

Dep. Col.
Thesis

M2184

DEPOSITORY
COLLECTION
NOT TO BE
TAKEN

CANADIAN RESPONSIBLE GOVERNMENT

in

BRITISH HANSAARD.

A THESIS

Presented to the Department of History of the
University of Manitoba

in partial fulfilment of the requirements for

the Degree of Master of Arts

of the

University of Manitoba

by

John Ross McLean, B. A.

THE UNIVERSITY OF MANITOBA
LIBRARY

Winnipeg, April 30th, 1927.

I N D E X.

Introduction	Page 1
The Glenelg Regime	" 11
The Russell Regime	" 54
The Stanley Regime	" 81
The Grey Regime	" 109
Conclusion	" 145

INTRODUCTION

The widespread discontent on the continent of Europe - in France, in Italy, in Belgium - in 1830 was not without its counterpart in England. In that year, when the Duke of Wellington declared his determination to resist any attempt at parliamentary reform, the half century of almost unbroken Tory rule came to an end. Earl Grey, for forty years a leader in the struggle for the reform of the House of Commons, assumed office as Prime Minister, having as his chief lieutenants Viscount Althorp, Lord Brougham, Lord Melbourne, Lord Palmerston, and the Earl of Durham. Viscount Goderich, as Prime Minister a 'transient and embarrassed phantom', succeeded Sir George Murray at the Colonial office.

During Earl Grey's administration, and while Lord Goderich held the colonial office, Canadian affairs provoked little discussion. Goderich attempted to pursue a conciliatory policy, and attempted to comply with the recommendations of the Committee of 1828, which had been appointed by Huskisson. In 1831 he carried the Canada Revenue Bill which gave to the Canadian Assemblies the control of the revenues collected at Quebec under the Act of 1774. His confidence that the Assemblies would prove equally generous proved unfounded, although that of Upper Canada granted a civil list as he had wished. The attention of parliament and people was focussed upon nothing so remote as discontent in Canada, but upon parliamentary reform and Ireland's chronic disaffection.

Because Lord Stanley's coercion bill of 1833 had almost driven Ireland into insurrection, he was promoted from the chief Secretaryship for Ireland to the colonial office. On January 14th, 1834, Stanley addressed to Lord Aylmer in Lower Canada the despatch which provoked Papineau to draw up his Ninety-two Resolutions.⁽¹⁾ In April Roebuck moved for a Select Committee to enquire into the condition of the Canadas;⁽²⁾ when Stanley consented to appoint a committee to investigate conditions in Lower Canada Roebuck withdrew his motion. Within a very short time the Cabinet of Earl Grey was broken by internal dissension. When "Johnny upset the coach" by revealing a split in the cabinet in regard to the Irish Church policy, Lord Stanley resigned office in company with the Duke of Richmond, Sir James Graham and Lord Goderich.

(1) W.P.M. Kennedy. Documents of the Canadian Constitution. Oxford 1918. p 364-5

After stating his refusal to change the constitution of the legislative council, he continued that his duty would be instead "to submit to parliament such modification of the charter of the Canadas, as should tend, not to the introduction of institutions inconsistent with monarchical government, but to maintaining and strengthening the connection with the Mother Country"...

(2) See Hansard 3rd Series. Vol. 22: 767: April 15, 1834. The grand cause of the "bad government that has so long tormented these provinces is the composition of this (executive) council, and that of the Legislative Council. These bodies hitherto have been two in name, but one in fact." The Executive council really governed because of the governor's ignorance of conditions. "The three bodies of the Legislature are at open war... the governor has utterly lost the confidence of the people... A revolution .. is at hand." Stanley replied that "if the executive powers of the state were thus to be made continually dependent upon the control of a popular assembly... it would be better to hand over the whole of those executive powers at once into their hands."

When Littleton's Irish policy was unsupported by the Cabinet, and he failed to keep a somewhat secret understanding with O'Connell, he resigned office, as did Lord Althorp, who was also involved. On July 9th, 1834, Lord Grey, who considered it impossible to govern without the support of Lord Althorp, whose influence in the Commons was paramount, resigned the Premiership, recommending Lord Melbourne as his successor.

During Lord Melbourne's short lived administration of 1834 Spring Rice⁽³⁾ held the colonial office, but before he could put his policy into effect, William IV was enabled to dismiss the Whigs and call upon the Duke of Wellington, who advised him to send for Sir Robert Peel. Until Peel could return from Rome, Wellington assumed all secretaryships of state.

In Peel's first cabinet, in which Wellington was foreign Secretary, Goulburn held the Home Office, and Lyndhurst was Lord Chancellor, the Earl of Aberdeen accepted the colonial portfolio. The parliamentary discussions of Canadian affairs were very meagre. It was the intention of Peel's government to send a Commissioner to Canada to investigate grievances. Lord Canterbury, formerly Manners Sutton, at first accepted the post, but later declined it. When Stratford Canning declined, Earl Amherst was selected and accepted the Commission. Before he could proceed to Canada, however, Peel was forced (April 8) to resign office, when his Irish policy was disapproved by parlia-

(3) Id. 25:920 Aug. 4, 1834. Rice called attention to Hume's letter to MacKenzie containing the phrase "baneful domination of the mother country," and charged him with "ministering to the angry passions of the malcontents."

ment, and Lord Melbourne once more became Prime Minister. Parliamentary conditions in England had forbidden three colonial ministers to execute their policies - Stanley, Rice, and Aberdeen.

In Lord Melbourne's second ministry Lord John Russell was appointed Home Secretary, and leader of the House of Commons; Lord Palmerston again became Foreign Secretary; the Marquess of Lansdowne, President of the Council. Charles Grant, who had been president of the Board of Control under Lord Grey, succeeded to the Colonial office.

The intention of Peel's government to appoint a single commissioner to Canada was not retained by the Whigs. The Earl of Gosford was selected as Governor-general and chief commissioner of inquiry; other members of the commission were Sir Charles Grey, once Chief Justice of Calcutta, and Sir George Gipps, sometime private secretary to Lord Auckland. In 1836 Sir Francis Head, by a strange error, was appointed lieutenant governor of Upper Canada.

After the insurrection in November, 1837, both Lord Gosford and Sir F. Head were recalled. The Lower Canadian constitution was suspended and the Earl of Durham was selected as High Commissioner with extraordinary power. Sir George Arthur, formerly governor of a convict colony, Van Diemen's Land, became governor of Upper Canada.

Lord Durham's conduct in Canada drew sharp criticisms from both Tories and Radicals. His ordinance banishing eight of the leaders of insurrection to the Bermudas, a part of which was clearly illegal, a defect Lord Durham expected the

Imperial parliament to rectify, was disallowed. Durham was bitterly assailed in the Lords by Brougham, Ellenborough and Lyndhurst, and even the Duke of Wellington thought he had erred in approving the powers granted to Lord Durham. In the Commons Sir E. Sugden, a Tory, and H. Leader, a Radical, attacked the ordinance. Lord John Russell deprecated the ill-temper of parliament and defended Durham as one who had a right to expect "indulgence and forbearance" in view of his many difficulties. Lord Brougham's "Declaratory and Indemnity Bill", for indemnifying those who had been responsible for the ordinance, implied that Durham's power was not unusual. Durham, believing that the disallowance of his acts, and the Declaratory Bill, would impair his authority, determined, after five months in Canada, to resign his Commission. In a proclamation which he issued he unwisely charged the British government with deserting him in his extremity, and Lord Glenelg⁽⁴⁾ felt compelled to recall him, not however, until after he had actually forwarded his resignation to England.

Durham committed other indiscretions which offended the peculiarly virtuous in the British parliament. He appointed T. E. M. Tuxton, who had had at least one fall from grace, although later he was a pillar of the church in Calcutta, to office upon his own responsibility. Melbourne and Glenelg officially disapproved the appointment, but Durham refused to revoke it.

The debates during Lord Glenelg's⁽⁴⁾ term of office

(4) Charles Grant, created Lord Glenelg.

were long and bitter. In 1836 Roebuck moved for a reform in the Legislative Council of Lower Canada (May 16), and Joseph Hume presented a petition from Upper Canada. In March 1837 Lord John Russell introduced Ten Resolutions, founded upon Lord Gosford's report, which finally passed the House of Commons on April 28, and the Lords on May 9. In the resolutions the Canadian demands were explicitly denied. It was considered "inexpedient" to make the Legislative Council elective, although it was advisable to render it more satisfactory to the people at large; the Executive Council could not be subjected to responsibility to the Legislative Assembly. As supplies had been refused in Lower Canada since 31st October, 1832, certain crown revenues were to be used for the payment of civil officials. (£ 142,160: 14:6.). On December 22, 1837, rumours of insurrection in Canada were discussed in both Houses. It was determined consequently that parliament should re-assemble on the 16th January 1838. Lord John Russell introduced a bill in the Commons for the suspension of the Canadian constitution and the appointment of Lord Durham, which received its third reading in the House of Lords on the 8th February. The Bill was amended by Sir Robert Peel and Sir William Follett, the latter inserting a proviso to which several later appealed as denying Lord Durham's unusual powers. During July and August of 1838 Lord Durham's conduct was reviewed; his ordinance of June, and his appointments, were condemned. On 10th August, Lord Melbourne announced the disallowance of the ordinance.

Before parliament assembled in February 1839 Lord John Russell's threat of resignation forced Lord Melbourne to deter-

mine to change the head of the Colonial office. Early in February Glenelg announced his resignation and was succeeded by the Marquis of Normanby, who, as the Earl of Mulgrave, had gone to Ireland as Lord Lieutenant.

During February, 1839 the debates were embittered by personal attacks upon Lord Durham, for the early unauthorized publication of his report, for which Gibbon Wakefield was probably responsible, for his appointment of Turton, and for what many thought the undue expense of his mission to Canada.

When the government's bill for the suspension of the Constitution of Jamaica was supported by a majority of only five in the Commons (April) Melbourne resigned the government, but, as a result of the misunderstanding between Queen Victoria and Sir Robert Peel in connection with the Queen's personal attendants, reassumed office.

On June 3, 1839, Lord John Russell discussed Lord Durham's report, and moved resolutions in favour of a legislative union of the Canadas, and, pending such a measure, the extension until 1842 of the powers vested in the Special Council of Lower Canada; but the following week the resolutions were withdrawn, when it was considered advisable to learn the opinions of Canadians upon the union bill. An act was introduced, however, extending the powers of the Special Council, which passed the House of Lords on 26th July, 1839.

In August, 1839, Lord John Russell became Colonial Secretary, and Normanby replaced him at the Home office. Lord Howick resigned from the war office, and was succeeded by Macaulay. Baring became Chancellor of the Exchequer in place of

Spring Rice; Lord Clarendon, Privy Seal; and Henry Labouchere became President of the Board of Trade, when Poulett Thomson was appointed by Russell to the governorship of Canada.

On March 23, 1840, Russell introduced in the Commons the Canada Union Bill. After having been reread the third time in the Commons on June 18, it passed the Lords on July 13, and received the Royal assent on the 23rd.

During the session of 1841 Baring's Budget was arraigned by parliament, and, early in June, Peel carried a vote of want of confidence against the administration of Lord Melbourne. After the election which followed Queen Victoria called upon Sir Robert Peel to form a government. Wellington led the House of Lords without portfolio, Goulburn became Chancellor of the Exchequer, Sir James Graham, Home Secretary, Lyndhurst, Lord Chancellor, and Lord Stanley succeeded Russell at the colonies, while the Earl of Aberdeen accepted the Foreign office.

Lord Stanley appointed Sir Charles Bagot, a retired diplomat, to succeed Lord Sydenham in Canada. In 1843 Bagot's conduct of the Canadian government was reviewed, when, early in February, Roebuck moved for the return of exiles to Canada, in order finally to wipe out the memory of insurrection.

Upon the death of Sir Charles Bagot, Sir Charles Metcalfe, who had just returned from the government of Jamaica, was appointed his successor. In 1844 Roebuck once more led an attack upon the Colonial policy of the Imperial government. (May 30).

The famine in Ireland failed to convince Lord Stanley, as it did Sir Robert Peel, that free trade, especially in food-stuffs, was necessary. When Stanley refused to support him,

and the Dukes of Wellington and Buccleuch doubted his wisdom, Peel resigned office on December 5, 1845. When Russell failed to form a government, because of Earl Grey's refusal to serve with Palmerston, he handed back to Sir Robert Peel "the poisoned chalice". Gladstone accepted the colonial secretaryship when Stanley refused to serve, while Buccleuch and Wellington remained in office.

During the session of 1846 Lord George Bentinck and Lord Stanley pointed to the likelihood of trouble in Canada if the Corn Laws should be repealed. (May 14).

The Irish again caused the downfall of Sir Robert Peel. On June 29, 1846, four days after the passage of his Corn Bill, and immediately after he was able to announce the assurance of peace with America, Peel resigned the government into the hands of Lord John Russell. In the new Cabinet Palmerston became Foreign Secretary, Lord Cottenham, Lord Chancellor, Sir George Grey, Home Secretary, Sir Charles Wood, Chancellor of the Exchequer, and Earl Grey followed Gladstone in the colonial office.

The Earl of Elgin, governor of Jamaica, a contemporary at Oxford of Gladstone, (Lord) Canning, Sidney Herbert, and Ramsay (Earl of Dalhousie), became governor-general of Canada to succeed Earl Cathcart, whom Gladstone had appointed during the disagreement with the United States upon the Oregon boundary. When Elgin assented to the Rebellion Losses Bill in 1849, without instructions upon the subject from Earl Grey, Gladstone and Lord Brougham led the attack upon the policy of the government. In the House of Lords the government was sustained by a majority of three (99-96) (June 19, 1849).

It may be said that the Canadian trouble dominated only one session of parliament - that of 1838, although both in 1837 and in 1840 the debates occupied considerable time. Russell corresponded privately with Lord Sydenham to avoid discussion and both Stanley and Grey followed his example. During Stanley's term of office Sir Robert Peel's tariff changes claimed the attention of parliament and people. In 1849 the Tories made their final attempt to assert the right of the Imperial parliament to control Canadian affairs.

THE GLENELG REGIME.

Upon the return of Lord Melbourne to power in 1835 Charles Grant, who was later raised to the peerage as Lord Glenelg, became Colonial Secretary. Although the Canadian situation had been menacing for several years it was relatively of small importance. The Reform Bill and Irish affairs dominated the political stage. It was only when an acute crisis came in the affairs of Canada, a crisis brought about chiefly by neglect, that real interest in the problem was shown by other than those directly concerned in the administration of the colonies.

Lord Glenelg's policy was not unlike that of his predecessors. At the colonial office he fell heir to the accumulated ills of a generation, the result of the policy which had been followed by Lord Bathurst during his long and apathetic tenure of office under Lord Liverpool. The over-reluctance of colonial Secretaries to interfere with a view to a reformation of the system of government cast responsibility for the success or failure of their policy chiefly upon the governors whom they selected.

Soon after his assumption of office, Glenelg appointed the Earl of Gosford, Sir Charles Grey, and Sir. G. Gipps to investigate and report upon Canadian grievances. "The King is most unwilling to admit," wrote Glenelg to his Commissioners, "as open to debate, the question whether one of the vital principles of the provincial government shall undergo alteration. The solemn pledges so repeatedly given for the maintenance of

that system, and every just prepossession derived from constitutional usage and analogy, are alike opposed to such innovations. .. But His Majesty cannot forget that it is the admitted right of all his subjects to prefer to him, as King of these realms, their petitions for the redress of any real or supposed grievances."⁽¹⁾ "It must be recollected that the form of provincial constitution in question is no modern experiment nor plan of government, in favour of which nothing better than doubtful theory can be urged... The considerations ought indeed to be weighty which should induce a departure from a system recommended by so long and successful a course of historical precedent." "I would not, however, exclude from your consideration any proposal of which it is the professed object to render the Executive council a most effective instrument of good government."

To Governor Head he wrote "Parliamentary legislation on any subject of exclusively internal concern, in any British colony possessing a representative Assembly, is, as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception."⁽²⁾ "Experience would seem to prove that the administration of public affairs in Canada is by no means exempt from the control of a practical responsibility. To His Majesty and to parliament the Governor of Upper Canada is at all times most fully responsible for his official acts." "This responsibility to His Majesty and to parliament is second

(1) W.P.M.Kennedy. Documents of the Canadian Constitution. Oxford. 1918. p. 407-10.

(2) *Id.* p. 414 seq.

to none which can be imposed upon a public man... I further unreservedly acknowledge that the principle of effective responsibility should pervade every department of your government, and for this reason, if for no other, I should hold that every public officer should depend on His Majesty's pleasure for the tenure of his office. If the head of any department should place himself in decided opposition to your policy, whether that opposition be avowed or latent, it will be his duty to resign his office into your hands... Some of the members of the local government will also occasionally be representatives of the people in the Assembly, or will hold seats in the Legislative Council. As members of the local legislature they will of course act with fidelity to the public, advocating and supporting no measures which upon a large view of the general interest, they shall not think it incumbent on them to advance. But if any such person shall feel himself compelled by his sense of duty to counteract the policy pursued by you as head of the government, it must be distinctly understood that the immediate resignation of his office is expected of him." Head acted upon his instructions as he interpreted them, provoked armed revolt in the province of which he was governor, and rendered futile Lord Gosford's attempt at conciliation in Lower Canada.

The parliamentary debates of the period reveal several marked cleavages of opinion. Unyielding Tories like Wellington and Gladstone were opposed by uncompromising radicals like Roebuck and Joseph Hume. Between the two extremes, undecided as to their course of action, desirous of delaying rather than of acting, stood the Whig group led by Lord Melbourne and Lord

Glenelg. Certain of the Whigs, it is true, notably Lord John Russell and Lord Howick, chafed under the restraint, but while Lord Glenelg held the Colonial office "deliberate composure rather than intemperate haste" was the prevailing rule.

Most powerful among the ultra-Tories was the Duke of Wellington. He could not consent to the slightest diminution of the power of the Colonial Secretary. "In his opinion the province of Lower Canada never manifested any disposition to make a provision for that which he thought most essential to the good government and well-being of every society that could be brought together - the due administration of justice by learned and independent men."⁽³⁾ Russell's Resolutions "stated with great propriety that it was not expedient that the Executive council should be made responsible to that body (i.e. House of Assembly)." "Had that House....," he asked, "no other duty to perform except to carry on the government of Canada according to the wishes of the people of Canada, as manifested in the House of Assembly, by whom it was insisted that the government of the province should be made responsible to them, and who would not vote supply to enable his Majesty to administer justice? He really must say, that that was a system of government which he for one could never consent to establish either in Lower Canada, or in any other dependency of the British Crown."⁽⁴⁾ He was irreconcilably opposed to the introduction of the elective principle into the composition of the legislative council.

(3) Hansard. Third series. Vol. 38: p.745: May 9, 1837.

(4) Id. p.747.

As a young graduate of Oxford, and as protégée of the Duke of Newcastle, W. E. Gladstone represented the purest Toryism. Speaking in the debate on Russell's Resolutions "he thought it was a vain distinction to claim for the houses of Legislature there (i.e. in Canada) a position which was analogous to that of the legislature in this country, so long as they were in the situation of a colony."⁽⁵⁾ Again, in the same speech, "in a country where life and property were secure, where there was no oppressive law, where the franchise was wide and liberal, where the church of the majority was in possession of the church property, where there was no tangible grievance capable of being put into terms and brought before that House - in such a country the Imperial legislature was called upon to grant an organic change in the constitution as the condition upon which for the future, the supplies necessary to carry on the government of the province should be voted by the provincial legislature. Then the question that lay before them was one between the support of a government, the maintenance of tranquillity and order, on the one hand, and the acknowledgment of the absolutism of the popular will on the other." "In a country where no practical oppression was proved to exist - where property and person had been secure, and would be so at this moment, but for the machinations of popular agitators - where the law was duly administered, and where the taxes were mild, or none at all - they were for the sake, and on the ground of speculative and organic changes, which promised no advantage to the colonies and which must prove utterly destructive of the analogy

(5) *Id.* 37: 96. Mar. 8, 1837.

and harmony which had existed between the mother country and the Canadians, to be terrified from maintaining that which they believed to be just on the first manifestation of the spirit of insurrection."⁽⁶⁾ The separation of Lower Canada from Great Britain was "not always to be regarded with apprehension."

Patrick Stewart, denying any similarity between the Canadian and the Irish and American grievances, likenesses stressed by O'Connell and Roebuck, presented a petition signed by some 12,000, numbering in their ranks "many who were both in Britain and Ireland, foremost in the cause of reform", deprecating any changes in the constitution of the colony which were not absolutely necessary "to afford permanent relief to the financial embarrassments of the Executive, to maintain the subsisting connection between the mother country and the colony, and to preserve in their proper places, and within their due limits the material rights and privileges of all classes of his Majesty's subjects within this province."⁽⁷⁾ He, himself, "firmly believed with Burke and others that the colonial assemblies were subordinate to the legislative assembly at home."⁽⁸⁾ "The colony had not a tittle of right to what they demanded."⁽⁹⁾ Mr. G. F. Young thought "there was no justification for the attempt to subvert British control."⁽¹⁰⁾ "The advantage of

(6) Id. 39: 1452: Dec.22, 1837.

(7) Id. 36: 1329: Mar. 6, 1837.

(8) Id. 38: 1262: Apr.14, 1837.

(9) Id. 38: 200: Apr.21, 1837.

(10) Id. 39: 1479: Dec.22, 1837.

colonial possessions was too great to be disposed of." (11)

He very much doubted the wisdom of the "inflammatory harangues" which were delivered on both sides of the Atlantic, in the House of Commons and the subordinate legislatures.

While he was inclined to believe that the "fault appeared to be the imperfect nature of the attempt made to engraft the free institutions of this country upon the feudalisms of that colony," Sir E. B. Sugden said, "It was impossible... that the demands of the Canadians as regarded an elective council, an executive council and judicial officers, under the control of the House of Assembly could for a moment co-exist with the dominion of this country, or with the happiness, the peace, prosperity, and comfort of the Canadians themselves. They were not the best judges of what might benefit themselves." (12)

(Sir) J. Pakington was "satisfied it was the feeble and compromising conduct of the government which had led to the present evils," (13) but supported the suspension of the Canadian constitution, thinking it his duty to support the Queen against her rebellious subjects. Lord Gosford, he thought, had carried conciliation, "which became weak as it exceeded impartiality," too far.

Several evinced a lesser interest in the Canadian situation. Mr. Borthwick, who favored "maintaining the integrity of the empire against the worse than Boeotianly-stupid philoso-

(11) Id. 39: 1478: do

(12) Id. 40: 408: Jan. 23, 1838.

(13) Id. 40: 348: Jan. 22, 1838.

phy of modern days,"(14) thought that the question in Canada was "not a practical one" but "a mere abstraction." The only possible policy was "to reduce the rebels to subjection;" "he could not think a republic a legitimate offspring of Great Britain." Gally Knight declared that the House of Assembly of Lower Canada demanded absolute independence, which he believed to be quite inconsistent with remaining in the British empire. "Perhaps the source of the present trouble was---in the division of the Canadas into two distinct provinces. They must be blended together before the Canadians can become a nation."(15) He would have wished to return to the condition of affairs in 1831, and begin "de novo"! Lord Ashburton, believing "the value of the colonies was greatly overrated,"(16) favoured, in view of the expense involved in the government of the colonies and the relatively small recompense, an early separation. Sir G. Sinclair thought the "present government has now reached the nadir of political ignominy."(17) Least pleasing among the Tories was Mr. Robinson of the British American Land Company, whose Toryism was less conviction than self-interest. The claim of the Assembly to the control of the Crown lands was "monstrous and untenable."(18) He spoke of the unexampled progress of the North American provinces, of the entire satisfaction with present

(14) Id. 40: 118: Jan.17, 1838.

(15) Id. 38: 236: Apr.24, 1837.

(16) Id. 40: 847: Feb. 8, 1838.

(17) Id. 40: 616: Jan.29, 1838.

(18) Id. 33: 940: May 16, 1836.

arrangements which existed in Upper Canada and the maritimes, and of "the ridiculous idea of nationality now entertained by the French party." He would have preferred separation from the colony rather than allow the "dignity of the British Crown" to suffer injury. Sir William Pollett, Lord Lyndhurst, and Lord Ellenborough contributed only to Lord Durham's difficulties.

Although Sir Robert Peel had been Tory prime minister he was less in sympathy with the extreme wing of the Tories than with the government group. He read to the House with approval those clauses in Lord Glenelg's instructions to the Gosford Commission which declared unwillingness to consider an organic change in the Canadian constitution. As many others, Peel too, feared for the welfare of the British if the French should gain undue predominance. "There was a British population in their provinces which had a right to look up to this country, not for predominance, not for exclusive privileges, but for British connection, on the faith of the constitution which this country had framed for them."⁽¹⁹⁾ Consequently he was opposed also to separation from the colony, and considered that the only practical course, in view of the conduct of the Assembly in Lower Canada, was to support the measures proposed by the government, both when Russell proposed his Resolutions in 1837 and later when it became necessary to suspend the constitution of 1791.

The Earl of Aberdeen, who had been Colonial Secretary during Peel's brief administration, did not deny that the Assembly had grievances, but he believed that most of them had been,

(19) Id. 37: 1284: Ap. 14, 1837.

and others were being, redressed. The Canadians would be the "most thriving, happy and industrious people on the face of the earth, if unfortunately, they were not exceedingly ignorant, and therefore easily to be led astray by wicked and designing men." (20) He attacked with ability, but without rancour, the failure of the British government to take measures to avert the calamity of insurrection. Unlike most of the Tories, he was optimistic. Recalling Burke's words of the Earl of Bathurst, (21) who had witnessed such great progress in the early American colonies, "He thought that with their present provinces of North America, there was no reason why they might not hope that their children would behold in them more increase and prosperity than all Lord Bathurst had ever lived to witness." (22)

The Earl of Ripon, who had been Colonial Secretary to Earl Grey during a very turbulent period in home politics, while not definitely affiliating himself with the Tory party adopted a very similar attitude. During his own tenure of office he had wished to act upon the "recommendations of the Canada Committee" of 1828, and "to make the government of the colony as conformable to the principles and constitution of this country as he possibly could." (23) He considered that when he had introduced the Canada Revenue Bill in 1831 he had acted "on an imprudent

(20) Id. 40: 648: Feb. 2, 1838.

(21) E. Burke: Speech on Conciliation with America. Burke's works. Bohn's Standard Library.
G. Bell: London. 1883 I: p. 460.

(22) Hansard. 3rd Series: Vol. 40: 663: Feb. 2, 1838.

(23) Id. 38: 729: May 9, 1837.

confidence in the reciprocal measures of the Assembly of Lower Canada." "He had been rather astonished at the new light which had broken in upon the House of Assembly after these despatches, respecting the necessity of an elective council."

"The sentiments since expressed by the Assembly of Lower Canada he did not consider to be in accord with those of the people at large" and were "in his humble judgment...of such a nature as called for the interference of the Imperial parliament in order ...to remedy the evil arising from the non-performance of the legislative functions of that Assembly, and prevent the colony being left a prey to mischievous and designing men." He thought the government culpable for not having provided greater security against insurrection. As Whig Colonial Secretary Lord Ripon had been consistently conciliatory, but, disillusioned by the lack of generosity exhibited by the Lower Canadian Assembly, he had lost faith.

Lord Ripon's successor in the Colonial office, E. G. (Lord) Stanley, who had also broken with the Whig party, "was sure that it was an accidental expression that fell from the noble Secretary for the colonies (Lord Glenelg) to call the Canadians an independent people."⁽²⁴⁾ The demands of the Colonial Assembly, both in regard to the legislative and Executive Councils, he considered beyond reason - "rights and privileges which the mother country did not possess herself." "The concession of an elective legislative council would remove the only check to the tyrannical power of the dominant majority."

(24) Id. 37: 111: Mar. 8, 1837.

and would consequently endanger the welfare of the enterprising and enlightened British minority. In the demand for an Executive Council responsible to the Assembly "was confounded altogether the wide and manifest distinction between an independent and subordinate state; the King was subordinate to no one; the King's ministers were responsible for him to the country." The Governor of a colony, however, was "responsible to the Crown here, to the ministry here; he acted under the orders of the ministry, and for his acts were the ministry responsible to the legislature. To impose on him...a double responsibility... would be to constitute two independent legislatures interfering with and counteracting each other." (25) The chief source, however, of Lord Stanley's difficulty was the fact that he "could never hear without horror the combination of these two words 'French Republicanism.'" "

To draw a sharp line of distinction between the less rigid Tories and the less liberal Whigs of the government group is impossible. Neither group perceived a middle way between the existing system of direct responsibility on the part of the Governor to Downing Street, and the absolute independence of the colonies.

Viscount Melbourne as Prime Minister appeared to take little interest in the Canadian situation. He spoke of the "unreasonable and unpracticable reform demanded in the Canadian constitution by the House of Assembly," (26) and the "dereliction

(25) Id. p. 118.

(26) Id. 40: 220: Jan. 18, 1838.

of duty on the part of the Legislative Assembly of Lower Canada". Whether from disinclination to take trouble, or because of his apparent conviction that a policy of extreme "laissez-faire" was alone satisfactory, coupled with a great respect for existing laws, he was very reluctant to interfere in Canadian affairs. He followed rather than led in proposing government measures to cope with insurrection.

While Lord Glenelg, who held the seals of the Colonial office during the most critical years, had very considerable 'natural abilities,' and was actuated by the best of motives, he lacked initiative. His desire that the problem should be solved was real, and his interest in the welfare of the colonies was genuine. The direction of affairs was left in his hands until the lack of an active policy and the continual temporizing, coupled with the foolish imprudences of Sir Francis Head in Upper Canada, provoked rebellion.

In his speech introducing Russell's Resolutions in the House of Lords, Lord Glenelg declared his policy to be firstly, "to respect the spirit of the constitution of the province;" to "separate as speedily as possible the really loyal and honest from the factions party in the province, by the redress of all real grievances"; "to institute a searching inquiry into the nature of their complaints"; "to observe especially the disposition of the adjoining British provinces;" and, finally, "in all cases to act in such a manner as should become the honour and dignity of the British Crown and parliament." (27) It was an amiable declaration which meant practic-

(27) Id. 38: 712: May 9, 1837.

ally the maintenance of the existing constitution. The inquiry of the Gosford Commission produced no valuable result; the "real grievances," if they existed, remained unredressed. Lord Durham's inquiry resulted in a recommendation which Glenelg had not the opportunity, nor the Government the will, to adopt. Nor is there reason to suppose that Glenelg would have executed Lord Durham's policy.

"He felt bound to say that up to the year 1828, the Assembly had just cause of complaint, but he was equally bound in justice to say that subsequently to that year their case was not so good."⁽²⁸⁾ "The question at issue was no minor grievance, no misconduct or maladministration." "Every pretext had vanished; there was no doubt as to the refusal of supplies; legislation was at a standstill." "They insisted upon the application of the elective principle to the legislative council; they required the dominion, unqualified and unconditional, over the revenues of the Crown, and the responsibility of the Executive Council to such a degree that the officers should be dependent upon the will of the Assembly."⁽²⁹⁾ The Legislative council would become merely an echo of the Assembly; the British party would see in such a provision the "proscription of their own race." If the Executive Council were subjected to such a responsibility, "the provincial Assembly would decide in matters of foreign policy, and exercise its own judgment independent of the parent country;...the result of which" would be a series of independent states."⁽³⁰⁾ In Lower

(28) Id.

(29) Id. 40: 167: Jan. 18, 1838.

(30) Id. 38: 722 : May 9, 1837.

Canada "The majority were unfriendly to commerce, to the spread of intelligence, to the diffusion of education." "The less liberal were fighting under the colour of popular institutions." (31)

The province of Upper Canada "I might almost say, that nation, was divided from others... All the commercial interests of the people of Upper Canada were controlled by foreign legislatures...or...by legislatures between whom and themselves there were considerable distinctions in manners, habits, views, and political principles." (32) To remedy the evil, Lord Glenelg, who had "a strong objection to a legislative union," supported Lord John Russell's proposal for a joint Commission chosen from the legislatures of both provinces. The "project of a federal union" of all British possessions in North America was, however, "one for deep and future deliberation."

Lord Glenelg's Canadian policy was marked by almost complete failure. The Earl of Gosford, who was at first welcomed by the Canadians, became obnoxious to them when Sir Francis Head published certain portions of the instructions to the Commissioners. The instructions given Gosford respecting changes in the legislative and executive councils appeared to indicate to the Assembly that "the researches authorized by Your Majesty, for the purpose of ascertaining the means of doing justice to your Canadian subjects, were, on several of the most essential points, limited by preconceived opinions and anticipated decisions." (33) Lord John Russell's resolutions, too, served to handicap Lord

(31) Id. 40: 167: Jan. 18, 1838.

(32) Id. p. 162.

(33) A.G. Doughty Report of the Public Archives. Ottawa. 1924. Minute on the State of Affairs in Lower Canada in November, 1836 - Lord Glenelg. p. 218.

Gosford, and to increase ill-feeling in the Assembly. If the resolutions were executed, they declared, British supremacy "will no longer depend upon the feelings of affection, of duty, and of mutual interest, but on physical and material force."⁽³⁴⁾ The projected reforms, however, if made effective would "become a powerful motive with us for examining whether the Legislative Council, in its present form of constitution, could even for a time cooperate with us in a system of legislation conformable to the interests of the people, and of thereby ascertaining whether it shall have been so remodelled as to induce us to manifest confidence in His Majesty's Government." The death of William IV prevented Glenelg from carrying the reforms which he had planned.

The Gosford Commission did not favour an Executive Council responsible to the Assembly. In a Minute submitted to the Cabinet, Lord Glenelg wrote: "The argument opposed to it may be summed up in a few words: it is the essence of a Colonial Administration, that it should be carried on in conformity with, and subject to, the general policy of the mother country. This can be effected only by enforcing the responsibility to the Metropolitan Government of the Executive power in the subordinate country."⁽³⁵⁾ The Commission recommended, however, "that the appointment of the Councillors should not last during good behaviour, nor require for its termination the assignment of any fault, but be liable to revocation whenever, on general grounds

(34) Id. p.244. Address of Assembly quoted by Lord Glenelg in a "Minute," continuing the foregoing narrative down to November 1837.

(35) Id. p.233-5. Minute. 1836.

the Governor might deem it advisable," and that the Governor should consult his Council more frequently.

If Lord Glenelg's proposals, which were foreshadowed by the Resolutions, had been carried, much of the trouble might have been averted. To improve the constitution of the Legislative Council he proposed an "addition of persons holding opinions corresponding, in general, with those of the majority of the Assembly, although not concurring in their extreme demands." (36) To reform the Executive Council "the selection of members from the Houses of Legislature, would not be established as a positive and inflexible rule, but only as a custom to be observed as far as possible." The Governor "should not be at liberty to propose any expenditure to the Assembly without a previous consultation with the Executive Council" but "should not be subject to any inflexible rule as to the other subjects on which he should consult the Council, but should be required to avail himself of their advice and assistance as far as might be compatible with the maintenance of his own free agency."

In Upper Canada Sir Francis Head's conduct drove the fiery MacKenzie to insurrection. The fact that Head was "grossly ignorant of everything that in any way related to the government of our colonies" (37) was proven by his administration. His insistence upon his responsibility to the Colonial Secretary, and his refusal to consult his councillors, resulted in their

(36) Id. p.245-6; Minute. 1837.

(37) A Narrative by Sir F. B. Head. Murray: London. 1839. p.25.

resignation. The Governor thought that "strong republican principles have leaked into the country from the United States." (38) "The Lieutenant-Governor is the King's Sentinel." (39) In the election which ensued, in which Head actively engaged in defence of the Royal prerogative and monarchical institutions, he gained a majority in the Assembly; but the unfair means which he had used served to enrage the malcontents. It was not, however, because of his policy, but because of his refusal to reinstate Mr. George Ridout, a judge whom he had dismissed, that Head was finally recalled.

In the instructions to Lord Durham, Lord Glenelg wrote, "The most important object of your Lordship's mission is, however, the settlement of her Majesty's dominions in North America on such a basis as may afford the reasonable prospect of an enduring tranquillity under a form of government corresponding in its general principles with that of this kingdom, so far as such correspondence is compatible with the essential differences which must subsist between the Metropolitan state and its provincial dependencies." (40) No system was practicable "unless it be adapted to the affections and circumstances of the people whom it professes to benefit." The "prime essential" of the system which should be enforced was that it should "work well." Before Lord Durham's report was submitted to Parliament, Lord Glenelg had left the Colonial office.

(38) Id. p.42.

(39) Id. p.88.

(40) A.G.Doughty. Rep. Pub. Arch. p.28 Glenelg to Durham
Apr. 21, 1838.

Glenelg's administration was not, however, without a gleam of hope. Although he refused an audience to Robert Baldwin in 1836, he listened always to the complaints of the reformers from Nova Scotia and New Brunswick.

In an address to the King the Assembly of Nova Scotia petitioned that he should "grant us an Elective Legislative Council, or to separate the Executive from the Legislative Council, providing for a just representation of all the great interests of the Province in both; and, by the introduction into the former of some members from the popular branch, and otherwise securing responsibility to the Commons, confer upon the people of this province ... the blessings of the British connection."⁽⁴¹⁾ "The language of the Address," wrote Lord Glenelg to Sir Colin Campbell, "would seem to indicate an opinion which yet is not distinctly propounded, that the Assembly of Nova Scotia ought to exercise over the public officers of that government a control corresponding with that which is exercised over the Ministers of the Crown by the House of Commons. To any such demand Her Majesty's Government must oppose a respectful but at the same time a firm declaration that it is inconsistent with a due advertence to the essential distinctions between a metropolitan and a colonial government, and is therefore inadmissible."⁽⁴²⁾ To the division of the Councils, although he doubted the wisdom of such a measure, Glenelg assented.

(41) Id. p.310. Address, Assembly of Nova Scotia to King.
13th April, 1837.

(42) Id. p.310-2. Glenelg to Sir C. Campbell. 6th July, 1837.

When William Crane and L. A. Wilmot negotiated with Lord Glenelg on behalf of the Assembly of New Brunswick, "No demand was made for a change in the constitution of the Legislative Council, nor for what is called a responsible Executive Council. On the contrary, it was clearly understood that any such changes were foreign to the views of the Assembly."⁽⁴³⁾ Without recognizing the principle of Executive responsibility, Glenelg instructed Sir Archibald Campbell "to ensure the presence in the Council of gentlemen representing the various interests which exist in the province, and possessing at the same time the confidence of the people at large."⁽⁴⁴⁾ The Assembly of New Brunswick, to which had been granted the control of the revenues in return for a civil list, expressed its complete satisfaction.

It is easy to criticize Lord Glenelg. At a time when a change of policy was required to avert disaster, he temporized. His strange error in choosing, or blundering upon, Sir Francis Head as Governor of Upper Canada is his chief indictment. Gosford might have succeeded in restoring confidence, if the success of his policy had not been jeopardized by the opposite course pursued by Sir Francis Head, who, by his own admission, was aware beforehand that his conduct would prejudice Gosford's position.⁽⁴⁵⁾ On the other hand, the instability of the Whig government demanded Glenelg's attention to the

(43) Id. p.229. Minute. 1836.

(44) Head. op.cit. p. 159. To Head this despatch was equivalent to "Mene, Mene, Tekel, Upharsin." (p.165)

(45) See Id. p. 46.

political temper of Great Britain. Only the Radicals, who lacked not ability but numbers, desired a marked change of principle in colonial government. The loss of the support of the many who held the traditional Tory view, would not have been compensated by the gain of a few. The measures which Glenelg proposed, but was unable to introduce, might have instituted such a practice in the colonies as would have satisfied the majority in both countries.

Sir George Grey acted as Lord Glenelg's parliamentary undersecretary. In his speech upon the Resolutions of 1837 he called attention to the fact that, "It was to be particularly remarked... that this outcry was raised only by the House of Assembly of Lower Canada," while Upper Canada remained loyal, and the Assembly of New Brunswick actually "entertained a deep sense of the obligations which it owed his Majesty's government for the promptness with which it had attended to their wishes." (46) The terms which had been gratefully accepted by New Brunswick had been refused by the Assembly of Lower Canada, who "insisted upon the absolute concession of their demands involving as they did the independence of the colony, and its separation from England." "The propositions of the House of Assembly were for the most part altogether inconsistent with the relations existing between the mother country and her colonies; and it was the indispensable duty of the government to oppose propositions the ~~direct~~ ^{direct} and immediate tendency of which was the dismemberment of the Empire." p Unquestionably the most

(46) Hansard. 3rd Series. Vol. 36: p. 1356: Mar. 6, 1837.

forceful figure on the government benches was Lord John Russell. He alone of the Cabinet definitely enunciated in parliament a theory of colonial government, which he believed to be absolutely beyond cavil.

Most of the measures dealing with the Canadian imbroglio -- the Resolutions of 1837, the suspension of the constitution and the appointment of Durham in 1838 -- were introduced in the House of Commons by Lord John Russell. In his speech upon the Resolutions he pointed out that "the pretensions put forth by the Assembly of that province (Lower Canada) are not supported by the general concurrence of the other provinces of North America subject to the Crown of Great Britain."⁽⁴⁷⁾ He believed that the demands were the consequence "rather of past irritation than demands, founded upon real and practicable wants, without the effectual redress of which we could not hope for future and permanent tranquillity." He did not, however, wish to censure the Lower Canadian Assembly since, he said, "I consider that this course so much resembles the course which other popular assemblies have on similar occasions taken, that instead of it being an act of self-will or caprice, or presumption, it seems rather to be the obligation of a general law which affects all these disputes between a popular Assembly on the one hand, and the Executive on the other."⁽⁴⁸⁾ Popular assemblies are hardly ever wrong in the beginning, and hardly ever right at the conclusion of such struggles." "They are

(47) Id. 36: 1267: Mar. 6, 1837.

(48) Id.

generally struggles which begin with seeking a remedy of well-founded and existing grievances, and end with a declaration of suspicion, and distrust of all authorities at present existing." While Russell perceived that conflict seemed to be the 'general law' under such a system as prevailed, he refused to introduce another principle of government.

"It seems to me," he said, "that it was intended to establish in Canada a general resemblance to the British Constitution, which I think impossible in any colony." (49) Of an Executive Council responsible to the Colonial Assembly he said, "I hold this proposition to be entirely incompatible with the relations between the mother country and the colony" which "require that his Majesty shall be represented not by a person removable by the House of Assembly, but by a governor sent out by the King, responsible to the King and responsible to the parliament of Great Britain." "That part of the constitution which requires that the ministers of the Crown shall be responsible to parliament, and shall be removable if they do not obtain the confidence of parliament is a condition which exists in an Imperial Legislature only." "If such a condition existed it would be virtual independence." "Canada would cease to be a colony and would be regulated by an authority there independent and subversive of the power of the British Crown." "They do not possess some privileges in the Imperial government of the colony, which it is not in their nature, as colonists, to enjoy." (50) "We consider that these demands are inconsistent with the rela-

(49) Id.

(50) Id. 36: 1300: Mar. 6, 1837.

tions between a colony and the mother country, and that it would be better to say at once, 'let the two countries separate,' than for us to pretend to govern the colony afterwards." (51)

In proposing the suspension of the constitution of 1791 he declared, "We do not propose to govern Canada in any other way than that which must tend to the welfare of its inhabitants." (52) "If the time be not come for the separation to which I allude, at least let us not consent to the separation of a small portion of persons who have carried their ambitious designs into effect by breaking into open rebellion in Lower Canada." (53)

Like many of the Tories, Russell feared for the welfare of the British minority if the French party should predominate in all the branches of the Canadian Legislature.

The Marquess of Lansdowne "believed that the system of concession, pushed to the utmost verge of reason, and attending to all the real sentiments and wishes of the inhabitants of that country, had been successful, if not in detaching, at least in affording moral support to many individuals in that country who might otherwise be found at the head of the insurrection." (54) The methods adopted by the Assembly of Lower Canada were "calculated to defeat the end of all government." What might have the appearance of delay on the part of the

(51) Id. 37: 1277: Apr. 14, 1837.

(52) Id. 40: 37: Jan. 16, 1838.

(53) Id. 40: 40: do.

(54) Id. 40: 237: Jan. 18, 1838.

government was merely "reluctance to have recourse to measures of constraint and violence." (55) He was not averse to a "peaceful separation" of the two countries, though it would be necessary first to "restore tranquillity."

Lesser lights among the Whigs were Mr. Cayley, Mr. Clay, Edward Ellice, Rigby Wason, and M. T. Baines. Ellice thought that "the government of Canada would be as impracticable as the government of Ireland would be, if one party were allowed to hold the purse strings of the state." (56) An elective legislative council would place the English in the hands of the French party. To propose at this time an union of all the North American colonies would "be a most inflammable topic" on account of the "different feelings, different laws, different interests." Wason was somewhat more liberal. He moved in amendment to Russell's Resolutions, "That the House of Assembly in Lower Canada, by withholding the supplies necessary for carrying on the government, have adopted the only constitutional means of obtaining a remedy for their complaints, and the reasonableness of which this house has recognized by affirming the 4th and 5th Resolutions; and it is therefore expedient to await the result of the plan about to be proposed by his Majesty's government for redressing the grievances complained of by the Canadian parliament." (57) Baines, like Lord Ashburton among the Tories, thought that the expense involved in governing the colonies rendered them a burden.

(55) Id. 40: 863: Feb. 8, 1838.

(56) Id. 40: 486: Jan. 23, 1838.

(57) Id. 38: 234: Ap. 24, 1837.

Like the government group as to theoretic principles of government, but unlike them in their willingness to recognize necessity and adapt principles to facts, were H. Labouchere and Viscount Howick. Both were staunch whigs, despite a difference. Both struck a hopeful note in their speeches upon the Canada Revenue Bill in 1831. Labouchere believed that the British parliament "owed it to its own character to give to its own colonists as much happiness and freedom as it was in its power to bestow." Lord Howick "rejoiced ... that the Canadians had had the intelligence and the power to assert their rights."⁽⁵⁸⁾ "He was desirous of protecting them from aggression, of cherishing their prosperity, and of combining their efforts with those of the mother country - in peace for the common welfare, and in war for the common defence. On such principles he should wish the connection to continue for ages." He deprecated any attempt on the part of parliament to "suppress the spirit of liberty."

While Labouchere was equally liberal he was scarcely as wise as Lord Howick. "His object to the last hour during which that connection lasted" was that "we should act toward these colonies liberally and justly, so that whenever the moment of separation might come ... we should be able in the face of the world and of posterity to have a good case."⁽⁵⁹⁾ "He had always so strongly felt the truth... that it was only possible to retain it as a British possession, in any way that could be useful

(58) Id. 2: 690: Feb./8, 1831. Labouchere spoke immediately afterward.

(59) Id. 37: 105: Mar. 8, 1837.

to either party, by carrying with us the reason and affections of the people of that country, that he for one always thought it was our interest and our duty to leave to them the direction of their own concerns." Had an elective legislative council been established in 1791 it might have been successful; after considerable quarreling each of the opposing parties would have made concessions. Of the demand for Executive responsibility he said that "He really could hardly conceive a public body of the respectability of that House of Assembly making any such claim. It was incompatible with any relation between a colony and the mother country." (60)

Lord Howick "was not prepared to say, that any mode of carrying on the government under a popular constitution could be devised by which a permanent resistance to the popular branch of the legislature could be maintained... He still most earnestly clung to the hope of an accommodation with the House of Assembly and the people of Lower Canada." (61) "They would not be right in saying to a people of the numbers and the intelligence that the Canadians had now attained 'Here is a constitution not more than forty years in existence - here is a novel experiment in legislation - here is a system that was never heard of before - here is an anomaly in legislation - here is one that you feel the effects of, and which you call upon us to alter but which we are determined to maintain.'"

"In all free countries the institutions ought to be such as

(60) Id. p. 109.

(61) Id. 37: 130: Mar. 8, 1837.

were calculated to produce the most good to the great body of the people." "He... never would say to the people of Canada that where a necessary improvement was required, to that necessary improvement he would never consent." "I believe that permanently to maintain our authority against the will of the great body of the people is impracticable, and that in attempting to do so we should be driven to acts of harshness and of oppression, which would lower the high character of this country." (62)

The principle of nomination as applied to the Legislative Council he considered to be vicious, and in need of alteration.

He was perfectly orthodox in his conception of Executive responsibility. "If the Governor is to be responsible to the Crown and to parliament, it is impossible that the officers serve under that Governor should also be responsible to the local legislatures, as the ministers of the Crown in this country are, to the Imperial legislature, because responsibility necessarily implies power, and if the governor is not to exercise any more direct authority than the sovereign in this country, and if a greater personal responsibility is not to attach to him, the whole notion of a colonial administration would be destroyed." (63) Yet he could write to Lord Durham after reading his report, "I think that... we shall be able to agree very much as to what ought to be done as I entirely concur with you

(62) Id. 40: 569: Jan. 26, 1838.

(63) Id. p. 577.

in your leading notions of allowing the colonists the most complete self-government upon matters of mere internal regulation and local interest, and of binding the different provinces together by the closest and strongest ties which it may be practicable to establish."(64)

Charles Buller, the Earl of Durham, and Smith O'Brien were moderately radical. Before his Canadian experience, as Chief Secretary to Lord Durham in 1838, Buller exhibited little knowledge of the Canadian situation, but he revealed a wise and a liberal spirit. The Resolutions of 1837 he regarded as "not merely a repetition, but a servile imitation, of the blunders of a former age."(65) In them "a blow was aimed at the constitutional rights of a whole population." "In a few years these resolutions would be universally condemned as unwise and uncalled for."(66) "The House of Assembly might have committed an error, but the government should not have taken advantage of that error to call upon parliament to violate the constitution of Canada, and thus summarily punish a whole people." Even after the insurrection he thought "there was not a shadow of ground for separation, and one ground of object^{ion} to her Majesty's ministers had been, that they had rather arbitrarily assumed, that the demands of Canada would lead to separation."(67) Although Lord Durham's report was not discussed in parliament during Glenelg's tenure of office, it was actually completed before

(64) A.G.Doughty. Op.Cit. p.338-40: Lord Howick to Earl of Durham. Feb.7/39.

(65) Hansard 3rd Series Vol.37: p. 1268: Apr. 14, 1837.

(66) Id. 38: 250: Apr. 24, 1837.

(67) Id. 40: 87: an. 16, 1838.

Glenelg retired. With the recommendations made in that report Charles Buller's name, almost equally with Durham's, is indissolubly linked.

In parliament the Earl of Durham revealed little of the eloquence and brilliance so evident in his report. On announcing his acceptance of the Governor Generalship of Canada, to which office he had been appointed almost immediately upon his return from Russia, he stated, in the House of Lords, his intention "to effect such a kind of settlement as should produce contentment and harmony amongst all classes, enable me to establish, not temporarily, but lastingly the supremacy of the laws, and finally, to leave behind me such a system of government as may tend to the general prosperity and happiness of one of the most important of her Majesty's dominions."⁽⁶⁸⁾ He desired "in the first place to restore... the supremacy of the law, and next, to be the humble instrument of conferring upon the British North American provinces such a free and liberal constitution as shall place them on the same scale of independence as the rest of the possessions of Great Britain, and as shall tend to their own immediate honour, welfare, and prosperity."

Durham submitted his report to Lord Glenelg at the end of January, 1839. With certain specified reservations, he recommended that the Governor should "be instructed to secure the co-operation of the Assembly in his policy, by entrusting its administration to such men as could command a majority."⁽⁶⁹⁾ "The Crown... if it has to carry on the government in unison with a

(68) Id. 40: 241: Jan. 18, 1838.

(69) Earl of Durham. Report. ed. Lucas. Oxford. 1912. p. 279-80.

representative body, it must consent to carry it on by means of those in whom that representative body has confidence." (70)

Smith O'Brien, like Buller, declared that the Canadian demands might be granted without endangering the connection. He thought that the Canadians would have succeeded in their just demands if they had "abstained from revolt," and "contented themselves with constitutional resistance." (71) "So far as he could trace, he thought many of their claims were conceived in a wise spirit." As it was constituted the Executive Council was responsible neither to the British parliament nor to the Canadian legislature. The demand for an elective legislative council he considered unwise. "He was for allowing the colony self-government in connection with the mother country... If they demanded an elective legislative council, give it them; if they asked for a responsible executive, let them have it."

The extreme wing of the Radical group was composed largely of men of very considerable ability. They had not, however, Buller's moderation, nor Lord Durham's respect for existing institutions. Entirely unlike the ultra-conservatives in their attitude of mind, they favoured measures entirely different.

Among the ablest and least factious of the Radicals at this time was J. A. Roebuck. He acted as the paid agent for the Assembly of Lower Canada, and consequently spoke always from their standpoint. In his first important speech upon Canada, while advocating Canadian claims, he struck another note which

(70) Id. p.278.

(71) Hansard 3rd Series. Vol.40: 287: Jan.23, 1838.

pervaded all his speeches; "It was quite clear in the natural course of things, that the Canadas and England could not remain joined together as they now were, but for a very small number of years." (72)

The source of dissatisfaction in Canada Roebuck considered to be fundamentally identical with that of Ireland, with that of the American colonies in 1774, and with that of the English people during the seventeenth century. "The cause of Canada and Ireland... is the cause of self-government and of religious liberty;... it is the cause of the suffering many who resist the overbearing insolence of a miserable monopolizing minority." (73) "Canada and Ireland have both been conquered by England; the majority in both countries are of the Roman Catholic persuasion; and in both countries a small minority who call themselves English, have hitherto domineered over, and insulted the people at large, whom they always stigmatize as foreigners and aliens. By the power of England this monopolizing minority has been supported in both provinces." (74) "I assert boldly that this is not a quarrel of races but of principle." "You told them you had given them a constitutional power, which you considered one beyond all price; you told them they were the House of Commons of Canada and you now punish them for putting faith in your assertions."

"The similarity of the language used by both parties to that employed in the year 1775, is absolutely startling, and if

(72) Id. 33: 930: May 16, 1836.

(73) Id. 36: 1335: Mar. 6, 1837.

(74) Id.

we substitute Massachusetts or Virginia for Lower Canada one record would serve for both transactions." (75)

"The House of Commons may not know that within the lifetime of most of its members there were committed acts by the English rulers of Canada very similar to those which this House had to bear in the reign of Charles the First." (76)

That the source of conflict lay in the fact that the House of Assembly had not the means of enforcing responsibility was recognized by Roebuck. "If we desire the people to be well-governed we must allow them to govern themselves." (77) "The evil is the irresponsibility of the public servants; the means by which this irresponsibility has been maintained is the legislative Council." The desires of the Assembly of Canada were twofold, firstly, to "make all the public functionaries responsible to the people whom they serve," and secondly, "to have subject to the control of the representatives of the people the whole of the revenue derived from and paid by them." "To these ends the first great means is the destruction of the irresponsibility of the Legislative council."

Roebuck heaped scorn upon the government measures. Lord John Russell's Resolutions aroused his potent wrath. "You see that demands are made to remedy a defective constitution and the noble Lord brings before your notice a pitiful evasion of the whole matter in dispute... The coming year must bring back every

(75) Id. 37: 1220: Apr. 14, 1837.

(76) Id. 36: 1340: Mar. 6, 1837.

(77) Id.

difficulty." (78) "The instant you have passed the Resolutions of the noble Lord, a wide and impassable gulf will be opened between you and your colony, the time for reconciliation will be gone forever, and the bitter lesson taught us by the empire we have already lost will be repeated." "We are on the eve of taking a step which will forever preclude all hope of peace and content hereafter... Fatal discontent will pervade the minds of the colonists, and their every aspiration will be for the happy time of their deliverance from our yoke. Whatever may be the course we may pursue, the time must inevitably come when our American colonies will become independent states... I am desirous that when this period does arrive, we may separate in peace and good will toward one another." As the government "could not carry liberal, they carried illiberal measures, if it were only to show that they could carry something." Such a measure he considered the suspension of the constitution after the insurrection, a "bill of pains and penalties." (79)

Whether wilfully, or because his information was drawn almost entirely from Lower Canada, Roebuck was blind to facts which might have illustrated the unwisdom of the extreme element in Canada. "The influence of Papineau and his friends at this moment," he said, "is precisely the same sort of power as that possessed formerly by the Adamses, the Warrens, and the Washingtons of America." (80) The difference between the two peoples,

(78) Id. p.1343. The extract which follows is from 37:1209:
Apr. 14, 1837

(79) Id. 40: 265: Jan. 22, 1838. At the Bar of the House of Commons. Roebuck was defeated in the election of 1837.

(80) Id. 40: 759: Feb. 5, 1838. At the Bar of the House of Lord.

and between Papineau and the early American leaders, was too great to admit the truth of such a statement.

Roebuck proposed an interesting system to overcome the difficulty. The Legislative council, since an aristocracy could not be "raised like asparagus," should be abolished. The Executive Council, composed of the Governor and those whom he should choose as Councillors, should be known as the Governor-in-Council, and was to have the power to amend measures sent up by the Assembly. The amended measures should return to the Assembly, and, if not withdrawn, should be sent to the Governor for his assent or veto. The direct responsibility of the Executive Councillors to the Governor would be an indirect responsibility to the Assembly, since "the House of Assembly has always been able in process of time to direct the conduct of the Governor." (81)

Joseph Hume, who espoused the cause of the Upper Canadian reformers, had none of Roebuck's eloquence. He spoke "longer, oftener, and probably worse than any other private member." He had not the confidence of the House of Commons. It is possible, however, that Hume was more moderate than most of the Radicals. It is true that, in a letter to William Lyon Mackenzie, written in March, 1834, he had mentioned "the baneful domination of the Mother Country." During the following years he spent much time in the House explaining his meaning. But in 1835 he wrote to Mackenzie, "You must have patience, and take as much as you can get quietly... We do this to get quietly what

(81) Id. 37: 1216: Apr. 14, 1837.

can be used afterwards for getting more, if that shall after trial be necessary... My friend Mr. Roebuck, and some others here, are too sanguine, and disposed to demand too much." (82) In the House of Commons, however, he seems to have been an intolerable bore.

In 1836, at a time when Robert Baldwin was in England and in communication with him, Hume thought that "the great ground of complaint was that no union or harmony had hitherto existed between the House of Assembly and the Council. The great object of the petition was that the Council selected by the governor should consist of men of principles accordant with those of the majority of the House of Assembly." (83) He moved, therefore, that the government in the colony "ought to be conducted according to the Act of 1791 with an Executive Council having the confidence of the people, and whose opinions and policy should be in harmony with the opinions and policy of the people of that province as declared by the majority of their representatives in their House of Assembly." Fox had said, "My wish is that the whole people of Ireland shall have the same principles, the same system, the same operation of government... the whole Irish government regulated by Irish notions and Irish prejudices;" Hume would have applied the same principle in Canada. Again, Fox had said, and Hume would echo, "I know of no way of governing mankind but by conciliating them." (84)

(82) Head. op. cit. p.36 quoting Hume to MacKenzie. Dec.5, 1835

(83) Hansard 3rd Series. Vol. 35:1257: Aug. 16, 1836.

(84) Id. 40: 137: Jan.17, 1836. The preceding quotation is from 37:89:Mar.8, 1837.

Hume disapproved of government men and measures.

Glenelg he considered thoroughly incompetent. Sir Francis Head's conduct was indefensible. Lord John Russell's Resolutions would only add to the difficulties. The suspension of the Canadian constitution was unjustifiable.

Closely in agreement with Roebuck and Hume were Sir William Molesworth, Harry Leader, Henry Ward, George Grote, and Mr. Warburton.

Molesworth thought that in Canada the "vast majority of the people" was opposed to a "miserable, monopolizing minority."⁽⁸⁵⁾ Since "it was the control of the purse which constituted the essence of freedom" Lord John Russell's resolutions were "a vile and unholy crusade against the rights and privileges of freemen." "Perhaps the British Legislature had such a power, but not the right; and such a power being founded on force alone was consequently tyrannical." In view of the dissatisfaction existing in all the colonies, Nova Scotia, Prince Edward Island, New Brunswick, as in Lower Canada, he proposed separation as the wisest course.

In moving for an elective legislative council Leader declared that the contest in Canada was "between the people and a nominated council... an oligarchy and a democracy."⁽⁸⁶⁾ "He was considered the best patriot who most embarrassed the detested...government."⁽⁸⁷⁾ While he admitted the chief cause of

(85) Id. 36: 1331: Mar. 6, 1837

(86) Id. 36: 1311: Mar. 6, 1837

(87) Id. 39: 1434: Dec. 22, 1837

discontent to be the twenty years of Tory misgovernment, he thought the measures taken by the Whig government were entirely inadequate. Lord John Russell proposed "by way of remedy not that the legislative Council should be so reformed as to act in harmony with the other estates, but that the House of Assembly and the great body of the people should be made to conform to the vicious principles and practice of the Executive Council."⁽⁸⁸⁾ After the rebellion he believed the "only remaining course is an amicable separation of the two countries."

Ward objected to the Resolutions upon the ground that they provided no permanent solution, and, in fact, attacked the only method by which the colony could check abuses. "The question was, whether or not the government should be responsible? and to whom?... He would wish to see the means of enforcing responsibility in the hands of the Canadians."⁽⁸⁹⁾ "As the strongest power...we should...make a conciliatory offer." The Colonial connection, he thought, could not survive long; "when a colony grew to a certain extent, and became ripe, it would drop off."

On all major issues, Grote supported Roebuck. He warned the government to "recollect that it was not the same thing to put down by armed restraint and to eradicate discontent."⁽⁹⁰⁾

Although Warburton held the view that separation from Canada would be "to get rid of a certain loss of money," he be-

(88) Id. 36: 1307: Mar. 6, 1837.

(89) Id. 37: 1253: Apr. 14, 1837.

(90) Id. 40: 63: Jan. 16, 1838.

lieved the time of separation might be deferred if colonial demands were granted. If a war should result in the triumph of Great Britain they should merely "make a solitude and call it peace." The colony ought to be set free, "seeing that emancipation was as natural an event in the history of the colonies as death to an individual." (91)

Charles Villiers and Colonel Thompson favoured separation as the only true economy. The former saw in the Canadian demands "nothing but what a free, intelligent, and spirited people would require." (92) Thompson could not "avoid recommending his Majesty's Government to adopt on this occasion the advice of the Scriptures, and 'to agree with their adversaries quickly.'" (93)

Harvey "would ask whether an instance could be suggested ... where the majority of a people had enlisted themselves in support of a mere abstract proposition unconnected with any possible or immediate advantage to themselves." He had not "so little faith in the stability of the constitution as to think it would be impaired in power if Canada should be granted some independence of government." (94)

Dillon Browne agreed with Mr. Fox, who had said that "he conceived the only means of retaining a distant colony with advantage was to enable it to govern itself." (95) He was suspicious of the agreement which seemed to exist between the Whigs

(91) Id. 40: 107: Jan. 17, 1838.

(92) Id. 40: 552: Jan. 25, 1838.

(93) Id. 36: 1333: Mar. 6, 1837.

(94) Id. 39: 150: Dec. 22, 1837.

(95) Id. 40: 119: Jan. 17, 1838.

and Tories.

Stressing the analogy between Canada and Ireland, Daniel O'Connell drew a distinction between the Orange party and the majority of the people. The "Canadians did not ask for that which other colonies had not." "The veto of the Crown would still remain." "The British parliament had a right as the stronger but no other right." (96)

It would scarcely be true to call Lord Brougham an extreme Radical. As Whig Lord Chancellor Brougham had proven his tremendous capacity, and had accomplished some useful reforms. In 1833 he had presented a petition from Lower Canada and had spoken upon it with moderation. Lord Melbourne's refusal to re-appoint him to the Woolsack in 1835 drove him into the most violent opposition, and thenceforth for the Whig government and its measures he had an infinite contempt. It was at this time that Brougham wrote to Lord John Russell; "My rule is simple, I always oppose whatever I hear said - if A abuses B, I defend B and vice versa." (97)

Of the failure of the government to propose the measures which had been promised when Russell promulgated his Resolutions, he said, "It would indeed seem, that just about this time some wonderful change had come over the minds of the Ministers, depriving them of their memory and lulling even their senses to repose - that something had happened, which cast them

(96) *Id.* 38: 241: Apr. 21, 1837.

(97) "Early Correspondence of Lord John Russell. 1805-40." ed. Rollo Russell. Unwin: London. 1913. Vol. II p. 121. Brougham to Russell.

into a sweet slumber - a deep trance - such as physicians tell us not only suspends all recollection of the past, but makes men impervious to the impressions from surrounding objects through the senses." (98) "They never pause until the season has arrived for acting."

Before the Canadian insurrection Brougham's attitude was not unpromising. "He was fully convinced ... that as far as circumstances would allow, making allowance for the difference between a colony and independent state, they ought to give the same constitutional principles of legislation to the provinces that they all admitted were necessary for the mother country. The Commons of England had the control over the executive by means of the control they had over the public purse...and he thought it was only just and fair that they should possess it inasmuch as their power as regards the Crown would be impotent without it." (99) "He could not go so far as to say that there were no other principles of government but that of leaving the people to govern themselves." "To treat the colonies well, to do them justice, to measure out to them the same justice, and the same conciliation as had been given and was still in the course of being given, to the subjects of the Crown nearer at home, was the true, the safe, the honest and therefore the best course of policy that could be pursued, and he only heartily regretted that he saw so little chance of its being adopted."

"The power which we told them we had...bestowed and boasted of

(98) Hansard. 3rd Series. Vol.40: p.201: Jan.18, 1838.

(99) Id. 38: 735: May 9, 1837.

our kindness in bestowing, the short-sighted, simple-minded men, proceeded to use, as if they really believed they had gotten it."(100)

After the rebellion he favoured an early, peaceful separation. The policy adopted when Durham was appointed seemed to be to "refuse all they ask;... mock them with hopes never to be realized;... punish them by the infliction of a dictator and a despotism."

Lord Brougham constituted his own party. Had he been able sometimes to forget his personal grievances his vast talents might have been used to greater advantage. His temperament rendered him incapable of cooperation.

None revealed an intimate knowledge of Canadian affairs, with the possible exception of Roebuck and Joseph Hume, who had little influence in parliament. The fixed attitude of mind revealed by the Tories was founded not upon knowledge nor observation, but determined by prejudice. The government group, less inclined than the Tories to employ strong measures to maintain the dignity and honour of the British Crown and parliament, differed from them only in degree. The ultra-radical group, desiring always the maximum of concession, was equally as uncompromising as the Tories, and unwilling to moderate its demands. The Tories believed the Canadians did not know what might benefit themselves; the Whigs sought delay in order to investigate grievances which increased because of the delay, and the increase of which required further inquiry:

the Radicals exaggerated the claims of the Canadian majority and declared that the people best understood their own interests. The Tories could not consider a republic a "legitimate offspring of Great Britain"; a republic was to the Radicals the ideal state. The Tories and Whigs considered the advantage of colonial possessions too great to justify their abandonment; the Radicals thought that to lose them would be to "get rid of a certain loss of money." All parties agreed in thinking that compliance with Canadian desires would be a prelude to separation, although the Radicals thought that by concession the break might be postponed.

THE RUSSELL REGIME.

In February, 1839 Glenelg was forced out of the Cabinet, and the Marquis of Normanby was recalled from the Lord Lieutenancy of Ireland to assume the Colonial portfolio. On announcing his resignation Lord Glenelg "said very little, but that little conveyed a sense of ill-usage and a mortified spirit."⁽¹⁾ During his administration, Greville writes, "there have been three parties, Stephen, Glenelg, and the Cabinet; and though the first may have exercised a great influence over the second, it has often happened that both have been overruled by the last, and neither Head nor anybody else can do more than conjecture what has really been the secret history of our colonial policy. Glenelg, however, was evidently feeble."⁽²⁾

During Normanby's administration a bill extending the power of the Special Council, until the union of the two provinces could be carried, evoked considerable discussion. It did not indicate a change in colonial policy. Lord Normanby and Lord John Russell exchanged portfolios in August, 1839. Simultaneously Lord Howick resigned office and was replaced by Macaulay. Of the Cabinet shuffle at this time, Greville writes, "The world believes that the change of the one takes place because Normanby is unequal to the work of the colonies, and the resignation of the other because Howick was not himself appointed Colonial Secretary."⁽³⁾

(1) C. Greville. Memoirs, ed. Henry Reeve. Longmans; London. 1909. IV 167. Feb. 10, 1839.

(2) Id. p. 180, Mar. 12, 1839.

(3) Id. p. 244. Sep. 4, 1839.

Lord John Russell's policy was very ably defined in his despatches of October 14th and 16th, 1839. The theory of Cabinet responsibility as it existed in England could not be applied in the colony. "The power for which a minister is responsible in England, is not his own power, but the power of the Crown, of which he is for the time the organ. It is obvious that the Executive councillor of a colony is in a situation totally different from the Crown of England. Can the Colonial council be the advisers of the Crown of England? Evidently not, for the Crown has other advisers for the same functions, and with superior authority. It may happen, therefore, that the Governor receives at one and the same time, instructions from the Queen and advice from his Executive Council totally at variance with each other.... It is now said that internal government is alone intended. - But there are some cases of internal government in which the honour of the Crown or the faith of Parliament, or the safety of the state, are so seriously involved, that it would not be possible for Her Majesty to delegate her authority to a ministry in a colony... While I thus see insuperable objections to the adoption of the principle as it has been stated, I see little or none to the practical views of Colonial government recommended by Lord Durham, as I understand them."⁽⁴⁾ The despatch which followed two days later was intended to strengthen the hands of the Governor. "The tenure of colonial offices held during Her Majesty's pleasure, will not be regarded as equivalent to a tenure during good behaviour; but...not only will such

(4) Kennedy. op. cit. p.522 seq. Russell to Thomson Oct.14,1839

officers be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure, but ... a change in the person of the governor will be considered as a sufficient reason for any alterations which his successor may deem it expedient to make in the list of public functionaries, subject of course to the future confirmation of the Sovereign."⁽⁵⁾ Such was the policy which Poulett Thompson was appointed to execute. In Great Britain it was not Russell's definition of executive responsibility, but his plan for the union of the two Canadas that drew sharp criticism.

The Duke of Wellington remained the incarnation of Toryism. "He felt quite sure that they had not got the better of the temper which had occasioned the insurrection in these provinces ... He thought that they would require to summon the legislature of Upper Canada again; and he felt convinced that they would find, before the session was over, that they must take it on their own responsibility, to suspend this measure to some future period."⁽⁶⁾ "He had observed in this country for some length of time, a growing desire to get rid of their North American dominions - a desire that they should become republics. ... It was his decided opinion that considering the resources and the power of these colonies, this country would sustain a loss indeed, if they separated from her."⁽⁷⁾ It was his opinion that this measure was entirely dangerous."⁽⁸⁾

(5) Id. p.524.do. to do. Oct. 16, 1839.

(6) Hansard. 3rd Series. Vol.55: p.239: June 30, 1840.

(7) Id.

(8) Id.

"Local responsible government and the sovereignty of Great Britain were completely incompatible."⁽⁹⁾ Of Head, who had combated all attempts in Canada to secure such a system of government, he said, "The activity and ability of the Governor joined to the loyalty of the Legislature and of the people, saved the province at that time."⁽¹⁰⁾ There were, he believed, two parties in Canada, the loyal or compact party, and the Republican party which demanded responsible government. Lord John Russell's despatch of October 16th, 1839, was understood by the colonists "to be a despatch distinctly in favour of local responsible government. It was so understood in Nova Scotia, where the Assembly went immediately, and demanded from the Governor the dismissal of his Executive Council. They went even further and advised her Majesty to dismiss that honorable and gallant gentleman from her service, because he declined to take the course prescribed."⁽¹¹⁾ "In fact, the inhabitants of these colonies seemed disposed to take the authority in their own hands."⁽¹²⁾ He expressed his surprise that Baldwin, who held the republican doctrine, "was neither dismissed nor retired" from the Canadian administration.

Nor had Gladstone learned wisdom. Already, however, his skill in qualifying his statements was remarkable. He thought that "Lord Durham had passed censure very liberally upon the acts of all his predecessors in the government of Canada."⁽¹³⁾ "Re-

(9) Id.

(10) Id. p. 241.

(11) Id. 55: 509: July 7, 1840.

(12) Id. 55: 509: July 7, 1840.

(13) Id. 54: 725: May 29, 1840.

responsible government meant nothing more than an independent legislature." (14) He quoted Russell's despatch of 14th October, 1839 with approval. "He admitted that the privilege which parliament possessed in limiting the choice of ministers by the Crown was the security of every liberty which the people enjoyed ... But if the Colonial Assembly possessed the same privilege why was this called the Imperial legislature?" (15) "But Lord Durham now said, that this cry was not only compatible with British connection, but that it was the best means of perpetuating British connexion; he had no doubt the disaffected inhabitants of Canada would attempt and ultimately effect their schemes for severing that connection altogether." (16) "One of the shallowest of all possible delusions - the doctrine of responsible government." (17) Between Great Britain and her North American colonies "there are great differences, original and inherent, in the elements out of which society is composed, which must render exceedingly difficult the regulation and the maintenance of the union between a country essentially aristocratic in its feelings and principles ... and countries in which some of the elements of society certainly seem to tend towards democracy." (18)

Despite his pessimism "he thought that it should be a cardinal principle of our policy to regard the union between Great Britain and Canada, and her other American colonies, as

(14) Id.

(15) Id.

(16) Id.

(17) Id. 54: 730: May 29, 1840.

(18) Id.

dependent on the free will of both parties."(19) The loyal subjects in the colonies "must be active and cordial co-operators, understanding that it is their part to contribute at least as much to the perpetuation of the union as parliament could on its part."(20) "He thought the chief practical difficulty which the Executive government would have to encounter, would be to determine between the real and permanent convictions of the people, and those temporary clamours of a few, temporary delusions even of the many, of which the history of the colonies had not been without example, and the recurrence of which was, of course, a danger to be anticipated more or less in every society where there were popular institutions with a very extended franchise."(21) Since the union Bill seemed the only measure possible, he did not oppose it.

The Earl of Hardwicke presented a formidable array of Tory antagonists to union. "No union between the two provinces could be founded on justice."(22) "The French Canadians would never feel satisfied that they would be justly and peaceably governed. On the other hand the loyal party would be unjustly treated."(23) In support of his contention he quoted the words of Sir Peregrine Maitland, of Sir Francis Head, of Strachan of Toronto, of Attorney-General Hagerman, of Lord Seaton, and of Sir George Arthur. Lord Glenelg had himself been opposed to union in 1837. Lord Durham's "expensive report", which Head had

(19) Id. 54: 731: May 29, 1840.

(20) Id.

(21) Id.

(22) Id. 55: 490: July 7, 1840.

(23) Id. 55: 491: July 7, 1840.

called a "tissue of unintentional errors," and which Chief Justice Robinson declared to be "utterly unsafe to be relied upon as the foundation of parliamentary proceedings", was not "a good guide in legislation." (24) He believed "Upper Canada was a citadel, in a country surrounded by enemies... I believe if you will only support there a just and good government - if you will refuse to listen to the delegations of unknown and insignificant individuals - if you will place confidence in your Governors, and will not receive information from every person who volunteers to transmit it to you - if you will countenance honest and patriotic men, and put aside all Reformers, Radicals and traitors - you will secure to England that fortress intact." (25) In words such as these Tory hearts found delight.

Gally Knight was oppressively doleful. "It did not appear to him that any man who entertained the wish that the Canadas should remain a part of her Majesty's dominions could behold this day without heaviness of heart;... whenever this bill should become a law he should regard the Canadas as gone, a few years, more or less, might intervene; but this was the beginning of the end." (26) The source of the present troubles "had not been hard usage; ~~it had not been hard usage~~; it had been the very reverse; it had been a long series of mistaken conciliation and the premature gift of a free constitution." (27) "All along a few demagogues were the instigators of the movement.

(24) Id. p.495.

(25) Id. p.504.

(26) Id. 53: 1057: April 13, 1840.

(27) Id. p.1059: April 13, 1840.

The people, long habituated to passive obedience, took little part - and it must be remembered that amongst such a people there existed no public opinion - in one way or other to affect the proceedings of the representatives." (28) Subsequent to 1831 "British Republicans in the colony, and men of the same opinions in this country began to take part with the French demagogues in the name of liberty and independence, and lent their aid to subvert what they termed the baneful domination of the mother country. At last the demands of an elective legislature, a responsible executive, and the unconditional surrender of the revenues of the Crown unmasked the real design. The traitors, finding themselves detected, had recourse to open violence, and the insurrection took place." Although there was no alternative course, the passage of the union bill would be "equivalent to an assignment." (29)

The union bill, thought Sir R. Inglis, was "pregnant with trouble and danger to the English and Protestant party in the colony." (30) He would have wished to retain only one clause of the bill - that decreeing that English alone should be the legal language in Canada.

J. Pakington had "grave and serious doubts" of the union measure. "Had it not been for their false system of conciliation, their long continued system of depressing the loyal, and encouraging the democratic and republican factions in that country - had it not been for the bad policy generally which

(28) Id.

(29) Id.

(30) Id. 54: 1132: June 12, 1840.

his Majesty's government had adopted in Canada, the rebellion, in his opinion, would not have occurred."⁽³¹⁾ "In the first place it was their duty to legislate for the internal happiness and welfare of the Canadas; and, in the second place, it was their duty to legislate for the maintenance of the connexion which existed between Canada and the Mother country."⁽³²⁾ "He believed, that with the exception of Russia and China, there was not an independent kingdom of such an extent ruled by one executive as the colony of Canada would be were it united under one government."⁽³³⁾ He could not trust the authority of the Earl of Durham, "whose mission (was) unfortunate for Canada, unfortunate for England, and unfortunate also for the noble earl himself."⁽³⁴⁾ He quoted Sir George Arthur with approval: "I have all along informed her Majesty's government, that it is absurd to think of Upper Canada as containing a whole community of loyalists. There is a considerable section of persons who are disloyal to the core - reform is on their lips, but separation is in their hearts. These people having for the last two or three years made 'a responsible government' their watchword, are now extravagantly elated because the Earl of Durham has recommended that measure."⁽³⁵⁾

Lord Ashburton declared that the colonies were not "forever to be governed from Downing Street." If New York or Penn-

(31) Id. 54: 712. May 29, 1840.

(32) Id.

(33) Id.

(34) Id.

(35) Id. p.717.

sylvania petitioned for a renewal of British sovereignty the answer would be "Govern yourselves - we have enough to do;" such ought to be their attitude toward Canada. "After having established a colony of which Great Britain had reason to be proud - a colony at present comprising a population of between 1,400,000 and 1,500,000 the time might come when self-government was necessary and when separation from the mother country must take place. The first difficulty was to ascertain the proper time for that separation, and the next was, to effect it on friendly terms." (36)

Among those who contributed to the Tory objections were the Earl of Wicklow, Sir G. Sinclair, Sir T. Cochrane, Mr. Colquhoun. They advocated the maintenance of the existing system. Sir G. Sinclair believed that the "weight of authority" - Sir F. Head, Sir P. Maitland, and Chief Justice Robinson - was opposed to union. He doubted the wisdom of Russell's despatch of 16th October, 1839, although Governor Thomson had thought its effect was salutary. "His Excellency might well exclaim, *veni I landed, vidi I made a tour, vici I carried everything before me.*" (37) Colquhoun was of the opinion that in "Lower Canada responsible government was the watchword of every rebel, and Sir G. Arthur said the same of the reformers in Upper Canada. What security had they, during these wretched squabbles about responsible governments and attempts at organic changes...that the whole strength of the province would not be engrossed by them." (38)

(36) Id. 55: 259: June 30, 1840.

(37) Id. 54: 1119: June 12, 1840.

(38) Id. 54: 741: May 29, 1840.

Sir Robert Peel, now as before, was not inclined to criticize Whig measures relating to Canada. He was not more liberal than the Whigs, but certainly he had more in common with them than with the uncompromising among the Tories. "He held that it would be quite inconsistent with the honour of this country to abandon this colony." (39) "Every pretext for delay with a view to making further inquiry, was now removed, and the time had arrived when something must be done." (40) "Religious disturbances were not known there at present, and the Lower Canadian population had, during the late disturbances, shown themselves well-affected towards the mother country." (41) "What decided his mind in favour of the union, was the preponderance of the local authorities in the provinces in support of it." (42)

Lord Ellenborough thought the union bill a prelude to separation. The differences in temper and character between the Upper and Lower Canadians demanded different principles of government. His solicitude was chiefly for the French, who, he feared, "were to be placed under the hereditary and absolute domination of the very people who had always shown themselves most hostile to them." (43) "In the want of almost all means of communication, in the deficiency of roads, in the imperfection of water communication in some seasons, and the utter want of it at other periods, it was impossible that an Assembly so con-

(39) Id. 53: 1063: Apr. 13, 1840.

(40) Id.

(41) Id. p.1065.

(42) Id. 54: 1120: June 12, 1840.

(43) Id. 55: 250: June 30, 1840.

stituted could do justice to the people whose affairs they were called upon to govern and to legislate for." (44)

Although he had "painful feelings" that the French would consider the union bill a coercive measure, the Earl of Ripon allowed it to pass without opposition. (45)

During Lord John Russell's administration of the colonial office his Canadian policy did not meet with serious opposition. Russell, almost alone of the government, had the confidence of parliament. He could never be accused of doing nothing to justify his position in the Cabinet; often he did too much, both for his own comfort and for the peace of mind of his colleagues. He had the capacity of choosing active and able men to execute his commissions in the colonies. For the apparent success of his Canadian policy, Poulett Thomson's ability and discretion were chiefly responsible.

Lord Melbourne, who was still somewhat more than nominal head of the government, although his authority in colonial and foreign matters was entirely delegated, apparently took a somewhat more active interest in Canadian affairs than he had done previously. He wished that the government's Canadian policy should not be rendered useless because of the state of parties in England. "The principal reason why you lost both France and America was not the energy of the enemy with whom you had to contend, but your own internal discords and dissensions." (46)

The union measure was necessary; "circumstances were sometimes

(44) Id.

(45) Id. 55: 257: June 30, 1840.

(46) Id. 55: 227: June 30, 1840.

more powerful than reasons, opinions, theories and systems."

Lord Durham and Poulett Thomson both stressed its importance.

"He was of opinion that the government of a free community by one assembly a matter almost impossible ... and if you were to have a popular government at all, he thought that you must have two houses of Assembly, constituted in different ways and upon different principles... On these general grounds he thought that those had come to a sound conclusion who had recommended the continuance of the Legislative Council in its present shape and form." (47)

What was to Durham and Buller and Baldwin responsible government, was to Lord Melbourne "irresponsibility." He paraphrased Lord John Russell's despatch of 16th October thus: "irresponsibility is perfectly inconsistent with your situation as colonists; but the government shall be carried on for the future more in accordance with your feelings than it has been." (48) The despatch was intended "directly to counteract the principle of irresponsible government and was properly understood by Sir Colin Campbell, and Sir John Harvey." "The opinion of this country and this government was entirely opposed to independent responsible government." "The feeling in favour of responsible government had in a great measure passed away." (49)

Lord John Russell traced most of England's ills to the government of the younger Pitt. The source of the Canadian trou-

(47) Id. p.232.

(48) Id. 55: 270.

(49) Id. 55: 657-652.

bles had been Pitt's "bad law for Canada."⁽⁵⁰⁾ The act of 1791 had been "a mistaken act of policy." "I think that the policy should rather have been to give the greatest power to the emigrants from this country, to have amalgamated the institutions of the two provinces, and to have brought them as near as possible to those of England."⁽⁵¹⁾

The Committee of 1828 had advised reforms; "but by the time that the government had determined to grant everything that could in fairness and justice be demanded by the House of Assembly, that body, elated by what they conceived to be a triumph over the mother country, made demands totally incompatible with the relations between the parent state and the colony... demands which in fact would, if granted, have established under the name of a British province, an independent French colony in Lower Canada."⁽⁵²⁾ Since "they could hardly again constitute an Assembly consisting almost wholly of French Canadians, without incurring the greatest risk," nor establish in Canada an arbitrary form of government, "the representative union of the two provinces appeared to him therefore, to be the most judicious mode of solving the difficulty."⁽⁵³⁾ "It would expose such union to great risk, and to a great probability of failure, if they did not previously take all possible means to provide for legislation in Lower Canada, so that no topics of irritation

(50) "Early Correspondence of Lord John Russell 1805-40." *HP* 238

(51) Hansard. 3rd Series. Vol. 47: p.1257.

(52) *Id.* 47: 1259: June 3, 1839.

(53) *Id.* 47: 1263: *do.*

should exist at the first meeting of the Assembly of the united provinces. (54)

"It does not appear to me that you can subject the Executive Council of Canada to the responsibility which is fairly demanded of the Ministers of the executive power in this country... The Sovereign in this country receives the advice of the Ministers, and acts by the advice of those Ministers, and indeed there is no important act of the Crown, for which there is not some individual minister responsible. There responsibility begins and there it ends. But the Governor of Canada is acting not in that high and unassailable position in which the Sovereign is placed. He is a Governor receiving instructions from the Crown on the responsibility of a Secretary of State." (55) "It was quite impossible to allow it to be laid down as a general principle, that any part of the government of this country, conducted by Ministers having the sanction of this House, shall be overruled by a colony, and that such colony shall not be subject to the general superintending authority of the Crown of these realms." "To the Executive belongs the appropriation of money, the Ministers being responsible for what they think necessary for the public service, and the House exercising that control over the grant which they think necessary. But in the colonies there is neither this division nor this control." (56) "The Governors orders issue directly from the Crown; and it is unjust that the representatives in the

(54) Id. 48: 211: June 13, 1839.

(55) Id. 47: 1268: June 3, 1839.

(56) Id. 52: 1332: Mar. 23, 1840.

Assembly should visit with responsibility those who are not the authors of the acts which they condemn." (57)

Russell admitted, however, "that the Executive should be acceptable and agreeable to the representatives of the people." (58) "I think ... it will be necessary without any positive enactment ... but by the rule of administration which will be established by the union, that the Assembly should exercise a due control over the officers appointed or kept in office by the Governor, and over the distribution and expenditure of public funds." (59) Lord Normanby had instructed Sir Colin Campbell "that whenever a vacancy occurred in the Council, he was to fill it up by a person selected from the majority of the Assembly." Lord John knew "no better way of giving confidence to the provinces, and at the same time making the leaders of the Assembly practical men of business, than by appointing them to situations of official trust and responsibility. I have said you cannot lay down any positive rule for effecting this object, still less can you trust to the Legislature as your guide, because you never can adopt the advice which the members of the Assembly may give when it interferes either with the Imperial policy, or with the honour and faith of parliament or the Crown. I would not then by any means lay down an inflexible rule on the subject, but I maintain, that a general system should be adopted by which the leaders among the majority of

(57) Id. 52: 1334: do.

(58) Id. 47: 1287: June 3, 1839.

(59) Id. 52: 1332: Mar. 23, 1840.

the Assembly should be included in the Executive government." (60)

"I think you must be prepared somewhat to bend your opinions - somewhat to relax in your views of a policy which may be agreeable to you, and which may be stable in this country, if you desire to conciliate the opinions and predilections - no less strong - of the people you wish to govern." "It has been one of the proudest of all our national boasts that wherever we have established colonies we have made them fit to manage and enjoy those institutions which were once peculiarly our own - that we gave them an education befitting them to become freemen, and to govern themselves according to those maxims, which as Englishmen we most revere" (61) - a boast which prompted Hume to an almost eloquent denial.

Lord John Russell was strongly opposed to the disruption of the empire. He spoke of "the great progression which I trust Canada is destined to make." (62) "I wish that the ties which unite this country to Canada may be drawn closer." "He could listen to no proposition having for its object to lead to a separation between the two countries, believing it to be for the best interests of both that the connection should subsist." (63) "It is my belief that you may maintain the connection with the colonies of British North America without imposing terms which they would feel it incumbent upon them to resist, and that they may be made to add to your greatness and

(60) Id. p.1334. do.

(61) Id. p.1341.

(62) Id. 47: 1266: June 3, 1839.

(63) Id. 53: 1062: April 13, 1840.

strength without a wish on their part to take their station on the globe as an independent nation."(64)

Poulett Thomson and Lord John Russell were in close agreement. Thomson wrote "Either the Governor is the Sovereign or the Minister. If the first he may have Ministers, but he cannot be responsible to the government at home, and all colonial government becomes impossible."(65) "I am not a bit afraid of the responsible government cry. I have already done much to put it down in its inadmissible sense; namely the demand that the council shall be responsible to the Assembly, and that the Governor shall take their advice and be bound by it... The absurdity of claiming to put the Council over the head of the Governor."(66) He "has told people plainly that, since he cannot get rid of his responsibility to the home government he will not put responsibility on the executive Council."(67) In Nova Scotia, he said, "the Representative of the Sovereign... can devolve the responsibility of his acts upon no man, without danger to the connection of the colony with the empire."(68) After he had carried the union he wrote, "What I have seen ... and had to do in the course of the last three weeks, strengthens my opinion of the absolute necessity of your sending out

(64) Id. 52: 1341: Mar.23, 1840.

(65) P.Scrope. Life of Lord Sydenham. Murray; London. 1843: p.143. To a Friend 12 Dec.1839.

(66) Id.

(67) Id.

(68) Id. p.185-7 Footnote. Of the Executive Council he wrote at this time (27 July 1840)... "If the proper direction be given to their labors, and due firmness evinced in controlling them the Council will prove a very useful and powerful engine in the hands of the Governor."

as my successor some one with House of Commons and Ministerial habits - a person who will not shrink from work, and who will govern, as I do, himself." (69)

Upon his arrival in Lower Canada he found "all the parties dead sick of the present state of things;" (70) "No such thing as a political opinion;" "they have only one feeling, a hatred of race." (71) "Everything is to be done by the Governor and his Secretary." In fact, "if it were possible the best thing for Lower Canada would be a despotism for ten years more." As a consequence of the hostility of the French to union he was forced to carry it in the Special Council, which he had inherited from Sir John Colborne and Lord Durham.

In Upper Canada the country was "split into factions animated with the most deadly hatred to each other." (72) The Treasury revealed an annual deficit in excess of the income; "Emigration going on fast from the province;" a government without a single vote to depend upon in the Assembly. He succeeded in conducting the government of the province chiefly as a result of the confidence which the Assembly placed in him personally. After he had prorogued the Assembly he wrote "Never was such unanimity! ... I have let them know and feel that I will yield to neither of them - that I will take the moderate from both sides - reject the extremes and govern as I think right, and not as they fancy. I can make a middle re-

(69) Id. p.246. 27th June, 1841. Private letter.

(70) Id. p.146. 20 Nov. - 8 Dec. 1839.

(71) Id. p.175. 13 Mar. 1840.

(72) Id. p.149-50. Nov.-Dec. 1839.

forming party ... which will put down both." (73)

Sydenham's position after the election in United Canada was extremely difficult. Baldwin's resignation increased his discomfiture. By using his influence, however, he succeeded in securing a majority to support his council. "I had to fight the whole battle myself; and it has been a considerable pull on both one's adroitness and temper." "Whoever follows me now may, with management, keep everything quiet, and rule with comfort." (74) The fact, however, that S. B. Harrison, a member of the Council, had to propose his resolutions upon Responsible government in order to forestall Baldwin's motion, boded ill for the future. Before the Assembly met again Sydenham had died.

The Marquess of Normanby, during his tenure of the Colonial office, was "anxious to abstain from anything likely to excite discussion." "He had himself had some experience in Colonial government, and he must say he did not see how a governor could act under the species of double and opposite responsibility which the plan of the noble earl (Durham) presumed. In what position would a governor be placed who was bound to obey instructions from the home government, and at the same time to act in accordance with the expressed opinion of the representative body of the colony, in the event of a conflict of opinions between those two." (75) "At the same time he admitted to the full how desirable and important it was that the Imperial govern-

(73) *Id.* p.171-2. c. 10 Feb. 1840.

(74) *Id.* p.244. 27 June, 1841.

(75) Hansard. 3rd Series. Vol. 49: 845: July 26, 1839.

ment should endeavour, as much as possible, to keep up a continued harmony between the governor of the colony and the House of Assembly." The bill of union "would, at least, secure the great advantages of commercial freedom to the Upper province and constitutional government to the Lower."(76)

Lord Lansdowne thought that by Russell's despatches of October, 1839 "the importance of giving free institutions to the people of the colony was clearly shown, as well as the duty that existed of making the officers of the local government responsible to the representatives of the country, and that it was impossible to give satisfaction to a people who had once been accustomed to free institutions unless this were done."(77) The well-being of the colony would be promoted "by giving the people a greater share in the Municipal government, so that these might be carried on in conformity with their local feelings and usages, and thus trusting the people with the management of their own affairs when confined to particular districts, and uniting all parts of the country for trade and commerce, and for general government."

The Earl of Gosford "could assert from his own knowledge that the great body of the French Canadians were loyal and disposed to maintain the connexion with this country."(78) The union bill, with its equal representation clause unaltered was a measure of injustice to the French; "he was convinced that a great mass of the people were hostile to a union upon such prin-

(76) Id. 55: 521: July 7, 1840.

(77) Id. 55: 256: June 30, 1840.

(78) Id. 55: 246: do.

ciples." If the constitution of 1791 were restored "He thought that with such measures, and with a fair and impartial government, trade and commerce, and prosperity and happiness, would be the results, and under such circumstances they might bring the people together with some chance of happiness and harmony."

Edward Ellice "believed that the people of that country (Canada) were perfectly sick of the agitation which had prevailed." (79)

While William Ewart advised legislation "for Canada on the principle she would one day be independent," he did not doubt that "The more slight our control, the more firmly she would adhere to us." (80)

Although Lord Howick resigned from the government his view of colonial government, in so far at least as theoretical definition was concerned, did not differ essentially from that of Lord John Russell. "If by responsible government it were meant that the Executive government of the colony should be directly responsible to the colonial Assembly, he was of opinion that responsible government so defined would be incompatible with the maintenance of colonial government. But he believed, that if the government at home, as well as the authorities in the colonies, were to pursue a system of protective government, guided by a conciliatory spirit, and a desire to consult the wishes of the people, then such a form of government would answer the object that those who were loudest in their clamours for a responsible government had in view." (81) "If the majority were desirous of throwing off the British connection, it would be impossible to carry on any govern-

(79) Id. 54: 1134: June 12, 1840.

(80) Id. 54: 752: May 29, 1840.

(81) Id. 54: 744: do.

ment against the wishes of the great majority of the people, and even if it could be so carried on, it would not be desirable."

"We must exhibit a disposition to go to great lengths for the purpose of conciliating the people of Canada." If the feeling in the colonies "were in favour of a more democratic form of government, he saw no reason why in the management of their internal affairs, the wishes of the people should not be acceded to as long as they did not produce a clashing with the authority of this country." (82)

The difference of opinion between the majority of the Whigs and Radicals at this time was not as marked as it had been hitherto. After the death of Lord Durham in 1840, the most capable and most influential among the exponents of Responsible government was Charles Buller.

The Earl of Durham stated his view at length in the House of Lords thus: "It was his conviction, that no government could be established which could give permanent satisfaction, which was not founded upon a principle, and conducted in such a manner as to carry with it the feelings and the approbation of the people of the colony. He did not say that he would proceed immediately to the construction of such a government, or that he would take Ministers from the House of Assembly, and so form a responsible government, but he did say, that if they gave to the Canadian people all the freedom which they themselves enjoyed as to representative institutions - if they gave them the power of regulating their own affairs, of voting money, and of refusing the supplies - if they gave them all these powers and yet denied to them the results of that freedom, and of those powers, it was impossible to imagine that there would be satisfaction in the colony... If such a govern-

ment was formed, confidence and strength would be the results." (83)

Upon Charles Buller fell the burden of defending the plan which Lord Durham and he had recommended. "Evils arose," he said, "not from any particular errors in legislation, not from any bad course which had been followed, but from the adoption of no course at all." (84) "They had fought their party fights on Canada and Jamaica - they had mutilated one bill and thrown out another - forced Lord Durham to return, and crippled Sir Lionel Smith, and what was the result? They had probably barbarized one colony and revolutionized another." (85)

"There was a regular ministerial minority in the House of Assembly, and he begged to ask the noble lord in what country on earth, whether a colony or a mother-country, dependent or independent, ... a legislature had ever been carried on to the advantage of the community when the Executive was constantly opposed to the will of the people." (86) "How the noble lord could expect that the House of Assembly would bear to see every office of the government given to the most determined enemies of the people? What the Earl of Durham proposed was a representative legislature, with a responsible executive." "If the legislature had no voice in the composition of the Executive, then they ought no longer to carry on the government after they had lost the confidence of the representative body." "In every colony of British North America there was the same constant collision between the Assembly and the Executive government; and in all the catastrophe of an absolute stoppage of the

(83) Id. 49: 880: July 26, 1839.

(84) Id. 48: 1200: July 4, 1839.

(85) Id. 49: 182: July 11, 1839.

(86) Id. 47: 1283: June 5, 1839. In 1840 Buller published a work on "Responsible Government for Colonies."

machine of government either had arrived or was fast approaching. ... Were they not forced to conclude that there must be some common cause for these common ills and that the cause must exist in the very frame of government."⁽⁸⁷⁾ Contrasting the lack of prosperity in Canada with the abundance in the United States, and attributing it to the self-government in the latter country, Buller said, "This is the error which he (Lord Durham) would rectify, by establishing an entirely different practice in our colonial government; by proposing it as a rule of government, that the Executive of the colony should be kept in entire harmony with the legislature,... and that the colonial government should, in fact, be carried on in the colony, and not in Downing Street." "To regulate their foreign relations, and to secure the immigration, and the settlement of waste lands, were the only objects left to the Mother Country." "He thought that the principle of Colonial government ought to be that the people of the colony were more competent to manage their own affairs than the constantly changing officers of a department in the mother country; that they would probably act with as much justice and as much good sense as other people, and that if they acted unjustly or unwisely, they must be the chief, and probably the only sufferers, and must, like other communities, purchase wisdom by experience."

Buller believed that the union of the two provinces would not only facilitate the establishment of responsible government, but would render it inevitable. "After all there was no great practical difference between the supporters of that doctrine and those by whom it was denounced in unequivocal language."⁽⁸⁸⁾ "Word

(87) Id. 49: 183: July 11, 1839.

(88) Id. 54: 733: May 29, 1840.

it in what they might, either boldly and intelligently like Lord Durham ... or involve the meaning in the unintelligible vagueness ... in talking of maintaining unity between the imperial and colonial governments, and at the same time preserving harmony between them; in either case they would come to the plain common-sense truth, that if they wished to govern any colony peaceably, they must govern it on principles and by men approved of by the people of the colony." "He had always said, that the union of the Canadas carried responsible government with it as a necessary consequence... In fact, responsible government, call it by what name they chose, was the necessary consequence of giving representative institutions to a large number of people." (89)

While approving of the Durhamite conception of responsible government, several of the Radicals feared for the safety of the French.

Smith O'Brien and Daniel O'Connell were opposed to the equal representation of the provinces in the United legislature. O'Connell "would briefly advert to Lord Durham's report, which after giving every possible virtue to the French Canadians, stating they were a mild and benevolent race, possessed of good qualities as men and as Christians, recommended that they should be swamped by the people of Upper Canada, and annihilated as a people." (90) Deprecating Papineau's resort to arms, when he led a party capable of constitutional resistance, he declared, "It was wickedness, it was a folly, to enter upon an insurrection... That rebellion had been deservedly crushed, but his country had suffered for his crime. The imperial parliament had passed a bill for the union of Canada,

(89) Id. p. 736.

(90) Id. 57; 18: Mar. 8, 1841.

which was based on injustice... This injustice would fester in the public mind." He, like Buller, contrasted the prosperity in the United States with the poverty in Canada; "on the aristocratic side of the line was a desert, on the democratic a garden."

Joseph Hume had learned the lesson which he had failed to understand when Baldwin had visited England in 1836. He "thought the present plan would merely continue the system of misgovernment which had already lasted for twenty years."⁽⁹¹⁾ "The noble lord (Russell) had talked of the free institutions of this country; but the noble lord seemed to have forgotten that in all our colonies those institutions had been hampered by the British government, and even in America itself, on the British origin of whose people the noble lord appeared so much to pride himself, it was only after an open resistance to our authority that free principles had become triumphant."⁽⁹²⁾ "They only asked to be allowed a privilege similar to that which the House of Commons here had - the control of their revenues, and the settlement of the question of the Clergy Reserves." "The principal complaint on their part was the want of responsibility in the Councils, and he did not see in this bill any security for responsibility."⁽⁹³⁾ The "want of responsibility had been pointed out by Lord Durham, who had suggested a proper remedy." "The Executive Council was to be the same as before, the governor was to choose the members as before. What security, then, had the people of Canada that they should have persons in whom they could confide?" He feared, too, "that a great injustice was about to be perpetrated

(91) Id. 47: 1276: June 3, 1839.

(92) Id. 52: 1344: Mar. 23, 1840.

(93) Id. 54: 740: May 29, 1840.

against the French population of Canada." Later, however, Hume, who wished that the arbitrary form of government existing in Canada should end, withdrew his opposition to the Union bill.

In the debate upon the bill of 1839 Leader opposed the principle of union. "Unless they could be convinced that it was a benefit, it would be the grossest tyranny, to make them English in language, laws, and religion, against their own feelings and wishes."⁽⁹⁴⁾ His anxiety for the French apparently did not remain in 1840.

The fact that Lord Brougham's mind was "continually oscillating on the verge of insanity" was less evident during Russell's administration of colonial affairs. He opposed the union bill, however, upon the ground that the consent of the Canadian legislature had not been fairly obtained, pointing to the strange change of opinion in Upper Canada within one year.

The recommendation made by Lord Durham that the Executive Council should be subject to responsibility to the local legislature formed the chief topic of debate, aside from Russell's Union bill. The report, however, received unqualified approval from none except Charles Buller. The Tories condemned the form of government advocated; the Radicals proclaimed its injustice to the French in the plea for "anglification." It was the Tories now, not the Radicals, who despaired. Lord Ashburton and Gladstone considered separation inevitable, while Gally Knight was even more pessimistic. Although the Radicals were not satisfied that responsible government was granted, Buller's conviction that the union measure rendered its adoption certain, evidently influenced them. Lord John Russell's repudiation of the principle of responsibility

(94) *Id.* 48: 1204: July 4, 1839.

pleased the Tories, while his acquiescence in the practical views recommended by Lord Durham served at least in some measure to diminish the opposition of the liberals. The knowledge that Sir Robert Peel would become Prime Minister, if Lord Melbourne were not sustained, prompted the Radicals and the Irish to support the existing government.

THE STANLEY REGIME.

After the "Bed Chamber" crisis of 1839, the Whig majority in the Commons was even more precarious than it had been previously. When, however, after a tariff measure was rejected, Peel carried a vote of want of confidence by a majority of one, Melbourne advised dissolution. As a result of the election which followed, Queen Victoria, who had overcome her antipathy for him, commissioned Sir Robert Peel to form a government. Lord Stanley accepted the Colonial office.

As Prime Minister, Sir Robert Peel exerted a very great influence in almost every department of government. The extent of his influence on Stanley can only be conjectured. Since neither Peel nor Stanley had criticized the policy pursued by Lord John Russell it was presumably not unsatisfactory to them. In fact, Russell's despatches of 1839 formed the basis of Stanley's policy. If during the administration of one Colonial Governor the application of the policy was different, it was not Lord Stanley's virtue.

In order to avoid difficulties in parliament the Colonial Secretary corresponded privately with the Governor. It was only when Sir Charles Bagot had acted in the teeth of his instructions and had restored peace to Canada, and again when Sir Charles Metcalfe had revived old animosities by interpreting his instructions in the spirit which Stanley approved, that the policy of the government was debated.

Sir Charles Bagot, who succeeded Lord Sydenham as Governor of Canada, had served at one time as a parliamentary undersecretary in the British government, but his experience had

been chiefly diplomatic - for a Colonial Governor perhaps a better training than a wide parliamentary experience. The conditions which Bagot found prevalent in Canada upon his assumption of office were much less salutary than Sydenham had represented. "Were I to lift," wrote the new Governor, "the thin veil of success which covers his policy much of deformity would be found underneath." (1) He was confronted by two particularly difficult problems - the insistent demand for a responsible ministry, and the necessity of conciliating the French whom Sydenham had alienated.

The policy of extension, the attempt to form a middle-reforming party, which Bagot first adopted, proved, within a very few months, a failure. Francis Hincks, one of the ablest advocates of responsible government, accepted control of the finances. When Cartwright refused to enter the Council of which Hincks was a member, Sherwood, a less uncompromising Tory, accepted office. Both S. B. Harrison, a Liberal, and W. H. Draper, a Tory, members of Lord Sydenham's Council, declared the combination impossible. In July, Harrison wrote to Bagot, "Looking at the present position of parties it may, I think, be safely laid down that, to obtain a working majority in the House of Assembly, it is absolutely necessary that the government should be able to carry with it the bulk of the French Canadian members . . . There is no disguising the fact that the French members possess the power of the country; and he who directs that power, backed by the most efficient means of con-

(1) Morison: (?) British Supremacy and Canadian Self-Government 1839-1854. Maclehose, Glasgow, 1919.

"trolling it, is in a situation to govern the province best." (2)
 Draper had no doubt "that, with the present House of Assembly, you cannot get on without the French, while it is necessary for me at the same time to declare frankly that I cannot sit at the Council board with Mr. Baldwin." (3) During the summer of 1842 the truth of their contention became increasingly evident. On the other hand, Stanley's wish that, in the event of trouble, the Compact party should advise the Governor, would even more certainly have caused conflict. Before the Assembly met in September, Bagot had decided that the only hope of forming a successful administration lay in the policy which Harrison and Draper considered inevitable.

When the Assembly met, Bagot, who had previously shown confidence in the French by appointing a French Judge, commenced negotiations with Lafontaine, the French leader. Although he considered them exorbitant, Bagot conceded the demands of the reformers. Baldwin's obstinate refusal to grant pensions to two of the retiring ministers - Davidson and Ogden - almost wrecked the attempt to form an administration, but Bagot's instructions to Draper to read to the Assembly the letter which proved the Governor's generosity, rendered Baldwin impotent. The Assembly voted confidence in the new Council by an overwhelming majority. (55 - 5). That Bagot did not merely drift into such a policy without appreciation of its results is evident from his words to Stanley: "Whether the doctrine of responsible government is openly ACKnowledged, or is only tacitly acquiesced in, virtually it exists." (4)

(2) Id. p. 133, Harrison to Bagot, July, 1842.

(3) Id. p. 134, Draper to Bagot, July, 1842.

(4) Id. p. 155, Bagot to Stanley, 28 Oct., 1842.

Sir Charles Metcalfe's training had been less fortunate than that of his predecessor. In India he had risen to be Governor General, but the abilities which proved sufficient there were not favourable to success in a colony with representative institutions. However admirable he may have been personally, as a constitutional Governor he failed; while Bagot refused to allow his instructions to limit him, Metcalfe attempted, as in military fashion, to execute his orders, at whatever personal inconvenience.

Metcalfe undertook the government of Canada with little hope of accomplishing his purpose of re-establishing British authority, which Stanley considered Bagot's action had endangered. "If I succeed", he wrote, "in reconciling local dissensions, and promoting attachment between the colony and the mother country, I shall rejoice in having undertaken the charge. If I fail, which from the state of things is more probable, I must console myself with the assurance, that for the rest of my days I shall be left undisturbed in the retirement that I love." (5)

After his arrival in Canada he wrote: "Lord Durham's meaning seems to have been that the Governor should conduct his administration in concordance with the public feeling, represented by the popular branch of the Legislature, and it is obvious that without such concordance the government could not be successfully administered." (6) Lord Sydenham had established such a system, and Sir Charles Bagot had even allowed his own authority to lapse. "The events were regarded by all parties in the country as establishing in full force the system of Res-

(5) Kaye - Life of Lord Metcalfe - Bently: London, 1854 II : 460, Metcalfe to Lord Monson, Feb. 10, 1843.

(6) Id. p. 477, To Lord Stanley, April 24, 1843.

"possible Government of which the practical execution had before been incomplete . . . From that time the tone of the members of the Council and the tone of the public voice, regarding Responsible Government has been greatly exalted. The Council are now spoken of by themselves and others generally as 'the Ministers', 'the Administration', 'the Cabinet', 'the Government', and so forth. Their pretensions are according to this new nomenclature." (7)

"Now comes the tug of war, and supposing absolute submission to be out of the question, I cannot say that I see the end of the struggle if the parties alluded to really mean to maintain it." (8)

"It is, however, an advantage of the present system that opposition to the Council need not be regarded as opposition to the Governor, as long as the Council is virtually nominated by the Representative Assembly, and that opposition to the local administration, even when the Governor is an object of attack, need not be considered as opposition to Her Majesty's government." (9)

"The point in which I most proximately expect to incur a difference with them (i.e. the Council) is their claim that the Government shall be administered in subserviency to their party views. They expect that the patronage of the government shall be bestowed exclusively on members of their party and in support of their influence . . .

I wish to make the patronage of the government conducive to the conciliation of all parties, by bringing into the public service

(7) Id.

(8) Id. To Lord Stanley, May 12, 1843.

(9) Id. p. 485, soon after assuming government.

"the men of greatest merit and efficiency, without any party distinction." (10) His policy was, in fact, that which Bagot had abandoned.

"The general course which I purpose to pursue towards the Council, is to treat them with the confidence and cordiality due to the station which they occupy; to consult them, not only whenever the law or established usage requires that process, but also whenever the importance of the occasion recommends it; and whenever I conceive that the public service will be benefited by their aid and advice. At the same time, I must be on guard against their encroachments." (11) Later he wrote: "I learn that my attempts to conciliate all parties are criminal in the eyes of the Council, or at least the most formidable member of it." (12) "The sole question is, to describe it without disguise, whether the Governor shall be solely and completely a tool in the hands of the Council, or whether he shall have any exercise of his own judgment in the administration of the government; whether he shall be at liberty to treat all His Majesty's subjects with equal justice, or be a reluctant and passive tool in the hands of a party for the purpose of proscribing their opponents." (13) "I fear that the whole concern is rotten at the core." (14)

The disagreement between Metcalfe and his Council in regard to the distribution of patronage became acute in the autumn of 1843. When Metcalfe refused to accede to Lafontaine's

(10) Id. p. 492, April 24, 1843.

(11) Id.

(12) Id. p. 493, May 12, 1843.

(13) Id.

(14) Id. p. 504, To his sister, Mrs. Smythe, Aug. 27, 1843.

interpretation of responsible government the Ministry resigned, as they declared upon the principle of responsibility, but as Metcalfe stated because of his refusal to become an ignominious tool in the hands of a party. In his version of a conversation with the Governor's private secretary, Lafontaine wrote: "The Councillor informed Captain Higginson that the responsibility of the members of the administration, extending to all the acts of government in local matters, comprehending therein the appointment to offices, consultation in all those cases became necessary, it being afterwards left to the Governor to adopt or reject the advice of his Councillors, His Excellency not being bound, and it not being possible to bind him, to follow that advice, but, on the contrary, having a right to reject it; but in this latter case, if the members of Council did not choose to assume the responsibility of the act, that the Governor wished to perform, contrary to their advice, they had the means of relieving themselves from it by exercising their power of resigning." (15) To a friend, Colonel Stokes, Metcalfe wrote: "Fancy such a state of things in India, with a Mahomedan Council and a Mahomedan Assembly, and you will have some notion of my position. On a distinct demand from the Council for stipulations which would have reduced me to a nonentity, I refused . . . Since then I have not even been able to form a Council likely to carry a majority." (16) He could not grant the demand of the Council, "for that would be to surrender the Queen's Government into the hands

(15) Sir F. Hincks, Reminiscences of his Public Life, Drysdale, Montreal, 1884, p. 99. Memorandum by L.H. Lafontaine, The conversation had taken place in May.

(16) Kaye, Op. Cit. p. 528, To Colonel Stokes. (Footnote).

"of rebels; and become myself their ignominious tool . . . The only thing certain is that I cannot yield." "Those must be blind who do not see the manifest difference between an independent state and a colony."

In the election which followed, Metcalfe, as Head had done, took active part. In the new Assembly the Governor gained a very small and uncertain majority. His Council - composed at first of Dominic Daly, the "perpetual secretary", W. H. Draper, and D. B. Viger, one of the French leaders - had little influence. During the following months Metcalfe was forced to become "in his own estimation, something of a trickster", in order to maintain even the small majority which existed in the Assembly. Several months later he wrote: "My only motive for remaining here now is to see such a state of things confirmed as may enable me to depart with an assurance that it will be lasting. I am not very sanguine in my hopes for the future." (17) Conditions remained unchanged when Metcalfe's ill-health forced him to resign.

The chief cause of disagreement had been the lack of the mutual unsuspecting confidence between the Governor and his Council indispensable under such a system of government. Metcalfe had confidence only in the party which most loudly proclaimed its loyalty, and he, like Stanley, suspected the republican designs of the reforming party. On the other hand, Lafontaine and Baldwin, inclined like Metcalfe to be doctrinaire and unyielding, probably exhibited lack of generosity. It was Metcalfe, however, not Bagot, of whom Stanley approved.

(17) *Id.* p. 590. To Mr. Tucker, Feb. 1845.

In the British parliament discussion of the Canadian question was avoided as much as possible. Since the Tory party was in power the reactionary members remained silent despite the fact that the policy pursued was actually that instituted by Lord John Russell in 1839. The Whigs did not disapprove of their own policy, nor did they condemn Lord Stanley's application of their principles. The Radicals alone, who had become a small company of lieutenants, were left to approve Bagot and criticize Metcalfe.

"The first principle undoubtedly of a representative government," thought Sir Robert Peel, "was that the sovereign should be guided in making appointments by the advice of the ministers, but it was quite a different thing whether the sovereign should contract obligations to act upon all occasions by that advice. In that case the sovereign would become the slave instead of the master."⁽¹⁸⁾ "There was no analogy between the position of the Governor and Council of Canada, and the position of the sovereign and Ministers of this country. The government in England or in Canada would be mad that sought the possession of patronage or power, excepting for the benefit of the community." "In his opinion the position of an Executive Council towards a Governor was perfectly distinct from the relation of a Minister towards his Sovereign. The very fact of a Governor standing in a double relation as it were, responsible to his Sovereign, at the same time as it was his duty to defer to the Colonial Legislature, at once established that distinction." "In a small community he did not think that party could govern with any advantage."

(18) Hansard : 3rd Series, Vol. 78, pp. 73-7, May 30, 1844.

In replying to Mr. Reebuck's motion, "That an humble address be presented to Her Majesty, praying that pardon may be extended to all persons transported from Upper and Lower Canada to our penal colonies, for political offences, committed during the late unhappy disturbance in those provinces," Lord Stanley thought that, "such grace and favour ought to emanate from the Crown."⁽¹⁹⁾ He considered it very unwise that the House of Commons "should recur to topics of difference and dissension, should revive the subject of former contests and should interfere with a government with which the whole people, as the noble and learned gentleman had told them, entirely concurred." "When Sir Charles Bagot first went out to Canada, the instructions given to him on the part of Her Majesty's government were, that in the administration of the law and in the selection of those whom he might think fit to call to his councils, no distinction of origin or race should be made, but that all men of all parties, of different origin and race, should combine in that which was to be the great object of his policy and government - forgetting and passing by recent transactions and recent animosities - should combine together for the advantage of those great provinces which Her Majesty's government - he thought advisedly - had united under one Governor and Council. He thought, therefore, that in the main - in all the essential features of the case - Sir C. Bagot since his appointment had acted entirely and cordially in concurrence with Her Majesty's government. It was in pursuance

(19) Id. 66 / 245-54, February 7, 1843.

"of the policy they pointed out - in pursuance of that determination to know no distinction of race or origin, between those who were willing cordially to co-operate with the government for the advantage and welfare of the colony."

"The two provinces were united; the difficulties formerly interposed, whatever other difficulties might have arisen, were at once at an end; from that moment there was no fear of the British population being overwhelmed by the dominant race interposed between themselves and the sea and communication with the Mother Country. From that time there was no reason why in the affairs of Canada this country should not feel herself bound to act upon the principles upon which, in all other colonies with Legislative Assemblies, she had felt it necessary to act - namely, to carry on the government in accordance with the views and sense of the great bulk of the population . . . without entering into the abstract theories which were put - and he thought needlessly - of a responsible government, and how far the Colonial Assembly must be overruled by the parliament of this country . . ." To govern, however, as the mass of the people wished, and "in support of the great interests of the province", did not involve "the utter oblivion of the crime of treason, and the necessity not to vindicate the power of the law against those who had placed themselves in arms against the established government of the country." If Roebuck's petition were granted "he did say that those who in both provinces had stood loyally by the Crown - those who boldly repelled the hordes of plunderers from the neighboring states - . . . those who stood forward and denounced rebellion and treason within . . . would have reason to complain, and might

"sorrowfully ask, where was the remembrance of all these things." He could not sanction an "act which would amount to a triumph of sedition and treason."

"He did not feel, in any degree, the slightest reluctance or hesitation in approving of the course which circumstances had rendered it necessary for Sir Charles Bagot to pursue."

"The course which had been taken by Sir Charles Metcalfe," Stanley stated, "had the entire concurrence and approbation of Her Majesty's government."⁽²⁰⁾ "Sir Charles Metcalfe went out to Canada to carry out fairly the new colonial system, but equally determined to resist those extravagant demands which were inconsistent with the authority of the Crown and of the true rights of a Colonial Legislature." The principle of responsible government, if fully applied in Canada, would be "inconsistent with the existence of monarchical institutions; and in the next place, with the relations which should exist between a colony and the Mother Country."⁽²¹⁾ Sir Charles Metcalfe had rightly refused to admit "that the whole patronage of the Crown in the colony should be surrendered to the Executive Council for the purposes of parliamentary support." The position of the King and the Governor-General in their relationship to their Executive Councils was not identical.

"The basis of the British constitution was, that the Sovereign was personally irresponsible for every act of the Government - that the responsibility rested with the confidential

(20) Id. 72 : 144 : February 2, 1844.

(21) Id. 75 : 38-61 : May 30, 1844.

"advisers of the Sovereign, who were responsible to parliament and the people for the advice they gave, and he admitted and allowed that no Minister could hold permanently the reins of power in this country who did not, in addition to the confidence, of the Sovereign, possess the confidence of the popular branch of the Legislature. But because the Crown was not responsible for the acts of government, the Crown particularly exercised no political power; and it was obvious that the exercise of political power without responsibility would not be more dangerous to the liberty of the country than the exercise of responsibility without power would be an absurdity and a contradiction."

In England the King made an appointment upon the advice of a minister, who was obliged as far as possible to defer to the "feelings and wishes" of the King, while the King, when the public interest so demanded, usually sacrificed "personal considerations." "But the case of a colony was totally different from that of this country." In England the people 'respected the dignity of the Crown from its hereditary nature'; the Peers, because of their wealth, rank and title, exerted, individually and collectively, a great influence upon the national life. The Legislative Councillors in the Colony had not such qualifications; nor had the Governor the dignity or wealth of the Crown, nor an equal personal interest in the welfare of his dominions. "Place that Governor and the Legislature so constituted in the position of a Minister being himself responsible, and compelled to act in every respect with parliament, stripped of all real power and authority, liable to act under the control of the leading politicians and parties of the day, and what would

"they institute in Canada? That which, but for the influence of the Crown and the Peerage, and the necessity of the Prime Minister of this country possessing the confidence of the House of Commons, would be the result here, a republican government - a Governor placed in a state of absolute dependence on the Assembly . . . would place the whole authority in the hands of the dominant party for the time, and convert Canada for a time into a Republic independent of the Crown of this country."

"Not only would such a course be inconsistent with monarchical government, but also with the Colonial dependence." "Now he had looked into the recommendations of Lord Durham as to the principle of responsible government, and although that Noble Lord did enunciate certain views, he did not appear to him to have seriously considered the mode in which they were to be carried out." "Lord Durham had laid down the doctrine that internal administration should be administered by heads of departments - each of them being in the Legislature answerable for his own department, prepared to defend it, and if not supported by the Legislature prepared to resign. To that principle from the time when Lord Sydenham went to Canada until now, when Sir Charles Metcalfe had declared his adherence to responsible government, he had not heard any objection." Lord Stanley quoted Lord John Russell's despatch of 14th October, 1839, "because it laid down broadly principles in which he concurred", and regretted that Lord Sydenham had not seen fit to lay it before the Canadian Legislature. "He understood by responsible government that the administration was to be carried on by heads of departments enjoying the confidence of the people of Canada -

"enjoying the confidence of the Legislature of Canada for the due exercise of the functions of their departments; and more, that the Governor in preparing and introducing, with their sanction, legislative measures to the Colonial parliament, was to be guided by the advice of those whom he had called to his Councils; that he was to introduce measures upon their advice and upon the advice and information of the local authorities throughout the Kingdom, taking the responsibility of conducting them through the Colonial Legislature. But if the honorable and learned gentleman asked this, whether he meant by responsible government that the Governor was to be a mere machine - a passive instrument in the hands of the Executive Council, or of any other different body - he replied that he did not so understand it." "The doctrine of the noble and learned gentlemen would leave him no responsibility, for it would leave him neither power, authority nor discretion - a mere instrument in the hands of the Executive Council, nominated by the dominant party in the province." "Without power there could be no responsibility."

He doubted if it would be wise "that the Crown should confer honour and rewards upon those who had favored the curtailment of its dominions on the one hand, and should inflict proscription upon those who had wished to maintain their integrity on the other."

Sir Charles Metcalfe was not a Tory, liberal in his views of government, and experienced in administration. Stanley believed that the "moderation, discretion, firmness, conciliatory temper and disposition of Sir Charles Metcalfe - his earnest desire to carry on the government of Canada in

"accordance with the well-understood wishes and views of the people of that province - that his determination to act in accordance with his instructions, to the effect that this country is not disposed to interfere in the local administration of purely internal affairs - and that the honesty, simplicity and straightforwardness of Sir Charles Metcalfe's character will not be without its influence on the feelings of the population."

The imperial connection Stanley thought advantageous; "indirectly the connection strengthens us by forming a nursery for our seamen, and in a commercial point of view, it is of great importance to us, as giving us a command over the inlet and outlet to a great continent, through a mighty river, which is one of the finest water communications on the globe."

When Sir Robert Peel reformed his Cabinet in 1845 upon the secession of Stanley, W. E. Gladstone became Colonial Secretary. In 1844, for the sake of consistency, Gladstone had resigned [REDACTED] from the Cabinet [REDACTED], declining to associate himself with the increase of the government grant to the Catholic College at Maynooth in Ireland. [REDACTED] While he held the seals of the Colonial Office he did not sit in parliament. Neither Gladstone nor the Earl of Dalhousie, who acted as his undersecretary, made a declaration of policy on Canadian affairs.

In 1846, Lord George Bentinck and Lord Stanley condemned the free trade policy of Sir Robert Peel as endangering the imperial connection with Canada. News had arrived, Bentinck said, "of the rejection by the Legislative Assembly of the

"commercial policy of Her Majesty's government." (22) The Bishop of Toronto condemned it, and the Solicitor-General in Canada stated that "our interests would cease to be identified with the interests of the parent state; our mental associations would assume new forms; our customs and laws, ~~aye~~, and our institutions too, would be assimilated to those of the people with whom we cultivated mercantile relations." The New York Herald wrote: "It will be the means of hastening the annexation - a measure which time and the moral effect of our laws and institutions, must finally consummate." Consequently, Bentinck asked, while on the part of the United States "there is no disposition to relax their tariff in our favour - is it a wise measure to adopt a system which may issue in the risk of our Canadian colonies?" Stanley referred to "the political dangers which were likely to result from giving the province of Canada an inducement to act independently of this country with respect to its commercial policy." (23) Upon almost this question alone, the Assembly of Canada was unanimous. He, too, pointed to the possibility of annexation.

Lord John Russell evidently agreed very closely with Lord Stanley. Of the Whigs only he and Buller contributed anything of value to the debates. Russell "thought that Sir Charles Bagot, in the circumstances in which he was placed, could have done no other than choose the ministry out of the large majority of the representative body; but he thought that circumstances did occur which certainly tended to weaken the authority

(22) Id. 86 : 553 : May 14, 1846. This, of course, in opposition to Peel's tariff policy.

(23) Id. 87 : 6 : June 4, 1846.

"of the Governor-General in those provinces. It must be remembered, however, that for a long period Sir Charles Bagot was suffering under indisposition." (24) While at first neither condemning nor approving Sir Charles Metcalfe, later he thought that the Governor had had no alternative course of action.

Charles Buller remained the sanest and ablest advocate of responsible government. The liberal policy which Lord John Russell and Lord Stanley professed to follow, and did follow in some measure, convinced him that however responsible government might be delayed, it was, at no distant time, inevitable.

In 1843 Buller objected to Roebuck's motion "because, on principle, he was opposed to the interference of the Imperial Parliament in Colonial matters, except in cases of absolute necessity, and as a last resource against an ill-disposed government." (25) Unlike Stanley and Russell, Charles Buller very eloquently commended Sir Charles Bagot. "There was no case made out of the government of Canada obstinately

(24) Id. 75 : 69-72 : May 30, 1844.

(25) Id. 66 : 255-8 : Feb. 7, 1843. Buller had, as is evident later in the same speech, great confidence in Metcalfe. He believed "there was nothing in the conduct of the government at home, there was nothing surely in the state of affairs in Canada, nothing in the working of the new system . . . nothing in the conduct of the people . . . nothing above all, in the preceding acts and general public conduct of the new Governor, that could create any distrust of his intentions."

"resisting the feeling of the people, or the expression of the Legislature of the province. On the contrary, he was bound there publicly to give his strongest approving testimony to the policy which had recently been pursued in Canada. He was afraid he should only do it harm in the eyes of a majority of that House if he were to say that he claimed a portion of the credit for others; and he would only say that he regarded the recent arrangements which had given so much satisfaction as the natural consequence of the union of the two provinces - which settled those unhappy questions of nationality that had given rise to the disturbances in one of those provinces, and added strength to the local legislature. These were the circumstances which had rendered it absolutely necessary to have an Executive in harmony with the Legislature. But it depended upon Sir Charles Bagot, the present Governor-General of Canada, and on those who had sent him out, to determine in what way he should meet the new necessities imposed upon him - whether he was to struggle to conduct affairs as former Governors had done and oppose for a while an unavailing and mischievous opposition to the will and the power of the people speaking through their legislature, or cheerfully and at once accept those necessities, and without a struggle adopt a new and better and more liberal system, in such a manner as to conciliate the good will of the people, while he yielded to their inclinations? He was bound to say that Sir Charles Bagot's government had taken the wiser and the safer course; that he had in a manner which could never be more than sufficiently commended, adopted the right course, and in the best possible way. The past acts of the present

"government in Canada inspired him with confidence in their administration of the affairs of the province, and he looked to the future with equal security, because he saw in the appointment which Her Majesty's Ministers had lately made - an appointment influenced by no party feeling, but resulting from a wise selection of the very fittest person that could be found in the country for so arduous an office - he saw in that appointment a guarantee that the Government of Canada would be conducted on just and sound principles." "Having sent such a man as Sir Charles Metcalfe to govern Canada with a free Legislature, and an executive in harmony with it, their obvious duty was to leave him unfettered as possible. Their opinions in this country, wise as they might be, and guided by the most enlightened principles, could have no weight in his judgment compared with those which an enlightened Governor would form on the spot when conversant with the circumstances with which he had himself to deal. He wished to inculcate upon both sides of the House that in this case there was no reason for distrust; on the contrary, that the exercise of the largest trust, the fullest confidence, was the safest and most prudent policy for them to follow."

"If the new Governor refused to conduct the government on just principles, then he would join with Roebuck; but he had confidence in Metcalfe's "just, humane and merciful disposition."

"Inquiring into the causes of the disorders of Canada, Lord Durham picked this out from the chaos of Canadian discontent and mismanagement, as that which appeared to him, conversant with the government and constitutional principles of this country, the main obvious cause of the disaffection,

"the executive government being carried on by persons not possessing the confidence of the legislature, to which was entrusted the full power of making laws, and the entire control over the public purse. No arguments had ever shaken his conviction, that if you had the power of legislation vested in a Parliament, the plainest and simplest reason dictated that you must place the executive government in the hands of those who possessed its confidence." "He felt confident that any attempt to abandon that principle, and revert to the old system of previous years, would only produce confusion and collision, a stoppage of the machine of government, and a prostration of that prosperity for which the situation of the British Colonies offered so fair an opening and in the ultimate result an ignominious and disastrous separation from the Mother Country. He would not lay down any definition of the principle of responsible government. It seemed to him to be very unwise to attempt to frame too strict a definition of constitutional principles, and still more unwise to put - which was the only fault he could find with the noble lord (Stanley) - hypothetical cases, in which those principles might be pushed to extremes. Of this there could be no doubt, that in every instance of parliamentary government, the business of that government must be carried out by heads of departments, who enjoyed the confidence of the executive authority, and of a majority of the Legislative Assembly; and no man could seriously think of saying, that in the appointment of every subordinate officer in every country of Canada, the opinion of the Executive Council was to be taken."

Buller defended Metcalfe against the attacks made upon him by Roebuck and Hume. "In the first place, Sir Charles Metcalfe did not violate the principle of responsible government; in the second, he did not turn out his Executive Council, and in the third, he did not refuse, in the manner stated, the pledge which had been demanded of him."⁽²⁶⁾ "To call upon the Crown or any representative of the Crown, for any pledge of the sort, appeared to him unheard of." He could not, however, completely exonerate Sir Charles Metcalfe from blame in connection with the Montreal elections. "He believed . . . that there never was an election there without the most dreadful riots, which were only settled by the Irish coming in with their sticks and driving out both parties." Mr. Howe, he said, attributed the difficulties in Canada to "a bungling administration."

The Radical group, like Buller, commended Sir Charles Bagot, but, unlike him, doubted the wisdom of Sir Charles Metcalfe's course, although they blamed not Metcalfe but Lord Stanley for the evil results of his policy.

In his speech supporting Roebuck's motion in 1843, Hume said, "Sir Charles Bagot himself had recommended that all past differences in the provinces should be buried in oblivion. He recommended that the future government of the country should be carried on in a conciliatory spirit."⁽²⁷⁾ "It was a fair

(26) Id. 75 : 63-9 : May 30, 1844.

(27) Id. 66 : 254 : Feb. 7, 1843.

"inference, from Sir Charles Bagot's conduct, that he thought an amnesty should be granted. These men were the victims of bad government, and for that reason the right honourable Baronet deserved the thanks of every friend of humanity for the change he had effected in giving a good government to the Canadas. It was an opposite course of policy that had raised all the angry feelings they had seen excited, till at last actual rebellion prevailed." He advised Roebuck, however, not to press his motion.

"Sir Charles Bagot had given the greatest satisfaction to the people of Canada." He "had frankly adopted the course of acceding to the demands of the colonists to possess a responsible government, to manage, in fact, the public affairs by the representatives of the people."⁽²⁸⁾

Hume "had a high opinion of Sir C. Metcalfe, and he had not a high opinion of the noble lord (Stanley)." "At this moment Canada was without a single responsible minister." "He hoped that both parties might be disposed to relax somewhat in their demands, but unless the noble lord set an example of conciliation, he regarded the prospect as one of the gloomiest kind." "He had expected that the conduct of Sir C. Metcalfe would be marked by that forbearance, prudence, and conciliation which had distinguished him in other situations. He knew that the principles of the right honourable gentleman were in favour of liberty, as he had manifested through a long course of public life; and he was very much disappointed to find that he was in the hands of such imprudent advisers."

(28) Id. 75 : 61-3 : May 30, 1844.

By his motion of 1843 Roebuck considered that "nothing but bare justice would be satisfied." "The noble lord the Secretary for the Colonies, on the first night of this Session, declared he was of opinion that, if Canada were not held by the affections of the inhabitants, our power there could not be maintained by a hostile army."⁽²⁹⁾ The course of the government "he could not mention . . . without remembering that he had before asked the House of Commons to adopt that very policy which the wisdom of the government had since deemed it advisable to pursue . . . They . . . had found that they must govern in accordance with the feelings of the majority of the inhabitants." At great length Roebuck praised the moderation of the French since they had been admitted by Sir Charles Bagot to a share in the administration. He deprecated the policy of attempting to make the French "English in language, in habits, in thought and in feeling, - to make their country as if for them it had never been; as if their ancestors had never lived there, as if they had not linked with that country any one of their dearest affections." He spoke of the "peace, quiet, gentleness and patience" of the Canadian peasantry. "The power of Great Britain in Canada was in the peaceful, quiet and virtuous disposition of the people of Canada, who were now rendered a loyal people. The curious state of that country when Sir Charles Bagot resorted to the wise policy which he had adopted - the remarkable exhibition which the country then showed, was calculated to instruct persons the least capable of paying attention to the changes that had taken place." The French "felt themselves relieved from an intolerable burden;

(29) Id. 66 : 237-45 : Feb. 7, 1843.

"but that joy and that triumph were not accompanied by anything improper or unfeeling towards that minority which had hitherto ill-treated them."

Sir Charles Bagot "had adopted a new rule - he gave a responsible government, not in name but in reality, to the Canadians, and resorted to no stratagems, to no means, to keep them down, corrupt or frighten them. The representative of the Government in Canada said to them, 'You have a majority in the House of Assembly, and unless we choose to govern by 14,000 bayonets, the people of Canada, by their leaders, must be leaders of my Councils.' That was language that had not been used before to them, and the French Canadians were now, for the first time, admitted, by their leaders, into the Councils of their Sovereign. They had raised a noble structure, and he now only asked them to put this coping stone on the arch, by bringing back that remnant of the misguided population, and binding them to Great Britain forever by the strongest ties of love and gratitude."

Sir Charles Metcalfe's administration of Canadian affairs once again aroused Roebuck's bitter eloquence. He condemned "without the least asperity" the "fraud from beginning to end of the proceedings," the "intimidation and violence" which Sydenham had employed in Canada to gain a majority in the Legislature. "Upon the death of Lord Sydenham Sir C. Bagot was appointed his successor. But the majority against his Government was so manifest that he found he could not continue his government under the existing system, and a remarkable change took

"place. Sir C. Bagot made a declaration of the principles upon which he would henceforth conduct his government. He referred to the resolution of the House of Assembly of the 3rd of September, 1841, a resolution in favour of responsible government, and declared that he would govern Canada upon the principles of that resolution. Acting in the spirit of that resolution, he selected from the body of the House of Assembly certain persons who seemed to possess the public confidence in the strongest degree, and of them constituted his Executive Council, determining at the same time that so far as the internal polity of the country was concerned he would be guided by their advice. In matters of metropolitan polity, of course, as heretofore he would continue to receive his instructions from the Home Government." (30) "It was touching to see how this conciliatory act was received by the people; . . . this people . . . seemed to forget at once all the evil which had been done them."

Sir Charles Metcalfe had declared "that he intended to govern the colony upon the principle of a responsible government; but from that hour to this he had never explained what he meant by a 'responsible government'." Roebuck thought "the noble lord ought to lend his assistance to lead on the Canadian

(30) Id. 75 : 31-8 : May 30, 1844. "He thought the distinction a very clear one; he thought that in matters relating to the metropolitan or imperial relations of the colony, the Governor should be under the control of the Home Government, but that in matters of purely internal polity, the local Council should have the controlling voice." He asked Stanley "what he really intended by that somewhat mystical phraseology 'a responsible government'."

"people, step by step, to that result which one day must inevitably occur - complete self-government - in order that when the separation from the Mother Country took place it might be of a friendly, and not of a hostile nature." "Sir Charles Metcalfe had not acted in conformity with the principle adopted by Sir Charles Bagot, especially in appointing to offices without first seeking the advice of his Council. He had declared 'he would not violate his duty by surrendering the prerogatives of the Crown.' The Executive Council then said, in that case we can no longer act as your ministry, and they tendered their resignations, which Sir C. Metcalfe accepted, and from that day to this the colony had been without an administration." "Either the noble lord must mean Canada to continue to be governed by Sir C. Metcalfe, irresponsible to all but the government at home, or by a government responsible to the people of Canada."

While Lord Stanley's policy was essentially the same as Lord John Russell's, his energies were concentrated upon a desperate attempt to defeat the aims of those whom he considered to be Republicans. He was not unwilling to allow the government to be conducted according to the well-understood wishes of the people, provided it should be carried on by the Governor, which was precisely what the colonists least desired. The Tories and the Whigs acquiesced in his policy, and were forced to excuse Bagot, of whom the Radicals approved, upon the ground of illness. Roebuck's conviction that the connection could survive for only a short time, and his desire that separation should be brought about in an amicable manner, as well as

his sympathy with the demands of Lafontaine and Baldwin, prompted him to assail Lord Metcalfe. While Roebuck condemned, Buller apparently approved, Lord Stanley's conception of executive responsibility. It is probable that Gibbon Wakefield, whose misconception of the issue in Canada drew severe criticism from Francis Hincks, exerted at this time a considerable influence upon Buller.⁽³¹⁾ With the exception of Charles Buller, and possibly a few who kept silence, almost all believed that to accede to Canadian demands would involve the severing of the Imperial connection, and the stipulation demanded from Metcalfe even Buller thought inadmissible.

(31) Gibbon Wakefield's influence upon opinion in England is outside the scope of this essay. He and Buller had been Durham's ablest assistants in Canada in 1838. I know of no retraction of Buller's approval of Metcalfe. In his letters to Howe, however, he seems to imply that the establishment of responsible government would be Lord Grey's work.

THE GREY REGIME.

Immediately after Sir Robert Peel's most liberal measure, the repeal of the Corn Laws, became law, his government was defeated on its Irish policy. On June 29th, 1846, Peel announced his resignation, and Lord John Russell received the Queen's commission to form a government. Viscount Palmerston became Foreign Secretary; Earl Grey, whose refusal in 1845 to serve in a Cabinet in which Palmerston held the foreign office had caused Russell's failure to form an administration, accepted charge of colonial affairs.

Since Earl Grey did not criticize Lord Stanley's colonial policy it is impossible to trace in Hansard his possible change of view between 1841 and 1846. It is true that in 1839 Howick considered the direct responsibility of the Colonial Executive to the Colonial Legislature incompatible with Imperial control, and that in his despatch of November 3rd, 1846, to Sir John Harvey in Nova Scotia, he conceded every essential condition for its establishment. It is also true, however, that in 1839 he said that he "saw no reason why in the management of their internal affairs, the wishes of the people should not be acceded to as long as they did not produce a clashing with the authority of this country."

However difficult it may be to determine at what time Grey definitely accepted Durham's principle, it is certain that his despatch of November, 1846, to Sir John Harvey, which formed the basis of the policy which Lord Elgin later executed in Canada, definitely ended another epoch in colonial government. The new system was finally established before it was seriously questioned in Parliament. "I am of opinion," Grey wrote to

Harvey, "that under all the circumstances of the case, the best course for you to adopt is to call upon the members of your present Executive Council to propose to you the names of the gentlemen whom they would recommend to supply the vacancies which I understand to exist in the present Board. If they should be successful in submitting to you an arrangement to which no valid objection arises, you will of course continue to carry on the government through them, so long as it may be possible to do so satisfactorily, and as they possess the necessary support from the legislature. Should the present Council fail in proposing to you an arrangement which it would be proper for you to accept, it would then be your natural course, in conformity with the practice in analagous cases in this country, to apply to the opposite party, and should you be able, through their assistance, to form a satisfactory Council there will be no impropriety in dissolving the Assembly, upon their advice; such a measure, under those circumstances, being the only mode of escaping from the difficulty which would otherwise exist, of carrying on the government of the province upon the principles of the constitution. The object with which I recommend to you this course, is that of making it apparent that any transfer which may take place of political power from the hands of one party in the province to those of another, is the result, not of an act of yours, but of the wishes of the people themselves, as shown by the difficulty experienced by the retiring party in carrying on the government of the province according to the forms of the constitution. To this I attach great importance; I have, therefore, to instruct you to abstain from changing your Executive Council until it shall become perfectly clear that they are unable, with such fair support from yourself as they have a right to expect, to carry on the

"government of the province satisfactorily, and command the confidence of the legislature . . . A refusal to accept advice tendered to you by your Council is a legitimate ground for its members to tender to you their resignation - a course they would doubtless adopt, should they feel that the subject on which a difference had arisen between you and themselves was one upon which public opinion would be in their favour. Should it prove to be so, concession to their views must sooner or later become inevitable, since it cannot be too distinctly acknowledged that it is neither possible nor desirable to carry on the government of any of the British provinces in North America in opposition to the opinions of the inhabitants." (1)

Lord Elgin, a Tory of the school of Gladstone, Lord Canning, the Earl of Dalhousie, was selected by the government to execute Earl Grey's policy. Conditions in Canada were unsettled. The discontent resulting from the repeal of the Corn Laws found its expression in the demand for annexation to the United States. The administration had not always the confidence of a majority in the Assembly. Lord Metcalfe, whose conduct had scarcely been wise, had once again destroyed the confidence in a British Governor. With these difficulties Elgin's qualities, his ability, tact, and wisdom, enabled him to cope successfully.

"I have adopted frankly and unequivocally," he wrote, "Lord Durham's view of government, and I think that I have done all that could be done to prevent its being per-

(1) Earl Grey, Colonial Policy of Lord John Russell's Administration, 1852, II, 210 seq., also in Kennedy op. cit. p.570

"verted to vile purposes of faction."⁽²⁾ "I give to my ministers all constitutional support, frankly and without reserve, and the benefit of the best advice that I can afford them in their difficulties. In return for this I expect that they will, insofar as it is possible for them to do so, carry out my views for the maintenance of the connexion with Great Britain and the advancement of the interests of the province. On this tacit understanding we have acted together harmoniously up to this time, although I have never concealed from them that I intend to do nothing which may prevent me from working cordially with their opponents, if they are forced upon me. That ministries and oppositions should occasionally change places is of the very essence of our constitutional system and it is probably the most conservative element which it contains. By subjecting all sections of politicians in their turn to official responsibilities, it obliges heated partisans to place some restraint on passion and to confine within the bounds of decency the patriotic zeal with which, when out of place, they are wont to be animated. In order, however, to secure these advantages, it is indispensable that the Head of the Government should show that he has confidence in the loyalty of all the influential parties with which he has to deal, and that he should have no personal antipathies to prevent him from acting with leading men."⁽³⁾

(2) Walrond, *Letters and Journals of Lord Elgin*, Murray, London, 1872, p. 36, Elgin to Lady Elgin 31 Jan. 1847. Lord Elgin was, of course, Durham's son-in-law.

(3) *Id.* p. 40. To Lord Durham's daughter he wrote: "I still adhere to my opinion that the real and effectual vindication of Lord Durham's memory and proceedings will be the success of a Governor-General of Canada who works out his views of government fairly."

"Canada", he thought, "will remain attached to England, though tied to her neither by the golden links of protection, nor by the meshes of old fashioned colonial office jobbing and chicanery." (4) "I am prepared to contend that with responsible government fairly worked out with free trade, there is no reason why the colonial relations should not be indefinitely maintained." (5) When Lord John Russell felt himself bound to express his doubt of the permanency of the colonial connection, Elgin wrote to Grey: "You must renounce the habit of telling the colonies that the colonial is a provisional existence." (6) In 1853 he wrote the Duke of Newcastle; "Let it be inferred from your language that there is in your opinion nothing in the nature of things to prevent the tie which connects the Mother Country and the colony from being as enduring as that which unites the different states of the Union, and nothing in the nature of our very elastic institutions to prevent them from expanding so as to permit the free and healthy development of social, political and national life in these young communities." (7).

Upon such principles and with such magnificent faith Elgin acted. When his first ministry had lost the support of Parliament, he called upon Lafontaine and Baldwin to form a government, and when the Hincks-Morin ministry was defeated in 1854, the opposition took office under Sir Allan MacNab.

(4) Id. p. 103, to Lord Grey, Nov. 8, 1849.

(5) Id. p. 112, to Lord Grey, Nov. 16, 1849.

(6) Id. p. 116, to Lord Grey, Mar. 23, 1850.

(7) Id. p. 133, to the Duke of Newcastle, 1853.

His system was most severely tested in 1849, when he gave his assent to the Rebellion Losses Bill which had passed both Houses of the Legislature. It was this action, Elgin's refusal to reserve the Bill or to seek instructions from Earl Grey, that prompted Gladstone to assail, with much more eloquence and ability than wisdom, the Canadian policy of his successor, Lord Grey.

"When I hear", declared Gladstone, "the noble and learned gentleman say 'the people of Canada have been voting the money of Canada, and, therefore, I warn you not to interfere', I protest against a doctrine which interferes with the supremacy of this country over all Imperial concerns." (8)

"The fact of the money concerned in this Bill being the money of Canada will not be, of itself, a conclusive reason against our interference, provided our interference shall seem, upon other grounds, to be called for." "We have not merely to consider in regard to it the general doctrine of the necessary supremacy of the Mother Country over a colonial dependency, but we have also to recollect that, in regard to Canada, the responsibilities connected with the fulfillment of the first duty of a government - namely, the maintenance of public order, are responsibilities which are discharged, not by the people of Canada at their own cost, but by the people of England, under the auspices of the Crown, and under the sanction of the British Government." (9)

"I hold it to be a sound principle admitting of but rare exceptions, that if England is to interfere, with

(8) Hansard, 3rd Series, Vol. 105 : 566 : May 16, 1849.

(9) Id. 106 : 189 : June 14, 1849.

"any rational prospect of advantage, with the legislative proceedings of a Colonial Parliament, in order to secure that prospect of advantage it must be united and not divided England that undertakes such interference." (10)

It was his impression "that on the Earl of Elgin has been laid an undue and excessive share of responsibility." "Now so far as responsible government, in general terms, is concerned, I think Canada has possessed it before the time of the Earl of Elgin, and I am at a loss what construction to put on the words of the honourable gentleman, unless it is this, namely, that the rule is now established that the Earl of Elgin is not to refer for directions on any question of colonial legislation to the Secretary of State at home, but only at the last stage, and in reference to the ultimate question whether the assent of the Crown shall be given or withheld." (11)

"I think his position an impracticable one."

"I think that the local Legislature of the Colony should be left free and unrestricted in its action upon questions purely and entirely having a bearing upon the local interests of the colony; but we ought to draw the broadest and most marked distinction between questions of a local and imperial character; and with regard to imperial questions, instead of being postponed till the resolutions and deliberations of the local legislature are concluded, and are sent home in their ultimate shape to receive the sanction or disallowance of the Crown, I think that reference to the Home Government ought to be made at the very first moment, and before public opinion may have been appealed to

(10) Id. p. 191.

(11) Id. p. 193.

"in the Colony; and that at the first moment it ought to be ascertained how far the Queen's Ministers at home think it necessary to fetter the discretion of the local authorities and how far they may freely move in the path to be trodden on by them." "Such a condition lies deep in the very nature of things, and rests upon the very foundations of common reason and common sense."

The issue of the struggle "I earnestly hope . . . may be such as may be for the happiness of the people of that country; and if it be for their happiness I am sure that we can have no reason to desire any other issue. It is possible that this measure and the struggles connected with it may lead to the entire dissolution of the Canadian Union. I can conceive that it may eventually lead to a general union of the North American provinces, into which the two divisions of Upper and Lower Canada would enter; and, for my part, I should rejoice if some such result should ensue. I should rejoice if these ill-omened beginnings should end in placing on a firmer footing the connexion between this country and the colonies, while it diminished the charges which this country has at present to bear, and secured and consolidated our Colonial Empires." (12)

He could never "be a party to any other than constitutional means of redress. I am deeply convinced that the Queen has no interest in obtaining from the people of Canada a coerced obedience . . . But then, I must say that there might be questions connected with the honour of the Crown here, which would impose upon us the duty of looking to what the honour of the Crown requires, without reference to the course which the feelings

"and wishes of the people of a colony might induce us to take."

The honour of the Crown "requires you to draw a clear line of distinction between those who rise up against the Government, and endeavor to overturn it by violence, and those who respect its laws and who are ready to support it with their lives and substance."

Gladstone wished that the Bill should be suspended to allow its reconsideration in Canada. It remained, however, for J. C. Herries to make a motion requiring that a greater assurance should be given that rebels would not be compensated. He would ask "whether they would deliberately approve of a principle which was calculated to sever all the bonds of political allegiance, and to stifle every feeling of loyalty and attachment to Government in any community."⁽¹³⁾

Lord Brougham moved in the House of Lords that it was necessary to provide security against the compensation of rebels. Brougham's conduct in 1848-9 is an excellent illustration of the "oscillation" of his opinions; whether he was a Liberal or a Tory probably not even he knew; of one thing he was certain, that he was in opposition. During the year of revolutions, however, he appeared to affiliate himself with the Tories, rather than with the Liberals.

The Rebellion Losses Bill Brougham thought "a bill of compensation for losses sustained by rebels."⁽¹⁴⁾

"A notion sprung up at one time, which was very much encouraged by Lord Durham and his Council, and which goes

(13) Id. 106 : 246 : June 14, 1849.

(14) Id. 106 : 470 : June 19, 1849.

"by the name of 'responsible government'. If I were to say that I clearly understand what is meant by the term, I should be arrogating to myself a degree of perspicacity to which I have no right."⁽¹⁵⁾ The principle of responsible government "I believe . . . to be that whosoever governs a colony, he shall be bound to choose as his ministers whomsoever the legislature of the colony is disposed to give its confidence to. And further, whatever be his opinions of their conduct, so long as the confidence continues, he cannot remove them. Now, if it be supposed that that is a copy of the constitution of the Mother Country, there cannot be a greater mistake. The ministers in this country are the organs of the Crown. They are responsible to Parliament, and not merely responsible, but they hold their offices at the good will and pleasure of Parliament. But the principle is one of give and take. The Crown has the choice of selection or dismissal, and the Parliament of refusal; and therefore both Crown and Parliament have a somewhat similar, though in cases of irreconcilable differences, not unequal, influence . . . But in the colony we are told to regard as the English constitution one which gives the whole power to one party, Parliament, and leaving nothing to the Crown . . . Such is the construction put upon responsible government in the colonies; and Lord Elgin, I see, has put this construction upon it; indeed, but for such a construction, nobody could ever have dreamt of appointing Mr. Lafontaine. He was first appointed in the time of Sir Charles Bagot, who was, I believe, an able Governor, and he displayed great judgment and great moderation, and

(15) *Id.* p. 461

"gave, upon the whole, great satisfaction in the colony; he was, however, in very bad health during the greater part of his government, which thus added to the weight and influence of his ministers. He appointed Mr. Lafontaine because responsible government had become the order of the day; but there can be no doubt it must have been a painful duty to him to make such an appointment. Then came Lord Metcalfe, a most excellent Governor . . .; and I must say when I look back upon the whole career of his government in those troubled times, I am filled with admiration of his statesmanlike capacity, of his profound judgment, of his calmness and deliberation in the most difficult and serious emergencies." (16)

"But there came afterwards another change, and the doctrine of responsible government was applied, in the utmost rigour of its absurd interpretation, by the new Governor, Lord Elgin; he restored Mr. Lafontaine and his friends to office. This notion of responsible government, as applied to the colonies, almost passes my powers of comprehension. It is utterly in-applicable to the colonies, that is, as it is upheld in the Mother Country. It is no doubt to a certain limited extent applicable, but only to a limited extent. I would, for my part, interfere as little as possible with the powers and workings of the Colonial Assemblies, in respect to the making of roads, bridges and canals, and as to all matters of a like nature; but in matters that touch in the slightest degree the honour of the Crown, or the interests of the Imperial Government, I deny that you can have responsible colonial government." The minority, he thought, would be subjected to a gross despotism. "I can conceive a thousand differences between the state of the colonies and the Mother Country, with

"respect to the applicability of this theory of responsible government." "The Governor, according to this principle of responsible

government, is a mere tool or puppet in the hand of the colonial ministers." A loyal subject in Canada wrote, "should Her Majesty

consent to the Bill which Lord Elgin sanctioned, Canada is lost to the British Crown." "Let us, therefore, come to the consid-

eration of this question uninfluenced by the farce of responsible government, so well exposed to ridicule and reprobation in the

despatch of Lord John Russell which I have read." (17) "America

counts every day an age until she hears that this Bill has received the Royal assent - until she hears that you have plunged yourselves

recklessly into the gulf which is now yawning . . . It is impossible, my Lords, to know the strong and sincere feelings of loyalty

which pervade masses of your fellow-subjects and not be sensible how cruel it would be to take any steps which would throw them

into the hands of the Americans." "I implore you to save your Canadian fellow-subjects from being made a sacrifice to this whim

of responsible government - responsible government carried to an absurd, ridiculous, and also to a needless extent." (18)

Forgetting for a time his own administration of the Colonial Office, Lord Stanley believed that if "public business were conducted by private letter", as between Grey and Elgin, ministerial responsibility was at an end.

"By responsible government," said Stanley, "I mean the government of a party. Now I have always been of opinion that government by a party is by no means that which is most likely to contribute to the good administration or successful management

(17) Id. p. 479.

(18) Id. p. 482.

"of the affairs of a colonial dependency. I have always thought that such a system must involve the colony and the Mother Country in constant and most unfortunate disputes." (19) If a Colonial Minister, "be he whom he may, is on all questions, whether local or general, colonial or imperial, absolutely to dictate the course of government, and exercise an unlimited control over the person who is nominally the representative of the Crown, but who under such circumstances would be the mere tool of a local administration - then I say that a system so carried out is utterly and wholly inconsistent with the idea of responsibility to the sovereign or the parliament of this country. Such a system in fact amounts to one of entire independence. If a Governor has nothing to do but obey the orders of a responsible administration in the colony, it is a farce to talk about his being responsible to a Secretary of State at home, and as much a farce to talk about the Secretary of State being responsible to Parliament for any opinion expressed. The noble Lord (Grey) stated that it was an exceedingly difficult problem to reconcile the authority of the Crown with the exercise of local self-government. Now with both authorities pushed to their extremes, such a ~~xxx~~ reconciliation is impossible. It is a case of contradictory terms. The notion of a supreme local government excludes the power of the Crown; and the notion of the power of the Crown again excludes that of local government. The real difficulty is this as applied to responsible government, it is to state the occasions and to form a judgment of the nature of the questions, in respect to which it is

"wise and expedient to interpose the authority of the Crown through the Secretary of State . . . For if this is to be the principle, that the prime minister of the colony is to advise the Governor on every question, and that his advice is always to be implicitly followed - that he must, too, be a man having the control of the Local House of Assembly, - that he is to advise the former, on all occasions, including those of the appointment of members to the Legislative Council - the result will be that the Legislative Council, the Governor, the Crown itself, will be absolutely made subject to one individual, who for the time being has in his hands the actual majority in one of the Houses of Parliament."⁽²⁰⁾ "Lord Elgin seemed, in the course of those proceedings to assume that he could exercise no control over his responsible advisers; that was not the doctrine held by that wise, great and good man, Lord Metcalfe." "Lord Metcalfe felt that he was responsible to his sovereign, and he would not permit himself to shelter himself behind that which might compromise the loyalty of the subject or the prerogative of the sovereign." He had occupied his post "with infinite honour to himself and with a degree of advantage to the country, the amount of which it would be extremely difficult to estimate." "I think if ever there was a question where the interference of the Crown, for the purpose, I will say, of preventing erroneous and most mischievous legislation, was desirable, this is the occasion on which it is the duty of the noble Earl to interfere."⁽²¹⁾

(20) Id. Would Stanley have described party government in England thus?

(21) Id. p. 530.

Lord Lyndhurst held that "unless (they) were to consider Canada as an independent state, they were justified in saying 'We will interfere for the purpose of preventing the passing of a measure which we consider injurious to the Empire, and inconsistent with the respect due to the British Crown.'" What harm, he asked, to say to the people of Canada, "we are advised by our officers that, by the construction of this Bill rebels may, and in some instances must, be compensated; in that respect it does not carry out your designs; therefore bring in a Bill in accordance with your intentions and it shall be passed." (22)

Disraeli's speech was at once flippant and serious argument against the surrender of the royal prerogative. "The question at stake is, whether the Queen shall exercise her constitutional veto or not. If the opinion of the majority is to be always conclusive, how could there be such a thing as the exercise of a veto?" (23) The "elements of success and prosperity" in Canada "only impresses me the more with the importance of our avoiding, under all circumstances, the permitting any party in Canada unreasonably to triumph over the other." "It is all very well to talk about the opinion of the majority being conclusive under ordinary circumstances. It is all very well to come forward and say that the question at stake is the question of responsible government. These are empty phrases, fit only for debating clubs - fit only for boys - and not for practical men, men who

(22) Id. 106 : 510 : June 19, 1849

(23) Id. 106 : 354 : June 14, 1849.

"have a knowledge of circumstances and details, and whose position in this House renders them responsible for the policy they recommend."⁽²⁴⁾ "You have a power reserved to you in that very constitution which you laud so highly; and by a wise, politic and temperate exercise of that power - by mediating between the contending parties - you may insure the prosperity of their country, as well as the greatness of our own. I see nothing in the course you are pursuing, whatever may be your plea for it, but a course that is unwise, impolitic, crude, and perilous."

"When they came to look into the Act itself", said Sidney Herbert, "they found words that so little bore the interpretation put upon the measure by the Governor-General, that it was difficult to reconcile them with the declared intentions of it."⁽²⁵⁾ Consequently he felt bound to support Herries' motion.

The Marquess of Granby thought that if rebels were to be rewarded it was the duty of the government to interfere. "The noble Lord at the head of Her Majesty's government said, the other night - and I am sure he is not opposed to the principle of responsible government - that in his opinion there were cases in which it was the duty of the government of this country to interfere in the decision of a Colonial Legislature. Was not the present one of those cases which would justify the refusal of the Royal assent to the act of the Canadian Legislature . . .?"⁽²⁶⁾ He thought it would not be difficult to dis-

(24) Id. p. 359. Really an ill-mannered attack upon Sir R. Peel.

(25) Id. 106 : 365 : June 15, 1849.

(26) Id. 106 : 335 : June 15, 1849.

tinguish between a rebel and a loyal subject. "I would ask the honourable and learned gentleman if he ever went out with 800 men for that object (i.e. shooting excursions); and if in doing so he ever mistook a red coat for a stray duck?"

To Mr. Newdegate: "It seemed that the doctrine of responsible government had gone to such an extent that the Governor had no discretion, and that the Crown had no discretion when the Act was sent home." (27)

"At present", Mr. Anstey believed, "the loyal population of Canada wished to maintain the connexion with this country; but he feared that the policy of Her Majesty's government, if persevered in would infallibly conduct them into the camp of those who desired the separation of the Canadas, and the concession of independence." (28)

Mr. B. Cochrane, Dr. J. Nicholl, and Mr. G. Bankes, also declared their intention of voting in support of Herries' motion, while C. B. Adderley thought that, in view of the fact that the Bill had become law in Canada, the suggested amendment could be of no avail.

In spite of the fact that many of his former supporters and colleagues followed W. E. Gladstone, Sir Robert Peel could not consent to disallow the measure approved by the Canadian Legislature. "That which the House of Commons is called on to affirm is substantially this, that the measure approved of by the majority shall not have effect until the majority shall adopt the amendments submitted to their consideration by a

(27) Id. 106 : 319 : June 15, 1849.

(28) Id. 106: 328 : June 15, 1849.

"small minority, and then negatived." (29) "If we accede to the motion of the right honourable gentleman, we are about to enter on a conflict of no small danger." "The present measure does not contemplate any appropriation of the revenue of this empire. It proposes an appropriation of colonial funds to colonial purposes." "I am unwilling to refer to the character and constitution of that majority, because the act of the majority is that which, under ordinary circumstances, ought to prevail"- an opinion which to Disraeli was "fit only for boys - and not for practical men." "The Earl of Elgin calls your attention to this remarkable fact, that two members of the minority who took a decided part against the measure, and were active in proposing amendments, were among the foremost to contend that the principle of responsible government ought to be maintained, and to declare that they would not be parties to any advice being given to the Crown of Great Britain to reject or destroy the bill after it should have passed." "It would be most painful to me if I were called on by a strong sense of public duty to take any line which would imply reflection on the Earl of Elgin . . . My conviction is, that he has acted with great firmness, with great resolution, with great impartiality; that he gave his entire confidence to the government which was supported by the majority of the Assembly - that he dissolved the Assembly upon their advice - that when the majority of the new Assembly transferred their support to other parties, he then, under the principle of responsible government, selected for his government those who had the confidence of the

"majority, and gave them, on the same principle on which he had acted with reference to his former government, his cordial support." "My opinion is, that it is a much wiser course to leave the matter to the discretion and the responsibility of the Crown and not enter into a contest with a popular Assembly in Canada which, if the motion should be entertained, I, for one, see to be inevitable. Our only hope of maintaining the connexion permanently, and with reciprocal advantage to the Mother Country and the colony, rests upon our acting on that principle on which the Earl of Elgin has acted - that of maintaining strict impartiality between the opposing parties."⁽³⁰⁾ "I appeal to you, whether it would be wise in us, with the limited information in our possession, to draw this invidious distinction between Upper and Lower Canada, and to tender advice to the Crown which would impose upon it the obligation of adopting a different course towards one province from that which has been pursued towards the other, and against which we, although cognizant of the fact, made no objection." "I cannot . . . vote for a resolution which I believe would prove destructive of the principle of representative government in the colonies, - which would constitute a precedent for constant interference in the affairs of possessions with whose local concerns we are but imperfectly acquainted - and which would cloud the prospect I trusted was opening, of a long, permanent, and cordial connexion with a colony."⁽³¹⁾

Like Sir Robert Peel were Monckton Milnes and

(30) Id. p. 351.

(31) Id. p. 354.

Cumming Bruce. "Was it possible," Milnes asked, "for the House to call upon the Crown to reject such a bill as this, sanctioned by such a majority in the Canadian Legislature, without seriously endangering the connexion between the two countries?" "Canada must be attached to us by the tie of ^{the} consciousness of her own interest; otherwise we could not hold Canada, and the question of separation could be only one of time."⁽³²⁾ He advised compliance with the will of the majority in the Canadian Parliament. Cumming Bruce thought that Gladstone had "indulged in the operation of splitting hairs, and had applied to their examination glasses not only highly coloured, but possessed of a strong microscopic power, which had not only discoloured the objects of his examinations, but invested them with proportions infinitely more formidable than could be discovered by the unaided vision of common sense."⁽³³⁾ "You had conceded to Canada the boon of a free constitution, and of responsible government. He said not whether wisely or unwisely. Was that boon to be fairly and honestly carried out, or were you to brand it with the mark of a delusion and a mockery on the very first occasion on which its working might seem to run counter to your own impressions of what it might be right and fitting for the Parliament of Canada to do? He believed that no more fatal error could have been committed than to have impressed on the mind of the Canadian people a conviction that the responsible government you had professed to bestow on them was a shadow and not a substance, a concession in name only, not in reality and truth."

(32) Id. 106 : 334 : June 15, 1849.

(33) Id. 106 : 270-3 : June 14, 1849.

"He believed that this conviction must have resulted from any arbitrary interference of the authority of the Crown to overrule the decisions of the Canadian Parliament on a question so purely local, and that in its results it would have proved disastrous, if not irremediable." "He entirely repudiated the defence set up for the Governor of Canada, which would separate his share in, and responsibility for, these measures from that of his ministers. In giving his sanction to them he had adopted them; and did not wish to escape from his full share in responsibility for measures which he had approved." "What really was important in this matter was that this imperial legislature should neither say nor do anything calculated to induce in the minds of the people of Canada a doubt of the sincerity of your determination honestly to allow them to work out, and reduce to practice, the principle of responsible government, which your own concession of it has for them invested with the character and the force of a passion." (34)

The Earl of St. Germans, at one time Irish Secretary to the Tory Lord ^{de Grey} ~~Grey~~, and who had held office in the Tory government of Sir Robert Peel, followed his former chief. He "understood responsible government to mean that the administration of local affairs was to be conducted by those who were supported by the parliamentary majority, provided these measures were not at variance with the honour of the British Crown." (35) In Canada one of the most active opponents of the Rebellion Losses Bill had expressly deprecated any interference of the

(34) Id.

(35) Id. 106: 535 : June 19, 1849.

Imperial Parliament. Consequently Lord St. Germans could not oppose the Whig Government.

At the head of the administration was Lord John Russell. Whether Russell would have conceded on his own initiative what Grey granted in 1846 is questionable. When, however, Grey and Elgin succeeded in working out a solution to the Canadian problem, Russell very loyally supported them, and reposed his fullest confidence in the Earl of Elgin.

"There are cases," admitted Russell, "where the honour of the Crown and the safety of this country are concerned, and in such cases it requires the utmost temper in the colonies, and the utmost temper and firmness in this country, in order to prevent differences from being pushed to a collision which might be fatal to the connexion between the Mother Country and the colonies."⁽³⁶⁾ "I don't regard the principle of responsible government as implying that every act passed in the colony ought to be consented to by the imperial government."

"To say that the act is expressly intended for the purpose of rewarding persons guilty of rebellion, is to confound two things totally and essentially as wide as the poles asunder."⁽³⁷⁾ "What really is proposed to you is that the Royal assent should not be given to this act." "How does any one suppose that the Canadian Government - that the Earl of Elgin or any of his present advisers, could bring in a bill into the Canadian

(36) Id. 106:225 : June 14, 1849. The extract following from 106:369, June 15, 1849.

(37) Id. 106:369 June 15, 1849.

"Assembly to carry out this principle of the minority?" "Why you are going to propose, in fact - there having been compensation and indemnity voted by the Legislature of Canada for the sufferers in Upper Canada - that there shall be no compensation or indemnity voted for the sufferers in Lower Canada."

"The opinion of the Earl of Elgin is, that if he were to dissolve the Assembly he should have another returned with the same majority, and representing the same sentiments; but he would not be in the same position . . . he would have caused vast ill-feeling and dissension." "I trust that the different parties in Canada, whose dissensions are not of yesterday, who have carried on these bitter contests for many years, will feel that, whatever imperial interests may be involved in this question, it is still more for the interest of Canada that she should be allowed to pursue her course of destined prosperity undisturbed by the effects upon commerce, upon agriculture, upon industry, of these violent agitations."⁽³⁸⁾ "It may be that hereafter a more general federal union . . . may be the means of admitting other parties, of diffusing over a greater space these dissensions, and thereby weakening their force."⁽³⁹⁾ "I think the best way in which I can support the responsibility of the executive government - in which I can support the due legislative independence of the Assembly of Canada, is to give my vote against the amendment of the right honourable gentleman, believing as I do, that it is one that would seriously impair the connexion between

(38) Id. 106 : 241 : June 14, 1849.

(39) Id.

"this country and that noble province, and one that would seriously endanger our future relations with every colony in which there is a responsible government established." (40)

In 1850 in a speech in which he reviewed the history of British Colonial policy, Russell said, "I consider it to be our bounden duty to maintain the colonies which have been placed under our own charge." (41) "I think that the persons who talk about giving up the colonies, without much investigating the subject, do not consider what would be the probable result with respect to a great number of those colonies." They would, he thought, seek protection from other states. He believed it impossible "that a line should be drawn between those laws which require the assent of the Crown, and those which should be enforced without such assent." "During the time that Lord Glenelg held the Colonial Secretaryship, Mr. Baldwin, who I believe is now in office in Canada, came to this country. Lord Glenelg informed me that, for particular reasons, he could not see Mr. Baldwin, but he wished me to see him and to hear his statement. I met Mr. Baldwin. My opinion when I met him was, that I should very widely disagree with him, and his opinion probably was that he would very widely differ from me; but after a long conversation, and mutual explanations, we came to a result which was one of nearly entire agreement with respect to the government of Canada." The rule established in Canada was that the Governor "will act strictly according to the rule which has

(40) Id. 106 : 372 : Kk June 15, 1849.

(41) Id. 108 : 535-67 : Feb. 8, 1850.

been adopted here." The Imperial parliament wished to "interfere no further in their domestic concerns than may be clearly and decidedly necessary to prevent a conflict in the colony itself." But the 'sting in the tail' - "I anticipate indeed with others that some of the colonies may so grow in population and wealth that they may say - 'Our strength is sufficient to enable us to be independent of England. The link is now become onerous to us - the time is come when we think we can, in amity and alliance with England, maintain our independence.'" (42)

Between Earl Grey and the Earl of Elgin there existed the closest cooperation and the greatest confidence. It was the duty of Lord Elgin to execute the policy set forth by Grey in his despatch to Harvey in November, 1846. Grey trusted Elgin's knowledge of local affairs and offered no advice as to the Governor's course of action in a particular emergency; Elgin accepted the responsibility for his action, and neither sought nor desired instructions from Grey.

"It is absolutely impossible," Grey thought, "that the affairs of the colonies can be administered with advantage, if the Secretary of State interferes more with the discretion of the Governor than is absolutely necessary. The more experience I have of colonial affairs, the more persuaded I am that the true secret of satisfactory management of our colonies is to choose the best men that can be found for governors, and having got such governors to give to them a large and wide discretion, and a generous trusting support, and never to believe that they have acted wrong, unless there is some strong evidence to that

(42) Id. The significance of these words may easily be exaggerated. Because Russell was prime Minister they might better have been left unsaid.

effect."(43)

From Lord Brougham, Grey had "heard no explanations... of how he considers the government of the province could be carried on after the wishes of the great majority of its representatives had been set at nought by a resolution of this House."(44) Nor had he learned "how the interference of this House on this question could tend to facilitate that most difficult task ... to reconcile the enjoyment by this great colony of that practical self-government and practical management of their own affairs, to which they had a right on the one hand, with the maintenance of the just authority of the Crown and the Mother-country on the other."

"I certainly have always been taught to believe that in matters of government, when the interests of great bodies of the people are concerned, there is nothing more injudicious than individually to attempt to lay down and define the rights and the powers of each different authority which takes part in the government. From these definitions, disputes and differences are too apt to arise; and I believe it is a sound rule of practical wisdom to avoid discussions of that kind, and to deal only with practical questions."(45) Responsible government as defined by Lord John Russell's despatch of October 14th, 1839, was so understood by Grey. "I believe it is true, as he states in that despatch, that there is a great distinction between the government of a colony and the government of this country."

(43) Id. 104: 1250: May 4, 1849.

(44) Id. 106: 484: June 19, 1849.

(45) Id. p.485. Buller and Grey here, too, were in close agreement.

Lord John Russell had written that there was little objection to "the practical views of Colonial government recommended by Lord Durham." In Canada "For several years misunderstandings existed between the Governor and the Assembly. The practice, to a very great degree, there prevailed of allowing persons, appointed to some of the most lucrative offices in the colonial government, to hold them for life, or during good behaviour, and, in fact, unless for very flagrant offences, they were not generally removed. Lord Durham, desiring to check some of the evils resulting from that practice, thought that some of these offices should be held by a different tenure, and though not legally, or necessarily, yet practically, that the higher offices of the Executive government should be held by persons having the confidence of the representative part of the legislature. The despatch of my noble friend concurs in that, and it was followed by another two days later, giving those who then held office to understand that they were not to consider they had a vested right in any offices they might have hitherto enjoyed. The noble Lord opposite (Lord Stanley), while he held office, went upon the same principle, in a great degree, and affirmed the principle that the offices in our North American colonies were to be held by persons possessing the confidence of the representative part of the legislature. It is perfectly true that to lay out in terms what is the exact power of the Governor, the Assembly, the Secretary of State and the Crown, is difficult; and if you attempt to define the power of each, you may lay out such a system in theory that in practice the government could not go on. But my noble Friend Lord John Russell shows that the same thing is true in our own

government: that if parliament or if the Crown should stretch their power to extremes, the whole machine of government must soon be brought to a stand. Therefore, if the noble and learned Lord lays down the rule that the Governor is to act so and so, and is not to have a will of his own, I say that he lays down a theory inconsistent with the working of responsible government. I entirely concur with the noble and learned Lord that the Governor exercises his will within certain well-known limits, and these limits are not very difficult to define.... It may be within your knowledge that during a recent discussion, ...the noble Lord (Stanley) did me the honour to refer to a despatch of mine to the Governor of Nova Scotia and to state that he concurred in the principle which I had laid down, and that what he found fault with was the application which I made of the principle." (46) The interference of the Imperial Parliament in colonial affairs should be limited, he believed, to extreme cases.

Grey's speech illustrates very well the confusion that may seem to exist when one attempts to reconcile the written law of the constitution with the practice.

Upon Russell's accession to office in 1846 Charles Buller became Judge-advocate-general, "a well-paid, high office of almost a sinecure character." Although he had not a seat in the cabinet, it is certain that he was consulted upon colonial

(46) Id. p.492. Grey conceived the maintenance of the empire to be a duty. "The authority of the British Crown is at this moment the most powerful instrument, under Providence, of maintaining peace and order in many extensive regions of the earth, and thereby assists in diffusing amongst millions of the human race, the blessings of Christianity and civilization." Col. Policy p. 13.

matters by Earl Grey. From 1838 until his premature death in November, 1848, Buller was the ablest advocate of the system which Grey established during his administration. Buller's letters to Howe illustrate in some measure at least, his influence at the Colonial office.

"But ours is a sad Colonial system," he wrote, "even with all recent concessions. In my eyes the almost sole business of the Colonial office should be to breed up a supply of Good Colonial Governors: and then leave them and you to manage your own affairs. Our practice is to neglect the one duty, and meddle in everything else. You are fortunate in now having a Colonial Secretary who has sound views of Colonial policy." (47) On November 16, 1846, he wrote, "Despatches of some importance have passed between your Lt. Governor and Ld. Grey. I am sure from what I hear, that the latter has impressed on Sir J. Harvey the fullest adoption of the principle of Responsible Govt. I have not the slightest fear but that Sir J.H. will show himself perfectly ready to entrust his Govt. to those who have the confidence of a majority in the Assembly." (48) "That there may be extreme cases in which a Colonial Governor may like a British sovereign be called upon to assume the weakness of his existing ministers, and turn them out for the purpose of getting successors with whom he can appeal to the people, I do not deny. But

(47) Canadian Historical Review "Correspondence between Joseph Howe and Charles Buller 1845-1848." - Chester Martin. p.316. Buller to Howe. Sept. 10, 1846 [C.H.Rev.Dec.1925]

(48) Id. p.320 The despatch, as Buller later admitted, was at least read by him before it was forwarded to Harvey. do to do. Nov. 16, 1846.

this is an extreme course, inconsistent with the usual course of Representative Govt. in which it seems to me that the chief of the state should presume his Ministers able to go on, until they are beaten in the Assembly, or come to him with some proposal for adding to or altering their own composition. And to you it is of paramount importance that the ordinary practice of Responsible Govt. should be rigidly respected."(49)

Not unlike Buller in mildness of temper and moderation was the Marquess of Lansdowne. One method of governing a colony was "to give to a colony the semblance of a constitution, and when they had given it, to remain jealous of its operation, and to endeavour to exercise over it that control which they possessed before, upon grounds which were not tenable or consistent with the possession of the constitution which you had given ... They must not give to any colony a constitution in leading strings."(50) "This was no question of principle upon which they differed but a question of detail." He considered that "those who formed an opinion upon local matters must know the locality, and those who determined questions affecting private interests and private conduct must have the means of ascertaining upon the spot the nature of those interests and of that conduct. They had been told that the Canadian Assembly was not to be considered as representing the opinions of the people of Canada. If that were the case he would ask their lordships how they proposed

(49) *Id.* p.321 In answer to Howe's suggestion to dissolve the Assembly. *do.*

(50) Hansard. 3rd Series. Vol. 106: p.539: June 19, 1849.

to collect the feelings and opinions of the Canadian people?"

"I believe that if public opinion had not gone along with what had been called the tyrant majority in Canada, it would at once have stopped this tyrant majority in its progress, and have prevented this Bill from being passed into a law."

Mr. Vernon Smith "must be allowed to say that the right honorable gentleman's address was more fitted for a Canadian Assembly debating Mr. Wilson's amendment, than for the Imperial parliament discussing whether or not the royal assent should be refused to the Colonial bill of a colonial Legislature." (51)

"They were dealing with the most important of all branches of Colonial government, namely, what was to be the responsible government of our colonies? The theory of that government, at least, had been explained by the noble Lord when himself Secretary of State for the colonies; and the doctrine laid down in his celebrated despatch to Lord Sydenham had been ever since acted upon, and never was impeached in the slightest degree by any succeeding Colonial Secretary." "Could, then, a greater insult be offered to the Legislature of Canada than for this house to adopt a motion embodying the very words that they themselves negatived.... That, he thought, would be a very formidable inroad upon the doctrine of responsible government." "Even if the right honorable gentleman had made good the whole of his case, still he would ask, was the danger of possibly admitting some few, who might have aided or abetted the rebellion, to a share in the compensation, anything at all to be compared with

(51) *Id.* 106: 311: June 15, 1849.

the imminent hazard they must run, by telling the greatest and most important of our colonies, that we would not allow any act sent home to us from their legislature to receive the Royal assent unless they would modify every letter and word of the act to suit our views of what would best carry out the obvious spirit and intention of its framers?" "They had been told of the agitation of the minority in Canada against this Bill; but ought they not much more to dread the agitation of the majority who had adopted the measure "if it were disallowed. "Now he had heard a great deal of abuse of the constant and vicious intermeddling of the Colonial office; but it rejoiced him now to hear it reproached, because the colony and its Governor were left to act freely for themselves; because he approved of the largest and widest discretion compatible with the rights of the mother country being given to the colony, and Earl Grey had steadily acted upon that principle with regard to the Canadian Legislature. This question affected our whole connexion with the colonies; and there was a danger of separation unless we were more cautious this century than we were during the last." (52)

Since "they all admitted that there should be a responsible government in Canada, and also that this Bill for the compensation of rebellion losses was a proper and a just measure" Mr. H. Labouchere thought "they had no right to interfere with this deliberate act of a colonial Legislature." (53) "Let them leave the various parties to these squabbles in which they in-

(52) Id. p. 315.

(53) Id. 106: 339: June 15, 1849.

dulged, and which, as in this country, were the natural result of a free constitution."

Among other Whigs who took the liberal view were Mr. Drummond, and Mr. J. M'Gregor. Drummond thought Lord Elgin's judgment merited confidence; to determine who should receive compensation "must be left to the discretion and judgment of those who had to carry it into effect."⁽⁵⁴⁾ "Now if the present bill was disallowed," said M'Gregor, "It would go to the extent of declaring to the people of Canada that although they had a controlling and responsible government in Canada, notwithstanding that, they would be deprived of its exercise when it suited the Home Government to do so... It would extinguish the principle and practice of self-government."⁽⁵⁵⁾

In so far at least as Canadian affairs were concerned, the distinction between the government group and the Radicals was almost imperceptible. In June, 1849, Molesworth and Hume criticized Earl Grey's administration of Colonial affairs generally, but expressly excepted his policy toward Canada. They, like Roebuck, opposed Herries' motion to suspend the Rebellion Losses Bill, as an undue interference in Canadian legislation.

Lord John Russell's speech in answer to Gladstone appeared to Sir William Molesworth "sound in principle, liberal in sentiment, and to prove that the noble Lord was well-versed in the true maxims of colonial government."⁽⁵⁶⁾ The error which

(54) Id. 106: 310: do

(55) Id. 106: 331: do

(56) Id. 106: 323: do

had "long pervaded our system of colonial policy ... had consisted in the tendency of the Imperial Government repeatedly to interfere in colonial affairs, on the plea that such interference was necessary to protect imperial interests.... He believed the colonies would never be well-governed and contented until our colonial policy was reversed, and the rule was laid down and strictly adhered to that the Imperial Government should abstain from interfering in Colonial affairs, except in cases of grave and well-proven necessity, in which it could be shown that there was immediate danger to the great interests of the empire."

"He maintained that the Imperial Parliament could not rescind that measure without being guilty of what appeared to him to be equivalent to a breach of faith", since it was merely the fulfilment of instructions given by Lord Stanley to Metcalfe in 1844. "He held that it was of paramount importance to our colonies that the House and the Imperial Government should cease to believe in their own omniscience and infallibility in colonial matters."

Joseph Hume complimented the Colonial Secretary upon his policy. "He thought that the Home Government had nothing whatever to do with the details of this bill; for responsible government gave the local assemblies and the local government the power of managing all their own internal affairs, providing they did not injuriously affect the Mother Country."⁽⁵⁷⁾ "It was their duty if they wanted to retain that most important possession, to allow them, as they are now doing, to conduct their own affairs, and bring out their resources for their advantage, instead of

(57) Id. 106: 316: do

being, as they had been a burden and a cause of trouble." He hoped that the Government, "who had in such a firm and manly manner stood by the principles and acts of those who were in favour of responsible government," would be sustained.

Lord Elgin had been opposed only by a minority in Canada, declared Roebuck, "and yet this factious minority has had the insolence to demand the recall of our noble Governor-General, whose just and impartial conduct has gained the affection of the mass of the Canadian people." (58) Roebuck vehemently defended himself against the charge that he had in 1838 advocated the cause of rebels. The demands of the Canadian Assembly "were constitutional and prudent, and they were such that every one of them has since been conceded... with the exception of the constitution of the Legislative Assembly ... by the House of Commons." "I am a man who wishes to support English dominion, but do they know ... that that pseudo-loyalty of 1837 is just that which is now found to be the most dangerous characteristic in that country. As sure as the sun will rise tomorrow, such a motion (as Herries') will tend to keep up that spirit of opposition - to give heart to and strengthen it - and tend to a resistance to those determinations of the majority on which I say good government can alone rest." "I want that no narrow policy, no such unhappy interference, should shake that respect and love which I am bold to say they are happy to owe and feel towards English dominion in that country." (59)

(58) Id. 105:561: May 16, 1849.

(59) Id. 106:262: June 14, 1849.

Although both Tories and Liberals agreed that the interference of the imperial parliament was justified in extreme cases alone, and Roebuck did not deny that such an occasion might arise, the Tories were much less reluctant to interfere than were the Liberals. While not seriously opposed to responsible government, as they interpreted it, the majority of the Tories demanded that the Queen's constitutional veto, which had actually lapsed in England for many decades, should not be abrogated in the colonies. The final grant of responsible government evidently shook Russell's faith in the future union of the two countries. Sir Robert Peel, unencumbered by office, proved himself almost a radical in colonial matters. The Whigs and the Radicals were in close accord.

CONCLUSION.

In the attitude of the majority towards the colonies there was nothing sinister. Few held the mercantilist theory of colonial government. There was no desire to exploit the colonies for the advantage of Great Britain. Although certain of the navigation acts remained on the statute books until 1849, Huskisson had recognized the impossibility of maintaining the old colonial system. The Tories, because of their belief that the colonies added to the strength and prestige of the Crown, were determined to retain them at whatever cost.⁽¹⁾ With a profound faith in the justice and beneficence of British rule, they could not understand the desire of an eminently self-respecting people to administer its own concerns. The Radicals, having in mind the increased trade with and emigration to the United States after the revolution, believed that an independent Canada would provide a better field for commerce and settlement. The Whigs, equally reluctant as the Tories to disrupt the empire, had less faith in British infallibility. A few considered it their appointed burden to extend to Canada the benefits of British laws and institutions, in order that, if separation might occur, they might at least have the satisfaction of having contributed to the world's happiness and well-being. Few, except Durham, Buller, Howick and Russell, had faith in the survival of the connection with Canada.

The argument advanced by Lord John Russell that to concede the Canadian demands involved the virtual independence of Canada was sound. None, however, except possibly Buller and Durham,

(1) There were exceptions e.g. Lord Ashburton, Gladstone.

and among Colonial governors certainly Lord Elgin, perceived the difference between virtual independence and separation. Everything hinged upon finding a solution in which local independence might be compatible with Imperial Sovereignty.

While the uprising led by Papineau was not required to call the attention of the British parliament to the discontent in Canada it proved that the disaffection was more serious than had been supposed. It served to demonstrate the folly of undue delay; two courses only were open - to attempt to eradicate discontent by harsh suppression as the Tories might have attempted to do, or to conciliate the good will of the majority in Canada by a generous and willing concession. In spite of the fact that Lord Durham advocated the second course of policy both Whigs and Tories attempted for several years to suppress those whom they thought to be disloyal. The insurrection itself assisted in the settlement of nothing. Not only were the Tories and Whigs alienated, but O'Connell considered it a foolish error when the leaders in the Assembly might have continued their constitutional resistance.

To almost every party in England the term responsible government connoted a different meaning. The Tories, and the Whigs until 1846, believed that responsible government existed when the Governor, while remaining responsible for his conduct to the Imperial parliament, consulted the wishes of the people as he interpreted them, and sought the advice of his councillors when he thought it necessary. Such a form of government demanded that the Governor should formulate his own policy, should choose his own executive councillors and should dismiss them at his will.

The Radicals insisted, especially after 1839, that the Governor should be bound to accept the advice of Colonial ministers, and to act upon it as far as was compatible with Imperial sovereignty. Although in the early part of the period there was little agreement as to what occasions justified the interference of the Imperial parliament, later all were agreed that only in 'extreme cases' could acts of the Canadian legislature be vetoed in England. Each party had its own conception of an 'extreme case'. Practically, therefore, the difference was one only of degree. All parties would have consulted the wishes of the people of Canada; all would have allowed self-government as far as was compatible with Imperial control; but none were agreed as to what measure of local autonomy might be granted without endangering the dignity and authority of the Crown and parliament. In fact, responsible government meant that the Executive should be selected from the party which commanded a majority in the popular branch of the legislature, and that the Governor should accept their advice upon all occasions, trusting to their loyalty and goodwill to maintain the imperial connection.

The suggestion that the theory of responsibility as it prevailed in England should be applied in the colonies was not new, nor was it originated by Lord Durham.⁽²⁾ In England the principle itself had caused many years of disagreement between the Crown and the Legislature, and a half-century of conflict, before it was recognized in 1688 and the following years. In his letter to Lord Glenelg, in 1836, Robert Baldwin stated that

(2) Lord Durham, of course, did not make any such claim.

in Canada "It has been before the people more or less prominently since 1820 - In 1828 or 1829 it was introduced into the address in the reply to the speech from the throne." To the authorities in England the first really discerning statement of the remedy for the trouble which prevailed was made by Baldwin in 1836 in his letter to Glenelg, a copy of which he sent in 1838 to Lord Durham. He proposed "to put the Executive Council permanently upon the footing of a local provincial cabinet, holding the same relative position with reference to the representative of the King and the provincial Parliament, as that on which the King's Imperial Cabinet stands with respect to the King and the parliament of the empire and applying to such provincial cabinet both with respect to their appointment to, and continuation in, office; the same principles as those which are acted upon by His Majesty, with respect to the Imperial Cabinet in this country."⁽³⁾ "The collision which has produced so much evil has not been merely between the representative branch of the Government and the Legislative Council, but between the Representative branch and the Executive government; the complaint has always been of the influence of the Executive upon the Legislative council, and not of the influence - of the Legislative council upon the Executive government - It were idle therefore to expect unanimity while you leave untouched the main source of discord." "The concession of the principle calls for no legislative interference." Nor did Baldwin demand the responsibility of the Lieutenant-governor to the local legislature; "such would be wholly

(3) A.G. Doughty. Rep. Pub. Arch. 1923. p. 329. Baldwin to Glenelg. July 13, 1836.

inconsistent with the respect due to the sovereign whom he represented, and fatal to the connection between the two countries - The proper place for his responsibility to rest is in England - But you must give the people such an influence upon their Executive government as will prevent the constant jealousy to which it is at present exposed." To Lord Durham he wrote "The Imperial parliament is the tribunal in whose hands should be retained all the powers of general legislation essential to the welfare of the empire as a whole; and for all legislation of a local character the Legislatures of the respective provinces will I am convinced be found the best adapted."⁽⁴⁾ No one in England realized the paramount importance of Baldwin's recommendation until after Lord Durham had made it a part of his report.

The gradually increasing liberalism of the majority in the British parliament during the period, and especially the very marked change in the Whigs, may be traced in the official despatches which received the approval of parliament, in the form of government which they sanctioned, and best of all in the parliamentary discussions of the principles upon which Canada should be governed.

Before 1839 it was the opinion of Colonial Secretaries that the responsibility of the Governor to the Imperial parliament for the acts of the Canadian government could not be improved upon, and that the form of government demanded by the Canadian assembly was incompatible with British supremacy. Lord John Russell stated the objection most clearly in his despatch

(4) Id. p.326. Baldwin to Durham. Aug. 23, 1838. Baldwin had had a personal interview with Durham about a month previously in Upper Canada.

of 14th October, 1839. His admission, however, that he saw no objection to the "practical views of colonial government recommended by Lord Durham," and more especially his despatch of 16th October, actually sounded the death-knell of the old form of Colonial governance. The Tories were quite justified in believing that the despatches explicitly denied responsible government; the liberals justly thought that, however governors might protest against the adoption of such a principle, the despatches rendered it, at no distant time, inevitable, if perpetual civil war were to be avoided. Russell, however unwittingly, dealt the first blow to the already undermined dykes opposing what he thought to be a sea of troubles. Earl Grey had the courage to demolish the walls, and to doubt if the floods would come.

The colonial governors, instructed, in fact, to govern in direct contravention of the wishes of the people, who asked that the government should be carried on by Ministers in whom they could confide, were inclined as much as possible to escape responsibility by seeking instructions in all circumstances from the Colonial Secretary. Such a method of administration involved serious delay, and gave colour to the cry against Downing-street interference. Until Lord Glenelg's term of office the large majority of governors had been military officers, accustomed to command, uninclined to compromise. The Assembly dominated by Papineau after 1832, obstructed as much as possible the governor in the execution of his duties. Lord Gosford's concili-

-
- (5) Lord Stanley in 1849, as earlier, considered party government impossible in a colony. Peel in 1844 thought a party could not govern with advantage in Canada; by 1849 he had evidently changed his view. Sydenham and Metcalfe persisted in attempts to form a middle party, but Bagot and Elgin, the former after considerable hesitation, confided in existing parties.

atory policy in Lower Canada received scant approval either in Canada or in England; the opposite course pursued by Sir Francis Head was severely criticized only by the Radicals, while the Tories accepted Head at his own valuation. Neither Gosford nor Head was willing to forego either power or responsibility. Lord Durham, in his own temper dictatorial, and equipped as High Commissioner with unusual powers, advised that the governor should be relieved practically both of his power and his responsibility. The Governors who followed Durham governed upon more liberal principles than had prevailed hitherto, and were not, with the exception of Elgin, vigorously condemned. Lord Sydenham, conducted the government with the assistance of a majority in the Assembly, and carried useful legislation. Sir Charles Bagot virtually allowed his own authority to lapse and tacitly acquiesced in responsible government. Lord Metcalfe attempted to restore his authority but, unlike Sydenham, realized his failure and despaired of the connection. Lord Elgin placed the confidence which former governors had refused them in the political parties in Canada, (5) and proved the "republicans" more loyal than the loyalists. Great as is the credit due to Lord Grey for his adoption of the principle of responsible government, yet for its successful application in Canada at a time of peculiar difficulty, when not only the French and the Reformers were disaffected but even the Compact party had been alienated by the repeal of the preferential duties in 1846, the Earl of Elgin was chiefly responsible.

(5) See Page 150 F/v.

(6) Elgin supplied most of the faith, although Grey very seldom lacked it. [See P. 154]

Before the publication of Lord Durham's report the reformers in the British parliament sought primarily to procure a change in the constitution of the Legislative Council. The demand for a responsible executive council was not considered of equal importance. It is true that Hume in 1836 proposed a motion advocating such a change, but the fact that subsequently he did not press it indicates that he did not appreciate its significance. To the demand for an elective legislative Council the Tories were irreconcilably opposed, not so much because of its republican tendency in Canada, but because of their fear that its repercussion on the constitution of the House of Lords would be disastrous. The Radicals, who sought to reform the Lords, would have welcomed its probable effect. By the Tories the demand for a responsible executive was dismissed as absurd, and to the adoption of any such principle the Whig government offered a firm, but a respectful, opposition. To remedy the evils of irresponsibility several weird plans were suggested, Roebuck's not least among them. Except by Charles Buller, Lord Durham, and Smith O'Brien, it was thought that responsible government would involve, immediately or in the near future, complete separation.

The Radicals rallied to the support of Lord Durham's recommendation for the reform of the Executive Council, although they denied that the French could, or should, be "anglicized." Lord Durham emphasized the rule of government which he advocated, admitting certain exceptional occasions upon which it might not operate; Lord John Russell, stressing the exceptions, demolished the rule. It is a question whether Russell's difficulty was

practical only, or theoretical as well. While his objection to the establishment of the rule was, no doubt, partly due to his fear of the advice Papineau might offer, his strong support of Lord Sydenham and qualified approval of Sir Charles Bagot would seem to indicate that, even when no such advice was anticipated, he was unwilling to admit the principle; when he did finally acquiesce in Grey's policy he expressed a doubt of the permanency of the connection with Canada. Neither during Lord John Russell's term of office, nor while Lord Stanley was Colonial Secretary was there serious disagreement between the Whigs and the Tories upon the principle of responsibility. In Canada Lord Sydenham managed to carry the union measure, and to establish in the United Canada parliamentary institutions. Sir Charles Bagot proved the practicability of complete self-government; Sir Charles Metcalfe demonstrated its necessity by attempting to pursue a different course. Lord Stanley denied the practicability and refused to comply with the necessity. The Tories and the majority among the Whigs supported Lord Stanley, while the Radicals commended Bagot unreservedly and attempted to palliate Lord Metcalfe's sin by accusing his advisers and superiors.

In 1846 Earl Grey, who was the first really responsible statesman except Lord Durham to do so, first publicly committed himself to the grant of responsible government. Grey proved that Lord John Russell's despatches of October, 1839, were sufficient to establish in Canada, "not legally, or necessarily, yet practically," the rule of government which prevailed in England. He and Lord Elgin cooperated to 'vindicate' Lord Durham. The Tories objected not to Lord Grey's principles, but to the manner

of their application; the Radicals questioned neither his principles nor their application. Between the Whigs and the Radicals on the one hand, and the Tories on the other, was revealed a very real practical difference. A few 'renegade' Tories, it is true, like Sir Robert Peel and Monckton Milnes, opposed their former political allies. Principles which had been considered republican by the majority in 1837, in 1839, in 1843, and in 1844, were approved as monarchical in 1849.

The fault had been, not primarily in the temper of the people in Canada or in England, not in any desire of the British government to tyrannize, but where Durham and Buller had sought it, in the very frame of government, which Grey and Elgin had the courage and the faith to change.⁽⁶⁾