Linguistic duality: A founding principle of Confederation?

Well, here we are. One hundred and fifty years later, and the Canadian federal experiment is still around – warts and all. The good, the bad, the ugly, and everything in between, have been the subject of much discussion and debate among historians of late, as one would expect in the year of the sesquicentennial.

One object of contention is as old as Confederation itself: the extent to which the new Dominion was to conceived as a duality. But *which* duality? An ethnic duality of French and British? A religious duality of Catholic and Protestant? Or a duality of the English and French languages? As the country became more secular and less ethno-centric over its 150 years, and as Indigenous peoples and cultural groups slowly achieved greater recognition, the one duality that remained relevant was that of a linguistic duality, affirmed by the *Official Languages Act* in 1969, the *Constitution Act* in 1982, and by the simple fact that, as of the 2016 census, French and English remain by far the most widely spoken languages in Canada (yes, both in *and* outside of Quebec).

At a thought-provoking conference on "Confederation and National Duality" at the Campus Saint-Jean (University of Edmonton)[1] in April of this year, there was some discussion as to whether or not the terms of 1867 had ever been intended to give recognition to such a duality, or whether the constitution's language clause, Section 133 of the *British North America Act*, had merely been conceived as a utilitarian concession to French Canadians – one of the multiple 'petits peuples' that were represented at the time.

But this begs several questions: Why were the rights pertaining to French and English framed in equal terms? Why were the relatively common languages of other 'petits peuples' – Gaelic, Irish, or even German, for example – not given some kind of recognition, if even limited? Why was recognition of French and English extended to all of Canada via the federal level, and not simply confined to the provincial boundaries of Quebec? Why were the language rights of 1867 greater than those that had been recognized before, in the old Province of Canada?[2]

Linguistic duality was implicit in other important elements of the 1867 deal:

- the decision to create a federal state with divided jurisdiction, with a Francophone majority province and Anglophone majority provinces controlling their own education systems (the most powerful tool that a state can yield for the transmission of language);
- certain guarantees for Catholic and Protestant minorities to separate schools, allowing, *de facto*, for some Francophone and Anglophone minority communities to use the education system to help transmit their language; and
- certain guarantees allowing for the continuation of French civil law and English common law traditions.

And what of Section 133 itself? Simply put, it recognized French and English as the languages of the federal parliament and courts of Canada, and of the provincial legislature and courts of Quebec. The same terms would be extended to the provincial legislature and courts of Manitoba three years later. Why those two provinces? Proportionately speaking, they were home to the country's largest and most influential official language minorities at time.

How did the Fathers of Confederation interpret Section 133? Did they see it as a limited utilitarian concession, or as an expansion of a broader principle? On 10 March 1865, the final day of debates on the terms of Confederation, the MPs of the Assembly of the Province of Canada broached this very subject.

The way in which the discussion unfolded was, in itself, a well-crafted parliamentary display of the principle of linguistic duality, with each language group speaking to the concerns of the other. Prior to this moment, the constitutional language clause had been the object of some concern for certain Anglophone MPs. They appear to have avoided asking about it, however, for fear of

[1] https://www.ualberta.ca/campus-saint-jean/recherche/colloque

[2] The terms under which the two languages received official recognition in the Canadian parliament in 1848 were far more limited. See https://slmc.uottawa.ca/?q=leg_act_repeal.

Even the new terms were themselves broadened out. The original version of Section 133, proposed in 1864, was as follows: "Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada."

The Section 133 adopted in 1867, however, created far more explicit obligations on the part of the state: "Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec. The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages."

sparking controversy and sectional discord. It was a nineteenth century version of political correctness. In an impressive display of collegiality, the question was ultimately put to the government not by an Anglophone, but by a Francophone MP, François Évanturel, "afin de me rendre au désir de plusieurs de mes amis."

The first MP who rose to defend the clause was an Anglophone, John A. Macdonald. He explained that the language rights would be "the same as they now are in the present [colonial] Legislature" but extended to the federal level. When pressed further by a skeptical Antoine-Aimé Dorion, who warned that "Il n'y a donc aucune garantie pour le maintien de l'usage de la langue [française], excepté le bon vouloir et la tolérance de la majorité [de langue anglaise]," Macdonald explained that the clause was more than a simple carry-over of previous colonial practice. It was a constitutional entrenchment of a foundational principle – it would affirm and protect the equality of the linguistic minority against the whims of the majority. Macdonald: "as it stands just now the majority governs; but in order to cure this, it was agreed at the [Quebec] Conference to embody the provision in the Imperial Act [*i.e.* the constitution]. This was proposed by [our] government, for fear an accident might arise subsequently, and it was assented to by the deputation from each province that the use of the French language should form one of the principles on upon which the Confederation should be established…. (Hear, hear.)"

The Globe, Toronto, September 1897

"HOME, SWEET HOME."

Just as it had been an Anglophone MP defending the language rights of the Francophone minority, so a Francophone MP, George-Étienne Cartier, rose to defend the rights of the Anglophone minority. As Cartier explained, "il fallait aussi protéger la minorité anglaise du Bas-Canada, relativement à l'usage de sa langue, parce que dans le parlement local du Bas-Canada la majorité sera composée de Canadiens-Français."

Still, Dorion was unsatisfied, arguing that the clause, as initially worded, did not go far enough. A guarantee for acceptance of a language in parliamentary debates, he pointed out, did not mean a guarantee of language of communication between the state and citizens: "Cette résolution dit simplement que la langue française *pourra* être employée, et non pas qu'elle *devra* l'être. ….l'important est que nous ayons la garantie de cet usage dans la publication des délibérations et des lois et documents de la législature…. Les discours prononcés en chambre ne sont adressés qu'à quelques personnes, mais les lois et les délibérations de la chambre s'adressent à toute la population, dont un million parle la langue française." (Although Dorion did not vote for Confederation, Section 133 would later be expanded along the terms for which he had argued.)

Some of the most insightful observations on the language clause came from one of the younger members of the legislature, Louis-Charles Boucher de Niverville. He explained how it represented an extension, or a broadening, of the language rights that were then in place in the Province of Canada: "Par rapport à notre langue, … loin d'être en danger, je crois qu'elle fleurira avantage sous le nouveau régime, puisqu'on pourra la parler et s'en server non seulement dans les parlements fédéraux et dans les législatures locales, mais aussi dans les tribunaux suprêmes qui seront plus tard institués dans ce pays." Still, de Niverville recognized that all the rights in the world could not guarantee the survival of a language. The state could only do so much. Rather, it was up to individuals themselves to assert the rights that they had won, to speak their language and to be heard: "si nous ne voulons pas permettre que notre belle langue perde de son influence," he explained, "il faut travailler avec énergie."[3] A century and a half later, his words still ring true.

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[3] For full transcriptions of the Confederation debates, see http://theconfederationdebates.ca/.