

UNIVERSITY OF OTTAWA

Lower Canadian Constitutional Thought
as seen through Le Canadien and
the Quebec Mercury (1804-1823)

by

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INTRODUCTION

In the years between 1791 and 1838, French and English-speaking Lower Canadians served their apprenticeship in the British system of government¹. Denied representative-democratic institutions since the early years of British rule, the people of the old Province of Quebec, now the new Province of Lower Canada, suddenly found themselves with the fundamentals and trappings of a system which was both new and strange to them.

At the apex of this political structure stood the Crown and its representative the familiar but slightly re-done Governor. He was assisted by a nine-man Executive Council largely of his own choosing. Under this, the Executive Branch of the Government, came the provincial Judiciary. Then came the Legislative arm of the Government composed of the Legislative Council and the Legislative Assembly. The sixteen-member Legislative Council was merely the successor and continuation of the old Legislative Council, formerly the sole legislative body within the province. The fifty-man Assembly, by contrast, was wholly innovatory and designed to represent the interests and mind of the majority of the colony's populace which elected it.

1. This, I believe, is the gist of Henri Brun's essay La Formation des Institutions Parlementaires Québécoises: 1791-1838. Presses de l'Université Laval, Québec, 1970. pp. 1-291.

In addition there were a good number of other offices and names to bewilder the popular imagination. Many of the fifty seats were attached to counties with such English sounding names as Hampshire, Buckingham, Huntingdon and Kent, to mention but a few. Again, there were a variety of offices such as the Lieutenant-Governor of the province and the Lieutenant-Governor of the Gaspé District, in which latter part of the colony many new Loyalists had settled from the South. There were, in addition, what amounted to various government departments headed by the Governor's executive counsellors. Among these were to be found the offices of the Provincial Secretary, the Surveyor-General, the Comptroller and the Postmaster-General for British North America. Furthermore, there were a fair number of committees attached to the Executive and Legislative Branches of the Government and each of the two legislative bodies had its various officers such as that of Speaker, Clerk and Sergeant-at-arms.

If the whole was perhaps confusing to the colony's urban population, it was even more exotic and puzzling to the habitant living on the thousands of farms scattered alongside the ageless St-Lawrence River. The natural reaction, then, of the province's educated class, now called to put the new Constitution into operation, was to attempt to duplicate the British experience.

Given a constitution reputedly "the very image and transcript

2. Craig, Gerald, Upper Canada: The Formative years: 1784-1841
McClelland and Stewart Ltd.: Toronto, 1963. p. 29.

of that of Great Britain²", Lower Canadian public figures quickly hurried to read such British political theorists as Locke, Montesquieu, Blackstone and De Lolme in order to obtain a correct understanding of the principles embodied in the British Constitution and consequently in their own the Constitutional Act of 1791³.

The writings most popular with them included Sir William Blackstone's Commentaries on the Laws of England and Jean-Louis De Lolme's The British Constitution⁴. These works had for their keynote Baron de Montesquieu's view of the division and balance of powers inherent in the British political system and it was this latter concept which would constitute the principal and guiding basis of their political and constitutional thought until the outbreak of the rebellion in 1837-38.

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3. Introduced by William Grenville in the House of Commons in March 1791, the Act had received royal assent in June and taken effect on 26 December of that year. See Neatby, Hilda, Quebec. The Revolutionary Age: 1760-1791. McClelland and Stewart Ltd.: Toronto, 1966. p. 259.
 4. Smith, Lawrence A.H., "Le Canadien and the British Constitution, 1806-1810". Canadian Historical Review. Volume XXXVIII, no. 2. Toronto, 1957. p. 101. Charles Louis de Secondat, Baron de la Bréde et de Montesquieu (1689-1755), a French man of letters, philosopher and author of the theoretical political work De l'Esprit des Lois would be increasingly quoted as the period wore on. It was in the eleventh volume of this famous work that Montesquieu enunciated the theory of separation of powers which was to make him so well-known in the eighteenth century political circles. Dividing political authority in the State into executive, legislative and judicial powers, the theory maintained that in the State most effectively promoting the freedom of all men, these three powers would be confined to different individuals or bodies acting independently of each other. England was, for Montesquieu, exemplary of a State in which this situation prevailed. (Encyclopaedia Britannica. Volume XV. E.B. Inc., William Brenton: Toronto, 1966. pp. 785-786)

In addition to constitutional theorists of the period, Lower Canadian leaders also thought it necessary to master various works explaining British parliamentary procedures. Both Hatsell's Precedents of Proceedings in the House of Commons (4 Volumes, London, 1781)⁵ and J.-F. Perrault's French translation of the Lex Parliamentaria or Law of Parliament as well as the latter's original work Le Dictionnaire Portatif et Abrégé des Lois et des Règles du Parlement Provincial du Bas-Canada were to be studied with this end in mind⁶.

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5. John Hatsell (1743-1820), Chief Clerk of the British House of Commons from 1768-1797, was acknowledged as the best living authority on parliamentary procedure in his day. Hatsell was the author of two works bearing upon the privileges and proceedings of the House of Commons entitled: (1) A Collection of Cases of Privilege of Parliament, from the earliest records to 1628 (4 Volumes, London, 1776); (2) Precedents of Proceedings in the House of Commons, under separate titles with observations. (4 Volumes, London, 1781). See the Dictionary of National Biography. Volume IX. eds. L. Stephen and S. Lee. Macmillan and Co.: New York, 1908. p. 158.
 6. Joseph François Perrault, the reputed "Father of French Canadian Education", was a protonotary of the Court of King's Bench in Québec and was actively engaged in the educational and political life of Lower Canada throughout the period 1792-1837. From 1796-1804, he represented Huntingdon County in the Legislative Assembly. (See, Jean-Jacques Jolois: J.-F. Perrault, 1753-1844, et les Origines de l'Enseignement Laïque au Bas-Canada. Les Presses de l'Université de Montréal: Montréal, 1969. pp. 1-268). In the Dictionnaire, Perrault maintained that the provincial parliament (sic) had been constituted "...à l'instar de celui de la Grande Bretagne..."; that it should have recourse to the "...règles, usages et formes du parlement Britannique jusqu'à ce que la chambre juge à propos de faire des règles applicables à ces cas..."; that "...tous aides et subsides accordés à sa Majesté par la législation du Bas-Canada sont le don de l'Assemblée seule..." and that "...il serait téméraire d'entreprendre de définir les privilèges du parlement..." (Hare, J., and Wallot, J.P., "Les Imprimés Dans le Bas Canada: 1801-1810. Les Presses de l'Université de Montréal: Montréal, 1967. p. 107). These

To reinforce their constitutional and procedural knowledge of the British parliamentary system, in 1811 the members of the Legislative Assembly ordered the purchase of several constitutionally significant works, among which were David Hume's Essay on Taxation, John Locke's essay On Civil Government, Jeremy Bentham's Principles of Legislation and William Cobbett's Parliamentary History and Parliamentary Debates. Also procured were the Statutes and Journals of the Legislative Assemblies of Upper Canada, Jamaica, Barbados, New Brunswick, New York and Nova Scotia⁷. Legislative practices and precedents described in these journals, it should be mentioned, would later be used by the Lower Canadian Assembly in its constitutional struggles with the province's Governors and their supporters.

In 1806 the Legislative Assembly of Lower Canada had established not only freedom of debate and freedom from arrest in civil cases for its members, but had also secured for itself various other privileges among which were the right of regulating its internal proceedings, the right of initiating all revenue bills, taxes and grants to the Crown, the power of expelling members by resolution and the power to commit either for acts

comments are indeed significant in that they constitute some of the main elements of the constitutional debate and struggle that was to dominate the political life of the province for the next quarter century.

7. Smith, Ibid., p. 105. The author had pointed out elsewhere (Ibid., p. 100) that the desire to preserve respectability and legality made Lower Canadian political leaders shun all politically radical thinkers, publicly at least. While avoiding, he noted, Locke's natural law and contract theories, they concentrated instead on his arguments justifying the Revolutionary Settlement of 1688 and expounding the rule of law and toleration.

of contempt against itself or for the attempts of outsiders to intermeddle in its affairs⁸. In November of that year, Le Canadien, the newspaper regarded as the mouthpiece of the "Popular Party" in the Assembly⁹, was founded. Its declared aim was to educate French-speaking Lower Canadians about their Constitution and to act as a public watchdog on the conduct of the provincial administration. Claiming that the power of censorship of a free press was a necessary concomitant of political and social freedom, Le Canadien's prospectus argued that...

Ce pouvoir est si essentiel à la liberté que l'état le plus despotique où il serait introduit, deviendrait par là même un état libre, et qu'au contraire la Constitution la plus libre, telle que celle d'Angleterre, deviendrait tout à coup despotique, pour le seul retranchement de ce pouvoir¹⁰.

The founding of Le Canadien, it should be pointed out, was in large measure a defensive reaction on the part of French-speaking Lower Canadians against the pretensions of a francophobe Québec City newspaper called The Quebec Mercury¹¹.

8. Ibid., p. 99.

9. Wade, Mason, The French Canadians: 1760-1967. Macmillan of Canada: Toronto, 1968. pp. 101, 105.

10. The prospectus of Le Canadien appeared on the streets of Québec City on 13 November, 1806. Its founders, Pierre Bédard, Jean-Thomas Taschereau, Joseph-Louis Borgia and François Blanchet would show themselves to be the undeniable leaders of the French majority in the Legislative Assembly before the decade had ended. As this thesis unfolds, they shall become familiar figures.

11. Faucher, Albert, "Le Canadien upon the Defensive, 1806-1810" Canadian Historical Review. Volume XXVIII (Sept.): Toronto, 1947. pp. 250-251, 253.

Founded almost two years earlier by Thomas Cary¹², a former East India Company man and ex-secretary to former Governor Robert Prescott (December 1796- October 1807), the Mercury had pledged itself by its prospectus of 19 November 1804 to "...a veneration for the British constitution, in all its branches...", and "...a perfect submission to and respect for the local laws and government under which we (Lower Canadians) live..." as well as to "...a love of social order and a sympathetic sense of and regard for the feelings of every individual, public or private." With these principles supposedly in mind, Thomas Cary and his newspaper would provide a forum for the province's largely anglophone commercial element. Until Cary's death in 1823, the Mercury would vigorously oppose the conduct and pretensions of the French-led and dominated Popular Party in determining the constitutional, political, social and economic life of Lower Canada¹³.

While Le Canadien would espouse a view of the Constitution of 1791 as the "image and transcript of the British Constitution", the Quebec Mercury would, for a long time, tenaciously hold to

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12. Wallace, W. Stewart, The Macmillan Dictionary of Canadian Biography. 3rd ed. Macmillan of Canada: Toronto, 1963, p. 121, describes Cary (1751-1823) as a British born journalist who founded the Quebec Mercury, "...as the organ of the official or Tory party in Lower Canada."
 13. This claim made upon the basis of the study of the "Quebec Mercury" between 1804 and 1825, shall be documented in this thesis. Wade, Ibid., p. 132, describes the Mercury as the organ of the English party" and Le Canadien as the organ "of the popular party". The word "party", especially with respect to the first decade of the nineteenth century, shall be used in this thesis to refer to a loose affiliation of people generally possessing the same aims.

the claim that the latter was nothing more than the substance of an imperial act precisely defining the role and activities of a colonial legislature¹⁴.

It would seem justifiable, therefore, in attempting to obtain some insight into the political and constitutional thought and developments of Lower Canada in the first quarter of the nineteenth century, to examine the arguments and political reports presented and carried by both Le Canadien and the Quebec Mercury during this period.

The date chosen to begin this study, November 1804, is the date of the founding of the Quebec Mercury; the date chosen to terminate it, 1822-1823, is the date of the proposed Union Bill and its less pretentious and contentious successor the Canada Trade Act. Between these dates, the thesis will examine the three basic politico-constitutional issues of the period: (1) the expulsion of judges from the Assembly; (2) the attempted impeachment of the province's two Chief Justices and its implications and (3) the struggle for control of the colony's Civil List. Dominating the years 1804-1823, these issues are the dominant and overriding ones of the whole period before the abortive Rebellion of 1837-38. A careful examination of each and of the reactions

14. Le Canadien, 20 November, 1806, 31 January 1807, 9 January, 1808, 19 March 1808, 24 June, 1809 and 22 March, 1820, also the Quebec Mercury, 21 April, 1806, 1 December, 1806, 15 February, 1808, 4 April, 1808, 22 May, 1809 and 28 October, 1811, constitute some examples of the views of the rival newspapers on the matter.

of our two newspapers to each will afford us a good insight into the thoughts and feelings of Lower Canadians of that era.

The terminal date, 1822-23, is more appropriate than would at first appear and a word about it may be in order. Firstly, the Union Bill and the reaction to it in both of our newspapers provides us with a focus whereby we may examine Lower Canadian political and constitutional thought at a specific point in time towards the end of the first-quarter of the century. Secondly, January 1823 marks the death of Thomas Cary, the Mercury's founding editor. Since 1804, Cary was undoubtedly the directing mind behind the Mercury's opposition to Le Canadien as well as the source and embodiment of the Mercury's thought for over twenty years. With his death, the editorship of his newspaper passed to other and different hands preoccupied with a different set of problems and issues and possessed of a new perspective.

CHAPTER I

The Constitution of 1791: "Image and Transcript" or "Imperial Act"?

Neither Le Canadien nor the Quebec Mercury had long been founded before their respective positions regarding the constitutional Act of 1791 began to emerge. The question soon arose as to whether the Act granted the province in 1791 had given it political institutions and customs analogous to those of Great Britain or whether the Act had merely conferred on the province institutions appropriately designed to handle only the latter's local problems and ills.

Feeling its adventurous way around the thorny problem of determining just what kind of institution it had been designed to be, the Assembly wasted no time in claiming for itself certain parliamentary privileges possessed and enjoyed in fact by the House of Commons, its counterpart in Great Britain. Such initiatives on its part provoked the hostility of the province's anglophone community and quickly gave rise to a debate on whether or not Lower Canada had been given a constitutional structure analogous in most ways with that of Great Britain. If so, the Assembly's initiatives in the area of parliamentary privilege were constitutionally correct and valid; if not, however, the province's Legislative Assembly

had no right to make such claims and harass the province's citizens with respect to infringements of them.

While not everyone agreed with Upper Canada's Lieutenant-Governor, Sir John Graves Simcoe, that the Constitution of 1791 was the "very image and transcript of that of Great Britain¹⁵", the idea was not long in finding wide acceptance among Lower Canada's French-speaking educated class. Their public voice, Le Canadien, had no sooner appeared than letters sharing this very sentiment were addressed to it by its readers.

One "Caius"¹⁶, in an address to the freeholders of Lower Canada, attacked those interested in creating a mercantile aristocracy in the province and concluded by stating that "...notre heureuse Constitution composée du Roi, des Lords et des Communes" would keep the people free from the oppression of such a clique¹⁷.

Another reader by the name of "Jérémie" was sympathetic to this view of the 1791 Charter and also suggested that the ills which plagued Lower Canada might be avoided by respecting a

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15. Charles James Fox and others disagreed with this general belief. On 21 April 1791, the latter told the British House of Commons that "...under the pretence of giving to Canada the British constitution, we (the British) in reality gave them a constitution essentially different and by no means possessed of the same privileges." See Brun, Ibid., p. 99.
 16. As was the custom in Great Britain at this time, letters to editors of newspapers were anonymous, their authors adopting a Latin pseudonym for the purposes of continued identification.
 17. Le Canadien, 22 November 1806.

Constitution which "...la générosité Anglaise vous a donné sur le modèle de la sienne." In wondering why his readers had not realized that public abuses were the result of an accumulation of powers on the same head, the latter noted:

J'ouvre les Commentaires de Blackstone, que je puis appeller l'esprit des loix Angloises, j'y vois ces mots que tout Législateur Canadien devoit avoir sans cesse présens à l'esprit: "Dans tous gouvernemens tyranniques, la Magistrature Suprême ou le droit de faire des Loix et de les exécuter réside en un seul et même homme ou en un seul et même corps d'hommes: et partout où ces pouvoirs sont réunis, il ne peut y avoir de liberté publique"¹⁸.

By contrast, the Quebec Mercury's view with respect to the Constitution had best been illustrated by events surrounding the Gaols Act of 1805¹⁹. On 1 April 1805, a Montreal paper had carried a report of the proceedings of a banquet held in the city during which the Legislative Assembly had been strongly criticized for its handling of the "Gaols Bill". Nearly a year later, on 7 March 1806, Pierre Bédard, the prominent member for Northumberland County in the provincial Legislature²⁰, had introduced a motion declaring the report, in the words of

18. Ibid., 9 January 1809.

19. Wallot, J.-P., "La Querelle des Prisons", La Revue d'Histoire de l'Amérique Française. Volume XIV (Dec.) Montreal, 1960, pp. 61-86. The author describes how the Lower Canadian Assembly opted in 1805 through the medium of the Gaol's Bill for an indirect system of taxation, for a tax on trade and commerce as opposed to a tax on land, in order to win the support of the habitant electorate against the commercial-political interests in the province.

20. Maheux, Arthur, "Pierre Stanislaus Bédard, 1763-1829: philosophe et savant". Mémoires de la Société Royale du Canada. Tome 50 (juin), 1956. pp. 85-93.

the Mercury, "...a false, scandalous and malicious libel, highly and unjustly reflecting upon his Majesty's representative in this province, and on both houses of the Provincial Parliament, and tending to lessen the affections of his Majesty's subjects towards his Government in this province²¹." Fearing only the worst from this attack on a fellow newspaper, an affronted Mercury had decided that the Assembly's action warranted a rebuke. "If the object be to charge the printer with a breach of privilege and to call him from his family and business," it had righteously declared, "we are extremely sorry for it, because we think it must give rise to unpleasant investigations of the rights and powers of the house²²."

By carrying in the same edition an anti-French article entitled "French Influence²³", the Mercury seemed to ensure that such a course of events would come about. Stung by these slights against itself, the largely French-speaking Lower House passed a motion ordering Thomas Cary be taken into the custody of its sergeant-at-arms "...for undertaking... to give an account of the proceedings of this House...²⁴". Although taken

21. Quebec Mercury, 10 March 1806.

22. Quebec Mercury, Ibid.

23. Ibid., the article in question attacked Frenchmen for being "...very uneasy at the 'liberty of free states, which will not admit the 'tying up of the tongue', and 'even suggested that locking up the press was the usual procedure '...where their tyranny is predominant.'"

24. Quebec Mercury, 17 March 1806. This issue gives a full report of the proceedings.

into custody, Cary was released without punishment after a petition on his behalf had been presented to the House by Louis Bourdages, the representative for Richelieu County.

The whole experience left the Mercury's defiant editor unrepentant and maintaining that had he conceived that the proceedings against himself were really intended as a curb on the liberty of the press he would have put his paper into mourning on the occasion and then assumed an attitude calculated to evince that its elasticity would never fail to raise it after pressure. If the glorious british privilege of a free press was lost, a briton's liberty became an empty name²⁵.

Meanwhile, the House Committee appointed to investigate the libellous article which had earlier appeared in the Montreal newspaper, the Montreal Gazette, had reported back to the Assembly and resolutions were successfully brought declaring both the paper's printer-editor Edward Edwards and its publisher Isaac Todd "...guilty of a high breach of the privileges of this House." The two men, however, could not be located by the sergeant-at-arms and the matter was finally allowed to rest.

Debate now arose from the province's anglophone community fully justifying the Mercury's earlier premonition that the Assembly's conduct with respect to its privileges "...must give

25. Ibid.

rise to unpleasant investigations of the rights and powers of the house²⁶." In mid-April, one of the leading works in this area, J.-F. Perrault's translated version of the Lex Parliamentaria, was attacked by "Scrutator" in a letter to the Mercury. The work in question was, he maintained, the source from which our House of Assembly may be considered to derive its powers and rules of action. It was a work, he said, originating from the Stuart's reign "...when Parliament daily assumed new powers, until, at length, it totally subverted the constitution." Blackstone²⁷, "Scrutator" explained, extended parliamentary privileges no further than to the protection of members from arrest and had said nothing of the existence of an active power in the Commons to imprison others. Since Blackstone felt that the power necessary to enforce the speaker's warrant did not exist under the Constitution, it ought not therefore to be used. Indeed, the fact that the Constitution pointed out no such power was a proof that it could have no such warrant or

26. It was in the course of this debate that the Mercury's opinion vis-à-vis the Constitution of 1791 became clear.

27. Sir William Blackstone (1723-1780) was an English legal writer, judge, Member of Parliament and Oxford Professor of English law. In 1763, he was appointed the Queen's Solicitor-General, and in the period 1765-1769, he wrote a four-volume work entitled. Commentaries on the Laws of England. His philosophy of laws, notes the Dictionary of Biography, was a confused mingling of Puffendorf, Locke and Montesquieu. The Commentaries reflect the Montesquieuan view of the British Constitution described earlier in this thesis. See Dictionary of National Biography. Volume II. The Macmillan Co.: New York, 1908. pp. 595-602.

authority in contemplation. Furthermore, if the speaker's warrant were disregarded, its weakness immediately became manifest to the public. If at any time, therefore, there was ground for punishment, "Scrutator" concluded with Blackstone, it would be...

much more consistent with the dignity of and creditable to the popular branch, to have recourse to a power whose authority is out of all question, the law courts. If there be offence, not of a sufficient magnitude to deserve punishment by law, the dignity of the house will best be supported by over-looking it²⁸.

Further commentary was not wanting. In the same edition, another writer, "Amicus", corroborated "Scrutator's" Blackstonian view of parliamentary privilege. It meant no more, he wrote, than immunity or safeguard to the party possessing it and could not be construed into an active power of invading the rights of others.

"Scrutator" himself returned to the attack in the following issue of the Quebec Mercury, maintaining that the Lower Canadian Legislative Assembly had not been granted privileges analogous to the British House of Commons. It was not, he explained, surprising that "american" assemblies felt justified in following the example of their model, the British Commons, even in its

28. Quebec Mercury, 14 April 1806.

abuses. It should be remembered, "Scrutator" pointed out...

that american assemblies, particularly in the colonies acquired by conquest, are not more than emanations, either from the royal will, which has manifested itself to be inimical to privileges, or from the british parliament. In addition to which, there is the very essential difference, which I have already pointed out, that certain privileges are secured, to the british commons, by acts of parliament; whilst with respect to trans-atlantic assemblies, the laws are totally silent, on the article of privileges²⁹.

In the latter's opinion, then, the Assembly had no power to appoint to office. Neither did it have either the power to grant public lands or to fix the salaries of government officials.

Yet another writer, "Philo-Scrutor" by name, wrote to the Mercury informing "Scrutator" that he had been told that the Speaker's warrant could be used by the House of Commons to support its privileges in any quarrel which it might have with the Crown, such occasions constituting precedents. Unable to accept the authority of precedents but faced with the argument that the British Constitution had been established by them, "Philo-Scrutor" now sought "Scrutator's" advice on the matter³⁰.

"Scrutator" replied to his question by explaining that the House of Commons had privileges far more efficient than any

29. Ibid., 21 April 1806.

30. Quebec Mercury, 12 May 1806.

depending on the speaker's warrant. Through its control of public funds, it could withhold supplies; in addition, it could refuse to comply with any number of wishes of the Crown. These, in "Scrutator's" opinion, were "the great counterpoises to undue influence..." on the latter's part. The House of Commons was not a court of justice but rather "...the grand inquest of the nation, a court of inquiry..." whose power to commit for contempt was "...justifiable more by a plea of 'necessity' than by a plea of 'legality'." The constitutional question of privilege was, "Scrutator" maintained, "consummate wisdom", seeing that Parliament had delegated to the province the power of framing laws for its own government. If any privileges were necessary for the fulfillment of that power...

the province must be the best judge of that necessity, and be the best qualified to remedy the defect, if any there be by local law. There can be no apprehension of a want of acquiescence in either of the branches (of the Legislature) in what may be found absolutely necessary...³¹

No parity, then, existed in "Scrutator's" opinion between the British Commons and the Lower Canadian Assembly with respect to the question of parliamentary privilege. Privileges deemed necessary by the Assembly for the fulfillment of its legislative duties could be embodied in provincial law. No plea of necessity, though, could condone any such law when it was thought to

31. Ibid., 19 May 1806.

contravene fundamental human rights or accepted constitutional principles.

Parliamentary privilege could not in the Mercury's opinion, it seemed, be construed into meaning more than the freedom from arrest in civil cases for members of the British Parliament and, by inference, for members of the Lower Canadian Legislature as well. Even here, however, serious doubt must have existed in Cary's mind whether parliamentary privilege existed at all in colonial dependencies, for two years later he would take an unequivocal stand against the Assembly's possession of even this privilege³².

This attitude would manifest itself yet more clearly before the decade had elapsed. Faced by a growing militancy on the part of the Lower House, the reaction of the Quebec Mercury and of the community to which it was addressed and by whom it was supported would be to deny to it any similarity with the Commons of Great Britain. "Scrutator's" subtle distinction on the question of parliamentary privilege should not be forgotten. The Constitutional Act's failure to delimit parliamentary privilege was praiseworthy because it left the two Houses of the Legislature free to enact laws embodying privileges deemed essential for the performance of their legislative duties.

32. Ibid., 4 April 1808.

Since a majority of the Legislative Council's membership found itself in a relative state of economic dependence upon the provincial Executive, it could be counted on to support the Governor in any conflict which might arise between him and the Lower House³³.

The "garrison mentality" which pervaded the anglophone community of Lower Canada at both the public and official level until the War of 1812³⁴ contributed to the emergence of such a conflict between the Assembly and the Governor and, consequently, between the Legislative Assembly and the Legislative Council. In the Assembly's struggle to secure parliamentary "rights" parallel to those of the House of Commons, the Legislative Council became an Executive pawn and, to a considerable

33. Brun, Henri, La Formation des Institutions Parlementaires Québécoises: 1791-1838. Presses de l'Université Laval: Québec, 1970. pp. 186-188, 196, 202. See also André Garon "La Fonction Politique et Sociale des Chambres Hautes Canadiennes, 1792-1841." Histoire Sociale. Volume 5 (avril 1970). Presses Universitaires d'Ottawa: Ottawa, 1971. p. 80.

34. Greenwood, F. Murray, "The Development of a Garrison Mentality among the English in Lower Canada, 1793-1811." Ph. D. University of British Columbia, June 1970. The author points out how the (pp. 103-107) anglophone community in Lower Canada was frightened by the emergence of an elected Legislative Assembly in the province, the rise of which had been simultaneous with that of the French National Assembly. He also notes how the fifteen or so anglophone members of the Assembly almost unanimously supported all legislative measures proposed by the Executive, willingly conferring powers on the latter at the expense of the Judiciary, the electorate and even the Assembly. Especially feared were the Papineau-Panet radicals, the largest group in the Assembly, because they drew some of their inspiration from the ideals of 1789, consistently opposed government measures and, at times, sought to limit the powers of the Executive...".

degree, allowed itself to be used by the Governor in thwarting the Assembly's aspirations.

Undeterred by the criticism levelled against it in the pages of the newly-created Quebec Mercury, the Legislative Assembly prepared, as the session of 1807 approached, to extend its claim to similarity with the British House of Commons which it considered its constitutional counterpart. Now, however, it too could publicize and expound upon its views on the matter and defend itself against public criticism from the Mercury and others, for its leaders had created their own newspaper, Le Canadien, to serve as their voice across the province. This it did, faithfully espousing and reflecting the views of Pierre Bédard and his followers both inside and outside of the Assembly. The Constitutional Act of 1791 had granted the province a Constitution "the very image and transcript of that of Great Britain" and the Assembly was fully justified, therefore, in claiming for itself the parliamentary privileges of the House of Commons, its British counterpart.

The analogy, Le Canadien believed, went much further than the question of parliamentary privilege. In this light, the debate only served as the opening shot in a politico-constitutional battle which would last for another forty years.

CHAPTER II

Ministerial Responsibility: an Eighteenth Century View

Political parties, as we know them today, were the invention of the generation succeeding the one with which we are dealing. Nevertheless, during this period Lower Canada witnessed the genesis of two political groupings each with its leaders, newspaper voice, ideological baggage and followers. Never strictly divided solely along linguistic lines, these opposing political groups were either basically French or English-speaking. The French or Popular Party (le parti populaire) had roughly thirty-five of the fifty-seats in the Lower House and by the end of the century's first decade would increase this number to forty or so. Its counterpart, the British or Official Party, could count on fifteen seats at the most and in bad times even this number might dwindle to ten. While the leader of the Official Party was all too often the Governor himself, practical leadership of that political group often devolved upon some of his Executive Councillors. The Popular Party, by contrast, drew its leadership from its own ranks and, until 1811, this mantle devolved upon the erudite Pierre Bédard. Learned in several areas including mathematics and law, it was Bédard who best among French-speaking Lower Canadians understood the workings

of the British Constitution upon which Lower Canada's had allegedly been modelled. This knowledge and insight he picked up not only from his own reading of constitutional works available to him in the Library of the House but also by means of instruction given him by anglophone members of the provincial Bar³⁵.

Not a physically dominant individual, Bédard seemed to cede leadership of the Party in the Lower House to his more vivacious and aggressive subordinates, among whom the more notorious were Augustin Cuvillier, J.-L. Taschereau, Louis Bourdages and Dr. Blanchet. In matters of theory and party tactics though, he retained the leadership of the Party until and even during his imprisonment under Governor Sir James Craig during 1810-1811. Bédard was one Lower Canadian for whom Simcoe's earlier description of the 1791 Constitution must be taken at its face value. He strongly believed that if Lower Canada had been given a constitution which was the very image and transcript of the British Constitution, then the analogous quality of that instrument could not and must not be confined to the Lower House's claim to enjoy the same rights and privileges

35. Manning, Helen Taft, The Revolt of French Canada: 1800-1835. Macmillan of Canada Ltd., Toronto, 1962. p. 66. Pierre Stanislas. Bédard (1762-1829) had first been elected to the Lower Canadian Assembly for Northumberland County in 1792. A lawyer by calling, he soon became the quiet theoretician-leader of the Popular Party and as such was prominent in the founding of Le Canadien which he would use to such great advantage to carry his views to the electorate. He sat continuously in the Lower House until appointed to the Bench in Three Rivers by Governor Sir George Prévost in 1812. See Wallace, (ibid. pp.42-43).

as its British counterpart, the House of Commons. For him, the similarity was more fundamental than that and extended to the very core of the British system of government. The British Government had an Executive, a Judicial and a Legislative Branch and it was logical that Lower Canada should have the same, albeit on a provincial scale. Therefore, aiding and assisting the province's Executive Branch, there must exist, as there had in Great Britain, a Cabinet or Ministry. This was, he felt, the only interpretation of the 1791 Act which permitted those governed by it to enjoy the effective provincial government³⁶ which it had been Britain's real intention to give them at that time. That these views should begin to make themselves felt both in the public press and in the Lower House was only a matter of time.

Late in January 1807, a letter voicing sentiments similar to Bédard's appeared in the pages of Le Canadien. Written by "A.B.", the letter reads much like later speeches made by Bédard and reported in Le Canadien³⁷. Pointing to the necessity of a ministry in the British constitutional form of government, the author warned of the danger in holding the Ruler or his representative responsible for the actions of his advisers.

36. Ibid., p. 69.

37. Le Canadien, 9 March 1808, 25 June 1808, 26 April 1809. Manning, ibid., p. 66, suggests that Pierre Bédard was the only editor of "Le Canadien" who could have shown the powers of analysis necessary to understand the intricacies of the British constitution and consequently to write articles like the one in question.

To the charge by Lower Canadian "ministers" that a "ministry" did not exist in the province and that the Governor was wholly responsible for the administration of the colony, "A.B." retorted:

Cette maxime qui tend à rendre le Représentant du Roi responsable de tous les conseils des ministres est aussi injuste et inconstitutionnelle, en ce qu'elle expose le Représentant du Roi à perdre la confiance du peuple par la faute des ministres... dans la Constitution Anglaise il faut attribuer à chacun ce qui lui appartient. S'il y avait quelqu'un à couvrir ce serait le Représentant du Roi, et non pas les ministres...

Reminding Le Canadien of its previous report about how the provincial ministry had found itself in a minority position during the 1805 debate on the land tax (i.e., the Gaols Bill) the author noted how the ridiculousness of the situation had struck those who had any idea of the British constitution. Even those ignorant of British constitutional theory were sure to have noticed it. He wondered how a situation could exist, whereby those who governed and led the province did not command a majority following in the Lower House. Explaining how the debate over the land tax had not been the only occasion in which the Administration had found itself in the minority, "A.B." concluded saying:

C'est une position où il s'est trouvé si souvent depuis le commencement de notre constitution, qu'elle lui est devenue habituelle et qu'il la regarde comme sa position naturelle. Aussi ne sait-on plus ce que c'est que l'opposition; les uns regardent la majorité dans la Chambre d'Assemblée comme le parti de l'opposition et les autres donnent cette fonction au ministère³⁸...

38. Ibid., 31 January 1807.

Irked by "A.B.'s" comments, the Mercury wasted no time in suggesting that its readers...

must doubtless expect shortly to hear of the treasury bench and the members with white slaves (sic) whose continuation in office is, we suppose, no longer to depend on their commissions, should they be even patents, but on their securing the votes 'à la Walpole' of certain bell-wethers of our blessed parliamentary flock.

Indeed, concluded the Mercury on this occasion, "A lecture on our ministry and opposition strongly reminds us of Swifts Lilliput; we could almost say in miniature³⁹."

The concept of a provincial ministry referred to in "A.B.'s" letter was anathema to the Mercury and its editor, connoting as it did the idea of a self-governing political entity. For Thomas Cary, terms such as "ministry" and "opposition" were inappropriate in a colonial setting like that of Lower Canada. In England, where, as he would find later occasion to point out, such terminology was completely suitable, individuals forming the administration did not fill their appointments for life. Consequently, their "situations" became an object of perpetual strife. As a result of this state of affairs, Cary explained, the many general political questions connected with speeches, messages, addresses, votes of supplies and thanks, together with notices, introductions and framing of bills, in

39. Quebec Mercury, 2 February 1807.

addition to the numerous other occasions which sparked political discussion, all furnished an incessant and vast field for the attacks of the opposition on those in power whom they wished to supplant. Widely different, he maintained, was "...the case in a circumscribed dependency such as this colony", where "Our men in office, with the exception of the King's Representative, hold their appointments for life, unless there should be anything flagitious in their conduct of which scarce an instance can be found". "What", he wondered, could be the object of an opposition or party in Lower Canada?" "What, he would ask concludingly...

is it the business of our Provincial Parliament? Is it anything beyond framing wholesome and necessary laws for the good government and well-being of the Province? Are there any general political questions connected with that duty? If not and if there be no minority here here to supplant, what can be the use of an opposition?

The opposition of Thomas Cary, his "Quebec Mercury" and its supporters would not be sufficient, however, to dissuade Pierre Bédard and his followers from the belief that a ministry along British lines did and must indeed exist under the Constitutional Act of 1791.

The Legislative Session of 1808

In the following session of 1808, the alleged "ministère"

40. Ibid., 28 October 1811.

was again brought to public attention, only this time in the very midst of the convened Assembly. On 9 March 1808, during the second reading of a bill designed to prevent provincial judges from either being elected to or sitting and voting in the Lower House, Ross Cuthbert⁴¹, one of the members for Warwick County, asked Bédard to explain what he meant by the term "ministère". In reply to his question, the latter explained that he had not used the term with reference to Great Britain where there existed "...un grand Parlement et un grand Ministère..." but rather had had Lower Canada in mind when he noted of Lower Canadians "... que puisque nous avons une Constitution modelée en petit sur celle d'Angleterre, nous devons avoir aussi les accessoires en petit. Petit Parlement, petit Ministère mais toujours Ministère⁴²...".

While Bédard had taken this occasion to re-iterate his belief in the necessity of a ministry in the province under the 1791 constitution, he failed to indicate, except in the vaguest manner, what the consequence of a majority in the Lower House implied for the group constituting it. The implication that those who enjoyed some measure of support in the Legislative Assembly should find places in the administration

41. Ross Cuthbert (1776-1861), lawyer and Seigneur of Lanoraie and Dautray, represented Warwick County in the Assembly of Lower Canada for many years. Called to the Executive Council in 1812, there he remained until 1841. From 1812-1816 he was the Government spokesman in the Assembly. See Wallace, *ibid.*, p. 168.

42. Le Canadien, 9 March 1808.

of the province by no means implied that once such a state of affairs existed those enjoying such support should be responsible to the latter for their public conduct. This, it is clear, is at the very root of what we mean when we use the term "responsible government". In the minds of the leaders of the Popular Party any suggestion that such a state of affairs should prevail was not in the least apparent. Nor could it be otherwise: it would have been the undoing of the Montesquieuan or tripartite form of the British Constitution under which the Legislative Power and the Executive Power in the State remained independent of one another and, along with the Judicial Power, had to be maintained in equilibrium with one another.

Neither Le Canadien nor the Quebec Mercury, however, appear to have shown much interest in debating the point. Perhaps neither felt knowledgeable enough at this juncture to do so at any length. While Le Canadien contented itself with reporting Cuthbert's question and Bédard's reply, the Mercury preferred to let its earlier comment on the matter stand unchanged as indicative of its position.

A purge of French-speaking Lower Canadian militia officers connected with Le Canadien the following June, though, soon resurrected the question. On 18 June 1808, Le Canadien charged that Lt. Col. J.A. Panet, Capt. P.S. Bédard, Capt. and Adjt.-Maj. J.T. Taschereau, Lt. J.L. Borgia and ass.-Surg. F. Blanchet

had lost their commissions as a result of their suspected ownership of Le Canadien⁴³. Believing these dismissals to be an unwarranted attack both on the freedom of speech and the freedom of the press on the part of the provincial Administration, it placed the blame for them on the shoulders of the "ministère". The contention that a ministry did not exist in the province and that, in truth, the King's Representative bore personal responsibility for the administration of the colony, Le Canadien described as "...une maxime inventée pour rendre odieux tous ceux qui voudraient soutenir une presse libre dans ce pays, et qui ne tend à rien moins qu'à ôter entièrement aux Canadiens l'exercice de leur Constitution." This was so, it explained...

Car s'il est vrai (comme on ne saurait nuire) que la personne du Représentant du Roi doit être sacrée et inviolable ici, comme l'est la personne même du Roi en Angleterre, dire que c'est le Représentant du Roi qui fait tout ici c'est ôter aux Canadiens le droit d'examiner les actes publics du gouvernement. A quoi leur sert la part qu'ils ont dans la Législation, si on leur ôte le moyen de connaître les abus auxquels il y aurait à remédier par cette législature⁴⁴.

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43. Joseph Planté, the member for Kent closely associated with Le Canadien, lost his commissions as Clerk of Land Papers and Inspector of the King's Domains as a result of this purge on the part of the provincial Administration. Seeking to re-establish his respectability with provincial officialdom, though, Planté, unlike the others involved in the case, wrote to Le Canadien on 19 June asking it to cancel his subscription. See (Le Canadien, 25 June 1808).
44. Le Canadien, 25 June 1808. The passage from Blackstone had discussed the prerogative "that the King can do no wrong". In subsequent issues, another commentator on the British Constitution, the Swiss jurist and theoretician Jean-Louis De Loime (later discussed) was quoted extensively on this

Largely inspired by Blackstone's "Commentaries on the Laws of England" (Book 1, Chapter 27), Le Canadien's editorial introduced two new ideas into the debate on the existence of a ministry in Lower Canada. Its extension of the royal prerogative "that the King can do no wrong" to the King's provincial Representative the Governor meant that the latter was henceforth to be approached as the embodiment of the Executive Power in Lower Canada's constitutional structure. Consequently, according to Montesquieuan tripartite theory, he was not to be blamed and publicly criticized for the failures of the provincial Administration: his Ministers were the ones legally and individually responsible for political acts of the Administration just as were their counterparts in Great Britain. There, each minister was personally, legally responsible for political acts done by him in the King's name on behalf of the King's Administration. The denial of the existence of a ministry in the colony, therefore, was tantamount to a denial of the public's right to criticize the conduct both of the Executive Power which existed and the ministry which, according to some, did not exist. It was in effect, a subversion and nullification of the British-like Constitution of 1791 for which such a right was an integral part.

These ideas failed to evoke much but contempt and derision from the Quebec Mercury, however and led it to compare the proprietors of Le Canadien to "...the water-men on the river

point, in order to prove that a free press was essential to the proper operation of the British Constitution. (see Le Canadien, 25 June; 9, 16, and 23 July, 1808).

Thames, who, when on the water, claim the privilege of the liberty of the tongue; and make a practice of opening (sic) all who pass them, by vomiting on them a torrent of abuse, termed in the river slang, slack jaw." In like manner, noted the Mercury...

"the scribblers in the Canadien eternally twang forth their claim to liberty of the press, and, in imitation of the water-men, seem to think a claim a mere nullity without the full use of it. In order to which it becomes necessary to find subjects; and none, it seems, so well suit their purposes, however unfounded or fanciful, as abuses in the administration of the government, and enmity to the Canadians.

On these they perpetually harp in one monotonous and wearisome sameness; than which the incessant brayings of an ass would afford a far greater variety of notes and intonations⁴⁵..."

When in its edition of 16 July 1808, Le Canadien charged Herman Ryland, the Governor's Civil Secretary, with the responsibility for the dismissal of the five militia officers in the recent purge, the Mercury was prompted into a more rational statement of its position on the matter. Having argued that the "ministry" theory was "far from respectful to the King's representative", it then declared:

To charge His Excellency with wholly pinning his faith on the sleeve of others, what is it but saying, we hope we shall be pardoned the phrase, that he is no more than a cypher. What then is the tendency of such writings? Is it to elevate

45. Quebec Mercury, 18 July 1808.

or vilify the government? the public will judge.

Unwilling and perhaps unable to dispute Le Canadien's reasoning on the existence of a provincial ministry, the Quebec Mercury chose instead to see behind its rhetoric a desire on the part of French Canadian leaders for more and better places in the Government. On a condescending note, it concluded:

Should the opinion of the Canadien be founded in the opinion that we should have no objection to share the loaves and fishes of the government, we have the consolation to feel that our mode of seeking them, is not by calumniating, besplattering and bullying that government in the hope of intimidating into it a compliance with our wishes... On the subject of places which perpetually haunts the brain of the scribblers in the Canadien, we must be permitted to assert that Canadians have an ample share of the favors of the not (sic) government; but because those writers are [not] among the fortunate ones, nothing can be well⁴⁶.

Reluctant as the more practically-oriented Mercury might be to enter into a constitutional argument with the more theoretical Le Canadien, it nevertheless showed by its comments that it was not unaware of what was at issue in the controversy over the existence of a ministry in the province: jobs! It was correct in assuming these to be the prize sought for by those who claimed to constitute or speak for a majority of the province's voters. Acknowledgement of the existence of a ministry in Lower Canada could not but lead to eventual demands on the part of the opposition, the political "outs",

46. Quebec Mercury, 8 August 1808.

for a greater share of the political pie and for greater participation in the administration of the province. Le Canadien's failure to refute the Mercury's allegations is strongly indicative of the truth contained in them⁴⁷.

The Legislative Session of 1809

The new Legislature which assembled in Quebec on 9 April 1809 was the product of an election originally called by Governor Craig in the hope of securing an Assembly more amenable to his demands⁴⁸. As the ensuing session would clearly show, Craig's hopes for a more compliant Assembly were completely thwarted by the province's electorate. Even J.A. Panet, the old Speaker of the previous Assembly whom the Government had taken pains

47. Craig, ibid., pp. 189-190, points out that the question of "jobs" is never far below the surface in the game of politics. First noting that the basic complaint against the Family Compact in Upper Canada was that "it distributed patronage in a narrow and selfish way", he goes on to explain how the demand for responsible government derived its main impetus "... from a determination to break the stranglehold of the local oligarchy on appointments bringing prestige and profits".

48. Craig, with his wide military experience, had been sent to Lower Canada in 1807 amid rumors and the real danger of a Napoleonic invasion. His forgiveable attitude (in the circumstances) coupled with his misfortune of being ill-advised by the province's leading proponents of anglicization had led him into political difficulties with the largely French and popularly-elected Assembly. For an excellent view of Craig, see L.A.H. Smith, The Working of the 1791 Constitutional Experiment in Lower Canada 1805-1811. B. Litt. Thesis, Oxford University, 1955. P.A.C., Microfilm ML-284 OOR, 1955. pp. 137-147.

to defeat in Quebec's Upper Town, was returned for the County of Hampshire and duly re-elected Speaker of the "new" Legislative Assembly⁴⁹.

Shortly after the House had been convened, the occasion again presented itself for discussing the question of the existence of a ministry in the province. The opportunity occurred during the debate on the Assembly's reply to the speech from the throne when Louis Bourdages, the member for Richelieu County⁵⁰, moved an amendment to the motion embodying the reply, charging that certain parts of the Governor's speech were untrue and had been inspired by his "advisers"⁵¹. An unidentified speaker in the debate, in all probability Pierre Bédard himself, was reported by Le Canadien to have stated that it was not the Royal Representative who was to blame in this case but rather persons by whom he had been misled. This speaker, Le Canadien noted, had taken the opportunity to point out...

49. Manning, ibid., p. 83.

50. Louis Bourdages, (1764-1835) farmer, notary and militia Officer, represented the Counties of Richelieu, Buckinghamshire and Nicolet in the Lower Canadian Assembly during the years 1804-1814, 1815-1816, 1820-1830 and 1830-1835, consecutively. A founder of Le Canadien and a fierce opponent of Governor Craig (in 1831) he introduced a motion to remove judges from the Legislative Council. See Wallace, ibid., p. 74.

51. Le Canadien, 22 April 1809. Bourdages' amendment had declared "...que ces idées de soupçons et de jalousies imaginaires entre nous-mêmes, ou de soupçons ou de jalousies encore moins fondées, et assurément non-méritées envers notre bienfaisant Gouvernement, ne peuvent venir que d'insinuations étrangères".

"combien l'idée d'un ministère étoit essentielle a la constitution. Le premier devoir de cette Chambre, troisième branche de la Législature, étoit de soutenir son indépendance, même contre les essais que feroit la première pour la diminuer. Qu'en adoptant le sentiment de ceux qui disoient qu'il n'y a point de ministère, il faudroit ou que cette chambre abandonnait ce devoir et renonçat à soutenir son existence ou qu'elle dirigeât ses idées contre la personne même du Représentant de sa Majeste, ce qui seroit une idée monstreuse dans notre constitution; parce qu'on devoit regarder la personne de notre Gouverneur comme tenant la place même de la personne sacrée de sa Majesté et lui appliquer les mêmes maximes⁵²"

While, in the speaker's opinion, there was no officially recognized ministry in the province, the existence of ministers or persons upon whose advice the Governor based his policies was nonetheless real. In Britain, he had concluded, government ministers had not always been made as well known as they presently were. In Lower Canada, by contrast, that task vis-à-vis their counterparts still remained to be done and was constitutionally necessary.

Views very similar to the ones above found further clarification in the editorial columns of the same issue of Le Canadien. In reporting the comments on the Bourdages and Bédard amendments to the Assembly's reply to the speech from the throne, Le Canadien, attempted a rather sophisticated explanation of the difference between the executive and legislative roles of the Executive

52. Le Canadien, 26 April 1809.

Branch of the Government, maintaining:

Quand le gouvernement exerce son pouvoir exécutif tout doit obéir, tout acte contraire à cette obéissance est celui d'un mauvais sujet. Mais quand le gouvernement exerce sa part du pouvoir législatif, il n'est qu'une des trois branches de la Législature, la première, et les deux autres branches en sont indépendantes.

Far from believing the opposition of one of the lesser (i.e., in Montesquieuan terms) Branches of the Legislature (the Judiciary and the Legislative Branch) to the first Branch (the Executive) of the same illegal, Le Canadien concluded instead that it was the duty of these Branches to challenge the latter whenever the situation warranted it. The Executive Power acting in its administrative-promulgating capacity was to be obeyed, however the same power acting in its legislative capacity as one of the three constituent branches of the Legislature could be contradicted when necessary⁵³.

53. Le Canadien, ibid., Montesquieu, it should be noted, had maintained that an equilibrium between the Executive, Legislative and Judicial Powers had to be maintained in the British State for its Constitution to survive. The Executive Power though, it should be noted, apart from constituting a force in the State unique in its own right also participated in the role and functions of the Legislative Power in the State by virtue of its embodiment in the Crown, as the Head of Parliament. This dichotomy was ultimately solved by the objectification of the Crown's parliamentary role in the institution of the Cabinet. The Crown was thereby able to promulgate laws and administer the country without becoming directly entangled in parliamentary battles. Political responsibility was transferred over a long period to its chosen advisors who clearly could do wrong. The theory that the King could not do wrong demanded the existence of a ministry or cabinet if the eighteenth century constitutional system was to be a reality. As government became more complex and the Executive role in it more involved and complex, it would have become increasingly difficult to dissociate the

The elections which followed Sir James Craig's harsh and unexpected dissolution of the Legislature in May 1809⁵⁴ only served to further clarify and stabilize the views of the Popular Party on the constitutional position of the Governor in Lower Canada. Led by Craig's conduct to comment on the recent and, for the Lower Canadian Assembly, relevant unconstitutional behaviour of the Jamaican Governor in the post-session arrest of the Jamaican Assembly's Speaker, Le Canadien explained how the Province's Lower House was limited in its powers vis-à-vis the colonial Executive. While maintaining that the latter could not be answerable to the assembly, it pointed out that the Assembly could bring complaints against the Governor and seek recall before the appropriate British authorities⁵⁵. Thus, while the Governor, as the King's Representative, might not be criticized within the local context, he could, as the appointed Representative of the Crown, become the object of colonial complaints. If his nomination by the Crown entailed his enjoyment of royal prerogatives locally, it also signified his temporary, limited and dependent character as the embodiment of the Crown under the local British Constitution, the Constitution of 1791.

While such thinking reinforced the position of the Executive Power under the 1791 Constitution and approximated it that much further to its British model, it nevertheless augured ill in

King from his political acts just as it had already become increasingly difficult to distinguish the Representative's from his.

54. Manning, ibid., p. 84.

55. Le Canadien, 24 June 1809. The Jamaican case will be taken up later.

this respect for the constitutional position of the Legislative Council and served to demonstrate just how weak the Council's theoretical foundations really were. Implying that in cases similar to the Jamaican one the Legislative Council could be bypassed in petitioning the Crown, "elle-même qui est la première branche de notre législature⁵⁶", and maintaining that the difference between the colonial and British Governments in such cases existed more in the inferiority of powers of the Governor and the Council, Le Canadien professed its belief in the idea that the British constitutional system, in so far as the Legislative Power under it was concerned, was reconstituted in Lower Canada by the existence there of a Legislative Assembly and a local ministry or cabinet. These bodies along with a local "Crown" and Judiciary recreated, in Le Canadien's opinion, the eighteenth-century British Constitution in Lower Canada.

In retrospect, therefore, Le Canadien and its supporters were clearly suggesting by the end of the nineteenth century's first decade that the Lower Canadian Constitution was analogous to the one enjoyed by Great Britain since the close of the seventeenth century. The Constitution of 1791, Le Canadien and its contributors had argued, had for its guiding principle the existence and balance of Executive Legislative and Judicial

56. Ibid.

Powers in the province. The Governor and his Executive Council embodied the Executive Power while the provincial Judiciary embodied the Judicial Power in the province. The Lower House, in these writers opinions, effectively embodied the Legislative Power in the province. It was, however, unique in its enjoyment of powers and privileges analogous to those of the British House of Commons.

What is equally clear too, here, is that Le Canadien was not talking about that nineteenth century form of the British Constitution embodied in the practice of responsible government as has been suggested at times by other historians⁵⁷. Responsible government was, in reality, quite different, referring to a practice under the British Constitutional system whereby the Sovereign's public acts must be countersigned by a minister who assumes the individual responsibility for them and whereby the Cabinet of Ministers is collectively responsible to the House of Commons to such a degree that when defeated in the House, it must either resign or appeal to the electorate⁵⁸.

In Great Britain, the concept of collective Cabinet

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57. Various historians, among them Helen Taft Manning (*ibid.*, p. 71) Jean-Pierre Wallot (Le Bas-Canada Sous l'Administration de Craig:1807-1811. These de Doctorat:l'Universite de Montreal:Montreal, 1965. p. 47), Henri Brun, (*ibid.*, p. 250), and Thomas Chapais (Cours d'Histoire du Canada. Volume II. Librairie Garneau:Quebec, 1921-194) suggest that responsible government as we to-day understand it was indeed what they were both discussing and striving to attain.
58. Monet, Jacques, The Last Canon Shot:A Study of French Canadian Nationalism 1837-1850. University of Toronto Press:Toronto, 1969, p. 24.

responsibility had initially been proposed by the Rockingham Whig political grouping in the early 1780's. Charles James Fox (1749-1806), the great British parliamentarian, had resigned from the Cabinet in 1782 in support of this principle. Twenty-four years later, however, in 1806, he unequivocally denied its validity in the famous Commons debate concerning Lord Ellenborough, the Lord Chief Justice of the Court of King's Bench, whose presence in the Cabinet had become a major issue of the day because of the possible conflict of interests which might arise in consequence of it. This conflict was by no means obvious, though, and really depended on the nature of the Cabinet and the concept of cabinet responsibility. The question basically was whether the Cabinet was collectively responsible for its political acts before the law, or whether individual ministers bore only legal responsibility for their political decisions in their personal, legal capacity. Even here, we must note, public opinion was still merely concerned with collective as opposed to individual legal responsibility for political acts whereas the concept of ministerial responsibility later to emerge in the 1830's would speak of political and collective responsibility of the whole cabinet.

Nevertheless, during the course of the debate in question, Fox maintained that the Cabinet as an entity had no status in law and could not be legally responsible for its collective actions. Responsibility therefore, had to rest with individual

members rather than with the whole Cabinet. Lord Ellenborough, therefore, his argument concluded, could not render judgment in favour of the Cabinet sitting collectively when he sat in his function as Chief Justice of King's Bench⁵⁹.

A Montesquieuan approach to the problem, however, could not have but failed to point out the obvious imbalance created in the Constitution by the fact that the Judicial Power and the Executive Power had become vested in one man by Ellenborough's appointment to the Cabinet. Even if the concept of individual legal responsibility for political acts seemed very much alive as the nineteenth century got under way in Great Britain, it was, in reality, a dying notion.

The view of the constitution which the eighteenth century had produced was at an end. The theory of the separation and balance of Powers in the State now stood in growing opposition to organic changes in the body politic of the period. The weakening financial position of the Crown since the 1780's⁶⁰, and the newly emerging democratic tide originating in the urban centres of "Industrial Revolution" Britain were combining to erode the independence of the Executive Power under the Constitution and make it dependent or responsible to the Legislative Power in the State. The Ellenborough debate constituted a dying victory for a view of the Constitution which had already been

59. Asp inwall, A., "The Cabinet Council, 1783-1835", Proceedings of the British Academy (Raleigh Lecture on History). Vol. 38. Oxford University Press. London, 1952. pp. 214-224.

60. Reitan, E.A., "The Civil List in Eighteenth Century British Politics: Parliamentary Supremacy versus the Independence of the Crown". Historical Journal. Vol. IX, no. 3; 1966. pp. 318-337

effectively undermined and whose time, in retrospect, was then definitely limited and must soon give way to the more appropriate concept of responsible government.

That Le Canadien and its followers could not have been talking of this newer concept is strongly suggested by the many passages cited above from Le Canadien. Such, we submit, is logically inevitable too in light of the fact that such a theory of government was incompatible with the, then, prevailing concept of the British constitutional system⁶¹. It was certainly not the goal to which minds steeped in eighteenth century political and constitutional thought would logically proceed. Eighteenth century political thought did not point to responsible government which, as we shall see later, came about as the result of a number of forces which coalesced in the 1830's and whose cumulative effect was foreseeable only in retrospect. The "mémoire" of 1814, the attempted impeachment of Chief Justice Sewell in the same year and the "Fortier" Case in 1818 suggest that this continued to be the case until the end of the century's second decade.

First, the "Mémoire" presented to the Governor in 1814 by

61. Dunham, Aileen, Political Unrest in Upper Canada: 1815-1836. McClelland and Stewart Ltd.: Toronto, 1963. p. 154 See too, Lawrence A.H. Smith, ibid., in speaking of the "ministère" theory, he declared that it was a legal one, that the advisors of the Crown should not remain concealed, and that they should be subject to the censure of the Houses in order to prevent abuse and maintain the balance of the Constitution.

some unidentified French Canadian leaders⁶² remained wholly within the limitations of Montesquieuvian British constitutional norms. Recommending that the Governor reserve a certain number of positions and offices in the Executive Council for Assembly leaders in order to remedy the lack of communication between himself and the province's inhabitants represented in the Assembly, the "Mémoire" stipulated that such places be held only as long as the leaders in question commanded a following in the Lower House. Far from advocating the responsibility of these Councillors for the acts of the Governor before the Lower House, the "Mémoire" made it quite clear that only a few places were to go to any of the Assembly's leaders whose advice the Governor was completely free to accept or reject. The "Mémoire's" main concern lay in improving communications between one of the lesser and the first branch of the Legislature, the embodiment of the Legislative Power in the province.

The attempted impeachment of Chief Justice Jonathan Sewell for advice he was charged with offering to Governor Craig in 1810 further confirms the contention that French-speaking Lower Canadians and Le Canadien were thinking in the eighteenth century constitutional terms as the century's second decade unfolded. That accusation, as a basis for impeachment, was rejected outright by officials at the Colonial Office as

62. Manning, ibid., pp. 70-71.

incompatible with the official view of the Governor's role in the colony⁶³. In their view, only the Governor could be held responsible for the administration of the province and there could be no individual responsibility of councillors for the political acts of the Governor⁶⁴.

The "Fortier" incident in July 1818 conclusively substantiates the case that attitudes regarding ministerial responsibility had not changed as the decade drew to a close. In July 1818, Thomas Fortier, a Lower-Canadian who had graduated from a New York medical school, was refused a licence to practice in Lower Canada. Andrew Cochran, Governor Sherbrooke's Civil Secretary⁶⁵, was subsequently attacked as the public official responsible for this turn of events. "Verus", in a letter to Le Canadien, came to the latter's defence arguing that Cochran was "...purement et simplement le dépositaire de la volonté du Gouvernement, le canal par où sont communiquées les demandes des administrés et les réponses ou les décisions de l'autorité." He was, explained Verus", simply the intermediary between the public and the Governor in such cases. While Cochran's position

63. Manning, ibid., p. 107.

64. In 1824, the Imperial Government would recognize the responsibility of Receiver General John Caldwell for defalcation of public funds. This it did, according to one author, for the sake of economy. (Brun, ibid., p. 64).

65. Andrew Cochran (1792-1849), a Nova Scotian by birth, had come to Lower Canada in 1812 as Assistant Civil Secretary to Governor Sir George Prevost whom he had known earlier in Nova Scotia. Under both Sherbrooke and Dalhousie, he was Civil Secretary of Lower Canada. Between 1827 and 1841, he served on Lower Canada's Executive Council.

was honorific, he noted "aucun pouvoir n'y est attaché, non plus qu'aucune responsabilité envers le public; cette responsabilité pesant exclusivement sur le dépositaire du pouvoir"⁶⁶

Le Canadien opposed this line of thought by asking what Government could survive if its head were not protected from public abuse and intrigue. If it were evident, Le Canadien maintained...

qu'un seul homme ne peut pas résister aux efforts réunis de plusieurs, qui tous ont un intérêt majeur de paroître innocens aux yeux de la multitude, il faut nécessairement que la personne du chef dans un état libre soit inviolable et que ses serviteurs ou ses Ministres soient seuls comptables des actes du Gouvernement.

In a despotism, Le Canadien continued, ministerial responsibility was unnecessary since ministers were answerable to the Head of State and not to its laws. The latter's powers of life and death guaranteed his security and position. In Lower Canada, therefore, which was governed under a recognized system of laws, the Civil Secretary was responsible for the public acts which he performed. For, concluded Le Canadien...

si la responsabilité des actes du Gouvernement Tombent (sic) les ministres, comment connoitra-t-on s'ils sont bien ou mal si on ne peut parler librement de leur conduite⁶⁷?

66. Le Canadien, 25 July 1818.

67. Le Canadien, ibid.

The "Fortier" affair, then suggests that even as the 1810's drew to a close, individual and legal responsibility for public acts and not collective responsibility for the same continued to be the main issue on the question of political responsibility in Lower Canada as it had been in the first decade of that century. It testified, too, to the British Government's reluctance to accept in Lower Canada the applicability of even the well-worn eighteenth century concept of legal responsibility of ministers of state for their public acts. It also illustrates the unsuccessfulness of the Popular Party in winning official acceptance of their constitutional views after what was to be yet another decade of fierce political debate and warfare.

To assume, however, that the political life of Lower Canada during the late 1800's gravitated around the issue of ministerial responsibility alone would be misleading, for the single most important political and constitutional debate to emerge during the Craig years (24 October 1807-19 June 1811) arose from the Legislative Assembly's attempt to expel judges from its midst. As a defensive reaction by the Lower House against the encroachments of an autocratic Executive Power⁶⁸, the Assembly's action constituted, with the repeated expulsion by the House of the Jewish Assemblyman Ezekiel Hart, the Assembly's first major attempt to carry out in fact its conviction that the

68. Brun, ibid., p. 211.

Constitution of 1791 was modeled along the lines of the British Constitution of 1688.

It is to the expulsion issue and its constitutional implications that we must now turn in order to examine more closely the thought of Le Canadien and the Quebec Mercury on Lower Canada's political and constitutional life.

CHAPTER III

The Expulsion Issue

The debate over the existence of a ministry within the province was merely a prelude to an even more serious one concerned with the problem posed by the presence of provincial Judges in the Legislative Assembly. The next few years would see Lower Canadian public figures embroiled in a struggle aimed at excluding Judges from membership in the Lower House. The conflict would pit the Executive Branch of the provincial government against the Assembly, the more dynamic of its two Legislative bodies. In this struggle, the Assembly would emerge chastised but victorious and its view of the Constitutional Act as analogous to the British Constitution would prevail over the question of the separation of the Judicial Power of the State from the Legislative Power of the same.

A letter published in Le Canadien in October 1807 gave the first indication that the Lower House was determined to secure the victory of Montesquieuvian theory and practice in this matter. According to that theory, it was anathema to the healthy and proper functioning of a British constitution such as that brought into the province by the 1791 Act that the Judicial Power in the State or any part thereof should find

itself invested in a person also participating in the Legislative Power of that same State. Severely critical of Judge Pierre-Amable De Bonne, an outspoken representative of the Administration and elsewhere⁶⁹ described as "...the spokesman for the Castle on the floor of the house and the most effective electioneering agent for the government in the history of Lower Canada..." and also as "...the nearest thing to a political boss that Canada produced in the early days...", the letter's author "Viator" attacked the concept of a man being invested with both judicial and legislative power at one and the same time under a British system of government. Such a state of affairs was, he implied, most reprehensible because a Judge under such a system was "...le représentant du Roi dans la plus aimable et la plus importante de toutes ses fonctions; celle de rendre la justice à ses sujets." Such a man's conduct, "Viator" had concluded, should be irreproachable. De Bonne's was not⁷⁰!

De Bonne, it should be mentioned at this point, had sat in the Legislative Assembly since 1792 and had represented Quebec County since 1804. In 1794 he had been appointed a Judge of the Court of Common Pleas and this appointment had been followed by a promotion to the Court of King's Bench in 1807.

69. Manning, *ibid.*, pp. 83, 94. See also Wallace, *ibid.*, pp. 179-180.

70. Le Canadien, 5 October 1807.

Since 1794, however, Judge De Bonne had become increasingly associated with the provincial Administration and had been called to the Executive Council in 1802. It is small wonder, then, that this man in whom reposed not only the Judicial, Legislative and Executive Power in the province but who enjoyed the reputation of being a political boss in his home area should arouse the ire of those Montesquieuan deputies in the Legislative Assembly. Here was the incarnation of the worst evil which could beset a British constitution aggressively conducting battle with the upholders of British orthodoxy. While it sparked no debate or comment from the Mercury or its subscribers, "Viator's" letter foreshadowed the struggle which would preoccupy Lower Canada's Legislature for the next three years.

The Session of 1808

Three months after "Victor's" letter had appeared in Le Canadien and with Sir James Craig's first legislative session well underway, Le Canadien received and published another letter by "Jérémie" criticizing the membership of provincial Judges⁷¹ in the Lower House of the Legislature. The judicial ills

71. In addition to De Bonne, the other Judge referred to in these complaints was Louis Charles Foucher, (1760-1829) representative consecutively of Montreal - West (1796-1800), York County (1800-1804) and Three Rivers (1804-1808) in the Legislative Assembly of Lower Canada. Appointed a Provincial Judge at Three Rivers in 1804 and a Judge of the Court of King's Bench for the District of Montreal in 1812, Foucher remained throughout his life a supporter of the Government. Wallace, ibid., p. 242.

currently plaguing the province, he suggested, were the result of the improper administration of the Constitutional Act of 1791 and its consequent mutilation. Noting how Britain had given Lower Canada a constitution modelled after its own, "Jérémie" asked his readers whether they had not yet wondered whether the province's judicial ills were not the result of an accumulation of Powers in the same persons. In opening Blackstone's Commentaries which embodied the true spirit of British law, he stated...

j'y vois ces mots que tout Législateur Canadien devoit avoir sans cesse présents à l'esprit:
 "Dans tous les gouvernements tyranniques, la Magistrature Suprême ou le droit de faire des Loix et de les exécuter réside en un seul et même corps d'hommes et partout où ces pouvoirs sont réunis, il ne peut y avoir de liberté publique.

In England, "Jérémie" maintained, Judges were members neither of the House of Commons nor of the House of Lords. "J'établirais donc en ce pays", he had concluded, "que les Juges ne pourroit être de la chambre d'Assemblée ni celle du Conseil législatif⁷²".

In "Jérémie's" mind, therefore, the Constitution of 1791 had been modelled upon that of Great Britain. The British

72. Le Canadien, 9 January 1808. In Britain, it should be noted, judges did not sit in the House of Commons and merely assisted but did not vote in the House of Lords. The question of Judges in the Legislative Council would be taken up by the Legislative Assembly in 1814 and later in the early 1830's.

Constitution operated on the principle of the separation and balance of Powers in the State⁷³. Consequently, the failure to uphold and maintain this principle must lead to some aberration in affairs of State. The malfunctioning of Lower Canada's judicial system resulted from the participation of Judges in the legislative life of the province or, better, from the non-separation and interference of the Judicial Power in the State with the Legislative Power therein. Unknown though he may have been, the author had just propounded the main arguments in the forthcoming struggle to remove Judges from participating in the legislative life of the Lower Canadian Assembly.

On 22 February 1808, Louis Bourdages, the Popular Party's House Leader successfully introduced a resolution in the Lower House declaring it expedient to assert that...

Judges of the Court of King's Bench "now established", Provincial Judges for the Districts of Three Rivers and Gaspé and all Judges commissioned for any Courts which might thereafter be founded in the province to try civil cases would henceforth be ineligible to be elected or to sit and vote in the Legislative Assembly⁷⁴.

In the debate over the resolution, French Canadian members of the Assembly displayed a more "conservative" attitude on the

73. Blackstone, according to his biographer, is acknowledged to have accepted Montesquieu's constitutional teachings with respect to the British Constitution (Dictionary of National Biography, Volume II, p. 599).

74. Le Canadien, 27 February 1808. The resolution was passed by a vote of 20 to 2.

question of the role of Judges in the legislative life of the province than had been earlier proposed by "Jérémie". Pierre Bédard agreed with the Bourdages resolution but maintained that the Legislative Council provided a more appropriate sphere of activity for members of the Judiciary. Aside from the reasons given for which Judges should not be members of the Lower House, such as the compromise of their dignity resulting from electioneering, there was another very important one, Bédard noted...

qui étoit le danger qu'en les y voyant siéger et voter souvent du côté du Ministère le peuple ne s'imaginat qu'ils y fussent sous l'influence des Ministres, et qu'il falloit éviter que le public pût avoir de pareilles idées des juges⁷⁵.

Mindful of not losing an opportunity to return to his favourite theme, Bédard had simply hit on the crux of the matter and the import of Bourdage's resolution. In the simplest and least complicated language, he was arguing for the separation of Powers, Judicial and Legislative, in Lower Canada. Sidestepping the constitutional rationale for such a division and separation of Powers, Bédard had argued in favour of this practice by pointing to the popular mistrust of the Judiciary which would arise if Judges were to continue to be elected members of the Legislative Assembly⁷⁶.

75. Le Canadien, 27 February 1808.

76. There is no reason to believe that Bédard and co.'s acceptance of the presence of Judges in the Legislative Council contradicted Montesquieuian practice and theory since Judges sat in the British House of Lords.

Joseph Bernard Planté, the member for Kent, agreed with Bédard that Lower Canadian Judges should confine their activities to the Legislative Council, arguing how...

La dignité des Juges, d'un côté et leur devoir public de l'autre, l'incompatibilité du caractère de Juges avec celui de Candidat sont les seules considérations qui me font agir⁷⁷.

Yet another Assemblyman, Jean-Marie Mondelet, representing Montreal-East, agreed with this opinion maintaining:

L'on sent la nécessité d'appeler les Juges au Conseil Législatif, (où) ils auront la voix consultative et seront médiateurs entre la Chambre et le Conseil Législatif⁷⁸.

On the Government side, the only proposal of much worth was the one unsuccessfully suggested by John Richardson⁷⁹ recommending that action should be taken instead with a view to preventing the election of Judges in their respective judicial districts. Defence of the official position which seemingly favoured maintenance of the status quo would come later.

Following the adoption of the original resolution on 22 February, a bill designed to give effect to it had been introduced and read for the first time. The debate on the question resumed

77. Le Canadien, 27 February 1808.

78. Le Canadien, ibid.

79. John Richardson (1755(?)-1831), was a Montreal merchant and Executive Councillor (approx. 1804) in Lower Canada. From 1792-1796 and 1804-1808, he represented Montreal in the Legislative Assembly. In 1816 he was appointed to the province's Legislative Council). Wallace, ibid., p. 627 .

over the second reading of the bill which took place on 2 March and gave rise to a more heated and lengthier discussion.

Jonathan Sewell, the Attorney-General and member for William Henry (Sorel)⁸⁰, argued without any repugnance whatsoever for the retention of Judges in the Legislative Assembly. Maintaining that the Government had need of enlightened persons in the Lower House to uphold its just rights, Sewell stated of such persons: "...Qu'il n'y en avoit pas assez dans la Chambre⁸¹

Sewell's stand so provoked Pierre Bédard, though, that he could not resist going to the attack. Commenting sarcastically on the Attorney-General's remarks, he observed how it was now clear that...

Le ministère avoit besoin de personnes pour le soutenir dans la Chambre et les Juges qui avoient de fortes pensions "durant plaisir" paroissoient être des personnes bien propres pour remplir ses vues⁸².

It was Ross Cuthbert⁸³ and not Jonathan Sewell, however,

80. Jonathan Sewell (1766-1839) was appointed Solicitor-General of Lower Canada in 1793. Appointed Attorney-General of the province in 1795, he represented the borough of William Henry in the Legislative Assembly from 1796-1808. In 1808 he was appointed Chief Justice of Lower Canada and President of the Executive Council and in 1809 he became Speaker of the Legislative Council, remaining in the latter position until 1839. Wallace, *ibid.*, pp. 681-82.

81. *Le Canadien*, 9 March 1808.

82. *Le Canadien*, *ibid.*

83. Ross Cuthbert (1776-1861), lawyer and Seigneur of Lanoraie and Dautray, represented Warwick County in the Legislative Assembly for many years. Elected to the Executive Council in 1812- (1812-1841), he acted as Government spokesman in the Assembly from 1812-1816. Wallace, *ibid.*, p. 168.

who led Bédard to enunciate his real opinion on the matter. In answer to a question by Cuthbert asking him to explain his use of the term "ministère", Bédard asserted his belief in the existence of a ministry in the province, implying thereby that Lower Canada enjoyed a system of government analogous to that of Great Britain. Focussing his comments upon the fact that essential principle of Lower Canada's British Constitution was not being respected and upheld, he asked the House...

"si il étoit juste de profiter de l'état précaire où les Juges tenoient leurs pensions pour les exposer à jouer le rôle de dévoués au Ministère dans la Chambre...seroit-il décent de les exposer à jouer ce rôle aux yeux du public dans cette Chambre? L'idée qu'on devoit avoir des Juges étoit qu'il devoit être inflexibles et incapables(sic) de se prêter à des opinions qui n'étoient pas les leurs⁸⁴".

From these remarks, then, it is clear that Bédard favoured a non-theoretical approach to the problem at hand. He preferred instead to tackle the problem from the layman's point of view, drawing from him the motivation for his desire.

In contrast to Bédard, Judge Pierre-Amable De Bonne spoke against the bill. Having initially charged that it had been directed against him personally⁸⁵, De Bonne now suggested as Sewell had done earlier that Judges were necessary in the Lower

84. Le Canadien, 9 March 1808.

85. Le Canadien, 20 February 1808.

House to support government measures. English Judges, he declared, assisted in the House of Lords. For that reason only were they unable to sit in the House of Commons. Lower Canadians should consider, he concluded...

s'il n'est point de l'intérêt du public d'avoir les personnes les mieux instruites et les plus qualifiées. Si on voyait venir ici cinquante vagabonds pour passer des loix, pour tous bouleverser, où en serions-nous? A voir ce qui a été fait dans un autre pays on en pourrait juger⁸⁶...

Although De Bonne's remarks were far from unimagative, they nevertheless failed to challenge Bédard and his friends on their own ground, that of constitutional analogy. The most interesting comments against the bill along these lines was to come from the Montrealer John Richardson.

Partly echoing Judge De Bonne, Richardson charged that the bill and those backing it were unconstitutional stating, in Le Canadien's words, that...

on vouloit imiter le Parlement de la Grande Bretagne dans ces choses qui n'étoient pas applicables ici... nous allions contre la Constitution ...en Angleterre les Juges étoient éligibles par la Constitution, mais la raison pour laquelle on ne les élit pas pour la Chambre des Communes étoit qu'ils assistoient à la Chambre des Pairs⁸⁷...

86. Le Canadien, 12 March 1808.

87. Le Canadien, ibid.

J.B. Planté⁸⁸ though, gave what *was* probably the most interesting and the most informed speech of the whole debate. On the occasion of the third reading of the bill on 4 March, he attacked the dual role of Legislator-Judge as incompatible under the British constitutional system. Stating that it was constitutionally improper under a British Constitution like that of Lower Canada's that two Powers be found in one and the same person, Planté explained:

La Constitution d'Angleterre est composée de trois pouvoirs distincts, séparés et indépendans l'un de l'autre, savoir du Législatif, du Judiciaire et de l'exécutif (sic). Que de mettre dans les mêmes mains ces différens pouvoirs, c'étoit tendre à l'anéantissement de la Constitution idéale et non réelle. Ces principes sont ceux de tous les plus fameux écrivains sur la Constitution d'Angleterre.

The Government, he said, had the right to receive advice from a free House. The influence of Judges in such a body could deprive it of that essential freedom. If that freedom were removed or restricted there would result, he concluded...

du désordre dans la Constitution qui n'est redevable de sa conservation qu'à l'équilibre qui existe entre les pouvoirs qui la constituent. Cet équilibre se soutient en Angleterre indépendamment des Juges, il peut se soutenir également ici sans leurs secours⁸⁹.

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88. Joseph Bernard Planté (1768-1826) was a notary public instrumental in founding Le Canadien in 1806. From 1796-1808 he represented Hampshire in the Legislative Assembly of the province, while from 1809-1826 he represented the County of Kent. Wallace, ibid., p. 597 .
89. Le Canadien, 19 March 1808.

Planté, then, had offered the clearest and best statement of Canadien thought on the constitutional issue in question during the debate. Briefly, he had argued that the Constitution of 1791 had been modelled along the lines of the British Constitution. By inference, therefore, it too was constituted of Executive, Judicial and Legislative Powers in equilibrium with each other. Allowing these three Powers to fall into the same hands was tantamount to destroying that equilibrium, in itself absolutely essential to the integrity of the Constitution. If Judges were unnecessary for the maintenance of this equilibrium in Britain, so too were they similarly unnecessary in Lower Canada. Although not specifically excluded from membership in the Legislative Assembly of Lower Canada under its Constitution, Judges would surely have been had it been thought that they would avail themselves of that opportunity in direct disregard to British constitutional practice.

When all the arguments were said and done, however, the bill to exclude Judges from sitting, voting or being elected to the Assembly was passed with a very large majority⁹⁰. It was then sent to the Legislative Council for approval. There, after the legalistic debate which followed its second reading, it was

90. Le Canadien, 12 March 1808. The bill was passed on 4 March.

given a four-month's hoist and effectively killed⁹¹. When one bears in mind Legislative Councillor Charles De Lanaudière's early debate⁹² recommendation that the bill be immediately thrown out without consideration for being unconstitutional, this fate was not as provocative as it might otherwise have been.

The only interesting speech on the matter in the Legislative Council had been delivered by the Seigneur Chartier De Lotbinière⁹³. Making different use of the "image and transcript" theory and echoing arguments made in the Lower House, De Lotbinière explained that Judges did not contest elections in Great Britain because they assisted in the House of Lords in order to enhance its dignity. Legislative Councillors, he maintained, were not Lords and therefore did not have the right to have Judges sitting in their House "sur des sacs de laine". In fact, De Lotbinière had argued...

si en Angleterre les Juges n'étoient pas disqualifiés, ils devoient encore moins l'être dans ce pays par notre Législation (sic) qui à coup sûr n'avoit pas les pouvoirs de celle de la Grande-Bretagne... cette Province avoit bien la Constitution d'Angleterre, mais... il y avoit beaucoup de différence entre les deux pays⁹⁴.

91. Le Canadien, 2 April 1808.

92. Charles Louis Tarieu de Lanaudière (1743-1811), soldier and legislative councillor (1792-1811). Wallace, p. 364.

93. Michel Eustache Gaspard Alain Chartier de Lotbinière (1748-1822), Seigneur of Vaudreuil, Rigaud and Lotbinière, soldier, assemblyman (York County, 1792-1796), and legislative councillor (1793-1822). Wallace, ibid., p. 422.

94. Le Canadien, 2 April 1808.

If Lower Canada did indeed enjoy a Constitution similar to Great Britain's, De Lotbinière felt, it should not hesitate to truly pattern that Constitution after the parent one. If Judges could not sit in the province's Legislative Council because Legislative Councillors were not British Lords, that was no reason why they could not sit in its Legislative Assembly. The latter was, in fact, the only place where they could sit in the Legislature, entitled to the privilege which British Judges forwent (in their country only) in order to assist in the proceedings of their House of Lords. So ran the only novel argument in the Upper House. The argument from analogy deprived of its Montesquieuan moorings could indeed produce a conclusion to suit Official taste.

Reaction of the Press

Le Canadien, unfortunately, refused to offer direct editorial comment on the ill-fated bill, either during its short legislative career or after its demise. It simply contented itself and its readers with reporting the legislative debates relevant to it.

The Quebec Mercury by contrast waited until the session was almost over before commenting on the bill. Opinion channeled through it focussed on the already familiar question of privilege. Early in April 1808, "Subscriber" wrote to express the view that it was by Magna Carta that the liberty of an Englishman

was preserved and that the Constitution would be destroyed if that liberty were ended without legal cause. It was by British law that the Commons had their being, therefore, it could never be in its power to control that law. In the author's opinion, the "whole privilege" of the Lower House was now confined to protection of individual members from arrest during the sitting of the session. Neither House of Parliament, he argued, had power by any vote or declaration "... to create to themselves any privilege that is not warranted by the known laws and customs of the realm, upon any pretense whatsoever...". When they did, he explained, they assumed to themselves alone a legislative authority...

...by pretending to attribute the force of law to their delcaration, and claim a jurisdiction not warranted by the constitution; assuming a privilege to which they can have no title by our laws and customs, thereby subjecting the rights of british subjects and the freedom of their persons, to the arbitrary votes of the House of Assembly or Commons⁹⁵.

The Mercury's response to "Subscriber" was to wish that he had gone a little further "...so as to have discriminated between the British house of commons and the Quebec house of Assembly..." in order, it said, that "...he might have been led to doubt whether even the privilege of protection from arrest"at any time", extends to a member of the Quebec house of assembly, whatever may be the cause with respect to a member of the British house of commons." The British member claimed protection

95. Quebec Mercury, 4 April 1808.

in virtue of a specific law, the Mercury pointed out, a law corroborated at the opening of every parliament by the Speaker's freedom of speech. But, it concluded:

...with respect to the members of the Assembly, there is neither any law in their favor, nor is the freedom from arrest, at any time, claimed by the speaker, though he puts in his prayer for the freedom of speech⁹⁶."

Claims to analogy of the British and Lower Canadian Constitutions had, then, been made in the Lower House by members or supporters of the Popular Party. The latter's leaders were intimately connected with Le Canadien and responsible for its attitudes, attitudes which encouraged and called for the enactment of bills such as the exclusion bill in question. The constitutional analogy proposed and defended by the Popular Party and its journal was responsible for that bill designed to prevent Judges from sitting or voting in the provincial Assembly. It remained for the Quebec Mercury and its supporters to attack this claim to constitutional analogy not on the issue of the "Judges'" bill, but rather at its very root. It was wrong in their opinion to prevent Judges from being elected to or sitting or voting in the Lower House because there was no analogy between that body and the British House of Commons. Whereas the British Commons had privileges enshrined in concrete

96. Quebec Mercury, 4 April 1808.

laws, the Lower Canadian "Commons" had none. It could not, therefore, like its British counterpart enact new laws bearing upon either its own constitution or any like matter. Without the Commons' most accepted privileges, the Mercury implied, the Legislative Assembly of Lower Canada could not disqualify provincial Judges from membership in the Lower House. The members of the Popular Party thought otherwise, though, and were determined to secure the victory of the principle in question.

The Session of 1809

Early in the following session, the Mercury and its supporters notwithstanding, Louis Bourdages re-introduced this exclusion motion in the Lower House. It simply declared that according to the rules and customs of the British Parliament Lower Canadian Judges could neither sit nor vote in the Legislative Assembly of the province. In opposition to it, Pierre-Amable De Bonne moved an amendment stating that the province's electors had a constitutional right to vote for whomever they wished, provided that the candidate was not legally disqualified by either the provisions of the Constitutional Act or by an act of the Legislature or as the result of a criminal conviction⁹⁸.

97. The motion was introduced on 18 April.

98. Le Canadien, 26 April 1809.

On 21 April, the motion and the amendment to it were debated; on the following day, the order of the day calling for the House to go into a committee of the whole to resume debate on the question was postponed until 30 July by a vote of 23 to 17⁹⁹. The motion had been given the six-months hoist traditionally reserved for bills. Twelve of the French-speaking members had not been prepared to expel a class of elected representatives from the Lower House. Bourdages and his supporters, it would seem, had left a majority of its members unconvinced as to the constitutionality of such proceedings. No party whip had existed to bring them into line on this important question.

Undaunted, however, by this failure, Bourdages successfully moved on 25 April that a committee be set up to consider whether there had resulted any inconveniences in elections where Judges were candidates and what, if any, these were¹⁰⁰. De Bonne who charged that the whole procedure was unfair, was offered the chairmanship of the committee. He refused it. Two weeks later, on 9 May, Bourdages presented the said committee's report to the Lower House. In spite of De Bonne's delaying tactics, the House resolved to take up consideration of the report on 15 May.

Immediately following this resolution, Bourdages successfully

99. Christie, Robert. A History of the Late Province of Lower Canada. Volume I. 2nd ed. Richard Worthington: Montreal, 1866, p. 282.

100. Le Canadien, 29 April 1809.

introduced a bill declaring Judges ineligible for election to the Lower House and it was read for the first time. On 12 May, it was given second reading and ordered printed¹⁰¹. During the third reading of the bill on 15 May, De Bonne, in an attempt to discredit the bill, introduced a motion condemning Bourdage's committee for taking evidence in secret. It was easily defeated¹⁰². Before the House could pass the ineligibility bill, however, Governor Craig dissolved the Legislature with a stinging speech destined to earn him the reproach of even the Colonial Secretary Lord Castlereagh¹⁰³. The Governor was not one to accept quietly this Assembly's attempt to deprive him of such strong support both in the House and among the Quebec area electorate. Finding this Montesqueuian bill intolerable, he used his power of dissolution to temporarily, and he hoped permanently, crush it.

Accusing the Assembly of having wasted its time "...in fruitless debates" and of having been excited "...by private and personal animosities, or by frivolous contests upon trivial matters of form", Craig's speech had referred to the acts which,

101. Le Canadien, 27 May 1809.

102. Manning, *ibid.*, p. 84. The author notes: "So much evidence was turned up that De Bonne had used his position to bully and browbeat voters that the English members abandoned the attempts made in the previous year to pass compromise measures."

103. Manning, *ibid.*, p. 85. Castlereagh was to instruct him on constitutional procedure and to caution him against dissolution unless he could obtain a better one. He would also warn him to guard his words referring to debate and free speech.

in his opinion, appeared to be "...unconstitutional infringements of the rights of subjects, repugnant to the very letter of that statute of the Imperial Parliament under which the members of the Lower House held their seats". These acts, he noted, had been matured "...by proceedings which amount to a dereliction of the first principles of natural justice". Dissolution was, in Craig's opinion, the only constitutional means whereby the recurrence of such acts could be prevented¹⁰⁴.

While this coercive dissolution was in complete conformity with the spirit of parliamentary life¹⁰⁵, the manner in which it had been carried out made it wholly unacceptable not only to the Legislative Assembly and the Colonial Secretary, but, as the ensuing general election would show, to the general electorate of the province as well.

Reaction of the Press

Refusing to accept Craig's unconstitutional view of the Constitutional Act, Le Canadien did not long delay in labelling Craig's speech "...une vraie disgrâce dans un pays britannique¹⁰⁶." An anonymous letter by one of its subscribers berated Craig's speech because it portrayed the King's Representative as having violated the rights and privileges of the Lower House

104. Quebec Mercury, 15 May 1809.

105. Brun, ibid., p. 219.

106. Le Canadien, 17 June 1809.

by the manner in which he had received the information upon which the speech had been based. Furthermore, the author maintained, it had represented the Governor...

comme ayant donné son appui à la plus affreuse corruption... comme se servant des prétextes les plus injustes et les plus frivoles pour dégrader la chambre d'assemblée dans l'esprit du peuple, comme se laissant entraîner dans les contradictions par le désir de la trouver en faute; comme donnant ridiculement une opinion en loi sur l'interprétation de l'acte de la constitution afin d'avoir un chef d'accusation à faire contre la chambre d'assemblée pour avoir eu des contestations sur des matières de forme et comme louant plus ridiculement encore le conseil législatif sur l'unanimité qu'il avoit montré dans ses procédés¹⁰⁷.

Craig's speech had indeed shocked the consciences of the constitutionally-minded, the circumstances under which the dissolution took place drawing more criticism than the act itself.

During the following summer and autumn, prior to the October 1809 general election, Le Canadien ran captions taken from the proceedings of the British House of Commons, warning the electorate against undue influence on the part of the Executive. The Quebec Mercury, on the other hand, adopted quite another line of thought reiterating its stand on the propriety of the membership of Judges in the Legislative Assembly. Noting that Lower Canada had a law governing the

107. Le Canadien, 10 June 1809.

election of Judges to the Assembly and arguing that a written law must never be superceded by a precedent, it declared:

...if a judge be not himself sensible of any impropriety in such conduct, while we have a written constitution on which we can lay our finger, which does not except him, we cannot, for a moment, cherish the idea that any theoretical or abstract reasoning, or any precedent, arising from out of any other constitution whatever, particularly if that constitution be not precisely defined, can overset the letter of a written and unambiguous law. If the law be not a positive rule, then are we afloat on the wild and ever varying ocean of individual opinion¹⁰⁸.

The same reasoning, the Mercury continued, applied to other individuals not excepted from membership in the Lower House by the Constitutional Act. Not even the British House of Commons nor the British Parliament could permanently exclude from membership in the Commons an individual or class of individuals. Much less, therefore, it concluded, could the provincial Legislative Assembly assume such an unreasonable and arbitrary power. Lower Canadians should and had to look to their written Constitution for guidance in constitutional matters.

Refusing to accept this approach to the constitutional issue at hand, Le Canadien did not long hesitate in answering the Mercury's remarks. Late in June 1809, it published a letter constitutional implications of recent events in Jamaica. There, the Jamaican Assembly had recently accused the Island's Commanding Officer of having taken on powers offensive to itself

108. Quebec Mercury, 22 May 1809.

during the Fort Augusta mutiny. In a series of resolutions passed on 1 December 1808, it had found both the Officer, Major-General Lyle Carmichael, and the Governor, the Duke of Manchester, guilty of infringing upon its privileges. Declaring its refusal to proceed with further business until reparation had been made, it had soon been prorogued. In April 1809, however, the Kingston (Jamaica) papers had carried the news of Colonial Secretary William Windham's approval of the Assembly's conduct in the matter, noting his acceptance of its privileges.

In commenting upon a British letter upholding this turn of events but counselling against theoretical preoccupation, Le Canadien explained that this did not mean that the privileges of the Jamaican Assembly were dissimilar to those of the British Commons. Neither, it maintained, did the author's views suggest that the Jamaican Lower House had erred in pretending this to be the case. What he had said, Le Canadien made clear, was that a pragmatic approach to specific questions such as those of privilege was better than a theoretical one. Its readers were not to conclude from the British author's remarks that the Jamaican Assembly had erred in proclaiming its privileges to be general like those of its British counterpart. Declared Le Canadien:

...on doit au contraire remarquer que c'étoit là une très-bonne manière de les réclamer, parce que quoiqu'on ne puisse pas décider dessus d'une manière générale, ils doivent toujours être

réclamés de la manière la plus générale possible, et qu'il n'y a pas de manière plus générale de les réclamer que de les réclamer semblables à ceux des communes de la Grande Bretagne qui sont d'ailleurs le plus beau model (sic) et même le seul dans le monde qu'une chambre d'assemblée puisse se proposer de suivre¹⁰⁹.

Varying its previous stand to meet the theoretical exigency of the moment, Le Canadien went on to explain that the analogy between the British Constitution and the Jamaican Constitution (and by implication, the Lower Canadian Constitution) was weak. This weakness, it argued, lay more with the deficiency in the constitutional position of the Governor and the Legislative Council than in the position of the Assembly¹¹⁰. The King was, Le Canadien explained, "...la première branche de notre législature...". The Governor, by contrast, only exercised those powers conferred on him by the King and by parliamentary law. The Legislative Council, Le Canadien explained, did not have the judicial power of the British House of Lords. This made perfect sense since the province's Legislative Assembly had itself the means of impeaching public officials who committed crimes in the performance of their duty¹¹¹.

109. Le Canadien, 24 June 1809.

110. Jamaica had an Executive Council but not a Legislative Council. In the Empire only Lower and Upper Canada had both in addition to a Legislative Assembly. For all practical purposes here, though, we must approximate Jamaica's Executive Council and Lower Canada's Legislative Council.

111. Le Canadien would later change its mind on the question when later, by 1821, it became generally recognized in the province that the constitutional analogy claimed by the Assembly must apply generally to all constitutional bodies there if it were really to be claimed successfully by any of them.

As for the question of privileges which, as we must recall here, was crucial to the success of any bill to exclude Judges from membership in the Lower House, Le Canadien went on to explain:

Ce n'est pas une chose qui soit au désavantage de la chambre d'assemblée que ses pouvoirs ne puissent être définis, c'est au contraire ce qui leur montre leur étendue. *(Vid. Blackstone, t.1, pp. 163 et 164) et ce qu'on peut regarder comme la plus grande marque de leur ressemblance avec ceux des communes de la Grande-Bretagne; car les communes de la Grande-Bretagne n'ont eu soin de conserver leurs pouvoirs "indéfinis" qu'afin qu'ils puissent être entendus à tous les cas auxquels il pourroit y avoir besoin de les étendre, cas qu'il est impossible de prévoir d'avance.

If the House of Commons undertook to define its privileges by means of a specific law, Le Canadien expounded further, it would soon find itself hamstrung by new cases of privilege which would not have been provided for by such a law. This occurred continually in Britain and should constitute a warning to Lower Canada's House of Assembly to continue its claim to parliamentary privilege in the most general manner. The Lower House, Le Canadien maintained, should claim its privileges in as vast a manner as possible, limiting them by no other bounds than by that of their occurring necessity. Only in this way would such privileges resemble those of the British Commons.

Having elaborated its viewpoint on this essential question, Le Canadien arrived at the crux of its lengthy discourse, stating what was tantamount to the Legislative Assembly's position on

the question of rights and privileges. The right to pass laws, it declared, was an undeniable right of the Assembly. Once admitted, the powers of the House could be deduced with the greatest clarity and certainty. They encompassed whatever was necessary to exercise the right to pass laws. The Lower House, wrote Le Canadien...

...ne peut exercer le pouvoir de passer des loix ou ce qui est la même chose, elle ne peut être une branche indépendante de la Législature sans avoir "en elle-même" le pouvoir de conserver son indépendance, et l'honneur et le respect qui lui sont dûs; car si elle avoit besoin pour cela du secours des autres branches de la Législature, il est évident qu'elle cesseroit par conséquent d'être une branche indépendante de la Législature... Les pouvoirs de la chambre d'assemblée une fois établis, c'est à elle à juger des circonstances particulières qui en demandent l'application. Elle n'est pas même liée à n'en faire usage que dans les cas dont elle trouveroit des exemples dans les procédés des communes de la Grande-Bretagne; ou à ne les exercer que sur les mêmes raisons et dans les mêmes circonstances.

In Le Canadien's opinion, therefore, this logic was a more just and perfect means of claiming unlimited privileges for the Assembly than the argument from analogy. It permitted the Assembly to claim its privileges from the same source from which the British Commons derived hers, namely the necessity imposed by the logic of the moment¹¹².

Having then argued that the Jamaican Assembly in particular

112. Le Canadien, ibid.

and British Assemblies in general were perfectly justified in claiming powers and privileges similar to those of the House of Commons and having also argued that the unlimited nature of such colonial privileges was the greatest mark of their similarity with those of the Commons, Le Canadien had provided its readers with what was undoubtedly its strongest statement to date on the independent nature of the province's Legislative Assembly. The very contention that the latter could by itself pass laws¹¹³ was certain to draw the fire of its opponents.

Indeed that very suggestion made the Quebec Mercury bristle. Predictably seizing on this pretentious terminology, the latter strongly attacked it exclaiming:

Were it ("The right of passing laws") the case, the other two branches of our Parliament would be a nullity - The house of assembly has the right of passing "bills" as far as its assent goes, we are ready to admit; but the passing of a "law" must according to our constitutional statute, be the combined act of the three branches. "Bills" are only "laws" in embryo, and are totally void of power; they may undergo fifty or a hundred reservations, after first passing the house before they became law. To call¹¹⁴ "Bill" a "Law" is to raise an infant to a man¹¹⁴...

By summer's end, therefore, Le Canadien and the Quebec Mercury were more than ever irreconcilable in their views

113. Laws as opposed to bills, that is. The Lower House could pass a bill but in order for that bill to become a law, it also needed the approval of both the Legislative Council and the Governor.

114. Quebec Mercury, 10 July 1809.

concerning the nature and role of the province's Legislative Assembly under the Constitutional Act of 1791. Le Canadien likened that body to the British House of Commons and endowed it with unlimited powers and supreme importance within the colony. The Mercury, on the other hand, thought of the Lower House as one of the three constituent parts of a colonial and, consequently, less important Legislature operating strictly within the context of powers outlined by a written imperial act. In this strict or documentary approach, however, the Mercury, which supposedly championed British rights and ways in Lower Canada, unconsciously rejected an approach to constitutional problems which was essentially British. By elevating the Constitutional Act into the sole standard of constitutional right and wrong in the province, it had advocated an approach to such problems typically American in nature. The parent British Constitution is essentially an unwritten one while its offspring, the American Constitution, is wholly a written one. Precedence could change the former and those like it but not the latter. French-speaking Lower Canadians were, in this period, advocating a British approach to what was, because of its written nature, an American constitution.

These were, nevertheless, the positions from which Le Canadien and the Mercury would interpret the political events of the new Legislature which opened in January 1810.

The Session of 1810

Contrary to Sir James Craig's hopeful expectations, the October general elections had failed to return a more compliant Lower House to the provincial Legislature. In addition, he had been thoroughly reprimanded by the Colonial Secretary for his dealings with the previous Legislature¹¹⁵. It was, consequently, in a chastized mood that he addressed his new Legislature on 29 January, declaring himself ready to assent to "any proper bill for rendering his Majesty's Judges of the Court of King's Bench in future ineligible to a seat in the House of Assembly¹¹⁶".

Even though Craig might have lost the battle, it immediately became apparent that the Mercury intended to see that he did not lose the war. Both his and the Mercury's vindication were at stake in the matter and the true principles of British constitutionalism, as the Mercury understood them, were to be upheld before the blows which reigned on their supporters both from the midst of the Assembly as well as from the Colonial Office. Consequently, and Craig's acquiescence notwithstanding, there now ensued a debate of no small length in the pages of both the Quebec Mercury and Le Canadien.

On the same day as the Governor delivered his opening

115. Chapais, Thomas, Cours d'Histoire du Canada. Tome II. Librairie Garneau Ltée.: Québec, 1921, p. 196.

116. Quebec Mercury, Extraordinary, 29 January 1810.

address to the new Legislature, the Quebec Mercury could still wonder...

Whether the expulsion of a judge or any other not infamous character, from the House of Assembly by a vote of that house, may not be considered, not only an attack on the rights, as well of electors as elected; but as "rebellion" against the sovereignty of the British parliament, from whom we hold the fundamental law of this country of which such an expulsion would be so marked an infraction¹¹⁷...?"

Le Canadien, to whom the query had evidently been addressed, countered with a question of its own, asking whether a Judge of the Court of King's Bench could legally and constitutionally sit or vote in the Legislative Assembly. Having answered this question in the negative, Le Canadien then explained how such a situation violated the most obvious principles of the 1791 Constitution. It violated too, in its opinion, the most basic principles of justice and both unleashed the vilest of passions and gave birth to the most infamous corruption! Indeed, Le Canadien pointed out, those supporting such Judges were themselves convinced of these facts and had confined themselves to insisting on the necessity of removing such Judges from the Assembly by means of an act. Believing the right to exclude Judges from the Lower House constitutionally unauthorized and, therefore, not practicable, such people nevertheless held

117. Quebec Mercury, 29 January 1810.

that an ex-criminal could be excluded from membership merely on the grounds of a criminal record. Other persons too not disqualified from membership in the Lower House by the 1791 Constitutional Act could not sit in it on constitutional grounds. In fact, concluded Le Canadien...

La Chambre a déjà exercé ce droit, sans occasioner des réclamations et dans le fait nier qu'elle a une autorité et des privilèges, dont la concession n'est pas prononcée par les termes de l'acte de la Constitution, c'est nier l'existence de la Constitution elle-même; nier que nous ayons un Parlement. Les partisans des Juges devroient avant tous nous prouver que les fonctions, dont ils sont chargés, sont compatibles avec celles des Représentans¹¹⁸.

Ignoring Le Canadien's charges of ridiculousness and illogicality, the Quebec Mercury again took up the cudgel in what had by now developed into a full-fledged debate. In answer to the latter's question about the legality and constitutionality of a Judge sitting in the Assembly, it replied:

Our answer is unquestionably yes, in spite of all the abstract reasonings and theories of all the "Canadiens" in the universe¹¹⁹.

118. Le Canadien, 3 February 1810.

119. Quebec Mercury, 12 February 1810.

Permitting itself, in turn, to pose a question the Mercury then asked whether "the visionary speculations of a few presumptuous individuals" or "a positive Statute of the British Parliament, forming a fundamental law of this country..." was to be supreme? In answer to this question, it gave its own reply saying:

Whoever has examined the statute with an unprejudiced eye, and an unpresuming mind must see that nothing short of an act of the whole Legislature, consisting of the three branches, can disqualify any description of persons from voting or being elected, other than such as are disqualified by the statute of the British parliament.

Le Canadien's inference that the unwritten right to expel members for felonious acts or criminal records gave the Lower House unlimited powers of expulsion was attacked by the Mercury as sheer casuistry. The Legislative Assembly, it claimed, might have exercised its power to expel members in the past but it had not had the "right" to do so except where there had been a conviction of felony. "In every case", the Mercury concluded, "where this power (to expel) has been or may be unconstitutionally exercised, we hope to live to see the day where every entry of such exceptions, may, by a vote of the house be expunged from the Journals." In this instance, it should be noted, Le Canadien was still thinking along "British" lines, upholding the importance of precedence in British constitutional life. The Mercury, paradoxically enough, continued to remain within the "American" constitutional

tradition in spite of the fact that it claimed to base its opinion upon established British practice. Indeed, quite a number of years had passed since a member of the British House of Commons had been expelled from its midst for criminal activity¹²⁰ by mere resolution alone.

In the Mercury's following edition, "A" contributed to the debate by outlining Sir William Blackstone's thoughts on the matter. Blackstone, he explained, had taught that...

though every subject is eligible of common right to a seat in the House of Commons, yet there are certain instances wherein the persons have forfeited that common right and have been declared ineligible for that Parliament by a vote of the House of Commons, or forever by an act of the Legislature¹²¹.

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120. The Wilkes case (1768-1782) is the one referred to here. According to The Dictionary of National Biography (ed. Sydney Macmillan Co.: New York, 1909) Volume 21, p. 248, John Wilkes (1727-1797) was found guilty of libel against Lord Sandwich by the two Houses of Parliament and was expelled from his seat in the Commons for Middlesex on 4 February 1769. During these proceedings, account had also been taken of his two previous offences as well as his present situation as a prisoner. The electors of Middlesex returned him three times thereafter despite the fact that he was immediately expelled from his seat on each occasion. In October 1774, Wilkes was again re-elected to represent Middlesex in the Commons and this time took his seat without any opposition. On 3 May 1782, a motion expunging the records of his incapacitation from the Commons Journals was finally carried. Christie, ibid., shows how impossible it had been to permanently expel a member by resolution from Lower Canada's Legislative Assembly. The Assembly was obliged to resort to a bill to exclude Charles-Baptiste Bouc from the Legislature in 1802 (Vol. 1, pp. 210-225).
121. Quebec Mercury, 15 February 1810.

A vote of one branch of Parliament was, in "A's" opinion, insufficient to expel a member.

Expounding upon this point and taking up once again the question of precedent, the Mercury substantiated its earlier position and explained the use of the latter constitutional device stating:

If any improper person be returned to serve in our House of Assembly, the statute of the 31st of the king furnishes the remedy; a disqualification by an act of the three branches of our Legislature. Having this prescribed mode, why recur to precedents of the British house of Commons, who have no such statute to limit and govern them?

The law of Parliament, in the Mercury's opinion, was totally undefined. The Commons had the undeniable right, therefore, to govern its own members. While similar cases might arise in Lower Canada, precedent was invalid in light of a constitutional provision governing them.

The law of Parliament was, then, according to the latter, undefined. In certain cases, the law of the Lower Canadian Legislature might also be undefined. Such was not the case in the current expulsion issue. Here, the 1791 Constitutional Act, a constitutional instrument of the Imperial Power, "... an authority having the right to dictate such prescription" prescribed what legislative conduct was in order. This Act, according to the Mercury, left Judges eligible for membership in the province's Lower House.

The Legislative Debate

In the midst of this journalistic debate, the expulsion issue had re-emerged in the Lower House. There, the Assembly, in gratitude for Governor Craig's announcement of official approbation of a bill designed to exclude Judges from the Lower House, had begun the session by resolving that every attempt of the Executive and of the other branches of the Legislature against itself

"...whether in dictating or censuring its proceedings, or in approving of the conduct of one part of its members, and disapproving the conduct of the others, is a violation of the statute by which this house is constituted, a breach of the privileges of this house against which it cannot forebear objecting; and a dangerous attack upon the rights and liberties of His Majesty's subjects in this province¹²²."

As might have been expected, the first bill introduced was designed to render provincial Judges ineligible to sit or vote in the Lower House. The bill did not exclude merely Judges of the Court of King's Bench as Craig had suggested it do, but had been phrased so as to encompass all members of the province's Judiciary. Introduced and read for the first time on 2 February 1810, the bill underwent its second reading on the following day, 3 February. Three days later on 6 February, following a very brief debate by the House sitting in a committee of the

122. Christie, ibid., volume 1, p. 295. Neither Le Canadien nor the Quebec Mercury mention this resolution. Christie gives no date.

whole, the bill was ordered engrossed. On 9 February, it received third reading, was passed and sent to the Legislative Council for approval¹²³.

On 23 February, the Legislative Council informed the Legislative Assembly that it had passed the bill with certain amendments. While agreeing in principle with the substance of the bill, it was not prepared to allow it to go into effect until the end of the current Legislature¹²⁴. The Assembly, in turn, answered this initiative by going into a committee of the whole to consider the amendments and, on the following day, 24 February, resolved that Pierre-Amable De Bonne a Judge of the Court of King's Bench could neither sit nor vote in the Lower House and that his seat for the County of Quebec was vacant¹²⁵. Having accepted several of the Legislative Council's amendments to the bill following the adoption of these resolutions and having also drawn up a report on its proceedings, the Assembly ordered the bill engrossed anew.

The Governor, however, had by this time tolerated more than he could bear. On 26 February, he dissolved the Legislature

123. Le Canadien, editions of 10 and 17 February 1810.

124. Christie, ibid., volume 1, p. 305.

125. Le Canadien, 3 March 1810. The only other Judge sitting and voting in the Lower House during this period (1807-1808) had been Mr. Justice Louis Charles Foucher of the Provincial Court at Three Rivers (1804-1812). He had been Solicitor General of the province from 1795-1804. In 1812 he became a Judge of the Court of King's Bench at Montreal. Foucher was defeated in the 1808 election and withdrew from active politics to devote himself to his judicial functions. See Wallace, ibid., p. 42.

declaring that the Assembly's resolutions respecting Judge De Bonne had forced him to do so.

It was impossible for him to consider what had been done in any other light than as a direct violation of an Act of the Imperial Parliament...

that Parliament which conferred on you the constitution to which you profess to owe your present prosperity, nor can I do otherwise than consider the House of Assembly as having unconstitutionally disfranchised, a large portion of His Majesty's Subjects and rendered ineligible, by an authority which they do not possess another not inconsiderable class of the community¹²⁶.

Craig's action was indeed surprising in light of his opening address to the provincial Legislature. Ready though he may have been to accept an exclusion bill from the Assembly, he undoubtedly felt that it had surpassed its constitutional limits by moving against De Bonne in the current session. He probably had not expected to see him removed from his seat until the end of the session at which time it was his usual practice to give the Royal Assent to bills which then, and only then, went into effect. Whatever his rationale, the thought of flying in the face of the Colonial Secretary does not seem to have disturbed this old veteran of many campaigns. He was not frightened off by the sounds of battle and probably even less concerned

126. Quebec Mercury, Supplement no. 9, 26 February 1810.

if such sounds came from across the sea.

Reaction of the Press

The Quebec Mercury wasted no time in supporting Craig's actions and busied itself with the publication of loyalty addresses in his favor from various parts of the province¹²⁷. It justified his recent dissolution of the Legislature by reminding its readers of the Governor's promise at the opening of the late Legislature that their electoral right of choice would only be limited by the concurrence of the three branches of the Legislature. Instead, the Assembly had sought to limit this right by virtue of its power alone. The Assembly's resolutions, the Mercury stated, constituted "...marked disrespect to the King's representative" and were "...in direct violation of the Statute giving us the Constitution". To a British subject aware of his civil and political rights, the Mercury explained, an attack on either was "...equal to a stroak at his throat." The plea of privilege, it concluded...

as exercised in this case, is like a masked guillotine, the more to be dreaded for being covered. Privilege, properly exerted, is a shield to protect rights, not a pike to pierce and destroy them¹²⁸.

Another letter to the Mercury also testified to anglophone

127. Quebec Mercury, 19 March, 26 March and 29 April 1810.

128. Quebec Mercury, 5 March 1810.

fears arising from the late Assembly's actions. In a letter supporting the Governor, "Viator" commented on the general principle that "Precedent makes Law", noting of the majority in the Assembly:

Had they been able to have succeeded in their designs and had the vote been allowed to have had the effect of expelling the Judge, and the whole passed without notice, I doubt not (and I am authorized in the assertion by acts that clearly demonstrate their intentions) but that ere one more solitary session had passed, we should have heard of the following motion carried likewise by a majority, that frequent elections are both troublesome and expensive and therefore this House constitutes itself into a perennial parliament¹²⁹.

To the Mercury's allusions to revolution, Le Canadien countered with a suggestion of its own, casting doubt upon the integrity of the petitions. Referring to those petitions as a plot designed to mislead the electorate, Le Canadien declared them to be an insult to Lower Canadians in view of the forthcoming elections which alone could serve to establish popular opinion on political events in the province. The British Parliament alone, Le Canadien maintained, could intervene in a dispute between the Legislative Assembly and the Legislative Council. How, then, it wondered, could the petitioners arrogate to themselves a power belonging solely to that body? The British Cabinet, it explained, could admonish the Governor

129. Quebec Mercury, 2 April 1810.

who was a servant of the King and, as such, subject to its directions, but only Parliament could decide whether the House of Assembly had made a constitutional error. In Le Canadien's opinion, opposition conduct in Lower Canada was undoubtedly the result of "...ce malheureux Yankéisme qui affaiblit toutes les idées de la Constitution Britannique, et ne laisse plus voir d'autre principe du gouvernement que l'influence de la populace...". Consequently, Le Canadien concluded:

Quand la volonté de sa Majesté était déclarée sur l'iexterpation (sic) d'un vice, était-il décent de dire qu'elle s'en réservait quelques conséquences, était-il décent d'interpréter les intentions de sa Majesté comme on interprétait celle d'un chétif Yanké qui, quand il accorde tout, se réserve tacitement chaque chose en particulier?

N'était-ce pas une occasion où elle [the Assembly] devait faire usage du pouvoir d'exclure par résolution si elle a ce pouvoir, comme il nous paraît nécessaire qu'elle l'ait¹³⁰.

The petitions of loyalty in favour of Sir James Craig were, then, in Le Canadien's opinion, constitutionally improper. They testified to the influence of democratic "Yankeeisme" in the province. In usurping the British Parliament's right to adjudicate colonial constitutional affairs, they were also presumptuous. If the two Houses of the Lower Canadian Legislature could not agree over the bill to exclude Judges from the

130. Le Canadien, 10 March 1810.

Legislative Assembly, only Parliament could intervene to seek a solution. The Governor too was bound to carry out the British Cabinet's decisions and could not, like it, interfere in colonial constitutional matters.

Having belittled both the Governor and his supporters, Le Canadien next went on to practice a bit of "Yankeeism" of its own. It departed from British parliamentary tradition to denigrate the Assembly's remaining colonial opponent, the Legislative Council, by appealing in the Assembly's favour on the grounds of its popular electoral basis. This, it contrasted with the Legislative Council's electoral base in a fictitious although not unusual dialogue in which "Pierre" explained to his counterpart "Baptiste" how...

La Chambre d'Assemblée représente la classe moyenne du peuple, par exemple les cultivateurs, les gens de métier, de profession, au lieu que le Conseil Législatif représente les riches propriétaires comme les seigneurs, les personnes les plus riches, les plus gros négociants¹³¹..."

In its attempts to portray the Assembly as the sole legislative representative of the province's "habitant" majority, Le Canadien could be charged with succumbing to "les effets de ce malheureux Yankéisme qui affaiblit toutes les idées de la Constitution Britannique", and which allowed for the influence of no other principle of government than that of "l'influence

131. Le Canadien, supplement, 14 March 1810.

de la populace¹³²".

By March 1810, both the Assembly's conduct and Le Canadien's theorizing had combined with the local tension engendered by the international situation to foster the belief amongst the colony's anglophones that the situation was getting rapidly out of hand. Britain's struggle with a Napoleon¹³³ who was then currently at the height of his power in Europe fostered anglophone belief in the existence of French intrigue in the province. "Camillus", writing in the Mercury, could easily wonder about Le Canadien which "...different from all other papers" had been "ushered to the world "gratis" with an impudent and seditious motto on its front"¹³⁴. This motto alluded, he said, to a period of English history when the civil and religious liberties of the

132. Le Canadien, 10 March 1810. Other occasions on which reference was made to class and the Assembly as representative of the farming and professional classes are Le Canadien, 22 November 1806, 17 January 1807, 13 January 1819. 1 December 1819.

133. Gershoy, Leo. The French Revolution and Napoleon. Appleton-Century-Crofts: New York, 1964, p. 448. The author explains how the year 1810 was one of crisis for Britain, a crisis largely due to the effective enforcement by Napoleon of his Continental System, a commercial policy designed to isolate Britain commercially from the Continent of Europe. Elsewhere (p. 451), Gershoy notes how... "By the end of 1810 the emperor's power appeared greater than ever and the territory of his empire reached its widest extent." Craig and the leaders of the province's anglophone community were undoubtedly aware of such developments in the Mother Country and, as is so often the case in such circumstances were probably more frightened than the King himself by the international current of events.

134. The motto referred to is probably the one stating "Que l'Election des Membres du Parlement doit être libre: Que la liberté de la parole et des débats ou des procédures en parlement, ne doit être sujette à aucune accusation,

country were attacked by the court. He insinuated that a similar situation prevailed in the province. If any, it was that faction in the Lower House connected with Le Canadien, Camillus claimed, which had attacked constitutional liberties in the province with the aim of assuming sovereign power! Their language had even suggested that the time would soon come when they could dispense with the concurrence of the Upper House in passing bills. Out of doors, he continued, they have spoken of a revolution as probable. Their recent offer to pay the Civil List¹³⁵ and their disenfranchisement of a Judge were directed towards seizing the whole legislative authority. In this daring effort of power, Camillus declared, they resembled the conduct of the popular leaders of the French Revolution who converted the "Tiers Etat" into the "National Assembly".

If the Governor had not happily had wisdom to see their object and firmness and to resist their attempt, we should not be surprised to hear shouts of "Vive l'Assemblée Nationale du Bas-Canada"¹³⁶! Canada was that place, he had concluded, which Napoleon hoped to use as a spring-board for his activities in the new world. The Roman Catholic clergy was to be reproached

ni à être mise en question dans aucune cour". (1 Wm & Mary, c2) "Le Canadien", 16 septembre 1809.

135. This question shall be discussed at length later in the thesis.

136. Quebec Mercury , 19 March 1810. Camillus' letter was dated 16 March.

for its slumbering attitude and ought to act immediately to counteract the delusion into which their own flock had been drawn.

On the day after which "Camillus" wrote his letter, action of the sort favourable to him did come, but not, however, from the province's Roman Catholic clergy. On 17 March, Governor Craig ordered that the press of Le Canadien be seized and that its printer, Charles Lefrançois, be arrested. Le Canadien, Craig announced by way of proclamation, had been guilty of printing and publishing...

divers, wicked, seditious and treasonable writings... expressly calculated to mislead His Majesty's good Subjects, to impress their minds with distrust and jealousy of His Majesty's Government, to alienate their affections from His Majesty's Person, and to bring into contempt and vilify the administration of Justice, and of the Government of the Country¹³⁷.

Two days later, on 19 March, Messrs. Bédard, Blanchet and Tsschereau were arrested in Quebec City along with a few lesser figures associated in the work of Le Canadien. While Blanchet¹³⁸

137. Quebec Mercury, 26 March 1810, Governor's Proclamation.

138. François Xavier Blanchet (1776-1830) was a French Canadian doctor who had studied medicine in New York in his earlier days. An original founder of "Le Canadien", he represented Hertford County in the Lower Canadian Assembly from 1809-1816. Earlier in June 1808, Craig had deprived him of his militia commission as an assistant-surgeon. He now had him arrested for his activities. Blanchet later revived Le Canadien in 1820 after it had ceased publication for a short time. Wallace, ibid., pp. 62-63.

and Taschereau¹³⁹ were released without trial after a brief imprisonment, Bédard chose to remain in jail until formal charges were brought against him by the provincial Executive. He was destined to remain there for more than a year in an unsuccessful attempt to defend his public conduct. The loss of his leadership threw the Popular Party into disarray and temporarily demoralized it. Its failure, on the other hand, to secure his release in December 1810 and to successfully challenge Craig's purge must probably have disappointed him and led him to accept the pecuniary advantages of the Judgeship offered him by Sir George Prévost in 1812¹⁴⁰.

De Bonne's decision not to contest his seat for Quebec's Upper Town in the general election of March 1810 made the solution of the expulsion crisis imminent. It constituted an admission of defeat and a graceful withdrawal in face of the inevitable.

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139. Jean Thomas Taschereau (1778-1832) sat in the Legislative Assembly of Lower Canada from 1800-1808 and 1820-1827. He too was a founder of "Le Canadien" and he too had suffered in Craig's purge of June 1808 in which he had lost his commission as captain aid-major. In 1827 he was appointed a Judge of the Court of King's Bench at Quebec and from 1828-1832 he was a member of the province's Legislative Council. Wallace, *ibid.*, 736-37.
140. Fernand Ouellet, Histoire Economique et Sociale du Québec, 1760-1850. Fides: Montréal et Paris, 1966, p. 266, suggests that the failure of the Borgia Committee (inquiry into the state of the province and into the political occurrence of the Craig years) to report during Sir George Prévost's first session with the Lower Canadian Legislature led Bédard to withdraw from the Assembly to accept a Judgeship.

The bill to disqualify judges from being elected to or from sitting and voting in the Lower House encountered no opposition in the new session which got underway on 12 December 1810. On the 13th December it was introduced and read for the first time in the Lower House. Five days later, on December 18, it received second reading and was ordered engrossed. On the following day, 19 December, the bill underwent third reading and was sent to the Legislative Council for approval. There it received its third and final reading on 22 December 1810. Governor Craig later sanctioned the bill when he prorogued the Legislature on 21 March 1811.

Despite his feeling of vindication¹⁴¹ and his obvious success in crushing all major opposition in the province, Craig had lost the major battle of his Lower Canadian administrative career. His influence in the Lower House had received a severe set-back and the Popular Party had succeeded in rallying to its support the majority of the province's voters¹⁴². Under the latter's leadership, the Lower House had established its right to parliamentary privileges enjoyed by the British Commons but not specifically outlined in the Constitutional Act of 1791.

141. Quebec Mercury, 25 March 1811.

142. Charles Valois, La Chambre d'Assemblée du Bas-Canada, 1792-1815. Maîtrise ès-arts: l'Université de Montréal, 1960, p. 16.

Most interesting of all, however, had been the Popular Party and Le Canadien's elaboration of a corpus of political and constitutional thought which was to inspire the Lower House for the next two decades¹⁴³. Borrowed from and shaped after the best eighteenth century commentaries on the British Constitution, it had, by the end of the century's first decade, led the Party and its supporters to conceptualize their constitutional existence in eighteenth century terms. In the 1790's, they had heard how the Constitutional Act had given them a constitutional system with components very much like those which operated harmoniously as the British Constitution¹⁴⁴. The Governor, therefore, they thought of as the local embodiment of the Crown, even though they believed or came to believe that, as an appointed colonial official, he was subject to their pressures via the Colonial Office. The provincial Judiciary, of course, they saw as analogous to the British Judiciary. The Lower House, they viewed as synonymous with the Legislative Power under the Constitution and analogous with the Legislative Power in Great Britain¹⁴⁵

143. Manning, *ibid.*, p. 74.

144. Brun, *ibid.*, pp. 16, 254-255.

145. The Legislative Power, according to Montesquieu and others, was actually composed of the Commons, the Lords and the Crown as Head of Parliament. The Lower Canadian "Lords", the Legislative Council, was gradually dismissed by the Lower Canadian "Commons", the Legislative Assembly, as a false or unreal participant in the provinces Legislative Power. The Executive, on the other hand, as "Head" of the Legislature, was attacked for undue interference with the Legislative Assembly in its function as the real embodiment of the Legislative Power.

where it was embodied in both Houses of Parliament. The whole was, according to accepted eighteenth century theory, supposed to operate in a balanced fashion, each Power, the Executive, the Judicial and the Legislative, remaining mutually exclusive and respectful of the independence of the others. Unfortunately, reality did not always conform to theory. This was to be expected where the embodiment of the Executive Power, the Crown, and in Lower Canada its representative, the Governor, could also act in its capacity as the Head of Parliament or of the Legislature¹⁴⁶.

From this perspective, then, and before the reality of Judge, Executive Councillor and Assemblyman Pierre-Amable De Bonne, in particular, the presence of any judges in the Lower House had become intolerable. By seizing upon British parliamentary theory and practice, Popular Party strategists and theorists of Le Canadien were able to mount a successful offensive to achieve their ends¹⁴⁷. On a constitutional level, the "de facto" embodiment of the Legislative Power in the

146. When, in Lower Canada, the responsibility of the Crown's representative was to the Colonial Office, the situation was really even more complicated. When taken with the obstinacy of the Legislative Council, the theoretical inconsistencies of the Popular Party and Le Canadien's commentators become more understandable.

147. Brun, ibid., p. 254, notes: "En s'appropriant les grands principes du droit constitutionnel anglais, ceux-ci faisaient montre d'un sens tactique aigu".

province, the Legislative Assembly, had rid itself of the interference of both the Judicial and Executive Power in its affairs. Montesquieu's theory of the balance and separation of Powers in the British State had become more real. On a practical level, Craig's political boss Pierre-Amable De Bonne and other supporters of the Administration in the Lower House had either been expelled or defeated in their bids for office¹⁴⁸.

In retrospect, however, the Assembly appears to have been really moving throughout the struggle in the direction of legislative supremacy. In this respect, it was not at all different from its British counterpart, the House of Commons. The Revolution of 1688 and its Lockian underpinnings had provided the philosophical justification for this aspiration¹⁴⁹ on the latter's part. The Crown's declining economic power throughout the eighteenth century and the increasingly democratic aspirations of the Industrial Revolution's newly emerging middle class had paved the way for its successful realization.

148. The Jew, Ezekial Hart, was deprived of his seat for the Town of Three Rivers on two occasions for technical reasons. J.P. Wallot in "Les Canadiens français et les Juifs (1808-1809): L'Affaire Hart" (Juifs et Canadiens. Deuxième Cahier du Cercle Juif de la Langue Française. Edition du Jour: Montréal, 1967, pp. 111-121) correctly explains how the Assembly was motivated by political considerations, Hart being a supporter of the Administration. Wallace, ibid., p. 242, notes how a Provincial Judge, Louis Charles Foucher, a strong supporter of the Administration throughout his life, lost his seat for Three Rivers in the 1808 election.

149. I am indebted for this insight to Professor Fernand Ouellet.

The House of Lords would, in the end, be forced to acquiesce.

For a variety of reasons, Lower Canada's "Lords" were not as susceptible to such pressure and were possessed of a totally different spirit. For institutional and ethnic reasons, they seemed quite prepared to challenge the Legislative Assembly as it was borne up by the democratic tide of the period.

The advancing eighteenth century had, however, signalled an end to Montesquieu's tripartite concept of British constitution. For the above reasons, his vision became increasingly removed from reality. More and more did the Legislative Power in Great Britain come to be embodied in the Commons. Less and less did the role of the Crown as the embodiment of Executive Power or as Head of Parliament continue to be a major importance.

In Lower Canada, the victory of the Legislative Assembly in expelling Judge De Bonne, a representative of Executive, Legislative and Judicial Powers in the province, was more than a victory for a dying constitutional concept. It was a victory for an ascendant British Lower House which modelled itself after the House of Commons. Unfortunately, though, it was a colonial House of Commons. As such, it would be hard pressed to achieve supremacy within the colonial "State" without overthrowing the Imperial Power¹⁵⁰. Supremacy, at least in local matters, would

150. Brun, *ibid.*, p. 19, explains how... "Le problème de la souveraineté dans l'Etat était en même temps, au Québec, celui de la souveraineté de l'Etat.

not be possible until the theory of Home Rule became known and accepted by the Colonial Office and Colonial reformers.

On 21 October, Sir George Prévost¹⁵¹ replaced Sir James Craig as the Head of the Lower Canadian Administration. By the end of his régime, the issue of supremacy within the "State", would have emerged more clearly than ever before and colonial ambitions would clash with imperial fact. Prevost's Administration¹⁵² constituted a veritable interregnum in the pre-1837 constitutional struggle in Lower Canada. Proverbial years in the desert for the Popular Party, they set the stage for the Lower Canadian Assembly's major legislative offensive for local supremacy. Together with the years of the Sherbrooke Administration (1816-1818) which succeeded them, they marked the failure of the British Imperial Power to stem a political thrust which had its very roots in British political, philosophical thought and experience. Together too, they testified to the failure of the Lower Canadian Legislative Assembly to achieve political predominance within the province by impeaching supporters of the Administration.

151. Sir George Prévost, formerly Governor of St. Lucia and Lieutenant-Governor of Nova Scotia had come to Lower Canada as Administrator in 1811. During the War of 1812 he was both Governor of Lower Canada and Commander in Chief of British forces in North America. Wallace, *ibid.*, p. 605.

152. Prévost remained Administrator of the province until 15 July 1812, on which day he was officially appointed Governor. This position he retained until 3 April 1815. See Frederick H. Armstrong, Handbook of Upper Canadian Chronology and Territorial Legislation. Centennial Publication. Lawson Memorial Library, University of Western Ontario: London, 1967, p. 5.

Before examining the Assembly's attempt to establish its authority over the public life of the colony by attempting to secure control of the provincial civil list, let us first look briefly at the impeachment interlude.

CHAPTER IV

An Eighteenth Century Device

There now occurred in the history of the province, a constitutional interlude best described as the impeachment debate. Motivated largely by a desire for personal revenge, the episode was also fed by general francophone desire for Montesquieuan purity and correctness. Directed at three individuals, all Judges and all with a record of alliance and cooperation in one way or another with the colony's Executive, the impeachment proceedings also represented the Lower Canadian Assembly's desire to arbitrate the social and political life of the province and to further establish its predominant role in the scheme of things.

Initiated by the Legislative Assembly, the impeachment proceedings gave rise to a thorough discussion of the role of both the Lower and Upper Houses of the Legislature and was to witness a change in the constitutional attitude of those who had traditionally opposed the Popular Party and its newspaper organ, Le Canadien. The Montesquieuan vision of how a British constitution should work came closer than ever before to being accepted in the province, albeit not by the Mother Country. Previously refusing to consider even the slightest concessions in the analogy "debate", anglophone opinion, as

represented by the Quebec Mercury, saw the necessity of accepting such a comparison in light of the falling legislative fortunes of Lower Canada's Legislative Council which was being increasingly outflanked in the constitutional schema of things by an Assembly now on the offensive. Interestingly too, even francophone opinion was able to rid itself of its thick-headedness to acknowledge in the Legislative Council an adjudicative role parallel to that of the British House of Lords.

The impeachment question and the debate surrounding it were easily triggered in a Lower House still sullen and suspicious from the events surrounding the closing down of Le Canadien.

Bédard's disappearance from the Legislature created what might best be described as a political vacuum in the province. Unfortunately for the Popular Party and those interested in settling the constitutional issues at hand, this vacuum coincided with the political ambitions and private vendetta of James Stuart, Lower Canada's former (1805-1809) Solicitor-General. Reputed to have regarded his fellow members in the Assembly with a contempt bordering on abhorrence¹⁵³, Stuart now took the opportunity which presented itself to seize Bédard's mantle for his own ends.

153. Manning, ibid., p. 101.

In May 1809, Stuart had been dismissed from his post as provincial Solicitor-General for failing to support the Executive in the Lower House. His replacement by Jonathan Sewell's brother had led him to blame the Chief Justice for his ill-fortune¹⁵⁴. Determined to revenge himself upon the latter, Stuart decided to use the impeachment procedure as his means of doing so.

During the legislative session of 1813 and within an atmosphere of delicately balanced tolerance for the new Governor¹⁵⁵, Stuart set impeachment procedures against Chief

154. Chapais, tome III, p. 19. Wallace, *ibid.*, p. 724, notes how from 1808-1824, Stuart was one of the members for Montreal in the Legislative Assembly. He was, then, made and remained provincial Attorney-General for the period 1825-1831. In 1841, he was honoured with the Chief Justiceship of Lower Canada and retained that post until 1853.

155. During Prévost's first legislative session in Lower Canada, the Assembly made it clear that it was not prepared to tolerate from him conduct like that to which it had been subjected by his predecessor. Refusing to pass unamended the Legislative Council's Alien Bill or to renew unamended the Act for the Better Preservation of His Majesty's Government (in force since 1810), the Assembly demanded that the power to imprison for treasonable practices be clearly transferred from the Executive Council to the Governor! (Chapais, tome III, p. 15). Responsibility would consequently lie more clearly with the Governor, the local embodiment of the Executive Power. Because of his appointed nature, the latter was more susceptible to the Assembly's pressures. The theory of balance and separation of powers within the state would therefore be better preserved than when the Attorney-General, a member of the Lower House issued the warrants in question under the authority of his office. In spite of its critical approach to the Executive relations were certainly polite between the Assembly and the Governor. The Assembly's willingness to co-operate with a reasonable man is shown by its authorization in

Justices Monk and Sewell into motion¹⁵⁶. At his instigation, the Lower House resolved on 18 February to take into consideration the power and authority exercised by provincial courts under regulations commonly known as the Rules of Practice¹⁵⁷. Prévost's decision to prorogue the Legislature on 15 February momentarily frustrated these intentions.

Shortly after the following session had been convened in January 1814, the Lower House resolved to reconsider the matter. On 2 February, the committee appointed to investigate the Rules of Practice reported to the House that the powers assumed by the province's courts were "...inconsistent with and subversive of the constitution..." and gave to its Judges "...an Arbitrary authority over persons and property of His Majesty's subjects in this Province¹⁵⁸." Two weeks later, on

July 1812 and on later occasions to circulate army bills as legal tender in the province.

156. Impeachment was a British procedure providing for the removal from office of those guilty of committing crimes or political offences therein. The Commons traditionally drew up the articles of impeachment. If the Officer was found guilty of the charges brought against him, the case then went to the Lords for adjudication.
157. As Chapais, *ibid.*, tome III, pp. 25-26, so rightly points out Le Canadien (and by implication the Popular Party) had previously declared itself in favor of standardized rules of practice for the province's courts. In an editorial appearing in its 22 August 1808 edition, Le Canadien had congratulated Sewell on his promotion to the Chief Justiceship of the province, wishing, with respect to the elaboration of rules of practice "...que ses talents et les reconnaissances qu'il a dans les anciennes lois du pays le mettront en état de travailler avec succès à un ouvrage si désiré et qui doit faire tant d'honneur à celui qui aura réussi."
158. Quebec Mercury, 8 February 1814.

18 February, the Lower House resolved that Lower Canada's Chief Justice Jonathan Sewell and Montreal Court of King's Bench Chief Justice James Monk be impeached for introducing the Rules of Practice into Lower Canada's courts. In all, seventeen accusations were levelled at the two men. Along with an Address to the Prince Regent, then replacing the ailing King George III, these were forwarded by Governor Prévost to London. The charges against Sewell were notable for their strictly political nature and accused him of having ill-advised the former Governor, Sir James Craig, on a number of occasions. These ranged from Craig's militia purge in June 1808 to his dissolution of and famous address to the Legislature in May 1809. Two referred to the events surrounding the closure of Le Canadien in March 1810 and another even went so far as to charge Sewell with conspiring to spread dissension in the United States!

The Legislative Council of which Sewell was Speaker and Monk¹⁵⁹ occasionally Speaker reacted vigorously to the

159. Sir James Monk had originally been Solicitor General of Nova Scotia in 1774. In 1776, he had been appointed Attorney-General of the Province of Quebec, and in 1792, Attorney-General of Lower Canada. Two years later, in 1794, Monk had been made Chief Justice of the Court of King's Bench of Montreal. At the same time, he had been called to both the Legislature and Executive Councils of the province. Here was another incarnation of the Montesquieuan antithesis, a man in whom Legislative, Judicial and Executive Powers met and resided and a man who studiously avoided Judge De Bonne's example. See Wallace, ibid., p. 520.

Assembly's attack on its leadership. If any right to impeach existed in the province, it declared, it was by law vested in the entire community of the people residing there¹⁶⁰. In the Council's own opinion, it itself had no right to hear and determine impeachments exhibited by the Assembly. Consequently, it was not excluded from participating in impeachment procedures¹⁶¹. The impeachments in question, the Council concluded, not only deprived it of its lawful rights and privileges and gave the Assembly an unacceptable control over its legislative powers, but rendered provincial Judges "and all other Officers of the Crown in this Province" dependent on the Lower House. Unthwarted by the lack of constitutional cooperation on the Council's part, the Assembly presented the articles of

160. Quebec Mercury, 5 April 1814. Here, a list of the Legislative Council's resolutions will be found.

161. Under the Constitutional Act of 1791, the Legislative Council had as much right to vote articles of impeachment, as did the Legislative Assembly. The Assembly's initiative, however, was in the process of securing for it sole right to powers which had originally been held by the Legislative Council prior to 1791 (i.e., the right of initiating bills, the right of voting supplies, etc.). Brun, Ibid., p. 103, notes how "...rien ne fondait juridiquement les pretentions de l'Assemblée..." and (p. 163) how, by 1819, the Legislative Council would complain to the Governor about the growing constitutional imbalance between the two Houses of the Legislature. The antinomy between these two legislative bodies mentioned earlier (ibid., p. 149), by the same author partially explains why they seemed to be constantly at odds with one another. It is significant nonetheless that the Council defended its integrity with what sounded like eighteenth century Montesquieuan arguments. Actually they were not, for the balance and separation theory referred mostly to Powers in the State as opposed to branches of the Legislature.

impeachment to the Governor and asked that they be forwarded to Britain where they might at last be acted upon. There, it was believed, the articles would serve as the basis for a trial of the two men. Sir George Prévost's refusal to temporarily suspend Sewell and Monk, while awaiting a verdict from Britain, infuriated the Assembly. It castigated him for having violated its constitutional rights and privileges by refusing to comply with its wishes¹⁶². Its condemnation was short-lived, though, with the Assembly soon after exculpating him of any wrong-doing and blaming instead his wicked advisors¹⁶³.

To defend both himself and his colleague against the Assembly's charges, Chief Justice Sewell undertook a trip to Britain in June 1814. Interestingly, various addresses presented to the two Chief Justices on the eve of Sewell's departure spoke of the necessity of maintaining the constitutional balance threatened by the Lower House's unwarranted charges. Typically, these referred to the constitutional principle securing the equal balance amongst the respective Public Authorities as the most important of all constitutional tenets. The independence of the "Judiciary Power", it was claimed, was one of the most "material" of these. The King had confirmed this principle in the Act of Succession which

162. Quebec Mercury, 8 March 1814.

163. Chapais, ibid., tome III, pp. 23-24.

stipulated that no Judge should be removed except on a joint Address to the Crown from both branches of the Legislature. This, the petitions concluded, was an admirable regulation "providing as well against any encroachments of the Executive Powers, as against the excesses of Party Spirit in either branches of the Legislature¹⁶⁴."

If nothing else, the addresses to Monk and Sewell showed that the Popular Party's 'campaign on behalf of a Montesquieuian interpretation of the Constitutional Act of 1791 had not been in vain. The theory had been well understood. Now, however, it was being marshalled against the party by its opponents in much the same way that that body had earlier used it to bring down Pierre-Amable De Bonne. In the case of the largely anglophone addresses, though, the incongruity lay in the fact that "their" legislative organ, the Legislative Council, had earlier in February rejected without discussion a Lower House bill designed to bar provincial Chief Justices and Judges of the Court of King's Bench from membership or participation in the activities of the Upper House. In Great Britain, Judges assisted in the House of Lords but did not directly participate in the proceedings. The opinion of Le Canadien and Popular Party theorists during the De Bonne debate had been that Lower Canada's Judges

164. Quebec Mercury, 21 June 1814.

belonged in the provincial equivalent of the British House of Lords, the Legislative Council. Logically, and in view of the fact that the Chief Justices in question were also members of the Executive Council, the Assembly's desire to exclude them totally from the province's Lower House had been more in line with British practice. The Lower House had not, it must be agreed, assumed enough of the initiative in legislative matters to force the Legislative Council into accepting its wishes in such matters.

There now ensued a two-year lull in the constitutional struggle overshadowing the province as the merits and demerits of the impeachments were considered in London. During this time, the Lower House attempted to secure the appointment of a provincial agent of its choice to present its case before the British authorities. Due to the efforts of the Legislative Council, it failed three times to achieve this goal¹⁶⁵ and was thereby provided with future justification for continuing its case when the awaited reply came.

The task of announcing the Regent's decision fell in the end to Sir Gordon Drummond. Drummond had become Administrator in April 1815 as a replacement for Sir George Prévost. In a

165. i.e., the late winters of 1814 and 1815. See the Quebec Mercury for 25 January, 15 February and 15 March issues, 1814. See also the issue of 28 March 1815.

message to the Legislative Assembly dated 2 February 1816¹⁶⁶, Drummond informed it of the failure of its impeachments. They had been, the message pointed out, basically unfounded. The Prince Regent, the future George IV, was of the opinion that no enquiry could be instituted into those charges against Chief Justice Sewell which were political in nature "... without admission of the principle, that the Governor of a Province might, at his own discretion, divest himself of all responsibility on points of political Government¹⁶⁷".

166. Sir Gordon Drummond (1771-1854) a lieutenant-general in 1811, had been appointed Sir George Prévost's second-in-command in 1813. He served as Administrator of Upper Canada from 1813-1815 and late in 1814, he was made commander-in-chief of British forces in North America. In 1815, he became Administrator of the province. Wallace, *ibid.*, p. 199.

167. Quebec Mercury, 13 February 1816. At this point, according to Henri Brun- *ibid.*, the Executive Council still constituted "...un corps d'aviseurs," wherein "... le rôle déterminant semble échoir au gouverneur" (p. 44). This body, Brun maintains, had "...rien de commun avec le régime du cabinet qui se perfectionne alors en Grande-Bretagne..." (p. 45). "Toute la responsabilité," du Conseil exécutif," he adds, "est tournée vers le gouverneur, comme la responsabilité du gouverneur est encore tournée vers Londres" (p. 45). While in agreement with Langstone that "the Governor's power was greater than that of the English monarch' and that he was 'the center and mainspring of the whole administration' (p. 36), Brun is nevertheless of the opinion that the Governor remained at the same time subservient to the Imperial Government (p. 38), that "...les fonctionnaires et conseillers exécutifs" were "...dans une position d'indépendance relative vis-à-vis le gouverneur" (p. 54) and that they were very influential with the metropolitan government (p. 55). In the parliamentary evolution of the "Executive" from an individual and non-representative institution to one collegial and representative in nature, the progressive association of the Executive Council with the Governor in the period between 1791-1837 was "...initiée par le

The constitutional analogy, then, proposed by Le Canadien and Popular Party theorists was very far from the minds of those responsible for Lower Canadian affairs in Britain. There, they were not even prepared to accept the concept of individual political responsibility in provincial affairs as opposed to the practice in Great Britain.

Disappointed with the results of the proceedings, which completely exonerated the two Chief Justices of all the charges brought against them, the Assembly refused to accept the Regent's verdict and immediately resumed its deliberation on the question. Its plans were thwarted, however, by Sir Gordon Drummond who upon the instruction of the then Colonial Secretary Lord Bathurst dissolved the Legislature on 26 February and shortly afterwards called a general election¹⁶⁸. While Drummond's dramatic intervention did not lead to the election of a more submissive Lower House, it afforded the British authorities time to successfully resolve the impeachment question during the next session of the Legislature.

gouverneur pour différer l'affrontement direct avec les organes collégiaux et représentatifs (pp. 27 and 47). If, then, responsible government in a practical sense was beginning to make headway in Great Britain, in this period, it is clear that in Lower Canada a very eighteenth century approach to the Constitutional Act was still the practice. It was a practice which further encouraged Lower Canadian constitutionalists to think in eighteenth century terms. Langstone, Rosa W., see bibliography.

168. Chapais, ibid., tome III, p. 46, Quebec Mercury, 27 February 1816.

The twenty-gun salute bestowed on an exonerated Jonathan Sewell upon his return from England on 14 July 1816¹⁶⁹ had far from signalled James Stuart's abandonment of the impeachments against Chief Justices Monk and Sewell. Drummond's successor, the new Governor Sir John Coape Sherbrooke¹⁷⁰, had not long opened the new Legislature in January 1817 when the issue emerged once again.

Impeachments were first levelled against the long-time Government supporter, Justice Louis Charles Foucher. On 25 February, the Lower House forwarded to Sherbrooke both the articles of impeachment¹⁷¹ against Foucher and an address to the Prince Regent on the case. The articles referred to a number of infractions allegedly committed by Foucher in the course of his office. In their address to Sherbrooke, they asked the Governor to forward these items to London and called upon him to suspend Foucher until a decision had been reached on the case.

The Legislative Council once again reacted vigorously to

169. Chapais, *ibid.*, p. 43.

170. Previously, the Lieutenant-Governor of Nova Scotia, Sherbrooke had received his commission as Governor on 25 March 1816. He assumed office on 12 July 1816 and would relinquish it only two short years later on 30 July 1818. See Armstrong, *ibid.*, p. 5.

171. The charges against Foucher, ex-Assemblyman for Three Rivers and presently a Judge of the Court of King's Bench in Montreal, related to infractions said to have been committed by Foucher in his functions as a Judge in 1811, 1814 and 1815. Quebec Mercury, 4 March 1817.

the Assembly's constitutional usurpation. On 3 March, its address to the Governor asked him to forward its address to the Prince Regent. This latter address reasserted the Council's belief that the Assembly had acted unconstitutionally without its lawful participation and claimed that the proceedings were grossly unfair to the Judge in question for a variety of reasons. Foucher, the address to the Regent's concluded, should not be punished in any way until he had been found guilty by legal procedures¹⁷²

Sherbrooke, nevertheless, decided after "...sufficient perusal of the evidence adduced in the course of this investigation" to suspend the Judge from his judicial functions until the Prince Regent had had time to pronounce upon the case¹⁷³. Not surprisingly, this decision in favour of the Assembly seems to have had the effect of killing all further agitation concerning the case during the 1817 session¹⁷⁴. Coupled with his adroit handling of the "salary"¹⁷⁵ question during the same session, Sherbrooke's conduct undoubtedly helped him to defeat James Stuart's renewed attempt to impeach

172. Quebec Mercury, 18 March 1817.

173. Quebec Mercury, 4 March 1817.

174. Chapais, *ibid.*, tome III, pp. 58-59. On 22 February 1817, a committee of the whole unanimously accepted the resolutions (each the basis for an article of impeachment) of a special committee investigating the impeachments against Foucher. On 24 February, the same resolutions were reported to the House and were voted unanimously. See the Quebec Mercury, 25 February 1817.

175. Under a compromise worked out by Sherbrooke, both the Speaker of the Lower House Louis Joseph Papineau and the Speaker of the Upper House, Jonathan Sewell, were granted annual salaries of 1000 Pounds Sterling on 14 March.

Chief Justices Monk and Sewell.

James Stuart's Demise

Stuart's final attempt to launch successful impeachment proceedings against the province's Chief Justices came on 22 March 1817. Earlier in the session, on 22 February, Stuart had introduced in the Lower House a resolution calling for the resumption of impeachment proceedings against the two men. His urgent recall to Montreal on business at this point left the matter unsettled. During his absence, the potentially troublesome salary question was amicably settled. Stuart returned on the above date only to see his proposal to renew his earlier motion defeated by a substantial vote (22-10) on an amendment by Charles Richard Ogden referring consideration of the original motion to the next session¹⁷⁶. This occurrence, in effect, ended Stuart's manipulation of the Popular Party and transferred the mantle of leadership to the Assembly's new Speaker, Louis Joseph Papineau.

176. Chapais, tome III, p. 62. Charles Richard Ogden (1791-1866) had been elected to represent Three Rivers in 1814. He was later appointed Solicitor-General (1823) and Attorney-General (1833) of Lower Canada. Wallace, ibid., p. 559.

Reaction of the Press

While the Quebec Mercury failed to comment upon these events, Le Canadien did so at the first opportunity¹⁷⁷. In its view, the Assembly's acquiescence in the Privy Council's judgement on the Monk and Sewell case amounted to an abdication of its constitutional prerogative. Impeachments, as would soon be seen, were, in its opinion, within the scope of colonial jurisdiction. The Assembly, therefore, was guilty of unconstitutional conduct on two counts. Not only had it accepted a judgement on the case resulting from judicial proceedings which it had earlier questioned but, by doing so, it had acknowledged the right of the Privy Council to sit in judgement upon colonial impeachment cases. The Assembly's acceptance of the Privy Council decision was tantamount to allowing "...un pouvoir subordonné à décider si les Loix de la Colonie ont été violées ou non". If it were allowed to remain unchallenged, Le Canadien maintained, the protection of the province's laws and property were certain to pass to it from the Assembly as time went on¹⁷⁸.

These remarks went unheeded. The attempt to impeach Chief

177. Le Canadien did not resume publication until 14 June 1817. Under the editorship of Laurent Bédard (14 June 1817-19 January 1820), Le Canadien continued to support a political-ly radical Assembly, opposing the jobbery of Papineau and some Popular Party members who followed him.

178. Le Canadien, 10 January 1818.

Justices Monk and Sewell was not to be renewed. The knowledge that James Stuart had been largely motivated by desires for personal revenge¹⁷⁹ undoubtedly helped to kill the case especially once Sherbrooke's spirit of compromise became a reality.

Such, though, was not to be the case with the impeachment of one-time Administration supporter and now Judge Louis-Charles Foucher when it resumed after the Regent replied to Sherbrooke's inquiries. Impeachment was a good Montesquieuan device for aiding the Assembly to maintain the balance of power in the province and was going to be used to chastise Foucher for his deviance even if it had not succeeded against Sewell and Monk.

The Foucher Impeachment Resumed

On 2 March during the following session of 1818, Sherbrooke informed the Legislative Assembly that the Prince Regent had recommended that adjudication of the Foucher and future similar cases be left to the province's Legislative Council¹⁸⁰.

Maintaining that he had not been told how to implement the

179. Chapais, ibid., tome III, p. 27, notes that Pierre Bédard was of this opinion; it could not out have been shared, in the end, by the majority of other deputies who were more familiar with Stuart's background.

180. Quebec Mercury, 6 March 1818.

Prince's wishes, Sherbrooke then informed the Lower House that he had written to the Regent for more information on the matter and that he would convey such information to them when he received it. While Sherbrooke was personally of the opinion that the Imperial Government should select those cases which the Legislative Council might adjudicate and reserve to itself the more serious cases that arose, the Colonial Office decided, at the end, that it should remain the final and sole arbiter in all impeachment cases. There would be, the Colonial Office explained, a clarification of the procedure involved¹⁸¹.

In Lower House, meanwhile, a lengthy debate would precede the colonial Office's final decision. Even before Sherbrooke's message of 2 March 1818, Le Canadien would express the need for a provincial tribunal to judge public crimes committed by the province's higher officials. Just as it had earlier¹⁸² refused to acknowledge the Legislative Council's right to act in such a capacity, Le Canadien now rejected the Privy Council's power to do so. In Montesquieuan terms, Le Canadien now attacked the possession of Judicial, Executive and Legislative Powers by certain officials in the colony, citing the Chief Justice as one of those in question. Did, it asked, anyone including the King enjoy the simultaneous exercise of these

181. Chapais, ibid., tome III, p. 59.

182. Le Canadien, 24 June 1809.

three levels of Power elsewhere in the British Empire? Commenting on the regrettable lack of a tribunal to judge persons of this category in the public crimes they might commit, Le Canadien concluded its remarks by noting that...

Quand le grand Pitt et l'illustre Fox travailloient de concert à donner aux Canadiens une constitution qui ne leur laissait rien à désirer de leurs voisins, ils n'imaginoient pas sans doute revêtir un individu de pouvoirs plus amples que n'en a le Roi en Angleterre. Ils n'ont jamais cru qu'une classe d'hommes pourroit exister dans l'empire sans un tribunal connu pour le (sic) juger. Cette anomalie constitutionnelle a paru si extraordinaire au Gouvernement de sa Majesté que des ordres positifs à ce que nous apprenons¹⁸³ ont été donnés pour en établir dans la colonie¹⁸³.

In Le Canadien's opinion, therefore, a system of government which did not provide for a tribunal to judge its officials for crimes against the State was doomed to become a dictatorship. The Lower Canadian Assembly could not afford to toy with so serious a question.

The Lower House's apparent refusal or lack of interest in debating this question at this stage of its development did not prevent the province's Upper House from doing so. There, two schools of thought confronted each other. On one side of the Chamber, Jonathan Sewell, Jean Baptiste Olivier Perrault and Thomas Coffin argued that an act was needed to

183. Le Canadien, 21 February 1818.

constitute the Council into a court of law such as the one under discussion. Collective legal power, they felt, was not a prerogative of the Legislative Council and had never before been exercised in a British colony.

On the other side, Councillors H.W. Ryland, Pierre Dominique Debartzch and Hall held the opinion that the Crown could establish whatever court it deemed necessary including this one. The House of Lords, the most powerful court of the realm, they pointed out, existed neither by virtue of a law nor by royal patent. The tacit approval of British Kings and people had constituted it such. The analogy between the British and Lower Canadian Constitutions and the Assembly's use of the impeachment procedure "...non pas par usurpation de pouvoir comme on l'avoit d'abord imaginé, mais parce que ce pouvoir dérive nécessairement de la nature de la constitution¹⁸⁴" strongly suggested that it was within the Legislative Council's power to adjudicate provincial impeachments.

When, therefore, the Regent's message conferring upon the Council the right to try impeachments became publicly known, the Council itself was divided upon the matter. The Legislative Assembly and the Quebec Mercury maintained an air of wait-and-see

184. Le Canadien, 7 March 1818.

as the question awaited further clarification from London¹⁸⁵. Only one person wrote to Le Canadien to offer his opinion on the matter. Explaining how Britain had given Lower Canada "...une constitution parfaitement analogue à la sienne..." with "...tous les privilèges et libertés qui en découlent et dont elle jouit sans aucune restriction (sic) quelconque...", "l'Ami de la Justice" argued that the Lower Canadian Legislature was entitled to the parliamentary privileges that belong to it as a Legislature of the Empire.

It was because of the problems of communication inherent in the distance separating it from the Imperial Parliament, that an analogous Constitution had been given to the colony to enable it to handle questions such as this impeachment. If, therefore, the Lower Canadian Constitution were an emanation of the Imperial one, why, asked the author...

n'en concluons-nous pas que tout ce qui est dans l'exécution d'icelle considérée comme étant essentielle à son existence l'est également ici, en autant que cela ne répugne pas à l'esprit de la nôtre. Pourquoi ce qui est reconnu faire partie intégrante de l'une et sans quoi elle seroit illusoire, ne le seroit-il pas de l'autre d'après les mêmes raisons d'efficacité¹⁸⁶...?

The Prince Regent's message, "l'Ami de la Justice" concluded, had corrected the mistaken view of the Constitutional Act

185. The Quebec Mercury carried only a very brief summary of the Legislative Council debate and refused to comment on these proceedings. See Quebec Mercury, 10 March 1818.

186. Le Canadien, 4 April 1818.

which had always publicly prevailed in the province. The Legislative Council was in fact the constitutional body designated to try impeachments. The fact that it had not before made use of this prerogative did not nullify it. The Regent's decision was in conformity with constitutional reality.

The Prince Regent's Message Clarified

When the question again arose in February 1819, Sir John Coape Sherbrooke had been replaced by a new Governor, Charles Gordon Lennox, fourth Duke of Richmond¹⁸⁷. On 8 February, Richmond informed the Assembly that, in response to Sir John Sherbrooke's previous inquiry concerning the message of 2 March 1818, the Regent had decided to personally handle all problems of adjudication in Lower Canadian impeachment cases. By this time, however, the Assembly had arrived at a greater understanding of how it wanted such cases tried and found itself basically opposed to his decision.

In a debate which took place on 27 February 1819, the Assembly's Speaker, Louis Joseph Papineau, came out in support

187. Richmond, the Lord-Lieutenant of Ireland from 1807-1813, was appointed Governor of Lower Canada in 1818. He died in office in Upper Canada on 29 August 1819. According to Helen Taft Manning (see "The Civil List in Lower Canada". Canadian Historical Review. Volume 24, Toronto, 1943, p. 46), Richmond was "...one of the most reactionary and irresponsible man ever to rule over a British colony."

of a law to bring the Legislative Council more into conformity with the British House of Lords. In his opinion...

le Conseil se trouvoit maintenant en partie composé d'officiers publics ou de gens en place... ceux-ci étoient trop dépendans de la Couronne et ...il étoit juste que si on augmentoit l'importance du Conseil en lui conférant un droit inconnu dans les autres Colonies Angloises, ses Membres devroient être parmi les plus riches propriétaires du pays¹⁸⁸.

Papineau felt, however, that the Prince Regent's solution should be accepted for the Foucher case to prevent it from being lost.

Papineau's contention that present Legislative Councillors were not wealthy or independent enough to constitute a body capable of acting in a manner befitting a judicial body was attacked by Andrew Stuart of Quebec City who laid the blame for the recent turn of events at his feet. When the debate resumed on the following day, 28 February, Stuart declared that the Regent's latest message bore "...l'empreinte de cette (sic) esprit de politique Coloniale, qui avoit fait perdre à la Grande Bretagne près de la moitié du nouveau monde." The British Government, he claimed, had given to Lower Canada a form of government similar to its own and superior to those of other British colonies. Lower Canada, Stuart maintained...

188. Le Canadien, 3 March 1819.

avait le droit incontestable, par cet acte, de régler toutes les affaires intérieures de son Gouvernement à sa fantaisie. Le (sic) Mère Patrie n'avait conservé d'autre surveillance que sur les affaires intérieures, telles que sur son commerce, sur la navigation...

Le Message de l'année dernière concernant le même sujet avait toute l'empreinte des sentimens libéraux de la Grande Bretagne tandis que celui-ci portoit évidemment l'empreinte de la politique personnelle et rétrécie des Gouvernemens Coloniaux¹⁸⁹.

Andrew Stuart was supported in his claim that impeachments were strictly an internal matter by François Blanchet, the representative for Hertford County. In pointing out how the right to impeach was a recognized and necessary one even though it was not to be found in the Constitutional Act of 1791, Blanchet argued that it was constitutionally necessary to have...

un tribunal pour juger les malversations de la Couronne, que ce tribunal par analogie devoit être le Conseil Législatif, suivant la déclaration de son Altesse Royale (sic) le Prince Régent, communiquée à cette Chambre par un message du ci-devant Gouverneur en Chef¹⁹⁰.

Michael O'Sullivan, the last member to participate in the debate quoted by Le Canadien, declared that Lower Canada's Constitution "étoit bien différente - elle étoit l'image du Parlement impérial - le plus beau présent que l'Angleterre toute grande qu'elle est, eût pu faire à des sujets...".

189. Le Canadien, ibid.

190. Le Canadien, ibid.

The King had not alone been its author and was, consequently, prohibited from sitting upon impeachment cases himself. Noting next how the Lower Canadian Legislature enjoyed the political rights of the British Parliament, despite its legislative immaturity, O'Sullivan asked:

Où les avions-nous puisé ces droits et entre autres le droit d 'accuser ("to impeach") (ou) notre acte constitutionnel celui de qui nous tenions notre existence, n'en disoit rien (sic) nous avions exercé, nous exercions ce droit, il étoit reconnu par toutes les autorités - nous l'exerçions qu'en vertu de l'analogie qui existoit entre nous et la Chambre des Communes en Angleterre notre grand modèle. Et n'estoit-il pas une analogie aussi forte entre le Conseil Législatif et la Chambre, sous ce point de vue Constitutionnel qu'entre cette Chambre et les Communes de l'Angleterre.

It was necessary to admit the analogy, he concluded, for the absence of it rendered powerless Lower Canada's Legislature. The Prince Regent's message of 2 March 1818 provided the correct solution for the problem. Only an act of the provincial Legislature was needed to give the Legislative Council the Powers necessary to try impeachment cases¹⁹¹.

If nothing else, then, the debate constituted a "volte-face" on the Assembly's part and showed a greater consistency of thought than had been earlier apparent during the Administration of Sir James Craig. No longer were the Assembly's chief

191. Le Canadien, 10 March 1819.

spokesmen prepared to completely dismiss the role of the Legislative Council in the political and constitutional life of the province. Now, the argument for the analogous nature of the Constitutional Act and the Lower House was being extended to include the province's Upper House as well.

A politically more astute Lower House may have been brought to realize that the colonial Legislature was a whole whose individual parts rose or fell together. An important initiative may have been lost to the Assembly before the situation was fully realized, however, for in the end the debate and the proposals inherent in it produced no firm results. The question of the provincial Civil List soon came to monopolize the thoughts and attention of Lower Canada's legislators and would continue to do so until the Duke of Richmond prorogued the Legislature on 24 April. Not until some two years later did the question emerge for the final time in the provincial Lower House.

Then, in January 1821, Vallières de St-Réal, the member for Quebec's Upper Town¹⁹², introduced a bill for the trial of impeachments or as Le Canadien termed it, "le bill pour continuer le conseil législatif de cette province, tribunal pour juger

192. Joseph Rémi Vallières de Saint-Réal (1787-1847), of French royalist background, was first elected to the Legislative Assembly for St. Maurice in 1814. He represented Quebec's Upper Town continuously from 1820-1829, serving as Speaker of the Lower House in 1823. In 1829 he was called to the bench. Wallace, ibid., p. 766.

des accusations portées par la chambre contre les fonctionnaires publics¹⁹³". When on 31 January the old familiar argument of analogy between the Lower Canadian Legislature and the British Parliament was again heard, Denis Benjamin Viger, a member for the County of Kent, countered with the argument that there was no colonial precedent warranting it. In Viger's, opinion, the Regent's message of 2 March 1818 had not constituted the Legislative Council into a tribunal to judge impeachments. The accustomed practice in all British colonies, Viger stated, "...avoit toujours été de référer au conseil du roi, toutes les accusations portées par les assemblées contre des fonctionnaires publics." A Legislative Council composed in part of persons holding commissions under pleasure was of dubious value in his opinion¹⁹⁴.

St-Réal's bill did not fare well. When debate resumed on it two weeks later, it was allowed to drift into oblivion. A motion by François Blanchet and John Neilson, editor of the Quebec Gazette and member for Quebec County, to give the bill the six months' hoist was first defeated. Then, the committee responsible for the bill was refused more time to deal with it and it disappeared from the floor of the House forever¹⁹⁵.

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193. Le Canadien, 7 February 1821; the Quebec Mercury's 30 January 1821 edition lists the provisions of the bill.
 194. Le Canadien, ibid.
 195. Le Canadien, 21 February 1821.

Reaction of the Press

Le Canadien offered no comment on these events and contented itself with reporting the proceedings of the Lower House. The Quebec Mercury, on the other hand, had clearly thought the matter out this time and spoke in favour of adjudication of impeachment cases by the Legislative Council. In a lengthy editorial notable both for its clarity and attention to constitutional detail, the Mercury argued that the Regent's message of 2 March 1818 had brought the Constitutional Act of 1791 nearer than ever before to an analogous position with the British Constitution. Colonial Assemblies, it noted, had long had the right to impeach colonial servants of the Crown. Only the lack of local independent bodies suitable for the task of adjudicating impeachment cases had led to the practice of having the Privy Council deal with them. In Lower Canada, the Mercury asserted, there existed a body sufficiently independent to fulfill this role - the Legislative Council. By comparison with the Privy Council whose members were removable at pleasure, the Legislative Council enjoyed a greater degree of independence. In fact, the Mercury declared, only Sir John Coape Sherbrooke's health had prevented the Council from acting upon the Regent's message of 2 March 1818. Now, Vallières de St.-Réal's bill would give it the powers needed to constitute it into a judicial body, powers, it seemed, much greater than it was the Crown's intention to

bestow upon it. Since the King could remove colonial officers at pleasure and since impeachments were punishable in the extremest degree by removal from office only, the Mercury concluded,

...it is evidently within the prerogative of the crown to delegate this authority to such individual or to such body as it may see fit. There can, therefore, be no reasonable objection to its being transferred to the most independent body that ever was created in a British colony¹⁹⁶.

So concluded the only significant comment on the St.-Réal bill to be published in either of the newspapers under study. Despite the fact that that bill had come to naught, it did reveal the effect that the Popular Party's constitutional thought had had upon popular opinion in the province. Defeated though it seems to have been by members of that group¹⁹⁷, it had constituted an attempt by political moderates to bring the concept of a tripartite constitution into greater reality in the province. The analogy between the Lower Canadian and British Constitutions was no longer only the theory of Popular Party constitutionalists. Even the Mercury, pledged as it had been and still was to "...a veneration for the british constitution, in all its branches..." and originally hostile to such an

196. Quebec Mercury, 13 February 1821.

197. No reason was discovered for the defeat of the bill, the Popular Party seemingly in favour of adjudication of impeachment cases by the Legislative Council. Perhaps it was felt by its supporters that no written legislation was needed to bring this about under a British constitution.

interpretation of the 1791 Constitutional Act, was now accepting it.

The consensus had, however, been achieved too late. Impeachments would henceforth be adjudicated in London. The Legislative Council would not, like its British counterpart the House of Lords, ever enjoy judicial power. Both it and the Lower Canadian Legislative Assembly were the losers. To the measure that the theoretical analogy between the Lower Canadian and British parliamentary systems was not brought to reality, both Houses of the provincial Legislature remained lesser colonial bodies and Lower Canada a more dependent colony of the British Empire. This perspective had not been immediately seen by all. When it was achieved by a sufficient enough number of opinion makers to make it viable, it was then too late.

Now, the Legislative Assembly would turn its attention to another and definitely more effective means of securing the political dominance that had become its sole ambition: control of the provincial Civil List. It is to an examination of this question that we shall turn before concluding this thesis.

CHAPTER V

The Civil List

The end of the impeachment controversy signalled the resumption of the major constitutional struggle in Lower Canada during the first quarter of the nineteenth century: the fight for control of the province's Civil List. In Britain, the term "Civil List" referred to expenses connected with the royal household. The money allocated to the monarch for such purposes was traditionally given at the beginning of his reign and was to continue for life. In Lower Canada, by contrast, the term referred not only to expenses of the civil administration and the courts (expenses formerly included in the British Civil List) but to the entire budget. Much confusion would result in Lower Canada from the failure or refusal of certain parties to recognize this terminological difference in the ensuing conflict over the Civil List there.

Begun under Craig, the struggle had temporarily disappeared from public view following the 1810 purge by the latter against Le Canadien and its supporters. Re-emerging now under Governor Sherbrooke, the Civil List question would dominate the political life of Lower Canada well into the 1830's with little new being added to the matter after the early 1820's. Ostensibly a fight

by the Lower House to bring itself into a constitutional analogy with the British House of Commons in money matters, the contest in reality became one for control of the political, economic and social life of the province. Control of provincial purse strings meant control of provincial spending and control of provincial spending meant greater control of the provincial Executive and administration. A strongly entrenched Executive Branch saw the threat to its position posed by a growingly militant, aggressive and politically aware Legislative Assembly embodying the Legislative Power in the province, and resisted its economic initiatives in every way it could. Even if in Great Britain the Montesquieuan vision had run its course and was now reeling back against the onslaught of those forces which were to shape and change our modern world and all British constitutions therein, that Montesquieuan constitutional approach could still and, in fact, did provide the rationale for the Assembly's new offensive. In "De la Constitution d'Angleterre", Montesquieu had explained the delicate relationship that existed under the British Constitution between political freedom and popular control of the public purse. In its edition of 23 August 1820, Le Canadien¹⁹⁸ quoted Montesquieu on this point when he wrote:

198. Le Canadien had ceased publication for the second time in its history in late December 1819. It resumed publication the following January when it was revived by François Xavier Blanchet. See Wallace, ibid., pp. 12-63.

Si la puissance exécutive statue sur la levée des deniers publics autrement que par son [the Legislative Power] consentement, il n'y aurait plus de liberté parce qu'elle deviendra législative dans le point le plus important de la législation. Si la puissance législative statue non pas d'année en année mais pour toujours sur la levée des deniers publics, elle court le risque de perdre sa liberté parce que la puissance exécutive ne dépendra plus d'elle; et quand on tient un pareil droit pour toujours, il est assez indifférent qu'on la tienne de soi ou d'un autre...

Taxation was, in Montesquieu's opinion, the most legislative of all powers under the British Constitution. Exercise of this power by the Executive destroyed the balance and separation of Powers so fundamental, in his opinion, to that Constitution. It was inevitable, therefore, that those who fully accepted the balance and separation theory eventually turn their attention to this aspect of it¹⁹⁹.

Since the Constitutional Act had become operational in 1791, the Lower Canadian Executive had largely avoided the

199. Under the early eighteenth century Constitution, the King had sizeable excise and customs revenues as well as revenues from various other sources such as estates belonging to him personally. These were independent of the taxation system and were the source, along with the unreformed political system, of his strong influence and prestige in the affairs of State. The power of taxation was in the hands of the Commons and Lords, the former initiating grants and the latter verifying them. When the King later gave up his revenues for a fixed Civil List, as we shall soon see, he retained the freedom of spending it as he wished over a few restricted areas. The budget, however, remained under parliamentary control throughout the eighteenth century and continued to grow in size.

question of taxation by drawing most of the funds necessary to defray provincial expenses from either the military chest or specific taxation acts. Specific taxation acts had been gratuitously voted by a politically naive Lower House early in its history while the military chest had been a fund accompanying the first military governors to the new colony in 1759. This latter fund had continued to remain at the disposal of subsequent administrations and had enabled successive Governors since Dorchester to avoid depending on the Lower House for funds needed to maintain the provincial civil service. As provincial expenditures mounted and as interest in economy grew in Great Britain, it became increasingly difficult to draw upon the Chest, the most important source of gubernatorial revenue. By the time Sir John Sherbrooke assumed the Governorship of the province in 1817, a huge debt had been amassed which the British Government was unwilling to pay. The only recourse, in Sherbrooke's opinion, was to the taxation power of the Legislature. This Legislature, unfortunately for those bent upon manipulating it, contained men influenced by the theories of Montesquieu and committed to the maintenance of a tripartite, Lower Canadian Constitution. These men were now led to turn their attention to the constitutional use of their power of taxation. Like the House of Commons before them, their struggle for control of the public purse led to a clash with the Executive Power, a clash which an Imperial Executive Power could not lose.

The Opening Phases of the Conflict

Ostensibly for reasons of economy²⁰⁰, although others thought differently²⁰¹, Lower Canada's Assembly had first offered to assume responsibility for payment of the provincial Civil List during the session of 1810. Governor Craig had, at the time, rejected this offer as "unprecedented" and "ineffectuous" on the grounds that it had not been solicited by the Crown or made jointly with the Legislative Council²⁰².

When in late February 1810 the Assembly's expulsion of Judge De Bonne led to the dissolution of the Legislature, the proceedings of its committee investigating the constitutionality and propriety of the Governor's reply to the Civil List offer came to an abrupt and unexpected end. Both the subsequent purge of 17 March with its closure of Le Canadien and imprisonment

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200. In its edition of 25 November 1809, Le Canadien, the voice of the Popular Party, had argued that the province ought to assume payment of its Civil List before it got out of hand. It feared that many would be included in it who could not later be removed when the British Government tired of paying for it from out of the military chest and suggested that the Assembly assume the responsibility instead.
201. "Sens Commun" in Le Canadien of 2 December 1809 argued that loss of budgetary control by the Executive would force it to seek majority support in both houses of the provincial Legislature, with all the disastrous consequences this entailed. "Camillus" in the Quebec Mercury of 19 March 1810 charged that the Assembly had been aspiring to full legislative control and referred to its Civil List offer as "...a snare to acquire the management of the public money, and all the power incident to it."
202. Quebec Mercury, 26 February 1810.

of Pierre Bédard as well as the War of 1812²⁰³ virtually assured an end to the issue for the next several years.

Not until the reappearance of Le Canadien in June 1817 did the Civil List question become a matter of serious contention. Almost immediately, after its resumption of publication, Le Canadien associated the current malfunctioning of the Constitution with financial corruption and irresponsibility within the province²⁰⁴. There was small doubt that this reference to malfunctioning referred to the failure of the francophone majority to obtain a representative number of positions within the provincial administration. One letter to Le Canadien hinted, interestingly, at the connection between these two when it declared:

La Chambre d'Assemblée qui est censée représenter les intérêts des Canadiens a eu bien peu d'influence dans les conseils de la Colonie, et chaque fois qu'il(sic) a fait quelques efforts pour régler la liste civile ou la paye des Officiers du Gouvernement et pour débar-rasser le pays de l'influence indue de quelques individus ou pour réclamer contre la violation de nos loix, on l'a cassée. Peut-on supposer un instant que le Gouvernement de sa Majesté en Angleterre désire que la constitution s'exécute ainsi? Est-il à croire que l'on veuille sérieusement faire de la représentation un automate entre les mains de l'exécutif? La chose n'est pas croyable²⁰⁵... .

203. Ouellet, ibid., p. 229, suggests that the political truce which prevailed during the Prevost Administration (1811-1815) was in part due to the threat of armed invasion under which the province lived during these years.

204. Le Canadien, 30 August and 6 September 1817.

205. Le Canadien, 27 December 1817. See also Le Canadien, 6 December 1817, for another letter in this period concerned with jobs.

Prompted now by the reported failure of the British Parliament to allocate funds for the current civil expenditure of the province, Le Canadien undertook to review the history of the Civil List question in the Legislature. The Lower House, it maintained, had not offered to assume responsibility for payment of the List in 1810 in order to further its independence from Great Britain. It was an unrestricted provincial Executive which spent provincial tax revenues and drew from the military chest which had, Le Canadien argued, "...intérêt bien grand de s'opposer à un vote annuel d'argent pour défrayer les dépenses civiles de la Province." This lack of financial control, Le Canadien concluded, was merely typified by the recent failure of the Receiver General Bill which had been designed to promote more orderly finances and financial scrutiny in the province²⁰⁶.

On the eve of the 1818 session of the provincial Legislature, then, concern had been voiced for financial responsibility and jobs within the colony. Indeed, the lack of jobs had been associated by the francophone community with the absence of financial responsibility on the part of the provincial Executive. As the session opened in January 1818, only Sherbrooke's popularity with most parties assured that a clash would not occur²⁰⁷.

206. Le Canadien, 4 October 1807.

207. Sherbrooke had earlier arranged the compromise over the question of salaries for the Speakers of both Houses of the provincial Legislature. In addition, he had called Bishop Joseph Octave Plessis to a seat in the Legislative Council and Louis Joseph Papineau to a seat in the Executive Council. Papineau, interestingly, had not

Sherbrooke and the Civil List

Even before Sherbrooke convened the provincial Legislature on 7 January 1818, he had already been told by the Colonial Secretary, Lord Bathurst, that "...the Legislature should be annually called upon to vote all the sums required for the ordinary annual expenditure of the province²⁰⁸". Bathurst had also told Sherbrooke, in reply to an earlier question, that the continued use of the military chest to defray expenses of the Civil List was no longer justified and had not been for some time. Consequently, he, Sherbrooke, was to assume that the Assembly had tacitly consented to the expenditure of 120,000 pounds sterling by the provincial Executive since 1813 to meet the civil expenses of the province.

Once the Legislature had been convened, therefore, Sherbrooke lost no time in asking the Legislative Assembly to vote the sums necessary to defray the cost of the Civil List for 1818. While the initial response to the Governor's request was one of public satisfaction²⁰⁹, misgivings were not long in cropping up. Le Canadien soon brought to light the conflict of opinion over the manner in which supplies were to be voted and then attacked all who favoured uncritical acceptance of the Governor's estimates.

accepted. As leader of the majority party in the Lower House, he could not easily have done so without betraying the Montesquieuan ethic of separation of Powers. By and large, however, Sherbrooke seems to have held the esteem of most parties in the Legislature.

208. Helen Taft Manning, "The Civil List in Lower Canada." Canadian Historical Review. Volume 24, Toronto, 1943, p. 33.

209. Christie, ibid., volume II, pp. 292-293.

In favouring an item by item scrutiny of Sherbrooke's estimates, Le Canadien argued that the Prince Regent had ordered...

au contraire que cette discussion et cet échec auront lieu de la part des Communes sur les comptes à payer qui seront produits par l'Exécutif devant la Chambre afin qu'il ne reste aucun doute à cet égard.

The Governor's request had finally established, it concluded in a tone reminiscent of the millenium, "...un gouvernement libre dans la Colonie" and had also showed "...combien les non résidens ont fait d'efforts pour empêcher les sujets Canadiens de jouir des avantages que la constitution leur donne²¹⁰...".

Aside from a few pointed reminders to its readers to beware of the place-men in the Assembly who might frustrate the good effects to be expected from popular control of the provincial purse and questioning the sincerity of the Imperial Government in requesting the province to assume responsibility for its own Civil List²¹¹, Le Canadien offered no further comment on the Governor's request.

The Quebec Mercury, on the other hand, refused to comment on the matter until it was evident that the Lower House intended to grant the requested supplies. Early in March 1818, it

210. Le Canadien, 10 January 1818.

211. Le Canadien, 24 January 1818.

joined with Le Canadien in favouring budgetary economy, declaring that...

...there seems to be a disposition to persuade the bees that the greater number they support of drones the better it will be for them; because for every pound of honey they part with to the idler quartered on them, an ounce may possibly return to them in the course of a diffuse circulation²¹².

Apart, therefore, from these few scattered comments in favour of financial economy, the Civil List question initially failed to generate much public comment. Sherbrooke's estimates were accepted after a lengthy debate lasting nearly a week²¹³. On 26 March, due to the lateness of the session, the Assembly voted 40,263 pounds, 8s. 9d., to defray the cost of the Civil List for 1818²¹⁴. Notable in its proceedings had been the use of an address to provide for the supplies and the consequent lack of concurrence on the part of the province's Legislative Council. Later, in March 1821, Lord Dalhousie would reject a similar address supplying the Civil List expenses because it had not received the concurrence of the Upper House. On this occasion, however, the procedure used was accepted by both Sherbrooke and the Legislative Council. If the Assembly had perhaps insisted upon an itemized account or made a claim to

212. Quebec Mercury, 3 March 1818.

213. Christie, ibid., volume II, p. 301. Neither Le Canadien nor the Quebec Mercury gave an account of these proceedings.

214. Le Canadien, 11 April, 1818.

authorization for the already appropriated tax revenues of the province²¹⁵, the events might have unfolded differently and a clash resulted. Fortunately for the ailing Sherbrooke, the granting of supplies went smoothly and the Assembly decided to postpone further consideration of the matter to the following session. Sherbrooke's replacement, the Duke of Richmond, would have to face a more aggressive and determined Lower House.

Richmond and the Civil List

No sooner had the provincial Legislature reconvened on 22 January 1819, than the new Governor, the Duke of Richmond asked the Lower House both to complete its work relating to the 1818 Civil List (i.e., the enactment of a bill to cover the earlier authorization) and to defray the cost of the Civil List in the forthcoming year. These requests elicited practically no comment from either Le Canadien or the Quebec Mercury. In fact, the only remark of note came from "Jean-Baptiste" who, in wondering whether motives of personal consideration would again be brought into play when the Assembly took up the Civil List,

215. The Executive had at its disposal the revenue from several Revenue Acts to pay for the administration of Justice and the Civil Establishment in the province. These were: the Quebec Revenue Act, 1774; the Legislature Expense Act, 1793 and the Revenue Act, 1795. In addition, there also existed the casual and territorial revenue obtainable from excise taxes and the sale of crown lands as well as two small revenue acts passed in 1812 and 1813. See Chapais, ibid., tome III, p. 71.

asked:

Cette politique foible et énervée de tout gagner par des voies modérées, en sacrifiant nos droits et nos privilèges, prévaudra-t-elle toujours parmi nous? Serons-nous encore guidés par des motifs de considérations personnelles? ...verra-t-on nos membres se montrer dignes et fermes du devoir sacré qu'ils ont à remplir, en ne votant nos argents pour la liste civile, qu'après avoir examiné minutieusement nos revenus, nos moyens et encore plus nos besoins pressans²¹⁶?

Referring to the consideration that had been shown the ailing Sherbrooke²¹⁷ towards the end of the previous legislative session, consideration which had prevented any serious dispute from emerging over the address providing the funds required for the 1818 Civil List, these questions nonetheless hinted at the more critical attitude the Assembly would take in dealing with the Civil List in the present session of the Legislature. So too did the passing of an act making good the Civil List supplies voted Sherbrooke in 1818. On that occasion, an almost unanimous resolve to pass the bill in the Lower House was followed by the vigorous though unsuccessful opposition of Augustin Cuvillier²¹⁸ and others who objected in principle to

216. Le Canadien, 27 January 1819.

217. In 1818, Sherbrooke suffered a paralytic stroke which forced him to resign the Governorship of the province (Wallace, *ibid.*, p. 687). Both the Assembly and the Council modified their positions in light of this stroke in order not to exacerbate the Governor's condition.

218. Augustin Cuvillier (1779-1849) was a Montreal banker and merchant who had been closely associated with the founding of the Bank of Montreal in 1817. Decorated for gallantry during the War of 1812, he represented Huntingdon in the Lower Canadian Legislative Assembly

the passing of an unitemized Civil List²¹⁹. When the bill finally did pass, though, it failed to cover the whole amount required and provided only the amount originally voted Sherbrooke earlier. The Legislative Council reluctantly assented to it on 12 March, declaring that it would in future refuse to pass measures similarly construed.

Having resolved this problem, the Assembly now turned its attention to Richmond's other request, the provision of supplies for the 1819 Civil List. Amounting to 81,432 pounds, 6.s., 6d., Richmond's estimates represented a substantial increase over those which had been put forward by his predecessor. A special committee of the Lower House appointed to examine them concluded its final report by recommending...

...an unqualified reduction of those sinecures and pensions which, in all countries, have been considered as the reward of iniquities and the encouragement of vice, which, in the mother country have been, and still are a subject of complaint, and in which this province will lead to corruption²²⁰.

The stage was now set for the victory of those demanding an itemized Civil List more amenable to the Assembly's scrutiny. When on 10 April the Lower House moved to take up consideration

between 1814-1830. Representing Laprairie from 1830-1834, he broke with Papineau and the "Patriotes" over the 92 resolutions. Wallace, ibid., p. 168.

219. Christie, ibid., volume II, p. 307; Quebec Mercury, 9 March 1819.

220. Christie, ibid., volume II, p. 308.

of the matter, deputies George Vanfelson²²¹ and Jean Thomas Taschereau unsuccessfully proposed a motion which would have granted the Executive the full amount requested. Two days later, however, Cuvillier successfully moved as the opinion of the committee of the whole House on the Civil List that the Governor be granted a salary of £4,500 pounds sterling²²². The subsequent failure of Vanfelson and his supporters to amend another motion by Cuvillier to grant the Lieutenant-Governor a salary of 1,500 pounds sterling (providing, of course, that he reside in the province) signalled the inevitable victory of an itemized List²²³. Sitting as a committee of the whole, the House proceeded to vote individually a total of 108 items comprising the Civil List expenses. On 17 April 1819, despite an amendment by George Vanfelson charging it with "unparliamentary, unconstitutional and unprecedented" conduct²²⁴, the Assembly voted acceptance of the committee's 108 resolutions. Two days later, on 19 April, the resolutions had been introduced in the

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221. George Vanfelson (1784-1856) represented Quebec's Upper Town in the provincial Legislative Assembly from 1815-1820. From 1832-1837, he represented Quebec's Lower Town in the same body. He eventually became provincial Attorney-General (1819-1820 and 1830-1832) and Judge of the Lower Canadian Superior Court in 1849 (1849-1856). Wallace, *ibid.*, p. 767.
222. Le Canadien, 14 April 1819. The Vanfelson-Taschereau motion, it should be noted, had only been defeated by a narrow one-vote margin (12-11); the Cuvillier motion was passed unanimously, however.
223. The Vanfelson amendment had wanted the motion to authorize a sum of £11,892,8s.,10d., to defray the cost of that section of the Civil List not contained under any department or head.
224. Quebec Mercury, 23 April 1819.

form of a bill and given third reading.

In the Legislative Council, the itemized bill ran into fatal opposition. Jonathan Sewell, the Council's Speaker, charged that its minute provision for every provincial office interfered with the royal prerogative and could lead public servants to look to the Assembly rather than to the King for their well-being. The Council could not sanction the bill, he argued, for...

To sanction the Bill would be to wrest the Crown from the Head of the Sovereign and place it on the Mace of the Assembly. It would deprive the Crown of the constitutional patronage belonging to it and invest the Popular Branch with that authority which appertained solely to the Executive Government²²⁵.

Only Louis Turgeon, former deputy for Hertford and the brother of the future Bishop Turgeon, opposed this line of thought within the Legislative Council. In his opinion, the power of supplying funds naturally implied the right of determining both the amount and purposes for which supplies could be granted. It was for the Crown alone to accept or reject supply bills however imperfect they might be. The bill as it stood changed nothing, he maintained, for...

The nomination still remained in the Crown which

225. Quebec Mercury, 4 May 1819. Sewell's characterization here is somewhat inexact as the Assembly's mace had a crown upon it.

could place and displace its officers as heretofore. The Bill fixed the salaries of the Public Officers as they heretofore had been and the only difference that would result from this method would be that they would hereafter hold their salaries in virtue of a Law.

The Crown's patronage was not in the least concerned, Turgeon concluded, for the Executive had sufficient energy to maintain its own rights whenever the Bill should be presented for Royal acceptance²²⁶.

The Council, as it turned out, was swayed more by Sewell's arguments than by Turgeon's and it rejected the Assembly's itemized Civil List bill on 21 April with a series of disparaging resolutions²²⁷.

Three days later, on 24 April, the Duke of Richmond prorogued the Legislature, admonishing certain members not to allow "... that Privilege ... come into question with prerogative" and to "... pay a due regard to the rights of the Crown²²⁸ ...".

This was Richmond's last speech to the Lower Canadian

226. Quebec Mercury, ibid.

227. Quebec Mercury, 23 April 1819. The resolutions attacked the form of the bill as unprecedented and unconstitutional and declared that it usurped the most important rights and prerogatives of the Crown. It was also bound, they stated, to give the "Commons" of the province the power not only to prescribe to the Crown the number and description of its servants but also to individually regulate and reward their services thereby rendering them dependent upon itself and potentially subversive to the latter.

228. Quebec Mercury, 27 April 1819.

Legislature. On 28 August, 1819, he died while on a hunting trip in Upper Canada. His successor would have to deal with an Assembly more dedicated than ever on vindicating its rights.

Reaction of the Press

By and large, the Civil List debate had once again failed to spark much public comment. Le Canadien, though, had some interesting remarks to make on the proceedings in the Legislative Assembly.

Not unexpectedly, it came out in support of an itemized bill. It agreed with Councillor Turgeon's claim that the Assembly had the right of specifying what salaries were to be attached to civil offices to which the Executive nominated meritorious persons. Reflecting the Montesquieuan theory that taxation was the act of legislating in its highest form, Le Canadien explained to its readers that...

En effet si la Couronne ou le Roi pouvoit en vertu de la prérogative attacher des salaires aux emplois qu'il se donne, il auroit par là même le droit de lever de l'argent sur le sujet ce qui est absolument subversif des principes de la Constitution qui sont que le sujet se taxe lui-même par ses représentans.

The subject's incontestable right to tax himself, it concluded, was "...le boulevard de la liberté Anglaise." The fixing of salaries by the Executive virtually forced the subject

to tax himself against his will²²⁹.

From a constitutional point of view the Executive's usurpation of the citizen's right to tax himself via his representative in the Commons meant an end to the tripartite Constitution. The Executive Power interfered thereby in the most important function of the Legislative Power: the right to levy taxes only with the consent of the people. If the Executive seized that right, the Legislative Branch was reduced to naught and there remained nothing to be balanced. To all who accepted the Montesquieuan interpretation of the Constitutional Act, any Executive interference with the Legislative Branch's power to tax, was intolerable. The Assembly had the right to levy taxes and to levy them in detail.

In its following issue, Le Canadien returned to the defence of the Lower House against charges that that body was impinging upon the royal prerogative. It argued instead that the powers of the Lower House and the Crown were complementary and productive of constitutional monarchy. Maintaining that the Crown's patronage sufficiently enabled it to meet the challenge of popularly elected members of the Commons, Le Canadien stated:

Le pouvoir qu'a la couronne de nommer à toutes les places et de conférer les titres de nobles et d'honneur met le Roi au dessus de tous ses sujets

229. Le Canadien, 14 April 1819.

et est ce qui constitue la monarchie Anglaise, et le droit qu'a le peuple de lever et d'accorder de l'argent par ses Représentans est ce qui forme la monarchie limitée. Car si la couronne possédoit ce pouvoir, elle seroit absolu et le peuple n'auroit aucune garantie de sa liberté²³⁰...

The Crown, Le Canadien explained, had certain prerogatives. It was the source of all judicial power in the State. It was looked upon as possessing the whole Kingdom. It was the fountain of honour, the regulator of commerce, the Head of the Church and of the armed forces and many more things. The Crown could do no wrong. More than six hundred years earlier, it explained, the Crown had lost its prerogative to levy taxes upon its subjects. "Englishmen " had won the right to tax themselves through their own representatives²³¹.

Since then, in the Revolution of 1688, the Crown's subjects had also won from it the power of distributing supplies voted to it by Parliament. The king had been awarded an allowance (the Civil List) for the support of his household while public expenses had been placed under the control of Parliament. It was, explained Le Canadien,

...ce pouvoir qu'a la nation de se faire rendre compte des deniers qu'elle accorde, qui fait que les parlements Anglois sont toujours extrêmement

230. Le Canadien, 21 April 1819.

231. Le Canadien, 5 May 1819.

libéraux, et c'est cette idée naissante dans cette colonie qui l'a rendu (sic) si libérale et prodigue même sous certains rapports²³².

Public funds entirely at the Crown's disposal meant the end of the Constitution even if the Crown were sworn to defend it. The Crown's power to influence members of the Assembly with offices and salaries signified the loss of independence not only for the Lower House but for all branches of the Legislature "...qui doivent par l'esprit de la constitution être indépendantes²³³ l'une de l'autre",

DeLolme, the noted commentator on the British constitution, Le Canadien explained, had said "...que sa chute sera prochaine quand la couronne disposera des subsides et quand la représentation aura part à l'exécution des lois²³⁴.

Lower Canadians, then, were neither children nor English "bastards", Le Canadien maintained. They were British subjects whose Constitutional Act was a bill of rights. Canadian colonists,

232. Le Canadien, 12 May 1819.

233. Le Canadien, in its issue of 5 May 1819, had attacked the non-Montesquieuan disposition of the Legislative Council which it felt to be the mouthpiece for the provincial Executive. "Si on vouloit nous faire des Lords dans le pays", it had declared, "on auroit dû s'informer s'il y avoit des gens assez riches dans le pays pour en soutenir la dignité ou au moins ne mettre dans le conseil législatif que des propriétaires de terres pour éviter leur dépendance aux autres branches de la Législature.

234. Le Canadien, 12 May 1819.

it concluded, could no more be taxed without their consent than Englishmen themselves. It was difficult to imagine, therefore, how a Civil List and, in particular, an itemized one impinged on the royal prerogative²³⁵.

Le Canadien's view on the Civil List question at this point, therefore, was basically an eighteenth century Montesquieuvian one. Lower Canada's constitutional system was analogous to Britain's. As such, the balance and separation of powers within it was essential to its proper operation. The provincial Executive's continued desire to control provincial taxation by determining unilaterally the provincial budget ran contrary to this scheme of things and was therefore unacceptable to the Lower House. An annual, itemized Civil List was the only constitutionally proper manner in which the Lower House could vote supplies to the Executive without abandoning its own independence and violating the province's British Constitution.

As opposed to Le Canadien, however, the Quebec Mercury adopted a non-theoretical viewpoint. Critical of the provincial Assembly for having passed its Civil List bill without reference to the wishes of the other branches of the Legislature, it explained how the criterion of wisdom lay in adopting means to ends. If a new method of doing things were adopted without a particular

235. Le Canadien, 5 May 1819.

reason for doing so, the Mercury stated, then, such a departure "...must in all probability be productive of both disappointment and much lost labour and time; all of which ought to be foreseen²³⁶."

The Mercury, it seemed, was really unable to see the impossibility of a reconciliation over so fundamental an issue. The politically admirable ideal of compromise was, for theoretical reasons, an impossibility here. The Legislative Power or its embodiment must win or the Executive Power would continue, in the eyes of the Popular Party, to make a mockery of Lower Canada's tripartite Constitution.

The only other interesting remark to be printed by the Mercury on the subject was a letter written by "C.D.E.". Initially suggesting the applicability of the axiom "He who pays the penny calls the tune" to the Lower Canadian scene, the author proceeded to quash the idea that Jamaica furnished a colonial precedent for an itemized Civil List. The procedure there, he declared, was "...rather the result of "routine" than of a right inherent in their character or derived from a positive right...", Jamaica having "...acquired a claim to a greater latitude of prerogatives by contributing to the support of the military establishment in that Colony..."

236. Quebec Mercury, 27 April 1819.

The Crown, "C.D.'E." maintained, needed local representatives to help it rule its far-flung domains. They were essential to the framework of Imperial Government. It was natural, therefore, he insisted, "...to infer that to that individual alone (i.e., the Governor) the Crown meant to leave the choice of those assistants or agents...". Such delegation necessarily implied "...a kind of security that shall not be rendered nugatory by a capricious refusal of the means of supplies, indispensable to insure the services of those agents." Consequently, the axiom earlier quoted could not, in the author's opinion, agree with the spirit of the 1791 Constitution more than accepting that "...the Legislature had an undubitable right to refuse supplies for sinecures and undeserved persons²³⁷."

By the end of Richmond's Administration, then, in August 1819, it was clear that anglophone opinion in the province still frowned upon constitutional theorizing and innovation. Correction of obvious abuse and abnormality was acceptable but the Assembly's drive to establish theoretical rights was not.

Be opinions what they were, the debate had yet to reach a final plateau under Lord Dalhousie's Governorship (19 June

237. Quebec Mercury, ibid.

1820-28 September 1828). Then, a stalemate would finally result²³⁸ effectively ending any new turn of events. It is to the debate during that period that we must now turn before concluding this question.

Dalhousie and the Civil List

That phase of the Civil List debate in which Governor Lord Dalhousie and the Lower Canadian Legislative Assembly were the protagonists between 1820 and 1822 produced a political and constitutional impasse which ended or seemed to end the growth of legislative institutions along British lines in the province until the Rebellions there had come and gone. In the provincial Legislature, it was to pit a growingly impotent Legislative Council against a determined and, by now, thoroughly aggressive Legislative Assembly. The latter, aware as it was of the growing civil expenditure in the province and of the Executive Branch's lack of adequate funds with which to pay them and maintain its old position of political predominance, saw constitutional victory in the offing and stubbornly pressed home its case. Through its already established right to initiate money bills and its power to refuse to vote them, it steadily began to tighten its grip on the provincial Executive Branch's life-blood.

238. Brun, *ibid.*, p. 169. The author notes how the 1821 Civil List debate was "...à l'origine de la détérioration progressive des relations entre les chambres, qui caractérise les dernières années de la période".

Montesquieu offered it its rationale while a much increased role in provincial life provided its desire. By the debate's conclusion, the Assembly's attempt to financially strangle the Administration had met with considerable success. So great was the financial plight of the Executive and the Assembly's success in achieving it, in fact, that the British authorities were willing to conceive of a plan to side-step the challenge it presented to their authority. This plan, simply put, entailed the effective liquidation of the force responsible for it (the Popular Party) by a combined process of discrimination, association and inundation historically known as the Union Bill of 1822.

If that phase of the debate produced a political and constitutional impasse for the provincial Assembly, it ultimately served to show the British authorities that their system of government had by then been already too well learned by Lower Canadians to be ignored by their British masters when it failed to meet their imperial designs.

The Legislative Session of 1820-1821

On 14 December 1820, the Earl of Dalhousie convened the new provincial Legislature. Two days later, in a request labelled by Le Canadien as "...une contradiction qui ne peut s'expliquer que par les intrigues dont on a fait usage pour faire croire au Gouvernement de Sa Majesté en Angleterre, qu'on ne pouvoit

gouverner la colonie qu'en rendant nulle sa représentation²³⁹...", he asked the Lower House to make good the 1821 Civil List deficit of 22,000 pounds sterling on a suitable and permanent basis²⁴⁰. One week later, the Lower House refused his request for reasons varying from the wishes of the provincial electorate, its duty to posterity and an unstable and precarious economy, to its attachment to the Constitution of 1791. It consented, however, to vote supplies on an annual basis and in a constitutional (Montesquieuvian) manner²⁴¹.

On 27 December, in a way strongly suggesting a desire to compromise or an actual behind-the-scenes compromise, Dalhousie forwarded the 1821 Civil List estimates to the Assembly. These he had had divided into six "chapters" or categories and each contained a list of the offices and items requiring funds, the specific amount required being denoted in each case²⁴².

Two months later, on 7 March 1821, Jean Thomas Taschereau, chairman of the Lower House committee charged with scrutinizing these estimates, presented an un-itemized Civil List bill to the Lower House. For the current fiscal year only and encompassing revenues already appropriated by provincial law for specific purposes (a precedent!) Taschereau's compromise bill contained six categories of expenditure, each allotted a specific amount. Rejecting any form of compromise, however,

239. Le Canadien, 27 December 1820.

240. Le Canadien, 20 December 1820.

241. Le Canadien, 27 December 1820.

242. Le Canadien, 10 and 13 January 1821, gives a copy of these estimates.

those earlier favouring an itemized bill²⁴³ now did their unsuccessful best to scuttle Taschereau's bill. Read for the first time, on 7 March and for the second time on 8 March, it underwent its third and final reading on 10 March and was immediately forwarded to the Legislative Council for approval²⁴⁴.

There, however, it was already destined for failure. Even before Taschereau had introduced the Civil List bill into the Lower House, the Council had passed a series of resolutions asserting its right to participate in all bills of supply or aid and declaring that it would in future refuse to proceed... "...upon any Bills of Appropriation for the Civil List which shall contain specifications therein by Chapter or Items nor unless the same shall be granted during the life of his Majesty the King²⁴⁵."

These resolutions the Legislative Assembly countered on 14 March with a set of its own. Rejecting the Council's claims and professing surprise at them in light of its own previous constitutional conduct in these matters, the Assembly's resolutions

243. I.e., Blanchet, Cuvillier, Neilson, Viger, etc... .

244. Quebec Mercury, 13 March 1821 offers a copy of the bill.

245: Quebec Mercury, 9 March 1821. Brun, *ibid.*, pp. 168-169, points to the correctness of Upper Canada's Legislative Council 1818 claim that there existed no British precedent that money bills from the Lower House could not be amended by Upper House. Conflict between both Houses of the Lower Canadian Legislature was natural and inevitable.

denied the latter's right to "...constitutionally prescribe or dictate to this house [the Legislative Assembly], the manner or form of proceeding on Bills of Aid or Supply... [or] upon any matter or thing whatsoever." Every attempt of the Legislative Council to do so, the resolutions declared, was a breach of the Lower House's rights and privileges and,

...all Resolutions by which one branch of the Legislature lay down for themselves beforehand, and in a general manner, a reule not to proceed on Bills of a certain form or description which may be offered to them by another branch, is contrary to parliamentary laws and usages, to the Constitutional Act, and to the liberties, rights and privileges of the other btanches of the Legislature, ²⁴⁶. and even of that branch which adopts such Resolutions

The Lower House could, the resolutions concluded, constitutionally vote sums of money to the government by means of an address.

Reaction of the Press

From the Mercury, this train of events elicited only a sense of bewilderment. Having taken note of the respective positions of both legislative bodies, it bemoaned the fact that no solution to the "too important and too delicate" question was at hand and expressed regret"... that the differences should be so widened as to preclude almost all hope of an adjustment²⁴⁷".

Le Canadien, on the other hand, was not as perplexed by

246. Quebec Mercury, 17 March 1821; Le Canadien, 4 April 1821.
247. Quebec Mercury, 13 March 1821.

the bill and events surrounding it. It reacted vigorously to the legislative disaster which it said the Lower House had by the bill perpetrated upon itself²⁴⁸. In Le Canadien's opinion, the Legislative Council could only concur with or veto a money bill from the Lower House and could not according to British practice alter, amend or change such a bill's intention. Like the British House of Commons, the Lower House could, it maintained, vote appropriations by address if the situation warranted it. Adequate measures were needed to guarantee budgetary economy if such were in order. Those receiving funds, Le Canadien continued, were still interested in ensuring that the public purse strings were not too tightly tied. Here lay the root of the problem. "Il est clair", it concluded, "...que le conseil législatif tiendra longtemps à ses résolutions, parce que nombre d'entre eux reçoivent des deniers publics²⁴⁹."

Clearly, then, Le Canadien lay the blame for the Civil List "problem" at the Council's doorstep. Indirectly, this blame was shared by the Governor who, by his use of the patronage at his disposal, was able to influence the Council's members. In more theoretical terms, the Executive Power was being charged with corrupting and interfering with the Legislative Branch of the Government or, more specifically, the leading body thereof.

248. Le Canadien, 21 March 1821.

249. Le Canadien, 14 March 1821.

Interestingly, it was with this same suspicion and skepticism that Le Canadien had earlier in the session viewed the appointments of Bishop Plessis and L.-J. Papineau to the Legislative and Executive Councils, respectively. At that time, it had maintained that the appointments were a ploy to counter the influence indirectly given to the Lower House by the official request for Civil List supplies. Of Papineau's appointment it was particularly suspicious, maintaining that it might destroy the independence of the Speaker's Chair. In suggesting that a salary voted by the Lower House might secure its Speaker's allegiance, Le Canadien wondered whether perhaps a law which gave "...une indemnité à tous les membres durant leur présence au Parlement, et qui rendroit leurs sièges vacans après avoir accepté une place lucrative, seroit mieux que tout cela²⁵⁰."

Such a law, it was evident, would undoubtedly prevent the Executive Power from exercising undue influence upon members of the Legislative Power in the province and would act to maintain that separation and balance of Powers essential to the survival of the tripartite Constitution.

By this point in the debate, however, both Le Canadien and the Quebec Mercury could seek consolation in the Quebec Gazette's view that "...the Constitution granted to this Colony

250. Le Canadien, 3 January 1821.

by the mother country thirty years ago is but going into operation." According to this bilingual Quebec City newspaper, the misunderstanding between the Council and the Assembly over the Civil List bill, would...

probably be removed by the effect of the Constitution itself, which subjects all parties to various inconveniencies where there is a want of harmony between any of the constituent parts of the Legislature²⁵¹.

While this "want of harmony" had not until now manifested itself clearly between the Governor and the "de facto" embodiment of the Legislative Power in the province (i.e., the Legislative Assembly), events now transpired which made it evident. On 14 March 1821, the Lower House presented an address to the Governor critical of the payment of several public officials delinquent in the performance of their duties. Asking for an end to this absenteeism or a withdrawal of salaries, the address criticized three of the province's sinecures: the Lieutenant Governorship, Provincial Secretaryship and Lieutenant Governorship of Gaspé as well as the London-appointed Provincial Agent whose office was described as "un fardeau inutile sur le Peuple". In addition, the Executive Council came in for some abuse as did political plurality. The address was concluded by a demand for a statement of duties of the Board of Public Audit²⁵².

251. See Quebec Mercury, 17 March 1821; Le Canadien, 4 April 1821.
252. Le Canadien, 11 April 1821.

While Dalhousie promised to forward the address to the Colonial Office, he also unfortunately made it clear that he would not act upon it until he had received the order to do so from his superiors.

The Governor added further fuel to the Assembly's fire when he refused to accept Civil List supplies of 46,060 pounds, 10s., 2d., offered to him in an address passed by the Assmblly two days after the above resolution on 16 March. In rejecting the offer on the grounds that it had not been made with the concurrence of the Legislative Council²⁵³, Dalhousie left no doubt as to his position in the struggle between the province's Lower and Upper Houses. By the session's end, Le Canadien had conceded defeat for the Assembly in its attempt to woo the Governor to its side in the contest with the Legislative Council regarding the Civil List²⁵⁴. This was not totally surprising considering the history of the recent Richmond Administration and the Legislative Council's alliance with the Governor during it. More polished a public figure than Richmond, Lord Dalhousie would prove to be no less a defender than he of the constitutional status quo. The predominant role of the Executive in the colony's political life was no less his main concern and to preserve it he too would rely on that other legislative body, the Legislative Council, which birth, origin, wealth and privilege made his natural

253. Le Canadien, 4 April 1821; Quebec Mercury, 17 March 1821.

254. Le Canadien, 4 April 1821.

ally in his struggle with the Assembly. Both had much to lose from the latter's victory.

The failure at compromise cast the dye for the ensuing legislative session of 1821-1822. The stalemate about to be achieved over the Civil List question would exist for years to come. To it, we shall now turn.

The Legislative Session 1821-1822

When Lord Dalhousie convened the Legislature on 11 December 1821, he immediately proceeded to ask the Lower House for a permanent Civil List, maintaining that it was an established principle in the British Parliament that the Civil List be granted for the life of the King²⁵⁵. Three days later, the Legislative Council informed the Governor that it would approve a Civil List bill along these lines in view of the fact that the Canadas were uniquely blessed among all British colonies "...by a constitution perfectly analogous to that of the Parent State...": This analogous quality of Lower Canada's Constitution, it declared, had led it to see both acquiescence to the Governor's wishes and British precedence as its "paramount duty²⁵⁶".

This encouraging response from the Legislative Council the

255. Le Canadien, 12 December 1821.

256. Quebec Mercury, 14 December 1821.

Assembly countered on 17 December with one of its own: it was totally non-committal. In brief, the Lower House confined itself to acknowledging receipt of the Governor's message about the British Civil List and his request for a permanent Lower Canadian one²⁵⁷.

A new twist was thrown on the question four days later, however, when the Governor informed the Lower House that the King did not expect "...that the provision of the Civil List which it may be deemed purely casual, should be otherwise than annually voted²⁵⁸ ...". This concession drew from both the Mercury and Le Canadien an almost immediate response. A letter from "Philo-Lucius" appearing in the first condoned the new approach to the Civil List suggested by the Governor when it explained the differing concepts of the term "Civil List" in Great Britain and Lower Canada. While, in the author's opinion, the British Civil List was and might be granted permanently because it was "...essential to the "immediate" dignity of the person of the Sovereign...", Lower Canada's could not be because it was "...the whole public expenditure as annually submitted by the Executive Government of the Assembly...". The huge excess that might thereby accrue to the Executive in certain periods would, in Philo-Lucius words, give him "... a power which was never intended to be given, and it to be hoped

257. Le Canadien, 19 December 1821.

258. Quebec Mercury, 24 December 1821.

will never be asked²⁵⁹."

The Governor's novel approach to the question drew an even more favourable response in the same paper, the Quebec Mercury, from "Common Sense", who, believing that a distinction ought to prevail in providing for permanent and contingent Civil List expenses, saw no reason why the latter category of such expenses could not be provided for by an annual vote and appropriation. Aghast at the possibility that the servants and pensioners of the Crown whose expenses were of a permanent nature might be dependent for their subsistence on an annual vote of the Assembly, the author declared that if such a situation came about, "...the admirable Constitution which has been given this Province would be overturned, and the allegiance which is so justly due to the King, be eventually transferred to the Representatives of the People²⁶⁰...".

Le Canadien's reaction to Dalhousie's initiative, on the other hand, took the form of a letter by "Junior". Annoyed at the lack of logical thought and explanation during the course of the debate, the author cited first Blackstone and then De Lolme to prove that the British concept of the term "Civil List" differed widely from the Lower Canadian one and that the British Parliament had not seriously diminished its powers by granting

259. Quebec Mercury, 21 December 1821.

260. Quebec Mercury, ibid.

a Civil List to the King for life. The provincial Legislature's opposition to granting a budgetary Lower Canadian Civil List to the Crown was, "Junior" concluded...

une opposition juste et raisonnable, qui tire son principe du désir de conserver des privilèges que la bonté de la Mère - Patrie voulut bien nous accorder en nous donnant une constitution dont nous serions indignes si nous permettions à qui que ce fut d'en violer les loix, sans faire tous les efforts possibles pour les maintenir²⁶¹.

In contrast with the Mercury, Le Canadien appears, if we are to judge by the only comment published by it on the question at the time, to have rejected the Governor's proposal to provide for the Civil List along British lines. Le Canadien's rejection foreshadowed what was to come in the Assembly. Le Canadien's rejection of the Governor's Civil List proposal was not as inconsistent with Montesquieuian theory as might at first appear. The expenses of the civil administration in the colony of Lower Canada and in any colony for that matter accounted for a more than substantial part of its budget. The mania for public works and the funds with which to finance them had not as yet made their appearance on the colonial stage, at least not in Lower Canada. Public works were confined to improving roads and building bridges. These could be postponed for the immediate future without provoking any crisis in the government of the province. If public officials went about their normal tasks

261. Le Canadien, 26 December 1821.

and the judicial system operated as it should, many were those who at that time would still consider the government effective. Compliance with Dalhousie's scheme assured the continuance of a paid civil service and the consequence of a situation like this would be a constitutional imbalance. The Executive Branch could continue to function while the Legislative Branch would become a lion without teeth, growling much but incapable of any constructive activity.

On 29 December 1821, the Assembly addressed the Governor and asked him to lay before it various statements and reports related to provincial finances. On 7 January 1822, it asked the Governor to order the Receiver General of the province or his Deputy "...to lay before the House a statement of the monies by him received and paid since the commencement of the Constitution to the year 1816, and from the year 1816 to the first of January 1820 in conformity to former addresses (i.e., to Richmond) from the House²⁶²". Scrutiny, then, was the mood of the Lower House as, on 7 January 1822, it went into a committee-of-the-whole to consider J.T. Taschereau's motion to grant Civil List supplies to the Crown. At this juncture, complaints that the committee could not proceed before knowing what funds currently existed in the provincial chest quickly brought proceedings to a halt.

262. Quebec Mercury, 8 January 1822; Le Canadien, 9 January 1822.

The Assembly's scrutinous frame of mind was further confirmed when, five days later, on 12 January, sitting as a committee-of-the-whole in consideration of the Public Accounts Committee's recent report, it passed several resolutions designed to ensure proper control of public funds. Specifying that the latter were to be spent only where allocated and that the provincial Receiver-General and his staff were henceforth to be held legally responsible for funds spent without legal authorization, the resolutions also denied further provincial responsibility for army bills extant subsequent to ex-Governor Sherbrooke's earlier proclamation. Lastly, they called for acts of indemnity for all public expenditures made by anyone acting under executive authority for and during the years 1819 and 1821, to the extent of sums voted by the Lower House for those years²⁶³.

When, therefore, on 14 January Taschereau renewed his attempt to have supplies granted to the Crown, his motion was unsurprisingly defeated by a vote of 26 to 5.

263. Quebec Mercury, 15 January 1822; Le Canadien, 16 January 1822. Brun, ibid., p. 64, described the Imperial Government's 1823 decision to view Receiver General Caldwell (Jr.) defalcation' as a case of personal legal responsibility as "...la seule contribution du gouvernement anglais au développement de la responsabilité locale des conseillers du gouverneur." By implying, however (ibid., p. 61), that such responsibility opened the road ("laisse entrevoir") to the political responsibility of "responsible government", he is guilty of reading the present into the past and seeing a development which did not take place. Legal responsibility continues to exist with political responsibility and is parallel to it, not anticipatory.

Following this defeat, yet another motion stipulating that "permanent provision" be made for support of the province's civil government and the honour and dignity of the Crown during the life of the King was quashed, this time by a vote of 31 to 5²⁶⁴. To conclude these proceedings, the Assembly passed several more financial resolutions basically claiming that there existed no parity between the province and the Mother Country with respect to the Civil List. While one resolution referred to a possible permanent List as "...un abandon formel d'un des plus anciens et principaux privilèges des assemblées coloniales, du poids que doit avoir cette province et des droits et privilèges du peuple de cette province", another plainly stated that the Lower House was prepared to grant a supply bill in conformity with its offer of 1810 and according to terms indicated in the Addresses from the Throne at the opening of the Legislature in 1818 and 1819. The most interesting resolution was, however, the one which maintained...

Que la division des pouvoirs, législatif, exécutif et judiciaire, l'indépendance des juges et la comptabilité des officiers du gouvernement sont des attributs essentiels de la constitution britannique, dont jusqu'à présent cette province a été et est encore privée, et qu'à tous ces égards il n'y a aucune parité entre la mère-patrie et cette province²⁶⁵.

264. Quebec Mercury, 22 January 1822; Le Canadien, 16 January 1822.

265. Le Canadien, 23 January 1822.

Its implication as well as the implication of the other resolutions was clear. In short, no permanent Civil List was going to be voted to the King, not even in its limited English sense, until Lower Canada's constitutional practice was brought into line with that of Great Britain. No un-itemized Civil List in the Lower Canadian sense was ever going to be passed by the province's Legislative Assembly. The resolutions disclaiming similarity between the Civil Lists of Britain and her Lower Canadian colony was undoubtedly framed to protect the leaders of the Popular Party from the charge that they were two-faced on the question of constitutional analogy and that they should accept the analogy here with respect to the Civil List if they were really intent on seeing reproduced in Lower Canada a constitution as tripartite, British and Montesquieuan as the one enjoyed by the Mother Country. By unequivocally denying the similarity of the term, Popular Party leaders remained free to cite Montesquieu and other British constitutional theorists in support of their position on the Civil List and any other constitutional issues which might arise.

By the session's end, the Assembly's attempt to wrest control of public funds away from the Executive Branch was beginning to bear fruit. Coupled with its refusal to grant supplies in any way detrimental to its full control of them, the Assembly had striven to ensure that strictly legal procedures were used to appropriate and authorize the use of such monies.

In addition, it had newly adopted a policy of refusing to renew Financial Acts such as 59 George III which authorized a tax on imported dry goods, wines, liquors and tea.

Netting an annual revenue of 20,000 pounds sterling, the latter Act had constituted a fund from which the Governor could temporarily draw under his own authority²⁶⁶. It was one of many which had previously been available to him for such purposes but which were no longer being renewed by the Assembly in an attempt to tighten the financial pressure on the Administration.

In May 1822, Herman Ryland's "Circular" informing a number of public servants that allowances due to them could not be immediately paid mutely testified to the success of the Assembly's financial tactics. The Power under the Constitution which appointed to office and directed the Government was now shown to be unable to provide for the salaries of certain of those in its employment. Their allegiance was consequently bound to suffer, if not to disappear, with time.

A letter from "Hector McPlaintruth" appearing in the Quebec Mercury now voiced fears similar to those above and made

266. Le Canadien, 27 March 1822. Dalhousie, in partial compliance with the Assembly's resolution in this respect (passed on 12 January 1822) was to inform it of his decision to no longer advance money on his own authority and responsibility for Civil List expenses falling under the category of local establishments (i.e., local works). See Quebec Mercury, 8 February 1822.

it obvious that by June most Lower Canadians were aware of the situation which prevailed with respect to the province's finances. Ryland's "Circular", the author claimed,

...comes abroad to the mortification of its advocates, proclaiming in effect the partial triumph of those principles for which the Assembly had contended and which, it was pretended, could never constitutionally be relinquished.

Public servants and government pensioners who had since 1818 appeared in the Civil List estimates under the category of "permanent expenses" were now acknowledged to be of that category which formed no part of the civil government. Financial weakness, "McPlaintruth" wrote, was the sign of a weak Government and an avowal of such weakness could only compound the matter. The King's representative might indeed preserve the trappings and nominal patronage of Royalty,

...but if in reality he ceases to possess the power of rewarding merit and of protecting the oppressed, as well as chastising insolence or disobedience among the servants of the crown, he is reduced to the level of a mere paymaster to dole out the munificence of the people.

It was in the people, the author argued, that the real patronage would then reside, it becoming increasingly more "effectual" by their annual exercise of it. The result, "McPlaintruth" concluded, would be that...

The King may appoint to office but the Commons will annually indulge in the prerogative of increasing, diminishing or retrenching it. They will weigh the Candidate and reward him according

to their views of his merit, and there will remain enough of Royalty to become odious from its association with the idea of transatlantic Sovereignty²⁶⁷.

The situation, then, was clear. Financial control was synonymous with the right to govern. A change in the control of state finances normally affected a change in the right to govern either immediately or in the foreseeable future. By 1822, a combination of both the Assembly's policies and changing circumstances in Britain had led to a financial impasse in the province. The Legislature was well on its way to securing control of the province's finances with its inevitable prize of supremacy in the "State". All the while, though, it only claimed to be attempting to redress the imbalance in the Montesquieuan scheme of things. The result, however, must surely be a constitutional imbalance in favour of the province's Legislative Branch rather than in favour of its Executive Branch as had hitherto been the case.

In Britain, the same struggle had been fought and won by the Commons in the 1780's. The Revolution of 1688 had theoretically settled the question of Legislative (i.e., "parliamentary" is more popularly used) supremacy nearly a century earlier. The eighteenth century had witnessed the Legislative Branch's struggle to give substance to that theory even though the theory of the

267. Quebec Mercury, 11 June 1822.

division and balance of power was subscribed to and accepted by most as the manner in which the Constitution did and should operate. Due, however, to the financial resources and prerogatives which remained at its disposal until the second half of the century, the power of the Crown, the Executive Power in the State, had remained immense. Great enough to permit the formulation of the tripartite view of the British Constitution by such eighteenth century constitutional theorists as Montesquieu, Blackstone and DeLolme, these powers had to be curbed before the Legislative Branch truly laid claim to supremacy within the Realm. While the growing tide of middle class democracy and the Reform Bill of 1832 which it brought about completed this process, it was really perhaps the financial difficulties into which the Crown increasingly fell as the 18th century wore on that wrought the greatest blows to Royal power²⁶⁸. By 1782,

268. By the Civil List Act of 1698, Parliament had assumed control of the national debt and the expenses of the armed forces. King William and Queen Mary had in consequence thereof been granted a revenue of 700,000 pounds sterling annually to defray the cost of both the royal establishment and the Civil Government of the Kingdom. George I, their successor, was successful in getting Parliament to make good a deficit in this Civil List revenue (primarily derived from customs and excise taxes), on condition that he turn over funds in excess of 700,000 pounds sterling derived from this source. Through Walpole, his successor George II obtained an £800,000 Civil List deficit grant from Parliament. George III, who succeeded him, however, was unfortunate to have his Civil List revenue transferred to Parliament by the Civil List Act of 1760 in exchange for a fixed revenue during an era of rising prices. When by 1769, the Civil List deficit had risen to more than £500,000., the Commons demanded to examine the Civil List accounts before paying it. The Commons paid, but through Lord North's insistence, it

was made to wait until the ensuing session before examining the accounts in question. When eight years later, the Civil List debt had again amassed to total more than £600,000., North was finally forced to concede on this constitutionally vital point: he presented the accounts in exchange for the Common's agreement to pay the deficit [See B.E.A. Reitan, "The Civil List in Eighteenth-Century British Politics: Parliamentary Supremacy versus the Independence of the Crown." The Historical Journal, vol. IX, 3 (1966), p. 32]. It was Lord John Cavendish, the author claims, who recommended that the Prime Minister annually apply to Parliament as the Civil List deficit occurred. This he notes, was the germ of Edmund Burke's economic reform ideas of 1780.

Under the tripartite Constitution [Reitan, ibid., p. 326], however, it was essential that the Civil List remain independent of parliamentary control. Lord North's "acquiescence" in the parliamentary examination of the Civil List accounts as a precondition to their payment by that body, the Legislative Power under the Constitution, meant that this essential prop to the Executive Power's independence had been lost. While North maintained that the King might continue to do what he liked with Civil List supplies, his financial advisors claiming responsibility for it to him only [Reitan, ibid., p. 321], the opposition now argued that Parliament had both the right and the obligation to investigate and regulate the Civil List especially when it was called upon to pay its deficit [Reitan, ibid., p. 327]. When therefore, in 1777, Lord North accepted a grant of £900,000., as sufficient to meet the Civil List expenses, he effectively established the First Lord of the Treasury's responsibility for it, even though the latter had no means of regulating how it was spent. Despite the fact that this responsibility might only be tested when a Civil List deficit was presented to Parliament, inflation in the latter half of the 18th century assured that deficits would be the order of the day in the immediate future. So too, then, would the question of responsibility for these.

By 1780, the concept of the Civil List as an "independent" source of revenue for the Crown or Executive Power again came under attack, this time in the form of Edmund Burke's Economical Reform Act. While this act attempting to extend parliamentary control over the Civil List failed, two resolutions passed by the House of Commons on 6 April 1780 showed that time was definitely running out in the Executive Power's attempt to keep the List free from parliamentary control [Reitan, ibid., p. 333].

the philosophically Lockian British House of Commons had secured control of the Civil List and had greatly reduced the independence of the Crown, the Executive Power, in the process. The public pressure which had helped to bring about the Commons' supremacy had, it should be recalled, found its expression in petitions like those of Rev. Wyvill which urged the abolition of sinecures, exorbitant salaries and unmerited pensions²⁶⁹. Burke's Bill (see below), it should also be noted, had been passed in the face of the opposition arguments that the King was the only judge of what officers were needed to carry on the executive business of government.

Much the same complaints and much the same defence were now in evidence in Lower Canada. The force of public criticism here, however, apparently found expression more in the medium of the

The resolutions, best known as the Dunning resolutions, after their proponent, declared "...that the influence of the Crown has increased, is increasing, and ought to be diminished..." and "that it is the opinion of this committee that it is competent to this House to examine into, and to correct abuses in the expenditure of the Civil List revenue, as well as in every other branch of public revenue, wherever it shall seem expedient to the wisdom of this House to do so" [Reitan, ibid., p. 333].

When in 1782, Lord Rockingham and his Whigs came to power, Burke's Bill was re-introduced and passed. While its provisions were soon by-passed, a deficit of close to £900,000., having amassed by 1802, the act succeeded in "bringing the Civil List under parliamentary observation and regulation" thereby destroying forever the concept of the British Civil List as an independent financial provision of the Crown [Reitan, ibid., p. 329].

269. Reitan, ibid., p. 329.

press than through the mass-circulation petition, although we must be careful not to dismiss the growing importance of the latter. Le Canadien had itself led the attack on "les gens en place", "les grosses salaires" and unmerited pensions throughout the period²⁷⁰.

While a difference between the British and Lower Canadian Civil Lists had existed until Lord Dalhousie's modification in 1822, the constitutional implications of parliamentary or legislative control of both had made them somewhat similar. The non-existence of an essential and locally controlled and supported military force as well as the lack of a national debt and other trappings of an independent power had undoubtedly led the struggle to uphold the tripartite Lower Canadian Constitution of 1791. It had even forced the struggle to secure pre-dominance of the Legislative Power over the two other Powers of the State under that Constitution to include a debate over the personal salary of the Governor and his immediate assistants.

270. Note this retrospective comment by Le Canadien, 19 July 1820, for example: "Mais ce qui paroîtra extraordinaire, et ce qui prouve en même temps combien l'on a fait peu d'usage de la censure de la presse dans ce pays, c'est que notre Liste Civile a été offerte (sic) à la province dès le commencement de notre présente constitution; mais le grand nombre de gens en place qui étoit alors dans la Chambre d'Assemblée, fit que la mesure fut négligée comme devant être un jour plus gênante. Il étoit plus commode de n'avoir aucune surveillance; et c'est la raison qui a fait quadruplé (sic) la Liste Civile dans le court espace de vingt-cinq années...".

The struggle for control of Lower Canada's Civil List, it must be said in the last analysis, came to be not very different from the struggle for control of the British Civil List in the 1770's and 1780's and, indeed, throughout the eighteenth century. Finding its initial justification in the Assembly's desire to maintain the balance and separation of Powers in the "State", it quickly came to be seen for what it really was and the transformation it would produce in the balance of Powers. The patronage synonymous with control of the Civil List and the importance of that patronage in establishing effective control of the provincial administration became recognized as the real prize in the contest.

Lower Canada, though, was not a State in the early nineteenth century. Nor was there any real prospect of its becoming so until the middle of that century²⁷¹. Supremacy within the "State" in Lower Canada was not possible under the prevailing system of Empire. It was, however, unfortunately but predictably equated with the notion of supremacy of the "State"²⁷².

Lower Canadian critics of the Legislative Assembly had early

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271. By that time, many "Englishmen" questioned the value of British colonies and were prepared to see them go. On this point see Robert L. Schulyer, The Fall of the Old Colonial System. Oxford University Press, 1945, Chapter II (The Rise of Anti-Imperialism) and Chapter VI (The Climax of Anti-Imperialism).
272. Brun, ibid., p. 19. The author cites W.J. Ashley's The Constitutional History of Canada, p. 15, on this point.

grasped and intuited the subtle shift in the nature of the legislative battle in the province. By 1822, it seemed clear to all concerned that a victory for the Assembly in this struggle would leave just "...enough of Royalty to become odious from its association with the idea of transatlantic Sovereignty." The apparent determination of Lower Canada's political leaders to achieve this control and the vision of what such control over the province's Civil List would give them undoubtedly laid some of the seeds of the discontent which would blossom later in Lower Canada. If predominance of the Legislative Branch was the inevitable outcome of a tripartite Constitution under the changing forces of the early nineteenth century, it was nevertheless resisted in the colonial context.

CONCLUSION

The summer of 1822 gave rise to a singular event which perhaps did more than any other occurrence during this period to encourage political restlessness in the minds of French-speaking Lower Canadian leaders: the proposed Union Bill, conceived amidst conditions of frustration on the part of Lower Canada's mercantile anglophone community at the "inveterate anti-British and anti-commercial prejudices" of the province's French-speaking population²⁷³ as well as in the current financial difficulties between the Lower and Upper Provinces, the abortive Union Bill had constituted an attempt by the British Government to solve these problems. When, however, it became apparent that the union proposal which it contained²⁷⁴ was totally unacceptable to the majority of Lower Canadians, the latter was removed from the bill which finally emerged in 1823 as the Canada Trade Act. Resolving the problem of financial difficulty between the two provinces, the Act limited the Lower Canadian Legislature's powers to enact financial legislation impinging upon the Upper Province's commercial life and provided for the commutation of seigneurial lands into lands held under free and common socage²⁷⁵.

273. Christie, ibid., volume II, p. 387.

274. The proposal was merely for the union of the two Legislatures.

275. Christie, ibid., pp. 382-383.

While the proposal in the original bill designed to "restore" royal supremacy over the Catholic Church in Lower Canada had merited for it the hostility of the province's catholic clergy, it was chiefly its union proposals that seemed most instrumental in galvanizing popular nationalist sentiment into opposition across the province. Proposing higher membership qualifications for the Legislative Assembly, a quinquennial life-span for the same body and anglicization of its proceedings, the ill-fated measure had also suggested that two members of each of the surviving Executive Councils be appointed by the Governor to non-voting but otherwise fully-privileged seats in the new Assembly²⁷⁶. Here, it was contended, they could represent the Executive's point of view without directly influencing the proceedings of the Lower House. The proposed bill, it should be mentioned, had also authorized the Executive to appropriate the surplus revenues of both provinces for a certain number of years with or without the proposed Legislature's consent²⁷⁷.

The Union Bill had come under fierce constitutional attack from the press in both Lower and Upper Canada. Echoing the Kingston Herald, Le Canadien noted in late November 1822 that the surplus revenue clause was "...en contravention directe aux

276. Ibid., pp. 385-386.

277. Le Canadien, 20 November 1822.

principes essentiels de la Constitution britannique...". The executive councillors clause, it continued, suggested that...

Il seroit sous plusieurs rapports plus expédient que l'assemblée nominale fut entièrement abolie et que l'exécutif fut expressément revêtu de tout le pouvoir législatif. Sa responsabilité sera plus incontestable et plus directe, et le gouvernement seroit plus simple²⁷⁸... .

If, Le Canadien maintained, several assemblymen had in the past shown themselves to be weak and vascillating with respect to the interests of their constituents because of the Executive's wishes and if on several occasions personal interest, ambition and fear of displeasing had swung the balance of votes despite the call of duty and the presence of those whose interests they were sworn to defend, then what would it be like...

lorsqu'ils auront à leurs côtés (sic) l'exécutif lui-même, dans la personne de ses émissaires? lorsqu'ils seront excités par les discours de ces derniers? Ce sera alors qu'un clin d'oeil suffira pour décider les questions les plus importantes: ce sera alors, Canadiens, qu'on ne consultera plus vos intérêts et que vos intérêts et que vos représentans attendront un regard pour voter pour ou contre vous²⁷⁹...

The proposed union was, in Le Canadien's mind, the work of "anti-Canadiens". If they had been genuinely interested in the peace, prosperity and good government of the province, these

278. Le Canadien, ibid.

279. Le Canadien, 11 December 1822.

people would have attacked instead the composition of the Legislative Council rather than that of the Lower House. They would also have criticized the "...mélange de tous les pouvoirs, législatif, administratif et judiciaire, du peu d'économie et du mauvais emploi des deniers public (sic) des entraves perpétuelles mises à l'éducation, à la passation des lois utiles et à l'établissement du pays²⁸⁰

If, in fact, they had attacked the Assembly instead of the province's real ills, Le Canadien insisted, then the justifiable conclusion was that it was because the latter...

"...etoit enfin parvenue au moment de faire porter remède à tous ces abus et faire jouir tous les habitans du pays sans distinction, des avantages de la constitution tel que l'a voulu (sic) ceux qui nous l'ont donnée.

It was pleasing to see, therefore, it concluded, that despite the animosity of Montreal's "anti-Canadiens", the province's leading anglophones and perhaps a majority of their followers had signed "Canadien" petitions favouring the retention of the 1791 Constitution. "Cela", noted Le Canadien, "indique une Union que nous désirons bien sincèrement et que nous voudrions voir perpétuelle."

It was people like Receiver-General Caldwell who opposed the proposed union because of the danger of eventual political

280. Le Canadien, 1 January 1823.

and moral contamination from the South inherent in it for Lower Canadians who were, in its mind, the real Englishmen in the colony, "...comme nous le sommes de coeur et d'esprit²⁸¹...".

These concluding words, therefore, and the crisis which engendered them constitute a fitting conclusion to this discussion. They provide a good focus for a view of Lower Canadian thought on the Constitution of 1791 at this point as illustrated throughout the period by Le Canadien and the Quebec Mercury. The reaction to the union proposals mutely testifies to the extent to which those engaged in the political and constitutional debate of these years had remained intellectually and emotionally committed to an eighteenth century view of the Constitution of 1791.

The debate over the union proposals saw Montesquieu's vision of a tripartite Constitution re-affirmed and re-stated as the "sine qua non" of colonial harmony and well-being. It²⁸² showed too that any concept of responsible government

281. Le Canadien, 22 January 1823.

282. The Mercury's opinion on the question, insofar as it had one, was probably stated by "C.D.'E." who noted (see p. 423 of the 1822 edition) that the surest way of successfully averting the real danger with which Lower Canada was menaced (i.e., independence), was...

to interest the Government itself, and to submit to the consideration of his Majesty's Ministers whether, by the intended measure [the Union Bill] the nature of the elements composing the united Legislatures shall be so altered as to remedy the existing defects in the administration of these Provinces - whether the projected amalgamation shall prevent the irregularity of its march - whether the compound aristocratic branch shall receive

was the last consideration in the minds of Lower Canadian politicians and constitutional theorists. Never once had it been suggested by the latter that the provision dealing with executive councillors could be turned about so that the councillors in question were instead to represent the views of the Assembly's majority in the Executive Council²⁸³. While this alone would not have constituted responsible government, it would certainly have been a step in that direction. No such proposal, however, was made. The tripartite view of the 1791 Constitution held sway over Lower Canadian political and constitutional thought until the mid-1830's. Executive councillors in the proposed Legislature meant the future presence and interference of the Executive Branch in the affairs and business of the real embodiment of the Legislative Branch, the Assembly. This was both intolerable and unacceptable.

A study, then, of the political and constitutional thought of Lower Canada during the period 1805-1823 as found in Le Canadien and the Quebec Mercury reveals that there were two different interpretations about the kind of constitution the province possessed and how it was to operate. Le Canadien represented francophone Lower Canadian interests in the Lower

an increase of influence capable of maintaining the equipose between the effective influence of numbers and the moral one of its head, - whether, in fine, the intended alteration shall certainly be productive of such beneficial effects as will outweigh the certain inconvenience which must inevitably be the result.

283. Brun, ibid., p. 206 notes how Dorchester had made such a recommendation in 1793.

House and outside of it. This group was united economically and spiritually and was distinguishable from its opposite by its language, its religion, its laws and its history. In Le Canadien's opinion, Lower Canada had been granted a constitution modelled along British lines. This tripartite constitution did not operate naturally because of the unwillingness of the province's successive Administrations to allow it to do so. In this, various Administrations had been abetted by the Executive Council, the Legislative Council and anglophone mercantile interests in the colony and their supporters.

If Le Canadien represented the former interest group, the Quebec Mercury spoke for the latter which was also united economically and spiritually. At first, the Quebec Mercury had refused to recognize the analogous quality of the Constitution of 1791 with the British Constitution. Lower Canada was a colony whose duty it was to obey the wishes of the Mother Country as expressed by the provincial Executive. Only gradually did its view of the Lower Canadian Constitutional Act change. When it finally did, the Mercury appeared to favour a merger of the Legislatures of the Upper and Lower Provinces as the most effective way of maintaining British control over discontented and pretentious elements within the Lower Province.

The distrust which prevailed in the province and which was reflected in both Le Canadien and the Quebec Mercury during the period 1805-1823 would help the seeds of discontent to grow and take root within the province in the coming years. This

discontent was undoubtedly stimulated by events surrounding the Union Bill in 1822. Because the solution to this distrust which was discovered by W.W. Baldwin a few years later and made possible through the collaboration of his son Robert and Louis-Hyppolite LaFontaine two decades later had not yet seen the light of day, this mistrust grew into frustration. An impasse had been reached in 1822 which could only be suitably resolved by independence or responsible government. While the former was then impossible, the latter had not yet been enunciated, debated and accepted by those concerned.

Lower Canadians could, nevertheless, be given credit for mastering the British parliamentary system in the space of a few short years since the granting of the Constitution of 1791. While not the ones to formulate that theory of government which was to become our own, their adaptation to the British system of government in the first quarter of the nineteenth century laid the groundwork for the birth of that system of government which we now enjoy. On that base our present system grew and flourished.

Too wedded to Montesquieu's vision of the eighteenth century British Constitution to diverge from it, Le Canadien its followers and the leaders of the Popular Party in the Assembly had chosen, instead, to follow the American constitutional example. Very reluctantly, the Quebec Mercury had come to accept that same view of the province's Constitution and constitutional life, having resisted it for so long in order

to defend and buttress anglophone political control there. More preoccupied with the economics of running the province, the Mercury had emerged as the poor cousin in the constitutional debate which gripped Lower Canada in the first quarter of the nineteenth century. Nevertheless, it had helped to mould and formulate Lower Canadian thought and life during a crucial period of our history, a period of apprenticeship in the British system of government of which we are today the heirs of Lower Canadians. To them, our physical and spiritual ancestors, we owe much.

BIBLIOGRAPHY

PRIMARY SOURCES See page 198

Articles:

- Aspinwall, A., "The Cabinet Council, 1783-1835", Proceedings of the British Academy (Raleigh Lecture on History). Vol. 30. Oxford University Press: London, 1952, pp. 145-252.
- Audet, F.-J., "L'honorable Pierre Stanislas Bédard", Mémoires de la Société Royale du Canada. Vol. 20, section 1, 1926, pp. 35-41.
-, "Joseph Bernard Planté", ibid. Vol. 27, section 1, 1933, pp. 133-159.
-, "Joseph LeVasseur-Borgia", ibid. Vol. 19, section 1, 1925, pp. 65-78.
-, "Louis Bourdages", ibid. Vol. 18, section 1, 1924, pp. 87-101.
- Bibaud, M., Histoire du Canada. 8 vols. Lovell et Gibson: Montréal, 1843-1876.
- Buxton, Georges, "The British Parliament and Canadian Responsible Government", Revue de l'Université d'Ottawa. Vol. 18, no.2, 1948, pp. 156-179.
- Caron, I., "La nomination de Mgr. Joseph-Octave Plessis, évêque de Québec, au Conseil législatif de Québec". M.S.R.C. Vol. 27, section 1, 1933, pp. -32.
- Chapais, Thomas, "Les Débuts du Régime Parlementaire". Le Canada Français. Vol. 1. Université de Laval: Québec, 1918, pp. 1-29, 95-111.
- Chartier, E., "Nos premiers députés après 1797". Bulletin des Recherches Historiques. Vol. 34, no. 1. Lévis, 1928, pp. 9-11.
- Creighton, Donald C., "The Commercial Class in Canadian Politics 1792-1870", Proceedings of the Canadian Political Science Association. Vol. 5, May 1933, pp. 43-58.

- Creighton, Donald G., "The Economic Background of the Rebellions of 1837". Canadian Journal of Economics and Political Science. Vol. 3, 1937, pp. 5-17.
-, "The Struggle for Financial Control in Lower Canada, 1818-1831". Canadian Historical Review. Vol. 12, no 2, 1931, pp. 120-144.
- Cruikshank, L.-C., "The Administration of Sir James Craig", Transactions of the Royal Society of Canada. Vol. 2, section 2, 1908, pp. 61-87.
- Denton, Trevor, "The Structure of French Canadian Acculturation, 1759-1800". Anthropologica. Vol. 8, no. 1, Ottawa, 1966, pp. 29-43.
- Desrosiers, L.-P., "Vers notre premier parlement" Cahiers Des Dix. No. 13, 1948, pp. 85-108.
- Dionne, M.N.-E., "Pierre Bédard et son temps", M.S.R.C. Vol. 4, section 1, 1898, pp. 73-117.
- Dubuc, Alfred, "Problems in the Study of the Stratification of Canadian Society from 1760-1840". Canadian Historical Association Annual Report. 1965, pp. 13-29.
- Faucher, Albert, "Le Canadien upon the Defensive 1806-1810". C.H.R. Vol. 28, no. 3, 1947, pp. 249-265.
-, "La Condition Nord-Américaine Des Provinces Britanniques et l'Impérialisme du Régime Durham-Sydenham, 1839-41". Recherches Sociographiques. Vol. 8, no. 2, 1967, pp. 177-209.
- Garon, André, "La Fonction Politique et Sociale des Chambres Hautes Canadiennes, 1792-1867". Histoire Sociale/Social History. Vol. 5. Université d'Ottawa/Carleton University: Ottawa, 1970, pp. 66-87.
- Groulx, Lionel, "Le Britannisme des Patriotes". La Revue d'Histoire de l'Amérique Française. Vol. 5, no. 3, Montréal, 1951, pp. 416-425.
- Hutt, M.G., "Abbé P.J.L., Desjardins and the Scheme for the Settlement of French Priests in Canada, 1792-1802". C.H.R. Vol. 39, no. 2, 1958, pp. 93-124.
- Jones, R.L., "Agriculture in Lower Canada (1792-1815)". C.H.R. Vol. 27, no. 1, 1946, pp. 33-51.

- Lamontagne, L., "Les Courants Idéologiques dans la Littérature Canadienne-Française du 19ième siècle". R.S. Vol. 5, nos. 1-2, 1964, pp. 101-119.
- Maheux, Arthur, "Pierre Stanislaus Bédard, 1763-1829: philosophe et savant". M.S.R.C. Vol. 50, section 1, 1956, pp. 85-93.
- Manning, Helen T., "The Civil List in Lower Canada". C.H.R. Vol. 24, no. 1, 1943, pp. 24-47.
-, "The Colonial Policy of Whig Ministers, 1830-1837". C.H.R. Vol. 33, nos. 3-4, 1952, pp. 203-236; 341-368.
- McGuigan, G.F., "Administration of Land Policy and the Growth of the Corporate Economic Organization in Lower Canada, 1791-1809". C.H.A.A.R. 1963, pp. 65-73.
- Ormsby, W., "The Problem of Canadian Union, 1822-1828". C.H.R. Vol. 39, no. 4, 1958, pp. 277-295.
- Ouellet, Fernand, "L'Enseignement primaire: responsabilité de l'Eglise ou de l'Etat (1801-1836)". R.S. Vol. 2, no. 2, 1961, pp. 171-187. Nationalisme Canadien-Français et Laïcisme au XIXe siècle, R.S. Vol. 4 no 1. 1963, pp. 47-70.
-, "L'Etude du 19ième siècle canadien-français". R.S. Vol. 3, nos. 1-2, 1962, pp. 27-42.
-, "Les Fondements historiques de l'option séparatiste dans le Québec". C.H.R. Vol. 43, no. 3, 1962, pp. 185-203.
-, "Joseph Papineau et le Régime Parlementaire", B.R.H. Vol. 61, no. 2, 1955, pp. 71-77.
-, "Nationalisme Canadien-français. De ses origines à l'insurrection de 1837". C.H.R. Vol. 45, no. 4, 1964, pp. 277-292.
-, "Mgr. Plessis et la naissance d'une bourgeoisie canadienne, 1797-1810". Société Canadienne d'Histoire de l'Eglise Catholique. Rapport, 1956, pp. 83-100.
-, "Toussaint Pothier et le problème des classes sociales, 1829". B.R.H. Vol. 61, no. 4, pp. 147-159.
- Ouellet, F., et Hamelin, J., "La Crise Agricole dans le Bas-Canada, 1802-1837". C.H.A.A.R. 1962, pp. 17-33.

- Paquet, G., et Wallot, J.-P., "La Liste Civile du Bas-Canada, (1794-1812)". R.H.A.F. Vol. 23, nos 2-3, and vol. 24, nos. 1-2, pp. 209-230, 361-392 and pp. 3-43, 251-286 respectively.
- Parizeau, Gérard, "Bas-Canada-1800: Le milieu et ses problèmes". M.S.R.C. Vol. 1, section 1, 1963, pp. 187-219.
- Parker, W.H., "A New Look at Unrest in Lower Canada in the 1830's". C.H.R. Vol. 40, no. 3, 1959, pp. 209-217.
- Potvin, P., "Papineau et l'Orientation du Nationalisme Québécois". C.H.A.A.R. 1943, pp. 35-42.
- Read, J.-E., "The Early Provincial Constitutions". Canadian Bar Review. Vol. 26, no. 4, 1948, pp. 521-637.
- Reitan, E.A., "The Civil List in Eighteenth Century British Politics: Parliamentary Supremacy versus the Independence of the Crown". Historical Journal. Vol. 9, no. 3, 1966, pp. 318-337.
- Savard, Pierre, "Les Débuts de l'Enseignement de l'Histoire et de la Géographie au Petit Séminaire de Québec, 1765-1830". R.H.A.F. Vol. 15, no. 4, 1962, pp. 509-525.
- Séguin, M., "Le Régime Seigneurial au Pays du Québec, 1760-1854". R.H.A.F. Vol. 1, no. 3-4, pp. 382-402; 519-532.
- Smith, L.A.H., "Le Canadien and the British Constitution, 1806-1810". C.H.R. Vol. 38, no. 2, 1957, pp. 93-108.
- Soward, F.A., "The First Assembly in Lower Canada". C.H.R. Vol. 4, no. 3, 1923, pp. 258-263.
- Trudel, M., "La Servitude de l'église catholique sous le régime anglais". C.H.A.A.R. 1963, pp. 42-64.
- Wade, Mason, "Quebec and the French Revolution of 1789: The Mission of Henri Mezière". C.H.R. Vol. 31, no. 4, pp. 345-368.
- Wallot, J.-P., "Les Canadiens français et les Juifs (1808-1809): l'Affaire Hart". Juifs et Canadiens. Deuxième Cahier du Cercle Juif de la Langue Française. Edition du Jour. 1967, pp. 111-121.
-, "La Crise sous Craig (1807-1811): Nature des Conflits et Historiographie". C.H.A.A.R. 1967, pp. 59-74.

Wallot, J.-P., "La Querelle des Prisons". R.H.A.F. Vol. 14, nos. 1-4, 1960-1961, pp. 61-86; 259-276; 395-407; 559-582.

Williams, Trevor, "The Cabinet in the Eighteenth Century". History. Vol. 22, 1938, pp. 240-252.

Texts

Ashley, W.J., Nine Lectures on the Earlier Constitutional History of Canada. Rowse and Hutchison: Toronto, 1889, 100p.

Audet, L.-P., Le Système Scolaire de la Province de Québec. Vols. 1-6. Editions de l'Erable: Québec, 1950.

Bagehot, W., The English Constitution and Other Political Essays. D. Appleton and Co.: New York, 1908, 468p.

Beaulieu, A. et Hamelin, J., Les Journaux de Québec de 1764 à 1964. Presses de l'Université Laval, Paris, 1965, 329p.

Bédard, T.P., Histoire de Cinquante Ans (1791-1841). L. Brousseau: Québec, 1869, 417p.

Bibaud, M., Histoire du Canada et des Canadiens sous la Domination Anglaise. 3 Vols. Lovell and Gibson: Montréal, 1844. Reprinted: [Wakefield, Eng.] S.R. Publishers; [New York] Johnson Reprint Corp., 1968.

Blanchet, F.-X., Appel au Gouvernement Impérial. Flavien Vallerand: Québec, 1824, 70p.

Bourinot, J.-G., Canada Under British Rule, 1760-1900. Copp, Clark: Toronto, 1901. 346p.

Brebner, John Bartlett, The North Atlantic Triangle. Yale University Press: New Haven and The Ryerson Press: Toronto, 1945. 385p.

Brun, Henri, La Formation des Institutions Parlementaires Québécoises, 1791-1838. Presses de l'Université Laval: Québec, 1970. 291p.

Buchanan, A.W.P., The Bench and Bar of Lower Canada Down to 1850. Burton's Ltd: Montreal, 1925. 219p.

- Buxton, Georges, L'Influence de la Révolution Américaine sur le Développement Constitutionnel du Canada (1774-1791). Editions E. De Boccard: Paris, 1929, 128p.
- Careless, J.M.S., ed., Colonists and Canadiens, 1760-1867. Macmillan of Canada: Toronto, 1967, 278p.
- Caron, I., La Colonisation de la Province de Québec. 2 vols. L'Action Sociale: Québec, 1923-1927.
- Chapais, Thomas, Cours d'Histoire du Canada. 8 Vols. Librairie Garneau Ltée: Québec, 1919-1934.
- Christie, Robert, A History of the Late Province of Lower Canada. 6 vols. T. Cary and Co.: Québec, 1848.
- Clark, S.D., Movements of Political Protest in Canada (1640-1840). Toronto University Press: Toronto, 1959, 518p.
- Cornell, P.G., et al., Unity and Diversity. Holt, Reinhart and Winston: Toronto, 1967. 529p.
- Coupland, R., ed, The Durham Report. The Clarendon Press: Oxford, 1945, p. 68 (Introduction) 187p.
- Cowan, Helen I., British Emigration to British North America; the first hundred years. University of Toronto Press: Toronto, 1961, 321p.
- Craig, Gerald, M., Upper Canada: The Formative Years: 1784-1841. McClelland and Stewart Ltd.: Toronto, 1963, 315p.
- Cuthbert, Ross, An Apology for Great Britain. J. Neilson: Quebec, 1809, p.30.
- D'Estimauville, R.-A., A Cursory View of the Local, Social, Moral and Political State of Lower Canada. T. Cary: Quebec, 1829. p.57.
- De Salles - Laterrière, P.-A., A Political and Historical Account of Lower Canada. March and Miller: London, 1830. 285p.
- Dunham, Aileen, Political Unrest in Upper Canada: 1815-1836. McClelland and Stewart: Toronto, 1963. 204p.
- Easterbrook, W.T., and Aitken, H.G.J., Canadian Economic History. The Macmillan Co. of Canada, Ltd.: Toronto, 1956. 606p.

- Fleming, John, Political Annals of Lower Canada. Montreal Herald and New Montreal Gazette: Montreal, 1828, 80p.
- Garner, John, The Franchise and Politics in British North America, 1755-1867. University of Toronto Press: Toronto, 1969, 258p.
- Gershoy, Leo, The French Revolution and Napoleon. Appleton-Century-Crofts: New York, 1964.
- Gilles, D.H., Democracy in the Canadas (1759-1867). Oxford University Press: Toronto, 1951. 217p.
- Gray, Hugh, Letters from Canada, written during a residence there in the years 1806, 1807 and 1808. Longman, Hurst, Reese and Orme, 1809 - reprinted [Toronto, Coles Pub. Co., c 1971]. 406p.
- Hamel, M.-P., ed., Le Rapport Durham. Editions du Québec: Québec, 1948. 376p.
- Hamelin, Jean et Marcel, Les Moeurs Electorales dans le Québec de 1791 à nos Jours. Editions du Jour: Montréal, 1962, 124p.
- Hare, J., et Wallot, J.-P., Confrontations: choix de textes sur les problèmes politiques, économiques et sociaux du Bas-Canada, 1806-1810. Boréal Express: Trois-Rivières, 1970, 323p.
-, Les Imprimés dans le Bas-Canada, 1801-1810. Les Presses de l'Université de Montréal: Montréal, 1967, 556p.
- Jolois, J.-J., J.-F., Perrault, 1753-1844, et les Origines de l'Enseignement Laïque au Bas-Canada. Les Presses de l'Université de Montréal: Montréal, 1969, 268p.
- Kingsford, W., The History of Canada. 10 vols. Roswell and Hutchison: Toronto, 1887-1898.
- Kennedy, W.P.M., The Constitution of Canada, 1534-1937. 2nd ed. Oxford University Press: London, New York, Toronto, 1938, 628p.
- Labrie, Jacques, Les Premiers Rudiments de la Constitution Britannique. James Lane: Montréal, 1827, 88p.
- Lambert, John, Travels Through Canada and the United States of North America in the years 1806, 1807 and 1808. 2 eds. 2 vols. Cradock and Jay: London, 1814.
- Langstone, Rosa W., Responsible Government in Canada. J.M., Dent and Sons Ltd: London and Toronto, 1931. pp. 1-241.

- Lower, A.R.M. Colony to Nation, A History of Canada, Longmans of Canada: Toronto, 1946, 600p.
- Lucas, C.P., A History of Canada 1763-1812. The Clarendon Press: Oxford, 1909. 360p.
-, Lord Durham's Report on the Affairs of British North America. 3 vols. The Clarendon Press: Oxford, 1912.
- Manning, Helen T., British Colonial Government after the American Revolution, 1783-1820. New Haven, 1933, 568p.
-, The Revolt of French Canada: 1800-1835. Macmillan of Canada Ltd: Toronto, 1962, 426p.
- Millman, T.R., Jacob Mountain: First Lord Bishop of Quebec. A Study in Church and State, 1793-1825. University of Toronto Press: Toronto, 1947, 320p.
- Monet, Jacques, S.J., The Last Canon Shot: A Study of French Canadian Nationalism, 1837-1850. University of Toronto Press: Toronto, 1969, 422p.
- Neatby, Hilda, Quebec: The Revolutionary Age, 1760-1791. McClelland and Stewart Ltd.: Toronto, 1966, 300p.
- Ouellet, Fernand, Constitutionalism and Nationalism in Lower Canada. University of Toronto Press: Toronto, 1969, 94p.
-, Eléments d'histoire sociale du Bas-Canada. Les Cahiers du Québec, 5. Hurtubise. H.M.H.: Montréal, 1972, 379p.
-, Histoire Economique et Sociale du Québec, 1760-1850. Fides: Montréal et Paris, 1966, 639p.
-, Louis-Joseph Papineau: un être divisé. Société Historique du Canada. Brochure historique no. 11. Ottawa, 1960,
- Shortt, A., and Doughty, A.G., eds., Canada and Its Provinces. 23 Vols. Publishers Association of Canada: Toronto, 1913-1917.
- Stanley, George, A Short History of the Canadian Constitution. Ryerson Press: Toronto, 1969, 230p.
- Schuyler, Robert L., The Fall of the Old Colonial System. Oxford University Press: New York, London, 1945, 344p.

- Sulte, Benjamin, Histoire des Canadiens-Français, 1608-1880. 8 Vols. Wilson et Cie.: Montréal, 1882-84.
- Surveyer, E.F., The First Parliamentary Elections in Lower Canada. Louis Carrier at the Mercury Press: Montreal, 1927. pp.1-15.
- Turcotte, G., Le Conseil Législatif de Québec, 1774-1933. L'Eclaireur: Beauceville, 1933, 324p.
- Wade, Mason, The French Canadians: 1760-1967. 2 Vols. MacMillan of Canada: Toronto- 1968.
- Young, D.M., The Colonial Office in the Early Nineteenth Century. Royal Commonwealth Society. Longmans: London, 1961, 310p.

Graduate Theses in Canadian History

- Greenwood, F. Murray, The Development of a Garrison Mentality Among the English in Lower Canada, 1793-1811. Ph.D., University of British Columbia, 1970.
- Hagerman, M.W., John Neilson: his activities in Lower Canada (1818-1834). M.A. University of Saskatchewan, 1937.
- Jolicoeur, Huguette, Etude sur "Le Canadien" Maîtrise ès-Arts. Université de Montréal, 1951.
- Tousignant, Pierre, La Gazette de Montréal de 1791 à 1796. Maîtrise ès-Arts. Université de Montréal, 1960.
- Valois, Charles, La Chambre d'Assemblée du Bas-Canada, 1792-1815. Maîtrise es-Arts. Université de Montréal, 1960.
- Wallot, Jean-Pierre, Le Bas-Canada sous l'Administration de Craig, 1807-1811. Thèse de Doctorat. Université de Montréal, 1967.

Encyclopaedias and Dictionaries

- The Canadian Biographical Dictionary. Quebec. Part I. American Biographical Publishing Co.: Chicago, New York, Toronto, 1881. 402p.

Les Députés de Saint-Maurice et de Buckinghamshire (1792-1808).
E.F. Surveyer et F.-J. Audet. Editions du "Bien Public":
Trois-Rivières, 1934. 94p.

Les Députés des Trois-Rivières (1792-1808). E.F. Surveyer et
F.J. Audet. Editions du "Bien Public": Trois-Rivières,
1933, 82p.

Les Députés au Premier Parlement du Bas-Canada (1792-1796).
F.J. Audet et E.F. Surveyer. Editions des Dix: Montréal,
1946.

The Dictionary of National Biography. eds. L. Stephen and
S. Lee. Macmillan and Co.: New York, 1908.

The Dictionary of National Biography. Oxford University Press:
Oxford, 1962-1971.

Encyclopaedia Britannica. E.B. Inc., William Brenton: Toronto,
1966.

Handbook of Upper Canadian Chronology and Territorial Legislation.
Frederick H. Armstrong ed. Centennial Publication. Lawson
Memorial Library, University of Western Ontario: London,
1967.

Les Juges en Chef de la Province de Québec, 1764-1924.
F.J. Audet. L'Action Sociale Ltée.: Québec, 1927.

The Macmillan Dictionary of Canadian Biography. W. Stewart
Wallace, ed. 3rd ed. Macmillan of Canada: Toronto, 1963.

La Presse Québécoise, des origines à nos jours. André Beaulieu
et Jean Hamelin. Vol. 1 (1764-1859). Presses de l'Université
Laval: Québec, 1973. 268p.

Sketches of Celebrated Canadians. Henry J. Morgan. Hunter
Rose & Co.: London, 1862, 779p.

Inventaire chronologique des Livres, Brochures, Journaux et
Revue Publiés en langue française dans la province
de Québec...1764-1905. N.E. Dionne. Société Royale du
Canada. (M.S.R.C. Section 4- 1904): Québec, 1905. 151p.

Notices Biographiques: les évêques de Québec. Narcisse-S.
Hardy: Québec, 1889. 692p. (Henri Têtu).

Le Panthéon Canadien: Choix de Biographies. M. Bibaud. n.
ed. J.M. Valois: Montréal, 1891. 320p.

PRIMARY SOURCES:

Le Canadien, 1806 - 1825

The Quebec Mercury, 1804 - 1825

ABSTRACT

Lower Canadian Constitutional Thought as seen through Le Canadien and the Quebec Mercury (1804 - 1823)

Without really looking at what took place in Lower Canada in the years between 1791 and 1838, many of Canada's major historians have assumed that the theory of responsible government which lies at the basis of our system of government first took root there in that period. What happened was actually quite different and is the subject of this study.

Covering the period between 1804 and 1822, this thesis sets out to examine what Lower Canadians were thinking and writing about the Constitution of 1791 and the way it was being put into effect by the British authorities and their own politicians. Constitutionally and politically, Lower Canadians were men of the eighteenth and not the nineteenth century. Their constitutional model was the system of government which had been enjoyed by Great Britain since the Glorious Revolution in 1688. This Constitution was amenable to change and was currently reeling from the onslaught of forces which were overtaking modern Europe towards the end of the eighteenth century. Composed of three branches or arms, the Executive, the Legislative and the Judiciary, which were supposed to function independently but in balance with one another, the British Constitution was now experiencing a

severe shift in its balance of Powers. This shift was destined to result in supremacy for the Legislative over the Executive Branch.

In Lower Canada, only the elements of this Constitution had been given by the Constitutional Act of 1791. Debate soon arose whether Lower Canada had been given a Constitution which was the "image and transcript" of the British Constitution or whether the Constitutional Act was merely an imperial act designed to govern a distant, conquered colony. If the 1791 Act had provided a Constitution which was the "image and transcript" of the British one, then its institutions must be likened to and function just as their models did in Great Britain. If the 1791 Act were merely an imperial act providing for political institutions not modelled upon those of Great Britain, then these bodies must confine their activities to the strict limits set out by the Act. The Quebec Mercury, the voice of English-speaking merchants in Quebec City, the capital, took the latter view, while Le Canadien, the voice of the Popular Party in the Legislative Assembly, took the former view.

With this point of view each approached the three constitutional crises which form the basis of my thesis: the debate to exclude Judges from sitting and voting in the Legislative Assembly; the attempted impeachments of Justices Sewell, Monk and Foucher and the debate over the provincial Civil List or budget. In approach then, each paper interpreted events from

the above described positions. What happened was good or bad depending on whether it offended against the theoretical assumptions held by the respective newspapers.

Trying its "democratic" wings, the Legislative Assembly played out a role not dissimilar from that enacted by its British counterpart, the House of Commons. Insecure in its partial-nobility, the Legislative Council fought a rear-guard action and allied itself with the Governors against its aggressive legislative twin. The Assembly expelled the Judges from its midst but failed to successfully impeach the three Judges in question. It was partially successful in its efforts to secure control of the province's Civil List or budget. All in all, however, it managed to win over to its view of the Constitutional Act even the conservative and cautious Mercury. The view of the Constitution of 1791 as "the image and transcript" of the British Constitution came to be accepted by many in the province as the way in which that Constitution should operate. This was a far cry from the theory of responsible government or cabinet responsibility to the House of Commons then developing rapidly in Britain and adopted by the succeeding generation in Lower Canada.

Le Canadien and the Quebec Mercury expounded these views and played a vital role in disseminating them throughout the province. By and large the poor cousin in the debate, the Mercury spent most of its time during this period in defending anglophone political supremacy within the province.

This blinded it to Le Canadien's Montesquieuan interpretation of political events unfolding in the colony and made for some lively exchange of views. If in the end the Mercury moved closer to Le Canadien's constitutional position, both remained far removed from any concept of responsible government then being born both in Britain and in Upper Canada.