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# TOWARD CANADIAN IDENTITY— THE SIGNIFICANCE OF FOREIGN INVESTMENT

By IAN WAHN, Q.C.\*

## *The New Foreign Investment Review Act*

In January, 1973, the Government introduced legislation to screen foreign investment in Canada.<sup>1</sup> This legislation may prove to be significant in that it specifically recognizes that the extent of foreign ownership of Canada's resource and manufacturing industries has become a serious problem. However, the existing provisions of the legislation will have to be strengthened greatly if it is to prove effective in achieving its stated purpose of assisting Canadians to maintain control over their economic environment.

This new legislation replaced a Bill which had been introduced early in 1972, and which was restricted to reviewing proposed foreign takeovers of Canadian businesses. At that time, the Government had been pressed by the opposition parties, by journalists and political commentators, by influential members of the public and by its own supporters to state that the review of takeovers by foreign investors was merely the first step in a continuing program designed to secure a greater degree of economic independence for Canada. The Government consistently refused to make any such statement, but on the contrary insisted that the measure introduced was all that it had in mind at that time.

Yet, in a special issue of *International Perspectives*, published by the Department of External Affairs in Mid-October 1972, shortly before the federal election, an article by the Honourable Mitchell Sharp, Secretary of State for External Affairs, seemed to indicate that an important change of policy was pending.<sup>2</sup> In the excitement of the closing days of the election campaign however, this article attracted little publicity or attention. The article suggested that Canada had the following options: (1) To maintain more or less its present relationship with the United States with a minimum of policy adjustments; (2) To move deliberately towards closer integration with the United States; or (3) To pursue a comprehensive long-term strategy to develop and strengthen the Canadian economy and other aspects of its national life and in the process to reduce the present Canadian vulnerability. The article indicated that after careful consideration the Government had chosen the third option leading toward a greater degree of Canadian independence.

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<sup>1</sup> Bill C-132, 1973, 1st Session, 29th Parliament, 21 Eliz. II.

<sup>2</sup> Mitchell Sharp, "Canada-U.S. Relations: Options for the Future" in *International Perspectives* (Ottawa: Information Canada, 1972).

It seems somewhat surprising therefore that the new Foreign Investment Review Act goes only slightly further than the much criticized 1972 Bill. It purports to regulate not only takeovers of existing Canadian businesses but also the establishment of new businesses by foreign owners.<sup>3</sup> However, the power to regulate the establishment of a new business by a foreign owner or group of foreign owners does not apply if the new business is "related" to any existing business carried on in Canada by the foreign owner or the group of foreign owners.<sup>4</sup> The extent of this loophole is startling: clearly it will have to be closed if the new business provision is to have much credibility.

There are at least two other basic defects which must be remedied if the problems of foreign ownership are to be dealt with effectively. Since over sixty per cent of Canadian resource and manufacturing industry is already foreign owned, the growth and continuing expansion of these foreign owned sectors must also be regulated. Even more important, the function of the Foreign Investment Review Agency, which under the existing legislation is limited to advising the responsible Minister with regard to the desirability of permitting foreign owners to takeover existing Canadian businesses or to establish new businesses, must be extended greatly. The Agency should be authorized to conduct research with regard to foreign investment and its advantages and disadvantages, to identify foreign controlled corporations, to make recommendations for dealing with problems resulting from foreign investment, and to publish its findings and recommendations.

In brief, the legislation is welcome for its recognition that policies pursued in the past with reference to foreign investment have resulted in serious problems, and particularly for the statement contained in clause 2 that: "This Act is enacted by the Parliament of Canada in recognition by Parliament that the extent to which control of Canadian industry, trade and commerce has become acquired by persons other than Canadians and the effect thereof on the ability of Canadians to maintain effective control over their economic environment is a matter of national concern." The legislation will have to be extended and strengthened, however, if it is to deal effectively with the problems associated with excessive foreign ownership of Canadian industry.

Whether or not the legislation proves to be effective, the apparent change in the stated policy of the Government between the Spring and Fall of 1972, as indicated by Mr. Sharp's article in *International Perspectives*,<sup>5</sup> may reflect a decisive shift in public opinion and the acceptance by the major political parties of the importance of regulating foreign investment in the national interest.

Of the total foreign investment in Canada about four-fifths is held by United States investors. This high concentration of ownership of important industries in the hands of United States investors creates serious problems;

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<sup>3</sup> Section 2 & 8.

<sup>4</sup> Section 8(2).

<sup>5</sup> *Supra*, note 2.

yet it is only one of a number of aspects of Canada's economic dependence upon the United States. Some of the other aspects may be even more important and difficult to deal with. Moreover, economic dependence is not the only problem we have in our relations with the United States. Canada's cultural and military dependence upon the United States also pose very serious problems. While it is important therefore to take action to regulate foreign investment, it is vital that we do not become preoccupied with it and thereby overlook other areas where action may be required. It is the purpose of this article to discuss the problem of foreign investment, but in this larger context of the challenge to Canada's national identity and independence.

### *Identity and Independence in an Interdependent World*

Those Canadians who have most strongly demanded effective action to lessen our dependence on the United States have often been described by their opponents as "Nationalists". They believe that in a world which, admittedly, is becoming increasingly interdependent, it is of supreme importance for Canada to maintain its national identity and independence. They believe that if we continue in the future as we have in the past, we will lose that degree of independence which is necessary if we are to maintain our identity, that in fact we do face problems, that we must change the policies which we have pursued in the past, and that we must take effective action immediately to preserve our national identity and independence.

This principle was stated clearly in the 1970 *External Affairs Committee Report*.

The Committee has concluded that, in addition to maintaining political independence, Canada must also maintain a sufficient degree of military, economic and cultural independence so that it will, in practice, be able to make the independent decisions which constitute the vital characteristic of an independent nation.<sup>6</sup>

The importance of this principle was recognized by Mr. Sharp when he said:

The evidence suggests that the overriding issue to emerge from the Canada-U.S. relationship for most Canadians today is that of economic independence. For example, a cross-section of various polls indicates that 88.5 per cent of Canadians think it important for Canada to have more control over its own economy; that two of every three Canadians view the current level of American investment in Canada as being too high; that, while seven out of every ten Canadians are prepared to acknowledge that American investment has given them a higher standard of living than they might otherwise have had, almost half of them would be willing to accept a lower living standard if that were the price to be paid for controlling or reducing the level of American investment. These are admittedly national averages. They do not necessarily do justice to pronounced regional variations.

If the national mood is to be comprehended in one sentence, it would appear that Canadians remain aware of the benefits of the American connection but that, today more than at any other time since the Second World War, they are

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<sup>6</sup> *Eleventh Report of the Standing Committee on External Affairs and National Defence Respecting Canada-U.S. Relations* (Ottawa: Queen's Printer, 1970) at s. 701.

concerned about the trend of the relationship and seem willing to contemplate and support reasonable measures to assure greater Canadian independence.<sup>7</sup>

Most Canadians who hold this view and who are so much concerned with Canadian independence are also however devoted internationalists; they are proud of Canada's achievements in the international community and they want Canada to play an increasingly active and independent role in international affairs. They see no point at all in trying to build Canada into a great national power. But for the same reason they see no point in Canada becoming part of a super-power through amalgamation or merger with the United States.

The greatest danger which Canada faces in maintaining its identity comes from one of its closest friends, the United States. During its entire history as a nation, Canada has faced the danger of undue economic, military, and cultural dependence upon this overwhelming neighbour. The relations between Canada and the United States are extremely close and affect every aspect of the national life of each. In religion, in the professions, in business, in labour, in education and in the arts, the pattern of organization is similar in both countries.

A very high proportion of Canadian manufacturing and resource industries are owned by Americans. A very large proportion of trade union members working in those industries are members of international unions which basically are American controlled.

The trade crossing the Canadian-United States border is the largest by far between any two countries in the world. About 70% of Canadian imports come from the United States and about 70% of Canadian exports go to the United States.

Similarly, with regard to military arrangements, Canada is closely allied with the United States through the North Atlantic Treaty Organization (NATO), the North American Air Defence Agreement (NORAD), the ALCANUS Military Agreements, and the Defence Production Sharing Agreements.

These relationships — economic, military and cultural — are probably closer than between any two other countries in the world, and because the United States population and economy are over ten times as large as ours, the danger of Canada becoming unduly dependent upon the United States is extreme.

### *Is A Separate Identity Possible for Canada?*

Many wise Canadians believe that it is not possible for Canada to retain its identity, or that the opportunity has already been lost. In 1866 Goldwin Smith said:

Grow the American federation must . . . but the growth shall be that of peaceful expansion and attraction, and not of forcible annexation . . . the British North

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<sup>7</sup> *Supra*, note 2 at 11.

American colonies will in time, and probably at no very distant time, unite themselves politically with a group of States, of which they are already by race, position, commercial ties and the characteristics of their institutions, a part.

That comment was made just over a hundred years ago and was followed by Confederation.

In this book, *Lament for a Nation* George Grant has said more recently: This lament mourns the end of Canada as a sovereign state . . . . The confused strivings of politicians, businessmen, and civil servants cannot alone account for Canada's collapse. This stems from the very character of the modern era. The aspirations of progress have made Canada redundant. The universal and homogeneous state is the pinnacle of political striving.<sup>8</sup>

Donald Creighton has expressed the opinion that:

Canada has lost its sense of unity and purpose, and with these it has lost its creative powers. What was in the middle nineteenth century a recognizably Canadian body of political thought has now vanished. Canada is bankrupt, and like all bankrupts who have not been discharged, it tries to go on borrowing from the nearest available creditor, in this case the United States.<sup>9</sup>

In a book published in 1968, Mr. George Ball, former United States Under Secretary of State, had this to say about our country:

Canada, I have long believed, is fighting a rearguard action against the inevitable. Living next to our nation, with a population ten times as large as theirs and a gross national product fourteen times as great, Canadians recognize their need for United States capital; but at the same time they are determined to maintain their economic and political independence. Their position is understandable, and the desire to maintain their national integrity is a worthy objective. But the Canadians pay heavily for it and, over the years, I do not believe they will succeed in reconciling the intrinsic contradiction of their position. I wonder, for example, if the Canadian people will be prepared indefinitely to accept, for the psychic satisfaction of maintaining a separate national and political identity, a per capita income less than three-fourths of ours . . . .  
. . . . Sooner or later, commercial imperatives will bring about free movement of all goods back and forth across our long border; and when that occurs, or even before it does, it will become unmistakably clear that countries with economies so inextricably intertwined must also have free movement of the other vital factors of production — capital, services and labour. The result will inevitably be substantial economic integration, which will require for its full realization a progressively expanding area of common political decision.<sup>10</sup>

No Canadian "nationalist" could have described the danger more clearly.

### *The Desire to Remain Canadian*

Despite the opinions of these wise men, the great majority of Canadians stubbornly persist in wanting to remain Canadian. The average Canadian man in the street wants Canada to retain its national identity, and if the issue were put to him clearly he would probably accept a lower standard of

<sup>8</sup> G. Grant, *Lament for a Nation* (The Carleton Lib. Ed., Toronto: McClelland and Stuart Ltd., 1970) at 2, 53.

<sup>9</sup> D. Creighton, *Towards the Discovery of Canada* (Toronto: McMillan of Canada, 1972) at 305.

<sup>10</sup> G. Ball, *The Discipline of Power* (First Ed., Boston: Little Brow & Co., 1968) at 113.

living, if necessary, in order to maintain Canada as an independent country. The *Watkins Report*,<sup>11</sup> the *External Affairs Committee Report*,<sup>12</sup> the *Gray Report*,<sup>13</sup> several Provincial Reports<sup>14</sup> and the recent statement by Mr. Sharp published in *International Perspectives*<sup>15</sup> all reach the same conclusion — that the situation, though difficult, is not hopeless, and that Canada can maintain its national identity even though the world is becoming increasingly interdependent. They also recognize that our present policies, if continued, will result in ever increasing integration with the United States and that to strike out in new directions, to reverse the trend, will take a great deal of time, a great deal of patience, a great deal of thought and above all, a great deal of courage. It will involve sacrifices which cannot be shifted to any one group in our society but must be borne by all.

In the final analysis, it seems clear that Canadians are determined to preserve their identity and independence and will be able to do so if they see the issue clearly. The great danger arises from the fact that the issue is very rarely presented to the man in the street in clear cut terms. As pointed out in the *External Affairs Committee Report*, the real danger which Canada must guard against is that it will lose its independence as a result of drifting gradually into a position of extreme dependence on the United States.<sup>16</sup> Canada's dependence upon the United States has been built up over many years. Unless appropriate governmental action is taken, any sudden change could result in the closing of some plants, unemployment for some Canadians and possibly higher consumer costs for others. In such circumstances it will be these issues, rather than the problem of Canadian identity, that will occupy the forum of public attention.

To avoid this danger, it is necessary that Canadians should recognize that it does exist, they should understand the significance of action taken to lessen dependence upon the United States and to preserve Canadian identity and independence, and they should be satisfied that effective action will be taken by their government so that any costs and sacrifices involved will be shared by all Canadian fairly and not borne by particular individuals, groups, or regions.

The preservation of national identity does involve sacrifice. No doubt Canadians would be better off economically if Canada formed part of the United States; certainly the average American today has a significantly higher

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<sup>11</sup> *Report of the Task Force on the Structure of Canadian Industry* (Ottawa: Queen's Printer, 1968).

<sup>12</sup> See *supra*, note 6.

<sup>13</sup> *Foreign Direct Investment in Canada* (Ottawa: Info Canada, 1972).

<sup>14</sup> *Report of the Interdepartmental Task Force on Foreign Investment* (Ont.: Queen's Printer 1971); *The Proceedings of the Ontario Conference on Economic and Cultural Nationalism* (Ontario: Queen's Printer, 1971); *Preliminary Report of the Select Committee on Economic and Cultural Nationalism*, tabled in 1972 in the Legislative Assembly, (Ontario).

<sup>15</sup> *Supra*, note 2.

<sup>16</sup> *Supra*, note 6 at section 1.08.

standard of living than has the average Canadian. An even greater sacrifice may be necessary over a period of time if effective action is taken to reduce our present dependence upon the United States. As indicated earlier, many people believe that Canadians are not prepared to make such a sacrifice "for the psychic satisfaction of maintaining a separate national and political identity".<sup>17</sup>

Why should Canadians be expected to make this sacrifice? Is their determination to maintain their identity and independence, even though it involves economic loss, based on pure emotion, or is there some good reason for it? The answer to this question is important, particularly since we have often been described as people who are unsure of our national identity.

The evidence presented to the External Affairs Committee in its review of Canadian-American relations established clearly that, in spite of many similarities with their American neighbours, Canadians believe that Canada is a distinct country with distinct problems that demand Canadian solutions, and that it is different from the United States in its most basic traditions, its languages, its culture, its laws, its judicial system and its political system. This may be enough to explain their determination to maintain their national identity and independence.

On a more philosophical level, Canadians sense that both Canada and the United States are engaged in great experiments in democratic nation building. Throughout recorded history millions of men and women, soldiers and civilians, have died in the struggle to establish democratic government. Twice in this century the struggle has almost been lost, and we cannot yet be certain of the final outcome. In our rapidly evolving world, it is vitally important that a number of such experiments should proceed at the same time. Canadians have been engaged for over one hundred years in a great experiment in creating in this northern half of North America a bilingual, multi-cultural, non-racist, federal, participatory democracy. In some respects this is similar to, but in other respects different from, the American experiment in nation building; and Canadians believe that their experiment should continue side by side with the American experiment, and that both countries have much to contribute in the continuing evolution of democratic principles and democratic government.

The Canadian official ideal was expressed many years ago by Sir Wilfrid Laurier in a speech which has been quoted so often that Canadians sometimes feel a little self conscious in repeating it. Yet it expresses clearly their hopes and aspirations for their country.

Three years ago, when visiting England at the Queen's jubilee, I had the privilege of visiting one of these marvels of Gothic architecture which the hand of genius, guided by an unerring faith, had made a harmonious whole, in which granite, marble, oak, and other materials were blended. This cathedral is the image of the nation that I hope to see Canada become. As long as I live, as long as I have the power to labour in the service of my country, I shall repel the idea of changing the nature of its different elements. I want the marble to remain the

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<sup>17</sup> *Supra*, note 10 at 113.



marble; I want the granite to remain the granite; I want the oak to remain the oak; I want the sturdy Scotchmen to remain the Scotchmen; I want the brainy Englishmen to remain the Englishmen; I want the warm-hearted Irishmen to remain the Irishmen; I want to take all these elements and build a nation that will be foremost amongst the great powers of the world.

In adopting an official multi-cultural policy, this is the ideal Canada has set for itself. Is this ideal possible to achieve? Will it be possible, or even desirable, to encourage within one nation not only the English, Irish, Scottish and French cultures which Sir Wilfrid Laurier had in mind, but also the Indian and Eskimo cultures and the cultures of the many other nations which have contributed their peoples to Canada in more recent years? Perhaps Canada's policy cannot be more than to permit and even encourage (as Canada is doing by multi-cultural grants) those cultures to survive where the will to survive exists and where population numbers and other circumstances are such as to make this possible; but even limited in this way the experiment is a brave one and one well worth trying in a world seemingly intent upon becoming more and more homogeneous.

#### *Basic Principle of Canada's Foreign Policy*

Because relations with the United States are so close, friendship with that country must be the basis of Canada's foreign policy. In his recent article on Canada-U.S. Relations, the Secretary of State for External Affairs concluded:

There is nothing in all this that should be thought to imply a scenario for greater contention. Far from it. There will, of course, be issues, such as Canada's policies on foreign ownership and perhaps in relation to energy and other resources — and in many other areas — where perceptions will differ. The same will almost certainly be true of United States policies as that country continues to grapple with secular and structural problems of economic adjustment. On occasion, as Secretary of State Rogers recently put it, each government 'may be required to take hard decisions in which the other cannot readily concur'. In the main, however, we should expect both countries to manage change in a spirit of harmony and without doing unnecessary damage to interests on the other side. Above all, it is in Canada's interest to work closely with a dynamic and outward-looking United States whose influence and the leverage it can bring into play will continue to be critical to the achievement of some of Canada's principal objectives in the international environment.<sup>18</sup>

But while Canada should maintain friendly relations with the United States, it is important that Canada, as a great trading nation, should maintain friendly relations with most other countries as well and in particular should try to diversify and spread its trade as much as possible so as to lessen its dependence upon the United States.

In seeking to establish its national identity and independence while still maintaining friendly relations with the United States, Canada's earlier experience with Great Britain should prove valuable. During most of the first hundred years of its national existence, Canada was engaged in a continuing struggle for identity and independence, and the problem at that time was

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<sup>18</sup> *Supra*, note 2 at 23.

extreme economic, cultural, and military dependence upon Great Britain. Yet over a period of years, Canada was able to establish its identity and independence while maintaining friendly relations with Great Britain, and recognizing and paying full tribute to the economic, political, military and cultural values resulting from the close relationship with that country. In the next two decades Canadian governments may well have to show equal skill and diplomacy in dealing with the United States.

If Canada is successful by peaceful means in its successive struggles to lessen its undue dependence upon its friends and to maintain its national identity and independence, history may record that Canadians have shown an almost unique ability for creative and democratic political evolution.

### *Dependence on the United States*

#### *Military Dependence*

As a result of the North Atlantic Treaty Organization (NATO), North American Air Defence Agreement (NORAD), the Alcanus Agreements and the Defence Production Sharing Agreements, the defence of North America has been organized on a continental basis, but because of the great difference in size and strength of the two countries, the military relationship cannot possibly be one of true partnership. Necessarily, as a result of following this policy, Canada's defence effort has become almost completely dependent upon the United States; indeed the air defence of the most industrialized and wealthiest part of Canada, including Southern Ontario, has been assigned largely to the United States Air Force. United States military technology is dominant in Canada and there is a large and continuous movement of military personnel between the two countries. This exchange of visits by military personnel far exceeds that of any other branch of government.

In considering the importance of Canada's military dependence upon the United States, Canadians should remember the words of President Eisenhower many years ago when he warned his countrymen of the tremendous power and danger of what he called the military-industrial complex. "In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist." The close integration of the small Canadian military establishment with the mighty American military complex may impose rather similar dangers upon Canadians.

The way back from undue military dependence upon the United States is bound to be long and difficult and one which cannot be explored in this article. It is clear, however, that in considering ways to reduce this dependence, Canadians ought to keep an entirely open mind and be completely objective in considering the advantages and disadvantages to Canada of renewing NATO, NORAD, the Alcanus Agreements, and the Defence Production Sharing Agreements.

### *Cultural Dependence*

The high degree of Canada's cultural dependence upon the United States is well known and need hardly be emphasized here. It was explored in some detail in Section 5.01 of the *External Affairs Committee Report*.<sup>10</sup> The main areas of concern are in radio and TV programs, films, book printing, publishing and distribution, magazines and communications and data transmission.

While Canadians should be concerned about the problems which still exist, they can nevertheless be pleased with action already taken to lessen dependence in this field. This includes the establishment of the CBC and the National Film Board, the establishment of Canadian content regulations by the Canadian Radio and Television Commission, the establishment of TELESAT to ensure Canadian control in the field of satellite communications, income tax provisions to prevent the takeover of Canadian newspapers, the establishment of the Canadian Film Development Corporation, and numerous grants to Canadian cultural and ethnic organizations.

Nevertheless, Canada is still very dependent upon the United States in cultural fields and the importance of further action to reduce this dependence cannot be over-estimated. In an interview a few years ago, the distinguished Canadian expatriate John Kenneth Galbraith was asked whether Canadians should be concerned more about cultural or economic domination. He said:

This is an important question and one which I think is very much misunderstood. In good Calvinist fashion, when Canadians talk about cultural autonomy, they really have economics in mind. They follow my friend Walter Gordon and talk about economic autonomy, which on the whole is rather unimportant. It really doesn't exist any more, anywhere in the world. If I were still a practising as distinct from an advisory Canadian I would be much more concerned about maintaining the cultural integrity of the broadcasting system and with making sure Canada has an active, independent theatre, book-publishing industry, newspapers, magazines and schools of poets and painters. I would be very much concerned that the widest possible support was given by all levels of Government to the preservation of the cultural traditions associated with the particular ethnic groups in Canada, and with French Canada. Also to make sure that Canadian theatre and artists received encouragement. And that people weren't totally dependent on American magazines. These are the things that are important for the maintenance of cultural autonomy. I wouldn't worry for a moment about the difference between Canadian or American corporations.

When Mr. Galbraith was asked whether he thought Canada should make a determined effort to increase its stake in the Canadian economy, he replied:

I would say this is a very minor consideration as compared with increasing the Canadian stake in the things I've just mentioned. These are the things that count.

In giving evidence to the External Affairs Committee the late Right Honourable L.B. Pearson said:

. . . the threat to our national identity and the preservation of a separate Canadian nationalism . . . is even greater from non-economic sources than that from economic and investment sources.

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<sup>10</sup> See *supra*, note 6.

While we may or may not agree with this assessment of the relative importance of economic and cultural dependence, it is certainly true that cultural dependence is a threat, and one which is subtle and difficult to combat, and which must not be overlooked in our preoccupation in dealing with the bread and butter issues involved in economic dependence.

### *Economic Dependence*

In the past, many Canadians have tended to say "Of course Canada should remain independent, no right thinking Canadian would suggest otherwise, but that does not mean that we cannot continue, as we have in the past, to integrate the Canadian economy with the American economy on a continental basis. It is more efficient that way, and for the mutual advantage of both countries." As mentioned earlier, American observers have usually not been so naive, and have realized that economic integration is likely to lead to political integration.

Certainly there is bound to be mutual interdependence between Canada and the United States. Nevertheless, because the United States economy is about fourteen times as large as the Canadian, the interdependence though mutual will always be unbalanced. The developments of the last few years tend to indicate that Canada cannot maintain its national identity and independence unless it can establish a reasonable degree of economic independence. "No self-respecting nation can or should accept the proposition that it should always be economically dependent upon any other nation." That quotation did not come from a Canadian economic "nationalist"; it was made by the President of the United States when he addressed a Joint Meeting of the Senate and House of Commons in April, 1972. The paragraph in which it appears reads as follows:

Canada is the largest trading partner of the United States . . . Our economies have become highly interdependent. But the fact of our mutual interdependence and our mutual desire for independence need not be inconsistent traits. No self-respecting nation can or should accept the proposition that it should always be economically dependent upon any other nation. And so, let us recognize once and for all that the only basis for a sound and healthy relationship between our two proud peoples is to find a pattern of economic interaction which is beneficial to both our countries — and which respects Canada's right to chart its own economic course.

### *Trade*

Canada's economic dependence upon the United States has many aspects. Perhaps the most important is its dependence upon trade with the United States. About 70% of Canada's imports come from the United States and about 70% of its exports go to that country. It is clear that any corporation that obtains 70% of its supplies from a single supplier more than ten times as large as it and sells 70% of its products to that same supplier is dependent to an unreasonable degree upon that supplier. The same principle is probably as applicable to countries as to corporations. The United States is not equally dependent upon Canada because a comparatively small percentage of its relatively smaller volume of imports and exports is with Canada.

Since Canada and the United States are next door neighbours, a high trade flow between the two countries is desirable and almost inevitable. But the fact remains that this results in a high level of dependence upon the United States and a type of dependence most difficult to deal with effectively.

There is some evidence that Canadian subsidiaries of United States parent companies tend to buy a larger proportion of their supplies from the United States than do companies which are not controlled from the United States. Similarly, Canadian companies controlled from the United States are sometimes restricted in exporting to foreign countries. To this extent, action taken to reduce our dependence upon American investment may also over a period of time tend to reduce our dependence upon trade with the United States. There is no easy solution. As indicated in the *External Affairs Committee Report*, we must recognize the vital importance of the problem and the difficulty of dealing with it effectively, and make every effort in every way and at every level to encourage diversification of our imports and exports.<sup>20</sup>

### *Technology*

Canadians have been told often that Canada's future depends upon the development of technologically advanced industries. Yet, as indicated in the *External Affairs Committee Report*, 96% of all the patents issued each year in Canada are issued to non-residents. In the United States the corresponding percentage is 20%, in Japan 36%, and in Sweden 77%.<sup>21</sup> Canadian laws relating to patents of invention and other intangible technological property, including designs and trade marks, are based largely upon British and American laws. These countries were early leaders in technological development and it was in their interests to establish relatively strict laws for the protection of such intangible property, a large proportion of which was owned by their own citizens. At the present time, most Western countries belong to the International Convention for the Protection of Industrial Property, under which reciprocal rights are granted to citizens of countries which are parties to the Convention.

In the past, Canada has acted as though the laws relating to patents and other technological property derived from British and American sources were engraved in stone and never subject to change. Since most Canadian patents are owned by non-residents it would clearly be in Canada's interests to have the patent laws as liberal as possible, within the limits permitted by the International Convention. With its present patent laws, Canada is encouraging dependence upon foreign owners of Canadian patents and discouraging the development of Canadian owned industries in fields requiring high technology.

Canada's strict patent laws may also provide an opportunity for foreign owners to prevent Canadian companies licenced under the patents from ex-

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<sup>20</sup> *Id.*, at section 2.09.

<sup>21</sup> *Id.*, at section 3.14.

porting to other countries, again reinforcing Canada's dependence upon the United States and preventing it from developing wider trade relations.

The Report emphasized that it is vital for Canada's patent laws to be reviewed and probably relaxed. Consideration should be given to the compulsory licencing of all foreign owned Canadian patents on reasonable terms to Canadian owned companies, and the prohibition of the use of Canadian patents to prevent exports by Canadian companies.<sup>22</sup>

### *Trade Unions*

In following the road toward independence, Canada must also take steps to lessen the dependence of Canadian unions upon "international" or American based unions. The *External Affairs Committee Report* points out that in 1967 more than 2,000,000 Canadians were members of local unions and 64% of these were members of locals chartered by international unions. In addition to having a majority of their members in the United States, international unions have their headquarters in that country. In only twelve of the ninety-five international unions reporting under the Corporations and Labour Unions Returns Act did Canadian membership exceed 15% of the total membership.<sup>23</sup>

Practically all of Canada's major export industries, including automobiles, steel, pulp and paper, and chemicals, are governed by the terms of collective agreements with Canadian branches of American based unions. Indeed, of the 15,676 collective bargaining agreements reported as in existence in Canada, 12,620 or 81% were held by locals of such unions.

From a legal and constitutional point of view, it is clear that international unions exercise wide control over Canadian locals. However in actual practice, the pattern of control in Canada spans the widest possible spectrum. In general, the officers and employees of international unions in Canada are Canadians resident in this country. There are some international unions whose control of Canadian local union activities is very small. On the other hand, there are internationals whose control over Canadian local unions is substantial. Between these two positions there is a broad continuum of different degrees of local autonomy.

An extreme example is in the automobile industry. Because of the Canadian-U.S. Automotive Trade Agreement, the Canadian and American automotive industries are now integrated on a continental basis. Collective bargaining between the United Automobile Workers and the Big Three auto makers is also on a continental basis. While there are Canadian labour representatives on the labour bargaining committee, they are outnumbered by representatives of American labour whose views are bound to be dominant. Nor can it be assumed that the interests of Canadian and U.S. labour will always coincide. Because of the size of the automotive industry and the num-

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<sup>22</sup> *Id.*, at section 3.36.

<sup>23</sup> *Id.*, at section 4.01.

ber of its employees, the continental integration of the industry has seriously impaired the ability of Canadian governments to deal effectively with it.

The *External Affairs Committee Report* notes that while on balance the international union organization has been advantageous to the trade union movement in Canada, it has had serious disadvantages. These include the fragmentation of the trade union movement in Canada among a large number of unions corresponding with the unions of the much larger American economy, and the dependence of many Canadian locals upon headquarters in the United States.<sup>24</sup> The *Report* indicates that guidelines should be established to give Canadian sections of international unions full autonomy in all matters relating to Canadian locals and that a division of the Department of Labour be established to obtain and publish information relating to the operations of international unions in Canada and the extent to which they are making progress in lessening dependence of Canadian locals upon international headquarters in the United States.<sup>25</sup>

### *Investment*

Based upon 1967 figures, the *External Affairs Committee Report* indicated that about 25% of all Canadian corporate assets are owned by foreign controlled corporations, of which about four-fifths are American controlled corporations. This foreign ownership is concentrated in two large sectors of the economy — manufacturing and resource industries — where approximately 60% of corporate assets are foreign owned.<sup>26</sup>

In some vital industries, the degree of foreign ownership is particularly high. For example: manufacturing production (60%); mining enterprises (60%); metal smelting and refining industries (85%); petroleum refining (99.9%); automobile industry (95%); rubber industry (90%); chemical industry (83%); electrical apparatus (65%); and the computer industry (90%). It is quite clear that in no other developed country in the world is the extent of foreign ownership as high as in Canada, and it is apparent that effective action must be taken to lessen the disadvantages which result from it. Nevertheless, in order to avoid the feeling of gloom and hopelessness characteristic of those who lament for the loss of Canadian independence, it is necessary to keep the figures in perspective and also to understand what Canadians have done to preserve a degree of economic independence during their first one hundred years of national life.

### *Canadian Regulation of Key Sectors*

For many years it has been Canadian policy to regulate foreign investment or control in certain "key sectors" of our economy.<sup>27</sup> This regulation of key sector industries has varied from industry to industry, and has proved

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<sup>24</sup> *Id.*, at section 4.04.

<sup>25</sup> *Id.*, at section 4.16.

<sup>26</sup> *Id.*, at section 3.01.

<sup>27</sup> *Id.*, at sections 3.04 to 3.09.

effective to preserve Canadian ownership and control of banks and federally incorporated life insurance companies, the railway and airline systems, radio and television broadcasting, and newspapers.

Canadians now take for granted the necessity of governmental intervention in these areas. Quite illogically however, they have assumed in the past that regulation which has proved so successful in the key sectors would for some reason limit the growth of our manufacturing and resource industries and that the principle of *laissez faire* should be allowed to prevail in those industries even though that principle has now been almost universally discredited.

It is surely significant that the Canadian companies which have been most successful abroad — Canada's most successful multi-national corporations — are Canadian banks and life insurance companies. Because of the protection which has been afforded to these companies by key sector regulation, Canadian banks and life insurance corporations have been able to achieve a size which has enabled them to compete successfully abroad. Their operations present a vivid contrast to the branch plant operations carried on by most Canadian subsidiaries of American manufacturing corporations, which have been set up largely to serve the domestic Canadian market and are restricted to it.

#### *Does Foreign Ownership Really Matter?*

Although foreign ownership is exceptionally high in resource and manufacturing industries, in the past many Canadians have asked themselves what difference it really makes as long as the American controlled corporations act as good Canadian corporate citizens. There is evidence that Canadian subsidiaries of American parent companies or multi-national corporations pay their employees as well as Canadian owned companies, they hire Canadian employees and Canadian executives, they take an interest in community affairs and they are generous in supporting community projects. In such circumstances, does it really matter if such a high proportion of Canada's resource and manufacturing industries are American owned? In particular, does it matter who owns the corporations if they are subject to control and regulation by Canadian governments? To take a specific example, does it matter that Canada's oil and gas industry is 82.6% foreign owned (65% American owned) in view of the fact that the operations of the industry are controlled and regulated under provincial and federal legislation.

In evidence given to the External Affairs Committee, Dr. A.E. Safarian expressed the opinion that ownership really was not of any great importance provided that the performance of the companies was good, particularly where the companies were subject to governmental control. Control or potential control by government, not the degree of ownership by private individuals, is what is important.

It has now become apparent, however, that these questions of performance, and control by governments or governmental boards, while interesting and important from some points of view, are not of like significance



when considering the vital issue of national identity and independence. The high degree of American ownership of our resource and manufacturing industries is merely one additional aspect of close economic integration with the United States which increases our already high degree of economic dependence upon that country. For the ordinary man in the street what value is there in theoretical political independence, if most of the decisions relating to employment, inflation and basic economic considerations which affect his ability to work and look after himself and bring up his family are in the final analysis dependent upon decisions made in another country?

Despite arguments based on performance and legislative control, extensive American ownership of Canadian resource and manufacturing industries is undesirable because it increases Canada's dependence upon the United States, and while it may be difficult and take time for Canada to lessen this dependence in certain fields, such as trade and defence, we can certainly take effective action with regard to American ownership of Canadian resource and manufacturing industries.

#### *Specific Disadvantages of Excessive Foreign Ownership*

The specific disadvantages of American ownership of such a large proportion of Canada's resource and manufacturing industries have been described in detail in Sections 3.15 to 3.20 of the *External Affairs Committee Report*.<sup>28</sup> They include large payments to American owners for know-how, management fees and dividends, the fragmentation of the relatively small Canadian market by American owned subsidiaries and branch plants repeating in Canada a pattern more appropriate for the much larger American market, restrictions on exports imposed for business or political reasons by the United States government or United States parent companies, the extra-territorial application of United States laws, restraints upon vital financial policy because of balance of payment regulations and undue dependence upon the United States capital market and the transfer from Canada to the United States of basic research and decision making at the executive level.

These disadvantages are common to all country having a large amount of foreign investment. Canada is unique, however, in facing a much more serious danger arising from the effect of unregulated foreign investment upon national unity. The evidence presented to the External Affairs Committee indicated that the serious imbalance which has existed, particularly in recent years, in the distribution of production and productive capacity and consequently of investment, employment, wealth and income among the five large areas of our country is due, to some extent at any rate, to the "remote controlling" from the United States of the greater part of private investment in Canada. As the decision centers of the Canadian economy are mainly in the United States, the law of inertia and the law of benefits encourage Canadian subsidiaries of United States firms to settle in the central part of the country. The result is economic stagnation in the Atlantic Provinces and Eastern Quebec and lack of industrial diversification in Manitoba and Saskatchewan.

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<sup>28</sup> *Id.*

The economic imbalance among the great regions of Canada is the great enemy of national unity. Canada has been attempting to limit this imbalance by regional development policies. But this has been relatively ineffective and will continue to be relatively ineffective so long as private foreign investment continues to pour into the central part of Canada.

### *Canada's Need for Capital*

It should be constantly emphasized that those who are concerned about the high level of American ownership of Canadian manufacturing and resource industries do not suggest that American or foreign capital should be prohibited. It is recognized that the flow of capital among the countries of the world in response to economic forces is desirable. It is also recognized, however, that foreign investment, particularly when it reaches large proportions, brings disadvantages as well as advantages, and it is important that it should be regulated in the public interest.

The regulation of foreign investment will not in fact stop the inflow of foreign capital, although no doubt any regulation, no matter how reasonable, will tend to diminish it to some extent depending upon how extensive the regulation actually is.

It must be remembered, however, that Canada is now generating much of the capital required for its future development. It is probably past the "takeoff" point. By far the largest part of so-called new foreign capital provided each year is now really Canadian capital. It is made up largely of retained Canadian earnings of foreign owned companies or capital borrowed in Canada from banks or other financial institutions by foreign owned companies.

For many years Canadians have been exporting very large amounts of capital to foreign countries, mostly to the United States, in the form of portfolio investments, i.e. investments which do not give control. In part, this is because so many of Canada's most important and attractive industries are owned by foreign companies which prohibit or limit Canadian participation, thus forcing Canadian capital to the United States and other countries. This Canadian capital now being forced abroad frees American and other foreign capital for investment in Canada. Instead of investing in Canadian portfolio securities, the American and other foreign investors use it to obtain control of Canadian companies by takeovers or direct investment. In brief, Canadian policy in past years has had the effect of helping to supply foreign investors with capital to take over Canadian businesses.

In view of these facts, it is ironic that those who oppose Canadian regulation of foreign investment (for example, former United States Secretary of the Treasury, John B. Connally) argue that such regulation is unnecessary because, on a per capita basis, Canadians invest more in the United States than Americans do in Canada. They neglect, of course, to add that much of this Canadian capital has been forced into portfolio investments in the United States because direct American ownership of Canadian industries through wholly owned subsidiaries limits Canadians in investing in their own economy.

### *Popular Myths — The Timid Canadian*

Those who oppose regulation of foreign investment often claim that Canadians are timid and cautious and are not prepared to risk their money in new ventures, and that Americans are much more prepared to do this. In a study prepared for the Toronto Stock Exchange in 1968,<sup>29</sup> Professor Conway examined this claim and came to the conclusion that it is a myth and that in fact Canadians are not more conservative investors than Americans. On the contrary, relatively more Canadians invest in stocks and invest a larger proportion of their assets in equities than do their United States counterparts.<sup>30</sup> Unfortunately however, because of the extremely high foreign ownership of Canadian industries, almost half of the largest corporations in Canada do not have their shares available on the market. The result is that there is a shortage of common stock, or equities, in which Canadians can invest and this in turn tends to make Canadian equities more expensive to Canadian investors than American equities, thus encouraging the flow of Canadian capital to the United States market.

### *The Role Of The State*

Bearing in mind the drive of American business, backed by the United States government, to secure investment opportunities in all countries of the world and to obtain the natural resources required by American manufacturing industries, and bearing in mind also the relatively large size of the U.S. economy; that about half of Canadian resource and manufacturing industries are already owned by American companies; and that Canadian owned businesses are small in relation to their American counterparts, it is entirely clear that in the competition to develop Canadian resource and manufacturing industries, Canadian owned businesses must inevitably lose out unless Canadian governments intervene. This conclusion is not based upon socialist principles but rather on the practical and obvious facts of business life in the circumstances which now exist in Canada.

A recent newspaper article illustrated the type of problem faced by Canadian business.<sup>31</sup> It pointed out that in 1972 more than \$200,000,000 was committed by U.S. investors to the exploration for new natural gas reserves in Canada. In all, about 18 trillion cubic feet of future Arctic gas supplies have been tentatively committed by operators to U.S. purchasers. Most of this large amount of money represents advance payments on gas that has not yet been found, to be transported through a pipeline which does not yet exist and which can be built only pursuant to a governmental decision which, so we are informed, has not yet been made.

The article explained that most of the United States money comes from gas companies which have special arrangements with the United States Fed-

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<sup>29</sup> G.R. Conway, *The Supply of and Demand for Canadian Equities* (Toronto Stock Exchange, Statistics Section, 1968).

<sup>30</sup> *Id.*, at 10.

<sup>31</sup> See, *The Globe and Mail*, Toronto, December 12, 1972 at B-6.

eral Power Commission to permit them to add such expenditures to their charges to United States consumers of gas. It seems quite clear that, in the absence of governmental assistance, Canadian companies cannot possibly compete with arrangements such as these which in effect are being financially supported by agencies of the United States government and by the American public.

Clearly, there must be a counter balancing force — there must be intervention by Canadian governments. Many Canadians object to such intervention. Very naturally, they dislike governmental regulation and are afraid of an ever growing bureaucracy. It must be remembered, however, that throughout Canada's history public intervention has been necessary to protect Canadian ownership of banks and other financial institutions, transportation, communications, and other key sectors of the Canadian economy. It is now apparent that laissez-faire principles have not worked; instead, they have resulted in an undue degree of foreign ownership of our vital resource and manufacturing industries. The solution is not to resist governmental intervention but rather to recognize that, unfortunately, it is a necessary evil, to concentrate on making certain that the regulation of foreign investment is reasonable and responsible, and to exert every effort to prevent the undue growth of a power hungry bureaucracy whether in Ottawa or in the provincial capitals.

### *Conclusion*

The gist of this article is that American investment in, and ownership of, Canadian industries, particularly resource and manufacturing industries, is a serious problem for Canada. Nevertheless it is a problem which Canada can deal with effectively if it has the will to do so, and in this respect it is vital that further and more effective legislative and administrative action be taken promptly both by Provincial and Federal Governments.

American investment, however, is merely one of many aspects of our economic dependence upon the United States. The American based trade union movement, our dependence upon American technology, and the extent of our undiversified import and export trade with the United States may pose problems even more serious and more difficult to deal with effectively. Moreover, our cultural and military dependence upon the United States may create even greater problems for Canada. Accordingly, Canadians must not become so preoccupied with American investment that they forget to take effective action in these other fields.

Over a period of many years Canada was able to resist integration with Great Britain, and to establish its national identity and independence while maintaining the closest and friendliest relations with that country; it must now show the same ability and diplomacy in its relations with the United States. It is not too late to do this. It is not necessary to lament for the nation, but it is necessary to take action now.

