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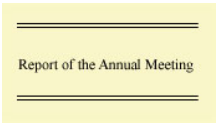

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R. G. Trotter

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DURHAM AND THE IDEA OF A FEDERAL UNION OF BRITISH NORTH AMERICA

By R. G. TROTTER

Lord Durham came to Canada in 1838 as High Commissioner and Governor General of all the British North American Provinces,[1] and although the special occasion for his appointment was the crisis in the Canadas he was instructed to base his recommendations for the future upon the needs of the entire group.[2] The idea of a possible federal solution so far as the Canadas were concerned was mentioned by Glenelg on the very day of Durham's appointment, in the first despatch in regard to his mission. It might well be considered, Glenelg suggested, whether the establishment of a "joint legislative authority" for the two Canadas, with the preservation of separate provincial authorities to deal

[1] The final form of his commission was purposely so drawn as to avoid inclusion of the Hudson's Bay Territory.—Sir George Grey to Durham, 16 Jan., 1838, Canadian Archives, *Durham Papers*, Sec. I, Vol. I, p. 5.

[2] Durham's commission and instructions are printed in full in *Calendar of the Durham Papers* (Canadian Archives *Report* for 1923, Ottawa, 1924), pp. 19 ff.

with "all matters of exclusively domestic concern" might not satisfactorily solve their peculiar difficulties. Durham, should that be his opinion, would "have further to consider what should be the nature and limits of such authority, and all the particulars which ought to be comprehended in any scheme for its establishment."[3]

The idea of a larger federal union including the other provinces was also in the air. It had been broached by a number of colonials in years gone by, and more recently it had been suggested in Parliament during debates on the Canadian situation. The first, apparently, to have brought it forward in this connection, was J. A. Roebuck, who had been educated in Canada, who was now a prominent member of the group of "Friends of Canada," and who for some years had been active as agent of the Assembly of Lower Canada. Just at this juncture he was not in Parliament, but he managed to obtain a hearing both at the bar of the House of Commons (22nd January) and at the bar of the House of Lords (5th February), to protest against the drastic bill which had been introduced to suspend the constitution of Lower Canada and give virtually dictatorial powers to the Governor-General. In the second of these speeches, he renewed his former suggestion for a federative union of all the provinces.[4]

During these days Durham was assiduously studying the British-American problem. Not unnaturally it occurred to him that he might with considerable profit avail himself of the assistance of the well-informed and fertile-minded if somewhat erratic Roebuck. To use him or to adopt his ideas might, moreover, conciliate some of the most inconveniently hostile opinion among the English radicals. He did not know the gentleman, but one of their mutual radical friends[5] dropped a hint to Roebuck that Durham would be glad to see him and receive any information he might care to give. Roebuck was mistrustful and coy, and only consented to the interview upon receiving a direct invitation through Charles Buller, whom Durham had already attached to his staff, to the effect that his lordship "was exceedingly anxious to see . . . . . (him), in order to ascertain the views and wishes of those whom . . . . . (he) had so long represented in England."[6] When Durham, at the interview, proposed that he become a secret agent for him on the American border of Canada, Roebuck rather resentfully rejected the suggestion, but for the sake of his Canadian clients he nevertheless consented to talk over the colonial problem which was facing the new Governor General. He explained his views in detail, was asked if he would put them on paper, and at once went home and did so. If his later account of the incident is to be trusted he was already suspicious of Durham's motives, believing him to be interested merely in carving for himself an illustrious personal career. He professed to believe that Durham gave approval of his scheme and assurance of "his determination to propose it for adoption" because it was "so likely to throw a sort of éclat upon him who should really succeed in executing it." At any rate Roebuck thought the prospect sufficiently promising to warrant his preparing the requested memorandum. He was unwilling, however, to entrust the original paper permanently to Durham, and at his request it was returned to him after a copy had been taken.[7] Eleven years later he published the memorandum, together with an embittered account of the interview, in his work on *The Colonies of England: a Plan for the Government of Some Portion of our Colonial Possessions* (London, 1849).[8]

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[3] Glenelg to Durham, 20 Jan., 1838, printed in full in Sir C. P. Lucas, ed., *Lord Durham's Report on the Affairs of British North America* (3 vols., Oxford, 1912), vol. III, p. 309.

[4] F. Bradshaw, *Self-Government in Canada and How It Was Achieved: the Story of Lord Durham's Repor* (London, 1903), pp. 7, 11, 16.

[5] *Ibid.*, p. 17, suggests Molesworth and Hume.

[6] J. A. Roebuck, *The Colonies of England: A Plan for the Government of Some Portion of Our Colonial Possessions* (London, 1849), p. 191.

[7] *Ibid.*, p. 192.

[8] *Ibid.*, pp. 193 ff. He had endorsed the paper: "Mem. Written for Lord Durham, just before he went to Canada, by J. A. R." Bradshaw, *op. cit.*, pp. 17 ff., recounts the episode and sketches and discusses Roebuck's scheme.

What use did Durham make of Roebuck's plan? Charles Buller, in his "Sketch of Durham's Mission," tells that "Durham, before leaving England, had, with a view principally to having some definite subject of discussion with the persons whom he might consult in the Province, prepared the outline of a plan for the future government."[9] The preparation apparently, and naturally, consisted largely of the appropriation of Roebuck's plan. In the *Durham Papers* at the Canadian Archives are two plans, or rather a plan and an accompanying summary.[10] I am indebted to Professor New, whose life of Durham is being awaited with so much interest, for calling my attention to the probable identity of this plan and the copy taken of Roebuck's memorandum. Apparently Durham was sufficiently impressed with the main features of the scheme to feel it unnecessary to go further into that phase of his problem until he should have opportunity to study it on the ground. As a basis for discussion there, Roebuck's plan would serve admirably.

In its original form, however, the memorandum had one drawback for such use: its description of a frame of government for British North America was interspersed with a number of copious "general remarks" which for the most part supplied little illumination and rather were liable to conceal in a quick survey the main features of the plan. Parts of the description, also, would bear condensation. Accordingly, probably at an early date, there was prepared by some person the careful summary which accompanies the plan in the *Durham Papers* and of which a digest is given in the *Calendar of the Durham Papers* published in the Archives *Report* for 1923.[11] Strictly speaking the so-called "summary" is more than that. It contains some material not in the original. And not only are certain points elaborated, but in a few particulars there is a discrepancy between the two schemes, sometimes probably accidental but certainly in at least two or three instances intentional. The nature of the proposals contained in plan and "summary" will become sufficiently clear in connection with a consideration of the use which Durham made of them. That use was notable. They furnished the starting-point of his discussions in the provinces, both with governmental delegations and with private persons.

Among the Lieutenant-Governors the first with whom he talked over his problem was Sir John Harvey of New Brunswick, who followed up a cordial correspondence with the new Governor General by hurrying to Quebec at the earliest opportunity to confer with him about the current difficulties on the Maine and New Brunswick frontier and also to offer any information which might be desired. Durham took advantage of the opportunity to raise the question of the desirability of bringing all the provinces together in a federal union. In order that Harvey might the better give a matured opinion on the project he embodied it for him in a memorandum. By good fortune this document, in Durham's hand, with pencilled marginal comments by Harvey, and with the latter's endorsation, "Confidential Paper placed in my hand by His Ex^{y} the Earl of Durham at Quebec 3d July 1838. Answered Aug^{t} 17th," is preserved in a volume of Harvey correspondence at the Archives.[12]

The contents of this document, which runs to something over 1,500 words, have a large interest in themselves, and more when compared with Roebuck's plan and the "summary" already mentioned. Its correspondence with sometimes one of those and sometimes the other, not only in general form but often in phrasing, is such as to make it quite apparent that Durham when writing it had before him both the fuller plan and the "summary," or if not both of those, then some other paper, not now available, embodying elements of each. Durham, however, did not merely take from such documents the parts which would

[9] *Durham Calendar*, p. 357. The "Sketch" is printed in full in the *Calendar*, also in Lucas, *op. cit.*, vol. III, pp. 336 ff.

[10] *Durham Papers*, Sec. VI, vol. III, pp. 578 ff.

[11] Pp. 209 f.

[12] *Delancey-Robinson Collection*, volume of "Harvey Miscellaneous Correspondence." Bradshaw, *op. cit.*, p. 177, is evidently in error as to the time of Harvey's visit to Quebec.

serve his purpose. He modified certain points and amplified others. He was no slavish user of other men's ideas. He used them, but his own brilliant and constructive mind inevitably contributed its quota to the final result. The main features of the proposal thus drawn up for Harvey's study may be briefly sketched.

"The object," it is stated at the beginning, "is to form a Government for British Colonies in North America, which, whilst it maintains the supremacy of the Mother Country, and protects the common interests of all the colonies, shall leave to each the arrangement of its own peculiar affairs. To have any chance of success in this object, it is necessary to limit and control our views by what may be considered likely to be sanctioned and adopted at home." The arrangement contemplated is to apply in the first instance to the Canadas "and subsequently, at their option, Nova Scotia, New Brunswick, Prince Edward's Island, & Newfoundland."

The scheme is federal, with provincial governments to control local affairs or matters peculiar to each province and "such a general government for all the Provinces in British North America present or future as will control & regulate all such matters as may be common to all, or to some two or more of them." It may be remarked that Durham's mention of future provinces seems to belie the general opinion that his gaze never wandered west of the Great Lakes.[13] The supremacy of the Mother Country is to be maintained by Governors appointed by the Crown, one for each province and one for the general government, each to form an integral part of the legislature over which he presides and to have a veto upon all legislative acts.

Each provincial government is to comprise a Governor, an Executive Council, and an Assembly. The Executive Council is to "consist of not more than five Councillors, all of whom shall be appointed by each successive Governor & removed by him (a specification in regard to appointments not found in Roebuck's plan) & who shall have the right to revise . . . . . but not reject" measures sent from the Assembly. This provision for a single council, the most peculiar feature of Roebuck's proposals, was due, of course, to the popular dissatisfaction of the day with the appointed legislative councils. In Roebuck's opinion, at that period, elimination of the separate legislative councils seemed, if not preferable, at least more feasible[14] than making them elective as was generally demanded.[15] His limitation of the legislative function of the executive council to revision, and a single revision at that, "was intended," he wrote later, "to conciliate the hostile feelings of that day."[16] Durham elaborates upon this limitation of the council's legislative power by stating specifically that the Assembly may accept or reject as they please any alterations made by the Council and present a measure "to the Governor for Royal assent in such form as they may think fit." The Assembly will also "control the whole Provincial Revenue."

To the Provincial Legislature are left "all powers not expressly conferred upon the General Government or General Legislature." The local government is "to be supreme in its own limits, so far as it shall not be controlled by the Government at home with which the Provincial Governor shall correspond

[13] Roebuck, in another part of his memorandum, *op. cit.*, pp. 195 ff., speaks enthusiastically of the future development of the West. Lucas, *op. cit.*, vol. I, p. 287, points out that Durham failed to forecast the westward growth of the Dominion. But two reasons may be suggested. First: his commission intentionally did not cover more than the existing provinces (See above, note 1). Second: the Northwest was much less in the lime-light than it came to be in the 'fifties, partly because of criticism and investigation of the Hudson's Bay Company, and partly because of the push of the frontier of United States settlement towards the Red River country and British Columbia, and the resultant feeling that something must be done to prevent those regions from falling to the Republic.

[14] Cf. Bradshaw, *op. cit.*, p. 19.

[15] Later he advocated two elected houses in colonial legislatures, *op. cit.*, p. 203, note. The elimination of the legislative councils had been advocated by him in the House of Commons. For Flenelg's comment upon the suggestion see Glenelg to Gosford, 31 Aug., 1837, printed in full in *Durham Calendar*, pp. 298, 300.

[16] *Op. cit.*, p. 203, note.

direct.[17] Such correspondence as he may have with the General Government shall me merely for the latter's information "but not for the purpose of the latter exercising any control." Roebuck, on the contrary, would have a similar limitation upon the local supremacy of the provincial government consist of control "by the powers of the general or federal government." Durham makes clear the purpose in maintaining the direct relation between provincial and Imperial Government: he would preserve "the supremacy of the Crown of England as inviolate as at present."

"The General Government of the combined Provinces" will consist of a Governor General, an Executive Council, and an Assembly, corresponding closely to the similar organs in the provincial governments, also a Judiciary appointed jointly by the Governor General and the Legislative Assembly. The Assembly, assisted by the Supreme Court for matters of law, should try impeachments of provincial officers and judges preferred by the local Assemblies, rather than leave such trial to the supreme court as suggested by Roebuck.

In the troublesome matter of the election of the members of the General Assembly Durham follows Roebuck only in part. He would have five members named by each Provincial Assembly and "for (say) each 50,000 or 100,000 Inhabitants an additional Member to be sent to the Assembly elected by the People in such manner as may be hereafter determined." Roebuck suggested an additional member for each 50,000 population, but all to be chosen by the Provincial Assemblies. While Roebuck suggested a decennial census as a basis of calculation, Durham prefers a quinquennial. The "summary" achieves in this whole matter a superficial simplicity by providing for ten members from each province, all chosen by their respective Assemblies.

"The General Government (is) not to possess any power not expressly conferred on it, & its object is to settle affairs in which one or more combined Provinces have a common interest, & those only. But for this purpose (it is) to act by Officers of its own & not by those of the Provinces." As to the difficult problem of the divisio nof powers between general and local governments, Durham is in substantial agreement with both Roebuck and the "summary," though his treatment of matters to be brought under the control of the General Government is, like that in the "summary." more comprehensive than Roebuck's. He goes further than either in making specific provision that "the power of taxation (be given the General Government) for any matters placed under . . . . . (its) control."[18]

The final section of the memorandum deals briefly with the Judiciary, which is "to be composed of a supreme Court of (say) 4 Judges" and such other courts and judges as might be found requisite, all to be "subject & subordinate to the Supreme Court." The supreme court would try conflicts between the provinces or between a province and the general government, appeals "from the provinces & from the general inferior courts, treason, and "all offences against laws or matters made subject to the control of the General Government." The judges would assist for matters of law at impeachments as already provided.

Except where indication has been given to the contrary the ideas in this paper which Durham drafted were drawn from the documents at his elbow. It is evident that as yet he had seen no reason to depart extensively from the proposals on the subject of a general union for which he was indebted to Roebuck. But such a condition of affairs was not permanent. From the many to whom he explained the project he drew forth numerous different and conflicting ideas which led him before long to an active reconstruction of his own.

[17] Before Durham's time it was not the practice for the Governor-General and the Lieutenant-Governors to carry on an official correspondence with one another.—Glenelg to Durham, 3 Apr., 1838, Lucas, *op. cit.*, vol. III, p. 313.

[18] The slightness of Roebuck's attention to this problem of the allocation of powers, particularly in regard to finance, is notable, cf. Bradshaw, *op. cit.* p. 20.

Harvey took the paper home to Fredericton and in the course of time prepared a confidential memorandum concerning it which he sent to Durham, not, however, until the middle of August, as he felt "it right," he wrote, "to delay . . . . . observations upon the Paper . . . . . for a time Sufficient to confer upon them a value to which they could not have been entitled, if they had been offered at an earlier Period."[19] Discussing the pros and cons of abolishing the local Legislative Councils, Harvey grants "that much of the inconveniences, embarrassments & difficulties which have occurred in the B. N. American Colonies, have arisen from the frequent collisions" between these councils and the local assemblies, and that "their extinction might . . . . . *generally* be regarded with satisfaction." But in New Brunswick, he points out, the Legislative Council is so liberal in its opinions and so ready to co-operate with the Assembly in reform measures that it "deservedly holds so respectable a place in the Confidence & good opinion of the People at large, as might . . . . . lead them to withhold their concurrence, AT PRESENT, in any measure of which the effect would be to dissolve the Council." Moreover, the people of the Lower Provinces are decidedly indisposed "to connect themselves in any way with the French Population of Lower Canada"—a feeling, it may be supposed, augmented greatly if indeed not largely aroused by the disturbances which had just taken place. Also the New Brunswick Assembly having recently acquired full control of the provincial revenues in return for a civil list would naturally be disinclined to surrender any of their new privilege to a body in which the representatives of the province would be only a small minority. Harvey's consideration of the whole subject leads him to offer as his opinion that "the proposed Plan . . . . . should be first tried in the Canadas (where indeed (he believes) its application is *indispensible* for the adjustment of the distracted State of Things)." He holds out the hope, however, that if the way should be left open for the other provinces "to join the Confederation, whenever they become sufficiently Sensible of its benefits," the time would not be remote when his own province and Nova Scotia would do so. But he adds that in New Brunswick only the people's "unbounded Confidence" in Durham's personal character can "counteract the prejudices" of which he has written.[20]

The other Maritime Province Lieutenant Governors, when Durham interviewed them at Quebec in mid-August, were somewhat more favourable than Harvey to the federation proposal, though it was plain that much popular reluctance to a union with the disturbed Canadas would have to be overcome before it would be welcomed down by the sea.[21] It seemed to the Governor General, nevertheless, well worth while to arrange for delegations of prominent men to be sent to Quebec from the Maritime Province Governments for fuller consultation upon the general British North American problem.[22] Before the arrival of these delegations in September, Durham's ideas in regard to a plan of union evolved considerably. Not only from Maritime Province Lieutenant Governors but from many persons in the Canadas he was eliciting opinions concerning proposals which he set before them, proposals which for a number of weeks seem to have been along virtually the same lines as those which he had placed on paper for Harvey.

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[19] *Durham Papers*, Sec. III, vol. II, pp. 378 ff. The memorandum is dated Fredericton, 16 Aug., 1838, though Harvey's endorsation on Durham's paper states that it was answered 17 Aug.

[20] He approves the device of "a Provincial Executive Council of advice and opinion," it being "precisely the Machinery" to which he found it expedient to have recourse as soon as he assumed his present office. As "a kind of Committee of Good Understanding" between the Assembly and himself it has proved highly advantageous.

[21] See Campbell to Durham, 18 July, 4 Sept., and 4 Sept. Private, *Durham Papers*, Sec. III, vol. II pp. 170, 559, 562. Cf. Bradshaw, *op. cit.*, p. 177, although his dates for the Lieutenant-Governors' visits at Quebec do not agree with the evidence in the correspondence.

[22] Campbell to Durham, 4 Sept., 4 Sept. Private, *loc. cit.*; Harvey to Durham, 16 Aug., *loc. cit.*, 5 Sept., 15 Sept., *Durham Papers*, Sec. III, vol. II, pp. 566, 664; FitzRoy to Durham, 8 Sept., *ibid.*, p. 583.

On his way to Upper Canada in July he tarried in Montreal, where he met several gentlemen selected by Peter McGill, then president of the Bank of Montreal. To this group he explained orally the outline of the measure which he proposed. He found cordial approval of his tactfully expressed desire to make Lower Canada a truly British province, but opposition to the idea of any sort of union with the Maritime Provinces or to federal union of the Canadas.[23] Previously, even before leaving England, he had received evidence that the British merchants of Lower Canada desired the complete submergence of the French influence, preferably by a close legislative union of the Canadas, and that they would be likely to oppose any federal scheme for fear lest it leave even local power to the French, whose ascendancy their interest led them so to dread.[24] Durham hoped to bring the French to a working acceptance of British institutions, but he did not yet wish, if indeed he ever wished, to submerge them politically to the extent which the British Montrealers of the day mostly desired. Thus he had at this time little if any sympathy with the urgency of the latter for the reunion of the Canadas.

Going on to the upper province for a brief visit he found opinion there more in accord with his own on that point, as well as somewhat more favourable to a general federation.[25] His proposals, however, by no means escaped criticism. Chief Justice John Beverley Robinson, while himself a redoubtable advocate of a united British-America, strongly opposed some of the suggested changes, such, notably, as the abolition of the legislative councils.[26] Robert Baldwin attacked the federal idea, being very fearful that a general government would speedily usurp the functions of the Imperial authority and thus lead disastrously to a severance of the connection with the Mother Country. Responsible government would be, in his eyes, the one and sufficient cure for the ills of the provinces, and for the application of that remedy he argued and plead with vehemence and ability.[27]

In such manner, during July and August and early September, there was much discussion and gathering of expressions of opinion, out of all of which Durham hoped that some feasible and acceptable scheme might be shaped. He came to believe that some measure must be adopted which would "effectually provide for the abstraction of all legislation on British interests from the control of a French majority." as he put it in his secret despatch of 9th August. He was confident that this object could be effected "without violence to Canadian (French) rights" and he expected soon to present measures for the Home Government's consideration.[28] He was by this time contemplating the erection of three provinces out of the two Canadas, the westernmost wholly English, the central, including a bit of Upper Canada and most of the districts of Montreal and the Eastern Townships, dominantly English, and the eastern French.[29]

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[23] G. Moffatt to Colborne, Montreal, 13 July; Adam Thom to Durham, Montreal, 8 July; *ibid.*, Sec. VI, vol. I, pp. 829, 784.

[24] G. Moffatt and W. Badgley to Durham, London, 5 April, *ibid.*, Sec. I, vol. I, p. 414; "Heads of Objections to a Federative Union of the Provinces of British North America," London, 20 Apr., 1838, endorsed: "For Lord Durham. Papers sent by Messrs. Stewart, Badgley, Moffatt, &c., in London," *ibid.*, Sec. VI, vol. I, pp. 486 ff.

One influential Montrealer was won over. Adam Thom, who, though he had accepted the recordership of Rupert's Land was still directing the policy of the *Herald* (Bradshaw, *op. cit.*, pp. 139, note 1, 148), not only became friendly to the federation idea, although not exactly in the form first presented, but agreed later to use the columns of the *Herald* in advocacy of a general federation.—Thom to Durham, 17 Aug.; Thom to Buller, 27 Sept., *Durham Papers*, Sec. VI, vol. II, pp. 98, 220.

[25] Bradshaw, *op. cit.*, pp. 156, 170.

[26] Robinson to Durham, 6 Sept.; Durham to Robinson, 16 Sept., *Durham Papers*, Sec. VI, vol. II, p. 127; Sec. III, vol. II, p. 675.

[27] Baldwin to Durham, Toronto, 23 Aug. Printed in full in *Durham Calendar*, pp. 326 ff. Concluding, he claims as his birthright, as a Canadian subject of Her Majesty, the Constitution and the Royal Prerogative. He wants no alteration in the first, no diminution of the second. He claims "to have applied to that Constitution and to have used in the exercise of that Prerogative the same principle of responsibility to the people through their representatives which is daily practiced in the Executive Government of that mighty Empire of which it is yet . . . . . (his) pride to be a subject."

[28] The despatch is printed in full in *ibid.*, pp. 316 ff.

[29] See Buller's "Sketch," *Durham Calendar*, p. 358. Cf. Bradshaw, *op. cit.*, p. 154.

The success of this or any other federal scheme would of course be dependent upon gaining the active good-will and co-operation of the French in its initiation. In the end Durham despaired of that being accomplished.[30] But before he reached that conclusion he did still further work in exploring the possibilities for a general federation. In order to meet objections he modified his proposals extensively. He abandoned the idea of changing the provincial constitutions by doing away with the legislative councils, though he continued to believe that the latter needed and were capable of improvement.[31] He hoped that the provinces, if not called up to sacrifice any of their existing machinery of government, would welcome as an additional privilege the sending of members to the General Assembly and also, as he now proposed, to the Imperial Parliament.[32] He also came to reject entirely the election of members of the General Assembly by the Provincial Legislatures. In writing to Chief Justice John Beverley Robinson (16th September) regarding these alterations he said: "You will see that I have not pressed any of the points to which you apprehended objection, and that I have sufficiently shewn my desire not to force my own opinions against the settled convictions of those who, from their position, have a right to command respect and consideration."[33] It is a nice distinction that is made here between his own opinions and other persons' settled convictions. He well appreciated the fact that his own views were still largely in process of settlement. The extent of the alterations that were going on in them during the process is further indicated by his critical notes on the margin of the "summary" mentioned earlier in this paper. When he made these the evolution of his ideas had gone far since the preparation of his memorandum for Harvey, for in that document he had embodied many of the points which now, as the result of his deeper and wider acquaintance with the problem, he criticized adversely.

When the Maritime delegations came up to Quebec in September it was a revised plan such as he described to Robinson that Durham submitted to them. The Nova Scotians and the Prince Edward Islanders arrived first (12th September). He promptly stated to them the amended scheme and received for it, according to his own words, "their warm assent."[34] The New Brunswickers arrived a few days later, about the twentieth. But on the nineteenth Durham had seen in the New York papers his first intimation of the Imperial Government's disallowance of his ordinance banishing the rebel leaders to Bermuda. by the twenty-second, when he had a formal meeting with all the Maritime delegates, he had already decided to relinquish his post, convinced that his effectiveness in it was shattered by what he considered the British Ministry's desertion.[35] But he still intended to present recommendations to the Home Government for such a loose form of federation as he thought might prove acceptable to the Lower Provinces.[36] Despite renewed insistence from Montreal that a close union of the Canadas was what was needed[37] it seems certain, from

[30] Cf. *ibid.*, p. 169.

[31] Cf. Lucas, *op. cit.*, vol. II, p. 325.

[32] For each province ten and two respectively. The equal representation of the provinces was evidently a bait for the smaller provinces. Robinson's influence is perhaps to be seen in the provision for representation in the Imperial Parliament.—See *Plan for a General Legislative Union of the British Provinces in North America* (London, (1823)), p. 39, regarding the authorship of which see C. W. Robinson, *Life of Sir John Beverley Robinson* (Toronto, 1904), p. 153.

[33] Durham to Robinson, 16 Sept., *Durham Papers*, Sec. III, vol. II, p. 675.

[34] Durham to Arthur, 16 Sept., *ibid.*, p. 671. Concerning the reluctant attitude of the Nova Scotia delegates, when they left Halifax for Quebec, towards the idea of a union with Canada, see Campbell to Durham, 4 Sept., Private, *ibid.*, p. 562.

[35] See above, note 22; also Wm. Young to Durham, 20 Sept., Lucas, *op. cit.*, vol. III, pp. 12 ff; Couper to Durham, Sept.; Campbell to Couper, 10 Oct.; Campbell to Durham, 17 Oct.; Glenelg to Durham, 22 Oct., *Durham Papers*, Sec. VI, vol. II, p. 252; Sec. III, vol. II, pp. 846, 877; Sec. I, vol. II, p. 970. Cf. Bradshaw, *op. cit.*, pp. 190 ff.

[36] Buller's later statement ("Sketch," *Durham Calendar*, p. 359) that "the public mind of all the Provinces was prepared for (a complete legislative) Union" can not be reconciled with the expressed attitude of the Maritime Provinces.

[37] Thom to Buller, Montreal, 27 Sept., *Durham Papers*, Sec. VI, vol. II, p. 220; Durham to Richardson, 2 Oct., C. W. Robinson, *op. cit.*, p. 243; Bradshaw, *op. cit.*, p. 197. On Montreal opinion cf. also C. W. Robinson, *op. cit.*, p. 255.

the phrasing of his proclamation of 9th October[38] and from other expressions of his views, that until his departure for England (1st November) he still clung to this ideal of a general federation, probably contemplating within it such subdivision of Lower Canada as would give the French superiority in those sections where they formed virtually the whole population.[39]

But there were lions in the way. The populous centres of the Maritime Provinces and of the Canadas were very far from one another. There were lacking those means of ready communication which would make possible the constant easy intercourse that political union would necessitate, or to look at the matter from the reverse angle, which would promote the growth of that community of interest and sentiment so essential as a basis for vital political union.[40] It was certain that under existing conditions the Lower Provinces would require considerable coaxing to induce them to surrender voluntarily part of their separate identity and a share of their present powers of government. It seemed, again, more and more unlikely that the disaffected French element would be sufficiently conciliated in the near future to render workable such a scheme as Durham had in mind. The renewal of insurrection after his departure tended to confirm this view. The Montreal British, moreveor, influential on both sides of the Atlantic, were firmly set in opposition to anything but a re-union of the Canadas such as would insure British ascendancy. In short, circumstances were against the immediate realization of the larger vision. The situation in British North America as a whole precluded the speedy consummation of any project for general union; while the problem in the Canadas clamoured for an immediate attempt at its solution.

Accordingly in his *Report on the Affairs of British North America* (dated 31st January, 1839) Durham contented himself, after advocating the grant of a measure of responsible government in each province, with recommending a legislative union of the Canadas with provision for the later voluntary accession of the other provinces.[41] He dwelt, however, at length, upon the necessity of promoting the growth of a British North American nationality in order to give to the people of the provinces a worthy political existence, off-set the preponderance of the United States on the continent, and insure the permanence of British institutions in North America. And he recognized uniquely the necessity, to that end, of developing interprovincial communications.[42]

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[38] "I shall also be prepared at the proper period to suggest the constitution of a form of government for Her Majesty's dominions on this continent, which may restore to the people of Lower Canada all the advantages of a representative system unaccompanied by the evils that have hitherto proceeded from the unnatural conflict of parties, which may safely supply any deficiencies existing in the Governments of the other colonies, and which may produce throughout British America a state of contented allegiance, founded, as colonial allegiance ever must be, on a sense of obligation to the parent state."—Quoted in Bradshaw, *op. cit.*, p. 209.

[39] See *ibid.*, p. 319, for a plan of this sort reprinted from *The Observer*, 24 Dec., 1838, written by an inhabitant of Montreal who "names as his authority one of the Commissioners, who may have been Adam Thom." See also Durham to Arthur, Quebec, 9 Oct., *Durham Papers*, Sec. III, vol. II, p. 815, the draft of which is in Buller's hand, a fact which reinforces Bradshaw's concludion (p. 318) that Buller as well as his chief still felt the necessity of some government for the common affairs of all the provinces, his later statement in his "Sketch" (*Durham Calendar*, p. 359) notwithstanding.

[40] Cf. (George H.) Markland to Durham, undated; Harvey to Couper, 12 June, *Durham Papers*, Sec. VI, vol. I, p. 721; Sec. III, vol. I, p. 223.

[41] Once the recommendation of legislative union for the Canadas was determined upon, the type of union to be formed by the later accession of other provinces would naturally be the same. In any case the difference between a legislative and a federal union seemed perhaps less important in view of the large powers which Durham would leave to the Imperial Government. It is a question, indeed, whether there would have been room for two sets of legislative machinery between the Imperial Government with extensive jurisdiction in the affairs of the colony on the one hand and on the other the municipal authorities which he considered essential.—Cf. Lucas, *op. cit.*, vol. I, p. 286.

[42] Durham's belief in a general union as the ultimate goal had been strengthened by contact with its colonial advocates. J. B. Robinson and Jonathan Sewell, both notable exponents of the idea in past years' had given him counsel and encouragement in support of the larger vision. R. J. Uniacke, hitherto the Maritime Provinces' chief advocate of the idea, was no longer living, but the extensive proposal which he had urged upon the Colonial Secretary in 1826 had now been placed in Durham's hands.—Campbell to Durham, 4 Sept., Private, *loc. cit.* Concerning Uniacke's scheme see the author's article, "An Early Proposal for the Federation of British North America," to be published shortly in *The Canadian Historical Review*

When the act to re-unite the Canadas was passed, its terms were far more in accord with the ideas of the Montrealers than he would have made them.[43] And no provision was included for the accession of other provinces. But in the end events proved the soundness of his advocating the ultimate creation, by one means or another, of a politically united British North America. In the meantime, however, there were important preliminaries to be accomplished. The Dominion did not come into being until the solution of the inter-provincial communications problem had been prepared for and made critically necessary by the building of railways within the several provinces; until responsible government, considerably more comprehensive than Durham contemplated, had become thoroughly domiciled in every province; until French Canada had vindicated its right to preserve its own culture and to have political self-determination as regards its internal problems; until Upper Canada had become populous enough to justify a demand for "representation by population"; until fears of external aggression had been enormously increased by the growth of power and the shaping of policy in which the American Civil War resulted in the neighbouring republic; until, in short, a situation had developed when the provincial leaders, trained in responsible government, were induced by their own constitutional, economic, and defence problems, to take the initiative in formulating a scheme of union, in winning its acceptance, and in putting it into successful operation. In the light of the whole story it is not the least part of Durham's achievement that when once he had become seized of the idea of a British North American nationality embodied in a political entity within the British Empire he never abandoned it as the ultimate goal.

[43] Cf. Bradshaw, *op. cit.*, p. 328.