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BOOK REVIEW

FREEDOM OF RELIGION: A CANADIAN CAUTIONARY TALE

The Resistance to Church Union in Canada, 1904-1939. By N. Keith Clifford. Vancouver: University of British Columbia Press, 1985.

Reviewed by M.H. Ogilvie.*

On 10 June 1925 and in accordance with the *United Church of Canada Act*,¹ the Methodist and Congregational Churches and the Presbyterian Church in Canada were united to form the United Church of Canada. Yet about 150,000 Presbyterians — perhaps as much as thirty-five to forty percent of the membership of the Presbyterian Church in Canada — resisted the decree of Parliament and chose to continue as the “Presbyterian Church in Canada,” although the *Act* expressly stipulated that the church bearing that name was no more. In 1939, the *United Church of Canada Act* was amended to recognize the continuity of the Presbyterian Church in Canada and the right of Presbyterians to use that name.² The continuing Presbyterians after 1925 had never doubted their right to be and to be called Presbyterians, regardless of the doctrine of Parliamentary Supremacy. Unlike the unionists, they clung to the inherited marks of Presbyterianism: the subordinate standard of the Westminster Confession of Faith, the Presbyterian polity of government by church courts and perhaps a dash of the Covenanting spirit. In contrast, the unionist majority appeared as schismatics, abandoning their Presbyterian heritage to facilitate a union with churches that professed distinctively different histories, polities and styles.

In an important and pioneering new book, *The Resistance to Church Union in Canada, 1904-1939*, Professor N. Keith Clifford of the Religious Studies Department of the University of British Columbia chronicles the resistance to union within the Canadian Presbyterian community. He considers the period from William Patrick’s totally unauthorized recom-

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¹ S.C. 1924, c. 100.

² S.C. 1939, c. 65.

mendation of union to the Methodist General Conference in 1902, to the 1939 amendment of the *United Church of Canada Act*. His theme is simply that with the 1939 amendment, the continuing Presbyterians were at least as much winners in the struggle that tore their church asunder — and many families and friendships as well — as the members of the United Church. Their sole aim in the forty years of resistance to the union was to continue in the faith of their ancestors, and Parliament ultimately acknowledged that right. Previous histories of the union — usually written by the unionists — ended with 1925, but Professor Clifford argues that this chapter in Canadian church history is only properly ended in 1939.³

The story re-constructed and narrated by Professor Clifford is a remarkably relevant one if the volume of early *Charter* litigation is indicative of the importance of the protection of religious expression to Canadians, and of the appropriate role for the legislatures and the courts in the protection of religious rights.⁴ Professor Clifford shows how the unionists deliberately used Parliament and the provincial legislatures and the doctrine of Parliamentary Sovereignty to legislate the continuing Presbyterians out of existence, or at any rate to attempt to force them into a new denomination of which they clearly wished to have no part. He further demonstrates how one group within a church seized with ostensible power and support can use its political contacts to muster government influence in Ottawa and in the provincial capitals to ensure the enactment of legislation that overrides the wishes of a minority — even a substantial minority within the same religious organization.

But the story is also one of successful minority resistance and of curial sensitivity to the substantive religious issues at stake. Indeed, taken as a whole the book demonstrates the dynamic nature of religious belief and of religious organizations, and the resulting complexities that the law must address in the protection of the religious expression now so clearly guaranteed by the *Charter*. These difficulties include especially

³ Important earlier accounts include: S.D. Chown, *The Story of Church Union in Canada* (Toronto: Ryerson Press, 1939); J.W. Grant, *The Canadian Experience of Church Union* (Richard, Va.: John Knox Press, 1957); J.T. McNeil, *The Presbyterian Church in Canada 1875-1925* (Toronto: Ryerson Press, 1925); G.W. Mason, *The Legislative Struggle for Church Union* (Toronto: Ryerson Press, 1956); G.C. Pidgeon, *The United Church of Canada: The Story of Union* (Toronto: Ryerson Press, 1950); C.E. Silcox, *Church Union in Canada: Its Causes and Consequences* (New York: Institute of Social and Religious Research, 1933).

⁴ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11. A number of cases are now before the courts, of which the most relevant are those concerning the financing of Roman Catholic schools (as yet unreported). For general discussions see: W.S. Tarnopolsky & G.A. Beaudoin, eds., *The Canadian Charter of Rights and Freedoms: Commentary* (Toronto: Carswell, 1982) at 185-211; W.S. Tarnopolsky, *Discrimination and the Law, Canada* (Toronto: R. de Boo, 1982) at 180-223; D. Macklem, "Freedom of Conscience and Religion in Canada" (1984) 42 U. Toronto Fac. L. Rev. 50.

the need for courts to understand theological issues and the distinguishing features of the multitudinous schools of theological thought, and as well, the ability of the courts to discern who within any religious organization is its true representative (if anyone ever really is). Then, of course, there are legal questions that result, relating to such issues as the extent of legislative and judicial involvement in internal church matters, the techniques that have to be devised for the protection of dissenting minorities (who from a theological perspective might well be the continuing church), and the division or unification of property, especially investments, trusts and estates. That religious fragmentation and denominationalism will be a fact of life — including legal life — for the foreseeable future is clear given the failure of the ecumenical movement within Christianity⁵ and the religious pluralism imported into Canada by recent immigrants representing all of the non-Christian religions of the world.

The Resistance to Church Union in Canada had its origins in the discovery in the early 1970s of the records of the Presbyterian Church Association for the period 1916 to 1925. This Association, based in Toronto, was organized to resist union after the General Assembly of 1916 voted to proceed with unification. The Assembly was acting in response to votes in 1911 and 1915 in which substantial majorities of the entire church favoured union. Professor Clifford has expanded the scope of his studies beyond this narrow, if valuable, ambit to re-examine in considerable detail the personalities, pamphleteering, debates, conferences, assemblies, financial worries and backroom politicking of the church union dispute. He is able to draw a number of new conclusions about the dispute that should fuel future research and writing on the subject.

Although Canadian Presbyterians had actively supported a series of nineteenth-century confessional unions that eliminated the various Canadian Presbyterian splinters of a very splintered Presbyterianism in Scotland,⁶ the resistance to trans-confessional union arose in response

⁵ The most recent frank acknowledgement of the failure of the major Christian denominations to achieve organic union is that in the Anglican-Reformed International Commission 1981-1984, *Report: God's Reign and Our Unity* (Edinburgh: St. Andrew Press, 1984) at 2-3.

⁶ For the history of Scottish Presbyterianism during this period see: A.L. Drummond and J. Bulloch, *The Scottish Church, 1688-1843* (Edinburgh: St. Andrew Press, 1973); *The Church in Victorian Scotland, 1843-1874* (Edinburgh: St. Andrew Press, 1975); *The Church in Late Victorian Scotland, 1874-1900* (Edinburgh: St. Andrew Press, 1978); A.C. Cheyne, *The Transforming of the Kirk: Victorian Scotland's Religious Revolution* (Edinburgh: St. Andrew Press, 1983); A.C. Cheyne ed., *The Practical and the Pious: Essays on Thomas Chalmers (1780-1847)* (Edinburgh: St. Andrew Press, 1985); S.J. Brown, *Thomas Chalmers and the Godly Commonwealth* (Oxford: Oxford University Press, 1982); S. & O. Checkland, *Industry and Ethos: Scotland 1832-1914 in The New History of Scotland*, ed. by J. Wormald (London: Edward Arnold, 1984). The fastest way to understand Scottish history is through Scottish literature and in this regard see: J. Galt, *Annals of the Parish* (Edinburgh: W. Blackwood, 1821; reprinted, Edinburgh: Mercat Press, 1980).

to the novel prospect of the disappearance of Presbyterianism from Canada. The anti-unionists simply wished to preserve their church in the teeth of their Church leaders, who had fallen victim to the wisdom of the prevailing theological liberalism and ecumenism of advanced thinkers of the day — that trans-confessional unions were God's will for His Church. It is hardly surprising, then, to learn that the leaders of the resistance were for the most part elders and laymen (women had no right to participate in church government, although they raised considerable sums of money for missionary work at home and abroad), while the unionists were comprised of advanced ministers, church bureaucrats and theology professors. Nor is it surprising to learn that resistance was centred in Ontario and Quebec, especially in the prosperous, self-confident, urban, professional, middle-class congregations of Toronto and Montreal that had no reason to change and that as the financiers of the Church's work expected to be heard in the Church courts. Denominationalism, not ecumenism, provided a cultural, social and economic identity for the merchants and lawyers of mostly Scottish and Irish origin who had imbibed their Presbyterianism with their mothers' milk. In contrast, the congregations most likely to be unionist were rural congregations in central Canada whose members were slipping away to the cities, and congregations on the fringes of Presbyterian Canada — in the Maritimes and in the West. Over fifty percent of Presbyterians lived in Ontario and Quebec, and it is not surprising that many small Western congregations united with other Protestant churches in their communities long before 1925, if only because of economic necessity.

Content to honour their solemn vow as elders to adhere faithfully to the Westminster Confession of Faith and to maintain and defend the Presbyterian Church in Canada, the lay resistance leaders tended, according to Professor Clifford, to approach the problem from a legal rather than a theological perspective, untainted as most were by philosophical idealism, modern biblical criticism and liberal theology. However, Professor Clifford's findings suggest that both factions were quite sensitive to the use and abuse of legal procedures in their respective causes, both in the church courts and in the civil courts and legislatures. One of the distinctive characteristics of Presbyterian church government, although frequently ridiculed unjustly by Presbyterians themselves, is its sensitivity to the importance of having and following well-structured, open and clearly-defined procedures as a protection for the discussion

and adjudication of substantive rights and issues.⁷ Professor Clifford most capably presents the story of church union in its entire institutional setting.

Indeed, the church union controversy began with several serious abuses of procedure when William Patrick, Principal of Manitoba College, recommended organic union to the Methodists in 1902 without any authorization from the General Assembly whatsoever, and so prompted the Methodists to issue an invitation to the Presbyterians to discuss union. Once the invitation was received, Patrick persuaded the General Assembly to reach an accord on the basis of union with the other churches without consultation with the presbyteries and kirk sessions, and then to send it down to the congregations to vote on, with the weight of the authority of the General Assembly behind it. Patrick was quite familiar with Presbyterian government but deliberately chose to circumvent it, because he believed that he was divinely inspired in inaugurating the union movement. Presbyterians do not as a rule respond to the movings of the Spirit in the absence of presbytery overtures, reports of church committees, General Assembly deliberations, *Barrier Act*⁸ procedures and more General Assembly deliberations. Yet Patrick, who had been in Canada for only 2 1/2 years, received a sympathetic hearing from liberal ministers and professors. He had immigrated to Canada at the age of forty-eight laden with the baggage of Scottish theological liberalism and a knowledge of the Presbyterian confessional church union movement in Scotland. His farewell dinner in Edinburgh had been attended by leading liberal theologians and unionists of the day including Principal Rainy, Lord Overtoun and Professor George Adam Smith. However, although he gained the support of like-minded men in Canada,⁹ Patrick understood little about Central Canadian Presbyterianism or society, and the potential for trouble in circumventing the usual procedures. Professor Clifford's

⁷ The authoritative text is, of course, J.T. Cox, *Practice and Procedure in the Church of Scotland*, 6th ed. by D.F.M. Macdonald (Edinburgh: St. Andrew Press, 1976). Of continuing historical interest are *The First Book of Discipline (1560)* ed. by J.K. Cameron (Edinburgh: St. Andrew Press, 1972) and *The Second Book of Discipline (1578)* ed. by J. Kirk (Edinburgh: St. Andrew Press, 1980). For Canada see: *The Book of Forms* (1981; updated annually).

⁸ The first *Barrier Act* was passed by the General Assembly of the Church of Scotland in 1697: see Cox, *ibid.* at 385. For Canada this was re-enacted by the Presbyterian Church in Canada in 1877: see *Acts and Proceedings* (1877), as cited in *The Book of Forms, ibid.* at para. 293.

⁹ An interesting literature is developing in the "mind" of late Victorian Canada; see, for example: L. Armour & E.A. Trot, *The Faces of Reason: An Essay in Philosophy and Culture in English Canada 1850-1950* (Waterloo, Ont.: Wilfred Laurier University Press, 1981); C. Berger, *Science, God, and Nature in Victorian Canada* (Toronto: University of Toronto Press, 1983); R. Cook, *The Regenerators: Social Criticism in Late Victorian English Canada* (Toronto: University of Toronto Press, 1985); A.B. McKillop, *A Disciplined Intelligence: Critical Inquiry and Canadian Thought in the Victorian Era* (Montreal: McGill-Queen's University Press, 1979); P.N. Oliver, *Public and Private Persons: The Ontario Political Culture 1914-1934* (Toronto: Clarke, Irwin, 1975); S.E.D. Shortt, *The Search for an Ideal: Six Canadian Intellectuals and their Convictions in an Age of Transition, 1890-1930* (Toronto: University of Toronto Press, 1976).

account of subsequent events over the next few decades indicates that the union proposal tended to be communicated from the top down in the church.

But William Patrick, who died in 1911, left a second legacy to the unionists, in that he argued from the start that union should be effected by legislation rather than by a mere voluntary accord of the uniting parties. This suggestion was prompted again by his Scottish experiences in relation to the union of the United Presbyterian Church and the Free Church of Scotland in 1900. A minority in the Free Church resisted union and successfully persuaded the House of Lords in the famous *Free Church Case*¹⁰ in 1904 to award all of the assets and property of the Free Church to the "Wee Frees" who had stayed out of the union. The House of Lords, speaking largely through Lord Halsbury L.C., justified this generosity to a minority principally on the ground that a church is a mere association of beneficiaries who had agreed to be bound by certain rules that if breached disentitled the breacher to the advantages of that association. The majority of the Free Church had breached the rules when it united. The minority, who had re-affirmed the rules by staying out, thus were entitled to all of the benefits of the association. This assimilation of a church with a trust or corporation bound by articles proved unhappy and the following year Parliament intervened to divide the property and assets equitably. Patrick was unsympathetic to the common law's insensitivity to the nature of a church but nevertheless learned the lesson and advocated a legislative resolution of the union debate from the start (provided the unionists could be the legislative drafters).

From the start the union debate would be a public one in the highest court of the church and ultimately in the civil courts. As Professor Clifford's fascinating narrative of the years between 1902 and 1925 reveals, the debate was throughout high-minded, intensely serious and all-consuming for active participants on both sides. Professor Clifford chronicles in revealing detail the intricacies of church politics as they related to the union debate, thereby casting considerable light on that usually less publicised political arena. Low moments, sharp practice and human failings are also, of course, present, but rather less present than might have been thought given the strong emotions such an issue would engender.

By the early 1920s and despite the growing strength of the anti-unionist movement, orchestrated to a large extent by the Presbyterian Church Association, it was clear that a decisive majority wished to proceed

¹⁰ *Free Church of Scotland v. Overtoun* (1904), [1904] A.C. 515 (H.L.). See also F. Lyall, *Of Presbyters and Kings: Church and State in the Law of Scotland* (Aberdeen: Aberdeen University Press, 1980).

with union. In 1923 the General Assembly approved draft legislation by a vote of 427 to 129. With this, the Presbyterian Church Association had to alter the character of its resistance by focusing no longer on church courts, but rather on legislatures and Parliament. It secured the services of Eugene LaFleur K.C., one of Canada's leading legal counsel with a large practice before the Supreme Court and the Privy Council, who advised a negotiated settlement from which continuing Presbyterians should seek to gain as much as possible, rather than active resistance in the courts. Unfortunately, this wise acceptance of the facts was temporarily displaced by the advice of a latecomer to the anti-unionist cause, F.H. Chrysler. Chrysler argued that an injunction should be sought to restrain the Presbyterian Church from proceeding with union, thereby using the courts to delay matters as long as possible. Chrysler, who practised in Ottawa as government counsel before the Railway Board, issued a writ in the Ontario High Court that outlined an argument for opposing union on theological grounds. Legal pleadings are not an appropriate vehicle for discussions of theological minutiae about double predestination and limited atonement, and Chrysler brought predictable public ridicule upon the anti-unionist cause (which had never been about theology in the first place) and was obliged to withdraw the action, thereby losing considerable face for the resistance in the process. Professor Clifford describes this as "one of the most serious blunders of the whole controversy".¹¹

Throughout 1924, legislature after legislature enacted union legislation; however in Ottawa the most important struggle was in progress before the Private Bills Committee where LaFleur persuaded the Committee to introduce an amendment into the *United Church of Canada Bill* to permit individual congregations to vote themselves out of the union prior to the *Act* coming into force. As well, in Toronto the provincial bill was amended to set up a property commission to divide property after the vote and to give Knox College to the anti-unionists. Likewise Quebec legislation followed suit and gave Presbyterian College to the anti-unionists.

The congregational vote was held during the winter of 1924-25 and about one-third of the members voted to stay out. Generally speaking, urban central Canadian congregations opted out, and rural and Western and Eastern congregations opted in. The formal split came at the General Assembly of 1925, which was divided into two parts. The first met at College Street Church in Toronto as the last Assembly of the Presbyterian Church in Canada for those going into the union; and the second convened

¹¹ At 146.

at St. Andrews Church, Toronto, under a new moderator as the continuing Presbyterian Church in Canada, although Parliament and the United Church denied them the name and the authority.

In the next few years the continuing Presbyterians attempted to secure an equitable share of the assets and property before the various legislative property commissions and asserted their claim to be the Presbyterian Church in Canada at home and abroad — a claim that was quickly recognized by the Church of Scotland and the United Free Church of Scotland in 1927. At the same time the United Church conducted a public campaign to deny the legitimacy of this claim both in the Canadian press and abroad; in fact, the United Church for a few years successfully persuaded the Alliance of Reformed Churches that it was the successor to the Presbyterian Church in Canada to the exclusion of the continuing Presbyterians. The campaign was not without its amusing, if frustrating, moments, such as the persistence of the then Prime Minister MacKenzie King, a continuing Presbyterian, in according the Moderator of the “Presbyterian Church in Canada” precedence over the United Church Moderator at state functions in Ottawa. The turning point came in 1930 when the Supreme Court of Canada recognized the right of a continuing Presbyterian congregation in Tatamagouche, Nova Scotia to a small benefaction originally made in 1924 to a congregation that had subsequently split with the minority continuing as Presbyterians.¹² This decision implied that some sort of ecclesiastical entity subscribing to the tenets of the Presbyterian Church in Canada had survived 1925. In a series of court decisions in the early 1930s about property claims, the common law implicitly recognized the strong claims of the continuing Presbyterians to that name and identity.¹³ No explicit recognition could have been possible given the clear wording of the *United Church of Canada Act*. By the end of that decade a changed leadership in the United Church recognized that the Presbyterians, who grew in numbers over the decade, would not go away and a joint legal committee of both churches agreed to an amendment subsequently enacted by Parliament that recognized the Presbyterian claim. Thus, by 1939 Presbyterian persistence had forced the United Church to compromise on

¹² *Re Patriquin* (1928), [1928] 2 D.L.R. 791 (N.S.S.C.); rev'd. (1929), [1929] 2 D.L.R. 197 (N.S.S.C. *en banc*); aff'd, (1930), [1930] 3 D.L.R. 241 (S.C.C.).

¹³ See for example: *Re Gray* (1932), [1932] 3 D.L.R. 250 (N.S.S.C.); (1933), [1933] 2 D.L.R. 400 (N.S.S.C. *en banc*); (1934), [1935] 1 D.L.R. 1 (S.C.C.); *Re Thorne* (1935), [1935] 4 D.L.R. 778 (N.S.S.C.); *Re Kelley* (1933), [1933] 4 D.L.R. 416 (N.S.S.C.); (1934), [1934] 3 D.L.R. 379 (N.S.S.C. *en banc*); *Laird v. MacKay* (1938), [1938] 3 D.L.R. 474 (Ont. C.A.). For an anti-Presbyterian analysis of these cases see B.A. Rogers, “Canadian Church Union Cases and the Law of Wills” (1939) 17 Can. B. Rev. 399.

its major claim to be the sole historical successor to the Presbyterian Church in Canada.

The Resistance to Church Union in Canada significantly increases our knowledge and understanding of this painful chapter in Canadian church history. Clifford draws not only upon new historical evidence, but also on the sociology of religion, especially the literature on the relationship of denominationalism and ecumenism, law, theology and church history to present a synthetic and richly embroidered chronicle of a religious dispute of importance to all religious groups in Canada today. Learning from the experience of the *Free Church Case* in Scotland, the unionists attempted to use Parliament to deny the continuing Presbyterians the right to claim that they belonged to the church of their ancestors; that is, they acted like an established church in a country that had recognized the separation of church and state from its foundation and was already religiously pluralistic by the 1920s. Despite Parliament's assertions of 'neutrality' throughout the debate, the central thrust of the legislation was to end the separate existence of the Presbyterian Church in Canada, which might in a different political climate have resulted in the persecution of one religious group. Some anti-unionists perceived this and equated their struggle for religious liberty with that of the Covenanters in seventeenth-century Scotland — undoubtedly an extreme comparison. But for the strength of Presbyterian resistance after 1925 to an enactment of Parliament and the willingness of the courts to clarify the issue as best they could in the absence of constitutional guarantees of freedom of religion, the matter might well have been resolved otherwise.

The story of resistance to church union by Parliamentary fiat was resolved in favour of a determined minority and a chapter of Canadian church history that left much bitterness is closed. Yet it should not be forgotten, although it is unlikely ever to be repeated exactly. Rather, it constitutes an excellent example of how strong religious belief will fuel and fortify both tyranny and resistance with whatever weapons are at hand, including the legislative and judicial branches of government. The history of religion is the history of extremes, not of moderation. Current events in Canada and abroad demonstrate the truism that religious belief is the deepest and most violent human emotion and will stop at nothing to find the expression that it deems appropriate to itself. For legislators and judges charged with the task of ensuring that the *Charter* guarantees of freedom of religion and belief are honoured, the resistance to church union by the continuing Presbyterians for almost four decades

is a cautionary tale with a happy ending and a profound moral lesson. As Professor Clifford writes:

This struggle, therefore, is important for all Canadians because without it the structures of denominationalism, religious pluralism, and religious liberty would have been seriously weakened. Moreover, the levels of tolerance and civility which exist between religious groups and between those groups and Canadian society as a whole would have rested on even more fragile foundations than they do today.¹⁴

¹⁴ At 241.