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CANADIAN RESPONSIBLE GOVERNMENT IN BRITISH HANSARD

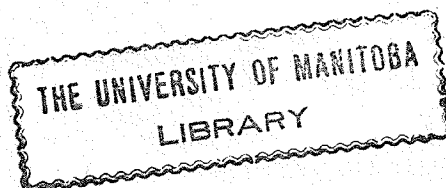
BY

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INTRODUCTION

As a thesis is less a matter of narrative than of exposition and argumentation, a brief review of the historical background in England and Canada might serve to connect and clarify the points discussed in this essay.

From 1830 until 1835, ministries in England were made and broken on the "Irish rocks". The collapse of Lord Grey's reform ministry on the Irish Coercion Act, and the defeat of Sir. Robert Peel's ministry of 1834 on the appropriation of Irish tithes, necessitated in 1835 the formation of Lord Melbourne's second ministry. The Colonial Secretary in this cabinet was Lord Glenelg. This Government depended very much for its existence on Daniel O'Connell's Irish and Sir Robert Peel's growing Conservative party. (1)

Glenelg's term at the Colonial Office coincided with a climax in Canadian affairs. The Act of 1791 had given to Upper and Lower Canada, each, a House of Assembly elected by the people, a nominated Legislative Council, and a Governor aided by a body of advisors known as the Executive Council. By the year 1820 it had become apparent that this constitution was not working smoothly as there was increasing friction between the Assembly on the one hand and the Executive and Legislative Councils, on the other. By 1827 matters had come to such a stage in Lower Canada that a special committee of the House of Commons gave audience to a deputation from this (1) In the elections of 1835, the Conservatives had increased their strength from 150 to 270.

province. The fruit of this investigation was the Report of 1828, which later was quoted freely in the debate on Russell's resolutions of 1837. It was perhaps due to the influence of this liberal report, that in 1830, Lord Goderich (later, Earl of Epsom) Colonial Secretary in the Grey cabinet had surrendered, to the House of Assembly, control over a large portion of the revenues. Whatever disposition to reform the British Government exhibited, however, did not result in compromise with the Papineau party in Lower Canada. In fact, the year 1833 saw the first of that series of sessions in which supply was stopped; whilst 1834 witnessed the 'Ninety-Two Resolutions' of which few were reasonable, many were ridiculous, doubtful, false and seditious. (2)

This was the state of affairs when Lord Glenelg commenced his tenure of office in 1835. As a result of the 'Ninety-Two Resolutions' he sent out a Royal Commission of investigation composed of Sir Charles Grey, Sir George Gipps and Lord Gosford, who acted as Governor until 1838. This commission prepared in 1836, six reports, which contradictory to each other, were of little use except to reinforce in the British Parliament, existing prejudices, whether liberal or reactionary. The following year, 1837, brought Lord John Russell's attempt at a solution. In a series of ten resolutions he denied constitutional changes to Lower Canada and proposed to take money from the Canadian treasury for the payment (2) This is the statement of Mr. Neilson who was ~~once~~ at one time ^a moderate reformer in Lower Canada.

of arrears in the salaries of officials. (Hansard, 3rd series Vol's. XXXVI and XXXVII). The passage of these resolutions, coupled with the publication of the unpromising despatch to Sir Francis Head in Upper Canada, and applied to the combustible materials prepared by Papineau in Lower Canada generated the flame of rebellion. An aftermath to this event was the suspension of the Constitution of Lower Canada 1838, (debated in Hansard, XL) and Lord Durham's mission of five months, made glorious by his 'Report', but terminated by his resignation after Melbourne's shabby disallowance of his Ordinances. That the Act suspending the Constitution of Lower Canada was passed thanks to the support of Peel's Conservatives, shows on what precarious grounds the Whigs were now treading. Indeed, in 1839, the Melbourne Government, finding itself in a majority of only five on a government measure, resigned. Because Queen Victoria was at a tender age and did not like Sir. Robert Peel to direct her choice of the ladies of the Bedchamber, Lord Melbourne at the dictates of chivalry, formed a third ministry, in which the Colonial Secretary was Lord John Russell.

Russell, in taking up the reins at the Colonial Office, found it his first duty to pass a new measure for the government of Lower Canada, which should define more clearly the powers of the Governor for the time being and prevent a repetition of the Durham incident. During this debate in 1839, (Hansard XLVII and XLIX,) he suggested the union of Upper and Lower Canada. In this year he sent as Governor to Canada Mr. Poulett Thompson, (later Lord Sydenham) to prepare and

receive Colonial assent to a Union Bill. The Act passed the British Houses in 1840, (see the debates in Hansard LIV and LV) and came into operation in 1841. Scarcely had the union of the Canadas seen the opening and prerogation of its first Assembly ere it witnessed the defeat of the Government and the death of the Governor, to whom it owed existence. The Whig Government was defeated on the Budget in May, 1841, Peel carried a vote of 'no-confidence' in June, and the subsequent appeal to the country sealed the fate of the Melbourne administration. Sir Robert Peel consequently formed a ministry with Lord Stanley as Colonial Secretary.

The first Governor-General of Stanley's term of office was Sir Charles Bagot who arrived at the scene of his labours in 1842. On the meeting of his first parliament, he saw that the Executive Council, the chief figure in which was Mr. Draper, did not possess the confidence of the Assembly. He prevailed upon Mr. Draper and his friends to resign and entrusted the administration to Mr. Lafontaine, leader of the French, and Mr. Baldwin, leader of the English reformers. This step, which he called his 'great measure' is discussed in Hansard, LXVI, (debates of 1843).

Upon Bagot's death, Sir Charles Metcalf, a Whig in politics, appointed by a Tory ministry, went out to Canada in 1843. He, no doubt, disappointed many of the Canadian reformers when he quarrelled with the Baldwin-Lafontaine ministry on the question of patronage, and accepted its resignation in spite of the confidence it enjoyed in the Assembly. With difficulty he scraped together an Executive some months later and in the autumn of 1844, held an election in which he was just fortunate

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enough to obtain a very narrow majority in favor of the Council he had formed. The discussions relating to this incident may be found in Hansard LXXV.

In November, 1845, one month before Peel's ministry broke down in the attempt to repeal the Corn Laws, Metcalf was recalled, a dying man. The Peel Government, owing to Lord John Russell's inability to form a cabinet, returned. Whilst in the reconstruction of the ministry in England, the Colonial Secretaryship passed from Lord Stanley to Mr. Gladstone, the administration of Canada passed into the hands of Lord Cathcart. But Peel's Government in 1846, after heroically passing the repeal of the Corn Laws, fell before the vengeance of the protectionists on the question of the Life Preservation Bill for Ireland. The Government passed into the hands of Lord John Russell, who gave the office of Colonial Secretary to Earl Grey. (3)

Earl Grey's tenure of office was brightened by two happy moves - the despatch to Sir John Harvey, 1846, and the appointment of Lord Elgin as Governor-General of Canada. Lord Elgin found on his arrival in Canada, the Council which Metcalf had improvised still holding office in the face of continued defeats in the Assembly. His course consisted in a dissolution of the House, a new election, and the calling upon the leaders of the victorious party, Baldwin and Lafontaine, to form the Government.

(3) Known in earlier debates as Viscount Howick.

Bearing in mind this summary of events, we may now proceed to a more detailed survey of British public opinion with respect to Canada and self-government, during the important colonial administrations of Lord Glenelg, Lord John Russell, Lord Stanley and Earl Grey.

GLENELG PERIOD

What was the attitude of the Imperial Parliament to Canada during Lord Glenelg's term at the Colonial Office? Mr. Roebuck, recommending to the House a plan for the better government of Canada, exclaimed, "I can indeed easily understand the personal vanity, private interest and ignorant prejudices, that stand in my way. (1) Perhaps vanity found its way into, say, the speeches of Mr. Hume who quoted letters addressed to and from Bryanston Square, and talked endlessly about his personal relations with Mr. MacKenzie and the Municipal Council of Toronto. Likewise it is just possible that a man like Mr. Robinson, a shareholder in the Canada Company, might have been influenced to take an uncompromising view of any reform that might jeopardize his interest in the colony. But these were, at worst, exceptional tendencies, manifesting themselves only in particular cases. The dominant note in the attitude of the Imperial Parliament we shall learn from a study of the Canadian situation as discussed in the British House.

The situation, briefly, was this: The Lower Canadians, wishing to secure a greater measure of self-government, had devised two means by which they hoped to make the officials of government responsible to the Assembly. In the first, place, they demanded full control of the revenues, each item of which was to be voted separately in the Assembly. In the second place they thought that by making the Legislative Council elective, they would exert a greater control over the Executive. Until

(1) Hansard, 3rd series, vol. XXXVII, page 1226.

these demands were granted they virtually refused to pass supply bills. Four years had passed and the salaries of officials were in arrears.

With respect to this situation, official policy was at least wellintentioned. "What has Great Britain to gain by the misgovernment of so important a portion of the British Empire?" had asked Lord Glenelg. (2) In the same vein spoke Lord John Russell, "I say for my own part, if I thought our conduct was founded in injustice to any party, from it, I would at once retreat." (3) Nor did he restrict his good intentions entirely to words, for his attitude toward the financial question was on the whole fair.

Lord Stanley, for instance, in reply to the demand for the control of the revenues, argued that a civil list should be granted for the payment of salaries, (4), that a certain class of revenue, similar to the land revenue of the

(2) Id XL, 24. This is an excerpt from a despatch from Glenelg to Gosford, July 17th, 1835, as quoted in Mansard.

(3) Id XL, 35.

(4) Id XXIVII, 116. Lord Stanley said, "It was absolutely necessary, in conformity with the British Constitution, that there be some permanent source of revenue for the objects mentioned (salaries of judges and officials) independent of the vote of the House of Assembly."

crown, could not be controlled by the Assembly, (5) and charged that in the case of Lord Ripon's Act, granting a partial control of revenue, the Assembly had broken faith by not responding with a civil list. (6) Mr. Roebuck, on the other hand, took quite

(5) Id XXIVII, 117. Stanley continued, "There were certain revenues in Lower Canada, over which from the foundation of the colony, the House of Assembly had no control - he meant the casual and territorial revenues, analogous to the land revenue of the Crown in England."

(6) Id XXXVII, 1234. Lord Stanley stated, "The Act (Lord Ripon's) was passed in the full undisguised, avowed confidence on the part of the Legislature; that Lower Canada would perform its part; for the measure passed with a declaration in the House of Lords, that if unhappily they should be disappointed, it should be for the Legislature to consider what different steps should be resorted to in order finally to settle the question."

a different stand. The casual and territorial revenues, he claimed, belonged to the Canadians by virtue of the Act of 1791. (7). He charged the government with an attempt to tie ~~the~~ the hands of popular assemblies by giving to the official party a greater measure of independence. (8) whether or

(7) Id. XXXVII, 1221. "The Governor (Dorchester) has given directions for laying before the House of Assembly an account of the provincial revenue of the Crown from the commencement of the new constitution to the 10th of January, 1794. First the casual and territorial revenue as established prior to the conquest, which his Majesty has been most graciously pleased to order to be applied towards defraying the civil expenses of this province."

(8) Id. XXXVII, 1219. "This dread of a popular assembly, I at once state to be feigned. I think the whole outcry that has been made, a part of a plan to enslave the colony. The desire was, to have a government entirely independent of the people, and the case of the judges has been put prominently forward, because there was some plausibility in the suggestion of making them free of immediate and pressing influences."

not there is anything in this charge, depends on what lesson Great Britain learned from the American Revolution. However, he promised that as soon as an efficient means was afforded, of exercising a check over the judges, a civil list would be given. (9). But, Lord John Russell, whilst agreeing with Lord Stanley, both in opposing the dependence of the judges on the Assembly, (10), and in denying that the Canadians have any claim to the casual and territorial revenues, (11), yet, refuted his charge of breach of faith against the Assembly, in (19) Id., XXXVII, 1219. "The people have, therefore, very steadily preserved in their own hands the only check they possessed over their magistrates, namely, the annual vote of the Assembly. If, however, a new and efficient means of controlling the judiciary could be devised, the House of Assembly would willingly yield up this annual vote and grant salaries to the judges for a term of years."

(10) Id., XXXVII, 1244. Lord John Russell complained that, "....occasion ^{is} ~~be~~ to be taken year after year... of diminishing taking away, or agreeing to vote in favor of their salaries."

(11) Id., XXXVII, 1245. Russell continued, "It was a pretension never before put forth and certainly not supported by any argument, that the Assembly of Lower Canada should say: 'We are constituted by the Act of Parliament of 1791; and although the only clause that there is bearing on the question has a tendency directly the other way, yet the Crown is entirely deprived of any control over these revenues.....'"

Id. XXXVII, 1251. Mr. Ward, very moderate in his opinions, supports Lord John Russell in this case.

the case of Lord Ripon's Act. (12) His position in regard to the Civil list is fair. "His understanding with regard to the settlement which should be honorable to the Crown and safe for the future government of the colony, was that whatever period might be fixed for the civil list, if at that period of renewal, a new civil list was not made, then the casual and territorial revenues should revert to the Crown." (13). Evidence of his liberal intentions in this respect, is the fact that the above proposal was accompanied by a suggested plan for controlling the judicature, which coincides almost completely in spirit with that of Mr. Roebuck. (14).

(12) Id. XXXVII, 1236 Lord John Russell says, "...The granting of the civil list was not made any part of the condition on which the Act was passed. The act of the British Legislature ...as it now stood on the Statute Book...sincerely acknowledged that for the future the Assembly should have control of the Crown revenue."

(13) Id. XXXVII, 1246.

(14) Id. XXXVII, 1220. The plan which Mr. Roebuck outlines here, provides that a General Assembly, composed of delegates from the Assemblies of Upper and Lower Canada, Nova Scotia and New Brunswick and Prince Edward Island, functioning both as a legislative and judicial body, ought to constitute a "tribunal before which the judges of the various provinces might be impeached."

Id. XXXVII, 1244. Lord John Russell speaks here of a joint Committee, composed of delegates from Upper and Lower Canada whose duties would be to originate laws, "...for establishing a court before which impeachments of the judges and other officers of the executive might be fairly heard and decided."

Likewise, Russell was fair enough to admit imperfections in the conduct of the Legislative Council, for he agreed, "with almost every party in that respect, that the Legislative Council of Lower Canada had not answered the purposes, and objects for which it had been instituted." (15) "The Crown," he continued, "had not always elected the most distinguished persons in the colony to sit in the Legislative Council, and it was questionable whether there were any of sufficient distinction to be admitted to hereditary honors." (16)

In a general way, it may be said that Russell had the practical welfare of the colony as much at heart as the most sincere friends of Canada. For instance, Mr. Roebuck suggested, a 'General Assembly,' a federal body which was to have exercised legislative and judicial functions. Under the latter head, he included a court of impeachment for judges and a court of appeal to take over the functions exercised in Canada by the Privy Council. By virtue of its legislative authority it was to regulate such matters as were of common interest to the colonies. (17). The duties of Lord John Russell's 'Joint Committee' were, "to originate laws that were to take effect in both colonies for the regulation of the duties of export and import in the commercial intercourse between the two provinces, for the regulation of drawbacks, for the improvement of the navigation of the St. Lawrence, for establishing insolvency courts, for

(15) Id XXXVII, 1241.

(16) Id XXIVII, 1242.

(17) Id XXIVII? 1220.

constituting a general court of appeal, and for establishing a court before which the impeachments of judges and other officers of the executive might be fairly heard and tried." (18). There is in effect a degree of similarity in these two propositions, both of which undoubtedly gave evidence of very good intentions towards the Canadians.

Having thus noted Russell's fairness, we must also notice a disposition on the part of the Assembly of Lower Canada to abuse its privileges. However, justifiable may have been the aspirations of the House, its 'talking' methods were not in accordance with the rules of the game. (19) The same applies

(18) Id., XXIVII, 1244.

(19) Id., XL, 16 and 17. Lord John Russell, referring to negotiations which had been on foot for giving up a certain class of revenue to the Assembly and for freeing the judges from dependence on this body, said, "But the House of Assembly instead of following out the suggestion, tacked to the law by which the independence of the judges was to be secured, certain propositions relating to the hereditary revenues of the Crown to which they pretended a claim and other provisions respecting a court of impeachment for the judges."

Lucas: Lord Durham's Report: Oxford 1912, Vol. II, pg. 89.

Lord Durham says, "A bill for the independence of the Judges was coupled with the establishment of a new tribunal for trying impeachments and with other provisions to which it was known that the Crown was decidedly hostile;"

to their custom of stopping supplies. Though a certain section of the House of Commons, represented by Mr. Robinson (20), and Mr. Stewart (21), practically denied this power in the case of a colony, there were others who showed adequately that this right was in the possession of colonists. "This method", claimed Roebuck, "is in strict accordance with the powers you yourselves conferred on the representatives of Canada." (22).

(20) Id. Hansard, XXXVI, 1320. Mr. Robinson takes as his example here, a case most likely to occur in the Mother Country, "...neither the Canadian House of Assembly, nor the Commons House of Parliament were justified in exercising their privilege of stopping the supplies, except in an extreme case; that powerful engine was only given to guard...against invasion by the Crown or the other House of Parliament."

(21) Id. XXXVII, 1263. Mr. Stewart here quotes from Brougham's 'Colonial Policy', "...the influence of the Commons, from their power of withholding supplies, which almost always prevents the negative of the Crown from being exerted in Great Britain, and is, indeed, the great corner stone of the British Constitution has almost no existence in the colonial system."

(22) Id. XXXVI, 1351.

This view, in which O'Connell and Ward both concurred, (23), was shown by Sir William Molesworth to be legally sound. (24) To Molesworth indeed, the control of the purse, whether employed in Stuart England, or in colonial Americans, was the essence of Freedom. (25)

(23) Id., XXXVI, 1324. Daniel O'Connell was incensed with the idea of "The Canadian representatives being permitted to exercise only one of the functions, to raise the supplies, but not to appropriate them."

Id., XXXVII, 1252. Mr. Ward said, "They had no annual estimates, they had no army or navy estimates to vote; they had no means of checking the executive unless by stopping the supplies in the way they had done;"

(24) Id., XXXVI, 1331. Sir William Molesworth laid down that, "...the Representatives of the people should alone determine the mode and manner in which the money levied from the community ought to be appropriated. By the 18th, George III, this principle was acknowledged with regard to all the colonies, and the 31st George III and first and second William IV, specially asserted it with reference to Canada."

(25) Id., XXXVI, 1332. "He maintained it was the control of the purse which constituted the essence of freedom, and did they think they, the Canadian people, would permit themselves to be rendered slaves by the resolutions of that House? The people of this country had in a similar case brought about the revolution - in a similar case they denounced the Monarch who dared tax them without their consent - in a similar case their fellow citizens of the United States bore them defiance and threw off their yoke;"

However, it is one thing to possess a privilege and quite another thing to show discretion in the use of it. In one stage of the reform movement in Nova Scotia, the excellence and success of Howe's tactics turned on the decision, not to use this privilege of refusing supplies. Thus in the case before us in which the House of Assembly of Lower Canada repeatedly, either stopped supplies, or made the passage of a supply bill impossible by the method of 'tacking', (26), the supporters of official policy' stressed the practical evils resulting from the abuse of this privilege. Labouchere, Gladstone and Stanley all agreed that a condition in which officials were allowed to go unpaid, was a disgrace to the British Crown and a danger to

(26) Id., XL, 46. Mr. Hume said, "It was incorrect to say, that the Legislative Assembly of Lower Canada had refused to pass the Act of Supply. They had only refused to do so without attaching to it certain conditions indicating the impropriety of allowing any individual to hold several offices, and the expediency of combining one individual to one office."

Id., XL, 21. Lord John Russell, said concerning this situation, "Sir these propositions may have been in themselves juster unjust, reasonable or unreasonable, but the Bill was rejected on the ground... that these propositions were tacked to a money bill which, therefore, as a matter of supply could not be passed in that shape."

the colony. (27). Russell sums up this phase of the situation very clearly, "To refuse the supplies," says he, "is to disorganize the army, - to refuse the supplies is to shake the public credit - to refuse the supplies is almost to dissolve the constitution." (28)

Here is the point at which Russell's good intentions break down. We shall now see his course as the result of ignorance, arising from practical obsessions and practical necessities of the case. The officials in Lower Canada must be

(27) Id., XXXVII, 109. Mr. Labouchere believed, "The effect of these resolutions (Russell's ten resolutions of 1837) would be to put an end to that most unseemly spectacle - that of public officers not having received any salaries for several years?"

Id., XXXVII, 97. Mr. Gladstone said, "Property and persons were secure in that province as far as the Government could make them so; but could the House of Commons look to that security as permanent when they knew that the judges of the land and all the other officers of the Provincial Government had had their salaries withheld from them for the last four or five years?"

Id., XXXVII, 121. Lord Stanley, here expresses a sentiment similar to that of Mr. Gladstone.

(28) Id. XI. 25.

paid. How was it to be done? Russell attempted to overcome this in the following way. He proposed, "To ask this House to apply to the necessary services of the colony these sums of money which ought in the regular course to have been voted by the colonial assembly." (29) The claim to this right, he buttressed by taking as an authority Benjamin Franklin; as a precedent, the case of Jamaica. (30) It may be said

(29) Id XXXVI, 1287.

(30) Id XXXVII, 1298. ".....he, (Benjamin Franklin) would have no object to it, (the right of interference) provided the power was only used for the use and the good of the colony itself."

Id XXXVI, 1298. Russell continued, "In legislative matters, we had recently an instance in regard to Jamaica where we interposed our authority to continue an act of great importance which the colonial legislature had omitted to pass within the proper period."

that both Russell and Howick were aware of the evil of using force. (31).

(31) Id XXXVII, 1247. Russell realized that oppressive measures by the Imperial Government might very easily provoke passive resistance in the colonies in the form of non-importation movements, "He (Lord Gosford), there stated that the duty raised under the imperial act of the 14th George III was \$47,602 in 1835, and in 1836 it was only \$28,432, being a decrease of \$19,180. Lord Gosford stated, that the principal decrease was under the head of importation from the West Indies - the diminution chiefly arising from the quantity of mixed rum being consumed by the Canadians instead of the genuine West India rum."

Id XXXVII, 130. Howick quotes from Sir. G. Gipps; "The Assembly even when deprived of the revenues of the fourteenth George III will retain control over funds nearly twice as great as those in the hands of the executive; and although the House may not have power to dispose of them at its discretion, it will at any rate, be able to lock them up..... It may also refuse to pass Bills required by the commercial interest, such for instance, as Bills for the renewal of Charters of the Quebec and Montreal banks, both of which expire in July 1837."

Yet Russell in discussing his policy says, "....The House of Assembly of Canada must either continue to suspend the constitution altogether, or must reconsider the grounds of their complaints" (32). The granting then of a second chance to behave, seemed to constitute the excellency of Russell's plan for the Canadians. For, said Viscount Herwick, "....he would only do what was necessary to relieve the executive officers and judicial officers from the pressure that was now on them, while at the same time, he would say to the people of Canada, he was willing to enter into an accommodation with them." (33) Just how coercive the nature of this course, just how inadequate it was to the situation, Russell did not seem to recognize. "What would the noble Lord do next year?" asked Roebuck, "Did he think the Canadian people would be better disposed after the seething process to which they were about to be subjected?" (34) The fact is that the worst and the best disposed to Canada, whether they favored a more consistent use of

(32) Id. XL, 27.

(33) Id. XLVII, 132.

(34) Id. XLVII, 1274.

force, (35), or decried the principle of coercion. (36), both agreed that the effect of Russell's resolutions was to suspend the constitution of the Lower Canadians.

But why did Russell attempt a solution in this fashion, rather than allow the demands for an elective Legislative Council and an Executive responsible to the Assembly? Gladstone and Robinson pointed significantly to seditious articles in

(35) Id XXXVII, 119. Stanley said, "He also considered the resolutions - he would not say unjust, but impolitic - impolitic because inadequate; for while they amounted to as great a violation as was in their power, of those constitutional rights which they so loudly invoked,....all they proposed to do for those who had been suffering for four or five years in penury and indigence....was to give these injured parties the paltry arrears of their salaries, leaving them exposed for the future to the certainty...of precisely the same or more bitter suffering and privations."

Id XXXVII, 1286. Vide Sir Robert Peel's recommendation in this respect.

(36) Id, XXXVII, 1269. Charles Buller said, "...here was a blow aimed at the constitutional rights of a whole population--at the very root of the principle of a representative government."

Id XXXVII, 1260. Mr. Grote here supports the sentiment expressed above by Mr. Buller.

Id XXXVII, 1252. Mr. Ward says, "By the constitution of 1791, nothing could be more distinct than the sacrifice of all right of taxation in Canada on the part of the Legislature of this country. No distinction could be made between the disbursement of funds belonging to the receiver - general of the colony and the imposition of a tax."

French Canadian newspapers. (37) Whilst Gladstone attributed these sentiments to the leaders of the people, (38) Labouchere spoke of a great and important 'middle party'. (39). To Robinson it was a party which would support the Government if firmness were shown; (40) To Howick it was a moderate party which would rally around the Government if moderation were

(37) Id XXXVI, 1316. Mr. Robinson said, "In the *Minerva*, he found this statement: -I repeat that an immediate separation from England is the only means of preserving our nationality."

Id XXIVII, 101. Mr. Gladstone states, "...the speaker (Mr. Rodin) bewailed ^{over} ~~was~~ 'his country as in ruin and mourning, presenting one vast cemetery, with the voice of thousands of his fellow citizens issuing from the tomb, that British emigration was the cause of their miseries.'"

(38) Id XXV II, 101. Mr. Gladstone said, "These he feared were not isolated instances, but too true specimens of the temper that prevailed amongst the leaders of what was called the popular party in Lower Canada."

(39) Id XXXVII, 110. Mr. Labouchere said, "...there was a great and important middle party composed of men who at all times ~~and~~ ^{had} struggled against extremes of every kind.

(40) Id XXXVI, 1322. According to Mr. Robinson, "...a great portion of the Canadians would detach themselves from the dominant party if they once saw, that while the British Government was ~~disposed~~ ^{determined} to maintain its authority, it was also disposed to give them every assistance, and to make all concessions not inimical to the existing privileges of his Majesty's British subjects who had settled there."

shown; (41) whilst Russell saw a well disposed section of the people opposed to violence (42). Whatever may have been the extent to which such a party existed, supporters of the Government did not see in it any encouragement to the granting of any measure of self-government. What they did see was that the Papineau faction enjoyed a considerable ascendancy over the Assembly. Mr. Patrick Stewart, for instance, could, "...name one member of the Assembly, who had been denounced and displaced by Mr. Papineau, because he drew back from the course into which he was trying to inveigle them." (43) Since Russell saw in an elective Legislative Council, "but an echo of the Assembly" (44) we see why it was that in the House of Commons, there

(41) Id XXXVII, 135. Howick asserted, "...this he knew, that the effects of such a line of policy (moderation) was, that in the year 1832, Mr. Papineau was left in a minority in the Assembly, on this very question respecting the propriety of having an elective council. From the course then pursued, he found that it had the effect of rallying round the Government many men of moderate and independent opinions.

(42) Id XL, 22. In Russell's opinion, ".....these men when they saw that the object was to put a stop to the machine of government and to make impractical conditions with the executive - at once withdrew from the contest and separated themselves from the violent party who took the lead in it."

(43) Id XXXVI, 1329.

(44) Id XXXVI, 1294.

was such an abhorrence of the application of the elective principle to the second branch of the Legislature in Canada. This is why Lord Stanley said so emphatically, "He could never hear without horror the combinations of these two words, 'French republicanism.' The concession of an elective Legislative Council would remove the only check to the tyrannical power of the dominant majority." (45) This is why Gladstone too held up the Legislative Council as a bulwark to British supremacy in the colonies. "The Legislative Council had been the outwork and defence of the Government. In all its most essential acts, it has been countenanced by the governor and the executive council, who in turn had been borne out by the government at home and the government at home had been borne out by the Imperial Parliament." (46) Fantastic as these fears may seem to us, they were quite real to the men who expressed them. For, said Russell "Supposing the St. Lawrence under the command of the

(45) Id XXIVII, 123.

(46) Id XXIVII, 99. Gladstone would thus reverse the current of government, making it proceed from above, rather than originate with the people.

United States and a Canadian Republic established at Quebec, does any one believe that the other provinces of Nova Scotia and New Brunswick could be kept under control?" (47)

(47) Id XL, 34.

Id XXXVII, 1284. Sir Robert Peel observed, "Look at the position of Lower Canada, commanding the entrance into the river St. Lawrence, and ask whether a population of half a million had a right to say, 'We insist upon a measure which in the heart of the British colonies in North America, will constitute a French Republic.'"

Id XXXVII, 125. Lord Stanley said, ".....if they surrendered Lower Canada they must recollect they surrendered with it Nova Scotia and New Brunswick and they cast off in Lower Canada alone one hundred and fifty millions of their British fellow subjects, who clung to them for protection against a tyrannical majority,.....who, if they flung them off, if they abandoned ^{them} to their own resources, were doomed to sink in the widespread democracy of the time." Vide Id XL, 848, for a similar viewpoint expressed by Lord Ashburton.

Closely connected with the fear of French republicanism was the obsession that reform of the Legislative Council in Canada would undermine the security of the House of Lords. Why is it that those who desired the Council made elective or abolished completely, were so careful to state that any change made to that body in the Canadas, need not apply to the British House?

(48) "What is it, let not ask", said Roebuck, "That stands in the way of our adopting this measure? (Abolition of Council)

.....I fear a name, a mere analogy, founded simply on the fact of the Legislative Council being a second chamber; and because the demand for a reform in this legislative body comes at the inopportune time when we ourselves are discussing the merits of our House of Lords." (49) In effect, this is precisely one of Stanley's reasons for opposing any change in the constitution of the Legislative Council in Lower Canada. Referring to the Lower Canadian demand respecting this body he asked, "Was this demand for Canada meant as a precedent to lead to the same result in this country?" (50)

(48) Id XXXV I, 1313. Mr. Leader here quotes Mr. Fox: "He did not advise giving Canada a servile imitation of our aristocracy because we could not give them a House of Lords like our own."

Vide Id XXXVII, 1217. for a like opinion expressed by Mr.

Roebuck.

(49) Id XXXVII, 1217.

(50) Id XXXVII, 115.
Id XXXVII, 1258. Mr. Robinson says, "A similar miserable tampering with the constitution has been suggested by the Hon. and learned member (Mr. Roebuck) in reference to the House of Lords here, whom it was proposed to deprive of the right of exercising their independent legislative functions and to invest them in exchange for this with merely a suspensive power."

Thus through these obsessions were the supporters of official policy blind to the real issue in North America. They saw at this time, not a universal need of granting self-government to a certain type of colonists, but merely a local question, whether or not certain demands should be granted to French Canadians. Said Russell, "....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....." (51) In the opinion of Sir George Grey "....this outcry was raised only by the House of Assembly of Lower Canada. The people of Upper Canada altogether disclaimed any participation in the demands made by Lower Canada and what was the case in reference to New Brunswick." (52) Thus was clouded the vision of a large section of the Imperial Parliament.

Nor did Roebuck and the friends of Canada dispel these miste when they represented Canadian aspirations for self-government as being inspired by the democracy of the United States. Mr. Grote said, "....however, considerable might be the vast power of England to keep down a reluctant people, yet they could not fail to imbibe something of the feelings and the habits of that vast and flourishing republic, which occupied so large a portion of that continent and which was so close to the limits of Lower Canada." (53)

(51) Id XXXVI, 1257.

(52) Id XXXVI, 1357
Id XXXVI, 1320. Mr. Robinson here concurs in his opinion

(53) Id XL, 63.

"The spirit of this great republic," said Roebuck, "naturally pervades every region of the great continent which they inhabit. The inhabitants of the bleak shores of Labrador and of New Brunswick, as well as he who dwells under the genial sun of Mexico, is subject to the moral and mental influence of the United States." (54)

If however, the supporters of official policy were carried away by the apprehended consequences of an elective legislative Council, the champions of the Canadian demands were certainly beside the point in believing that a Council of this

(54) Id XXXVII, 1211, Compare this attitude with that of Joseph Howe.

Kennedy: Documents of the Canadian Constitution, Oxford, 1918, page 482. Howe to Russell, Sept. 18th, 1839. "I have ever held, my Lord.....that the population of British North America is sincerely attached to the parent state; that they are proud of their origin, deeply interested in the integrity of the empire and not anxious for the establishment of any other form of government here than that which you enjoy at home;"

Id 512. "All suspicion of disloyalty we cast aside as the product of ignorance or cupidity; we seek for nothing more than British subjects are entitled to; but we will be contented with nothing less." Howe then is inspired in his pleas, by British traditions of freedom rather than by the forms of the new American democracy.

kind would be an adequate remedy for the real evils from which the country was suffering. (55) "Now the great point to be settled," said Leader, "and on which the Canadians laid the greatest stress, was making the upper Assembly elective." (56) According to Roebuck, "The evil is the irresponsibility of the public servants; the means by which the irresponsibility has been maintained is the Legislative Council." (57) Grote maintained that, ".....no measure which did not remedy the complaints made against the Legislative Council would suffice to produce the desired tranquillity in Canada." (58)

(55) Hansard XL, 51. Mr. Hume said, "The Canadians complained that that body as at present constituted, was subject to no responsibility; and that as long as it was continued in its present shape, they could have no power over their revenues, over their laws, or in fact over anything that concerned their welfare; because whatever their own efforts might be in the House of Assembly, the Legislative Council had always the power without any kind of responsibility to step in and mar all."

(56) Id XXXVI, 1310.

(57) Id XXXVI, 1342.

(58) Id XL, 59.

Certainly there were grounds on which the Legislative Council could be attacked. Hume blamed the Council for the stoppage of legislation beneficial to the colony. "They complained," he said, "of the rejection by the Legislative Council of all Bills that were for the benefit of the colony. In, 1822, eight Bills were there lost of the greatest public importance; in 1832, the number of Bills thus lost was fourteen; in 1824, twelve; in the following year, twelve also; in 1826, nineteen; in 1830, sixteen; in 1831, eleven; and in 1832, fourteen." (59) Just how far the Council was itself to blame for this state of affairs, is, of course, a debatable point. (60) But the Council did unjustly oppose good measures, it seems, for the Commissioners Report of 1828, as quoted by Mr. Roebuck, reads, "...We have seen the Council....discard what we believe would have proved a most salutary measure, in a manner which can hardly be taken otherwise than to indicate at least a coldness

(59) Id XXXVII, 81.

(60) Vide Id XXXVII, 1265, for Mr. Patrick Stewart's attack on the methods of the Assembly.

Lucas: op. cit II, 87. The practices for which Stewart blames the Assembly are mentioned by Lord Durham. "It adopted the custom of renewing all expiring laws, however heterogeneous in their character, in one and the same Bill. Having the first choice to exercise, it renewed of course only those Acts of which it approved and left to the Legislative Council and the Governor only the alternative of rejecting such as had proved beneficial, or of passing such as had in their opinion, proved mischievous."

towards the establishment of customs calculated to exercise the judgment and promote the general improvement of the people. We allude to a Bill for enabling parishes and townships to elect local officers and assess themselves for local purposes." (61) Mr. Leader in attacking the Council on the grounds of its composition, is also supported by this report. "It was hardly to be expected, that a body thus nominated would agree with an Assembly elected by the people; and the consequence was such as every man expected - the two houses did not agree on any one point, and all legislation was stopped - the Assembly was useless and the colony was deprived of the benefit of a Legislature....." (62) Even Russell did not hesitate to admit that there were imperfections in the Council, for, "....he agreed with almost every party in that respect, that the Legislative Council of Lower Canada had not answered the purposes and objects for which it had been instituted." (63) One of his objections was that, "The Crown had not always elected the most distinguished persons in the colony to sit in the Legislative Council, and it was questionable whether there were any of sufficient distinction to be admitted to hereditary honors." (64) Not only were there these specific charges against the Council, but one of the strongest arguments against the adoption of the elective principle to this body could be answered easily enough. To those who argued as Stanley did, that an elective Council was unconstitutional it could be plainly shown that there was no true analogy

(61) Hansard XXXVII, 1214.

(62) Id XXXVI, 1311.

(63) Id XXXVII, 1241.

(64) Id _____

between the British House of Lords and the Legislative Council of Lower Canada. On this point, Radical and Government supporters were agreed; Leader and Labouchere both quoted Mr. Fox, in arguing that an elective Legislative Council was not necessarily unconstitutional; (65) Rosbuck and Russell agreed that as there existed no aristocracy in the colonies, there was not a perfect analogy between the House of Lords and the Legislative

(65) Id XXXVI, 1313. According to Leader, ".....Mr. Fox said, {Instead therefore the of King naming the Council at that distance - in which case they had no security that persons of property and persons fit to be named would be chosen.....he proposed that the Council should be elective."

²¹
Vide above page ~~21~~, note 48.

Hansard XXIVII, 108. Mr. Labouchere here states, "How any honorable gentleman could contend that it was against the British Constitution and our colonial system that there should be an elective council in Canada..... in the teeth of the fact that in American more than one-half of our colonies were actually governed by elective Legislative Councils, he could not conceive."

Council. (66) The force of these arguments was very effectively and very humorously brought out by Buller: "The real aristocracy of Canada consisted in the transient Scotch and English merchants. One of the most distinguished members of the class of which the Howards and Russells were ^{here} representatives was an ironmonger - an individual eminent in ten penny nails; another was a substantial pig merchant, eminent in sausages and great in curing hams. This being so it did seem to him that the Legislative Council might be altered without affecting the dignity or shaking the foundation of the House of Lords." (67)

(66) Id XXIVII, 1217. Mr. Foxbuck asserts, "....the true strength of the House of Lords lies in their wealth and in the feelings of the people.....No such power, no such hallucination can attach to the Legislative Council of Canada. They are not an aristocracy - have no wealth, no blood, no historical recollections to support them."

Id XI, 11. Lord John Russell said, "With regard to the House of Lords, though every privilege may be liable at times to abuse, yet we all know that there must be some distinction of eminence or some consideration of large property to justify a minister in proposing to the Sovereign to elevate a Commoner to the House of Lords. In Lower Canada the case was not the same. ."

(67) Id XXXVII, 1271.

It is true then that the Legislative Council as it stood in Lower Canada, was open to attack. But was the Legislative Council the real obstacle to responsibility of the officials of government in the colonies? Would a reformed Legislative Council, really secure the desired results? We will see the answer to this more definitely later on. However, there is a hint to the answer in Labouchere's attitude. The fact that he was opposed to a responsible executive (68) and still did not seem particularly horrified at the idea of an elective Legislative Council, gives one the idea that irresponsibility existed elsewhere than in the Legislative Council. Supposing you abolish the Legislative ^{Council} altogether and adopt Roebuck's 'Governor - in - Council' plan, have you solved the matter? It is precisely at this point that Roebuck's theory, because it was not founded on an adequate knowledge of the Canadian situation, breaks down. The virtue of his scheme was supposed to rest in the responsibility of the Council to the Governor, whom he claimed was indirectly

(68) Id XXXVII, 109. Labouchere referring to propositions of the Canadians, was of the opinion that, "....there were others, some of which appeared to be so unconstitutional, and others so fraught with injustice to individuals, that he could never give his consent to them..... The first was that which referred to the Executive Council being made responsible to the House of Assembly..... It was incompatible with any relations between a mother country and a colony.

responsible to the people. "I propose," he said, "to have only one Council in name as well as in reality and to make it dependent directly upon the Governor...The House of Assembly has always been able, in process of time, to direct the conduct of the Governor; and thus, through him they would eventually control indirectly the Executive Council." (69) It was a native Canadian who pointed out that the Governor, far from being controlled by the people was helpless in the hands of that very Executive Council which he was to be the means of controlling. (70)

(69) Id XXXVII, 1216.

(70) Kennedy, op. cit. page 504. Howe to Russell, 1839. "I have shown...that most Governors come out to Colonies so ignorant of their geography, and topography, climate productions, commerce, resources and wants; and above all, of the parties, passions, and prejudices which divide them; and of the character, talents and claims of the men by whom the population are influenced and led, that for the first six or twelve months they are like overgrown boys at school. It is equally clear, that while the business of government must move on, and their administration commence from the day on which the new Governor arrives, the schoolmasters from whom all his facts are derived - from whom he gathers his views of external affairs, and his impressions not only of different parties, but of individuals in each party, - are the irresponsible Executive Councillors, whom the present system calls around him; and who possessed of such advantages, rarely fail, before he can by any possibility escape from their toils, to embroil him with the popular branch of the Legislature, and the mass of the people by whom it is sustained."

Thus, though you do away completely with the Legislative Council, you have not eliminated the element of irresponsibility from Canadian politics.

If some men showed ignorance in proposing, and others in opposing, the principle of an elective Legislative Council, there is perhaps no point at which ignorance of a proper solution of the Canadian question was more general than in the attitude of the House to the future relations of the colony with Great Britain. In regard to colonial policy, there were at least two theories, quite the opposite to each other. To some, colonies were valuable and must be kept; to others they were of no material advantage to the mother country and should be allowed to drop off when the time should come.

In support of the first theory, "I do believe," said Russell, "that the possession of our colonies tends materially to the prosperity of the empire. On the preservation of our colonies depends the continuance of our commercial marine; and on our commercial marine mainly depends our naval power; and on our naval power mainly depends the strength and supremacy of our arms. (71)

(71) Id. Mansard XL, 34. Id. XL, 70. Sir Robert Peel exclaimed, "why if we were to act on such a rule of public conduct, the glory of England would, in ten years, be utterly annihilated. The great influence which we possessed, owing to our vast colonial establishments, and the great power which we derived from our navy, which as the noble Lord had observed was supported by our commercial marine, would soon pass away; and England from the foremost ^{rank} among the nations of the earth would descend to the situation of a subordinate and a fifth-rate power."

Id. XL, 223. Here Viscount Melbourne also supported this point of view.

Mr. Northwick, spoke of himself as, "one of those old-fashioned politicians who thought, 'ships, Colonies and Commerce' was the true motto of British policy." (72) Since colonies were worth so much to the empire, they must be held. Accordingly, Mr. Stewart, always ~~a~~ very plain spoken, did not hesitate to advance his theory for the maintenance of the connection." If (the right of the Crown to interpose in colonial affairs) is essential," he said, "to the dependence of the colonies, and is a necessary part of their subordinate constitution. It is the legal mode of enforcing subjection, consistently with the forms of the British Government." (73)

Implied in this school of opinion was a lack of faith in Canadian loyalty. To grant concession would be to grant independence; the basis of connection, is supervision from Downing Street. Thus in the language of Sir. George Grey, "....it was the indispensable duty of Government to oppose demands, the direct and immediate tendency of which was the dismemberment of the empire and the severance from this country, one of the greatest possessions of the Crown." (74) Said Lord Stanley, ".... this was a question of empire - a question whether or not this colony was to be held or given up." (75).

Representing the second school of opinion, Hume and O'Connell struck the note that colonies were not an asset materially to the mother Country. "What asked Hume, "was the value of

(72) Id XL, 118.

(73) Id XXIVII, 1264 Vide above page 9, note 21.

(74) Id XXX VII, 1356, Hansard

(75) Id XXIVII, 118.

her colonies to England, if she treated them as conquered provinces?" O'Connell's reply was "Canada ought not to be governed for British purposes merely. We ought not to hold it for one moment and we could not want to hold it for the trifling pecuniary advantage to be derived from it." (76) In the ranks of those who shared this belief, were different shades of opinion. Some, like Gladstone, believed that colonies should be held as long as possible by supervision from the Mother Country. "He did not mean to say, that we ought to maintain the institutions of Canada forever in the subordinate position in which they now existed, but he thought it was again distinction to claim for the Houses of Legislature there, a position analogous to that of the Legislature of this country, as long as they were in the position of a colony." (77) Others like Roebuck believed that concessions should be freely granted, so that when the day of separation should come it would be a parting of friends. "Whatever may be the course we may pursue, the time must inevitably come when our American colonies, will become independent states; but I for one am not anxious that this should be anticipated and brought about before its natural period; and above all, I am desirous that when this period does arrive, we may separate in peace, and goodwill towards one

(76) Id XXXVII, 76, for Mr. Home's speech.

Id XXXVI, 1327, for Mr. O'Connell's speech.

Id XL, 213 and 214. Id XL, 510 and Id XL, 483 for discourses from Lord Brougham, Mr. Palmer and Mr. Warburton on the cost of colonies to the mother country.

(77) Id XXXVII, 96.

another." (78) Radical, Whig and Tory were agreed that the time would come when colonies would grow into independencies. (79)

(78) Id XXXVII, 1210.

Id XXXVII, 1228. Mr. Reebuck said, "..... But if we could by care, erect a northern federal republic out of our colonies, to check and control this mighty power, we should act wisely and with forethought."

(79) Id XXXVII, 105. Mr. Labouchere expresses the idea here, that when separation might come, England should have a good case in the face of the world and of posterity.

Id XL, 580. Even Howick speaking here of the union of the Mother Country and Canada expressed the opinion, "...that when that union should terminate, it would terminate only because, from our being restrained within comparatively small limits, and from the almost boundless space which is left for the increase of the population in Canada, a time must necessarily arrive when the relative magnitude of the two nations would be altogether changed and the relation of a Mother Country and a Colony with respect to them could be utterly absurd."

Id XL, 398. Mr. Bulwer spoke of educating the Canadas "to that safe and gradual independence which should be the last and crowning boon that a colony should receive from a parent state."

Id XL, 851. Lord Ashburton considered that England should, "shake hands with them, and let them join with the North Americans if they so thought fit."

Id XL, 663. Lord Aberdeen here regards separation of Canada from England as inevitable as death.

This school of thought implied as did the former, a lack of faith in Canadian patriotism. Sir. W. Molesworth thought he was doing justice to the Canadians when he championed in their favor, the right of resistance. "In this case if the people were strong enough, they were morally bound to have recourse to the right of resistance.....", he said, "...if the Canadians were of that race which produced Washington, Jefferson and Franklin, they would feel themselves in that position which made every man of English blood a rebel." (80)

Thus there is no really promising attitude regarding the future connection of Canada and Great Britain. Those who see the wisdom of keeping together the Empire, fail utterly in the means ~~for~~ ~~which~~ they recommend. Those who plead for liberality to the colonies have no idea of maintaining the integrity of the Empire. For a moment a glimmer of hope lights up when we read the speeches of Mr. Ward. He stated, "...the inhabitants might be left to exercise their own discretion and authority in the expenditure of their funds with perfect security to the friendly connection between the colony and the mother country." (81)

(80) Id XXXVI, 1332 and 1333.

(81) Id XL, 101. Mr. Ward here takes as an example of the evil of irresponsibility in colonial government, the separation from Spain of her possessions.

Id XL, 384 and 385. Sir W. Molesworth points out, "But it should be remarked that of all the high functionaries the Colonial Secretary was the one least exposed to effective responsibility, because the people of a mother country are necessarily uninterested and unacquainted with the affairs of their remote dependencies." He continued, "It was in the dark recesses of the Colonial Office - in those dens of speculation and plunder - it was there that the real and irresponsible rulers of the millions of inhabitants of our colonies were to be found."

But this flicker dies out as we come to the following: "He did not believe that it was possible to perpetuate the connection between a mother country and her colonies; for when a colony grew to a certain extent and became ripe, it would drop off." (82) He too then believes in concessions but not in colonies.

Mr. Buller, lights up a stronger flame. "If this kind of interference with the privileges of nations was allowed, there would soon be no right safe from might, and no longer any respect for that sanctity of honour which should hedge the Majesty of an Imperial legislature." (83) "He was not any advocate for separation, and he protested against the doctrine which the noble Lord and the right Honorable Baronet, had laid down, that the colonies were to be kept merely with reference to the commerce and interest of the mother country." (84) Here is the promise of a new spirit in colonial policy. (85)

As yet, however, this tiny light fails to pierce the penetrating darkness in which the period closes. Viscount Howick, for instance, in hoping to solve the problem of irresponsibility, advocated not responsibility of the Executive Councillors to the Assembly, but suggested rather the expedient of removing the Governor by petition to the Imperial

(82) Id XXXVII, 1254.

(83) Id XXXVII, 1270.

(84) Id XL, 83

(85) Id XL, 392. Mr. W. S. O'Brien said later, "He was for allowing the colonies self-government in connection with the mother country.....Matters should be so contrived as to give satisfaction to the people of Canada. If they demanded an elective Legislative Council, give it to them, if they asked for a responsible Executive, let them have it.".

Parliament. (86) But when we reflect how prone was each successive Governor to fall into the toils of his Executive Council, we cannot help feeling how inadequate was this plan. (87) Though Howick expressed the opinion, "that permanently to maintain our authority against the will of the great body of the people is altogether impracticable," (88) yet the alternative he suggested seems almost equally impracticable. And though Warburton seemed to take a step ahead when he pointed to petitions from other North American colonies, asking for a responsible executive, (89) yet he had no faith in the connection. "The

(86) Id XL, 576, Howick, refuting the idea of executive responsibility in the colonies says, "Such a system would be irreconcilable with the idea of the proper relation between a colony and the mother country." His idea was, "...if the Governor should pursue a course of government in a manner not in accordance with the feelings of the great body of the people, they have their appeal not against his subordinates but against himself, by an address to the Crown and by petitions to the Imperial Parliament."

(87) Vide p. 30, n. 70

(88) Harvard XL, 570

(89) Id XL, 477. Mr. Warburton said, "Let them look to the petitions, not from Lower Canada, but from the whole of their North American colonies,.....and they would find that the people required not only popular representation, but what naturally grew out of it, a responsible executive. What he meant by a responsible executive was, that if there was a majority in the House of Assembly against that government, which was put over them by the colonial government at home, or if the course recommended by the administration at home was disapproved by them, what they asked was power to dismiss the executive, and to place in their stead ministers who would act in conformity with the majority of the inhabitants."

remedy which he conceived would remove all disaffection in the colonies was to propose an amicable separation between the mother country and the colonies.* (90) As yet then the British parliament was still,* legislating upon this question in ignorance, in passion and in indifference, in a national and perfectly excusable indifference arising from ignorance, and in ignorance that very naturally fomented and excited passion.* (91)

(90) XL, 477

(91) XLVII, 1268. The above is quoted from a speech made by Mr. Bailer.

RUSSELL PERIOD

We are now in 1840. The rebellions are over, the charter of Lower Canada has been suspended for a time and Lord John Russell is considering a safe return to constitutional government in Canada. Consequently, it is the Union Bill that draws from the Imperial Parliament, diverse opinions as to how Canada should be governed.

Lord Durham, commenting on the reformers of Upper Canada had stated in his report, "They rightly judged that, if the higher offices and the Executive Council were always held by those who could command a majority in the Assembly, the constitution of the Legislative Council was a matter of very little moment, inasmuch as the advisors of the Governor could always take care that its composition could be modified to suit their own purposes." (1) We shall find that in the debates of the Russell period, the idea of Canadian self-government is associated with a responsible Executive, rather than an elective Legislative Council. Thus, though many do not yet understand just how executive responsibility is to be applied to the colonies, and though many are directly opposed to the application of such a principle, yet the mere fact that it has found a more prominent place in the British Parliament shows that some advance at least, over the earlier period has been made in the question of Responsible Government.

The Radicals saw in the proposed legislation simply a measure of injustice to the French Canadians. O'Connell protested against this bill because it contained two distinct

(1) Lucas: op. cit. 150.

principles of injustice - first, on the ground of unequal representation of the people of Lower Canada, as compared with those of the Upper Provinces..... The second injustice of which he complained was a pecuniary one." (2) To Mr. Hunt it appeared that, "It was intended to swamp the French population, by not giving them a fair share in the representation." (3)

On the other hand, Conservatives believed that the Union placed a dangerous power in the hands of the French. Lord Stanley and Sir Robert Peel both recognized dangers attendant upon the Union and voted for it because they believed it to be the least unsatisfactory of the alternatives before them. Lord Stanley, ".....was satisfied that if the danger of moving in the matter were great, the hazard of doing nothing, of allowing matters to arrange themselves or of permitting them to remain as they were at present, was not, properly speaking, a hazard, but an absolute certainty of involving the British interest in Canada in the most serious disaster, if not in utter ruin." (4)

(2) Harvard LIV, 748.

Id IV, 248. The injustice to which O'Connell referred was stated very clearly by Lord Gosford: "With respect to the measure before the House, who could say it was just? They gave to a population of 200,000 or 300,000 the same representation which was given to a population of 700,000 or 800,000. Besides that injustice, they were to saddle the debt of the Upper Province upon the Lower Province, which had no debt of its own."

(3) Id LIII, 1056.
(4) Id LIV, 1137.

Sir Robert Peel, ".....felt it to be necessary to the honour and credit of parliament that something should be done now for the government of the Canadas." Accordingly he voted for the Union because, "He doubted whether he could have suggested a better scheme for the good ^{of the} ~~of the~~ Canadas; certainly he had at present no better scheme to offer and preferred the attempt to govern the Canadas by the union of the two provinces to any other which had been proposed." (5)

There were others, however, who were much more fearful of the consequences of Union than were these two whom we have quoted. Mr. Pakington, for instance, seemed to attach great significance to the despatch of Sir. George Arthur, of July 2nd, 1839, which he quoted, "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." (6)

(5) Id LIV, 1119 and 1121.

Id XLIX 1065 - 1066.

Sir Robert Peel realized practical obstacles to Union in the way of racial and religious difficulties.

(6) Id LIV, 717

This opinion received the hearty concurrence of the Duke of Wellington. After eulogizing the loyal, 'Family ^{Compact} ~~Compact~~' party, he continued, ".....there was another party in that province called, 'Republicans' which was composed in a great part of refugees from the United States, and from this country. This party was in favor of republican institutions and responsible government." (7) Accordingly, we see Mr. Gladstone concluding, ".....that it was easy to anticipate that when the United Legislature assembled, 'responsible government' would be the war cry in which the French Canadians and British republicans in the upper province would cordially unite." (8) Whilst we must praise Gladstone, his perceptions in foreseeing the alliance of the French and British reformers for the purpose of carrying Responsible Government, we cannot but blame him for his blindness in attributing to this movement a republican color. One who spoke in this same vein, perhaps even more plainly than Gladstone, was Mr. Falkington whom we have mentioned, "Looking to the large proportion of the disaffected in the upper province," said he, "and the overwhelming majority of the French population in Lower Canada, he very much doubted whether they would have a sufficient majority to keep up the connection between Great

(7) Id. LV, 506.

(8) Id. LIV, 726.

Britain and Canada." (9)

Whilst one set of men was thus opposed to the measure because of its injustice to Lower Canada, and another group feared the ascendancy it gave to the French, Lord Ellenborough in his attack, most curiously combined both these objections. He uncovered what he alleged to be the object of the Bill and what he supposed would be its effect. "What practically was the object of the Bill? It was not in reality to give liberal institutions to Lower Canada; but under the pretence of giving them to disfranchise the French population." (10)

(9) Id LIV, 1145.

Vide Id LIV, 714, for a similar sentiment from Mr. Colquhoun. Id LIV, 1116. Sir G. Sinclair said, "I fear that the compulsory union of the two provinces will accelerate the separation of both from the British Empire. This measure is so constructed as to give a triumph to the French over the English, to the Roman Catholics over the Protestants, to the traitorous over the well-affected."

(10) Id LV, 249.

Id As an instance of the frauds and tricks of which he spoke, Ellenborough pointing to the representation of Lower Canada mentioned, that, "six counties, containing a population of 33,000 returning English representatives now, were to return six members; and two French counties, which were to be consolidated and contained a population of 30,000 were only to return one member."

"But after all the tricks and frauds contained in this bill, it was clear that the French Canadians might and probably would return three fourths of the members of the Assembly to be elected by Lower Canada.....If, however, such an absolute majority, under this bill they failed to carry, in Upper Canada there was an end of the union of the colony with this country." (11) Whether Hilenborough with the Radicals was troubled at the disfranchising of the French, or whether Hilenborough and the Conservatives trembled at the thought of separation, (12) does not concern us now. The point is that

(11) Id IV, 251.

(12) Conservative opinion was divided in this respect. The Duke of Wellington, (Id IV 240) stated, "He was aware that there were also others, who felt a desire that the separation should take place, tranquilly if possible, but that, at all events, it should take place. In his opinion, these gentlemen were mistaken."

On the other hand, Lord Ashburton, (Id IV 261) believed that, ".....after having established a colony of which Great Britain had a reason to be proud, the time might come when self-government was necessary and when separation from the Mother Country must take place."

neither Lord Ellenborough, nor the Radicals, nor the Conservatives seemed to realize that the Act of Union, by its redistribution of parties, which diverted French dissension into English channels of constitutional reform, (13), and by the form of its constitution which provided the scene of working a system of self-government, (14) allowed to the Canadians, the development of their aspirations in harmony with the imperial connection.

Indeed, the Radical Party clamored for definite enactments, changes in the constitution as a guarantee that the people would be allowed a just control of their affairs. "Did the noble Lord imagine," he asked, "that when the two provinces were united, they would abate one jot of their claim for popular institutions; or that things would go on better than they did, when there was nothing in the bill to make the councils in harmony with the people? The Executive Council was to be the same as before; the governor was to choose the members as before." (15)

(13) Vide above page 40 line 7.

(14) Vide below; footnote (15).

(15) Massard, MLK, 1056.

cf. Report of the Public Archives, 1923, King's Printer Ottawa, page 333. Mr. R. Baldwin advocating Responsible Government wrote the following "...there is nothing in the Charter which forbids the application of such a principle." "....the principle in its application consists in fact solely in the ordinary exercise of the Royal prerogative....."
 "The Concession of the principle therefore calls for no legislative interference....."

On the other side were those good honest Tories who based the existence of the British Empire on a rigidly defined theory of Downing Street control over the colonies. They expressed freely the opinion that official positions in the colonies were to be given not necessarily to men who might possess the confidence of the people, but rather to a certain 'loyal' section of the population. Hence, Mr. Pakington complained that while the gallant Captain Drow had been "treated with utter neglect by the Government," Mr. Robert Baldwin was appointed Solicitor-General. (16) The man who shared this opinion did not hesitate to plainly denounce responsible Government. Sir. George Sinclair said, "In this instance, the cry is for 'responsible Government.' But this phrase also admits of various meanings, and I am persuaded that in the mouths of those who are so clamorously insisting upon it on behalf of the Colonies, it means a Government altogether responsible to themselves, and which shall, as soon as possible, divest itself of all responsibility to the British Parliament or to the British Crown." (17) The Duke of Wellington believed, ".....their lordships might depend, that local responsible government and the sovereignty of Great Britain were completely incompatible." (18) The core of the Tories' opinion on this matter was contained in Gladstone's speech. Using as

(16) Harvard LIV, 721.

(17) Id LIV, 1116.

(18) Id LV, 242.

his definition of Responsible Government, a passage from Lord Durham's Report, (19), he spoke of, "...the necessity of having an executive unity throughout all portions of the empire and consequently repudiating as one of the shallowest of all possible delusions, the doctrine of responsible government in connection with the perpetuation of the union." (20)

What stood official policy in this respect? Lord Stanley in 1844 contended that Lord Sydenham had been "sent out to carry into practice Lord Durham's principles." (21). Mr. Poulett Scrope, M.P., Lord Sydenham's biographer stated, "It was.....to carry out the great objects of Lord Durham's mission which had remained unaccomplished, that Mr. Scoult Thompson was selected to proceed to the province...." (22)

Lord John Russell himself, in the despatch of Oct. 14th, 1839, said, "while I see ^{thus} insuperable objections to the adoption of the principle, (Responsible Government), 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." (23)

(19) Id XIV, 727. Mr. Gladstone in attacking Responsible Government understated it in the sense of Lord Durham's remarks concerning, "The wisdom of adopting the true principle of representative government and facilitating the management of public affairs by entrusting it to the persons who have the confidence of the representative body....."

(20) Id XIV, 732.

(21) Id LXIV, 43.

(22) Scrope: Life of Lord Sydenham, London, 1843, p.131.

(23) Harvard LXIV, 45. Lord Stanley quotes this extract from Lord John Russell's despatch of Oct. 14th, 1839.

Now then did Russell understand Durham's views? Durham said, "It needs no change in principles of government, no invention of a new constitutional theory to supply the remedy which would in my opinion completely remove the existing political disorders." (24)

"This change might be effected by a single despatch containing such instructions....."(25) The remedy which Durham had in mind, is contained in the following words, "Every purpose of popular control might be combined with every advantage of vesting the immediate choice of advisers in the Crown, were the Colonial Governor to 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."(26)

As to the method by which the remedy was to be applied, Russell practically concurred with Durham. "I think....it will be necessary, without any positive enactment....but by the rule of administration that the Assembly should exert a due control over the officers appointed or kept in office by the Governor, and over the distribution and expenditure of the public funds." (27) It was with respect to the remedy itself, that Durham and Russell parted company. The extent to which Russell follows Durham depends on what he understands by the 'due control' which he intends the Assembly to exercise over the officials. He said, ".....I maintain that a general

(24) locus: op. cit. p.p. 277, 278.

(25) Id 280.

(26) Id 288, 289.

(27) Manoré LII, 1333.

Vide above p. 43 line 9 Russell differed from Hume in this respect.

System should be adopted, by which the leaders among the majority should be included in the Executive Government." (28) But this is not parliamentary government. The council must not only include the leaders of the Majority, it must consist entirely of these men. Thus we conclude that Russell's understanding of Durham's views was not Responsible Government. Indeed Russell said in so many words, "Lord Durham has stated that an analogy existed between the representative of the Crown in the colony and the constitutional responsibility of the ministers in this country..... It does not appear to me that you can subject the Executive Council of Canada to the responsibility which is fairly demanded of ministers of the executive power of this country." (29)

Nor was Russell unsupported in this stand which he took. His colleague, Viscount Howick, believed that the Government at home as well as the authorities in the colonies, should pursue "a system of protective government, guided by a conciliatory spirit, and a desire to consult the wishes of the people....." (30) The question is for how long could a protective government, no matter how conciliatory the spirit in which it were conducted, really consult the wishes of the people? Why, only so long as public opinion itself should be favorable to it. If this system of protective government were to be truly administered in a conciliatory spirit and in accordance with the wishes of the people, then, just as soon as the people

(28) Harvard LII, 1334.

(29) Id XLVII, 1268.

(30) Id LIV, 746.

should so desire, the 'protective' idea must be abandoned in practise, if not in theory. Fortunately, Newick's sincerity did lead him, later, to take this step in 1846 and 1849, but in 1840 he still said, "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 the opinion that responsible government so defined would be incompatible with the maintenance of Colonial Government." (31)

An old saying is, 'the proof of the pudding is in the eating.' Let us then look at Russell's policy actually at work. The despatch to Sydneyham, Oct. 16th, 1839, stated that, ".....hereafter the tenure of colonial officers held during her Majesty's pleasure will not be regarded as equivalent to tenure during good behaviour, but such officers will be called upon to retire from public service, as often as any sufficient motives of public policy may suggest the expediency of that measure." (32)

(31) Id LIV, 746.

(32) Id LV, 502.

What did Russell mean by this despatch? Was this to be an instrument in the hands of the Governor for the purpose of doing away with men opposed to his measures, such as, for instance, the Act of Union? This was the charge made by Lord Brougham and the Duke of Wellington. (33) Or was he now introducing Responsible Government in the colonies? (34)

(33) Id LV, 263. Lord Brougham, commenting upon the change of opinion in Canada with regard to the union,....." begged to ask since when that change had been effected? Why since the despatch of his noble Friend, the Secretary of the Colonies and the announcement it contained of the measure which did not make it convenient for that body to hold out." Id LV, 507, 508. On these pages, the Duke of Wellington, developed at length the idea suggested above by Brougham.

(34) Id LV, 242. The Duke of Wellington said, "The despatch of the sixteenth of October, went out and an immediate change took place in the whole tone of society there. A few days after its publication, 'Responsible Local Government' became the universal cry."

We will not accuse Russell of issuing this despatch with a view to disarming colonial opposition to the Act of Union. Yet in view of the fact, that, as Howe pointed out, the Governors had been very much in the tails of the Executive Councillors, it seems that Russell, by this despatch, was seeking to give the Governor more freedom from his Council. Viscount Melbourne saw, ".....that that despatch was misunderstood in the colony and that it was looked upon as intended to countenance the principle to which he alluded (Responsible Government). It was not misunderstood, however, by the Governor-General; it was not misunderstood by Sir Colin Campbell or Sir J. Harvey, for the correspondence showed they attached to it its correct interpretation....." (35) What do we see then in the correspondence of, say, Lord Sydenham, the Governor-General? In the first place, he wrote, "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." (36) In the second place, he was of the opinion, ".....that we do not derive from our officers that aid in the management of public affairs in the legislature which is absolutely indispensable for the conduct of them in the colony." (37) Thus it seems that the Russell despatch of Oct. 16th, 1839, was intended to give the power over the Executive to the Governor rather than to the Assembly.

(35) LV, 270.

(36) Scrope: op. cit. 143.

(37) Id. 183.

Let us remember that at this date Russell was still uneasy about certain elements in the Canadian situation. For instance, he intended the Act of Union to overcome as much as possible the presence of a French population in Canada. He said, "There is no more obvious or safer mode of proceeding in order to put down this system of monopoly and exclusion, than to admit the inhabitants of both countries to one Legislature, leaving the French race to be represented by persons of their own opinions, but depriving them of that preponderance of which they made so ill an use." (38) He was still haunted by the fear that disloyal men might gain control of affairs in the colony. "I need not say," he argued, "That it would have been impossible for any minister to support in the Parliament of the United Kingdom, the measures which a Ministry headed by Mr. Papineau would have imposed upon the Governor of Lower Canada." (39)

(38) Massary LII, 1326.

(39) Id LXXII, Lord Stanley quoted this passage from Russell's despatch of Oct. 14th, 1839. The measures which Russell visualized, he summed up thus: "British officers punished for doing their duty; British emigrants defrauded of their property; British merchants discouraged in their lawful pursuits, would have loudly appealed to Parliament against the Canadian Ministry and would have demanded protection."

Lord John Russell was afraid in the face of such possibilities, to grant true Responsible Government to Canada. He cast about for some other mode with which to carry on the administration of Canada to the satisfaction of the Canadians.

Thus in his despatch of Oct. 16th, 1839 to Sydenham he did not instruct the Governor to apply to colonial administration the principles of parliamentary government. Lord Sydenham was simply given the power to change his advisers as often as he deemed it necessary in the interests of public policy. The despatch did not state whether or not the Assembly were to play any part in deciding what was required by public policy. Russell's despatch of Oct. 14th, 1839, on the other hand distinctly denied parliamentary government to colonies. "The power for which a minister is responsible in England," it read, "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." (40) Once, however, 'public policy' was officially recognized in the administration of

(40) Kennedy: op. cit. 522. In support of the above statement, regarding the position of Executive Councillor, Russell explained, "The Governor under whom he serves, receives his orders from the Crown of England, But 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.

Canada, it was impossible for Sydenham not to admit into the Council, men of the popular party. On the one hand, he was to enforce the provisions of the despatch of Oct. 16th, "as often as the public good may clearly demand the enforcement of them." (41) On the other hand, he was plainly told, ".....you may encounter much difficulty in subduing the excitement which prevails, on the question of what is called 'Responsible Government.' I have to instruct you, however, to refuse any explanation which may be construed to imply an acquiescence in the petitions and addresses upon this subject." (42) Thus, denied the power to use parliamentary government in the colony, he was expected to achieve what nothing short of parliamentary government could achieve. In order to work out such an impossible system, he must call to his Council enough popular leaders to give it a proper complexion without placing it beyond his control; he must employ all the known

(41) Id 525.

(42) Id 522. In this case Russell referred the Governor for guidance to the resolutions of April 12th and May 9th, 1837, which provided among other things, "That while it is expedient to improve the composition of the Executive Council, in Lower Canada, it is unsavable to subject it to the responsibility demanded by the House of Assembly of that province." (Hansard XXXVI, 1303).

tactics of party management in order to maintain this Council to some extent in the confidence of the Assembly; (43) he must even descend to the expedient of influencing elections (44) in order to obtain in the Assembly as much support as possible for the Council which he must use in carrying on

(43) Vide Sarope, op. cit. 239. Sydenham continually stressed practical measures in the hope of sidestepping the issue of Responsible Government. He said to the Canadians, "May your efforts be steadily directed to the great practical improvements of which the province so much needs."

Id 183. He conceived it to be the duty of the Governor to "propose and submit to the legislature,.....whatever measures may appear to be called for, for the good of the province, and the very consideration of which would divert men's minds from the agitation of abstract points of government....."

(44) Many held the opinion expressed by Roebuck in Hansard LXXV, 32, that Lord Sydenham had a hand in the violence which took place, for instance, at the Montreal and Terrebonne polls.

his personal administration. (45) This is the policy by which Lord John Russell, desirous of administering the country in the interests of the people, yet afraid to trust that administration to the people themselves, attempted to keep up the connection with Canada.

One man at least in the House of Commons, held high the torch of Canadian political liberty. Buller, unlike Russell, agreed with Durham not only in the method by which a remedy should be applied, (46) but in the remedy itself which Durham prescribed for the ills of the colony. (47) Russell

(45) Scrope; op. cit. 345. Scrope stressed here the necessity of choosing as his successor, a man "who will govern, as I do, himself."

(46) Vide above, p. 46, line ■ /

Hansard LIV, 733. Mr. Buller, "did not wish to enter into the controversy on the great and difficult question of responsible government there, (in the House of Commons) - that controversy was not to be settled there."

(47) Vide above, p. 46, line ■ 7

Vide Hansard LIV, 734. Mr. Buller foresaw, "....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 and that otherwise the colony would be a scene of interminable confusion and anarchy such as had followed every attempt to work representation without a responsible executive."

still distrusted the aspirations of the reformers in Canada; (48) Buller struck the note of confidence in the Canadians. He saw in Responsible Government, a safe principle, on which should be conducted the affairs of the North American Colonies. It was the natural, necessary consequence of the granting of representative institutions. Without it the representative system could not work smoothly. (49) The very discontent itself, which existed in the colonies, was proof that Responsible Government could be safely applied. "He should have very little respect for persons of the English race, who under a bad constitution

(48) Vide above, p. 51 line, 1

(49) Hansard LIV, 733. Mr. Buller said, "The Reformers of Upper Canada, who had been so much misrepresented - the vast majority of the intelligent inhabitants of all the Colonies, had practically supported the doctrine of representative government long before Lord Durham approved of it;..... Lord Durham merely announced the principle of responsible government as that on which the government of every country having representative institutions must be conducted."

exhibited no discontent." (50) Indeed, he declared, "In no place had he ever seen a stronger feeling of nationality than in Canada - there pervaded throughout the strongest feelings of pride in descent or connection with the British nation. From Nova Scotia to the extremity of Upper Canada, that feeling had been acted upon..... Instead then, of acting as if they looked on such persons with suspicion and by so doing exciting their discontent, they ought to rely upon the nationality and loyalty of the Canadians, of which they had given proof....." (51)

(50) 11 LIV, 736.

(51) 14 LIV, 739.

STANLEY PERIOD

The time now shifts to 1843 and 1844; the characters, with whom we are, in general familiar, are seen in somewhat different roles; (1) The actions around which this act revolves are the Bagot incident and the Metcalf crisis. Sir Charles Bagot, unable to manipulate any longer Sydenham's impossible machine (2) appointed a popular ministry for the Administration of affairs in Canada. Sir Charles Metcalf, his successor, unable to agree with this Council, accepted its resignation.

The Radicals spoke in glowing terms of Bagot's 'great measure.' Mr. Hume, crediting this policy to Lord Stanley, thought, ".....the right hon. Baronet deserved the thanks of every friend of humanity for the change he had effected in giving a good Government to the Canadians." (3) There is nothing here, of course, to show whether or not he understood the true significance of Bagot's move. Mr. Roebuck said, "The right hon. gentleman had adopted a new Rule - he gave a responsible Government, not in name but in reality to the

(1) Vide intro. p iv

(2) Kennedy: op. cit. 566. Sir. Chas. Metcalf, discussing Lord Sydenham's administration wrote, "It is understood that he was little accustomed to consult his Council, and that he conducted the administration according to his own judgment. His reputation for ability stood high in this country; but it is believed that he could not have carried on his Government much longer without being forced to yield to the pressure of the Legislative Assembly or his Executive Council."

(3) Standard LXVI, 254.

to the Canadians; and resorted to no stratagem, to no means of keeping them down, corrupt or frighten them." (4) He was at least rendering lip service to Responsible Government. But did he really appreciate this principle? We shall see later.

Meanwhile, how did Lord Stanley look upon Bagot's action? To the House of Commons he said, "He did not feel in any degree, the slightest reluctance or hesitation in approving of the course which circumstances had rendered necessary for Sir. Charles Bagot to pursue...." (5) This sounds very encouraging. So far one would think that Lord Stanley favored Responsible Government. However, "when Sir. Chas. Bagot first went out to Canada, "he explained, "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 to whom he might think fit to call to his Councils, no distinction of origin or race should be made, but that men of all parties of different origin and race should combine together..... He thought, therefore, that in the main - in all essential features of the case - Sir. Ch. Bagot since his appointment had acted entirely and concurrently with

(4) Id LXVI, 244.

(5) Id LXXV, 70. Lord John Russell thought ".....that Sir. Chas. 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 circumstances did occur which certainly tended to weaken the authority of the Governor General in those provinces."

her Majesty's Government." (6) There is nothing in the above; instructing Bagot to follow the principles of parliamentary government in the formation of his Council; on the contrary he is told plainly to ignore parties. Thus when Lord Stanley, in the face of Bagot's deliberate use of party government, stated that Bagot had followed her Majesty's instructions, it seems evident that he was trying to blind the public to the real state of affairs in Canada.

We doubt then whether the Radicals understood and whether Stanley favored Responsible Government. There is not the same doubt, however, as to what was Mr. Buller's attitude. Heartily endorsing Bagot's action he, ".....was bound to say that Sir. C. Bagot's government had taken the wiser and safer course; that he had, in a manner sufficiently commended, adopted the right course and in the best possible way." (7) But more than this, he took the occasion of Metcalf's succession to Bagot, to throw more light on the subject of Colonial Administration. "Having sent such a man as Sir. C. Metcalf ~~and~~ to govern Canada with a free legislature and an Executive in harmony with it, their obvious duty was," he believed, "to leave him as 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 could form on the spot." (8) Buller has come very close to the heart of Res-

(6) Hansard LXVI, 246

(7) Id LXVI, 256

(8) Id LXVI, 257

possible Government.

A few minutes ago we asked the question whether Mr. Reebuck in applauding Bagot's conduct, really understood Responsible Government. He pointed out quite emphatically some of the evils of Colonial Administration in Canada at that time

In the discussion on the Metcalf crisis, he asked, "What was the case with respect to the emigrant? A river divided him from the United States, where everything was open to him, every office in the Government, every legitimate influence in the conduct of the affairs of the State. In Canada, on the contrary, under the tutelage of England, he could expect nothing in the shape of public honours or emoluments, but at best, some wretched petty office of a subordinate character; he would have no sympathies with the Government which was put over him; he would have to lead a sort of existence upon sufferance under the Colonial Office in Downing Street." (9) Thus we can say at least that he was both eloquent and rational

(9) Id LXXV, 34. Vide Scrope: op. cit. 149

Sydenham, in a different context of course, referred here to conditions similar to those which Reebuck pictured. He wrote in 1839, "Emigration going on fast from the province. Every man's property worth only half what it was. When I look to the state of Government and to the departmental administration of the province, instead of being surprised at the condition in which I find it, I am only astonished it has been endured so long. I know that much as I dislike Yankee institutions and rule, I would not have fought against them, which thousands of these peer fellows, whom the Compact call rebels, did, if it were only to keep up such a Government as they got."

in desiring self-government for Canada. He continued, ".....the noble Lord ought to lend his assistance to lead on the Canadian 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 a hostile nature." (10) This shows clearly that Roebuck did not appreciate the principle of Responsible Government. This principle is essentially one which allows the colonists to realize their aspirations for self-government in harmony with the British connection. Roebuck, as yet, could see colonial self-government only as the achievement of separation. (11)

(10) Hansard LXXV, 35.

(11) Id LXXV, 59. Lord Stanley evidently was against separation. "In a military point of view, therefore, Canada adds little to the strength of the empire. Indirectly, the connection strengthens us by forming a nursery for our sea-ment; and in a commercial point of view, it is of great importance to us, as giving us a command over the inlet and outlet of a great continent....."

We have also raised the doubt, to what extent Lord Stanley contemplated the working of Responsible Government in Canada. In discussing this subject, he quoted from Metcalf, "If you mean that the Governor is an irresponsible officer who can, without responsibility, adopt the advice of the Council, you are, I conceive in error,.....He is responsible to the Crown and the Parliament, and the people of the Mother Country, for every act which he performs, or suffers to be done, whether it originates with himself, or is adopted on the advice of others." (12) Whether a subscriber to these sentiments, believes in Responsible Government or not depends on what he conceives to be the position of the Governor in the colony. If he believes that the Governor's responsibility to the Mother Country consists in cultivating the loyalty and affection of the colonists by carrying on their administration as they wish it to be conducted, then I would say that he is a supporter of Responsible Government. If, on the other hand, he understands that the Governor's every act must be under the supervision of the Imperial Parliament, then I would say that he is an unbeliever in this enlightened principle of colonial government.

Lord Stanley, ".....understood by responsible government that the administration of Canada was to be carried on by heads of departments enjoying the confidence of the people of Canada....."(13) Lord John Russell in his despatch of Oct.

(12) Id LXXV, 54.

(13) Id LXXV, 47.

14th, 1839, to Lord Sydenham, hit upon one of the qualities essential to the proper working of Responsible Government. "Every political constitution," he wrote, "in which the different bodies share the supreme power, is only enabled to exist by the forbearance of those among whom the power is distributed." (14) He marred this statement, however, by his persistent references to hypothetical and extreme cases, which he brought up as arguments against Responsible Government. (15)

(14) Kennedy: op. cit. 523.

(15) Hansard XLVII, 1268, 1269 and 1270. In this speech, (June 3rd, 1839), Lord John Russell attempted to show that local Responsible Government was inconsistent with the welfare of the British Empire. Speaking of international relations, he pointed out that in the dispute between Maine and New Brunswick, the latter under Responsible Government, might have desired to act in contradiction to Imperial policy. In the matter of internal affairs, he imagined a case in which a local Assembly might require that all invaders of their territory should be put to death without trial, thereby causing great inconvenience to the Mother Country.

Vide

Russell Period -

p. 51, 2. 11

We find Lord Stanley too taking up a similar line, "Taking the principle as he interpreted it, it was to be exercised with mutual forbearance and good sense, neither party straining their powers, but making concessions to the wishes of the other. Interpreting the principle in this way, it was possible, - nay it was not difficult - successfully to administer the affairs of Canada by its application." (16)

Thus Stanley stated that administration must be by popular heads of departments, and that mutual forbearance must lubricate the wheels of government. This much of the spirit of Responsible Government he seemed to have absorbed. And yet, its true significance was lost in his case when he came to make definite declarations as to the position of the Governor in the colony. "It was inconsistent," he maintained, "with monarchical Government, that the Governor, who was responsible should be stripped of all authority and all power, and be reduced to that degree of political power which was vested in the constitutional sovereign of this country." (17)

(16) Id LXXV, 48.

(17) Id LXXV, 42.

Vide Id LXXV, 41. Lord Stanley believed that executive responsibility in England was made possible by the presence of the House of Lords and the veneration with which the people regarded the person of Sovereign. As these institutions did not exist with the same force in the colonies, he argued then that to concede executive responsibility in a colony would be to establish a republic.

By making this denial, by refusing to admit that the position of the Governor in the colony should correspond to that of the Sovereign in England, he showed clearly that it was not Responsible Government that he meant to apply to Canada.

What was the nature of his substitute then? Let us turn to the Metcalf crisis. When Metcalf went out to Canada, he had for his Council of advisors, the popular executive formed by Bagot. Sydenham, as we remember, had attempted to so manipulate the Executive Council and the Assembly, that the policy of the administration should be that of the Governor himself rather than that of public opinion. (18)

Bagot, in appointing an Executive, composed of men who really enjoyed the confidence of the Assembly, had allowed public opinion to come into its own. Though he used his own discretion in guiding his councillors from the ways of excess he was nevertheless allowing public opinion to express itself in the Executive Council. (19) Metcalf, however, attempted to

(18) Serape: op. cit. 172. In 1840 Sydenham wrote with respect to parties: "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."

Vide Russell Period) - (~~Metcalfe~~) p 55 n. 45

(19) By his action of forestalling in the Assembly, a vote of want of confidence in the Executive, he remained in control of the situation and was thus able to guide the movement along a constitutional path.

Vide intro. p. iv 212

break a link in the chain, by placing the Governor out of reach of the Executive. In his opinion, "the general responsibility of heads of departments, acting under the orders of the Governor, each distinctly in his own department, might exist without the destruction of the former authority of her Majesty's Government. In this scheme there is no mention of the combination of these officers in a Council, to act bodily with the character of a cabinet, so as manifestly to impair the powers of the responsible head of the Government." (20) In accordance with this theory then, he maintained, "when the acts of the Governor are such as they do not choose to be responsible for, they should be at liberty of resign." (21)

There came a clash, as might have been expected. The Governor, without the knowledge of the Executive had appointed as Speaker of the Legislative Council, a member of the Opposition. (22) This action was, of course, decidedly unparliamentary.

(20) Kennedy: op. cit. 567

Vide Hansard LXXV, 70. Lord John Russell, believed that himself, "declared his adherence to the principles of responsible government so far as they were applicable to a colony."

(21) Hansard LXXV, 54.

(22) Id LXXV, 35.

"One of these appointments so made was that of speaker of the Upper House of Representatives. This appointment was offered without any advice with the Council, and the people heard for the first time, in the streets of Kingston that the offer of this high office had been made to one of their bitterest opponents."

ary. Mr. Buller was of the opinion that, "Under such circumstances a Ministry ought to resign at once. The offer of such an appointment to such a man, was a mark of the withdrawal of the Governor-General's confidence." (23) But the Executive Council, it must be admitted, also made a "faux pas" here. They attempted to ~~make~~ ^{extract} a pledge from the Governor, to the effect that he would make no appointments without the consent of the Council. (24) In thus attempting to obtain a written declaration defining the power of the Governor, they too were using methods alien to the best spirit of parliamentary government. Buller said, "To call upon the Crown, or upon any representative of the Crown, for any pledge of the sort appeared to him to be unheard of." (25) If both parties had acted strictly in

(23) Id LXXV, 66.

(24) Id LXXV, 39. According to Lord Stanley, "The Governor-General had stated publicly and it had not been contradicted.... that the Executive Council demanded from the Governor-General that he would agree, under his hand and seal, to make no appointment whatever, without previously taking the advice of the Council."

(25) Id LXXV, 65.

Vide Id LXXV, 50, 51 and 52. Lord Stanley, "doubted whether it was for the advantage of any small community - he was sure it was not for the advantage of a colony - that political patronage should be dispensed as a reward for political subserviency." He believed that minorities whether English or French, would stand a better chance of fair play if patronage were vested in the hands of the Governor-General. His particular dread, however, was lest the Crown should be made to "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."

accordance with the principle of Responsible Government, the Governor would not have made such an appointment, whilst the Executive would not have attempted to make use of such direct methods, but would have resigned on the question of the appointment itself.

The point is, however, that the popular executive resigned. What were Metcalf's alternatives? He might turn to the minority in forming his new executive. Or else, he might, at the risk of having to call back the men with whom he had quarrelled, appeal to the people and conduct his administration in accordance with the wishes of the Council thus formed. In the former case, he would be using 'heads of departments' in whom the people had no confidence; (26) in the latter case, he would be assuming a position in the colony similar to that of the constitutional sovereign in England (27) a position which Stanley denied in colonies. Thus in either case, Stanley's attempt to produce satisfaction in the colonies, by introducing a substitute for Responsible Government, breaks down.

Sir Robert Peel at this time proved himself quite alien to the spirit of colonial government on parliamentary principles. He did not as yet have faith in public opinion in Canada. He conceived that the Governor, instead of using majorities in carrying on his administration, ought to protect minorities. He said, ".....supposing that there was a party possessed

(26) Vide above page 63, line 22

(27) Vide above, page 65, line 14.

of a majority in the House of Assembly, and held the reins of power, that viewed with intolerance the minority and exhibited a disposition to tyrannize over the Government, he was not certain if in that case the Governor ought to be bound to accept the recommendations of the dominant party in Canada." (28) He was in the habit at this time of attempting rigidly to define the status of the Governor and the Council, in Canada. "...in his opinion the position of an Executive Councillor towards a Governor was perfectly distinct from the relations 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 that it was his duty to defer to the Colonial Legislature, at once established that distinction." (29)

In marked contrast to Sir Robert Peel, was Mr. Charles Buller. It is true that he defended Metcalf in his quarrel with the Executive. "He was firmly convinced," he said, "looking at the subject with no bias whatever against the gentle men who had gone out of office, that the errors in this case were upon the part of those who had quarrelled with Sir. Chas. Metcalf." (30) He took this stand, I should say, more because he disapproved of the mistaken tactics of the Executive

(28) Hansard LXXV, 75.

(29) Id LXXV, 74. Peel continued, "There was no analogy between the position of the Governor and the Council of Canada, and the position of the Sovereign and Ministers of this Country?"

(30) Referring to the quarrel as it was fought between the Executive and Metcalf, Buller believed, "In the first place Sir. Chas. Metcalf did not violate the principle of responsible government."

than because he agreed in principle with Sir. Charles Metcalf. (31) In any event Buller proved himself infinitely more enlightened in the matter of Responsible Government, than either Lord Stanley or Sir Robert Peel. "He would not lay down any definition of the principle of responsible government. It seemed to him to be very unwise to attempt to form too strict a definition of constitutional principles, and still more unwise to put.....hypothetical cases in which these principles might be pushed to extremes." (32) The finely cut distinctions and nicely turned theories, which constituted the logic of Stanley and Peel, found no place in Buller's mind. To him Responsible Government in the colonies, like Parliamentary Government in England was essentially practical and unwritten.

(31) Vide, above page 67, line 16.

(32) Hansard LXIV, 61.

The Rebellion Losses Bill in Canada, was the test of opinion in the British Parliament with respect to Responsible Government in 1849. This measure which was to compensate Lower Canadians for losses suffered during the rebellion of 1837, excepted from its provisions, only those few who had been court martialled or transported to Bermuda. It seemed inevitable then, as the opponents of the measure pointed out, that other Lower Canadians who had sympathized with and had possibly taken part in the rebellion would receive compensation for losses suffered. Lord Elgin, governed by the enlightened instructions of 1846 (1), assented to the bill when it was presented to him by the Executive Council. Overseas, however, a strong move

(1) Earl Grey: The Colonial Policy of Lord John Russell's Administration, London 1853, p. 211.

".....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."

Id p. 211. "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 inhabitants."

was made in the British Parliament to have the measure disallowed. According as the members here, behaved on this occasion, do we form our conclusions as to their ideas of colonial administration, particularly that of Canada.

Those who still made the distinction between loyalty, deserving office, and disloyalty, straining for separation; those who appealed in this case to inflexible definitions of local and Imperial authority; these, finally, who openly denied the principle of parliamentary government to colonies, were unfriendly to Responsible Government. Lord Brougham, referring to the Baldwin-Lafontaine ministry, said, "A ministry was chosen from the party which I will not call the disloyal party, but which was not the loyal party." (2) Mr. Cochrane felt, "that it was a matter of regret that the Government forgot their friends, and made the loyal inhabitants feel that the only result of respecting the authority of the Government was to be overlooked....." (3) Mr. C. Anstey saw the question in this light, "At present the loyal population of Canada wished to maintain the connection 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." (4)

(2) Hansard CVI, 459.

Id CVI, 329. Mr. C. Anstey said, "Mr. Lafontaine and Mr. Baldwin, who had been so active with respect to this measure were themselves rebels."

(3) Id CVI, 253.

(4) Id CVI, 330

These men, labouring under old prejudices, contributed to suspicion and distrust, - poor foundations on which to erect an Imperial structure. Others perhaps did worse. Suspicion and distrust are provoking enough, but unbending logic in support of a mistaken conception, is exasperating. Mr. Gladstone said, "I cannot admit that the sense of the people of Canada is to limit the criterion that ought to be taken on imperial considerations. If this question involved local considerations only, I would bow to their opinion at once; but as it involves imperial questions, here, and here only can it receive its final decision. (5) It might sound quite simple in theory to say that local questions may be settled by local bodies, and imperial questions must be reserved to imperial decision, but when a complicated matter comes up, such as the Rebellion Losses Bill, a matter which involves both local and imperial considerations, then the theory must be applied according to the rule, not of consistency, but of common sense.

So far we have dealt with men who were alien in spirit to the principle of Responsible Government. We now mention some who openly repudiated it. Lord Stanley, who had no intention of (6) conceding this principle in 1844, said in 1849, "By Responsible Government, I mean the government of a party. Now I have always thought that such a system must involve the colony in constant and most unfortunate disputes." (7) One who surpassed his colleagues in expressing contempt for Responsible Government was Mr. Disraeli. He did not see the circum-

(5) Id CVI, 208

(6) Vide above page 66, line 4.

(7) Hansard CVI, 519.

stances of 1849 as an opportunity to prove to the Canadians, the sincerity of the British Government in allowing them a management of their own affairs. Rather, he said, "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 have a knowledge of circumstance and details, and whose position in this House renders them responsible for the policy they recommend." (8)

On the other side were those who opposed imperial interference in this case. Whether they argued in a general way the principles of self-determination; whether they took the stand that the Government had taken a step which it could not withdraw (9); or whether with greater insight they explained the policy which was to allow colonial self-government within the empire, they proved themselves friends of Responsible Government.

Sir William Molesworth, for instance, in an impressive attack on Downing Street government, 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; that they should be persuaded of their own necessary ignorance of these matters and should not venture to rescind the decisions of the representatives of a great colony." (10) There is nothing in the speech (8) . Id CVI, 359.

(9) The reference is to the instructions of Earl Grey to Sir John Harvey, July 1846.

(10) Hansard CVI, 328.

from which this extract is quoted, to show whether Sir. William Molesworth really understood the means by which the principle of self-determination for Canadians was being realized. It is quite possible that in connection with other colonies, he may have advocated a system quite different in essence, from that at work in Canada. We do know that Mr. Roebuck had a scheme for colonial government, which in two respects ran directly counter to the genius of Responsible Government. It was a plan to provide by Act of the Imperial Parliament, a written constitution for the colonies. (11) When we see that by this Imperial Act, Roebuck would determine the form of government in the colonies, (12) and regulate the system of representation, the trade policy, and the relation of the colony to its surrounding territories, (13) then we form the idea that in his well-intentional way he was adopting an attitude of paternalism. Moreover, he admitted that his plan might pave the way for separation. (14) But though Molesworth's pleas for colonial

(11) Id CV, 963. Mr. Roebuck said, "what he proposed to do was, not to take from existing rights, but to put them into a lucid order, to consign them to an Act of Parliament, and by these means obtain a general rule for their future conduct."

(12) Id CV, 942. Roebuck planned a Confederate Union.

(13) Id CV, 937.

(14) Id CV, 942. Mr. Roebuck said, "He might be told he was preparing the way for the independence of Canada. The time was coming when she would be so, and he was preparing the way that she should not be separated from them by war, but by amicable settlement."

self-government were of a general nature, and the particulars schemes born of Hoebuck's mind were beside the point, (15) yet in opposing Imperial disallowance of the Rebellion Losses Bill both were justifying the decision of public opinion and giving life to Responsible Government in Canada. (16)

Sir William Molesworth, indeed, recognized that the Canadians had been conceded a popular form of Government and that, "...the Imperial Parliament could not rescind that measure (Rebellion Losses Bill) without being guilty of what appeared to him to be equivalent to a breach of faith and he held that such a breach of faith would, on Imperial grounds, be a greater evil than any compensation to a few rebels which might happen under that Bill." (17) This surely is a different conception to that entertained by Gladstone. (18)

(15) With respect to Canada at least.

(16) Hansard CVI, 241. Mr. Hoebuck seemingly recognized that Responsible Government was in operation here. He said, "But the Colonial Office, this House, and the country have grown wiser. They have now given them a constitution and the Colonial Office has given the Governor instructions by which the majority of the people in place of the minority shall rule in Canada."

(17) Id CVI, 224. Id CVI, 272. Mr. Gunning Bruce, said, "...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 force of a passion!"

(18) Vide above, page 74, line 5.

In discussing the opinions of those men who now understood Responsible Government, in its political phase at least, we might perhaps do well to consider their views in contrast with Lord Brougham's attacks. This noble Lord whom we have already seen making a distinction between the 'loyal' and 'not loyal' party, (19) now comes out with the statement, "....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. This is called Responsible Government." (20) Now Responsible Government itself, we learn from Baldwin, Durham and Buller, (21) is nothing more than the English parliamentary system transposed to Canada. In the colony, as in England, there is to be a homogeneous cabinet enjoying the confidence, and executing in the name of the Crown, the wishes of the majority in the popular branch of the legislature. Nor did these advocates of Responsible Government intend that whatever prerogative the Crown still enjoyed in England should be at

(19) Vide above, page 73, line 10.

(20) Hansard CVI, 461.

(21) Vide above page 43, note 15 and page 46.

Hansard LXXV, 63. Mr. Buller said, "The recommendation of responsible government, or as he preferred calling it in a general sense, Parliamentary Government, was the main feature of Lord Durham's Report."

all diminished in a colony which enjoyed the privilege of parliamentary government. (22)

Such is the general theory of Responsible Government to which Mr. Labouchere and Sir Robert Peel subscribed when they argued, "Let them leave the various parties to those squabbles in which they indulged, and which as in this country were the natural result of a free constitution." (23) ".....I cannot consent to our making ourselves partisans in Canadian politics" (24) Is this after all a safe principle? Not according to Lord Brougham. "I for one say, that if that is to be the rule, gross injustice will be done - frightful cruelty will be exercised - because the majority of the popular party, and the Government which according to this doctrine, must be the tool of the popular party, will be sure to trample upon the minority." (25) In other words, majorities would abuse their power, and minorities would no longer be able to look to the Governor for protection. Lord Brougham does not seem to realize that no majority could for long abuse power in the face of an enlightened public, without causing a reaction which would deprive it of that power. Thus said the Marquis of Lansdowne, ".....if

(22) Report of the Public Archives 1925 p. 333. Mr. Robert Baldwin in discussing this principle, distinctly stated, "It involves no sacrifice of any branch of the Royal Prerogative."

(23) Hansard CVI, 343. Mr. Labouchere's speech.

(24) Id CVI, 351. Sir Robert Peel's speech.

(25) Id CVI, 463.

public opinion had not gone along with what had been called the tyrant majority in Canada, it would at once have stopped this tyrant in its progress, and have prevented this Bill from being passed into law." (26)

Responsible Government then, according to Lansdowne depends for its success, largely upon the state of the electorate. Should a rare case arise, however, in which the majority actually did overstep its bounds, has the Governor no choice but to stand by, as Lord Brougham suggests? Not at all. He has, first of all, much indirect influence which he may use in moderating such a party, thus bringing it around to a sane constitutional position. According to Earl Grey, "In the strife of parties which prevails in all free governments, the existence of an impartial authority serves to check the two great violence with which political contests are sometimes carried on, and the experience and position of a minister of the Crown in this country enable him frequently to offer useful advice to the Colonial Legislatures." (27) Then let us not forget that, thanks to the unwritten nature of Responsible Government, a Governor's power is limited mainly by practical considerations. Thus, unfettered by legal definitions, he is free in an extreme case to reject advice which he has reason to believe will be injurious to the interests of the people. (28) Of such a case, however,

(26) Id CVI, 538.

(27) Earl Grey: op. cit. 21.

Walrond: Letters and Journals of Lord Elgin, London 1872, p.40 Lord Elgin wrote, "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."

(28) This was more of a real power in 1849 than it is today.

it is not Lord Brougham, nor even the House of Commons, it is the Governor himself who is to be the judge. (29) Earl Grey instructed the Governor: "In giving, therefore, all fair and proper support to your Council for the time being, you will carefully avoid any acts which can possibly be supposed to imply the slightest personal objections to their opponents, and also refuse assent to any measure which may be proposed to you by your Council which may appear to you to involve an improper exercise of the authority of the Crown for party rather than public objects" (30) Thus the second defense against an usurping majority is the Governor.

So far we have seen that the principle of Responsible Government, based on the good sense of the people and the discretion of the Governor, is a safe thing for the colony itself. But is it safe for the Empire? Are we going to say with Gladstone, "....we ought to act with the broadest and most marked distinction between questions of a local and imperial character." (31)

(29) Vide ~~ibid.~~, page ~~83~~^{70 + 2} ~~38~~ 38

(30) Earl Grey: op. cit. p. 211. Earl Grey carefully guarded the above statement in this way: "In exercising, however, this power of refusing to sanction measures which may be submitted to you by your Council, you must recollect that this power of opposing a check upon extreme measures proposed by the party for the time being, in the Government, depends entirely for its efficacy upon its being used sparingly and with the greatest possible discretion."

(31) Mansard CVI, 193.

Must we lay down a rule which is to govern every matter involving Imperial considerations? (32)

Lord John Russell said, "There are cases 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..." (33) If we are for a moment dubious as to the nature of the 'firmness' which Russell intended should qualify the attitude of the mother country, we are soon encouraged when we see the temper with which he exercised this firmness. When Lord Elgin signed the Rebellion Losses Bill, men like Mr. Gladstone and Lord Brougham argued convincingly that this was a case for Imperial consideration. (34) Moreover, they were supported by no inconsiderable sections of Both Houses. (35) What was Russell's attitude? In 1839 he had said, "But there are cases of internal government in which the honour of the Crown....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 minister in a colony." (36)

(32) Vide above, page 74, line 6.

(33) Hansard CVI, 226.

(34) Vide Hansard CVI, p. 189 - 225.

(35) 96 Lords and 150 members of the House of Commons voted for the disallowance of that measure.

(36) Kennedy: op. cit. 522 - 523. Despatch of Lord John Russell to Foulett Thompson, October 14th, 1839.

In 1849 he said, "Neither to the Earl of Elgin nor to any other Governor of a province has been committed any other than that general discretion, which must belong to a person in a chief situation in a great possession of the Crown to judge what are the cases which, however important, are of a local importance in which he thinks that the honour of the Crown may be affected, and in which he considers it necessary to ask the direction of the Government of this country." (37) Though theoretically, he distinguished, as in 1839, those cases affecting the honour of the Crown, in actual practice this distinction ~~was not~~ in 1849 amounted to little, in view of the discretion he allowed the Governor to decide what were those cases which should be reserved for the Imperial Parliament. That he sincerely intended the Governor to practice this discretion is evidenced by the support he gave to Lord Elgin in the case of the Rebellion Losses Bill. He said, "But I could not, as things at present stand, so far as I am at present informed, advise the Crown to the disallowance of this Act." (38) Thus Russell shows clearly that in (37) Hansard CVI, 226.

(38) Id CVI, 491. Vide Mr. Buller's opinion, p. 58, line 18. Walrand: op. cit. 114. Lord Elgin stated, "...I see nothing for it but that the Governors should be responsible for the share which the Imperial Government may have in the policy carried out in the responsible - government colonies, with ^{the} liability to be recalled and disavowed whenever the Imperial authorities think it expedient to repudiate such policy."

that field lying outside the bounds of purely local administration, that field of internal questions with an Imperial bearing, he intends the power of discrimination to be exercised by the Governor rather than by the Home Government.

In his speech of 1850, with reference to the notion that a line should be drawn between laws requiring Imperial assent, and those not needing this sanction, Russell said, ".....any attempt to draw such a line would be most likely to raise disputes as to whether a particular law came within or stood without that line." (39) Earl Grey stated very clearly, "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 such a system in theory that in practice the Governor could not go on." (40) Grey and Russell did not in 1849 and 1850 attempt to lay down a set rule applicable to every difference which must come up between the mother country and the colony. Rather, they were leaving the way open for future difficulties to be solved according as the nature of the case should require. The good sense and loyalty of the colonists, the discretion of the Governor, and an enlightened policy on the part of the Home Government were thus left to adjust themselves to the ever new conditions brought about by the march of progress.

Not only does Responsible Government not imperil the integrity of the Empire, it is, indeed, the best hope for the

(39) Id XVIII, 547.

(40) Id CVI, 491.

maintenance of the Imperial connection. If the granting of Responsible Government to a colony means separation from the Mother Country, then it must be that the people desire separation. And if they desire separation by what method at all, are they to be governed satisfactorily? Fuller said in 1840, "but if the opponents of British connection attained a majority upon what ground with a majority of the representation of the two Canadas opposed to the British connection, could that connection be kept up?" (41) On the other hand, if they desire not separation, but rather the privilege of exercising self-determination, then the concession of Responsible Government is the best means of keeping them loyal. Lord John Russell seems to have discovered this truth when in 1849 he supported Lord Elgin's course with respect to the Rebellion Losses Bill. "I believe", said he, "we shall consult at once the honour of the Crown and the interests of Canada by supporting the Earl of Elgin in the course he has taken." (42)

Speaking of the situation of the Canadians in 1856, he admitted, "They certainly do not enjoy some privileges in the Imperial Government of the colony, which it is not in their nature as colonists to enjoy." (43) In 1849, whether or not there were still doubts left in his heart, he was able to boast, "I believe under the British sceptre, (they may enjoy as much freedom and as much happiness as can be the lot of any people on the face of the earth."

- (41) Id LIV, 737.
 (42) Id CVI, 241.
 (43) Hansard XLVI, 1303
 (44) Id CVI, 242.

CONCLUSION

As we make our way through the documents relating to Responsible Government in Canada, we notice a marked similarity in the views expressed in Mr. Baldwin's letters of 1836, Lord Durham's Report of 1839, and Mr. Buller's speeches in the House of Commons subsequent to the Durham mission. Then we see in 1846 the despatch of Durham's brother-in-law, Earl Grey, and in 1849 the conduct of Durham's son-in-law, Lord Elgin, carrying into effect these views. Lord Elgin 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." (1)

We admire Russell's support of Elgin in 1849; we admire his perception in seeing that this was the only course compatible with the harmony of the relations with Canada. For, once Lord Elgin, using the discretion allowed him by Grey's despatch, had taken his stand, any Imperial reversal of his decisions would have courted almost certain and immediate separation. Looking at the failures of the attempts of Russell and Stanley, from 1840 to 1845, to administer Canadian affairs without Responsible Government, we agree with Buller and Durham that Responsible Government was really the

(1) Walrond, op. cit. 41

the inevitable consequence of the granting of representative institutions.

Thus, thanks to the loyalty and practical good sense of Canadians, like Howe and Baldwin, who guided the inevitable trend towards self-government, along lines compatible with the British connection; thanks to the wisdom and liberality of the Durhamites whose influence was timely and effectual, Responsible Government came into operation in Canada.