The Historical Origins of Section 121 of the British North America Act: a Study of Confederation's Political, Social, and Economic Context

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Introduction

The motivations for Confederation included a range of economic, trade, defence, linguistic, and religious issues.[1] I have discussed some of the economic aspects of Confederation elsewhere.[2] This paper will advance the position that the widespread and strong desire to create inter-colonial Free Trade was an important motivation for Confederation. Section 121 of the British North America Act of 1867 provided for the elimination of interprovincial trade barriers. It declared that "All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces." Section 121 used the more comprehensive and broader formula "admitted free" rather than simply "admitted free of duty" or "free from duty" terms used in other contemporaneous pieces of legislation. [3] This paper will suggest

[1] Donald Grant Creighton, *The Road to Confederation: the Emergence of Canada, 1863-1867* (Toronto: Houghton Mifflin, 1965); Peter Smith, "The Ideological Origins of Canadian Confederation," *Canadian Journal of Political Science* 20, no. 01 (1987): 3-30; Ged Martin, *Britain and the origins of Canadian Confederation, 1837-67* (Vancouver: UBC Press, 1995); Arthur Silver, *The French-Canadian idea of confederation, 1864-1900*. (Toronto: University of Toronto Press, 1997).

[2] Andrew Smith, *British Businessmen and Canadian Confederation: Constitution Making in an Era of Anglo-Globalization* (Montreal: McGill-Queen's University Press, 2008).

[3] The more restrictive phrase "admitted free of duty" was used in the text of the1860 Anglo-French commercial treaty. See Henry Reader Lack, *The French Treaty and Tariff of 1860 With an Historical Sketch of the Past Commercial Legislation of France* (London: Cassell, Petter and Galpin, 1861), 130.

that the decision to use the more comprehensive phrase "admitted free" reflected the desire to eliminated *all* government-created impediments to inter-provincial trade, not simply customs houses and customs duties. Indeed, when we examine the other sections of the British North America Act, statements by contemporaries, and the policies implemented by the first post-Confederation parliament, we can see evidence that the creators of the Dominion of Canada envisioned a comprehensive economic union rather than simply the absence of customs duties on interprovincial trade.

This paper will explore the political, economic, and philosophical context of section 121 by examining what contemporaries said about the relationship between Confederation and interprovincial Free Trade. The paper will examine the statements and actions of Confederation's creators during the "constitutional moment" of the 1860s (i.e., the period from June 1864 to March 1867 when the details of the British North America Act were being worked out). The British North America Act of 1867, which was a statute of the British parliament, was based on the Quebec Resolution, the rough draft constitution produced by the Fathers of Confederation at the Quebec Conference in the fall of 1864. A subsequent constitutional conference held in London in late 1866 modified some of the details of the Quebec Plan of Union, which was further refined as the plan developed by the Fathers of Confederation was converted into the bill debated in the British parliament in February and March of 1867.[4] This study of the context of the creators of British North America Act show that an understanding of the positive benefits of Free Trade and the negative effect of trade impediments, also called "non-tariff trade barriers", were widespread in both British North

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The restrictive phrase "free from duty" was used in an 1850 statute of the Province of Canada, "An Act to facilitate Reciprocity Free Trade between this Province and other British North American Provinces," *Debates of the Legislative Assembly of United Canada, 1841-1867*, Volume 9, 363.

[4] For more information on this episode, see Andrew Smith, "The Reaction of the City of London to the Quebec Resolutions, 1864-1866," *Journal of the Canadian Historical Association/Revue de la Société historique du Canada* 17, no. 1 (2006): 1-24.

America and Britain at the time of Confederation. British statesmen who influenced the content of the British North America Act also shared the Fathers' contention that it would beneficial to create a true common market embracing all of Britain's North American colonies.

The Fathers of Confederation
Painting by Rex Woods,1968
Medium: Oil on canvas
Dimensions: 213.36 x 365.72 cm

Image Source: House of Commons Heritage Collection

http://www.parl.gc.ca/About/House/collections/fine_arts/historical/609-e.htm

The Fathers of Confederation are often defined as the individuals who attended at least one of the following constitutional conferences: Charlottetown (1864), Quebec (1864), and London (1866). The Fathers of Confederation quoted in this paper include John A. Macdonald, George Brown, Charles Tupper, George-Etienne Cartier, and Hector Louis Langevin.
For a full list of the individuals currently considered to be Fathers of Confederation, please see http://www.collectionscanada.gc.ca/confederation/023001-3010.22-e.html

In creating a constitution that was designed to eliminate both tariff and non-tariff trade barriers within British North America, the authors of the British North America Act were surprisingly wise, as various provisions of the British North America Act appear to anticipate modern-day concerns about non-tariff trade barriers. In the twenty-first century, observers of international trade generally recognize that non-tariff trade barriers, including "search and detain" protocols, penalties and offences, differences in regulations, fluctuations in exchange rates, and the actions of state-owned enterprises, can create barriers to trade at least as great as customs duties.[5] Indeed, much recent trade diplomacy has been focused on eliminating such obstacles to international trade. Comprehensive economic unions, as opposed to simple free-trade agreements, generally have a procedure for harmonizing regulations. These processes are designed to eliminate non-tariff trade barriers. In the present day, harmonization involves everything from investment regulations to standards for electrical goods to weights and measures.[6]

Living in a very different technological and cultural era, the Fathers of Confederation could not have anticipated all of the goods and services that are sold today. It also would have been hard for the Fathers to have anticipated the variety of regulatory regimes and government-imposed technical standards that currently structure markets. Moreover, they do not appear to have foreseen that the sale of alcohol would eventually become a state monopoly in Canada, since in 1867 government-owned liquor stores could be found nowhere in the world save for the Swedish city of Gothenburg. The so-called "Gothenburg System" did not spread to North America until the twentieth century.[7] However, the creators of the

[5] For an introduction to these issues, see Sjoerd Beugelsdijk, Steven Brakman, Harry Garretsen, and Charles Van Marrewijk, *International economics and business: nations and firms in the global economy* (Cambridge: Cambridge University Press, 2013), 135-6.
[6] Peter Dicken, *Global shift: Mapping the changing contours of the world economy* (London: SAGE Publications Ltd, 2007), 205.
[7] Craig Heron, *Booze: A distilled history* (Toronto: Between the Lines, 2003), 220, 270.

British North America Act certainly recognized that for interprovincial trade to be truly free, there would have to be uniformity in currency, weights, and measures, and the like. In my view, the fact that the 1867 constitution provides for such uniformity is additional evidence that the Fathers of Confederation envisioned a truly comprehensive union in meaning and in application, rather than simply the absence of internal tariff barriers. As a historian who teaches about and does research on international trade, globalization, and regulation, I am impressed by the foresight shown by the Fathers of Confederation. A survey of the scholarly literature shows that policymakers only began to pay sustained attention to the issue of non-tariff trade barriers starting in the late 1960s.[8] The OECD's definition of nontariff barriers include technical standards, quotas, levies, embargoes, border impediments, sanctions and outright trade restrictions, which are in the nature of impediments or fetters.[9] The Fathers of Confederation appear to have been thinking about the crucial issue of non-tariff trade barriers more than a century earlier. I would attribute the ability of the Fathers to foresee the importance of this issue to the fact the United States had imposed a variety of non-tariff impediments to trade during the Civil War, such as the passport requirement for visiting British subjects (introduced in December 1864) and the various "search and detain" regulations and outright prohibitions that had been introduced since 1862.[10] These moves by the United States interfered with both trade between British North America and the United States and trade between different regions of British North America. British North Americans in the 1860s were alarmed by the trend of US trade policy, especially the rise of non-tariff trade barriers.[11] This context helps to explain why the Fathers of Confederation paid attention to the issue of non-tariff trade barriers.

[8] Gerard Curzon and Victoria Curzon Price, *Global Assault on Non-Tariff Trade Barriers* (London: Trade Policy Research Centre, 1972).
[9] *OECD Glossary of Terms*, "Non-tariff barriers" https://stats.oecd.org/glossary/detail.asp?ID=1837/
[10] Robin Winks *The Civil War Years: Canada and the United States* (McGill-Queen's Press-MQUP, 1998), 135-6. 329-30, 340.
[11] Donald C. Masters, *The Reciprocity Treaty of 1854* (London: Longmans, Green, 1936), 81-83, 189.

Overview of the Paper

The first section of the paper will describe the British imperial context in which the Fathers of Confederation will operate. The first section will establish that support for Free Trade was widespread in Britain in the 1860s. This context is important because British North Americans at this time evidenced a strong desire to emulate the mother country in the shape of its constitutional structures and many areas of public policy. In 1866, Alexander Galt, who was then the Finance Minister of the Province of Canada. In introducing his budget, Galt explicitly repudiated Protectionism as an "American" idea, stating his preference that Canada should adopt the British system of Free Trade. Galt declared that Canada had come to a parting of the ways and needed to choose between "the American system of high protection" and the English and European system of low duties. As a loyal British subject, Galt said that he wanted to follow the British system as much as possible.[12]

Moreover, section 121 and other parts of the British North America Act were drafted by a British lawyer named Francis Savage Reilly. Despite efforts to learn more about Rielly, we historians actually know relatively little about this individual. However, as Professor Ged Martin has noted, Rielly was born in Dublin in 1825, was called to the English bar in 1851, and specialized in insurance cases and commercial arbitration.[13] We also know that he lived in London and was thus likely influenced by the prevailing climate of opinion in Britain. In thinking about the making of Confederation, it is important to take the Victorian intellectual context of the Fathers into account. The Fathers of Confederation were practical men, not

[12] O.D. Skelton, "General Economic History, 1867-1912" in *Canada and Its Provinces* (Toronto: Glasgow, Brook & Co, 1914) vol 9: 95-276, 134.
[13] Ged Martin, Britain and the Origins of Canadian Confederation, 1837-67 (Vancouver: UBC Press, 1995), 370.

ivory-tower philosophers. However, they were influenced by the intellectual culture of the period. As an economist once observed, "the ideas of economists and political philosophers, both when they are right and when they are wrong are more powerful than is commonly understood. Indeed the world is ruled by little else." His point was that "practical men, who believe themselves to be quite exempt from any intellectual influence" are often the followers of thinkers whose ideas they have absorbed indirectly.[14] In the Victorian period, the climate of opinion strongly favoured Free Trade and the operation of free markets, as the historian Geoffrey Searle has shown.[15] The second section of the paper examines what the Fathers of Confederation said about inter-colonial Free Trade in the debates about Confederation. This section will suggest that a desire to inter-colonial economic union was an important motive for Confederation. The last section of the paper will show how the Fathers of Confederation used the powers of the new Dominion parliament to eliminate non-tariff barriers to interprovincial trade after 1 July 1867. The fact they eliminated both tariff and non-tariff trade barriers is relevant to understanding the motives that drove the creation of the Canadian federation.

Figure 2: British North America in 1862[16]

[14] John Maynard Keynes, *The General Theory of Employment Interest and Money* (London: Macmillan, 1936), 383-4.
[15] Geoffrey Russell Searle, *Morality and the Market in Victorian Britain* (Oxford: Oxford University Press, 1998).
[16] Source : *Canadian Geographic*, http://www.canadiangeographic.ca/mapping/historical_maps/1862.asp (2011-01-21)

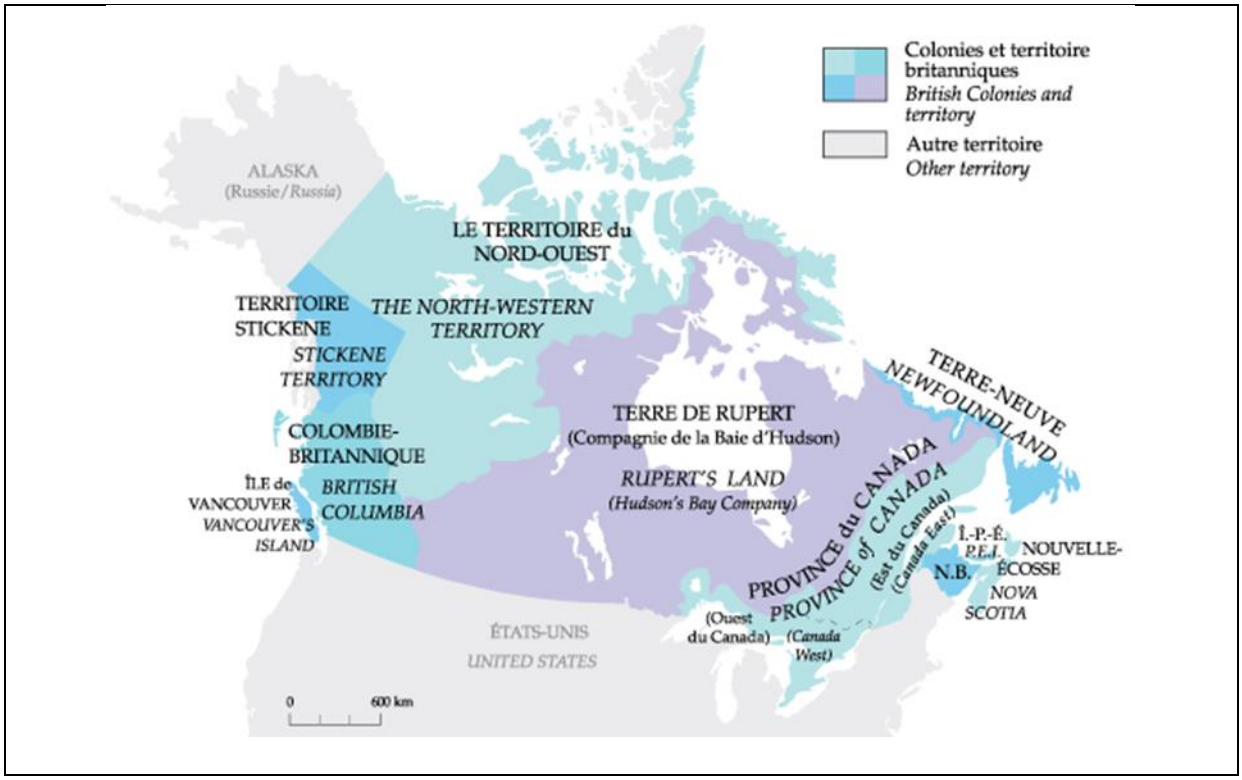
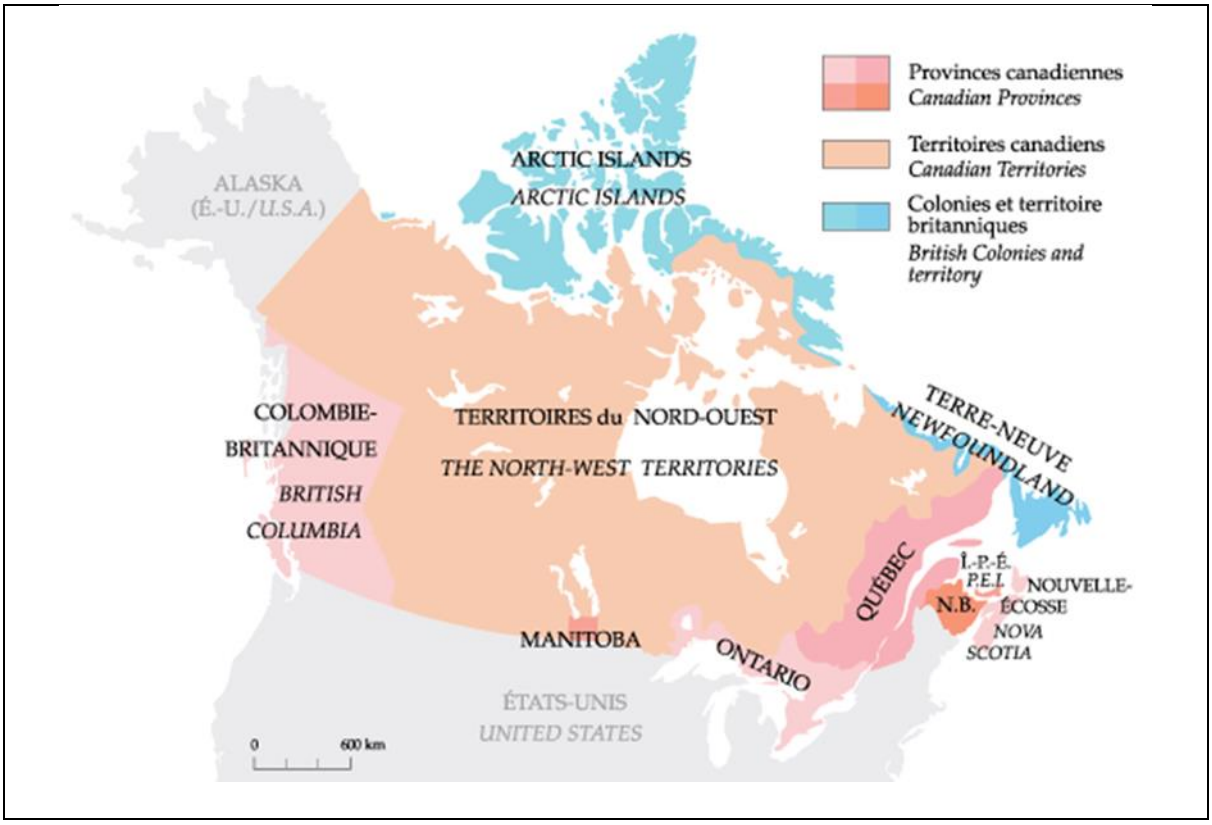


Figure 3: British North America in 1873[17]

[17] Source: *Canadian Geographic*, http://www.canadiangeographic.ca/mapping/historical_maps/1873.asp



Economic Liberty, and the Intellectual Foundations of Canadian Confederation

It would be wrong to represent the Fathers of Confederation as doctrinaire libertarians who were opposed to all forms of government intervention in the economy. As I have shown elsewhere, the Fathers of Confederation supported some forms of government intervention in the economy that alarmed some of the more extreme classical liberals in British North America, who feared that Confederation would be followed by a torrent of taxpayer-funded

infrastructure spending.[18] However, I would argue that the thinking of the Fathers of Confederation was strongly influenced the prevailing climate of thought in this era, which was largely classical liberal. I would also argue that this climate of thought helps to explain why they believed in Free Trade, particularly Free Trade within British North America. The Fathers of Confederation saw no contradiction between supporting international Free Trade with a pragmatic willingness to adopt forms of state intervention such as public ownership of infrastructure and public spending on education and the post office. In this respect, they were very similar to policymakers in Victorian Britain, a society characterized by both widespread support for Free Trade and a growing role for the state in infrastructure and social welfare.[19]

In understanding the economic philosophy that informed Confederation, it is important to distinguish the ideas of John A. Macdonald in the 1860s from his later ideas. Macdonald, who is often regarded as the most important Father of Confederation, later introduced the famous National Policy. The National Policy was the protective tariff trade barrier introduced by Macdonald's government in 1879. This tariff trade barrier sought to nurture the country's manufacturing industry and to artificially re-direct trade along east-west lines.[20] However, it would be a mistake to assume that because Macdonald was a protectionist in 1879, he and the other Fathers of Confederation were protectionist in the 1860s. In 1861, John A. Macdonald explicitly stated that he was opposed to a policy of high tariffs and praised the economic effects of Reciprocity with the United States: "One great cause of the prosperity of the farmer in Upper Canada is the reciprocity treaty and the

[18] Andrew Smith, "Toryism, Classical Liberalism, and Capitalism: The Politics of Taxation and the Struggle for Canadian Confederation," *Canadian Historical Review* 89, no. 1 (2008): 1-25.
[19] J. Bartlett Brebner, "Laissez faire and state intervention in nineteenth-century Britain," *The Journal of Economic History* 8, no. S1 (1948): 59-73; Martin Daunton, *Trusting Leviathan: the Politics of Taxation in Britain, 1799-1914* (Cambridge: Cambridge University Press, 2007), 24-7; Derek Fraser, *The Evolution of the British Welfare State: a History of Social Policy since the Industrial Revolution* (London: Palgrave Macmillan, 2009), 134; Mark F. Bailey, "The 1844 Railway Act: a violation of laissez-faire political economy?" *History of Economic Ideas* (2004): 7-24. .
[20] Ben Forster, *A Conjunction of Interests : Business, Politics, and Tariffs, 1825-1879* (Toronto : University of Toronto Press, 1986), 182-200.

consequent interchange of agricultural commodities and raw materials."[21] In critiquing the calls for higher tariffs, Macdonald was likely alluding to the proposal that had recently been made by a Canadian businessman named Isaac Buchanan: Buchanan had advocated the introduction of a protectionist or "National" tariff to nurture manufacturing in the Province of Canada. [22] In the 1860s and early 1870s, the Macdonald government repeatedly attempted to negotiate a new Reciprocity (i.e., freer trade) Agreement with the United States. Macdonald's goal of restoring Reciprocity enjoyed overwhelming support in Canada, which shows the sheer strength of Free Trade sentiment in Canada in this era. In March 1870, an MP could say without risk of contradiction that "the whole country was in favour of reciprocal Free Trade with the United States."[23] British North Americans in the 1860s were supportive of Free Trade both international and, especially, within British North America.

The key point here is that Macdonald was an advocate of international, and *a fortiori*, inter-provincial Free Trade in the 1860s, the period in which the British North America Act was being written. In assessing the intentions of the Fathers of Confederation during the making of the British North America Act, the views of the John A. Macdonald of the 1860s are surely more relevant than those of the Macdonald of, say, 1881. Moreover, Macdonald never favoured inter-provincial trade barriers. It is true that Macdonald was later converted to the cause of tariff protection, but this came after he lost power in 1873. Moreover, even after he legislated a protective external tariff, he never interfered with interprovincial Free Trade.

[21] *Address of the Hon. John A. Macdonald to the Electors of the City of Kingston*(1861), 62.
[22] For Buchanan's views, see Isaac Buchanan, *The British American Federation a Necessity: Its Industrial Policy Also a Necessity* (Hamilton: Spectator Steam Press, 1865); Douglas McCalla, "Isaac Buchanan", *Dictionary of Canadian Biography*.
[23] Speech by Colby, *House of Commons Debates*, 1870, 265.

The Fathers of Confederation strongly favoured the elimination of trade barriers within British North America. This conviction was strong for several reasons. British classical political economy taught that tariff trade barriers and non-tariff trade barriers were harmful. British political economy influenced how British North Americans in the 1860s thought about economic development. The well-documented influence in British North America of British economists such Smith, Ricardo, and Mill helps to explain why most British North Americans in the 1860s favoured Free Trade, international as well as domestic.[24] Support for Free Trade was also informed by a reading of a particularly important episode of British history, namely the rapid economic growth that Scotland had enjoyed after 1707. In that year, the internal trade barriers between England and Scotland had been eliminated through the union of the parliaments of those two kingdoms. The historical experience of Scotland was cited by at least one supporter of Confederation, D.W. Prowse, who stated in February 1865 that his support for Confederation and intercolonial Free Trade was based on the study of the lessons of history, particularly the industrial prosperity enjoyed by Scotland after its 1707 union with England. He also declared that it was unthinkable that the future Canadian federation might adopt a protectionist tariff policy, as in a scientific age, a Canadian ministry containing such intelligent men as George Brown and Alexander Tilloch Galt would no more "return to the exploded theory of protection" than they would propose to "defend the Canadian frontier with bows and arrows."[25] This comment suggests how many British North Americans in the 1860s associated Free Trade and the free play of market forces with modernity, with science, and with reason.

[24] Crauford Goodwin, *Canadian Economic Thought : the Political Economy of a Developing Nation, 1814-1914* (Duke University Press, 1961), 57.
[25] Speeches by Prowse in the House of Assembly, 6 and 22 February, reported in "House of Assembly," *Newfoundlander*, 20 February 1865, 1; 23 February 1865, 1.

The Fathers' support for the elimination of trade barriers within British North America was shaped by the advent of the railway, the steamship, and the electric telegraph. The Fathers of Confederation were extremely conscious of the fact that new technologies were shrinking the globe. Within the adult lifetimes of the Fathers of Confederation, these three technologies had effectively reduced the size of British North America and indeed the world. In 1862, Amor de Cosmos, the editor of Victoria's *British Colonist* advocated the union of the separate British colonies of Vancouver Island and British Columbia on the ground that it was "the age of the electric telegraph and the railroad." Larger political units, he said, thus made sense.[26] In the debates on Confederation which took place in the parliament of Canada in early 1865, Charles Alleyn declared that "the telegraph has annihilated time, railroads and steamers have devoured space." He said that these new technologies had caused a worldwide drive for "territorial aggrandizement, this gathering together of the *disjecta membra* of nations." Alleyn referred to the recent steps to unify Italy and Germany, Russia's absorption of small countries in the Caucausus and Central Asia.[27] Another supporter of Confederation, Hector Louis Langevin, spoke of the vast improvement in communications which had occurred since the union of Upper and Lower Canada. In 1841, telegraphy in Canada had consisted of a semaphore used to relay messages between the Quebec Citadel and some nearby islands. But as Langevin observed, one could now communicate instantaneously with "the most remote districts."[28] The key point here is that natural barriers to trade within British North America were falling rapidly, which made the man-made barriers to trade between the British North American provinces a greater obstacle to development than had been the case previously.

[26] *British Columbia*, "Union of the Provinces" 13 August 1862, 2.
[27] Charles Alleyn, Speech of 6 March 1865, *Confederation Debates*, 671..
[28] Lavengin, 21 February 1865, *Confederation Debates*, 386.

The interpretations of economics and history that were prevalent in the 1850s and 1860s meant that British North Americans were disposed to strongly favour both Free Trade in general and inter-colonial Free Trade in particular. Even before the American Civil War, British North Americans had spoken of the benefits of Free Trade amongst the British North American colonies.[29] During the constitutional moment of the 1860s, British North Americans acquired an additional motivation for seeking to eliminate trade barriers between British North America: at the close of the Civil War in 1865, the United States government announced that it was going to abrogate the 1854 Reciprocity Treaty, which had given colonial natural products duty-free entry into the Republic. Throughout the Civil War, there had been calls in the United States to exclude the British North Americans from the United States market. At the close of the conflict, the White House and Congress worked together to terminate Reciprocity, which took effect in 1866.[30] The impending end of their privileged access to the US market forced British North Americans to think about substitute markets. Achieving intercolonial Free Trade was seen by contemporaries as a way of cushioning the economic blow that was certain to follow from the reversion of the United States to protectionism.[31]

The British Imperial Context

[29] Joseph Cauchon, *Étude sur l'union projetée des provinces Britanniques de l'Amerique du Nord* (Québec: Typ. d'Augustin Coté et Cie, 1858).
[30] Michael Hart, *A Trading Nation: Canadian Trade Policy from Colonialism to Globalization* (Vancouver: UBC Press, 2002), 51-52.
[31] Donald C. Masters, *The Reciprocity Treaty of 1854* (London: Longmans, Green, 1936).

To understand the thinking of the Fathers of Confederation, we need a brief digression of the history of British imperial economic policy. In the 1860s, support for Free Trade had become part of the political consensus in Britain, the mother country of British North America. In the eighteenth century, Britain's foreign trade and internal economy had been highly regulated. Under so-called mercantilism, the economies of the colonies had been controlled by a host of tariffs and other regulations designed to limit market forces.[32] In the years after 1815, the credibility of mercantilist policies was challenged by the teaching of the classical political economists and a variety of classical liberal authors, as well as various interest groups. These authors derived from the works of Adam Smith and David Ricardo the conclusion that international Free Trade would be the best policy for Britain, and her colonies. [33] Classical liberals began campaigning for the unilateral elimination of Britain's trade barriers. They also changed the thinking of the two main political parties in Britain. After 1815, an element within Britain's ruling Conservative party also came to doubt to the wisdom of these protective tariffs, as did many members of Britain's Whig Party. The efforts of the market-oriented faction within the Conservatives to deregulate the British and British Imperial economies, which began cautiously at first, would later split the party. [34] The advocates of Free Trade in Britain achieved major political victories in the 1840s. In the 1840s, the British government led by Sir Robert Peel abolished the tariffs protecting British farmers, the so-called Corn Laws. Britain also scrapped the system of Colonial Preference, whereby lower duties levied on goods entering Britain from British colonies than on

[32] Robert Livingston Schuyler, *The Fall of the Old Colonial System; A Study in British Free Trade, 1770-1870* (New York: Oxford University Press, 1945).
[33] Cheryl Schonhardt-Bailey, *From the Corn Laws to Free Trade: Interests, Ideas, and Institutions in Historical Perspective* (Cambridge, MA: MIT Press, 2006).
[34] Boyd Hilton, *Corn, Cash, Commerce: the Economic Policies of the Tory Governments 1815-1830* (New York : Oxford University Press, 1977).

equivalent goods from foreign countries such as the United States. After 1850, most goods entering the United Kingdom did so without paying any customs duties. The British government replaced the revenue that had previously been collected from regressive customs duties with an income tax paid by the top two percent of British families. Contemporaries noted that the customs duties and excise taxes were regressive in the sense they took a higher percentage of the incomes of poor families than rich families. Many saw Free Frade as the only trade policy consistent with social justice and Christianity.[35]

Britain's shift to Free Trade had been opposed in the 1840s by much of the country's Conservative Party. Indeed, in implementing Free Trade, Sir Robert Peel had badly damaged the unity of his party and the more market-oriented faction of the party (the Peelites) moved in the nascent Liberal Party. In the early 1850s, Britain's rump Conservative Party continued to call for a return to protectionism. However, Benjamin Disraeli and the other party leaders soon realized that Free Trade was so popular with the British electorate that it would be foolish to persist in opposing this policy. Simply put, the voters liked the cheap food they associated with Free Trade. Belief in Free Trade quickly became part of the political consensus in Britain: it was supported by both of the main political parties there, the Conservative and the Liberals. When Disraeli's Conservatives eventually regained power, it did not reverse Peel's Free Trade policy.[36] Free Trade became the cornerstone of British economic policy and Free Trade became associated with the British national identity itself.[37] One of Manchester's largest concert and meeting halls was actually called Free Trade Hall. Contemporaries usually capitalized the phrase "Free Trade" to underscore its significance.

[35] Boyd Hilton, *The Age of Atonement: The Influence of Evangelicalism on Social and Economic Thought, 1785-1865* (Oxford: Clarendon Press, 1991), 36-72.
[36] J. B. Conacher *The Peelites and the Party System, 1846-52* (Newton Abbot : David & Charles, 1972), 152; Anthony Howe, *Free Trade and Liberal England, 1846-1946* (Oxford: Oxford University Press, 1997). 173.
[37] Frank Trentmann, *Free Trade Nation: Commerce, Consumption, and Civil Society in Modern Britain* (Oxford: Oxford University Press, 2008), 354.

Free Trade meant that the vast majority of goods entering Britain did so without paying any duty at all.[38] Support for Free Trade and free-markets was so strongly associated with Britain in Germany that opposition to protectionism became known in German as *Manchesterismus*, a reference to the British city that had been at the forefront of the 1840s campaign for Free Trade.[39] In the United States, the advocates of protective tariffs denounced the theory that Free Trade was good for the economy precisely on the grounds that this doctrine had been developed in Britain. Henry Charles Carey, a US protectionist writer and advisor to President Abraham Lincoln, dubbed protectionism the "American System." Playing to US anglophobia, Carey reminded his readers that Free Trade was a British idea.[40]

Along with the advent of technologies that reduced the costs of moving goods, the British government's shift in policy in the 1840s contributed to the growth of international trade. The second half of the nineteenth century today referred to by many historians as the first golden age of globalization, since international trade increased so rapidly.[41] The Fathers of Confederation thus lived in an environment that was experiencing rapid globalization and economic integration over great distances, which helps to explain why they were intent on eliminating trade barriers within British North America.

This British background is important for two reasons. First, the Fathers of Confederation were both British subjects and admirers of their mother country. Many of the

[38] In 1860, the British government classified imported goods into 420 categories. 400 of these categories were completely exempt from all duty. Over the course of the 1860s, additional commodities were added to the free list. H. C. G. Matthew, *Gladstone, 1809-1898* (Oxford: Oxford UniversityPress, 1996), 216-8.
[39] Leslie Hannah, "The Origins, Characteristics and Resilience of the "Anglo-American" Corporate Model" *Essays in Economic & Business History*, vol. 33, page, 2.
[40] H.C. Carey, *The Harmony of Interests: Agricultural, Manufacturing, and Commercial* (Philadelphia: J.S. Skinner, 1850); Meardon, Stephen. " ' A Reciprocity of Advantages': Carey, Hamilton, and the American Protective Doctrine," *Early American Studies: An Interdisciplinary Journal* 11, no. 3 (2013): 431-454.
[41] Kevin H. O'Rourke and Jeffrey G. Williamson, *Globalization and History: the Evolution of a Nineteenth-century Atlantic Economy* (Cambridge, MA: MIT Press, 2001).

English-speaking Fathers of Confederation, including Sir John A. Macdonald and George Brown, had been born in Britain. Their love of Britain went beyond simply the desire to acquire knighthoods or Macdonald's famous ruling that British rather than US spelling had to be used in all Canadian government documents.[42] The Fathers of Confederation deeply admired the constitution and laws of Britain. This desire to emulate Britain is seen in the very first resolution of the Quebec Conference of 1864, which declared:

> In framing a Constitution for the General Government, the Conference, with a view to the perpetuation of our connection with the Mother Country, and to the promotion of the best interests of the people of these Provinces, desire to follow the model of the British Constitution, so far as our circumstances will permit.[43]

This discussion of the history of British imperial economic policy in the first half of the nineteenth century is relevant to understanding the motives of the creators of the Canadian constitution because the government that was in office in Britain at the time of the

[42] Order in Council (No. 1178 of June 12, 1890.

[43] Quebec Resolution Number 3, "Resolutions of the Quebec Conference". in *Confederation : Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act*, edited by Joseph Pope, (Toronto: Carswell, 1895), 39.

passage of the British North America Act happened to be a Conservative one. (Confederation was supported by both political parties in Britain). It thus fell to a Conservative Colonial Secretary, the 4th Earl of Carnarvon, to introduce this piece of legislation into the British parliament. In his speech of 19 February 1867, Carnarvon discussed the many benefits that would flow from the political union of the colonies. His speech deal with a wide range of issues, some non-economic, but it also reflected Carnarvon's support for Free Trade. He praised Confederation as a measure that would guarantee Free Trade within British North America at the same time as increasing the likelihood that Canada would emulate Britain's wise policy of international Free Trade.

Carnarvon spoke at great length about how Confederation would achieve Free Trade within British North America. After discussing the natural resource endowments of each of the regions of British North America, Carnarvon pointed out that trade between these regions was currently impeded by a range of tariff and non-tariff trade barriers. It is worth quoting his words at length:

> Now these districts, which it may almost be said that nature designed as one, men have divided into many by artificial lines of separation… [the British North American colonies] stand to each other almost in the relation of foreign States. Hostile Custom Houses guard the frontiers, and adverse tariffs choke up the channels of intercolonial trade. **There is no uniformity of banking, no common system of weights and measures, no identity of postal arrangements. The very currencies differ.** In Canada the pound or the dollar are legal tender. In Nova Scotia the Peruvian, Mexican, Columbian dollars are all legal; in New Brunswick, British and American coins are recognised by law, though I believe that the shilling is taken at twenty-four cents, which is less than its value; in Newfoundland Peruvian, Mexican, Columbian, old Spanish dollars, are all equally legal; whilst in Prince Edward's Island the complexity of currencies and of their relative value is even greater. Such then being the case, I can hardly understand that any one should seriously dispute the advantage of consolidating

> these different resources, and interests, and incidents of government under one common and manageable system.[Emphasis added].[44]

Note here how Carnarvon was conscious of the fact that tariffs are just one impediment to trade between jurisdictions. Differences in currencies, confusing variations in units of measurement, and different banking laws are all barriers to economic integration. Carnarvon's emphasis on non-tariff trade barriers is a strikingly perceptive comment that anticipates how we think of about international trade in the early twenty-first century, when it is generally recognized that non-tariff barriers such as differences in regulations can do more to frustrate trade than simple customs duties.

The Fathers of Confederation and Inter-Colonial Free Trade

In the 1865 debates in the parliament of the Province of Canada about the proposed confederation of the North American colonies, John A. Macdonald made it clear that the political union of the North American colonies was the only way to bring about the long-discussed economic union of the British North American colonies. He declared: "if we wish…to establish a commercial union, with unrestricted free trade, between people of the

[44] Speech by Carnarvon of the British North America Bill in the House of Lords, 19 February 1867.

five provinces, belonging, as they do, to the same nation, obeying the Same Sovereign… this can only be obtained by a union of some kind between the scattered and weak boundaries composing the British North American Provinces. (Cheers)."[45] For Macdonald, political and economic union were synonymous and imperative, although he was open to further debate and discussion about the subordinate details of the political union to be created.

The words of the other Fathers of Confederation support the thesis that the union of the colonies was motivated by a strong desire to create a free trade space. The Fathers of Confederation frequently said that Confederation would eliminate barriers to trade within British North America. Some of the Fathers of Confederation also said the union of the colonies would also result in the reduction of trade barriers between British North America and the rest of the world, but it appears that the desire to achieve free trade within British North America was a more important motivation for Confederation.

In a speech to his constituents on 23 November 1864, Alexander Tilloch Galt explained the rationale for Confederation. He said that one of "the chief benefits expected to flow from the confederation was the free interchange of the products of the labor of each Province." Confederation would eliminate "restrictions on the free interchange of commodities as to prevent the manufactures of the rest from finding a market in any one province, and thus from sharing in the advantages of the extended Union."[46] Galt returned to this issue in his 1865 speech in the debates in the parliament of the Province of Canada on the desirability of Confederation. Here Galt used the prosperity that the North American colonies had enjoyed since the passage of the 1854 Reciprocity Treaty to illustrate "the benefits of

[45] Speech by Macdonald, 6 February 1865, *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces*, (Quebec : Hunter, Rose & Co., 1865). 28-9.
[46] A.T. Galt, *Speech on the Proposed Union of the British North American Provinces, Delivered at Sherbrooke, C.E*. Montreal: Printed by M. Longmoore & Co, 1864, 10.

free commercial intercourse" as a general principle. Galt provided statistics to show the trade between the countries "swelled from less than $2,000,000 to upwards of $20,000,000 per annum." He also observed that "we are threatened with an interruption of that trade" and that US politicians might soon prove to be "hostile to the continuance of free commercial relations with this country." Given that it was possible that the United States might soon re-impose trade barriers, "it is the duty of the House to provide, if possible, other outlets for our productions… If we have reason to fear that one door is about to be closed to our trade, it is the duty of the House to endeavor to open another." The legislature could do this by providing for "free trade with our own fellow-colonists for a continued and uninterrupted commerce which will not be liable to be disturbed at the capricious will of any foreign country. (Hear, hear.)" On this ground, therefore, Galt concluded "that the union between these colonies is demanded alike on account of their extensive resources, and because of the peculiar position in which they stand relatively to each other, to Great Britain, and to the United States."[47]

George Brown, a Liberal Father of Confederation, has been described as a "stout believer in the Cobdenite philosophy of free enterprise and laissez-faire."[48] It is not surprising, therefore, that we find Brown declaring in the *Confederation Debates* that "I go heartily for the union because it will throw down the barriers of trade and give us control of a market of four million people." Brown's thinking appears to have been informed by the rapid progress of the United States since it swept away internal trade barriers. He said:

> What one thing has contributed so much to the wondrous material progress of the United States as the free passage of their products from one State to

[47] Speech by Galt, 7 February 1865, in *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces*, 64-65.
[48] Donald Creighton, "George Brown, Sir John Macdonald, and the "Workingman"," *Canadian Historical Review* 24, no. 4 (1943): 362-376, 363.

> another ? What has tended so much to the rapid advance of all branches of their industry, as the vast extent of their home market, creating an unlimited demand for all the commodities of daily use, and stimulating the energy and ingenuity of producers ? Sir, I confess to you that in my mind this one view of the union — the addition of nearly a million of people to our home consumers — sweeps aside all the petty objections that are averred against the scheme.[49]

In French Canada, supporters of Confederation also used the argument that the political union of the colonies would be a step towards the elimination of internal trade barriers. In 1858, Joseph-Édouard Cauchon had opposed the political union of the North American colonies on the grounds a purely economic union would have been preferable, as such a union would have given the colonists the benefit of "La liberté des échanges" between the British North American colonies without endangering the status of French Canada.[50] Writing in 1864, Cauchon explained why he now favoured a federal political union as well as an economic union: "Six ans de méditation et d'une rude expérience, au milieu des luttes sociales…" had taught him that political union was necessary. In addition to promoting "la liberté des échanges pour notre commerce intérieur" political union would protect and develop "notre commerce extérieur" (i.e., trade with regions outside of British North America). [51] George-Etienne Cartier also argued in favour of Confederation on the grounds that it would ensure free trade between the British North American colonies: "It was of no use whatever that New Brunswick, Nova Scotia and Newfoundland should have their several custom houses against our trade, or that we should have custom houses against the trade of those provinces." [52]

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[49] Speech by Brown, 8 February 1865, *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces,* p.99.
[50] Joseph Cauchon, *Étude sur l'union projetée des provinces Britanniques de l'Amerique du Nord* (Québec: Typ. d'Augustin Coté et Cie, 1858).
[51] Joseph Edouard Cauchon, *L'union des provinces de l'Amérique britannique du Nord* (Quebec : Imprimerie de A. Cote, 1865), p.31-32.
[52] Speech by Cartier, 7 February 1865, *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces,* 60.

Elimination of Non-Tariff Barriers to Trade In British North America

The creators of the British North America Act favoured inter-colonial free trade in the broadest possible sense. Simply eliminating tariff trade barriers would not be enough, in their view, to establish true freedom of trade within British North America. They thus understood that economic integration would involve the elimination of various non-tariff barriers to trade. For this reason, section 91 the British North America Act gave the future federal government jurisdiction over a wide range of commercial matters.

1. The Regulation of Trade and Commerce.
2. The raising of Money by any Mode or System of Taxation.
3. The borrowing of Money on the Public Credit.

14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.

22. Patents of Invention and Discovery.
23. Copyrights.

This list of some of the powers in Section 91 suggests that the creators of the British North America Act understood that a failure to harmonize the laws governing finance, weights and measures, currency, intellectual property, and various other matters would create de facto trade barriers. Since one of the goals of Confederation was to create a comprehensive economic union, the possibility that such trade barriers might emerge needed to be avoided. The Fathers of Confederation recognized that Quebec was going to continue to have a distinctive legal system, which suggests that they were sometimes willing to accept the economic costs associated with a lack of harmonization. However, section 94 of the constitution did empower the federal parliament to oversee and direct the "Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick."

After Confederation, the government led by Sir John A. Macdonald did, in fact, use its new powers to harmonize many areas of economic policy in an effort to create a thoroughgoing economic union. For instance, the first Dominion parliament established a common currency and banking system for the whole country, a process I have discussed elsewhere.[53] A national Weights and Measures Act was passed to eliminate the confusing and inconvenient differences in units of measurement that had been inherited from the pre-Confederation era. In the words of Father of Confederation Charles Tupper, the aim of this law was "to insure between buyers and sellers uniformity" throughout the new Dominion by requiring the adoption of common units such as the British Imperial gallon.[54] The first federal

[53] Andrew Smith, "Continental Divide: The Canadian Banking and Currency Laws of 1871 in the Mirror of the United States," *Enterprise and Society* 13, no. 03 (2012): 455-503.
[54] Speech by Charles Tupper, House of Commons, 28 March 1873.

parliament attempted, albeit with less success, to create uniform accounting standards for the Dominion.[55] The fact that the first federal parliament made these important reforms suggests that the Fathers of Confederation wanted to create a complete economic union rather than simply to eliminate custom duties in British North America, by abrogating non-tariff trade barriers as well as tariff trade barriers.

Conclusion

This paper has advanced the thesis that the desire to create an economic union of British North America was an important motivation for Confederation and that the Fathers of Confederation wished to eliminate a wide range of government-created impediments to inter-provincial trade (i.e non-tariff trade barriers), not simply customs houses and customs duties (i.e. tariff trade barriers). Indeed, when we examine the making of the British North America, we see evidence that the creators of the Dominion of Canada envisioned a comprehensive economic union rather than simply the absence of customs duties on trade between the provinces. Their goal was unfettered trade between the provinces. Corroborating evidence to support this interpretation can been seen in the actions the Fathers of Confederation took in the years immediately after Confederation, when they eliminated a range of tariff and non-tariff barriers. The Fathers of Confederation demonstrated remarkable prescience in creating a constitution that was designed to eliminate both tariff and non-tariff trade barriers within British North America. Today, we are conscious that the simple absence of customs duties is not enough to ensure that there is true Free Trade between jurisdictions. The Fathers of

[55] Ron Baker and Morina D. Rennie, "Accounting for a nation's beginnings: Challenges arising from the formation of the Dominion of Canada," *Accounting History* 17, no. 3-4 (2012): 415-435.

Confederation appear to have anticipated this problem in the 1860s, and it appears that their principles have not been followed by subsequent generations of Canadian legislators.