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In the mid 1860s the Rouge turned their attention from the union of the Canadas to the proposed union of the British North American colonies. As a group, French Canadians tended to equate Lower Canada with French Canada. They believed that the interests of French and English Canadians were incompatible and thus their first concern was that the province of Quebec should be safe from English

(1) Jacques Monet, "French Canadian Nationalism and the Challenge of Ultramontanism," Canadian Historical Association, Report, 1966, p. 41.

(2) Jean-Paul Bernard, Les Rouges: libéralisme, nationalisme et anticléricalisme au milieu du XIXe siècle (Montréal: Les Presses de L'Université du Québec, 1971), pp. 53-54.



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Jane E. Harrison

Date of Birth — Date de naissance

August 19, 1957

Country of Birth — Lieu de naissance

Canada

Permanent Address — Résidence fixe

420 BRANFORD ST apt 503 Ottawa Ontario Canada
K1R 7T7

Title of Thesis — Titre de la thèse

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Professor H. Blair Neatby

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WILFRID LAURIER'S VIEWS
ON CANADIAN FEDERALISM

by

Jane E. Harrison, B.A.

A thesis submitted to the Faculty of
Graduate Studies in partial fulfilment
of the requirements for the degree of
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Carleton University

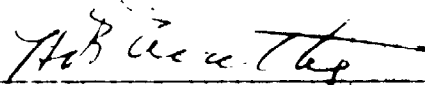
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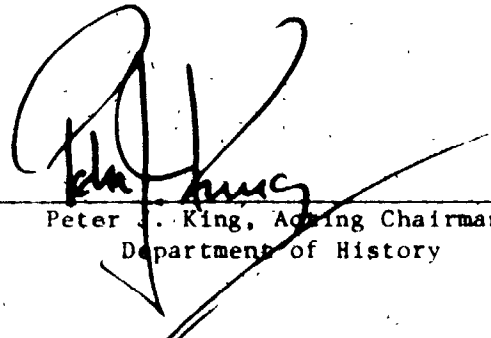
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H. Blair Neatby, Thesis Supervisor


Peter J. King, Acting Chairman
Department of History

Carleton University
Ottawa, Ontario

May 23, 1985

ABSTRACT

This study traces Laurier's view of federalism from his young manhood in the years just prior to Confederation, through his membership in the Legislative Assembly of Quebec, into the federal House and, ultimately, the office of Prime Minister. It focuses on the constitution and federalism, and discusses how Laurier viewed, wished to reform, and manipulated the British North America Act. In particular, it concentrates upon Laurier's view of the unitary facets of the constitution although other aspects of the constitution are discussed. The study reveals a significant continuity in Laurier's view of federalism over more than five decades.

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INTRODUCTION

One of the more striking features of Laurier's correspondence and speeches is his frequent reference to federalism. While still a young man he was involved in the debate over the form the proposed union of the British North American colonies would take. Amongst his last statements is a published letter on the nature of Canadian federalism. In the intervening years, when the constitution was as newly moulded clay, still particularly malleable, federalism was the frequent focus of his attention.

The purpose of this study will be to trace Laurier's view of Canadian federalism through these years. His discussion of federalism focused largely upon the constitutional framework of the Canadian union. This thesis will begin with his earliest years, those at law school, as a young Rouge newspaper editor and lawyer, and, finally, as a member of the Quebec Legislative Assembly. Subsequently, the twenty-two years he spent in the federal House prior to the Liberal victory of 1896 will be discussed. The third chapter will not be so much chronological as topical. It will focus on Laurier's view of French Canadian provincial minorities and will consider how his concern for their

interests may have affected his view of federalism. The final chapter will cover the years of his Prime Ministership. It will ^{thus} consider not only his statements but his actions. In the last years of Laurier's life federal issues arose less frequently than in earlier years: the nature of the constitution was clearer and governments were preoccupied with other issues, particularly the war. Laurier himself made few references to federalism and those he did make were largely consistent with his views in the previous decade. The opinions he did express in this final period, from mid 1911 until his death in 1919, will serve both as an indication of his views near the end of his life and as a point of comparison with all that had gone before.

This study focuses on Laurier's concept of Canadian federalism. There were other concepts, interesting in themselves, which had to be ignored because they were not relevant to this topic. It is not a study in political decision making. The focus will be upon the ideas, assumptions, and convictions that lay behind Laurier's often pragmatic actions in the political arena. There were areas on which Laurier would not give way, points beyond which he would not go. While his statements and actions were not invariably consistent, there was a significant degree of continuity to them throughout these years. This continuity serves better than anything to suggest that Laurier did have a "view" of federalism.

CHAPTER 1: THE EARLY YEARS

Three distinct phases can be distinguished in Laurier's early views on political union in British North America. These are associated respectively with Laurier's initial years as a young law student and McGill valedictorian, with his subsequent career as a Rouge lawyer and editor of Le D'fricheur, and, finally, with his brief membership in the Quebec Legislative Assembly. In each period his fundamental concern was the same: to secure the interests and defend the distinctiveness of French Canada. What distinguished the three phases was his analysis of how this was to be achieved. Ultimately, we learn something not only of his view of Canadian federalism, but also of his philosophy of government, a matter intricately linked to his enthusiasm for federalism.

Laurier was born in 1841 at St. Lin, Quebec, and lived the first twenty-five years of his life within the union of the Canadas. His two early and highly influential biographers argue, based upon an analysis of his valedictory speech given at McGill in 1864, that Laurier saw that union

as a model of racial harmony.(1) The tone of this discourse - the first recorded statement of his views - and his later characteristic tolerance of religious, ethnic and linguistic diversity are attributed to his upbringing.

Any attempt to attribute later behaviour to Laurier's early experiences can amount to little more than conjecture, however. What we know of Laurier's early years is slight. St. Lin was a predominantly French Canadian village some twenty-five miles north of Montreal and Laurier's parents were themselves French Canadian. For three years he attended the local parish school, learning the catechism, reading, writing, and the basis of arithmetic. The typical experience of any young Catholic boy in Canada East at the time. The next two years he spent, rather less typically, living and attending school in nearby New Glasgow, a largely Scotch Presbyterian settlement, although Laurier spent the greater portion of his time living with the Irish Catholic Kirk family. It is to his experiences here that his subsequent faith in the possibility of racial fraternity is attributed.(2) In New Glasgow he not only learned the English language, it is argued, but "he came unconsciously

(1) O.D. Skelton, Life and Letters of Sir Wilfrid Laurier, 2 vols. (London: Humphrey Milford, Oxford University Press, 1922) vol. 1, chapter 1; J.S. Willison, Sir Wilfrid Laurier and the Liberal Party: A Political History, 2 vols. (Toronto: George N. Morang and Company, Limited, 1903), vol. 1, chapter 2.

(2) Skelton, Laurier, vol. 1, pp. 29-31.

to know and appreciate the way of looking at life of his English-speaking countrymen, and particularly to understand that many roads led to heaven."(1) From 1854 to 1861 he attended the classical college of L'Assomption(2) - once again the more typical experience of a young man of his origins - and then continued to Montreal and the study of law at McGill.

Whether or not his biographers' explanation of the origins of Laurier's views of the union is accepted, that he viewed that union in a positive light is clearly unchallengable. It was upon the completion of his degree at McGill in 1864 that Laurier delivered his valedictory address.(3) His theme was the mission of the man of law. This mission, he argued, embraced,

justice, the most noble of all human
perfections; patriotism, the noblest of
all social virtues; the union between
the peoples, the secret of the future.

He focused on this last aspect briefly. He argued that there was a growing "fraternity" between the English and the French in a process that had gone furthest among men of law

(1) Ibid., p. 31.

(2) Ibid., pp. 33-36. Claude Galarneau, Les collèges classiques au Canada français (1620-1970) (Montréal: Fides, 1978).

(3) Willison, Laurier, vol. 1, pp. 35-39. Willison quotes directly from Laurier's address at times, and at others, merely summarizes portions of the speech in his own words. The discussion of the valedictory speech which follows is taken from Willison.

because the study of law was perhaps its principle cause.

He explained that:

Two different systems of law rule this country: the French and the English. Each of these systems places under obligation not only the race to which it properly belongs, but each rules simultaneously the two races.

The French Canadian continued to be guarded "in all the ordinary transactions of life" by the "ancient laws" of New France, while "offenses against the public order" were punished under British law. It was apparently in the manner in which this dual system had been introduced and carried through, "without violence, without usurpation, but solely as an effect of the laws of justice," that Laurier felt the lesson for racial harmony lay. According to his biographer, Laurier argued that if in all respects the union was continued, as it had begun, on the basis of "the same just provisions which allowed to each people the law that was suited to its traditions and ideas," the ultimate success of this union of two peoples was guaranteed. It had already, he testified, progressed considerably. He argued:

that race hatreds are finished on our Canadian soil. There is no longer any family but the human family. It matters not the language people speak, or the altars at which they kneel.

It was the task of the man of law to aid in carrying this process to completion, for none understood better than he that its key lay in tolerance, and accommodation, in "justice and humanity."

The question arises of how sincere Laurier was in his discussion of duality in his valedictory address. Was it perhaps the mere product of circumstances? He was after all a French Canadian graduate of an English Canadian establishment, speaking in his native tongue, having completed a study of French and English jurisprudence. A discussion of duality was not out of place. The warmth with which he spoke of the growing sense of unity between the two peoples is, however, notable and encourages one to feel his words were heartfelt. Certainly it makes it impossible to accept, for these years at least, the assertion of one student that Laurier was throughout his life "in principle a hereditary foe to any form of intimacy with les Anglais." (1) Had this been the case he would hardly have developed his theme in the same manner.

When, however, one attempts to trace further this very positive attitude to the political union of the French and English races, one encounters a significant difficulty. In the period immediately following the valedictory, Laurier, as the editor of a weekly Rouge newspaper, Le Défricheur, wrote articles distinguished by their Anglophobia and by the conviction that the political union of diverse elements would not only be weak itself, but would lead to the ultimate destruction of the weaker party to the union.

(1) J.A. Colvin, "Sir Wilfrid Laurier and the Imperial Problem, 1896-1906" (Ph.D Thesis, University of London, 1955), p. 4.

Neither of his English Canadian biographers sees this period as significant. O.D. Skelton views Laurier's Rouge sympathies as a temporary aberration. "It was not long," he argues; "before his views widened." (1) J.S. Willison goes further. While he reproduces portions of one issue of Le Défricheur he dismisses Laurier's writings as unimportant on the grounds that the views Laurier expounded were not his own or were at least not strongly held. Rather, Willison attributes the general tone and content of the articles to the need to maintain the editorial character of the journal, which had been established by Eric Dorion, a fanatical Rouge. Both men have given Laurier's years as a Rouge far too little attention. While the views he expressed in Le Défricheur were not in harmony either with those of the valedictory or with his attitude in later years, this is not a sufficient reason to discount his sincerity or to minimize this period. J.S. Willison's attitude, in particular, is too simplistic. The extent of Laurier's Rouge contacts and activities during these years should make one hesitant to dismiss Laurier's views in their entirety as mere editorializing. (2)

Before considering Laurier's connections with the Rouge and his editorship of Le Défricheur in any detail, it is

(1) Skelton, Laurier, vol. 1, pp. 78-79.

(2) Willison, Laurier, vol. 1, pp. 111-12.

necessary to give a brief summary of the origins of the Rouge and their attitude to the union of the British North American colonies. The Rouge were the product of a division amongst French Canadian nationalists in the late 1840s. A majority, under the leadership of L.-H. LaFontaine, believed that the rights of French Canadians had been secured under the Act of Union. They felt the union ensured, Jacques Monet argues, "a broadening future for their language, their institutions, and their nationality."⁽¹⁾ A minority, the Rouge, disagreed. They refused to accept the union, calling for a distinct Lower Canadian province, inhabited and governed by French Canadians. L.-J. Papineau was their nominal leader; his chief disciples and the effective Rouge leadership consisted of A.-A. Dorion, L.-A. Déssaulles, Rodolph Laflamme, Labrèche-Viger and J. Daoust.⁽²⁾

In the mid 1860s the Rouge turned their attention from the union of the Canadas to the proposed union of the British North American colonies. As a group, French Canadians tended to equate Lower Canada with French Canada. They believed that the interests of French and English Canadians were incompatible and thus their first concern was that the province of Quebec should be safe from English

(1) Jacques Monet, "French Canadian Nationalism and the Challenge of Ultramontanism," Canadian Historical Association, Report, 1966, p. 41.

(2) Jean-Paul Bernard, Les Rouges: libéralisme, nationalisme et anticléricalisme au milieu du XIXe siècle (Montréal: Les Presses de L'Université du Québec, 1971), pp. 53-54.

Protestant influence in any British North American union.(1) It followed from this that "provincial autonomy was to be sought in the proposed constitution as a key safeguard of the interests of French Canada."(2) Where French Canadians were divided was over the question of whether or not the proposed British North American constitution adequately secured the autonomy of a French Canadian Lower Canada. The Rouges felt it did not, while the Bleus felt that it did.(3)

A.-A. Dorion's specific objections to the terms of union give an indication of the grounds on which the Rouge opposed the proposed union. He complained of the centralized quality of the union.(4) Under confederation, he argued, French Canadians would surrender their rights and privileges and what little influence they had possessed under the Union. He objected to the fact that the militia, judicial appointments and the administration of justice were under the control of the central government, a government

(1) Jean-Paul Bonenfant, "L'idée que les canadiens français de 1864 pouvaient avoir du fédéralisme," Culture, 1964, p.316; A.I. Silver, The French-Canadian Idea of Confederation, 1864-1900 (Toronto: University of Toronto Press, 1982), pp. 35-36.

(2) Silver, The French-Canadian Idea of Confederation, p. 34, see also pp. 41-42, 50-66.

(3) Ibid., p. 38.

(4) Le Pays, June 4, 1867, cited in Ibid., p. 296.

which, because largely English, would be predictably hostile. In addition, he objected to the existence of areas of concurrent jurisdiction and he opposed the limitation of the province to delegated powers.(1) Similarly, Le Pays, a prominent Rouge journal, denounced the British North America Act as an "anglicizing bill." It foresaw under Confederation :

la langue française noyée, la religion persécutée, la nationalité submergée, et la race franco-canadienne bafouée et maltraitée, ses droits ravis, ses libertés foulées aux pieds.(2)

When and under what circumstances Laurier's connections with the Rouge began is not clear. Laurier's father and grandfather are believed to have had Rouge sympathies and this may have influenced Laurier.(3) Whatever may have been the environment in which he was raised at St. Lin, however, the atmosphere at the classical college of L'Assomption was clearly hostile to the radical and anticlerical political

(1) Mason Wade, The French Canadians, Vol. I: 1760-1911, revised edition (Toronto: Macmillan of Canada, 1968), p. 327.

(2) Le Pays, Mar. 27, 1867, cited in P.B. Waite, The Life and Times of Confederation 1864-1867: Politics, Newspapers, and the Union of British North America (Toronto: University of Toronto Press, 1977), p. 148.

(3) Joseph Schull, Laurier: The First Canadian (Toronto: Macmillan, 1965), p. 19; Richard T. Clippingdale, Laurier, His Life and World (Canada: McGraw-Hill Ryerson, 1979), p. 13.

tendencies of the Rouge.(1) Certainly, he did not echo the Rouge condemnation of the union of the Canadas in his valedictory speech of 1864. We do know, however, that Laurier apprenticed in the office of the prominent Rouge Rodolph Laflamme when at McGill. After graduation, and a brief attempt at establishing a practice with two young acquaintances, he entered into partnership with Médéric Lanctôt in the spring of 1865. Lanctôt was a fierce opponent of Confederation who, with L.-O. David, L.-A. Jetté and Desiré Girouard, established the notable anti-confederate journal L'Union Nationale in September of 1864. According to J.S. Willison, Laurier "seldom contributed" to the paper.(2) His name does appear, however, amongst some forty at the end of a report in L'Union Nationale of a meeting on August 8, 1864 which approved a series of resolutions opposing confederation. According to the resolutions, constitutional change should be avoided unless absolutely necessary. If indeed change appeared necessary, the only reform in Lower Canadian interests was the repeal of the Act of Union. By accepting federation or confederation, Lower Canada:

renoncerait au droit bienfaisant et
juste de demander et à l'espoir.

(1) Skelton, Laurier, vol. 1, pp. 33-36; Galarneau, Les colleges classique.

(2) Willison, Laurier, vol. 1, p. 95. A cursory search of the available issues of L'Union Nationale for this period uncovered no signed articles written by Laurier.

d'obtenir la dissolution de l'union législative actuelle, dans le cas où la nécessité d'un changement organique deviendrait absolue.(1)

If Laurier did not necessarily participate directly in the publication of L'Union Nationale, in 1867, when he was editing Le Défricheur in the Eastern Townships, L'Union Nationale called him a "confrère," whose programme was identical with their own.(2) Laurier himself, in an article in February 1867, stated that he was proud to collaborate with L'Union Nationale and to fight for "la défense de nos privilèges nationaux attaqués et menacés par les torys anglais et français."(3)

If Laurier's professional links were largely with the Rouge, so too were many of his personal connections. Dr. Gauthier, in whose home he had for a time boarded and later visited, was a staunch Rouge. Lanctôt and David were close friends, the Dorions and Laflamme, associates if not more. When Laurier left for L'Avenir "a sizable banquet" was held by his Rouge friends in his honour.(4)

Laurier was also involved in two organizations firmly associated with the Rouge. He frequented the Club

(1) L'Union Nationale, Sept. 3, 1864.

(2) From an article written by Médéric Lanctôt, an extract from which was published in Le Défricheur (L'Avenir and Arthabaskaville, Quebec), Mar. 14, 1867.

(3) Le Défricheur, Feb. 14, 1867.

(4) Schull, Laurier, pp. 41, 50.

Saint-Jean Baptiste, a secret society founded in opposition to Confederation.(1) In addition, as a student in Montreal he was a member of the Institut Canadien.(2) He remained associated with it until his departure for the Eastern Townships in late 1866, serving for a period as vice president. The Institut was founded in Montreal in 1844 "to provide an intellectual centre for French Canadian graduates of the classical colleges."(3) Rouge sympathizers tended to be prominent amongst the membership of the Institut.(4) Indeed the Institut Canadien operated, according to one historian, as "le centre d'organisation du parti rouge."(5) The content of its library and the tone of many of the lectures and debates held under its auspices clearly made it the central foyer "des idées radicales, et particulièrement

(1) Robert Rumilly, Histoire de la province de Québec, 10 vols. (Montreal: Bernard Valiquette, n.d.), vol. 1, p. 42.

(2) Bernard, Les Rouges, p. 240. Laurier was initially a member of the Institut Canadien-Français but then apparently joined the Institut Canadien. The former was founded by the Church as a rival organization to the Institut Canadien.

(3) Wade, The French Canadians, vol. 1, p. 343.

(4) Bernard, Les Rouges, p. 58.

(5) Ibid., p. 60.

de l'annexionnisme et de l'anti-clericalism." (1) Most studies of the Institut dwell upon its conflict with the ultramontane archbishop of Montreal, Ignace Bourget. Thus there is little written about the general stance of its membership on other political issues. The Institut's character as a Rouge bastion, however, would suggest it was a centre of opposition to Confederation.

Laurier's connection with the Rouge went beyond professional associations, friendship, and a connection with the Club St.-Jean Baptiste and the Institut Canadien. He actively supported the Rouge campaign against the union. On at least one occasion, he spoke against Confederation and in support of the views of Antoine-Aimé Dorion at a public meeting. (2) He may well have spoken at other public meetings in late 1864 and 1865 on behalf of the Dorion brothers when they were occupied in the House. (3)

The extent of Laurier's association with the Rouge and Rouge anti-confederate politics encourages one to believe that he shared their general political and philosophical attitudes. It discourages one from accepting Willison's argument that the views Laurier expressed in Le Défricheur were not his own, but the mere continuation of an editorial policy.

(1) Ibid.

(2) Willison, Laurier, vol. 1, p. 92.

(3) Schull, Laurier, p. 46.

Le Défricheur was established by Eric Dorion in 1861. In it he expounded upon colonization issues, his admiration for the United States and his opposition to Confederation.(1) When Dorion died, Laurier purchased the paper in partnership with M. Guitté, a printer from St. Hyacinthe. He was moved to do so, J.S. Willison argues, by the desire "to combine law and journalism" and, at the same time, to quit Montreal for the countryside where he hoped his chronic ill health might improve. The paper was published first at L'Avenir and, subsequently, at St. Cristophe d'Arthabaskaville (Arthabaska). It appeared on a weekly basis from November 1866 to late March 1867. Financial problems which predated Laurier's editorship, aggravated by the determined conservative and clerical opposition the new editor encountered, led to the paper's eventual collapse.(2)

We might best begin our analysis of Laurier's discussion of the proposed union in Le Défricheur by noting that he, as French Canadians generally, clearly assumed there was an identity between French Canada and Lower Canada or Quebec. The provincial government would thus be the

(1) Bernard, Les Rouges, pp. 218-20; Rumilly, Histoire de la Province de Québec, vol. 1, pp. 24-25.

(2) Willison, Laurier, vol. 1, pp. 99-110; Skelton, Laurier, vol. 1, p. 40.

political voice of the French Canadian race.(1) He wrote in December, 1866, that, "Agissant dans le Bas Canada, c'est à dire dans sa sphère naturelle, la race française exerce son action dans toute l'étendue de ses forces." He argued that such self-government was the sacred right of any people and demanded, in any new union, "Un gouvernement libre et séparé" for his race that French Canada might continue to enjoy the right of self government.(2) A truly federal constitution, he argued, would serve the purpose for, ideally, the federative form:

n'attribue au gouvernement central que la direction des affaires communes à tous les états, les affaires particulières des états sont laissées à leur contrôle et personne, pas plus le gouvernement central qu'un autre, n'a le droit d'y voir.(3)

The sovereignty of the local legislatures within their sphere was of key importance. In arguing thus Laurier differed little from the main run of French Canadian nationalists.

As the Rouge generally, however, Laurier maintained that the proposed constitution did not secure the requisite

(1) Laurier seems to have paid little if indeed any attention to the existence of French Canadian minorities in other provinces nor to the Anglo-Quebecois minority of Quebec in his writing for Le Défricheur. It is, however, far from clear how Laurier's neglect of the issue of English minority rights is to be explained.

(2) Le Défricheur, Mar. 7, 1867.

(3) Le Défricheur, Dec. 27, 1866.

autonomy for Quebec. He complained that, "tous les actes de notre petit parlement local peuvent être modifiés, corrigés, coupés, augmentés, annulés" by the federal government. It had the right "de tailler dans nos institutions, nos lois, nos actes, comme en plein drap."⁽¹⁾ No measure of the provincial government, whatsoever it concerned, could be protected against interference by the central government, which Laurier thus referred to as "l'arbitre suprême de nos destinées."⁽²⁾ Laurier complained not only that the provinces would be subordinate to the federal government, but that "Toutes les questions importants sont du domaine du gouvernement fédéral."⁽³⁾ He did not proceed to detail what he considered to be important powers, however. In short, the proposed union was really a poorly disguised legislative union.

He complained further that the proposed constitution provided no guarantees to Lower Canada for the conservation of her religion and language.⁽⁴⁾ The question of language was one upon which Laurier focused in his issue of February 14, 1867. He argued that it had long been the desire of English Canadians to anglicize the French Canadians. Lord

(1) Le Défricheur, Dec. 27, 1866.

(2) Le Défricheur, Jan. 17, 1867.

(3) Le Défricheur, Dec. 27, 1866.

(4) Le Défricheur, Jan. 17, 1867; Feb. 14, 1867.

Durham had traced the route anglicization might take, (1) but it was a project which had originated at the Conquest. (2) Under the Union of the Canadas, however, the English Canadians had lacked the strength to achieve their object. Even so, feeble as the force they could muster was, the French language had lost ground. (3) In the proposed British North American union, English Canadians would secure the preponderance of power. French Canadians, he argued, would be one against four in the House of Commons and one against seven in the Senate. (4) It would not be long before English Canada used this new found strength to attack the French language. The English were, he explained in allegorical terms, like the brigand who met a strong and well armed man on the road:

il voudrait bien le dévaliser, mais il sent que l'homme peut se défendre et le vaincre peut-être; alors il va chercher cinq ou six brigands de son espèce.

The end, in reality as in the allegory, would be the same: "à eux tous ils viennent facilement à bout de ce qu'un seul

(1) Le Défricheur, March 7, 1867.

(2) Le Défricheur, Feb. 14, 1867.

(3) This was false. The French language, which had been largely proscribed by the Act of Union, had actually risen in status in subsequent years until the Union had virtually become officially bilingual. See Royal Commission on Bilingualism and Biculturalism, Report, Book 1: The Official Languages (Ottawa: Queen's Printer, 1967), p. 46.

(4) Le Défricheur, Jan. 17, 1867. Laurier's mathematics are questionable.

n'a pas meme osé."(1) What in more precise terms he felt the English Canadians would achieve was unclear. We should further note that while Laurier specifically referred to the fate of the French language, he made no similar, particular reference to religion. One may speculate that this indicated he felt language to be more important to the survival of French Canada than religion and thus that he was less concerned with dangers to the latter than the former, but there is nothing further to refute or encourage such a view.

In short, from Laurier's perspective the proposed union was an assimilationist scheme. Confederation, he commented, "sera le tombeau de la race française et la ruine du Bas-Canada."(2) Further, it becomes clear as one studies Le Défricheur that no alteration of the terms of union would be sufficient to reconcile Laurier to Confederation. It was not the form of the union to which he objected so much as the fact of the union. Laurier clearly had come by this time to believe that the sort of amicable coexistence of English and French Canadians within the confines of a political union which he discussed in his 1864 valedictory speech could never exist.

He began with the assumption that a union of heterogeneous elements would never be strong: "Vous avez

(1) Le Défricheur, Feb. 14, 1867.

(2) Le Défricheur, Dec. 27, 1866.

beau entasser ensemble des éléments disparates, il n'y aura pas de force il n'y aura pas même d'union."(1) He cited the example of the union of Ireland and England, never strong nor happy, and that of Hungary and Austria. These unions were "faibles et déplorables,"(2) because their component peoples lacked homogeneity. The axiom "l'Union fait de la force" held true only when the elements united were homogeneous.(3) Further, he believed that the union of heterogeneous elements would not only be weak itself, but would lead to the destruction of the weaker party to the union. He cited the Union of the Canadas which, he argued, had left the once strong, French, and pure French Canadian race weakened:

Aujourd'hui elle est plus vaste, plus nombreuses; mais elle porte dans son sein un germe dissolvant - elle est sans forces, elle est divisée, elle n'est pas encore anglifiée, mais elle est en voie de l'être.(4)

The lesson to be derived from this interlude was that no union would have any other effect. It was unrealistic "de se bercer de l'espoir de pouvoir reprendre un jour les concessions que chaque nouvelle constitution nous arrache."(5)

(1) Le Défricheur, Dec. 27, 1866.

(2) Ibid.

(3) Le Défricheur, Dec. 20, 1866.

(4) Le Défricheur, Mar. 7, 1867,

(5) Ibid.

He argued more particularly in respect to the proposed union of the British North American colonies that the colonies had neither origin, religion, nor national aspirations in common, but merely dependence upon the same metropolis. Lower Canada's relations with Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland were no closer than its relations with Australia. The only difference was that the distance between the British North American colonies was less.(1) Laurier argued that contiguity was insufficient justification for uniting the British North American colonies. Why not on the basis of the same singular reasoning annex oneself to the United States and proceed to unite all neighbouring states, creating a vast world union, Laurier inquired with heavy sarcasm.(2) Confederation was designed to entrench English, Protestant and monarchical institutions on British North American soil, to create a bastion of British monarchism against the United States.(3) The union of the British North American colonies, far from strengthening its component elements and providing them with the means to combat future dangers, would be productive of new dangers by uniting contrary elements: Catholic and Protestant, French

(1) Ibid.

(2) Le Défricheur, Jan. 17, 1867.

(3) Le Défricheur, Jan. 17, 1867; Feb. 14, 1867.

and English. The result could only be, Laurier argued, division, struggle, war, and anarchy with "l'élément le plus faible, c'est à dire l'élément français et catholique, ... entraîné et englouti par le plus fort." (1) Joined to a race five times stronger, "dont les tendances sont diametralement opposés," French Canada had two options. She could follow the English Protestant majority, "docile, esclave," and gradually become English and Protestant herself. Alternately, she could resist the assimilationist pressure from English Canada, "et alors, au lieu d'être engloutie et noyée pacifiquement, lentement, savamment, elle sera reduite à merci par la violence." (2) It was this sense of powerlessness in the face of a hostile majority which permeated Laurier's discussion of the proposed union in Le Défricheur. The union of French and English Canada would resemble, he argued,

l'union célèbre du pot de terre et du pot de ter [sic-fer] ou le premier fut broyé pour s'être allié à plus fort que lui, (3)

or, similarly,

l'union du chat et du moineau, union touchante, sentimentale, qui datait de l'enfance, qui faisait verser les larmes aux admirateurs de cet axiome: "l'union fait de la force" et qui finit par la

(1) Le Défricheur, Dec. 27, 1866.

(2) Ibid.

(3) Le Défricheur, Dec. 20, 1866. "C'est le pot de terre contre le pot de fer": be up against more than his match (Harraps).

mort du moineau croqué et mangé par le chat devenu grand. (1)

In conclusion, Laurier, during this second phase as editor of Le Défricheur, objected not so much to the terms of the proposed union as to any form of political association with English Canada. No federal union could be strict enough in its division of spheres to secure French Canada. The federal government would inevitably be the "gouvernement des colonies anglaise," (2) and Laurier retained no faith in their goodwill or in their sense of justice. The violent terms and imagery which he used in this period to describe the future of Lower Canada in any union with English Canada stand in stark contrast to the terms of his valedictory speech. Then, he had waxed enthusiastic at the prospect of growing racial fraternity; now he gave expression to a violent Anglophobia. His had become a highly defensive nationalism bounded by narrow horizons.

The final issue of Le Défricheur appeared in March, 1867. That June the Dominion of Canada came into being and in September the first federal and provincial elections were held. The Rouge were divided on how best to respond. At a convention prior to the election, A.-A. Dorion argued in favour of bringing an end to the Rouge opposition to

(1) Ibid.

(2) Le Défricheur, Dec. 27, 1866.

Confederation, now that it was a fait accompli. However, "les plus jeunes et les plus avancés parmi les libéraux," in league with "le groupe de l'Union Nationale," convinced the majority of the Rouge to maintain their platform of opposition. This group was responsible for the production and distribution of a pamphlet entitled "La Confédération, couronnement de dix années de mauvaise administration," which argued amongst other points that those who supported Confederation did so "pour réaliser le plan de Lord Durham, et soumettre la population française aux volontés de la population anglaise."(1)

Laurier was asked to run as a Rouge candidate in the September elections of 1867. He considered the offer but declined for reasons of health and a stated reluctance to divide the party by challenging another potential candidate.(2) He was, however, deeply involved in the Rouge campaign, and neglected his legal practice while it continued.(3) Where he stood in the division of the party over whether or not to continue its opposition to Confederation is unclear.

(1) Rumilly, Histoire de la Province de Québec, vol. 1, pp. 95-96.

(2) Wilfrid Laurier Papers, Public Archives of Canada, MG 26 G, Correspondence, Laurier to Zoé Laurier, Aug. 1 and Aug. 16, 1867, vol. 814A. Hereafter simply cited Laurier Papers.

(3) Laurier Papers, Laurier to Zoé, Sept. 6, 1867, vol. 814A.

The elections over, "les libéraux cessèrent leurs critiques contre la Confédération."⁽¹⁾ Provincial opposition leader Henri-Gustave Joly told the Assembly on December 30, 1867, "qu'il acceptait la Confédération et s'offrait à travailler pour le bien du pays dans le cadre de ce régime." Felix-Gabriel Marchand, another leading Rouge, also announced his acceptance of the Union now that it was a fait accompli.⁽²⁾ Presumably, if Laurier had not sided with Dorion in the summer and dropped his opposition to the union then, he did so now.

He worked for the Rouge between 1867 and 1871 but there exists no record of his view of Confederation during this time. When next we can learn anything of his outlook, he was a member of the Quebec Legislative Assembly.

Why Laurier decided to enter active political life is unclear. There exists no record of any cause he was particularly concerned to forward. To run for a legislative seat may merely have seemed a logical next step for a lawyer with a relatively established practice and extensive political contacts. Whatever the case, in 1871 Laurier ran successfully as the Liberal representative for the provincial constituency of Drummond-Arthabaska.

Laurier spoke relatively little in the Legislative

(1) Rumilly, Histoire de la Province de Québec, vol. 1, p. 111.

(2) Ibid.

Assembly. He gave two major speeches during the first session of the second provincial parliament and these alone are of interest to us here. The first was his November 9, 1871 reply to the speech from the throne in which he discussed race relations and the economic condition of the province. In the second address on November 22, 1871, Laurier focused upon the double mandate, an electoral practice which allowed politicians to sit in both federal and provincial legislatures.(1)

It is clear from these two addresses that Laurier had abandoned his earlier opposition to Confederation. That he did so, it may be suggested, reflected more than the mere acceptance of a fait accompli. There remained no echo of the assumptions and fears which had fueled his earlier opposition to the union. There was no reluctance, no hesitancy in his acceptance of the union as might have been expected had he merely been reconciled to the union by its inevitability. Rather, he spoke of the union of the disparate elements of the population, as the creation of "un tout compact et homogène, tout en laissant à chacun de ces éléments, son caractère propre et son autonomie." It was "un fait dont nous pouvons être justement fiers."(2) His

(1) These speeches are reproduced in Quebec, Débats de l'Assemblée Législative, 2e Législature: 1871-1875 (Texte établi par Marcel Hamelin, 1976), Nov. 9, 1871, pp. 8-10, and Nov. 22, 1871, pp. 71-74.

(2) Laurier, Débats de L'Assemblée Législative, Nov. 9, 1871, p. 8.

tone carries an element of conviction. The abandonment of his opposition to Confederation would appear to have been bolstered by a broad change of attitude, by a renewed faith in the possibility of a just and harmonious union of heterogeneous elements. His outlook is reminiscent of his positive discussion of racial fraternity in the valedictory speech of 1864, rather than of the isolationism he expressed in Le Dérivateur. At the root of this change, it may be suggested, lay the diminution, if not the complete disappearance, of his Anglophobia. Gone was the crippling fear of assimilationism and in its place was a renewed and developing trust in the English Canadian, his sense of justice and goodwill, his reasonableness. No longer did Laurier describe relations between English and French Canada in the violent terms he once had. He argued:

Nos pères jadis ont été ennemis; il se sont fait pendant des siècles des guerres sanglantes. Nous, tous enfants réunis sous le même drapeau, nous n'avons plus d'autres combats que ceux d'une généreuse emulation pour nous vaincre mutuellement dans le commerce, dans l'industrie, dans les sciences et les arts de la paix.(1)

Laurier felt that the harmonious and successful accommodation of the diverse elements that comprised the population of the new Dominion was dependent upon two factors: a conscientious respect for the fundamental rights of the individual, and the autonomy of the provinces within

(1) Ibid., p. 9.

a truly federal union.

He noted that under our constitution, the fundamental principle of which was "[le] principe du gouvernement libre et représentatif," linguistic and religious freedom, as the freedom to observe established customs, were fundamental or natural rights of the individual. It was the respect for these rights and the equality of the rights enjoyed by all citizens that ensured peace and harmony in the face of diversity.⁽¹⁾ Whether Laurier felt these fundamental, individual rights might be better secured within a federal or a unitary state is unclear. He did not develop this reference to fundamental rights and nothing in his two speeches allows us to take our analysis further.

Laurier devoted far more attention to federalism as a mechanism for the harmonious reconciliation of diverse elements within a political union. A federal union, or "une confédération," as Laurier referred to it alternately, was:

un faisceau d'Etats qui ont ensemble des intérêts communs, mais qui néanmoins vis-à-vis les uns des autres ont des intérêts locaux, distincts et séparés.

Pour tous leurs intérêts et leurs besoins communs, les Etats ont une Législature commune, la Législature fédérale; pour tous leurs intérêts locaux ils ont chacun une Législature

(1) Laurier, Débats de L'Assemblée Législative, Nov. 9, 1871, p. 8; also Nov. 22, 1871, p. 72. The precise meaning of "established customs" is unclear. The observance of various cultural practices springs to mind but the phrase might be meant to include somewhat more concrete practices. The extent of linguistic and religious freedom is also left, perhaps deliberately, vague.

locale et séparée.(1)

The essence of such a union lay, he argued, in the co-ordinate sovereignty of the federal and provincial legislatures, in the complete independence of the two both in fact and in law. He argued:

il faut surtout que la Législature local soit complètement à l'abri de tout le contrôle de la Législature fédérale. Si de près ou de loin la Législature fédéral exerce le moindre contrôle sur la Législature locale, alors ce n'est plus en réalité que l'union législative sous la forme fédérative.(2)

This independence was dependent not only upon a strict division of powers but also upon the strict separation of federal and provincial legislative membership. He explained in his speech on the dual mandate that, "Par le fait même que nous sommes un Etat indépendant faisant partie d'un autre Etat indépendant, nous aurons avec cet Etat des rapports et des relations d'affaires." Where there was such contact, he continued, there was equally bound to be "froissements et complications d'intérêts." Under the dual mandate system which allowed members of the federal Legislature to hold seats in the provincial Legislature, the interests of the province would be bound to be sacrificed, Laurier argued, in the case of any controversy. The members of the federal Legislature would, in any conflict, naturally

(1) Laurier, Débats de l'Assemblée Législative, Nov. 22, 1871, p. 73.

(2) Ibid.

take the part of the federal government, as would the members of the local Legislature take that of the local government. Even when sitting in the local assembly these federal members would be unlikely to abandon their interests and sentiments. Thus, they would constitute within the local assembly, "une élément nécessairement hostile à la province du Québec et qui devra nécessairement prendre partie contre lui." They would, he argued, plead at Quebec the cause of Ottawa and urge upon their compatriots the sacrifice of the best interests of the province. Without a complete separation between federal and provincial spheres:

Le sort de Québec sera le sort du pot de terre qui, un jour, s'avisa de voyager de compagnie avec le pot de fer, Québec sera broyé. (1)

Laurier's criticism of the dual mandate rested in particular upon the assumption that under such a system federal interests would always predominate. This does not seem entirely warranted, but certainly served well the partisan interests of the political grouping to which Laurier belonged. Laurier and his colleagues in provincial opposition had every reason to desire the triumph of the single mandate which would make it impossible for the Conservatives to place their best men in both legislatures. While, however, Laurier's opposition to the dual mandate and his arguments against it may have been inspired by partisan

(1) Ibid., p. 74. See more generally pp. 73-74.

interests, his concern that the provincial legislature be autonomous appears sincere, the product not of partisan considerations but of personal conviction.

His interest in provincial autonomy was clearly confined, however, to an interest in the autonomy of the province of Quebec. Quebec alone had any need for that autonomy, because she alone had distinct, local interests. While Laurier referred to Confederation as a union of independent states, his vision of that union was highly dualistic. He perceived a rigid dichotomy between English and French Canadians and distinguished not at all amongst the English Canadian provinces. He viewed them, rather, as an amorphous mass. Had the union been one of the English colonies alone, it would likely have taken a legislative rather than a federative form. The federative form of the Canadian union was the direct result of Quebec's inclusion therein. "C'est un fait historique," he commented, "que la forme fédérative n'a été adoptée qu'afin de conserver à Québec cette position exceptionnelle et unique qu'elle occupe sur le continent américaine."(1)

What "la situation particulière et des intérêts exceptionnels de Québec"(2) were is not entirely clear. Laurier continued to perceive an identity between French Canada and that geographically definable unit, Québec. He

(1) Ibid., p. 74.

(2) Ibid.

used the terms French Canada and Quebec interchangeably. Arguably, Laurier felt Quebec was more than merely a community of French-speaking, Catholic individuals who observed certain established customs, for he looked to more than a respect for fundamental individual rights to defend its identity. Quebec was, rather, a community of French Canadians whose physical proximity allowed them to enjoy an existence that went far beyond a common language, faith, and customs, an existence the isolated French Canadian could never enjoy. Together they formed a corporate entity, a unit in commerce, industry, the arts, sciences, and letters.(1) The health and development of these facets of their corporate existence was the responsibility of the government of the province of Quebec.

The only aspect of this corporate existence to which Laurier made any substantial reference was the economic life of French Canada. He began by noting the comparative economic inferiority of the French, "éternellement dévancés par nos compatriotes d'origine étrangère." After three centuries, Quebec was still not self sufficient, was still obliged "de se fournir sur les marchés étrangers," despite the rich resources of Quebec so suited to the development of an industrial nation. The cause of this inferiority was largely political:

Après la Conquête, les Canadiens, jaloux

(1) Laurier, Débats de l'Assemblée Législative, Nov. 9, 1871, p. 10.

de conserver intact leur héritage national, se concentrèrent en eux-mêmes, sans conserver avec le dehors aucune relation. La conséquence immédiate fut qu'ils restèrent étrangers à tous les projets qui s'accomplissaient tous les jours à l'étranger, qu'ils demeuraient fatalement dans le cercle de leurs vieilles idées et de leurs vieilles théories.(1)

Withdrawing from economic intercourse as a unit, French Canada had been surpassed by its far more vigorous neighbouring colonies, children of the most commercially and industrially developed nation under the sun. The time had come, Laurier had argued in 1871, to close the gap, to compete with English Canada. It was not a question of individuals entering the fray but of the race developing its economic potential as a unit. "C'est pour nous, nous surtout Canadiens d'origine française, un devoir de créer une industrie nationale," he argued, national industry in this case meaning provincial industry.

With the provincial government lay part of the responsibility for this industrial development. It was a responsibility it was to undertake by encouraging "une immigration industrielle" and by shunning imports from the metropolis amongst other policies.(2) In the first instance the Quebec government would be exercising its authority in an area of concurrent jurisdiction. In the second case, its

(1) Ibid., p. 9.

(2) Ibid.

authority was less clear. How the government was to "shun" imports when tariffs were a federal responsibility was uncertain. The federal government's control under the British North America Act of banking and interest rates might also hamper the province in its efforts to encourage the development of "une industrie nationale." Notably, however, Laurier did not discuss possible difficulties nor demand any alteration in the distribution of legislative power. He appears to have felt that the provincial government should perform its responsibilities by working within the constitutional status quo. Significantly, he did not suggest the provincial government co-operate either with other provinces or the federal government to develop the broader Canadian economy. Laurier's failure even to touch upon such specifics underlines the lack of constitutional sophistication of his discussion of federalism.

In conclusion, the similarity between the first and final phases of this youthful period should be underscored. Both were distinguished by an affirmation of faith in the goodwill and sense of justice of English Canada. This faith allowed Laurier to view the political union of French Canada with one or more of the neighbouring English colonies with equanimity. In the first phase, he argued that the bases of

a harmonious union were mutual tolerance and accommodation, a willingness to allow each party to the union to govern itself within a certain sphere according to its values and customs. In the later period, Laurier clearly felt he had found in a classical federal union based upon the strict autonomy of the local legislature within its sphere, the constitutional embodiment of the principles he had earlier argued should govern relations between the French and English in the union of the Canadas.

In the middle, radical, phase Laurier's fundamental concern was, as previously, to ensure the continued distinctiveness of Quebec, the physical embodiment of the French Canadian race. The integrity of Quebec was dependent, he felt then as throughout these few years, upon self-government. In the first and last phases, he was confident such self-government or autonomy was possible within a larger union. When writing in Le Deffricheur he had argued it was not. The difference in his outlook can be attributed to a crisis of confidence. He seems to have temporarily lost his faith in the sense of justice and tolerance, in the accommodating spirit of English Canada and had taken refuge in isolationism.

CHAPTER 2: CLASSICAL FEDERALISM

On January 22, 1874 Laurier was elected as the federal member for the constituency of Drummond-Arthabaska. Why he made the transition from provincial to federal politics is unclear. As a member of the Legislative Assembly, he had portrayed the Quebec Legislature as the custodian and champion of all that vitally concerned him, of the health and welfare of French Canada. The role of the federal Parliament, by implication, was of comparatively little importance. Laurier's decision to enter the federal House suggests, however, that he did not believe this to be the case. Rather, it indicates he saw federal politics as a broader political forum offering greater opportunities and that his earlier tendency to make the provincial government appear preeminent was largely the product of his membership in the provincial Assembly.

This chapter will focus upon Laurier's view of federalism during his years in Parliament from 1874 until the Liberal victory of 1896. The first years until 1878 were spent on the government benches. Thereafter he was in opposition and, after 1887, opposition leader.

Laurier entered the federal House at a time when the nature of the Canadian union was a matter of great controversy. Indeed the 1870s and 1880s as a whole were distinguished by persistent and wide-ranging constitutional debate. The new Dominion had a constitution in the British North America Act, but how that constitution was to be implemented was far from clear. Canadians differed in their interpretations of the Act, as they differed in the interests, assumptions, and political concerns they brought to bear in their discussion of the form the union should take. In particular, debate centred on the question of the status of the provinces. Were they to be treated as bodies akin in status to municipal corporations or as mature and autonomous entities? Those who argued the latter were often labelled "provincial rightists," but "provincial rights" carries implications of a platform going far beyond the mere

assertion of the autonomy of the province within its sphere.(1)

In the debate Laurier associated himself, and his party more generally, with the defence of the classical federal principle of provincial autonomy. He claimed in 1893 that:

When the historian of the future shall refer to the first twenty years of Confederation, the brightest page he will have to record will be the page in which he will trace the efforts of the Liberal party to maintain inviolate and intact the liberties and independence of the Local Legislatures.(2)

Our focus will be upon Laurier's defence of "the principle of local liberties and local interests, the recognition of which," he argued, "lies at the very basis of our

(1) Ramsay Cook, Provincial Autonomy, Minority Rights and the Compact Theory, 1867-1921: A Study Prepared for the Royal Commission on Bilingualism and Biculturalism (Ottawa: Queen's Printer, 1969), chapters 2, 3, 4, provides one of the more complete overviews of the debate. "Provincial rights" was the clarion call of the provinces, in particular of Ontario and Quebec, in their battle against the Macdonald government's liberal exercise of the power of disallowance and his assertion of federal legislative and fiscal superiority. The Interprovincial Conference of 1887 is often seen as the culmination of the provincial revolt against federal dominance. Its nineteen resolutions provide a good example of the myriad of positions which can be associated with "provincial rights"; see M. Ollivier, ed., Dominion-Provincial and Inter-Provincial Conferences, 1887-1926 (Ottawa: 1951), pp. 20-27. These resolutions were intended to form the basis of an amendment to the British North America Act, a fact which indicated the participants' belief in the "compact theory" of Confederation. The resolutions also serve to indicate the interest of the provinces not only in securing their autonomy, but in securing greater power.

(2) Laurier, House of Commons, Debates, Mar. 8, 1893, p. 1984.

constitution."(1) The broad movement of opposition to what has been called the "Macdonaldian" conception of Confederation,(2) forms a background to his views in these years.

Laurier's emphasis on the importance of the classical federal principle of local autonomy was based on the assumption that Canada was the political union of several distinct communities. The diversity of the Canadian nation derived from two factors: the presence in Canada of two races, French and English, and the sheer physical size of the country. Racial diversity had been his focus in the past. He continued, in this period, to identify French Canada with Quebec and to emphasize her "peculiarities, characteristics, institutions, which we look upon as a national inheritance" and which "we have derived from our origin."(3) It was a new departure for him to go beyond this perception of duality to argue that in other respects the nation was heterogeneous. This heterogeneity derived

(1) Laurier, Speech at Somerset, Aug. 2, 1887, in Ulric Barthe, compiler, Wilfrid Laurier on the Platform, 1871-1890: Collection of the Principal Speeches Made in Parliament or Before the People (Quebec: Turcotte and Menard, 1890), p. 361.

(2) W.L. Morton, "Confederation, 1870-1876," Journal of Canadian Studies, 1966: 11-23; W.L. Morton, "The Conservative Principle in Confederation," in Canadian History Since Confederation: Essays and Interpretations, Second Edition, edited by Bruce Hodgins and Robert Page (Ontario: Irwin-Dorsey, 1979).

(3) Laurier, House of Commons, Debates, Mar. 12, 1879, in Barthe, Laurier, p. 108.

from the "variety of climatic conditions, of geographical situations, of natural productions and industrial pursuits" that characterized any large territory, and inevitably created "a difference in regard to the wants, the desires, the pursuits and the conditions of the people." (1)

The only just means of governing a state characterized by diversity, Laurier argued again and again, was by a division of spheres and by the self-government of each of these spheres. He commented at Somerset, Quebec, in the summer of 1887 that:

It is evident that, in our province we have not the same wants as the province of Manitoba. So that it must be perfectly clear to all that the moment local wants arise, the federative principle which makes the distinction between local, interests to (sic) and general interests, is the only system by which men can be governed in all liberty. If this principle be true, gentlemen, and I think it is so, it necessarily follows that the federative principle, legislative separation, is the most powerful factor in national unity. Legislative union does not respond to local wants and must necessarily press tyrannically somewhere thus creating the desire for complete separation, while legislative separation of the provinces respects the rights and conduces to the happiness of all. (2)

In this paragraph the essence of his view of federalism is expressed. Liberty, justice, and tolerance were the only

(1) Laurier, House of Commons, Debates, Feb. 5, 1890, p. 263.

(2) Laurier, Speech at Somerset, Aug. 2, 1887, in Barthe, Laurier, p. 366.

bases upon which men, both in groups and as individuals, could be governed successfully and in harmony, Laurier consistently argued.(1)

While Laurier frequently stressed that federalism was a response to both the racial and the territorial diversity of Canada, it appears that he continued to consider federalism of particular importance to French Canada because of her "peculiar circumstances." (2) He commented in 1884 that "All the provinces are interested in the integrity of the constitution, but no province so much as the province from which I come." (3) The federal separation of powers was "a source of privileges" for French Canada. With the creation of a "free, independent, and untrammelled" provincial government, "We had been restored to ourselves,... the

(1) Perhaps the best discussion of his general view of the importance of a respect for liberty to harmony is expressed in Laurier's speech on "Political Liberalism," June 26, 1877, in Barthe, Laurier, pp. 51-80. Laurier illustrated this essential principle of government by referring to historical example. In particular, he argued that the unrest in British North America at the end of the 1830s was the result of the lack of self-government of the colonies. The reforms of the early forties secured peace because they ensured for each colony the right to govern themselves in respect to their local affairs. See, for example, Laurier, House of Commons, Debates, Mar. 16, 1886; Apr. 21, 1887; and Laurier, Speech at Horticultural Pavilion, Dec. 10, 1886, in Barthe, Laurier, respectively, p. 267, pp. 345-46, pp. 309-313.

(2) Laurier, House of Commons, Debates, Apr. 14, 1882, p. 907.

(3) Laurier, House of Commons, Debates, Mar. 18, 1884, in Barthe, Laurier, p. 170.

sacred trust of our nationality had been confined to a Government of our own."(1) This particular concern for the interests of Quebec will emerge in the analysis of the more particular aspects of Laurier's view of federalism.

In these years Laurier portrayed liberalism as the defender of the classical principle of provincial autonomy. He saw in the strict respect for that principle the key to a just and harmonious union of diverse elements. The British North America Act, however, while creating a federal union of the provinces, contained both federal and unitary elements. These unitary aspects of the constitution, designed to insure the subordination of the provinces to the Dominion government, directly contradicted the federal principle.(2) How did Laurier view these unitary elements of the constitution? In particular, how did he view the

(1) Laurier, House of Commons, Debates, Mar. 12, 1879, in Barthe, Laurier, pp. 106-7.

(2) K.C. Wheare, Federal Government, 3rd ed. (London: Oxford University Press, 1953), p. 11, who defines the federal principle as "the method of dividing powers so that the general and regional governments are each, within a sphere co-ordinate and independent," describes the Act as "quasi-federal" because of the presence of these unitary elements. Cook, Provincial Autonomy, Minority Rights and the Compact Theory, p. 7, discusses them as does Peter W. Hogg, Constitutional Law of Canada (Toronto: Carswell Co., 1977), pp. 29-37.

federal power to appoint and dismiss provincial Lieutenant-Governors, the federal power of disallowance, federal subsidies to the provinces, and the unitary nature of the judicial system?

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The federal government's power to appoint, pay, and dismiss the Lieutenant-Governor for "Cause assigned" is one of the unitary facets of the constitution, as is the Lieutenant-Governor's power to reserve provincial bills "for the Signification of the Governor-General's pleasure." Laurier did not discuss reservation during this period; he did, however, comment on the federal government's power to dismiss a Lieutenant-Governor.

Laurier's view of the office of the Lieutenant-Governor was most clearly expressed in the debates between 1878 and 1880 over the Letellier affair. The controversy arose when Quebec's Conservative administration of Charles Boucher de Boucherville was dismissed on March 2, 1878, by Luc Letellier de St. Just, the Rouge Lieutenant-Governor.⁽¹⁾ In the federal Parliament the opposition Conservative party strongly criticized Letellier's behaviour and demanded his

(1) J.T. Saywell, The Office of the Lieutenant-Governor: A Study in Canadian Government and Politics (Toronto: University of Toronto Press, 1957), p. 118.

dismissal.(1) Liberal Prime Minister Alexander Mackenzie argued that the federal government could not be considered responsible for what had occurred, and that federal interference would constitute a violation of provincial autonomy and responsible government. Mackenzie was defeated in September of 1878 by J.A. Macdonald and the Conservative party. A few months later Letellier was dismissed.(2)

Laurier questioned the wisdom of Letellier's action in private,(3) but in the House soon after the crisis he argued that it was not for the federal Parliament to judge the wisdom of Letellier's actions. Federal interference in a controversy which concerned the "provincial constitution of Quebec alone" would be a violation of provincial autonomy and responsible government. If a wrong had indeed been

(1) House of Commons, Debates, Apr. 11, 1878, pp. 1878-2000. Macdonald's motion argued:

That it be resolved, that the recent dismissal by the Lieutenant-Governor of the province of Quebec of his Ministry was, under the circumstances, unwise and subversive of the position accorded to the advisers of the Crown since the concession of the principle of responsible Government to the British North American colonies.

(2) Mackenzie, House of Commons, Debates, p. 1902 ff, cited in Saywell, The Office of the Lieutenant-Governor, p. 236.

(3) Laurier to Pacaud, Mar. 5, 1878, in Lucien Pacaud, editor, Sir Wilfrid Laurier: Letters to My Father and Mother (Toronto: Ryerson Press, 1935), p. 9; Saywell, The Office of the Lieutenant-Governor, p. 235, 237; Rumilly, Histoire de la province de Québec, vol. 2, p. 132.

committed, "the people of Quebec could remedy the evil themselves by overthrowing the present legal advisors of the Crown." Should they fail to do so "It would," he argued, "indeed be better than that the system of Federal Government should be jeopardized."⁽¹⁾ During the remainder of the controversy he would expand upon this position.

Laurier's premise was that the Lieutenant-Governor, once appointed, should be independent. Only then, he argued, would he retain his usefulness as the "captain" of the provincial "ship of state."⁽²⁾ A Lieutenant-Governor's conduct in the execution of his official duties affected the people of Quebec alone.⁽³⁾ It was they who should rule on the issue according to their "own standard."⁽⁴⁾ A provincial minority, displeased with the conduct of a Lieutenant-Governor, should never be able to appeal over the head of the provincial majority to the federal government for the Lieutenant-Governor's dismissal. The will of the

(1) Laurier, House of Commons, Debates, Apr. 11, 1878, pp. 1917-18.

(2) Laurier, House of Commons, Debates, Apr. 27, 1880, p. 1784.

(3) Laurier, House of Commons, Debates, Mar. 12, 1879, p. 90.

(4) Ibid., p. 106, also pp. 91-92.

majority must prevail in this, as in all, matters.(1) Should the federal government interfere in such a matter, "a breach would be opened in the principle which we have always looked upon as the landmark of our provincial liberties," Laurier argued.(2)

The provincial majority might censure or uphold the conduct of a Lieutenant-Governor through the exercise of its franchise, as the Lieutenant-Governor was responsible through his ministers to the provincial electorate for all political acts.(3) In the Letellier case, the Quebec electorate signified their acceptance of Letellier's dismissal of de Boucherville by electing Henri Joly de Lothbinière, who had accepted responsibility for Letellier's actions, rather than the Conservative Chapleau who condemned them.(4) Laurier argued that when the federal government dismissed Letellier on the grounds that he had "trespassed beyond the limits of his prerogative," they had "exceeded their power and authority." Letellier had not been,

tried before the tribunal to which he was amenable, but a Star Chamber tribunal was authorized to try, condemn

(1) Laurier, House of Commons, Debates, Apr. 27, 1880, p. 1784.

(2) Laurier, House of Commons, Debates, Mar. 12, 1879, p. 94.

(3) Laurier, House of Commons, Debates, Mar. 12, 1879, pp. 100-101; Apr. 27, 1880, p. 1784.

(4) Laurier, House of Commons, Debates, Mar. 12, 1879, p. 93.

and punish him.(1)

His dismissal had established the precedent that the Lieutenant-Governor could be dismissed "simply at the will and the pleasure of the Dominion Parliament, if it is of the opinion that he is not popular or not up to his work." (2) This was unacceptable. The only justifications for dismissal, he argued, were "offenses of a personal character" such as "grossly dishonourable conduct" which could detract from the Crown's dignity.(3)

Little more than ten years later and under quite similar circumstances the Lieutenant-Governor of Quebec again became the focus of political controversy. This time, however, it was a Conservative Lieutenant-Governor, J.R. Angers, who dismissed the government of Parti National leader Honoré Mercier. Angers then summoned the Conservative Charles Boucher de Boucherville to form a government and granted him a dissolution. In the election of March 8, 1892, the electorate firmly supported the new administration.(4) Angers' conduct did not become an issue in federal politics. The Liberals introduced no motion of censure although the affair was referred to periodically in

(1) House of Commons, Debates, Apr. 27, 1880, p. 1784.

(2) Ibid.

(3) Laurier, House of Commons, Debates, Mar. 12, 1879, p. 100.

(4) Saywell, The Office of the Lieutenant-Governor, pp. 120-30, provides a summary analysis.

the House in the sessions of 1892 and 1893.

Laurier's response to Angers' dismissal of Mercier followed the lines he had established during the Letellier affair. Speaking at Quebec on the 18th of January, 1892, he described Angers' action as a "coup d'Etat." He condemned it as "arbitraire, une violation non seulement de l'esprit de la constitution, mais une violation de la lettre de la loi, un abus d'autorité, un acte revolutionnaire..." Significantly, however, he did not call for the federal government to take action against Angers. Rather, he called upon provincial voters to censure Angers by rejecting the new ministers appointed by the Crown.(1) Laurier was still upholding the federal principle.

In the Letellier and Angers controversies, Laurier argued that the Lieutenant-Governor should enjoy security of tenure during his term of office. Except for failings of a personal nature, he should not be liable to dismissal. On two other occasions he considered a slightly different matter: whether or not the Lieutenant-Governor's term of office should be formal and fixed. Once again the issue at least in theory had implications for the Lieutenant-Governor's independence. During the term of his commission, a Lieutenant-Governor was liable to dismissal

(1) Laurier, Speech in Québec Est, Jan. 18, 1892, L'Electeur of Jan. 19, 1892, cited in Rumilly, Histoire de la province de Québec, vol. 6, p. 277, who discusses the speech.

only "for Cause." When a Lieutenant-Governor continued in office after the end of his term, he could be dismissed at the will of the Dominion government. The potential danger was that the threat of dismissal might then be used to influence the Lieutenant-Governor's conduct.

The Macdonald government regularly kept a Lieutenant-Governor in office for an extended period beyond his five year term, and it was this practice which became controversial. In 1893, debate centred upon the Lieutenant-Governor of New Brunswick, Sir Leonard Tilley, who remained in office after the conclusion of his second term. Laurier objected to the practice of lengthy extensions. He argued that "every day after the expiration of five years that a Lieutenant-Governor remains in office, there is a violation of constitutional government as we have always understood it." He was, however, no more explicit in his objections.¹⁾ In similar circumstances in 1895, Laurier argued that the constitution provided for the appointment of a Lieutenant-Governor for a fixed term and suggested that these provisions were not to be violated with

(1) House of Commons, Debates, Jan. 31, 1893, p. 84. Saywell, The Office of the Lieutenant-Governor, p. 229, suggests that Laurier argued that "extended terms were incompatible with the desired independence of the Lieutenant-Governor." He did not do so in this debate at least. Other Liberals argued, however, that as matters stood, Tilley held office at the caprice of the federal government, a circumstance which boded ill for his independence.

"impunity." (1) Unfortunately Laurier does not say what exceptional circumstances would justify a violation.

In summary, it may be said that Laurier saw the Lieutenant-Governor as an important figure with a responsibility "de surveiller la législature et de surveiller l'administration." (2) His skills and experience were to be used in the interests of the province. He should not be considered an officer through whom the Dominion government could impose its priorities upon the provinces, but rather should be independent of that government and answerable only to the provincial populace through the working of the principles of responsible government and majority rule. In so arguing, Laurier brought a unitary portion of the constitution into harmony with the federal principle of provincial autonomy.

The federal government's power to disallow provincial legislation within one year of its receipt was a far more striking and far more controversial unitary facet of the

(1) Laurier, House of Commons, Debates, July 12, 1895, pp. 4263-64.

(2) Laurier at Québec Est, Jan. 18, 1892, L'Electeur, Jan. 19, 1892, cited in Rumilly, Histoire de la province de Québec, vol. 6, p. 277.

constitution than ^{the} power to dismiss the Lieutenant-Governor. In effect it allowed the federal government to exercise a supervisory control over all provincial legislation. According to G. V. La Forest, "in point of law the authority is unrestricted even with respect to statutes over which the provincial legislatures have complete legislative jurisdiction..." (1) In 1868, J.A. Macdonald, in his capacity as Minister of Justice, attempted to clarify the limits of disallowance. In a report prepared for the Governor-General in Council he drew a parallel between the federal government's power of disallowance and that possessed by the Imperial government over colonial legislation. He warned, however, that:

under the present constitution of Canada, the general government will be called upon to consider the propriety of allowance or disallowance of provincial Acts much more frequently than Her Majesty's Government has been with respect to colonial enactments.

At the same time, he warned the power would have to be "exercised with great caution" and provincial legislation interfered with "as little as possible." Acts should be disallowed only when they affected "the interests of the Dominion generally," were unconstitutional, or, in areas of concurrent jurisdiction, clashed with "legislation of the

(1) G.V. La Forest, Disallowance and Reservation of Provincial Legislation (Ottawa: Queen's Printer, 1965), p. 15.

general Parliament."(1)

In the period 1867-1881 the power of disallowance was exercised little. When it was, the legislation was generally argued to be ultra vires or in conflict with Dominion policy.(2) After 1881 disallowance was used considerably more frequently and on far less restricted grounds. A number of Acts, although intra vires, were disallowed, for injustice(3) or increasingly on the grounds they conflicted with Dominion policy.(4) This broader use of the power gave rise to considerable controversy.

In 1879 Laurier, while objecting to the federal dismissal of a Lieutenant-Governor, had, at the same time, argued that the federal government was justified in certain instances in exercising its power of disallowance.(5) He defended it in instances where "Provincial Legislatures may

(1) Report, June 8, 1868, in W.E. Hodgins, Dominion and Provincial Legislation, 1867-1895, pp. 61-62, cited in LaForest, Disallowance, pp. 24-25.

(2) LaForest, Disallowance, p. 53.

(3) Generally such an exercise of the power was justified as falling under what is here given as Macdonald's second category - the disallowance of Acts conflicting with the "interests of the Dominion generally."

(4) Once again this fell under the second category. LaForest, Disallowance, chapters 5 and 7.

(5) Laurier, House of Commons, Debates, Mar. 12, 1879, in Barthe, Laurier, p. 99.

have overstepped beyond their jurisdiction into prohibited ground... for the protection of Imperial or federal rights." These cases, however - when the legislation was ultra vires the provincial government - were the only times when he considered disallowance acceptable. Intra vires legislation should not be disallowed. He argued that:

The doctrine is now well settled that, if Provincial Legislatures keep within the jurisdiction which is allotted to them by the constitution, however odious their laws may be, however despotic and tyrannical, however desirable both the Executive and the Government might be of affording relief against such laws, yet this House will not interfere, because interference in such cases would be a violation of the federal principle.(1)

In thus upholding the sovereignty of the province within its jurisdictional sphere, Laurier did not feel he was jeopardizing the interests of the provincial populace. The people, he argued, had redress against legislative acts, like administrative ones, through their power to agitate and to vote. In responsible government, he argued, an "aggrieved portion of the community" could seek and find "its relief." He added:

Those who believe, as I do, in the efficacy of responsible government know that those weapons are amply adequate, and that, with them, truth and justice will prevail in the end.(2)

Two years later Laurier explained more particularly his

(1) Ibid., pp. 99-100 (my italics).

(2) Ibid.

objection to the disallowance of intra vires provincial legislation. At issue was the federal government's disallowance of the Ontario government's Streams Bill. The legislation was held to be in "flagrant violation of private right and natural justice."⁽¹⁾ Laurier objected to the disallowance of the Act. He argued that there existed "a standard rule dividing right and wrong within a Province." It was according to this standard that any item of provincial legislation should be judged. Representing a different electorate, the federal government could only judge provincial legislation by its own, federal standard of right and wrong. To do so would be "to apply a remedy that will be far worse than the evil itself," because inappropriate.⁽²⁾

Thus, in his discussion of disallowance in 1879 and in reference to the Streams Bill in 1881, Laurier had taken a

(1) Report of the Minister of Justice about disallowance in W.E. Hodgins, Dominion and Provincial Legislation, 1867-1895, p. 178, cited in La Forest, Disallowance, pp. 53-54. Macdonald relied upon the second of the categories he had defined in 1868, and disallowed the Act on the grounds it conflicted with "the interests of the Dominion generally." This was a new departure. Previously, "the interests of the Dominion" had been interpreted to refer merely to "the interests of the Dominion in its own sphere." In acting in such a fashion the Government established the right of the Dominion government to review provincial legislation on its merits. See LaForest, p. 87. The title of the Act was "An Act of Protecting the Public Interest in Rivers, Streams, and Creeks." It was customarily referred to as the "Streams Bill."

(2) Ibid., p.907.

clear stand on the use of the power of disallowance: disallowance was acceptable where provincial legislation was considered ultra vires and was unwarranted where legislation was intra vires. Within the provincial sphere, he argued, provincial authority should hold sway. Subsequent references to the power of disallowance were somewhat more confused. This was particularly true of Laurier's speech at Somerset, Quebec, in August, 1887, soon after he became leader of the federal Liberal party.⁽¹⁾ Certain points do emerge clearly, however, from these later discussions which we must consider.

At Somerset and also in an earlier speech before the House in 1884, Laurier discussed the disallowance of intra vires provincial legislation that conflicted with Dominion policy. The issue arose in particular from the Conservative

(1) Laurier, Speech at Somerset, Quebec, Aug. 2, 1887, in Barthe, Laurier, pp. 367-69. Laurier attempted in the instance, as in a speech before the House of Commons, Aug. 7, 1891, pp. 3585-86, to make a distinction between political and judicial disallowance as opposed to the disallowance of ultra vires and intra vires legislation. This effort merely led to a confusion. Further, Laurier made an error in this latter speech. He commented, p. 3585, that disallowance "is exercised under a responsibility to Parliament, because Parliament may subsequently approve or disapprove of the reasons given for the disallowance." This is incorrect. The House of Commons may express its views as to whether it considers the disallowance of a provincial statute desirable or not, LaForest, Disallowance, p. 33, but it has no jurisdiction over the exercise of the power. Certainly it may pass a motion of non-confidence objecting to the Governor-General in Council's exercise of the power, but then it criticises the exercise of the power rather than the reasons therefore.

government's repeated disallowance of Manitoba railway legislation in the 1880s. The federal government's contract with the Canadian Pacific Syndicate, introduced into the House in December of 1880, had contained a monopoly clause that prohibited the construction of any line south to the American border from the main line of the Canadian Pacific.(1) Macdonald had promised that the existence of a monopoly clause would in no way limit the freedom of action of the provincial government of Manitoba.(2) However, subsequent Manitoba legislation granting charters to railways for the construction of branch lines was regularly disallowed on the grounds that it conflicted with federal policy designed in the national interest.(3)

Laurier objected strongly to the disallowance of intra vires legislation even on these grounds. He argued that the use of the power in respect to any piece of valid provincial

(1) James A. Jackson, "The Disallowance of Manitoba Railway Legislation in the 1880's: Railway Policy as a Factor in the Relations of Manitoba with the Dominion, 1878-1888" (M.A. Thesis, University of Manitoba, 1945), p. 11. The syndicate had demanded the clause, which was designed to protect the C.P.R. against competition from American lines and to maintain its rate structure, as compensation for the unproductive nature of the line north of Lake Superior. For the government, the C.P.R.'s monopoly would help to guard against the diversion of western trade to the American market.

(2) Ibid., p.13.

(3) La Forest, Disallowance, Table of Disallowed Statutes, pp. 87-92; W.L. Morton, Manitoba: A History, 2nd edition (Toronto: University of Toronto Press, 1967), pp. 215-16, discusses the impetus behind the grant of these provincial charters; Ibid., p. 109.

legislation "completely destroys the legislative independence of the provinces." It was the "exercise of such tyrannical powers," that led to provincial revolt, and rightly so, he implied. The provincial legislatures should be free to legislate as the requirements of their province and the desires of their population dictated.(1)

Further, at Somerset, Laurier took a firmer stand on the disallowance of ultra vires legislation. What he had formerly accepted as legitimate, he now argued was "one of the most arbitrary things under the sun." He explained:

When a law has been passed by a Local Legislature, there is just as much reason to suppose that it is within the powers of that legislature, as there is reason to suppose that it is not, because it has pleased the central government to declare it so.(2)

Should the federal Minister of Justice commit an error and disallow an Act which was intra vires, Laurier commented, "he deprives the province of the benefit of a law which its Legislature has deemed essential to its administration, and

(1) Laurier, Speech at Somerset, Aug. 2, 1887, in Barthe, Laurier, p. 369, see more generally pp. 370-74; Laurier's discussion of the issue in the House of Commons, Debates, May 11, 1888, p. 1342, was somewhat less clear but seems generally to reiterate his opposition to disallowance of intra vires legislation on the grounds of conflict with Dominion policy. Here he labelled the disallowance of intra vires legislation unconstitutional.

(2) Laurier, Speech at Somerset, Aug. 2, 1887, in Barthe, Laurier, pp. 367-68.

it is not thus that a Confederation should be worked." (1) He argued that it was preferable that the law courts judge the validity of acts of the provincial legislatures. The courts were far more likely to render an accurate judgement than was the Minister of Justice. Further, he suggested, the provincial administration would be less inclined to dispute their ruling.

Finally, Laurier suggested for the first and the only time that the federal government's power of disallowance be formally amended. He delivered his speech while plans were underway for the convocation at Quebec of an interprovincial conference to "consider the relations between federal and provincial governments in the wake of considerable dissatisfaction with the "paternalism" of the federal government, and in closing he recommended that the provincial premiers,

suggest an amendment to the constitution which will once and for all put an end to the abuses of the veto power and close the door forever to the tyrannical acts which Sir John Macdonald's Government is so prone to in order to attain its ends. (2)

He spoke of putting an end to "the abuses" rather than to the veto power itself. This suggests he may have felt disallowance to be warranted in certain instances;

(1) Ibid., p.369.

(2) Ibid., p. 374; Cook, Provincial Autonomy, Minority Rights and the Compact Theory, pp. 37, 41.

alternatively, he may have assumed that the way to end the abuses would be to end the abusive power.

The provincial premiers acted at the 1887 conference very much as Laurier had suggested they should. The Conference resolved unanimously that the federal power of disallowance should be abolished so as to ensure the sovereignty of the provincial electorate within the sphere of provincial legislative jurisdiction. Provincial acts would then, like acts of the federal legislature, be subject only to disallowance by the British Government.(1)

In a letter to Laurier, former Liberal leader Edward Blake complained that this proposal to transfer the federal government's power of disallowance over provincial legislation to the Queen in Council would be a "step backward." Laurier replied, and he would repeat the view on another occasion,(2) that the federal veto was "a corollary of colonial dependence and therefore [it would be] logical to place it, if it must be anywhere, in the hands of the imperial authorities." (3) This was no more than logical: if federal legislation was subject to Imperial veto, it was only consistent that provincial legislation should be also.

Laurier's only other references to the federal powers

(1) La Forest, Disallowance, p. 59.

(2) Laurier, Speech at Toronto, the Young Men's Liberal Club, Sept. 30, 1889, in Barthe, Laurier, p. 557.

(3) F.H. Underhill, "Laurier and Blake, 1882-1891," Canadian Historical Review, 1939, p. 402.

of disallowance were made within the context of controversy over the Jesuit Estates Act in the late 1880s. These references are consistent with Laurier's earlier views but they elaborate on the basis of his distaste for the veto power. Before proceeding to a consideration of Laurier's views it is desirable, however, to review briefly the nature of the controversy.

The Jesuit Estates Act was perhaps the most hotly debated piece of legislation enacted by a provincial administration prior to 1890. Passed in July of 1888 by the Mercier administration, the Act was a settlement of a long standing dispute between various Catholic interests and the Quebec government over compensation for the Crown's confiscation of the estates of the Jesuit Order after the Conquest. Where others had failed, Honoré Mercier had succeeded in designing a settlement which all parties seemed to accept. The Bill secured the unanimous consent of both Houses in July of 1888 and received Royal assent on the twelfth of that month.(1) Nonetheless, the Bill became the focus of considerable national controversy, as Protestants outside Quebec agitated for its disallowance.(2) The Macdonald government, however, did not disallow the Act,

(1) J.R. Miller, Equal Rights: The Jesuits' Estates Act Controversy (Montreal: McGill-Queen's University Press, 1979), pp. 17-23.

(2) Ibid., pp. 36-46, 75-76, 81.

arguing that the Act dealt with an issue "of provincial concern only, having relation to a fiscal matter entirely in the control of the legislature of Quebec."⁽¹⁾ If it hoped to end the controversy, it failed, for the Jesuit Estates Act remained the object of much debate through 1889.

Throughout the controversy, Laurier consistently defended the decision not to disallow the Jesuit Estates Act. He did so not only in Quebec where such a stance might have been considered politic, but also in Ontario where it was far less so. At Toronto in September, as in the House in March of 1889, Laurier argued that the disallowance of valid provincial legislation was neither just nor in the interest of national harmony. The only effective way to govern was according to the wishes, "not only the wishes, aye, but the passions and prejudices" of the provincial electorate.⁽²⁾ Quebec was a French and Catholic province with the convictions and prejudices "peculiar" to its "race and creed."⁽³⁾ The disposal of the Jesuit Estates was one that had long concerned the province, and Mercier's Act was

(1) Reply of the Minister of Justice to the Petition of the Evangelical Alliance, Jan. 16, 1888, in W.E. Hodgins Correspondence, Reports of the Ministers of Justice and Orders in Council upon the Subject of Dominion and Provincial Legislation, 1867-1895, p. 389, cited in Miller, Equal Rights, p. 46.

(2) Laurier, House of Commons, Debates, Mar. 28, 1889, in Barthe, Laurier, p. 508. See also Laurier, Speech at Toronto, Sept. 30, 1889, in Barthe, Laurier, p. 558.

(3) Laurier, House of Commons, Debates, Mar. 28, 1889, in Barthe, Laurier, p. 495.

a settlement that accorded with "the wishes of public opinion in the province of Quebec"(1) and hence had resolved the issue in "peace and harmony."(2) The British Protestant citizenry of Ontario claimed that the Jesuit Estates Act was "offensive to the Protestant interest and to the interest of the country at large" and demanded that it be disallowed.(3) Laurier, however, argued that for them to attempt to override the wishes of the province of Quebec could only be productive of discord.(4) "Are you quite sure," Laurier asked, "that the power of disallowance, thus exercised, will be more in the interest of Canada than the law disallowed?" He referred to the discontent the disallowance of Manitoba Railroad legislation had given rise to and questioned:

will any one tell me that if you create discontent in a province you will promote general welfare in Canada? Will any one tell me, in fact, when we have a system which allows local questions to be determined by local bodies, that it is for the general good that those local bodies should have their will set aside by a superior power?(5)

The people of Quebec, and this included the Protestant

(1) Ibid., p.507.

(2) Ibid., p.508.

(3) Ibid., pp. 495, 498.

(4) Ibid., pp. 508-9.

(5) Laurier, Speech at Toronto, Sept. 30, 1889, in Barthe's Laurier, p. 559.

minority of Quebec as represented in the Legislative Assembly by their elected members, had judged Mercier's compromise settlement acceptable.⁽¹⁾ If the Protestants of Quebec were satisfied, Laurier argued, no one else should object.² To interfere with the independence of the local legislature was to do away with its utility. "A great mistake was made in our constitution, he concluded, when the power of disallowance, which threatened that independence, was vested in the Dominion Government."⁽³⁾

In summary it can be said that Laurier was seriously concerned by the non-conformity of the federal power of disallowance with the federal principle of provincial autonomy. He considered the disallowance of *intra vires* legislation unacceptable, whether on the grounds that it conflicted with natural justice, or with Dominion policy and interests. The provinces should be independent within their jurisdictional sphere and not subject to the tyranny of having federal priorities and standards imposed upon them through the exercise of the power of disallowance. His position was based on his firm faith in the ability of the provincial populace to govern itself wisely and appropriately and in the efficacy of responsible government

1 Laurier, House of Commons, Debates, Mar. 28, 1889, in Barthe, Laurier, 510-13.

2 Ibid., p. 509.

3 Laurier, Speech at Toronto, Sept. 30, 1889, in Barthe, Laurier, p. 557.

as a remedy against unjust legislation. He was less sure whether the disallowance of ultra vires legislation was acceptable. On occasion he argued that the Dominion government was justified in deciding a statute ultra vires; at other times he argued that the Courts should be left to identify invalid provincial legislation. Generally, he sought the restriction of the power in practice, not its amendment or end.

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The financial arrangements of the British North America Act could also be seen as undermining the federal principle of provincial autonomy. The provinces were made dependent for at least a portion of their revenues upon a system of federal grants(1) rather than each possessing "under its own independent control financial resources sufficient to perform its exclusive functions."(2)

The intention at Confederation had been that the

(1) J. Harvey Perry, Taxes, Tariffs, and Subsidies: A History of Canadian Fiscal Development (Toronto: University of Toronto Press, 1955), vol. 1, pp. 40-45. Subsidies were necessary because Maritimers and Lower Canadians would not accept the only "alternative source of revenue," direct taxation.

(2) Wheare, Federal Government, p. 97. See similarly Ramsay Cook, Canada and the French-Canadian Question (Toronto: Macmillan, 1966), p. 57.

financial arrangements detailed in the British North America Act should be permanent.(1) These terms were, however, frequently a matter of dispute in the years that followed. What the provinces demanded was not, however, so much an independent source of revenue as a larger revenue that would provide them with the resources to expand their activities.(2)

The controversy between provincial governments and the "universal clamor of beggary"(3) to which any discussion of subsidy revision could give rise, led Laurier to infrequent discussions of public finance. Usually he stressed the importance of an equitable and well-regulated system of subsidy revision. He even suggested the abolition of subsidies in 1882. They were, he argued, "a source of

(1) R. MacGregor Dawson, The Government of Canada, 4th edition (Toronto: University of Toronto Press, 1963), p. 120.

(2) Dawson argues that the controversies of the late nineteenth century between advocates of "provincial rights" and the federal authorities concerned the distribution of powers to some extent but, more particularly, the financial arrangement of 1867 and the nature of the allocation of financial authority. Ibid., pp.94-95. Maxwell suggests that the Conservative administration tended to make "a discrete grant of 'better terms' to secure the favour of a restive province." Ontario was somewhat outside these developments, tending increasingly to resent what it perceived to be its role as the 'milk cow' of Confederation and thus to oppose the granting of better terms; particularly to Quebec. J.A. Maxwell, Federal Subsidies to the Provincial Governments in Canada (Cambridge: Harvard University Press, 1937), pp. 94-95.

(3) Edward Blake Papers, Public Archives of Canada, Laurier to Blake, Sept. 12, 1882.

annoyance to honest governments, and an engine of corruption in the hands of unscrupulous governments." Each province should provide for the "ways and means of its own expenditure".(1) How they would do so he did not suggest. In his speech at Somerset in 1887, Laurier discussed the question of subsidies from a somewhat different perspective. He argued that he "would like to see the provinces with revenues large enough to render them independent of the Federal Government."(2) He then went on to complain that the subsidies encouraged extravagance, the provincial government not being responsible for collecting the funds it spent.(3)

Although Laurier's references to federal subsidies were few, they were consistent with his view that the provinces should be treated as mature and responsible entities. They required for the effective conduct of their affairs a secure revenue, if not necessarily an independent one. They were, in addition, fully able to take responsibility for their own fiscal affairs. While Laurier made no explicit reference to federalism, his attitude to subsidies was consistent with a concept of federalism based upon watertight spheres and the principle of responsible government.

(1) Blake Papers, Laurier to Blake, Sept. 12, 1882.

(2) Laurier, Speech at Somerset, Aug. 2, 1887, in Barthe, Laurier, p. 375.

(3) Ibid.

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The Canadian judicial system can also be seen as inconsistent with classical federalism. The provinces are subordinate to the federal government for it possesses the authority to appoint the judges of the provincial, superior, district, and county courts. Further, the Canadian Court system is incompatible with the federal principle. K.C. Wheare argues that if that principle "were to be strictly applied one would expect a dual system to be established, one set of courts to apply and interpret the law of the general government, and another to apply and interpret the law of each state."⁽¹⁾ In Canada, however, provincial courts have jurisdiction in most matters of Dominion law.⁽²⁾ The Supreme Court has appellate jurisdiction in both civil and criminal matters from provincial courts and thus has, as Wheare notes, "wide powers to interpret the laws of the regions upon uniform principles."⁽³⁾ Laurier never directly discussed the question of the federal appointment of judges. His only noteworthy reference to the judicial system concerned one aspect of the second issue,

(1) Wheare, Federal Government, pp. 68-69.

(2) Thus in criminal law, administration is decentralized where jurisdiction is centralized.

(3) Wheare, Federal Government, p. 71.

the administration of provincial law by federal and Imperial courts.

Before considering Laurier's views, something more should be said of the Supreme Court. The Court was established by the Mackenzie administration in 1875 as the superior court of appeal for all questions of provincial as well as federal law. Its members were to be appointed by the Governor-General in Council and were to be six, a Chief Justice and five judges. Provision was made that two of the judges be drawn from Quebec and thus be familiar with her civil law. The final court of appeal for Canada remained the Judicial Committee of the Privy Council and indeed appeals could be taken directly from the Supreme Courts of the provinces to that body until 1949.⁽¹⁾ The role of the Supreme Court in the Canadian judicial system and indeed the question of the desirability of having such a body at all were frequently discussed in the years after its establishment.

Laurier in his comments focused entirely upon the concerns of Quebec. Macdonald suggested in 1881 that the Supreme Court be abolished. Laurier objected. He stated that neither he nor French Canadians more generally were any longer concerned by the Court's jurisdiction in cases involving criminal or constitutional law, "the principles of which affect the Dominion at large." He had, however,

(1) Dawson, The Government of Canada, p. 465.

certain misgivings over the administration of provincial laws by the Supreme Court. He felt, as he argued many French Canadians did, this aspect of the judicial system was questionable. Yet he noted that, in studying Quebec appeals to the Court, he had discovered that "in the course of five years that Court has been called upon to decide seven or eight cases of a civil nature." The number was so slight, he concluded, that "Quebec has no reason to feel anxious. Further, whatever lingering concern he may have felt over the administration of provincial laws by the Supreme Court, it was preferable that the laws of the province be reviewed by a Court, "where two of our [Quebec's] men sit, than by the Privy Council where none of our men sit." (1)

Laurier spoke in a similar vein in the 1885 debate on a Bill to limit the appellate jurisdiction of the Supreme Court by suppressing the appeal to the Court in purely provincial matters, leaving open an appeal to the Judicial Committee of the Privy Council. One Quebec member had supported the proposal, arguing that the judgements of the Quebec Court of Appeal, whose members were all versed in French law, should not in all justice be reviewed by the Canadian Supreme Court. Laurier countered by inquiring whether it was not "far more nonsensical that an appeal should be taken to the Privy Council, where there are no

(1) Laurier, House of Commons, Debates, Mar. 10, 1881, p. 1329.

judges supposed to be practically versed in our law, than to the Supreme Court in which two judges were familiar with Quebec's civil law.¹

Laurier's concern over the administration of Quebec laws in federal and Imperial courts again suggests the attractiveness to him of a federal system characterized by a strict division of spheres. Quebec law was inspired by concerns and conditions peculiar to the province which members of the Supreme Court and, particularly, of the Judicial Committee of the Privy Council, neither necessarily recognized nor comprehended. Consequently there was the danger Quebec law would be administered by these Courts inappropriately. Laurier, however, never questioned the need for an appeal; nor did he ever suggest that the court system be divided vertically instead of horizontally, following the American example, where the federal and provincial structures were each capped by a final court of appeal.² He was prepared to accept these aspects of the judicial system despite their incompatibility with the federal principle.

(1) Laurier, House of Commons, Debates, Feb. 19, 1885, p. 167.

(2) Dawson, The Government of Canada, pp. 457-91.

Where the first section of this chapter focused upon the nature of the division of spheres, this section will consider whether Laurier felt the diversity that made that division necessary had implications for policies and institutions within the federal sphere itself.

A matter of controversy during these years was whether provincial franchises or a uniform federal franchise should be used in federal elections. Section 41 of the British North America Act did not establish a federal franchise but rather provided that provincial qualifications would be used until the federal government established its own franchise. The Conservative party generally supported the idea of a federal franchise, but the Liberals did not. The bases of these positions were complex a confused mix of partisan considerations and principle. What made the issue particularly controversial was the electoral advantage that could be secured through the manipulation of the franchise.⁹² The Conservatives finally established a uniform federal franchise in 1885. From that time until the Liberals secured a majority in 1896, the Act was the object of continual criticism.

Laurier argued consistently that in a federal state the

1 Dawson, The Government of Canada, pp. 375-77, provides an interesting discussion of the debate. Waite's brief comments are useful in P.B. Waite, Canada, 1874-1896: Arduous Destiny Toronto: McClelland and Stewart, 1971, pp. 140-42; See also W.L. Morton, "The Extension of the Franchise in Canada: A Study in Democratic Nationalism, The Canadian Historical Association, 1943, pp. 72-81.

federal franchise should be diverse. He maintained that:

The regulation of the franchise is above all, a matter of local legislation, local in its provisions, in its nature, and it should be determined by the local legislative bodies.⁽¹⁾

The circumstances, wealth, intelligence, "passions," and prejudices of each community differed.⁽²⁾ In 1895, for example, he stated that "The question of women suffrage is one which, like other questions concerning the suffrage, more properly belongs to provincial jurisdiction." Whether or not women, or any other group, might beneficially be given the vote was dependent upon the education of the people... [and] their social habits. Thus while some provinces might be ready to grant the suffrage to women, others, such as Quebec, were not.⁽³⁾

In both his parliamentary speeches and correspondence, Laurier repeatedly stated that while manhood suffrage or even some degree of universal suffrage might be appropriate for the other provinces, either would be totally unacceptable in Quebec. In a letter to Edward Blake in 1883, for example, Laurier argued that the imposition of

(1) Laurier, House of Commons, Debates, Feb. 5, 1890, p. 264.

(2) Laurier, House of Commons, Debates, Apr. 17, 1885, in Barthe, Laurier, p. 199; reiterated in House of Commons, Debates, Feb. 24, 1888, p. 10; Feb. 1, 1889, p. 9; and Feb. 5, 1890, pp. 263-66.

(3) Laurier, House of Commons, Debates, May 8, 1895, pp. 717-19.

manhood or universal suffrage on the province would be greeted with outrage. He suggested, "as a question of expediency and principle," that "the question of the franchise ought to be left to the provinces, and that we ought to fight it on that line."⁽¹⁾ This singling out of Quebec in discussions of the franchise was characteristic. Laurier continually stressed the particular importance of allowing Quebec to determine her own franchise.

If much of his rationale for separate provincial franchises seemed tied to his concern for Quebec, Laurier did discuss one factor which varied between all the provinces and affected the determination of the franchise. He argued that as real estate was one of the bases of the franchise and as it differed radically in value between provinces, "the best judge to determine what kind of real estate should command a vote" was the provincial legislature within whose boundaries the real estate was situated.⁽²⁾ This was, according to one writer, a just observation.⁽³⁾

In the debate on the Federal Franchise Bill in April of 1885, Laurier added a different argument in favour of the use of provincial franchise in federal elections. Separate Dominion and provincial franchises would, he argued, be

(1) Blake Papers, Laurier to Blake, Dec. 10, 1883.

(2) Laurier, House of Commons, Debates, Feb. 5, 1890, p. 265.

(3) Waite, Arduous Destiny, pp. 140-41.

feasible only if there existed "two classes of electors, one class for the Dominion House and one class for the Local Legislatures." In Canada, however, "the same people ... are represented in either House." Laurier reasoned that the federal House had not the right, therefore, to determine who should elect its members:

it is the people themselves who should determine who shall be the constituent members of this House, according to the mode regulated by the constitution, speaking through the Local Legislatures.(1)

What precisely Laurier meant by this discourse is unclear. Perhaps his objective was to argue that individuals were represented only in the provincial legislature, while in the federal parliament the provinces were represented by provincial delegations.(2) If it was, this leads us into another group of issues entirely, into the question of whether or not Laurier considered the House of Commons ought to be, in one federal theorist's terms, an "instrumentality" for the accommodation of territorially organized social diversities.(3) If this is what Laurier thought, he did not bother to develop his view further.

(1) Laurier, House of Commons, Debates, Apr. 17, 1885, in Barthe, Laurier, p. 204.

(2) Morton, "The Extension of the Franchise in Canada," p. 78, argues Laurier and Blake believed this to be true.

(3) William Livingston, "A Note on the Nature of Federalism," in Aaron Wildavsky, editor, American Federalism in Perspective (Boston: Little, Brown, 1967), pp. 33-47.

The Canadian Senate is often seen as an important federal institution, the role of which is, at least in part, to represent regional interests in a legislature in which the House of Commons may be said to represent the popular will. It has been argued in fact that, at the Conferences that led up to Confederation, the Senate was considered "the heart of the [federal] system."⁽¹⁾ For those who emphasize the Senate's federal character, two aspects are of interest: the role of the provinces in appointing or electing Senators, and the basis on which Senate seats are distributed. These were controversial issues in the decades following Confederation. Senate reform was indeed a Liberal preoccupation in the latter half of the nineteenth century, and much of what was said focused on the federal rather than the national character of the Senate.⁽²⁾

Unlike many Liberals, Laurier rarely discussed Senate reform. His only references to the Senate occur in personal political correspondence in the early 1890s when the Party spent some time considering what stance they might best

(1) Waite, The Life and Times of Confederation, p. 111.

(2) See Ian MacGregor, "A History of Senate Reform in Canada," (M.A. Thesis, Queen's University, 1957), pp. 23, 41-47, 49-51, 57, 60.

adopt on the question of Senate reform or abolition.(1) Writing to J.D. Edgar in 1893, Laurier noted that in Quebec "the idea prevails that the senate is a bulwark for Quebec's peculiar institutions." To suggest its abolition "might be a most dangerous step." (2) The other provinces tended to view the issue somewhat differently from Quebec, not being affected by her peculiar concerns. He concluded that the most "judicious" policy might well be to leave the question "in a hazy and undecisive utterance." The tone of the letter suggests that Laurier himself did not necessarily see the Senate in the light his compatriots did. Indeed he appeared little interested in the issue.

In conclusion, although Laurier's few references to the Senate reveal nothing of his view of federalism, his view of the franchise did. In the latter case, the same sense of the importance of provincial diversity that led him to insist upon a division of spheres between federal and provincial governments led him to emphasize the need for a diverse federal franchise. In a federal state a uniform

(1) Laurier Papers, Willison to Laurier, Aug. 4, 1892; J. Young to Laurier, Nov. 4, 1892.

(2) J.D. Edgar Papers, Laurier to Edgar, Apr. 15, 1893.

federal franchise was inappropriate because it conflicted with the essential reality of federalism: a territorially organized social diversity.

In his discussions of federalism Laurier consistently opposed federal intervention in the provincial sphere. He was committed, with few exceptions, to the division of legislative jurisdiction into watertight compartments. He paid less attention to what should distinguish these compartments. It is clear what he thought the basis of that division to be. He argued in 1896 that the federal and provincial legislatures were "equal with this-exception that the Dominion Parliament is invested with larger powers, that is, powers of a more extended and more important character than the local legislature."⁽¹⁾ It is less clear, however, whether he felt the actual distribution of powers to be appropriate.

The important powers of the Dominion government appear to have been primarily those related to economic development. In particular, he held it responsible for the creation of markets and industry, as it was for the

(1) Laurier, House of Commons, Debates, Mar. 3, 1896, p. 2741.

development of agriculture.(1) Canada's high rate of emigration was something Laurier attributed to the Dominion government's failure to exploit Canada's abundant resources and to create a productive and prosperous state. He felt they, rather than the provincial governments, should combat this emigration.(2) Laurier fairly clearly accepted the principle of a transcontinental railway and does not seem to have ever suggested that the provinces should be allowed to determine the route it should follow through their territory, a factor closely linked to local development. He did, however, in the case of Manitoba argue that the province should be able to exercise complete autonomy in the provision for local lines.(3) In short, it would seem he saw economic and development issues as neutral in cultural or regional terms, and believed federal and provincial governments should pursue their objectives in isolation from one another.

If economic issues did not have regional implications

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- (1) See, for example, Laurier, House of Commons, Debates, Apr. 5, 1888, speech at Somerset, Aug. 2, 1887, in Barthe, Laurier, pp. 392-397, 376. See also Laurier, House of Commons, Debates, Mar. 10, 1876, pp. 590-92; Jan. 17, 1890, p. 18; Feb. 20, 1892, pp. 24-26.
- (2) Laurier, Speech at Somerset, Aug. 2, 1887; Speech at Oakville, Aug. 13, 1888; House of Commons, Debates, Apr. 5, 1881; in Barthe, Laurier, respectively p. 376, p. 446, p. 392. Also Laurier, House of Commons, Debates, Feb. 24, 1888, pp. 10-11.
- (3) Laurier, Speech at Toronto, Sept. 30, 1889, in Barthe, Laurier, pp. 558-59; House of Commons, Debates, Feb. 24, 1884, p. 12.

in Laurier's eyes, other issues did. The question is whether Laurier felt federal jurisdiction should end and provincial jurisdiction begin when provincial diversity became significant. His discussion of prohibition suggests he felt the federal Legislature was best not charged with areas of jurisdiction in which there existed a significant degree of provincial diversity. He was clearly impressed by the difficulties of attempting to accommodate diverse provincial views on prohibition within one uniform federal platform and advocated a federal plebiscite on the matter. A plebiscite was not, he argued, "in harmony with our institutions"; he would rather see the question disposed of in Parliament. However, he argued, a plebiscite was desirable to "give the whole tenor of public opinion in this question." It would ensure "that we would know where we stand and what is desired by the people of the country."⁽¹⁾ His view suggests he did not see the federal sphere as an ideal mechanism for the accommodation of territorially organized diversity.

Whatever his concern about the practical and political difficulties involved in the federal Legislature's apparent responsibility for prohibition, Laurier did not suggest a redistribution of legislative authority. Nor did he ever do so in respect to other legislative matters. This is

(1) Laurier, House of Commons, Debates, May 16, 1892, p. 2653; See also Edgar Papers, Laurier to J.D. Edgar, May 17, 1893.

significant. Laurier appears to have pragmatically accepted the British North America Act's division of legislative jurisdiction.

In conclusion, it may be argued that Laurier's view of federalism during the years he spent in federal opposition was based upon the conviction that justice and domestic harmony were dependent upon a respect for local interests. A tolerance for diversity and a willingness to allow distinct communities to govern themselves according to their values and interests in respect to local matters was the only basis on which a federal state as Canada could be governed. He affirmed the maturity and responsibility of these provincial communities and argued that within the provincial sphere the principles of majority rule and responsible government would ensure just government. The federal government had no need to supervise local affairs.

Throughout these years Laurier's reluctance to seek the formal alteration of the constitution is evident. Whatever his dissatisfaction with aspects of the constitution, his inclination was either to seek the alteration of facets he disliked through an alteration of practice rather than law, or to reconcile himself to these features as inevitable.

Laurier was a constitutional conservative who, in the case of legislative and other provisions of the British North America Act, pragmatically accepted the terms set out in that Act and merely sought to secure their correct application.

Whether he saw Canadian society as dualistic or pluralistic is not clear. He was very imprecise on this matter. Throughout these years he focused frequently on the peculiar concerns of Quebec and the particular importance to her of a strict observance of the federal principle. He often portrayed English Canada as a monolith. And yet he did discuss broader provincial diversities. He illustrated his argument that harmony was dependent on a respect for the province's right of self-government within its sphere, by referring to the revolt of Manitoba and Ontario against Macdonald's interference in local matters. Whatever his perception of the true nature of the diversity of Canadian society, however, Laurier clearly accepted the concept of a federal union based upon the equality of all eight provinces.

CHAPTER 3: MINORITY RIGHTS AND EDUCATION

Much of Laurier's enthusiasm for classical federalism was the product of his determination to secure for the French Canadian population of Québec the right to self-government. For them, the federal principle represented liberty and security. For their compatriots, the French Canadian minorities of the remaining provinces, the federal principle provided no protection but rather abandoned them to the potentially tyrannical rule of the provincial majorities.

The purpose of what follows will be to determine whether Laurier's concern for these minorities affected his essential commitment to classical federalism. His views on the linguistic and religious rights of these minorities will be considered initially. They emerge most clearly in the controversies over language and education in the North-West Territories in the 1890s and in the debate on the Autonomy Bills in 1905: here the federal government was directly responsible for policy and so the question of provincial autonomy does not arise. It is in the subsequent section, which focuses on the Manitoba School Question and the controversy over Ontario's "Regulation 17," that federalism

comes into the picture. In particular this section will focus upon Laurier's attitude to a hitherto unmentioned unitary feature of the constitution, the federal government's power "to determine appeals from provincial decisions affecting minority educational rights," and its power "to enforce a decision on appeal by the enactment of remedial legislation."⁽¹⁾ It will consider whether he would, when denominational rights hung in the balance, condone federal interference within the sphere of a province.

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The controversy over the linguistic and educational rights of the French and Roman Catholic minority in the North-West were part of a more generalized conflict between French and English Canadians that developed in the mid 1880s and 1890s and continued into the era of the Great War, as English Canadian majorities pursued an ideal of racial, linguistic, and cultural unity.⁽²⁾ In the North-West, territorial politicians sought, as part of their campaign for responsible government, the right to abolish ~~separate~~

(1) Hogg, Constitutional Law of Canada, p. 36.

(2) An interesting analysis of the origins and early manifestations of such conflict is provided in Miller, Equal Rights, chapters 2 and 8.

schools and the official status of the French language. (1) Section 11 of the federal North-West Territories Act established the right of a Roman Catholic or Protestant minority to organize separate schools without incurring the penalty of double taxation. The clause had been inserted after the Bill's introduction to the federal House in 1875 at the instigation of Edward Blake, who hoped to avoid a repetition of the controversy then being waged in New Brunswick over denominational education. A Senate amendment to this same Act in 1877 provided for the use of either French or English in the proceedings and records of the Territorial Council and Courts. It was against a background of local resentment of these provisions and the campaign for responsible government that D'Alton McCarthy introduced in the federal Parliament in January of 1890 a bill to abolish the use of the French language in the legislature and courts of the North-West. He argued that the measure was crucial to the development of the community of language upon which national unity was dependent. (2)

Laurier first spoke on McCarthy's bill on the 17th of February, 1890. His concern was to combat McCarthy's basic

(1) Manoly R. Lupul, The Roman-Catholic Church and the North-West School Question: a study in church-state relations in western Canada, 1875-1905 (Toronto: University of Toronto Press, 1974), pp. 39, 60-61, 97; George M. Weir, The Separate School Question in Canada (Toronto: The Ryerson Press, 1934), pp. 62-66.

(2) McCarthy, House of Commons, Debates, Jan. 22, 1890, pp. 38-51.

premise that national unity required national homogeneity. The Bill was not in itself, he argued, of very great importance. (1) Its objective was after all, with some exceptions, a local question (2) and the French population of the North West was small. Thus he would under normal circumstances be inclined to say, Let the measure pass and let us return to those measures of practical usefulness which demand our attention. (3) He objected to the Bill because, rather than being founded on an expression of the will of the people of the Territories and limited to the proscription of the use of French in the North-West, the Bill was allegedly based on principles applicable to the whole Dominion. (4) The Bill constituted a declaration of war against the French race; "it was the first step in a campaign for their annihilation ... as an individual people in this Dominion." (5)

It was Laurier's contention, stated on both the 17th and the 21st of February, that the local population should

(1) Laurier, House of Commons, Debates, Feb. 17, 1890, in Barthe, Laurier, p. 572.

(2) Ibid., p.605.

(3) Ibid., pp. 576-77.

(4) Ibid., p. 607.

(5) Ibid., p.577.

have the right to decide for themselves whether or not they are to have the privilege or the onus of having two official languages. It is clear that he was in no way insisting that official bilingualism be forced upon the North West Territories. He supported an amendment sponsored by Eleophas Beausoleil:

that the official use of the French and English languages in the Legislature and the Courts of the North-West Territories was established by this Parliament in the well understood interests of the people of the said Territories, in order to promote the good understanding and the harmony that should exist between the different races, and with a view, by a liberal policy, to promote the colonization and settlement of these vast domains. That nothing has happened since to excuse or justify the withdrawal of the privileges granted only a few years ago: that the result of the proposed legislation would be to create uneasiness and discontent throughout the Dominion and to put in doubt the stability of our institutions, and thereby to hinder and delay for a long time the development of the immense resources of the Canadian North West. (2)

However, he took exception to Beausoleil's statement that the provisions of the North-West Territories Act should be considered permanent. They were, rather, "exceptionally temporary." Everything had changed, he told the House, since "we passed this law and gave this incipient

(1) Laurier, House of Commons, Debates, Feb. 21, 1890, p. 1013.

(2) Laurier, House of Commons, Debates, Feb. 12, 1890, p. 557.

constitution to the territories." (1) They had acquired a population and a Legislature and had developed views "not only on the question of language, but on the schools and on the system of Government." (2) Thus the Act would have to be altered "from time to time" to meet these changing circumstances. (3) He argued that "the only way to deal with the question before the House would be on the broad principle of local autonomy." He recognized that the Territories were not provinces and thus technically had no provincial rights, but argued that "the principle involved is the same." That principle should be acted upon: "the will of the people of the Territories affected ought to be the will which should prevail in the solution of this question, and of all similar questions." (4) He rejected the Davin amendment that rather baldly authorized the local

(1) Laurier, House of Commons, Debates, Feb. 17, 1890, in Barthe, Laurier, p. 606. See similarly Laurier, House of Commons, Debates, Feb. 21, 1890, p. 1012.

(2) Laurier, House of Commons, Debates, Feb. 17, 1890, in Barthe, Laurier, pp. 606-7.

(3) Ibid.

(4) Laurier, House of Commons, Debates, Feb. 21, 1890, pp. 1012-13. Laurier argued that McCarthy's Bill was a violation of local [territorial] autonomy. This is not strictly true. The North-West's status was territorial; the Bill could be seen as responding to local demands. Laurier clearly opposed McCarthy's measure not from a concern for local autonomy but from an antipathy for its broader implications.

legislature to decide the language question in all its facets, however, (1) ostensibly because it was "premature" to give to the population of the North-West "plenary power while they are still in a form of tutelage." (2) The time had not yet come to grant a broader degree of self-government to the Territories and to allow them to decide the issue for themselves; until then the Territorial constitution should not be changed. (3) On the 22nd of February, 1890, however, Laurier supported Justice Minister Sir John Thompson's amendment to the Davin amendment. It gave to the Territorial Legislature the power after the next general election to regulate the language of debate and of journal publication, but retained the use of French in the courts and in the publication of statutes. Perhaps he felt the latter more important to the minority and thus wished to leave them beyond the control of the Territorial Legislature. Perhaps also he saw in the Thompson amendment a means to reunite the House strictly divided into racial

(1) The Davin amendment, House of Commons, Debates, Feb. 12, 1890, p. 532 stated, "That it be resolved, That it is expedient that the Legislative Assembly of the North-West Territories be authorized to deal with the subject of this Bill by Ordinance or enactment after the next general election for the said Territories."

(2) Laurier, House of Commons, Debates, Feb. 17, 1890, in Barthe, Laurier, p. 600.

(3) Ibid., pp. 605-7; and reiterated Debates, Feb. 21, 1890, p. 1012.

camps over the Davin and Beausoleil amendments. (1) It was significantly less radical than the Davin amendment, being both a partial measure and far more conciliatory. Its preamble, in the words of Rumilly, "couvrait des fleurs la langue française." (2) It stated:

That this House, having regard to the long continued use of the French language in old Canada, and to the covenants on that subject embodied in the B.N.A. Act, cannot agree to the declaration contained in the said Bill as the basis thereof, namely, that it is expedient in the interests of the national unity of the Dominion that there should be community of language amongst the people of Canada. That, on the contrary, this House declares its adherence to the said covenants, and its determination to resist any attempt to impair the same. (3)

In the event, Thompson's amendment to the Davin amendment passed by a vote of 149 to 50.

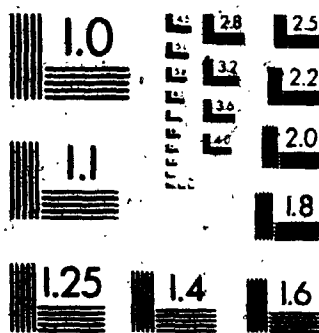
Laurier recognized that the passage of the Bill so amended might mean the end of the official status of the French language in the North-West. But while he felt that

(1) In the February 18th vote on the Beausoleil amendment "every French-speaking member with the exception of Chapleau and one or two absentees, voted in its favour, and one hundred and seventeen English-speaking members voted in a body against it." D.G. Creighton, The Old Chieftain, p. 538. On the other hand, "La deputation française aux Communes se fit unanime" against the Davin amendment, according to Rumilly, Histoire de la province de Québec, vol. 6, p. 127.

(2) Rumilly, Histoire de la province de Québec, vol. 6, p. 127.

(3) Laurier, House of Commons, Debates, Feb. 18, 1890, pp. 881-82.

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the official recognition of the French language was in the tendency of peace and harmony," (1) he argued that the position of Cleophas Beausoleil, and other French Canadians who were intractable in their refusal to consider any alteration of the status of the French language in the North-West, was untenable. (2) Laurier told Pacaud, It would not only be unjust but short sighted, on our part, to attempt to force upon the people of the Territories a second language, if they do not want it. (3) To do so, he argued elsewhere, would lead to resentment and racial discord. (4) The federal parliament might hope for a certain reasonableness and tolerance from the local assembly but could not command it.

To Laurier, then, the use of French in public affairs was not a matter of right for provincial minorities. He felt it was desirable that the language should have a special status but recognized that this was dependent upon the goodwill and tolerance of the provincial majority. He avowed a faith that the majority could be trusted to act in a "spirit of fairness." He told the House that he had no reason to suppose, and I do not for one moment suppose, that

(1) Laurier, House of Commons, Debates, Feb. 21, 1890, p. 1013.

(2) Pacaud, Letters to My Father and Mother, Laurier to Pacaud, Feb. 22, 1890, p. 52.

(3) Ibid., p. 52.

(4) Laurier, House of Commons, Debates, Feb. 17, 1890.

the people of the North-West Territories would act unjustly or unfairly towards the French minority." (1) Wise and honourable men, he was sure, would be guided by the higher instincts of the human heart and the human intellect, "by a broad spirit of tolerance and a recognition of the importance of liberty to harmony." (2) Since the Territorial Legislature contained no French members, he saw no grounds for complaint if it did abolish the French language for the moment. If it subsequently acquired even a sprinkling of French members, he believed the majority would reinstate the French language. (3) Quebec members in the House who opposed allowing the majority in the North West the right to determine the issue had no real alternative but to trust in the sense of justice of their fellow man. The principle of racial autonomy must be upheld, even if it meant that the French language would no longer possess an official status in the North West. The inviolacy of that principle was Quebec's only protection under the Constitution. (4) He

(1) Laurier, House of Commons, Debates, Feb. 21, 1890, p. 1014.

(2) Laurier, House of Commons, Debates, Feb. 17, 1890, p. 583, see also pp. 583-85, 590-95, 599.

(3) Laurier, House of Commons, Debates, Feb. 21, 1890, pp. 1014-15.

(4) Pacaud, Letters to My Father and Mother, p. 52; and Laurier, House of Commons, Debates, Feb. 21, 1890, p. 1014.

admitted that the principle was a double-edged sword but he argued that, "if we wish to apply it when it is to our advantage, we must be prepared to accept it when it proves to our disadvantage." (1)

The application of the principle of local autonomy in this case was to the ultimate disadvantage of the French Canadian minority in the North-West. Thompson's amendment was finally embodied in an Act to Amend the North-West Territories Act in 1891, and in January 1892 the Territorial Assembly passed a motion which approved the use of English alone in the recording and publication of its proceedings. (2) Controversy did not end there, however. In 1891, and in at least two subsequent years, McCarthy introduced bills repealing clause 110 of the North-West Territories Act which provided for the use of French in the Courts and in the publication of statutes. To each bill he added a demand for the repeal of the educational as well as of the linguistic clauses of the North-West Territories Act.

It was not again, however, until 1894 that the question of language and education in the North-West received much

(1) Pacaud, Letters to My Father and Mother, p. 52.

(2) Royal Commission on Bilingualism and Biculturalism, Report, Book 1, pp. 51-52, argues that if French "ceased to have an official status ... there seems to be some doubt as to the constitutionality of this abolition." The 1891 amendment to the North-West Territories Act "required any resolution of the assembly to be embodied in a proclamation before becoming law" but that no such document has been found.

attention in the federal House. Laurier opposed McCarthy's bill. In his address in the debate, he dealt only with the educational provisions of the North-West Territories Act. He did not suggest, as in the debate on language in 1890, that the issue be resolved on the basis of territorial autonomy. He acknowledged that education was, "by its very nature," a local issue. He argued, however, that the limitation of local autonomy by constitutional guarantees for separate schools was justified and, if somewhat extraordinary, not unprecedented. He argued that:

The [Territorial] Legislature was deprived of its supremacy in matters of education in order to make that Legislature conform to the other provinces in respect to the powers relating to the subject of education. It was made to conform to the two largest provinces of the Dominion in respect to that matter. (1)

In 1875, as in 1864, constitutional provision had been made for separate schools in an effort to avoid agitation over the educational rights of denominational minorities. (2) "The question was discussed before," Laurier argued, "and when it came to be discussed practically by practical men, it was found advisable to allow matters to remain as they are at the present time, and allow a minority to have

(1) Laurier, House of Commons, Debates, July 16, 1894, p. 6106.

(2) Ibid., pp. 6107-10.

separate schools where they desire them." (1) In the interest of national harmony and unity, Confederation should be carried on "upon the basis which was adopted in 1864, and maintained in 1875." (2) Nothing, he concluded, could be gained by returning to "the old heart-burning." (3) Separate schools might be considered objectionable by some, but, he argued, "they cannot be more objectionable today than they were in 1876 [sic] or in 1864." (4) He reminded those who were dissatisfied with these educational provisions of the words of Edmund Burke:

In most questions of state there is a middle. There is something else than the mere alternative of absolute destruction and unreformed existence. This is, in my opinion, a rule of profound sense, and ought never to depart from the mind of an honest reformer.... A man full of warm, speculative, benevolence may wish his society otherwise constituted than he finds it; but a good patriot and a true politician always considers how he shall make the most of the existing materials of his country.

Laurier concluded by calling upon "all Canadians, French or Catholic, Protestant or English, to sink a little of their preferences, of their prejudices, of their passions, of

(1) Ibid.

(2) Ibid., p. 6113; also see p. 6111.

(3) Ibid., p. 6111.

(4) Ibid.

their sentiments, upon the altar of our common country." (1) To this defence of the status quo, Laurier added a brief secondary argument based on the principle of justice. He argued that it was "only fair to ask that what is granted in Quebec to the minority should also be granted to the minority elsewhere," but he took this point no further. (2)

The Autonomy Bills of 1905 illustrate Laurier's particular concern for the educational rights of Roman Catholic minorities. He sought to entrench these rights in the constitutions of the new provinces of Alberta and Saskatchewan. (3) He clearly felt provincial jurisdiction over education should be limited so that the rights of the denominational minority were not wholly dependent upon the goodwill of the provincial majority. In the prolonged controversy over the Autonomy Bills, he defended his position time and again in the House and in correspondence. The accuracy and applicability of his discussion of the constitutional basis of minority educational rights is often questionable. His defence of the very limited nature of the rights he sought to secure may appear doubtful to some. But

(1) Ibid., p. 6113.

(2) Ibid., p. 6112.

(3) J. William Brennan, "The 'Autonomy Question' and the Creation of Alberta and Saskatchewan, 1905," in The New Provinces: Alberta and Saskatchewan, 1905-1980, edited by Howard Palmer and Donald Smith (Vancouver: Tantalus Research Ltd., 1980), pp. 50-54, summarizes the debate over the educational clauses of the Autonomy Bills.

the sincerity of his central argument in defence of these rights is unassailable. He argued that, as a matter of equity and of justice, (1) in order to avoid the resurgence of violent religious passions and to secure national harmony, (2) the minority should be given a constitutional guarantee of its denominational educational rights. Confederation was based upon compromise, (3) upon a spirit of tolerance and charity, (4) and he stressed continually that Confederation must be continued on this same basis of "give and take." (5) The educational provisions of the British North America Act "were enacted in a spirit of tolerance and forbearance," (6) and were designed to avoid religious controversy and to secure justice to the minority. Their

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- (1) Laurier Papers, Laurier to J.R. Dougall, Mar. 4, 1905, pp. 208877-79.
- (2) Laurier Papers, Laurier to William Selby, Mar. 29, 1905, pp. 209491-92; Laurier, House of Commons, Debates, Feb. 21, 1905, p. 1441.
- (3) See for example, Laurier Papers, Laurier to William H. Orr, Mar. 3, 1905, pp. 208900-1; Laurier to J.R. Dougall, Mar. 4, 1903, pp. 208877-79.
- (4) Laurier, House of Commons, Debates, Feb. 21, 1905, p. 1441.
- (5) Laurier Papers, Laurier to C.R. Harrow, Mar. 3, 1905, pp. 208889-90.
- (6) Laurier Papers, Laurier to Rev. J.W. Gregory, Mar. 2, 1905, pp. 208838-39.

terms were as appropriate in the circumstances of 1905 as they had been in 1867. (1) Laurier concluded:

Of course if my friends ignore entirely the principles upon which Confederation was based and organized, my task becomes absolutely disheartening, and it is impossible to expect harmony in this country, whereas I always thought and still believe that a close adherence to the principles laid down by the Fathers of Confederation would induce all classes to submit to some sacrifice of their own opinions on certain questions, that of education included. (2)

While, however, Laurier sought some guarantee for minority denominational rights, he argued that his compatriots should not press for language rights in the Autonomy Bills. There was no provision in the British North America Act guaranteeing French language rights as there was for separate schools and, he argued, "speaking as a member of the minority of this country," nothing should be sought which was not provided by the constitution. (3) He argued further that it was unwarranted to demand language rights as a matter of justice or utility. The French Canadian population of the North-West was simply far too small. (4)

(1) Laurier Papers, Laurier to William H. Orr, Mar. 3, 1905, pp. 208900-1.

(2) Laurier Papers, Laurier to Rev. W.T. McMullen, Mar. 10, 1905, p. 209125.

(3) Laurier, House of Commons, Debates, June 28, 1905, p. 8285. See also Laurier, House of Commons, Debates, June 30, 1905, p. 8581.

(4) Laurier, House of Commons, Debates, July 5, 1905, p. 8854; June 30, 1905, p. 8577.

Laurier apparently felt linguistic sensitivities to be far less legitimate than religious fears.

His comparative lack of concern for French language rights is explained further by other statements. In May of 1884, for example, Laurier addressed a select group of French Canadian supporters of the Liberal party in the Montreal offices of La Patrie. He argued that:

although there are about fifty French members in the House of Commons, it is exclusively an English assembly. French is its official language as well as English, but French is being less and less spoken in it. The reason for this is that it is impossible to take an effective part in the debates unless you use the language of the majority.... Things must be taken as they are. Our parliamentary laws, usages, and customs come to us from England. Moreover, the English are better adapted than we are for that system of government. In no matter what deliberative assembly they may find themselves, they are more at home than are the French race, and where they are in the majority, their language must necessarily prevail.(1)

He himself only infrequently used French in the House and only then for specific purposes; unlike some French members of the federal House, he was unconcerned that prayers were read by the Speaker in English alone.(2) His attitude suggests that Laurier saw language as a tool. Which language an individual used was a practical issue dependent

(1) Laurier, Lecture at Montreal, May 19, 1884, in Barthe, Laurier, p. 191 (my italics).

(2) Laurier, House of Commons, Debates, Feb. 19, 1877, p. 94.

upon his circumstances. Religion, on the other hand, could not be treated so pragmatically. Faith was part of the identity of an individual and thus should be respected on principle.

In conclusion, it may be suggested that Laurier did not see the use of French by the minority as an innate right, but rather as a privilege. Language rights were a local issue. Local communities must be free to decide the extent of the rights the provincial minority would enjoy both in respect to education and more generally. The official status of the French language he believed to be largely dependent upon strength of numbers and far less important than linguistic rights in respect to education. Arguably, he was reconciled to this state of affairs by his essential faith that men were customarily tolerant and reasonable in their actions. He saw intolerance, it may be suggested, as a temporary aberration.

Denominational educational rights he saw in a somewhat different light. He was far less willing to allow the local community the right of complete self-government in educational matters. He sought, rather, to guarantee some measure of denominationalism for the minority, clearly feeling that it possessed a certain fundamental right to this, if not to the official recognition of its language. Religious sensitivities, he felt, were far more volatile, passionate, and legitimate.

The rights of provincial minorities, religious and linguistic, differed from those of territorial minorities because they brought provincial as well as federal jurisdiction into play. Section 133 of the British North America Act provided for the use of English or French in the debates of the Houses of the federal Parliament and Quebec Legislature as it did for the publication of their acts, journals, and records in both languages. In addition, Section 133 declared that either language might be used in any federal or Quebec court. Section 93, on the other hand, gave to the provinces exclusive jurisdiction over education subject to certain provisions. Subsection 1 provided for an appeal to the courts against any provincial act believed prejudicial to the rights or privileges possessed by law at the time of union by any "class of persons" with respect to denominational schools.⁽¹⁾ Subsection 3 provided for an appeal to the Governor-General in Council from any provincial act or decision "affecting any right or privilege

(1) The discussion of the Privy Council in the case of *Ottawa Separate Schools vs. Mackell*, 1917, stated that the "class of persons" to whom this clause referred was "a class of persons determined according to religious belief and not according to race or language," thus definitely ruling out, as Weir notes, "language or race as having any legal relationship to denominational teaching." Weir, The Separate School Question in Canada, pp. 43-44.

of the Protestant or Roman Catholic Minority of the Queen's subjects in relation to Education" existing in law at the time of union or established by the Legislature thereafter. Should an appeal under this section be sustained, Section 4 provided for the issue of a remedial order by the Governor-General in Council. If, subsequently, the provincial authorities failed to remedy the minority's grievance, the same section provided for the passage of remedial legislation "as far only as the Circumstances of each Case require" by the Parliament of Canada. Thus under certain circumstances the federal government had the constitutional right to intervene on behalf of a denominational minority in a province. With the Manitoba School Question, Laurier had to take a stand on the issue of federal intervention.

The Manitoba Act of 1870, a federal statute, provided guarantees for the language and schools of the French Catholic minority patterned largely on those of the British North America Act. Provincial legislation in 1871 authorized public support for Protestant and Roman Catholic sections of a common school board, each of which regulated "matters pertaining to the conduct of its own schools." (1) In 1890, however, the Manitoba Legislature abolished the joint school board and established "a system of free, national schools, which all classes of ratepayers were

(1) Weir, The Separate School Question in Canada, p. 36,

obliged to support." (1) Separate schools were not abolished although they were excluded from any share of public monies. (2)

The legislation was challenged in the Courts. The Canadian Supreme Court declared it ultra vires but in July 1892 this decision was reversed by the Judicial Committee of the Privy Council. The constitutional rights and privileges of the minority in respect to denominational education had not been affected, the Judicial Committee concluded, because denominational schools had not received public funds by law or in practice at the time of union. (3) Following this decision, the only redress for the minority was an appeal to the Governor-General in Council under Subsection 3 of Section 93 of the British North America Act, on the grounds that the right to public funds had been "thereafter established." The Conservative administration under Sir John Thomson postponed the minority's appeal by first raising the question of the government's competence to hear an appeal against legislation which had been ruled intra vires. The courts were asked to decide the issue and in 1895 the Judicial Committee of the Privy Council ruled that

(1) Ibid., p. 37.

(2) Ibid., pp. 37-41.

(3) Weir, The Separate School Question in Canada, pp. 38-41. This was the Barrett Case. The Act did revoke certain rights and privileges enjoyed under the terms of the Act of 1871, but as these had been acquired after the Union this was within the competence of the provincial legislature.

the Governor-General in Council could indeed entertain an appeal and could, if necessary, pass remedial legislation.(1)

Public debate began in earnest on the Manitoba School Question as soon as the possibility of an appeal was raised in 1893. From that time on, in both the House and in the press, according to Laurier, nothing was heard but "the grumbling voice of Ontario, that the Legislature of Manitoba is not to be interfered with, and the threatening voice of Quebec, that the Roman Catholic minority is to be protected in all its rights."(2)

In March of 1893, on a motion censuring the government for its handling of the controversy, Laurier argued that the minority in Manitoba possessed the right of appeal for redress to the federal Government "whenever they feel oppressed by local legislation in the matter of education."(3) When a system of separate schools existed at the time of Union or was subsequently established by

(1) Ibid., pp. 41-43. The ruling in the Brophy case delivered in late January, 1895, focused upon the issue of administrative fairness rather than legality. Lord Halsbury in presenting the decision of the Judicial Committee of the Privy Council noted that the appeal allowed under subsection (2) of the Manitoba Act "was not designed to provide machinery for the enforcement of Subsection 1" which might be, as had been, the case, enforced by judicial appeal, but "had reference" to a different set of circumstances.

(2) Laurier, House of Commons, Debates, Mar. 8, 1893, p. 1982.

(3) Laurier, House of Commons, Debates, Mar. 8, 1893, p. 1995.

provincial legislation, the federal government had "a supervisory power" over it. It not only could hear an appeal from the minority, but it possessed the authority to interfere within the provincial sphere and revise provincial separate school legislation. (1) He admitted that this was a "most abnormal and extraordinary" provision, and suggested that "it would have been wiser for the Fathers of Confederation to have adopted the American principle of absolute local independence." (2) He explained, however, that Section 93 had been designed, at the instigation of Alexander Galt, to place the Protestant minority of Quebec "beyond the caprice or ill-will of the Local Legislature" and its French Roman Catholic majority. Galt and the delegates to the London Conference of 1866 had intended that these guarantees should apply to "all" the other minorities of the other provinces," and the Manitoba Act had explicitly extended the right of appeal for remedial legislation to the provincial minority. (3)

He cautioned that the right of appeal should be limited:

so strong am I in my conviction of provincial rights that I am bound to say at once that this privilege of appeal should not be exercised except for very, very cogent reasons - reasons implying such an abuse of power on the part of

(1) Ibid., p. 1984.

(2) Ibid.

(3) Ibid., pp. 1985-92.

the local legislature as no man with a heart in his bosom would submit to. (1)

Should an appeal be heard and investigation demonstrate that the minority had a just grievance, not a moment is to be lost in coming to the rescue of the oppressed minority. (2) The crucial question, however, was what constituted a just grievance.

Laurier argued in a letter written to the Francophone editor of the Ottawa Canada, Oscar McDonell, in July 1893, that if it was discovered that the minority,

avaient de fait leurs écoles comme ils les ont au Nouveau Brunswick et à la Nouvelle Ecosse, ... je crois qu'il faudrait accepter cet état de choses. (3)

It seems then that within certain bounds Laurier was willing to accept a variety of educational arrangements. It was not essential to reinstate the pre-1890 system. Rather, his reference to the New Brunswick school system, which according to one historian represented a compromise between state schools and separate schools, suggests he felt the creation of a similar system in Manitoba would be an

(1) Ibid., p. 1991.

(2) Ibid., p. 1998.

(3) Laurier Papers, Laurier to McDonell, July 14, 1893. In New Brunswick all schools were state supported and in theory non-sectarian but yet the regulations were such that there was a considerable Roman Catholic presence in (and character to) the schools.

acceptable solution to the controversy. (1)

Laurier argued repeatedly, however, that it was "tyrannical" to deprive the Roman Catholic minority of its schools, only to force them to attend ones operated on Protestant lines. If the public schools of Manitoba were Protestant rather than secular, the minority possessed a just grievance. (2) If Manitoba schools were Protestant "it was such an outrage upon the conscience that no Protestant community would tolerate it." (3) Laurier consistently argued that the allegation that Manitoba schools were Protestant would have to be investigated, but it is clear from a letter Laurier wrote to Clifford Sifton late in 1894

(1) H. Blair Neatby, Laurier and a Liberal Quebec: A Study in Political Management (Toronto: McClelland and Stewart, 1973), p. 58, argues that Laurier's letter to McDonnell indicates that "whatever his opinion of the Manitoba School Act of 1890, he [Laurier] was able to realize that the decision of the courts that the Act was intra vires had altered the position of the minority in the province. If the majority in Manitoba refused to consider separate schools as acceptable, it was now useless to insist." This view would appear to be largely based on the assumption that Laurier's reference to the New Brunswick compromise indicated as much about the manner in which a solution to the controversy was to be achieved as the form it would take. This seems unwarranted.

(2) See, for example, Laurier Papers, Laurier to O. McDonnell, July 14, 1893, pp. 2562-64; House of Commons, Debates, Mar. 8, 1893, pp. 1997-98; Globe, Feb. 6, 1895, text of a speech given by Laurier at Massey Hall on Feb. 5, 1895.

(3) Globe, Feb. 6, 1895, Laurier at Liberal meeting, Massey Hall, Toronto, February 5; see also Neatby, Laurier, p. 57, citing Laurier at Winnipeg on Western tour, Montreal Star, Sept. 4, 1894.

that Laurier believed its claim to be well founded. His persistent use of the conditional was tactical. Laurier told Sifton, however, that the hierarchy's "complaint that the schools were protestant," which he himself had been echoing, "was not well put from their own point of view." Sooner or later, he predicted:

they will come back to the position, which they have always held, that they are entitled to Catholic schools, and that whether the schools are protestant or secular, so long as they are not catholic, they will pretend they have a right to complain.(1)

This passage seems to suggest that Laurier felt the minority was not justified in claiming secular schools contravened their rights. Perhaps secular schools were the minimum he felt acceptable. It is clear, however, that he preferred something beyond that: the reintroduction of an element of denominationalism. He told George Ross in March of 1895 that he believed that "the only justifiable" course to take in the controversy was to argue that the minority's demand for the restoration of denominational schools was a demand not "for constitutional concession" but for what was theirs by "constitutional right." (2) Certainly it would be a popular position in Quebec. He suggested, however, that "tactical aspects" made it difficult if not impossible to

(1) Sifton Papers, Public Archives of Canada, Laurier to Sifton, Dec. 3, 1894.

(2) J.S. Willison Papers, Public Archives of Canada, Ross to Laurier, Feb. 27, 1895; Laurier to Ross, Mar. 2, 1895.

take this line.(1) Ontario was unlikely, he feared, to view the Roman Catholic minority's grievance sympathetically. The Protestant community at large would first have to be convinced of the reasonableness of the minority's position.

This would not be easy. Laurier argued that:

The man who upholds the system of public schools does not conceive the extent of the injustice which is inflicted on the conscience of Roman Catholics when they are deprived of their schools.(2)

The Roman Catholic minority, in its objections to secular schools, appeared "unreasonable [sic]" to "a large section of the protestant community."(3) Protestants could not understand why Roman Catholics alone opposed schools which were acceptable to Baptists, Methodists, Presbyterians and Anglicans. What they failed to understand was "that the Roman Catholic Church attaches as much importance to doctrinal tuition as to moral tuition."(4) Laurier believed that by explaining the source and nature of the minority's grievance to the Protestant community he could bring that community to recognize that the Public Schools Act was unjust. That achieved, the controversy over Manitoba schools would be on the way to being solved. Thus, he

(1) Willison Papers, Laurier to Ross, Mar. 2, 1895.

(2) Ibid.

(3) Laurier Papers, Laurier to Anglin, Apr. 2, 1895, pp. 3722-24.

(4) Laurier, House of Commons, Debates, Jan. 23, 1896, p. 593.

frequently discussed Roman Catholic attitudes to education. He also called for an "investigation of facts." For a number of years this constituted his only positive policy suggestion, and one which he repeated at every possible opportunity. (1) It was primarily designed to educate the Protestant community. He told Frank Anglin in a forthright letter in April, 1895, that it might "not be necessary for the Catholics," but "would be a great help with the protestant community." (2) He spoke of it in 1896 as "une étude préparatoire." (3)

Thus Laurier in this instance, as in the North-West Territories Schools Question and the Autonomy Bills controversy, felt the minority should enjoy some form of denominational education. At the very least, he felt the minority must be satisfied with secular schools. Arguably his view of what the minority could legitimately demand was

(1) Ibid.

(2) Laurier Papers, Laurier to Anglin, April 2, 1895. Crunican, Priests and Politicians, p.178 cites Groulx, L'Enseignement Français au Canada, vol. 2, pp. 117-19. Laurier to C.E. Pouliot, Jan. 31, 1895, in Groulx, cited in Crunican, Priests and Politicians, p. 178. Laurier argued that an inquiry would be designed preeminently for the benefit of Protestants of whom he wrote they "ne veulent d'écoles athées mais ils ne veulent pas non plus, d'enseignement dogmatique... en imposant aux catholiques les mêmes restrictions qu'ils s'imposent à eux-mêmes, ils ne se rendent pas compte qu'ils sont coupables d'un acte d'intolérance." Protestants were to be shown that the system they were imposing upon the Roman Catholic minority was indeed a Protestant one.

(3) Laurier Papers, Laurier to Bégin. Feb. 24, 1896, cited in Ibid., p. 190.

based on an inarticulated belief that the minority enjoyed certain fundamental rights. These rights did not guarantee separate schools. They did, however, guarantee that no child of the Roman Catholic faith would be forced to attend schools of a hostile religious faith.


In an ideal world, this guarantee would be based on the goodwill and sympathetic understanding of the majority. As he explained to J.S. Willison in July, 1895:

in a matter of this kind, it is impossible to reconcile the conflicting opinions of different sections, except by an honourable acknowledgement of those differences with a view of effecting a compromise of the same. (1)

If the firmest basis of minority rights was the goodwill of the majority, the constitution provided the minority with the right of appeal to the federal government for redress should the majority's goodwill fail. In 1893 Laurier had upheld the minority's right of appeal. It seemed clear to Laurier that the constitution did not permit the majority to enforce its will. As he explained to Willison:

Can there be here a question of Provincial Rights? How can this be pretended? Does not the constitution expressly declare that in matters of education the Provincial Legislature shall have exclusive jurisdiction, except ... There is an exception. What is it? You have it in section 9301 [sic] of the B.N.A. Act, and it is that in provinces where a system of separate

(1) Willison Papers, Laurier to J.S. Willison, July 17, 1895.



schools exists, an appeal shall be given to the minority. How is it possible to talk of provincial rights, when by the very letter of the constitution, jurisdiction is given to the Federal authorities to review and to override provincial legislation?

He went further on this occasion and added, "What is the [sic] use of giving an appeal to the minority, if the appeal is to be heard only to be denied?"(1) In principle, at least, Laurier seems to have accepted the constitutional right of the federal government to take remedial action if a provincial majority attempted to impose its denominational schools on the minority. This did not necessarily mean that Laurier favoured federal remedial legislation for Manitoba. He cautioned Willison in a subsequent letter in early April that a minority's appeal should be "granted or rejected according to the circumstances of each case." As to whether, in this instance, the minority's request for remedial legislation should be granted, Laurier stated he was as yet unsure.(2)

Was Laurier then inclined to view remedialism as a valid exercise of federal power in the spring of 1895? The evidence is not clear. One historian has suggested that Laurier favoured remedial legislation in the spring of 1895 but was dissuaded by Willison's arguments in defence of

(1) Willison Papers, Laurier to Willison, Mar. 30, 1895. Clearly Laurier referred to section 9303/04 vs. 9301.

(2) Willison Papers, Laurier to Willison, Apr. 9, 1895.

provincial rights and his own desire to retain the support of leading Ontario Liberals such as John Charlton, who were adamantly opposed to any federal intervention in Manitoba.(1) By the end of March, it is suggested, his correspondence shows a recognition of the strength of the forces arrayed against interference in Manitoba. It also reflects the fear that if Catholics were not careful they could provoke an attack on the privileges of provincial French Catholic minorities throughout the nation. This concern was first clearly expressed in a letter in early April 1895(2) and repeated at intervals in frank correspondence with close political associates throughout that year. He stated, for example, in August that:

if the minority were wise they could realize that such interference [as the passage of federal remedial legislation], far from being conducive to the object which they have in view, would produce a totally different result.(3)

He added further in December that:

Should the [remedial] bill be passed, it is obvious that the majority of the people in Manitoba would make a strong appeal to their fellow coreligionists all through the provinces to be protected against Church oppression, as they would put it, and it is not

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- (1) Crunican, Priests and Politicians, pp. 71, 142 for example.
- (2) Laurier - Papers, Laurier to Anglin, Apr. 2, 1895, pp. 3722-24.
- (3) Laurier Papers, Laurier to J.D. Cameron, Aug. 5, 1895, pp. 3831-32.

unlikely that an agitation would at once be started to amend the constitution against Separate Schools generally not only in Manitoba, but all through the provinces.(1)

The difficulty with this analysis is the lack of certainty about Laurier's earlier views. There are few texts prior to March of 1895 in which Laurier refers to the provision of Section 93 and these are so vague as to be of no help. Without more definite evidence it seems unwarranted to conclude that Laurier had failed to appreciate the force of opposition to remedialism, prior to the late spring of 1895. Certainly he was aware long before then of the danger involved for French Canadians in any attempt to override the will of the Manitoba majority. He argued, for example in July 1893, that if the courts determined the minority did not have the right to appeal to the federal government for redress, the risk involved in trying to amend the constitution would be too great. Any such attempt on the part of the minority,

entraînerait une semblable demande de la part de l'école McCarthy pour abolir la langue française dans le Parlement et les écoles séparées dans Ontario. Ces conséquences sont telles qu'elles doivent faire réfléchir tout homme de sense.(2)

(1) R.W. Scott Papers, Public Archives of Canada, Laurier to Scott, Dec. 24, 1895. See, similarly, Laurier Papers, Laurier to Fielding, Nov. 5, 1895, pp. 3923-26.

(2) Laurier Papers, Laurier to McDonell, July 14, 1893, p. 2563.

It may be that Laurier had never favoured remedial legislation. His defence of the minority's right to appeal to the federal government for remedial legislation may have been no more than a political tactic to encourage a more conciliatory attitude on the part of the Manitoba majority.

Any doubts about Laurier's position ended on the 19th of July 1895. On that day he told the House:

I do desire and do wish that the minority in Manitoba may be allowed the privilege of teaching in their schools, to their children, their duties to God and to man as they understand those duties, and as their duties are taught to them by their church. That is my wish. But I do say, that if that object is to be attained, it is not to be attained by imperious dictation nor by administrative coercion. (1)

This passage can be seen as his first public rejection of remedialism. Later in the year, at Morrisburg, in an oft-quoted speech, Laurier outlined his alternative to remedial legislation for Manitoba. He argued that investigation, negotiation, and compromise were far more likely than other more violent tactics as the issue of remedial orders to secure a settlement to the controversy. He commented to his audience:

the government are very windy. They have blown and raged and threatened and the more they have raged and blown, the more that man Greenway has stuck to his coat. If it were in my power, I would try the sunny way. I would approach this man Greenway with the sunny way of

(1) Laurier, House of Commons, Debates, July 15, 1895, p. 4391 (my italics).

patriotism, asking him to be just and to be fair, asking him to be generous to the minority, in order that we may have peace among all the creeds and the races which it has pleased God to bring upon this corner of our common country. (1)

Even then, however, it was not the principle of remedial legislation that he was rejecting but remedial legislation for Manitoba. In his final address to the House on the Manitoba School Question in March of 1896 he still balanced in theory the "remedy of interference with local legislation has never been applied and probably never can be applied without friction, and discontent: that you cannot apply that remedy without causing as much dissatisfaction as satisfaction," (2) with an apparent willingness to condone the use of the federal remedial power. Clearly Laurier was dubious about the effectiveness of remedial legislation under any circumstances. It is perhaps going too far to suggest that nothing would have led Laurier to accept it as a necessary response on some occasions. After the election in the summer of 1896, Laurier set about finding a solution to the Manitoba School Question. His proposed investigation was quietly shelved and negotiations were opened with the Manitoba government. On the 29th of April, 1897 he announced in the House that an agreement had been reached

(1) Laurier, speech at Morrisburg, Oct. 8, 1895, cited in Skelton, Laurier, vol. 1, p. 464.

(2) Laurier, House of Commons, Debates, Mar. 3, 1896, p. 2742.

between the Dominion government and that of Manitoba.(1) Its terms were a considerable improvement on those of the Public School Act of 1890. An element of denominationalism was reintroduced into the Manitoba school system.(2) Further, as Laurier argued, "the agreement will have this further advantage, of being put into effect by a Government which is sympathetic, and which has made these concessions with a good grace."(3)

The controversy in Manitoba had been more than a question of confessional schools. In 1890, in addition to the Public School Act, provincial legislation had deprived the French language of its official status.(4) The French members of the Manitoba Legislature appealed to the federal government for disallowance. The statute was not disallowed; unlike the Public School Act it did not, however, become the subject of federal debate. Laurier never discussed the issue. Perhaps in part this was because he was already involved in the controversy over the Manitoba

(1) Laurier, House of Commons, Debates, Apr. 29, 1897; p. 1451.

(2) Crunican, Priests and Politicians, p. 318, summarizes the terms of the agreement.

(3) Laurier to Pacaud, Nov. 18, 1896, in Pacaud, Letters to My Father and Mother, p. 96.

(4) The English Language Act made English the sole language to be used in the records and journals of the Legislature, in all Manitoba courts and in the publication of all Manitoba statutes. Royal Commission on Bilingualism and Biculturalism, Report, Book 1, p. 50.

School Question and could not fight two battles at one time. More likely, however, it was because he did not feel language rights to be of as fundamental importance as religious rights.

Laurier's position in the Ontario School Question suggests the latter was the case.(1) In this case he argued that although all children in the province should receive "a good English education," they should also be accorded the privilege of studying French. This latter was denied by "Regulation 17."(2) He sought to encourage the English Canadian majority of the province to moderate their stance on the use of French in Ontario schools and to revise their law "in a broader spirit."(3) Their intransigence over the matter dismayed him greatly and momentarily weakened his faith in the innate justice of men. "I have about come to the conclusion that I have lived too long," he wrote when he considered what he felt to be the betrayal of Liberal principles by the Ontario wing of the Party. He found it incomprehensible "that in a civilized country, the teaching

(1) Margaret Prang, "Clerics, Politicians, and the Bilingual Schools Issue in Ontario, 1910-1917," in Robert Craig Brown et al., ed., Minorities, Schools, and Politics, (Toronto: University of Toronto Press, 1969), pp. 85-111.

(2) Laurier Papers, Laurier to N.W. Rowell, Mar. 1, 1916, pp. 191265-68.

(3) Laurier Papers, Laurier to Geo. Broadley, July 14, 1916, p. 192331.

of a second language, and such a language as French, could be thus ruthlessly prohibited." Yet, he rejected the idea of disallowance.(1) He argued, "that the powers of the province should be, and indeed are, in this matter paramount."(2)-

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Laurier's views on the constitutional rights of linguistic and denominational minorities are thus fairly clear. He was willing to leave language rights to be determined entirely by the local majority. He would appeal to that majority to permit the use of French; on no occasion, however, would he consider federal intervention or coercion in defence of language when the majority was intransigent. Even in 1890 in the North-West Territories, where federal authority was unquestionable, he did not interfere with the majority's determination to abolish the official status of the French language.

Denominational rights were in a different class. Laurier would tolerate secular schools although he favoured an element of denominationalism. He believed it completely

(1) Laurier Papers, Laurier to Mahlon Cowan, Apr. 11, 1916, pp. 191551-55.

(2) Laurier Papers, Laurier to Rowell, May 11, 1916, p. 191986.

unacceptable to force children of one faith to attend schools of a hostile faith. Unlike the case of language rights, he did use the authority of the federal government in the North-West in 1905 in an effort to secure formal constitutional guarantees for the denominational minority. Again, however, the ideal solution to any controversy over the denominational character of provincial schools was to persuade the majority to be generous and tolerant. Failing this, the constitution gave the federal government the authority to intervene within the provincial sphere and to pass remedial legislation if necessary. Laurier was doubtful about the desirability and effectiveness of exercising this authority. It is unclear whether he ever would have felt its use warranted.

CHAPTER 4: THE PRIME MINISTER

Controversy over "provincial rights" in the 1870s and 1880s had led to a clarification of the nature of Canadian federalism by the time Laurier became Prime Minister in the summer of 1896. He himself claimed in 1903 that the "federal principle" had triumphed over the Macdonaldian preference for legislative union. He credited Oliver Mowat with much of the responsibility for "having given" the Canadian union "its ultimate character as a federal compact." For some twenty years after Confederation, when "its orientation was still uncertain," Mowat had opposed Macdonald's efforts "toward centralization" and the appropriation of powers more properly provincial. His efforts had met with victory when, ultimately, the courts had sanctioned his interpretation of the Constitution. (1)

It is true that by the century's end the classical federal principle of provincial sovereignty within its sphere had been upheld as a fundamental principle of the constitution in a series of Judicial Committee decisions. The Court had also supported the notion that Confederation

(1) Laurier, House of Commons, Debates, Apr. 20, 1903, pp. 1577-8.

was the product of a compact between the provinces.(1) The status of the provinces was further confirmed by the Court's declaration that the Lieutenant-Governor possessed full prerogative powers for the purpose of provincial government(2) and that the Dominion's residual power to "make Laws for the Peace, Order, and good Government of Canada," was subordinate to the legislative jurisdiction of the provinces.(3)

To an extent these decisions served merely to clarify and confirm a drift in Canadian constitutional practice. By the 1890's it was clear that the provinces possessed considerably more power than Macdonald had originally intended and that they would resist any attempt by the federal government to exert its authority over them.(4) These developments made the Dominion government wary of offending provincial sensibilities.

(1) Hodge v. R. [1883] 9 App. Cas. 117; Liquidators of Maritime Bank v. Receiver General of New Brunswick [1892] App. Cas. 437; A.G. Ont. v. A.G. Can. (Local Prohibition) [1896] App. Cas. 348, 5 Cart 295; A.G. Can. v. A.G. Ont. (Fisheries) [1898] App. Cas. 700.

(2) Liquidators [1892].

(3) Local Prohibition [1896].

(4) Cook, Provincial Autonomy, Minority Rights and the Compact Theory, pp. 43-44; F. Murray Greenwood, "Lord Watson, Institutional Self-Interest, and the Decentralization of Canadian Federalism in the 1890's," University of British Columbia Law Review, 1974, pp. 244-79.

Laurier's celebration of the victory of the federal principle seemed to imply that a far more substantial change had occurred. Certainly it does not prepare one for the continued strength of unitary elements that Laurier had in the past condemned.

In no way can it be argued, as one recent analyst has, that:

when Laurier assumed office, the political system was established as thoroughly federal in nature - whatever might have been the intentions of the Fathers and their legal draughtsmen.(1)

While there was a danger that disallowance might cause a provincial uproar, it remained a viable tool. The Dominion government could use it to exert its authority over provincial legislation if it was prepared to pay the political costs. In addition, other unitary aspects of the constitution such as federal fiscal superiority; the federal power to appoint and dismiss, "for Cause," the provincial Lieutenant-Governor and to appoint provincial judges; and the declaratory power, were essentially unaffected. These unitary elements are not unimportant. While the courts had recognized the principle of provincial autonomy, the Dominion government retained intact powers that allowed it to override that autonomy and exert its authority within the

(1) Edwin R. Black and Alan C. Cairns, "A Different Perspective on Canadian Federalism," in Meekison, editor, Canadian Federalism: Myth or Reality, (Toronto, 1968), p. 84 (My italics).

provincial sphere.(1)

The nature of Canadian federalism, whatever Laurier may have implied, remained a matter very much open to dispute. If certain limits had been established upon the freedom of action of contemporary politicians, the character of federalism remained dependent to a large extent upon their inclination. Laurier had spoken of Mowat shaping "our institutions" in conformity with the federal principle. It was a process he himself might continue.

Laurier was not, however, a constitutional reformer. He was, as he himself admitted, a constitutional conservative. He felt that constitutional change was a process that should be embarked upon only with great caution. While he might express dissatisfaction with facets of the constitution, he never had and did not now eagerly pursue formal constitutional change. Rather, he argued that:

it is the duty of everybody in this House and in this country to take confederation as we find it, with its good points and its blemishes, and carry it through to the end on the principle upon which it was established.(2)

Insofar as was possible, men should attempt in their conduct

(1) Perhaps an indication of the comparative insignificance to government of these court decisions is their absence from Laurier's discussions of federalism with the exception of this speech on Mowat's death.

(2) Laurier, House of Commons, Debates, Feb. 21, 1905, p. 1435.

to conform to the constitutionally ideal, but formal structures were best left in their imperfect state. He commented on another occasion:

I am a Conservative to this extent - I want to maintain the constitution of the country such as it is. It is not perfect, but we must endeavour to work it out with all its deficiencies.(1)

It was "safer," Laurier wrote to a correspondent in 1904, "to let things as they are, though they may be theoretically insufficient, if satisfactory to the people."(2) Constitutional amendment "is always a serious matter,"(3) he commented in 1907. "I lay down the principle that it is better to submit even to some inconvenience which might be remedied by the amendment of the constitution than to have the constitution lightly amended."(4) It should be a power reserved for the "last resort,"(5) to be exercised only if "the evil sought to be remedied is permanent and irremediable in any other way than by recourse to such an

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- (1) Laurier, House of Commons, Debates, June 2, 1898, p. 6766.
- (2) Laurier Papers, Laurier to A.O. Jeffrey, Jan. 21, 1904, cited in Stevens, "Laurier and the Liberal Party in Ontario," p. 74.
- (3) Laurier, House of Commons, Debates, Jan. 28, 1907, p. 2195.
- (4) Laurier, House of Commons, Debates, May 1, 1899, p. 2388.
- (5) Laurier, House of Commons, Debates, Jan. 28, 1907, p. 2196.

extreme measure."(1)

... It should be a matter of duty to all Canadians to maintain the constitution as far as it can be maintained in its absolute entirety; and only change it when it is made plain that a very great wrong would arise if it were not amended.(2)

If Laurier was wary of formal constitutional change, he recognized that the constitution could be altered by a process of evolution. As the history of the United States demonstrated, he argued on more than one occasion, "sans changer un mot au texte de la Constitution, il est très possible d'en dénaturer l'esprit autant que s'ils l'amendaient réellement."(3) Constitutional practice could mean constitutional change.

Laurier's failure to formally alter the constitution should not thus be taken as an indication of a lack of

(1) Laurier, House of Commons, Debates, Jan. 28, 1907, p. 2195.

(2) Laurier, House of Commons, Debates, May 1, 1899, pp. 2388-89.

(3) See, for example, Laurier, "La constitution anglaise comparée à la constitution américaine," in Alfred D. DeCelles, Discours de Sir Wilfrid Laurier, 1889 à 1911 (Montréal: Librairie Beauchemin, 1920), p. 79. The text of this speech, which Laurier gave to the Montreal Women's Canadian Club, was printed in English in the Toronto Globe on Saturday, Oct. 30, 1909, pp. 4-5; See also Laurier Papers, Laurier to E.W. Thomson, July 28, 1908, pp. 142887-89.

commitment to federalism.(1) His constitutional practice should also be considered. This chapter will focus upon Laurier's statements and actions between 1896 and his defeat in the early fall of 1911. Like the second chapter, it will be divided into three sections. The first will consider Laurier's attitude to the unitary aspects of the constitution.

The office of the Lieutenant-Governor was, as noted previously, one of the unitary facets of the constitution. Through its officer, the Dominion government could assert its authority on the provincial sphere. Formerly, Laurier had argued that, once appointed, the Lieutenant-Governor should be independent. In harmony with the federal principle of provincial autonomy, the Dominion authorities should not attempt to impose their priorities and standards upon the province through the office of Lieutenant-Governor.

(1) Christopher Armstrong, The Politics of Federalism: Ontario's Relations with the Federal Government, 1867-1942 (Toronto: University of Toronto Press, 1981), p. 66, argues that Laurier's commitment to "provincial rights" after 1896 was without substance. This was clear in part, he argues, by Laurier's failure "to alter the formal relationship between the provinces and the Dominion." He is mistaken. Part of his difficulty derives from his failure to consider the roots of Laurier's commitment to federalism.

Rather, he should be considered solely a provincial officer, guided in his conduct by his ministers and responsible, through them, to the provincial electorate. From this theoretical stance, two practical positions derived. First, Laurier argued that the Lieutenant-Governor should enjoy security of tenure during his term of office. Except for failings of a personal nature he should not be liable to dismissal. Second, Laurier argued that his term of office should be formal and fixed.

The federal government's ability to influence a Lieutenant-Governor was not, however, dependent upon leverage or other forceful means. Saywell argues that it was in the nature of the office that the Lieutenant-Governor would seek and also would be the recipient of federal advice.⁽¹⁾ Lieutenant-Governors quite frequently would act according to federal policy. These instances seem never, however, to have become public issues, and Laurier certainly never discussed them.

Once in power, Laurier did not consistently follow his own guidelines. In 1902 Oliver Mowat wrote to Laurier requesting a formal second term as Lieutenant-Governor of Ontario. He argued, as Laurier had in the past, that the issue of a second commission would give to a Lieutenant-Governor "as much independence as would be

(1) Saywell, The Office of the Lieutenant-Governor, p. 173.

practicable." (1) Significantly, Laurier touched not at all upon this aspect of the question in his reply. (2) Mowat did not subsequently receive a second commission but, rather, was kept in office after the expiration of his initial term and replaced only upon his death some five months later. (3) Writing to Lieutenant-Governor Henri Joly de Lothbinière of British Columbia in 1905, Laurier was more direct. He stated:

Ce n'est pas l'habitude du gouvernement de remplacer aucun Lieutenant-gouverneur immédiatement après l'expiration de son terme. (4)

Such behaviour, Saywell confirms, was his "deliberate policy." (5) Laurier, however, did not exploit the situation to exert greater control over his Lieutenant-Governors than was possible during their five year terms. Nevertheless, he certainly was establishing what, in earlier years, he would have labelled a dangerous precedent.

In addition to a fixed term, Laurier had argued that a

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- (1) Laurier Papers, Oliver Mowat to Laurier, Oct. 10, 1902, pp. 67414-17.
- (2) Laurier Papers, Laurier to Oliver Mowat, Sept. 20, 1902, pp. 67418-19. This is a reply to Mowat's letter of the 10th. One or other of the correspondents clearly had mistaken the month.
- (3) Saywell, The Office of the Lieutenant-Governor. Appendix A. Sir William M. Clark's commission was issued on Apr. 20, 1903.
- (4) Laurier Papers, Laurier to H. Joly de Lothbinière, June 8, 1905, p. 98074.
- (5) Saywell, The Office of the Lieutenant-Governor, p. 231.

Lieutenant-Governor should enjoy security of tenure during his term of office. Security of tenure was, however, a distant prospect under an administration that could send a memorandum to the Colonial Office arguing that the Lieutenant-Governor's term of office was "virtually dependent" upon the "good pleasure" of the federal cabinet.(1) This memorandum did not necessarily reflect Laurier's personal view accurately. However, as it was sent during his term in office, he cannot be completely dissociated from it. Further, it is clear that Laurier was responsible for the dismissal of British Columbian Lieutenant-Governor, T.R. McInnes, before the expiration of his term, for conduct of a political rather than a personal nature.

The events which led to McInnes' dismissal came at the end of a series of ministerial crises. The story of these earlier incidents need not be recounted here. Suffice it to say that the Lieutenant-Governor's behaviour therein made him liable to the charge of interfering in provincial affairs. While his actions were often not without a certain justification, the manner in which he disposed of old and treated new advisors was highhanded and led to his being cautioned on more than one occasion by the federal

(1) G 21, I, no. 193A, Memorandum by [Sir Joseph] Pope, Jan. 31, 1911, cited in Saywell, The Office of the Lieutenant-Governor, p. 17.

government.(1) His conduct in the last of these crises elicited a somewhat sterner response.

The final crisis began when McInnes called upon Joseph Martin, a Liberal, to form a ministry in the wake of the rather precipitate dismissal of the former Premier C.A. Semlin. Martin's choice was not entirely unwarranted.(2) He was, however, not well liked in the federal cabinet(3) nor in the British Columbian Assembly, whose members filed out when he was first introduced by McInnes.(4) This act of protest was brought to Laurier's attention in the House and he commented as he would have of old:

The Lieutenant-Governor, in the exercise of his authority, has taken a very serious step... He has taken the step of dismissing his responsible advisers, who, it may be claimed in one sense, though they had been defeated on the previous day, had still the confidence of the House; but he has found advisors ready and willing to take the responsibility of his action. Now, it has been determined more than once, and the question is no longer in dispute, that under the circumstances the remedy is in the hands of the people themselves. It is for the people of the province of British Columbia to declare whether they approve or disapprove of

(1) Saywell, The Office of the Lieutenant-Governor, pp. 131-36, 158, 250.

(2) Ibid., pp. 137-39.

(3) Ibid., pp. 249-50.

(4) House of Commons, Debates, Mar. 6, 1900, pp. 1382-86. Mr. Prior, a member for B.C., recounted the tale.

the action of the Lieutenant-Governor.(1)

In saying this, however, Laurier did not deny the possibility of a federal role in the affair, as he might have in earlier years. Certainly, if Martin received the support of the electorate, there would be no cause for further controversy.(2)

When McInnes neither convened nor dissolved the Assembly the federal cabinet did intervene in the affair, recalling to him his duty to submit his action to the judgement of the province.(3) Such a submission was, as Laurier commented soon thereafter to Martin, "imperatively commanded by the very essence of (liberal) constitutional government, and still more by the principle and tradition of the Liberal Party."(4) Elections were eventually called for June. Significantly, Laurier refused to play a part in the campaign, arguing that it would be improper for any members of the federal government to do so; "the Lieutenant-Governor has taken an action which may possibly, as he is an officer

(1) Laurier, House of Commons, Debates, Mar. 6, 1900, p. 1387 (my italics).

(2) Ibid.; Saywell, The Office of the Lieutenant-Governor, p. 251 sees this speech as entirely in keeping with his views during the Letellier affair.

(3) Saywell, The Office of the Lieutenant-Governor, pp. 252-53.

(4) Laurier Papers, Laurier to Martin, Apr. 20, 1900, p. 44693. The word "liberal" appeared in a handwritten copy of the letter (p.44681) but not in the typed version cited here.

of this Government, have to be reviewed by us."(1)

The election was held on June 9th and it soon became clear that, while Semlin's faction was firmly defeated, Martin had received very little support; the election had given him, according to Saywell, only 7 certain and 6 probable supporters.(2) Martin resigned and McInnes called upon James Dunsmuir to be Premier.(3) Soon after, Laurier explained to McInnes "that the result of the appeal to the people of British Columbia makes it impossible for you to remain Lieutenant-Governor."(4) When McInnes refused to resign he was dismissed.(5)

Laurier's behaviour was inconsistent with his earlier views. While he continued to stress, as of old, that the Lieutenant-Governor's conduct must be judged by the provincial electorate, he left open the possibility that the federal government might also have to pass judgement. Ultimately it did. The difficulty was that, while in the

(1) Laurier Papers, Laurier to J.C. McLagan, Apr. 14, 1900, p. 42945. His refusal to participate in the election was also the product of a disagreement with Martin on jurisdiction over the restriction of Japanese immigration.

(2) Saywell, The Office of the Lieutenant-Governor, p. 253.

(3) Saywell, The Office of the Lieutenant-Governor, pp. 137, 253.

(4) Laurier Papers, 159, Laurier to McInnes, June 19, 1900, cited in Ibid., p. 254.

(5) The Order-in-Council was approved on June 21, 1900 and Laurier informed the House the subsequent day. House of Commons, Debates, June 22, 1900, p. 8074.

Letellier and Angers cases the Lieutenant-Governor's behaviour had been upheld, the British Columbian population had condemned McInnes' conduct by rejecting his minister. In the past Laurier had implied that the provincial electorate was capable of remedying any wrong by the exercise of its vote. Clearly, it could not. By failing to support Martin in the election of June 1900, the electorate had forced Martin's resignation and had obliged McInnes to appoint a Premier more acceptable to the electorate. However, McInnes, whose judgement had been at fault throughout and whose penchant for meddling in provincial affairs was resented, remained in office. Laurier had practically no alternative, when McInnes refused to resign, but to dismiss him. McInnes' dismissal can, perhaps, be seen as an exceptional case when dismissal was justified.

Although Laurier's behaviour conflicted with the strictly classically federal position he had enunciated in the past, it should be noted that his behaviour reflected a respect for the principle of provincial self-government. He insisted that McInnes was first of all responsible to the provincial electorate. Only once Martin had been repudiated

by them was McInnes dismissed. (1) Further, although Laurier dismissed McInnes, he appears never to have used the threat of dismissal to subvert provincial objectives and priorities.

No other Lieutenant-Governors were dismissed or threatened with dismissal by Laurier, but he did on occasion treat them as federal agents. Saywell notes that:

Even Mowat, who pursued a lifelong crusade against the federal power, admitted that as Lieutenant-Governor he was "an officer of the Dominion Government" and asked for specific instructions in a matter which in his opinion involved "national considerations." (2)

Laurier issued such instructions to his Lieutenant-Governors and there were also occasions in which he clearly interfered within the provincial sphere by pressing on his Lieutenant-Governors certain actions. (3)

(1) Ibid., p. 256, states that Laurier argued during the Letellier affair that dismissal was virtually a delegated power. It is not entirely evident that he did so; indeed, as argued in chapter two, it would appear that he objected to the exercise of this power under most circumstances. Saywell's argument that in exercising the power in 1900, as if in response to provincial demand, Laurier remained consistent with his earlier position, would thus appear essentially unfounded.

(2) Laurier Papers, 74, Mowat to Laurier, May 2, 1898, cited in Saywell, The Office of the Lieutenant-Governor, p. 167.

(3) As Saywell, The Office of the Lieutenant-Governor, p. 173, notes, the extent to which the Lieutenant-Governor acted as the "agent and spokesman" of the federal government must remain somewhat unclear because it was dependent upon a host of indeterminable factors.

Laurier, however, preferred to exercise his influence in private. During the McInnes affair, Laurier and his cabinet were, for example, very careful to stress that in advising the Lieutenant-Governor to submit his conduct to the electorate for their approval, they were not initiating policy but merely reminding McInnes of his duty. Laurier was similarly careful to emphasize that he had no intention of instructing the Lieutenant-Governor how to respond to the British Columbian electoral results. He argued "The lieutenant-governor has chosen to appeal to the people of the province and the answer is in their hands."⁽¹⁾ Laurier also insisted that Lieutenant-Governor A.E. Forget had selected Liberal Walter Scott as the first Premier of Saskatchewan in 1905, rather than F.W.C. Haultain, although he had clearly been involved.⁽²⁾ When Borden charged that the federal government had interfered, Laurier responded

(1) Laurier, House of Commons, Debates, June 13, 1900, p. 7319.

(2) See Laurier Papers, Laurier to George Bulyea [a prominent Territorial Liberal who became Lieutenant-Governor of Alberta] July 25, 1905, pp. 100389-91 and Aug. 11, 1905, p. 100393. See also Saywell's analysis in The Office of the Lieutenant-Governor, pp.104-8 and David E. Smith, Prairie Liberalism: The Liberal Party in Saskatchewan, 1905-71 (Toronto: University of Toronto Press, 1975), chapter 1. Laurier commented in 1909 that "en raison de circonstances incontrôlables" he would become involved in the selection of a provincial premier, Laurier Papers, 311, Laurier to Langlois, Apr. 4, 1909, 350, Laurier to Langlois, Jan. 11, 1905, cited in Saywell, The Office of the Lieutenant-Governor, p. 99.

with feigned innocence "that any attempt to interfere with Mr. Forget in the discharge of his duties would have met with a strong rebuke...."(1) Laurier was also prepared to instruct Lieutenant-Governors on provincial legislation. In 1907, while at the Imperial Conference in London, Laurier agreed with his Secretary of State's suggestion that British Columbia's Lieutenant-Governor be instructed to reserve a provincial bill. The measure in question was designed to limit Asiatic immigration into the province. It was similar to earlier provincial Acts disallowed because they might detrimentally affect Dominion and Imperial relations with Japan, and Laurier urged the Bill's reservation on similar grounds.(2) Lieutenant-Governor Dunsmuir reserved the Bill before Laurier's letter reached Ottawa. Thus he was quite truthful if not frank when he told the House in 1908 that the federal government had not advised reservation.(3)

Laurier's attempts to avoid discussing the connection between his government's advice and the actions of its provincial officers seemed indicative of a desire to create the illusion that the Lieutenant-Governor was independent.

(1) Laurier, House of Commons, Debates, Mar. 12, 1906, p. 52.

(2) Laurier Papers, Laurier to Scott, Apr. 26, 1907, cited in Saywell, The Office of the Lieutenant-Governor, p. 214.

(3) Laurier, House of Commons, Debates, January 23, 1908, p. 1738.

Either he was personally uncomfortable with the incompatibility of his practice with the federal principle or he felt others would be.

Laurier's attitude to the office of the Lieutenant-Governor was nonetheless little changed from his years in opposition. He had abandoned the rhetoric of classical federalism and the outraged demands that largely insignificant forms and practices be brought into line with principle. He was willing to exploit the link between the office and the federal government for partisan and limited political ends. But in substance, the Lieutenant-Governor was essentially a provincial rather than a federal officer during these years. He was not a medium through which the federal government attempted in brutal fashion to overthrow provincial priorities. Laurier argued in a letter in 1909 that the Lieutenant-Governor had "practically very little initiative as he is bound to act upon the advice of his Ministers." While politicians might "try and ^(sic) change the public mind," it was not "the business of the Governor, who has simply to carry it out such as it is." It may be suggested that when he claimed that a Lieutenant-Governor who fulfilled his role properly neither was "meddlesome" nor, "unduly interfered to thwart the popular mind" (1) he was sincere.

(1) Laurier Papers, Laurier to John Oliver, June 28, 1909, p. 157196.

The federal power of disallowance was a further unitary aspect of the constitution. Laurier had in the past sought to bring into conformity with the federal principle. He had argued on occasion that the Dominion government was justified in deciding a statute ultra vires and disallowing it where it conflicted with federal or Imperial interests and policy, although he generally maintained that the courts should be left to identify invalid legislation. The disallowance of intra vires legislation, whether on the grounds it conflicted with natural justice, or Dominion policy or interests, he considered unacceptable. The provinces should be independent within their jurisdictional sphere and not subject to the imposition of federal priorities and standards.

In the days of opposition, Laurier had portrayed his objections to disallowance as a righteous defence of provincial autonomy, using terms indicative of a sense of outrage. Disallowance was unjust and tyrannical. Once in office he declared his continued commitment to the Liberal tradition of opposition to disallowance.⁽¹⁾ The high ground

(1) See, for example, Laurier Papers, Laurier to Ross, May 7, 1900, pp.45257-58 cited in Armstrong, The Politics of Federalism, p. 44; Laurier Papers, Laurier to J.H. Gibson, Apr. 29, 1901, p. 55762, Laurier to J. Bertram, Apr. 16, 1901, p. 55280.

of former years was abandoned, however. Explicit references to the 'federal principle' disappeared. A careful respect for provincial autonomy was no longer presented as a good in itself. He spoke not in terms of principle, but of practicality.(1) He opposed disallowance, not because it was wrong but because it was politically costly and generally ineffective. Experience had shown, he argued, that the disallowance of provincial legislation was not "conducive to good relations between the provinces, conducive to good results."(2) It merely tended to provoke resentment, and conflict.(3) "The remedy," he concluded on one occasion, was "worse than the ill."(4) Indeed disallowance could not at times even be considered a remedy, for on occasion it was merely followed by the reenactment of the offending statute.(5) Laurier commented in 1909,

(1) Laurier commented that for the federal government to disallow a provincial act was for it "to trample upon the will of the legislature in any one of the provinces." Laurier, House of Commons, Debates, January 17, 1910, p. 1997, *my italics*.

(2) Laurier, House of Commons, Debates, January 17, 1910, p. 1997.

(3) Ibid.; Laurier, House of Commons, Debates, January 30, 1911, p. 2711.

(4) Laurier Papers, Laurier to J. Charlton, May 24, 1899, pp. 33943-44.

(5) Laurier Papers, Laurier to H. Blain, Nov. 23, 1909, p. 162331.

uncannily echoing the views of the Judicial Committee of the Privy Council in the Fisheries Case in 1898,(1) that:

The local legislature had certain powers vested in it. These powers may be abused, but we have always held that the remedy was not in the exercise of the power of disallowance by the stronger government at Ottawa, but by the people of the province themselves.(2)

Responsible government was the appropriate mechanism for the remedy of local grievances;(3) a legal appeal against offensive legislation was preferable to a demand for the exercise of the power of disallowance.(4)

Disallowance, however, was not ruled out entirely in these later years. It was, he admitted in 1901, "a very serious matter"(5) but he conceded its use might be

(1) The Judicial Committee argued that:

The supreme legislative power in relation to any subject matter is always capable of abuse, but it is not to be assumed that it will be abused; if it is, the only remedy is to appeal to those by whom the legislature is elected.

Attorney-General for Canada v. Attorney-General for Ontario (1898), O'Connor Report, annex 3, case no. 16, cited in Armstrong, The Politics of Federalism, p. 64.

(2) Laurier Papers, Laurier to H. Blain, Nov. 23, 1909, p. 162331.

(3) Laurier Papers, Laurier to J.M. Clark, Apr. 17, 1908, p. 139088; Laurier to the same, Nov. 20, 1908, p. 147916-17. Laurier, House of Commons, Debates, Jan. 30, 1911, p. 2711-12.

(4) Laurier Papers, Laurier to W.M. German, Sept. 24, 1909, pp. 166120-21.

(5) Laurier Papers, Laurier to E. S. Clouston, May 7, 1901, p. 55951.

warranted in "very extreme cases." (1) Again in 1909, he wrote, "I would feel it a calamity to have to come to a clash with the Legislature of the Province, but such action may be necessary." (2)

Disallowance of provincial legislation that was fairly clearly ultra vires could be justified. (3) Thus, although he argued, in a report written on behalf of the Minister of Justice in 1911 on three Saskatchewan statutes, that "great care should be taken to see that the execution of this power [of disallowance] does not unduly interfere with the legislatures," he added that:

it is equally the duty of Your Excellency's Government when persuaded by authority or upon due consideration that a provincial enactment is ultra vires of the legislature to see that the public interest does not suffer by an attempt to sanction locally laws which can derive their authority only from the Parliament. (4)

Thus if it was felt that a statute might do serious harm before it was invalidated by court decree, its disallowance

(1) Laurier Papers, Laurier to J. Bertram, May 16, 1901, p. 56233; It "should not be exercised except in cases of extreme emergency" Laurier wrote to J.L. Blaikie, Laurier Papers, June 14, 1909, p. 156871.

(2) Laurier Papers, Laurier to B.E. Walker, June 5, 1909, p. 156483.

(3) Laurier, House of Commons, Debates, Jan. 17, 1910, p. 1993, Jan. 30, 1911, p. 2712.

(4) Laurier, for the Minister of Justice, Jan. 9, 1911, Correspondence, Reports of the Ministers of Justice, p. 786, Vol. 2, compiled by W.E. Hodgins.

was warranted. In opposition, Laurier had argued that the courts should decide whether a provincial statute was within provincial jurisdiction, lest the Minister of Justice judge incorrectly.(1) The responsibilities - or the powers - of office had reversed this position. Now he argued that, "Ministers may of course err in the interpretation of constitutional powers, but they should not on that ground decline to give effect to what they deem to be a just conclusion."(2)

Disallowance of intra vires legislation was a matter

Laurier clearly felt should be approached more cautiously.(3) It was clearly acceptable, however, in certain instances. He felt there was no question that the disallowance of British Columbian legislation restricting Chinese and Japanese immigration had been justified. While intra vires, the provincial statutes had conflicted with Imperial interests, which, he argued, should be given precedence over local concerns.(4) Both the federal and Imperial governments feared that the Japanese government

(1) Laurier at Somerset, Aug. 2, 1887, in Barthe, Laurier, pp. 367-68.

(2) Laurier, for the Minister of Justice, Jan. 9, 1911, Correspondence, Reports of the Ministers of Justice, p. 786, Vol. 2, compiled by W.E. Hodgins.

(3) Laurier, House of Commons, Debates, Jan. 17, 1910, p. 1998, Jan. 30, 1911, p. 2712.

(4) Laurier, House of Commons, Debates, Jan. 30, 1911, p. 2712, and Dec. 2, 1907, p. 59.

would find the British Columbian legislation offensive and that this would imperil the harmony of Anglo-Japanese relations at a time when Britain was in dire need of an eastern ally.(1) The potential cost of such provincial legislation was too great. It was better for Canada to have a uniform, federal immigration policy compatible with Imperial interests.(2) In formulating this policy, however, Laurier emphasized the importance of accommodating as far as possible the peculiar concerns of British Columbia and the brutality of disallowance was minimized as far as possible.(3) On another occasion Laurier argued that the disallowance of intra vires legislation should be considered only when such legislation affected the "peace, order and good government of Canada." If an Act, he explained by way

(1) Ibid.; Laurier, House of Commons, Debates, June 8, 1900, pp. 7057. Laurier added at one point that the legislation might jeopardize developing trade ties between Japan and Canada.

(2) Laurier, House of Commons, Debates, June 14, 1900, pp. 7404-08.

(3) Laurier, House of Commons, Debates, June 25, 1900, pp. 8162-63; Laurier Papers, Laurier to J.A. Macdonald [B.C. Liberal leader], Nov. 2, 1908, p. 146403. Melva Jean Dwyer, "Laurier and the British Columbia Liberal Party, 1896-1911: A Study in Federal-Provincial Party Relations" (M.A. Thesis, University of British Columbia, 1961), provides the best detailed account of the various steps the federal government took to deal with the issue of oriental immigration. These included increasing Head Taxes, passing the Natal Act, a Royal Commission, and the Lemieux mission to Japan. See also Brown and Cook, Canada 1896-1921, pp. 69-70.

of example, "had the result of affecting seriously the credit of the country, it may then be held to be against good order, and as such subject to disallowance." (1) While he accepted disallowance in the interests of the Dominion at large, however, he argued in one instance, "If the evil complained of is confined simply to private individuals, I think this should not be a reason for interference." (2)

While Laurier claimed in 1909 that the traditional Liberal "principle of disallowance of provincial legislation" had "finally prevailed and was practically endorsed by the whole community," (3) he himself clearly did not entirely subscribe to it. He had stressed that disallowance was a limited power but he considered it justifiable. Between 1896 and 1911 the power was used thirty times. (4) This figure is misleading, however. Many of the Acts were, according to LaForest, "simply re-enactments of Acts previously disallowed," (5) and almost

(1) Laurier Papers, Laurier to B.E. Walker, June 5, 1909, p. 156482.

(2) Laurier Papers, Laurier to J.L. Blaikie, June 14, 1909, p. 156871.

(3) Laurier Papers, Laurier to H. Blain, Nov. 23, 1909, p. 162331.

(4) LaForest, Disallowance, Appendix A.

(5) Ibid., p. 68.

two-thirds were British Columbian statutes to exclude orientals.(1)

Laurier, as mentioned above, approved of the disallowance of these British Columbian statutes. Of the remaining eleven instances in which the power was used, six involved jurisdiction over incorporation and the licencing of companies. These matters were the object of considerable controversy between the federal and provincial governments, debate centring largely on the extent to which provincial powers of incorporation were territorially limited and the authority of the province to demand federally incorporated companies secure a provincial licence.(2) Laurier himself, in a "Report" of 1909, recommended the disallowance of three of the six statutes on the grounds they were ultra vires the provincial sphere.(3) The ~~same~~ arguments presumably applied to the other three.

Laurier's position on the other five statutes is less clear. One was proclaimed ultra vires and disallowed

(1) Nineteen Acts were disallowed, others were left in operation because it was felt that certain interests would be inconvenienced by their disallowance after so long a time. This practice was not always followed after 1901. Correspondence, Reports of the Ministers of Justice and Orders in Council upon the Subject of Provincial Legislation, 1896-1920, Volume 2, compiled by Gisborne and Fraser, p. 623.

(2) LaForest, Disallowance, Appendix A; Correspondence, Reports of the Ministers of Justice, compiled by Gisborne and Fraser, pp. 256-61, 452-60, 513-15, 783-87.

(3) Correspondence, Reports of the Ministers of Justice, pp. 785-87.

accordingly. The other four, however, were not necessarily beyond the competence of the provincial legislatures. They were disallowed because they conflicted with Dominion policy or interests or had been subject to Imperial objection. In these cases Laurier cannot be dissociated from his government's use of the power, but it can not be assumed that it received his full support. There is evidence that on other occasions Laurier and his Minister of Justice had disagreed on the desirability of disallowing a provincial statute.

Laurier may have found disallowance repugnant, but he clearly, however, accepted its use as at times necessary if not necessarily desirable. The Liberal position in opposition had been uncompromising; Liberal practice was more flexible. The federal government was to be very wary of disallowing provincial legislation, but on occasion the principle of provincial autonomy was violated. But disallowance was not used frequently nor, as LaForest notes, was it ever used on the grounds of injustice or

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- (1) LaForest, Disallowance, Appendix A.
 - (2) Armstrong, The Politics of Federalism, pp. 46-47; Laurier Papers, G.W. Ross to Laurier, May 14, 1901, p. 56180, Laurier to Ross, May 15, 1901, pp. 56182-83, Laurier to Ross, May 31, 1901, p. 56282, Laurier to Bertram, May 16, 1901, p. 56233.
 - (3) Laurier Papers, Laurier to J. Martin, Jan. 23, 1899, pp. 29733-35.
 - (4) Laurier, House of Commons, Debates, Jan. 17, 1911, p. 1998.

inexpediency.⁽¹⁾

If Laurier no longer held firmly to the strict classical federal principle of provincial autonomy in this respect, he did assume that disallowance was essentially inappropriate in a federal state. At times it might be used without causing an uproar, at times it must be used regardless of the consequences. Generally, however, because of the jealousies, competitiveness and diversity of a federal state, any attempt to tamper within the provincial sphere would be met with such hostility that disallowance was best never resorted to. Laurier's position was not based on a concern for the federal principle. However, except on rare occasions, it was consistent with the ideal of federalism.

The federal declaratory power is another unitary element of the constitution. Under Section 92(10)(c) of the British North America Act, the federal legislature has the authority to make laws in relation to "Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the

1. LaForest, Disallowance, p. 62.

Advantage of two or more of the Provinces. The power, as one student of Canadian constitutional law has noted, enables the federal Parliament, by its own unilateral act, to increase its own powers and diminish those of the provinces. The limitations upon its exercise are comparatively few. While the term works is subject to judicial definition, it has generally been agreed that the act of declaration itself and the motives behind it are a matter of policy not subject to review by the Court. 2

Prior to the Liberal victory of 1896, the declaratory power had been exercised on 219 occasions. 3 The exceedingly limited attention paid the power in the work of historians and students of Canadian constitutional law suggests that it was not the object of significant

(1) Hogg, Constitutional Law of Canada, p. 331; See, similarly, Judge Duff, Reference Re Water Powers, 1929, 2, Dominion Law Review, pp. 490-91, cited in Andree Lajoie, Le pouvoir déclaratoire du Parlement: Augmentation discrétionnaire de la compétence fédérale au Canada (Montréal: Université de Montréal, 1969), p. 21.

(2) Bora Laskin, Canadian Constitutional Law, 4th edition, 1973, pp. 478-81. Laskin notes that the jurisdiction over but not the ownership of a work is to be transferred.

(3) Lajoie, Le pouvoir déclaratoire, Appendix.

controversy.⁽¹⁾ The Ontario government did, however, voice some objections to the exercise of the power in the 1880s.⁽²⁾ In addition, one of the resolutions of the Interprovincial Conference of 1887 concerned the power. The resolution argued that the scope of the term works was properly considerably more limited than it had been in practice and that the declaratory power should not be exercised unilaterally, but rather with the concurrence of the Provincial Legislature.⁽³⁾ Laurier himself seems never to have discussed the power during his years in opposition.

The Laurier government exercised the power 179 times, largely in connection with local railways.⁽⁴⁾ It seems to have been used to extend or reinforce the federal

1. Lajoie's study, Le pouvoir déclaratoire, would appear to be the only work of length devoted to the power. The study is legal and polemical rather than historical. Hogg, in Constitutional Law of Canada, discusses the power, basing his comments largely on Lajoie. Other than the brief and uncomprehensive discussions in Armstrong, Politics of Federalism, little of a historical nature has been written on the power and responses to its exercise.

(2) Armstrong, Politics of Federalism, pp. 86-87. See also Lajoie, Le pouvoir déclaratoire, p. 71.

(3) Dominion Provincial and Interprovincial Conferences, p. 21.

(4) Lajoie, Le pouvoir déclaratoire, Appendix. When Lajoie's study was published in 1969, the power had been used a total of 470 times. Of the 179 occasions on which the declaratory power was used by Laurier, all but 14 concerned railways.

government's powers of incorporation. Again there was comparatively little discussion of the practice; many Bills with declaratory articles passed without any reference to their declaratory aspect. Once again, however, there was apparently some dissatisfaction on the part of the government of Ontario. It objected most particularly to the federal government's use of the power to incorporate provincial electric railways.⁽¹⁾ The Whitney government even appointed a permanent representative to Ottawa in 1905, R.G. Code, to examine all pending federal bills and to oppose on the Ontario government's behalf any declarations of general advantage for essentially local works.⁽²⁾ In 1913 the Chief Justice of Ontario wrote that:

It is common knowledge that much irritation has been caused, especially in this province, by the action of the Parliament of Canada in incorporating companies with purely local objects and bringing them within the ambit of its exclusive legislative authority by declaring their undertakings to be for the general advantage of Canada; and it was said that purely local electric or street railway companies sought incorporation by the Parliament of Canada in order to escape from the restriction on the right to operate their railways on Sunday, to which they would be subject if incorporated by the provincial legislature.⁽³⁾

(1) Armstrong, Politics of Federalism, pp. 88-89, see also to p. 100.

(2) Ibid., pp. 93-94.

(3) Kerley v. London and Lake Erie Railway and Transportation Co., (1913) 13, Dominion Law Reports, 145, cited in Lajoie, Le pouvoir déclaratoire, p. 70.

There is no evidence that the Ontario government objected to the use of the federal declaratory power in respect to other 'works' or that other provincial governments joined Ontario in its dissatisfaction. What is evident is that the conflict over the declaratory power was essentially part^{of} a broader conflict between the provinces and the federal government over the jurisdictional division of authority over railways and other concerns. Debate seems to have centred largely on jurisdiction over incorporation rather than on the declaratory power in its own right. The exceptional nature of this constitutional provision seems not to have been fully appreciated. There seems to have been no concern that the power allowed the federal government to appropriate to itself jurisdiction customarily provincial. Provincial governments would appear to have focused on the narrower issue of incorporation and to have shown no concern for the wider implications of the declaratory power.

Laurier himself never discussed the federal declaratory powers explicitly. He participated in a debate over the federal government's incorporation of an enterprise under the declaratory power on only one occasion. The position he took in this instance suggests that he in no way saw the government's authority as extraordinary. He seemed, rather, to view the federal government's incorporation of the North Shore Power, Railway and Navigation Company as a routine

exercise of the federal authority to incorporate. He commented "I do not see that we are invading any right of the [provincial] legislature," that "we are invading a single right of the province." He commented, "No doubt a great deal of what is done by this parliament could be done by the provincial legislature. He argued, however, that in this instance it was preferable that the federal government incorporate the company because it could give it far broader powers than could the provincial legislature. (1) Laurier could continue to assert that "The province is supreme within its authority, as the Dominion is supreme within its authority," (2) and see no inconsistency between this federal concept and his use of the declaratory power to incorporate. In this sphere, it is apparent that the analogy of watertight compartments did not apply.

Federal and provincial power to incorporate overlapped and thus on a matter integral to development and growth, their policies were in potential conflict. Laurier seemed unconcerned, in the case of the federal incorporation of the North Shore Company under the federal-declaratory power, that the government might disrupt provincial priorities. He did not express the slightest recognition that in so doing

(1) Laurier, House of Commons, Debates, Apr. 21, 1902, pp. 3143-44. See, more generally, the debate on pages 3134-44.

(2) Ibid., May 8, 1909, p. 6004.

the federal government might interfere with provincial development programmes and imperatives. In the debate on a Bill to incorporate, under the federal government's regular authority, the Ontario and Michigan Power Company, Laurier did, however, argue that he was reluctant to pass a Bill which would directly interfere with provincial development strategies. In this particular instance, he noted, the government of Ontario had a policy "reserving to themselves the exploitation of all water powers, refusing to give them to private companies" with which the federal Bill was not in accord. He concluded, "holding as I have all my life, to the sacredness, if the word is not too strong, of provincial rights, while we have the brute power to override these rights, it is questionable whether we should do so."

In conclusion, it may be said that Laurier's government exercised the federal declaratory power and he approved its use. He did not see the power as incompatible with the federal principle although it clearly was. Evidence is inconclusive on the extent to which he recognized that the exercise of the power could interfere with provincial development priorities. Laurier's view of the broader federal principle to incorporate suggests, however, that in matters related to development and growth he was unconcerned by the niceties of jurisdictional divisions and the possible conflict of federal and provincial priorities. His object

(1) Ibid., Apr. 19, 1909, p. 4532.

was development and the constitutional issues involved therein were of little concern to him.

Laurier's views on federal subsidies also reveal something about his concept of federalism. To the classical federalist, such subsidies are inconsistent with the complete separation of spheres. They can also be seen as inconsistent with the principles of responsible government. In Laurier's words, those who have the spending of the revenue should also have the responsibility of collecting it. (1) But Laurier pragmatically accepted federal subsidies as an inevitable facet of the Canadian union. For years as Prime Minister he made no connection between subsidies and federalism. His government made discrete grants of better terms to certain provinces and otherwise avoided discussing the matter.

Subsidies, however, became a political issue when certain of the provinces, led by Quebec Premier Lomer Gouin and spurred on by the financial provisions of the Autonomy Bills, sought higher subsidies. In 1907 Laurier introduced a motion requesting the Imperial government to amend the

(1) Laurier, House of Commons, Debates, May 4, 1905, p. 2104, Mar. 25, 1907, p. 5304.

constitution to substitute an increased scale of subsidies. The decision to do so was political. His objective was to end debate over the level of subsidies. The formal amendment and the inclusion of a clause that declared the revision to be "final and unalterable" would, Laurier hoped, end bickering. He found justification for his programme in federalism. His argument was taken directly from an earlier speech by Edward Blake. Blake had pressed upon the then Conservative administration the early adoption of some plan whereby, once and for all, the question of provincial subsidies shall be placed on a permanent and lasting basis. It was, Blake had argued:

destructive to the independence and autonomy of the provinces that they should be looking to Ottawa for favours, that they should be dependent on the central government for carrying on their affairs.

He did not suggest the subsidy system be abolished, but rather that it be finally, generally, and uniformly revised. Laurier's central concern may well have been to bring an end to the continual demands made on the federal government for the revision of subsidies. He continually stressed the finality of the settlement in a manner that suggested he saw

(1) Laurier, House of Commons, Debates, Mar. 25, 1907, p. 5303. Blake was speaking in 1884 to the House on the occasion of its voting aid to the province of Quebec as compensation for the construction of a railway which had become part of the Canadian Pacific Railway.

in this the most important aspect of the entire process.⁽¹⁾ His desire to make the arrangement final and unalterable was also consistent with the principle of provincial financial autonomy.

The manner in which Laurier went about the process of a general and final subsidy revision was possibly more revealing than the revision itself. "We thought," Laurier told the House in retrospect, "we could not do better than to have a friendly conference with the provinces."⁽²⁾ This was a significant development. In 1887 and 1902 the provinces had met alone to discuss their fiscal and constitutional grievances and the federal government had been presented with a series of resolutions embodying their proposals for the amendment of the constitution. On other occasions individual provinces had approached the federal government requesting better terms. The Conference of 1906, in contrast, was called by Laurier, and the provinces attended less as supplicants than as partners to a contract. Significantly, Laurier described the meeting as desirable rather than necessary. There was no precedent for the Conference and his decision to call one and its procedure

1. Laurier, House of Commons, Debates, Mar. 25, 1907, p. 5304; Laurier Papers, Laurier, to L. Elgin, June 11, 1907, pp. 125739-40, Laurier to H. Greenwood, June 11, 1907, p. 125741.

2. Laurier, House of Commons, Debates, March 25, 1907, p. 5304.

indicates that Laurier considered the provinces mature and responsible entities. (1)

The significance of the Dominion-Provincial Conference of 1906 should not, however, be exaggerated. It was "the first occasion on which the federal government consulted with the provinces before seeking a constitutional amendment." (2) Laurier did not, however, necessarily summon the Conference in the belief that the constitution should not be altered without consultation with and the consent of the provinces, (3) as advocates of "provincial rights" argued. (4) He himself said nothing in his speeches on subsidy revision to indicate whether this might have been the case. He did, however, in another context, argue early in 1907 that:

(1) Minutes of Proceedings in Conference of the Representatives of Canada and of the Provinces, October, 1906, in Dominion-Provincial and Interprovincial Conferences, 1887-1926, compiled by Maurice Ollivier, pp. 53-63. The provinces did meet separately and then subsequently discussed with federal representatives resolutions they had, as a group, prepared.

(2) Guy Favreau, The Amendment of the Constitution of Canada (Ottawa: Queen's Printer, 1965), p. 12.

(3) J.T. McLeod, "The political thought of Sir Wilfrid Laurier: A Study in Canadian Party Leadership" (Ph.D. Thesis, University of Toronto, 1965), pp. 166-67 argues that "the summoning of the conference underlined his [Laurier's] desire to consult and safeguard the interests of the provinces before undertaking any major revisions of the federal system."

(4) Armstrong, The Politics of Federalism, pp. 4-5, 13.

Confederation is a compact, made originally by four provinces and adhered to by all the nine provinces who have entered it, and I submit to the judgements of this House and to the best consideration of its members, that this compact should not be lightly altered. It should be altered only for cause, and after the provinces themselves have had an opportunity to pass judgement in the same.(1)

This rule had been followed in the case of the revision of federal subsidies, he argued. The government had not announced its intention of asking "parliament to alter the financial terms of confederation," "except after conference with the provinces and after all the provincial governments had united in a prayer for the same."(2)

The incompatibility of the Canadian judicial system with classical federalism was discussed in chapter two. Early in his Premiership, Laurier focused upon the unitary facet of that system, the federal government's

(1) Laurier, House of Commons, Debates, Jan. 28, 1907, p. 2199 [my italics].

(2) Ibid. It might be best noted here that C. Armstrong, The Politics of Federalism, pp. 235-36, argues that while Laurier secured the consent of the provinces to the 1906 amendment, "other constitutional amendments considered to be made at the behest of the federal parliament alone." This was true insofar as other administrations were concerned. Laurier, however, only once amended the constitution.

responsibility to appoint and pay provincial higher court judges. (1) He argued that the arrangement was neither wise nor satisfactory. While theoretically the federal government could refuse to grant provincial requests for new appointments or use its power to press reforms upon a province, practically it had little discretion in the expenditure of its monies. Any attempt to assert its authority would only lead to violent and highly undesirable controversy. The result would be, Laurier argued, that "We would have the same conflicts that they had in the United States in respect to state rights, and we do not want that state of affairs." (2) Thus, he argued, the government should consider its duty to be simply to act in consonance with the judgement of the province, as expressed by the voice of its legislature. (3) He added, "It behooves every true Canadian to endeavour to prevent friction between the federal authorities and the local authorities." (4)

There are two aspects to Laurier's position

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- (1) The discussion was prompted by the introduction of Bill No. 150 to further amend the Act Respecting the Judges of the Provincial Courts. Laurier spoke on two occasions. Laurier, House of Commons, Debates, May 26, 1898, pp. 6134-35, June 2, 1898, pp. 6761-67.
- (2) Laurier, House of Commons, Débates, June 2, 1898, p. 6766.
- (3) Ibid., pp. 6765-66.
- (4) Ibid., p. 6767.

of particular interest. First, we find reiterated here Laurier's long-espoused belief that Confederation should only be worked on the basis of federal respect for provincial designs, and priorities in matters of local import. Any attempt on the part of the federal government to substitute for a province's standards its own standard of right would meet with violent reaction. Such constitutional provisions as the division of control over major provincial courts between the province and the Dominion were a source of great danger to the country because they raised the spectre of federal-provincial conflict. Laurier suggested that ultimately the Imperial Parliament would have to be invited to amend the constitution and eradicate such features. This was, however, a distant prospect. In this as in other instances Laurier argued the immediate remedy lay in the federal government's willingness to be guided in its daily conduct by a respect for the interests of the province.

What made Laurier comfortable with such an arrangement was his conviction that the provincial Attorney-General would be frank, honest, perceptive, and knowledgeable in advising the federal government. (4) It could be assumed

(1) Ibid., p. 6766.

(2) Ibid., p. 6767.

(3) Ibid.

(4) Ibid., pp. 6761-62.

that the provincial legislatures did indeed know best the needs of the province in respect to the administration of their courts. 1) Laurier informed the House:

I shall endeavour to believe under any circumstances, until it is proved on the floor of this House to the contrary, that the local legislature is sincere and truthful; I shall be willing to take its recommendation and accept the recommendation as the honest expression of the will of the province. 2)

Thus the second point of interest: Laurier apparently considered the provinces mature, responsible entities and was willing to trust in the good sense of the enfranchised local populace and be guided thereby.

The other facet of the judicial system which Laurier discussed was the unitary structure of the Canadian court system and its implications for the administration of law. When in opposition, he had focused upon possible difficulties arising from the administration of provincial law by federal courts. Now he considered the administration of federal law by provincial courts. A member of the House suggested in 1907 that the federal government should consider itself "responsible for the due enforcement of all federal laws," and should legislate "to secure such due

1) Laurier, House of Commons, Debates, May 26, 1898, p. 6135.

2) Laurier, House of Commons, Debates, June 2, 1898, p. 6766.

enforcement and to punish "violations thereof." (1) Laurier denied that this would be "conducive to good government." The federal authorities, in administering criminal law within the provinces, would be enforcing their "own views which perhaps might be very different from the views of the [provincial] community." He argued that it was "essential to liberty" and "of the utmost importance to the welfare of the community that the administration of justice in every province should be left to the authorities of that province." (2)

In summary, it may be said that once in office Laurier had lost something of his earlier preoccupation with classical federalism and his concern for formal constitutional niceties. But while he was no longer the advocate of a rigid co-ordinacy, in practice he generally respected provincial autonomy. Arguably, he retained what had always been an essential facet of his outlook: a faith in the maturity, wisdom, and reasonableness of the provincial populace, and a willingness, yea a conviction in the need, to allow provincial standards to be the basis on which matters were governed within the province. This respect for provincial values and interests was a matter of justice but also of political wisdom.

(1) House of Commons, Debates, March 5, 1907, p. 4119, Motion of W.F. Maclean.

(2) Laurier, House of Commons, Debates, March 5, 1907, pp. 4141-42.

The first section of this chapter focused on various unitary facets of the constitution. In large part, it considered the issue of provincial sovereignty. While his discussion of these aspects of the constitution comprises the greater portion of his comments on federalism, Laurier's attitude to the federal franchise and the Senate also reveals something of his concept of federalism.

In 1898 Laurier restored provincial franchises for Dominion elections as he had promised when in opposition. His position on the franchise was based on three essential propositions. First, he believed that whether it be the federal House of Commons or a provincial legislature, it is the same people who are represented in each. (1) Further, he argued that the population of Canada was but the sum of distinct provincial societies. Circumstances, customs, and education varied from province to province, molding the

(1) Laurier, House of Commons, Debates, Mar. 22, 1898, p. 2282.

provincial majority accordingly. Finally, he maintained that "the extension or restriction of all franchises is a question which depends largely upon the conditions of the different communities where the franchises apply. (1) Thus it followed that the people represented in the House of Commons were the people of the provinces and that, given the diversity of provincial societies and the basis on which a franchise should be determined, federal and provincial franchises were inherently provincial matters. (2) As Laurier expressed it:

The regulation of the franchise is largely a matter of custom or education or sentiment, if you please - even of prejudice - but after all it is a question, the determination of which had better be left to the different communities which are represented in the local legislatures. (3)

Laurier examined rather cursorily the variation then evident in provincial franchises in an attempt to illustrate the inappropriateness of a uniform federal franchise. He noted:

We have seven provinces in the Canadian confederation, and in no two of them do the franchises perfectly agree. We find in all the same principle; we find that in all the principle of sovereignty is largely democratic, it is almost universal manhood suffrage, still it is

(1) Ibid.

(2) Ibid., pp. 2280-83. See also Laurier, House of Commons, Debates, Apr. 21, 1895, pp. 4009-12.

(3) Laurier, House of Commons, Debates, Mar. 22, 1898, p. 2283.

not universal. There are restrictions of education, of property qualification, of residence, payment of taxes, and so on. (1)

He argued, as he had in opposition, that the universal franchise was not considered "the correct thing" in Quebec, although it might be appropriate for Ontario. (2) In another instance, he underlined further the importance of a provincially determined franchise in respect to the Indian franchise. It was evident, he argued, that while in some provinces the Indian population might have reached that degree of civilization when they can be entrusted with the franchise, in other provinces it was clearly not so. The argument in favour of a provincially determined franchise was strengthened in this case, Laurier maintained, by the fact that the former federal franchise had itself enfranchised the Indian population of certain provinces and not that of others, thus recognizing the strength of provincial diversity in this important respect. (3)

Recalling to mind his attitude to provincial policy when discussing federal appointments to provincial courts, Laurier argued that it was because "we believe and suppose that the local legislature will act as they have been

(1) Ibid., pp. 2282-83. See also Laurier, House of Commons, Debates, Apr. 28, 1898, p. 4310.

(2) Laurier, House of Commons, Debates, Apr. 21, 1898, p. 4011.

(3) Laurier, House of Commons, Debates, Apr. 21, 1898, pp. 3967, 3980-83.

acting, in the best interests of their own constituents, by adopting the best franchise to suit the province, that his government had been comfortable with the substitution of a set of diverse provincial franchises for a uniform federal franchise.⁽¹⁾ He reiterated this faith in the representativeness, wisdom, and maturity of the provincial legislatures on one or two other occasions when discussing an issue related to the franchise, the provision of appeals against electoral lists. In response to a proposal that the federal Parliament provide for an appeal to the judiciary against provincial lists where provincial law did not, Laurier argued that provincial standards should not be tampered with. Presumably, provincial law satisfied the provincial majority. He had every faith that should if not, the electorate could air their grievances and reform provincial law under the system of responsible government. The people of those provinces that did not provide for a judicial appeal were, he argued:

only part and parcel of the great Canadian body, and it is idle to suppose that those men will be recreant to their duty and fail to understand their business.⁽²⁾

This was a new facet to his discussion of the franchise.

(1) Laurier, House of Commons, Debates, Apr. 21, 1898, p. 4014.

(2) Laurier, House of Commons, Debates, Apr. 26, 1898, p. 4312, and more generally, pp. 4308-13; also, May 17, 1898, pp. 5671-73.

As a final note it might be said that in 1899, Laurier urged a reform of provincial electoral laws upon Nova Scotia and New Brunswick. The laws of neither provided for a judicial appeal. "I do not dispute ... that your laws worked satisfactorily up to the present time," he wrote. He suggested, however, that "it would be desirable to have as near as possible uniformity of law in election matters."

In conclusion, it might be said that while Laurier felt the essential characteristic of a federal constitution lay in its division of spheres, he seemed also to believe that the reality that had made necessary that division was, or should be, reflected within the confines of the federal sphere itself and, in particular, in the form of the federal franchise.

Senate reform was a perennial issue between 1896 and 1911, as it had been in the past. There were many pressures for Senate reform. It was a traditional plank in the Liberal party platform; one of the resolutions of the

(1) Laurier Papers, Laurier to G.H. Murray, Apr. 1, 1899, pp. 32034-35. He wrote an essentially identical letter to A.R. Emmerson on the same day, pp. 32039-40.

Liberal Convention of 1893 had pledged the party to reform,⁽¹⁾ but long before that many individual members had put forward proposals. An appointed Senate aroused in some a hostility to privilege and federal control of appointments aroused the ire of provincial rightists.⁽²⁾ To these and other factors encouraging the Liberal party to reform the Senate, there was added upon their victory in 1896 the hard fact that the Conservatives controlled a majority of Senate positions.⁽³⁾ The Conservative members also during these later years pressed for Senate reform.

(1) According to R.L. Borden, House of Commons, Debates, Apr. 30, 1906, p. 2307. The resolution argued that:

The present constitution of the Senate is inconsistent with the federal principle in our system of government, and is in other respects defective, as it makes the Senate independent of the people and uncontrolled by the public opinion of the country, and should be so amended as to bring it into harmony with the principles of popular government.

2. Ian MacGregor, "A History of Senate Reform in Canada" (M.A. Thesis, Queen's University, 1957), pp. 48-114.

3. On only one occasion did Laurier seem at all serious about Senate Reform and this was following the Senate's rejection of the Yukon Railway Bill; see generally Ibid., pp. 62-83. Laurier wrote to Chamberlain on the matter, Laurier Papers, Laurier to Joseph Chamberlain, Feb. 11, 1899, pp. 31226-33, and to Liberal provincial administrations urging their cooperation. See for example Laurier Papers, Laurier to Murray, Feb. 8, 1899, pp. 30379-80. Laurier's favoured reform was "to have all questions of difference between the Senate and the Commons referred to a congress of the two Houses and determined by a majority of the members present and voting." Laurier Papers, Laurier to Chamberlain, Feb. 11, 1899, pp. 31226-33.

While in earlier years Laurier had never really participated in frequent Liberal discussions of the Senate and reform, he did so once he became Prime Minister. His more frequent references to the Senate were not indicative of a desire to alter the institution, however. Senate reform did not have a high priority for Laurier. This is, perhaps, largely explained by his constitutional conservatism, but also by the political difficulties involved in an issue like Senate reform where there was little agreement on the character reform should take.

One repeated suggestion in these years was that the Senate be abolished. Laurier objected on two grounds. First he argued that it was necessary to have some check on legislation passed by the House of Commons. The Imperial veto should not be used, he suggested, because, like disallowance, it entailed the substitution of a foreign view of what was right for our own view of what was right. This was likely to create controversy. A check on federal legislation was, he argued, "not to be found in Great Britain, but within the purview of our constitution, and consequently in the second chamber."¹¹ Second, he argued that the Senate was a necessary, even an important, institution "surtout en vue des [sic] notre système

¹¹ Laurier, House of Commons, Debates, Jan. 30, 1911; pp. 2711-12.

fédératif. 1 This was the aspect of the Senate's role he focused on particularly.

In the first place, Laurier argued that, theoretically, the purpose of the Senate was to protect provincial minorities. 2 There were, he explained, special clauses in our constitution safeguarding the privileges of minorities both in regard to language and education. 3 The task of the Senate was to defend these privileges against the majority in the federal House. While the Senate had never yet been called upon to perform this function, he considered it important. There was always the possibility that a majority would abuse its power. 4 He noted, for example, that "a strong effort was made under the old union to disestablish the French language and implied that it was against such an eventuality that it has been deemed desirable to have control over the majority for the protection of minorities. 4

1 Laurier Papers, Laurier to Marchand, Feb. 8, 1899, pp. 30881-82.

(2) Laurier, House of Commons, Debates, Feb. 27, 1911, p. 4317.

(3) The privileges to which he referred were the right to use the french language in the federal Parliament and Courts and, presumably, the right of provincial denominational minorities to appeal to the federal Parliament against provincial acts or decisions in respect to education.

(4) Laurier, House of Commons, Debates, Jan. 17, 1910, pp. 1995-96. This example is surprising given Laurier's view of language rights discussed in chapter three.

Laurier took far more seriously the Senate's role of protecting the rights of the smaller provinces against the larger provinces whose voice dominated in the House of Commons and thus threatened to dominate federal policy. The smaller provinces found protection "in the fact that in the popular body, in the House in which we now sit the representation is based upon population, but in the upper chamber the principle has been adopted of equality of representation." (1) Laurier commented in 1906, "under our system of government, a second chamber is an absolutely needed safeguard for the smaller provinces against a possible invasion of their rights by the larger provinces." (2) The Senate, he argued in 1911, ideally was representative of the provinces rather than of any other body of men. (3) Thus he objected to suggestions that the government be given the power, should a deadlock arise between the Commons and Senate, to appoint an additional and sufficient number of Senators to overwhelm the unco-operative Senate majority. Laurier argued that:

The illimited number of appointments might be increased so as to imperil the equality of representation provided for between the three large groups of population, Ontario, Quebec and the

(1) Ibid.

(2) Laurier, House of Commons, Debates, Apr. 30, 1906, p. 2301.

(3) Ibid.

Maritime Provinces, and give to the largest provinces a predominance of numbers which the smaller ones would resent and resent with just cause.

He concluded with the statement that "Fixity and equality of representation in the second Chamber seems to be a safe principle under a confederate form of government."⁽¹⁾

On occasion he argued that, ideally, this principle of equal representation should be perfected. In the United States, "In order to favour the minorities, the constitution has provided that every state, big or small should be represented in the Senate by two members."⁽²⁾ This principle of equality had been adopted in the case of the Canadian Senate "in a very imperfect manner,"⁽³⁾ and Laurier suggested that "if we were to have a reform I would not be adverse to adopting ... the system of our neighbours and have each province represented by an equal number of members, whether that province be large or small."⁽⁴⁾ He never, however, made any move to introduce such a reform. Nor did he perfect the Canadian system of sectional representation by creating a fourth Senate section of the

(1) Laurier Papers, Laurier to Chamberlain, Feb. 11, 1899, pp. 31226-33.

(2) Laurier, House of Commons, Debates, Apr. 30, 1906, p. 2301.

(3) Laurier, House of Commons, Debates, Jan. 20, 1908, p. 1569.

(4) Laurier, House of Commons, Debates, Apr. 30, 1906, p. 2302; Ibid.

four Western provinces as he had vaguely suggested might be done in 1905.(1) For Laurier to have altered the basis of provincial representation in the Senate, in the first manner particularly, would have been for him to voluntarily disrupt an arrangement seemingly satisfactory to most, merely to bring that institution into closer conformity with an ideal. As suggested before, it would have been surprising had he done so.

While Laurier had no real intention of reforming the Senate, he twice discussed the role the provinces should play in this process. It was asked in the House in 1899, whether "the provinces were not "overstepping the bounds assigned them, by the constitution" in expressing their opinion on Senate reform. Laurier responded to the contrary that:

the Government are of the opinion that the provincial legislatures have a vital interest in the question, and that it is entirely proper for them to express their views on the same.(2)

In 1906 he similarly maintained that it was not improper for the provinces to express their views on the matter of Senate reform. He suggested indeed that the question "be left for consideration by them." Interestingly, however, he argued that the government were not "bound in this matter to

(1) Laurier, House of Commons, Debates, May 9, 1905, pp. 5674-75.

(2) Laurier, House of Commons, Debates, Apr. 19, 1899, p. 1821.

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consult the provinces. It was a matter, he believed, over which this House, this parliament, without any reference to the local legislatures, can present a petition to the Imperial parliament for reform. In saying this Laurier contradicted his earlier argument, discussed in reference to subsidy revision, that Confederation was a compact and should be altered only after consultation with the provinces. But while in this instance he did not argue that consultation must occur, he went on to add that it was desirable. I think, he commented, in a question where so much delicacy exists, it is not inadvisable that we should have the opinion of and consultation with the premiers of the different provinces who are to meet here during the course of the present year. 3

In conclusion, it may be said that Laurier saw the Senate as an important federal institution, providing as it did representation for the smaller provinces in the federal arena. Further, he was sincere in feeling it desirable, if not necessarily practicable, to alter the basis of provincial representation in the Senate.

- (1) Laurier, House of Commons, Debates, Apr. 30, 1906, pp. 2306-7.
- (2) Laurier, House of Commons, Debates, Jan. 28, 1907, p. 2199.
- (3) Laurier, House of Commons, Debates, Apr. 30, 1906, p. 2307.

one of the fundamental characteristics of a federal union is the division of legislative powers. Two features of that division are of particular interest: first, the division of legislative jurisdiction, and second, the extent to which legislative spheres are separate, watertight compartments. Laurier never discussed the former, except on the occasion when he praised the British North America Act's division of power. He argued that it was far better that the supreme power be vested in the federal government and delegated powers in the provinces than the alternative as in the United States. Otherwise, he seems in this period, as earlier, merely to have accepted the division of legislative jurisdiction provided in the constitution unquestioningly. He did, however, make certain comments which reveal his views on the nature of this division of spheres and the implications it had for the relations between federal and provincial legislatures in the execution of their legislative functions.

The British North America Act had never separated powers completely. It had provided for certain areas of concurrent jurisdiction, namely agriculture and immigration. Beyond that, many areas of jurisdiction were split. The

(1) Laurier Papers, Laurier to E.W. Thomson (for Brand), July 28, 1908, pp. 142887-89.

implications of this last aspect were becoming increasingly clear in the late nineteenth and early twentieth centuries as the role of government, particularly in the economy and the provision for the health and social welfare of the population, expanded. Some would see in this a need for co-operation. Not so Laurier, while he recognized legislative spheres were not rigidly compartmentalized, he clung tenaciously to an ideal of independent legislative action and eschewed co-operation.

His attitude was clearly illustrated in his defense of the federal government's decision to retain control of the public lands of the newly created provinces of Alberta and Saskatchewan in 1905. Federal control of the lands was, he argued, absolutely necessary to the guaranteed success of the federal government's Western immigration and settlement policies. If control of the lands were given the new provinces there was a danger that:

the policy of either one of them might differ from ours and clash with our efforts to increase immigration. It might possibly render these efforts nugatory. For instance if either of the new provinces, under the strain of financial difficulty, were to abolish the free homesteads, which have proved so beneficial and so great an inducement to immigration, one can readily understand what a great blow that would be to our immigration policy. (2)

(1) Laurier, House of Commons, Debates, June 28, 1905, p. 8272.

(2) Laurier, House of Commons, Debates, Feb. 21, 1905, pp. 1433-34.

There was no suggestion, no hint of the possibility, that control of the lands might be given the provinces, and federal and provincial policies co-ordinated in the pursuit of a mutually acceptable settlement programme. Rather, to avoid the need for such co-operation, Laurier merely appropriated to his government authority over all relevant areas of jurisdiction.

Laurier made his preference for single or unified rather than split areas of jurisdiction clear again within the context of federal-provincial debate over fisheries jurisdiction. Divided authority was not, in this matter, in the "public interest" he told the House in 1905. It was rather preferable that the fisheries be "vested altogether in one body or the other," preferably in the Dominion government. He neither detailed his reasons nor suggested how this unification of jurisdiction should be orchestrated.⁽¹⁾ Further, in matters of national economic and industrial development the federal government would appear to have acted largely without reference to the provincial governments. No effort was made to co-ordinate and harmonize development strategies or reconcile

(1) Laurier, House of Commons, Debates, March 6, 1905, pp. 2104-5. The issue of fisheries jurisdiction is a complex one which it seems unnecessary to enter upon here. Hogg, Constitutional Law of Canada, pp. 393-94 explains many of the legal intricacies: The Canadian Annual Review for the years 1898-1910 discusses various facets of the fisheries controversy.

priorities. Provincial jurisdiction was not appropriated except in the case of the authority to incorporate provincial works through the federal declaratory power, but merely disregarded. The federal government tended to behave within the confines of its own jurisdiction as if no other authority existed. (1) This was true not only in respect to development policy but also in the case of legislation to regulate labour disputes. (2)

Laurier did not formally alter the constitution once in power. Nor did he rigidly conform in his conduct to the classical federal ideal. He was willing to exploit certain unitary facets of the constitution, to assert federal authority over the provinces. He would tolerate the inconsistency of other facets of the constitution with his theoretical construct. In this period, even his rhetoric

(1) See for example, Stewart Bates, Financial History of Canadian Governments: A Study Prepared for the Royal Commission on Dominion-Provincial Relations (Ottawa: 1939), pp. 1-36. See also Armstrong, Politics of Federalism, and H.V. Nelles, The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849-1941 (Canada: Macmillan, 1974).

(2) See H.D. Woods and Sylvia Ostry, Labour Policy and Labour Economics in Canada (Toronto: Macmillan, 1962), pp. 18-55. See also Paul Craven, 'An Impartial Umpire': Industrial Relations and the Canadian State 1900-1911 (Toronto: University of Toronto Press, 1980).

was less pronouncedly federal. Yet, his outlook and behaviour were broadly consistent with the ideal of federalism.

He continued to believe strongly that the provinces must largely be left to govern themselves within their own sphere. The provinces were distinct communities. Each was characterized by interests, circumstances, and values particular to itself. He felt this diversity had to be recognized and accommodated. He stressed this less in this period as a question of justice than as a prerequisite for domestic harmony. He had few qualms that local self-government would be incompatible with the principle of good government. These provincial communities were mature, wise, and responsible. Moreover, he had an abiding faith that under popular sovereignty, truth and justice would prevail.

For Laurier, it may be suggested the essence of federalism lay in the federal qualities of a society, rather than in the nation's written constitution. These qualities not only made necessary a division of spheres, but had implications for strictly federal policies and institutions such as the administration of federal law, the federal franchise, and the Senate. It was a concern, Laurier argued, for the federal qualities of society which must guide the statesman in his interpretation and manipulation of the formal constitution.

EPILOGUE

Laurier returned to the opposition benches in the fall of 1911. In the following years, with the exception of his comments on the Ontario school question, he did not often discuss federalism. When he did, his views were largely consistent with those of the previous decade. The constitution was no longer the focus of debate as it had been in the past; amongst other factors, political controversy and judicial interpretation of the constitution had led to the clarification of many once disputed points, while the war focused attention elsewhere. In 1918, however, the publication of an article on Canadian constitutional law prompted a reply from Laurier. His letter, published only months before his death in February 1919, expressed in very summary form his concept of Canadian federalism.(1) It serves well as a point of comparison with his views in the preceding decades.

Federalism was, Laurier argued, a compromise between an

(1) Laurier, "Le fédéralisme," Revue Trimestrielle Canadienne, Nov. 1918: 219-221. Laurier's letter was a reply to Léon Mercier Gouin, "Esquisse de Droit Constitutionnel," Revue Trimestrielle Canadienne, May, 1918: 69-76.

alliance and the complete fusion of the component parts of the union. The essential characteristics of a federal union lay, he stated, in the equality in status of federal and provincial governments. Neither should be subordinate, but rather each should be independent of the other and sovereign within its sphere. Thus, he referred to disallowance as the point noir de la confédération canadienne, and added further that:

dans toutes les agitations qui à différentes reprises ont bouleversé notre jeune confédération, la cause unique reste toujours la même: c'est toujours les tentatives du pouvoir central d'empiéter sur les prérogatives provinciales.

To all these attempts to invade the provincial sphere, Laurier claimed, les libéraux opposèrent une résistance inflexible, et dès l'origine ils se firent les champions de l'autonomie provinciale.

It did not follow from the co-ordinacy of federal and provincial authorities, however, that the division of jurisdiction must be equal. On the contrary, Laurier argued: "Le nouvel état sera nécessairement plus solide et plus forte si l'autorité finale est confiée au pouvoir qui unit tous ces éléments." This was particularly true where the elements united were diverse and had previously been separate. The division of legislative authority under the British North America Act was, in this respect, ideal: "Je crois bien supérieur notre système qui attribue au pouvoir

federal provinces plus les provinces.

In other respects, however, the line dividing federal and provincial authority was not as satisfactory. Laurier argued in a somewhat confused discussion of minority rights and the central school question that he had not stepped from the line. He reproached the questioners, however, for not having done so. He maintained, however, that the salutary result of the maintenance of the integral of the institution des provinces tels que définis et établis par la constitution.

This view of Canadian federalism at the end of Laurier's long career is clearly an oversimplification. He had never consistently been the inflexible defender of provincial sovereignty he portrayed himself as in 1867. In 1918 as in 1867, the constitution remained formally quasi-federal. The federal government still appointed and dismissed Lieutenant-Governors; appointed provincial judges, exercised the federal declaratory power, and disallowed provincial statutes. The system of federal subsidies remained intact. Laurier, in fifteen years in office, had not formally altered any of these unitary facets of the constitution. His conservatism and pragmatism made him reluctant to tamper with the formal terms of the union. He put far more emphasis on the broad spirit in which the constitution was manipulated than upon its conformity with a

theoretical ideal. Thus, while he would tolerate inconsistency with the federal principle and indeed would explicit certain unitary facets of the constitution, Laurier did not establish a pattern of using federal power to encroach upon provincial autonomy. His government acted with moderation and restraint in its relations with the provinces and was guided by a broad respect for their diverse interests and values. Laurier's own outlook and behaviour throughout his life was essentially consistent with the federal ideal. Fundamentally, he believed, as his letter suggested, that the nation could only be justly and harmoniously governed upon a respect for the right of self government of provincial communities. He had first enunciated this view in 1864 in his valedictory speech at McGill. He repeated it and was guided by it in the following decades; nothing was more appropriate than that fifty-four years later he should uphold the principle again, if in rather too uncompromising terms.

In 1864, as throughout his career, Laurier had looked to the principle of provincial autonomy to provide an essential security for the French Canadian population of Quebec. As the majority of that province, they would be able to govern themselves within the provincial sphere according to their own values. But while for the French Canadian population of Quebec provincial autonomy provided security, for French Canadian provincial minorities the

federal constitution provided few guarantees for their language or religion. He sought to secure for them certain guarantees in 1844 and 1855 in respect to denominational education. Ultimately, however, he believed their position to be dependent upon the goodwill of the provincial majority. He had never been comfortable with the position of the minorities. His letter in 1866 showed, however, that to the end of his life he could envisage no real alternative. The essential abandonment of the provincial minorities to their fate under the rule of the provincial majority was a price to be paid. If Laurier was not happy with this fact he accepted it. The constitution was not ideal, but Laurier had always felt, as his letter demonstrated, that moderate and tolerant citizens could resolve their differences and controversies within the existing constitutional structures.

As he had argued in the letter, the union had been founded on compromise and moderation. All parties to the union must remember that fact and continue the union on that basis. Laurier commented:

Bonaparte prenant le pouvoir comme premier consul annonçait au peuple français dans une proclamation célèbre que "les lois doivent être fondées sur la modération" et il ajoute: "Sans elle (la modération), il peut bien exister une faction, mais jamais un gouvernement national."

Heureuse la France, si Bonaparte devenue Napoléon se fut souvenue de cette sage maxime!

If in France Napoleon had ignored what Bonaparte had proclaimed, in Canada, Laurier's actions as Prime Minister remained broadly consistent with the concept of federalism he had enunciated both in opposition and as elder statesman.

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For the earliest period of Laurier's life, Le Défricheur and the compiled Debates of the Quebec Legislative Assembly are virtually the only primary sources available. Le Défricheur, in particular, although not great in bulk is exceedingly rich in content. The Laurier Papers contain little from this period. Otherwise, with the exception of Pacaud's collection, Laurier's letters do not appear to have survived.

For later years, Laurier's collected speeches in Barthe are, of course, important. DeCelles's collection is far less so, and Sir Wilfrid Laurier: Discours à l'étranger et au Canada (Montréal: Librairie Beauchemin, 1909) contains nothing of interest. The Debates of the federal House of Commons are, perhaps, the most important source for the period after 1874, particularly in the range of material they provide. The Laurier Papers is a rich source but poses certain difficulties for the student seeking to determine Laurier's views. Its subject index is largely useless for such a study. The author index is by correspondent and there is no index at all to letters written by Laurier. The Willison Papers, while topically limited, are also useful. Other collected papers are less so. While correspondence on schools and language is easily found, references to other relevant issues is highly elusive.

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