

MARSHAL SPRING BIDWELL, A REFORM LEADER IN UPPER CANADA

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ABBREVIATIONS

O. A. Ontario Archives, Toronto.

P. A. C. . . . Public Archives of Canada, Ottawa.

T. P. L. Toronto Public Library, Toronto.

V. U. Victoria University, Toronto.

INTRODUCTION

The role of Marshal Spring Bidwell in the Reform Movement of Upper Canada has not been fully realized nor adequately appreciated. In general, Canadian history texts say very little about Bidwell who spent twelve years, from 1824-1836, in the Assembly of Upper Canada. These years were occupied with political change, when the principles of liberalism and democracy were being laid in the fast developing province. Most of the writing about this period has been concentrated on the vivacious personality of Mackenzie, who organized the 1837 Revolt, and on Robert Baldwin whose idea of responsible government was adopted as a basis for our parliamentary system. Bidwell, their contemporary, has been largely overlooked. Some historians have simply omitted his name, while others generally pass him over with a slight acknowledgement as an important leader.

The only major work devoted to the study of Bidwell's role in the development of Upper Canada is J. G. Brown's M. A. thesis, "Marshal Spring Bidwell and the Reform Movement in Upper Canada, 1822-1837", written in 1934, for Queen's University. The emphasis here, however, is on the genesis of the Reform Movement rather than on Bidwell, his policies and his contributions.

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The reasons for this neglect of Bidwell in Canadian history can perhaps be attributed to a lack of readily available information on the subject. Bidwell's Papers, except for information dealing with his banishment, contain very few letters which throw light on his ideas and his work in Upper Canada. The student of Bidwell must resort to public documents and especially to the newspapers of the period.

Other sources of information about Bidwell are found in the collections of private letters of his political contemporaries. The correspondence of the Baldwins and the papers of John Macaulay were especially valuable for this study.

Another reason for the lack of interest in Bidwell may be due to the fact that he was banished from Upper Canada in 1837, and was the only one of the exiled leaders that did not return. Others adopted his policies and his programme and received credit for them.

The purpose of this thesis is to examine Marshal Spring Bidwell's Upper Canadian career, and to determine his impact on the course of events in a period of political transition. The political life of Bidwell is part of the stirring years of Canadian history from 1822 to 1837. To tell the story of his parliamentary career is to give a record of the struggle for more mature forms of government in Upper Canada. Bidwell was personally responsible for many pro-

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gressive reforms, and he advocated policies which were accepted in a later and more democratic age. Today, almost a century after his death, the time seems ripe for the assessment of this neglected political figure of early Canadian history.

CHAPTER I

BIOGRAPHY

People are interesting for what they are as well as for what they do. Before commencing to review Marshal Spring Bidwell's public life, it may be helpful to look briefly at his background, his private life and his place in his local community. A look at Bidwell as a civilian will help to evaluate him as a politician. Therefore, to present a character, to see Bidwell the man is the reason for this introductory chapter.

Marshal Spring Bidwell, son of Mary Gray and Barnabas Bidwell, was born in Stockbridge, Massachusetts, on February 16, 1799. He spent his early years in a home where political interests held an important place. Barnabas Bidwell was a prominent lawyer and an ardent supporter of President Jefferson. In 1801 he was elected to the House of Representatives in the United States Congress, and in 1807 was appointed attorney-general of the State of Massachusetts.

When Marshal Spring was eleven years old, the rather comfortable life of the Bidwell family was suddenly disrupted. Ironically, the unfortunate incident had arisen out of a plan to promote the father in his legal career. In 1810 President Madison wanted to raise the talented attorney-general to the Supreme Court of the United States. A formal investigation of Bidwell's public life was ordered in preparation for this appointment. This normal procedure, however, proved to be

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the ruin of his promising career in the United States. He had served for many years as treasurer of his home county, Berkshire. It was in the treasurer's records that the investigation committee found evidence for some strange charges - alleged forgery and embezzlement of public funds. When the trial was arranged, Bidwell did not appear. Instead of facing his accusers, he fled to Canada with his family.

He later explained his sudden departure by claiming that he saw no chance to prove his innocence before his political enemies.¹ That some figures in the treasurer's accounts had been tampered with has been proved.² But whether it was done by an oversight of the clerk, as Bidwell protested, or whether he himself succumbed to a temptation has never been definitely resolved. In any case, the unhappy episode was the occasion which brought the Bidwells to Upper Canada.

That Marshal Spring Bidwell's father was not a habitual defrauder is indicated by the good reputation he enjoyed in Upper Canada where he lived for twenty-three years. However, the American incident, once it became known, was never forgotten, and was later used to undermine the popularity of his son.

¹ Chronicle, Kingston, February 1, 1822.

² Journals of the Assembly of Upper Canada, 1821-1822, January 4, 1822.

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The Bidwells settled in Bath, a town near Kingston. There was no school in the county of Lennox and Addington, and Bidwell was^{concerned} about his son whose formal education was interrupted when the family moved to Canada. Accordingly, he organized a public school in the county in 1811, and became its first teacher. Marshal Spring attended his father's academy and followed the classical programme which prepared him for his future role as lawyer and politician. He was a bright boy and his father took great care to give him a good education.

Among Marshal Spring's classmates were Christopher Hagerman and Peter Perry, two persons who later entered prominently into his political life. Hagerman, a staunch Tory, the future solicitor-general and subsequently attorney-general of Upper Canada, became a bitter opponent of Bidwell. They were to fight many political battles in the House of Assembly. Perry, on the other hand, was to be Bidwell's long-time colleague. They jointly represented the constituencies of Lennox and Addington for eleven years. The Tory press nicknamed Perry, Bidwell's "battering ram".³

³ Brockville Recorder, December 29, 1831.

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After graduating from the Bath Academy in 1816, Marshal Spring took the oath of allegiance,⁴ and following his father's profession was apprenticed in the law office of Daniel Washburn. Washburn was disbarred before Bidwell completed his term of service. Consequently, he was transferred to the office of Daniel Hagerman and there completed his law studies. The degree of Barrister of Law was conferred on Marshal Spring Bidwell in the spring term of 1821.⁵ He was the sixtieth student to receive the law degree in the province.

In 1818, while still a student at law, Marshal Spring married Clara Wilcox, daughter of a wealthy farmer in the vicinity of Ernesttown.⁶ This was before the Marriage Act was passed in Upper Canada, giving the right to ministers of different religious denominations to perform the marriage ceremony. Bidwell, although not an Anglican, was married by the Reverend O'Kill Stuart, the famous missionary of the Church of England.

⁴ RG5, A1, S Series, Upper Canada Sundries, Vol. 28, p. 12863, M.S. Bidwell to Gore, May 20, 1816.

⁵ P.A.C. Pamphlet 1-1397, Rules of the Law Society of Upper Canada, York, 1833, p. 44.

⁶ Kingston Gazette, October 8, 1818.

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Bidwell's domestic life would have been peaceful and happy were it not for the frequent illnesses and deaths which the family endured. His wife, a warm, affectionate woman, suffered from poor health and was obliged to spend many weeks at a time in the southern United States or in the West Indies. Bidwell himself, although well built and robust in appearance, never enjoyed good health. Illness often prevented him from being at his law office and his father, who was a partner in the firm, conducted the business.⁷

When Bidwell was a member of the Assembly, he was frequently so physically exhausted that his colleagues worried whether he would be able to get through a session. One of the persistent maladies from which he suffered was phlebitis. Sometimes he was crippled for weeks. His poor eyesight, too, must have been a handicap, when one considers the poor lighting facilities in Upper Canada at the time, and the amount of close work a man of his profession had to do.

The year 1833 was especially trying for the Bidwell family. That year Bidwell had made plans to move to York and there open an office. But he was forced to write to his law

⁷ O.A., Miscellaneous Papers, B. Bidwell to J. Small, July 4, 1825, and July 25, 1825.

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firm, "all my plans and expectations and hopes have been crossed by domestic events this summer".⁸ His father died in July, and both Bidwell and his wife were critically ill. In November of the same year, their only son, nine-year-old Marshal Spring Junior, died of scarlet fever. The move to York did not take place until the following year.

Two years later another son was born to the Bidwells, whom they also named after the father. But this child, too, was sickly and suffered from epilepsy. The two daughters, Mary and Clara, likewise inherited the family's poor health. Almost every letter written by Mrs. Bidwell made reference to some illness from which one of the family was suffering. It is important to bear in mind these depressing circumstances of Bidwell's domestic life when evaluating his activity in the public sphere, in order to realize the difficult conditions under which he was forced to work.

Perhaps it was these frequent visits of sorrow, borne with mutual sympathy, which helped to bind the Bidwell family into a very close unit. While serving in the Assembly, Bidwell was obliged to be away from his home in Kingston for long periods. He felt this separation keenly and complained of homesickness.⁹ This was probably one of the reasons why

⁸ O.A., Bidwell Papers, M. S. Bidwell to Ford and Bogert, October 26, 1833.

⁹ Ibid., Same to same, December 12, 1831.

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he decided to move his office and family to York in 1834. Bidwell's strong attachment to his wife and children, and also his deep religious conviction are well illustrated in a letter to his friend John Rolph, a year after his wife's death:

It was questionable for some time whether I would survive the blow. But the greatness of my loss made me sensible of the greatness of the blessings God has bestowed upon me for so many years ... I had my children to care for and to live for and I had the estimable consolation of a firm belief ... Life is a vain show, eternity is real.¹⁰

Bidwell declared himself a Presbyterian and attended that church during his residence in Kingston and Toronto. But the Bidwell's were very likely Congregationalists in Massachusetts, and evidently remained so at heart.¹¹ In their day Presbyterianism was almost non-existent in that state.¹² When the Bidwell's moved to Kingston, there was no Congregational Church so they attended the local Presbyterian Church connected with the Kirk in Scotland. However, the elder Bidwell did not formally join any church until 1825 when he and his son helped to organize an independent Presbyterian Church more in line with the principles of the Congregationalists. This Church was later known as the Union Church, and

¹⁰ O. A., Rolph Papers, M. S. Bidwell to J. Rolph, September 15, 1863.

¹¹ Barnabas Bidwell's father was a Congregational minister.

¹² J. W. Barber, Historical Collections, Being a General Collection of Interesting Facts, Traditions, Biographical Sketches, Worchester, Dorr, Hosuland, 1839, p. 99.

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both Bidwells served as trustees on its board for many years.

In 1827 an address, signed by the two Bidwells as trustees, was sent from the Union Church to the King imploring financial aid for the support of its pastor from the clergy reserves. It stated that they opposed any connection with the national Church of Scotland and protested "a conscientious conviction that it is the right and duty of every church and congregation to elect its own pastor."¹³ This was a basic practice in the Congregational communion. An article in a newspaper of the old Congregational Churches in Canada stated that the Union Church in Kingston was taken over by the Congregationalists in 1831. That year a Reverend John Smith arrived and "became the first Congregational pastor of what was then known as the Union Church".¹⁴ The Bidwells very probably had much to do with bringing this change about. The article mentions that "the Bidwells, father and son, were its leading members". This same Congregational minister preached the sermon at the funeral of Barnabas Bidwell.¹⁵

The Bidwells were contributing citizens in the Kingston and Toronto communities. Their names are found on committees of various philanthropic organizations, and also on

¹³ Q Series, 345-11, pp. 381-385, Petition to His Majesty, November 7, 1827.

¹⁴ The Canadian Independent, Toronto, 1884, Vol. 3. No. 7, p. 212.

¹⁵ Christian Guardian, York, November 20, 1833.

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Lists of donors for missions and other benevolent causes. Both Bidwells served on the committee for promoting education and industry among the Indians and destitute settlers in Upper Canada.¹⁶ Miss Sarah Bidwell, Marshal's only sister, was the secretary of the ladies branch of that organization. She was also one of the managers of the hospital at Kingston run by the Female Benevolent Society.¹⁷ Marshal Spring Bidwell was frequently invited to address the Auxiliary Bible Societies and took an active interest in their work. On several occasions he served as vice-president and as president of the organization.

George Templeton Strong, Bidwell's associate for thirty-five years in the Bidwell and Strong law firm in New York, wrote in his diary that "Bidwell is a first rate man".¹⁸ Bidwell possessed a keen sense of duty. He injured his already poor health by scrupulous attention to the details of his office. He believed in carrying into public career the same high principles which governed his private life. After his elevation to the Speakership in the House of Assembly in 1829, Bidwell wrote to Egerton Ryerson, "I wish Christians would reflect what important consequences may follow from

¹⁶ Chronicle, Kingston, January 1, 1827.

¹⁷ Ibid., May 8, 1827.

¹⁸ A. Nevins, ed., The Diary of George Templeton Strong, New York, Macmillan, IV, p. 449.

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every step taken in public life and especially in the legislature".¹⁹ Bidwell had a steadiness of purpose and of character which marked him for leadership. Character was indeed the secret of Bidwell's life.

Bidwell's reserved nature was but a defence of a most sensitive temperament. He could readily forgive people who differed with him in political views, yet he could nurse a personal grudge for a long time. His son, Marshal Spring Junior, the boy on whom so much paternal attention had been lavished, had married against his father's wishes. Although the son, at the time, was at least thirty years old, Bidwell never forgave him. In his last will and testament he willed \$2500.00 to each of his three children but the residuary property, which must have been quite large, considering his successful practice in New York, was left to the two daughters.²⁰ The son was largely overlooked.

Perhaps it was this sensitiveness, which developed into an almost morbid joy in persecution, that drove Bidwell to insist on a thorough public investigation of his political life as condition for his returning to Canada, after his

¹⁹ J. G. Hodgins, ed., The Story of My Life, Toronto, William Briggs, 1883, p. 195.

²⁰ Kingston Registry Office, General Register 63, copy of the Last Will and Testament of Marshal Spring Bidwell, August 16, 1871.

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expulsion in 1837. He was personally hurt and only a public inquiry, he believed, would clear his reputation. Years after the unhappy event, Bidwell still protested his innocence and complained of the injustice done him. In spite of the many exertions by his friends to induce him to return, and a proposed exoneration by the Canadian government in the form of act of Parliament, Bidwell did not return.

During his twenty-six years of residence in Upper Canada Bidwell played an important part in the Reform movement in the fast developing province. Brilliantly endowed, yet modest and reserved, he strived with dignity and order to bring constitutional reform into a turbulent period of our parliamentary growth. Although born in the United States, Bidwell considered himself a Canadian and was earnestly concerned with native issues and problems. In his public life, Bidwell inevitably had many political enemies, but in the words of C. B. Sissons, "No man in public life who stood apart from the governing class commanded general respect to the same extent".²¹

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C. B. Sissons, "The Case of Bidwell", Canadian Historical Review, Vol. 27, 1949, p. 369.

CHAPTER II

BIDWELL AND THE ALIEN QUESTION

The British government, the governors sent to administer Upper Canada, and the local Tories were all determined to protect the province from inroads of republicanism from the United States. After the War of 1812 the British government prohibited American immigration, and the lieutenant governors were authorized to refuse grants of land to persons of American origin.¹ In 1815 the magistrates were forbidden to administer the oath of allegiance to Americans except with special permission.²

Merchants and land speculators challenged this policy. It also alarmed the American settlers in the province. In response to a vigorous protest of the Assembly in 1817, Bathurst pointed out that the naturalization requirements were those dating to the Act of 1704, which required seven years residence and subscription to various oaths and declarations. These conditions were henceforth to be enforced in the province. Yet, the Bathurst instructions were largely

¹ F. Landon, Western Ontario and the American Frontier, Toronto, Ryerson Press, 1941, p. 48.

² In 1816 Marshal Spring Bidwell had to write for permission to take the oath of allegiance before he was admitted to law school.

ignored and thousands of immigrants from the United States voted at elections and some of them sat in the Assembly.

Before 1820 the alien question was primarily economic. The issue was whether or not the Americans could hold land. In the early 1820's the problem became more serious when the political as well as the civil rights of American settlers began to be questioned. It was the election of the Bidwells, first father and then son, to the Assembly of Upper Canada, which brought the alien question to the centre of the political stage. The Bidwells held the ancient British view of naturalization: that a person could not voluntarily disavow his allegiance.³ With this conviction they defended their own political and civil rights as well as those of their fellow American immigrants.

In this chapter the alien issue will be reviewed in order to show how the Bidwells, especially Marshal Spring, became the central figure in the controversy over the status of the American-born settlers in Upper Canada, and how through the latter's efforts the contentious problem was finally resolved.

In the spring of 1821 Daniel Hagerman, the representative for the county of Lennox and Addington died suddenly,

³ Aileen Dunham, Political Unrest in Upper Canada, 1815-1836, Toronto, Longmans, 1927, p. 75.

and the local Reformers took advantage of this opportunity to bring out the popular Barnabas Bidwell as candidate. He had become well known in Liberal and Conservative circles through his espousal of the Gourlay cause. His newspaper articles helped to arouse public sympathy for Gourlay, as well as bring upon himself the opposition of the Family Compact. Shortly after his arrival in the province, he had struck up a controversy with Doctor John Strachan in the columns of the Kingston Gazette. The Reformers thought that this vociferous American would doubtless impart strength to the opposition in the Assembly.

Bidwell, supposing that his American mishap was either forgotten or not widely known, consented to the nomination and was accordingly elected. His election, by a strong Tory constituency, was a bitter blow to the government party. John Beverly Robinson, a leading Tory, was "positively sick at Bidwell's return".⁴ Bidwell's long-time opponent, Strachan, said that Bidwell's election was "a disgrace to the province",⁵ and that he should be prevented from sitting. To the Tories of Upper Canada the War of 1812 was fought to save the colony

⁴ O. A., J. Macaulay Papers, J. B. Robinson to J. Maucalay, November 18, 1821.

⁵ Ibid., Strachan to J. Macaulay, November 18, 1821.

from American democracy and from men like Barnabas Bidwell. In the post-war years these goals seemed less attainable as settlers poured across the border and brought with them their American ideas. The steadily increasing number of Reformers in the Assembly was considered a direct result of American influence. Hence the Tories determined to help stem this American influence by preventing this influential Yankee from sitting in the Assembly.

During the progress of the campaign, while Barnabas Bidwell was denouncing the domination of the Family Compact, his opponents were investigating his American background. John Boulton was sent to Berkshire, and on the strength of the documents and information obtained by this emissary, a petition was filed with the House of Assembly declaring that Barnabas Bidwell was an alien. He had held office in the United States, and had taken an oath abjuring all allegiance to Great Britain. Furthermore, the petition declared, "circumstances connected with Barnabas Bidwell's character render him unworthy of the high honor of sitting in your august House".⁶

During the trial in the Assembly, Bidwell maintained that, according to the doctrine of natural allegiance, the establishment of a part of the British Empire as a distinct sovereignty did not dissolve the British allegiance of those

⁶ Journals of the Assembly of Upper Canada, 1821-22, November 24, 1821.

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born in the territory before separation, and "that naturalization due and vested by birthright cannot by any separation from the crown be taken away".⁷ He cited precedents to defend the principle of double allegiance. For example, when Americans came to reside in a British dominion their American allegiance ceased; they were citizens of the United States only during their residence there. This was, as the Tories pointed out, a very debatable point, for if Bidwell could be considered eligible on such grounds then "the sons of Monroe and Adams had equal claims". However, in a vote of 20 to 14 the Assembly declared that Bidwell was not an alien, and hence eligible to sit in the House.⁸ It was too dangerous to vote otherwise, because the status of many other members was the same as Bidwell's.

Bidwell's opponents did not give up. When the first attempt to expel him failed, they accused him of being a fugitive from justice. Bidwell contended that he had never been tried or convicted, and that the Assembly had no right to assume his guilt without positive proof. He produced certificates verifying that all demands and accounts in favour of the county of Berkshire had been fully settled. His friends drew up a petition in his defence. Nevertheless, the election

⁷ Chronicle, Kingston, February 1, 1822.

⁸ Journals of the Assembly, November 29, 1821.

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was declared void by a majority of one.⁹ And as it was believed that the electors would again return him, his adversaries determined to disqualify him by special legislation. Accordingly, an act was passed rendering ineligible to a seat in the Assembly those who had held any principal office in a foreign state, or those who had been convicted of felony.

The expulsion of Barnabas Bidwell from the legislature caused much concern among the American immigrants in the province. Although there was much heated discussion over Bidwell's American origin during the trial, he was disqualified not as an alien but for having held office in a foreign state, and for his alleged misconduct in office. The election of his son, Marshal Spring, to the Assembly again raised the alien question.

Following the expulsion of Barnabas Bidwell, a new writ for election was issued for the incorporated counties of Lennox and Addington. Marshal Spring Bidwell was nominated in his father's place. Since he had taken an active part in his father's campaign, the Tories realized that the son would be as formidable an opponent as the father would have been. They decided to continue the opposition and keep "young Barney" out of the Assembly. He would not be disqualified on the same grounds as his father because he had held no office in the United States; nor had he committed any

⁹ Journals of the Assembly, January 4, 1822.

fraud, but he was born in the United States after 1783. It was, therefore, as an alien that they decided to disqualify him.

In a province where more than a half of the population and many members of the Assembly were American-born the alien question was a delicate issue. This was the time of open voting when the state of the polls was known to everyone. In consequence, the election contest promised to be a bitter one.

On February 11, 1822 when the writ of the election was read in Adolphustown, Marshal Spring Bidwell was the first to be nominated. He was followed by Matthew Clark and Thomas Williams. Williams immediately objected to Bidwell's nomination on the ground that he was born in America and was, therefore, an alien. The returning officer, John MacLean, refused to register votes for Bidwell, and Clark was elected to represent the county. The supporters of Bidwell addressed a petition to the Assembly protesting against the legality of the election.¹⁰ The trial was set for February 10, 1823, and Marshal Spring himself appeared at the Bar of the Assembly as counsel for the petitioners. The eloquent speech in which the young lawyer presented his case proved to his opponents that their fears of the younger Bidwell were not groundless.

The facts of the contested election were presented in the petition. The Assembly had resolved that if the

¹⁰ Journals of the Assembly, January 21, 1823.

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allegations were true it was sufficient to void Clark's election. Hence Bidwell's defence did not aim to verify the facts of the episode; these could easily be proved by witnesses. He was concerned with considerations which were of greater importance to a large segment of the population in the province, and discussed the legal and the constitutional aspects of the alien question.

The case presented two questions - was the rejected candidate eligible, and had the returning officer a right, under the circumstances, to decide the question? First, Bidwell argued that his father was a natural born British subject who had held office in the state of Massachusetts, but who had not taken any oath of abjuration of his natural allegiance. The oath only required him to defend the constitution of the United States while he was in office. Marshal Spring Bidwell had resided in Upper Canada since 1812, had taken the oath of allegiance and supremacy, and had been admitted to the Bar. On these grounds Bidwell contended that he came within the provision of 7th Anne, c.5 and 4th George II, c.4, by which all persons born out of the King's allegiance, but whose fathers were natural born British subjects, were to be considered British subjects. He maintained that the treaties of 1783 and 1795 did not dissolve natural allegiance; it could only be dissolved by an act of parliament. Because the father was never absolved from his natural allegiance, the son was a British subject, and eligible for

election.

That such must have been the opinion of Simcoe and the other early governors with regard to American status could not be doubted, because Americans were invited to come to Upper Canada to buy land, and to invest their capital.¹¹ Now their land titles were being questioned. This, Bidwell held, was a gross libel on the integrity of their highest authority - the British Parliament.

The returning officer's right to decide on the eligibility of the candidate, Bidwell pointed out, was a complicated question with important bearings upon the civil and political rights of a large portion of the population. He concluded that the returning officer had overstepped his authority, and encroached upon the constitutional rights of the Assembly, which alone had the right to decide on the eligibility of its members. On that count also, Bidwell declared, the election should be nullified.

Bidwell then proceeded to strike at the heart of the question. Persons in the same position as he in the matter of allegiance were admitted to vote in the election. If he were an alien, so were they, and their votes were illegal. Consequently, it could not be determined whether the sitting member had a majority of legal votes. Hence the election was void upon that ground too.

¹¹A. Shortt and A.G. Doughty, eds., Canada and Its Provinces, Toronto, Glasgow - Brook, 1914, Vol. III, p. 328.

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During the debates on the eligibility of the younger Bidwell the whole status of the American-born immigrants was brought into the open. Bidwell's opponents argued that at the close of the revolutionary war the British King relinquished all claim to the people of the United States, and a peace was declared between Great Britain and the citizens of the United States. By this treaty, the Americans became free and independent and aliens to their former sovereign. Barnabas Bidwell, as a citizen of the United States, was a party to that treaty. His son, born in 1799, was therefore, foreign born. Their arguments were legally sound, but it was evident that their conclusions were based on political considerations

Nevertheless, the strongest argument for Bidwell's eligibility was the fact that so many other people in Upper Canada were in the same position. Whatever the legal arguments, the undeniable fact was that Americans were invited to settle, had settled, and for years enjoyed the rights of citizenship. Because the majority in the Assembly realized the magnitude of the question before the House, they decided on a course which was most expedient for the province. A motion brought in by Doctor Warren Baldwin declaring Bidwell an alien was lost, and in a vote of nineteen to seven Bidwell was declared eligible to sit in the Assembly.

The "Bidwell Case" was widely debated in the newspapers. The Montreal Gazette referred to the Assembly's decision as "an alarming doctrine", which implied "that any man

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who had the courage to swallow the oath of allegiance, whether he was otherwise qualified or not" was entitled to vote and be elected to the Assembly.¹² The Kingston Chronicle assailed the conduct of the Assembly as unpatriotic - a house filled with "rebels and traitors".¹³

The Loyalists' ire, too, was up. They remonstrated against a precedent which made no distinction between a true loyalist and an "American adventurer". They pointed to the absurdity of a principle which would enable the son of an official of the government of the United States to come to Canada, be elected, and legislate for the people while his father at the same time might be making laws across the border.¹⁴

The American-born settlers defended their position. They replied that, until this current campaign, they had always been considered as British subjects, and thought this "springing a trap of allegiance upon them" unjust and impolitic.¹⁵ The popular conclusion drawn from the Bidwell controversy was that the government party was trying to adopt a method that could be used to remove its political opponents

¹² Upper Canada Gazette, Kingston, March 13, 1823, reprinted from the Montreal Gazette, February 28, 1823.

¹³ P.A.C. Pamphlet, 1-1196, An Abridged View of the Alien Question Unmasked, York, Canadian Freeman Office.

¹⁴ Upper Canada Herald, Kingston, March 23, 1823.

¹⁵ Ibid., March 18, 1823.

by depriving them of their political rights. The Attorney-General, J. B. Robinson, referred the status of the two Bidwells to the law officers of the Crown in England.¹⁶

In the meantime, a new writ was issued for the election in the counties of Lennox and Addington, beginning on Monday, March 24, until Saturday, March 29. Bidwell and George Ham were the candidates, with Robert Stanton as the returning officer. This election was also ill-fated. Lieutenant Governor Maitland, in assigning the dates, overlooked the fact that they included Good Friday, a public holiday. The returning officer adjourned the polls from Thursday till Saturday and prolonged the elections till Monday. He did this with the consent of Ham, but not of Bidwell who insisted that according to law the polls must be held open on the exact days designated by Maitland. Bidwell was willing to have the polls closed during church services on Friday but not over the entire day,¹⁷ because many labouring people would take advantage of the holiday to come to vote. On Saturday morning Bidwell protested the illegality of the proceedings, and on Monday he did not even attend the polls, declaring that the elections on that day were positively prohibited by law. When the polls closed on Thursday and Saturday,

¹⁶ Q Series 337 - II, p. 401, Robinson to Bathurst, October 30, 1824.

¹⁷ Upper Canada Herald, Kingston, April 8, 1823.

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Bidwell had a majority of votes. But on Monday Ham polled a majority of thirteen, and he was declared elected.

Bidwell's supporters again filed a petition with the Assembly, protesting against the legality of the adjournment of the polls from Thursday to Saturday without the concurrence of one of the candidates, and that the continuation of the election beyond Saturday was contrary to law.¹⁸ They insisted that Bidwell was entitled to a seat in the Assembly because he was elected by a majority of all votes legally polled.

Maitland was asked to settle the problem which he, inadvertently, had created. He admitted that he had overlooked the fact that the dates included Good Friday, which would have not made the election illegal and declared that the returning officer had no right to change the date of adjournment. The election was nullified.

On January 19, 1824 the Assembly passed an act requiring seven years residence and an oath of allegiance for election to the Assembly. This measure qualified Marshal Spring Bidwell but the law which barred his father remained in force. In the general election which took place a week later, Bidwell and Peter Perry were elected to represent the counties of Lennox and Addington.¹⁹

¹⁸ Journals of the Assembly, November 13, 1823.

¹⁹ In the previous session the counties were separated and hence could send two representatives.

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Marshal Spring Bidwell was coming to be recognized as a spokesman for the American settlers in Upper Canada. When he was finally elected to the Assembly, he was determined to achieve a definite settlement of the alien question. The verdict of the law officers in England declared both Bidwells ineligible for public office, and persons in their position were aliens.²⁰ The lawyers were confident "that this question which has been so long and so frequently agitated ... be considered as finally determined". The issue may have appeared closed to the English lawyers, but in Upper Canada there were four stormy years ahead before the status of the American-born settlers would be resolved. Fortunately for Bidwell, the news of the verdict did not reach Canada until 1825. By that time an act of the Assembly had qualified him and he was allowed to retain his seat in the House, as this decision, if applied, would have disqualified most of the sitting members.

The Constitutional Act of 1791 provided that natural-born subjects, subjects naturalized by conquest of Canada, were entitled to full British citizenship.²¹ This Act could not be changed or repealed by provincial legislation, but the

²⁰ Q Series 237, p. 245, Law Officers to Bathurst, November 13, 1824.

²¹ W. P. Kennedy, ed., Statutes, Treaties, and Documents of the Canadian Constitution, 1713 - 1929, Toronto, Oxford University Press, 1930, p. 752.

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provincial parliament had power to enact legislation regarding aliens which would not conflict with the imperial act.

The provincial legislature had passed several acts which were designed to regulate the status of the American settlers. The Act of 1795 disqualified as members of Assembly persons from without His Majesty's dominions who had not been British subjects for seven years after their arrival in the province. In 1800 an act was passed denying the right to vote to persons who had sworn allegiance to a foreign state, unless they resided for fourteen years in a British colony and had taken the oath of allegiance. The 1818 act changed the required term of residence back to seven years.

These acts were popularly interpreted to mean that settlers of the requisite standing and property qualification were entitled to vote and sit in the Assembly, whether their antecedents were American or British.²² All this provincial legislation did not, of course, modify the provisions of the Imperial Act of 1791, and it did not clarify the basic problem. For, if Americans were not British subjects, then they could not become so under any act then in force. On the other hand, if they were to be considered subjects, then their situation would involve the absurdity "that in 1815 they could be legal proprietors of our soil which in 1814 they

²² Dunham, *op. cit.*, p. 68.

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could have invaded without incurring the guilt of treason"²³

It was apparent to both sides of the controversy that the question of allegiance to Great Britain could not be decided in a dependent colony. Both the governor and the Assembly appealed to the Crown, petitioning for remedial legislation in order to resolve the problem of the status of American settlers. The British government, however, did not want to get involved with the explosive question of naturalization. England had always maintained that it was impossible for a British subject to renounce his allegiance of his own volition. The British had claimed their right of search on this contention. However, they realized the impossibility of applying this interpretation to Upper Canada. Yet, an act which would consider American residents aliens would put Britain in an awkward position of denying in international negotiations what they admitted in colonial legislation. To the officials, the safest way to get rid of the troublesome question was to solve it in the province. Accordingly, the British government instructed Maitland to obtain provincial legislation conferring the civil rights and privileges of British subjects on resident Americans. The Canadian legislature was given the opportunity to settle the question.

²³ Q Series 346 - I, p. 282, Robinson to Smith, February, 1818.

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It was evident, however, that the two Houses in York would not agree on the method of bringing about this settlement. In the fall of 1825 the Legislative Council of Upper Canada passed a bill which pronounced Americans as aliens, but conferred on them certain rights regarding the holding of land. The existing laws of the province concerning the rights of voting and serving in the Assembly were retained. Bidwell and his supporters in the Assembly were on the alert. If the British lawyers' decision over the Bidwells was to be enforced, the operation of the proposed act of the Legislative Council would be narrowed to property holding rights and all American settlers would be disfranchised. Bidwell and the Reformers were aiming at obtaining a declaratory Act, which would confirm, without condition, full British citizenship on all who resided in Upper Canada for seven years.

Accordingly, Bidwell moved an amendment to the Council's bill to the effect that all persons residing in the province who were born in a British dominion, or whose parents were born British subjects, should be entitled to all rights and privileges.²⁴

Bidwell's amendment met with vehement opposition. Attorney-General Robinson, in a burst of emotion, said that

²⁴ P.A.C. Pamphlet, I-1196, Alien Question Unmasked, p.8.

he would rather die than consent to such a measure that would confer the rights of subjects on men, who, but a few years ago, "had invaded our country ... and murdered our wives and children".²⁵ In the Assembly, however, there were enough supporters of Bidwell's amendment. It passed, but was rejected in the Legislative Council, "the strong hold of loyalism".

A contest then developed between the Legislative Council and the Assembly as each tried to impress its ideas on the colonial office.²⁶ This conflict only further convinced the British authorities that the act of naturalization must be a provincial one. Again instructions were sent to Canada specifying a measure to be passed by the colonial legislature. The instruction stated that all Americans were aliens, whether they were born before 1783 or after. The proposed measure was to naturalize those Americans who had resided in the province for seven years. All others had to wait the completion of the required term of residence. Further, persons applying for British citizenship were to take an oath renouncing their American allegiance.²⁷

²⁵ Ibid.

²⁶ Q Series 340 - I, House of Assembly of Upper Canada to His Majesty, January 13, 1826; Q Series 342- II, p. 374, Minutes of the Executive Council of Upper Canada, February 3, 1826.

²⁷ Dunham, op. cit., p. 74.

Early in 1827 Attorney-General Robinson proposed a bill in accordance with the instructions of the Colonial Secretary. The American settlers resented the clause which required them to register before their land titles could be confirmed.²⁸ The other provision, equally objectionable, restricted British citizenship to Upper Canada. Upon entering any other part of the British Empire, the American-born settlers had to resume the character and disabilities of aliens. The bill, on the first reading, was rejected by the vote of the Speaker, John Rolph (Bidwell's powerful colleague in the alien controversy), seconded by Bidwell, placed the rejected bill again on the order of the day. Rolph and Bidwell hoped that when the supporters of the measure saw that it met with a natural death in its present form, they would be willing to accept amendments.²⁹ Their strategy failed. Because of the absence of two or three members of the opposition, the bill was rushed through the second and third readings, and was passed in the same form in which it was rejected a week before.³⁰

The Attorney-General's bill easily passed the Legislative Council and, according to the instructions, was reserved for His Majesty's pleasure. In the interval, the

²⁸ Upper Canada Herald, Kingston, January 16, 1827.

²⁹ Canadian Freeman, York, March 1, 1827.

³⁰ Upper Canada Herald, Kingston, January 23, 1827.

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Colonial Office was swamped with petitions for and against the measure. The governor and councils considered the bill very generous, for they looked with "jealousy on the admission of foreigners into our legislature".³¹ They thought the registration procedure a small price to pay for "the honors of British citizenship". On the other hand, several leading American settlers of York formed "The Central Committee of the Inhabitants of Upper Canada" whose purpose was to work for the disallowance of the attorney-general's alien bill. It held public meetings, circulated petitions, and finally sent to England Robert Randall, a native Virginian, as their spokesman against the bill. Randall was well received at the Colonial Office and gained the support of the English radicals in Parliament. The bill was disallowed. Lord Goderich did not want the bill to be passed in England as it would have given rise to discussions of the delicate question of general naturalization, which the English radicals threatened to do if the Canadian alien bill was not disallowed.³²

This action of the British government was a painful rebuff to the anti-American element in the province. Maitland who had opposed every step leading towards relaxation of the exclusive policies was mortified by the triumph of the

³¹ Q Series 344, p. 416, Maitland to Goderich, October 2, 1827.

³² Upper Canada Sundries, Vol. 84, p. 46005, Strachan (from England) to Hillier, June 22, 1827.

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"republican faction".³³ John Coleman, a staunch Tory in the Assembly, paid Bidwell and Rolph an unintentional compliment when he said that had last years's bill been introduced "by either of the above gentlemen it would have passed and met with the approval of the people".³⁴ He hoped that in the future all bills having a popular appeal would be introduced by either Bidwell or Rolph, and then no objection would be raised by the people.

Accompanying the disallowance of the alien bill were instructions to the Canadian legislature to pass an act which would confer full privileges of British citizenship on all persons who came to the province before 1820, or who had received grants of land from the government, held public office, or had taken the oath of allegiance. Those who entered after 1820 would be admitted after seven years residence. The instructions did not provide for the naturalization of future American immigrants, for, officially, American immigration was forbidden.

The way to settlement was now open. With the general election coming in July, it was imperative to have the alien problem settled in order to remove doubts as to the rights of voters. Bidwell, who was associated with the genesis of

³³ Q Series 347, No. 23, p. 25, Maitland to Huskinsson, May 12, 1828.

³⁴ United Empire Loyalist, York, February 16, 1828.

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the question, introduced the measure which brought the long civil rights controversy to an end. The Legislative Council, realizing the disturbance that continued opposition to the naturalization of American settlers was creating in the province, made no further protest. It did, however, amend the fourteenth clause of Bidwell's bill which would have repealed all former provincial legislation regulating the qualifications of aliens. This clause had a special importance to Bidwell, as it would have removed the legislation which disqualified his father. The amended clause made certain that no previous legislation was to be affected by the new alien bill. Bidwell thought that the Council's amendment was not in accordance with the spirit of the instructions from the Colonial Secretary, but since not too many people would be affected by the change, he was willing to comply.³⁵

Bidwell's alien bill which received royal assent on May 7, 1828 made no mention of the offending word alien. It dispensed with the necessity of registration and simply declared all residents of Upper Canada British subjects in accordance with the instructions from the Colonial Office. Finally the last disability of the American-born settlers was removed, and the alien question as a leading political issue had ended.

³⁵ Colonial Advocate, York, March 6, 1828.

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From the early 1820's to its solution in 1828 the alien question had created intense political interest, and was an opportunity for educating the provincial politicians in the methods of constitutional criticism. Professor G. M. Craig dates the beginning of agitation for reform in Upper Canada to the controversy surrounding the alien question.³⁶ The Reform movement was greatly strengthened by the support it received from the American-born settlers, who were well aware that it was the Reformers in the Assembly who had secured for them their rights and their property. The Reformers, who had strongly supported the settlement bill, were heartened by the generous policy of the Imperial government. The success of Randall's petition encouraged them to make similar exertions upon other controversial questions.

The protracted struggle over the naturalization bill, with which Bidwell was so closely associated, kept him in public limelight. His popularity among the Reformers so increased that in the next parliament he was elected Speaker.

³⁶ G. M. Craig, Upper Canada - The Formative Years, 1784-1841, Toronto, McClelland and Stewart, 1963, p. 188.

CHAPTER III

THE POLITICAL IDEAS OF MARSHAL SPRING BIDWELL

The Tories of Upper Canada charged Marshal Spring Bidwell with being a "republican", "a revolutionary", and one "who was bent on severing the colony from Britain". These imputations were attributed in varying degrees to all Reformers of the period. However, Bidwell's American origin made his position more vulnerable, and republicanism and disloyalty were readily ascribed to his political statements and actions. There were, in fact, in the Reform group many shades of political opinions. Generally they agreed on the basic issues confronting them, but the remedies and methods proposed were varied and often conflicting.

Bidwell's political philosophy will be reviewed in this chapter in order to evaluate the Tory accusations and to estimate his contribution to the evolution of parliamentary democracy in Upper Canada. In appraising Bidwell's statements and actions one must bear in mind his basic principle of government: that the government should clearly reflect the opinion of the majority of the governed, and that this public opinion should flow unimpeded into all branches of the government. Bidwell's endeavors to implement this idea of government in Upper Canada will be the subject of this chapter.

The discontent in Upper Canada, which preceded the Reform movement in the 1820's and 1830's, was largely a reaction to the form of government laid down in 1791. By the

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1820's Upper Canada, a rapidly expanding province, was fast outgrowing the need for the controls and centralization established by the Constitutional Act. The defects of the system were obvious. The complete separation between the appointed and the elected branches of the government produced friction. A privileged minority group, the Family Compact, entrenched in the Executive and Legislative Councils, held the reins of government and thwarted the Reformers' efforts to introduce a greater degree of democracy into the political life of the province. The members of the Family Compact held large tracts of the best land in the province, and were associated with every important enterprise. Having a large stake in the province, they were truly concerned with the welfare and security of the colony; yet, in the administration of it, they were grossly partial and distrusted any innovation or reform. They considered themselves the defenders of British heritage and guarded the British colony from the encroachment of republicanism from across the border. Thus anyone who advocated reforms inspired by the American example was branded a republican, and more strongly "a rebel", potentially guilty of disloyalty. In trying to gain more control of the affairs of the colony the Reformers were concerned chiefly with dislodging this oligarchy from its privileged position in the province. The two sides fought strenuously in the legislature and at the polls.

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According to the Reformers the greatest obstacle to good government in Upper Canada was the disregard for the opinion of the majority of the population.¹ One of the remedies suggested for the constitutional difficulties was the introduction of the elective principle, not only into the municipal government, but foremost into the Legislative Council. Bidwell, Rolph and Mackenzie were the chief advocates of elective institutions, but Mackenzie's advocacy of them far out-reached that of his colleagues.

The Legislative Council was a vulnerable target. Many moderate Conservatives, although not sanctioning the elective principle, agreed that the Council "ought to be remodelled", as "its present construction is at once at variance with the letter and spirit of our constitutions".² Even the Colonial Office considered the Legislative Council "the root of all evils complained of in both provinces".³ For years the Council had blocked the work of the Assembly by rejecting or ignoring many of its favorite bills. The Reformers' victory at the polls proved useless in face of the Council's opposition. The extent of this conflict between the two branches of the legislature was indicated by the fact that in

¹ Chronicle, Kingston, March 12, 1831. (Bidwell's speech in the Assembly)

² Brockville Recorder, December 11, 1835, reprinted from the Belleville Intelligencer, a Tory paper.

³ Ibid., May 8, 1835, Letter of Lord Stanley to W.W. Baldwin.

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ten years the Council defeated about four hundred of the Assembly's bills.⁴

Bidwell saw in the elective principle nothing contrary to British institutions. Elective institutions, he claimed, were British "of their very nature and essence".⁵ Saxon kings were elected, and a portion of the House of Peers was still elected.⁶ But Bidwell's strongest arguments for elective institutions were found in his reference to American colonial history, where, he pointed out, most of the early colonies elected their Councils as well as the Assemblies. If it was the privilege of British colonists before, as well as after, the Revolution to elect their own Councils, then he contended, the Canadians were not demanding an innovation by requesting the same rights for themselves. Furthermore, Bidwell maintained, the elective Councils must have proved effective since the States of the Union adopted the elective device in both branches of their legislature.

⁴ Mg. 24, B72, Colonial Office Minutes, p. B6, April 30, 1836.

⁵ T. P. L., Baldwin Room, Letters Addressed to the People of the Canadas on Elective Institutions, Colburg, 1835 p. 40. This pamphlet was probably written by W. B. Wells, former law student in Bidwell's office, but the ideas are so similar to Bidwell's that some historians have attributed the pamphlet to Bidwell. The title page of the copy in the Toronto Public Library is inscribed in Bidwell's own handwriting, "M.S. Bidwell's", but on the cover is the inscription, "To Mr. Speaker Bidwell from Wm. B. Wells".

⁶ Ibid., p.15, "Scotch and Irish Peers were elected".

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In his public statements Bidwell repeatedly pointed out that the Legislative Council in Upper Canada did not answer the purpose for which it was established.⁷ The Council was composed of men from the executive, the chief justice, the archdeacon and a bishop, thus "blending into one body the executive, legislative, judicial and ecclesiastical powers". Bidwell argued that the British government could never have intended that one branch of the Canadian legislature should possess such powers. The councillors, holding office during the pleasure of the governor, inevitably conformed to his wishes and views. Such a body could not claim the respect of the people, as the hereditary House of Lords who had no fear of being removed from office. Bidwell strongly believed that the only way to bring the Legislative Council into line with popular will was to make it elective. As it was now constituted the Upper Canadian Council "resembled the Chamber of Peers, in republican France" rather than any British institution.⁸

Many objections, however, were raised against an elective Legislative Council; the strongest of these was that it would, in reality, create two Houses of Assembly, and give the people a double representation, which in turn would

⁷ Brockville Recorder, March 1, 1832; Chronicle, April 14, 1832, (Bidwell's address to his constituents).

⁸ Letters Addressed to the People of the Canadas, p. 46.

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destroy the balance of power in the constitution. Bidwell denied this. He maintained that actually both Houses were now composed of the same class of people, because there was no other in the province. Since Upper Canada did not have a hereditary aristocracy, it could not pretend to have a House of Peers. He contended that the Legislative Council as now composed, "dependent and subservient upon the executive", actually "destroyed the counterpoise of the constitution", for it gave to the executive the unconstitutional power of enacting laws, and hence encroached on the constitutional powers of the Assembly.

Furthermore, Bidwell pointed out, an elective Legislative Council was not an invention of the Reformers. When the Constitutional Act was debated in the British parliament, Charles James Fox had advocated an elective Upper House for the Canadas. He proposed that a Council be chosen by a restricted franchise from the propertied men of the colony, for this would give it the influence and the power "of guarding against harmful innovations".⁹ Bidwell did not agree with this method of election. Convinced that the idea of an aristocracy, on the English pattern, could not be transplanted into the pioneer North American society, and being adverse to any kind of privilege, he opposed the institution of two

⁹ Ibid., p. 41.

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distinct constituencies with unequal privileges in the same country. He preferred an institution like the American senate which was elected by the same voters as the Lower House, but having a different term of office. The powers of the legislature would then be placed "in different bodies who were differently organized", but who would be directly responsible to public opinion. This was the key idea in Bidwell's constitutional theory.

But citing American precedents was not the way to convince the Tory element in Upper Canada. To advocate American institutions smacked of revolution. There were still many people who remembered the War of 1812, as well as the War of Independence. Moreover, the governing class had pledged itself to keep the British institutions, as they understood them, free from all taint of republicanism. They considered the introduction of the elective principle into the American colonies a fatal mistake in policy, for it had allowed too much popular control of government and consequently led to independence. They feared that the majority of the pioneer populace, living in close proximity to the republican states, and a large portion of them American-born, were unable to appreciate British tradition and heritage. The Tories were apprehensive of entrusting the complicated business of government "to the unbridled democratic will". Solicitor-General Hagerman was convinced that as soon as the

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Legislative Council was made elective the connection with Britain would be dissolved.¹⁰ The Colonial Office also declared that an elected council would lead to a "speedy establishment of a republic".¹¹ The Tory press deemed it a direct avowal of republicanism "that the power of nominating should be wrestled from the King and given to the people".¹² It was this "too much democracy", which, they believed, had weakened the imperial control over the old colonies, that troubled the Tories in Upper Canada.

But Bidwell was not proposing a break with Britain, nor did he desire to establish a republic in Canada.¹³ He argued that he was only trying to secure the rights and privileges to which every British subject, whether he lived in England or in the colonies, was entitled. His campaign for an elective Legislative Council was based on the native demand that the government be made more amenable to popular control. Because he was convinced that a replica of the British House of Peers could not be established in Upper Canada, advocated what he considered a practical solution. Bidwell saw that similar circumstances had produced similar demands

¹⁰ Christian Guardian, York, January 30, 1836.

¹¹ Mg. 24, B72, Colonial Office Minutes, 1830-1836, April 30, 1836.

¹² Courier, York, February 22, 1836.

¹³ I have not found in any of Bidwell's letters or public statements any indication that he wanted to see Upper Canada a state in the United States.

in the United States, and therefore, appealed to American precedents and examples when presenting his policies. Unlike his opponents, Bidwell was not concerned about the origin of a political idea "as long as it was applicable and useful". And if public welfare would be promoted by altering the Constitution, then Bidwell believed, it was the duty of the public servants to "state their opinions". He was certain the people in England would not submit to being ruled by persons, "raised to office under a system of favoritism, without regard to their qualifications".¹⁴ A constitutional monarchy was not contrary to Bidwell's plan of local self-government. He would have retained all that was practical of British institutions for Upper Canada and for the rest developed a system of government suitable for Canadian society.

He considered the solicitor-general's remarks a libel on the people of Upper Canada, for the statement implied that there was much dissatisfaction with the British connection, and that dissolution would inevitably come as soon as the people would have the power. Bidwell was correct in defending the loyalty of Upper Canadians, for both Tories and Reformers, as was proved by later events, valued the British connection. In spite of the impact of the American precedents and the glaring abuses in their own government, the political

¹⁴ Christian Guardian, Toronto, January 30, 1836.

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ideas and policies in Upper Canada remained strongly coloured by British tradition. This tradition nurtured a respect for the monarchy and produced a fearful distrust of anything which might undermine the union with the mother country. (The reaction to Joseph Hume's letter to Mackenzie, and the appeal of Governor Head's election campaign are good indications of how the Upper Canadians could be rallied in defense of their British connection). Bidwell contended that the surest way to preserve this loyalty was to abolish the "irresponsible" body in the government.

The opposition to an elective Legislative Council was not restricted to the Tories; some of the leading Reformers also objected to it. Peter Perry, Bidwell's colleague from Lennox and Addington, disagreed with Bidwell on this point.¹⁵ He admitted the urgent need of reform in the present body, but considered that the elective principle would destroy the purpose of an Upper House, and in such a case "it would be more reasonable to destroy it altogether". Egerton Ryerson, too, opposed the elective device.¹⁶ While the Methodist leader advocated a more liberal distribution of patronage and power, he was averse to what he considered a radical change in the constitution.

¹⁵ Courier, Toronto, January 30, 1836.

¹⁶ R.G. Riddell, "Egerton Ryerson's View of the Government of Upper Canada in 1836", Canadian Historical Review, Vol. 19, 1938, pp. 402-411.

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Robert Baldwin, probably the most conservative of the Reform group, did not see any need for an elected Legislative Council. He maintained that the American example, where the president was also elected, could not be applied to Upper Canada. Here, where the governor would doubtless continue to be appointed by the Crown, other means had to be adopted to give the people the control of the government. Baldwin pointed out that the cause of the friction was between the representative and the executive branches of the government; "the complaint had always been of the influence of the executive upon the Legislative Council and not vice versa".¹⁷ The adoption of the British cabinet system, which Baldwin proposed as a remedy to the existing discord, did not require any reform in the constitution, for, he maintained, it was already implied in the Constitutional Act. In this system the appointed governor would remain a figurehead, acting, like the king, on the advice of his "responsible" ministers. Baldwin contended that it was the resistance of the provincial administration to accept the principle of responsible government that had forced the Reformers "into almost unanimity in the call for an elective Legislative Council".

¹⁷ Q Series 399, No. 33, R. Baldwin to Glenelg, July 3, 1836.

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Mackenzie was the most vociferous of the Reformers in his demand for elective institutions. But, he too, was not completely satisfied with an elected council. He did not think that it would be "the grand panacea for our government ills", unless it was accompanied by an elected governor.¹⁸ Bidwell, it appears, did not see any need to go that far.

The idea of an elective Legislative Council never took strong root in Canada, although the possibility of its adoption has been debated in almost every parliamentary discussion on the reform of the senate. In 1854 the elective principle was introduced in obtaining new legislative councillors, but the practice was not popular and was discontinued after Confederation. "What to do with the House of Lords"?¹⁹ is still today an unsettled question in Canadian politics.

In evaluating the political policies of Bidwell the idea of responsible government should be considered. Although he was not the originator of the concept of adopting a "responsible" executive for Upper Canada, he was its enthusiastic supporter. Baldwin's theory of responsible government, in

¹⁸ P.A.C., Neilson Papers, Vol. 8, p.524, Mackenzie to Neilson, December 28, 1835.

¹⁹ C. New, "The Rebellion of 1837 in its Larger Setting", Canadian Historical Association, Toronto, University Press, 1937, p. 14, quotes The Times, London, August 1833.

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which the real administrative power would be placed in the executive ministers who had the confidence of the majority in the Assembly, fitted well with Bidwell's theory of government. An elected legislature and an Executive Council responsible for its official acts to that legislature would place the complete control of the internal affairs of the province into the hands of the people. Local self-government was the ultimate goal for which Bidwell and the Reformers were striving.

In the 1830's the Reformers and the Conservatives were aware of the "irresponsibility" which existed in the Executive Council. The Colonial Office gave a fitting description of the Canadian council by stating that it was a "body of men having no function but that of controlling the governor's will by unwelcome advice, left for many months... in a state of utter inaction and insignificance".²⁰

Bidwell's comment on the meaningless role of the Upper Canadian Executive Council echoed the statement of the British officials: "the governor may ask advice and then treat it with contempt".²¹ Further, many of the Tories agreed with the Reformers that the governor should consult his ministers on all affairs dealing with the country.

²⁰ Mg 24, B72, Colonial Office Minutes, April 30, 1836, p. B5.

²¹ Christian Guardian, Toronto, January 30, 1836.

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G. M. Craig, in his recent study of Upper Canada, concluded "that there was never any real difference between the Reformers and the Conservatives on the real need for local control of the affairs of the province".²² The disagreement was over the relationship of the executive to the legislature. The Reformers, in contesting for a more democratic control of government, wanted the Executive Council to be composed of men who would possess the confidence of the representatives of the people, and who would be subject to removal by them. The Conservatives, while they advocated that the governor, who was usually a military man, unfamiliar with colonial affairs, should consult his local advisors, were not willing to concede so much power to popular control by making these advisors responsible to the Assembly. Solicitor-General Hagerman, when presenting the Tory view of responsible government, warned that "the moment the House had power to say who would compose the Executive Council that moment the Kingly office and his authority would be annulled". Furthermore, and this was the real bone of contention, "the power and patronage of the Crown within the colony would be transferred to the House of Assembly".²³ This was a monopoly which the

²² Craig, op. cit., p. 202.

²³ P.A.C. Pamphlet, No. 1-1541, Solicitor General Hagerman's Speech on the Report of the Committee of the Difficulties Between His Excellency and the Late Executive Council, York, 1836, p. 6.

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Family Compact did not wish to give up. The Solicitor-General concluded that the Reformers' view of responsible government was not the constitution of the province, "but the blind theory of the honourable member from Lennox and Addington".

Because Baldwin was not a member of the Assembly in the 1830's when his idea of responsible government was advocated by the Reformers, the theory was attributed to Bidwell, by virtue of his leadership in the House. Bidwell, however, did not elaborate on the principle of executive responsibility as fully as he did on an elective Legislative Council. Having a preference for elective institutions, which directly reflected the will of the people, he probably did not appreciate how great a change the application of responsible government would effect. Although his support of the principle embroiled him with Governor Head, he probably believed that an elective Legislative Council would accomplish the same result as Baldwin's responsible executive. Bidwell believed that a strong, popular legislature would force the will of the executive, and that this united front of the representatives of the people would carry weight with the home government.

Bidwell, like Mackenzie, tended to judge the government of Upper Canada in relation to the North American background, and hence seemed almost to disregard the fact that Upper Canada was a dependent colony. The fundamental doctrine of Bidwell's political faith was that "the government was a

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trust to be administered on behalf of the governed". He contended that a dependent "colonial state in its nature was temporary"²⁴ and was useful only in primitive society. Bidwell confident that the people of Upper Canada were now ready and able to take a responsible part in their own government, was not too concerned whether popular control of the government was brought about by a "responsible" executive, an elected Legislative Council, or by both. He agreed with Adam Smith that "the prosperity of colonies depended on two circumstances - possession of plenty of land and the management of their own affairs".²⁵ Bidwell would have allowed British intervention in measures which concerned the interests of the whole empire, but strictly colonial matters he wanted left to local control.²⁶ In 1836 the Reform Assembly, of which Bidwell was Speaker, passed an address to the King "humbly praying that His Majesty's ministers do not interfere with the internal affairs but leave the same entirely to the discretion and control of the legislature of this province". Bidwell considered the establishment of the Royal Commission of 1834 an

²⁴ P. A. C., Bidwell Papers, Bidwell to Cassady, January 8, 1839.

²⁵ Christian Guardian, Toronto, January 30, 1836.

²⁶ Brockville Recorder, April 4, 1834, (Bidwell's speech in the Assembly).

undue external interference in the affairs of Upper Canada. The King, he said, "had insulted our legislature by appointing commissioners to inquire into our affairs, who have no union of interests with us".²⁷ He was looking far into the future when he maintained that investigation of Canadian affairs should be done by Canadians.

In the last session of the Conservative parliament of 1830-34 Bidwell had an opportunity to express clearly his views on colonial autonomy. While Mackenzie was in England he tried to persuade the British authorities to disallow the bank bills passed in Upper Canada during his absence. His protests, however, were not the only reason for the unpopularity of the bills in England. These bills did not comply with the regulations issued by the British Board of Trade regarding colonial banking.²⁸ The provincial legislature was requested to amend the bills to comply with the instructions; otherwise they would be disallowed. Bidwell thought that this interference of the British government called for a firm remonstrance from the Assembly. "It was a sacred principle in all free governments, that the people should have a voice in making the laws by which they are governed". He urged the Assembly not to amend the bills, but by firm resistance "establish the principle of our right to legislate for

²⁷ Ibid.,

²⁸ E. P. Neufeld, Money and Banking in Canada, Toronto, McClelland and Stewart, 1964, p. 87.

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ourselves on our local matters".²⁹ The address to the King, which Bidwell drafted, defined the limits of British interference, and marked the boundaries over which the mother country could not pass. The remonstrance stressed that "no laws ought to be, or rightly can be dictated to, or imposed upon the people of this province to which they do not freely give their consent through the constitutional medium of representatives chosen by and accountable to themselves".³⁰

This "Declaration of Legislative Independence" called forth much comment in the newspapers. The Colonial Advocate thought that "Mr. Papineau and the sister colony had come far short of this address, even with all their ninety-two resolutions". The Brockville Recorder hoped that this address would be "the first of a series of constitutional assertions which would terminate in our political regeneration".

Believing firmly in popular control of all aspects of local government, Bidwell supported the principle that the post office, the land-granting system, and all revenue from the colony should be administered by the provincial government. He considered it "an absurdity and an inconvenience" for the British government to control the post office department in the colony.³¹ He urged that the neglect and abuses

²⁹ Brockville Recorder, April 4, 1836.

³⁰ Journals of the Assembly, 1833-34, p. 140.

³¹ Christian Guardian, York, December 19, 1832. (Bidwell's speech in Assembly).

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which existed in the postal department could be remedied only if legislated upon in the province. Likewise, since the land in the province belonged to the people, the granting of it, and the proceeds from it, should be administered by the people's representatives. Bidwell was a strong advocate of the Reformers' plank that all public wealth be used for the country's common good, and that only the people's representatives had the constitutional control over the public purse and expenditure.

In seeking an unimpeded flow of public opinion the Upper Canadian Reformers were enthusiastic supporters of the ballot. The system of voting by ballot was an American practice, but the movement for its adoption in Canada arose out of native conditions. Intimidation and violence "with effusions of blood" occurred frequently at the polls. The riots accompanying the many elections in the constituency of Leeds in 1834 and 1835 were typical examples. Much of the time of the members of the Assembly was spent in judging contested elections.

Bidwell, as was to be expected, was an ardent advocate of the ballot. In supporting the Ballot Bill in 1833, he stressed its effective use in the United States, where it was adopted almost universally. He pointed out that persons in debt would be free to vote for whom they wished "without fear of being injured". The object of the law was to protect "the weak against the strong, and this the ballot was

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calculated to do". Bidwell proposed that those who preferred oral voting should be allowed to do so, but the wishes of those who wanted secret ballot should also be respected.³² He was probably convinced that once the ballot system was introduced even on a partial scale it would be difficult to prevent its universal adoption.

The ballot was strongly opposed by the Tories. Bishop Strachan considered it "the most corrupt way of using the franchise".³³ It was deemed "a cloak of hypocrisy" and completely republican. Hagerman stressed that the ballot would lead to universal suffrage and elections would no longer be controlled by people of property.³⁴ In 1835 the Reformers were able to pass a bill to introduce the ballot into provincial elections but it was rejected by the Legislative Council. The issue of the ballot continued to be debated in Canadian politics until 1874 when a vote by ballot was made compulsory throughout the Dominion.

Because the House of Assembly was the only government body which was responsible to the people, Bidwell was resolute in asserting its rights and privileges. In contesting

³² Brockville Recorder, November 29, 1833.

³³ J. E. Middleton, Province of Ontario, Toronto, Dominion Publishers, 1927, Vol. I, p. 270.

³⁴ Christian Guardian, Toronto, April 22, 1835.

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the prerogatives of the people's representatives, he did not hesitate to censure the actions of the governor when he considered that the British official was overstepping his powers. In 1828 an address of thanks was forwarded to the King for having disallowed the attorney-general's Alien Bill of 1827. Maitland was so disaffected by the Reformers' victory in the alien question that he asserted he would inform the colonial secretary that the new alien bill was precisely the same as the one rejected by the House the previous year. Bidwell considered the governor's comment an insult to the Assembly, and urged the House to remember "a proper sense of its own dignity" and not to submit to "such impeachment" for it would amount "to the surrender of its rights and privileges".³⁵ The Assembly drafted resolutions justifying its conduct in the previous session.

Bidwell criticized Governor Colborne for interfering with the rights of the Assembly when the latter delayed in appointing a date for the by-election at York after Mackenzie's expulsion. The governor^{was} impowered to set dates for elections, but Bidwell considered it "hardly compatible with the freedom of election to allow the executive to use a discretionary power as to the time of holding elections".³⁶

³⁵ Brockville Recorder, February 23, 1828.

³⁶ Canadian Freeman, December 22, 1831. (Bidwell's speech in the Assembly).

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He saw no logical reason for the delay, but "the disfranchisement of the largest constituency in the province" at a time when important bills were voted upon. Bidwell proposed that the Assembly either vote a direct censure upon the executive government or send an address of inquiry for the reason of the delay. Bidwell's motion, however, was considered an attempt to stir up trouble, and the Speaker ordered him not to speak on the topic again without the permission of the House.

Bidwell insisted that the Assembly had the constitutional right to inquire into the expenditure of all the revenue in the province. The Conservative Assembly in 1831 refused to establish an inquiry into the contingent expenses of the Legislative Council, considering that it would be "an insult to that honorable body". Bidwell denied the contention that the Legislative Council had the same right as the Assembly to spend public money. Since the Council was not responsible to the people its control of revenue would amount "to taxation without representation".³⁷ The proposed investigation was nullified for the majority feared that "the Legislative Council would have spirit enough to resist it". The Assembly was not yet ready to assert its rights in Bidwellian fashion".

Another inherent right of the Assembly which Bidwell

³⁷ Canadian Freeman, York, November 24, 1831.

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advocated was the privilege of the House to appoint its own officers. When the doorkeeper of the House of Assembly died in 1833, the governor, without consulting the House, appointed Hugh McLennan. Bidwell, who was the leader of the Reform minority in the Assembly, urged the members to refuse to recognize the appointment, for he "considered it an indignity to have the executive appoint people to protect our doors",³⁸ Bidwell's motion received the support of the Conservatives and in a vote of twenty-two to two the clerk was requested to name a doorkeeper. He named McLennan, the House, approving the appointment, made the nomination an act of the Assembly.

As early as 1828 the Reformers had advocated the practice of the Assembly appointing its own clerks and officers.³⁹ In England these positions were granted by the King. But the Reformers maintained that since the constitution of Upper Canada was not, and could not, be the same as in Britain, "they ought to adhere to the usages of the mother country so far as they are applicable to the circumstances and no more".⁴⁰ They proposed the American practice of vesting the power of these appointments in the respective Houses of the legislature. The idea received much opposition as it

38 Brockville Recorder, November 29, 1833.

39 Gore Gazette, Ancaster, January, 1828.

40 Ibid.

was considered "incompatible with our situation as a colony", and "it would reduce the executive branch to a mere dependent of the legislature". Finally, in 1835, the "Bidwell Parliament" passed an act giving to the Assembly the right to appoint their own clerks and officers. Gradually the Assembly was divesting the "irresponsible magistracy" of some of its powers of patronage.

Bidwell revealed a new concept of the rights of the Assembly when he commented on the reply that was to be drafted in answer to the governor's speech at the opening of Parliament in 1835. According to contemporary practice the reply never introduced matters not included in the speech, and never expressed sentiments contrary to the opinions of the executive. Bidwell said that this reply would not be the customary "echo of the Governor's speech". "The government had changed ... and the reply will evidence it".⁴¹ Had the Executive Council, he argued, been changed so as to reflect the opinion of the people this would not have been necessary. But since the governor was removed from free intercourse with the people, and surrounded by persons who were likely to misinform him as to the real conditions of the country, it was the duty of the representatives of the people to convey the country's wishes to him.

⁴¹ Christian Guardian, Toronto, January 28, 1835.

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The Assembly's reply to the throne speech included a vindication of the insinuations against Mackenzie and Hume which were contained in the speech. The address stated that "in a free country a difference of political outlook should not lead the executive to impeach the loyalty, integrity, and patriotism of those in the opposition."⁴² It further remonstrated that if the government of Upper Canada was administered according to the interest and spirit "of our glorious constitution", and if the favours and patronage were "indiscriminately bestowed" upon persons of worth and talent, "who are influenced by the public voice", then, the address concluded, there should not be "the slightest apprehension that the connection between this country and the parent state will long continue to exist".

Bidwell took advantage of the opportunities which presented themselves in the province to assert his policies of making the government of Upper Canada responsible to the "people". Unlike Mackenzie, Bidwell never resorted to unparliamentary means in trying to achieve reforms. He saw the needs of Upper Canada in broad terms, and he tried to put forward a few key reforms in a reasoned, orderly way. His American background influenced his political ideas. Bidwell was aware of the similarities, in background and environment, between Upper Canada and the states of the republic. Realizing

⁴² Journals of the Assembly, Upper Canada, 1835.

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that certain American precedents appeared to work effectively in a North American society, Bidwell drew upon the American experience in presenting his policies. However, Bidwell knew that until there was a willingness by the British authorities to concede self-government to Canada there was no other constitutional means to gain control of their own affairs, but through a persistent and firm assertion of their rights by the representatives in the Assembly. It was from the Assembly that Bidwell wanted the leadership of the provincial government to come.

The present House of Commons in Canada has evolved from the pioneer Assembly in Upper Canada. It was there in "muddy York" that the fundamental practices of Canadian parliamentary democracy were laid. In their early stirrings for self-government the pioneer parliamentarians struggled to gain prestige and power for the Assembly, the only constitutional body which was the voice of the people of Upper Canada. Marshal Spring Bidwell was one of these early parliamentarians who strived to change the House of Assembly from "a mere debating society" to a focal institution of the government of a free people.

CHAPTER IV

MARSHAL SPRING BIDWELL'S IDEAS ON RELIGIOUS LIBERTY

Besides her constitutional problems Upper Canada was harassed by religious controversy. The privileged position of the Church of England, in a pluralistic society, created a persistent cause of discontent, and embroiled the colony in a series of unrelenting controversies. The high Tory element of Upper Canada, which included government officials and influential members of the Family Compact, contended that the structure of the society of the province should be modelled on that of the parent state. Hence, they maintained that like in England, the Anglican Church was established and exclusively entitled to public support. Moreover, the Church of England alone had the right to solemnize marriages, and to benefit from the Clergy Reserves. This arrangement on the diverse religious scene of Upper Canada, inevitably invited friction.

The majority of Reformers, drawing their support from among the Dissenting religions, advocated the doctrine held in the United States that the state was purely a secular institution without religious affiliation. Bidwell, a dedicated Reformer, and a deeply religious man, took an active part in the struggle against religious discrimination. His endeavours to abolish all privilege on account of religious affiliation, and his steadfast defence of religious liberty were perhaps his greatest contributions to the people of

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Upper Canada.

In 1828 Bidwell had an opportunity, in the Assembly, to express his opinions on religious liberty, and separation of Church and State. He was appointed chairman of a committee which dealt with the petitions sent to the Assembly protesting Strachan's Ecclesiastical Chart and Letter. Arch-deacon John Strachan, the champion of Anglican ascendancy in Upper Canada, had made several bitter remarks about the other Protestant denominations in the province, especially the Methodists. Further, he went to England to negotiate the sale of the Clergy Reserves for the benefit of the Anglican Church. The Chart, which he forwarded to the Colonial Office, was designed to prove the exclusive right of the Church of England to the proceeds from the Reserves by pointing out the small and unorganized proportion of the other denominations in the province. In a letter, accompanying the Chart, Strachan again attacked the Methodists, accusing them of spreading republican ideas under the guise of religion. This Letter and Chart occasioned an intense sectarian debate. Egerton Ryerson, the newly-converted Methodist leader, forcefully challenged Strachan's statements in his Letters to Strachan.¹

The strong opposition which Ryerson began outside of parliament was carried on the inside by Marshal Spring

¹ J. G. Hodgins, ed., The Story of My Life, Toronto, Wm. Briggs, 1883, p. 7.

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Bidwell. The Assembly had been petitioned to inquire into the "cruel charges" against the Methodists, and to preserve the province from Anglican domination. The committee, chaired by Bidwell, examined fifty-two witnesses including members of the legislature and executive, several clergymen, and a few private individuals.² Some of the questions asked of the witnesses were: would the people prefer an increase of Anglican clergymen? Did they want an established Church? Were the Methodists, in fact hostile to British institutions? All the witnesses, including members of the Church of England, except two or three, contradicted Strachan's statements. The report of the Select Committee pointed to the inaccuracies contained in the Letter and Chart regarding the relative strength of the Church of England, strongly defended the Methodists, and affirmed that the people did not want an established Church.

This report was in reality a manifesto which set forth the policies of Church and State of Bidwell and his party. It stressed the injustice of exalting one Church above the others, which had much larger membership, and whose worshippers were equally loyal to the Crown. "A country in which there is an established Church, from which a vast majority of the subjects are dissenters, must be in a lamentable state". The committee asserted that neither church nor

² Colonial Advocate, York, April 3, 1828. (Report is printed in full).

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state would gain from an establishment. For, "if the church is incorporated with the state" the people who do not belong to that religion "are compelled by the obligation of their conscience to oppose one of the civil institutions of the country, a part of government itself". The people's "very conscientiousness comes by degrees to be recognized as a crime ... Laws are made to guard against any attempt to injure the establishment ... and thus freedom of conscience is legislated against". To show that religion could flourish without being given special favours by the government, the New York state, where all the denominations had equal rights, was cited as an example.

The report was one of the best issued in the province, and the dignified tone in which Strachan's Chart was refuted was typical of the reasoned liberalism of Bidwell.³ Five thousand copies of Bidwell's report, accompanied by a chart giving information very different from that of Strachan's were ordered to be printed. It is no wonder that the arch-deacon felt little love for Bidwell.

Throughout his political career Bidwell consistently opposed any connection between church and state. "The state, he maintained, "was never meant to dictate the religion of the people"; its function was to provide safety and order

³ Aileen Dunham, Political Unrest in Upper Canada, 1815-1836, Toronto, Longmans, 1927, p. 89.

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for the country, and not religion.⁴ He pointed to British establishment to show how often "religion was profaned for secular purposes ... the Sacrament of the Lord's Supper was taken to qualify persons for government offices". Bidwell thought that personal salvation should be worked out freely by each individual according to his conscience. "Let opinions in religion be as free as the air". If a religion was of a divine origin it needed no protection from the state "it would be protected by God from whom it emanated".⁵

This reasoned liberal view of religion was still a novel concept in Bidwell's day. To a large majority of public leaders in Europe, as well as in Upper Canada, a union of Church and State was the accepted structure of a Christian society. A widespread conviction, among the high Tories, was that a strong church establishment would have saved the Thirteen Colonies from republicanism.⁶ A republic in the 1820's connoted revolution and godlessness. Strachan maintained that an established church was a mark which distinguished a Christian country from one that was "Infidel".⁷

⁴ Colonial Advocate, York, March 31, 1834. (Bidwell's speech in the Assembly).

⁵ Chronicle, Kingston, January 31, 1831. (Bidwell's speech in the Assembly).

⁶ Dunham, op. cit., p. 80.

⁷ The Seventh Report from the Select Committee of the House of Assembly of Upper Canada on Grievances, Toronto, 1835, p. 8.

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However, it was evident, for all who wanted to see, that it was impossible to transplant a European system of ecclesiastical privilege into Upper Canada, where all the conditions of the North American society had, for years, been pointing towards religious liberty. Colborne was essentially right when he wrote that "most Dissenters, and certainly those who emigrate from the United States are strongly opposed to the making of any legal provision for the maintenance of a national church". He added, however, that it would be unwise "to admit the rights of voluntary separatists to share with the endowed churches".⁸ An English immigrant, George Biggs, wrote to Lord Stanley that nine-tenths of the population of Upper Canada was averse to an established church.⁹ Yet, the governors, the members of the two Councils and their dependents, managed for many years to uphold the idea that the Anglican Church was established, and administered the colony accordingly.

Although there was some justification for holding the view, the Church of England was not legally established in Upper Canada. The Constitutional Act had reserved land throughout the province which amounted to one-seventh of the

⁸ Q Series 352, p. 32-33, Colborne to Murray, August 19, 1829.

⁹ Q Series 379, Pt. I, p. 188-92, Biggs to Stanley, July 6, 1833.

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total territory for the support of "Protestant Clergy". The word "clergy", in 1791, was used in reference to ministers of the Church of England. The Anglican Church was not especially designated in the Act, but there were instructions for the establishment of rectories and parsonages - terms which seemed to point to the Church of England. J. J. Talman asserts that, although there was no legal statement to the effect, the intention of the Colonial Office was to establish the Church of England in Upper Canada.¹⁰

From the government officials' point of view, there was no question that the privileges claimed by the Anglicans were clearly implied in the Constitutional Act. On the other hand, the Reformers adhered to the contention of the majority of the people that the term "Protestant" included all Protestant faiths. Thus the religious struggle, and through it the struggle over minority rights and privileges, was embittered by uncertainty. The opposing parties tried strenuously to defend a policy which had never been clearly established in the province.

One religious issue which deeply affected a large majority of the population was the marriage regulations in Upper Canada. In 1792 English civil law was established in

¹⁰ J. J. Talman, "The Position of the Church of England in Upper Canada, 1791-1840", Canadian Historical Review, Vol. 15, 1934, p. 362.

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the province, and henceforth the presence of an Anglican clergyman became necessary to make a marriage ceremony legally valid. Even at that early date there was a reaction against this exclusive policy. The following year a very conservative Marriage Act was passed by the provincial legislature, on the positive assurance by Governor Simcoe, that representations would be made to the British government in favour of non-Anglicans, and that the matter would be placed on a more liberal basis in the next session.¹¹ The Act made valid all marriages hitherto contracted in the province, but for the future only the clergy of the Church of England could solemnize matrimony. If no such clergyman was residing within eighteen miles, the Justice of the Peace could perform the marriage, according to the rites of the Anglican Church.¹² The promised relief for the non-Anglicans did not come during Simcoe's governorship.

In 1798, after Simcoe's departure, a new Marriage Act was passed. It extended the power to marry to the ministers of the Church of Scotland, to the Lutherans, and to the Calvinists, providing that at least one of the contracting parties belonged to the minister's congregation for six months.¹³

¹¹ W. R. Riddell, "The Laws of Marriage in Upper Canada", Canadian Historical Review, Vol. 2, 1921, p. 227.

¹² Talman, "Position of the Church of England", p. 373.

¹³ Statutes of Upper Canada, 1792-1840, Public Acts, Vol. I, p. 74.

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(The Presbyterians were considered to be included with the Church of Scotland and the Baptists with the Calvinists.) No other clergyman was authorized to marry, and 'all other marriages were illegal', 'The children of such void marriages were considered illegitimate, and not entitled to inherit the estate of their parents, and widows were not entitled to dower'.¹⁴

Although this Act was a temporary expedient, it continued to exclude many religious denominations in the province. One of the most numerous religious bodies excluded was the Methodists. Their exclusion was deliberate. Most of the Methodist preachers came from the United States, and consequently were suspected of spreading republican sentiments. Petitions from the Methodists to include them in the Marriage Act were ignored. Bills in favour of the Methodist cause were repeatedly passed in the Assembly, but were lost in the Legislative Council. Even in the 1820's, after the denomination took strong root in Upper Canada, and a native-born ministry replaced the American-born one, the opposition from the government party to include Methodists did not cease.

In 1821, Lennox and Addington, the constituency represented by Barnabas Bidwell, sent a petition to the Assembly asking that a resolution be passed which would give

¹⁴ Gazette, Kingston, March 29, 1817.

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Methodist ministers the right to solemnize matrimony.

Barnabas Bidwell introduced a resolution to that effect; it passed in the Assembly, but was rejected by the Council.¹⁵

However, from 1821, the Marriage Act controversy entered prominently into the political scene. Henceforth, until its solution in 1831, the marriage question was an important issue in every election campaign. The liberal marriage bills sponsored by the Reformers helped to unite the Methodists behind the cause of reform. Thus the marriage issue, like the alien question, popularized the Reformers and contributed to the increased ranks of their supporters.

In the session of 1826, Marshal Spring Bidwell, who was becoming popular through his involvement in the alien question, introduced a marriage bill which validated all previous marriages, and gave the right to ministers of all denominations to celebrate marriages, without limiting the power to circumstances when the contracting parties belonged to the minister's church.¹⁶ To Bidwell the persons involved, and not the government, had the privilege of choosing by whom they were to be married. The Legislative Council amended the bill to include the provision that ministers could marry only

¹⁵ Journals of Assembly of Upper Canada, 1820-1821, December 6, 1821, p. 48.

¹⁶ Colonial Advocate, York, January 4, 1827.

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their respective congregations, people who had belonged to their parcticlar church for at least six months. The Council's amendment was read in the Assembly, but the House was prorogued, and the bill failed.¹⁷

Bidwell was undaunted. In the following session he again introduced his marriage bill, and the Assembly passed it without any opposition. In the Council the bill was referred to a special committee, and no more was heard of it. In 1828, Bidwell again sponsored a marriage bill along the same lines. When the Council delayed in responding, Bidwell and Perry moved that a message be sent to the Council "reminding the Honorable House" of the importance of the bill.¹⁸ The Council replied that the bill was in progress, and "therefore there was no reason for departing from the usual course".¹⁹ The "usual course" was not departed from, and the bill was not heard of again.

The election of 1828 brought more Reformers into the Assembly, and the demand to reform the marriage regulations became more urgent. Outside the Assembly, the influential Egerton Ryerson was leading a vigorous campaign for the Methodist cause. Numerous petitions from denominations, not included in the Marriage Act, continued to address the Assembly

¹⁷ Riddell, *op. cit.*, p. 237.

¹⁸ Journals of the Assembly of Upper Canada, 1828, March 3, 1828, p. 106.

¹⁹ Ibid., March 19, 1828, p. 113.

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and the governor.

Bidwell was elected Speaker in this Assembly, so his marriage bill was brought in by his colleague, Peter Perry. It readily passed the Assembly, and, this time, the Legislative Council made only a few insignificant changes.²⁰ On March 20, 1829, Colborne reserved the bill for His Majesty's pleasure. The governor, a military man, believed rigidly in an established church. Equality in church matters, he thought, were "inconsistent with British institutions". That this equality "prevailed nowhere but in the American republic" did not add to its popularity with the government officials.

When the session ended, no reply regarding the marriage bill had been received from Britain. Believing that the Home government was trying to evade the issue, the Assembly determined, by repeated demands, to force the British authorities to act. On the first day of the next session Perry brought in the same marriage bill. The House dispensed with the forty-first rule, and the following day the bill was passed, and sent to the Legislative Council.²¹ The Council, however, considered that, since the bill was exactly the same as the one passed last year, and since the pleasure

²⁰ Ibid., March 18, 1829, p. 28.

²¹ Journals of the Assembly, of Upper Canada, 1830, Januray 8, 1830, p. 1.

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of the King had not been declared on the former bill, "it was inexpedient to press the matter on the Home government". The matter was again dropped for another session.

The election of 1830 completely changed the complexion of the Assembly. Of the leading Reformers, only Bidwell and Mackenzie survived the Conservative victory.

At the opening of the new parliament there was still no word on the marriage bill. In this Conservative Assembly, Attorney-General John Boulton brought in a marriage bill granting ministers of all denominations the right to solemnize marriages within their respective congregations. Bidwell congratulated Boulton on his generous measure, but objected to the limiting of the rights of ministers. He also criticized the bill for not providing for the legalizing of marriages already performed by Dissenting ministers. A more liberal marriage bill had passed the provincial legislature two years ago, and Bidwell saw no reason why the Assembly should not continue to demand the same provisions.

In the debate on the Attorney-General's marriage bill Bidwell disagreed with Solicitor-General Hagerman. The latter had opposed Bidwell's marriage bill, as well as the Attorney-General's. He was a staunch defender of establishment, and considered the existing marriage regulations sufficiently liberal. Hagerman accused the Methodist ministers of ignorance, and contended that, since marriage was a religious

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ceremony, it should be conferred on and by Christians of "good standing".²² Bidwell denied the accusations against the Methodists, and wondered how the Solicitor-General would judge who was a real Christian. Would he "prescribe doctrine by law"? No law, Bidwell argued, could change a man's opinion. He preferred to leave opinions, especially religious, to "reason, argument, and fair discussions". Hagerman foresaw chaos in the province if all religious denominations would be recognized by law, and, referring to Fanny Wright and her doctrine, he pointed to the excesses religious liberty was creating in the United States. Bidwell maintained that all Christian denominations were recognized by law, for the Constitutional Act excluded their ministers from a seat in the Assembly. And nothing can be excluded, unless it is first recognized. He further corrected the Solicitor-General: Fanny Wright was an English woman and not an American, and she had returned to her native land "to preach there, where she was not prevented by law". Bidwell concluded his defence of religious liberty, on this occasion, by his favorite conviction: "If the origin of a religion is divine, it needs no stronger arm than that of its founder to protect it, and human laws, for that purpose, are quite unsatisfactory".

²² Canadian Freeman, York, January 27, 1831. (Report of the debate on the Attorney-General's marriage bill.)

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Bidwell and the Reformers voted for the Attorney-General's bill, because it appeared that it was as liberal a measure as the Conservative Assembly would agree to. However, when the bill was in its second reading in the Legislative Council, word was received that the Marriage Bill of 1829 had received royal assent.

Bidwell's defence of religious liberty was bearing results. The legislation introduced by Bidwell in 1826, and finally promulgated in 1831, was almost entirely due to his initiative and effort. The Act validated all previous marriages publicly contracted in the province, and all Christian ministers were authorized to solemnize matrimony upon obtaining a certificate, for that purpose, from the Court of Quarter Session.²³ One vital issue from the religious controversy in Upper Canada was removed, but there remained many others.

As has already been pointed out, the Church of England maintained a position of prestige from custom rather than from law. Chaplains to the Legislative Council and to the Assembly were appointed exclusively from the Anglican clergy. Although this practice had no legal basis, it was advanced as a proof that the Church of England was established in Upper Canada.

²³ Statutes of Upper Canada, 1792-1840, Public Acts, Vol. I, p. 521-524.

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Bidwell had an opportunity to express his position on religious liberty, and the separation of Church and State, in the debates which dealt with the appointment of a chaplain for the House of Assembly. In 1829 the chaplain of the House, too ill to perform his duties, delegated Doctor Strachan's curate in his place. The Assembly, of which Bidwell was Speaker, "disapproving of the attempts to rear a dominant state church in the province", did not engage the curate, but employed different ministers from York to lead the religious services.²⁴ On the death of the chaplain, Colborne appointed Doctor Phillips, an Anglican. This appointment was not approved by the House, and it provided an opportunity for the Assembly to throw off another pretension to an established church. In several resolutions the Assembly re-affirmed that the people had a "strong and settled aversion to a dominant church connected with the government", and further denounced the monopoly of the Clergy Reserves and other privileges "to the exclusion ... of various denominations of Christians". It considered it "an imperative duty to mark their strong disapprobation" of the appointment of a chaplain by the governor, which was only a furthering of the exclusive policy. The Assembly requested

²⁴ Brockville Recorder, February 3, 1831.

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its Speaker to make arrangements with different ministers of the various Christian congregations in York to conduct prayers alternately in the House.²⁵ It re-enforced its position on the matter by passing a bill to repeal the clause of the Statute which authorized the payment of a salary to a chaplain. This bill, however, was lost in the Legislative Council, and Doctor Phillips, although he did not officiate, continued to receive his salary of fifty pounds.²⁶

In the next parliament, which was strongly Conservative, Mackenzie brought in a resolution denying to the executive the right of prescribing the religious practices of the Assembly, and affirming to the House the privilege of appointing its own chaplain.²⁷

Bidwell was thoroughly in agreement with this view. It was for the House, he contended, to determine, first, whether there would be prayers at all, and second, in what form, and by whom. He pointed out that in reality this was a constitutional question on whether or not there was an established church in the province. The right claimed by the Crown to appoint chaplains in England was part of the system of

²⁵ Christian Guardian, York, January 16, 1830.

²⁶ Brockville Recorder, February 3, 1831.

²⁷ Ibid.

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ecclesiastical patronage, a principal feature in an established church, but in Upper Canada this practice was irrelevant there was no established church. Defending the government's side, the Attorney-General and the Solicitor-General argued that the Statute of 1822 sanctioned the right of the Executive to appoint chaplains by conferring a pension on the late chaplain, who was appointed by the governor. They also pointed out that the right of the Executive to make such appointments had never been questioned until 1829, when "the Bidwell-Rolph Assembly" raised the issue.²⁸

Mackenzie's resolutions were defeated, and the issue of the chaplaincy was submitted to a committee. The committee reported that the legislature had the power to appoint its chaplains, but in order "not to create animosity at the beginning of each session", it was considered best to dispense with the services of a chaplain, and to repeal the rule that required the business of the day to be commenced by a prayer. For the practice, although much desired, had been the occasion of producing feelings "little allied to the spirit of devotion".²⁹ The recommendations of the committee were adopted, and Colborne was informed that the Assembly, to avoid

²⁸ Chronicle, Kingston, January 22, 1831. (Report of the debate in the Assembly.)

²⁹ ibid.

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any appearance of recognizing an established church, would no longer require a chaplain. Another step in the disestablishment of the idea of a state church had been successfully taken.

The Clergy Reserves, as an endowment to the Church of England, were not called into question for nearly thirty years. Within that time the Reserves became valuable, and the question of their disposal began to be of interest to other denominations in the province. The contentious issue emerged in 1819. That year Strachan secured the establishment of the Clergy Reserves Corporation which officially brought the clergy lands under Anglican control. Henceforth, all rents from the Reserves were to be collected by the nearest Anglican clergyman, and the money sent to the Receiver General to be forwarded to England for investment.³⁰

(Previously the administration of the Clergy Reserves was under the control of the Executive Council.) The direct linking of the Reserves with the Church of England aroused opposition, first from the Church of Scotland, and then from other denominations in the province. That same year Maitland appealed to Lord Bathurst for a definite decision from the British government on the Clergy Reserves, because he was petitioned from Presbyterians for financial support. The matter was referred to the British Law Officers who decided

³⁰ Talman, "Position of the Church of England", p.369.

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that the proceeds from the Reserves "may be applied only to the Church of England and to the Church of Scotland, but not to the support and maintenance of Dissenting Protestant Congregations".³¹

The unwelcome decision was not given publicity by the provincial authorities, but the Kirk soon learned of its terms, and pressed their demands. In 1824, the Assembly embraced the Church of Scotland's cause, and asserted that since both churches were established in Great Britain, both should share equally in the proceeds of the Reserves. The next year, however, the Assembly took a much more liberal stand, and contended that all Protestants should benefit equally from the clergy lands.

The chief weakness of the Reserve system lay in the purpose to which they were designated, and in the refusal of the provincial authorities to re-examine that purpose responsibly.³² For in essence the struggle over the Clergy Reserves was an attempt to rid the province of the domination of a minority church. Yet, the advocates of establishment would not admit the impracticality and the injustice of perpetuating the privileges of a church to which only a small

³¹ Report from the Select Committee of the Civil Government of Canadas, Quebec, 1829, appendix p. 267.

³² A. Wilson, "The Clergy Reserves - Economic Mischief or Sectarian Issue?", Canadian Historical Review, Vol. 42, 1961, p. 299.

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percentage of the population belonged.

In 1825 Bidwell moved a resolution in the Assembly in favour of dividing the proceeds from the Clergy Reserves among all religious sects. He would have preferred the proceeds to be used for education, but since that was considered impossible at the time, he advocated the next fair solution. His resolution was lost, but in 1826 the majority in the Assembly, realizing the impossibility of dividing the revenue among so many religious groups, proposed the secularization of the Reserves by selling them and applying the proceeds to education and general improvement. This position the Assembly never abandoned, whether the majority was Reformers or Conservatives,³³ until the issue was settled in 1854.

Bidwell and Rolph were the most prominent leaders in the campaign against the Clergy Reserves. Clearly these advocates of secularization had the people behind them, but their efforts were repeatedly thwarted by the Legislative Council. In 1828, Bidwell's committee dealt with the problem of the Clergy Reserves; the committee was aware that in 1826 the British government had passed an Act providing for the sale of the Reserves, but the purpose of these sales had not been made very clear. The report of the committee stated that "the people generally desire to use it for public improvement and the support of education", without any distinction on

³³ G. M. Craig, Upper Canada, The Formative Years, 1784-1840, Toronto, McClelland and Stewart, 1963, p. 177.

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account of religion.³⁴

Bidwell was not opposed to all state aid to religion; his protest was against the state prescribing what a person should believe, and denying privileges to those who would not comply. He also had no objection to religious bodies holding land, so long as all denominations were given equal treatment.³⁵

In 1831 he sponsored an address to the King setting forth the opinions of the Assembly to the Clergy Reserves. The petition stated that the Reserves derived their economic value from the labours of the people who belonged to various denominations, that only a small minority belonged to the Church of England, and the majority of the people were opposed to any connection between church and state. On the basis of these arguments, the address pointed to the injustice and impolicy of excluding subjects from an equal share in the proceeds of the reserved land. It concluded that the money, produced from the sales, be applied, under control of provincial legislature, to the improvement of the province and to the support of education.³⁶

³⁴ Colonial Advocate, York, April 3, 1828.

³⁵ Chronicle, Kingston, February 4, 1825, (Bidwell's speech in the Assembly); also, Journals of Assembly, 1826-27, December 5, 1826, Bidwell's bill for allowing religious bodies to hold land.

³⁶ Ibid., March 12, 1831.

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Bidwell constantly put forward the same theory in every debate on the Clergy Reserves.³⁷ He was, perhaps, mistaken in maintaining that, when the land was reserved in 1791 for the Protestant Clergy, the Act referred to all Protestant denominations. But he was not alone in holding this view. The Select Committee of the House of Commons, in 1828, gave the same interpretation. Lord Grenville, himself, declared that he meant the reserves should be applied to all Protestants.³⁸

As was the case with the alien question so it was with the Clergy Reserves: The Colonial Office was flooded with petitions appealing for a solution. In the fall of 1831, Lord Goderich recommended the re-investing of the Reserves in the Crown. Henceforth, they were to be sold on the same basis as other Crown lands. According to the instructions of the Colonial Office a draft of a bill was prepared by the Assembly repealing the clauses of the Constitutional Act dealing with the appropriation of the Reserves for the support of the clergy, and converting them into the property of the Crown. However, before the bill came to a vote Colborne prorogued the House. Goderich's plan pleased neither side of

³⁷ Courier, York, December 1, 1832, Canadian Correspondent, York, March 1, 1834.

³⁸ Courier, York, December 1, 1832, (Bidwell's speech in the Assembly.)

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of the controversy. The majority of the Assembly wanted the control of the lands to be vested in the provincial legislature, while the government group deplored a system which would deprive the Church of England of exclusive control over the lands.

During the 1834 and 1835 sessions the Assembly's bills to appropriate the proceeds for the purpose of education and general improvement were repeatedly rejected by the Legislative Council. In 1836, after Colborne was recalled, he recommended forty-four rectories to be erected and endowed with the lands from the Clergy Reserves. This act indicated that, despite the recommendations of the Colonial Secretary, the Anglican pretensions to an established church had not been abandoned. It revived the opposition to religious discrimination, which was beginning to subside after the passing of the Marriage Act in 1829, and the extension of some government grants to various religious denominations.

The Assembly, helpless in the face of the Council's opposition, continued to appeal to the Home government for remedial legislation. Britain, however, was eager to evade the troublesome issue, and maintained that "to withdraw from the Canadian to the Imperial legislature the question respecting the Clergy Reserves would be an infringement on the colonial government, which forbids parliamentary interference",

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except in urgent need.³⁹ Thus the Clergy Reserves, for reasons not wholly connected with their economic value, continued to be the focus of a bitter political-religious controversy in Upper Canada.

Closely allied to the question of church and state was the problem of education in Upper Canada. The system badly needed organization and adaptation. The government-supported grammar schools, set up in 1807, were too expensive, and because of distance, inaccessible to the majority of the population. They also came under severe attack as being too partial to Anglican influence. The boards were appointed by the Executive, and the schools were staffed predominantly by Anglicans. A system of public elementary education was established in 1816, but, it appears that, the government did not make an earnest effort to have it work effectively. In order to receive a government grant the people of the District had to raise twice the sum of the grant.⁴⁰ The Common School Act itself was passed reluctantly by the Legislative Council in return for non-interference by the Assembly with the grammar schools.⁴¹

³⁹ W. P. Kennedy, ed., Statutes, Treaties, and Documents of the Canadian Constitution, 1713-1929, Toronto, Oxford University, 1930, p. 418.

⁴⁰ F. Landon, Western Ontario and the American Frontier, Toronto, Ryerson Press, 1941, p. 67.

⁴¹ C. E. Phillips, The Development of Education in Canada, Toronto, Gage, 1957, p. 112.

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The pioneers found difficulty in collecting revenue, but they had an even greater problem in obtaining teachers and supplies. Thus, when Americans presented themselves, they were readily hired, and allowed to use American text books. While to most pioneers education and politics had nothing in common, the government officials saw in this practice a real danger. For that reason they endeavored to set up an educational system which would cleanse the province of "the dangerous influence of republicanism". To the government leaders, the surest way to preserve a sound British heritage and tradition in Upper Canada was to give the Church of England a leading role in education.

As a sure sign of strengthening loyalty and developing a Canadian Tory leadership, Strachan, president of the Board of Education, set up in 1823, pursued an unrelenting policy of trying to place all education "under the direction and control of the regular clergy". In 1827, while in England, he secured a charter for a Canadian university, designed for Anglican control and requiring religious tests for the teaching staff. Many agreed with Strachan "that religion and education were inseparable", but his efforts to impose, with the help of law, the domination of his Church on the nineteenth-century North American society was much outdated, and indicated that, in this aspect, Strachan was somewhat "out of

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tune with the society in which he lived".⁴² Unfortunately, because of this narrow view, Strachan's efforts to provide an effective educational system for Upper Canada have not been duly appreciated.

Bidwell, who was deeply interested in education, took an active part in the contest of removing the Anglican Church from the controlling position in this field. He believed, along with the majority of the inhabitants, that educational institutions, endowed with public lands and revenue, should be free to all the faiths, without religious tests, and that the operation of these public educational projects should be controlled by the people's representatives in the Assembly. Bidwell was one of the leading opponents of the university charter which Strachan had negotiated. Although by British contemporary standards the terms of the charter were very liberal, the university was definitely intended to be under the auspices of the Church of England. Religious tests were required of the students registered in divinity, and of the professors who sat on the governing council.

Bidwell's committee, which was set up to investigate Strachan's Letter and Chart, denounced the "sectarian tendency" of the proposed King's College, as not adaptable "to the character and circumstances" of the people of Upper

⁴² Craig, op. cit., p. 171.

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Canada. In 1829, during Bidwell's first term as Speaker, the Assembly sent an address to the King requesting removal of all religious tests for students as well as for professors. The Assembly considered it unjust that a publicly supported institution should confine its Degree of Divinity "to those subscribing to the Thirty-nine articles". It further believed that "it was inexpedient " for a clergyman of the Church of England to be the president of the university, and recommended that all the officers and chancellors of the college be elected.⁴³

Here the Assembly was advocating a novel and "a republican device", and also an impractical one. It was not explained by whom these officials were to be elected, but it is quite obvious that if left to the general pioneer elector, the method would have proved very ineffective in obtaining the best qualified people for the positions of authority. However, the motive behind the proposition was obvious - a means to lessen the influence of the Anglican Church.

The same Assembly re-affirmed its position in a reply to the speech from the throne. It stated that the proposed King's College was undeserving of public support, since it was designed "to perpetuate those exclusive and dominant establishments" which have been the cause of so much tragedy

⁴³ C.O. 42, Vol. 388, No. 12, April 10, 1829.

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in European countries.⁴⁴ In Upper Canada, King's College, if established according to the proposed charter, would only serve to continue fermenting sectarian jealousies.

The Select Committee of the House of Commons on Civil Government in Canada supported the Assembly's view, and recommended that the university charter be amended to exclude religious tests.

After receiving vigorous protests from the province against the university charter the Colonial Office and Colborne, the new governor, were anxious to drop the whole idea of the university. In 1831, Goderich proposed that the corporation of the university surrender its charter. And he empowered the provincial legislature to deal with the issue. The Anglican leaders in the Legislative Council were adamant. The charter was granted by the British government, and the Council intended to hold on to it. Consequently the university charter was thrown about, year after year, between the Council and the Assembly. The latter introduced bills to amend the charter, while the former denied that the Assembly had a right to amend a royal statute. In 1835, the Colonial Office, in a despatch to Head, replied to the insistent demands of the Assembly for remedial legislation on the university issue. The despatch maintained that the college

⁴⁴ Upper Canada Gazette, York, January 2, 1830.

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question, having once been placed under the control of the local legislature, should not be withdrawn at the insistence of one of the Houses.⁴⁵ The contest between the Council and the Assembly continued.

It was this inability of the provincial legislature to agree on what was best for Upper Canada that retarded her progress. The proposed university, with a modified charter, did not become a reality until 1843, and it did not become totally non-sectarian until 1849.

Bidwell was not averse to government grants given to privately conducted educational institutions, provided that all such institutions were treated equally. In 1831 Grantham Academy, a Methodist establishment, but not requiring religious tests, petitioned the Assembly for some financial aid. Bidwell strongly supported the request. He believed that institutions like the Grantham Academy should be encouraged, and if they were performing a service to the community, government assistance should not be withheld.⁴⁶ The bill was rejected by the Legislative Council, which was determined not to encourage institutions not under the control of the Church of England.

⁴⁵ Kenny, op. cit., p. 418, Glenelg to Head, December 5, 1835.

⁴⁶ Brockville Recorder, April 7, 1831.

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Of special interest to Bidwell were the publicly supported schools of the province. He advocated more government support for the Common Schools: "If you wish to have better subjects of the government, and better members for the society you must lay the foundation in a common school education".⁴⁷ The School Bill, passed during his second Speakership, authorized the board of education in each district to select eight scholars from each county to be educated in the District School at public expense.⁴⁸ Its purpose was to give persons of ability the opportunity to obtain a higher education. However, this forerunner of the modern student-aid programme was rejected by the Legislative Council.

Bidwell's basic grievance against the existing public schools was that there was too much Executive, hence Anglican control. The Executive, appointing the boards of education in each district, gave preference to Anglicans. In a committee on a School Bill in 1835, Bidwell pointed out that in every appointment to the board of education the name of the Archdeacon was included.⁴⁹ This, Bidwell argued, was a contradiction of the law which forbade persons not residing in the District to serve on a board. Strachan, a resident of

⁴⁷ Christian Guardian, Toronto, April 8, 1835.

⁴⁸ Phillips, op. cit., p. 114.

⁴⁹ Reformer, Cobourg, April 21, 1835.

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the Home District could not be a member of every board of education in the province.

Despite the strong opposition from the supporters of Anglican ascendancy, the education in the province was slowly put on a more democratic basis. In 1833, following persistent requests from the Assembly, the revenue from the school reserves was put under the control of the provincial legislature, and the general Board of Education, presided over by Strachan since 1823, was abolished. The struggle against religious exclusiveness in education was bearing some fruit. Yet, no education system supplying the needs of the province was possible until responsible government was established. The government officials, determined that education should be affiliated with a dominant church and not positively evaluating the educational needs of a pluralistic society, placed a negative emphasis on the whole educational problem before 1840.

Another phenomenon in Upper Canada, closely allied to the religious issue, was the Temperance Movement. This Movement, from its beginning in 1828, received strong support from Bidwell. Temperance Societies were already popular in the United States. This, along with the fact that prominent Reformers such as Bidwell, Jesse Ketchum and John Rolph were among its leading supporters, gave the Temperance Movement in Upper Canada "political overtones".⁵⁰ The Tories, although

⁵⁰ Craig, *op. cit.*, p. 208.

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not openly condemning it, were suspicious that republican ideas were being propagated under the guise of morality.⁵¹ There was, however, enough stimulus in Upper Canada for such a movement to arise without the aid of American influence. Taverns were plentiful; there were twenty between Hamilton and York, a distance of forty miles. They served as gathering centres for the settlers, and meetings of all kinds were held there. On all such occasions liquor was abundant and spirits were high. Liquor was a common commodity in many homes in the province and drunkenness was widespread.⁵² Men, interested in correcting the evil, organized themselves into societies which served as nuclei for the propagation of temperance ideas.

It would be expected that Bidwell, a man with a high standard of conduct, would support such a cause. In 1833 he was elected president of the Kingston Temperance Society, an office he held in 1836 in the Toronto branch of the organization. As president, Bidwell solicited Governor Head for his support in encouraging Temperance Societies in the province. Head gave a public promise "to give his countenance and support ... to abate the evils of drunkenness".⁵³ It was also

⁵¹ C. O. Ermatinger, Talbot Regime, St. Thomas, Municipal World, 1904, p. 167.

⁵² M. A. Garland, "Pioneer Drinking Habits and the Rise of the Temperance Agitation in Upper Canada prior to 1840," Ontario Historical Society, Papers and Records, Vol. 27, 1931, p. 350.

⁵³ Canadian Temperance Advocate, Montreal, June, 1836.

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during Bidwell's presidency that a newspaper, Temperance Record, was organized by the Toronto branch of the organization. Its pertinent articles, detailing the evils of the abuse of liquor, served as a valuable auxiliary to the temperance cause.⁵⁴

Several Reformers, among them Jesse Ketchum, cherished the idea of prohibition by law and looked to politics to settle the moral problem. A bill for prohibition was introduced into the Assembly in 1836, but it was defeated. However, some laws which dealt with the control of liquor were enacted, for example, laws governing the granting of licenses were strengthened and the condition of the inns improved. An Act to prevent the consumption of liquor in shops was passed in 1834.⁵⁵ Reverend J. Roaf of Toronto tried unsuccessfully to organize a Temperance Political Party which would unite all the parties against a common enemy.

Bidwell, although he abhorred the effects of intemperance, and in his public speeches forcefully denounced the abuse of the "destructive fluids", believed that legislative enactments would not suppress liquor traffic. Far more would be gained by a slower and an educational policy.

⁵⁴ This newspaper was discontinued in November, 1837, due to lack of funds.

⁵⁵ Statutes of Upper Canada, 1792-1840, Public Acts, Vol. I, p. 675.

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In his opinion an individual's moral life should be ruled by conviction and not enforced by law. Bidwell did not want to transform moral duties into legal duties. A total abstainer himself, he strongly advocated temperance, but not prohibition.

The Temperance Movement in Upper Canada did not result in prohibition, but it did in some ways lessen liquor traffic. Magistrates in Kingston and York adopted improved sets of rules and regulations for licensed taverns and houses. Many temperance inns were established where no alcoholic beverages were served.⁵⁶

Bidwell's religion was of a positive nature; it showed itself in deeds. A deep conviction in the freedom of the individual to work out his own salvation made Bidwell an ardent opponent of an established church, of privileges in religious matters and of any coercion of conscience. His efforts to make all religious denominations legally equal deserve a rightful place in Canadian history.

⁵⁶ Canadian Watchman, Kingston, January 12, 1832.

CHAPTER V

MARSHAL SPRING BIDWELL AND THE LEGAL SYSTEM OF UPPER CANADA

Bidwell's firm belief in religious freedom matched his regard for the dignity of the person. Hence, the protection of the inherent rights of the individual by just and impartial laws was another principal objective in his public programme. His lawyer's training helped to make him keenly aware of the shortcomings in the legal system of the province. This chapter will review Bidwell's contribution to the modification of the common laws of England to suit the conditions of Upper Canada.

Both friend and foe acknowledged Marshal Spring Bidwell as one of the finest lawyers of his time. He regarded law as a pure science. This sometimes led him to advise according to strict logical principles, when it was certain that any jury or court would have devised some way of getting around the letter of the law, and have done plain justice.¹ Bidwell enjoyed asserting a legal principle rigorously and inflexibly in a difficult case. His colleagues referred to him as "an arsenal of knowledge."² Oftentimes, instead of studying up a legal question, they would go to Bidwell and

¹A. Nevins, ed., The Diary of George Templeton Strong, Vol. IV, New York, Macmillan, 1952, p. 449.

²Ibid., p. 450.

and receive an off-hand abstraction of all cases bearing on the matter in question, and all the considerations for and against it.³ Bidwell's legal skill and attention to detail were great assets in his parliamentary career. Often his opponents unwillingly acknowledged "that no man in the House was so competent as the honourable member from Lennox and Addington to detect errors in a bill."⁴

Bidwell specialized in the law of real estate, trusts and wills, but in the early stages of his career in Upper Canada he was obliged to handle a variety of cases. His legal practice was not confined to his own neighborhood; his services as counsel were sought after, in important cases, in all parts of the province.

As a young lawyer in Kingston, Bidwell defended Mackenzie's claims after the latter's press in York was destroyed by a few enraged Tory youths. Mackenzie was awarded a generous sum for the damages, but he insisted on pressing criminal charges. Bidwell warned him that, if he persisted in this course, he would alienate public sympathy which the rash action had won for him, as well as mitigate the wrath that it aroused against the Family Compact. It was one of the

³Ibid.

⁴Brockville Recorder, December 27, 1832. (Report of a Parliamentary Debate.)

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few times that Mackenzie followed Bidwell's advice.

In discussing Bidwell's popularity as a lawyer one other case is worthy of note. The matter concerned a court issue. In 1834, the commissioners of the Court of Request in Bath were charged with forging an addition to a judgement of a court after it had been pronounced and recorded. Due to the respectable character of these gentlemen, the case excited much attention. Bidwell, who served as counsel for the defendants, spoke so eloquently during the trial that the Conservative press, "although it considered it their duty to oppose his political course," had to admit that, his conduct was "manly and generous", and such "as does honour to the best feelings of human nature."⁵ The verdict was not guilty.

Bidwell's legal talents developed to even greater dimensions after he was forced to leave Canada in 1837. In New York, where he resided for thirty-five years after his banishment from Canada, he had greater opportunity to exercise his legal skill. His close friend, the famous Daniel Lord, leader of the New York Bar, considered Bidwell "a great lawyer", and esteemed his opinion "more highly than that of any man of the profession, on intricate points."⁶

⁵Chronicle and Gazette, Kingston, September 13, 1834.

⁶Nevins, op. cit., Vol. IV, p. xxii.

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In his first important case in America, Bidwell so distinguished himself as counsel that he was readily recognized as "a man of extraordinary talents and attainments."⁷ As in Canada, Bidwell became a great favorite among his legal brethren. Periodically, he addressed the Law Association on various topics of interest to the profession, and was a regular lecturer in the law school of Columbia College.⁸

Bidwell became naturally involved in the legal questions in a province which was attempting to lay foundations for an effective legal system.

The Judiciary in Upper Canada was criticized for being too dependent on the Executive. The practice of appointing and removing judges at the pleasure of the Executive actually made the Judiciary dependent on the government. Another complaint was that the presence of the Chief Justice on the Executive Council, his role as Speaker of the Legislative Council, and the presence of other judges in the Councils prevented impartial administration of justice.

To separate justice from politics, and to lessen the hold of the local oligarchy on the legal system, the Reformers first proposed the appointment of all judges from the

⁷Ibid., (The case was a libel suit brought in by Fenimore Cooper, the well-known novelist against W. L. Stone, editor of the Commercial Advertiser.)

⁸Ibid., Vol. II, p. 152.

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English Bar. These men, they believed, would be as "free as possible from entanglements of family connexion, the influence of local jealousies and from provincial politics."⁹ However, after the arbitrary removal of Justice Walpole Willis, and of Robert Thorpe before him, the Reformers' hope that the appointment of judges from England "would redeem the character of the provincial Judiciary", was frustrated. For judges, whether English or Canadian, could be arbitrarily dismissed if they displayed a spirit independent of the Executive.

In a letter to Dr. Baldwin, Bidwell expressed his opinion on the issue: "the arbitrary and ignominious dismissal of Judge Willis is, in my opinion, one of the most flagrant acts of tyranny and oppression by which a free country was ever sullied, and I shall assist, with heart and hand, in every attempt to produce redress and to bring the authors of this measure to a just and signal punishment."¹⁰

Historians generally agree that Willis was not worthy of the Reformers' praise. Yet, the fact that such an arbitrary method of dismissing judges, without consulting the

⁹Chronicle, Kingston, March 28, 1829. (Address of the Assembly to His Majesty regarding the Administration of Justice in Upper Canada.)

¹⁰T. P. L., Baldwin Correspondence, Bidwell to W. W. Baldwin, April 8, 1828.

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the legislature, could be employed was a real grievance.

Bidwell supported the Reformers' plank that the judges be appointed on good behaviour, and removed only by an address from both Houses of the Legislature. He considered that "every public man holds his office not for himself but for the public good." Therefore, if it would be to the advantage of public good, a judge should be removed, but by the representatives of public opinion. Making the appointment of judges for life, provided they conduct themselves properly, would remove them from the influence of the Executive. In order to further remove the judges from political influence, Bidwell supported the resolutions to exclude them from seats in the Executive and Legislative Councils. "Our lives, liberty, and fortunes depend upon the judges", so, Bidwell maintained, they should be free, as much as possible, from all temptation to interfere in political controversies, which might bias them in their decisions.¹¹

In 1831, the Colonial Office offered, as a result of opposition from the provinces, to appoint all judges on tenure during good behaviour, on condition that the legislature make an adequate provision for their salaries. The despatch further announced that, "it is His Majesty's settled purpose to

¹¹Brockville Recorder, December 27, 1833, (Report of the debate in the Assembly.)

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nominate on no future occasion any judge as a member of either the Executive or Legislative Councils."¹² The Assembly refused to agree on the conditions of the salaries, so the tenure of the judges' appointments remained unchanged. And in 1832, Goderich again recommended legislation for the independence of judges.

Yielding to the pressure from the Imperial government, the Legislative Council in 1834 finally acquiesced in the matter. It passed an Act making the judges independent of the Crown by enabling them to hold their office during good behaviour. The Act declared both Houses of the Legislature a court to try impeachment against the judges, but provided also for an appeal to the King-in-Council.

One long-standing abuse was removed. But judges, appointed prior to the Act, continued to sit in the two Councils. The contest between the Assembly and the Legislative Council to discontinue this practice followed the same pattern as did the other controversial issues. The Reformers in the Assembly made addresses and passed bills which were nullified by the Council. The Council contended that, since in England judges were admitted to the House of Lords, and the King had a right to choose whom he wished to his privy council, his representative in Upper Canada should not be

¹²Public Archives Pamphlet 1-1533, An Address of the Assembly to Sir Francis Bond Head on Independence of Judges, Toronto, 1836.

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deprived of taking advice from judges. Bidwell did not want to exclude professional men from the Councils, but he maintained that when these men were made judges they should vacate their seats in the Councils.¹³ To Bidwell the rights of the people to impartial justice were as important as the prerogatives of the Crown.

It is surprising that Bidwell, who was a strong advocate of elective institutions, did not propose the elective device for selecting judges. The elective judiciary, it appears, was one of the American institutions which Bidwell found objectionable. In 1859, after he was well acquainted with the American legal system, Bidwell wrote to his friend in Canada: "I hope most sincerely that Canada escapes an elective judiciary...it is in more than one respect objectionable."¹⁴ To Bidwell the executive in a responsible government was in a much better position to evaluate a man for the judiciary than the ordinary voter.

Another cause of complaint against the administration of justice in Upper Canada was the method of impanelling juries. Trial by jury was one of the chief safeguards against

¹³Courier, Toronto, February 20, 1836. (Bidwell's Speech in the Assembly.)

¹⁴P. A. C., Mg. 24, B14, La Fontaine Papers, Vol. 17, p. 2959, Bidwell to La Fontaine, February 16, 1859.

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arbitrary power. Yet, in Upper Canada, this safeguard was less meaningful when the sheriff, who was an appointee of the Executive, could choose whomever he pleased to serve on the jury. The contention was that sheriffs, who were supporters of the government, selected jurors of similar views. Thus justice was inevitably influenced by politics. This partiality of the sheriffs led many of the Reformers to advocate the choosing of juries by lottery, a practice in certain American states.

Bidwell supported this method of selecting juries. He maintained that, to insure a fair trial, the impanelling of juries should not be placed with anyone who holds his office during pleasure.¹⁵ In a debate on a jury bill, brought in by Perry, Bidwell argued that the proposed measure would take the power of selection out of the hands of the sheriff and place it in the hands of the people. Township officers would make up lists of persons, who could serve on juries, and people residing in the township would be instructed to strike from the lists the names of those whom they thought unfit. The names would be placed in a box and drawn out by ballot. Through this method, Bidwell maintained, two objectives would be attained; the charge of packing juries would

¹⁵Brockville Recorder, February 9, 1830.

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be avoided, and competent persons were more likely to be selected.¹⁶ Moreover, it would not be in the power of any political party to control the impanelling of juries.

Bills to amend the jury laws were repeatedly passed in the Assembly, but like other measures which were designed to curb the influence of the Family Compact, this one was consistently rejected in the Legislative Council. The much-needed legislation had to wait for more enlightened times.

Another government appointee to come under the scrutiny of the Reformers was the Justice of the Peace. Appointed during pleasure by the Executive, the Justices reflected its views and thus appeared to play the role of henchmen for the government. Besides their judicial functions these men also supervised statute labour on the roads, and the levying of local taxes, duties which, the Reformers maintained, could be performed more effectively by elected persons responsible to public opinion.

Bidwell became alarmed when Attorney General John Boulton introduced a bill for the summary punishment of offenders by the Justice of the Peace. On account of the multiplicity of cases brought before the court of Quarter Session at a heavy expense to the country, the government

¹⁶Colonial Advocate, York, November 22, 1832.

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party wished to simplify matters by investing the Justices of the Peace with power in minor cases to pass verdict without a jury. Bidwell saw danger in this practice. He objected to placing arbitrary power in the hands of men, who were appointed for "electioneering services", and hence could not be expected to make impartial judgements.¹⁷ Another objection to the bill was that the prosecutor had the liberty to choose whether the trial would be by a Justice of the Peace or by a jury. Bidwell was surprised that a measure of this nature would be contemplated in a free country. To deprive anyone of a trial by jury, and to leave a case entirely in the hands of a political appointee of the government, was in Bidwell's opinion, an invitation to tyranny. He stressed the incompetency and lack of legal training of the majority of the Justices of Peace, and feared that "malicious people, after harassing their neighbors, would bring them before some favorite Justice of the Peace for his summary punishment". However, despite the efforts of Bidwell and Perry to modify the provisions so as to insure the right of trial by jury, the bill was passed in the Assembly.

In 1825, a question of considerable interest to lawyers and of great importance to persons accused of crime

¹⁷Canadian Correspondent, York, November 23, 1833.
(Bidwell's speech in the Assembly.)

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was introduced for the first time in Upper Canada's Assembly. Marshal Spring Bidwell, a newcomer to the Assembly, introduced a bill which would allow all persons on trial for felony the full defence by counsel. This measure, Bidwell maintained, would correct "an evil of great magnitude in the administration of criminal law in the province." "In trifling disputes each party could employ a counsel", but in those cases where "a man's life might be forfeited", a counsel was not allowed, and the witnesses of the accused were not permitted to be sworn.¹⁸

The crown officers in the Assembly, arguing that the judge was the counsel for felons on trial, opposed Bidwell's bill. Bidwell, however, logically pointed out that if the judge was counsel for the prisoner more than for the Crown, he was no longer impartial, and that of itself was an evil which should be corrected. Further, Bidwell asserted his bill was not an innovation; it was a law in Scotland as well as in the United States.

The measure was carried in the Assembly, but was defeated in the Legislative Council. The following year, with the powerful support from Doctor John Rolph, Bidwell re-introduced the Felon's Bill. It passed without opposition

¹⁸Chronicle, Kingston, February 11, 1825. (Bidwell's speech in the Assembly.)

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or amendment in the Assembly, but failed in the Council. This political game was played year after year, the Assembly passing the bill and the Council giving it the "three month hoist".

In 1836, Bidwell's Felon's Counsel Bill was still debated. He argued that the measure was not contrary to British constitutional principles. A similar bill had passed in Lower Canada and received royal assent.¹⁹ He was confident that a similar measure would soon be passed in England, although he believed that the need for such a law was more urgent in Upper Canada. In Upper Canada the crown officers were permitted to address the jury a second time, after the defence had been gone through; this made the prisoner's position more difficult to defend.²⁰ In Bidwell's opinion it was "just and equitable" that persons, "however atrocious the offences of which they are accused", should be allowed the means of vindicating their innocence.

On February 22, 1836, the Felon's Counsel Bill finally passed the Legislative Council. Another safeguard to insure the "pure" administration of justice had been introduced into Upper Canada. The newspapers, both Tory and Reformer gave Bidwell credit for his untiring effort in

¹⁹Brockville Recorder, February 12, 1836.

²⁰Ibid.

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supporting this important, humane reform.

Another law which Bidwell considered "barbarous" and badly in need of revision was the imprisonment for debt. Because the law did not make a distinction between fraud and debt, many honest debtors were wrongly subjected to punishment. In the prolonged debate in 1828 on the bill for abolishing imprisonment for debt, Bidwell cited extracts from the Magna Carta, Bill of Rights, and the works of Lord Bacon and Blackstone to indicate that "men of practical sense and wisdom, through the ages", advocated the abolition of this inhumane practice.²¹ He was confident that imprisonment for debt would in the near future be abolished in all civilized nations.

Yet, in Upper Canada the bill received strong opposition. The crown officers contended that their duty as legislators was to protect the creditors as well as the debtors. They feared that the measure would ruin many people who had entrusted their property to others.

However, Bidwell and Rolph²², too, were concerned about the creditor. They agreed that fraud should be punished

²¹Upper Canada Gazette, York, January 20, 1827. (Debate on imprisonment for Debt Bill.) Other speeches by Bidwell on the same topic are reported in: Colonial Advocate, February 9, 1828; Canadian Correspondent, York, January 5, 1833; Star, Cobourg, April 5, 1835.

²²Rolph introduced the bill for abolishing imprisonment for debt.

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as crime, but they wanted a distinction made "between fraud and misfortune."

In 1835, after eight years of opposition, the act to abolish imprisonment for debt finally received royal assent, effective for four years. In 1840 it was made perpetual.²³

In 1836, Bidwell introduced a bill for the abolition of whipping as a punishment for prisoners. The purpose of the law in inflicting punishment was not only to protect society against crime, but to lessen crime by effecting a reformation in the criminal. In his opinion, whipping "debased the mind", and was of doubtful corrective value.²⁴ The opponents of the measure had difficulty finding a substitute punishment for whipping. Jails were not adequately equipped either for imposing solitary confinement or for employing prisoners in labour. When it appeared that the bill would fail, Bidwell proposed that at least female prisoners be exempt from whipping. They had already dispensed with such punishment in England. The women did receive relief, but male criminals continued to be whipped.

Another example of Bidwell's humanitarian efforts to modify the criminal laws of Upper Canada dealt with capital

²³Statutes of Upper Canada, Public Acts 1792-1840, Vol. 1, p. 700.

²⁴Chronicle, Kingston, December 29, 1826, Bidwell's speech in Assembly.

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punishment. In 1833, in a debate on diminishing the number of crimes for which capital punishment was inflicted, Bidwell proposed an amendment which would provide that death would in no case be carried out in less than one month after the passing of the sentence. A religious man, he held that a condemned man should be allowed at least thirty days "to prepare himself to appear before his Maker."²⁵ Surprisingly, his harmless resolution elicited animated discussion. The House was evenly divided. Many saw in the delay only an extension of public excitement at public expense. The vote of the Speaker broke the tie in favour of Bidwell's amendment. But, by the time this bill was finalized into law, the thirty day provision was dropped. The judge, after pronouncing sentence, was to decide the time of execution.²⁶ The condemned was denied the consolation of a clergyman, and the judge was empowered to send the body "to be dissected and anatomized." It is no wonder that Bidwell hoped that, in the near future, the whole question of criminal punishment would be given serious consideration.

The question of whether Quakers, Mennonites, and other religious sects, who had conscience scruples about taking an oath, should be admitted to serve on juries in criminal

²⁵Courier, York, January 26, 1833.

²⁶Statutes of Upper Canada, Public Acts, 1792-1840, Vol. 1, p. 589.

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cases and act as witnesses was introduced into the Assembly in 1825. Bidwell strongly supported the amendment which allowed witnesses having religious scruples to make an affirmation instead of an oath. In other countries pagans and infidels had been admitted as witnesses. Why then, Bidwell asked, should this be denied to Christians who were respectable citizens of our society? With respect, however, to admitting these people to juries in criminal cases, Bidwell had reservations. Justice must be administered "without a shadow of suspicion and impartiality", and he feared that if jurors were admitted without oath, "it might create suspicion in many minds".²⁷ Rolph, who generally agree with Bidwell, saw no need for such a bill. The persons concerned could already give testimony by affirmation in civil cases, and that, in his opinion, was quite enough. In criminal cases, where a man's life was in question, he would exclude such testimony. He also disagreed with Bidwell's statement that in essence an affirmation and an oath were the same; they differed only in language. Bidwell maintained that Rolph was considering only one side of the issue. It was true that the measure would have the effect of taking a prisoner's life without the solemnity of an oath, but it would have the same effect in saving a life. At that time witnesses on the affirmation

²⁷Chronicle, Kingston, February 25, 1825.

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were not admitted in favour nor against the accused.

On March 20, 1829, a law was passed in Upper Canada, which admitted Quakers, Mennonites, Tunkers and Moravians to give testimony in criminal cases by affirmation instead of oath, but the prohibition to serve on juries, in such cases, was retained. Bigotry was still too prevalent to give total respect to religious conscience.

To Bidwell, the taking of an oath was a sacred responsibility; he, therefore, objected to the practice of exacting an oath on occasions that made the oath meaningless. He held the view that a man could not renounce his allegiance without the consent of the sovereign to whom his allegiance was due. Hence Bidwell disapproved of requiring an oath from people becoming naturalized.²⁸

He further objected to the practice of requiring these persons to take the oath of adjuration. This oath, intended against the Pretender, was still in force, although the family was long extinct. Bidwell considered the oath of abjuration a perpetuation of a meaningless tradition. "A man could be just as good a subject without it". A similar law existed in the United States, and Bidwell regarded it a reproach to the American nation. He had no objection to adopting an American practice, if it were useful, but this law,

²⁸Reformer, Cobourg, December 14, 1832. (Debate on the Bill of Naturalization).

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he maintained, was "contrary to the maxims of our Constitution." The Naturalization Bill passed; Bidwell had voted against it. He, had, however, some consolation. The bill prescribed an oath of allegiance, but the abjuration oath was abolished.

Another controversial issue with which Bidwell was inseparably connected was the demand for the abolition of primogeniture. As a lawyer, Bidwell was particularly interested in the matter of property. He saw primogeniture as "a vestige of feudalism, an institution totally unsuited to North American society; he introduced a bill for the equal division of intestate estates in every Assembly of which he was a member. According to the prevailing law, when a man died without a will, his property went to the eldest son, or, if he had no children, to the eldest male relative. Further, if a childless man died intestate, his father could not succeed to his son's property. Likewise brothers and sisters of the deceased could not inherit the real estate; if no other male relative could be found, it would be invested in the Crown.³⁰

This common law principle of primogeniture, which gave the whole inheritance to one heir to the exclusion of others in equal degree of kindred, was particularly objec-

³⁰Public Archives Pamphlet, 1-1344, Mr. Bidwell's Speech on the Intestate Estate Bill in Provincial Assembly of Upper Canada, York, January 24, 1831, p. 1.

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tionable to Bidwell. It was productive of aristocracy, and therefore, had no place in Upper Canada. His bill provided for equal division of intestate estates among the next of kin.

Since Bidwell's measure would obviously be "a death blow" to the idea of aristocracy, the chief opponents of the bill were the members of the Legislative Council. These members realized that the bill was aimed at them; therefore, the measure was rejected every time it passed the Assembly.

Mackenzie aptly commented that Bidwell's intestate bill was "one of the class that never passed up-stairs".³¹

Bidwell's speech in support of this bill in 1831, was considered by the editor of the Christian Guardian as the most able parliamentary orations ever made in Upper Canada.³²

Bidwell argued that primogeniture might be useful in a densely populated country like England, but it was totally unsuited to a pioneer community. It was foolish to transplant this British institution into North America, and expect it to function exactly as in England. In England a great portion of the wealth was vested in commercial enterprises, or in funds, and was, therefore, exempt from the operations of the law of primogeniture. In Upper Canada, where people were chiefly

³¹P. A. C., Mg 24, B14, Neilson Papers, Vol. 8, p. 526, Mackenzie to J. Neilson, December 28, 1835.

³²Christian Guardian, York, February 15, 1832.

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engaged in agriculture, there was little property not under the operation of that law. Moreover, primogeniture was introduced into the province in 1791, and Upper Canada was the only province where this law existed.

The basic argument against Bidwell's Intestate Estates Bill was that it would produce a minute subdivision of property, and in a short time estates would be too small to be of any value. Bidwell easily refuted this argument as not being applicable in a thinly populated province. He further indicated another danger in the continuation of primogeniture. The franchise in towns was limited to freeholders, and since primogeniture tended to concentrate property in a few hands, the system decreased the number of voters. He subtly added that primogeniture "made aristocrats of the eldest sons and democrats of the others".³³

As with his other policies, so with primogeniture Bidwell expressed Canadian ideas, but cited American precedents and examples. Primogeniture was introduced in America in colonial days, but it was one of the first institutions to be abolished, because it was found unsuitable to North American conditions. However, arguments from the American experience were not really necessary, for it was obvious to the

³³Public Archives Pamphlet, 1-1344, Mr. Bidwell's Speech...p. 3.

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majority of the people that primogeniture was irrelevant to the circumstances in the province. Bills for its abolition passed regularly in the different Assemblies, whether the majorities were Conservative or Reformers.

Besides the high Tories, some moderate Reformers also opposed Bidwell's Intestate Estate Bill. Dr. Baldwin, a known Reformer who generally worked harmoniously with Bidwell, considered Bidwell's measure "a visionary scheme suitable only to a republican state".³⁴ Baldwin held this position when Barnabas Bidwell during his few weeks in the Assembly tried to introduce a bill to abolish primogeniture. His vote against Bidwell's motion drew a wondering comment from a member of the Family Compact:

His (B. Bidwell's) first democratic attempt, by which he hoped to overturn the whole law of descents, and to make lands distributable in the same manner as sheep and swine...Baldwin for a wonder took the right side of the question.³⁵

Marshal Spring Bidwell's primogeniture bill, too, found in Dr. Baldwin one of its sturdiest opponents.

Baldwin believed that an aristocracy could perform a useful function in a British province, and he considered

³⁴G. E. Wilson, The Life of Robert Baldwin, Toronto, Ryerson Press, 1933, p. 9.

³⁵O. A., Macaulay Papers, A. Hagerman to J. Macaulay, December 12, 1821.

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Bidwell's "levelling system" an attack on the very foundations of the social structure.³⁶ Bidwell, on the other hand, wanted all pretensions to an aristocracy completely wiped out in Upper Canada. He considered the lofty theories of Baldwin inconsistent with the realities of life in the province. Ironically, however, it was Robert Baldwin who, thirty years later, introduced and successfully carried a bill to abolish primogeniture in Canada.

As has been pointed out, many of Bidwell's views for establishing a more "pure" administration of justice were not immediately incorporated into the legal system. Much of the prejudice, bigotry, and rivalry in the province had to subside before objective action could be taken. However, the contribution of lawyer-politicians, like Bidwell, is significant. They recognized the needs and problems of the judiciary in Upper Canada, and pointed to practical solutions. Although, the implementing of their theories had in many instances to await more favourable times, the groundwork was done by these men.

³⁶Wilson, op. cit., p. 281.

CHAPTER VI

MARSHAL SPRING BIDWELL, A REFORM LEADER IN UPPER CANADA

The previous chapters have discussed Bidwell's views on the contemporary issues in Upper Canada and his endeavors to bring about social change. The purpose of this chapter is to review Bidwell's place in the Reform group, his role as leader of the Reformers in the Assembly, and thereby evaluate his position and influence in the provincial politics.

Although no political parties in the accepted sense of the term existed, party struggles had begun to take shape in Upper Canada before Bidwell entered politics. By 1820, the governing class, the Family Compact, had become clearly differentiated, and a discontented class was fast emerging. The latter group was hardly conscious of a fixed membership or a definite policy, but protests were being organized, and the conditions in the province provided fertile ground for opposition to develop.

One of the basic causes of irritation which attracted many followers was the narrow and selfish distribution of patronage by the governing oligarchy. The Reformers (as the opposition element came to be called) tried to break this monopoly of the Family Compact and to make the government responsible to the people. Another source of discontent was

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the control of the revenue. The Reformers believed that all revenue raised in the province should be controlled by the Assembly and not by the "irresponsible" executive.

The election of 1824, which introduced Marshal Spring Bidwell into the Assembly, indicated that the spirit of Reform had been truly awakened. For the first time since the organization of the province, the opponents of the high Tory oligarchy had a majority in the Assembly. Like the other Reformers, Bidwell was an opponent of monopoly and privilege in the government.

In the Assembly of 1824-1828, Bidwell, only twenty-five years of age, was one of the leading critics of government, but John Rolph, the Oxford graduate, was the accepted leader of the Reformers. Bidwell's turn to lead the party came in the next Assembly. His first four years in parliament were spent primarily in helping to bring about a solution to the alien question and to the marriage issue. As has been pointed out earlier, his introduction and support of reform measures kept him before the public eye, and brought him many followers, as well as bitter opponents in the government party.

The Reformers grew stronger during the 1820's, and were able to win a larger majority in the election of 1828. Bidwell was elected Speaker in the new Assembly. Because the Reformers won the elections through the support of the

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American immigrants, and because in the debates they cited many American precedents to support their Reform measures, the party was laid open to charges of republicanism and disloyalty. Furthermore, Bidwell, their recognized leader now, was American-born, whose father was noted for his strong republican principles. The Reformers' victory at the polls strengthened the conviction of the Family Compact that there was a dangerous republican faction active in the province.

Of all the Reformers, Marshal Spring Bidwell was suspected most. Robert Stanton, spokesman for the Tories outside of the Assembly, was disgusted at Bidwell's elevation: "a loyal Yankee is the first commoner of a loyal British colony--I have not the patience to say more."¹ The Cobourg Star regarded the Assembly of 1828-1830 as "the transient existence of a Yankee parliament of which Bidwell is the speaker."² Because leading the party from the Speaker's chair was an American practice, and because Bidwell was American-born, the Family Compact considered his very presence in the chair a symbol of republicanism. A liberal newspaper, the York Canadian Freeman, wondered how Attorney General Robinson, who "viewed it a disgrace to sit in the

¹O. A., Macaulay Papers, R. Stanton to J. Macaulay, January 10, 1829.

²Star, Cobourg, August 28, 1830.

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House with the father," would "bend his loyal neck to his son in the Speaker's chair."³ The Kingston Chronicle expressed the view of the majority of the high Tories that by Bidwell's election to the Speakership "the character of the House for loyalty has been seriously and injuriously affected."⁴

In the absence of a cabinet system, the Speaker was virtually the leader of the majority in the House, for, in effect, he acted as an intermediary between the Assembly and the Executive. On the election of the Speaker the Tories had hoped that the Reformers' votes would split between Bidwell and Baldwin, and, as a result, their candidate would be elected.⁵ Nevertheless, the Gore Gazette, a strong Tory organ, hoped "that if any adherent of the (republican) faction" was to be Speaker, they preferred Bidwell, because "there was no mistake about his principles", and, above all, "he was a man of character" of which, the editor thought, "very few of them can boast."⁶

In a speech on accepting the Speakership Bidwell indicated that he was aware of the rights and responsibilities

³Canadian Freeman, York, December 25, 1828.

⁴Chronicle, Kingston, March 7, 1829.

⁵O. A., Powell Papers, B82, S. P. Jarvis to W. D. Powell, p. 53.

⁶Gore Gazette, Ancaster, December 12, 1828.

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of his office:

I do in their name (members of the Assembly) and on their behalf...beg claim to all their rights and privileges, particularly that they may have liberty of speech for the better management of their debates, access to Your Excellency's person on all occasions, and that their proceedings may receive from Your Excellency the most favourable interpretation.⁷

Bidwell's election as Speaker reduced his effectiveness as debater. As Speaker he could not employ his debating skill to rally the Reformers as he could when he sat in their midst. Despite the frequent discussion over programme and strategy by Bidwell and other leading Reformers,⁸ the session was noisy and quarrelsome. There was much personal animosity among the Reform members, and "they vented their spleen on one another."⁹ Besides Bidwell, Rolph, the two Baldwins and Dunn there was little culture in the Reform ranks. Many of the members were ill qualified for the task of legislation. According to Mackenzie, the education of a large number of them did not exceed the ability to sign their names, to say nothing "of the Herculean task of framing a bill."¹⁰

Bidwell's sensitive character deplored any kind of

⁷Chronicle, Kingston, January 12, 1829.

⁸T. P. L., Baldwin Papers, Bidwell to W. W. Baldwin, October 8, 1828.

⁹Gore Gazette, Ancaster, March 9, 1829.

¹⁰Ibid., January 17, 1829. "Letter of Mackenzie to Dalhousie."

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disharmony and violence. Referring to the divisions in the House on controversial issues, Bidwell complained to his friend Ryerson, "that this unpleasant state of things produces anxiety, uncertainty and a violent party spirit," and therefore, he received "but little satisfaction" in his public life.¹¹ Bidwell worked hard to temper the rough spirits of the members and to bring order and decorum into parliamentary procedures. Doubtless the debates would have been more passionate and disorderly had the calm and dignified Bidwell not presided over them.

Until 1824, the Reformers had struggled to gain control of the Assembly. This was now accomplished. But they soon realized that control of the Assembly was of little use if they had no control over the administrative and judicial functions in the colony. In fact, they did not have much control over the legislative enactments either. Bidwell saw that "the whole system and spirit of the present administration need be done away with."¹² But he was confident "that the sound principles of our excellent constitution will triumph...notwithstanding the fury with which they are visited."¹³ To increase the powers of the Assembly became

¹¹J. G. Hodgins, ed., The Story of My Life, Toronto, Briggs 1883, p. 195.

¹²T. P. L., Baldwin Papers, Bidwell to W. W. Baldwin, September 8, 1828.

¹³Ibid., same to same, May 28, 1828.

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the urgent policy of the Reformers. This, Bidwell maintained, could only be achieved, not through negotiations with the British government, but with "the firmness and spirit of the peoples of Canada."¹⁴

One of the first actions of the Assembly was to frame an address to the Lieutenant Governor, which strongly expressed the lack of confidence in the advisors of the government. The Reformers were beginning to see that responsible government was the best way to gain effective control of the provincial government. The bold address was carried almost unanimously. J. B. Robinson, the Attorney General, was the lone defender of the "irresponsible" ministers. It was evident that in the opposition to the Executive the Assembly acted above party lines. Colborne responded with a curt ambiguity that "it was less difficult to discover the traces of political dissensions...than to efface them", and he sealed his alliance with the Family Compact by refusing to grant the petition of the Assembly for the release of Francis Collins, a printer of liberal views.

Since the Assembly could not remedy abuses, it would continue to expose them. The Reformers' attacks were tireless and spirited, but unorganized. They renewed their criticism of the judiciary, organized an investigation of the

¹⁴p. A. C., Mg 24, B14, Neilson Papers, Vol. 6, Bidwell to J. Neilson, January 7, 1829.

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post office, and demanded accounts of the Canada Company. Mackenzie, who made his debut into the Assembly in this session, began that system of inquiry and agitation which he henceforth pursued throughout his parliamentary career. The manner in which he conducted the investigations gave unnecessary offence and caused much harm to the Reform movement.

Despite the unhued calibre of the majority of the members and the frequent disharmony among them, the Assembly of 1828-1830 worked diligently on legislation. Their labours however, were fruitless, for a majority of their important bills were rejected by the Legislative Council. Among them were such popular measures as the abolition of primogeniture, the amending of the marriage laws, the exclusion of judges from the political sphere, and laws promoting religious liberty and education. According to Professor William Kilbourn, it probably would have been more effective had the Reformers been able to channel public resentment and their own efforts upon one or two major pieces of legislation, instead of attacking so many abuses at the same time.¹⁵

The helplessness of the Reform Assembly to pass measures which the people demanded lessened their popularity.

¹⁵W. Kilbourn, The Firebrand, Toronto, Clarke Irwin, 1956, p. 286.

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The frontiersmen might not have understood the constitutional issue over which the Reformers were struggling, but when the annual bill for the building of roads and bridges failed to pass in 1829, many began to think that there was something wrong with their representatives in York.

While the Reformers were losing their hold on the country, there was developing a spirit of restlessness and desperation in their own ranks. By their continued unwise agitation, the radicals among them were assuming a notorious importance. Seeing the apparent ascendancy of the radical element, and fearing it to be more dangerous to the British connection than the domination of the Family Compact, many moderate Reformers gave the government party their support in the next election. It was unfortunate for the Reform cause that men of the calibre of Bidwell, Rolph and the Baldwins were unable to restrain the radical faction, and to effect a strong union within the Reform group.

An interesting episode, which occurred during Bidwell's first term as Speaker, deserves mention because it throws light upon his character and statesmanship. Early in 1829, an effigy of Colborne was burned in Hamilton. The blame of this daring act was placed on the Reformers, as an act of revenge for the governor's refusal to release Collins from jail. This trick could easily have been executed by the Tories, and then used to throw discredit on the Reformers,

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and embroil them with the new governor.¹⁶ Wanting to clear its members of suspicion, and to discover the real culprits, the Assembly established a commission to investigate the incident. In the process of the investigation many people were interrogated, among them the Solicitor-General, John Boulton. He refused to reply to certain questions asked by the committee, and consequently was placed before the Bar of the House to be tried for contempt. At the tribunal, sensing the mood of the House, and realizing that the prominent lawyer Allan MacNab had spent ten days in jail for a similar offense, Boulton pleaded that he had not intended to be disrespectful to the committee and was now ready to be questioned. The House ordered that the repentant Solicitor General be admonished by the Speaker and discharged.

There was reason to believe, however, that the admonition was not going to be easy on John Boulton. Bidwell was one of the most eloquent and powerful speakers in the province, and he could have plenty to say about the Boultons. A long-standing feud existed between the two families. It was a Boulton who had been dispatched to Massachusetts in 1821 to find evidence on the misconduct of the elder Bidwell.¹⁷

¹⁶C. New, "Marshal Spring Bidwell", in R. G. Riddell, ed., Canadian Portraits, Toronto, Oxford University Press, 1940, p. 30.

¹⁷W. Kingsford, History of Canada, Vol. 10, Toronto, Rowsell and Hutchison, 1898, p. 292.

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It was John Boulton who had worked for the expulsion of Barnabas Bidwell from the Assembly, and promoted the legislation which excluded the elder Bidwell from political life in Canada. He had tried to use his influence against the election of the younger Bidwell as Speaker, and in the recent elections worked to turn the votes of the constituency against him.

It was universally expected that Bidwell would be hard on Boulton. The admonition, however, was delivered in such a tone of dignity and forbearance, that it was impossible to detect any personal animosity. The Speaker reminded the Solicitor General of the privileges of the Assembly, that being the Grand Inquest of the province, the Assembly was bound by duty to investigate all grievances and abuses. He pointed out that, because of the character and authority of Boulton's position, his offense was very grave.¹⁸ The short speech has been considered a classic of Canadian parliamentary oratory;¹⁹ it received praiseworthy comments on both sides of the Atlantic. Moreover, Bidwell's conduct on this occasion illustrates that, when charged with the performance of a constitutional duty, he could rise above personal and

¹⁸Colonial Advocate, York, February 26, 1829.

¹⁹Aileen Dunham, Political Unrest in Upper Canada 1815-1836, Toronto, Longmans, 1927, p. 26.

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political differences and discharge that duty like a true statesman.

The Assembly of 1828-1830 suddenly ended by the death of King George IV, on June 26, 1830. According to the practice of the time, a new election was called upon the death of a reigning monarch. There was a marked change of opinion in the electorate in the elections of 1830. The Reformers suffered a defeat. Of the forty-eight members in the last Assembly only ten were returned.²⁰ Some of their strongest leaders were defeated at the polls: both Baldwins, Rolph and Matthews. Bidwell and Perry were returned from Lennox and Addington, but, due to the changed complexion of the House, there was no chance of Bidwell's re-election as Speaker. York was faithful to Mackenzie, but his fiery temperament in a House composed of a majority of his opponents led to serious complications.

Besides the inability of the Reform Assembly to pass useful legislation, and the unwise speeches of the radicals, the results of the polls could be accredited to several other reasons. The voters' list had been considerably enlarged for these elections, but the inequitable system of representation remained. For example, in the Home District one member represented seven thousand inhabitants, while in the Western

²⁰Chronicle, Kingston, October 30, 1830.

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District one member represented only three thousand.²¹ The patronage of the government, too, had its influence in defeating the Reformers. The Assembly was filled with post-masters, county registers, inspectors of all kinds, and other placeman who held their office at the will of the Executive. Colborne, the new governor, who appeared to show sympathy with the Upper Canadian community, inspired hope and support. The Upper Canada College was timely opened by Colborne, just before the elections.

The Tories were exuberant with their unexpected success. At last the Assembly of a British colony "was wrestled from the clutches of a Yankee faction." Satires in poetry and prose appeared, and, as would be expected, Bidwell and Rolph were the main targets. The Brockville Gazette made a prejudiced, but a telling comparison of the Reform leaders to horses at auction. Rolph, the "silvertongue by treachery", was to be sold "at any price, as his owners had no more use for him." Bidwell, the "Speaker by Yankee", who "has been used for sometime as a guide", and who "was considered a smart runner, ran too far." He was purchased by Hypocrite (Ryerson)."²² (The last remark was in reference to the good

²¹Public Archives Pamphlet, 1-1332 Report on the State of Representation of the People of Upper Canada, York, March, 1831.

²²Brockville Gazette, December 14, 1830.

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relations which existed between Bidwell and the leader of the Methodists.) Robert Stanton was relieved that a native Canadian succeeded Bidwell in the Speaker's chair.²³

With Rolph and the Baldwins defeated, the responsibility of leading the opposition forces in the Assembly fell more heavily on Bidwell. The Reformers, although fewer in number, seemed to grow in effectiveness. An editorial in a Conservative newspaper in York gave a revealing analysis of the strengths and weaknesses of the political groups in the Assembly of 1830-1834:

The opposing minority, with Bidwell at their head, can boast of no persons who have the least claim to talent except Messrs. Perry, Beardsley, and Mackenzie. Yet, Mr. Bidwell, notwithstanding the inferiority of his party, both in talents and in numbers, has acquired an influence in the present House beyond any other member in it--this may be accounted for from the fact that Bidwell's party have a common and uniform system of action, while the former have none. The ministerial party, consisting of more than two-thirds of the House, have no acknowledged leader, no mutual understanding and no common or uniform system of action. Therefore, upon almost all the leading questions which come before the House, they exhibit a divided front, while the party of which Bidwell is head...is a well-drilled and compact little body--always ready to follow their leader withersoever he may summon them. It is the superior organization of the smaller body, with the well-known parliamentary tact of its leader, that gives it the advantage and sometimes enables it to triumph over its more numerous opponents.²⁴

²³O. A., Macaulay Papers, Stanton to Macaulay, November 24, 1830.

²⁴Courier, York, February 28, 1831, reprinted from Christian Guardian, York, March 5, 1831.

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The prominent leader of the government party, J. B. Robinson, was appointed Chief Justice in 1829, and, subsequently, was transferred to the Legislative Council. The leadership of the Conservative group in the Assembly fell on the new Attorney General, the erratic John Boulton, and on the new Solicitor General, the temperamental Christopher Hagerman. The two leaders often disagreed openly on the floor of the House, and were "more hostile to each other and more resolutely determined to overthrow...each other's measures than are the two nominally opposed factions themselves."²⁵

Bidwell and his party knew well the weakness of the majority and capitalized on them. For example, when Ryerson was ready to sail to England with petitions requesting that the proceeds from the Clergy Reserves be used for education and general improvement, Bidwell thought that Ryerson's mission would gain in importance and in weight if a vote of the Assembly could be obtained in favour of the measure. He realized, however, that such a measure could only be carried by a coup-de-main before the House heard of Ryerson's mission. Hence, without previous notice, Bidwell introduced a motion for an address to the King, which contained the same requests as those included in Ryerson's petitions. The government

²⁵Courier, York, January 26, 1833, (an editorial).

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party was taken by surprise. It was unprepared with any practical measure to counteract Bidwell's motion.²⁶ Finally, an amendment, which differed only in wording from Bidwell's, was introduced by a Tory member, and the amended address was easily passed.

Much time and energy of this Assembly was occupied with the well-known episode of the expulsion of Mackenzie from the Assembly. Although Mackenzie, in his pursuit of grievances and abuses, was threatening to create more public disorder and confusion than he professed to cure, the Tory majority was guilty in the extreme, when it outraged law and the spirit of the constitution by its repeated expulsions of Mackenzie for the same offence. It was evident that the majority in the Assembly was not interested in justice, but in a victim.

Bidwell, although not defending Mackenzie's conduct, forcefully pointed out the gross misuse of power by the majority. In expelling Mackenzie for libel, they were punishing him not as a member of the Assembly, but as a printer. By debarring him from the House, the Assembly was violating the rights of the electors of York, the largest constituency in the province. It was galling the people, Bidwell protested,

²⁶Christian Guardian, York, March 5, 1831, (a report of the debate on the address).

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to pretend that they had the power to elect, and the Assembly had the right to reject their choice. He rightly concluded that the majority was making a martyr of Mackenzie and a spectacle of the House.²⁷

The Mackenzie expulsions ended with the session of 1834, because the general elections of that year effected a change in the composition of the House. Mackenzie emerged as a hero, and, as such, he destroyed the hopes of a united Reform party which seemed, but a short while before, quite possible of realization under the reasoned guidance of Marshal Spring Bidwell.

The struggle which developed over Goderich's report, involved not only Bidwell but also Mackenzie. In 1832, after his second expulsion, Mackenzie went to England, armed with petitions and grievances which he had been accumulating for months. At the same time, the members of the government also presented their views to the Colonial Office. Lord Goderich replied to the many petitions in a despatch which contained many important recommendations respecting the education in the province, the control of revenue by the Assembly, and the independence of the judges. At first the Tory majority was eager to publish the despatch, but the rules of the House did

²⁷The Advocate, York, January 4, 1834, (Bidwell's speech in Assembly).

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not permit an immediate motion. In the interval, upon further examination, the despatch "was found to contain death to their hopes."²⁸ Mackenzie had secured concessions far beyond what they were willing to concede.

Despite its protestations of loyalty, the Tory majority refused to print the recommendations from the Colonial Office. It went further. A motion was made to exclude the despatch from the Journals.²⁹ Here was a rebuff to the Home government in the person of the Colonial Secretary. By threatening the government party with full exposure of their conduct,³⁰ Bidwell and Perry rescued the despatch from this ill fate. A small majority voted for the appearance of the despatch in the Journals.

Referring to Bidwell's stand on Goderich's despatch, the Quebec Gazette was confident that "the Yankee republican faction", in Upper Canada, was no "formidable concern, for Bidwell in no instance had gone beyond the principles of the British constitution. There had been reason, moderation and good feeling in all his public measures." Furthermore, the Tory editor commented, Bidwell's character was a sufficient

²⁸Brockville Recorder, February 11, 1833.

²⁹Reformer, Cobourg, February 1, 1833.

³⁰Ibid.

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guarantee "that he will never countenance anything contrary to his duty to the government under which he lives."³¹

In the general election in the fall of 1834, "Bidwell's Glorious Minority" added many members to its ranks, and again became the "Bidwell Majority." The sympathy for Mackenzie, because of his many expulsions, was an important factor in the Reform victory.³² The majority of the people rightly considered the action of the Tory Assembly a gross infringement on the elective franchise. Mackenzie's renown as martyr "for the people's cause", so enhanced his popularity that several liberal newspapers were advocating him for Speaker for the next Assembly. Had the election been a few months earlier, when public sympathy with Mackenzie was at its height, a greater number of Reformers would probably have been returned. In the interval, however, the publication of Hume's letter with its "baneful domination of the mother country" message in the Colonial Advocate, alienated many sympathies from Mackenzie, and lost many votes for the Reformers. Nevertheless, of the sixty representatives elected, forty were considered Reformers.³³ But with the

³¹Spectator, Kingston, May 28, 1833, reprinted from Gazette, Quebec, no date.

³²V. U., United Church Archives, Ryerson Correspondence, Ryerson to Lord Glenelg, June 3, 1836.

³³Brockville Recorder, November 7, 1834, reprinted from Free Press, Hamilton, October 29, 1834. (An analysis of the political sympathies of the members of the Assembly).

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exception of Bidwell, Perry, and Mackenzie some of the important Reform leaders had no seats in the House. Rolph and the Baldwins, after their defeat in 1830, refused to stand for any constituency.

There was much spirited campaigning in connection with the election of Speaker for this Assembly. The Brockville Recorder voiced the opinion of the majority of the Reformers when it stated that Bidwell, "a well-trying Reformer", with his high legal requirements and extensive parliamentary experience, was the best man for the position.³⁴ At a meeting of the newly-formed Canadian Alliance Society, in December, 1834, resolutions respecting the appointment of a Speaker of the new House of Assembly were adopted by acclamation.³⁵ The Speaker, they resolved, must "possess talents, experience and urbanity to attract confidence" and "firmness to uphold the rights vested, by the laws and constitution", in the people. Bidwell, they unanimously agreed, "possesses in an eminent degree" the various qualifications, which, in the tenth parliament, obtained for him respect and approval

³⁴Ibid., November 14, 1834.

³⁵Ibid., December 26, 1834, (Bidwell was popular with the people of York. At a meeting of the delegates of the County of York in 1834, Bidwell was chosen as candidate to represent the first riding, but he declined, because he did not want to abandon the constituency which had elected him so many times. Ibid., March 2, 1834).

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even of his political opponents. Due to the "utmost exertions" that were made to defeat the election of Bidwell to the Speakership, the Canadian Alliance Society wrote to the members of the Assembly reminding them "of their sacred duty", and forwarding to each a copy of the resolutions. The editor of the St. Thomas Liberal alerted his readers to keep close watch over their representatives, for the members "who will vote against Bidwell will, for the same reason, vote against every liberal principle."³⁶

On January 15, Parliament met to elect a Speaker. Perry at once nominated Bidwell, and Hagerman, "forced by his duty to King and Country", opposed the motion. He considered Bidwell a disloyal man, connected with a party which "was striving to overturn the institution and government of this country."³⁷ Hagerman acknowledged Bidwell's talents and parliamentary skill, but strongly criticized his political principles. Bidwell, he maintained, had opposed British immigration and the improvement of the country, and above all, he had voted for O'Grady³⁸ in the last election, "for a man who

³⁶Brockville Recorder, January 9, 1835, reprinted from Liberal, St. Thomas, no date.

³⁷Christian Guardian, Toronto, January 21, 1835. (Report of the debate on the election of the Speaker).

³⁸John O'Grady was an excommunicated Roman Catholic priest. He was a friend of Mackenzie. In the election of 1834, O'Grady ran in Kingston against Hagerman.

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had the audacity to defend the sentiments of Hume's letter."

Ogle R. Gowan, a noted Orangeman, had wanted to vote for Bidwell,³⁹ but, after Hagerman's remarks, he hesitated to raise a "disloyal man" to the high position of Speaker.

Therefore, he publicly questioned Bidwell: Did he approve of Hume's letter? Did he approve of the Ninety-Two Resolutions of Lower Canada? And did he support an address from Lennox and Addington, which opposed British immigration? Bidwell calmly replied that he did not approve entirely of Hume's letter, that he found several items in the Resolutions objectionable, but he did not think it proper to discuss the proceedings of another House of Assembly. Regarding the immigration, Bidwell admitted that he considered it unfair to allow England's parish paupers to be sent to Upper Canada for support; but he would welcome in the province immigrants of good standing.⁴⁰

In a speech after the election in 1834 in Lennox and Addington, Bidwell had already given his reason for voting for O'Grady.⁴¹ He knew that O'Grady would not be elected, but Bidwell "had never shrunk from a public display of his

³⁹Gowan said that he wanted to vote for Bidwell, because Bidwell as Speaker would deprive the Reformers of a strong debater.

⁴⁰Brockville Recorder, January 25, 1835.

⁴¹Canadian Correspondent, Toronto, October 25, 1834.

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sentiments and opinions on any occasion." His abstaining from voting (as he would not vote for Hagerman) would have given approval to the reports against O'Grady's moral character. These accusations Bidwell considered false, fabricated because of O'Grady's bold stand against the Family Compact.

Other reasons were put forward to prevent Bidwell's election to the high office "of the first commoner of the province." Bidwell, the "democratic leveller", had "be-leagued himself with the low and the unprincipled", when he upheld Mackenzie's cause in the last parliament. Even the reprimand, of five years ago, to Solicitor General Boulton was brought in.

On the other hand, Bidwell's Reform friends supported him; "he had done more for the province than all the Tories combined."⁴² "Bidwell as Speaker would reflect the feeling of the country," and the character of the Assembly would be "unequivocally determined in favour of Reform." In a vote of thirty-one to twenty-seven Bidwell was elected Speaker of the twelfth parliament.

Regarding the voting for the Speaker, the Cobourg Reformer pointed to the unfair representation in the province.

⁴²Ibid., January 15, 1835, a similar eulogy in Correspondent and Advocate, Toronto, January 15, 1835.

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While there was only a difference of four votes, the members who voted for Bidwell represented a population of 158,802, and the ones who voted against him represented only 77,571.⁴³

Because it removed from "the fighting ranks of the Reformers in the House their sanest and ablest leader", Professor S. W. Wallace considered the election of Bidwell to the Speakership an unfortunate move.⁴⁴ However, the post of authority did enable Bidwell to discipline the radical members of the party. A Tory observer remarked that "Bidwell never failed to employ all the rules of the House to keep Mackenzie in order."⁴⁵

This same observer also gave a revealing, although somewhat prejudiced, picture of the "Bidwell Assembly":

Those professed Reformers are without public experience...Perry, at present, leads that side of the House, but it is plainly seen they are not content under him...It is a consolation that, for all practical purposes, they have placed him (Bidwell) "hors du combat"...Mackenzie can never be trusted by them. They deplore him one and all.⁴⁶

Another Tory remarked that "while Perry leads the Reformers, he is coarse, not a reasoner...Bidwell is the

⁴³Ibid., February 5, 1835, reprinted from Reformer, Cobourg.

⁴⁴S. W. Wallace, The Family Compact, Toronto, Glasgow Brook, 1915, p. 93.

⁴⁵O. A., Macaulay Papers, R. Stanton to J. Macaulay, January 23, 1836.

⁴⁶Ibid., same to same, January 29, 1835.

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acutest reasoner...He is always dispassionate, and seldom under the sway of the party. They follow him, not he them."⁴⁷ These favourable comments by Bidwell's political opponents should not be discounted in evaluating his leadership in the Reform party.

One of the first acts of the Reform majority was to try to counteract the Tory accusations of the disloyalty by framing an address to Colborne, affirming that the Reformers "were deeply attached to the British connection", and refusing their opponents insinuations to the contrary. On most of the important issues the Reformers were united.⁴⁸ Their labours, however, met with the usual fate in the Legislative Council. In frustration the Assembly passed an address to the King, complaining of the many useful bills rejected by the Council. The last paragraph of the petition made a strong request for responsible government, as a cure for the political and economic ills of the province. "The rapid succession of ministers in the Colonial Office", who "are strangers to our province, and too distantly situated to acquire true and correct knowledge of the wants and wishes of the Canadian people", make "the practical need of local res-

⁴⁷Ibid., Nelson Cozens to J. Macaulay, March 18, 1835.

⁴⁸Canadian Correspondent, York, February 13, 1836.

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possibility" more "apparent and imperious."⁴⁹ The Reformers were determined to press their policies in this session, and probably would have fared better had it not been for the exaggerations and lack of political tact of their colleague, Wm. Lyon Mackenzie.

Mackenzie, once again in the Assembly, and popular because of his expulsions and successful trip to England, seemed to take for granted his right to speak for the entire Reform party, although he led only the very ultra-radical wing of it. Leading Reformers had, for some time, viewed with alarm Mackenzie's aggressiveness and sullied attacks on the government. At a meeting in Lennox and Addington Perry said that "no two persons disapproved more, at times, of Mr. Mackenzie's occasional violence than Mr. Bidwell and himself."⁵⁰ However, they supported him in principle. And because they did not openly disavow him, his programme, policies, and even language became associated with the Reformers. The Tory press grouped them into "the revolutionary Hume-Mackenzie-O'Grady-Bidwell party."⁵¹ When Mackenzie wrote an inflammatory letter to his constituents, and in vulgar vocabulary denounced the government, both at home and abroad, the

⁴⁹Brockville Recorder, April 21, 1835, (A reprint of the address).

⁵⁰Canadian Correspondent, York, April 26, 1834.

⁵¹Chronicle and Gazette, Kingston, October 11, 1834.

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Christian Guardian remarked that, although these were the opinions of one man, they took on "a stamp of importance" when their author was "a conscientious supporter of Bidwell and Perry."⁵²

Mackenzie never openly challenged Bidwell's right to leadership, but, with party organization in the modern sense almost non-existent, there was no need for such a challenge. Bidwell never attempted to dominate men's opinions. He preferred to discipline the members by logic and persuasion, methods that had little effect on the impulsive Mackenzie. Although he generally worked with the other Reformers in the "Bidwell Parliament", Mackenzie was never considered a leader in the Assembly.⁵³ He frequently voted with the minority, and often "heaped the most bitter abuses" on the Reform leaders.⁵⁴ Yet, there can be no doubt that Mackenzie had influence with the people. Since he was editor of the Colonial Advocate, many of his subscribers must have considered him the leading spokesman for the Reform party. Certainly on matters of finance there were few in the province who could speak so authoritatively.

Early in the first session Mackenzie persuaded the

⁵²Christian Guardian, York, September 30, 1835.

⁵³Public Archives Pamphlet, 1-1730, Responsible Government, by O. R. Gowan, York, 1839, p. 18.

⁵⁴Ibid.,

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Reformers to set up a Committee of Grievances, as the best way to expose the misgovernment of an "irresponsible" Executive. The committee, with Mackenzie as chairman, was established. Many Reformers, disgusted with Mackenzie and his methods, were prepared to stay away from the Grievance Committee, and let Mackenzie have his fill of investigations and reports.⁵⁵ This "laissez-faire" decision regarding Mackenzie and his works was probably an unwise policy on the part of the Reform leaders, but it pleased Mackenzie. He was now authorized to give free rein to his abundant energy, and show the world the true extent of Family Compact misrule. This he did, but unfortunately much more.

Mackenzie presented his voluminous report to the Assembly towards the end of the session. The House was half empty on the occasion, and before the members had an opportunity to examine the Report, a motion for printing it was carried. Thus when Mackenzie's Seventh Report on Grievances came before the public it was assumed to have received the sanction of the Reform majority. Later, Perry, voicing the opinion of the leading Reformers in the Assembly, "wished it to be distinctly understood by the country that the House never sanctioned the Report. There was a great deal of

⁵⁵G. M. Craig, Upper Canada, The Formative Years, 1784-1841, Toronto, McClelland and Stewart, 1963, p. 223.

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falsehood and shameful misrepresentations in it, and the House erred in printing it."⁵⁶ This disavowal came too late. The Report had been read throughout the country, and had already crossed the Atlantic. The Assembly did, finally, give the Mackenzie document a reluctant approval. Actually, it could not disown it; the Report was compiled under its auspices.

Mackenzie's Report exposed many real grievances, but its extreme and unjust remarks, especially against the Methodists, further alienated that body,⁵⁷ and many moderates from the Reform party. The report was received with alarm at the Colonial Office, because it was reasonably assumed that the critical document had the approval of the Assembly. Colborne was soon relieved of his position and instructed to delay the calling of a new session until a reply was received to the Grievance Report.

Meanwhile Mackenzie was organizing Alliance Societies throughout the province. Their purpose was to strengthen the Reform programme by supporting "honest, faithful, and capable candidates for office", and by arranging "to enter into close

⁵⁶Canadian Correspondent, Toronto, February 4, 1836, (Perry's speech in the Assembly).

⁵⁷Ryerson, after his visit to England in 1833, became estranged from the Reformers. He feared that their association with the "godless" English radicals would harm the British connection.

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alliance with any similar association that may be formed in Lower Canada."⁵⁸ Although these societies were under special tutelage of Mackenzie, they acquired more importance with the public when it was known that Bidwell and Rolph were the solicitors of the parent branch in Toronto.⁵⁹

In retaliation the Tories re-organized for action their dormant British Constitutional Society, and called "for every person possessed of British feeling or love of British institutions" to counteract "the baneful machination of a contemptible faction which is perambulating the two provinces."⁶⁰

It is into such a highly charged political atmosphere that Sir Francis Bond Head arrived, armed with Lord Glenelg's instructions on ruling Upper Canada. Although, according to the Colonial Secretary, the constitutional changes, demanded by the Grievance Report, could not be introduced, the new governor was instructed to make every effort to remedy real abuses in order to calm the unrest in the colony. This despatch, however, was proposed as a guide to Head, and only its essence was intended to be communicated to the provincial legislature.

⁵⁸Canadian Correspondent, Toronto, December 8, 1834.

⁵⁹Ibid.

⁶⁰Courier, Toronto, September 22, 1835. (Similar exertions were made in the April 30, 1836 edition.)

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Soon after his arrival in the province, Head had a number of private interviews with several leading Reformers. Mr. Speaker Bidwell was the first to be consulted. He informed Head that the Reformers did not consider the Grievance Report a true exposition of the problems in Upper Canada.⁶¹ The Reformers were eager to discuss the many abuses in the province, but were wary about bringing in Mackenzie's Report, probably for fear that its author would be considered their mouthpiece.

In the course of the frequent interviews, Head developed a strong dislike for Bidwell. Head was incapable of believing that a man, born in the United States of American parents, could possibly be a loyal British subject. In his communication with the Colonial Office, Head referred to Bidwell as "an avowed enemy of monarchical institutions, and an incurable American."⁶²

Although the session was officially opened by Colborne before he left the province, Head again summoned the legislature, and read his speech from the throne. The liberal newspapers later reported that Head re-opened the session because he intended to have a new election for Speaker. This would have given him the privilege to exercise

⁶¹F. B. Head, A Narrative, London, John Murray, 1839, p. 34.

⁶²Wallace, op. cit., p. 17.

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his prerogative of approving or disapproving the Assembly's choice. The Brockville Recorder thought that Head had planned to supplant Bidwell with Solicitor General Hagerman.⁶³ However, if such an intrigue was contemplated, the vigilance of the majority discouraged it, and this second opening of the session received critical comment.

Not heeding the instructions of the Colonial Secretary, Head laid the full text of Glenelg's instructions before the legislature. This document, although conciliatory in form, held out little hope for basic reforms. The British government was not willing to grant Upper Canada full control over her local affairs. For example, it was not ready to concede to any Canadian popular body the selection of public officers. However, the governor was advised to base his appointments on personal qualifications and not on political affiliations. The elective Legislative Council was completely ruled out as inconsistent with British institutions, and the responsibility of the Canadian Executive was to be "at all times" to the King and Parliament. It was obvious that the system of government contemplated by the Colonial Office was far different from what was proposed by the Reformers.

Notwithstanding the discouraging news from the Home government, the Reformers took heart when Head professed that

⁶³Brockville Recorder, June 10, 1836.

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he was a friend of Reform and willing to eradicate every real abuse. Their hopes grew when he appointed three of their members, Robert Baldwin, John Rolph, and J. H. Dunn to the Executive Council. These appointments were made in consultation with Bidwell who assured the Governor that all three possessed the full confidence of the majority of the Assembly.⁶⁴

The happy state of affairs lasted three weeks. When the new councillors demanded their rights to advise the governor in his policy-making according to the wishes of the Assembly, Head's conciliatory attitude changed abruptly. He absolutely refused to consider any such system, and set out on a course of high-handed autocracy. Without consulting the Colonial Office, he dismissed, or rather forced, the ministers to resign, and chose a new Council composed of Tories.

The Assembly, forcefully asserting the principle of a responsible Executive Council, passed an address to the governor, calling for information as to the causes which led to the resignation of the ministers. After passing the address, the House adjourned with an understanding that they would transact no further business until the requested information was received. Bidwell, as Speaker, could not have

⁶⁴Baldwin had pressed Head to appoint Bidwell, but the Governor claimed that Bidwell had to be discounted because of his American origin.

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adjourned the session had any member objected to the proposal. But both Tories and Reformers were equally unanimous on this important subject, and from the morning of March 15 until noon the following day all business of the Assembly was stopped.⁶⁵

Head defended his action in a long exposition of the prerogatives of the Lieutenant Governor. In essence, he stated that he alone was responsible to the King for the acts of the government.

But the Assembly was no longer to be intimidated by rhetoric. Even the usually unruffled Bidwell was losing restraint, and under his quiet exterior a feeling of deep antagonism towards the government was gaining momentum. The Assembly sent an address to the governor, expressing the majority's want of confidence in the new Council, and asking for its dismissal. Head's curt reply, that he cannot alter the Constitution, nor can the Assembly, only added heat to the already feverish atmosphere in the House. The correspondence between Head and the late councillors was submitted to a committee whose long report approved the conduct of the Reform ministers, and recommended, since all else failed, the withholding of supplies.

The Tories rejoiced at the setbacks experienced by

⁶⁵Brockville Recorder, March 25, 1836.

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the Reformers. The Chronicle and Gazette saw, in the answer of the governor to the Assembly's address, "the total extinguishing of all hopes of an elective Council...of the plunder of crown reserves, of having M. S. Bidwell at the head of the government and Mackenzie at the tail with Dr. O'Grady as vizier."⁶⁶ In defending Sir Francis, Hagerman made such heated and insulting remarks about Bidwell that the latter was forced to comment: "When the gentleman comes to his senses, I will answer him."⁶⁷

When it became evident that Head would not retract from his position, the Bidwell Assembly wielded the last weapon at its disposal. On April 15, 1835, the Assembly voted the stopping of supplies, thus withholding the salaries and pensions of the lesser government officials, not covered by the civil list. Head countered the Assembly's bold measure by refusing to sign the money bills for the building of roads, schools, and other public works, and then prorogued the House. The governor's action was much more damaging to the country than was the Assembly's rather empty gesture, but it gave Head and the Tories the chance to "ascribe every evil, past, present and to come...in the

⁶⁶Chronicle and Gazette, Kingston, February 24, 1836.

⁶⁷Canadian Correspondent, Toronto, April 14, 1836, (A report of the debate on the stopping of supplies).

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province, to that source."⁶⁸ The supplies stopped by the Assembly mounted to £10,000, while the money bills stopped by the governor amounted to £150,000. The Reformers defended their action by pointing out that "the stopping of supplies was the undoubted right of the representatives of the people, while the stopping of money bills was a stretch of power which the King dare not exercise in England."⁶⁹

The Reformers accompanied their refusal of supplies with an address to the King and to the House of Commons. Declaring that responsible government was constitutionally established in the province in 1791, the address strongly denounced Head's arbitrary acts, and referred to him "as despotic, tyrannical...and as displaying conduct derogatory to the honour of the King."⁷⁰ It was generally known that Bidwell was the framer of this condemning document; and once in his life he sounded very much like Mackenzie. This was the first time that such undisguised charges of so critical a nature had been officially made against a colonial governor.⁷¹ Head never forgot this.

⁶⁸Brockville Recorder, June 4, 1836.

⁶⁹Ibid.

⁷⁰Journals of Assembly of Upper Canada, 1836, April 15, 1836.

⁷¹C. J. Dent, The Story of Upper Canadian Rebellion, Vol. 1, Toronto, C. Blackett and Robinson, 1885, p. 307.

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At the close of the session Bidwell was acting contrary to his prudent manner. Head's obstinacy had driven the reasonable man to commit one of the greatest faux-pas of his political career. The day before parliament was to be prorogued, Bidwell presented to the House a letter from Papineau. This letter was written in protest to Colborne's speech from the throne in 1836. The governor had remarked that the affairs in Lower Canada were exercising as "injurious influences" on the interests of Upper Canada. The Lower Canada Assembly passed a series of resolutions contradicting Colborne's view, and authorized its Speaker to send copies of the resolutions to the Speakers of the other provinces. Bidwell's action in tabling Papineau's letter at this time was almost as indiscreet as Mackenzie's was when he published Hume's letter. There was little sympathy in Upper Canada with the political attitude assumed in the Lower province. The text of the letter, denouncing "the colonial ministers 4000 miles away from the scene of our suffering", and advocating the form of government selected "by the wise statesmen of the neighboring union",⁷² gave the opponents of Bidwell and his party the opportunity for new accusations. They warned the country that under the guise of reform "the

⁷²Christian Guardian, Toronto, May 4, 1836, (A copy of Papineau's letter).

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republican faction" was working for independence from Britain.

The Patriot's remarks were typical of the Tory reaction:

That the Speaker of our Assembly should sympathize with a traitor who for years has been plotting the overthrow of the British constitution, and participate in all his revolutionary schemes is at once, our disgrace and misfortune.⁷³

A month later Head dissolved the head-strong Assembly and Bidwell's political life in Canada came ingloriously to an end.

The general election in July was preceded by one of the most vigorous campaigns ever conducted in Upper Canada. The chief protagonist in the political arena was Sir Francis himself. The governor understood mass psychology. He reduced the issues which were contested in the province to the simple formula of whether the people wanted to retain their British connections or not. A vote for Bidwell and his supporters would, in Head's language, be a vote "for republicanism and independence." There is irony in the fact that the man who publicly protested that Upper Canadians "detest democracy" used the most democratic means to endorse his position as an autocratic governor. "By appeals to their fears and their patriotism, and other means quite as effective, but less widely advertised, Sir Francis won the elections."⁷⁴

⁷³Patriot, Toronto, April 26, 1836.

⁷⁴T. P. L., Baldwin Papers, W. W. Baldwin to R. Baldwin, July 6, 1836.

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Much importance was attached to the defeat of Bidwell, "the leader and soul of the (Reform) party",⁷⁵ for "the defeat of one BIDWELL would equal to a dozen PERRYS."⁷⁶ Although as Speaker Bidwell did not take part in the debates of the late Assembly, the Tories were aware "that from the elevated seat, it was he who directed the fight."⁷⁷ By an express command of Head, Hagerman was sent to the polls at Lennox and Addington to harangue the voters against returning Bidwell. In addition, a Tory candidate read the ill-fated letter from Papineau.

Bidwell came at the foot of the polls in the former Reform stronghold. Head had his revenge. The Courier rejoicing over Bidwell's unexpected defeat could not resist to bring again to the public's attention the ex-Speaker's dubious American background:

The ungrateful son of an ungrateful father...a father and son, who have both sought to subvert the institutions of that colony, which sheltered their heads when they fled from their native state, Massachusetts...The leader of the herd is struck down...and the chair which was desecrated by a Yankee refugee will soon be more worthily filled.⁷⁸

⁷⁵By Town Gazette, July 21, 1836. (A Tory paper.)

⁷⁶Chronicle and Gazette, June 18, 1836. (A Tory paper.)

⁷⁷Ibid.

⁷⁸Courier, Toronto, July 13, 1836.

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The father's misfortune continued to cast a shadow over the path of the son.

After the stormy and futile session, "a session as was never before seen in Upper Canada",⁷⁹ Bidwell had no heart left for politics. He wrote wearily to Robert Baldwin in England: "Twelve years hard labour have exhausted my hopes and my strength."⁸⁰ While Head and the Tories were stumping the province, calling on all who stood for British institutions and British connection to give their support in defeating Bidwell and his party, the exhausted ex-Speaker joined his wife in Florida where she was recuperating from a recent illness. When he returned the elections were already beginning. He later wrote that although "every means were used to defeat Perry and myself..., we might have succeeded if we would use the same weapons as our adversaries...but neither of us thought it best."⁸¹ Retiring from political life, Bidwell could not see "in what way the country could be relieved and improved." But of one thing he was certain. No good would be accomplished "by denouncing any man as disloyal,

⁷⁹United Church Archives, Toronto, Ryerson Correspondence, Junkin (reporter for Christian Guardian) to Ryerson, May 1, 1836.

⁸⁰T. P. L., Baldwin Papers, Bidwell to R. Baldwin, July 29, 1836.

⁸¹Ibid.

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a revolutionist, a traitor who happens to differ from the Provincial government on questions of expediency or constitutional principle."⁸²

Of the leading Reformers in Upper Canada Bidwell and Mackenzie could probably be considered the most liberal. They both advocated similar policies and had that disregard for irrelevant tradition which is a mark of a liberal Reformer. The difference was in their attitude and methods of implementing the policies of Reform. Bidwell saw the problems of the province in broad terms and worked for reform through the existing constitutional structure. Mackenzie had no organized programme; "he never clung to one sovereign political panacea."⁸³ He saw political evil all around him, and ended by denouncing the whole political system. Robert Baldwin, a moderate Reformer, found the solution to the political ills of the province in the principle of responsible government, but during the 1830's he did not engage in the rough pioneer politics in the Assembly, but by logical arguments tried to persuade the British authorities of his plan. Ryerson never seemed to have comprehended the principle of responsible government. While Bidwell and

⁸²Ibid.

⁸³D. G. Creighton, The Commercial Empire of the St. Lawrence 1760-1850, Toronto, Clarke Irwin, 1937, p. 263.

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Baldwin wanted leadership in the government to come from the Assembly, Ryerson preferred it to come from an enlightened governor, "to whom men of good will would respond." The administration of responsible government would, Ryerson thought, produce party strife, harmful to British connection and the peace of the colony.⁸⁴ An unfortunate phenomenon in the history of Reform in the 1820's and 1830's was that there was no one leader who was able to unite the different streams of the Reform movement into one strong organization with a definite platform. Bidwell, the greatest parliamentarian among the Reformers, might have been a more effective leader were it not for his retiring nature and constant ill health. The unco-ordinated efforts of the different Reform leaders complicated and confused the issues.

⁸⁴R. G. Riddell, "Egerton Ryerson's View on the Government of Upper Canada in 1836", Canadian Historical Review, Vol. 19, 1938, p. 406.

CHAPTER VII

THE BANISHMENT

Bidwell left Canada in 1837, as his father had come in 1810, from motives that are very similar and not entirely clear. Both claimed the impossibility to vindicate themselves before their political enemies. The story of Marshal Spring Bidwell's banishment will be told here. By presenting both sides of the case, this chapter will attempt to evaluate this dramatic episode in Canadian history to see whether Bidwell should stand acquitted, a victim of prejudice and revenge, or stand accused, guilty of high treason.

After the defeat in the election of 1836, Bidwell retired completely from public life and became engrossed in his law practice. He was no longer willing "to incur expense or trouble for the purpose of merely getting harnassed in again for uphill work."¹ When a committee of the Conservative Assembly questioned Bidwell, regarding the irregularities of the last election, he revealed little that might have implicated his opponents.² It appeared futile to Bidwell to

¹T. P. L., Baldwin Papers, Bidwell to R. Baldwin, July 29, 1836.

²Q Series 399, 41, p. 61, Minutes of the Evidence Taken Before the Select Committee to Whom was Referred the Petitions of Charles Duncombe, November 25, 1836.

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expend any more energy so long as Head, in whom he had no confidence, remained at the helm of the government.³ Referring to Bidwell's testimony, Rolph stated that Bidwell was now "wholly unconnected with the Reform Society", and never attended its meetings. Once out of this House, he was notoriously so estranged from political transactions as to render any application to him, a priori, certainly fruitless.⁴

Bidwell himself, however, never publicly severed his connection with the Reform party. He, along with Rolph, was still considered as one of its chief leaders, and it was generally accepted that any action or policy taken by the party was sanctioned by these two men. When Mackenzie's ultra-radicals met in Doel's Brewery in Toronto to adopt a Declaration, modelled on the American document of 1776, they unanimously appointed Rolph and Bidwell as delegates to a provincial convention.⁵ The Mackenzie group realized that the two names would give weight to their project. This convention was to draft a constitution for Upper Canada, ask the

³O. A., French Papers, Bidwell to Buell, March 5, 1836.

⁴Public Archives Pamphlet, 1-1596, Speech of the Hon. John Rolph, On the Occasion of the Late Inquiry into the Charges of High Misdemeanor at the Late Election, York, 1836.

⁵Constitution, Toronto, August 2, 1837. (Gives a complete report of the meeting).

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governor to remodel the Executive Council to include Rolph, Bidwell and Mackenzie, and make it responsible to the Assembly. On the acceptance of these demands a general election was to be held, and the Assembly made dominant; otherwise, the government would be seized and a provisional one established.⁶

All of this was planned without consulting Bidwell. When he heard of his unexpected appointment, he wrote a letter of refusal to Mackenzie and requested that it be published:

I cannot but regret that my name should have been used without my consent or previous knowledge, by which I have been driven to the disagreeable necessity of thus publicly declining an appointment which I have no doubt was made with kind and friendly feelings towards me.⁷

Although Bidwell took no active part in politics, he followed closely the developments in Upper and Lower Canada. The following extract from a letter to a Lower Canadian Patriot, E. B. O'Callaghan, editor of the Vindicator, was unfortunately published, and furnished an added weapon to

⁶W. Kingsford, History of Canada, Vol. 10, Toronto, Rowsell and Hutchison, 1898, p. 374.

⁷By Town Gazette, October 4, 1837, reprinted from the Constitution, no date.

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strike Bidwell when the opportune time arose:

...Your great and powerful exertions in the cause of liberty and justice I have noticed with admiration and respect, and I look with deep interest on the struggle in Lower Canada between an insulted, oppressed and injured people and their oppressors. All hope of justice from the authorities in England seem to be extinguished.⁸

As a step in the programme of conciliation, Lord Glenelg instructed Head to make overtures to the Reformers. One of the gestures in this act of conciliation was to appoint Bidwell to the Court of the King's Bench in Upper Canada.⁹ Soon after his arrival, Head informed Bidwell that he intended to recommend him to the judgeship on the first vacancy.¹⁰ However, a few weeks later, when the Assembly questioned the action of the governor in connection with the dismissal of the Executive Council, Head warned Bidwell that he would not make the proposed appointment if the Assembly continued to censure his actions.¹¹ Bidwell understood this threat to be a strong indication that he was expected to throw his influence in support of the government. Indignant

⁸Patriot, Toronto, May 18, 1838, reprinted from the Vindicator, (no date).

⁹H. T. Manning, "The Colonial Policy of the Whig Ministry, 1830-1837", Canadian Historical Review, Vol. 33, 1952, p. 357.

¹⁰Brockville Recorder, May 10, 1838.

¹¹Ibid.

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at the offer of a bribe, Bidwell determined not to accept the judgeship if it involved any such conditions. He replied that the resolutions had been adopted by a large majority in the Assembly, with all the documents before them, and he saw no justification in trying to alter the decisions of the House.¹²

The rift between the governor and the Speaker became more pronounced as the session progressed. After the address to the King, in which Bidwell minced no words in charging Head with flagrant misrule, his chances of promotion under Head were completely destroyed. Head was surprised that the British government, instead of condemning Bidwell, desired publicly to exalt him by giving him a judgeship. He was keenly disappointed when the Home government approved the bills which he had reserved as punishment to the Assembly for withholding supplies. And Sir Francis could not "recover from the shock" when he received instructions to promulgate to all North American colonies that "the Executive Council was to be increased in number, and henceforth be composed of individuals possessing the confidence of the people."¹³ Bidwell had advocated this principle, but Head labelled him a republican

¹²Ibid.

¹³F. B. Head, A Narrative, London, John Murray, 1839, p. 169.

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and a traitor, and denounced the principle itself as unconstitutional.

Head had further reasons to dislike Bidwell. After the election of 1836, which so positively endorsed Head's autocratic programme, Bidwell wrote privately to Glenelg relating what had taken place between the governor and himself, particularly about the former's proposition to appoint him judge.¹⁴

Several other Reformers, among them Rolph, also wrote to Glenelg. The Colonial Secretary refused to consider these direct communications, insisting that they should be sent through the governor. The Reformers had relied too much on the good will of the British minister when they neglected to follow the usual procedure in corresponding with British officials. Glenelg informed Head about the letters and requested him to obtain copies from the gentlemen concerned, and then supply the Colonial Office with "any observations on it."¹⁵

Rolph acknowledged Head's letter requesting a copy of his correspondence with the Colonial Secretary, and promised to reply when less pressed for time. The time never came.

¹⁴R. G. 5, A 1, Upper Canada Sundries, Vol. 171, Bidwell to Joseph, October 6, 1836.

¹⁵Head, op. cit., p. 146.

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Bidwell wrote to Head's office stating that his letter to the Colonial Secretary was of a private nature, intended to protect himself

...in the estimation and good opinion, not of the government, but of his Lordship personally against any representations from this province relative to me that might require explanations...But I had no wish or intention to appeal to the government, and no anxiety about its views. The private letter, I do not now choose, especially as I have no longer any connection with public life, to commit into a public or official communication by transmitting to you a copy of it...¹⁶

Head could not comprehend why, inspite of all of Bidwell's misdemeanors, the Colonial Office insisted that he be raised to the judgeship. But Head was adamant. After he had made his appointments to the judiciary, he wrote to Glenelg:

...I regret to have omitted to recommend...the name of Mr. Bidwell. The gentleman's legal acquirements are, I consider, superior to at least one of the individuals whom I have elevated. His moral character is irreproachable, and though he ostensibly was the leader of a party who have offered me every possible insult...I entertain no animosity towards Mr. Bidwell. Yet I cannot but feel that the welfare and honour of the province depends on His Majesty never promoting a disloyal man. Mr. Bidwell's object (as far as can be solicited from his associates)... was...by forming an alliance with Papineau, to exchange the British constitution for the low groveling principles of democracy.¹⁷

¹⁶R. G. 5, A 1, Upper Canada Sundries, Vol. 171, Bidwell to Joseph (Head's private secretary), October 6, 1836.

¹⁷Head, op. cit., p. 273, Head to Glenelg, July 14, 1837.

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Notwithstanding the governor's perfidious picture of Bidwell, the reply from Downing Street regretted that Bidwell was not appointed. The Colonial Secretary maintained:

that Bidwell's disloyalty had not been attempted to be proved by an act of his; that he has for the present, at least, withdrawn himself from political strife; and that his legal abilities and high moral character are acknowledged and respected even by his political opponents; I cannot regard the part which he formerly took in local politics as an insuperable barrier to his future advancement in his profession...If any vacancy should occur among the judges of the Court of King's Bench, it is the wish of Her Majesty's Government that the situation should be offered to Mr. Bidwell.¹⁸

Disregarding the orders of the Colonial Office, Head took upon himself "the serious responsibility of positively refusing to place Mr. Bidwell on the Bench."¹⁹ When the rebellion erupted, Head was still arguing with Glenelg about the judgeship for Bidwell. Shortly before the outbreak, Head had once more refused the Colonial Secretary's request to appoint Bidwell to the Bench and accompanied the refusal with his own resignation. However, he was probably confident that his resignation would not be accepted, for he considered his presence most important in the disturbed province. Head thought that he would be commended by the Colonial Office if he could in some way prove that Bidwell was involved in a conspiracy against the government. In this way, he would not

¹⁸Ibid., p. 277, Glenelg to Head, July 14, 1837.

¹⁹Ibid.

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only justify his own disobedience to Glenelg, but show his capacity for discernment by proving Bidwell a "deeply dyed traitor". Unfortunately Bidwell fell into Head's trap.

When the insurrection broke out, Head asked Bidwell to accompany Baldwin to the rebel camp with a flag of truce. Bidwell declined, giving as a reason that he did not possess the confidence of the leaders of the insurgents. Rolph and Baldwin complied with the governor's request.

Bidwell soon became aware that public opinion had unfavourably interpreted his refusal to accompany Baldwin in his mission to the rebels, as an approval of the rebellion. He went to the Attorney General to protest against the suspicion, and offered to submit his papers to public investigation. Hagerman attested that as far as he knew, no government official had suspected him, but that many people mistrusted him because of his political principles and his constant opposition to the government. The Attorney General advised Bidwell to leave the province, as his political theories were "entirely at variance with the British monarchical institutions."²⁰

On the morning of May 8, the day after the Yonge Street fracas, Bidwell heard about a flag used by the rebels, which carried the inscription "Bidwell and the Glorious

²⁰Kingsford, op. cit., Vol. X, p. 424.

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Minority, 1837, A Good Beginning." Furthermore, his letters at the post office had been seized by the government.

Bidwell, must have felt his position keenly. That morning Head sent for him, and strongly recommended that he leave the province. He warned that martial law would soon be enforced, and that it would be impossible to protect him.²¹ Sir Francis brought out the rebel flag and pointed to the implications which it would bring. Apparently, Head affirmed, the rebels considered Bidwell their leader, "the Papineau of Upper Canada." Bidwell's arguments that the banner was one which had been used in a former election, and that he was totally unconnected with the insurrection, proved futile. The governor then produced the intercepted letters. Bidwell asked that they be examined, as he was certain that they contained nothing that would implicate him. The letters were not opened, but the governor was inflexible. He claimed that he was being blamed for not already apprehending Bidwell. Head contended that whether Bidwell was innocent or not, in the present excited state, it was safer for him to leave.

Bidwell's contemporaries could well appreciate the circumstances with which he was faced. Charles Durand testified from his own experience "that in 1837-38 no influential

²¹F. Hincks, Reminiscences of His Public Life, Montreal, Wm. Drysdale, 1884, p. 26.

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man having political enemies could expect a fair trial or British justice."²² Francis Hincks said that there was "literally a reign of terror in Toronto and vicinity."²³ Knowing that the courts of justice were all in the hands of his enemies, Bidwell, a timid man, consented to Head's apparently friendly and urgent request. Head insisted that Bidwell put his decision in writing.

That evening Bidwell wrote a letter to Head. The content indicates that he still did not suspect the governor's design:

In consequence of the kind conversation of Your Excellency this morning, I have determined to leave the province forever. I am aware that the circumstances to which Your Excellency alludes are calculated to give rise to suspicions against me...I am confident at the same time that the investigation that, of course, now will be made will fully remove those suspicions from the mind of Your Excellency and will prove that I had no knowledge or expectation that any such attempt was in contemplation.²⁴

That same day Bidwell received a letter from Attorney General Hagerman reassuring him that his fears regarding Rolph's property (who had secretly left the province) were groundless. Hagerman, however, agreed to take measures for

²²C. Durand, Reminiscences of Charles Durand, Toronto, Hunter, Rose, 1897, p. 26.

²³Hincks, op. cit., p. 28.

²⁴P. A. C., Mg. 24, B123, Bidwell Papers, Bidwell to Head, December 8, 1837.

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its security.²⁵ The rest of the letter is probably one of the strongest points in Bidwell's defence, for it showed clearly that the official, who was Bidwell's political opponent, did not suspect him to be involved in the rebellion, even after discussing Bidwell's banishment with Head:

...I have seen your note to Sir Francis Bond Head announcing your intentions to leave the province, as you say, forever. I lament deeply that any train of circumstances should have induced you to believe that this estrangement from a country where you have lived so long and where you have made so many sincere friends was imposed upon you as a duty...If I can be of service to you by shielding your character from unmerited reproach, my testimony in your favour shall not be withheld.²⁶

A further proof that leading government officials did not believe Bidwell guilty of any treason is that the Chief Justice himself came to bid him farewell, "and appeared much affected" as he accompanied Bidwell to the steamboat.²⁷

J. B. Robinson was too loyal a Tory to have wanted to be seen with a rebel.

Head gave Bidwell from Friday till Sunday morning to make arrangements and to leave the province forever. Mrs. Bidwell was in the Southern States at the time so Bidwell

²⁵This property actually belonged to Bidwell, for he had loaned Rolph large sums to pay off debts.

²⁶Ibid., Hagerman to Bidwell, December 8, 1837.

²⁷Brockville Recorder, December 28, 1837, reprinted from the St. Catherine Journal.

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left the children in Toronto with his sister Sarah. He wrote to Henry Cassady, a barrister in Kingston, and once a student in Bidwell's law office, (and who ironically was a high Tory) to arrange his affairs for him. Bidwell again attested his innocence, but "as these are times when the slightest circumstances, to minds excited by prejudice and alarm, may appear conclusive evidence of guilt" he felt it wise to comply with this governor's wish.²⁸

Once across the border, and having two days to think over the "nightmarish" weekend, Bidwell wrote another letter to Head, probably to explain some ambiguities which appeared in his hurriedly written note of December 8. Now he enumerated what, and what only, were the "circumstances" which the governor had mentioned would throw suspicion on him: his former political life, "the garbled extract of a hasty and carelessly written letter to Dr. O'Callaghan", and the discovery of a flag which was used in a former election campaign.²⁹ At this point Bidwell was still confident that "after the excitement of the moment shall have subsided and the grounds of suspicion...calmly reviewed", the governor would be convinced that he had no part in the recent revolt. Bidwell also qualified the "forever" of the former letter,

²⁸P. A. C., Mg. 24, B123, Bidwell Papers, Bidwell to Cassady, December 9, 1837.

²⁹Ibid., Bidwell to Head, December 11, 1837.

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making his return conditioned upon the pleasure of the local or imperial government. Probably anticipating his return to Canada, Bidwell put in a note of respect for Head's administration, when he considered himself "a subject of a free government which does not proscribe opinions or condemn anyone for the free or even unguarded expression of them."

Bidwell's sudden departure caused much excited comment in Upper Canada and elicited regret and relief, depending to which side one belonged. The Brockville Recorder, voicing the sentiments of the liberals, regretted "the perpetual exilement of the distinguished individual."³⁰ On the contrary, John Macaulay thought that Head deserved the thanks of Upper Canadians "for shielding them from the indignity of having Bidwell...a democratic in the very marrow of his bones...on our bench of justice." He amused himself with the idea of "how (British) ministers will stare when they learn that their intended pet, Bidwell, has found it advisable to expatriate himself."³¹ The By Town Gazette hoped "that the Bidwell case will be left alone" as it "only created stormy and injurious party feelings."³²

³⁰Brockville Recorder, December 28, 1837.

³¹O. A., Macaulay Papers, J. Macaulay to Anne Macaulay, January 16, 1838.

³²By Town Gazette, June 20, 1838.

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Head had no intention of ever recalling Bidwell to Canada. Before delivering the province to Sir Arthur, he replied to Bidwell's letter of December 11:

...You know what has been the lamentable policy which has been pursued by the party which considered you their leader...I should have felt it my duty to Upper Canada not to have annuled the agreement you made never to return here...Your talents in the United States may be useful, whereas they were here constantly obstructed by a conscientious predilection in favour of elective institutions, which you must have known are subversive of monarchical governments.³³

As soon as Bidwell had departed, Head accused him of fleeing because of implication in the rebellion. He advertised that he had given Bidwell the alternative of leaving the province or having the intercepted letters examined, and that Bidwell chose the former course. Rumours reported that communication between Bidwell and Papineau had been seized, and that Bidwell himself sought permission to leave the province. Parts of Bidwell's letters to Head were quoted to show how much he was indebted to the governor.³⁴ The Patriot, a government organ, gave Head's version of the Bidwell episode, and printed Bidwell's letter of December 8 to the governor, carefully omitting the part of the sentence in which Bidwell

³³P. A. C., Mg. 24, B123, Bidwell Papers, Head to Bidwell, March 23, 1838.

³⁴O. A., J. Roaf Papers, J. Roaf to Bidwell, December 19, 1837.

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declared his ignorance of the insurrection.³⁵ Furthermore, the editor called on the Law Society of Upper Canada to remove Bidwell's name from their rolls.

Ryerson immediately came to Bidwell's rescue. Although in recent years the friendship between the two men had somewhat cooled, and Ryerson had been attacked by newspapers of the party to which Bidwell belonged, he felt it a duty "to prevent a gross act of injustice", on a man who had carried through "the legislation by which the different religious denominations held their church property and their ministers solemnized matrimony."³⁶

From the Cassadys, Ryerson obtained the correspondence which took place between Bidwell and Head and the Attorney General. And using his own knowledge of Bidwell, Ryerson exposed the Bidwell case in the Upper Canada Herald.³⁷ He signed the graphic article "a United Empire Loyalist", and had a law student recopy it so as not to excite suspicion. Bitter feelings were rampant after the rebellion and arrests were frequent. It was, therefore, not prudent to come to the defence of a supposed rebel. Ryerson exposed the judgeship

³⁵By Town Gazette, May 9, 1838, reprinted from the Patriot.

³⁶J. C. Hodgins, ed., The Story of My Life, Toronto, Wm. Briggs, 1883, p. 191.

³⁷Upper Canada Herald, Kingston, May 8, 1838, (Mrs. Cassady was a relative of Ryerson; her husband was Bidwell's law agent).

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controversy and the falsehood about the intercepted letters. (These were innocently private, one from Bidwell's wife and the other from a Mr. Jones, formerly of Toronto.) He further proved that up to the time of Bidwell's departure, there was no suspicion against him in the minds of those most competent to judge: the Attorney General and the Chief Justice. Ryerson affirmed that Bidwell "was morally and virtually compelled to leave the province" by Head. Moreover, Ryerson pointed out that the recent investigations of the rebellion did not bring forth any evidence to show Bidwell's implication in it.

Regarding the flag used by the rebels, it was not difficult to prove that the flag had been used in 1832, in the by-election of York, after Mackenzie's second expulsion. The Christian Guardian of January 4, 1832, had an account of the banners used in the procession to escort Mackenzie to the town. Someone had changed the "2" to "7". The inscription was actually quite inappropriate in 1837, for Bidwell was not in the Assembly, and the rebels professed to be in a majority in the province.³⁸

³⁸Head treasured this banner as a trophy of war, and took it with him to England. When Laurier visited England on the Diamond Jubilee of Queen Victoria, this banner was brought out by a member of the Head family to a dinner in honour of the prime minister. E. J. Hathaway, Jesse Ketchum and His Times, p. 244.

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Ryerson concluded that "a British subject had been banished for talent and opinions, and British liberty had been violated..."

Angry at the publication of his letter to Bidwell, Hagerman attempted to justify his conduct in the Patriot. He pointed out that Bidwell was grateful to leave the province unimpeached, for he was aware that "he had advocated anti-British policy from childhood, and earnestly recommended it to the people."³⁹ This statement, of course, in no way proved Bidwell guilty of conspiracy in the rebellion. Hagerman also wrote to Ryerson and accused him of not signing his own name to the Bidwell article for fear of possible legal repercussions.⁴⁰

Ryerson at once reciprocated "with the most argumentative article he ever penned", and this time signed his own name to it. Sir Arthur, who succeeded Sir Francis, requested Ryerson publicly to withdraw the article, "for it greatly weakened the government position." Ryerson refused, and, as a result, lost the governor's friendship.⁴¹

Bidwell consistently maintained that his offence consisted "in a faithful, honourable, disinterested attempt, by

³⁹Patriot, Toronto, May 18, 1838.

⁴⁰Hodgins, ed., op. cit., p. 193.

⁴¹Ibid.

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constitutional means...to improve the conditions and support the rights of the people of Upper Canada." He was confident that had his views prevailed, "there would have been no rebellion."⁴² Keenly hurt, Bidwell complained: "I shall live and die feeling that I have been deeply injured by the government, and that it is one of the basest governments that exists."

Bidwell visited Sir Francis when the latter was passing through New York on his way to England. Head confided that he had been required by Glenelg to appoint Bidwell judge, and that his refusal to carry out the order led to his resignation. He claimed that he regretted Bidwell's banishment, but said that it was a consequence of the rebellion. To which Bidwell retorted: "No, this was your act, not that of the rebels."⁴³

Bidwell also called on Sir Arthur at Albany, when the new governor was on his way to Upper Canada. However, after the interview Bidwell was certain "that there would be no liberality under him (Arthur)."⁴⁴ Bidwell did not ask permission to return to Canada. His personal pride did not allow him "to ask that as a favour which ought to be offered

⁴²P. A. C., Mg 24, B123, Bidwell Papers, Bidwell to Cassady, April 29, 1838.

⁴³Ibid., Memorandum at the back of the letter from Head, March 23, 1838.

⁴⁴Ibid., Bidwell to Cassady, April 28, 1838.

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as an act of justice."⁴⁵

Sir Arthur, like his predecessor, was convinced that Bidwell was implicated in the rebellion. He wrote to Glenelg that "Mackenzie was only the tool in the hands of Rolph and Bidwell", who had been "for years meditating the overthrow of the government."⁴⁶ Arthur was certain that there was a secret understanding between Bidwell and the Governor Marcy of New York, and that Bidwell had a hand in the organization of the attacks on Upper Canada from Rochester.⁴⁷ However, the only proof that he had for the above accusations was the friendly relations between Bidwell and the governor of New York, along with the suspicions of Sir Francis, which were faithfully transmitted to his successor.

In a despatch of May 5, 1838, Glenelg authorized Arthur "to acquaint Mr. Bidwell that he is at liberty to return to the province."⁴⁸ Bidwell, of course, would never have complied to such a gesture, even if it had been offered. He wrote to Cassady that "a permission to return would not

⁴⁵Ibid.

⁴⁶C. R. Sanderson, ed., The Arthur Papers, Vol. 1, Toronto, University of Toronto Press, 1957, pp. 196-197, Arthur to Glenelg, June 15, 1838.

⁴⁷Ibid., Arthur to Colborne, April 5, 1838, p. 71.

⁴⁸GI Series, Vol. 85, p. 157, Glenelg to Arthur, May 5, 1838.

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repair the wrong done me."⁴⁹ To Bidwell only a public investigation could properly clear his name of treason.

Sir Arthur, like Head, tried to convince the Colonial Secretary of Bidwell's disloyalty. Hoping to procure some tangible evidence to justify his opinions, the governor intercepted a few of Bidwell's letters to his Canadian friends. The letter to Francis Hincks must have sparked the ire of Sir Arthur when he read that Lord Durham had an opportunity to effect wonders, but "if he allows Sir Arthur to remain, there is an end, of course, of all hope." Furthermore, "the system in which the government has been administered--that of disregarding the opinions of the people and advancing those, and only those, who adopted that course, is the root of all the trouble."⁵⁰ Bidwell's letters did indeed contain much criticism of the government, but they contained no treason. His opponents, however, made no distinction between dissatisfaction and disloyalty.

Bidwell claimed that he had "never had the least expectation of obtaining justice or redress from the Colonial Office", and he knew "Canadian authorities too well to expect

⁴⁹P. A. C., Mg. 24, B123, Bidwell Papers, Bidwell to Cassady, May 18, 1838.

⁵⁰Sanderson, op. cit., p. 237, Bidwell to Hincks, July 12, 1838.

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anything liberal from them, even if they were ordered."⁵¹ Yet, that for a long time after his exile, Bidwell desired to return to Canada is evident from the efforts he made to that effect. The interviews with the two governors must have had a return to Canada as their object. Also, Bidwell did not solicit the publication of his correspondence with Head and Hagerman, but he was quite pleased when Ryerson and Cassady published it. Further, as soon as he arrived in the United States, he wrote a letter to a friend in England, giving a full account of what befell him. Significantly this friend was an intimate acquaintance of Glenelg and Durham. This letter probably inspired Glenelg's despatch to Arthur, granting permission to Bidwell to return. Bidwell hoped that Durham would vindicate his name, but the Governor General was too preoccupied with colonial affairs to investigate the Bidwell case. Disappointed, Bidwell wrote bitterly about Durham and his "childish pomp", and perhaps unfairly denounced "his melancholy and infamous violation of all the free and liberal principles which he formerly professed."⁵² Bidwell had not yet read the Durham Report and believed Durham to have leagued himself with "the desperate faction that rules Upper Canada." "As to my case", Bidwell complained, "it

⁵¹P. A. C., Mg. 24, B123, Bidwell Papers, Bidwell to Cassady, May 18, 1838.

⁵²Ibid., Bidwell to Cassady, September 7, 1838.

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turned out as I expected. There is too little honour or justice in the government to afford me any redress."

Bidwell's household property was not sold until August, a full eight months after his departure.⁵³ Was he waiting until he was certain that there would be no redress of the injustice done him? One of his houses in Toronto was purchased by Rev. J. Roaf in 1839 and the other by Rolph in 1845.⁵⁴ At the time of Bidwell's death in 1873, much of his property in Kingston was still undisposed of. Bidwell seems to have wanted to keep some ties with Canada.

In discussing Bidwell's banishment several questions inevitably present themselves. If Bidwell was guilty of treason, why was he offered to escape by the very people who maintained that he was guilty? If he was a leader of the disloyal Reformers, of men like Matthews and Lount, why was he not treated to the same fate? Or was there, in fact, any foundation for the accusations against Bidwell? An answer to the last question would throw light on the other two.

Hagerman had accused Bidwell of not informing the government of the plans of the insurrection. Supposing that Bidwell was aware of the preparation for a revolt, (which he he consistently denied) was there a need to notify the

⁵³Brockville Recorder, August 9, 1838.

⁵⁴O. A., Assessment Rolls, 1834-1845.

government? Mackenzie did not work in secret. His newspaper articles advocating armed resistance were read throughout the province.⁵⁵ Head himself stated that he was informed about the preparations for a rebellion: "I allowed the leader of the intended insurrection, a full opportunity to make his intended experiment, freely to write, say, and do what he chose, allowed him to drill his deluded adherents, and allowed him to make a deliberate preparation for revolt."⁵⁶ Obviously there was no need to inform the government.

Bidwell was accused of conspiring with Papineau to overthrow the government. In the Lindsey Papers there is a letter written by General Birge, which claims that when the General visited Toronto in the fall of 1837, Bidwell informed him of the projected rebellion and solicited his help. The writer further states that Bidwell received secret despatches from Papineau through an emissary named Dufort.⁵⁷

⁵⁵Correspondent, Toronto, August 12, 1837, (The entire proceedings of the meeting at Doel's Brewery was published.)

⁵⁶Brockville Recorder, June 7, 1838, (Quotes Head's speech); Patriot, April 17, 1838, (Quotes despatch of Head to Glenely, December 17, 1837.)

⁵⁷O. A., Lindsey Papers, Box 1, A letter from General Birge. It has no forwarding address and no date. Some historians have questioned the authenticity of that letter. Professor F. Ouellet, who has made a profound study of Papineau, has not found any reference to the Dufort mission.

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Yet no other proof has been found in support of Bidwell's involvement in the rebellion. The investigations, made during the trials following the insurrection, and those by a Select Committee, appointed to inquire into all the circumstances of the uprising, found no evidence which might implicate Bidwell. Mackenzie, himself, testified in his Flag of Truce that Bidwell did not attend any meetings at which the insurrection was organized, and had no part in planning the outbreak.

Bidwell and Papineau, both Speakers of the Assembly, probably did communicate frequently. It was during Bidwell's first term as Speaker that formal negotiations were first made between the Reform groups of Upper and Lower Canada. A commission was appointed in each province for the purpose of cultivating an understanding between the two provinces in order to be able to act "in consort upon the great principles, equally applicable to both provinces."⁵⁸ In an election speech in Montreal, Papineau declared that he kept an intimate correspondence with Bidwell. He further asserted that the liberal party to which Bidwell belonged was prepared "to join the principles of their Lower Canadian brethren."⁵⁹

⁵⁸P. A. C., Mg. 24, B14, Neilson Papers, Vol. 6, Bidwell to Neilson, November 21, 1829.

⁵⁹Chronicle and Gazette, Kingston, January 21, 1835.

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However, none of this correspondence has been located.

Papineau claimed that he destroyed all his political correspondence with Upper Canada,⁶⁰ and Bidwell, for fear of implications must have done likewise.

Bidwell agreed with Papineau on the principle of local self-government for the Canadian provinces. Throughout his political career he asserted this view with firmness and vigour, but he always fought with constitutional weapons. Considering Bidwell's character and his appreciation of the place of law in human society, it is difficult to suppose that he would have resorted to violence to achieve his objective. In a letter to David Gibson, one of the chief participants in the rebellion, Bidwell gave his opinion of the uprising:

...I lament the recent proceedings of Upper Canada and cannot to this day reflect upon them without amazement. How men of good sense like you and others could be involved in so absurd and hopeless a project fills me with continued surprise. However, I would not upbraid you, though I shall perhaps be ruined in consequence of these movements.⁶¹

When Mackenzie announced the members of his provisional government in Navy Island, he alluded to "two other

⁶⁰F. Ouellet, Papineau, Quebec, University of Laval Press, 1957, p. 81.

⁶¹C. J. Dent, The Story of the Upper Canadian Rebellion, Vol. 1, Toronto, C. Blackett and Robinson, 1885, p. 362. (Quotes the letter from Bidwell to Gibson, March 6, 1838) Gibson had escaped to New York and wanted Bidwell to give him a letter of reference.

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distinguished gentlemen whose names there are powerful reasons from withholding from public view." Many immediately began to conclude that the two men were Bidwell and Rolph or Morrison.⁶² To guard against such an inference, Bidwell wrote a note to Cassady and asked to have it published: "I assure you that I have nothing to do with this Provisional Government, or with any of Mr. Mackenzie's plans or movements."⁶³

That Bidwell was not involved in the Mackenzie conspiracy has been generally established. But he was a political thorn for Head, and the unrest in the province gave the governor an opportunity to rid himself of so formidable an opponent.

There were many attempts made by Bidwell's Canadian friends to induce him to return from exile. In 1840 Robert Baldwin discussed Bidwell with Lord Sydenham. The governor did not consider the pledge exacted from Bidwell by Head as binding, and said that he was free to return. Upon learning Sydenham's view, Bidwell requested an investigation of the

⁶²E. C. Guillet, The Life and Times of the Patriots, Toronto, University of Toronto Press, 1963, p. 73. (Guillet believes that Bidwell and Morrison were the two men, but gives no reason.)

⁶³Brockville Recorder, January 4, 1838, reprinted from the Patriot.

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reasons of his banishment.⁶⁴ But the governor would not allow an investigation "as it might stir up public feeling which was just beginning to subside."⁶⁵

In 1843 Baldwin, now Attorney General of Canada, again made efforts to persuade Bidwell to return, with a view of appointing him to the Executive Council. He sent Bidwell a copy of a note from Lord Metcalfe which stated that in the event of Bidwell's return the governor would sanction a parliament bill "to restore to that gentleman the political rights of which his residence abroad, under pressure of his pledge, had deprived him."⁶⁶ This arrangement, Baldwin thought, would not require Bidwell to descend "from the high ground which you have always maintained in relation to your unjust expatriation." The proposal, however, was not agreeable to Bidwell. Although he would continue "to have a deep interest in that country", he made no plans for a change of residence.

In 1849 Baldwin, who with La Fontaine, headed the Canadian Ministry, offered Bidwell a judgeship. He declined. In the early 1850's, William McDougal and Peter Perry tried

⁶⁴T. P. L., Baldwin Papers, Bidwell to R. Baldwin, April 16, 1840.

⁶⁵Ibid., R. Baldwin to Bidwell, April 16, 1840.

⁶⁶Ibid., same to same, June 2, 1843.

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to persuade Bidwell to return and aid in the organizing of the Clear Grit Movement. Their pleas were unsuccessful. Sir W. B. Richards, Attorney General, was authorized to offer Bidwell the position of commissioner to revise the Canadian Statute Law.⁶⁷ Even J. A. MacDonald solicited Bidwell to return to Canada.⁶⁸ All these offers and invitations were politely declined.

Was Bidwell's fastidious conscience still insisting on a public investigation of the reasons of his exile? Or was he unwilling, from a pecuniary point of view, to exchange the legal arena of New York, where he was then well established, for the financially humbler roles in Upper Canada? Bidwell, besides being concerned for his reputation, was also a practical man.

However, one cannot help wondering what his contribution might have been had he been persuaded to return. Would his preference for institutions along American lines have blended with the Canadian form of responsible government? Professor Kilbourn maintains that of all the characters in this period of Canadian history Bidwell ought to have been a prime minister, "and of all the prime ministers he might well have been one of the best."⁶⁹

⁶⁷Hodgins, op. cit., p. 194.

⁶⁸Ibid.

⁶⁹W. Kilbourn, The Firebrand, Toronto, Clarke Irwin, 1956, p. 216.

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Marshal Spring Bidwell effected an interesting chapter in the history of Upper Canada during his twelve-year parliamentary career. The key idea in his constitutional theory was to make the government of Upper Canada more amenable to the voice of the people. In trying to bring an unimpeded flow of public opinion into the government, Bidwell campaigned for an elective Legislative Council and a responsible executive. He was an enthusiastic supporter of the ballot system, and strongly protested British interference in the local affairs of the province.

Believing that the people of Upper Canada were ready and able to take a responsible part in their own government, Bidwell sought to develop a system of government suitable for Upper Canadian society. In so doing he disregarded irrelevant tradition, and tended to judge Upper Canada in relation to the United States, forgetting the fact that Upper Canada was a dependent colony. Bidwell wanted the leadership in the provincial government to come from the Assembly, the people's representatives, and not, as hitherto, from the "irresponsible" executive. As a member of the Assembly he strove to make that body the focal point of government. It was mainly because of his persistent demand for the rights of parliament that Bidwell became embroiled in a dispute with the governor

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and was finally banished from Canada.

One area in which Bidwell's initiative and effort bore important results was in the religious controversy in the province. A great opponent of an established church and any privilege based on religious affiliation, Bidwell took an active part in the contest of removing the Anglican Church from a favoured position in Upper Canada. He was one of the chief opponents of the Clergy Reserves, the church-affiliated university, and Anglican chaplaincy in the Assembly. In his zeal to dislodge the Church of England from its privileged position, he sometimes advocated impractical methods; for example, the popular election of officers and chancellors for the university. Yet his sincerity in believing that the government should not restrict religious freedom, and that every religious denomination should be equal before law, was real. The Marriage Act of 1829, and the legislation allowing different denominations to hold property were due almost entirely to his effort.

Bidwell attempted to adapt the common law of England to the conditions and circumstances of Upper Canada. The abolition of primogeniture, an institution totally unsuited to a pioneer society, was one of Bidwell's major concerns. For this same reason he co-operated with Rolph to abolish imprisonment for debt.

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To diminish the control of the Family Compact on the legal system in Upper Canada was an important objective in the Reform programme. Bidwell strongly supported the legislation which would have taken away from any political party the power of impanelling juries. He also advocated the lessening of the power of the justices of the peace-- political appointees of the government. But these measures, along with Bidwell's ideas on reforming the criminal law of Upper Canada, had to wait for more favourable times. However, Bidwell's Felon's Counsel Bill, after ten years of repeated rejection in the Legislative Council, became law in 1836.

The controversy over the status of the American-born settlers ushered Bidwell into political life. The fact that the legislation introduced by Bidwell ended the long civil rights struggle had important consequences for the Reform party in Upper Canada. The American-born settlers, grateful for the civil and political rights secured for them, gave the Reformers their support. And Bidwell became the spokesman for the Americans in Canada.

That Bidwell was an important leader in the Reform movement in Upper Canada can hardly be questioned. The contemporary newspapers and private correspondence of both the Conservative and Reform groups give ample evidence of this. There are repeated references to the "Bidwell Majority", the

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"Bidwell Minority", and the "Bidwell Parliament". Further, the fact that Bidwell experienced such adamant opposition from the government party indicates that he was considered an influential leader in the Reform group. His introduction and support of Reform measures kept him before the Upper Canadian public, and earned him many followers among the people, as well as bitter opponents in the government party.

Bidwell's political error was that he retired from politics after his defeat by Head in 1836. His political sin was in the omission rather than in the commission. He erred in withdrawing from politics at a time when Upper Canada needed him, perhaps most, and in permitting Mackenzie to take the lead. Had prominent Reformers like Bidwell, the Baldwins and Rolph possessed that energy and resoluteness with which Mackenzie was endowed, they could have presented a unified Reform front, and dwarfed Mackenzie's plans. Without this leavening influence the desperation of the radicals increased, and drove them to excesses and finally to armed revolt. Bidwell's retiring nature and constant ill health were obvious obstacles to an effective leadership in these troubled times. His contributions, however, in obtaining the privileges we enjoy in Canada were substantial enough to merit for him a memorable place in Canadian history.

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