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**THE CAPACITY TO JUDGE:
Public Opinion and Deliberative Democracy in Upper Canada,
1791 - 1854**

Jeffrey L. McNairn

A Thesis submitted in conformity with the requirements for the Degree of Doctor of
Philosophy Graduate Department of History in the University of Toronto

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ABSTRACT

This thesis analyzes the emergence of 'public opinion' as a new form of authority in Upper Canada from the colony's inception in 1791 until 1854. The original understanding of the colony's constitution assumed that the vast majority of Upper Canadians were not sufficiently capable of judging the common good to govern alone. By the 1820's and 1830's, an increasing range of commentators argued that authoritative decisions about the common good could and should be generated by critical discussion among private persons outside the control of traditional institutions or elites. These decisions were 'public opinion.' Debates about the nature and power of public opinion were not only matters of political rhetoric, but drew strength from people's experience of concrete social, economic and cultural changes. In particular, the quantity and distribution of printed texts, the nature and number of sites for reading and discussing those texts, and institutions that fostered certain skills and norms of behaviour lent credence to the concept of public opinion. Finally, the thesis argues that constitutional debate in the 1840's and 1850's revolved around how to integrate 'public opinion' into the province's social and constitutional self-understanding. After several alternatives were canvassed, deliberative democracy in Upper Canada, whereby the province's public was deemed capable of judging the collective good, took the form of parliamentary government.

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Dissertation-writing is a strange mixture of individualism and community. It demanded tremendous focus, almost tunnel-vision. On the other hand, it required the aid of many individuals and institutions who have made the project possible, sparked my interests, helped refine the product and kept me relatively sane throughout.

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commitment to this study provide an all-too-rare model for thesis supervision. Our sessions, both on and off the thesis topic, were intensive training for the public sphere and have convinced me of its tremendous critical potential.

Carl Berger's exciting doctoral seminar in Canadian history not only introduced me to much of the field, but also to colleagues and soon-to-be friends: Adam Crerar, H. Julia Roberts and Jane Thompson. What a group we made - both during the seminar and at regular lunches with Jane Harrison and Deborah Van Seters! As a micropublic, several have read and commented on parts of the thesis. Along with Janice Du Mont, all have provided valuable advice and a supportive audience for venting on all sorts of petty frustrations and triumphs extending well beyond academia.

When I met Paul de Figueiredo he was working on his own, very different, public sphere. While providing unstinting emotional and computer support, he has made much fun of the project and my pretensions, helping me preserve at least some semblance of a healthy perspective. Finally, my parents deserve much of the credit for believing that there was no better way for their son to spend his time than in expanding his own capacity to judge.

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INTRODUCTION

*Enlightenment is man's emergence from his self-incurred immaturity. Immaturity is the inability to use one's own understanding without the guidance of another ... Have the courage to use your own understanding!*¹

...do not trust either my propositions or conclusions. examine for yourselves. read fully and think freely: for there is a great difference between a taught and an acquired belief. and since the mind of man imbibes falsehood as readily as truth. let me admonish you never to place implicit confidence in any man. however commanding his talents may be. for authority is not proof. and assertions are not arguments. never therefore surrender your own reason to that of another man. however small you may reckon your own. when compared with his: for you cannot think in borrowed wisdom. nor understand by another man's knowledge.²

The first quotation is from a 1784 essay by Immanuel Kant. It was his answer to the question. "What is Enlightenment?" The second quotation comes from a speech by Dr. Robert Douglas Hamilton at Scarborough. Upper Canada. in the spring of 1832. Despite the distance of half a century and much else. they express remarkably similar sentiments. The place of those sentiments in Upper Canada's constitutional and political history is the subject of this study.

For Kant, most people remained unenlightened for two reasons: they were afraid

¹ Immanuel Kant. "An Answer to the Question: 'What is Enlightenment?'" *Kant: Political Writings*. Hans Reiss, ed. and H. B. Nisbet, trans., 2nd ed., (Cambridge: Cambridge University Press, 1991), p. 54. [emphasis in the original]

² Guy Pollock [Hamilton] to a Scarborough meeting, 13 March 1832, reported *Courier of Upper Canada*, copied *Western Mercury*, 22 March 1832.

or they were lazy. It was "all too easy for others to set themselves up as their guardians." These guardians, or those who presumed to think for others, "soon see to it that by far the largest part of mankind (including the entire fair sex) should consider the step forward to maturity not only as difficult but also as highly dangerous." It was easier to surrender one's own judgement to a minority. That minority had little interest in surrendering their monopoly. Thus, "only a few, by cultivating their own minds, have succeeded in freeing themselves from immaturity."

"The entire public," cultivating their minds together, had more of a chance of enlightenment. A few solitary thinkers, the first to achieve maturity, "will disseminate the spirit of rational respect for personal value and for the duty of all men to think for themselves." Enlightenment was "almost inevitable, if only the public concerned is left in freedom ... freedom to make public use of one's reason in all matters." This public use of reason was "*as a man of learning addressing the entire reading public.*"

The widespread use of the printing press allowed individuals to transcend their particular roles as citizen, military officer, clergyman, government official or teacher - to become "a man of learning," and to speak to "the entire reading public." Individuals had to obey a military officer, cleric or tax-gatherer, but he "who acts as part of the machine also considers himself as a member of a complete commonwealth or even of cosmopolitan society." As a member of that society, the individual was free to use his own reason "as a scholar addressing the real public (i.e. the world at large) through his writings." He submitted "these to his public for judgement." In print, arguments could travel without their authors, creating a truly free and rational space. The hierarchies of society, the church, and the state were transcended by a commonwealth of authors judging arguments in print.

Enlightenment was achieved when all matters of public concern were debated by a reading public informed by these men of learning. This public was the ultimate tribunal for all arguments. Kant believed that the invention of the printing press, recent increases in political freedom, and individuals' growing desire to think for themselves were enlarging the public and bringing more questions before it. He concluded that "[e]ventually, it even influences the principles of governments, which find that they can themselves profit by treating man, who is *more than a machine*, in a manner appropriate to his dignity."³

Dr. R. D. Hamilton, author of the second quotation at the head of this introduction, was a good example of Kant's "man of learning." A medical doctor, scientific researcher, essayist, novelist and founder of a local subscription library, he frequently wrote on political topics for one of the colony's growing number of newspapers, the *Courier of Upper Canada*. His contributions appeared under the nom de plume "Guy Pollock, a local blacksmith."⁴ For whatever reason, he did not address Upper Canadians as a doctor or community leader. He did not claim expertise. He did not speak from an elevated social platform. There was no suggestion that readers should pay particular heed to his arguments because they were supposedly from a mechanic. Hamilton's clarion call for individual emancipation - for others to emulate his own intellectual independence - was made in the hope that his audience would ignore those who contended that Upper

³ Kant, "An Answer to the Question: 'What is Enlightenment?'" pp. 54-60.

⁴ Charles G. Roland, "Hamilton, Robert Douglas", *Dictionary of Canadian Biography*, v. VIII, pp. 357-359.

Canadians were suffering under a tyrannical and corrupt government. Hamilton hoped that all who came into contact with his words would be roused to the voluntary and reasoned support of the existing constitution. Others made the same call for intellectual independence because they believed that this constitution could not withstand such public scrutiny. By mid-century, Upper Canada's constitution had been forged in that contest.

Enlightenment, in Kant's sense of the term, was gradually recognized as a leading virtue by Upper Canadians across the spectrum of opinion and experience. Various commentators, officials, newspaper editors, and others came to the idea by different routes, at different times, and with different degrees of enthusiasm - but come to it they did. Once they arrived, Upper Canada was no longer the polity it had been. That authoritative decisions about the collective good could and should be generated by critical discussion among private persons outside the control of traditional authorities or the most privileged was something of a revolution. There were contradictions and unfulfilled promises, but for all that, it marked the birth of the modern political order. The legitimating principles of that order, less understood and less evident today than in much of the period under investigation here, have yet to be superseded. Scarborough's best known blacksmith supported older constitutional principles, but the way he did so, his appeal for a more robust reasoning public, helped rewrite the social contract. He advanced the process by which Upper Canadians came to understand authority in a new way. This study attempts to trace this process. For those caught up in it, the Kantian Enlightenment had arrived in the backwoods of North America. For those left out, the grounds on which they would demand inclusion had been established.

As already noted, Kant argued that Enlightenment was achieved when all questions of common interest were decided by the outcome of public debate. 'Public opinion' was the name generally given to this outcome. The concept was not widely used until well into the eighteenth-century.⁵ Its relatively modern coinage emphasizes its particular meaning. Public opinion was not the mere aggregation of various individuals' opinions, preferences, prejudices or initial reaction to any question posed to them. Such a definition suggests a phenomenon existing in any community at almost any point in history.⁶ In the eighteenth and nineteenth centuries, public opinion referred to the outcome of prolonged public deliberation among private individuals, often strangers and with little in common, who listened to or participated in the free, open, rational, and informed exchange of information and argument. Out of this deliberation came conclusions that participants accepted as rational, preferred and representative. Such deliberation was only possible under certain conditions that were not available in most of Western Europe until the eighteenth-century.

The most influential account of these conditions is Jürgen Habermas' *The Structural Transformation of the Public Sphere*. Indebted to Kant⁷ and originally published in 1962, (but not translated into English until 1989), Habermas offers a sociological-historical investigation of the creation and destruction of a social domain in

⁵ Precise dating remains controversial, but for an emphasis on the 1730's see, J.A.W., "Public Opinion", *Political Innovation and Conceptual Change*, Terence Ball, James Farr and Russell L. Hanson, eds., (Cambridge: Cambridge University Press, 1989), esp. pp. 249-250. The *Oxford English Dictionary* dated 'public opinion' from 1781.

⁶ Thus many works on Upper Canada refer to 'public opinion' on a given issue, but do not see the concept itself as problematic. See for instance, Graeme H. Patterson, "Studies in Elections and Public Opinion in Upper Canada", (Ph.D. thesis, University of Toronto, 1969).

⁷ For a clear comparison of the moral philosophies of Kant and Habermas see Johanna Meehan, "Introduction", *Feminists Read Habermas: Gendering the Subject of Discourse*, Johanna Meehan, ed., (New York: Routledge, 1995), pp. 1-6. See also Habermas's own discussion of Kant, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, Thomas Burger, trans., (Cambridge, Massachusetts: The MIT Press, 1989), pp. 102-117.

which private individuals could exercise their reason together. Habermas insists that the emergence of public opinion can only be understood as part of the forces that made this social domain, the 'public sphere,' possible. Summarizing Habermas and those influenced by him, the French historian Sarah Maza has referred to the forces underpinning this sphere as "a series of expanding communicative processes - the commercialization of cultural products, the development of networks of writers and readers, the growth of institutions (salons, coffee houses, reading rooms) that fostered intellectual sociability."⁸ The merits of Habermas' chronology and the conditions he emphasizes are less important here than the essential insight: debates about the nature and power of public opinion were not only matters of political rhetoric, but were tied to people's experience of concrete social, economic and cultural changes.⁹ 'The Enlightenment,' in this sense, can no longer be limited to a small canon of famous writers or their treatises.¹⁰

Historians of Upper Canada are unaccustomed to seeing the colony as a participant, no matter how late or how derivative that participation undoubtedly was, in

⁸ Sarah Maza, "Women, the Bourgeoisie, and the Public Sphere...", *French Historical Studies*, (v. 17, n. 4, Fall 1992), p. 935.

⁹ A veritable avalanche of historical work published in the last two decades on the public culture, literary and artistic expression, journalists and book-sellers, judicial politics, voluntary associations and academies, and forms of human interaction or sociability of eighteenth-century France is heavily indebted to Habermas. This work is most accessible through review articles, especially, Benjamin Nathans, "Habermas's 'Public Sphere' in the Era of the French Revolution", *French Historical Studies*, (v. 16, n. 3, Spring 1990), pp. 620-644; Anthony J. La Vopa, "Conceiving a Public: Ideas and Society in Eighteenth-Century Europe", *Journal of Modern History*, (v. 64, n. 1, March 1992), pp. 79-116; Daniel Gordon, David A. Bell and Sarah Maza, "Forum: The Public Sphere in the Eighteenth Century", *French Historical Studies*, (v. 17, n. 4, Fall 1992), pp. 882-956; and Dale K. Van Kley, "In Search of Eighteenth-Century Parisian Public Opinion", *French Historical Studies*, (v. 19, n. 1, Spring 1995), pp. 215-226. For Habermas' influence on German and British historiography, see Eckhart Hellmuth, ed., *The Transformation of Political Culture in England and Germany in the Late Eighteenth Century*, (Oxford: The German Historical Institute, London, and Oxford University Press, 1990). Habermas' profound impact on the study of eighteenth-century France is somewhat ironic since he considered France to be a 'continental variant' of Britain, the paradigmatic case.

¹⁰ For an ambitious synthesis of this new approach see Dorinda Outram, *The Enlightenment*, (Cambridge: Cambridge University Press, 1995).

the Enlightenment. As Frank Underhill put it in his 1946 Presidential Address to the Canadian Historical Association. "we never had an eighteenth century of our own. The intellectual life of our politics has not been periodically revived by fresh drafts from the invigorating fountain of eighteenth-century Enlightenment....All effective liberal and radical democratic movements in the nineteenth century have had their roots in this fertile eighteenth-century soil."¹¹ The shift in historians' focus away from the works of 'a few great men' to the full range of printed texts and to the practices and institutions that sustained the circulation and discussion of those texts invites historians of other communities to investigate similar phenomena. The concept of public opinion and the open exchange of ideas were not developments limited to a few West European states. How the concept of public opinion developed in Upper Canada and how it was eventually integrated into the constitution have not been studied. A central chapter in Upper Canada's engagement with liberal democracy is missing.¹²

This is certainly not to suggest that historians have neglected Upper Canada's constitution, politics, ideas and public culture. A recent survey of the field laments the continued dominance of narrowly political themes.¹³ Two related preoccupations have produced considerable work relevant to this study. First, the ideas of colonial officials and their supporters have received much attention, largely in an attempt to map a

¹¹ Frank H. Underhill, "Some Reflections on the Liberal Tradition in Canada". *In Search of Canadian Liberalism*. (Toronto: The Macmillan Company of Canada Limited, 1960). p. 12. Underhill's insistence on the importance of political ideas, the North American elements in Upper Canadian politics and on the battles of the 1830's as expressions of incompatible world views find considerable support in the following chapters.

¹² This study is concerned with the Kantian Enlightenment defined above and not with the full range of principles, methodologies, practices and issues that fall under the capacious umbrella "The Enlightenment." For interesting thoughts on the broader question see Michael Gauvreau, "The Case of the 'Missing Enlightenment'", *The Evangelical Century: College and Creed in English Canada from the Great Revival to the Great Depression*. (Montreal & Kingston: McGill-Queen's University Press, 1991), pp. 15-19.

¹³ Byran D. Palmer, "Upper Canada", *Canadian History: A Reader's Guide*. M. Brook Taylor, ed., v. 1. (Toronto: University of Toronto Press, 1994), pp. 185-186.

distinctive political culture for Upper Canada. Second, the institutions and processes of constitutional development - the workings of the colony's original constitution, the rise of opposition to it, the campaign for local self-government and the growth of autonomy within the British empire - have been studied as part of a national narrative of increasing self-determination and territorial expansion.

The first area continues to be driven by the essays of S. F. Wise. Although first published two or three decades ago, they remain required and stimulating reading. Focussing on the ideas of colonial officials, establishment clergymen and their supporters, Wise argues that an entrenched conservative elite believed that Upper Canada had a providential mission to preserve the British empire and monarchical, hierarchical, and communal values in North America against the threat of democracy, egalitarianism, and individualism posed by the United States. This articulate elite acted upon its beliefs and had a lasting impact on Ontario's political culture, including a willingness to use the state to advance economic and other collective goals that reinforced differences with the neighbouring republic.¹⁴ Wise's framework has been elaborated and modified more than it has been challenged. His considerable influence is evident in recent contributions to the field such as David Mills' *The Idea of Loyalty in Upper Canada* and Curtis Fahey's work on colonial Anglicanism, *In His Name*. Another recent contribution, Jane Errington's *The Lion, the Eagle, and Upper Canada* points out that the early Upper Canadian elite was neither monolithic nor entirely hostile to everything American. Much of Wise's interpretative vision, however, remains intact. Others continue to probe the forging on a

¹⁴ S. F. Wise, *God's Peculiar Peoples: Essays on Political Culture in Nineteenth Century Canada*, A. B. McKillop and Paul Romney, eds., (Ottawa: Carleton University Press, 1993). The editors provide a valuable introduction to the context, nature, and influence of Wise's work. Also particularly useful and thorough is Colin Read, "Conflict to Consensus: The Political Culture of Upper Canada", *Acadiensis*, (v. XIX, n. 2, Spring 1990), pp. 169-185.

coherent, largely anti-American, political culture that fostered a strong state.¹⁵

Despite important variations in emphasis, the general thrust of this scholarship remains decidedly away from highlighting enlightenment, liberal or democratic antecedents. Upper Canada was formed in reaction to the American and French revolutions by those whose enthusiasm for the liberal Enlightenment had been severely dampened or who had never been among its adherents. Upper Canada's constitution and leadership are usually characterized by a number of reinforcing labels which are often presented, incorrectly, as synonyms: "conservative," "monarchical," "hierarchical," "anti-American," and "pro-British." Much of this work, at least in part, evinces a strong desire to differentiate English Canada from the United States. It has, consciously or not, turned Upper Canada into something of an anomaly on the North American continent, largely standing apart from, rather than participating in, the broader intellectual trends and arguments of the western world. This study, heavily indebted to this work, nonetheless insists on placing Upper Canada firmly in that broader world. It is also more concerned with the form and content of political debate than with the more problematic concept of political culture.¹⁶

¹⁵ David Mills, *The Idea of Loyalty in Upper Canada, 1784-1850*, (Kingston & Montreal: McGill-Queen's University Press, 1988). Like this study, Mills emphasizes the importance of studying attitudes toward opposition and conflict, although our discussions are organized around very different concepts and our categorization of some of the key players is at odds. Curtis Fahey, *In His Name: The Anglican Experience in Upper Canada, 1791-1854*, (Ottawa: Carleton University Press, 1991). Fahey argues that Upper Canada was rigidly counter-revolutionary, anti-American and eighteenth-century tory. While there is much of value regarding Anglicanism in the book, its insistence on closed-mind rigidity is less subtle and convincing than Wise's own treatment of similar subjects. Jane Errington, *The Lion, the Eagle, and Upper Canada: A Developing Colonial Ideology*, (Kingston & Montreal: McGill-Queen's University Press, 1987) was particularly helpful in conceptualizing chapter seven of this study. For a survey of other work on the connection between culture and statism see Paul Romney, "From the Rule of Law to Responsible Government: Ontario Political Culture and the Origins of Canadian Statism", Canadian Historical Association, *Historical Papers*, (1988), pp. 86-119.

¹⁶ Some of the following chapters, particularly the first and seventh, take issue with particular elements of the 'conservative consensus' approach to Upper Canadian political thought. I have provided a fuller historiographic discussion of the relevant points in an earlier version of chapter seven, published under the same title, *Canadian Historical Review*, (v. 77, n. 4, December 1996), pp. 505-508.

The other large body of work behind this study is the longstanding interest in Canada's constitutional and institutional progress, both internally and as part of the British empire. The steps from anti-democratic outpost to self-governing colony, to transcontinental Dominion, to autonomous member of the British Commonwealth have been well traced. That these events occurred largely without revolution, violence or complete independence from Britain has reinforced interpretations of political culture that stress the conservative and 'un-American' nature of English Canada. While the preoccupations of the historical profession have moved away from Colonial Office despatches and disputes about the respective roles of British governors and colonial politicians, historians of the British empire, especially Phillip A. Buckner and Ged Martin, have reminded us that there is still much to learn from such sources and institutions.¹⁷ This study touches on many of the same players and events. It seeks, however, to shift focus away from institutions and policy to the legitimating principles that underpinned the nature of authority within the colony and thus dictated changes to institutions, empire, and political discourse.

Along with these two long-standing traditions, at least three newer strands of relevant scholarship can be identified. First, some historians have returned to the study of the state and its processes, less to understand the arguments made for or against them and certainly not to celebrate their increasing autonomy from Britain or their democratization, but to investigate the various ways they increasingly came to impinge on the lives of

¹⁷ See for instance, Phillip A. Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1850*. (Westport, Connecticut: Greenwood Press, 1985) and "Whatever happened to the British empire?", *Journal of the Canadian Historical Association*, (v. 4, 1993), pp. 3-32. As well as Ged Martin's many cogent articles see *The Durham Report and British Policy: A Critical Essay*, (Cambridge: Cambridge University Press, 1972) and *Britain and the Origins of Canadian Confederation, 1837-67*, (Vancouver: University of British Columbia Press, 1995). Particularly noteworthy among an older generation are Robert MacGregor Dawson and W. P. M. Kennedy.

Canadians.¹⁸ Of course, those interested in state formation have much to discuss with students of institutional development or of the changing principles that shaped state power by (de)legitimizing certain practices and institutions. A second strand has applied the categories and insights of British and American historiography on the struggle between 'civic republicanism' and 'liberalism' and between 'court' and 'country' parties to early Canada.¹⁹ For instance, Gordon T. Stewart's *The Origins of Canadian Politics* surveys the existing literature that emphasizes Canada's statist tradition, arguing that this can be understood best as the victory of the 'court party' in Canada as opposed to dominance of the 'country party' tradition in American political culture.²⁰ Comprising the beginnings of a third strand, several historians of early English Canada have begun to point out that despite being almost entirely excluded from the electorate and office-holding, women

¹⁸ See especially, Bruce Curtis, *Building the Educational State: Canada West, 1836-1871*, (London, Ont.: Althouse Press, 1988); *True Government by Choice Men? Inspection, Education and State Formation in Canada West*, (Toronto: University of Toronto Press, 1992); and Allan Greer and Ian Radforth, eds. *Colonial Leviathan: State Formation in Mid-Nineteenth Century Canada*, (Toronto: University of Toronto Press, 1992). For an insightful review, see Peter Burroughs, "State Formation and the Imperial Factor in Nineteenth-Century Canada", *Journal of Imperial and Commonwealth History*, (v. 24, n. 1, January 1996), pp. 118-131.

¹⁹ Several of the most important essays have recently been reprinted in Janet Ajzenstat and Peter J. Smith, eds. *Canada's Origins: Liberal, Tory or Republican?* (Ottawa: Carleton University Press, 1995). Ajzenstat's previous work on Lord Durham and early Canadian liberalism is also relevant here. See for instance, *The Political Thought of Lord Durham*, (Kingston & Montreal: McGill-Queen's University, 1988) and "Modern Mixed Government: A Liberal Defence of Inequality", *Canadian Journal of Political Science*, (v. XVIII, n. 1, March 1985), pp. 119-134. Like Ajzenstat's work, Peter J. Smith's articles on the ideas behind Confederation suffer from insufficient historical context. While raising interesting questions, Smith over-emphasizes the continuity between the categories of the eighteenth and nineteenth-centuries. He first made his case in "The Ideological Origins of Canadian Confederation", *Canadian Journal of Political Science*, (v. XX, n.1, March 1987), pp. 3-29. For a treatment of Lower Canada along these lines see Louis-Georges Harvey, "The First Distinct Society: French Canada, America and the Constitution of 1791", *Canadian Constitutionalism: 1791-1991*, Janet Ajzenstat, ed. (Ottawa: Canadian Study of Parliament Group, 1992), pp. 125-146. For a vigorous review of this literature see Jeremy Rayner, "The Very Idea of Canadian Political Thought: In Defence of Historicism", *Journal of Canadian Studies*, (v. 26, n. 2, Summer 1991), pp. 7-24.

²⁰ Gordon T. Stewart, *The Origins of Canadian Politics: A Comparative Approach*, (Vancouver: University of British Columbia Press, 1986). Paul Romney, "From the Rule of Law to Responsible Government", pp. 92-95, questions the use of 'court' and 'country' labels, but adds to the confusion by suggesting 'constitutionalism' and 'legalism.' For another use of the former see Janet Ajzenstat, "The Constitutionalism of Etienne Parent and Joseph Howe", *Canadian Constitutionalism*, pp. 159-176.

were not irrelevant to colonial public life.²¹ Further, Cecilia Morgan's just published *Public Men and Virtuous Women* explores how gender roles for both men and women were expressed in and shaped by religious and political discourse in Upper Canada.²²

This study seeks to add another strand. It argues that the quantity and distribution of texts, the nature and number of sites for reading and discussing those texts, and institutions for fostering certain skills and norms of behaviour are an important part of understanding their words and images. The possibilities for and the actual extent and importance of debate were themselves subjects of debate. This study seeks to highlight the vital connection between the structure and growth of public debate in Upper Canada and long-standing concerns about changes in constitutional theory and rhetoric. This adds another dimension to these concerns, but it also pushes this study away from an emphasis on 'the rise of responsible government' and towards an emphasis on the competing assessments of the ability of private individuals to deliberate effectively on political questions. The responsibility of a cabinet of ministers to elected legislators was not the central motor of Canadian constitutional theory or practice, but merely one of many

²¹ See for instance, Rusty Bittermann, "Women and the Escheat Movement: The Politics of Everyday Life on Prince Edward Island" and Gail Campbell, "Disfranchised but not Quiescent: Women Petitioners in New Brunswick in the Mid-19th Century", both in *Separate Spheres: Women's Worlds in the 19th-Century Maritimes*, Janet Guilford & Suzanne Morton, eds., (Fredericton: Acadiensis Press, 1994), pp. 23-38 and 39-66. For Upper Canada, see Katherine M. J. McKenna, "The role of women in the establishment of social status in early Upper Canada", *Ontario History*, (v. LXXXII, n. 3, September 1990), pp. 176-206; Lykke de la Cour, Cecilia Morgan and Mariana Valverde, "Gender Regulation and State Formation in Nineteenth-Century Canada", *Colonial Leviathan*, pp. 163-191; Janice Potter-MacKinnon, *While the Women Only Wept: Loyalist Refugee Women*, (Montreal & Kingston: McGill-Queen's University Press, 1993); George Sheppard, "'Wants and Privations': Women and the War of 1812 in Upper Canada", and Keith Johnson, "'Claims of Equity and Justice': Petitions and Petitioners in Upper Canada, 1815-1840", both in *Histoire Sociale/Social History*, (v. XXVIII, n. 55, May 1995), pp. 159-179 and 219-240; and J. K. Johnson, "'A lady should have nothing to do with risks': A Case of Widowhood in Upper Canada", *Ontario History*, (v. LXXXVIII, n. 2, June 1996), pp. 85-101.

²² Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850*, (Toronto: University of Toronto Press, 1996). While referred to in several of the following chapters, this book was not available in time for its insights to be fully integrated into this study. See also Allan Greer, "The queen is a whore!", *The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada*, (Toronto: University of Toronto Press, 1993), pp. 189-218.

possible techniques for incorporating the emerging power of public opinion into the constitution.

Immanuel Kant believed that Enlightenment would be fully achieved when even the structure and justification of the state were submitted to and determined by the tribunal of public opinion. This study focuses on some of the central forces that helped to create and lend credence to that tribunal (chapters 3-5) and its integration into constitutional and political theory (chapters 6-8). While these were central to Upper Canada's emergence as a liberal democracy, there were other, parallel and complicating, forces: legal, religious and economic.

Paul Romney has emphasized the close connection between the perceived mal-administration of justice and growing demands to make government more accountable to the local population. He argues that the criticism of the judicial system was rooted in frequent violations of the rule of law by lawyers and officials closely associated with the constitutional status-quo.²³ Within the British common law tradition, the rule of law had long entailed certain norms and procedures mirroring those of the later public sphere. The

²³ See especially, Paul Romney, "From Type Riot to Rebellion: Elite Ideology, Anti-legal Sentiment, Political Violence, and the Rule of Law in Upper Canada", *Ontario History*, (v. LXXIX, n. 2, June 1987), pp. 113-143 and *Mr. Attorney: The Attorney General for Ontario in Court, Cabinet, and Legislature, 1791-1899*, (Toronto: University of Toronto Press, 1986), esp. pp. 62-157. Romney's contention that the 'rule of law' was an acknowledged concept throughout this period has come under fierce attack, particularly from David Howes and G. Blaine Baker, on the grounds that government supporters accepted the alternative principle of the 'rule of the virtuous few.' While Romney has convincingly countered this specific charge, partially in the article cited above, their broader point, that his work is marred by a pervasive hostility to leading government officials, particularly to John Beverley Robinson, cannot be denied. For another assessment of the connection between legal culture and the constitution, see Robert L. Fraser, "'All the privileges which Englishmen possess': Order, Rights, and Constitutionalism in Upper Canada", *Provincial Justice: Upper Canadian Legal Portraits from the Dictionary of Canadian Biography*, (Toronto: University of Toronto Press, 1992), pp. xxi - xcii.

most important of these was probably impartiality or equality before the law whereby the social, religious, political or national identity of participants was, in theory, secondary to the merits of the case. Also crucial was trial by jury whereby a group of peers determine outcomes after deliberating on the evidence and arguments that emerge from a process designed to elicit the truth from the conflict of opposing sides. The use of judicial terms, such as 'tribunal,' to describe public opinion was not coincidental.

The relationship between legal developments and the topics of this study are further underlined by noting that colonial grand juries frequently considered themselves as a primary voice for local sentiment on both legal and non-legal matters. Further, core legal principles, including trial by jury and *habeas corpus*, were often seen as essential components of the 'British constitution.' Many leading political protagonists confronted each other, not only in newspapers and legislative institutions, but also in the colony's courtrooms. Finally, the connection is also clear because the law was used to control the expression of political opinion (in cases of seditious libel, for instance), or to deal with politically motivated violence (as in the case involving the destruction of William Lyon Mackenzie's print shop in 1826).²⁴

There was also a multifaceted relationship between the forces studied here and the religious ideas and institutions prevalent in the colony. Upper Canadians, while overwhelmingly Christian, were divided into various, often competing, denominations, sects, faiths and traditions. Colonial politics often incorporated issues of religion and the relationship between its various forms, including which ministers had the right to perform

²⁴ Several aspects of the connection between law and the public sphere are discussed in chapter four below. They are also the subject of several essays in *Canadian State Trials: Law, Politics, and Security Measures, 1608-1837*. F. Murray Greenwood and Barry Wright, eds.. (Toronto: University of Toronto Press, 1996) which only became available after chapter four was written.

marriages, which denominations, if any, had a right to state support, the role of religion in education, and the connection, institutional or ideological, of various traditions to co-religionists in other political jurisdictions. Religion provided some of the most divisive issues and personalities in Upper Canada and cemented several of its political groupings.

The concept of public opinion required reasoned debate across these denominational and political lines. Thus, like an appeal to emotion, an appeal to a particular interpretation of God's will as a *sufficient* reason for a specific claim could not count as legitimate participation in the public sphere. Rather, it was an attempt to supersede or short-circuit conversation: an attempt to trump or ignore the arguments and opinions of others by appealing to an ultimate, if contested, source of authority beyond the public sphere itself. Thus, one sign of the growth of a public sphere, not fully explored in this study, was the decrease in explicit and strictly denominational appeals in favour of secular or vague and inclusive Judaeo-Christian sentiments and idioms.²⁵ This is not to deny the profound role of religion in Upper Canada. This study says little about the origins, religious or otherwise, of the arguments and idioms used in public debate. This is a distinct question, requiring a biographical approach to draw persuasive links between public argument and individual religious belief and experience. Individuals' participation in the public sphere might be shaped by religion.²⁶ but, when talking to Upper Canadians from competing traditions, they needed to make their case on other

²⁵ I briefly discuss a specific instance, regarding primogeniture, in chapter two. Charles Taylor has argued that a defining facet of the public sphere is its 'radical secularity.' "Liberal Politics and the Public Sphere", *Philosophical Arguments*. (Cambridge, Massachusetts: Harvard University Press, 1995), pp. 267-271.

²⁶ Michael Gauvreau, "Protestantism Transformed: Personal Piety and the Evangelical Social Vision, 1815-1867", *The Canadian Protestant Experience, 1760-1990*, George A. Rawlyk, ed., (Montreal & Kingston: McGill-Queen's University Press, 1990), esp. pp. 86-92, calls on historians to investigate the impact of evangelical religion on the disputes, outcomes and idioms of Upper Canadian politics. He has attempted to draw those connections in "Covenantal Democracy: Scottish Popular Religion and the Varieties of Religious Dissent in Upper Canada, 1815-1860". (unpublished paper courtesy of the author).

grounds. In short, arguments had to be framed to engage, not exclude or silence, others.

Another important connection between religion and the public sphere concerns the degree to which the behaviour and beliefs of some denominations promoted or hindered the development of the public sphere. The work of several historians on the centrality of religion to the politics and culture of Upper Canada is relevant here.²⁷ The emphasis in any given tradition on equality within its ranks or equality between different traditions, the role assigned to reason and intellect, the relationship favoured between church and state, the relative emphasis placed on individual interpretation of the printed word or collective ceremony or more personal and emotional connections to religious truth, conscious attempts to reinforce or undercut hierarchies not based on religion, the role given to individuals in governing local churches, the degree of concern with individuals' public behaviour, and, finally, the degree to which tracts, newspapers and voluntary associations were promoted to reach larger audiences or to transform society, all had implications for the norms and mechanisms of the public sphere.

Along with legal and religious themes, there were undoubtedly connections among evolving economic practices, the terms used to describe those practices, and the

²⁷ George A. Rawlyk, *The Canada Fire: Radical Evangelicalism in British North America, 1775-1812*, (Montreal & Kingston: McGill-Queen's University Press, 1994), esp. chp. 7-8; and Nancy Christie, "'In These Times of Democratic Rage and Delusion': Popular Religion and the Challenge to the Established Order, 1760-1815", *The Canadian Protestant*, pp. 9-47 argue that evangelical religion was democratic in implication. While thus important for several facets of the public sphere, its opponents charged that it was also irrational, emotional and anti-intellectual, qualities not conducive to sustained public debate. William Westfall, *Two Worlds: The Protestant Culture of Nineteenth Century Ontario*, (Montreal & Kingston: McGill-Queen's University Press, 1989) argues that evangelical religion gradually shed these characteristics as it became more institutionalized and concerned with its respectability. At the same time, colonial Anglicanism was shedding much of its earlier insistence on social deference and a direct link to the colonial state that was so anathema to many evangelicals. The result, Westfall argues, was convergence or protestant consensus. Michael Gauvreau, *The Evangelical Century*, also emphasizes the connection between evangelical consensus and English Canadian culture while highlighting the complex, but often reinforcing, relationship between reason and faith in the nineteenth-century. For a survey of religion in the colony see, John Webster Grant, *A Profusion of Spires: Religion in Nineteenth-Century Ontario*, (Toronto: University of Toronto Press, 1988).

public sphere. Jürgen Habermas himself explicitly links the rise of the public sphere in eighteenth-century Europe to particular economic interests and forms. Ironically, those historians of eighteenth-century France most indebted to Habermas have largely ignored this aspect of his work to emphasize broadly political and cultural factors.²⁸ Nonetheless, there are likely, if complex and still not sufficiently studied, connections between the public sphere and trends in economic thought and practice. That individuals were or could be informed and act rationally, that they were formally equal, and that stable and optimum outcomes could arise from unplanned mutual exchange were points shared by the public sphere and some versions of the market economy. The currency of mutual exchange, however, was different - arguments about the common, public good in one realm and economic, private self-interest in the other. When, to what extent and how the norms of the market economy gained currency in Upper Canada are not entirely clear.²⁹

²⁸ Van Kley, "In Search of Eighteenth-Century Parisian Public Opinion", p. 216. For an important use of Habermas that stresses the connection between economics and the public sphere see David Blackburn and Geoff Eley, *The Peculiarities of German History: Bourgeois Society and Politics in Nineteenth-Century Germany*, (Oxford: Oxford University Press, 1984), pp. 190-204.

²⁹ Read, "Conflict to Consensus", pp. 184-185; rightly notes that historians continue to argue that changes in Upper Canada's political culture "stemmed from a deep structural change, the development of capitalism. Oddly, none really explore that key notion." Historians have, however, investigated the economic attitudes of a few key individuals, emphasized the degree to which the conservative political elite promoted commercial interests and, with varying degrees of sophistication, attached particular political groups and outlooks to agrarian, commercial, or industrial interests. On the connection between conservatives and economic development see S. F. Wise, "Upper Canada and the Conservative Tradition", *God's Peculiar Peoples*, pp. 169-184; H.G.J. Aitken, "Defensive Expansion: The State and Economic Growth in Canada", *Approaches to Canadian Economic History*, W. T. Easterbrook and M. H. Watkins, eds., (Toronto: McClelland and Stewart, 1967), pp. 183-221; J. K. Johnson, "The U.C. Club and The Upper Canadian Elite, 1837-1840", *Ontario History*, (v. LXIX, n. 3, September 1977), pp. 151-168; and Robert L. Fraser, "Like Eden in Her Summer Dress: Gentry, Economy, and Society: Upper Canada, 1812-1840", (Ph.D. thesis, University of Toronto, 1979). For the classic statement of conflict between the commercial-merchant-political elite and agrarian, often parochial, reformers see Donald Creighton, *The Empire of the St. Lawrence*, (Toronto: Macmillan, 1956 [1937]), esp. pp. 264-320. Also on the economic ideas of reformers see G. M. Craig, "The American Impact on the Upper Canadian Reform Movement Before 1837", *Canadian Historical Review*, (v. XXIX, n. 4, December 1948), pp. 333-352; and especially, Lillian F. Gates, "The Decided Policy of William Lyon Mackenzie", *Canadian Historical Review*, (v. XL, 1959), pp. 185-208. On the economic background of elected legislators see J. K. Johnson, *Becoming Prominent: Regional Leadership in Upper Canada, 1791-1841*, (Kingston & Montreal: McGill-Queen's Press, 1989). Considerable work has been done on land policy, banking, currency, tariffs, railroad promotion and public financing, but, with the exception of Gates' article cited above, less systematic attention has been paid to broader assumptions and arguments; but see Craufurd D. W. Goodwin, *Canadian Economic Thought: The*

To attempt to fully integrate the subject of this study with related legal, religious and economic themes would be to undertake the writing of Upper Canada's emergence into the liberal democratic order of the nineteenth-century North Atlantic world. Far less ambitious, this study draws on the longstanding interest in the colony's intellectual and political history to add a neglected, but crucial, dimension: the emergence of 'public opinion' as a new form of authority and its integration into the social and constitutional understanding of Upper Canadians.

To accomplish this more modest end, this study is divided into three parts. The first, "The Problem," begins with an introductory chapter and follows with a study of the colonial debate on the law of primogeniture. The introductory chapter summarizes the theory that informed Upper Canada's constitution of 1791. It argues that the theory of mixed monarchy structured the language and arguments of a wide range of political actors. It was not, however, compatible with the notion that non-legislators were informed and rational enough to be the ultimate judges of public measures. The prolonged debate about primogeniture in the colony was one of the issues that brought the concept of public opinion into prominence. Chapter two argues that economic and social explanations of this debate are inadequate: it can be fully understood only by analyzing

Political Economy of a Developing Nation, 1814-1914, (Durham, N.C.: Duke University Press, 1961) and Robin Neill, *A History of Canadian Economic Thought*, (New York: Routledge, 1991). Much of the work cited in this note needs to be re-evaluated in light of Douglas McCalla, *Planting the Province: The Economic History of Upper Canada, 1784-1870*, (Toronto: University of Toronto Press, 1993). For an early attempt to equate certain norms and ideas with a 'middle class' and the development of capitalism see Alison Prentice, *The School Promoters: Education and Social Class in Mid-Nineteenth Century Upper Canada*, (Toronto: McClelland & Stewart, 1977). For a tentative discussion of the relationship between economics and political positions on one issue see chapter two below.

the actual debate. Moreover, the very process of debate became increasingly important. It helped create the notion of public opinion to which government was to be responsible. At the same time, it demonstrated that Upper Canada lacked such a government. Herein lay the problem.

Part two, "Creating a Public Sphere," examines three main factors that made the notion of public opinion credible. Chapter three argues that voluntary associations were experiments in democratic sociability. Many taught that national, religious, and social boundaries could be transcended, that common ends could best be pursued collectively in mini-republics, and that reason could be used in public. Newspapers, the subject of chapter four, reinforced these points and helped to form a community of readers. The nature of colonial newspapers, (their number, distribution and reports of parliamentary debates), helped to create and express public opinion. Chapter five examines the political dimensions of this creation. Examining key political conflicts in the colony, it concludes that while the concept of public opinion began as a rhetorical device for critics of the government, government supporters and the government itself were increasingly forced to act as if they too believed in the power and just authority of public opinion. By the early 1840's, a new constitutional theory was required that fully integrated the concept of public opinion.

Part two, then, looks outside the constitution, to voluntary associations, social communications, and political conflict for the roots of deliberative democracy in Upper Canada. Part three, "Facing the Alternatives" turns to the constitution to see how it incorporated deliberative democracy or government by discussion. Chapter six argues that the Metcalfe crisis of 1843-44 marked the demise of the theory of mixed monarchy as a way of understanding Upper Canada's constitution and social structure. Chapter seven

argues that with the destruction of this old paradigm and the acceptance of the public sphere, a significant and vocal minority of conservatives turned to American republicanism for a model that, while republican, was still conservative. Chapter eight examines reformers in the same period as they debated the relative merits of British parliamentary government and a more radical form of democracy. Their arguments revolved around the potential and limits of the public sphere. The chapter also concludes that while the institutions of parliamentary government were firmly established, some of its key principles rested on less secure foundations. Thus, while parliamentary government was the institutional expression of deliberative democracy in Upper Canada, its form threatened to overshadow its substance.

This study's emphasis on the form and content of public debate determined the nature of its major evidence, published texts. For the period under investigation, this primarily means newspapers: their commentary, announcements and advertisements, letters to their editors, proclamations and official documents they copied, debates of legislators they reported, and pamphlets produced on their presses and often first appearing in their pages. Trying to understand the sheer mass of this evidence and its overwhelming preoccupation with politics is part of this study. Given their centrality, this study does not rely solely on better known colonial newspapers. Rather, most that have survived were consulted, especially for issues and moments of particular interest. While many newspaper issues and the entire output of some newspapers have not survived and what remains of some of the others is scattered or damaged, the evidence for this study

comes from every region of the colony and expresses the full range of political opinion. Chapter four discusses the number, location, distribution, readership and nature of colonial newspapers in some depth. Where appropriate, the colonial press has been supplemented with other sources, including private correspondence, settler and travel accounts, official documents and reports, and memoirs.

The society that produced these sources changed rapidly between its founding as a British colony in 1791 and 1854, by which time this study argues its constitution fully acknowledged the public sphere. By 1812, when war broke out between Great Britain and the United States, the colony's settler population neared 80,000, about 60% of whom were recent immigrants from the United States. The United Empire Loyalists and their descendants comprised about half of the remaining 40%. The capital, York, renamed Toronto in 1834, had fewer than 700 inhabitants. By 1818, the British government had concluded treaties with local natives opening up the relevant land for settlers of European ancestry. While there had always been political conflict within this settler population, it escalated during the 1820's. One of the most contentious issues was the political and cultural standing of former American citizens in the colony in the face of increased migration from Britain. Political conflict continued throughout the 1830's, culminating in a failed rebellion against local and imperial authorities in 1837. Responding to rebellions in both Upper and Lower Canada, the British united them as the Province of Canada in 1841. The population of what contemporaries continued to refer to as Upper Canada had surpassed 400,000. It reached one million in the early 1850's, spurred by Irish famine migration in the 1840's.

These population trends diversified the religious, cultural, social and economic life of the colony, contributed to the growth of villages and towns, and required new religious,

educational, legal and government structures at the local, provincial and imperial levels. By the census of 1851-52, the population of the colony's largest centre, Toronto, was over 30,000; larger than the combined population of the next two largest towns, Hamilton to the west and Kingston to the east. Nonetheless, 37 colonial newspapers were published outside of Toronto in 1845. A further ten were published in Toronto. Many of the tensions expressed and shaped by these newspapers can be traced to the diversity of the population and competing visions of the collective identity and institutional forms best suited to this society of immigrants.

Although a commercial sector had always existed and continued to grow, Upper Canada remained predominantly agricultural. The spread of agricultural settlement, the growth of towns and improved internal transportation and communications helped knit together what had been a fractured string of small villages and farming townships along the lower Great Lakes and St. Lawrence river into a common, if divided, community.³⁰ With Confederation in 1867, this community re-emerged as a separate jurisdiction, the province of Ontario in the federal Dominion of Canada. It was governed by a single elected legislature and an executive in the form of a committee of that legislature retaining office only as long as it was supported by the majority of the legislature. Ontario has had a significant influence on the institutions and practices of the federation as a whole and several other provinces. Understanding how Ontario came to and understood this structure requires an investigation of the nature and fate of its first constitution.

³⁰ The best survey of settlement and early development remains Gerald M. Craig, *Upper Canada: The Formative Years, 1784-1841*, (Toronto: McClelland and Stewart, 1963). For Upper Canada under the Union see J.M.S. Careless, *The Union of the Canadas: The Growth of Canadian Institutions, 1841-1857*, (Toronto: McClelland and Stewart, 1967). Invaluable for its detail see, Frederick H. Armstrong, *Handbook of Upper Canadian Chronology*, revised edition, (Toronto: Dundurn Press, 1985). For the estimation of the size of the press in 1845 see McCalla, *Planting the Province*, p. 111 and chapter four below.

PART ONE

THE PROBLEM

*... the envy of the World the Model for Politicians the theme of Eloquence & the
mediation of the Philosopher in every part of the World*

John Strachan on the British Constitution. c.1828

CHAPTER ONE

"the very image and transcript:" Transplanting the Ancient Constitution

...this province is singularly blessed, not with a mutilated Constitution, but with a Constitution which has stood the test of experience, and is the very image and transcript of that of Great Britain, by which she has long established and secured to her subjects as much freedom and happiness as it is possible to be enjoyed under the subordination necessary to civilized Society.¹

With these words Lieutenant-Governor John Graves Simcoe closed the first session of the Upper Canadian parliament at Newark in October 1792. His description of Upper Canada's constitution as "the very image and transcript of that of Great Britain," became the most repeated phrase in colonial discourse. It was used with mind-numbing regularity by so many officials, writers, pundits, legislators, and ordinary Upper Canadians, that it now appears as a kind of unthinking mantra or required formula preceding or cloaking the real substance of a speech, editorial, or petition.

The incessant reference to the British constitution lends an essentially limited, derivative, and insular tone to Upper Canadian constitutional theory and practice. Disputes about the meaning of the British constitution ring far less nobly - sound far less independent-minded - than stirring affirmations of "We the People" or "the inherent and inalienable rights of man." Appearances, however, can be misleading. In the following chapters it should become evident that Upper Canadians were accustomed to wide-ranging and sophisticated discussions of constitutional theory. This chapter describes the way in which Simcoe and his audience understood the British constitution and tries to

¹ Lieutenant-Governor Simcoe's speech at prorogation, *Journals of the House of Assembly*, First Session, First Parliament, 15 October 1792, p. 18.

account for its force, longevity, and eventual inadequacy.

What, precisely, was being transplanted to this British outpost in the North American interior? Simcoe had supported the Constitutional Act as a member of the British House of Commons, offering his fellow M. P.'s "a panegyric on the British constitution." The Act gave Upper and Lower Canada the basic institutions to frame local laws: first, an elected representative assembly; second, another deliberative chamber, the Legislative Council, composed of men the Crown either appointed for life or ennobled with the hereditary right to attend; and third, a Governor to represent the monarch and the imperial government as head of the colonial executive. The Governor, new to the colony, was to be assisted by a loosely defined body of local advisers, the Executive Council. The Governor participated in the legislative process by granting or withholding royal assent to bills passing both the Assembly and the Legislative Council. He could also reserve them until the wishes of the imperial government were known.

The formal symmetry between this skeletal structure and the venerable King, Lords, and Commons of Great Britain was self-evident. Both had a bicameral legislature with one elected and one non-elected branch. Both were headed by a constitutional monarch. William Pitt, leader of the British government, defended provisions for creating Canadian nobles with an hereditary seat in the Legislative Council on the grounds that "[a]n aristocratical principle being one part of our mixed Government, he thought it

proper there should be a council in Canada as was provided for by the bill.”² Two points were made: the Canadian constitutions were modelled on the British and the British constitution was mixed.

Classical authors, following Aristotle, had identified three basic forms of government: monarchy, aristocracy, and democracy - rule by the one, the few, and the many. Each had particular virtues: rule by one was strong and decisive; the few were the wisest and most independent; the many brought diverse perspectives and had no minority interest to pursue. The history of classical Greek and Roman republics was thought to demonstrate that each form, left alone, degenerated over time: monarchy became despotism, aristocracy became oligarchy, and democracy became anarchy. Each of these degenerate systems was a form of tyranny. Oppression, therefore, resulted from relying on a single form of government. Classical authors reasoned that only a mixture of all three forms could avoid degenerating into tyranny. A mixed system would retain the benefits of each form while its particular vice was prevented by the existence of the other two forms. Tyranny would be impossible.

The notion that England, and later Britain, had achieved this mixed or balanced form of government had a long and tenacious grip on the imagination, not only of those who lived under it, but of admirers from afar, including Voltaire, Montesquieu and the Swiss jurist John Louis De Lolme. In 1642, Charles I’s *Answer to the Nineteen Propositions* equated England’s parliament of King, Lords and Commons with the classical republican notion of a balance or mixture of the three forms of government.³

² Simcoe and Pitt, *The Constitution of the Canadas, Adopted by the Imperial Parliament in the Thirty-First Year of the Reign of His Majesty, George the III, and, in the Year of Our Lord, 1791, Together with the Debates Thereon*, (Hallowell [Picton]: Joseph Wilson, 1833).

³ For the importance of this equation see J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, (Princeton: Princeton University Press, 1975), pp. 361ff.

More than a century later, William Blackstone's *Commentaries on the Laws of England* explained that

herein indeed consists the true excellence of the English Government. that all parts of it form a mutual check upon the nobility and the nobility a check upon the people...while the king is a check on both. which preserve the executive power from encroachments. And this executive power is again checked and kept within due bounds by the two houses...Like three distinct powers in mechanics. they jointly impel the machine of government in a direction from what either acting by itself. would have done; but at the same time in a direction partaking of each. and formed out of all; a direction which constitutes the true line of liberty and happiness of the community.⁴

Blackstone's description of the British constitution was widely read on both sides of the Atlantic in at least twenty-three editions before 1850.⁵ British government united decisiveness, wisdom and honesty and prevented despotism, oligarchy and anarchy, because it combined, mixed, or balanced monarchy, aristocracy and democracy. Each of these powers corresponded to an identifiable social entity: monarch, nobles, and the people. The social entity was a prerequisite for the political institution that was to embody both its virtue and vice.

In 1776, a few years after Blackstone completed his *Commentaries*, two works assaulted the notion that the British constitution was a balance of three estates. In January, Thomas Paine's explosive *Common Sense* argued that whatever freedom Britons enjoyed they derived from their right to elect the House of Commons. The monarchy and House of Lords, far from two necessary components of a tripartite balance, were "the base remains of two ancient tyrannies." Dismissing most of what had been written on the British constitution in the eighteenth-century, Paine insisted that "[t]o say that the

⁴ William Blackstone, *The Sovereignty of the Law: Selections from Blackstone's Commentaries on the Laws of England*, Garth Jones, ed., (Toronto: University of Toronto Press, 1973), pp. 66, 68-73.

⁵ For publication details see Mark Francis with John Morrow, "After the Ancient Constitution: Political Theory and English Constitutional Writings, 1765-1832", *History of Political Thought*, (v. IX, n. 2, Summer 1988), p. 283n.

constitution of England is a *union* of three powers, reciprocally *checking* each other, is farcical; either the words have no meaning, or they are flat contradictions."⁶ In April, Jeremy Bentham's *A Fragment on Government* ridiculed Blackstone's contention that by uniting monarchy, aristocracy, and democracy, the British constitution united strength, wisdom and honesty. Following one of his famous mathematical proofs, Bentham concluded that "[a]fter the same manner it may be proved to be *all-weak, all-foolish, and all-knavish*."⁷

These attempts to decouple the British constitution from a mixture of monarchy, aristocracy and democracy, failed. Bentham was hardly read. Despite Paine's popularity, even British radicals, both before and after the American and French Revolutions, continued to theorize about government largely in terms of the ancient constitution and a tripartite legislature, not natural rights or utilitarianism.⁸ In its broadest outlines, the theory of mixed monarchy was the intellectual property of every educated person in the North Atlantic world - a commonplace that represented the distillation of British theory and practice.

By the 1790's, and certainly by the 1830's, it was evident that the British constitution was undergoing significant, if still contested, change: the development of political parties, the rise of public opinion, the influence of ministers of the Crown in the House of Commons, the increasing limitations on the Crown's ability to choose or dispose of its ministers, the declining use of the legislative veto by the House of Lords, and numerous other real or perceived reforms, adaptations and innovations. The language

⁶ Thomas Paine, *Common Sense*, in *Political Writings*, Bruce Kuklick, ed., (Cambridge: Cambridge University Press, 1989), p. 6.

⁷ Jeremy Bentham, *A Fragment on Government*, Ross Harrison, ed., (Cambridge: Cambridge University Press, 1988), pp. 83-84.

⁸ James A. Epstein, "The Constitutionalist Idiom", *Radical Expression: Political Language, Ritual, and Symbol in England, 1790 - 1850*, (New York: Oxford University Press, 1994), pp. 3-28.

of mixed monarchy persisted, in part, because it was flexible enough to accommodate the early stages of these developments. The clarity of the mechanical metaphor was deceptive. It could accommodate strikingly different interpretations of where the balance lay, what threatened it, and how to maintain it.⁹ More corrosive to the theory of mixed monarchy than the frontal attacks of Paine or Bentham was the gradual and painful process of trying to make sense of changing political reality within the terms of mixed monarchy.

The Constitutional Act of 1791 reduced the complex and evolving nature of the British constitution to its most basic eighteenth-century form: three legislative bodies representing the one, the few, and the many. Imperial authorities were well aware that Upper Canada, a colony and small frontier society, could not have exactly the same constitution as Britain, but believed that they could transplant the basic form and principles of the tripartite legislature. It was also this theory, complete with its attendant view of society, that informed the policies of Lieutenant-Governor Simcoe.¹⁰ The Act of 1840 to unite Upper and Lower Canada replaced the Constitutional Act of 1791, but the semi-official organ of the Governor went to considerable lengths to reassure its readers

⁹ For changes in British constitutional theory see J. A. W. Gunn, "Influence, Parties and the Constitution: Changing Attitudes, 1793-1832", *Historical Journal*, (v. XVII, n. 2, 1974); Gunn, *Beyond Liberty and Property: The Process of Self-Recognition in Eighteenth-Century Political Thought*, (Kingston and Montreal: McGill-Queen's University Press, 1983); and Francis with Morrow, "After the Ancient Constitution", although the last stresses discontinuity.

¹⁰ On Pitt see, Connie Constock Weston, *English Constitutional Theory and the House of Lords, 1556 - 1832*, (New York: Columbia University Press, 1965), pp. 160-164, on Simcoe see, S. J. R. Noel, *Patrons, Clients and Brokers: Ontario Society and Politics, 1791-1896*, (Toronto: University of Toronto Press, 1990), pp. 46-48; and in general see, A. F. Madden, "'Not for Export': the Westminster Model of Government and British Colonial Practice", *The Journal of Imperial and Commonwealth History*, (v. VIII, n. 1, October 1979), pp. 18-19.

that "the general principles of our Government remain the same as they have ever been...We still have the three estates, with their distinct, and independent powers, and their mutual relations, checks and balances."¹¹

Summaries of the genius of the British constitution appeared regularly in addresses to the colonial electorate. Thus, a candidate for election in 1808 assured potential supporters that

I am a British born subject. I have lived under the Government. I have read that great and wonderful *production*, the Constitution, and admire it. Its *origin* is from *Scripture* in Gothic ages, and after the conquest by William the Norman, it was *improved*, and has been by great and able state[s]men, preserved and supported by wholesome laws. The *three* estates, or *regal power*, when *united*, are like *three pillars* set apart at the *bottom*, and all joined at the *top*, the one supports the other.¹²

Silent on the practical application of any of this to Upper Canada, the address merely affirmed that the British constitution was ancient, based on revealed religion, had been improved, and was composed of three independent social parts which together formed the sovereign power.

Twenty years later, another candidate sought to represent the County of Frontenac by promising "to watch over the finely balanced powers of that Constitution...That Constitution, Gentlemen, teaches us that certain rights and powers belong to the three branches of the Legislature respectively, and that if the one should successfully encroach on the rights and powers of the other, the balance and equi-poise [sic] of the machine is destroyed - and that disorder must be the inevitable consequence."¹³ Again, the evolving and uncodified British constitution had been reduced to its tripartite legislature. This

¹¹ "Policy of the Government", *The Monthly Review: devoted to the Civil Government of Canada*, (v. 1, n. 1, January 1841), pp. 1-14.

¹² Robert Henderson, *York Gazette*, 30 April 1808, and *The Town of York, 1793-1815, A Collection of Documents of Early Toronto*, Edith G. Firth ed., (Toronto: The Champlain Society and University of Toronto Press, 1962), p. 189.

¹³ Captain McKenzies, *Kingston Chronicle*, 26 July 1828.

second address was overtly neutral on who was doing the encroaching. His audience, aware of the speaker, the other candidates, and recent political events, undoubtedly heard something more definite.

During the same general election, Jesse Ketchum, a prominent American-born critic of the government who was frequently ridiculed for a lack of intellectual sophistication, addressed the Freeholders of the County of York:

...Having always heard the British Constitution spoken of with commendation, its great excellence appears to consist in its dividing and compounding the several parts so as to make and preserve a whole, more perfect in its operation than the constitution of the surrounding [sic] nations. The democratic part keeps the prerogative of the Crown within due limits...while in return, the active energy of the regal prerogative prevents the democratic branch of government from degenerating into licentiousness - and the Aristocracy, gives stability and permanence to both; acting as a salutary check upon the royal power, and also opposing the encroachments of the Commons. The system not only looks beautiful in theory but also works well, as is confirmed by the page[s?] of British history, in which it appears that when the three estates have preserved their constitutional powers unimpaired, good government has been the uniform and certain result.

Ketchum expounded the nature of the mixed constitution with more substance than most. Moreover, as a vocal critic of the colonial status-quo, he concluded that "[a] departure from the true principles of the Constitution seems to be the chief cause of all the evils which exist in these provinces."¹⁴

Why did a leading reformer make extensive use of the theory of mixed monarchy?
Why did he trace the "evils" he diagnosed back to "a departure from the true principles"

¹⁴ Ketchum, *Colonial Advocate*, 10 July 1828.

of the British constitution? Why did the theory of mixed monarchy continue to structure political debate long after Simcoe had left the colony?¹⁵

There were good reasons why it might not have. Taking a closer look, the analogy between the colonial and British constitutions appears superficial. How could a temporary, appointed imperial officer reporting to the Colonial Office be equated with an hereditary monarch? How could the splendour of an ancient peerage sitting by hereditary right in the House of Lords be compared with a handful of office-holders, clerics, and men of business appointed to the Legislative Council by the Colonial Office? How could complex British conventions that had developed over centuries be frozen in time and transplanted to a population dominated by the North American born? The number of British emigrants increased over time but it cannot be assumed that those leaving Ireland, Scotland or England were particularly enamoured with the British constitution as they had experienced it.

The questions multiply: How could a colony have the same constitution as the empire? How could practices informed by the British social structure be applicable to a few frontier and localized communities? Differences in the distribution of land-ownership alone were enough to make any analogy tenuous. Of course, Simcoe and those who thought like him hoped that Upper Canada would come to resemble Britain over time. They devised administrative, cultural, and legal measures to push it in that direction. Several failed to produce the desired results, some were soon abandoned, while the effects of others were simply so long-term as to be largely irrelevant in the decades in which the analogy between Britain and Upper Canada was most common.

A correspondent in the *Kingston Chronicle* in 1825 feigned incomprehension

¹⁵ On this question I am indebted to Epstein, "The Constitutionalist Idiom".

when the *Montreal Herald* argued that without a monarch or an aristocracy the "internal tendencies of our society [are] at variance with those of Great Britain."¹⁶ Such dismissals were convenient, if hardly convincing. Nine years later, the conservative *Patriot* asserted that the "political institutions of every people must have a close reference to their peculiar state & habits, religious beliefs & sentiments, modes of thinking and feeling, manners, &c. - in short, that the government of every individual country or nation must be a transcript as near as may be, of the national character and manners." It went on to describe how the poor, merchants, monied interests, agricultural classes and corporations were represented in the British parliament. The *Patriot's* declaration, in the same article, that "the social or political structure of the British Constitution, must be considered as identical with those [structures] of her Canadian colony," could hardly be taken literally.¹⁷ Such stubborn insistence on the analogy between Britain and Upper Canada was more a desperate act of faith than a realistic assessment. Wish was being expressed as fact.

One reason for the persistence of the analogy is clear. The theory of mixed monarchy survived, in part, because it was vague enough to be useful in the pursuit of different ends, at different times, or in different social settings. The "British constitution" was a complex and evolving collection of institutions, conventions, historical events, and cultural symbols from which commentators could select those they found most useful.

The theory of mixed monarchy was flexible in a second sense. As J. A. W. Gunn points out, King, Lords, and Commons "might be simultaneously perceived as orders of the population, branches of the legislature and organs of government performing different

¹⁶ John Bull jun. *Kingston Chronicle*, 13 May 1825.

¹⁷ *Patriot*, 21 October 1834. The use of the term "conservative" requires some comment since it was not generally used before the Rebellion. It refers here to those who generally supported the government, or who did not see themselves and were not seen as "reformers." The term "Tory" is used as it was at the time in the colony. For a caution about reading too much into the term see footnote 36 below.

functions..."¹⁸ The language of mixed monarchy could be sociological; an argument for a Canadian aristocracy or hierarchical social structure. It could be institutional; the existence of three independent legislative branches became paramount. It could also be functional. The monarch was the executive as well as part of the legislature. The demand for further separating or blending of executive, legislative and judicial functions could be expressed in terms of the relationship between King, Lords and Commons.

A third reason for the persistence of the theory of mixed monarchy was its compatibility with criticism of the status quo. Jesse Ketchum did not need other ways to express his discontent. In 1830, an essayist for the *Kingston Chronicle* divided people into "those who incline to the privileges of the People, and those who incline to the prerogatives of the Crown: those who have popular, and those who have aristocratical and monarchical notions...The two divisions of men I have alluded to exist to this hour, and can only cease with the Constitution itself."¹⁹ Opposition, if expressed as an attempt to maintain or redress the balance of the three estates, was legitimate. Indeed, by defending the constitutional balance, the critic could portray himself as the true patriot.

The *Chronicle's* essayist divided people into two camps, but the theory of mixed monarchy offered the critic multiple targets. The personnel, structure or behaviour of the Governor, Executive Council, Legislative Council, and Assembly could all be questioned within the terms of mixed monarchy. The focus of criticism - the perceived source of grievances - changed over time, but without the need to change constitutional discourse.

Some of the dynamics of this process can be seen in two pamphlets published during the first public constitutional dispute in the colony. One, published in 1809 by

¹⁸ Gunn, "Influence, Parties and the Constitution", p. 301.

¹⁹ "Points in History: The English Constitution", *Kingston Chronicle*, 6 November 1830.

John Mills Jackson, praised the British parliament for "bestowing [on Upper Canada] a constitution nearly an epitome of the British." Jackson singled out what he saw as the arbitrary and increasing power of the Lieutenant-Governor as the source of the colony's ills. "[A]rmed with the executive and judicial authority," able to distribute Crown lands for political purposes, and with access to funds not appropriated by the Assembly, power was concentrated in the Governor. Such concentration thwarted Britain's noble intentions.²⁰ Jackson made no use of the social aspects of mixed monarchy, preferring to point to its division of functions and power.

One of the Governor's defenders also began by assuming that the colony had "an exact epitome of the British constitution." This led him to conclude that Jackson had to be mistaken. Even if the Governor harboured evil intentions, he could not act outside the law. Every law required the consent of "the third branch of the Legislature... composed of the yeomanry of the country...wholly of that class of people who have a strong interest in preserving their own independence..." By equating a social entity (the yeomanry) with a particular virtue (independence) and incorporating it into one of the three estates (the Assembly), mixed monarchy prohibited arbitrary government. Lieutenant-Governor Francis Gore's own response to criticism of executive power did not refer to the specific social entities of monarch, aristocracy and people, but still echoed Simcoe's conviction that the British constitution required the British social structure. To end opposition, Gore supported measures that "will have the most salutary influence in preventing the further progress of that spirit of equality and want of subordination which too much prevails

²⁰ John Mills Jackson, *A View of the Political Situation of the Province of Upper Canada....* (London: W. Earle, 1809), pp. 2, 6, 31.

among the Lower Ranks of this Province."²¹

This early exchange set the framework for much of the constitutional discourse in Upper Canada. Demands for reform were framed in terms of implementing the British constitution granted in 1791 but perverted in practice. The typical rejoinder argued that the British constitution was already in place and that problems, if any existed, had some other source. Atypically, this early exchange concentrated on the powers and actions of the Lieutenant-Governor. This was risky since the governor stood in for the British monarch and represented the imperial government. Such attacks were easily portrayed as disloyal. Other targets made more sense.

The correspondence between the Legislative Council and the House of Lords was the weakest part of the analogy between the Canadian and British constitutions. The latter was steeped in ancient tradition and spectacle. Most of its large number of members attended by hereditary right. The constitutional provision for the creation of Canadian peers was never acted upon. Instead, the Legislative Council was composed of a handful of men selected for life by the Governor and confirmed by the Colonial Office. While their seats in the Council were secure, many of them were dependent on other offices held only at the pleasure of the Crown. They did not seem to represent any social category excluded from the Assembly.

The Legislative Council was attacked from several angles, all compatible with the theory of mixed monarchy. For instance, critics could accept the utility of an aristocratic or independent second house but doubt whether a body of executive appointees could

²¹ Anon., *To the Right Honorable Lord Castlereagh one of His Majesty's Principal Secretaries of State, &c. &c. &c.* (Quebec, 1809), pp. 12-13; and Gore to Castlereagh, 14 November 1807, quoted in Harry H. Guest, "Upper Canada's First Political Party", *Ontario History*, (v. LIV, n. 4, December 1962), p. 292.

fulfil that role. Marshall Spring Bidwell advocated an elective Legislative Council. Echoing countless other reformers, he told the Assembly that "[t]he Legislative Council could not with propriety be compared with the British House of Lords - the lords were an hereditary race, the descendants of the most illustrious and renowned men, that had ever adorned the English nation. Can this be said of the Legislative Council?"²² Conservatives doubted the sincerity of Bidwell's reverence for the British aristocracy, but as the Lords were praised as noble, independent, and ancient, the colonial Legislative Council paled in comparison. In fact, conservatives felt vulnerable on this point. Some advocated the creation of a local aristocracy to strengthen the analogy. Others sought to improve its standing with Upper Canadians by suggesting that men of various political persuasions and national backgrounds be appointed or that its deliberations be published.²³

The Council was also attacked for rejecting a far greater proportion of the bills from the elected Assembly than the House of Lords rejected from the Commons. Moreover, the Council, dominated by office-holders, was particularly active when the

²² Bidwell, and letter to the *Observer*, copied, *Patriot*, 19 February 1836.

²³ For a call for a local aristocracy see One of the People, *Kingston Chronicle*, 17 December 1831. In the Assembly in 1835 and 1836, Allan MacNab rejected demands for an elective Legislative Council but admitted that "the gentlemen who composed the Legislative Council were almost all appointed from one side of the question in politics, which he thought was not judicious, and certainly very unsatisfactory." MacNab also rejected the argument of the Solicitor General in 1835 that the upper house should be made a court of appeal on analogy with the House of Lords. It was too small, too dominated by office-holders living at Toronto, and too under the thumb of John Beverley Robinson. See MacNab, *Correspondent & Advocate*, 9 and 23 April 1835, and 28 January 1836. A correspondent for the conservative *Cobourg Star*, 21 January 1835, admitted that too many dependent office-holders had been appointed to the Legislative Council but argued that the problem was the state of society, not the nature of the constitution. The correspondent suggested a compromise whereby the Governor would choose Councillors from those nominated by popular election. He suggested that when education was more widely diffused, the Legislative Council might be elective. The *Star* referred to the essay as "eminently deserving attention" and, 20 April 1836, admitted the need for reform but rejected making it elective. The *Port Hope Gazette* had stood behind Governor Head in the election of 1836 and against reformers but once the election was over it admitted that the Legislative Council was not independent of the executive; a dependence that amounted to "a monstrous innovation on the British Constitution," copied, *Correspondent & Advocate*, 28 December 1836. Likewise, with the defeat of the "republicans," the *Courier of Upper Canada*, 7 December 1836, felt it was safe for those committed to the British constitution to make the necessary reforms in the Legislative Council. The *Courier's* editor had made the same point before the rise of those "republicans," *Gore Gazette*, 4 October 1828.

majority of the Assembly was opposed to the administration.²⁴ The *Cobourg Reformer* conceded that checks between three estates were admirable, but "the model is a clumsy piece of workmanship...the teeth of the checks are so made that they will turn only one way." "If the Assembly attempts to check the Council it immediately comes into collision with an irresponsible body of life legislators...Far from the Council being a check on the Governor it may be controlled by him and may be made a scapegoat to bear all his sins. With respect to the balances we cannot conceive where they will be found in our inimitable model."²⁵

In an editorial entitled, "The Balance of Power," the *St. Thomas Liberal* argued that this expression was "lugged in in all political discussions, whether relevant to the question in agitation or not. It is, in fact the Shibboleth of the party, and is pronounced with the greatest *flippancy* by every one of the favoured few..." Conservatives certainly found the theory of mixed monarchy useful, but it was not yet their exclusive property. The *Liberal* readily agreed "with our political opponents in the sentiment that the peculiar excellencies of the British Government, consist in the powers delegated to each branch being nicely balanced..." "The English government, as every one knows, consists of three distinct forms or branches of government - a monarchy, an aristocracy, and a democracy." It argued that "there is not the smallest resemblance between the speculating, stock-jobbing monopolizing Legislative Council of this Province and the English House of Lords..." The attack extended to the Assembly, whose majority the *Liberal* did not support. "We have an aristocracy, (a burlesque on the aristocracy of England) and a Parliament, the majority of which is under the complete controul of the other branches -

²⁴ *Dundas Weekly Post*, 5 April 1836, estimated that the number of bills defeated by the Legislative Council per year: 1829, 20; 1830, 27; 1831, 17; 1832, 14; 1833, 9; 1834, 16; 1835, 34; for a total of 127.

²⁵ *Reformer*, 7 April 1835, and copied, *Brockville Recorder*, 17 April 1835.

this is the Balance of power that has so many enthusiastic admirers in this Province...it is an insult to the understanding."²⁶ Thus, opponents in the elected Assembly, as well as the appointed Executive and Legislative Councils, could be attacked using the terms of mixed monarchy. The notion that Upper Canada had such a system could be ridiculed without challenging the superiority of that system.

From its inception, William Lyon Mackenzie's *Colonial Advocate* repeatedly argued that the Assembly, despite the analogy to the British House of Commons, was powerless. Mackenzie argued that "[t]here is a parade about "Three distinct sections of government," but constitutionally to speak, the whole power is lodged in the executive." It acted independently or hid behind the screen of the Legislative Council.²⁷ The overlap in the personnel of the Legislative and Executive Councils meant that one of the branches was not independent of another. Executive and legislative powers were concentrated in the same hands: one of the standard definitions of tyranny.²⁸ As a result, the Assembly, the only legislative estate responsible to the people of Upper Canada, was powerless. Either its members were bought by executive patronage, or elections were unfair, or its most popular measures were consistently blocked by the Legislative Council, the Governor or the imperial government.

The analogy between the two constitutions was persistently used by members of the colonial Assembly, especially reformers, to claim all the powers and privileges of the

²⁶ *St. Thomas Liberal*, 1 August 1833. See also Robert Davies, *The Canadian-Farmer's Travels in the United States of America...* (Buffalo: Steele's Press, 1837), p. 70: "Talk of a mixed government indeed! The *three estates*!! yes, we have three estates - a *tory*, and *aristocracy*, and an *oligarchy*, the compound of which is a pure DESPOTISM!!! As for democracy, it is useless, and I verily think our king has very little to do with the matter."

²⁷ *Colonial Advocate*, 29 July 1830; and also 30 December 1824 and 7 May 1829. In the Assembly, Mackenzie referred to the other house as "a pompous impotent screen," only acting on behalf of the local or imperial executive. Mackenzie, *Correspondent & Advocate*, 16 April 1835.

²⁸ "Executive Council", *Reformer*, copied, *Correspondent & Advocate*, 22 October 1835.

British House of Commons. The analogy, however, could work the other way. When radicals demanded an elective Legislative Council on the grounds that it "bears no analogy to the British House of Lords, neither in numbers, wealth, influence, or intelligence," the point could be conceded while asking "what analogy the Canadian House of Assembly bears of the British House of Commons in numbers, wealth, influence and intelligence?" More bluntly, another opponent of an elective Legislative Council insisted that radicals also "contrast the enlightened House of Commons of England with the illiterate insensible majority here."²⁹ If the Legislative Council was more active than the Lords in checking elected representatives, it was because "the numbers, wealth, influence and intelligence" of those elected in Britain made such vigilance unnecessary. In short, despite the same constitutional theory, good government required one thing in Britain and another in Upper Canada.

The theory of mixed monarchy accommodated expressions of discontent from a variety of quarters aimed at all three legislative institutions. The theory could also justify radical reforms to meet that criticism. Adopting a common Chartist point, the *Reformer* argued that annual elections and "universal suffrage has been exercised by the people of England long before and after John signed Magna Charta...it was wrested from them by such tyrannic monarchs as Henry VI." Restoring the purity of the ancient constitution entailed universal suffrage and annual parliaments.³⁰

American republican institutions, with their separation of President, Senate and House of Representatives, could be credibly seen as "essentially British." The United

²⁹ A Canadian [Egerton Ryerson], "Letters on the Canadas No. VI", *Patriot*, 20 September 1836; and anon., *Observer*, copied *Patriot*, 19 February 1836. See also the *Upper Canada Herald*, 22 September 1835; "The Legislative Councils more nearly resemble the House of Lords than the Assemblies do the House of Commons; so that the radical argument from a want of materials applies more forcibly to the Assemblies than to the Councils...Let them reform themselves before they attempt to reform the councils."

³⁰ *Reformer*, 3 March 1835.

States demonstrated that three separate estates could exist in North America only if "these several bodies...are created by the elective principle... Here, say our tories, republicanism shows its cloven foot! Say you so?" asked the *Reformer*. The British had a monarch and an aristocracy, but "[i]n these colonies...we have not now nor never can have barons."¹¹ In the different social circumstances of North America, mixed monarchy required elective institutions.

A month before the outbreak of armed rebellion, a conservative wrote to the *Patriot* outlining his "Reasons against Rebellion." He began by asserting that "[e]very lover of British liberty will readily admit, that there are certain cases in which resistance to constituted authorities is sanctioned..."¹² With the example of the Glorious Revolution before them, supporters of the British constitution could not deny the right of resistance, only its relevance to the circumstances of Upper Canada.

British constitutionalism could support less radical change than universal suffrage, elective institutions or the right of resistance. Responding to charges that any reform of Upper Canada's constitution was an attack on mixed monarchy, it was useful to point out that the British constitution had itself been reformed. The *Canadian Correspondent* pointed to the Protestant Reformation, the end of feudalism, the rise of the House of Commons, the Glorious Revolution, the Septennial and Union Acts, and the Reform Bill as successful reforms that had preserved or improved the British constitution. "Any man having the slightest acquaintance with English history cannot be ignorant that the British constitution is the result of successive improvements advancing with the intelligence of

¹¹ *Reformer*, 7 April 1835.

¹² Alan Fairford, "Reasons Against Rebellion: Addressed to the People of Upper Canada." *Patriot*, 7 November 1837.

the people."³³ There was no reason to believe that history had ended in 1791.

The *Correspondent's* list of changes was such that its point could not be denied by conservatives. In 1830, Justice Macaulay invited a grand jury "to review the energies of a great people gradually emerging from a state of servility and ignorance, to one of freedom and intelligence." The constitution had "from age to age unfolded" and "in the maturing progress of time" had "become the proud boast - the valued inheritance of all."³⁴ Macaulay, by historicizing the British constitution, suggested that its evolution might continue.

Another conservative agreed that the British constitution had gradually developed over time, but attempted to foreclose the implication that such growth might continue. The British constitution had reached its final form with the Glorious Revolution and Bill of Rights in 1689. This was a fairly standard ploy, but was hardly convincing. As the same author was forced to admit, there had been important constitutional developments since 1689.³⁵ In fact, regarding what was arguably the single most important of those developments, the Reform Bill of 1832, every conservative newspaper in Upper Canada, save one, had supported its adoption. It was seen as a means of maintaining the balance of the British constitution under threat from both an overgrown aristocracy and radical demagogues.³⁶ It was easier to support reform at a distance than reform that struck at cherished local power structures. Nonetheless, this near unanimity of editorial support for the Reform Bill was a recognition that the British constitution was not static and that

³³ *Canadian Correspondent*, 18 October 1834; and *Correspondent & Advocate*, 25 January 1836. See also "Canadian Institutions," *Reformer*, copied, *St. Thomas Liberal*, 18 July 1833.

³⁴ Macaulay, *Brockville Recorder*, 2 November 1830.

³⁵ "General Union: Letter IX. The British Constitution," *Cobourg Star*, 20 March 1839.

³⁶ *Courier of Upper Canada*, copied, *Western Mercury*, 27 June 1833, surveying the conservative colonial press. The exception was the *Brockville Gazette*. The widespread and vocal support for the Reform Bill by Upper Canadian conservatives should caution historians in their use of the label "Tory." Many Upper Canadian "tories," particularly in the press, would not have qualified as "tories" in Britain.

some reforms strengthened it. Overall, however, most conservatives were largely satisfied with the basics of the existing constitutional structure and thus talked of it as something to be preserved. Reformers, less satisfied with the status quo, tended to talk of the British constitution as something to be restored or purified.¹⁷ Both, however, spoke the same language and could, when occasion demanded, switch stances.

Another factor helping to account for the persistence of the theory of mixed monarchy was its compatibility with rights-based language. Appeals to the ancient or pure form of the British constitution could double as appeals to rights which that constitution was thought to embody. Tidy distinctions were not made between reasoning from British history and natural rights. As James A. Epstein has argued, "there was a structured interdependence between these two modes of reasoning within English political discourse since certain rights 'inherent in the People' had been either fully or partially realized historically."¹⁸ Thus, furious at what it considered to be an arbitrary act by the Colonial Office, the conservative *Patriot* asked "What is the British Constitution? Why it is the *beau ideal* of the full Rights of Man in civilization..."¹⁹ Following the same logic, the radical *Correspondent & Advocate* argued that "[t]he inhabitants of the Province, as British subjects, have an inherent right, co-existent with birth, to the rights and liberties of their fellow subjects in England."⁴⁰ No one disagreed. The question was defining those rights and applying them to Upper Canada. The inherent rights of British subjects under the British constitution were not natural or human rights, but if they included, (as William

¹⁷ Epstein, "The Constitutional Idiom", p. 27.

¹⁸ *Ibid.*, p. 21.

¹⁹ *Patriot*, 3 May 1833.

⁴⁰ *Correspondent & Advocate*, 11 April 1836. Likewise, the *St. Catharines Journal*, 22 October 1835 concluded that "[a]s an integral portion of the British empire, we have a natural and inherent right to all the privileges and immunities of British subjects..." Membership in the empire could be quite useful to radicals. See also *St. Thomas Liberal*, 18 February 1836.

Lyon Mackenzie believed),⁴¹ the right to determine the form of government, this was a distinction without a difference.

Thus the longevity of the theory of mixed monarchy, in both Britain and Upper Canada, can be partially explained in terms of its flexibility, its allowance for criticism, its ability to accommodate a variety of targets for that criticism, its compatibility with radical and moderate reforms, and its partial affinity to rights-based reasoning. In these respects, it served the interests of reformers well. There was little need to resort to other idioms. When abandonment of the theory of mixed monarchy was equated with pro-American sentiments and separation from the empire; when the government had proven its willingness to use the law of seditious libel to silence critics, it made sense to develop criticisms using the same theory that legitimated the government itself. Moreover, arguments in the language of mixed monarchy had a greater chance of mobilizing those dissatisfied with the government of Upper Canada but who either believed in the superiority of the British constitution or feared independence. Overt appeals to republicanism or natural rights doctrines were not needed and made little strategic sense.

Occasionally, there was a high degree of instrumentality in the use of the theory of mixed monarchy. The *Reformer's* discussion of the Executive Council referred to the British Privy Council, "[a]s we must ever seek for analogies in the English constitution,

⁴¹ *Colonial Advocate*, 15 July 1830. Mackenzie followed Richard Price, rather than Edmund Burke, in arguing that with the Revolution of 1688 "the British nation have acquired three fundamental rights: 1. To choose their own rulers and governors. 2. To cashier them for misconduct. 3. To frame a government for themselves, suitable to their wants and necessities."

though this resembles ours less than a puppy is like a dog, or a calf like an ox..."⁴² Some shared this sense of frustration but the use of alternative idioms was remarkably inconsistent and minimal.

In fact, colonial status made the theory of mixed monarchy more, not less, resilient in Upper Canada. In a North American frontier outpost where the social and political leadership felt insecure from the external threat posed by a powerful, neighbouring republic, and from an internal threat posed by a population dominated by the American, Canadian and Irish-born, appeals to Britishness took on something of religious fervour. They were an important means to solidify their identity as participants in a broader British civilization despite their isolation in a hostile cultural and social environment. Any alternative, especially if it drew on American experience, threatened that identity.

Support for the theory of mixed monarchy could also be strengthened, not weakened, by the perceived differences between Upper Canadian and British social structures. Conservatism in Upper Canada could not rely on large land-owners with a dependent tenantry, extensive disparities in wealth, widespread social deference, an established church, long-standing indigenous traditions, or the cultural baggage of most emigrants. The legislative structure outlined in the Constitutional Act became the last bulwark against a hostile social and cultural environment. Only the theory of mixed monarchy seemed to guarantee the rule of gentlemen under an hereditary monarch.⁴³ It provided a rationale for non-elective institutions and offices. It ensured that those in positions of authority as appointees of the Crown in the Executive or Legislative Councils

⁴² *Reformer*, 3 October 1835, copied, *Correspondent & Advocate*, 22 October 1835.

⁴³ Robert L. Fraser, "'All the privileges which Englishmen possess': Order, Rights, and Constitutionalism in Upper Canada", *Provincial Justice: Upper Canadian Legal Portraits from the Dictionary of Canadian Biography*, (Toronto: University of Toronto Press, 1992), p. xxxvi.

were not entirely dependent on the support of a majority of the elected representatives or a majority of Upper Canadians. Such a theory was valuable indeed.⁴⁴

The differences between Upper Canada and Britain helped secure the persistence of the theory of mixed monarchy in a third way. It was clear that the power of the British House of Commons was growing, and that aristocratic families and the executive had considerable influence over who was elected to the Commons. These developments led several influential Whig thinkers, particularly Francis Jeffrey, editor of the *Edinburgh Review*, to argue that the balance of King, Lords and Commons no longer occurred primarily among three legislative branches but within the House of Commons itself. Monarchy and aristocracy were felt in the Commons through those elected by the influence of the Crown or aristocratic families. Thus, such executive or aristocratic influence, far from reducing the independence of the Commons, preserved constitutional balance. Further, since measures passing the House of Commons already reflected a balance of monarchy, aristocracy and democracy, there was no need for the Crown or the Lords to exercise their legislative veto. This approach justified the pre-eminence of the Commons, the declining use of the legislative veto by the House of Lords, and the influence of the ministers of the Crown in the Commons. Later, under the theory of parliamentary government, ministers could be made accountable to the Commons because it embodied monarchy, aristocracy and democracy.

This transitional theory was not unknown in Upper Canada. In 1834 the *Patriot*

⁴⁴ As the opposition *British American Journal*, 28 January 1834, put it, appointed officials "take shelter behind the constitution, and bid defiance alike to publick [sic] opinion and the just resentment of an indignant people: - why? Because this same constitution invests them with the power and furnishes them with the means and of which no human authority can deprive them" except the imperial government. See also *St. Thomas Liberal*, 2 November 1832: "Who ever heard of a tory who was not a pretended stickler for the constitution; this is their text on all occasions: to justify their measures, our ears are stunned by their sickening senseless rant of the glorious and inimitable, the sublime, immaculate and never-to-be-sufficiently-praised constitution..."

argued that those who refused to vote for an executive officer as a candidate for the Assembly misunderstood the British constitution. King, Lords, and Commons were no longer entirely independent of each other. In fact, "[w]e would hold...that the Commons' House of Parliament is de facto, an exact epitome or reflected image of the whole three branches of the legislature embodied." Indeed, "[w]ere the three branches of the Legislature to come to frequent collision, there is a strong presumption that an incurable rupture would ensure." With the King virtually represented by his ministers and the peerage represented "by the junior scions of the nobility who find their way into the Lower House...all the discussions, objections, amendments, approvals, or otherwise, connected with every public measure, are first brought into shape and bearing in that House." Neither King nor Lords needed to veto such measures. While an excellent summary of Whig doctrine, this was almost its only use in Upper Canada.⁴⁵

The reasons for its rarity are evident. There was no aristocracy in Upper Canada to get its younger sons elected to the Assembly. The Governor lacked the necessary patronage and there were no closed boroughs to ensure the election of his leading supporters. Moreover, there was no need for the theory in Upper Canada. It had become popular in British Whig circles to preserve the image of the constitution as balanced while recognizing that the Crown never vetoed measures and the Lords only did so rarely. In Upper Canada, the Legislative Council was far more active than the Lords in rejecting the measures of the elected House; in some sessions rejecting more measures than it assented

⁴⁵ *Patriot*, 21 October 1834. The only other case where this theory was clearly evoked in Upper Canada appears to be *Mirror*, 28 July 1838; "A struggle in the House of Commons, is a struggle of *all the three Estates...*" For Britain see, Gunn, "Influence, Parties and the Constitution", pp. 319-320; and Biancamaria Fontana, *Rethinking the Politics of Commercial Society: The Edinburgh Review, 1802-1832*, (Cambridge: Cambridge University Press 1985), pp. 147-160.

to.⁴⁶ While the Governor could not usually get individual favourites elected to the Assembly, he had little need of such indirect methods. He headed the executive in a far more real sense than the reigning British monarch. He could also influence, delay or veto legislation as the representative of the empire. The Governors of Upper Canada exercised far more visible legislative authority than British monarchs had for a century. In Upper Canada, three differently constituted legislative bodies assented to or rejected proposed legislation. The tripartite legislature was more real to Upper Canadians - it better explained what they saw of their legislative process - than it was to nineteenth-century Britons.⁴⁷

Finally, and again unlike the original model, a tripartite legislature was enshrined in an actual text Upper Canadians pointed to and discussed. In 1833 the printer of the *Hallowell Free Press*, published *The Constitution of the Canadas...Together with the Debates Thereon*.⁴⁸ The Constitutional Act was Upper Canada's written, codified, constitutional charter to be preserved, restored or amended. In short, the theory of mixed monarchy made more sense of constitutional reality in Upper Canada than in Britain.

⁴⁶ In 1835, Mackenzie estimated that the Legislative Council had thrown out 154 public bills passed by the Assembly since 1829. *Correspondent & Advocate*, 16 April 1835.

⁴⁷ Further, if, as Mark Francis with John Morrow argue, "After the Ancient Constitution", esp. pp. 287-288, the unity of action demanded by the concept of parliamentary sovereignty was increasingly driving theorists of the British constitution away from the notion of a balance of three estates, the same pressures did not exist in Upper Canada. As a colony established by ordinary British legislation, its institutions could not consider themselves sovereign in the same sense as the King-in-Parliament.

⁴⁸ *The Constitution of the Canadas...Together with the Debates Thereon*. Mackenzie occasionally followed Thomas Paine in arguing that since no one could give him a copy of the British constitution, it did not exist. Such rhetoric was rare in Britain, but in Upper Canada it made little sense since both conservatives and reformers could refer to the text of the Constitutional Act and to the intentions of those who framed it. See *Colonial Advocate*, 3 January 1828, and "Letter to Sir. J. Colborne", 15 July 1830, which asked "Did Your Excellency ever see the British Constitution in print?" just as Paine, in *The Rights of Man*, had asked, "Can then Mr Burke produce the English Constitution?"

From 1828 William Warren Baldwin and his son, Robert, advocated what they called "responsible government." The advisers of the Crown in Upper Canada, the Executive Council, were to form a Cabinet of ministers retaining office only as long as they enjoyed the support of the majority of the people's elected representatives. When the government removed one of its critics, John Walpole Willis, from the Court of the King's Bench in 1828, William Warren Baldwin addressed a large public meeting at York. The resulting petition began with the usual declaration of support for the Constitutional Act of 1791 and complaints about the influence of the executive on the Legislative Council. Instead of demanding the reform of the Legislative Council, the petition traced the problem to the Executive Council. Their control of the Legislative Council augmented their power, ensuring "the practical irresponsibility of Executive Counsellors and other official advisers of your Majesty's representative, who have hitherto with impunity both disregarded the laws of the land, and despised the opinions of the public." They were not responsible to anyone.

The principal remedy was "a legislative act...made in the Provincial Parliament, to facilitate the mode in which the present constitutional responsibility of the advisers of the local government may be carried practically into effect: not only by the removal of these advisers from office, when they lose the confidence of the people, but also by impeachment for the heavier offenses chargeable against them." The elder Baldwin argued, with little regard to the facts, that this was no innovation, merely the final implementation of what William Pitt and the British parliament had recognized as the rights of Upper Canadians in 1791.⁴⁹ The analogy with Britain was to be retained even if

⁴⁹ Baldwin's speech and petition, *Canadian Freeman*, 11 July 1828. See also Paul Romney, *Mr. Attorney: The Attorney General for Ontario in Court, Cabinet and Legislature, 1791-1899*. (Toronto: University of Toronto Press, 1986), pp. 145-146, 151.

it meant modifying or abandoning the theory of mixed monarchy.

The nature, desirability, and consequences of "responsible government" were hotly debated after 1828, but as Graeme Patterson has argued, the term remained highly ambiguous. It "became a sort of ideological nucleus around which revolved a whole constellation of opposing ideas." To many, "[i]t simply meant the opposite of arbitrary government."⁵⁰ At its most general, it simply meant that those who framed or implemented laws in Upper Canada were to be accountable to Upper Canadians. Power should not be entrusted to those who were not answerable for its use and they should answer to those most directly affected by its exercise. Despite protestations to the contrary, responsible government was local self-government. It could be direct by making institutions and officers subject to popular election or indirect by making them accountable to the people's elected representatives. Their accountability could be judicial as in impeachment for improper behaviour or political as in dismissal for failure to act in accordance with the wishes of the people or their representatives. The Baldwins, among others, used the term in the more limited sense of ministerial responsibility to the majority of elected representatives. In 1834, the *British American Journal* defined this sense as having "the Executive Council changed as often as they shall find themselves in a minority in the Commons House of Assembly."⁵¹ This was a deceptively simple formula that did violence to the ambiguities and subtleties of current British practice.

⁵⁰ Graeme H. Patterson, "An Enduring Canadian Myth: Responsible Government and the Family Compact", reprinted, *Historical Essays on Upper Canada: New Perspectives*, (Ottawa: Carleton University Press, 1991), pp. 500-501. G. M. Craig, "The American Impact on the Upper Canadian Reform Movement Before 1837", *Canadian Historical Review*, (v. XXIX, n. 4, December 1948), p. 334; also insisted that "[t]he impetus motivating the Reformers was no narrowly conceived demand for a changed relationship of executive and legislature, but was rather a genuine democratic ferment, involving widespread discussion of a great variety of political and economic issues, a debate which crystallized the demand for self-government in the province." A new relationship between executive and legislature was also only one means to achieve that self-government.

⁵¹ *British American Journal*, 15 April 1834.

Even so, it was not the dominant opposition demand before 1836. It was often still coupled with other demands, especially an elective Legislative Council. On arriving in Upper Canada, the new Lieutenant-Governor, Sir Francis Bond Head, attempted to conciliate opposition opinion by appointing two reformers, Robert Baldwin and John Rolph, to the Executive Council. In March 1836 the entire Council resigned claiming that Head had often failed to ask for their advice and had rarely heeded it when it was offered. Robert Baldwin argued, that "what the constitution required was that there should be persons within this country itself who could be made responsible to the provincial parliament here for the administration of the internal affairs of the province." This may have been current British practice and what Baldwin desired for Upper Canada, but it was certainly not what the Constitutional Act of 1791 had required. Nonetheless, the reform majority in the Assembly rallied behind the ex-Councillors and refused to grant the supplies. Head dissolved parliament and led the "Constitutionalist" forces in the ensuing election. The nature of this crisis, discussed further in chapter five, focussed debate on the Executive Council as never before.⁵² The Baldwinite panacea of ministerial responsibility temporarily dominated reformers' constitutional agenda. Robert Baldwin was insistent that this agenda was "nothing more than the principles of the British Constitution applied to that of this Province." The analogy to the British constitution was preserved while local self-government was sought in terms not obviously indebted to American republicanism.

Head did not challenge Baldwin's reading of the current British constitution. Instead, he asserted that Upper Canada's constitution "resembles, but is not identical with,

⁵² The language of the "Family Compact" often gave prominent place to office-holders in the Executive Council but the term was usually broader in scope and the proposed remedies usually revolved around reforms to the judiciary and the Legislative Council or to strengthen the Assembly.

the Constitution of the Mother Country." He conceded that ministerial responsibility to parliament existed in Britain, but argued that this evolution neither had been nor should be followed in the colony. The Governor was not a hereditary monarch but an officer of the imperial government. He, not his advisers, was personally responsible for executive acts. Head did not base the distinction between the British and Canadian constitutions solely on the latter's juridical inferiority as a colony. If the colonial executive was responsible to the colonial parliament rather than to the imperial government there would be no effective institutional link between colony and empire, but this was not Head's primary rationale. Instead, he emphasized that "the difference between the Constitution of the Mother Country and that of its Colony [the persistence of an independent Governor and Legislative Council], is highly advantageous to the latter." In "small communities, private interests, and party feeling must unavoidably be conflicting." In Upper Canada, a responsible ministry would be little more than "an oligarchy composed of a few dominant families, shielded by secrecy." The people were better served by an independent Governor to whom they could appeal directly for redress.⁵¹ Mixed monarchy had been safely modified in Britain, but it remained the best form of government for Upper Canada.

Many of Head's supporters echoed this theme. The *Cobourg Star* thought it was "unreasonable to suppose it at all practicable for us, as a new and dependent country, to possess an Executive government upon terms of equality with that of the Mother Country, containing a *highly cultivated and dense population!* Our constitution is assimilated to that of Great Britain, as is expedient for our interests, and safe for the parent state. As we

⁵¹ Head's reply to his former Councillors, *Patriot*, 18 March 1836. In another reply to his critics, Head outlined a number of other ways in which the Upper Canadian constitution was not identical with that of Britain and asserted that it was simply absurd not to notice the social and political differences between the two polities. Head's reply to resolutions of public meeting, *Patriot*, 29 March 1836.

advance in population and improvement, we may look forward to every necessary modification of our constitutional laws..."⁵⁴ The *Kingston Spectator* agreed that an independent Governor could better serve the interests of Upper Canadians than "a body of irresponsible functionaries with a domineering power, who have their own interests to promote, and their own prejudices to revenge." Whatever current British practice, the *Spectator* believed that mixed monarchy was better adapted to Upper Canada than Cabinet government. Likewise, the *Brantford Sentinel* insisted that the Executive Council was analogous to the British Privy Council, not to the Cabinet, for which there was no colonial equivalent. The *Kingston Chronicle* doubted that Cabinet government would benefit the province, but suggested that, if Baldwin and others sincerely believed it would be superior to mixed monarchy, they should petition Great Britain for a new constitution - not hide the innovation behind empty invocations of the British constitution.⁵⁵ The nature of good government in Upper Canada, not the analogy with Britain, was central. If Baldwin preserved the analogy with the British constitution by abandoning mixed monarchy, Head and his supporters willingly sacrificed the analogy to preserve mixed monarchy.⁵⁶

⁵⁴ *Cobourg Star*, 23 March 1836.

⁵⁵ See "Spirit of the Upper Canadian Journals", *Patriot*, 8 April 1836. For another reference to the Executive Council as Upper Canada's Privy Council, not Cabinet, see "A British Emigrant" to F. B. Head, *Patriot*, 10 May 1836.

⁵⁶ Indeed, in 1818 it was the Legislative Council that was selective about transplanting precedents to Upper Canada. The Assembly insisted on a more literal approximation to the British system. The Assembly resisted the Council's claims to the power to amend money bills. The Council responded that the two bodies "are co-ordinate branches of a limited legislature constituted by the statute" of 1791. Their powers derived from the act, not from the history of the British constitution. The Council "does not assume the power, authority and privileges of the upper house of parliament grown out of the practice of ages, and unsuitable to the circumstances of this country." The Assembly could not claim all the "power, authority and privileges" of the House of Commons. Both systems rested on independent and co-ordinate legislative bodies but their relationship should be governed by methods and principles that took the colonial status and social structure of Upper Canada into account. The Assembly was unanimous in rejecting this argument. At the same time, Robert Gourlay's use of the dissimilarities between the two polities to advocate reforms in Upper Canada undoubtedly underlined for conservatives the dangers of relaxing the analogy. For the resolutions of the Legislative Council see *Niagara Spectator*, 9 April 1818. For the need to maintain the analogy against the charges of Robert Gourlay, see A.U.E. Loyalist, *Kingston Chronicle*, 11 June 1819. It

Of course, these discursive strategies conformed to the positions of those who pursued them. The theory of mixed monarchy justified a power structure conservatives found congenial; one that welcomed democratic input but retained independent checks on the opinions of the people and their representatives. Baldwinite responsible government offered local self-government without the taint of American republicanism. Britain provided much of the evidence for the relative merits and mechanics of both mixed monarchy and ministerial responsibility, but the evidence was selectively deployed to meet local circumstances. While often framed in terms of competing interpretations of the British constitution, Upper Canadians were arguing about the best form of government for their own society.

Attempting to convince Upper Canadians that mixed monarchy was worth preserving or restoring, it would not have been productive to emphasize that the theory carried several meanings or that the analogy was useful in advancing the speaker's own interests. A different order of reasons was required to convince others in public debate that mixed monarchy was to be preserved or restored. Three seemed most promising: that mixed monarchy was essential to membership in the empire; that it was constitutive of being British; or that mixed monarchy was the best form of government. Only the last was viable in the long-term. In 1836, when Head and his supporters were forced to choose between mixed monarchy and the analogy with Britain, they chose mixed

was not until 1836 that those in appointed office and their supporters would again forcefully question the analogy between the British and the Canadian constitutions.

monarchy. They argued that it was the best form of government for Upper Canada, even if it was not current British practice. This preference for mixed monarchy independent of current British practice had been true before 1836.

The argument that mixed monarchy was required by membership in the British empire was rare. Some institutional link to Britain was required, but this did not dictate how local laws were to be enacted. In 1841, Lord Sydenham's *Monthly Review* argued that "while Great Britain continues to rule her Colonies, it is both natural and necessary that she should rule them according to her own model; because, if otherwise, the Government would have no unity of character, purpose or action..."⁵⁷ So boldly formulated, this line of argument was exceptionally rare. Far from contributing to public debate, it was a blatant attempt to short-circuit it. It offered Upper Canadians no reason to be sincerely attached to the British constitution. If, as long as they remained part of the empire, they could not alter their constitution, it was irrelevant whether that structure was good or bad. Such an argument was too brutal; too unconvincing. It did not justify the British constitution in Upper Canada - it transformed it into an imperial fiat. Moreover, it was not true. The British empire incorporated an array of constitutional structures. The British were often more wary of analogies to the Westminster model than colonists.⁵⁸

A second, related, approach relied on cultural, rather than juridical, connections to Britain. The 1820's witnessed heightened anxiety over the cultural identity of Upper Canada as a British colony whose population was predominantly American-born. Arguments were offered that went something like: mixed monarchy was British. Upper Canada was British, therefore Upper Canada, if it was to be British, had to maintain

⁵⁷ "Policy of the Government", *Monthly Review*, (v. 1, n. 1, January 1841).

⁵⁸ This is the central point of Madden, "Not for Export".

mixed monarchy. Thus, in 1825 John Beverley Robinson thought it only natural that those born in the neighbouring republic would prefer what they had grown accustomed to, but they "should acquiesce in institutions which they found established here, and which were congenial to our form of government." Future British immigrants would expect Upper Canada's institutions to resemble those of the mother country.⁵⁹

While there are many examples of this approach, especially in the 1820's, it had serious weaknesses. It was hardly a means of co-opting those in the electorate who were not British-born. It was useless when demands for reform came from British immigrants themselves. It also broke down when the British began to search for alternative understandings of their own constitution. Finally, this approach did not identify what the essential aspects of the British constitution were and how they could best be transplanted to North America. After all, the Baldwins sold a competing theory, ministerial responsibility, partially on the grounds that it maintained the cultural connection to Britain. Appeals to a diverse range of Upper Canadians, whether to support a particular proposal, to maintain the British constitution, or to demand their rights as British subjects, had to rest on the argument that the particular proposal, constitution or rights was the best - not just that it was British.

Edward Allen Talbot informed potential readers of the *London Sun* in 1831 that "[w]e are by birth - by education - from reason - and from reflection, attached firmly and unalterably to the British constitution."⁶⁰ The list seems reasonable. Talbot was British

⁵⁹ Robinson, *Canadian Freeman*, 1 December 1825.

⁶⁰ prospectus, *London Sun*, copied, H. Orlo Miller, "The History of the Newspaper Press in London, 1830-1875, *Ontario Historical Society, Papers and Records*, (v. XXXII, 1937), p. 118. Talbot continued that "enjoying it [the British constitution] as we do here, stripped of its most objectionable features, [he was] determined ever to support it." The idea that the transplanted version of the British constitution was superior to the original was not unique to Talbot. Others pointed to the absence of a state church, tithes, or to the broader basis of representation (esp. in 1832) as the key advantage of the colonial imitation. See A. U. E. Loyalist, *Kingston Chronicle*, 11 June 1819; A British Subject, *Patriot*, 21 February 1832; John Bull

and thus predisposed to the British constitution. Reason and reflection had confirmed its superiority. He could then appeal to all Upper Canadians to support his interpretation of that constitution.⁶¹ In 1792, Simcoe thought that the colony was "blessed" with "the very image and transcript" of the British constitution, not because mixed monarchy was British, but because it had "stood the test of experience" and had "secured to her subjects as much freedom and happiness as it is possible to be enjoyed under the subordination necessary to civilized Society."⁶²

These two reasons, that the constitution had proven its utility by surviving longer than any other constitution - republican or monarchical - and that it had created the world's most powerful, stable, free and enlightened nation - republican or monarchical - were central arguments advanced for the preservation of mixed monarchy in Upper Canada. Of course, a tremendous amount of cultural chauvinism went into the assessment of the relative liberty, prosperity, and stability of other nations and forms of government. Even so, the argument that mixed monarchy was the best was open to evidence, argument, and refutation in a way that appeals to the de facto power of the empire or national identity were not.

The radical *Reformer* grew impatient with the analogy to Britain. When advocating the secret ballot he noted that it, "say its opponents, is un-English. If it were what then? If it is superior in many respects to open voting, though it be un-English, ought it not to be adopted?"⁶³ The *Reformer* undercut its own point by going on to deny

to *Kingston Chronicle*, 7 April 1832; and *Canadian Freeman*, 22 March 1832.

⁶¹ Nor was this unique to conservative papers. The radical editor of the *British American Journal*, 28 January 1834, born in the colonies, could not share "that excessive veneration for British institutions, which some pretend to." He had "studied the distinguishing features of different constitutional governments" and had "not the least hesitation, early prejudice aside, in giving a decided preference to the limited monarchy of England, with its mixed government of King, Lords and Commons."

⁶² Simcoe's speech at prorogation, *Journals of the House of Assembly*, 15 October 1792, p. 18.

⁶³ *Reformer*, 30 June 1835.

that the secret ballot was un-English. but the question remained.

Supporters of the British constitution never admitted that it was anything less than the best: "In advocating the cause of British connexion, and the ascendancy of British institutions and principles in this province...we [the Toronto *Courier*] firmly believe we are promoting the true interests of the country of our adoption..." The *Courier* characterized some of its opponents as "decidedly republican." Others were "ignorant of the nature and advantages of the British Constitution" but were still loyal to the empire. Their loyalty, however, was insufficient because it was only prudential - only "because they know and feel the advantages which, in common with us all, they enjoy from the connexion." Unlike the *Courier*, they were not loyal "from the principle of attachment arising out of a conviction of its great superiority over every other form of government in the world..."⁴ The history of the British nation, especially when compared to the tyranny and anarchy periodically suffered elsewhere, offered conclusive proof to the *Courier* and others. Was not the British constitution "justly the admiration of the most wise and enlightened statesmen and legislators of civilized Europe?"⁵

Even during the highly polarized election of 1836, William Hamilton Merritt, leading promoter of the Welland Canal, rejected calls for radical reforms but told his constituents that if the economic prosperity of New York state was due to "being administered by a Democracy...it would not only be our duty, but our individual interest, as well as in the interest of our posterity, to use every peaceable and legitimate means to

⁴ *Courier*, copied *Cobourg Star*, 29 October 1834. On another occasion, the *Courier* complained that constitutionalists were indiscriminately labelled Tories when, in fact, many were not. Instead, they "regard the British Constitution for its own sake, from a rational conviction of its superiority over every other form of Government in the world..." copied, *Canadian Emigrant*, 24 January 1835.

⁵ A British Subject, *Patriot*, 21 February 1832.

bring about that form of Government. which produced such beneficial effects."⁶⁶ In 1844, Isaac Buchanan, another moderate, published his reasons for supporting Governor Metcalfe's interpretation of the British constitution against that offered by Robert Baldwin. He was emphatic about the grounds of his support:

It is under British monarchical institutions alone that liberty is protected at once from tyranny and licentiousness. If that vital object could be better attained by other than British systems, we, on British principles, must be willing gladly to change them: for *it is not the name, but the realities of liberty*, (of which the British systems are but the instruments, not the embodiment [sic].) that we are enamoured of.⁶⁷

The British constitution claimed support because it was the best - not because it was British.

Upper Canadians who believed that the British constitution was the best - that it was worthy of emulation - did so because this was the conclusion of what they referred to as the science of politics. The study and understanding of this science was originally limited to the colony's educated elite, but as political information and printed material became more accessible, radicals and reformers began to insist that a broader range of Upper Canada could understand its lessons. Access to this information supported their right to political participation.

In 1844, Hugh Scobie, editor of the *British Colonist* eulogized the science of politics:

⁶⁶ Merritt, "To the Freeholders of the County of Haldimand". *Patriot*, 25 October 1836. On Merritt and reform see Craig, "The American Impact", p. 339.

⁶⁷ [Isaac Buchanan], *First Series of Five Letters, Against the Baldwin Faction, by an Advocate of Responsible Government, and of the New College Bill*, (Toronto: British Colonist Office, 1844), p. 11.

A nobler study than politics...cannot be conceived, - to investigate the history of the past, and compare it with the experience of present times, - to ascertain and expound the principles of government, under which man in our circumstances, can enjoy the greatest happiness and peace. In this sense, the greatest philosopher is the greatest politician. Every improvement in science or art; every development of mind; every moral benefit conferred on humanity; and every *progress* made in the advancement and spread of Divine truth, may be called *political movements*...⁶⁸

The science of politics was inductive, historical and comparative. It was the study of the formation, operation and consequences of all forms of government as they had existed in history. It compared these forms with each other and over time. The principles of good government under particular circumstances were to be distilled from the comparative study of constitutional history. Thus the conservative *Royal Standard* deplored the state of the parliamentary library in 1836 because of "[w]hat light might have been thrown on the Executive Council Question, had a copy of Pownall's Administration of the Colonies, or Chief Justice Stokes's Work, or even the Federalist, stood upon the shelves of the Library."⁶⁹ Insights from a governor of pre-revolutionary Massachusetts or the architects of the republican constitution of 1787 were useful in understanding Upper Canada's constitution.

In the early decades of the colony, only the few could understand such a science. The rector of Cornwall, John Strachan, argued in his *A Discourse on the Character of King George the Third* (1810), that the foundations of the British constitution were "the more durable, because visionary empiricks have not been allowed to touch them. No fine

⁶⁸ *British Colonist*, 4 June 1844. Perhaps Scobie had in front of him T. B. Macaulay's 1829 description, of "...that noble Science of Politics...which, of all sciences, is the most important to the welfare of nations, - which, of all sciences, most tends to expand and invigorate the mind, - which draws nutriment and ornament from every part of philosophy and literature, and dispenses, in return, nutriment and ornament to all." For the study of politics in Britain see Stephan Collini, Donald Winch & John Burrow, *That noble science of politics: A study in nineteenth-century intellectual history*, (Cambridge: Cambridge University Press, 1983).

⁶⁹ *Royal Standard*, 19 November 1836.

spun theories of metaphysicians, which promise much and end in misery, have shared in its formation; such men may destroy, but they can never build." The juxtaposition of actual historical experience with abstract theory was common. The repudiation of attempts to deduce constitutional structures from ahistorical first principles is often identified with conservatism but it was shared by nineteenth-century Whigs, especially in their quarrel with the utilitarian calculus of the Philosophical Radicals.⁷⁰

Strachan was participating in a dispute about methods. He was not questioning the existence of a science of politics. He preferred the writings of the ancients and "Lock's [sic] treatises on government, De Lolme on the British constitution, Blackstone, [and] Montesquieu" to works of abstract theory written since the American Revolution. From his reading of such sources and "[c]onceiving the British the best practical form of government that ever existed," Strachan argued that "those who understand it best must love it the best...In maintaining its purity, they will oppose any encroachment tending to arbitrary power on the one hand, or popular authority on the other. Preserving the balance with steady care, they will admit no changes on either side without the greatest deliberation." The inductive, historical and comparative science of politics demonstrated the value of the British constitution and enabled its students to recognize internal threats to its balance from one of its estates or external threats from those, enamoured with abstract theories, who attempted to replace it. Referring to himself, Strachan admitted that "[t]he writer is not however so blind an admirer of the British constitution as not to be aware of several imperfections... He [also] conceives a man may be a firm friend to the constitution and hostile to the minister's measures," but only the few, versed in the science of politics, could be entrusted with the right to criticize and the task of preserving

⁷⁰ Collins, Winch and Burrow, *That noble science of politics*, esp. chap. 3.

that constitution.⁷¹

In this period, the science of politics was used to limit the number of Upper Canadians who could claim an active part in public life. Cato, writing in support of "an eminent candidate" to represent York in 1800, told his fellow electors that "something more than plebian honesty, than rugged uprightness is necessary, to qualify an individual for the dignified station" of elected representative. It was "a field on which volumes might be written." A potential representative's "knowledge of governments and the constitutions of empires should be general..." The need for "honesty, independence of spirit, penetration, and intimate knowledge of the true interests of your country, and an acquaintance with its existing laws" translated into the need for a candidate of particular social standing. Thus, when the elector "shall find these combined with eminence of station such an one should be the object of general choice. His station will give weight to his counsels - currency to his opinions and strengthen his desire and endeavors of serving his king and his country."⁷²

Political leadership belonged to gentlemen with the leisure, finances, cosmopolitan outlook and skills to study the science of politics. Social standing was a necessary condition for, not the consequence of, political and intellectual leadership. As Gordon S. Wood has argued in the American context, gentlemen "were civic minded by necessity: they thought they ought to lead society both politically and intellectually -

⁷¹ Rev. John Strachan, *A Discourse on the Character of King George the Third. Addressed to the Inhabitants of British America*, (Montreal: Nahum Mower, 1810), pp. 39, 53-54. For a somewhat different interpretation of this pamphlet, see David Mills, *The Idea of Loyalty in Upper Canada, 1784-1850*, (Kingston & Montreal: McGill-Queen's University Press, 1981), pp. 18-19. See also *Kingston Gazette*, 29 January 1811: "In the political as well as in the natural world, experiment is to be preferred to theory. The administration of a government, its practical operation, is the true test of its merits. On this ground, Englishmen value their constitution, which has grown out of the experience of ages."

⁷² Cato, "To the Free Electors of the County of York", *Upper Canada Gazette*, 15 March 1800, and *The Town of York*, Firth, ed., pp. 157-158.

indeed, they could not help but lead the society - by sheer force of their position and character. Ordinary men would respect and follow them precisely because the members of the elite possessed what ordinary men by definition could not have."⁷³ In the case of the York election of 1800, Cato demanded that electors *recognize* the pre-existing social standing and consequent political and intellectual superiority of "an eminent candidate." Their vote would add nothing to his social standing or to his ability to lead. Moreover, Cato did not attempt to educate his readers in the science of politics as a means of empowering them to make more informed electoral choices. Only gentlemen, not the common electorate, were capable of such discrimination. The relative scarcity in Upper Canada of the great books on the science of politics identified by Strachan heightened their authority and the authority of those who had access to them.⁷⁴

Conservatives continued to use the science of politics to question the intellectual and social worthiness of their opponents. In 1819, one editor ridiculed what he took to be the American doctrine that neither social standing nor learning was required to understand politics. Even "the common street beggar thinks himself qualified to give gratuitous opinions on the science of legislation, though his abilities and judgement have been totally inadequate to the task of devising 'ways and means' for keeping himself from rags and starvation." The Upper Canadian Assembly required those who had studied the British constitution and its laws. It had no room for "an ignorant artisan" who "presumed

⁷³ Gordon S. Wood, "The Democratization of Mind in the American Revolution," *Leadership in the American Revolution*, Library of Congress Symposia, (Washington D.C.: Library of Congress, 1974), pp. 66-67.

⁷⁴ For fascinating parallels see Rhys Isaac, "Books and the Social Authority of Learning: The Case of Mid-Eighteenth-Century Virginia", *Printing and Society in Early America*, William L. Joyce, David D. Hall, Richard D. Brown and John B. Hench, eds., (Worcester: American Antiquarian Society, 1983), pp. 228-249. Strachan's sermons also endorsed a political division of labour. See S. F. Wise, "Sermon Literature and Canadian Intellectual History", *God's Peculiar Peoples: Essays on Political Culture in Nineteenth Century Canada*, A. B. McKillop and Paul Romney, eds., (Ottawa: Carleton University Press, 1993), esp. p. 16.

to step over the threshold to give his opinion upon momentous subjects about which he knows nothing."⁷⁵ The presumption was as much social as it was intellectual.

In 1831, another conservative attacked Americans for believing "knowledge obtained by chopping, plowing [sic], tinkering and tailoring, is all that is necessary even for the Presidential chair." Was it not better to be governed "by men of talent than by ignorant blackhearts? - Which are most likely to understand human nature, and the science of government, those who devote their time to study and observation in general literature, and an acquaintance with the world, or those who stand from day to day at the Work Bench?"⁷⁶ In 1836, a contributor to the *Patriot* argued that "the main distinction between the gentleman and the blackguard" centred on the science of politics, "taken up as it is by almost every body, and understood as it is by scarcely any."⁷⁷

Such attempts to limit the right to judge based on exclusive insight into the science of politics did not go unchallenged. "A Farmer in Support of an Honest Candidate" rejected Cato's address of 1800 as "pompous." He conceded that the candidate he preferred, Samuel Heron, "has not had the advantage of a refined education, he is nevertheless possessed of a large share of mother wit and good sense: and it can justly be said of him, that he is, 'that noblest work of God, an honest, upright, and just man.'" Cato characterized the response as "[t]he idle, the nefarious belchings of an assuming ignoramus."⁷⁸ From his perspective, both "A Farmer" and Heron were

⁷⁵ *Kingston Chronicle*, 4 June 1819.

⁷⁶ One of the People, *Kingston Chronicle*, 26 March 1831.

⁷⁷ A Simple Tory, *Patriot*, 2 February 1836. See also "Points in History: English Constitution", *Chronicle*, 25 December 1830; *Dundas Weekly Post*, 16 February and 22 April 1836; and Phospher, *Brockville Gazette*, 26 April 1832; "...religion and politics, are infinite, too extensive and various, and in some things too intricate by far for common men to have any thing like a clear view of them...But we are told that "the people" are the only proper judges of all that concern themselves."

⁷⁸ A Farmer and Cato, *Upper Canada Gazette*, 22 March and 26 April 1800, and *The Town of York*, Firth, ed., pp. 159-161.

assuming positions to which they had no claim. "A Farmer" considered an identity of interests with the electorate, independence from the executive and native good sense more valuable in a representative than social standing and a familiarity with the science of politics. He did not, however, claim that the general electorate was versed in the science of politics. By the mid-1830's, some were coming to precisely this point - and with it, to the claim that the right to judge had to be extended.

In 1835, the editor of the *Reformer* called for a greater understanding of the science of politics among newspaper readers. He perceived "some slight movements among the people...and Politics may be now than formerly a more general and more serious subject of enquiry." The "interested adherents of our corrupt government" resisted the "diffusion of useful knowledge, especially political knowledge, among the operative classes of society," but, aided by cheap and accessible newspapers, "men are beginning to discover that unless they understand their own affairs and show themselves determined by their union and intelligence to exercise a check on their government, they must expect that their rulers will look to their own interests and not make the interests of the governed the paramount object of their care."

To channel this discovery, "[r]eading should be more generally encouraged, useful knowledge should be more widely diffused and politics, instead of being a mere topic of desultory conversation, should be made a much more general as well as a much more serious subject of enquiry." The science of politics

presents a field of observation worthy of employing the noblest faculties of man. It unfolds to him a vast picture of the human family, exhibiting its character and condition in all their interesting diversity and under those endless modifications, in whose production the institutions of government are uniformly found to exercise a predominant influence. It leads him through the various stages of civilization, tracing the progress and marking the workings of the great variety of institutions which human sagacity and experience have framed to exalt the character and ameliorate the social

condition of the species. It teaches him to apply the principles which he acquires in these investigations to the laudable purpose of advancing the knowledge of good government in his fellowmen; thus arousing them to exertion for the salutary renovation of the old and corrupt institutions, and for the adoption of others that are manifestly conducive to the happiness and prosperity of the community.

Politics was indeed a noble science. By studying it, Upper Canadians "must become thoroughly convinced that it is the advance of the popular mind and the expression of enlightened public opinion alone that can originate important and beneficial changes in our hitherto corrupt, expensive, and irresponsible government."⁷⁹ The study of the science of politics was being decoupled from gentility. No longer the exclusive possession of the socially privileged, political science would empower the general reading public "to exercise a check on their government." Government could become responsible to it. Political science would become "enlightened public opinion."

By the end of the 1840's, Charles Clarke, a radical reformer, argued that *Reformer's* goal had been realized. Clarke admitted that there had been a time "when wealth was necessary to and almost synonymous with intelligence...when the popular voice was the mere echo of the will of the privileged few." That time, however, had passed. The expansion of the newspaper press, greater educational opportunities, better internal communications, and a general spirit of inquiry ensured that "every laborer has become a thinker." "The pages of De Tocqueville and Montesquieu are seen as often in the hands of the "proscribed" as in those of their more fortunate brethren." And finally, "[t]he poor may remain poor still; but they are not necessarily ignorant."⁸⁰ Social and economic inequality no longer justified political and intellectual inequality. To the extent

⁷⁹ *Reformer*, 22 September 1835.

⁸⁰ Reformatory [Charles Clarke], *Mirror*, 10 August 1848, 17 August 1849, and 22 February, 29 March, and 7 June 1850.

that this assessment was seen as even partially true, much had changed since Cato and John Strachan had invoked the science of government to dismiss the political opinions of most Upper Canadians. The political opinions of the reading public were now to be considered informed and rational. Because they were the opinions of a large segment of the population, they were also to be considered representative. Political science had been democratized.

Strachan was confident that when gentlemen studied politics they would become the most able defenders of mixed monarchy. The *Reformer* advocated the widespread understanding of the science to empower a broader range of Upper Canadians to reform their constitution. In a passage already quoted, the *Correspondent & Advocate* equated the British constitution itself with "successive improvements advancing with the intelligence of the people." Was there a point at which popular intelligence, in the form of a general knowledge of politics, was incompatible with the theory of mixed monarchy? In other words, to what extent was a belief in the existence of public opinion, defined as the outcome of rational public debate, compatible with the theory of mixed monarchy?

The theory of mixed monarchy was preoccupied with three legislative institutions and the relationship between them. Issues as diverse as whether office-holders should be elected to the Assembly or whether colonial land policies should promote the creation of an aristocracy were debated with reference to the three legislatures. As J. A. W. Gunn has argued, "[t]he major consequence of such a parsimony with categories was that the perceived constitutional framework excluded a number of significant political units, both

governmental and social..."⁸¹ If the balance of Governor, Legislative Council, and Assembly was at the heart of the constitution, what formal role was left to those who were not members of any of these legislative institutions? What status did their opinions have?

Emphasizing the sociological aspects of the theory of mixed monarchy seemed to offer a simple answer. The "people" formed one social category. The monarch and aristocracy formed the other two. Each was represented in its own legislative institution. This approach was not very compelling in Upper Canada. Appointed by the Crown, it was unclear what social entity Legislative Councillors represented. A simplistic use of this approach suggested that every Upper Canadian, except the handful of Legislative Councillors, was tied to only one of the three institutions for making local laws. This left the other two institutions at a conceptual disadvantage. It also said nothing about the nature of the "people's" relationship to the Assembly or to the constitution as a whole. Of course, supporters of the theory of mixed monarchy argued that when King, Lords and Commons acted together the best possible outcome resulted. Acting together, they embodied the national will.⁸² Concrete individuals and their opinions remained only tenuously connected to the theory of mixed monarchy.⁸³

In whatever form, the theory of mixed monarchy justified two legislative branches that lacked direct links to non-legislators. These branches existed precisely because they were independent of such links. As "An Englishman" reminded Upper Canadian

⁸¹ Gunn, "The Fourth Estate: The Language of Political Innovation," *Beyond Liberty and Property*, p. 43.

⁸² Thus the conservative *Patriot* argued that by expanding the definition of the "people" to include "the King and the Peers, and the Clergy, and the Middle Class" it could be truly said that the three estates gave "the unequivocal expression of the people's will, - and Vox Populi Vox Dei, say we. IT IS THE BASIS OF THE BRITISH CONSTITUTION." This seemed to confuse parliamentary sovereignty, whereby the British parliament was supreme, with popular sovereignty.

⁸³ Gunn, "The Fourth Estate", pp. 73-88, discusses the roles "the people" played in eighteenth-century constitutional discourse in Britain. See also Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America*, (New York: W. W. Norton & Company, 1988).

reformers, the history of the British constitution demonstrated "the absolute necessity of an independent and controlling power in the government of a free people."

Republicanism or popular self-government resulted in tyranny of the majority, lack of protection for minorities, no independence of thought, and general turmoil.³⁴ In short, the theory of mixed monarchy rested on a belief in the basic incapacity of "the people" to govern alone. Good government required a corporate society, including an aristocracy and monarch, or at least an inegalitarian one resting on the basic incapacity of non-legislators.³⁵ John Simpson, in his first appearance as editor of the *Niagara Chronicle*, claimed that "[w]e would advocate the Republican form of Government, if we were all educated to the same standard, and possessed the same natural faculty of judging rightly, but as this unhappily is not the case, we must be permitted to adhere to our natural and national predilection for the British Constitution in *its* purity, as the best mode of ruling yet constituted, viewing it in reference to the present nature of mankind."³⁶ This simply repeated the age-old charge that republics were only fit for angels.

The concept of public opinion, or that people could come to collective decisions through rational debate, destroyed the theory of mixed monarchy. It did not, however, suggest that each individual was angelic or equally capable of judgement. Public opinion was not the mere aggregation of everyone's casual observations, opinions or prejudices. Rather, public opinion was the result of a process of prolonged deliberation among those who paid attention to politics. The concept of public opinion required that enough people

³⁴ An Englishman, "To the Reformers of Upper Canada". *Patriot*, 26 December 1837.

³⁵ This should not be taken to mean that there was no notion of equality in the theory of mixed monarchy. The British aristocracy was seen as open rather than closed. Every subject was equal under the Crown. All adults had the right to petition. All had the right to the equal protection of the law and to the same liberties derived from them. As Paul Romney has emphasized, the perception that Upper Canadian courts did not offer equal protection or impartiality was a major impetus behind constitutional discontent. See Romney, *Mr Attorney*, pp. 62-157.

³⁶ John Simpson, *Niagara Chronicle & Advertiser*, copied, *Chronicle & Gazette*, 9 September 1837.

had access to sufficient information and could exercise their reason in public with adequate competence to contribute to that process. Collective decisions about the common good, not conflict and dissension, would then emerge from free public debate. Since debate was open, rational and incorporated a significant portion of the people, the collective decisions that emerged from the process were more likely to represent the interests of the community than decisions reached by any individual, group or institution - including the balance of monarchy, aristocracy and democracy. Legislative bodies, now only contributors to a broader process of public deliberation, would have to be re-designed to ensure that their decisions reflected the conclusions of public opinion. They were no longer to check or thwart those conclusions. The increasing belief in the capacity of the public to judge - and thus its right to do so - replaced the balance of King, Lords and Commons at the heart of constitutional theory in both Britain and Upper Canada.

The process by which public opinion supplanted the tripartite legislature was arduous. The two co-existed, in various states of tension, long before the theory of mixed monarchy was abandoned. To take one widely read example, John Louis De Lolme's *The Constitution of England*, first published in Holland in 1770, spent considerable time describing "the resources allotted to the different parts of the English government for balancing each other, and how their reciprocal actions and re-actions produce the freedom of the constitution, which is no more than an equilibrium between the ruling powers of the state." De Lolme, like most visitors, was also struck by the number, freedom and importance of the British press relative to its counterparts in other European states. Because of the press, every man was "enabled to communicate his sentiments to the public...and it is this public notoriety of all things that constitutes the supplemental power, or check...[to] keep within their respective bounds all those persons who enjoy any share

of public authority." Officers acted in the knowledge that any incompetence or partiality would be exposed and "when the law gives a full scope to the people for the expression of their sentiments, those who govern cannot conceal from themselves the disagreeable truths..."

Through the press, the opinions of the people influenced their government. Many of these people did not have the time or resources to be statesmen, but De Lolme, rejecting the connection between gentility, knowledge and leadership made by John Strachan and others, did not conclude that their opinions ought, therefore, to be disregarded. A free press made the knowledge and arguments of politics more widely available. "[E]very individual may, at his leisure and in retirement, inform himself of every thing that relates to the question on which he is to take a resolution...a whole nation as it were holds a council, and deliberates...all matters of fact are at length made clear: and, through the conflict of the different answers and replies, nothing at last remains but the sound part of the arguments." When the public "perseveres in opinions which have for a long time been discussed in public writing...then it is, though only then, that we may with safety say, - 'the voice of the people is the voice of God.'" What relationship did this voice have to the other three powers he had just described? De Lolme's answer, that public opinion acted "by means of the right they have of electing their representatives..." was surely inadequate - a disappointing come down from the equation of public opinion with the voice of God. The check of public opinion remained "supplemental" and, except at elections, largely an external force on, rather than part of, the British constitution described by De Lolme.⁸⁷ If public opinion was what De Lolme described, it deserved a

⁸⁷ J. L. De Lolme, *The Constitution of England; or, An Account of the English Government; in which it is compared both with the republican form of government and the other monarchies of Europe; A New Edition, with Life and Notes by John Macgregor*. (London: Henry G. Bohn, 1853), pp. 52, 141, 199-213.

more secure and substantial place in British constitutional theory than De Lolme, or anyone else trapped within the mixed monarchy paradigm, could make for it.

This chapter has attempted to account for the longevity of the theory of mixed monarchy, to demonstrate how it structured the language and arguments of both conservatives and reformers, and to understand the meaning of the analogy to the British constitution. It also introduces an argument that will occupy several later chapters: that the rise in the concept of public opinion, seen here in the democratization of the science of politics, was a key conceptual innovation undermining the theory of mixed monarchy. Part two of this study examines the decades in which Upper Canada reached the point described by De Lolme: a free and extensive discussion of politics in the press and a recognition of the force of public opinion. Part three examines the two decades after the Rebellion in which public opinion secured a substantial place in the province's constitutional theory. The process was slow and painful. It was not complete until public opinion was seen as the final arbiter or tribunal of all public men and measures - ultimately replacing the theory of mixed monarchy. The start and end points of the process are relatively clear, but the movement between them was not linear. Actors moved at different speeds and in different ways. Some pulled back from the implications of positions they had already taken.

Moreover, the development of constitutional theory in Upper Canada was not an

For a somewhat different interpretation of De Lolme see Francis with Morrow, "After the Ancient Constitution", pp. 288-293. They note that *The Constitution of England* appeared in seventeen editions before 1850.

academic exercise. Most of the texts used for this study are far less systematic than Blackstone's *Commentaries* or De Lolme's *The English Constitution*. Most were written by active participants in the constitutional struggles they tried to both understand and shape. Positions emerged in the context of actual struggles about the location and exercise of power. In turn, these positions conditioned later struggles. Only by examining specific instances, issues and circumstances can the dynamics of constitutional theorizing be fully appreciated. One such issue, the prolonged debate about the law of primogeniture, touched on many of the themes of this chapter. Much of the debate concerned the functioning of the colony's legislative institutions, the structure of British and colonial societies, the need for an aristocracy, and the constitutional implications of widespread and lengthy public deliberation.

CHAPTER TWO

"it was folly to raise a Monarchical structure upon a Republican foundation:" The Debate about Primogeniture

In one of his first speeches to the Assembly, the new member for Kingston, John A. Macdonald, attacked a motion as "anti-British and anti-Monarchical; it ought not to be introduced here, for the very reason that it had been introduced into the United States; it was folly to raise a Monarchical structure upon a Republican foundation." This categorical declaration was prompted by a motion to abolish the common law of primogeniture in Upper Canada. In essence, the law required that the real property of those dying intestate (without a valid will) descended to their eldest son. Macdonald went on to argue that "the law of primogeniture was the great bulwark between the people and the Crown, and the Crown and the people." Those who supported the motion, particularly Robert Baldwin, were "madmen." Baldwin supported the principle of the motion on the grounds that "nine tenths of the people of Upper Canada was [were] in favour of a change." Further, since "the United States, that great country whose institutions must exercise a great influence upon those of this colony," had abolished primogeniture, public opinion in Upper Canada would only become more insistent. Primogeniture should be abolished in Upper Canada "for the sooner the great principles of the social system were settled the better."¹

Writing in the 1830's, Alexis de Tocqueville was "surprised that ancient and modern writers have not attributed greater importance to the laws of inheritance and their

¹ Robert Baldwin and J.A. Macdonald, *Debates of the Legislative Assembly of United Canada*, Elizabeth Gibbs, general ed., (Montreal: Centre de Recherche en Histoire Economique du Canada Français), 30 January 1845, pp. 1233, 1237.

effect on the progress of human affairs. They are, it is true, civil law, but they should head the list of all political institutions, for they have an unbelievable influence on the social state of peoples."² Upper Canadians agreed. The laws of inheritance influenced the distribution of property, which in turn influenced the distribution of political power. In Upper Canada the law of primogeniture also bore tremendous symbolic weight. It was hotly debated for over three decades. It became a barometer for the broader cultural war between monarchy and democracy and between an essentially British and American national identity. By the early 1830's, the extent of the public debate took on a significance of its own.

Historians of Upper Canada have ignored de Tocqueville. They have paid considerable attention to inheritance patterns to investigate strategies of family survival, the status of women and children, the structure of kinship networks, geographic mobility, and the distribution of property-holding. Almost no attention has been paid to the laws regulating those practices.³ This chapter concludes that, along with political and social analysis, the content and structure of the public debate must be examined in order to explain the contested nature of those laws. Debate did not occur in a social or political vacuum, but commentators conceptualized and articulated the social and political world around them differently. In debating intestacy law, they also gave a greater role to the very process of public debate.

² Alexis de Tocqueville, *Democracy in America*, George Lawrence, trans., J. P. Mayer, ed., (New York: Harper & Row, 1969), pp. 51-53.

³ For brief mentions of intestacy law and primogeniture see Bruce S. Elliott, *Irish Migrants in the Canadas: A New Approach*, (Kingston & Montreal: McGill-Queen's University Press, 1988), pp. 210, 236. The most important study of inheritance patterns to date makes only one mention of intestacy law by noting, incorrectly, that primogeniture was abolished in 1856. David Gagan, *Hopeful Travellers: Families, Land, and Social Change in Mid-Victorian Peel County, Canada West*, (Toronto: University of Toronto Press, 1981), p. 51. But see Gerald M. Craig, "The American Impact on the Upper Canadian Reform Movement Before 1837", *Canadian Historical Review*, (v. XXIX, n. 4, December 1948), pp. 341-342; and *Upper Canada: The Formative Years, 1784-1841*, (Toronto: McClelland and Stewart, 1963), pp. 207-208.

In England, the inheritance of land was largely governed by the common law. The second volume of Sir William Blackstone's *The Commentaries on the Laws of England* provided its definitive statement on both sides of the Atlantic. Two of Blackstone's eight rules of descent pertained directly to primogeniture: first, "That the male issue shall be admitted before the female." and second, "Where there are two or more males, in equal degree, the eldest only shall inherit: but the females all together." A third rule was also important: "The lineal descendants, in infinitum, of any person deceased shall represent their ancestors."⁴ The Statute of Wills of 1540 established the right of testators to alter these rules by executing a will. The personal property of those dying intestate was divided by the Statute of Distributions of 1670: one-third to the widow and the remainder to the children equally.⁵ The importance of retaining land in the bloodline is evident in the different intestacy law for real and personal property.

These rules of descent were imported wholesale into Upper Canada. The first statute of the colony, [32 George III, c.1, (U.C.) 1792], read that "in all matters of controversy relative to property and civil rights, resort shall be had to the Laws of England." Lieutenant-Governor John Graves Simcoe's commitment to create a truly British colony, complete with an aristocracy and inequalities in the distribution of land

⁴ Blackstone, *The Commentaries on the Laws of England*, Robert Malcolm Kerr, ed., v. 2, "Of the Rights of Things," 4th edition, (London: John Murray, 1876), pp. 176-199. A fictitious example demonstrates the implications of these principles. If a father, possessed of 100 acres freehold, was survived by all his children, say by 2 sons and 2 daughters, the 100 acres descended to the eldest son. If this father was survived by only one of his sons and his 2 daughters, the younger son inherited the 100 acres. If this father was survived by only his two daughters each would receive 50 acres. If the eldest son predeceased his father but was survived by sons of his own, the grandfather's 100 acres would descend to the eldest son of his deceased eldest son thus excluding not only his other grandchildren but also his surviving children or their heirs. If the eldest son was deceased but was survived only by daughters, these granddaughters would divide the 100 acres equally to the exclusion of their uncles, aunts and cousins.

⁵ *Ibid.*, pp. 71, 468. Primogeniture applied to realty in Britain until 1926.

and political power, would almost certainly have guaranteed the adoption of primogeniture, but it appears to have been an indistinguishable part of the general importation of English law.⁶ For the next sixty years, the freehold property of those dying intestate descended to the eldest surviving son or his heirs in accordance with the principles of primogeniture.

When Rhode Island abolished primogeniture in 1798, Upper Canada became the only jurisdiction in North America to retain it. Even before the existence of colonial inheritance laws, some form of partible inheritance or multigeniture was practised. A system of dividing realty into equal portions, granting two shares to the eldest son and one share to each of the other children, was standard in the Plymouth colony by 1627 and became the law in neighbouring colonies. New York, Virginia, Maryland, and the Carolinas adopted primogeniture. Thus, colonial inheritance laws divided along regional lines: New England except Rhode Island, and the Middle Colonies except New York, adopted some form of multigeniture while primogeniture existed in the southern colonies.

The Revolutionary decades brought greater uniformity. In Virginia, Thomas Jefferson led the campaign to abolish primogeniture as incompatible with republicanism. Jefferson equated the distribution of real property with the distribution of political power. A wide distribution of property ownership would prevent the development of aristocracy and ensure the existence of a sufficient number of independent yeomen to act as virtuous

⁶ Privileging one heir over all others in realty was certainly consistent with the attempts of early land policy to create inequalities in the new society, but grants were made equally to the sons and daughters of loyalists. Later opponents of primogeniture pointed to the discrepancy.

republican citizens. Southern states and New York abolished primogeniture between 1785 and 1791. Rhode Island followed in 1798. At the same time, other northern states abolished the eldest son's double portion.⁷

Nova Scotia joined neither the American Revolution nor the resulting revision of inheritance laws. It copied its law from Massachusetts in 1759, only one year after gaining an elected assembly. The Halifax merchants who dominated the early assembly rejected the common law of primogeniture. The influx of New Englanders, and later the Loyalists, produced no change. Prince Edward Island adopted the double portion system in 1781. Despite its predominately Loyalist origins, New Brunswick also adopted a double portion of realty for the eldest son in 1786, only two years after the founding of the colony.⁸ Thus, while Upper Canadians debated the merits of primogeniture for a British colony in North America, Nova Scotia retained its pre-Revolutionary American heritage and both Prince Edward Island and New Brunswick failed to adopt primogeniture.

⁷ On colonial inheritance law see two charts in Carole Shammas, Marylynn Salmon and Michel Dahlin, *Inheritance in America From Colonial Times to the Present*, (New Brunswick: Rutgers University Press, 1987), pp. 32-33, 64-65. The charts can be misleading. See also, Charles McLean Andrews, "The Influence of Colonial Conditions as Illustrated in the Connecticut Intestacy Law", *Selected Essays in Anglo-American Legal History*, v. 1, (Boston: Little, Brown and Company, 1907), pp. 437, 446, 463; Richard B. Morris, "Primogeniture and Entailed Estates in America", *Columbia Law Review*, (v. XXVII, 1927), pp. 24-25; George L. Haskins, "The Beginnings of Partible Inheritance in the American Colonies", *The Yale Law Journal*, (v. 51, n. 8, June 1942), pp. 1280-1281, 1295-1296; C. Ray, Keim, "Primogeniture and Entail in Colonial Virginia", *William and Mary Quarterly*, 3rd Series, (v. XXV, n. 4, October 1968), pp. 545-547, 550, 586; J. R. T. Hughes, "Planting the Tenures and Inheritance", *Social Control in the Colonial Economy*, (Charlottesville: University of Virginia Press, 1976), pp. 80-81, 83-86; Toby Ditz, *Property and Kinship: Inheritance in Early Connecticut, 1750-1820*, (Princeton: Princeton University Press, 1986), pp. 63, 164; and David E. Narrett, *Inheritance and Family Life in Colonial New York City*, (Ithaca: Cornell University Press, 1992), pp. 127-128. On Jefferson, see Stanley N. Katz, "Republicanism and the Law of Inheritance in the American Revolutionary Era", *Michigan Law Review*, (v. 76, n. 1, November 1977), pp. 1-29; and more recently, John V. Orth, "After the Revolution: 'Reform' of the Law of Inheritance", *Law & History Review*, (v. 10, n. 1, Spring 1992), pp. 33-44.

⁸ Chapter III, "of Intestate Estates", *The Revised Statutes of New Brunswick*, v. 1, 1854. John Henry Howard, *The Laws of The British Colonies...*, (Westport, Connecticut: Negro University Press, 1970 [London, 1827]). New Brunswick followed English law by dividing personal property equally among all children.

Thomas Haliburton explained Nova Scotia's rejection of primogeniture in the same terms used in other British colonies: "in a new country, the improvements necessary to be made upon land, and the expense of subduing the soil, constantly absorb the whole of the personal property; and that if the real estate were inherited by the eldest, there would be nothing left to provide for the younger children." The preface to a 1692 Massachusetts' statute had advanced an additional argument - the land could only be subdued by the labour of all children. Parents could offer only a portion of that land in return since they lacked "personal estate to give out unto them in Portions, or otherwise, to recompense their Labour."⁹

Historians have agreed that colonial conditions promoted the abandonment of primogeniture. According to one of the first scholars of this question, the rejection of primogeniture in the north "represented a principle of land-distribution which the experience of the colony had shown to be best adapted to its own prosperity and continued existence...The law was an organic part of the life of the colony." A recent synthesis likewise concludes that "the particular wealth mix in the early years of the colonies, with land being abundant and some types of personality including financial assets less available, seems to be the main reason for this divergence" from English law.¹⁰

With Lower Canada guaranteed its more egalitarian civil law, Upper Canada was an anomaly. Other British colonies did not adopt primogeniture. The arguments used against primogeniture by colonial law-makers since the seventeenth-century also applied to Upper Canada. Primogeniture was not the law in Upper Canada because it was a

⁹ Thomas C. Haliburton, *An Historical and Statistical Account of Nova Scotia in Two Volumes*, (Belleville: Mika Publishing, 1973, [Halifax, 1829]), pp. 337-339; and Massachusetts' statute cited in Haskins, "The Beginnings of Partible Inheritance", p. 1295n.

¹⁰ Andrews, "The Influence of Colonial Conditions as Illustrated in the Connecticut Intestacy Law", pp. 446, 449; and Shammass, Salmon and Dahlin, *Inheritance in America*, pp. 39, 66.

British colony or because primogeniture was a principle of English common law. What the colony had imported by statute it could abolish. The question is not why Upper Canada adopted primogeniture, but why it retained it for almost sixty years.

It was certainly not from lack of trying to abolish it. In 1817, the Legislative Council passed a bill to abolish primogeniture, but it was lost by a single vote in the Assembly. The Council acted, not from a sense of the superiority of another rule of descent, but because recent legal decisions suggested that no distinction was to be drawn in the colony between real and personal property for the execution of debts. In response, the Legislative Council, led by the Chief Justice, sought to harmonize the rules of descent for real and personal property. Later judicial decisions on the recovery of debt removed the impetus behind harmonization. The Council's bill, however, prompted the first published attack on the principles of primogeniture.¹¹ The second published attack coincided with Robert Gourlay's agitation. Primogeniture was not mentioned in connection with Gourlay's questionnaire, but it formed the last in a series of "Grievances as stated by certain inhabitants of Ernest Town" dated the 28th of November 1818. It echoed most of the first published attack and is worth quoting in its entirety:

The common law rule of descents, by which the oldest son of an intestate inherits all his land, to the exclusion of the other children, appears to us not necessary in this Province, there being no hereditary aristocracy among us, requiring to be supported by the perpetuation of the real estate in one branch of the family; nor is it adapted to the circumstances, education, habits and manners of those who are the subjects of it, but is

¹¹ Amicus Curle, *Kingston Gazette*, 18 November 1817. The Legislative Council's bill was most fully discussed by John Beverely Robinson, *Canadian Freeman*, 1 December 1825.

uncongenial with the general sentiments, there being probably few if any parents, in the Province, having more children than an only son, who would be willing to have their estates descend as the law now called the descent; and yet, from a natural propensity to defer the disagreeable business of making a will, and the requisite legal formalities, in cases of sudden death, in the absence of counsel, and amidst [sic] the distress and agitation of dying scenes, many persons die, without devising their estate, as they would wish them to be divided. The principle of the statutes of distribution of personal estate, seems to be equally applicable, in this country, to real estates; and we pray your excellency to consider the propriety of recommending an act, to extend and apply that equitable principles to descent of intestate real estates.¹²

Here was the basic case against primogeniture: it was an aristocratic device, its justification in Britain did not apply to Upper Canada, the people opposed it, parents wanted to treat their children equally, and many failed to make a will resulting in the distribution of their land against their wishes.

These were only the early signs of a prominent and persistent campaign to abolish the common law. In the early 1820's, primogeniture was debated by the members of the Juvenile Advocate Society, a debating society for those training for the colonial bar.¹³ In 1831-32, abolishing the law of primogeniture arose as an issue at public meetings to circulate grievance petitions. It was a plank in the Canadian Alliance Society's platform of 1834-35, and re-emerged at Clear Grit meetings in 1850.¹⁴ The issue also made its way into election addresses and petitions to the Assembly.¹⁵ In his first appearance as editor

¹² "13th Grievance as stated by certain inhabitants of Ernest Town," *Upper Canada Gazette*, copied, *Kingston Chronicle*, 12 February 1819.

¹³ G. Blaine Baker, "The Juvenile Advocate Society, 1821-1826: Self-Proclaimed Schoolroom for Upper Canada's Governing Class", *Canadian Historical Association, Historical Papers*, (1985), pp. 93, 95-96.

¹⁴ See for instance, *Christian Guardian*, 16 May 1832; *Brockville Recorder*, 2 January 1835; *Correspondent & Advocate*, 30 April 1835; *Patriot*, 6 September 1836; *St. Catharines Journal*, 17 January 1850; *Mirror*, 22 March 1850; and *Independent*, 27 March 1850.

¹⁵ See *Cobourg Star*, 8 October 1834 for its inclusion in candidates' nomination and acceptance speeches. W. B. Wells also highlighted the issue in an address to his constituents, *Correspondent & Advocate*, 1 March 1837. The *St Thomas Liberal*, 29 November 1832, reminded voters that their local representative had supported the common law as a key reason for voting against him. See also the petition of Peter Frank and 239 others of Vaughan, *Journals of the House of Assembly of Upper Canada*, 23 November 1831, pp. 12-13.

of the *Colonial Advocate*. William Lyon Mackenzie called primogeniture a "latent source of evil." It was explicitly forbidden in his draft constitution for a republican Upper Canada.¹⁶ After Mackenzie's rebellion failed to usher in that republic, Francis Hincks tried to revitalize reform forces in the pages of his *Examiner*. It listed the abolition of primogeniture as one of six "principal measures desired by Reformers."¹⁷ Table 1 lists bills originating in the Assembly to abolish primogeniture.

TABLE 1: Bills to Abolish Primogeniture in Upper Canada

Year	Parliament /Session	Sponsor	Last Action	Vote Y N
1821	8/2	B. Bidwell	Notice of motion to introduce	10 to 16
1823	8/4	Willson	Committee of the Whole, to sit in three months	16 to 15
1825	9/1	Coleman	Second Reading	Not Reported
1825	9/2	M.S. Bidwell	Third Reading	25 to 4
1826	9/3	Bidwell	First Reading (?)	Not Reported
1828	9/4	Bidwell	Third Reading	21 to 3
1829	10/1	Perry	Third Reading	33 to 5
1830	10/2	Perry	Third Reading (vote at second reading)	21 to 4
1831	11/1	Bidwell	To receive Report of Committee of the Whole, in three months	21 to 20
1831	11/2	Bidwell	Third Reading	25 to 14
1835	12/1	Perry	Third Reading	35 to 8
1836	12/2	Perry	Third Reading	27 to 3
1836	13/1	Norton	not reported out of Committee of the Whole	
1841	1/1	Hincks	Notice of motion to introduce	
1843	1/3	Roblin	First Reading (?)	
1844	2/1	Roblin	Second Reading in six months	29 to 28
1850	3/3	Morrison	Notice of motion to introduce	
		Baldwin	First Reading	
1851	3/4	Baldwin	Third Reading	35 to 7

Source: *Journals of the House of Assembly of Upper Canada and Debates of the House of Assembly of the Province of Canada*

¹⁶ *Colonial Advocate*, 18 May 1824; and Section 16 of Mackenzie's draft constitution. *Canadian Political Thought*, H. D. Forbes, ed., (Toronto: Oxford University Press, 1985), pp. 38-39. Mackenzie also described the intestacy law of New York state in some detail in his *Sketches of Canada and the United States*. See Craig, "The American Impact on the Upper Canadian Reform Movement", p. 342n.

¹⁷ *Examiner*, 1 August 1838.

Eighteen bills to abolish primogeniture in favour of equal partibility were proposed. Attempts were made in each of the last five parliaments and in thirteen of the last twenty sessions.¹⁸ After 1821, few representatives could avoid the issue. Eight bills abolishing primogeniture actually passed the Assembly: in 1825, 1828, 1829, 1830, 1831, 1835, 1836, and again in 1851. The first seven were lost in the Legislative Council. In fact, the *Journals of the Legislative Council* suggest that these bills never got to third reading. In 1830, a report supporting primogeniture was issued by a select committee and its findings were endorsed in 1836. With these two exceptions, the bills disappeared in the upper house without trace or explanation.¹⁹ Without the appointed Legislative Council, primogeniture might have disappeared from North America as early as 1825.

The eight bills that passed the Assembly often did so by impressive margins. As few as three or four members dissented. The most vocal of this minority were the law officers of the Crown, notably Christopher Alexander Hagerman and John Beverley Robinson. While promoted by leading reformers and more successful when the House was reform-dominated, these bills often gained the adherence of a significant number of government supporters. The margins may have been inflated by the intransigence of the Legislative Council. Representatives could vote to abolish primogeniture against their own judgement safe in the knowledge that the law would be retained.²⁰ With the hostility

¹⁸ The issue came to the attention of legislators on other occasions. Thomas Parke attempted to abolish primogeniture with a rider to the bill to create a Court of Chancery in 1837. *Christian Guardian*, 15 February 1837. The issue also arose when the Legislative Council sent a bill amending inheritance laws to the House in 1849 and was mentioned during debates on other measures. See Peter Perry on his ballot bill, *Christian Guardian*, 22 April 1835.

¹⁹ The *Correspondent & Advocate*, copied, *Brockville Recorder*, 1 May 1835, demanded a reformed Legislative Council because of its contempt for popular measures, such as a recent bill to abolish primogeniture. They had simply "put it under their table."

²⁰ *Examiner*, 1 August 1838, provided a list of conservatives who consistently supported the abolition of primogeniture. R. Macdonald, the member for Cornwall "declared that the Tories who voted for the bill...voted against their consciences in hopes that the bill would be tomahawked in the Legislative Council. They were he said anxious to shirk the responsibility of opposing it." *Debates*, 30 January 1845, pp. 1237-1238. See also Sir Francis Bond Head's despatch to Lord Glenelg, 22 September 1837; "the members of

of the upper house assured. several attempts to abolish primogeniture were made without expectation of success. Often introduced at the beginning of a session, the process became repetitious and something of a stubborn test of wills. In 1830, the bill passed second reading by a vote of 21 to 4 but apparently "no discussion took place on it."²¹ The arguments were as well known as its fate.

The issue of primogeniture became an important part of the reform argument that the Assembly was powerless; thwarted by an appointed and irresponsible Legislative Council, which, along with the law officers of the Crown, formed a pernicious oligarchy serving its own interests under the cloak of hyper "loyalty" to British precedents. As early as 1828, a Markham meeting declared that "the rejection, refusal, or neglect to proceed upon these and other necessary Bills ...constitutes a public grievance, destructive of the ends of the constitution of government as by law established."²² The issue became the responsiveness of the constitution as much as intestacy law.

It is not surprising, therefore, that primogeniture was finally abolished by the second reform government. The first reform government resigned in 1843, soon after the Attorney-General, Robert Baldwin, asked a private member to withdraw his bill abolishing primogeniture to allow the government to sponsor a similar measure.²³ After the re-election of reformers in 1848 and Lord Elgin's acceptance of "responsible government," the Assembly replaced primogeniture with equal partibility effective 1

the Assembly constantly find it necessary to give their votes in support of measures which they know, and even readily admit to be worse than inexpedient, but the common apology is "Yet, but we know quite well they would be thrown out by the Upper House!" The Legislative Council therefore, though it incurs much odium by apparently opposing the House of Assembly, yet in fact affords material assistance to its individual members who relying on its veto are enable to vote with impunity..." enclosure, Glenelg to Sir George Arthur, *Arthur Papers*....Charles R. Sanderson, ed., (Toronto: Toronto Public Libraries and University of Toronto Press, 1957), 21 December 1837, v. 1, pp. 29-32.

²¹ *Brockville Recorder*, 2 February 1830.

²² *Colonial Advocate*, 31 January 1828.

²³ *Debates*, 11 October, and 20 and 28 November 1843, pp. 234, 884, 1013; and 30 January 1845, p. 1233.

January 1852. Constitutional and political structures had helped ensure the persistence of primogeniture. Once those structures were transformed, it was abolished.

Political analysis might also help explain some individual's legislative behaviour. For instance, Robert Baldwin may have mustered his lukewarm enthusiasm for equal partibility in 1850-51 in an (unsuccessful) attempt to mute Grit criticism that his government was insufficiently radical.²⁴ Undoubtedly others were influenced by political motives, but patronage was not one of them. Preferment was not to be sought by voting against Robinson and the Legislative Council to support a measure so closely identified with the Bidwells and Peter Perry. In the days before party discipline, the behaviour of most members opposed to primogeniture can probably be explained in one of two ways: either they believed in the measure or they believed that the people desired it. If it was the latter, they either feared electoral sanctions or believed that the wishes of their constituents ought to be respected. Why did some members believe in equal partibility and why did popular attitudes force others to vote against primogeniture? Why was the Legislative Council so determined to resist the repeated voice of the Assembly? Finally, why had intestacy law become so controversial in the first place?

To what extent did actual inheritance patterns of the period provide part of the answers? Can the nature of this debate and the positions adopted by key players be

²⁴ Most representatives, however, were remarkably consistent on this issue, with a few notable exceptions such as W. W. Baldwin. The elder Baldwin may have abandoned his support for primogeniture in 1821 which had earned him high praise from Robinson partly because such company was increasingly embarrassing. Baldwin was attempting to gain the support of Marshall Spring Bidwell, the prime opponent of primogeniture, for his version of responsible government. It is also worth noting that there was no direct economic self-interest for representatives on this issue.

explained by individual or group interests? The *Upper Canada Herald* probably exaggerated when it concluded that "almost every family in the province is interested" in "the distribution of intestate estates,"²⁵ but few other laws had such an immediate and personal effect on the families involved. Susanna Moodie observed that "it is certain that death is looked upon by many Canadians more as a matter of business, and a change of property into other hands, than as a real domestic calamity."²⁶ Moodie clearly saw the relationship between family and land, and between death and the transference of land. In Gore township during the 1850's, almost 73% of sons who became land-owners for the first time did so with family help. Almost 45% of them received that help in the form of inheritance.²⁷

Like those of neighbouring American states, the economy of Upper Canada was dominated by the family farm. Agriculture was largely the concern of owner-producers and their immediate families, not plantation masters and slaves, or manor lords and tenants, or employers and employees. As Toby Ditz emphasizes in his study of Connecticut, "in regions, dominated by owner-producers, inheritance transfers are a primary mechanism for allocating economic decision-making powers." Inter-generational transfers of land created new households - they passed on the actual means of independent livelihood. More than the labour market, inter-generation transfers of land determined the life-chances of many of the next generation.²⁸

The common law of primogeniture affected land-transfers only at death, only where there was no valid will, and only where family or creditors petitioned the courts.

²⁵ *Upper Canada Herald*, 29 November 1825.

²⁶ Susanna Moodie, *Life in the Clearings versus the Bush*, (Toronto: McClelland and Stewart, 1989, (London 1853)), p. 157.

²⁷ Herbert J. Mays, "'A Place to Stand': Families, Land, and Permanence in Toronto Gore Township, 1820-1890", *Historical Papers*, (1980), Table 8, p. 204.

²⁸ Ditz, *Property and Kinship*, pp. 3, 36-37, 105.

The Legislative Council argued that intestacy was common among farmers since they were "seldom so attentive and provident" as to make a will: they often lacked the education to meet the legal formalities; and, even where willing and able, "they were from their pursuits more exposed to casualties leading to sudden death." They claimed that "in the District of Bathurst...it was some years before the Surrogate Judge had a single Will brought to him...we suppose, that five proprietors of single lots die Intestate for one that makes a valid will."²⁹ Opponents of primogeniture also emphasized the difficulties in making a valid will. The younger Bidwell thought that "a great proportion of those who had a legal capacity to divide their property neglected to do so."³⁰

Bruce Elliott has provided some of the only figures we have on intestacy in Upper Canada. In March township, from 1838 until 1900, 38 wills were probated and 25 letters of administration were issued by Surrogate and Probate courts. A further 46 wills were deposited at the Land Registry Office. Thus, 40% of estates before the courts and 23% of estates for which there were legal records were subject to the common law. Between 1838 and 1849, of the 16 deceased male heads of household, 10 left legal records: 6 wills and 4 letters of administration. In this case, the common law effected a quarter of the deceased heads of household and 40% of those whose estates warranted legal procedures. Thereafter, the rate of intestacy in the township fell sharply.³¹ Calculations for Peel

²⁹ "Report of the Select Committee of the Legislative Council on the Intestate Estate Bill" *Christian Guardian*, 28 March and 4 April 1832.

³⁰ *Mr Bidwell's Speech on the Intestate Estate Bill, in the Provincial Assembly of Upper Canada, January 24, 1831*, (n.d.), p. 5; Ernest Town Grievances, *Kingston Chronicle*, 12 February 1819; and Jesse Ketchum, *Cobourg Star and Hallowell Free Press*, 8 February 1831. Col. Prince seems to have been the only one to disagree. He suggested that it "rarely happens, perhaps not oftener than six times in the course of a year, that a man dies intestate." *Debates*, 15 July 1851, p. 835. This was, however, two decades later.

³¹ Bruce S. Elliott, "Sources of Bias in Nineteenth-Century Ontario Wills", *Histoire Sociale - Social History*, (v. XVIII, May 1985), pp. 126-127, 129. About 70% of these deceased householders were farmers. In her study of women and inheritance in Stormont, Dundas and Glengarry County, Marjorie Griffin Cohen concludes that "in most cases men did not leave wills" forcing the courts to intervene. It is unclear whether this refers only to 1800-1811 or also to 1850-1858. As noted below, however, the conclusion that most men died without a will does not mean that the laws of intestacy applied. Cohen.

County produced the following results:

TABLE 2: Estates Records for Peel County, Upper Canada, 1812 - 1867

	Surro- gate Court				Deed
	Will	W/C	ADM	A/W	
1813-23	2		1		
1824-33	7	1	5		17
1834-43	46	2	19	1	26
1844-53	89		27	8	84
1854-63	153	6	53	11	173
1864-67	54	1	18	10	37
Total	351	10	123	30	337

Legend: W/C= Will with codicil; ADM=letter of administration; A/W=letter of administration with will annexed. Source: J. Brian Gilchrist, *Estate Records of Peel County, Ontario, 1812-1867*. Toronto, 1994.

A total of 514 estates came before the Surrogate court.¹² Of these, 153 or about 30% required letters of administration, but only 123 or about 24% left no will at all. The number of estates represented by the 337 registered deeds is difficult to determine. One estate might involve several deeds and estates probated by the courts might also have registered deeds. Further, Bruce Elliott's figures for March township suggest that the number of estates involved in all these various legal procedures might comprise only about half of all deceased males.

In thirty cases, or about 6%, the Surrogate court issued letters of administration with a will annexed. Letters of administration were required where the will named no executor, or where those named could not or refused to serve. By annexing the will, courts ensured that the estate would be devised according to the wishes of the deceased rather than the laws of intestacy. The courts appear to have emphasized the wishes of the deceased over the technicalities of the law. The principles of the law, not its

Women's Work, Markets, and Economic Development in Nineteenth-Century Ontario. (Toronto: University of Toronto Press, 1988), p. 49.

¹² A further 56 estates were handled by the Probate court.

administration, were the issue.

Thus it would appear that contemporaries exaggerated the number of estates effected by the laws of intestacy. The Legislative Council's estimate that five-sixths of small farmers died without a will was too high. It would have been closer to the reality if the entire population had been the point of reference, since most of those who died without a will did not engage the legal system at all. Nonetheless, letters of administration were probably more common in the less developed and younger communities, declining in proportion to wills over time, as they did in Peel. Letters of administration seem to have amounted to somewhere between a quarter and a third of cases where the size or nature of the estate warranted recourse to the courts. Such a proportion is hardly insignificant.

Moreover, the law of intestacy was not irrelevant for those who ultimately escaped it. Heirs remained vulnerable until a will was written. Since wills were generally written only when death was imminent (accounting for the small number of wills amended by codicil - under 3% in Peel), sudden death left the estate subject to intestacy law. For some, hostility to primogeniture may have prompted the writing of a will in the first place. Finally, that contemporaries thought primogeniture affected an even larger number of estates was itself important.

What most concerned opponents of primogeniture was not that "many" died without a will but that the law devised land in a way that most wills did not. This suggests that the campaign might be best explained by what Bruce Elliott has called the

"continual tension between law and practice."¹³ The common law did not mirror social practice, but neither did the basic principle of the proposed alternative.

In his study of Peel county, David Gagan has argued that as nearby land became scarce and expensive, fathers sought to provide for their wives and children without dividing land, the major family asset. The result was the increasing use of what has been called the "English Canadian" system. One son received the family land but was obligated to provide for other family members. As Gagan notes, this system "was a hybrid, a preferential system which deliberately attempted to combine the economic conservatism of the impartible system with the social and sentimental egalitarianism of the partible." Thus between two decades, 1845-55 and 1856-65, the number of impartible divisions fell from just over 32% to just over 17% and partible divisions fell from 28.6% to 11.5%. By 1856-65, the "single heir plus burdens" system accounted for 71.2% of the probated estates, up from 39.3% in the previous decade.¹⁴

Primogeniture combined three principles: impartible inheritance of realty, the postponement of female in favour of male heirs, and the preference for the eldest over other male heirs of the same degree. The figures for Peel reveal an increasing desire to avoid the partition of family lands. Over 71% of testators in 1845-55 and 88.5% in 1856-65 adopted some form of single heirship (impartible plus "Canadian"). At the same time, an increasing but a smaller percentage of testators were also committed to providing for several heirs (partible plus "Canadian" or almost 68% in 1845-55 and 82.7% in 1856-65). The law accorded with the desire to avoid division of estates, but not with the desire to provide for several heirs. In fact, partibility replaced primogeniture in law at precisely the

¹³ Elliott, *Irish Migrants*, p. 210.

¹⁴ Gagan, *Hopeful Travellers*, pp. 51-52.

time owner-occupiers in Peel were increasingly refusing to divide their realty in practice.³⁵

The law's privileging of male over female heirs closely mirrored practice. Unmarried daughters were often provided for but rarely in the form of land. Bruce Elliott concludes that "the devolution of land was strictly from fathers to sons." Marjorie Griffin Cohen found in Stormont, Dundas and Glengarry County that the proportion of daughters receiving even lesser portions of land decreased from 22% in 1800-11 to 3.5% in 1850-58.³⁶ Inheritance by daughters, in land or personalty, was almost always of lesser cash value than that of their brothers. The common law preference for male over female heirs was a much closer approximation of social practice than equal partibility.

The dissonance between law and practice was most pronounced in the former's preference for the eldest son over his brothers. Some estates devised as impartible in Peel probably went to the eldest son, but the proportion is unknown. While Gagan originally suggested that under the "English Canadian" system the inheriting son was usually the eldest, Bruce Elliott has convincingly argued that it was most often the youngest. Ultimogeniture, rather than primogeniture, made sense for owner-occupiers. Often, the eldest son had already been provided for during the life of his father. The youngest, often still working their father's land, had the least time to wait until the father's retirement or death.³⁷

³⁵ Conversely, it is likely that partibility between sons was somewhat more common in earlier and/or less developed regions, where population pressures were less or where more and cheaper nearby land was available. Thus, partibility made more sense for many regions in the 1820's than it did when the common law was replaced. Few historians have studied the earlier period, partially because of the paucity of probated estates.

³⁶ Elliott, *Irish Migrants*, p. 203; Cohen, *Women's Work*, p. 55; and Gagan, *Hopeful Travellers*, p. 55.

³⁷ David P. Gagan, "The Indivisibility of Land: A Microanalysis of the System of Inheritance in Nineteenth-Century Ontario", *The Journal of Economic History*, (v. XXXVI, n. 1, March 1976), p. 136; Elliott, *Irish Migrants*, pp. 236, 306 n11.

Thus social practice, as revealed by existing research, conformed to neither the common law nor the central principle of its eventual replacement. The common law left all descendants but one without a share of the land (but with an equal share of the personalty). It gave the bulk of most estates, the land, to the eldest son rather than the youngest or some combination of sons. While the proposed alternative was designed to achieve the more egalitarian division of the estate's value sought by most fathers, it did so in two ways that were vigorously avoided by even more of the same fathers: the extensive division of family land and the equal treatment of sons and daughters.

The relationship between law and social practice was further complicated because contemporaries disagreed about what that practice was and the degree to which it should determine the law. Not surprisingly, opponents of primogeniture emphasized the commitment to multiple heirs and the likelihood that the eldest son had already been provided for.³⁸ Supporters of primogeniture countered that farmers avoided excessive partitioning of land and rarely adopted equal partibility. Moreover, they pointed out that the eldest son might use his inheritance to assume parental responsibilities over his siblings.³⁹ Within limits, what constituted "social reality" was itself open to dispute and interpretation. So was its degree of relevance. To what extent should a generalization about present individual testamentary decisions determine a law regulating *future* conditions? The question was especially pressing when other factors deserved consideration, including the macro-implications of these individual decisions, national

³⁸ For instance, the Ernest Town grievance, *Kingston Chronicle*, 12 December 1819; Hamilton, *Kingston Chronicle*, 2 December 1825; Bidwell, *Kingston Chronicle*, 9 December 1825; Perry, *Cobourg Star*, 8 February 1831; and Roblin, *Debates*, 30 January 1845, p. 1226.

³⁹ Robinson, *Kingston Chronicle*, 19 January 1827; and *Hallowell Free Press*, 8 February 1831; Gowan, Meyers and Seymour, *Debates*, 30 January 1845, pp. 1230, 1234, 1236; H. Smith and W. Boulton, *Debates*, 15 July 1851, pp. 834, 837, and William Robinson, p. 836 argued that while obligated to support his siblings, yeomen usually left their farms to the eldest son.

identity and the constitution.

If social practice likely fuelled some of the discontent with primogeniture (although without dictating the nature of the proposed alternative), perhaps elite behaviour helps account for the resistance of leading conservatives and the Legislative Council. Bruce Elliott, in his study of Irish migrants to Upper Canada, notes that some of the minor Irish gentry brought "the British gentry's preference for primogeniture" with them. Some, like Captain John Benning Monk, gave farms to several sons but left the homestead to their eldest son. Hamnett Pinhey, a member of the local gentry of English descent appointed to the Legislative Council in 1847, "anticipated his testamentary arrangements by naming his Canadian estate Horaceville, after the eldest son who would inherit it." These examples are from March township where a number of half-pay officers settled along the Ottawa river front and attempted to dominate local society.⁴⁰ Only further research can reveal whether similar inheritance patterns occurred elsewhere.

Given the nature of their office and their role in preserving primogeniture, the inheritance practices of Legislative Councillors are of some interest. From the nine men summoned to parliament by royal commission in July 1792 until the union of the colony with Lower Canada in February 1841, a total of 62 men were commissioned, took the oath of office, and served until their natural death or the constitutional death of the

⁴⁰ Elliott, *Irish Migrants*, pp. 206-207; and "Sources of Bias in Nineteenth-Century Ontario Wills", p. 130. See also, Michael S. Cross, "The Age of Gentility: The Formation of an Aristocracy in the Ottawa Valley", *The Canadian Historical Association: Historical Papers*, (1967), pp. 105-117.

colony. The wills of 36 of these men or about 60% have been analyzed.⁴¹ All but three left valid wills. Peter Robinson failed to appoint an executor and the two named by Aeneas Shaw refused to serve. Letters of administration were issued in both cases with their wills annexed. Thus, the law of intestacy applied to the family and creditors of only one of these 36 Councillors.⁴² Robert Jarvis Hamilton, eldest surviving of the 3 sons and 5 daughters of George Hamilton, petitioned as "Heir at Law" for letters of administration. Ironically, as a member of the Assembly, George Hamilton had voted four times to abolish primogeniture.

The significantly smaller proportion of intestacy among these Councillors than in the general population probably reflects their higher economic status and perhaps greater knowledge of the law or access to the legal profession. It also demonstrates that any elite hostility to changing the laws of intestacy was not driven by a crude desire to shape the disposition of the colony's larger estates.

Did Legislative Councillors demonstrate a predisposition toward primogeniture in their own wills? Among those who had multiple heirs, none devised all their realty to the eldest son; none wrote a will mimicking the law of primogeniture. Nonetheless, its spirit was followed by Alexander Fraser. While he partitioned his realty among his brother, grand-daughter, second son, widow, and daughters, 'Fraserville' was to descend to his son, Archibald. If Archibald should die without issue, his brother, Alexander George,

⁴¹ Sixty-nine commissions were issued but seven men were dropped for non-attendance or were never sworn in or never attended a meeting. Frederick H. Armstrong, *Handbook of Upper Canadian Chronology*, revised edition. (Toronto: Dundurn Press, 1985), pp. 55-57. These wills can be found in the AO, RG1, GS1, Records of the Probate Court, Surrogate Court of York, and Surrogate Court of Stormont, Dundas & Glengarry. The following analysis focuses on the division of real estate between siblings and therefore largely ignores personal property, bequests to more distant relations, and life estates for widows.

⁴² There is one rather complicated exception to this rule. Thomas Scott, former Chief Justice of the colony, died in 1824 and, without children, appears to have left his estate in trust to his brother in Scotland. In 1838 William Morris, the lawyer representing Scott's sole surviving heir, a sister in Scotland, petitioned for letters of administration to transfer the estate from the now-deceased brother to his client. It appears that Scott left a will but it later proved incomplete.

was to inherit Fraserville. If his second son also died without issue or declined to accept the family seat, it was to revert to a son of one of his daughters, chosen by his widowed wife, on condition that the grandson and his heirs changed their name to Fraser. Fraser divided his realty to provide for multiple heirs, but the dynastic ambitions associated with primogeniture were evident. Although he adopted the spirit of the common law for his own estate, Fraser had voted with the majority of the Assembly in 1829 to abolish primogeniture in favour of equal partibility.

An almost mirror-opposite example is provided by William Morris. He ordered all his real and personal property to be divided equally among his three surviving sons and one daughter. Since Morris' will was probated after the abolition of primogeniture, he had adopted the colony's new intestacy law. His personal adherence to the law, however, did not arise from a conviction that equal partibility was good for the colony as a whole. In 1829, Morris had voted to retain primogeniture against 33 of his fellow representatives including Alexander Fraser. Morris repeated his minority vote in 1830 (one of only four), twice in 1831, and again in 1835.⁴¹ In 1851, William Morris was the only Legislative Councillor to formally dissent from the new intestacy law.

These two cases demonstrate that individual testamentary decisions by members of the elite bore no crude relationship to their decisions as legislators. The wills of other Legislative Councillors reveal none of the hostility to partitioning land that underpinned primogeniture. They also reveal a desire to provide for other heirs well beyond the common law of primogeniture and often to a greater degree than was typical of farmers in Peel. This sample of the elite came closer to equal partibility than the population as a

⁴¹ Morris did, however, suggest a compromise to reconcile the competing claims of the impartible inheritance of land and the need to provide for several heirs. See below.

whole.

Alexander Fraser came closest to the spirit of primogeniture, but other Councillors also favoured their eldest over other sons or all their sons over daughters. Thomas Fraser left land to his two daughters, the children of a deceased son, and his third son, Hugh, but the substantial family farm was given to his two eldest sons, John and Richard Duncan. Nelles Abraham left his farm, other land and the residual of his estate to one son, Henry William, but still partitioned the remainder of his real estate to provide for other family members. Likewise, Alexander Grant Prescott's estate was to pass eventually to his two sons as "tenants in common." While unmarried daughters were to be supported and lands were devised to a widowed daughter, a married daughter, and both sons, Prescott's business and homestead went to the sons only. He appears to have assumed that the eldest would control both the homestead and business, since money was bequeathed to the younger son to enter a learned profession.

These are not strictly examples of primogeniture, but some support for its principles is still evident. In other cases, particular sons might be singled out. Peter Robinson divided his property for the support of both his son and daughter but hoped that his loyalist grant could be "assigned to my son Fredrick, so that it remains in the family and tends to strengthen his feelings of loyalty and attachment to his King." Similarly, Peter Boyle de Blaquiere left the family plate to his eldest son, but expressed the hope that he would offer half to his brother.⁴⁴ Aeneas Shaw left his entire estate to his wife to support her and their minor children. Should she remarry or die, Shaw's "Heir at Law" was to assume control over the estate to support his minor siblings. Thus, while one or

⁴⁴ Blaquiere's last will left the estate almost entirely to his eldest son but this was not from a belief in primogeniture but from pecuniary difficulties that forced the replacement of an earlier will that had divided the real estate into fifteen equal shares, nine of which were to go to various daughters.

more sons might be privileged. there was a strong desire to provide for other children. This desire usually entailed the partitioning of realty.

William Morris was not the only Legislative Councillor to adopt equal partibility. William Dickson left the bulk of his estate equally to his three sons; William Dummer Powell divided his estate equally among his son, son-in-law, and unmarried daughter; Alexander McDonell divided his estate equally among his five sons and one daughter; Archibald McLean, who had twice voted in the Assembly to retain primogeniture, also adopted equal partibility for his five sons and three daughters; and Alexander Grant did likewise for his one son and at least six daughters. William Claus left the Fief of Blainsville in Lower Canada and 15,000 acres along the Grand River to his two sons and two daughters in equal shares. Perhaps thinking of the common law of primogeniture, John Munro told his three sons that "they are all equally beloved by their old father" and left them an equal portion of the residual of his estate after bequeathing 1,200 acres each to his wife, daughters, and sons. Extensive partitioning was also practised by Robert Hamilton, Thomas Ridout, Charles Jones and Richard Cartwright.⁴⁵

As these examples attest, daughters of Councillors did considerably better by their father's will regarding real property than they would have under primogeniture. They also did considerably better than most daughters of farm families. Many did as well as they would have under equal partibility.⁴⁶ In every case, younger sons fared much better than they would have under primogeniture. This degree of egalitarianism surpassed that found in the general population and was accomplished only through the extensive

⁴⁵ The issue here is the division of ownership. A few of these bequests avoided the actual division of realty for a generation by giving it to multiple heirs together.

⁴⁶ Widows of Legislative Councillors also fared relatively well. Few women in Upper Canada were in the position of John Jonas' "dearly beloved wife Mary Elizabeth" who inherited her husband's entire estate without condition since he was "perfectly satisfied that she will do therewith as I myself would" respecting their children, including the eight sons who had survived infancy.

partitioning of realty. Partitioning posed fewer risks for the elite because they held more land to partition and because many were not primarily farmers. For merchants, speculators and professionals, land resembled other forms of capital and personal property (eg. bank stocks) more than the sole means of family production.⁴⁷

Only further research can determine more precise patterns of inheritance among the colonial elite. This sample of Legislative Councillors suggests that these patterns were close to equal partibility. With a few notable exceptions, they did not adopt the principles of primogeniture. Research on elites in colonial America has also found that aristocratic devices, including primogeniture, were rarely used.⁴⁸ These patterns are also a dismal predictor of legislative behaviour. Finally, the laws of intestacy were less likely to apply to their estates in the first place. The vast majority of members of the Legislative Council could have further concentrated landed wealth but they chose not to do so. Their economic position made them able, and most were willing, to practise a relative egalitarianism antithetical to primogeniture.

Law and social practice were in tension, particularly in the early decades of the colony. While this probably fuelled some of the opposition to primogeniture, it cannot explain the nature of the alternative or the opposition of leading conservatives and the

⁴⁷ Elliott, *Irish Migrants*, p. 206.

⁴⁸ See, Keim, "Primogeniture and Entail in Colonial Virginia", p. 552; Ditz, *Property and Kinship*, p. 30n; Narrett, *Inheritance and Family Life*, p. 8; Shammass, Salmon, and Dahlin, *Inheritance in America*, p. 56; Philip J. Greven, Jr., *Four Generations: Population, Land, and Family in Colonial Andover, Massachusetts*, (Ithaca: Cornell University Press, 1970), p. 228; James W. Deen, Jr., "Patterns of Testation: Four Tidewater Counties in Colonial Virginia", *The American Journal of Legal History*, (v. XVI, n. 1, January 1972), pp. 162, 173-174.

Legislative Council. Moreover, commentators disagreed about what those social practices actually were. These practices reflected several, potentially conflicting, principles. Which of those principles to enshrine in colonial law, their long-term consequences, and the value judgements to be placed on them, were not questions that could be determined solely by social reality.

Another nagging question remains. Why did no compromise emerge? Sufficient common ground seemed to have existed between the inheritance patterns of the general population and the elite to devise a rule that reflected those practices more than either primogeniture or equal partibility. Two basic principles seemed widespread: the desire to provide in some form for all children, and a commitment, where land represented livelihood, to keep it in viable units. Equal partibility was one rule of descent that reflected the first of these commitments while primogeniture was one rule that reflected the second. Other rules might have incorporated both.

During debate on Bidwell's bill to abolish primogeniture in 1831, William Morris moved to strike a select committee to consider "a modification of the law of primogeniture which would entitle the younger branches of children, whose father dies intestate, to claim from the heir at law a certain portion of the value of any real estate which the intestate may die seized of, and that Messrs. Attorney General and Bidwell do compose the said committee." The most articulate proponents of the different rules were to consider a compromise whereby the eldest son would still inherit the land but his siblings would be supported from that land. The compromise was a considerable movement toward the "English Canadian" system that would later come to dominate inheritance in many farm communities.

Morris' amendment was lost 14 to 20. Ten of the 14 voted to retain primogeniture

when the amendment was lost. They included John Beverley Robinson. Christopher Hagerman was the only one to vote to retain primogeniture who had refused to support the compromise. On the other side, only three members supporting the committee went on to vote for Bidwell's original bill. Leading proponents of equal partibility, including Bidwell and Peter Perry refused to consider the compromise, guaranteeing the defeat of their measure in the Legislative Council and the retention of primogeniture.⁴⁹

In the previous session, Bidwell added a provision to his bill empowering three freemen chosen by the Surrogate Court judge, "when they should judge it best, on account of the smallness of the property or any local circumstances, instead of dividing it, to appraise it, and then, unless some one or more of the heirs would take it, with the consent of the rest, at that appraisal, and pay the others their proportion, the judge was to have it sold, and the avails divided amongst all."⁵⁰ Here was a mechanism which, while it treated all sons and daughters equally, attempted to avoid excessive partitioning of land. This provision was included in subsequent bills to abolish primogeniture.

What is surprising is how little comment it produced. The debate continued much as before. While the select committee of the Legislative Council provided detailed criticism of the process whereby three freemen would exercise these powers, both sides continued to debate the merits of equal partibility as if it entailed the actual division of real estate. This was not necessarily the case.⁵¹ Bidwell's incorporation of this mechanism offered another compromise, but one that leaned more toward equal

⁴⁹ *Journals*, 11th Parliament, Second Session.

⁵⁰ Bidwell, *Mr. Bidwell's Speech on the Intestate Estate Bill, in the provincial Assembly of Upper Canada, January 24, 1831*, (n. d., S. Midds, Printer), p. 1; and also Bidwell, *Christian Guardian*, 5 February 1831.

⁵¹ In Bucks County, Pennsylvania, where a similar provision existed, 27 intestate estates were appraised between 1752 and 1765. Actual partitioning was recommended for only three. Shammas, Salmon and Dahlin, *Inheritance in America*, p. 66.

partibility. Morris's leaned toward primogeniture. Both received little comment. No further attempts at compromise were made.

In part, this merely reflected the nature of the international debate. British legal commentators and travellers such as James Humphreys and James Paul Cobbett contributed to the science of politics by comparing the British experience of primogeniture and France's experience of equal partibility under the Code Napoleon. Their observations were read in Upper Canada and occasionally excerpted in local newspapers.⁵² The failure, however, to more seriously examine common ground suggests two further points: first, many continued to believe that equal partibility would normally result in the actual division of real estate, and second, some believed they had decisive arguments that had little to do with either the size of land holdings or the desire to provide for multiple heirs.

One of those arguments (and therefore part of the explanation for the lack of compromise) involved the degree to which the issue of primogeniture became part of a larger cultural war over national identity. Nova Scotia could be sanguine about retaining New England's pre-revolution laws, but Upper Canada was very much a post-revolution

⁵² See for instance, Humphrey's *Observations on the Actual State of the English Laws of Real Property with the outline of a Code*, excerpted in *Quarterly Review* and copied, *U. E. Loyalist*, 13 January 1827. The relevant sections of James Paul Cobbett's *A Ride of Eight Hundred Miles in France, 1824*, were copied in the *Royal Standard*, 9 November 1836. On France, see also "France - Primogeniture Laws", *Colonial Advocate*, 17 October 1833 and Montesquieu, *Upper Canada Herald*, 20 June 1826. The sweeping away of primogeniture, along with the king's head, in the early years of the French Revolution was unlikely to lead to a more generous assessment of the motives of Upper Canadian advocates of the measure. John Beverley Robinson quoted extensively from a recent discussion of Irish agriculture in the *Edinburgh Review*, *Canadian Freeman*, 1 December 1825. Bidwell cited Lord Humphrey's observations from his travels to the Netherland, *Hallowell Free Press*, 8 February 1831. Common law authorities, especially Blackstone and Matthew Hale, were also cited frequently.

creation. In the years following the War of 1812, diverse issues were bound together in a cultural war between essentially British and American identities. Primogeniture was tied to the former and equal partibility to the latter. Such a construction was not conducive to compromise.

John Strachan's response to the Ernest Town grievance appeared anonymously in the *Kingston Chronicle*. He admitted that

the education, habits, and manners of some persons among us, [are] uncongenial enough with those of England, to be sure, yet there are also others, who think it their greatest pride, and make it their first boast, that their educations, habits, and manners, are congenial with those of the most glorious nation on earth, and who would look with a most jealous eye on any departure from a system of laws, wisely framed, on a model the most perfect the world has known.

To claim, as the Ernest Town grievances had, that Upper Canadians found a central principle of English common law uncongenial "slanders the public feeling...we cannot admit it without degradation; or, if forced to confess it, we must feel, that a nearer resemblance should be the great object we should aspire to; that we should draw closer the chain which binds us, not sever the links."⁵³ The colony was to be British - not just in a juridical sense, but in its social and political complexion. Being "British" meant adopting "a model the most perfect the world has known."

Such cultural chauvinism was a transparent attempt to portray opponents as "disloyal." Nonetheless, construing opponents of primogeniture as "Americans" was not without some truth. First, it was credible given the legal history of the former colonies. As already noted, after 1798, Upper Canada was the only jurisdiction in North America retaining primogeniture. The American Revolution may not have been the most

⁵³ letter to the editor, *Kingston Chronicle*, 5 March 1819; and AO, Macaulay Family Papers, John Strachan to John Macaulay, 25 January 1819.

important cause of its disappearance in the former colonies, but it was the occasion and provided some of the arguments. Thomas Jefferson was only the best known republican to insist that primogeniture was essentially monarchical. Many Upper Canadians agreed.

Second, the charge made sense given the existing population. While a large portion of Upper Canada's Loyalists came from New York, where primogeniture was only abolished in 1787, another significant portion migrated from Pennsylvania where partible inheritance had been the law since at least 1706. The much larger post-loyalist American population came from jurisdictions where primogeniture had never existed or where it had been abolished in favour of equal partibility. Thus, except for a portion of the loyalists, only English immigrants came to Upper Canada from a jurisdiction with primogeniture.

Third, the early campaign against primogeniture in Upper Canada was probably dominated by recent American immigrants lacking any real constitutional or cultural commitment to Britain. The chief promoters and authors of the "Grievances as stated by certain inhabitants of Ernest Town" are unknown. The agitation surrounding Robert Gourlay certainly appealed to recent American immigrants - immigrants from a country that had recently invaded Upper Canada. Another two hundred men from Ernest Town addressed the Lieutenant Governor, Sir Peregrine Maitland, in January 1819, to express their loyalty and lack of support for the Ernest Town grievances. One of these was Peter Perry, son of a Loyalist veteran of the American War of Independence.⁵⁴ Ironically, Peter Perry became a prime proponent of the abolition of primogeniture, introducing the measure in the Assembly on four occasions. The only politician more closely identified with the campaign was Marshall Spring Bidwell.

⁵⁴ H. E. Turner, "Peter Perry", *Dictionary of Canadian Biography*, (DCB) v. VIII, pp. 694-699.

One of the supporters of the Ernest Town grievances in 1818 was probably his father, Barnabas Bidwell. An adherent of Thomas Jefferson's and a prominent Massachusetts politician, Bidwell fled to Upper Canada under suspicion of financial irregularities while treasurer of Berkshire County, Massachusetts. In 1811 he became a school master in Ernest Town. While the extent of his involvement with the Gourlayites is unclear, he clerked with the Gourlayite lawyer, Daniel Washburn, and wrote "Sketches of Upper Canada," later published by Gourlay. After winning a by-election in November 1821, one of his first acts was to introduce a motion to abolish primogeniture. Leave to introduce his motion was denied by a vote of 10 to 16. The very introduction of such a measure was deemed inappropriate in a British legislative institution. As Christopher Hagerman put it, "if they passed the present bill, they would be departing from every thing venerable, noble, and honorable."⁵⁵ On January 4th, 1822, the Assembly decided that Barnabas Bidwell himself was not suitable to be a member of a British legislature.⁵⁶

That the measure to abolish primogeniture was introduced into the Upper Canadian Assembly by a former Attorney-General of Massachusetts and known republican must have appeared to many as conclusive proof that it was only part of a broader campaign to Americanize Upper Canada by politics rather than armed force. The Attorney-General made the connection abundantly clear when the issue re-emerged in 1825. Robinson "could easily understand that that proportion of our population which had come from the neighbouring Republic," desired to see primogeniture abolished.

⁵⁵ Hagerman, *Kingston Chronicle*, 11 January 1822.

⁵⁶ G. H. Patterson, "Bidwell, Barnabas", *DCB*, v. VI, pp. 54-58; and Craig, *Upper Canada*, pp. 115-116. Amicus Curle, *Kingston Gazette*, 18 November 1817 included a draft bill which was quite similar to those later introduced to abolish primogeniture. The wording of the letter is also very similar to that of the Ernest Town Grievances. This suggests that Bidwell, then living in Kingston, was involved in both. It was also implied by Cato, *Kingston Chronicle*, 10 March 1826, that a series of letters attacking primogeniture by Justinian to the *Upper Canada Herald* in 1826 were written by the elder Bidwell.

"Their attachment to the constitution and system of laws to which they had been accustomed from their infancy, was perfectly natural and was neither to be wondered at nor blamed." Nonetheless, Robinson insisted that it was also reasonable "that they who had voluntarily come from a republican country to reside here as subjects of a monarchy, should acquiesce in institutions which they found established here, and which were congenial to our form of government." Robinson had no doubt that the swelling number of British immigrants would insist upon retaining primogeniture.⁵⁷

Some of the resentment and near-hysteria of the period came through when "Catharus," unable to resist sarcasm, pointed out that if primogeniture were abolished, loyal British subjects would still be free "to return home again, and leave the country to the aliens, Americans, whose prejudices and feelings alone deserve regard." Warming to his theme, he argued that any popular prejudice against primogeniture had come from the United States, and was merely "the forerunner of other measures hostile to our connection with the greatest and most magnanimous nation in the world." He concluded, "are we, who are British subjects, to permit a few adventurers...to change our laws and constitution, and to trample our prejudices, our feelings, and our interests under foot - I trust not. This is a British Province, and every thing in it should be British."⁵⁸

National identity appeared in later debates on primogeniture but in far more muted tones.⁵⁹ It was a weapon used by supporters of primogeniture to short-circuit debate by

⁵⁷ Robinson, *Canadian Freeman*, 1 December 1825. George Hamilton responded to the Attorney - General that "if the government of this colony induced thousands of these people to come in and settle here, why not consult their wishes, and even their prejudices?" The battle-lines of the "alien question" were already drawn.

⁵⁸ Catharus, *Kingston Chronicle*, 16 December 1825.

⁵⁹ Robert Baldwin's reference to the intestacy laws of the neighbouring republic in 1845, quoted at the beginning of this chapter, led A. H. Meyers to deny "that the institutions of the United States ought to have any influence over those of this Colony; the people of Upper Canada recognised no influence but that of the Mother Country." Meyers was reportedly met by "tremendous cheering" in the House. Such a collective expression of national identity had much to do with the recently concluded and bitter election of 1844. It had seen the narrow defeat of reformers in Upper Canada, accused of forsaking the British

ruling the arguments against primogeniture out of contention as disloyal, illegitimate, and motivated by the national prejudices of an alien state. Such arguments did not have to be rationally engaged. As the select committee of the Legislative Council put it, "Your Committee have not felt it necessary to give much consideration to its details from a conviction, that the proposition for making Real Estate distributable like Goods and Chattels is such a departure from one of the first principles of the Laws of England as is never likely to be sanctioned."⁶⁰

The committee was wrong. Argument rather than assertion, reason rather than prejudice, was necessary. Despite repeated usage, national identity proved an ineffective weapon. Even in 1825, the Attorney-General was one of only four members who voted to retain the English common law. The other 25 elected representatives could hardly be dismissed as "a few adventurers." In 1829, Donald Bethune, representing Kingston, claimed that if primogeniture were abolished, "he would abandon the country...All that was honourable and virtuous would flee from it, and none but demagogues, and the very dregs of society would be left behind." The desire to abolish primogeniture "must lead to anarchy and rebellion, and might, if not checked in the bud, uproot every thing that was British and monarchical." Not only did the bill pass but Bethune's outburst was reportedly met by "long and continued bursts of laughter." The moderate reform-oriented *Upper Canada Herald* chastised him for disturbing "the gravity of the Assembly by a farcical speech."⁶¹ If the issue of primogeniture had been successfully construed as one of national identity and loyalty to Britain, it would not have achieved its repeated levels of

constitution, by supporters of the Governor. The immediate aftermath of the Metcalfe crisis was hardly an auspicious time for reformers to be making favourable references to American law. *Debates*, 30 January 1845, pp. 1233-1234.

⁶⁰ Report of the Select Committee, *Christian Guardian*, 28 March and 4 April 1832.

⁶¹ Bethune and editorial, *Upper Canada Herald*, 25 February 1829.

support in the Assembly.

It was too easy for opponents of primogeniture to question the assumed relationship between intestacy laws and Britain's stature. They could argue that even if primogeniture suited Britain, North American circumstances were substantially different. They could point to other British colonies that had not adopted primogeniture, or they could point out that primogeniture, like the feudalism of which it was a part, was largely a Norman imposition. In short, the very meaning of "British," the value to be placed on it, and the ability to transplant it to Upper Canada were contested. This was as true for the British constitution as it was for the common law. This does not mean, however, that appeals to British identity were insincere or inconsequential but, even when making such appeals, supporters of primogeniture were forced to fight argument with argument. In so doing, they repeatedly referred to the experience of France, the Netherlands, Ireland, Scotland, Lower Canada, and China, as well as to England and the United States. All provided relevant historical experience with which to judge various intestacy laws. In public debate, the politics of identity was insufficient.

Most of the public debate on primogeniture fell into two broad classes: constitutional and socio-economic.⁹² Many statements of cultural chauvinism merely asserted a necessary connection between primogeniture and the British constitution. In 1836, "A British Constitutionalist" appealed to York farmers to reject radical candidates

⁹² Other arguments were employed, including appeals to equity, simplicity, and the natural rights of all children, but they were secondary and have been largely ignored here. The following discussion concentrates on the pre-rebellion phase of the debate.

because they were pledged to such measures as the abolition of primogeniture, "a point of the highest importance to the British Constitution."⁴ In 1821, William Warren Baldwin insisted that

the subdivision of land had too much of the Agrarian system in it; by it society would be condensed, and Aristocracy, upon which the happy Constitution of Great Britain rested, would be destroyed. He would wish to see the principles of Aristocracy supported in this Colony to preserve the constitution conferred upon us by the British Government, and not run into a scheme of Democracy by establishing new fangled laws...⁴

While the elder Baldwin abandoned his support for primogeniture in 1829, his contentions remained: democracy rested upon greater social equality than monarchy; aristocracy was desirable; and an aristocracy was required by the British constitution. According to the Solicitor-General, "a well regulated aristocracy was essential to the happiness and good government of any people."⁵

For John Beverley Robinson, republics, both ancient and modern, might do away with primogeniture, but "we were not citizens of a republic, we were the subjects of a monarchy, and wished to continue so: whatever, therefore, was most consistent with our own form of government, was that which we ought to prefer." With Britain's balanced constitution, aristocracy helped to prevent monarchy from degenerating into despotism and democracy from degenerating into anarchy. As John A. Macdonald put it 1845, "the law of primogeniture was the great bulwark between the people and the Crown, and the Crown and the people." An attack on primogeniture was an attack on aristocracy. As long as the British constitution was seen as an example of mixed monarchy, an attack on aristocracy was an attack on the constitution. For conservatives, if Upper Canada lacked

⁴ A British Constitutionalist. To the Independent Electors of the Metropolitan County, *Patriot*, 17 June 1836.

⁴ W. Baldwin, *Kingston Chronicle*, 11 January 1822.

⁵ Hagerman, *Cobourg Star*, 8 February 1831.

an aristocracy, its laws should help create one. For Robinson, abolishing primogeniture would "abolish all hopes of ever attaining to the same state of Society as existed in England, which he thought desirable."⁶⁶ The constitution could not be separated from the social structure; any law vital to the latter was part of the former.

The argument was at least credible. Primogeniture was an aristocratic device and the theory of mixed monarchy entailed some form of social inequality. A pro-aristocracy interpretation of British history and the celebration of that nation's achievements was hardly unique to Upper Canadian Tories. Nonetheless, such arguments derived much of their resonance from the broader cultural war in which primogeniture was only a small part. To give in, even on the smallest issue, was but the first step toward repeating the American Revolution.

Outside of such a context and applied only to intestacy laws, such constitutional arguments appeared weak. First, only the land of those dying intestate was at stake. As Robinson himself noted, the elite was less likely than others to die without a valid will. The land of those most able to create an aristocracy was the least likely to be subject to the laws of intestacy. Intestacy law was also a particularly inefficient tool to create an aristocracy. Entail or "strict settlement" by individual testators was much more effective in concentrating landed wealth both within families and across generations.

Thus, one could agree that aristocracy was beneficial to society and vital to the British constitution without supporting the retention of primogeniture. Quoting the annals of Tacitus, Charles Fothergill pronounced that "the most perfect system of government [was] where the aristocratic and democratic parts are equal; this system seems to be

⁶⁶ Robinson, *Canadian Freeman*, 1 December 1825, *Kingston Chronicle*, 19 January and *Upper Canada Herald*, 23 January 1827. See also Strachan's response to the Ernest Town grievances, *Kingston Chronicle*, 5 March 1819.

brought to great perfection in England." Fothergill's only objection to the abolition of primogeniture was his concern that it might "strike at the very root of aristocracy, that he wishes anxiously to exist, with a view to the establishment of a House of Peers in this Province." He still voted to abolish primogeniture.⁶⁷

Second, while constitutional arguments never disappeared, they became less prominent. They were conspicuously absent from the 1831 select committee report of the Legislative Council - a body that rarely missed an opportunity to lecture the colony on the nature of the constitution and their equivalence to the House of Lords. While the tory *Cobourg Star* desired more debate on Bidwell's bill in 1831, since "it seeks the subversion of a principle that has long been considered a main bulwark of our Constitution," it hastily added that "we by no means wish to be understood that such is our opinion."⁶⁸ Robinson and Hagerman had failed to convince even the sympathetic that primogeniture had to be retained with the same vehemence and for the same reasons as an appointed upper house or monarchy itself. After the rebellion, mixed monarchy became an increasingly minority interpretation of the British constitution, and thus the force of the connection between the British constitution and aristocracy further declined. Like appeals to national identity, arguments deduced from monarchical government declined over time.

Finally, opponents of primogeniture had strong counter-arguments. They simply denied that intestacy law had constitutional implications. The British had placed no restrictions on the right of the colonial parliament to legislate in this area. Other British colonies had not adopted primogeniture. M. S. Bidwell also tried to sever the connection

⁶⁷ Fothergill, *Canadian Freeman*, 1 December, and *Kingston Chronicle*, 2 December 1825, and *Upper Canada Herald*, 4 March 1829. His newspaper had supported its abolition without reservation a year earlier, *Weekly Register*, 15 April 1824.

⁶⁸ *Cobourg Star*, 8 February 1831.

between republicanism and equal partibility by pointing to monarchical countries without primogeniture. China was his only example. More effective was Bidwell's contention that primogeniture was a feudal remnant imposed by the Normans "at a time unfavourable to the principles of civil liberty." Just because the law was ancient did not mean that it should be venerated along with the other "Saxon" principles of trial by jury and representation.⁶⁹

Opponents of primogeniture could have stopped there, but they made two further arguments: first, that aristocracy was undesirable, and second, that equal partibility had liberal political implications. Such arguments lent credence to suspicions that the campaign to abolish primogeniture was motivated by a desire to move Upper Canada closer to the image of its republican neighbour.

Peter Perry thought that the tendency of primogeniture was "unquestionably, to produce gradually a landed aristocracy; to throw into the hands of a few all the land, all the wealth of the country, and to leave the majority, without any real estate." Any law tending to prevent such concentration deserved support. For Bidwell, such a concentration was "one of the greatest evils" that could befall the colony. He attacked the concentration of landed wealth in England which had partially arisen from the "aristocratic tendency of the law of primogeniture to aggrandize a few and reduce the multitude to a servile and beggared, and frequently a distressed condition." By helping to maintain an aristocracy, primogeniture also created "a peasantry reduced to pauperism." Bidwell mocked Robinson for his desire "to behold a provincial Lord going forth in a

⁶⁹ Bidwell, *Canadian Freeman*, 1 December and *Kingston Chronicle*, 2 and 9 December 1825; *Mr. Bidwell's Speech...1831*, p. 2; *Substance of Mr. Bidwell's Speech...1832*, pp. 25-26, 28. For Peter Perry, "primogeniture was an ancient law[.] a vestige [sic] of the feudal system, but it was no part of the English constitution, any more than the poor laws or bankrupt laws." Perry, *Upper Canada Herald*, 25 February 1825.

splendid equipage, and with a numerous retinue of proud and lazy and liveried menials, and to see ten or twenty miles square of fine land enclosed with a lofty wall, as his Lordship's park...It might gratify the aristocratic tendencies of the honorable and learned gentleman to have a snug provincial code of game laws, under which the poor plebeian should be liable to be sent to Botany Bay, if he had the audacity to kill a partridge or a hare." Upper Canada was fortunate in its lack of such an aristocracy: it should amend its laws to prevent any from developing.⁷⁰

Bidwell's stinging rejection of aristocracy rested on an alternative ideal. Without aristocrats there would be no "menials," "plebeians," "peasants" or "paupers." Proud and independent yeomen dominated a healthy social structure. Game laws and enclosed parks were its antithesis. Bidwell embraced the political implications of this ideal. Equal partibility would increase the number of property-holders, thereby increasing the number of people with a permanent stake in the colony's tranquillity and prosperity. "Instead of a peasantry, let us have a yeomanry: and the country, on the one hand, would be more free, and all its liberal and popular institutions be supported with more spirit; and, on the other, the Government, within the just limits of its constitutional power and influence, would be vastly stronger." "[T]he country would be more free, more moral, more happy, if there was a pretty equal diffusion of property." Peter Perry also waxed eloquently on the theme that, "a country was most happy and most virtuous where wealth was nearly-equally diffused through the community; when none were very rich or very poor."⁷¹

With a property-based franchise, any increase in the number of property-holders

⁷⁰ Perry, *Upper Canada Herald*, 25 February 1825; Bidwell and Hamilton, *Canadian Freeman*, 1 December 1825; Fothergill, *Upper Canada Herald*, 4 March 1829; *Substance of Mr. Bidwell's Speech...1832*, pp. 14, 16, 23; and *St. Thomas Liberal*, 2 November 1832.

⁷¹ Perry, *Upper Canada Herald*, 25 February 1829.

increased the size of the electorate. Conversely, the concentration of land ownership promoted by primogeniture restricted the size of the electorate and would allow the Assembly to "degenerate into a sycophantic office for registering the decrees of the Executive." Bidwell conceded that "there might be well-founded objections" to extending the franchise beyond property-owners but he was committed to an extension "by multiplying the number of freeholders, and increasing them in proportion to the whole population." Thus the political, as well as the social, effects of equal partibility were "salutary and favourable."

In short, Bidwell's framework was remarkably similar to Thomas Jefferson's: hostility to a landed aristocracy, belief in the benefits of a wide distribution of property-ownership which would also eliminate poverty, adherence to the myth of the Norman yoke and Saxon democracy, and a reliance on independent yeomen. The function of intestacy law was also similar. Like Jefferson, Bidwell would not "forbid, the accumulation of property, but I would adopt such laws as have a gradual tendency, without interfering with the free acquirement or disposal of property, to counteract the approximation which is always produced in society by other causes, towards an unequal division of it."⁷² Equal partibility would promote core values, but those values were not to be pursued at the expense of property rights or a permissive inheritance system.⁷³ William Baldwin's reference to the Agrarian system was not inaccurate. Neither were conservatives' suspicions. Bidwell may not have attacked the institutional superstructure of the British constitution, but his enthusiasm for a republican social base and its political

⁷² Bidwell, *Canadian Freeman*, 1 December and *Kingston Chronicle*, 9 December 1825; *Mr Bidwell's Speech...1831*, pp. 3-4, 8; and *Substance of Mr. Bidwell's Speech...1832*, pp. 15-16, 19-22.

⁷³ On Jefferson, see Katz, "Republicanism and the Law of inheritance in The American Revolutionary Era", pp. 12-29.

consequences was clear. Could mixed monarchy thrive in the context of such a social ideal? John A. Macdonald was not alone in thinking that "it was folly to raise a Monarchical structure upon a Republican foundation."

Further, many of the most articulate supporters of primogeniture did not share Bidwell's social ideal. In general, they favoured and predicted the inevitability of a more varied social structure. The desirability of an aristocracy was only one component. They also argued that, ironically, the yeomanry eulogized by Bidwell was better protected under primogeniture than equal partibility.

In 1825 "Catharus" laid down three facts: "first, that the farms here are, in general, small; that the people are prolific; and that none are willing to go into the forest while they can vegetate upon the land in the neighbourhood of our great waters." Equal partibility would produce excessive subdivision of farms. Heirs would subsist on smaller plots because remaining near settled areas was preferable to subduing the backwoods. In a single generation, a one hundred acre farm would be divided into five to seven equal parts, each with its own frontage and buildings. The alternative of one heir compensating others with money was also ridiculous. Most farms already carried substantial debt. What farm could sustain existing mortgages while assuming further debts to other heirs amounting to four-fifths or six-sevenths its value?⁷⁴ Neither was a fast track to sturdy independence.

As supporters of primogeniture pointed out, owners of smaller farms were more likely to die intestate. Equal partibility would apply disproportionately to those farms least capable of being divided. Pointing to Lower Canada and Ireland, Christopher Hagerman argued that such division would "destroy a spirit of enterprise - many would

⁷⁴ Catharus, *Kingston Chronicle*, 16 December 1825.

thereby be induced to settle down on little pieces of land, like potato gardens, instead of emigrating further into the interior, clearing away the forests of the country, enlarging its cultivated fields, and promoting its agricultural interests and public enterprise."⁷⁵ Bidwell and his supporters feared that by concentrating land ownership, primogeniture would create a peasantry. Supporters of primogeniture such as Robinson, William Dunlop, Henry Smith, W. Badgley and John A. Macdonald feared that the farms of yeomen would be divided into parcels fit only for subsistence peasantry. As Macdonald put it, "that which was a comfortable farm house in one generation, [would become] a cottage in the second, and a hovel in the third; and under it, agriculture, instead of becoming a science, would be degraded, as it was in Ireland and France, to a mere means of life."⁷⁶ Primogeniture would preserve more-efficient farm sizes, and force younger sons to seek opportunities other than subsistence peasantry. They would develop "the spirit of enterprise."

Equal partibility, by giving them small plots of land, would also allow them to marry earlier and thus increase the population. Opponents of primogeniture generally welcomed the subdivision of land and the resulting population increase. Both were precisely what the young colony needed. Further, smaller parcels of land would be better cultivated. Bidwell "wished to see the country cleared and cultivated like a garden." Moreover, he was convinced that primogeniture would eventually create "a dependent population, hanging loose upon society and without any considerable interest in its prosperity and peace." In fact, he quoted Adam Smith on the greater benefits to society

⁷⁵ Hagerman, *Cobourg Star, Hallowell Free Press*, 8 February 1831.

⁷⁶ Robinson, *Canadian Freeman*, 1 December 1825; Dunlop, Macdonald, *Debates*, 30 January 1845, pp. 1232, 1237; 15 July 1851, pp. 834, 838.

from freehold agriculture than from other forms of economic enterprise.⁷⁷ Again, the agrarian ideal was paramount.

In an influential article, Leo A. Johnson has argued that land policy in Upper Canada was designed to create a landless class that would reduce the costs of labour, make the employment of capital easier, and create a more diversified economy and social structure.⁷⁸ Marshall Spring Bidwell suspected that the same intentions motivated support for primogeniture. It was, however, recognized that the large scale population growth that might generate such a labouring pool was more likely to arise from equal partibility than primogeniture. Under primogeniture, all but one child from each intestate family would be pressured to postpone marriage as a result of not inheriting land.⁷⁹

While some of Bidwell's opponents feared population increase due to the subdivision of land,⁸⁰ most usually saw younger sons moving from settled areas to clear the backwoods, and thus foresaw, at least in the medium term, an expanding class of independent farmers. Nonetheless, they were aware that, unlike the United States with its vast reserves of unsettled western land, Upper Canada would not be able to provide adequate farm land for its entire population indefinitely. In short, Robinson and others saw primogeniture contributing to the long-term maintenance and extension of a yeoman class combined with the forced migration of others, some of whom would enter different economic activities. The alternative was a gradual and wider slide toward subsistence

⁷⁷ Bidwell, *Canadian Freeman*, 1 December 1825; *Mr. Bidwell's Speech...1831*, pp. 5-6; *The Substance of Mr. Bidwell's Speech...1832*, pp. 17-18.

⁷⁸ Leo A. Johnson, "Land Policy, Population Growth and Social Structure in the Home District, 1793-1851", *Ontario History*, (v. LXIII, n. 1, March 1971), esp. pp. 57-58, 60.

⁷⁹ For an interesting discussion of the relationship between intestacy laws and the economy see Lee J. Alston and Morton Owen Scapiro, "Inheritance Laws Across Colonies: Causes and Consequences", *The Journal of Economic History*, (v. XLIV, n. 2, June 1984), pp. 277- 287.

⁸⁰ Cato, *Kingston Chronicle*, 13 January 1826. Robinson, *Kingston Chronicle*, 19 January 1827, feared that equal partibility would "entail a needy population on the Country." It is not clear whether this refers to excessive population growth or the development of a peasantry.

peasantry. Supporters of primogeniture expressed none of Bidwell's hostility to other livelihoods.⁸¹

Social historians would find much to debate in these competing arguments. Upper Canadian commentators were reasonably well aware of the influence of inheritance on geographic mobility and fertility. Supporters of primogeniture rightly insisted that intestacy was more common among average farmers than large land-holders. They were also right to insist that most farms were too small to be divided equally among a family's children. In 1851, 83% of farms in Essex County were one hundred acres or less. Opponents of primogeniture, however, were probably right to insist that a more intensive agriculture was still possible since only 27% of the land in the Western District (including Essex) was under cultivation in the same year.⁸² It is important to remember, however, that the farmers who owned this land did not practice equal partibility. They tenaciously maintained efficient, even extravagant, farm sizes.⁸³ Moreover, while some of the consequences emphasized by opponents of primogeniture made sense where nearby land remained available or was under-cultivated, they could not be sustained in the long term. Thus, some of the competing predictions rested on different time frames. Primogeniture was abolished when the social arguments in its favour were increasingly credible. The opposing social arguments had already been developed and continued to find an audience

⁸¹ The frequent references made to primogeniture as "feudal" by its opponents might suggest that the campaign to replace it was part of a move to capitalism. As already evident, it was the supporters of primogeniture who wished to encourage geographic mobility, farm sizes capable of producing a marketable surplus and the development of non-agricultural classes. Moreover, in arguing that equal partibility would make it significantly more difficult to recover debts or secure clear titles, it was Robinson and the Legislative Council who invoked the needs of a capitalistic land market. The opposite of feudalism was not capitalism but a non-hierarchical social and political system. By devaluing primogeniture because it was "feudal," Perry and Bidwell were, by implication, devaluing the ancient British constitution.

⁸² Leo A. Johnson, "The State of Agricultural Development in the Western District to 1851", *The Western District*, (Windsor: The Essex County Historical Society and the Western District Council, 1983), pp. 121, 127.

⁸³ This is a central conclusion of Gagan, "The Indivisibility of Land", esp. pp. 127-128.

despite changing circumstances.

Examining this debate highlights two factors that were not prominent: gender and religion. Since, unlike primogeniture, equal partibility treated female and male heirs equally, it is tempting to place it in the context of other changes to the legal status of women: improvements in mothers' custody rights in 1855 and the 1859 "Act to Secure to Married Women Certain Separate Property Rights." The nature of the debate, however, suggests that such a context is inappropriate.

A few months prior to the abolition of primogeniture, the *Hamilton Spectator* published the first in a promised series of letters "On the Rights of Women." A future number in the series would discuss primogeniture.³⁴ It never appeared. This minor incident is strangely indicative of the role of gender issues in the debate about intestacy law. Equal partibility entailed a gender equality that was not practised by Upper Canada's farmers, yet there was a striking absence of debate on this point.

In 1848, a radical reformer attacked primogeniture, in part, because it was "common sense...that girls should receive as much as boys."³⁵ This, however, was the only clear criticism of primogeniture for privileging male over female heirs. Supporters of equal partibility insisted that parental love extended to all children equally and that "all the children have an equal claim on the father."³⁶ Occasionally this commitment to equity was expressed in gender-specific terms. The *Christian Guardian*, listing the abolition of

³⁴ *Hamilton Spectator*, 12 April 1851.

³⁵ John Galt, "Thoughts No. 2", *Huron Signal*, 16 June 1848.

³⁶ Bidwell, *Kingston Chronicle*, 2 December 1825.

primogeniture as a key reform goal, added that realty should be "equally divided among the children, male and female."⁸⁷ Much more common were gender-neutral terms such as "children" or "descendants."

Supporters of equal partibility believed that daughters needed or deserved support, but female heirs were rarely singled out. In 1829, Marshall Spring Bidwell argued that the eldest son, far from being the first, was the last sibling that should be privileged by the law. If intestacy law had to privilege anyone, Bidwell argued that it should point "to those who needed it most; to the youngest child and the feeblest sex." In an agricultural country, the need to support unmarried daughters necessitated partitioning real estate. Nonetheless, the exclusion of younger sons was a more damning, or at least a more frequent, criticism of primogeniture than the exclusion of daughters. It was primogeniture's disregard for both the labour of younger sons on the family farm and their long-term fate that seemed so unfair.

The next line in Bidwell's speech was telling, "in this province most men were farmers."⁸⁸ Opponents of primogeniture never envisaged that the increased inheritance of land would alter females' social or economic status. This was partially because, once married, any property they inherited would be controlled by their husbands. At times, arguments were advanced that seemed to ignore the actual provisions of the alternative being considered. For instance, Colonel Prince voted for equal partibility because "there should be a fair division among all the sons of the family."⁸⁹ Even when debating a law altering the legal treatment of females, women's farm labour, and even their existence,

⁸⁷ *Christian Guardian*, 16 May 1832.

⁸⁸ Bidwell, *Upper Canada Herald*, 25 February, and 4 March 1825. See also *Substance of Mr. Bidwell's Speech On the second reading of his intestine Estate Bill, in the Session of 1832*, (n.d.), pp. 12-13.

⁸⁹ Prince, *Debates*, 15 July 1851, p. 835.

could be forgotten.

Neither opponents nor supporters of primogeniture made much of the gender dimension of the issue.⁹⁰ Gender roles were agreed upon. Alternative rules of descent more favourable to younger sons but less so to female heirs were never seriously considered although they would have been more consistent with common inheritance practices than equal partibility.⁹¹ From the start, the debate was constructed around two alternatives, primogeniture and equal partibility. The substantial improvement in the position of the female heirs of those dying intestate was largely an unintended consequence of this construction.

Religion also received little attention in the debate. Research on colonial America has found that inheritance practices varied along ethnic and religious lines. New England's double portion system has been traced to the "passion of Puritans for biblical law;" it was a principle of the mosaic economy described in the Book of Deuteronomy.⁹² Historians of Upper Canada have yet to map similar variations. The only mention of such denominational divisions came from Charles Fothergill who remarked that "it so happened that he was brought up in the society called Quakers, and it was a custom among them to keep a will conformable to the provisions of this bill by them, dividing

⁹⁰ As the select committee of the Legislative Council pointed out, those who used gavelkind in the County of Kent as a model were mistaken. Gavelkind divided realty equally between sons but postponed female heirs in the same manner as primogeniture. The committee's point, however, was not to criticize the inclusion of female heirs, but rather, to insist that the bill which passed the Assembly, by including all children, would involve more partitioning of real estate than gavelkind. Excessive partitioning of real estate, not the inclusion of women, was the issue. Report, *Christian Guardian*, 28 March and 4 April 1832. "Cato" was the only supporter of primogeniture who came close to preferring it on the grounds that it privileged male over female heirs. Cato, *Kingston Chronicle*, 6 January 1826.

⁹¹ This was clear from what appears to be the only proposal to adopt gavelkind in Upper Canada. "Zeno" noted that "the prevailing disposition of Testaments in this country, was in favor of the ancient common Law rule of England, which divided the inheritance of Land among all the male children, equally." Primogeniture was a "barbarous and unnatural" imposition of the Normans. Zeno, *Upper Canada Courier*, 3 December 1831.

⁹² Narrett, *Inheritance and Family Life*, pp. 7-8, 201; and Shammass, Salmon, and Dahlin, *Inheritance in America*, pp. 30, 33-34, 39.

their property equally among their children."¹³

The almost complete absence of Biblical reference or religious allusion is striking. Primogeniture was frequently referred to as unjust, unnatural, or unfair. None of these carried a more specifically Christian point of reference. William Lyon Mackenzie used Deuteronomy's double portion system as an authority against primogeniture while a supporter of the common law used the same passage and others to argue that a preference for the eldest son and for sons over daughters had Biblical sanction.¹⁴ Deuteronomy appears to have been used only twice in the debate and its actual rule of descent was never seriously considered.

Extensive public debate marginalized explicitly denominational appeals. As one of many arguments in favour of primogeniture, Ogle Gowan appealed to the ultimate authority "for which Hon. Members must entertain the greatest veneration and respect, an authority no less than that great Being who had created and placed them upon this world, had in his holy writ established the law of primogeniture....in the Patriarchal ages, the great Being who formed us all, gave the precedence to the eldest son." Gowan's opponents may have venerated God, but they did not venerate his heavy-handed use of the deity in public debate. Gowan was met by ridicule and laughter.¹⁵ The rhetoric of equality within families and against the aristocratic pretensions of primogeniture may have appealed to some denominations more than others, but the debate was conducted almost entirely in secular terms.

¹³ Fothergill, *Canadian Freeman*, 1 December, *Kingston Chronicle*, 9 December 1825; *Weekly Register*, 15 April 1824.

¹⁴ Mackenzie, *Cobourg Star*, 8 February 1831; and Cato, *Kingston Chronicle*, 6 January 1826.

¹⁵ Gowan, *Debates*, 30 January 1845, p. 1229.

While the content of the debate is revealing, the very act of debating became important. Marshall Spring Bidwell was certain that "public opinion" opposed primogeniture. From the early 1830's, the concept played an increasing role in the debate. Stymied by government officials and Legislative Councillors who drew their legitimacy from the imperial state and the theory of mixed monarchy, Bidwell had little choice but to appeal to a broader public outside those institutions as a different source of legitimacy. Primogeniture was one of the first issues where such appeals to public opinion, defined as a rational consensus arising from informed public debate, were prominent. The persistent opposition of the law officers of the Crown and the Legislative Council maintained primogeniture, but unwittingly forced a repetitious public debate that helped develop the concept of public opinion. That concept undermined the very constitutional theory that legitimated their own authority.

At the beginning of his speech on the second reading on his Intestate Estates Bill in 1832, Bidwell noted that he was unlikely to marshal any new argument, but the continued opposition of government officials made yet another reasoned defence of this measure necessary. Bidwell did not regret the opportunity to rehearse the arguments in favour of his bill because "its success against such strong and formidable opposition must depend on the force of public opinion, which can only be formed and kept alive and strengthened by such clear explanations and such plain reasons as will remove prejudices and convince the understanding." Bidwell did not appeal to some sort of national sentiment, cultural trait, or the innate common sense of the people; he appealed to the collective decision of those outside of the legislature who heard and judged the competing

arguments. He referred to the people's capacity to judge the common good, not to their private testamentary decisions. Bidwell ended the speech by repeating that opposition to his bill served some good since it had "provoked discussion which will be useful...it will confirm and strengthen the public opinion."

That non-legislators had come to a decision, that "public opinion" was in favour of abolishing primogeniture, was not just one argument among many. It was both the ultimate argument and the power by which the change would be achieved. Bidwell asserted that "it is not possible for a few men, however great they may be in their own estimation, long to resist the reasonable, and well ascertained wishes of the community."⁹⁶ The previous year, Bidwell had asserted that "no man or body of men could long successfully resist public opinion, in any country, much less in a country where there could be a free discussion of public matters. They might, indeed, for a time oppose and obstruct the stream; but it would be continually accumulating and acquiring greater strength, until finally it would sweep away all opposition. When he depended upon the force of public opinion, to carry this measure into a law, he relied upon a principle, as simple, to be sure, but as certain and as powerful, as the law of gravitation." Primogeniture had been retained "because a few persons, who happened to be in influential stations, under the influence of prejudices, thought they could judge what the people wanted better than the people themselves."⁹⁷

With freedom of discussion and access to information, the people were capable of judging for themselves. As chapter five argues, by the early 1830's commentators increasingly pointed to public opinion as a new force in colonial politics, but the retention

⁹⁶ *Substance of Mr. Bidwell's Speech...1832*, pp. 1, 29.

⁹⁷ *Mr. Bidwell's Speech...1831*, p. 6.

of primogeniture graphically illustrated that the colony lacked a government based on public opinion. When a new Governor, Charles Poulett Thomson, promised the Assembly in 1840 that he would "administer the government of these Provinces in accordance with the well understood wishes and interests of the people, and to pay to their feelings, as expressed through their representatives, the deference that is justly due to them," David Thorburn, a moderate reformer, hailed the message as marking a revolution in colonial government: "What was the feeling of the people on the Intestate Estates bill, which passed this house several sessions? Was there any deference paid to the feelings and interests of the people?"⁹⁸ The debate about primogeniture had helped convince many of two things: first, that decisions about the common good could be arrived at through the deliberation of non-legislators, and second, that those decisions were not sufficiently recognized by the constitution.

In 1825, Charles Fothergill agreed that the intestate estates bill "was universally desired by the people." He also quoted Dr. Johnson to the effect "that the universal voice of the people could not be mistaken." Earlier in the same debate Bidwell had claimed that, with few exceptions, "every bill that was anxiously desired by the people ought to be adopted."⁹⁹ In 1829, Peter Perry argued that the repeated majorities in the Assembly reflected public opinion. This "was not a transient feeling, produced by any sudden excitement, but a deliberate, though strong desire, founded on a conviction of its justice and necessity." When the people had come to such a consensus, "their wishes ought to be consulted, and were...a sufficient reason, if no other could be adduced, for the adoption of the bill." By giving such prominence to public opinion and agreeing with one of the

⁹⁸ Thorburn, *Christian Guardian*, 22 January 1840.

⁹⁹ Fothergill and Bidwell, *Kingston Chronicle*, 2 December 1825.

Rolph brothers, that the Assembly "represented the feelings and wishes of the people, and it was their duty to comply with the wishes of their constituents."¹⁰⁰ Perry and Bidwell implied that the existing constitution, based on the theory of mixed monarchy, was inadequate, if not illegitimate. Public opinion and its servants, not a mixture of monarchy, aristocracy and democracy, were the basis of legitimate authority.

Bidwell soon generalized from his experience with the intestate estates bill and other measures blocked by the Legislative and Executive Councils. During a debate on judicial independence in 1834, he concluded that "public opinion does not have that influence here as it does in England...The government of England is a government of public opinion; but if the whole government of Upper Canada was opposed to public opinion it would nevertheless go on if supported by the Executive, which plainly showed it had not that weight or force that it had in England..."¹⁰¹ Constitutional debate in Upper Canada over the next two decades, discussed in part three of this study, was dominated by the meaning and institutional requirements of "a government of public opinion."

On the question of primogeniture, there was much to lend credibility to Bidwell's claim that non-legislators were capable of judging. As already noted, the issue came up so repeatedly in the Assembly that on a few occasions, debate was short or even non-existent. This was not typical. The extent to which both sides were committed to providing lengthy and reasoned justifications, even when the outcome was pre-ordained, is remarkable. One of the best speeches against equal partibility was given at third reading in 1825 by John Beverley Robinson - just after it had passed second reading and

¹⁰⁰ Rolph, *Upper Canada Herald*, 25 February 1829. This report does not distinguish between John and George Rolph, both of whom were present and both of whom voted with the majority to abolish primogeniture.

¹⁰¹ Bidwell, *Christian Guardian*, 18 December 1834.

was to pass the third with only three other members opposed. Likewise, some of the most forceful critiques of primogeniture came when Bidwell and Perry knew that their bill had no hope of becoming law.

Nor were these efforts limited to the Assembly. Barnabus Bidwell's original motion in 1821 coincided with the beginning of regular reporting of parliamentary debates by colonial newspapers, discussed in chapter four of this study. After 1821, colonial newspapers provided their readers with arguments from both sides, regardless of their own editorial politics. Thus, the Attorney-General's 1825 speech was carried not only by the *Kingston Chronicle* but also by such reform organs as the *York Observer*, *Upper Canada Herald* and Francis Collins's *Canadian Freeman* where it occupied more than a page and a half of close type. The Legislative Council's report was not only copied by such sympathetic organs as the *Patriot* and *Chronicle*, but also by one of Bidwell's strongest supporters, the *Christian Guardian*. Bidwell's 1831 speech was printed as a pamphlet and was copied and judged "able" by the *Kingston Chronicle*.¹⁰² Bidwell's next speech on the issue was also printed as a 29-page pamphlet and serialized over several months in both the *Colonial Advocate* and the *Christian Guardian*. Colonial newspapers made no claim of objectivity. They were party organs, but any active reader could learn much about the nature and extent of the opposing position from a single major paper.¹⁰³ As discussed in part two of this study, the accelerated growth of the colonial press in the 1830's and the development of public spaces and voluntary associations in which private persons might publicly exercise their reason only added to the credibility of appeals to

¹⁰² *Kingston Chronicle*, 26 February 1831. *The Christian Guardian*, 5 February 1831.

¹⁰³ Besides the papers mentioned in this paragraph, reports of Assembly debates on primogeniture can be found in the *Canadian Watchman*, *Cobourg Star*, *Brockville Gazette*, *Correspondent & Advocate*, *Hamilton Free Press*, *Hallowell Free Press*, and the *U. E. Loyalist*.

public opinion.

Not surprisingly, supporters of primogeniture remained unconvinced. One letter to the editor of the *Brockville Gazette*, denounced Bidwell's appeals to public opinion on the question of primogeniture as "democratic cant" which, given the absence of petitions, entailed "the extreme nonsense of deriving majesty and power from the people, by the authoritative mandate of their *silence*."¹⁰⁴ The relative absence of petitions was often used to deny that the majority of the people desired the abolition of primogeniture. Robinson also argued that the people were poorly informed and failed to appreciate all the implications of the proposed change. "It was the duty of the Legislature to look at every consequence."¹⁰⁵ The people were free to deliberate, but they were neither always right nor always to be heeded. Robinson was committed to a fair degree of autonomy for the Assembly from public opinion. He, and other adherents of mixed monarchy, also insisted that the other two legislative institutions, the Governor and Legislative Council, were free to disregard public opinion altogether. That was, after all, largely why they existed in the first place. The claims made for public opinion by Peter Perry and Marshal Spring Bidwell during the debates on primogeniture were incompatible with the still widely accepted axiom that Upper Canada's constitution was a form of mixed monarchy. If most came to agree with Bidwell that the people were capable of collective judgement through deliberation, mixed monarchy could no longer justify Upper Canada's constitution.

¹⁰⁴ anon., *Brockville Gazette*, 5 April 1832.

¹⁰⁵ Robinson, *Canadian Freeman*, 1 December 1825. John A. Macdonald, *Debates*, 30 January 1845, p. 1236; "There were but two legal and Parliamentary means of learning what were the opinions of the people - petitions and public meetings, and there had been neither of these in its [abolition of primogeniture] favour." This restricted view of the mechanisms of public opinion was already antiquated by 1845.

It may be banal to conclude that an explanation incorporating social, political, cultural and intellectual perspectives is superior to one that is less inclusive. It is still important, however, to stress that the debate surrounding intestacy laws in Upper Canada was not a mere articulation of social and political realities or self-interest. Equal partibility was not generally practised. Primogeniture was not widely adopted by the elite. Legislators often made decisions that bore little relationship to their own testamentary behaviour. What precisely the "social and political realities" were, was itself subject to debate and rationalization. The implications of those realities and the conclusions to be drawn from the history of other societies only added to the contested domain. Political debate was a form of action. Which arguments to make and which ones to avoid - how to advance a cause with words - were forms of behaviour as much as dispensing patronage or purchasing a piece of property.

The audience for these words extended beyond entrenched political operators and the economic elite. It incorporated an expanding, and increasingly important, public. The immediate self-interest of most of the members of this public was not affected by whether the land of those dying intestate descended to the eldest son or to all children. The consequences of either of these rules of descent and how they related to the interests, values and aspirations of this public, (or a segment of it), were not matters of social fact but of interpretation and argument. What was in any individual's self-interest was as much an intellectual construct as theories of the constitution. Finally, commentators would not have bothered to mount such extensive efforts to argue and convince if they thought it was pointless. They behaved as if, and expected their opponents to behave as if, arguments mattered. Ultimately, contemporaries believed that, under certain circumstances, arguments did matter: they could persuade, embarrass and motivate.

None of this means that the debate was somehow disembodied or disengaged. Competing intellectual constructs emerged, but they were not hermetically sealed. They were attempts to observe, understand, and shape the same social world. Contemporaries deployed competing discursive constructs, but they still understood each other. Such constructs were presented as rational arguments capable of persuading others and were thus vulnerable to being ignored, dismissed, refuted or ridiculed. In short, some arguments were more credible than others: some were not accepted as reasonable interpretations of a shared reality.

The arguments, assumptions and language employed by opponents of primogeniture eventually won out. Marshall Spring Bidwell's glorification of independent farm families had considerable appeal for a rural electorate composed largely of the male heads of such families. Bidwell's distrust of wealth and political influence gained by other forms of economic activity; his emphasis on the desire of fathers to provide for each of their children; his commitment to equality between actual and potential heads of households while not questioning inequalities within those households; his suspicion of lawyers employed by the government and appointed legislators who thought the people were incapable of judging for themselves; and his conviction that Upper Canada could be a more liberal, equal and free society than Britain must have had wide resonance for his audience. After all, the desire for landed independence and a secure future for their children was a prime reason why many had come to Upper Canada in the first place. Finally, those who were told that they constituted the most independent and reliable part of society might easily conclude with Bidwell that primogeniture was a part of feudalism where "everything was derived from the lord...But the true principle of a free government is the very reverse...It is this, that everything is derived from the people,

and held for their benefit."¹⁰⁶

Thomas Jefferson had translated this ideal into an agrarian republic sustained by independent yeomen actively exercising virtue, including the military defence of their republic. Bidwell held a roughly similar social ideal but translated it into a political vision that owed far less to classical republicanism. Those with sufficient ability and independence would engage in critical public debate about the common good.¹⁰⁷ The model for Bidwell and many other reformers, was one where male heads of household owned and worked sufficient land to render them relatively independent of material want, market fluctuations, political patronage, and other forms of dependence. The public sphere, not the *res publica* or city state of ancient philosophers, was the political manifestation of the agrarian ideal. For these reformers, the dominant social image of the public sphere was the sturdy yeoman.

The arguments to retain primogeniture had less resonance, particularly with a rural electorate. The interests and inheritance practices of these rural electors bore little immediate resemblance to primogeniture. Robinson had a point when he argued that the people were fixated on "one single proposition - is it reasonable that one son should get the whole?"¹⁰⁸ To deny land to younger sons was not merely to deny them compensation for their contribution to the family economy but to seriously jeopardize their chances of attaining the same status as their fathers - rural independence. The importance placed on this status is evident: heads of households partitioned land only to the extent that it could support at least one son as an independent farmer and most heads of household wanted to

¹⁰⁶ Bidwell, *Christian Guardian*, 29 February 1832.

¹⁰⁷ For the differences between ancient and modern publics see Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, Thomas Burger, trans., (Cambridge Massachusetts: The MIT Press, 1992), p. 52.

¹⁰⁸ Robinson, *Canadian Freeman*, 1 December 1825.

see all or most of their sons established as yeomen. The onus was clearly on supporters of primogeniture.

The argument that primogeniture was in the best interests of independent farmers was too long-term and not sufficiently convincing. Constitutional arguments appeared forced when the issue was "only" intestacy laws. Talk of aristocracy, British supremacy, alternatives to landed independence, and the limited amount of agricultural land were a difficult sell. This did not make them more or less self-interested; more or less true. It probably helps explain why Robinson was often deserted in the Assembly.¹⁰⁹ On other issues or at times of crisis, such arguments had considerably more success in rallying elected conservatives and a broader segment of the electorate.

Conservative arguments lost much of their credibility when applied to intestacy law. This loss of power to persuade or cajole was ultimately tied to a declining belief that a healthy society and constitution comprised a mixture of the monarchical, aristocratic, and democratic. Without this belief, many conservative arguments had to be recast or jettisoned. The increasingly widespread belief that a healthy society was dominated by yeoman families and that a healthy constitution was based on the political equality of the heads of those families, undercut more than the resonance of conservative arguments on primogeniture.

Membership in the Assembly, an elected deliberative body, with a colonial press free to publicize and comment on those deliberations, forced supporters of primogeniture, however great their social status or political influence, to provide reasons and arguments.

¹⁰⁹ While reform representatives dominated long-settled agricultural constituencies, conservatives were consistently successful in newer or less-developed rural constituencies as well as in the towns. See J. K. Johnson, *Becoming Prominent: Regional Leadership in Upper Canada, 1791-1841*. (Kingston & Montreal: McGill-Queen's University Press, 1989), pp. 148-154. Most of these conservatives deserted Robinson and the Legislative Council on this issue.

To remain silent, to dismiss opponents, or to hurl abuse only undermined their credibility. It also struck at their own self-image as upright benefactors of their community. Moreover, most believed they were right. They believed that there were reasons why primogeniture should be retained that were independent of their own or anyone else's private self-interest. Such reasons were capable of persuading those who were open-minded, honest, and sufficiently informed and rational. Prior to the 1840's, many conservatives believed that most non-legislators failed to meet this standard. This failure was one of the reasons they thought an aristocracy was needed. It was why they rejected republicanism and why they had doubts about "public opinion." As long as the theory of mixed monarchy remained paramount, supporters of primogeniture were not entirely dependent upon the outcome of public debate. The theory provided alternative sources of legitimacy. Once mixed monarchy was replaced by "government by discussion" in the 1840's, no such alternative existed.

The abolition of primogeniture in 1852 did not really represent the triumph of the Assembly over the Legislative Council, or of reformers over tories, or of egalitarianism over aristocracy, or of society over politics. It contained elements of each of these, but something more fundamental had changed. The pre-rebellion debates about primogeniture had contributed to the development of the concept of public opinion, but, as later chapters will argue, it was not until the late 1840's that government by public opinion replaced mixed monarchy at the heart of Upper Canadians' constitutional and social self-understanding. Public opinion developed under a constitution that failed to give it the power it demanded. Herein lay the problem.

In 1845, Robert Baldwin admitted that he had reservations about equal partibility and "saw no danger of the vast accumulation of property in a few hands arising from the

existence of the present law." "But the opinion of nine tenths of the people of Upper Canada was in favour of a change; that opinion had been growing for years. and, instead of retrograding, was still advancing...then it became a question, with him, whether, sooner or later, it would not be necessary to introduce that measure; and if, sooner or later, it must be done, then let it be done at once."¹⁰⁰ The people had decided and their decisions were to be the basis of a new constitutional order. The abolition of primogeniture was the triumph of public opinion.

¹⁰⁰ Baldwin, *Debates*, 30 January 1845, p. 1233.

PART TWO

CREATING A PUBLIC SPHERE

To a representative democracy this unofficial, unpaid, and incorruptible judicatory is an instrument of support; and in regard to it, the object and endeavour will be to maximize the rectitude of the decisions given by it ... To every other form of government, it is by correspondent causes rendered an object of terror and anxiety, though the magnitude of its power is universally acknowledged among them.

Jeremy Bentham on public opinion. 1827

CHAPTER THREE

Experiments in Democratic Sociability: The Political Significance of Voluntary Associations

The *Upper Canada Gazette* copied an article from an American newspaper in 1797 entitled, "Differences in opinion are an advantage to Society." The author was surprised that, "even in this enlightened age," many favoured uniformity and were prejudiced "against those who happened to differ from them in opinion." This was dangerous because differences of opinion "rouse the attentions, give exercise to the understanding, and sharpen the reasoning faculty." Those who wished "to see knowledge and rational principles diffused" and "to suppress such illiberal sentiments" were encouraged to support "literary societies for mutual improvement. It is by such means that reason will resume her sovereign authority, and speedily banish the remains of bigotry and illiberality of sentiment from civil Society."¹ In many voluntary associations, people grew accustomed to coming together to further common goals, to working with others of different socio-economic, religious or ethnic backgrounds, to devising and abiding by mutually agreed upon rules, to discussing topics of common concern, to speaking in front of others, to listening to others with opposing views, and to disagreeing without attacking the speaker or attempting to impose uniformity. In voluntary associations, people learned and practised the norms of reasoned discussion and mutual respect that were vital to any sustained process of public deliberation.

¹ *Princeton Packet*, copied, *Upper Canada Gazette*, 4 October 1797.

In his campaign to reform intestacy law, Marshall Spring Bidwell frequently appealed to public opinion. For him, it was the informed and rational judgment of the community after prolonged deliberation. This ideal made demanding assumptions about individuals and how they related to each other. It assumed that individuals were aware of issues beyond their immediate family, work or locality; that they were interested in those issues; that they were informed about competing arguments and were capable of judging between them; that they were willing to engage others in discussion or at least pay attention to the discussion of others; and that they were willing to abide by the outcome of those discussions. Individuals had to temporarily transcend differences rooted in family, religion, ethnicity, occupation, and social status in order to relate to each other as participants in collective deliberations.

These deliberations, and the institutions and practices that made them possible, defined the public sphere; membership was based on the capacity and willingness to reason, not on prescription, revelation, law or birth. Participants had to deliberate with others of different ethnic, religious, occupational, or class backgrounds. They had to try to understand and persuade. They had to allow themselves to be persuaded by arguments made by those of different backgrounds or points of view.

Given the localized and fractured nature of Upper Canadian society, it is surprising that such assumptions took root. S. F. Wise has highlighted the existence of ideologies that emphasized corporate identities and providential hierarchy.² Moreover,

² S. F. Wise, *God's Peculiar Peoples: Essays on Political Culture in Nineteenth Century Canada*, A. B. McKillop and Paul Romney eds., (Ottawa: Carleton University Press, 1993).

people were fiercely, even violently, divided. Membership in social groups shaped political positions as much as argument or reason. Paul Romney has shown that voting at Toronto in 1836 was strongly correlated to nationality, religious denomination, occupation and date of arrival in Upper Canada.¹

Against such realities, the claims of the public sphere appear utopian. To some extent they were. They defined an ideal polity sustained by reason and discussion rather than habit, prejudice or force. The public sphere embodied the emancipatory potential of the enlightenment. That "a public" capable of generating "public opinion" existed was a wish that more and more Upper Canadians thought could be approximated in fact. This was possible, not only because a few leaders like Bidwell advanced their cause by appealing to an ideal political order, but because the experience of a sufficient number of Upper Canadians made the ideal seem plausible. Their experiences suggested to them that some people could reason in public and formulate arguments that others of different backgrounds could understand and find convincing. Such experiences made appeals to public opinion credible. Voluntary associations were a key site for these experiences; they were among the most important political institutions in the colony.

Jürgen Habermas has argued that public opinion was the expression of "the sphere of private people come together as a public" that provided space outside of state

¹ Paul Romney, "On the Eve of the Rebellion: Nationality, Religion and Class in the Toronto Election of 1836," *Old Ontario: Essays in Honour of J. M. S. Careless*, David Keane and Colin Read eds., (Toronto: Dunburn Press, 1990), pp. 192-216. Of course, it may have been the process of public debate that convinced voters that they had different interests based on these categories.

institutions for an unprecedented form of critique: "people's public use of their reason." Public opinion emerged from discussions by private individuals. Some of these discussions occurred in the growing number of voluntary associations, such as libraries and reading rooms, mechanics' institutes, and debating societies, but voluntary associations were more than potential sites for political debate. They helped create and maintain a social space between family and labour on the one hand, and state officials and institutions on the other. Voluntary associations were composed of private individuals meeting independently of family, economic production, and the state to pursue common projects. This social space gradually developed its own norms, different from the norms of family, economic production or the state, about how people should relate to each other and how and by whom power should be exercised. Within this space, the hierarchy and fractures of the broader society might be temporarily set aside to allow for a free association of equal members discussing topics of common concern, choosing leaders, and joining province-wide networks of the like-minded. Members also believed that they were only part of a larger number of potential members and discussants.⁴

By the 1830's, frontier conditions were ending in significant parts of the province. Discretionary income, leisure time, and the ability to travel with relative ease to the increasing number of secondary population centres were part of the experience of an ever increasing number of Upper Canadians. The province's population almost quadrupled between 1820 and 1838. The cumulative impact of these factors is reinforced by a quick comparison of the isolation depicted by Susanna Moodie in *Roughing It in the*

⁴ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, Thomas Burger, trans., (Cambridge Massachusetts: MIT Press, 1992), pp. 27, 37-38. See also Geoff Eley, "Nations, Publics, and Political Cultures: Placing Habermas in the Nineteenth Century", *Habermas and the Public Sphere*, Craig Calhoun ed., (Cambridge: MIT Press, 1993), esp. pp. 290-291.

Bush, with her *Life in the Clearings versus the Bush*. The Belleville she describes had parades on various public holidays, balls given by the Odd Fellows, Freemasons and the fire company, travelling theatre, public lectures at the Mechanics' Institute, and a market, where "politics, commercial speculations, and the little floating gossip of the village are freely talked over and discussed."⁵

Galt provides another example of a small community rapidly developing an impressive public life. A debating society was formed in 1834, when the population had just reached 250. Seventeen men met regularly to debate questions of political economy, aesthetics and ethics. In January 1836 a public meeting established the Galt Subscription and Circulating Library. Ninety-nine subscribed to secure access to its books and newspapers. Membership climbed by 50% over the next few years. The number of public spaces also grew. The first tavern opened in 1821, and was soon joined by a school house, churches, the King's Arms Hotel, and a Township Hall in 1838. A Curling Club was also formed in 1838. An amateur theatre group and a Harmonic Society were already in existence. An agricultural society was founded in the summer of 1839. Efforts were soon underway to establish a newspaper. Annual township meetings had been held at Galt since 1819 to elect a variety of local officers and to debate issues of common concern. William Lyon Mackenzie addressed 2-300 electors at Galt in 1833 and the village hosted the first public meeting to endorse Lord Durham's *Report*.⁶

Alexis de Tocqueville marvelled at the propensity of Americans to form

⁵ Susanna Moodie, *Life in the Clearing versus the Bush*. (Toronto: McClelland & Stewart, 1989. [London: Richard Bentley, 1853]). pp. 17-76, 88-114.

⁶ James Young, *Reminiscences of the Early History of Galt and the Settlement of Dumfries, in the Province of Ontario*. (Toronto: Hunter, Rose and Company, 1880). By 1846, Guelph, with a population of 1,357, had 19 general stores, 4 lawyers, 4 surgeons, 7 taverns, a Daily Royal Mail, a reading room, a book club, a circulating library, a cricket club, a weekly paper, and at least seven teachers. Leo A. Johnson, *History of Guelph, 1827-1927*. (Guelph: Guelph Historical Society, 1977).

associations for every conceivable purpose.⁷ The same might have been said for Upper Canada. The *York Commercial Directory* for 1833-34 listed twenty-two voluntary associations in a city of 9,254. Some were denominational, such as the Missionary Society of the St. Andrew's Scotch Church, the Missionary Society of the Methodist Episcopal Church, the York Branch of the Canada Auxiliary Wesleyan Missionary Society, or the Missionary Society of the Upper Canada Primitive Methodists. Non-denominational religious societies included the York Auxiliary Bible Society, the Society for Promoting Christian Knowledge, the Upper Canada Religious Tract and Book Society, and the Society for Converting and Civilizing the Indians and Propagating the Gospel among the Destitute Settlers in Upper Canada. Benevolent associations included the Society for the General Relief and Benefit of Strangers and the Distressed Poor of York, the Institution for the Relief of the Orphan, the Fatherless, and the Widow, the York Annual Bazaar, and the Lying In Charity. There were two temperance societies. Civic groups included the Fire Engine Company and the Hook and Ladder Company for the Extinguishing of Fires. Economic self-help was institutionalized in the Home District Saving Bank and fraternalism was represented by the Freemasons. Debates and the exchange of information were organized by the Young Men's Society, Commercial News Room, York Mechanics' Institute, Home District Agricultural Society, and the Literary & Philosophical Society of Upper Canada.

By 1837, there were notable additions. The city boasted two literary clubs: The City of Toronto Ethical and Literary Society and the City of Toronto Literary Club. Economic interests were represented by the Board of Trade and the Mechanics'

⁷ Alexis de Tocqueville, *Democracy in America*, J. P. Mayer, ed., George Lawrence, trans., (New York: Harper & Row, 1969), p. 513. Richard D. Brown, "The Emergence of Urban Society in Rural Massachusetts, 1760-1820", *The Journal of American History*, (v. LXI, n. 1, June 1974), pp. 29-51.

Association. The St. George's Society had been founded in 1835 and was followed a year later by the St. Andrew's and St. Patrick's Societies. Two associations primarily aimed at elite sociability were also listed: the Upper Canada College Cricket Club and the City of Toronto Horticultural Society. The prominence given to voluntary associations in the directories of the period is itself telling.⁹

Most of these associations had no formal connection to political discussion, although gatherings of the like-minded were probably conducive to informal political conversation. Other associations, such as literary societies or news rooms, were designed to provide information and exchange opinion. Clubs for elite sociability, such as the short-lived "Toronto Club House" were explicitly devoted to "kindly intercourse, and intellectual conversation, as well as to the fostering of those minor graces which add such a charm and polish over manners."⁹ The Upper Canada Club, established in 1837, provided its elite members with a large number of colonial, American, and British periodicals as well as opportunities for conversation and conviviality.¹⁰

The sheer explosion in the number and range of voluntary organizations from the late 1820's created a space for the development of public opinion. Voluntary associations were political in several senses. Some were political because they sought to influence government policy or officials. Some associations were political in that they were vehicles for the ideas and ambitions of those who felt excluded from or insufficiently recognized by existing government structures. Some associations were politically

⁹ *York Commercial Directory, Street Guide and Register, 1833-4: with Almanack and Calendar for 1834*, compiled and arranged by George Walton, (York: Thomas Dalton), pp. 126-156; and *The City of Toronto and the Home District Commercial Directory and Register with Almanack and Calendar for 1837*, by George Walton, (Toronto: T. Dalton and W. J. Coates), pp. 41-48. Directories were often incomplete, leaving out associations such as the Orange lodge.

⁹ *Royal Standard*, 9 and 11 November 1836.

¹⁰ J. K. Johnson, "The U.C. Club and the Upper Canada Club, 1837-1840", *Ontario History*, (v. LXIX, n. 3, September 1977), pp. 151-168.

significant because they acted as forums for information and ideas. Their members learnt to debate and think critically. Finally, almost all voluntary associations were mini-republics. They were self-governing bodies composed of equal members who had consented to join. Members devised the rules and policies of the association and elected officers to carry out their wishes. They grew accustomed to expressing ideas in front of others and abiding by collective decisions. They came to expect a voice in the organizations to which they belonged. These skills and expectations could be transferred. One of the arguments Charles Duncombe made in favour of the secret ballot was simply that "in societies the ballot was used..."¹¹ Voluntary associations gave particular and concrete expression to the concepts of consent and participation.

The diversity and inclusivity of membership varied tremendously. Some Upper Canadians, because of their sex, race, or social status, were much less visible in associational life than others. The ambiguous lines of inclusion and exclusion developed by voluntary associations were similar to those of the public sphere - and not by coincidence. Nonetheless, it is useful to refer to many voluntary associations as experiments in democratic sociability: experiments because what they represented was new and not always successful; democratic because the relationships they fostered were between individuals and usually horizontal, not between groups and vertical.¹² Voluntary associations brought people together as individuals, often across social divisions. Many taught people the skills, expectations, vocabulary, and sociability of the public sphere.

¹¹ Duncombe, *Brockville Recorder*, 7 February 1834, during the debate to incorporate York.

¹² See the discussion of Augustin Cochin's work on the origins of Jacobinism in Roger Chartier, *The Cultural Origins of the French Revolution*. Lydia G. Cochrane, trans., (Durham: Duke University Press, 1991), p. 161.

The earliest voluntary association in the colony, Freemasonry, was also the best representative of liberalism and democratic sociability. Gordon S. Wood argues that "for thousands of Americans it was a major means by which they participated directly in the Enlightenment."¹³ Several lodges pre-date the colony: by 1793 there were ten, and about forty lodges were warranted in Upper Canada between 1792 and 1815. Many probably resembled Lodge No 6, founded at Kingston in August 1794. Twenty men signed a code of by-laws to participate in fraternal rituals, "to prevent all Feuds, Controversies, Illegal arguments or debates, which might in any sort disturb or make void the true Intent and Meaning of this our unanimous Conjunction," and to collect money for charity. Harmony and benevolence were the hallmarks of Freemasonry. The rules also established annual and semi-annual elections, with each member (except the master) entitled to one vote. Between 1794 and 1821, 239 men subscribed to these rules.

The total number of active Masons in Upper Canada, during the association's various phases of growth and decay, is not known. The number of brothers drawn together at meetings ranged from less than 10 to over 50. Between 1797 and 1799, Rawdon Lodge, York, contained 40 Masons. By 1798, Niagara lodges had over 100

¹³ Gordon S. Wood, *The Radicalism of the American Revolution*, (New York: Alfred A. Knopf, 1992), pp. 223-224. I have been particularly influenced by Margaret C. Jacob, *Living the Enlightenment: Freemasonry and Politics in Eighteenth-Century Europe*, (New York: Oxford University Press, 1991), but see also Chartier, *Cultural Origins of the French Revolution*, pp. 162-168. For America see two dissertations: Wayne A. Huss, "Pennsylvania Freemasonry: An Intellectual and Social Analysis, 1727-1829", (Ph.D. thesis, Temple University, 1984); and Steven Conrad Bullock, "The Ancient and Honorable Society: Freemasonry in America, 1730-1830", (Ph.D. thesis, Brown University, 1986). The latter is now available as *Revolutionary Brotherhood: Freemasonry and the Transformation of the American Social Order, 1730-1840*, (Chapel Hill: University of North Carolina Press, 1996). For the role of freemasonry in the European public see, Anthony J. La Vopa, "Conceiving a Public: Ideas and Society in Eighteenth-Century Europe", *Journal of Modern History*, (v. 64, n. 1, March 1992), esp. pp. 82-98.

members.¹⁴ The significance of Freemasonry, however, did not lie in its status as the colony's first voluntary association, the size of its membership, or the existence of a network of lodges throughout the colony, but in its ideals and practices.

Those ideals were perhaps best expressed in Upper Canada by James FitzGibbon, Provincial Deputy Grand Master, in his oration to the Provincial Grand Lodge meeting at York in the summer of 1823. Representatives of twenty-one lodges from nineteen different communities heard FitzGibbon argue that the Masonic duty of charity was less important in Upper Canada than elsewhere because of the relative absence of poverty in the colony. Masonic benevolence also had to be understood in a wider sense because of the nature of the colony's population. The craft had a "most harmonising effect upon the minds of the People of this Province, composed as we are of persons of various Creeds and Countries." Freemasonry could overcome prejudice because it taught its members to "love one another, and to serve one another." "Our population being made up of persons of many nations, languages and religions, need we wonder at sometimes hearing the offensive terms of Insolent Englishman! selfish Scot! savage Irishman! cunning Yankee!" These prejudices had resulted in "national calamities...family feuds, in heart burning between neighbours, in religious differences and dislikes between sects, and though last, not least, in political dissensions." The discipline imposed by the rules and norms of the lodge made harmony possible. By participating in that harmony, the individual Mason "will become a blessing to his Family, to his Neighbour, and to his Country."

Masonry was also a collective force for enlightenment. FitzGibbon looked

¹⁴ J. Ross Robertson, *The History of Freemasonry in Canada From its Introduction in 1749...Compiled and Written from official records and from MSS...* (Toronto: The Hunter Rose Co., Limited, 1899), v. 1, pp. 177-178, 276, 279-287, 339, 368, 457, 543-552, 592, 601-602 and v. 2, 21-24, 73, 151-156. Generally, references to this work are to the primary sources it contains and not to Robertson's own commentary.

forward to a time when the order would be prosperous enough to promote education. It might "give effect to Schools already established. to establish new ones...to the formation of libraries in every Town and Township; proceeding in short. to make war upon Ignorance, which is of all the evils the greatest enemy of Man..." Masons could teach society that knowledge and reason promoted self-discipline and harmony. As well as being models for their neighbours. FitzGibbon pleaded with Masons to end ignorance within their families. By working to end ignorance and prejudice. by working "towards subjecting the passions of men to the government of religion and of reason." Freemasonry "shall contribute to the building up of a social edifice. in our Province. worthy of the principle of our order."¹⁵ This was not the goal a mere social club.¹⁶

The brethren assembled in 1823 were also addressed by their Grand Chaplain. the Rev. William Smart. a secessionist Presbyterian. He asked his fellow Masons to remember that "while we feel all the kind charities of brotherly love. and enlightened humanity." large parts of the globe "are sunk in ignorance. depravity and guilt...while we are Free. and enjoying the blessing of civil order. and domestic happiness and peace..." Masonry had already done much to spread enlightenment. but "from the principles that form the basis of the Masonic institution. the spirit that ought to animate its members. and from the duties inseparably connected with it. that it has not only been the means of preserving and diffusing the light of science and truth. and disseminating the blessings of order. and subordination in society." it could "spread through the world. the light of Divine revelation." Not only Masonic ideals. but also the "spirit that ought to animate its

¹⁵ FitzGibbon's oration. *Weekly Register*. 24 July 1823.

¹⁶ Freemasonry was also public because of its visibility: processions on feast days. funerals and laying cornerstones for public buildings. building lodge halls and occasional newspaper announcements and reports. On the visibility of American Masonry see Bullock. "The Ancient and Honorable Society". pp. 4. 46-47.

members" - its sociability - promised international order and harmony.¹⁷

These ideals were reiterated when Masons laid the cornerstone of St. George's Church, St. Catharines, in 1835. The Anglican rector, James Clarke, not himself a Mason, addressed the assembled lodges based on texts they had provided. Clarke deplored excessive divisions in the Christian Church and society and insisted that these divisions "should not excite unkind, uncharitable or hostile feelings, one toward another." Some division was inevitable as no one should interfere with another's divine right of private judgment "in the management either of his spiritual or temporal concerns." This private judgement "should be as free as the air or the light." Caught between the sanctity of private judgement and its potentially harmful social effects, Clarke praised Freemasonry because it sought "to harmonize the jarring passions of men - to bring all denominations of Christians to love one another, to love as brethren, to be at peace." Masons were to be congratulated because "you exclude none...from your society, but the selfish, the uncharitable, the contentious, blasphemers of God's name and word, and traitors of the King, or the Government under which they live: all others, no matter of what sect, religion or country, you receive as brethren, and treat them as such." "[N]o association seems to have contributed more in allaying differences, and healing divisions" from religion and politics. In the politically polarized Upper Canada of 1835, this was high praise indeed.

Clarke concluded by enjoining Masons to remain true to their four cardinal

¹⁷ The Rev. and Excellent W. M. Smart, *An Address Delivered Before the Provincial Grand Royal Arch Chapter of Upper Canada, At York, on the 8th of July 1823*, Published by order of the Chapter, (Kingston: H. C. Thomson, Printer, 1823), pp. 3-7. Smart's proposal to use Masonry to spread Christianity would also counteract suspicions that the Order was unchristian. Smart's decision to join the Freemasons in 1820 almost split his Kingston congregation. As a secessionist Presbyterian, he opposed the pretensions of both the Churches of England and Scotland, he continued to perform marriages although legally barred from doing so, and was a frequent contributor to the local reform organ, the *Brockville Recorder*. See Ruth McKenzie, "Smart, William," *Dictionary of Canadian Biography*, v. X, pp. 659-660.

virtues: temperance, fortitude, prudence and justice. Each had a civic meaning.

Temperance, you say, is that due restraint upon our affections and passions which renders the body tame and governable...Fortitude, you say, enables us to undergo every privation, pain or danger, in support of truth... Prudence teaches you to regulate your lives and actions agreeably to the dictates of reason, and the law of God; whilst Justice is that standard or boundary of right which, without distinction or particularity, gives to every one his due...¹⁸

Masonic rules and rituals created self-governing individuals who were capable of moderating both their passions and their "affections" for kin, nation, sect or language. They sought truth and lived by its precepts. A common core existed in individuals as rational animals despite everything that divided them. Here was the essence of a liberal individualism that, far from creating alienated atoms, allowed those who transcended ignorance and particularisms to create and sustain fraternal bonds.¹⁹ The concept of a public sphere must have been easily understood by those socialized by Freemasonry's ideals.²⁰

These ideals could also be found in less formal texts such as this toast for a York banquet in 1854. The second, fourth and fifth stanzas are particularly revealing:

¹⁸ Clarke, Rev. James. *An Address, to a Large and Respectable Body of Freemasons, on their Laying the Corner Stone of St. George's Church, St. Catharines: July 29, 1835. Published at the Request of the members of St. George's Lodge, No 15 and of Several Other Lodges.* (St. Catharines: British American Journal Office, 1835), pp. 3-12. Curtis Fahey sees this address as evidence of the influence of tractarianism on colonial Anglicanism by promoting religious intolerance and criticizing dissenters from Anglicanism as heretics and schismatics. While Clarke did contend that Satan has taken advantage of the over-division of Christianity, he still saw some benefit to more than one denomination and insisted on the right of private judgement. Fahey, *In His Name: The Anglican Experience in Upper Canada, 1791-1854*, (Ottawa: Carleton University Press, 1991), pp. 250, 280n.

¹⁹ As John M. Roberts pointed out, "the craft embodied and announced what were to be central elements in a new sensibility, that of modern man. It reflected at once a new sense of individualism and a new awareness of the need for natural social ties." Roberts, "Freemasonry: possibilities of neglected topic", *English Historical Review*, (v. CCCXXXI, April 1969), p. 335.

²⁰ The role of Masonic principles in such socialization was also stressed by the Anglican Chaplain of St. John's Lodge, Kingston. Masonry "teaches them to love as brethren, to dwell together in Unity." It had "promoted pure friendship, encouraged the virtues which adorn life, and disarmed prejudice or its poison." Freemasonry served society by socializing individuals "by such a prudent and well regulated course of discipline, as may best conduce to the preservation of our corporeal and mental qualities." The Rev. W. M. Herchmer, *Love, The Spirit of Masonry: An Address Delivered in St. George's Kingston, on the Festival of St. John the Evangelist, December 27, 1847*, (Kingston: Argus Office, 1848), pp. 6, 8.

2. The Masons' social brotherhood, around the festive board.
Reveals a wealth more precious far than selfish miser's board:
They fairly share the priceless stores that generous hearts contain...
4. Amidst our mirth we drink "To all poor Masons o'er the world:
On every shore our flag of love is gloriously unfurled;
We prize each brother, fair or dark, who bears no moral stain -
5. The Mason feels the noble truth the Scottish peasant told,
That rank is but the guinea's stamp; the man himself the gold
With us the rich and poor unite, and equal rights maintain"²¹

Masonry was a fraternal organization of individuals who valued associational life and strove for a sociability that transcended the particularities of Upper Canadian society and proclaimed an international brotherhood. It equated harmony with reason and dissension with ignorance. It judged by behaviour, not birth.

Common rituals and a code of behaviour were necessary if diverse individuals were to socialize together as brothers. In 1823, the Provincial Grand Lodge ordered the printing of a local edition of the *Constitutions* of English Freemasonry. Its first Charge read, "[I]et a man's religion or mode of worship be what it may, he is not excluded from the order, provided he believe in the glorious architect of heaven and earth, and practise the sacred duties of morality." Such latitudinarian, almost deist, language, represented a remarkable degree of toleration.²² According to the *Constitutions*, "Masons unite with the virtuous of every persuasion in the firm and pleasing bond of fraternal love." The order was "the happy means of conciliating friendship amongst those who must otherwise have remained at a perpetual distance." Meritorious behaviour was the sole means of

²¹ *The Junior Warden's Toast*. The Music Composed and Dedicated to F. W. Barron, Esq. W. M. and the Brethren of St. Andrew's Lodge No 1, by their friends and fellow townsman, J. D. Humphrey's, Toronto, 27 December 1854, n.p.

²² The relationship between Masonry, Newtonian science, natural religion and religious denominations is beyond the scope of this chapter. Further research is also needed before generalizing from other countries. For the United States see, Wood, *Radicalism of the American Revolution*, p. 223; Bullock, "The Ancient and Honorable Society", pp. 24-26, 274-280; and Huss, "Pennsylvania Freemasonry", pp. 68-76. For England see John Money, "Freemasonry and the Fabric of Loyalism in Hanoverian England", *The Transformation of Political Culture in England and Germany in the Late Eighteenth Century*, Eckhart Hellmuth, ed., (Oxford: The German Historical Institute, London, and Oxford University Press, 1990), esp. pp. 258-260, 265.

advancing through the craft's various degrees and of being elected to positions of leadership. "All masons are, as brethren, upon the same level."

To realize these ideals, brothers were to "avoid all ill language, and to call each other by no disobliging name, but brother or fellow." In the lodge, "private committees or separate conversation" were prohibited. Nor were Masons "to talk of any thing impertinently or unseemly, nor interrupt...nor behave yourself ludicrously or jestingly...nor use any unbecoming language...but to pay due reverence to your master, wardens, and fellows..." While enjoying the conviviality that membership provided, Masons were prohibited from "doing or saying any thing offensive, or that may forbid an easy and free conversation; for that would blast our harmony, and defeat our laudable purposes." Thus "private piques or quarrels" could not be admitted into the lodge, "far less any quarrels about religion, or nations, or state policy, we being only, as masons, of the universal religion above-mentioned; we are also of all nations, tongues, kindred, and languages, and are resolved against all politics."²¹

The exclusion of political discussion was necessary to ensure harmony and "easy conversation," within a mixed and voluntary association. According to the Chaplain of a Kingston lodge, "within the Lodge is assembled a family animated by one desire, and influenced by one motive, *Brotherly Love*: no angry passions are allowed to rise; no violent discussions to provoke dissension; no political sentiments to disturb unanimity."²⁴ This did not, however, mean that Freemasonry was without political significance. The structure and sociability of their meetings, not the content of their conversations, made it

²¹ *Constitutions of the Antient Fraternity of Free and Accepted Masons. Part the Second. Containing The Charges, Regulations, &c. &c. Published, by the Authority of the United Grand Lodge, by William Williams, Esq. Provincial Grand Master for the County of Dorset. First Canadian Edition. Republished by Order of the Provincial Grand Lodge of Upper Canada, (Kingston: H.C. Thomson, 1832), pp. 3-11.*

²⁴ Herchmer, *Love, The Spirit of Masonry*, p. 9.

significant for the development of a public sphere. As Margaret Jacob has argued with reference to European Freemasonry, "these were political societies, not in a party or faction sense of the term but in a larger connotation. Within the framework of civility and in the service of an imagined social cohesion, the lodges practised a civil administration, derived from British political practice and tradition."²⁵

Lodges were associations of individuals who "met out of mutual interest and not as a result of confessional affiliation, birth, or rank in society per se. And they always met separately from their families...they met as individuals."²⁶ They consented to general rules and agreed to abide by the decisions of their fellow masons. Dues and fines were a form of self-imposed taxation. They were disbursed by those who paid them. Non-financial obligations included attendance at lodge meetings and conformity with a code of behaviour. This moral code was man-made. Each Mason was bound by it because he had freely consented to it. It was enforced by the majority, usually after committee investigation, discussion in the lodge, and attempts at informal mediation. Members also participated in formal discussions regarding lodge activities and their constitutional relationship to the Provincial Grand Lodge and the English Grand Lodge. Such discussions were structured by norms of equality of voice and access, majority rule, deference to the chair, and civility.

All lodge officers were elected by ballot in semi-annual or annual elections. Positions were open to the entire membership. Preferment was by merit as judged by fellow Masons. Freemasonry was hierarchical in structure with three degrees of masons, (apprentice, fellow and master), and a hierarchical executive (which might include 11 or

²⁵ Jacob, *Living the Enlightenment*, pp. 50, 16, 32.

²⁶ *Ibid.*, p. 20.

more offices). This hierarchy, like the order's rules, was explicitly man-made, not revealed by God or nature. Elected officers represented the lodge at provincial conventions. The *Constitutions* stipulated that "the majority of the members of a lodge duly assembled have the privilege of giving instructions...because these officers are their representatives, and are supposed to speak their sentiments."²⁷ Collectively, these rules and the sociability they were to foster, created what Margaret Jacob calls a "civic consciousness."²⁸ The concepts of social contract, consent, rule of law, constitutionalism, representative government, majority rule, liberal equality and individualism received their ideal expression, not in Upper Canada's constitution, but in its Masonic lodges.

There were also parallels between debates about the structure of provincial Masonry and Upper Canada's constitution. In 1836, Charles Duncombe's lodge attempted to create a schismatic Grand Lodge (rather than a Provincial Grand Lodge) independent of the English Grand Lodge. It was also to be led by an elective Grand Master, Duncombe, not one appointed in London. It can hardly be coincidental that Duncombe soon led the western phase of the rebellion against British colonial rule.²⁹

Likewise, after fruitless appeals to Britain for leadership, Ziba M. Phillips assumed the invented title of Grand High Priest and called a convention at Smith Falls. Forty-six Masons, mostly from eastern Upper Canada, passed resolutions declaring that "master Masons are invested with inherent Rights to adopt any measures for the benefit of the Craft," and "that in all institutions requiring the co-operation of many, there should be a

²⁷ *Constitutions*, pp. 59-60.

²⁸ Jacob, *Living the Enlightenment*, p. 32.

²⁹ Duncombe, among others, had questioned the superiority of the English Grand Lodge over Upper Canadian Masonry as early as 1822. The prolonged conflict between Provincial Grand Master William Jarvis at York and a rival Grand Lodge formed at Niagara in 1802 was partially driven by American-born Masons near Niagara who favoured autonomy for Upper Canadian Masonry and retained contacts with lodges in the United States. Robertson, *History of Freemasonry*, v. 1, pp. 339, 390-410; v. 2, pp. 21-23, 187, 191.

proper head and Executive." They proceeded to establish such an executive and legislature. The resolutions then rehearsed complaints against the English Grand Lodge to justified their assumption of constituent power over Freemasonry in Upper Canada. Here was a convention creating a regular government for Upper Canadians independent of the imperial tie and adopting the form and rhetoric of a declaration of independence.³⁰ The timing was important. Meeting in February 1844, these Masons could not have been unaware of the resonance the issues of rights, grievances, regular government and colonial status had with the constitutional debate raging between Governor Metcalfe and his former reform advisers (see chapter 6 below).

Freemasonry was not inherently radical; its ideals did not necessarily breed dissatisfaction with the colony's constitution. Some of the staunchest supporters and most rewarded officers of that constitution were Freemasons and government officials and gentlemen dominated the offices of the Provincial Grand Lodge. They probably delighted in the idea that they were chosen as the enlightened leadership of an association devoid of partisan politics. The regular, non-controversial, aspects of Masonic constitutionalism were probably more important. Parts of the *Constitutions* were read aloud. There were regular lectures and other forms of instruction. Lodges held elections and most members probably served in some sort of local office. Norms of speaking, deference to the chair, acceptance of the majority voice, respect for procedure, form and precedent, and socializing with a diversity of others were inculcated.

³⁰ *Ibid.*, v. 2, pp. 207-209, 251. Robertson calls the resulting organization a Provincial Grand Lodge and thus argues that it did not break away from Britain although the means of its formation were unconstitutional. None of the documents copied by Robertson regarding the Smith Falls' convention refer to anything but a Grand Lodge and thus suggest that the convention not only acted independent of English Masonry but also established an unaffiliated organization. This makes sense since a body founded against the constitution and because of the negligence of the Grand Lodge in London could hardly be recognized as a creature of that same Grand Lodge.

Not everyone was deemed capable of participating in the conversation and conviviality of this constitutional order. The *Constitutions* concluded that Masons "must be good and true men, free born, and of mature and discreet age and sound judgement, no bondmen, no women, no immoral or scandalous men, but of good report."¹¹ Women and slaves were lumped together with those free men who lacked sufficient maturity, moral character or financial means. All lacked independence. They were not autonomous moral agents. Certain standards could be used to discriminate among free males, but all women, like all slaves, were not seen to possess the minimal characteristics for membership.

Freemasonry was important, not only because of its ideals, but also because its members attempted to live by them. They were part of the lived experience of its members.¹² Lodge minutes often ended on the same note: "the lodge was closed in due form, and in harmony." Masons proclaimed the achievement of their ideals after their festivals, banquets, and processions. As one secretary recorded, "it appeared to be every brother's desire to do honor to the day with conviviality accompanied by the true decorum, after many Masonic toasts were drunk, the Brethren retired with the utmost harmony and felicity." Drinking, toasts, dining and easy conversation after formal rituals were hallmarks of Freemasonry and several other associations in Upper Canada, all contributing to a "vision of masculine camaraderie."¹³

Masons also practised the benevolence they preached. Philanthropy Lodge No 4, Newark, like other lodges, established a fund "for the benefit of Free Mason's widows, the education of orphans, and indigent brethren's children." Lodges responded to

¹¹ *Constitutions*, pp. 4-5.

¹² This is the central point and source of the title of Jacob, *Living the Enlightenment*.

¹³ Mary Ann Clawson, *Constructing Brotherhood: Class, Gender and Fraternalism*, (Princeton: Princeton University Press, 1989), p. 14. Masonry makes a good case study for studying gender identities. See Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850*, (Chicago: University of Chicago Press, 1987), pp. 426-427.

petitions for aid from fellow Masons and their benevolence occasionally extended to the entire community. St. John's, Kingston, donated money to the Female Benevolent Society in 1826, and various lodges investigated the possibility of purchasing public libraries, creating a Masonic asylum, or assisting in other educational projects.¹⁴ This emphasis on education, also evident in FitzGibbon's oration, reflected their belief that reason could transcend parochial interests and prejudices. It also reflected the belief that meritorious behaviour, not monarchical hierarchy or patronage, was the ultimate standard of worth. As one historian of American Freemasonry has put it, the emphasis on education "recognized natural equality, not by fixing a person's status, but by allowing all the opportunity to rise to their merit position without hindrance from unnatural barriers."¹⁵

The extent of mixing within each lodge varied, but, in most lodges, men of various social classes, religious denominations, nationalities, and political persuasions participated in common rituals, adhered to a common set of rules and celebrated their equality. A few lodges, however, were quite homogeneous. The nine men who met at William Campbell's house to form St. Andrew's Lodge, York, in 1822 were already connected by status and office. Campbell was Puisne Judge of the King's Bench. Members included John Henry Dunn, Receiver-General of the colony; Major George Hillier, the Lieutenant-Governor's aide-de-camp; Col. Nathaniel Coffin, Adjutant-General of the colonial militia; Stephen Jarvis, Usher of the Black Rod; James Fitzgibbon, a perennial militia and government officer; and Thomas Ridout, a Legislative Councillor.

¹⁴ Robertson, *History of Freemasonry*, v. 1, pp. 291, 319, 532, 653; v. 2, pp. 81-2, 107, 291, 297, 317; and *Kingston Chronicle*, 20 January 1826.

¹⁵ Bullock, "The Ancient and Honorable Society", pp. 285-288. Due to its emphasis on merit and education, American historians have tended to see Freemasonry as quintessentially republican. See Wood, *Radicalism of the American Revolution*, p. 233 and especially, Steven C. Bullock, "A Pure and Sublime System: The Appeal of Post-Revolutionary Freemasonry", *Journal of the Early American Republic*, (v. 9, n. 3, Fall 1989), pp. 359-373.

The following year, when Christopher Hagerman and Levis Peters Sherwood joined, the lodge resolved that "any member of the Branches of the Legislature wishing to celebrate that Festival [of St. John the Evangelist] with the members of this lodge on that day, may be at liberty to do so." Their initiation fee was also twice that of most lodges. Later, St. Andrew's became substantially more diverse, especially after 1840,¹⁶ but as Mary Ann Clawson has argued "[s]ince the rite creates a fraternal bond predicated upon the formal equality of members, even the most socially restrictive lodges engaged in a symbolic repudiation of distinctions of rank and class."¹⁷

In his study of voluntary associations in mid-century Halifax, David A. Sutherland found that 44% of Masons were artisans or pursued other "low status" occupations, 42% were merchants, professionals or from other "high status" occupations, and 14% were in retail trade. The merchant, professional and other higher status category was over-represented among officers at 56%, but almost a quarter of the officers in this period were artisans (only 3% lower than their proportion of the entire membership) and a further 7% came from other low status occupations.¹⁸ Thus those from higher status occupations required the votes of those from lower status occupations to gain admission to the lodge, to be elevated through its degrees, and to be elected to its offices. Many consented to obey, respect, be instructed by, and have their behaviour monitored by Lodge leaders of lower occupational status. The hierarchy created with the lodge, celebrated in Masonic

¹⁶ Robertson, *History of Freemasonry*, v. 1, pp. 41, v. 2, pp. 255-65, 304-5. Their fee in 1822 was six guineas with annual subscriptions of 8 dollars. The initiation fee for other lodges appears to have been only three guineas.

¹⁷ Clawson, *Constructing Brotherhood*, pp. 16, 76, 78.

¹⁸ David A. Sutherland, "Voluntary Societies and the Process of Middle-class Formation in Early-Victorian Halifax, Nova Scotia", *Journal of the Canadian Historical Association*, (v. 5, 1994), pp. 258-259. These figures are roughly similar to those Bryan Palmer found in a Hamilton lodges between 1855 and 1905: 36% of members were from skilled trades and 6% unskilled. Bryan A. Palmer, *A Culture in Conflict: Skilled Workers and Industrial Capitalism in Hamilton, Ontario, 1860-1914*, (Montreal: McGill-Queen's University Press, 1979), pp. 41-42. Huss, "Pennsylvania Freemasonry", pp. 9-10, 209-210, concludes that membership was drawn from all classes.

rituals, and displayed in Masonic processions did not necessarily correspond to the social and occupational standing of its members.

Scattered evidence from lodge registers suggests a similar occupational range in Upper Canada. Of the 13 members present at Hiram Lodge No 20, Cornwall, in 1804, 3 were farmers, 2 were clothiers and one each was a tinsmith, innkeeper, schoolmaster, weaver, joiner, artist, merchant and blacksmith. Only 38 of 105 names on the registry for Lodge No 12, Stamford between 1806 and 1822 were listed with occupations: 25 farmers, 3 blacksmiths, 2 members of the military, 2 wheelwrights, 2 teachers, and a physician, joiner, and surveyor and carpenter. Twenty of the 139 men subscribing to the by-laws of St. John's Lodge No 16, York, during the first quarter of the nineteenth-century, listed their occupation: 3 farmers, 2 tailors, 2 innkeepers, and 2 carpenters, and a blacksmith, clergyman, barracks master, saddler, surveyor, tinsmith, merchant, mason, mariner, goldsmith and cabinetmaker. While Unity Lodge, Township of Murray, Northumberland County, contained 9 self-described "gentlemen" between 1820 and 1822, they associated on the basis of fraternal equality with 2 carpenter-joiners, a tanner-currer and a plasterer."⁹

Upper Canadian lodges took the qualifications for admission seriously. They investigated prospective members, denied admission to some and expelled those who proved unworthy. A committee of Lodge No 6, Kingston, reported in 1821 on several members. It concluded that a former officer of the lodge "is living in adultery with a woman by whom he has had a child." He withdrew from the lodge before he could be expelled. Another member while unmarried, was also living with a woman with whom he had a child. A third was convicted of "keeping a disorderly House." Since "no specific

⁹ Robertson, *History of Freemasonry*, v. 1, pp. 716-18, 796-8, 875, 1135.

charge" had been proven against him, the committee recommended that "he be admonished to be more circumspect in his conduct generally." A fourth was found not guilty.⁴⁰ Lodge rules, rituals, fellowship and quasi-judicial proceedings taught discipline and civility.

The same range was true of religious divisions. Again, proportions within each lodge are unknown. Both Roman Catholic and Methodist officials in various jurisdictions had condemned Freemasonry, but members of both confessions could be found in Masonic lodges.⁴¹ Masons laid the foundation stones of several Anglican churches,⁴² several lodges had Anglican chaplains, divine service at Masonic festivals was often held in the local Anglican church, and Rev. A. N. Bethune, Bishop John Strachan's lieutenant, was Provincial Grand Chaplain. However, as already noted, one of Bethune's predecessors was a seceding Presbyterian and the chaplain of one of the largest and most active lodges in the 1840's, St. Andrew's, Toronto, was a Kirk Presbyterian.

Perhaps the relationship between religious denomination and Masonry in Upper Canada is best symbolized by the building of a new frame church in Ancaster in 1824. The cornerstone was dedicated according to Masonic rituals, followed by "an excellent and very appropriate oration...in which the progress of masonry was traced from the

⁴⁰ *Ibid.*, v. 1, 298-299, 579-584, 590, 592, 599, 601-602. Note the further evidence for the contribution of Masonry to concepts of masculinity. Appropriate concern for dependents and behaviour toward women were mandatory.

⁴¹ For explicit reference to Roman Catholic Masons see *ibid.*, v. 2, pp. 298-299. Charles Duncombe, a leading Mason, was also a Methodist. For early Methodist condemnation of Masonry and its lack of efficacy in New Brunswick see, Hannah M. Lane, "'Wife, Mother, Sister, Friend' Methodist Women in St. Stephen, New Brunswick, 1861-1881", *Separate Spheres: Women's Worlds in the 19th-Century Maritimes*, Janet Guilford & Suzanne Morton eds., (Fredricton: Acadiensis Press, 1994), p. 116. For the complexities of papal injunctions against Freemasonry see W. McLead, "Freemasonry, As a Matter of Fact", *Canadian Historical Review*, (v. LXXIX n. 1, March 1988), p. 53n.

⁴² Robertson, *History of Freemasonry*, v. 2, pp. 300, 327. Robertson, p. 439 claims that "the large proportion of the members of the Draft in the early years of York were members of the Anglican church." Anglicans were also the single largest denominational affiliation of Pennsylvania Masons; Huss, "Pennsylvania Freemasonry", pp. 209-210.

earliest ages to the present period, and its benefits to the society depicted in a manner that evidently delighted the fraternity, inspired the uninitiated with a high opinion of the Masonic Institutions and pleased every one." The church was financed by subscription and was dedicated "indiscriminately to the worshippers of God, of every Christian Profession, without distinction of sect or party - with this reservation, viz. that the resident minister of the Episcopal Church is at all times to have the right of preaching in it once a day."⁴³ A tolerance of Christian diversity with a nod toward the special status of the Anglican Church would not have pleased everyone but it was still an externalization of Masonic ideals into the wider society on one of the most divisive issues in the colony.⁴⁴

Lodges also included those of different political leanings, although proportions probably varied by lodge.⁴⁵ J. K. Johnson found that of the 283 men elected to the Assembly before 1841, at least 57 were known Masons, including many prominent reformers.⁴⁶ In 1800, Barton Lodge, composed almost exclusively of Loyalists, many of

⁴³ George Gurnett to Charles Fothergill, 13 July 1824, *ibid.*, v. 1, p. 972-974.

⁴⁴ Masons even revelled in the fact that their order crossed racial boundaries. The Junior Warden's toast quoted above claimed that Masons "prize each brother fair or dark." One of the 57 signatures subscribing to the by-laws of Barton lodge in 1796 belonged to the Chief of the Six Nations, Thayendanegea (Joseph Brant). His youngest son was also a Mason and there may have been a lodge at Mohawk Village. *Ibid.*, v. 1, pp. 632, 643, 688-689. There was also a French Canadian, Jean Baptiste Rousseaux, among the founders of Barton Lodge. See Norman Macdonald, *The Barton Lodge, A.F. and A.M. No. 6, G.R.C. 1795-1945*, (Toronto: The Ryerson Press, 1945), pp. 32-41. In 1842 a number of blacks applied for affiliation to Barton Lodge as members of the African Grand Lodge of Masons in the U.S. Some officers of Barton Lodge suggesting that they communicate directly with the "Grand Lodge of Canada." Not only was such action unnecessary for affiliation, but no such body existed. The intent was clearly to frustrate them. According to the minutes of Barton Lodge for January 1842, the senior warden argued that "our obligation obliged us to admit even colored men." After debate the lodge resolved to communicate directly with the African Grand Lodge to ensure that the petitioners were indeed Masons. Robertson, *History of Freemasonry*, v. 2, pp. 460-461. It would appear that the stalling tactics worked. The leading name on the petition does not appear on either the initiated or affiliated membership list of Barton Lodge as published in Macdonald, *The Barton Lodge*, pp. 207-243.

⁴⁵ In January 1827 William Lyon Mackenzie petitioned St. George's Lodge, York, "praying to become a candidate for the mysteries of Masons," but the balloting in March "was found unfavourable." Mackenzie, following the American Anti-Masonic party, was publicly attacking the craft in the *Colonial Advocate*, 1 and 15 March 1827. The meeting that rejected Mackenzie was attended by fellow reformer John Rolph. Robertson, *History of Freemasonry*, v. 2, p. 373.

⁴⁶ J. K. Johnson, *Becoming Prominent: Regional Leadership in Upper Canada, 1791-1841*, Kingston & Montreal: McGill-Queen's University Press, 1989), pp. 89, 84-95, 249-250.

whom had served in Butler's Rangers, purchased black crepe and went into official mourning to mark the death of one of America's most famous Masons - George Washington.⁴⁷ Hugh C. Thomson was initiated into St. John's Lodge, Kingston, in 1818. The following year he established *The Upper Canada Herald*, an important reform paper. He was elected junior warden in 1823, senior warden in 1824 and master in 1827 and again in 1828. He had also been elected to the Assembly in 1824. In April 1825, Christopher Hagerman, a fellow member of the Assembly and a frequent target of Thomson's editorial pen, was initiated into the lodge. In September 1826, Marshall Spring Bidwell, who had replaced his father as the member for Lennox & Addington, was also initiated. Given their different politics and Hagerman's role in ousting the elder Bidwell from the legislature, one can only speculate on the degree of conviviality between them. In January 1827 Donald Bethune became a member of the lodge. The following year he was elected to the Assembly. His strident toryism was ridiculed in the *Upper Canada Herald*. In 1828 he was elected junior warden to serve the re-elected Master, Hugh C. Thomson.⁴⁸

Freemasonry embodied the liberalism of the period. It believed that individuals were self-governing, capable of reasoning, and shared certain common traits despite differences of race, nationality, language, religion, and social status. They could enter into a social contract, create and abide by self-imposed rules and participate in the association's government. Self-interested individuals could achieve harmony and accept communal responsibilities by the use of their reason and the appropriate sociability. Participants were equal and all positions were open to talent and merit. Inequality of

⁴⁷ Macdonald, *The Barton Lodge*, p. 58.

⁴⁸ Perhaps the distance between such prominent political opponents was too great. Bidwell withdrew from St. John's in June, 1828. His affiliation with Masonry, however, continued.

result was thereby justified, but older justification for it, including birth, legal privilege or corporate identity, were rejected.⁴⁹ Masons believe in their own enlightened status, but they also believed they could act as a model for society. Finally, like the liberalism of their time, they did not believe that everyone was capable of participating in their ideal micro-polity. The dependent position of women, the poor and the morally weak, excluded them from enlightenment.

Freemasonry's contribution to collective social and political perceptions was ambiguous. The equality achieved within the lodge was not intended to replace broader social hierarchies. As the *Constitutions* put it, "though all masons are, as brethren, upon the same level, masonry takes no honour from a man that he had before."⁵⁰ They accepted the existing social structure but also issued a subtle challenge. Even given social inequalities, a sphere could be created where those inequalities were held in abeyance - where equality could reign. The ability to conceive of distinct social spaces (family, economic, political), each with its own norms and organization, was precisely the key conceptual demand of the public sphere: people could be equal, rational participants in public debate at the same time they were organized according to very different principles in other realms.

The contribution of Masonry to political self-perception was also ambiguous. By valuing loyalty, accepting the existing constitution, and prohibiting partisan discussions, Freemasonry was a conservative force. By deeming politics to be destructive of fellowship, even among the enlightened, Masonry bolstered the idea that only a few were

⁴⁹ Clawson, *Constructing Brotherhood*, p. 14.

⁵⁰ *Constitution*, p. 9. Masonic ideals could be used to bolster conservative social imagery. For one Masonic chaplain, the injunction to love as brothers "teaches man to be content with the lot assigned him by Providence." Herchmer, *Love, The Spirit of Masonry*, pp. 8-9.

fit for political leadership. The Newtonian imagery of Masonic rhetoric also complemented interpretations of the colony's constitution as a highly developed machine of checks and balances.⁵¹ Yet the experience of these Upper Canadian Masons gave them a glimpse of another world: a world where it was possible for men to be equal, rational, and benevolent; a world where men could transcend social divisions and work together; a world where reason could produce harmony. Protected by rules and rituals, such a world could exist even in a highly fractured and hierarchical society. This was not, however, the public sphere. Could individuals in the broader society create a self-directed harmonious space for rational discursive practices or would selfishness, anarchy and prejudice prevail?

Many other voluntary associations also contributed to the possibility of harmony among diverse individuals, but debating societies self-consciously taught the skills and sociability of the public sphere. During the 1830's, literary and debating societies were formed at York - Toronto (various associations founded in 1830, 1831, 1833, 1835, 1836, 1838), Hallowell (1833, 1834), Kingston (1833, 1836, 1837) Galt (1834), Niagara (1835), Perth (1835), Hamilton (1836), St. Catharines (1836), Cobourg (1831, 1837?), Bytown (1838), Ancaster (1839?), and Chatham (1839). Most could have echoed the City of Toronto Ethical and Literary Society: "The object of the above Society is the reading of Essays on Ethical and Literary subjects, and also debating on questions given out for

⁵¹ For the potentially loyalist/conservative nature of Masonry in England as opposed to its supposed radicalism on the continent, see Money, "Freemasonry and the Fabric of Loyalism in Hanoverian England", esp. pp. 243, 251, 257, 266-267.

discussion."⁵² The rules of Niagara Literary and Debating Society were followed by 60 signatures of those "deeply impressed with a sense of benefit and general utility likely to result, from the organization of a Debating Society."⁵³ The Kingston Young Men's Society debated 15 subjects, discussed 11 original essays, and listened to sermons by four clergymen of different denominations during the spring and fall of 1837. Weekly attendance ranged from 20 to 35. Within a year, their library contained 90 volumes.⁵⁴

These societies provided instructional or improving uses for leisure and furthered both personal and public ends. They were a training ground for public leaders. John A. Macdonald was elected president and Oliver Mowat recording secretary of the Kingston Society, but such societies trained citizens as well as leaders. According to one promoter, they prevented demagogues from "enclosing in their ruinous embrace the unwary and unsuspecting."⁵⁵ Those trained in the public use of reason could not be deluded by false prophets.

The first institutionalized association for the exchange of argument, (besides the provincial legislature), was probably the Juvenile Advocate Society. According to the eight founding students-at-law in 1821, it was to be a "little Seminary of Law and Eloquence," designed "for the increase and cultivation particularly of Legal and Constitutional but generally of all useful knowledge." It took "the form of a debating Society, but not entirely such." It met weekly to debate a variety of topics: the nature of civil liberty, the limits of just laws, primogeniture, annual parliaments, republican versus monarchical governments, applications of international law, the jury system, and taxation

⁵² *City of Toronto and the Home District Commercial Directory...1837*, p. 45.

⁵³ cited in Janet Carochan, *History of Niagara (In Part)*, (Toronto: William Briggs, 1914), pp. 269-270.

⁵⁴ *Chronicle & Gazette*, 11 November 1837.

⁵⁵ A. N., *Cobourg Star*, 11 October 1837.

without representation.

Elaborate rules were developed to maintain civility and decorum. Any conduct deemed "indecent and improper" was met with admonitions, fines or even incarceration by the "sergeant-in-waiting." G. Blaine Baker characterizes these rules as intended to instill professionalism and gentility, but they also attempted to foster a sociability whereby individuals could challenge each other without causing offence or discord. The frequent injunctions found in the Society's journals to maintain "decorum and a gentlemanly and forbearing conduct," or to make efforts to "smooth away the acrimony that will always arise upon a difference of opinion," or to preserve "coolness and presence of mind," established the boundaries of a space where reason could overcome passion and personality. Controversy could be controlled because it occurred in a rule-governed environment where participation was limited to an educated few tied together by social background and professional interest. Senior members of the bar insisted that limiting membership to law students was required to preserve harmony.⁵⁶

Nonetheless, the membership in the debating societies of the 1830's were not limited to a particular profession. Most were probably dominated by young clerks, professionals, and those with the requisite inclinations and skills searching for self-improvement and social advancement.⁵⁷ One of the literary societies at Toronto was reportedly "formed by the mercantile young men of the City."⁵⁸ No women made the

⁵⁶ G. Blaine Baker, "The Juvenile Advocate Society, 1821-1826: Self-Proclaimed Schoolroom for Upper Canada's Governing Class", *Historical Papers*, 1985, esp. pp. 77-79, 86, 90-93.

⁵⁷ For the membership and motivations of similar American societies, see Richard D. Brown, *The Strength of a People: The Idea of an Informed Citizenry in America, 1650-1879*, (Chapel Hill: University of North Carolina Press, 1996), p. 105, 122, 127-128. Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850*, (Toronto: University of Toronto Press, 1996), esp. Pp. 153-156, 215-217, analyzes discussions of the perils facing young unattached men and the role of voluntary associations in overcoming those dangers.

⁵⁸ *Royal Standard*, 9 November 1836.

published lists of officers of such associations, although they could be admitted as visitors by the male members of the York Literary and Philosophical Society. This association, along with a few others, was self-consciously elite in origin and reputation. Established in 1831 by William Dunlop, Dr. Rees, John Strachan and Charles Fothergill, it was forced to insist publicly that its membership was not exclusive. It lasted only about a year.⁵⁹

Whatever their origins, debating societies were organized like most voluntary associations: annually elected officers responsible to the body of equal members. They attempted to transcend some of the divisions in Upper Canadian society by refusing to recognize distinctions of religion, political party, nationality, or social status in either their membership or discussions. Article Two of the by-laws of the Western District Literary, Philosophical and Agricultural Association read in part that "the only qualification necessary in a candidate is a love of knowledge."⁶⁰ One of their hallmarks was the collective search for enlightenment through discussion. In the preamble to their constitution, the members of the Kingston Literary Society declared that, "being aware of the advantages which result from the interchange of thought," they were associating together for "mutual information."⁶¹ Knowledge was to be diffused through associations of "mutual instruction,"⁶² not by passively taking in received wisdom or revealed truth from social superiors. This emphasis on the mutuality or cooperative nature of enlightenment incorporated a further dimension of equality. Knowledge and education

⁵⁹ *Courier of Upper Canada*, copied *Colonial Advocate*, 4 October 1832.

⁶⁰ *By-Laws of the Western District Literary, Philosophical and Agricultural Association...* (Sandwich, 1842), p. 6. It is not clear if this meant women could be full members. Women could participate in the Quebec Literary and Historical Society, although one Upper Canadian commentator focussed as much on the morals women could bring to the society as on their contribution to scientific knowledge. "The labours of Mrs. Sheppard we very much admire; and who would not admire those of a lady in the cause of science. - It is principally to female virtue and benevolence that general society owes its main and best support." *Kingston Chronicle*, 5 December 1829.

⁶¹ *The British Whig*, 10 February 1836.

⁶² *By-laws of the Western District...* p. 3, 5, 14.

were the great social equalizers: "A person of cultivated mind to a very great degree, is rendered independent of circumstances."¹

The *Christian Guardian*, promoting debating societies for every village, laid out their functions:

Philosophical and debating societies...are very important, especially in a free country. They are schools of reason, where the human mind is cultivated and expounded, and men taught to arrange their ideas, and to speak in public...and, above all, where men are learned [sic] to govern their passions - without which no man can reason. One may *passionate* or *opinionate*, but without cool and deliberate reflection, men seldom compare things correctly; and reasoning is simply a comparison of proved, self-evident or acknowledged facts.

Members benefited from the skills developed, the knowledge acquired, and from having an alternative to "vitiating amusements," but the entire society also benefited. Debating societies "not only enable the common people to speak in public with confidence and ability, on their own private concerns...but ultimately raise up more Franklins, and such worthies. We should then see, after a while respectable farmers and mechanics, qualified to fill every station in the Country."

Debating societies were training schools for the public sphere as well as public office. Only in the company of others could reasoning, the construction of an argument, public speaking, and disciplining the passions be taught. As the *Christian Guardian* put it, "[a]ny society of young men, associated for intellectual criticism and improvement, would derive great benefit by reading their own written essays, criticisms, or productions...and also by reading pieces of their selection from newspapers, books and other publications: with a general freedom of numbers remarking upon the same." The *Guardian* also argued that debating societies could counter the temptation to resort to

¹ A Friend, *Upper Canada Herald*, 12 June 1838.

ridicule, abuse, or personality rather than rational arguments because "to trifle or jest, in reply to serious or just argument, evinces want of decency, and a lack of sense, as well as a deficiency of argument."⁶⁴ Likewise, the members of the Toronto Literary Club were told to avoid "declamation and personal sarcasm or invective...On the other hand, a display of legal knowledge, or of sound political opinion, made in a frank, high-toned and benevolent temper, with courtesy and good will towards an opponent, is sure to win the approbation of all who[se] approbation is worth possession." Debating societies maintained "urbanity and good feeling" and fostered "a noble spirit of emulation" while pursuing knowledge through conflicting arguments.⁶⁵

Many of these points were also made by "A Friend" seeking new members for the Kingston Young Men's Society. Only in formal debate - only when "opposed by argument" - could the mind develop. Furthermore, "controversy is the very life of the intellectual world. It is often [by] the most vigorous controversial struggles, after conflicting efforts, that Truth now takes such a formidable, and victorious position."⁶⁶ This epistemological point was crucial to the notion that rational public discussion was the best form of decision-making. The knowledge achieved by public debate "has been the powerful and successful instrument of banishing many debasing and superstitious practices, in every region enlightened by its diffusion." Participation in this noble project "excludes neither sect nor party, it regards not strength of intellect or poverty of genius, nor yet worldly circumstances." The only requirement was the moral character and

⁶⁴ "Philosophical and Debating Societies," *Christian Guardian*, 13 March 1833.

⁶⁵ "Address to the Members of the Toronto Literary Club delivered at the opening of the Institution by a Gentleman of that City", *Cobourg Star*, 7 February 1838; and A. N. to *Cobourg Star*, 20 September 1837. The Toronto Literary Club was founded by the members of the Toronto Shakespeare Club of 1835-36 who had resigned over a membership dispute. See Mary Lucinda MacDonald, "Literature and Society in the Canadas, 1830-1850", (Ph.D. dissertation, Carleton University, 1984), pp. 134-137, 141-142.

⁶⁶ A Friend, *Upper Canada Herald*, 12 June 1838.

discipline to pursue the objects of the society. "A Friend" concluded that "the sociabilities created and cultivated by the exercise of such institutions, is another important consideration in favour of them." Members formed important friendships and came together as equal seekers after the public good. "Here party is annihilated, bigotry receives a deadly wound, distinctions are forgotten, selfishness is crushed in the bud of life, and the heart is taught to expand in the most liberal exercises."⁷⁷ Here was the public sphere.

Thus, the political significance of debating societies lay primarily in their guiding principles and the skills and sociability they fostered, rather than in the content of their meetings. Most debating societies were formed in the second half of the 1830's, a time of bitter partisan conflict. The need to attract sufficient members and to maintain internal harmony ensured that political controversy was shunned and, in most cases, formally prohibited.⁷⁸ In 1836, when a Toronto literary society advertised forthcoming lectures on "Logic, Moral Philosophy, and the Philosophy of History," one newspaper was "pleased to anticipate that amid the din of politics, the voice of science will not be altogether silent."⁷⁹ Overtly political topics were, however, occasionally debated. On Christmas

⁷⁷ *Ibid.*

⁷⁸ This was true of the Dumfries Agricultural Society, the Western District Literary, Philosophical and Agricultural Association, the Kingston Literary Society, and the various Young Men's Societies. Young, *Reminiscences of the Early History of Galt*, p. 182. *By-Laws of the Western District...*, p. 11; *The British Whig*, 10 February 1836, *Hallowell Free Press*, 10 March 1834, *Canadian Freeman*, 3 November 1831, and *Chronicle & Gazette*, 16 November 1833. The topic of Catholic Emancipation was rejected by the Juvenile Advocate Society while debates about republicanism, liberty, and primogeniture were seen as civic or legal rather than partisan. Baker, "The Juvenile Advocate Society", p. 93. Because of the heated political climate of the 1830's, Upper Canadian societies were never as political, as commercial, or as popular as the debating societies of eighteenth-century Britain. See John Money, "Taverns, Coffee Houses and Clubs: Local Politics and Popular Articulation in the Birmingham Area, in the Age of the American Revolution", *The Historical Journal*, (v. XIV, n. 1, 1971), pp. 15-47; Trevor Fawcett, "Eighteenth-Century Debating Societies", *The British Journal of Eighteenth-Century Studies*, (v. 3, n. 3, Autumn 1980), pp. 216-229; and Mary Thale, "London Debating Societies in the 1790s", *The Historical Journal*, (v. 32, n. 1, 1989), pp. 57-86. For German debating and literary societies see Horst Möller, "Enlightened Societies in the Metropolis: The Case of Berlin", *The Transformation of Political Culture*, pp. 219-233.

⁷⁹ *Royal Standard*, 9 November 1836.

Ever 1833 the Hallowell Lyceum tackled an issue frequently before the House of Assembly: "ought the present system of imprisonment for debt to be abolished."⁷⁰ The Perth Debating Society devoted one of its weekly meetings in November 1835 to "whether the Union of the upper and lower Provinces would be beneficial or injurious to the former."⁷¹

Questions for debate more frequently concerned comparative history, literature, ethics, philosophy, and political economy. The content of these debates is not known, but it is likely that participants exchanged opinions and took away information and arguments that were of broad political relevance. In 1837, the Kingston Young Men's Society debated: "Whether is Commerce or Agriculture to be most highly prized in the present state of the Provinces." This debate could not have been immune to the partisan explanations being made outside the Society for the colony's economic distress or without reference to several prominent reform grievances such as the government's support for the Welland canal and its land policies. Likewise, its debate: "Whether has the Science of Navigation or the Art of Printing been more beneficial to mankind." was probably informed by the participants' own experience with printing in Upper Canada, dominated as it was by fiercely partisan newspapers. Even a question such as "Was Wellington or Bonaparte the greater Man" probably strayed from personal characteristics or military strategy to encompass their legal, political and constitutional contributions to Britain and

⁷⁰ *Hallowell Free Press*, 23 December 1833.

⁷¹ *Bathurst Courier*, 20 November 1835. Besides inter-colonial union, the Perth Debating Society spent the fall of 1835 debating "Whether the art of War, as a Profession, is justified or not," "Whether the married or single state is the happier," "Whether anticipation or reflection affords the most happiness," "Whether Cowardice or Dishonesty is the more despicable," "Whether Ignorance or Knowledge affords more happiness," "Whether should the vicious be regarded with indignation or contempt," and "Whether has the Sword or the Pen gained the more renown." *Bathurst Courier*, 18 September, 9, 16, 30 October, 20, 27 November, and 11, 18 December 1835.

France.⁷² Political discussion might also arise on seemingly unrelated topics. A lecture to the Toronto Literary Society in 1843 on the thought of the Greek orator and statesman, Demosthenes, sparked a heated debate on the merits of church establishment in Upper Canada.⁷³

Debating societies were promoted as means of private and public advancement. They were microcosms of the public sphere and as such they met with occasional opposition. A few were uncomfortable with the idea of an unsupervised group of non-specialists, mostly young men, discussing contentious issues. Rev. John Barry worried that the Young Men's Societies "were nothing but nurseries of infidelity and Atheism," while the editor of the *British Whig* ridiculed the notion that young men could profitably compare Bonaparte and Wellington.⁷⁴ These were minority voices. In the way they were organized, in the skills they fostered, and in the information they exchanged, debating societies made an important contribution to the credibility of the public sphere. In establishing explicit and implicit qualifications for membership, rules of behaviour, and particular questions for discussion, debating societies attempted to control controversy and thereby demonstrate its utility.

⁷² The other questions debated included: "Whether have Ancient or Modern Times produced the greatest Literary Men", "Whether are the works of Nature or of Art more calculated to excite the admiration of mankind," and "Are the works of Nature sufficient, without the assistance of Revelation, to prove the existence of a Supreme Being." *Chronicle & Gazette*, 15, 29 April, 5 May, and 2, 12 August 1837.

⁷³ Oliver to John Mowat, 7 March 1843, Peter Neary, ed. "Neither Radical Nor Tory nor Whig: Letters by Oliver Mowat to John Mowat, 1843 - 1846", *Ontario History*, (v. LXXI, n. 2, June 1979), p. 125.

⁷⁴ Barry, *Colonial Advocate*, 11 April 1833 and *British Whig*, 17 May and 16 June 1837: "have the silly boys grown ashamed of their folly; or has the fine weather tempted them to out-of-door games, such as marbles, buttons, or peg-top?" There was the smell of sour grapes here since the editor had been a prime supporter of the Kingston Literary Society which had not been able to compete with the Young Men's Society. Unexplained opposition was also aroused by Hollowell Young Men's Association. It was forced to relocate to end the disruption of their meetings by someone beating a drum outside. *Hallowell Free Press*, 5 May 1834.

Mechanics' institutes and agricultural societies also attempted to instruct, educate and inform Upper Canadians well below the level of the gentry. There was probably considerable overlap between the membership of the Young Men's Societies and the mechanics' institutes being founded at the same time, although a contemporary thought the latter more appropriate for "those who are more in need of instruction than to think of debating the parallels of latitude. [the relationship] one vice or one virtue bears to another, or one event or another, &c."⁷⁵ Rather than debate among equals, mechanics' institutes and agricultural societies were designed to transmit knowledge and values from those who claimed to possess them to those who were thought to be in need of them. Individuals would come together for mutual advantage and to access knowledge, but the flow of information was to be hierarchical. Thus, these organizations were usually fostered by local elites to bolster their claims of benevolent and enlightened leadership. Their status would be acknowledged as instructors, association officials and as the ones worthy of emulation.

Local elites, however, were themselves divided, and many of these associations became part of that struggle. Conservatives, in particular, faced a tension between their support for such improving associations and their fear of thereby empowering a broader segment of the population. On the one hand, they believed that they had earned their privileged positions by merit. Others were rational enough to emulate the appropriate models and could thereby reaffirm the social and political hierarchy. On the other hand, if farmers and mechanics were rational enough to recognize merit and to determine their

⁷⁵ Some Body, *Chronicle & Gazette*, 1 March 1834.

own self-interest, perhaps they were also capable of learning from each other and of organizing voluntary associations along more democratic lines. Conservatives wanted to spread useful knowledge and a belief in rational, disciplined behaviour, but they feared the political implications of popular organizations, widespread reading, and the habit of enquiry - especially when such efforts were led by reformers.

The first agricultural society was established at Newark by 1793 under the patronage of the Lieutenant-Governor.⁷⁶ According to a traveller, "it is not to be supposed that in such a settlement, many essays would be produced on the theory of good farming, or that much time would be taken up with deep deliberation." The monthly dinner meetings at the Masonic Hall did, however, afford valuable opportunities for "chatting in parties after dinner on the state of crops, tillage, etc."⁷⁷

With the exception of the Upper Canada Agricultural and Commercial Society of 1806, which appears to have attracted critics of Lieutenant-Governor Francis Gore,⁷⁸ there was little activity until December 1818, when a meeting of "several Magistrates and other gentlemen" formed the Agricultural Society of Upper Canada with Lieutenant-Governor Maitland as patron and the King's Printer as secretary. Its constitution was similar to those of most other voluntary associations, although potential members had to be

⁷⁶ The following account is indebted to Elsbeth A. Heaman, "Commercial Leviathan: Central Canadian Exhibitions at Home and Abroad During the Nineteenth Century", (Ph. D. thesis, University of Toronto, 1996), esp. pp. 49-64; but see also Foster Vernon, "The Development of Adult Education in Ontario, 1790 - 1900", (D. Ed. thesis, University of Toronto, 1969), chapter 3; and James J. Talman, "Agricultural Societies in Upper Canada", *Ontario Historical Society Papers and Records*, (v. XXVII, 1931), pp. 545-552.

⁷⁷ Cited in Vernon, "Adult Education", p. 28.

⁷⁸ One of these critics, Justice John Thorpe, was thanked "for his laudable zeal in establishing this society" at its February 1806 meeting. See the pamphlet of another critic, John Mills Jackson, *A View of the Political Situation of the Province of Upper Canada...*, (London: Printed for W. Earle, 1809), appendix no. 20; and *Upper Canada Gazette*, 15 February 1806, and 6 January 1808. "Falkland," in a letter to the *Kingston Gazette*, 18 December 1810, noted that "the Agricultural Society of Niagara had come to a resolution to purchase one hundred copies [of Richard Cartwright's *Letters from a Loyalist...* a response to Mills], for the purpose of circulating it in that district." Thus, from the beginning, agricultural societies were enmeshed in colonial politics.

approved by the elected Board of Directors. The society was intended to instruct farmers in the best and latest techniques, not by essays and deliberation, but by premiums and prizes - marks of honour from social superiors that "will tend to create competition and emulation amongst the Farmers of this Province." Instruction was to be vertical rather than horizontal. The active support of Compact figures like John Strachan and the vetting of potential members were likely prompted by the agitation recently surrounding Robert Gourlay. The *Kingston Chronicle* made the political purpose explicit:

These Societies, while they tend to diffuse general information on agricultural subjects, must naturally excite a spirit of emulation and enterprise among the farmers and [illustrate] how much depends upon them for promoting the general prosperity of this new country and their own advantage at the same time. Thus discontent would soon cease - imaginary grievances would no longer be heard of...

There were similar societies by 1819 in the Johnstown, Newcastle and Midland districts, although most were short-lived.⁷⁹

The formation of agricultural societies received considerable impetus from the offer of public funds in 1830. Charles Fothergill, representing Durham, argued that "these societies are attended with very beneficial effects - they bring together people from different parts; and the various means of promoting the grand objects of the whole are made known to all, so that great good results to the community." There was some debate as to whether rules should be stipulated for governing these societies, but James Lyons, the member for Northumberland, successfully argued that "the prosperity of all societies and institutions depended on their being established on liberal principles, and if we wished the agricultural societies to be successful, they must be untrammelled."⁸⁰

⁷⁹ For the constitution of the Upper Canada Agricultural Society see, *Kingston Chronicle*, 1 January 1819, for Macaulay's justification see, 8 January 1819, for the existence of other societies see, 28 May 1819, and for their failure see, 11 October 1822.

⁸⁰ For the fullest report of the debate see, *Colonial Advocate*, 21 January 1830.

"Liberal," in this context, probably meant that associations were to be self-governing with an open, voluntary and equal membership electing its own officers.

The political implications of such associations were self-evident to Brockville's two newspapers. The sheriff called a public meeting to establish a Johnstown district agricultural society that would qualify for the public grant. According to the reform *Brockville Recorder*, "various gentlemen and two farmers attended, and formed resolutions, entered into a subscription, appointed officers, &c. It now only remains for the Farmers to enter and humbly compete for the prizes under these great men and all will be complete." For this editor, such proceedings reflected the diseased structure of the colony. "A certain set of men must manage all public matters their own way or they will withdraw their support...while a no less respectable and worthy class...see that they can have no chance of enjoying equal privileges, quietly attend their private occupations." The collective pursuit of public ends required "a proper amalgamation of the individuals who should share in their management."

The conservative *Brockville Gazette* did not dispute its rival's characterization of the public meeting. Rather, it accused the *Recorder* of "attempting to create a popular excitement" by suggesting that agricultural societies should be "under the management of such persons as least understand the subject." The *Recorder* thought farmers were no less capable - "a no less respectable and worthy class." Given the nature of the colony's economy, the *Gazette* argued that every Upper Canadian, not just farmers, was interested in agriculture. Therefore, the *Recorder's* concern for "the rank of farmers in society," relative to other groups, was "as remote from the possibility of rational definition as the revolutionary cant of "the Sovereignty of the people."" Both slogans rejected hierarchy. Even in an agricultural society, egalitarianism

has a tendency to crush that noble emulation by which in countries where honours are not hereditary[,] individuals ever do acquire rank. - Rank among us means distinction, either conferred by authority, or admitted by common consent, where there is either positive or implied merit, and it is but a bad compliment to the profession in general, and such as none other would be proud of, to suppose that the best and the worst are on the same footing in society.⁸¹

Voluntary associations were safe, in the view of the *Gazette*, only insofar as they reflected and reinforced the broader social hierarchy. Of course, its position rested on the assumption that the gentlemen and government officers who attempted to dominate the agricultural society were, almost by definition, the most worthy of emulation. It was an assumption the *Recorder* was unlikely to accept.⁸²

Agricultural societies were supported by both conservatives and reformers, and they were able to work together in several of them.⁸³ The structure and control of others were contested. This was not simply the result of bitter personal and political feuds spilling over into voluntary associations. Voluntary associations were an integral part of the contest. As gathering places for individuals to discuss issues and pursue common interests, and as spaces where individuals were to be formally equal and elect their own leadership, voluntary associations had a widely acknowledged political significance.

Even where elites dominated the local agricultural society, they mixed with farmers of various religious and ethnic backgrounds and operated according to formal constitutions that usually included provisions for the equality of members and elective

⁸¹ *Brockville Recorder*, 18 and 25 May; and *Brockville Gazette*, 14 May and 4 June 1830.

⁸² In the Home District, William Lyon Mackenzie tried to form an agricultural society but his political opponents called a rival meeting. Their provisional list of officers was dominated by government officers. Finding farmers to attend proved more difficult. When a society was finally established, farmers were still outnumbered three to two. Moreover, when Mackenzie objected to the constitution of the association, he was thrown out of the meeting. For the list of provisional officers see *Courier of Upper Canada*, June 1830, [date torn]; for the various meetings see *Colonial Advocate*, 8 July 1830. On gentry domination of the Bytown agricultural society see Michael S. Cross, "The Shiners' War: Social Violence in the Ottawa Valley in the 1830s", *Canadian Historical Review*, (v. LIV, n. 1, March 1973), p. 17.

⁸³ Heaman, "Commercial Leviathan", p. 60.

positions of leadership. Even their most conservative promoters recognized that others were capable of knowing and acting on their own self-interest in a way that promoted the common good. While competition for prizes and emulation of superiors remained central to agricultural societies, they were still potential training grounds for the ideals and practices of the public sphere.⁸⁴

While conservatives dominated the leadership of the York Agricultural Society, most of the leaders of the York Mechanics' Institute, also founded in 1830, were reformers. Kingston (1834), Cobourg (1834-35?), London (1835), Woodstock (1835), Brantford (1836), Hamilton (1839) and Niagara (1839) soon followed. By 1850 there were at least 24 mechanics' institutes in Upper Canada offering lectures, evening classes, libraries and reading rooms.⁸⁵ As in agricultural societies, the emphasis was on the diffusion of "useful knowledge." As the York Institute put it in 1832, they sought to provide activities that were "becoming rational beings..."⁸⁶

A year before its founding, William Lyon Mackenzie had pleaded for the establishment of a mechanics' institute at York:

Imagine a society of 70 or 80 persons of all ages from 15 to 75, of all ranks, from the apprentice mechanic with his leather apron, up to the city bailie or parish minister with his powdered toupee, met together on an entire equality in a large hall full of books and papers, scientific apparatus, chemical tests, models of machinery, etc., etc., to give and receive

⁸⁴ Heaman, "Commercial Leviathan", pp. 63-64. The mixing of people with various backgrounds in agricultural societies is evident from the overlap in membership between the Kingston Mechanics' Institute and the Midland District Agricultural Society. See the appendix to Bryan D. Palmer, "Kingston Mechanics and the Rise of the Penitentiary 1833-1836", *Histoire sociale - Social History*, (v. XIII, n. 25, May 1980), pp. 29-32. As Talman points out, fairs and annual dinners were important opportunities for conviviality and social intercourse. He also notes that some agricultural societies were involved in essay reading and at least one annually elected a librarian. Talman, "Agricultural Societies", pp. 548-549. According to Vernon, "Adult Education", p. 30, seven agricultural societies received the legislative grant in 1836.

⁸⁵ On the growth of the movement see Vernon, "Adult Education", esp. pp. 259-261. The other centres were Dundas and Galt (1841), Paris (1842), Waterdown (1843), Simcoe (1844), Stratford (1846), Mitchell, St. Catharines and Whitby (1849), and Belleville, Vittoria and Guelph (1850).

⁸⁶ AO, MU2020, York Mechanics' Institute, report, 5 March 1832; and Heaman, "Commercial Leviathan", p. 86.

valuable information.⁵⁷

Imagine indeed. The mingling of ranks for the mutual exchange of information in the pursuit of common ends was an ideal shared by such institutes and the public sphere.

Encouraging such sociability was also a goal of the Kingston mechanics' institute. The *Upper Canada Herald* conceded that "some persons were apprehensive that the Mechanics' Institute would become an arena of political strife; but we believe that it...will form a neutral ground where all parties may peaceably meet to hold high converse with the mighty dead or the illustrious living, and may collectively enjoy 'the feast of reason and the flow of soul.'" Likewise, a letter to the conservative *Chronicle & Gazette* called on mechanics to form an institute "embracing the society of every individual that will be interested in the prosperity of the improvement of the human mind, and that on a scale of expense that no friend of social fellowship or a well wisher of general information would think a burden on his purse." The institute would be a protected social space where "he shall hear or be heard...where he shall hear all communications received from other members read, and any he shall have to produce received with pleasure..." This enthusiast hoped that a journal might be published "embracing instruction in way of their occupation, to every class, from the statesman to the farmer and mechanic; and that unsoured by the thread-bare jargon of politics, and the invectives of contentious sectarians, which so much mar the harmony of society in general, that it may be a welcome visitor wherever it goes..." Finally, the letter insisted that only an association of individuals could achieve these ends. "What is more adapted to spread information and forward instruction than the effects of societies? A single individual, however wealthy, patriotic, learned, energetic, or high in station he may be, is not able to achieve what a

⁵⁷ *Colonial Advocate*, 1 October 1829.

society may."⁸⁸

The institutes' sociability might also be exported to society as a whole. In a published address to the York Institute in 1832, William Dunlop attempted to answer the question, "Why do nations and empire fall?" It was "[b]ecause though great in the Arts and Sciences, their knowledge was not diffused through the body of society, but confined rigorously to a part of it." England's greatness rested on her diffusion of knowledge and her commerce. "The Mechanical Arts produce Commerce - Commerce wealth, and wealth knowledge...all these principles re-act on each other..." The result was beneficial social structure. Commerce and manufacturers

establish a middle order in society, which forms a communicating link between the highest and the lowest; and one rank, shading imperceptibly into another, permits a common sympathy to pervade the whole...every man must have an interest in the common good; for though only a part of the community can possess property and be men of rank and of influence, yet, every man sees that the door is open to him to possess these distinctions, and every man feels anxious to promote the good of the community.⁸⁹

Little wonder that reformers and merchants, shopkeepers and professionals, and ambitious mechanics were drawn to the Institute. The wider diffusion of knowledge and commerce contributed to an open meritocracy where individuals, while pursuing their own self-interest, also pursued the common good. Society, divided by merit, would be united in valuing information, rational deliberation, and the collective definition of common interests.

⁸⁸ *Upper Canada Herald*, 9 April 1834 and *Some Body, Chronicle & Gazette*, 1 March 1834. The goals were perhaps best summarized by the constitution of the Dundas Mechanics' Institute in 1843: "The instruction of the Members in the principles of useful and ornamental arts and various other branches of useful knowledge, to the exclusion of controversial divinity, party politics, and all subjects of local controversy." cited in Vernon, "Adult Education", pp. 285-286.

⁸⁹ Dr. Dunlop, *An Address Delivered to the York Mechanics' Institution, March 1832*. (York: Guardian Office, 1832), pp. 3, 6-7. Also *Christian Guardian*, 21 March 1832.

Lectures, like this one, were the primary vehicles of instruction.⁹⁰ They usually focussed on practical or scientific subjects, although many were broader. In 1834, R. Jennings lectured at the Kingston institute on the "Advantages and Pleasures of Literary and Scientific Pursuits," while the Rev. William Proudfoot lectured to about forty people at the London institute in 1835. "On the Improvement of the Mind."⁹¹ By their Third Annual Report in 1834, the York Institute claimed 140 members, held regular lectures (a total of 16 during the winter of 1833-34), planned to establish an evening reading room to increase access to the library (which contained 46 volumes in 1832 and 370 volumes in 1836), organized a drawing class, and had held successful conversation classes. The last did not concern elocution, but were a sort of study group where those attempting to understand scientific principles worked together. As an annual report put it, "intricate or difficult problems may be solved, and the important truths of the arts and sciences rendered intelligible to all, with less danger or error than in private study or even public lectures."⁹² The pursuit of knowledge was a social enterprise as well as a social good.

Many classes were under-subscribed or short-lived. Fiscal reality defeated many hopeful plans. The number of people actively involved in these institutes is also difficult to determine. There were 140 members at York in 1834, but the number regularly attending lectures and classes may have been considerably lower. Moreover, little is

⁹⁰ The number of public lectures organized by voluntary associations or through ticket sales increased noticeably in leading towns during the 1830's. For later developments in the United States, see Donald M. Scott, "The Popular Lecture and the Creation of a Public in Mid-Nineteenth-Century America", *The Journal of American History*, (v. 66, n. 4, March 1980), pp. 791-809.

⁹¹ *Chronicle & Gazette*, 22 November 1834 and Vernon, "Adult Education", p. 245. There were limits to lecture topics. In 1848, A. A. Riddell wanted to lecture to the Toronto institute on "The Rights of Labour" but was refused. In 1842-43, Rev. D. Rintoul had given a series of lectures on political economy. See Heaman, "Commercial Leviathan", p. 18.

⁹² Third Annual Report, *Chronicle & Gazette*, 8 March 1834. See also Vernon, "Adult Education", pp. 267, 268-269, 282, 296-298; and extracts from James Lesslie's diary, *The Town of York, 1815-1834: A Further Collection of Documents*, Edith G. Firth ed., (Toronto: University of Toronto Press, 1966), pp. 335-337.

known about the social composition of the membership. The leadership of the York Institute was dominated by elite figures. On the other hand, one newspaper editor claimed that the members of Cobourg Institute were "nearly all operative Mechanics." A supporter at Kingston appealed to "Journeymen Mechanics" on the grounds that "boarding houses are generally too crowded for allowing the freedom required in stocking the mind." The constitution of the Kingston Institute stipulated that two-thirds of the managing committee had to be mechanics. This lends credence to another report that a "most high respectable body of mechanics, interspersed with some few of the inhabitants of Kingston"⁹³ made up the 3-400 attending the founding meeting.

The institutes offered educational opportunities to a broader range of adults than literary societies, (particularly to young men without considerable financial resources). Lectures, classes and libraries were made available to those who might otherwise have never had access to them. Within months of its founding, the Kingston Mechanics Institute opened a reading room and was receiving both reform and conservative newspapers.⁹⁴

As instructional associations reaching beyond the genteel, mechanics' institutes revealed many of the same political tensions as agricultural societies. One of the strongest supporters of the York institute, James Lesslie, recorded in his diary that

The M. Institute is viewed with suspicion by some of our Gentry & some of its professed & warmest friends seem to be influenced by them. - The intelligence of the lower Classes they and their system would if possible keep under - their *Lord and Slave System* is not to be grafted upon the people of U.C. and their favorite maxim "Ignorance is Bliss"...shows

⁹³ On the Cobourg Mechanics' Institute see *Reformer*, 13 October 1835; for the appeal to journeymen see *Some Body, Chronicle & Gazette*, 1 March 1834; for the constitution and attendance at Kingston see *Chronicle & Gazette*, 15 March and 19 April 1834; and for a report of the preliminary meeting see *British Whig*, 11 March 1834, reprinted as a broadside, "The Kingston Mechanics' Institute."

⁹⁴ *Chronicle & Gazette*, 7 June 1834, and 14 January 1835; and *Hallowell Free Press*, 27 October 1834.

clearly from which their opposition to the dissemination of knowledge arises.⁹⁵

Some of that suspicion simply reflected the dominance of prominent reformers in the institute. Part was driven by support for a more genteel alternative, the York Literary and Philosophical Society.⁹⁶ The level of suspicion should not, however, be exaggerated. Both the Receiver-General, John H. Dunn, and Lieutenant-Governor Colbourne served as patrons of the York Mechanics' Institute.

It was a common reform slogan that conservatives opposed popular education, but this caricatured the tension between their desire to instruct and their fear that, without proper controls, instruction might consist of pernicious doctrines or lead people to place too high a value on their own abilities and opinions.⁹⁷ Mechanics' institutes at Kingston and Cobourg found support from both conservatives and reformers, although actual control seems to have been contested at Kingston.⁹⁸ One of the most ultra-tory newspapers in the province, the *Cobourg Star*, found it "doubly gratifying to find this class of society using means for the cultivation of the understanding and employing their few leisure hours over works of literature and science." The establishment of mechanics' institutes in Upper Canada proved, "that there is a thirst for knowledge among the people, and it should be encouraged by their rulers if it be true - which cannot be disputed for a moment - that to cultivate the mind is essential to the happiness and the welfare of

⁹⁵ Lesslie, *A Further Collection of Documents*, Firth ed., p. 335.

⁹⁶ As noted above, this society had to publicly insist that it was not exclusive. William Dunlop was active in founding both groups.

⁹⁷ W. C. "On a Taste for Reading", *Cobourg Star*, 30 June 1841, praised the formation of mechanics' institutes, libraries and public lectures to provide rational uses for leisure time and to spread knowledge. He feared, however, that "[t]he facilities which the present day affords of disseminating any set of opinions, place the great body of the people open to the attacks of mistaken zeal, ill directed talent and ambitious policy." He was almost alone among conservatives by this point in publicly voicing reservations about the benefits of the "universal diffusion of knowledge" because "without proper checks we believe it a dangerous principle as it leads to serious consequences, both to the individual and the state."

⁹⁸ Palmer, "Kingston Mechanics and the Rise of the Penitentiary", pp. 26-27.

society."⁹⁹

Over the next decades conservatives, as well as reformers, discovered just how essential individuals capable of rational deliberation were to good government. In 1866, the *Toronto Leader*, referring to mechanics' institutes, underlined the connection between voluntary associations and the status of public opinion:

Class education was a very excusable thing when the work of government and the guidance of public opinion were supposed to be the privileges of a class; but the inevitable tendency of social and political power to the masses, the confusion and intermixture of ranks...warns us that if we would preserve the State in its integrity, we must as liberally and as fast as we can educate to the highest point every member of the state.¹⁰⁰

Conservatives in the 1830's were wary of the claims of public opinion and wary of voluntary associations that lent too much credence to those claims. Once those claims could not be disputed, the question became one of ensuring that public opinion was as informed and rational as possible.

.....

Freemasonry, debating clubs, agricultural societies, libraries, news rooms (discussed in the next chapter) and mechanics' institutes were formally connected to democratic sociability and the spread of reason and information. Other voluntary associations flourishing in Upper Canada lacked this formal connection. Some have even been perceived as working in the opposite direction. For instance, Orange lodges seemed to have reinforced, rather than overcome, divisions between Protestants and Roman Catholics, especially with the often violent confrontations surrounding the annual Orange

⁹⁹ *Cobourg Star*, 14 December 1836.

¹⁰⁰ *Leader*, 9 October 1866, cited in Heaman, "Commercial Leviathan", p. 17.

parades to mark the Battle of the Boyne. Nonetheless, the lodges exhibited many of the characteristics of other associations discussed in this chapter, especially a sociability that crossed class and ethnic lines. Moreover, they were mini-republics where, as Gregory Kealey points out, they "trained their members in parliamentary procedure and taught them how to conduct and lead meetings." The extent to which sectarian divisions were actually reinforced during the 1830's requires further investigation. Relations with Upper Canadian Catholics, (as opposed to Catholicism or the papacy) were far from straightforward, especially prior to the Rebellion.¹⁰¹

National societies might also appear divisive, and the accusation was made at the time. Just as Orangemen and Catholics could, under certain circumstances, co-exist, so too could members of different national societies manifest goodwill and support for each other. John Rolph thanked his Irish and English friends for helping celebrate St. Andrew's Day at Ancaster in 1833, swelling with "national pride" that this "interchange of social sentiment gives birth to a buoyancy of spirit and an expansion of manly and liberal intercourse."¹⁰² Likewise, benevolent and religious associations that actively attempted to bridge denominational boundaries grew during this period. In his diary entry for January 9th, 1832, the Baptist James Lesslie noted that "much unanimity & good

¹⁰¹ Gregory S. Kealey, *Toronto Workers Respond to Industrial Capitalism, 1867-1892*, (Toronto: University of Toronto Press, 1980), p. 121. For social composition see Gregory Kealey, "The Orange Order in Toronto: Religious Riot and the Working Class", *Essays in Canadian Working Class History*, Kealey and Peter Warrian, eds., (Toronto: McClelland and Stewart Limited, 1976), pp. 18-19. For occupational, religious, and ethnic diversity see especially Cecil J. Houston and William J. Smyth, *The Sash Canada Wore: A Historical Geography of the Orange Order in Canada*, (Toronto: University of Toronto Press, 1980), esp. pp. 35, 84, 95-96, 101; and Hereward Senior, "The Genesis of Canadian Orangeism", *Ontario History*, (v. LX, n. 2, June 1968), p. 26. For its politics see especially, W. B. Kerr, "When Orange and Green United, 1832-9: The Alliance of Macdonell and Gowan", *Ontario Historical Society, Papers and Records*, (v. XXXIV, 1942), pp. 34-42. Lord Durham thought that some Irish Catholics had actually joined the Order. He also noted, correctly, that the Order claimed to be tolerant of Catholics and praised the loyalty of Catholic Bishop Macdonell. *Lord Durham's Report: an abridgement*, G. M. Craig, ed., (Ottawa: Carleton University Press, 1982), p. 98.

¹⁰² *Western Mercury*, 12 December 1833.

feeling [was] manifested by the Speakers of all denominations" at a meeting of the Bible society. "[S]uch institutions tend to make Christians more of "one heart & one mind.""¹⁰³

The political significance of these associations - the extent to which they promoted and/or hindered the developing the public sphere - deserves closer scrutiny. Only one such association can be examined here.

Temperance societies were among the largest, most socially and geographically diffused, and contentious, voluntary associations. The first temperance society in Upper Canada was established by a Baptist minister in Bastard Township in 1828. Within four years there were about 100 societies with approximately 10,000 members, mostly from evangelical denominations, especially the Methodists. Along with evangelical protestants, reformers were noticeably over-represented. In 1830 Jesse Ketchum helped establish the Toronto Temperance Society, which attracted 252 members by the end of its first year. Other prominent reformers who held office in this society included Marshall Spring Bidwell, John Rolph, T. C. Morrison, and James Lesslie. Its constitution declared that "any person may become a member of this society, by subscribing his name to the constitution."

Jan Noel argues that while the leadership was largely drawn from "the broad middle class of preachers and journalists, and doctors, druggists, wholesalers, grocers, shopkeepers, and booksellers," early temperance was in fact something of a "mass movement." The Toronto society was dominated by mechanics and artisans. Only leading Compact figures, those who profited from liquor, or those "who saw little

¹⁰³ Lesslie, *A Further Collection of Documents*, Firth, ed., pp. 208-210. The second rule of the York Bible Society, founded in 1828, read that the "society shall consist of all who are disposed to promote the object of the Institution without regard to differences of religious sentiment." As well as denominational lines, it also crossed political ones to incorporate office-holders like John H. Dunn, conservatives like George Dennison and John Gamble, moderate reformers like the Baldwins, and more radical reformers like Jesse Ketchum and John Rolph. See the report, *Loyalist*, 15 November 1828.

opportunity for self-advancement whether or not they stayed sober" were noticeably absent. Incorporating women and the young in large numbers, they "moved hitherto silent souls to speak."¹⁰⁴ After one year of operation, the Young Men's Temperance Society at Toronto claimed 201 members, including 80 women. The geographic breadth of the movement also incorporated isolated areas, both rural and urban, into an international network of shared aspirations, common tracts, newspapers (including Ketchum's *Temperance Record* published from 1835) and travelling lecturers.

This network cut across several important divisions in Upper Canada. As the *Canadian Watchman* put it in 1831, "the interest felt in opposing the grand enemy - intemperance - in every form...banished all invidious distinctions and created a real enjoyment in the exercise of those social and kindly feelings which soothe and allure the mind of men to make common cause in promoting a good object."¹⁰⁵ Individualism and a downgrading of social distinctions were also evident in the ideals of the early temperance movement. As Noel argues, "the hallmark of the early movement was its insistence that *everyone* take the pledge and cease to deal in the stuff...The first generation of movement activists...typically blasted immoral profits and comfortable timpling clergymen...In this they attacked the existing social order." Moreover, temperance sought to motivate and educate individuals to join societies, take the pledge, and work in the collective struggle to remake society. The prime enemies of temperance were ignorance, tradition and

¹⁰⁴ Jan Noel, *Canada Dry: Temperance Crusades before Confederation*, (Toronto: University of Toronto Press, 1995), pp. 7-9, 11.

¹⁰⁵ *Canadian Watchman*, 7 January 1831, cited in F. L. Barron, "The American Origins of the Temperance Movement in Ontario, 1828-1850", *The Canadian Review of American Studies*, (v. 11, n.2, Fall 1980), p.142. Blacks and natives were also incorporated but without challenging their inferior status. Blacks joined temperance organizations but there were few inter-racial societies. Where there were, they probably adopted the system at Coldwater - one multi-racial society but segregated into two "branches" with the leadership generally confined to the non-blacks. Natives were also admitted to mission temperance societies, though they were not seen as adults voluntarily banding together, but as children in need of special protection from missionaries and the state. See F. L. Barron, "The Genesis of Temperance in Ontario, 1828-1850", (Ph.D. thesis, University of Guelph, 1976), pp. 4, 10-12.

prejudice. To quote Noel again, "they wanted to break the bonds of ignorance, sensuality, and vice (including drunkenness) and slavish adherence to caste or fashion." More practically, temperance societies helped educate their members by the extensive use of printed tracts, newspapers, lectures, and debates.¹⁰⁶

Reports of a meeting of the Young Men's Temperance Society in August 1833 brought many of these themes together. The hall "was filled to overflowing by our fellow-citizens of all grades and persuasions, in eager and anxious expectation of hearing our talented and distinguished fellow-citizen (Dr. Rolph) lecture on Intemperance." The meeting was chaired by the Society's president, a carriagemaker. The Society praised Rolph's lecture. It would be remembered "not only by the friends of Temperance, but by every person who was capable of being delighted by sound reason, founded on facts."¹⁰⁷ British subjects, divided by social status and religious persuasion, were also "fellow citizens" capable of working together as rational individuals.

Heavily influenced by its American counterpart;¹⁰⁸ dominated by protestant and political dissenters; drawing individuals of diverse status into formal organizations; and attacking the leisure and economic activities of social superiors: temperance societies drew conservative fire. Col. Talbot blamed unrest in his area on meetings of "Damned

¹⁰⁶ For the constitution of the Toronto Temperance Society see *Christian Guardian*, 27 February 1830; for the membership of the Young Men's Temperance Society see the *Guardian*, 12 March 1834, and *A Further Collection of Documents*, Firth ed., pp. 342n-343n, 347. See also Jan Noel, *Canada Dry*, esp. pp. 7-11, 59, 62, 84-85, 104-107. Barron notes that temperance meetings were "semi-literary in character, placing great emphasis upon learned lectures, debating and public speaking." A military society at Amherstburg had its own reading room. Barron, "The Genesis of Ontario Temperance", pp. 101-102, 166-168.

¹⁰⁷ *Canadian Correspondent*, August 1833, and annual report, *Christian Guardian*, 12 March 1834; both in *A Collection of Further Documents*, Firth ed., pp. 342-343, 347.

¹⁰⁸ The United States provided models, personnel and tracts for the movement in Upper Canada. Its influence could also be felt in statements of wider applicability than drinking habits. In 1830, the members of the Prescott Temperance Society listened to an address, later published by a Kingston newspaper, that the United States deserved praise and recognition for its response "to the heavenly prompted call, as moral Queen of the western hemisphere." *Kingston Gazette and Religious Advocate*, 16 April 1830, cited in Barron, "The American Origins", p. 133.

Cold water drinking Societies where they ["rebels"] met at night to communicate their poisonous and seditious schemes to each other." In 1833 the *Patriot* referred to temperance societies as "ingenious inventions of the crafty, for lifting themselves into political power."¹⁰⁹ In his account of the colony in 1841, Sir Richard Henry Bonnycastle, a military engineer resident in the colony since 1826, expressed the same complaint. "Obscure individuals...without the previous acquirement of education, observation and research" achieved a sort of "pseudo celebrity." Temperance societies gave them a social standing and an audience they did not deserve. "Thus you will find, that political quacks, whose whole dependence and livelihood depend on keeping up a scurrilous, agitating, unprincipled newspaper, are generally the firmest and most untiring temperance advocates."

Bonnycastle's analysis, however, went further. These unworthy agitators read these pestiferous productions to the wholly uneducated, and make as great merit of politically converting from the habitual dram, as they do from the Catholic, the Scotch, the English, or the Methodist Church; and upon the same reasoning too, because their situation and limited education, assure them they can rise no higher; and they are willing therefore to have a drink and a religious of their own, where neither science nor reason shall sway, any more than birth, the customs of good society, nor education.

By-and-by, comes the re-action; - the drunkard who never read before, reads now a little, and he finds he is just as good a reasoner as his teacher, and quite equal to him as a man; and why should he, forsooth, be controlled?

Bonnycastle's condescension is obvious, but the process he described deserves attention. Voluntary societies provided respectability and an audience for those "whose previous career has convinced the thinking" that they should be excluded from political and social

¹⁰⁹ Col. John Talbot, draft of speech, 23 April 1832, The Talbot Papers, Part II, James H. Coyne ed., *Transactions of the Royal Society of Canada*, 1909; and *Patriot*, 15 November 1833. Both also cited in Barron, "The American Origins", p. 141.

leadership. Shunned, these agitators turned to voluntary associations, creating a social space organized on different principles from those supported by existing social and political leaders - a space where, according to Bonnycastle, "neither science nor reason shall sway, any more than birth, the customs of good society, nor education." They also reached their audience through newspapers, tracts, and lectures. With these methods, they threatened to replace existing elites as the primary influence on popular mores and attitudes.

This process, Bonnycastle argued, was self-perpetuating. Once the "half-educated" or the "political quacks" undermined respect for the existing order, their audience felt capable of continuing the process. Thus "the drunkard...reads now...and he finds he is just as good a reasoner as his teacher, and quite equal to him as a man; and why should he, forsooth, be controlled?" The "half-educated" attempted to replace existing elites, but their major tools, voluntary associations and printed texts, could undermine the potential for hierarchy altogether.

Bonnycastle did not condemn temperance societies outright, but they were to avoid political and religious discussion. They should persuade each member that "his superiors in society can never admit him to a confidence, or a level, if you please [if he was not temperate], and he will be convinced." Change in popular drinking habits should be achieved by preying on the desire for respect from social "superiors." Such associations would bolster, not undermine, existing elites. That hierarchy deserved to be reinforced when it was an open meritocracy. Bonnycastle attacked the exclusivity of the Family Compact because progress was possible only if "honours are alike open to all classes of the British people in it, as they are in England, where the poorest man from Upper Canada, if he be a man of high talent, may become lord-chancellor." Even the least

fortunate could be reasoned with and admitted to "a level."¹¹⁰ One might question his analysis of British society, but the principle was clear. Bonnycastle articulated a clear, if exaggerated and prejudiced, view of the process many conservatives feared would result from unregulated agricultural societies or mechanics' institutes. Reformers supported voluntary associations to organize and instruct people precisely because they did not believe that existing elites were an open meritocracy.

The establishment of the British Constitutional Society, Upper Canadian Political Unions, and the Canadian Alliance Society in the 1830's translated the principles of voluntary associations into the political realm. Committees for particular causes, to nominate candidates, or to garner signatures for petitions, were common by 1830. More formal associations, particularly on a province-wide scale, remained something of a novelty.¹¹¹ These political groups resembled voluntary associations far more than later political parties. They reflected the perceived need for collective over individual action and the recognition that existing institutions and informal mechanisms were insufficient. Party, like faction, remained a label to apply to one's opponents, but democratic organizations to further certain political ends were seen as increasingly acceptable, even necessary, across the ideological spectrum.

¹¹⁰ Sir Richard Henry Bonnycastle, *The Canadas in 1841*, (London: Henry Colburn, 1841, reprinted 1968), v.1, pp. 127-130, 171-172. Bonnycastle, a prominent Freemason, was unlikely to be critical of voluntary associations *pre se* and his views of the social order fit well with one reading of the Order's ideals. See Robertson, *History of Freemasonry*, v. 2, pp. 328, 340.

¹¹¹ For political organizations in the 1820's see Hartwell Bowsfield, "Upper Canada in the 1820's: The Development of Political Consciousness", (Ph.D. thesis, University of Toronto, 1976), esp. chapters 7 and 8.

Most political associations were founded at public meetings where a constitution was adopted, officers elected, and others encouraged to join. Many were local branches of a provincial association. The fifth resolution of the York Constitutional Society formed in 1832 could have been used by other voluntary associations: "Every male inhabitant of this town of good character, over 21 years of age, without distinction of rank, religion or country, shall be eligible to become a member of this Society, provided he subscribes his assent to the principles and objects on, and for which[,] it is organized." Women were explicitly excluded but adult men of acceptable character were divided only by their support for or opposition to the principles of the organization - not by "distinction of rank, religion or country."¹¹²

Partly as a response, radicals formed Political Unions modelled on the British associations of the same name. One promoter pointed out that while they were inherently political, they were distinct from the state. They were "neither more nor less, than a voluntary association of freemen, united for the purpose of mutual intelligence and natural protection."¹¹³ The constitution of the radical Canadian Alliance Society, adopted in December 1834, laid out 23 objectives. The corresponding secretary, William Lyon Mackenzie, told the editor of the *Brockville Recorder* that, "there is no test reqd than an approbation of the views of the society." The inaugural meeting also established 19 rules concerning such things as elections, committees, and speaking at meetings. Sounding like a fraternity, the sixteenth rule stated that "any member of a Branch Society shall be

¹¹² For the Society's constitution see *Courier of Upper Canada*, 4 April, or *Western Mercury*, 12 April 1832. The provision that social rank was irrelevant carried particular force since there was no subscription fee.

¹¹³ *Cobourg Reformer*, copied *St. Thomas Liberal*, 27 December 1832; and for the formation and principles of the Political Union at York, see *Colonial Advocate*, 13 December 1832.

admitted as a brother into every other branch...by producing a certificate of fellowship."¹¹⁴

These organizations represented the conscious adaption of the model of voluntary associations to overtly political ends. As such, they bore an ambiguous relationship to the theory of mixed monarchy with its fixation on the relationship between three legislative institutions or social estates. This ambiguity was only one aspect of the broader tension between the growth of voluntary associations and constitutional theory. Voluntary associations contributed to the creation of a social space where non-legislators gained the requisite skills, expectations, and sociability for political deliberation.

By establishing who could function in that space, voluntary associations also helped to determine the boundaries of the public sphere. Some blurred divisions of social rank, ethnicity or religion. By developing distinctive norms and sociability, voluntary associations carved out a social space with a degree of autonomy from the rules and interactions of family, economic production, and the state. Voluntary associations introduced more and more Upper Canadians to this space. Colonial elites could no longer claim a monopoly on the ability to reason or to organize. Others had the skills, inclination and forums to work together toward common ends. This space was not, however, open to everyone. The economically marginal were excluded by a combination of formal prohibitions and informal constraints.¹¹⁵ They were seen as lacking two basic

¹¹⁴ "Objects and Rules of the Canadian Alliance Society". *Bathurst Courier*, 9 January 1835; and AO, Mackenzie-Lindsey Papers, William Lyon Mackenzie to A. N. Buell with enclosures, 15 December 1834. Morgan, *Public Men and Virtuous Women*, esp. pp. 66, 85-86, argues that reform organizations in general were "fraternal unions" where appeals to a common manliness were intended to overcome socio-economic divisions.

¹¹⁵ On racial exclusion see notes 44 and 105 above.

requirements: first, the independence to publicly exercise their reason, and second, the time, skills and resources to contribute to common projects, and, therefore the right to claim a stake in them. The emphasis on the use of reason and printed texts also deepened the cultural gulf between the literate and the illiterate.

The ability of women to enter this social space is problematic.¹¹⁶ Some voluntary associations were primarily seen as extensions of women's domestic role as mother, wife, moral exemplar, and care-giver. The Female Benevolent Society of Kingston, founded in 1821 and composed mostly of elite women, dispensed relief to over 100 persons in 1825. To do so they organized, ran meetings, elected directresses, and raised and managed funds.¹¹⁷

Less socially prominent women gained skills and visibility in temperance societies. Some, however, were only "visiting ladies" who took the pledge but paid no dues and could not hold office. By the 1840's exclusive female temperance societies became more common. It is difficult to judge whether this reflected the growing number and importance of women in the movement or an increasing desire, perhaps on the part of both men and women, to segregate the sexes. Gradually, women began to speak to mixed

¹¹⁶ It is also highly contested. See Morgan, *Public Men and Virtuous Women*, esp. pp. 121, 125, 180-182, 202-211, 214-215, 222. Compare Joan B. Landes, *Women and the Public Sphere in the Age of the French Revolution*, (Ithaca: Cornell University Press, 1988) with Dena Goodman, *The Republic of Letters: A Cultural History of the French Enlightenment*, (Ithaca: Cornell University Press, 1994). See also Daniel Gordon, "Philosophy, Sociology, and Gender in the Enlightenment Conception of Public Opinion" and Sarah Maza, "Women, the Bourgeoisie, and the Public Sphere..." *French Historical Studies*, (v. 17, n. 4, Fall 1992), pp. 882-911 and 935-950. For Upper Canada see Lykke de la Cour, Cecilia Morgan, and Mariana Valverde, "Gender Regulation and State Formation in Nineteenth-Century Canada", *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, Allan Greer and Ian Radforth, eds., (Toronto: University of Toronto Press, 1992), pp.163-191. For the United States see Mary Ryan, *Women in Public: Between Banners and Ballots, 1825-1880*, (Baltimore: The Johns Hopkins Press, 1990). For fascinating, if more theoretical and contemporary, perspectives see Johanna Meehan, ed., *Feminists Read Habermas: Gendering the Subject of Discourse*, (New York: Routledge, 1995). Much of the dispute in this area centres around whether the relative invisibility of women was contingently or constitutively related to the rise of the public sphere. The evidence presented here suggests, in Upper Canada at least, that it was the former more than the latter. This is, of course, a working hypothesis, not a conclusion.

¹¹⁷ "Report of the Female Benevolent Society of Kingston", *Kingston Chronicle*, 20 January 1826. For the Society's constitution see AO, Macaulay Family Papers, enclosures, 1821.

audiences, but when a Miss Maria Lamas lectured at Hamilton in 1851 it was still referred to as "rather a novel thing for a female to be engaged in this cause. as a public lecturer." In 1846, female temperance supporters petitioned local officials in favour of increased regulation of taverns. An increased public role was possible on those issues, such as temperance, which either effected women directly or could be seen as extensions of their domestic responsibilities. These were necessary steps toward a greater public role, but they were only a beginning. In fact, Jan Noel suggests that the increased presence of women in the movement after 1837 helped erode its perceived connection to reform politics. It could still be inferred from the presence of women that a cause or meeting was non-political.¹¹⁸

Many of the associations and activities most closely associated with democratic sociability and the public use of reason were almost exclusively male. This chapter took the sociability of Freemasonry as a model for the public sphere, but among the rules designed to foster that sociability was a prohibition on female members. The incorporation of some women into European Masonry in the eighteenth-century forced the articulation of some of the rationale. Jacques Brengues' study of Masonic poetry reveals three arguments for exclusion: "first, that women are indiscreet and thus would violate the idea of secrecy; second, that women cause disorder among men and thus would violate the ideal of harmony; and third, that the inclusion of women would violate

¹¹⁸ Moreover, the earlier presence of women had attracted the attention of its opponents. The *Patriot* ridiculed the Young Men's Temperance Society's claim to mass support since it consisted of "old men and maidens, widows and wives." *Patriot*, 23 August 1833. As noted above, about 40% of the membership in 1834 was female. Much of the material, but not always the interpretation, for this paragraph is taken from Noel, *Canada Dry*, pp. 96-102. On full versus visiting status see Barron, "The Genesis of Ontario Temperance", pp. 196-197. Maritime women in urban centres were also signing temperance petitions by the late 1840's, with the practice incorporating rural women by the early 1850's. Gail Campbell, "Disfranchised but not Quiescent" Women Petitioners in New Brunswick in the Mid-19th Century", *Separate Spheres*, pp. 39-65.

the space based on friendship between men in the introduction of love between men and women."¹¹⁹ Fellowship across national, religious, economic, and political lines seemed more likely among men. Women might be ideally suited to influence the manners and behaviour of their male relations within the household, but in public men were capable of devising rules and codes of behaviour in the absence of, and often in the explicit exclusion of, women. They were not seen as independent actors, and therefore, were less suited to the public use of their reason and the practice of democratic sociability.

However vital women's contribution was to the rural labour force and family economy, men gathered in formal associations to discuss improvements. The notice for the founding meeting of the York Mechanics' Institute read that "[m]echanics are earnestly requested to attend. Suitable accommodations will be provided for the ladies."¹²⁰ Women were not excluded. By advertising that special arrangements had been made, they were actually encouraged to attend, but they were given a sort of gallery from which to safely observe the proceedings. The Institute's constitution, as published in 1839, read that "[j]unior members shall be under 18 years of age, and shall not be eligible to office, or to vote at elections, or on any other question: but shall enjoy all the other privileges of ordinary members. Females shall be junior members in every case."¹²¹ Regardless of age, occupation or degree of economic independence, women were excluded from the management of the organization. They could, however, attend lectures and classes, and visit the library and reading room. Whether they actually felt able to do so requires further research. The same norm, that is, possible participation, usually as a spectator, but without the rights and responsibilities of membership, seems to have

¹¹⁹ Goodman, *The Republic of Letters*, pp. 253-255 summarizing Brengues' study.

¹²⁰ *Colonial Advocate*, 25 November 1830.

¹²¹ AO, MU2020, Mechanics' Institute of Toronto. The provision still appeared in 1855.

operated in some of the colony's debating and literary societies. Women were often invited to attend lectures given by literary societies just as they were invited to attend public or subscription lectures.¹²²

Even in the political realm, a first step was soon taken. The radical Canadian Alliance Society, founded at Toronto in December 1834, adopted the provision that "the wives and daughters and sisters of members may be admitted as spectators - and members are earnestly invited to bring their female relations to the lectures as a means of interesting them in the success of the association and the promotion of its measures." Women could not attend in their own right. They had to be accompanied by a male relation who was a member. Women were excluded from both membership and active participation. Nonetheless, as Mackenzie put it, the Society "may be distinguished from most meetings by the mark that women *may* be present."¹²³ In fact, the constitution encouraged their presence and, while denying them active participation, it publicly acknowledged their influence. This was an unprecedented and necessary step toward bringing women into the public sphere as active participants. Whether women were, in fact, only "spectators" is not known.¹²⁴ Here, as in the York Mechanics' Institute, women's public status was subordinate, but they were still considered capable of using their reason with profit on philosophical, literary, scientific, and even political, topics.

¹²² For instance, *Courier of Upper Canada*, cited in *Colonial Advocate*, 4 October 1832 on the York Literary and Philosophical Society. *Christian Guardian*, 28 March 1832, explicitly invited ladies to the Mechanics' Institutes first lecture on "Natural and Experimental Philosophy."

¹²³ "Objects and Rules of the Canadian Alliance Society", *Bathurst Courier*, 9 January 1835; and AO, Mackenzie- Lindsey Papers, Mackenzie to Buell, 15 December 1834, [emphasis in the original].

¹²⁴ In an article entitled "Huzza for the Women!!", *Patriot*, 7 July 1837, "Stephan Randall" claimed to have attended radical meetings and found that the women attending voiced their own opinions and, contradicting their husbands, disapproved of the radical agitation. This may have been Stephen Randal who had edited the radical *Hamilton Free Press*, but the authenticity of the article cannot be determined. It is, however, in line with the stance of most of the Lower Canadian women for whom evidence has survived. Allan Greer, *The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada*, (Toronto: University of Toronto Press, 1993), p. 215. The whole relationship between women and politics in Upper Canada requires further study.

Moreover, since the standards of inclusion now centred around the ability to use reason in public and to act independently, once women could claim these attributes, they could claim admittance to this public space on exactly the same grounds as men.

Many Upper Canadians belonged simultaneously to several voluntary associations, reinforcing their political significance. A person might become an officer in one association, socialize with people of different social status in another, learn to debate in a third, and be introduced to political concerns in a fourth. Some of this overlap is captured by two little known residents of Kingston who were active in establishing the local mechanics' institute. William Lesslie, a bookseller, was also secretary of a temperance society, librarian of the Young Men's Society, and later president of the Canadian Alliance Society. Thomas Smith, a merchant hatter, joined Lesslie in promoting the mechanics' institute, but he also subscribed to the Kingston Auxiliary Bible and Common Prayer Book Society and the Kingston Compassionate Society, was a steward of the St. George's Society, captain of the Volunteer Fire Company, a founder of the British Constitutional Society, and a member of the Frontenac County Agricultural Society.¹²⁵ Awareness of general issues, the ability to organize and be heard, a sense of efficacy, holding local offices, and belonging to voluntary associations were all highly inter-correlated.

Voluntary associations represented an increasingly complicated social world - a world no longer fully captured by family, nationality, locality, occupation, or fine

¹²⁵ Palmer, "Kingston Mechanics and the Rise of the Penitentiary", pp. 29-30.

distinctions of rank. A new social space - potentially political but independent of the state - was created with its own boundaries and sociability. By creating, maintaining and defining that space, voluntary associations were among the most important political institutions in the colony. They offered the potential for an alternative leadership, the extension of the public use of reason, and a sociability capable of transforming those principles into lived experience. They provided a space where social intercourse and the pursuit of enlightenment could flourish even when political divisions were inflamed. In turn, their sociability offered the potential that future political debates would be more rational, less divisive. Voluntary associations incorporated far more people and reflected different principles of political and social co-ordination than pre-democratic governments or corporatist models of society: the rational and progressive capacity of individuals rather than their natural depravity; formal equality rather than ranked orders; active debate and deliberation rather than habit, force, arbitrary will or revelation. They reinforced the belief that the best answers, the most information, and the greatest results could not be achieved by a solitary individual or even an educated elite, but only by active citizens working together.

In 1840, an anonymous resident of Perth, "Amicus Mentis," repeated the platitude that the vices and short-comings of individuals and society were rooted in ignorance. Government should be "anxious to enlighten the public mind: both that the people may be more easily governed, and that they may be enabled to understand and appreciate the advantages of good government, which the ignorant never can do." Such an enlightened people would be able "to judge correctly of them and their measures." Community leaders also had a duty to end ignorance; "to use their exertions to disseminate knowledge and to encourage the cultivation of the mental and moral faculties of those among whom

they are placed.” In practice, the ideal of extending the capacity “to judge correctly” entailed support for “an Agricultural Society, a Mechanic’s [sic] Institute, a Public Library...[and] a debating Club.”¹²⁶ Amicus Mentis understood the connection between voluntary associations and politics; between the activities and sociability of local societies and the public sphere; between an agricultural society or a debating club and the state.

Nonetheless, whatever forums, skills, or attitudes voluntary associations fostered, appeals to public opinion could not be credible unless its decisions were based on relevant information. Most of that information came from colonial newspapers. In turn, newspapers formed a province-wide association of readers.

¹²⁶ Amicus Mentis, *Bathurst Courier*, 11 December 1840.

CHAPTER FOUR

"in duty bound to enquire:" The Press and the Formation of a Community of Readers

In the 1823 edition of *An Essay on the History of the English Government and Constitution*, Lord John Russell argued that "[t]here can be no doubt that public opinion acquired prodigious force during the late reign [of George III, 1760 - 1820]." Russell attributed this new-found power to "[t]he publication of the debates in parliament, and the general diffusion of political knowledge." Both developments were made possible by the expansion of the newspaper press.¹ Four years later, William Lyon Mackenzie attributed the same consequence to England's growing number of newspapers, libraries, book clubs, and reading societies: "This great increase of the production of the press will account for the influence of public opinion in Great Britain...Where the press is free, *mind*, and not wealth or high family honours, will govern."²

This chapter addresses aspects of the relationship between the press and the public sphere. While there is still much to learn about what Upper Canadians read, how they understood it, and the impact it had, this chapter makes a beginning. It argues that newspapers were the most significant factor in the development of the public sphere. Their importance is partially reflected in their growing number and circulation. Following the previous chapter's discussion of voluntary associations, this chapter argues that newspaper readers can be seen as another, in fact the largest and most important,

¹ Lord John Russell, *An Essay on the History of the English Government and Constitution, From the Reign of Henry VII. to the Present Time*, Second Edition, (London: Longman, Hurst, Rees, Orme, and Brown, 1823), p. 429.

² *Colonial Advocate*, 31 May 1827. Mackenzie got his statistics from a recent *Quarterly Review*.

voluntary association. News rooms and taverns are discussed as particular sites for this community of readers. Finally, the publication of parliamentary debates in colonial newspapers is examined. Like Lord John Russell, this chapter sees the acceptance of public opinion as the eventual result.

In Jürgen Habermas's account, the public sphere grew out of the earlier 'Republic of Letters,' a term used to describe the community of scholars since the seventeenth century. Members of this community conceived of themselves as belonging to an ideal republic. While divided by religion and nationality, while living in different parts of the world and under different forms of government, they were united in the pursuit of knowledge and enlightenment. In theory, all who furthered their ends could participate. Participation entailed the reciprocal right to discuss and to criticize each other's work. In their work, they owed allegiance to truth and art, not to particular rulers. The pursuit of truth above all else and the rejection of traditional national and social boundaries made this intellectual sociability republican. The concept of a "Monarchy of Letters" is incoherent. In essence, Habermas argues that the public sphere emerged with the politicization of this literary and scholarly sphere. Mere spectators became a critical public actively evaluating literature, art, music and theatre.³ According to Habermas, the norms of openness and deliberation developed in the literary sphere were gradually transferred to political questions and directly challenged the monopoly of publicity and

³ Roger Chartier, *The Cultural Origins of the French Revolution*, Lydia G. Cochrane trans., (Durham: Duke University Press, 1991), p. 36, and more generally, pp. 16-17, 20-66.

reason claimed by monarchical courts and early modern elites.⁴

The concept of the Republic of Letters was not foreign to Upper Canada. In his 1836 report on education, Charles Duncombe urged his fellow legislators to promote what he saw as the increasingly international and cooperative pursuit of knowledge. At the forefront of this pursuit were the "friends of literature." "These, though scattered over the world, form a Republic of themselves, and are drawn together by cords that no distance can attenuate, and bound by connections that no varieties can sever. They all drink of the same fountains without jealousy, and climb up the same intellectual elevations without envy; for the attainments of each are the property of all. True Philosophy has in it nothing of party and caste."⁵ Such "friends of literature" could be found in Upper Canada. William Dunlop, for instance, participated in the wider literary world in his contributions to such leading journals as *Blackwood's*. In the mid-1830's, friends gathered at Gairbraid, his home in the Huron Tract, to read periodicals, including *Fraser's* and the *Times*, and to discuss "their lands, their 'crops,' the last bundle of literature which had come over sea and corduroy to cheer them, the possibility of a mail bag during the coming week, the politics of the day in both countries, the last impudence of the Family Compact, the advent of a new Governor, the mistakes of the old one, the grievances which heralded the coming rebellion..."⁶ Susanna Moodie published her prose and poetry in Britain as well as Upper Canada, and co-edited *Victoria Magazine*, a journal devoted

⁴ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, (Cambridge Massachusetts: MIT Press, 1992), pp. 36-37, 54, 85. For an insightful analysis of the French experience heavily indebted to Habermas see Dena Goodman, *The Republic of Letters: A Cultural History of the French Enlightenment*, (Ithaca: Cornell University Press, 1994).

⁵ Duncombe, "Report on Education", *Documentary History of Education in Upper Canada*, v. 2, J. George Hodgins, ed., (Toronto: Warwick Bros & Rotter, 1894), p. 292.

⁶ Robina and Kathleen Macfarlane Lizars, *In the Days of the Canada Company: The Story of the Settlement of the Huron Tract and a View of the Social Life of the Period, 1825-1850*, (Toronto: William Briggs, 1896), pp. 164, 176.

almost entirely to Canadian works. Between 1830 and 1851, there were 58 literary periodicals published in Upper and Lower Canada. Only four lasted more than a year.⁷

Nonetheless, Habermas's model cannot account for the origins of the public sphere in Upper Canada. The Republic of Letters was a precondition in Europe because many of its members lived under absolutist monarchs. The Republic of Letters fostered the public use of reason on literary and cultural questions before expanding to traditionally prohibited topics: religion and the state. The antithesis between the public use of reason and the state was never as pronounced in Upper Canada. From the beginning, Upper Canada had a representative legislature and periodic elections. Upper Canada was also a frontier colony with a small, localized population. A literary sphere took time to develop. The widespread public discussion of politics developed at the same time and in response to some of the same factors. Moreover, despite a number of attempts to found literary journals in the early 1830's, most of the more successful endeavours date from the late 1840's, after most acknowledged the existence of a public sphere.

As the previous chapter noted, literary and reading societies appeared by the late 1830's but they were often promoted as more polite and controlled alternatives to the public use of reason already occurring in the political realm. They were not pre-existing agents whose politicization created the public sphere. The reaction to the development of amateur and travelling theatre, musical concerts, and exhibits by the Organization of the Society of Artists and Amateurs, established at York in 1834, would make a fascinating study but such efforts, while more widespread than often thought, were still too restricted

⁷ Mary Lucinda MacDonald, "Literature and Society in the Canadas, 1830 - 1850", (Ph.D. thesis, Carleton University, 1984), esp. pp. 17-18, 77, 112, 85-86. Two of the four were in French.

to be seen as the origin of the public sphere. Newspapers, not literary reviews or specialized journals, marked the rise of the public sphere in Upper Canada. Not surprisingly, then, the public sphere in nineteenth-century colonial Upper Canada was less literary and genteel than that of late eighteenth-century Europe.

This does not mean that the availability of books and the social pattern of reading are not important, if largely ignored, questions. Travellers complained bitterly about the scarcity of books and the state of literature in the colony. Their testimony must be treated with caution.⁸ In 1818, one bookseller advertised 479 titles on the front page of the *Upper Canada Gazette*. History, biography, travel accounts and literature dominated. The list included Hume's *History of England*, the works of Voltaire and Edmund Burke, Adam Smith's essays and his *Wealth of Nations*, and multiple volumes of such journals as the *Tatler*, *Spectator*, and *Quarterly Review*. Works by Addison, Wilberforce, Goldsmith, Johnson, Swift, Shakespeare, Homer, Francis Bacon and Walter Scott were also listed.⁹

Reading and talking about these works were also important components of elite sociability. Peter Russell, Administrator of the colony, read 17 books aloud to his assembled family and friends over a year and a half.¹⁰ Much of the early correspondence between former schoolmates John Beverley Robinson and John Macaulay concerned their reading. Robinson complained that his legal studies left him insufficient time to keep up with his friend's reading. Besides legal authorities, Robinson still managed to read the 13 volumes of Hume's *History of England*, Sterne's work in 8 volumes, several of Shakespeare's plays, the works of John Wilkes, two volumes of *Eccentric Biography*,

⁸ See Jennifer Ruth Johnson, "The Availability of Reading Material for the Pioneer in Upper Canada: Niagara District, 1792-1841". (M.A. thesis, University of Western Ontario, 1982); and MacDonald, "Literature and Society".

⁹ *Upper Canada Gazette*, 26 February 1818.

¹⁰ Johnson, "The Availability of Reading Material", pp. 26-27.

Young's *Night Thoughts*, eight volumes of *Practical Philosophy of Social Life* and several other works, all during the winter of 1808-09.¹¹

Ten years later, the *Kingston Chronicle*, co-edited by John Macaulay, published a series of essays entitled, "Domestic Recreations." The author had "been transplanted from the midst of a lively circle into the woods...I at first felt like one who is suddenly struck dead and dumb. However, the arrival of the Kingston Chronicle last week, relieved me...I intend, through its medium to talk to the public by *proxy*." Talking with the public through a newspaper did more than relieve boredom or a sense of isolation. It was an important form of sociability.

The man living in a city was "blessed with the means of daily communicating his opinion to his fellow-mortals." He feels he "has a vote in the general concerns of the world." Those isolated from "social intercourse" were deprived of the benefits of conversation, which was "one great subordinate principle upon which the existence of society depends." It induced men to assemble together and develop the "sympathy, friendship, or cordiality" that broadened horizons and tempered selfishness. Regularly conversing with their fellows, "the desire of exhibiting himself to advantage, and communicating importance to his opinions, induces him to cultivate his mind, and enlarge his ideas, by the acquisition of knowledge."¹²

Here was an outline of the role assigned to polite conversation and manners by eighteenth-century British commentators such as the Third Earl of Shaftesbury. In the wake of the civil and religious strife of the previous century, polite conversation and manners were thought capable of taming partisanship and bigotry. The principles of a

¹¹ AO Macaulay Family Papers, John B. Robinson to John Macaulay, 25 November 1808, 1 February and 6 May 1809; and 24 July 1810.

¹² "Domestic Relations", *Kingston Chronicle*, 5 February, and 5 and 19 March 1819.

new political order were to be found in the measured exchange of opinion between gentlemen. Sympathy, mutuality and harmony could be sustained by conversation, replacing the bitterness of civil war.¹³ The growth of coffeehouses in Britain embodied these principles. Voluntary associations for polite sociability began to appear in Upper Canada by the end of the 1830's, but the author of "Domestic Relations" was surely right to insist in 1819 that other means were required in Upper Canada. He concluded that the exchange of opinion and the appropriate sociability could be developed, even in the backwoods, by newspapers.

Newspapers were "organs of sentiment, and theatres for discussion." The expansion of the colonial press would have four positive consequences. First, it would diffuse knowledge and be a "means of awakening that intelligent spirit, which will urge men to seek deeper sources of information." Second, newspapers would call "the attention of men to matters of public importance," and thereby reduce apathy. Newspapers helped define the issues of common concern, provided the necessary information, and encouraged readers to act. Third, newspapers would encourage emulation. They "celebrate the bravery of the hero - they display the eloquences and genius of the orator - they communicate to mankind all over the world a mutual knowledge of the local and general concerns of each other, and encourage an emulation in arts, sciences, elegances and accomplishments..."

Finally, newspapers would have important political consequences. If newspapers were free, they became "the organs through which the public feelings are manifested." The number of newspapers "will always bear a fair proportion to the number and strength

¹³ See Goodman, *The Republic of Letters*, pp. 5, 114, 120-122; and especially, Marvin B. Becker, *The Emergence of Civil Society in the Eighteenth Century: A Privileged Moment in the History of England, Scotland, and France*, (Bloomington: Indiana University Press, 1994), pp. 43-44, 55-56, 69.

of the party, whose principles and tenets they support and inculcate, and by attending to this, a pretty correct estimate of the state of public opinion may generally be formed." Papers also helped create, as well as express, public opinion. They disseminated political information. Moreover, "[w]hen a government encourages political discussion, the people are inspired with a confidence in their rulers," but "when public discussion is fettered...the people begin to be suspicious." By exposing misdeeds, "[n]ewspapers...have a powerful tendency to check the abuses which are often exercised by those who hold office."¹⁴

This essayist argued that newspapers could replace polite conversation, yet there were significant differences between publication and verbal transmission or private correspondence.¹⁵ Oral conversation reached only those in range of the speaker. The identity and social status of the speaker influenced how those words were received. Conversation also demanded an immediate response which might come from passion or insufficient reflection. In print, opinions could be exchanged in the absence of the original author and could reach countless others. Authors might be unknown and therefore could exercise influence only by their words, not their identities. The resulting conversation could appear as general in location and universal in applicability.

Not only did publication differ from oral communication, but publication in the form of newspapers or pamphlets, rather than books, was also significant. The periodic and more ephemeral nature of newspapers; their increasing number; and their often clearer biases, errors, and attacks on each other, fostered a critical distance between reader

¹⁴ "Domestic Recreations," *Kingston Chronicle*, 5 February, 5 and 19 March 1819.

¹⁵ On this complex question see Chartier, *The Cultural Origins of the French Revolution*, pp. 26, 31-2, 65-6; Michael Warner, *The Letters of the Republic: Publication and the Public Sphere in Eighteenth Century America*, (Cambridge Massachusetts: Harvard University Press, 1990); and Richard D. Brown, *Knowledge is Power: The Diffusion of Information in Early America, 1700-1865*, (New York: Oxford University Press, 1989).

and text. Surrounded by abundant texts, active choice was possible for some readers. Other forms of public communication, such as sermons or charges to grand juries, were authorized by social superiors. Readers were faced with competing and combative newspapers, divorced from formal state or devotional practices. Few newspapers originated from obvious social superiors. Readers were thus encouraged to adopt a more casual and sceptical attitude toward printed texts.¹⁶ Finally, newspapers integrated their readers into a common political community. They participated in public debate by talking to each other and with their readers. As Michael Warner argues, "the reader does not simply imagine him- or herself receiving a direct communication or hearing the voice of the author. He or she now also incorporates...an awareness of the potentially limitless others who may also be reading. For that reason, it becomes possible to imagine oneself in the act of reading, becoming part of an arena of the national people that cannot be realized except through such mediating imaginings."¹⁷

The growth of the provincial press was the single most important gage for the size of that arena.¹⁸ The first newspaper printed in Upper Canada, the *Upper Canada Gazette*, appeared in April 1793 as the official, subsidized organ of the government. The first

¹⁶ David Jaffee, "The Village Enlightenment in New England, 1760-1820", *William and Mary Quarterly*, (Third Series, v. XLVII, n. 3, July 1990), pp. 342-343. This touches on the contentious thesis of a "reading revolution" in the eighteenth-century. For two recent sceptical summaries see Chartier, *The Cultural Origins of the French Revolution*, pp. 89-90; and Robert Darnton, *The Forbidden Best-Sellers of Pre-Revolutionary France*, (New York: W. W. Norton & Company, 1996), pp. 217-219. For a more positive statement see David D. Hall, "The Uses of Literacy in New England, 1600-1850", *Printing and Society in Early America*, William L. Joyce, David D. Hall, Richard D. Brown, and John B. Hench eds., (Worcester: American Antiquarian Society, 1983), esp. pp. 21-34.

¹⁷ Warner, *The Letters of the Republic*, p. xiii.

¹⁸ I have calculated the statistics for the following paragraphs from Brian J. Gilchrist, *Inventory of Ontario Newspapers, 1793-1986*, (Toronto: Micromedia, 1987).

private newspaper, the *Canada Constellation*, appeared five years later at Newark, after the *Gazette* had followed the government to York. By 1819, papers had been published in six towns but only three (Niagara, Kingston, and York) were able to sustain a paper for any length of time. Thirty years later, 39 communities had had at least one local newspaper. Some supported several papers; others witnessed repeated attempts and failures.

Ten communities boasted at least one newspaper between 1820 and 1829. Nine of them, (excluding York), accounted for 19 different newspapers in this decade. Five communities, (Brockville, Kingston, Markham, Niagara and York), sustained at least two newspapers simultaneously at some point during the 1820's. During the following decade, the number of communities with a local press more than doubled (from 10 to 23). The number sustaining at least two newspapers simultaneously also doubled (from 5 to 10). Competitive local markets existed in both the eastern (Cobourg, Prescott, Belleville, Kingston) and western (Hamilton, St. Catharines, St. Thomas, London, Niagara) sections of the colony as well as at the capital. Five of these ten communities supported more than two newspapers simultaneously sometime during the 1830's. Seventy-three newspapers were published in Upper Canada outside the capital sometime between 1830 and 1839. Fifty-one of these lasted 12 months or longer. At the capital, 20 newspapers survived from the 1820's or were established during the following decade. Of these 20, at least 14 published regularly for a year or more during the 1830's. Of course, not all of these 65 newspapers (51 plus 14) lasting at least a year during the 1830's were published at the same time.

A comparison between two specific years, 1828 and 1836, is revealing. The colony faced a heated election in 1828 after the prolonged conflict over the rights of

former American citizens. In July, the time of the election, eight communities had at least one newspaper and accounted for at least 14 separate papers (and perhaps as many as 16). Competition existed in at least four local markets. (Brockville, Kingston, Niagara, and York). By 1836, these figures more than doubled: from 8 communities with at least one newspaper to 18; from approximately 18 different newspapers by the end of 1828 to 46 published sometime in 1836; and from four competitive markets to 9 or 10. Between 1828 and 1836, the colony's population had barely doubled. By the election in July 1836, William Lyon Mackenzie had founded the radical *Constitution*, which joined 34 newspapers already in existence. It was the seventh in Toronto alone. In November, the *Statesman* appeared at Brockville and, with the addition of the daily *Royal Standard*, 8 newspapers were being published at Toronto. The capital's population had yet to reach 10,000.¹⁹

These figures can still be misleading: first, readers were not restricted to the place of publication, and second, the number of newspapers says little about the number of people who read them. Living at or near a competitive market could be important. Alternative interpretations of local issues and events were more likely from newspapers published in the region. The expansion and decentralization of the newspaper press to non-metropolitan centres not only provided local sources of information and a sense of connectedness to the larger community, but also the potential for the local production of pamphlets, broadsheets, and books. Editors often doubled as local booksellers and agents for other newspapers or booksellers. The nature and ideals of their profession also tended to make them prominent promoters of news rooms, libraries, schools, agricultural

¹⁹ In 1846, 14 issues of 10 newspapers were printed in a city of less than 22,000 inhabitants. *Brown's Toronto City and Home District Directory, 1846-7*, (Toronto: George Brown, 1846), p. 35.

societies and mechanics' institutes. Cultural production in the hinterlands was a key component of what David Jaffee has called the "village enlightenment."²⁰

The amount of purely local material in any colonial newspaper was, however, quite small. Notices or minutes from local associations and coverage of local officials or local candidates for the Assembly were fairly common, but most communities were still small enough that any community-based news was already known before it could appear in a weekly paper. Newspaper editors usually found out about local events at the same time and in much the same way as other members of the community. Newspapers were to provide reading material and information not readily available otherwise. That meant non-local material. Newspapers were especially suited to reproducing lengthy documents or commentary. Many subscribers bound their copies as a reference tool for such texts.²¹ Thus, much of what was printed at one location was relevant to readers at another. This was particularly true of newspapers at the capital, where editors had easier and more timely access to political news and official documents. The number of presses at the capital underlines the importance of political news to readers throughout the colony.²²

Geographic diffusion was not only a matter of the increasing number of communities with a local newspaper. Diffusion also involved the use of agents, private

²⁰ Jaffee, "The Village Enlightenment in New England", esp. p. 333. See also Richard D. Brown, "The Emergence of Urban Society in Rural Massachusetts, 1760-1820", *The Journal of American History*, (v. LXI, n. 1, June 1974), pp. 43-44; and J. E. Hodgetts, *Pioneer Public Service: An Administrative History of the United Canadas, 1841-1867*, (Toronto: University of Toronto Press, 1955), p. 229. Freemasonry also appears to have been particularly attractive to newspaper editors.

²¹ Brown, *Knowledge is Power*, pp. 36-38. The *Western Herald*, 10 February 1838, encouraged more of its readers to preserve their copies in bound volumes.

²² A rigid division of labour had not yet developed between local and metropolitan papers. Community papers were dominated by provincial politics, including reports of parliamentary debates, not local matters. There was no paper of record in Upper Canada like the *Times* of London, and no single newspaper approached such a position of dominance before the *Toronto Globe* in the 1850's and 1860's.

carriers and the post office.²³ The *Weekly Post* was printed at York from 1821 but had agents in 19 other communities.²⁴ Brockville's small conservative paper, the *Gazette*, was intended to counter the *Brockville Recorder*. Its agents were concentrated in eastern Upper Canada, but could be found at York, Hamilton and Niagara, communities with one or more conservative papers of their own. In 1835, *The Reformer*, a radical Cobourg paper, had agents in at least 42 communities in Upper Canada. With the exception of the largest or most prestigious, most newspapers concentrated on their immediate hinterland, while still making themselves available further afield.²⁵

Newspaper agents fulfilled a variety of roles.²⁶ Some were largely passive, merely forwarding subscriptions to the editor. Others were energetic salesmen. William Lyon Mackenzie mailed out copies of the *Colonial Advocate* to people he hoped would subscribe. He then depended on his agents to keep track of the individuals who took, refused or returned these early issues. A few agents, including Marshall Spring Bidwell, distributed copies themselves. Charles Duncombe forwarded the names of 45 subscribers to Mackenzie and ordered 8 copies of each issue for himself. The acting agent at Ancaster tried to arrange for a prominent London merchant with a branch store in Ancaster, to "take at your office 150 or 200 Advocates weekly" for the Thames region, thus saving Mackenzie the postage.

²³ The role of peddlars in the transmission of texts has been studied in the United States, but not in Upper Canada, but see Brian S. Osborne, "Trading on a Frontier: The Function of Peddlers, Markets, and Fairs in Nineteenth-Century Ontario", *Canadian Papers in Rural History*, v. 2, Donald H. Akenson, ed., (Gananoque: Langdale Press, 1980), pp. 61-68. Critics charged that itinerant preachers increased the speed and geographic reach of the *Christian Guardian*.

²⁴ For the original 18 communities see 1 March 1821

²⁵ *Brockville Gazette*, 22 August 1828; and *The Reformer*, 24 February 1835. The *Chronicle & Gazette*, 26 April 1837, listed 35 agents in the Canadas and while it had an agent as far west as Niagara, they were concentrated in the eastern section of Upper Canada.

²⁶ The following information on agents is from AO, Mackenzie-Lindsey Papers, especially the letters to Mackenzie from M. S. Bidwell, 19 June 1824; G. Tiffany, 6 January 1825; Henry Lasher, 11 December 1825; Charles McDonell, 20 February 1826; Jacob Keefer, 25 February 1825; Matthew Crooks, 9 June 1826; and Charles Duncombe, 15 April 1831.

Agents also had the difficult task of collecting from subscribers. Some forwarded advertisements, reported on local opinion and reaction to the newspaper, discussed editorials with Mackenzie, and relayed concerns about the ease and regularity of delivery. Agents also helped distribute pamphlets and books published by newspaper editors. This was especially valuable for those readers who were without access to a local bookseller. Thus, when the editor of *The Reformer* finished printing *Letters on Elective Institutions*, he announced that it was "to be had at the Office of the Reformer whose Agents may receive and transmit orders."²⁷

In return, agents might get a free subscription. A few, like Charles Duncombe, advanced their own political careers by distributing supportive newspapers, but this was hardly typical. Most believed in the paper. Charles McDonell, Mackenzie's agent at Cornwall, told his fellow Scotsman that "I feel really proud of a countryman conducting such an independent paper as the *Advocate*." In 1825 Henry Lasher, agent at Bath, congratulated Mackenzie on the appearance of a new series of the *Advocate*. It could not "be denied to be superior in every respect to any circulating newspaper ever yet published within this Province and which has therefore enabled me to procure the names annexed as subscribers." In the same year, Jacob Keefer of Beaverdam was blunt about his motivation: "if your political statements had not been such as I admired and approved I should not have taken that interest in the circulation of the *Advocate* for which you are pleased to express your satisfaction."²⁸ Active agents believed in the newspaper they represented to their neighbours. By helping to construct a network of readers beyond its

²⁷ *The Reformer*, 29 December 1835.

²⁸ Of course, relationships founded on political affinity were fragile. In 1826, Matthew Crooks, Mackenzie's agent for two years, refused to continue and cancelled his own subscription. He now believed that the *Advocate* was "degrading itself by becoming the vehicle of the most low and contemptible scurrility."

place of publication, they were vital to its survival.

Several agents were also postmasters. The connection made sense since the flow of newspapers was often dependent on the mails. The expansion of the post office was important to the diffusion of newspapers and the creation of the public sphere. Despite frequent complaints about slow or irregular delivery, the expansion of the postal system remains impressive. In 1791 there were seven postmasters in Upper Canada. In 1817 there was still only twelve but by the end of 1831, 109 post offices had been established in Upper Canada and a further 127 were added by 1841. Increased postal accommodation roughly mirrored population growth. By 1841, there was a post office for about every 1,800 Upper Canadians.²⁹ About ten communities had a post office for every one that had a newspaper.

The standard postal rate, established by British statute, failed to distinguish between newspapers, pamphlets and inland letters. The rate, determined by the number of sheets and distance, would have effectively prohibited the dissemination of newspapers by mail. It never seems to have been enforced. Instead, a highly preferential rate was established for newspapers. The sender of a weekly newspaper was charged 4 shillings currency a year per copy - or 1 pence per issue, to send a newspaper anywhere in the colony. The postage for an average letter was estimated to be eight or nine times more than for a newspaper.³⁰ The highly preferential rate stimulated the distribution of colonial

²⁹ *Report of the Commissioners appointed to enquire into the affairs of the Post Office in British North America*, 31 December 1841, reprinted, *Journals of the Legislative Assembly of the Province of Canada*, 1846, Appendix F, No. 16. This source was brought to my attention by Jane E. Harrison. For a list of post offices see, Frederick H. Armstrong, *Handbook of Upper Canadian Chronology*, revised edition, (Toronto: Dundurn Press, 1985), pp. 229-237. For later developments see Brian Osborne and Robert Pike, "Lowering 'the Walls of Oblivion': The Revolution in Postal Communications in Central Canada, 1851-1911", *Canadian Papers in Rural History*, v. 4, Donald H. Akenson, ed., (Gananoque: Langdale Press, 1984), pp. 200-225.

³⁰ See *Report of...the Affairs of the Post Office...* especially Appendix D. Although preferential, the newspaper rate remained controversial. Some editors argued that since the public good was served by newspaper distribution no postage should be charged. Others favoured a rate tied to distance travelled in

newspapers outside of their place of publication.

Editors could also send a copy free of charge to other editors. The resulting exchange of newspapers was the primary method of news-gathering. It created a free pool of material from which editors could copy. It also increased the number of potential readers of a copied piece. As Anna Jameson noted, "[p]aragraphs printed from English or American papers, on subjects of general interest, the summary of political events, extracts from books or magazines, are copied from one paper into another, til they have travelled round the country."¹¹ If some newspapers copied only to criticize, they still informed their readers that more than one opinion was being expressed on an issue, what some of the opposing arguments were, where to find such analysis, and finally, that readers of other newspapers were part of the same discursive community. Editors could compare reports of the same event or issue in several papers and often commented on discrepancies.¹²

Postal regulations established a preferential rate for newspapers and made the exchange system possible. Furthermore, it cannot be assumed that editors paid the actual amount owing. Proprietors declared the number of issues being mailed and were "seldom afterward questioned." Postmasters had little incentive to count through bundles of

order to favour local or regional papers over the growing power of the Toronto press. Editors' comments are included as an appendix to the British report. The Assembly addressed the Crown in 1839 to lower the rate, see *Christian Guardian*, 13 March 1839. It was lowered after the union by Lord Sydenham.

¹¹ Anna Brownell Jameson, *Winter Studies and Summer Rambles in Canada*. (Toronto: McClelland and Stewart, 1990, [1838]), p. 153. For a similar discussion of the exchange system in the U. S., see Richard B. Kielbowicz, *News in the Mail: The Press, Post Office, and Public Information, 1700-1860s*, (New York: Greenwood Press, 1989), pp. 141-151. Peter G. Goheen notes that in 1841 two small newspapers at Prescott and Dundas received six and seven free exchange copies per week. They both received one from Montreal and three from Toronto. Goheen, "Canadian Communications Circa 1845", *The Geographic Review*, (v. LXXVII, 1987), p. 48.

¹² Post masters also had the right to receive a copy of colonial periodicals free of postal charges. This right extended to newspapers published in the U. S. American newspapers mailed to other Canadians were charged a fairly nominal rate of one penny per issue, while, after 1834, British newspapers arriving by the Halifax Packets travelled to their Canadian destination free of charge.

newspapers. An official report concluded that the sums collected "fall considerably short" of what the regulations suggested. "In many cases, indeed, it appears that a fixed sum is paid under an old agreement, without any reference to the number of papers now mailed."¹³

In these various ways, the postal system subsidized the spread of newspapers. The system generated a gross revenue of £62,400 for the fiscal year ending July 1840. Only about £3,000, less than 5%, came from distributing newspapers. For the same fiscal year, an estimated 1,400,000 chargeable letters were circulated by post in the two Canadas. At about the same time, Thomas Stayner, Deputy Provincial Post Master General, estimated that the number of newspapers and pamphlets circulated through the post was at least 1,456,000.¹⁴ Since newspapers were bulkier and heavier than most letters and often constituted about half of the items handled by post masters, the preferential rate combined with its lax enforcement meant that the post office's other business heavily subsidized the transmission of newspapers.¹⁵

The existence of a network of agents and post offices meant that any colonial newspaper was theoretically available to any Upper Canadian living in proximity to these conduits. But to what extent did newspapers actually circulate beyond their own locality? How many Upper Canadians could afford to subscribe to a colonial newspaper? Of those who could afford it, how many actually subscribed?

Several contemporaries tried to estimate the circulation of the provincial press

¹³ *Report of...the Affairs of the Post Office...*

¹⁴ *Ibid.*

¹⁵ The same was true in the U.S. where the promotion of newspaper readership was a conscious objective of post office regulations. Richard B. Kielbowicz, "The Press, Post Office, and Flow of News in the Early Republic", *Journal of the Early Republic*, (v. 3, n. 3, Fall 1983), pp. 255-280.

from post office records.¹⁶ According to Anna Jameson, 427,567 papers circulated through the mails in 1836 among a population of about 370,000. Almost a quarter of these were transmitted free of charge, and, of those paying postage, almost 46% were from the United States or elsewhere.¹⁷ The total suggests a newspaper per week for as few as one family in seven. The ratio receiving a provincial paper and paying postage comes out as low as one in fifteen or sixteen. Jameson was impressed, but was the proportion of families with access to a provincial newspaper so small? The *Christian Guardian* was right to be sceptical. In its review of *Winter Studies and Summer Rambles*, the *Guardian* ventured "to assert that in Upper Canada there is twice the number of newspapers read, in proportion to the population than there is in any county, city, town or village, in England."¹⁸

In 1831 William Lyon Mackenzie published the amount of postage paid by nineteen newspapers and claimed that between 1,000 and 1,250 readers subscribed to the *Colonial Advocate*. There is no way of knowing if the latter figures were inflated and, if so, by how much. It is also not clear how many of these copies went to paying subscribers.¹⁹ In 1831, the *Colonial Advocate* paid the second highest amount of postage.

¹⁶ In 1840 Thomas Stayner estimated that postage was paid on 600,000 sheets (newspapers and pamphlets) by the printers and a further 50,000 were sent by someone other than the printer. Non-printers also paid to import 210,000 sheets from the United States. He estimated that another 596,000 sheets were posted free of charge; including 320,000 sheets from Britain via the Halifax Packets. The accuracy of these figures is unknown and they combine the Canadas. Upper Canadians (outside Kingston and Toronto) contributed to postal revenue at about six times the rate of the French population (outside of Montreal and Quebec). How many of these sheets were newspapers is also unknown. Stayner's estimates do, however, give some impression of the sheer scale of printed material transmitted by the post. He believed that a total of 1,456,000 newspapers or other printed sheets were posted. Of this total, about 210,000 items came from the United States paying postage and about 200,000 items came from Britain free of postage via the Halifax Packets. Thus, 29% of the printed sheets handled by the post came from these two countries. *Report of...the Affairs of the Post Office...*

¹⁷ Jameson, *Winter Studies and Summer Rambles*, p. 153.

¹⁸ *Christian Guardian*, 20 February 1839. Even earlier, Mackenzie asserted that "we do not know of a country upon earth where so many journals have obtained a circulation in proportion to the inhabitants as Upper Canada...How different from what it was a few short years ago..." *Colonial Advocate*, 1 November 1832.

¹⁹ *Colonial Advocate*, 2 May 1833. He claimed to print almost 1,000 copies by 5 August 1824.

£57. This translates into postage for about 265 yearly subscribers. Mackenzie may have sent more newspapers via the post than he paid for. Others were sent free of charge or by other means. Nonetheless, if we can give any credence to Mackenzie's figures, it appears that the post office transmitted as little as a third, and no more than half, of his print-run.

The amount of postage paid by Mackenzie's competitors suggests that many focussed on their own regions. They were more widely known through the exchange system, but many paid remarkably little postage. For instance, the two leading Kingston papers, both highly respected and widely copied by other editors, do not appear to have relied on paying subscribers living outside the Kingston area. The *Chronicle* and *Upper Canada Herald* combined did not pay enough postage to account for 100 yearly subscribers in 1831. This undoubtedly underestimates their diffusion outside Kingston, but it still represents a small proportion of their total output.

Denominational papers paid considerably more postage. In particular, the *Christian Guardian* paid postage to send a yearly subscription to over 1,000 families. Besides the *Advocate*, the conservative *Courier* also paid a considerable sum to the post office, £45. These figures undoubtedly under-estimate transmission through the post, but they still suggest that many newspapers were primarily read at or near their place of publication. In the village or town, people could call at the printing office themselves. In larger markets, newspaper editors probably adopted a crude delivery system. By the late 1820's, Francis Collins at Toronto hired "a boy, who usually carried the papers through town."⁴⁰ Still, at least three Toronto papers, the *Guardian*, *Advocate*, and *Courier*, made considerable use of the post office by 1831 to reach Upper Canadians outside the capital.

⁴⁰ Levis P. Sherwood, charge to the jury, Collins libel case, printed with the fifth report of the committee on the petition of Francis Collins to the Assembly. *Journals*, 1829, appendix.

This still gives little sense of the overall number of newspaper readers. In 1833, a subscriber to the *Western Mercury* thought that about 150 newspapers were distributed in Hamilton. With a population of about 1,000, that translates into a newspaper for almost every family.⁴¹ Mackenzie had also tried to estimate circulation in 1824. He listed the print-runs of his six competitors as follows: *Gazette*, 300; *Observer*, 290; *Chronicle*, 350; *Upper Canada Herald*, 420; *Brockville Recorder*, 300; and *Niagara Gleaner*, 190; for a total of 1,850. Mackenzie boasted that "I received 150 subscriptions during the three last weeks, and will now print upwards of 1000 copies of the *Advocate*, weekly, being more than one third of all the papers printed in the Province."⁴² Again, these figures cannot be verified. Marshall Spring Bidwell corrected Mackenzie's total for the *Upper Canada Herald*, claiming that Hugh C. Thomson printed 520 copies, 100 more than Mackenzie's claim.⁴³

While the individual numbers are questionable, the average, just over 300, seems reasonable. If the seven papers in 1824 printed no more than 2,500 copies a week, only about one family in ten had direct access to a newspaper per week. The ratio in Toronto (where the *Gazette*, the *Observer*, and shortly the *Advocate*, were published) and Kingston (where the *Chronicle* and the *Herald* were published) was probably higher. Others gained access indirectly, but the numbers are still small.

Five years later, in 1829, when Thomas Dalton established the *Patriot* at

⁴¹ A Subscriber, *Western Mercury*, 11 April 1833. I have adopted an average household size of six. For the household size of 5.8 in Hamilton in 1851, see Michael B. Katz, *The People of Hamilton, Canada West: Family and Class in a Mid-Nineteenth-Century City*, (Cambridge, Massachusetts: Harvard University Press, 1975), p. 221. The figure for Peel in 1851 was 6.4. David Gagan, *Hopeful Travellers: Families, Land and Social Change in Mid-Victorian Peel County, Canada West*, (Toronto: University of Toronto Press, 1981), p. 69.

⁴² *Colonial Advocate*, 5 August 1824.

⁴³ AO, Mackenzie- Lindsey Papers, Marshall Spring Bidwell to William Lyon Mackenzie, 24 August 1824.

Kingston, (making four local papers). Mackenzie forecast that in a few months 6,000 issues would be printed by eighteen different papers in the colony, which would "average a number a week among every five families."⁴⁴ In these five years (1824 to 1829), the population had increased by only 25%, but the number of families receiving a weekly paper had probably doubled. During the 1830's, the expansion of the newspaper press would continue to out-pace population growth, although not as dramatically. Mackenzie was not alone in noticing the sudden expansion at the end of the 1820's. The *Farmers' Journal* fretted that many of the new publications could not be sustained "and yet all seem to prosper...should these, together with the older Journals...receive as liberal support as present appearances indicate, it will auger well for the moral and intellectual improvement of their patrons, and the rising generation..."⁴⁵ The *Journal* thought that the expanding number and reach of newspapers marked a new era. It marked the beginnings of the public sphere.⁴⁶

Some papers in the 1830's, particularly those at the capital, printed considerably more than the average of 300-350 copies per week used here for the 1820's. In 1831, the *Christian Guardian* was paying to mail at least 1,000 issues per week and claimed to have 1,900 subscribers, up almost 300 from 1830.⁴⁷ The *Correspondent & Advocate* claimed 1,400 subscribers in 1834 and in 1836 Mackenzie claimed that 1,250 subscribed to the *Constitution*. Given that these were among the leading papers, such figures do not seem

⁴⁴ *Colonial Advocate*, 8 October 1829. Mackenzie was using an average of about 330 issues per newspaper and a household size of about 6.7. Neither assumption was unreasonable. When considering relaunching the *Western Herald* [Sandwich], the publisher stated that "we cannot incur the risk of another publication, till we are possessed of at least three hundred and fifty subscribers." *Western Herald*, 3 January 1838.

⁴⁵ *Farmers' Journal*, 23 December 1829.

⁴⁶ The community of newspaper subscribers was still probably smaller than the electorate. Elwood Jones has estimated that about 40% of adult males in the colonial period had the right to vote. For Jones' unpublished study see Carol Wilton, "'Lawless Law': Conservative Political Violence in Upper Canada, 1818-41", *Law and History Review*, (v. 13, n. 1, spring 1995), p. 115.

⁴⁷ *Christian Guardian*, 16 November 1831, and 11 December 1830.

unreasonable. Newspapers in smaller communities might still average around 350 copies, although several claimed substantially higher readership: in 1832 the Brockville *Antidote* and the St. Thomas *Liberal* claimed 645 and 600 subscribers respectively.⁴⁸

There is no really satisfactory way to compare the proportion of families receiving a weekly newspaper in 1829 (about 1 in 5) with the proportion in 1836. To be conservative, if we assume that four of the newspapers at the capital had a circulation of three times our base average of 350, (or 1,050 - still well below their claims) and that three other papers had twice that average, the total number of issues printed per week would have been almost 16,000.⁴⁹ This translates into a weekly paper for about one in four families. Many others gained access to newspapers through friends, at inns and taverns, and in voluntary associations such as libraries, reading rooms and mechanics' institutes.⁵⁰ Some may have had access at their place of work or where they boarded. Anne Hales of Kingston told Egerton Ryerson that "they only take the *Christian Guardian* for the servants to read."⁵¹ Moreover, Michael Katz demonstrates that boarders

⁴⁸ For these claims see J. J. Talman, "The Newspapers of Upper Canada a Century Ago", *Canadian Historical Review*, (v. XIX, n. 1, March 1938), p. 12, and MacDonald, "Literature and Society in the Canadas", pp. 68-69.

⁴⁹ Talman puts the weekly number at 20,000 for 1835 but gives none of his calculations. "The Newspapers of Upper Canada", p. 15. The average of 16,000 copies per week is well over four times the estimate arrived at by Anna Jameson using postal returns. Thus, only about one-quarter to one-third of the actual newspapers printed were transmitted by the post. Richard B. Kielbowicz has estimated that only about one in six newspaper copies printed in the United States in 1810 was transmitted to readers through the post office. Kielbowicz, "The Press, Post Office, and Flow of News in the Early Republic", p. 270.

⁵⁰ On the number of newspapers passed between friends and relatives at a distance, recall that Stayner estimated that 50,000 sheets travelled in the Canadas through the post office in 1840 with the postage paid by someone other than the printer. See note 36 above. More probably reached non-subscribing readers without the aid of the post. It is impossible to quantify this multiplier effect (the number of readers per issue). One common estimate for Europe is "10 to 12 readers per copy for a typical eighteenth-century periodical." Jeremy D. Popkin, *News and Politics in the Age of Revolution: Jean Luzac's Gazette de Leyde*, (Ithaca: Cornell University Press, 1989), p. 122. A Brockville resident informed Mackenzie that non-subscribers were reading the *Advocate*, "for by their appearance they must have made the tour of Brockville half a dozen times." AO Mackenzie-Lindsey Papers, Thomas S. Maitland to Mackenzie, 8 March 1825.

⁵¹ Ryerson to Samuel Junkin, 30 March 1838, C. B. Sissions, *Egerton Ryerson, His Life and Letters*, v. 1, (Toronto: Clarke, Irwin and Company Limited, 1937), p. 438. [emphasis in original]

in mid-nineteenth century Hamilton tended to be integrated into the homes of the relatively affluent - those likely to subscribe to newspapers - and not into the homes of the poor.⁵² If one also subtracts those families whose members were illiterate or who were denied access because of geographic isolation, the ratio of families who had regular access to at least one colonial newspaper relative to the total number of families who *could* have had such access was probably greater than one in three by 1836.⁵³

Newspapers clearly reached far beyond the privileged. Direct access to a newspaper subscription was partially set by income, although, for many, geography and interest must have posed greater obstacles than class.⁵⁴ Throughout the 1830's, most weekly newspapers charged either 15 or 20 shillings a year. Postage amounted to about a third of this cost.⁵⁵ Who could afford to subscribe? Douglas McCalla found that the lowest advertised rate for craftsmen in the 1830's was about 5 shillings per day and could

⁵² Katz, *The People of Hamilton*, pp. 36-38, 77, 231-232.

⁵³ The press continued to expand after 1836. The *Christian Guardian* estimated that there were more than 50 papers and journals in Upper Canada by 1841 with a combined weekly circulation of at least 40,000. *Christian Guardian*, 27 October 1841. This meant a weekly paper for one in every two families.

⁵⁴ Subscriptions were also limited by gender. Of the original 33 subscribers to the *Colonial Advocate* at York, one was a woman. AO, Mackenzie-Lindsey Papers, W. Beggin to William Lyon Mackenzie, 31 August 1824. That most subscribers were male says little about actually reading. The pattern of reading within Upper Canadian families awaits its historian. For comparative purposes see Brown, *Knowledge is Power*, pp. 160-196. John Howison, critical as always, tells of a landlord entering the parlour of his tavern "and having seated himself among the seamstresses [including his wife] began to read articles of foreign intelligence. His female auditors listened with undivided attention until he had got through a paragraph and then they all broke silence at once and commented with much prolixity upon what it contained." Howison, *Sketches of Upper Canada...*, (Edinburgh: Oliver & Boyd, 1821), pp. 207-208. I owe this reference to Julia Roberts. Anna Jameson and Susanna Moodie commented on public issues in their writings. In her frequent letters to her American brother, Anne Murray Powell discussed the clergy reserves, the 1836 election, the rebellion, the American patriot movement, Lord Durham's *Report*, the union of the Canadas, and Governor Bagot's appointments to the Executive Council. All occurred after the death of her husband, Katherine M. J. McKenna, *A Life of Propriety: Anne Murray Powell and Her Family, 1755 - 1849*, (Montreal & Kingston: McGill-Queen's Press, 1994), pp. 253-255.

⁵⁵ For a table of prices see Macdonald, "Literature and Society", Table 1, p. 62. The *Western Mercury*, 27 June 1833, attacked the postal rate for newspapers, claiming that it accounted for about 30% of the cost to subscribers. In 1833 the *Niagara Gleaner* charged 15s a year if it did not travel by post, and 20s if it did. Early papers appear to have cost a similar absolute amount. The *Canada Constellation* in 1798 and *Niagara Herald* in 1801-2 both charged 20s. Carl Benn, "The Upper Canadian Press, 1793-1815", *Ontario History*, (v. LXX, n. 2, June 1978), p. 100. The *Weekly Register* and *Upper Canada Gazette* together were more expensive at five dollars a year, including postage, or about 25 shillings, see 18 April 1822. Thus, despite economic fluctuations, the absolute cost of newspapers remained relatively stable.

be almost twice as much. Thus, artisans and some journeymen could subscribe to a colonial newspaper for about three days' wages. Again relying on McCalla, a bushel of wheat in 1831 sold for about 5s. Thus, a year's subscription was equivalent to three or four bushels of wheat in 1831.⁵⁶ The conversion rate was important because readers often paid for their newspapers in kind.⁵⁷

A newspaper subscription still represented a considerable investment, even an unattainable luxury, for many. For male farm labourers earning 50 to 60 shillings a month or shantymen in the Ottawa valley timber trade earning as little as 40 shillings a month, the price of a subscription was measured by the week rather than the day.⁵⁸ Even with the barter system, many were constantly in arrears. They paid only what and when they could - to the constant complaint of proprietors. Many probably received fairly lengthy runs of a newspaper before being cut off for non-payment.

Thus, merchants and professionals, skilled tradesmen and journeymen, and most relatively established farm families could probably afford a newspaper subscription. Within this disparate group, inclination was probably a key factor. Only the illiterate,⁵⁹

⁵⁶ Douglas McCalla, *Planting the Province: The Economic History of Upper Canada, 1784-1870*, (Toronto: University of Toronto Press, 1993), pp. 114-115, 336-337.

⁵⁷ As late as 1838, the *Kingston Chronicle & Gazette* advertised its need for firewood to inform those who usually paid for their subscription in that commodity. *Chronicle and Gazette*, 12 December 1838. A quick glance at the surviving account book of H. C. Thomson of the *Upper Canada Herald* at the AO reveals many paid in a variety of goods including eggs and butter.

⁵⁸ McCalla, *Planting the Province*, p. 55; and Terry Crowley, "Rural Labour" in *Labouring Lives: Work & Workers in Nineteenth-Century Ontario*, Paul Craven, ed., (Toronto: University of Toronto Press, 1995), p. 24. If female wage labour or seasonal wages by males were only supplements to farming, some of these families might have been able to afford a subscription. Thus, Mackenzie's agent at Esqueing reported that he was not remitting money from one subscriber, since he "is at the canals working for money." AO Mackenzie-Lindsey Papers, Thomas Fyfe to William Lyon Mackenzie, 23 May 1827.

⁵⁹ Literacy in early Upper Canada is still relatively unexplored although generally assumed to be high. Most early settlers seem to have been literate, although some of their children may have been unable to achieve the same level of literacy. Literacy among later immigrant groups is unclear. For a summary of the literature see Susan E. Houston and Alison Prentice, *Schooling and Scholars in Nineteenth-Century Ontario*, (Toronto: University of Toronto Press, 1991), pp. 84-85. For the purposes of this chapter, all members of a family needed to be illiterate before the household was excluded from the pool of potential newspaper subscribers. Thus, the *Brockville Recorder*, 17 January 1834, urged the illiterate (although how they were to read this urging is unclear) to "put them [newspapers] into the hands of your children, direct

the most isolated, unskilled wage labourers, marginal farmers, and the transient, were largely excluded from the community of newspaper subscribers.

This social profile was shared by potential newspaper subscribers and the membership of most voluntary associations. Indeed, subscribing to a newspaper was much like joining a voluntary association. Since newspapers covered similar events, copied from each other, and were widely distributed, their readers formed the only truly province-wide organization.

Reading brought the individual into an impersonal public arena of other readers. Besides access to newspapers, there were no further rules or norms, as in other voluntary associations, to exclude potential participants. Since this association met only as anonymous readers, the social standing or wealth of any particular reader was irrelevant. Readers were not passive consumers. As subscribers, potential contributors, and discussants with other real or imagined readers, they were active participants. Subscribing to a newspaper was not a mere monetary transaction between producer and consumer. Subscribing was a decision to participate in the public arena and to support a particular vehicle for that participation. Thus, as Dena Goodman argues, "[t]o subscribe also meant to join a community of subscribers" to further common ends. Subscribing, even to a newspaper whose editorial viewpoint the reader did not share, kept members of the public "connected with one another and engaged in the intellectual activity that united them. Subscriptions to periodicals made members out of readers, citizens out of

them to read their contents aloud..."

subscribers."⁶⁰

The editor of the *St. Thomas Journal* assured potential readers that he was "fully aware of the vast power of that mighty, moral engine the PRESS." He also wished to "assure the Public, that in our hands its energies will ever be directed with both prudence and moderation." His prospectus concluded that "we look principally for encouragement and support in our undertaking to the great body of intelligent Farmers and mechanics...On them depends our success or failure..."⁶¹ These readers' choice of a newspaper was based on any number of factors. Among them was their degree of support for its principles. A subscriber to the *Advocate* told one of Mackenzie's agents that he "resolved not to support you any longer, from a belief that you were wavering in your political sentiments; but, from the tenor of your late address...he has determined to continue to the support of a useful Journal so long as it perseveres in its avowed sentiments to the general interests of this province."⁶² The expansion of the press increased the proportion of readers able to choose among alternative sources. The choice, often conditional, was influenced by more than the timely delivery of paper and ink.

The analogy between newspaper readers and voluntary associations also highlights important differences. Voluntary associations, particularly those most closely associated with the public sphere, were rule-governed spaces. For instance, most debating and literary societies had explicit rules excluding religious and political discussions. They had presiding officials to manage the debate. Membership in these associations tended to be relatively homogeneous. Controversy was thus confined within strict limits. Little of this applied to the association of newspaper readers. Membership was more open,

⁶⁰ Goodman, *The Republic of Letters*, pp. 175-177.

⁶¹ George Hodgkinson, "Prospectus, *St. Thomas Journal*", *Western Mercury*, 15 September 1831.

⁶² AO Mackenzie-Lindsey Papers, Henry Lasher to Mackenzie, 11 December 1825.

incorporating a range of interests, backgrounds and abilities. Politics, far from being excluded, preoccupied most newspapers. Finally, there seemed to be no governing force or presiding officer to discipline the discussants. These differences explain why some were enthusiastic about literary or debating societies but wary of, if not hostile to, a public of newspaper readers.

It would be misleading, however, to suggest that the community of newspaper readers lacked rules or structures. With the rise of the independent press, editors became the gate-keepers of the public sphere.⁶¹ They could not control discussions like a presiding officer, but they controlled what was published. They decided which issues to address, what to select from other newspapers, and which letters to publish. Editors often announced that they could not publish a recent submission. Some were not of general interest. Others were simply "inadmissible."⁶² Gate-keeping also involved inclusion. When, in 1815, the editor of the *Kingston Gazette* printed a letter critical of the Commissariat Department, he admitted that he was unable to judge its accuracy and would thus "give room to a reply if requested."⁶³ The editor of the reform *Brockville Recorder* argued for publishing "as much substantial matter as possible, and often on both sides of a question. It is wholesome for the people to hear occasionally what their opponents have to say, and not depend alone on the writings of their friends."⁶⁴ Such principles were not always observed, but by copying from each other and publishing parliamentary debates, most papers presented a wider range of opinion than expressed in their editorials.

⁶¹ The role of gate-keeper for the official *Gazette* was shared by the King's Printer and the government - a relationship that produced considerable friction.

⁶² For instance, *Kingston Gazette*, 24 March 1812 and *Niagara Spectator*, 21 March 1817.

⁶³ *Kingston Gazette*, 1 April 1815. In 1818, the *Gazette* endeavoured to give equal space to the publications of Robert Gourlay and his opponents.

⁶⁴ *Brockville Recorder*, 26 December 1839.

To take one example, the *Patriot*, one of the staunchest government supporters, provided information on both sides of the quarrel between Sir Francis Bond Head and his former Executive Council in 1836. There was no question of the *Patriot's* position. It provided reasoned arguments, but also attacked the intelligence, integrity and loyalty of Head's opponents. Readers who did not share the *Patriot's* viewpoint were not, however, left in the dark. The *Patriot* broke the news of the Executive Council's resignation by publishing its lengthy letter of justification. A week later, the paper carried a letter by one of the former Councillors, Robert Baldwin, further outlining their constitutional position and criticizing the Lieutenant-Governor. The same issue copied Toronto City Council's address expressing its lack of confidence in Head's new Council from the radical *Correspondent & Advocate*. The next issue printed the numerous resolutions of a Toronto public meeting that reiterated the constitutional position of the Governor's opponents. The *Patriot* also provided its readers with the Assembly's debate on the dispute and a letter of support from the Speaker of the Lower Canadian Assembly, Louis-Joseph Papineau, to his Upper Canadian counterpart, Marshall Spring Bidwell.⁷ In short, those whose access to the community of newspaper readers was limited to the *Patriot* were bombarded with documents and commentary favourable to its own position, but they were not deprived of the essential arguments of Head's opponents, often in their own words. Newspapers were party organs but they participated in a broader public debate. They exposed their readers, however imperfectly, to that debate.

To take another example, in 1832, the conservative Kingston *Chronicle* published a letter from "A British Subject" which referred to the advisers of the Lieutenant-Governor as a faction and called for the Legislative Council to be restructured. The

⁷ *Patriot*, 18, 25, 29 March and 8, 12, 19 and 26 April 1836.

editorial of the same day rejected the letter's arguments but its publication still angered some of the *Chronicle's* readers. In the next issue, the editor responded "[t]hat the columns of a public journal should at all times be open to a fair and candid discussion of the events that are hourly passing before our view." Any other principle was "so at variance with common candour and justice" that the editor printed another letter from "A British Subject." References to personal character had, however, been removed. A letter from "John Bull," responding to the first letter, also appeared. In the following issue, "A British Subject" responded with further constitutional arguments and the editorial again engaged the correspondent. The following week "A British Canadian" replied and the editorial concluded that the correspondent was really a disloyal democrat. The editor received another letter from "A British Subject" for the subsequent issue but "we must decline continuing a correspondent so manifestly opposed to our public principles." No new arguments had been made and "'The 'Subject' is no longer edifying to either side."⁶⁸

The editor defended the necessity of hearing both sides of a dispute. He engaged in debate, printed letters from opposing sides, edited a submission to meet his standard of propriety, and cut off the debate when he considered it no longer instructive. Another editor might have acted differently. Readers frequently complained that particular editors were not adequately exercising their gate-keeping function: that newspapers were scurrilous and too partisan.⁶⁹ If the public sphere required accurate information and balanced analysis, what could control editors who failed as gate-keepers? Violence, as in the so-called "Type Riots" of 1826, when several tory youths vandalized William Lyon

⁶⁸ *Chronicle*, 31 March, 7, 14, 21, and 28 April 1832.

⁶⁹ The degree of scurrility points to the contested nature of politics and to how much participants thought was at stake. It was also a sign that editors were attempting to mobilize and persuade ever broader segments of the population that had never been incorporated into politics before. Gordon S. Wood, "The Democratization of Mind in the American Revolution", *Leadership in the American Revolution*, Library of Congress Symposia. (Washington, D. C., 1974), p. 71.

Mackenzie's print shop, proved counter-productive at best.⁷⁰ Some thought that the law could impose decency and accuracy.

Editors faced prosecution in the Assembly (for breach of privilege) or in the courts at the behest of either the government (for seditious libel) or private individuals (for libel). There were many cases of each.⁷¹ Most of these prosecutions offend against the modern notion of the liberty of the press, but what that liberty meant was still being worked out. Several editors were punished, some severely, but the government, courts and Assembly failed to end criticism or significantly narrow the range of published opinion. Prosecutions from all three sources fell off by the early 1830's, creating a de facto free press. Several juries had refused to convict. Opposition to some prosecutions had made them counter-productive. The independent press had continued to grow. When Mackenzie complained to the Colonial Secretary in 1832 about government harassment of the press, Lord Goderich noted that "it is needless to look beyond Mr. Mackenzie's journal to be convinced that there is no latitude which the most ardent lover of free discussion ever claimed for such writers, which is not enjoyed with perfect impunity in Upper Canada."⁷²

⁷⁰ Mackenzie was awarded sufficient damages to purchase a new press and the reputation of ruling circles was severely tarnished. Violence was not the only extra-legal means by which pro-government forces could try to influence editors. Money for reporting parliamentary debates could be withheld or government advertising could be transferred to a competing paper. In 1825 Charles Fothergill was dismissed as King's Printer for voting against the government in the Assembly.

⁷¹ Many of the prosecutions by the Assembly and the government are chronicled in H. Pearson Gundy, "Liberty and Licence of the Press in Upper Canada", *His Own Man: Essays in honour of Arthur Reginald Mansden Lower*, W. H. Heick and Roger Graham eds., (Montreal: McGill-Queen's University Press, 1974), pp. 71-92. See also Barry Wright, "Sedition in Upper Canada: Contested Legality", *Labour/Le Travail*, (v. 29, Spring 1992), pp. 7-57. There is no study of the concept of the liberty of the press in Upper Canada, but for a provocative look at the America experience see Leonard W. Levy, *Emergence of a Free Press*, (New York: Oxford University Press, 1985). But see also the recent essays in Murray Greenwood and Barry Wright, eds., *Canadian State Trials: Law, Politics, and Security Measures, 1608-1837*, (Toronto: University of Toronto Press, 1996).

⁷² Goderich to Colborne, quoted in Gundy, "Liberty and Licence" p. 88. As Gundy notes, Mackenzie's great catalogue of complaints, the Seventh Report of the Grievance Committee in 1835, did not include the liberty of the press as an endangered principle in Upper Canada.

The last prosecution in the courts for seditious libel had been in 1828⁷³ and private actions for libel brought by public figures also appeared to be declining. When a jury refused to convict George Gurnett, editor of the *Courier*, in such a case in 1834, editors, regardless of their politics, were nearly unanimous in support of the verdict. It seemed to mark an end to vexatious libel charges. As the *British American Journal* put it, Upper Canadians could be proud of living in a country "where the freedom of discussion is protected by the force of publick [sic] opinion."⁷⁴ By the 1830's, the press was sufficiently secure to sustain full-scale public debate.

The changing theory of the liberty of the press arising from the various attempts to punish editors cannot be traced here, but it is worth noting the grounds on which at least one such attempt was resisted. Robert Baldwin represented John Carey, editor of the *Observer*, in a private libel action brought in 1829 by Col. Fitzgibbon. Baldwin warned the York Assizes that the physical force employed against the *Colonial Advocate* in 1826, the criminal indictment against Francis Collins as editor of the *Freeman* in 1828 and the private libel action against Carey, were more than individual strikes at opposition newspapers. They were a concerted attack "directed against yourselves, your children and your country." Baldwin did not defend an editor's right to express his opinions. The public's right to discuss, not the individual's right to speak, was at issue.

The liberty of the press was a social rather than individual right. According to Baldwin, both government and the people benefited from the free circulation of ideas. The government learned the wishes of the people. The people learned the intentions and policies of the government. Baldwin even implored the jury to ignore the law of libel as

⁷³ Wright, "Sedition in Upper Canada", pp. 23-24.

⁷⁴ *British American Journal*, 15 April 1834.

expounded by Justice Macaulay: "I deny it is law - because I deny the morality of it - I deny the common sense of it - I assert that that cannot be an immoral crime which so greatly benefits the public at large. as the freedom of discussion for which I contend." Liberty of the press was grounded in a basic social good: the freedom of discussion.⁷⁵

Newspapers overflowed with claims that the liberty of the press was the "palladium" of British freedoms. The connection between them was succinctly drawn by the *Brockville Recorder* in 1828: "Bad as men may be at heart they dread the force of public opinion, aided and supported by the press. When principle offers no restraint[,] shame and a fear of consequences resulting from their conduct becoming generally known through the propagating power of the press confined them in some measure, within the prescribed limits of law and the constitution."⁷⁶ Public opinion, not the mechanisms of mixed monarchy, checked officials. Eventually, public opinion would assume an even greater role. In 1851, the *North American* argued that "a free press...spreads abroad the great principles of liberal government and makes all men practical politicians."⁷⁷ A free press sustained public discussion. Collective empowerment resulted.

In 1831, the Assembly debated expelling one of its members, William Lyon Mackenzie, for denigrating the House in the *Advocate*. William Morris could not understand how Marshall Spring Bidwell could oppose the motion as violating the freedom of the press. Morris asked "[h]ow is it possible that the people of the country can be rightly informed, when the public journals of this town disseminate such falsehoods[?]" When it [the press] fairly comments upon our public acts, I consider it entitled to our most

⁷⁵ Baldwin to the York Assizes, reported, *Canadian Freeman*, copied, *Patriot*, 19 November 1829. For the liberty to publish as a social right, see Samuel H. Beer on John Milton in *To Make a Nation: The Rediscovery of American Federalism*, (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1993), pp. 74-77.

⁷⁶ *Brockville Recorder*, copied, *Canadian Freeman*, 20 November 1828.

⁷⁷ *North American*, 10 January 1851.

unbounded protection; but when it is wholly employed in the propagation of falsehood - foul malicious and slanderous - I think it should be arrested in its unholy career, and taught to pay some respect to the opinions and feelings of mankind." Morris presented the privileges of the Assembly and the laws of libel as a defence of the public sphere.⁷⁸

Those who disagreed argued that subscribers and public opinion, not legislative or judicial institutions, should enforce public decency and fairness. As Bidwell put it, "if that press transcended its legitimate privileges, he would leave the press itself to correct the evil. If one newspaper published falsehoods, and misrepresentations, other papers would expose the falsehoods, and correct the misrepresentation - the public would be undeceived, and the libeller would soon meet with public scorn, as the just reward of his dishonest conduct."⁷⁹ Likewise, the *Upper Canada Herald* argued that "public opinion inflicts a punishment, in consequence of which real abuse generally operates more against its authors and publishers, than against the persons abused. This is the natural and salutary corrective of an evil which seems to be inseparable from a full enjoyment of the benefit of a Free Press."⁸⁰ Inaccurate information would be corrected in other newspapers and subscribers would abandon any paper that consistently misled them.

By the early 1830's, readers were seen as the principal check on their newspapers. The voluntary association of newspaper readers was governed by its own membership.

⁷⁸ Morris, *Cobourg Star*, 27 December 1831. Likewise, in the debate on a bill to allow truth as a defence in libel cases, Attorney General H. J. Boulton agreed with the bill's sponsor, Mackenzie, that "[y]es nothing contributed more to the liberties of mankind than free open discussion; but he wished to be understood that all such discussions should be free and open with a bona fide intention. This is true liberty; but when the Press exceeded the proper bounds and turned its liberty into licentiousness, it became a curse to society..." *Canadian Freeman*, 8 December 1831.

⁷⁹ Bidwell, *Cobourg Star*, 27 December 1831. Also commenting on Mackenzie's expulsion from the House, the *Christian Guardian*, 7 December 1831, argued that "[p]ublic opinion is the true supporter of the press - and public opinion is the proper and only effectual corrector of its licentiousness..."

⁸⁰ *Upper Canada Herald*, 30 June 1826. Also in response to the Type Riots, the conservative *Courier*, copied *Farmers' Journal*, 5 July 1826, agreed that only public opinion could discipline the press.

Public opinion was to control the individual organs of public opinion.⁸¹ This self-referential quality pointed to the growing belief in the autonomy and ultimate authority of the public sphere. In 1834 the conservative *Patriot* believed that much poison had been spread by the press but argued that "the only way of averting the intended ill. is by applying more force to the same engine in counteraction, which is always successful in repressing arrogant presumption and maintaining truth."⁸² These two contentions, that only argument could counter argument and that truth emerged from the conflict of arguments, marked the *Patriot's* acceptance of the public sphere.

If newspaper readers formed a species of voluntary association, news rooms (also called reading rooms) were its most tangible manifestations. Most were probably quite plain: a room with chairs, lamps, a table for the most recent newspapers and journals, and shelves for earlier issues. Here men (there is no evidence that women frequented news rooms) could congregate to read newspapers and reviews at their leisure.

Since membership required some sort of fee, reading rooms did not push the social and economic boundaries of the public sphere. Instead, they allowed those who already had access to the public sphere to read more widely. They could read a fuller range of editorial opinion⁸³ and more specialized, expensive, or distant periodicals than they could

⁸¹ Given the financial precariousness of most newspapers, and their dependence on subscribers, consumers were probably able to exercise more control over the press in this period than later.

⁸² *Patriot*, 7 February 1834.

⁸³ *Examiner*, 29 August 1838, published a letter signed, "An Irish Roman Catholic and Constitutional Reformer." It commented on an article in Ogle Gowan's *Brockville Statesmen*. The author claimed to have seen this conservative Orange organ at a news room, "and as it was a paper I had never before seen, and was indeed prejudiced against, I felt some curiosity..."

obtain on their own. Reading rooms were also social spaces. They allowed readers, away from the distractions of family or business, to exchange information, to discuss topics of mutual interest, and to develop their judgement in the process of conversation with other participants in the public sphere.⁸⁴ By storing periodicals over a period of time, reading rooms also acted as a sort of reference library.

Many reading rooms were organized by local newspaper publishers. They might be housed in the same building as the print shop and stocked with the exchange copies of periodicals received free of charge from their publishers. In this way, the benefits of the exchange system were shared with members of the community. Other news rooms were established by public meeting and subscription. Many, perhaps most, have left no mark on the written record. Given the intimate connection with the newspaper business and the likely overlap in patronage, it is probably safe to assume that there were attempts to found news rooms in communities that supported a newspaper or a debating society.⁸⁵

The first such attempt was probably made by the editor of the *Spectator*, Bartemus Ferguson, in 1817 at Niagara. His notice is worth quoting in full since the features it advertised were typical of later news rooms:

Having obtained a more central situation for our office, we are induced, from the voluntary encouragement of several Gentlemen, to establish a Newspaper Reading Room. A very convenient room, directly over the Printing Office, will shortly be in readiness, and appropriated exclusively to that purpose. The terms will be one dollar for three months, or four dollars per year, payable at the end of every quarter. The room will be

⁸⁴ The proprietor of the *Brockville Gazette*, 23 August 1830, announcing his intention to open a reading room, argued that "it will increase society, and be the means of diffusing much useful and important information, at an infinitely less expense than it could otherwise be procured."

⁸⁵ Some of the attempts to establish news rooms mentioned in the press included those at Niagara, (in 1817); St. Catharines, (1829, 1834, 1839, 1840); York, (1824, 1827, 1833, 1838); Kingston, (1827 - for religious works?, 1832); Cobourg, (1849), Perth, (1853); Brockville, (1830, 1852); Hallowell, (by 1833); Hamilton (1832); and Bytown (1838 or 1839). This list refers only to independent news rooms. Jeremy Popkin estimates that there were about 1000 reading rooms in Europe by 1789 either attached to booksellers or as voluntary associations. *News and Politics in the Age of Revolution*, p. 130.

furnished with necessary accommodations for reading, and will be open for readers from nine in the morning until nine in the evening.

Our terms, we conceive, can afford no objection to the undertaking, particularly when it is considered that an individual publication would cost an equal, if not a larger sum. Here the reader will have at his leisure, the perusal of from thirty to forty publications weekly, besides a few choice Magazines and Monthly Reviews.³⁶

By the 1830's such attempts were increasingly common.

The editor of the *Farmers' Journal* attempted to found "a respectable Reading Room" at St. Catharines in 1829 by calling a meeting "of the gentlemen of this village and its vicinity" "at the rear of the Printing Office" where he proposed to locate the reading room.³⁷ Words like "respectable" and "gentlemen" were used with misleading frequency in Upper Canada, but several news rooms appear to have been designed, in part, to offer a more refined atmosphere for reading and conversation than was possible in most taverns.

Anna Jameson referred to the Commercial News Room, founded in Toronto in 1833, as "absolutely the only place of assembly or amusement, except the taverns and low drinking houses." In 1838, Francis Hincks argued that only the exertions of the mercantile class of the city had founded and sustained the news room. In 1846, the membership rate was £1 5s, probably enough to exclude most artisans. The room, located upstairs in the Market Buildings, was open twelve hours a day. In 1850, 62 periodicals were made available: 49 newspapers (all 10 from Toronto, 10 from London, 5 from elsewhere in Britain, 7 from New York City, 7 from elsewhere in the United States, and 10 from the Canadas outside of Toronto); 10 reviews from Britain and the United States;

³⁶ *Spectator*, 16 October 1817. See also Johnson, "The Availability of Reading Material", p. 98.

³⁷ *Farmers' Journal*, 6 May 1829. See also *British Colonial Argus*, 11 January 1834.

and 3 specialized periodicals published in Upper Canada.⁹⁸

In 1827, William Lyon Mackenzie attacked attempts to establish a York news room with a subscription rate of \$10. According to Mackenzie, "[t]he reason why so absurd a sum is named in this little community" was "to keep out all except a few individuals of a certain class." For Mackenzie, the founding of a polite news room was yet another example of the attempt to create exclusive social institutions. In 1824, Mackenzie had established the "York Reading Room." Its yearly subscription rate, \$4, was significantly lower, but hardly negligible. The room was open at half that rate to subscribers of the *Advocate*.⁹⁹ Francis Hincks founded the *Examiner* in 1838 and soon opened his own news room. Local subscribers were given access to the exchange newspapers he received for the *Examiner*, the "leading journals in Upper and Lower Canada, the United States and a few from Great Britain," free of charge.¹⁰⁰ These reform editors founded relatively inclusive news rooms, but they still catered only to those who already had access to periodicals. Other rooms, by design or effect, were more restrictive in order to provide space for polite reading and conversation.

In 1830, Thomas Dalton of the *Patriot* at Kingston, complained that "the papers generally abound with interesting matters but it is impossible in a weekly print to give it all at one. We blush for Kingston that it has no reading room."¹⁰¹ Two years later, the

⁹⁸ Jameson, *Winter Studies and Summer Rambles*, p. 154 and *Examiner*, 30 January 1839. For its founders, (George Monro, Thomas Carfrae jr., James Newbigging, and J. W. Brent) see, *York Commercial Directory, Street Guide, and Register, 1833-4: with Almanack and Calendar for 1834*, George Walton, ed., (York: Thomas Dalton, 1833), p. 133; *Brown's Toronto City and Home District Directory 1846-7*, (Toronto: George Brown, 1846), p. 29; and Roswell's *City of Toronto and County of York Directory for 1850-1*, J. Armstrong, ed., (Toronto: Henry Roswell, 1850), pp. xlix-l.

⁹⁹ *Colonial Advocate*, 2 December 1824 and 22 March 1827.

¹⁰⁰ *Examiner*, 30 January 1839.

¹⁰¹ *Patriot*, 8 June 1830. Dalton continued that "We have blushed in agony, when the subject has been mentioned to us in Quebec, Montreal, New York, Albany and Utica, nay, even in little York." If this can be interpreted to mean that York had a reading room in 1830, one of the attempts mentioned above or some other endeavour succeeded before the establishment of the Commercial News Room in 1833.

Kingston Chronicle praised the editor of its major competitor, Hugh C. Thomson, for opening such a room attached to the offices of the *Upper Canada Herald*. According to the *Chronicle*, it was

supplied with nearly 60 newspapers and periodicals of the best description. The list of subscribers is increasing, and this desideratum so long required in Kingston, is likely to become the resort of "all the talents," a valuable acquisition to the daily increasing advantages of the town, and a repository of useful and improving information.⁹²

The *Chronicle* assumed that those with the leisure, money and inclination to join constituted "all the talents" of the town. Thus, the informed opinion of Kingston was to be found in its news room. This was probably the reading room Henry Jones, a clerk in the Crown Lands Office, referred to in his diary for April 3, 1843: "...had a confab in the Newsroom with Hawke and Patton on the rights of women..."⁹³ Readers came together as a community in a public, albeit respectable, setting to purchase, read and discuss printed material.

Other voluntary associations also had reading rooms for their members. This probably includes most early libraries. One reader of the *Advocate* cancelled his subscription when he joined the Ancaster Library Society at its founding in 1825.⁹⁴ In 1829, the Dalhousie Library, at Perth, asked "all the Editors in both Provinces to send a

⁹² *Chronicle*, 19 May 1832. Potential subscribers to a reading room about to open in Hamilton in 1832 were promised "access to about 50 different newspapers from various parts of this Province and the United States, including many of the best political and literary publications of the present day." *Western Mercury*, 29 December 1831.

⁹³ Lambton County Archives, Henry John Jones Diary. I owe this reference to Julia Roberts. At this time, Jones was reading *Blackwoods*, the *Patriot*, and several newspapers from New York and elsewhere. How many of these he read at the newsroom is unclear.

⁹⁴ In conveying the bad news, Mackenzie's agent reported that the subscription library "is supported by most of the inhabitants here." Matthew Crooks to William Lyon Mackenzie, 11 January 1825. When Francis Collins accused the library of not subscribing to the *Canadian Freeman*, its treasurer, George Gurnett, responded in his conservative paper, that the library did indeed subscribe to the *Freeman*. See *Gore Gazette*, 21 December 1827.

copy of their respective papers. to be filed in the Library room."⁵⁵ Associations for elite sociability, such as the United Services Club and the Upper Canada Club, also had reading rooms. Besides a variety of colonial and American newspapers, the latter subscribed to *Blackwood's*, *Fraser's*, *The Fortnightly Review*, *The Quarterly Review*, *The Foreign Quarterly*, *The London and Westminster Review*, and the *Edinburgh Review*; the leading British conservative, whig and radical journals.⁵⁶ Hotels might also make newspapers available for their patrons. In 1829, the owner of the British Coffee House at York advertised that "among the attractions which he intends to add to the establishment will be a reading room which will be furnished with the principal English and provincial papers." The Coffee House catered to the elite of the city and hoped to board out-of-town members of parliament during the upcoming session.⁵⁷

Mechanics' institutes contained libraries and reading rooms, extending the social reach of many periodicals. In January 1835, the Kingston Institute began ordering "reprints of the principal European periodical Literary Reviews," and in April claimed that "there are 20 or 30 Reviews and newspapers regularly taken in for the Reading Room table." The Toronto Institute's library received the *Foreign Quarterly*, *London*, *Edinburgh*, *London and Westminster*, and *Westminster Reviews*, according to its 1842 catalogue. Its 1855 catalogue listed 48 reviews, magazines and newspapers available to

⁵⁵ *Perth Examiner*, copied, *Kingston Chronicle*, 11 July 1829. The *Chronicle* announced that it would comply with the request for a free subscription. The *Brockville Gazette* did likewise, 23 October 1829. The Galt subscription library, referred to in chapter three above, also made newspapers available to its members.

⁵⁶ On the United Services Club, (for the military and navy at York), see *Courier*, copied, *Upper Canada Herald*, 23 October 1833. J. K. Johnson, "The U.C. Club and the Upper Canadian Elite, 1837-1840", *Ontario History*, (v. LXIX, n. 3, September 1977), p. 154. The Free & Easy Club established at Chatham in 1839 also appears to have had a reading room. See Foster Vernon, "The Development of Adult Education in Ontario, 1790-1900", (D. Ed. thesis, University of Toronto, 1969), p. 52.

⁵⁷ *Upper Canada Gazette*, 17 December 1829. I owe this reference to Julia Roberts.

members.⁹⁸ The range of periodicals was similar to that of the Commercial News Room but with an annual fee of less than one-third the fee of the latter, the York Mechanics' Institute placed them within the reach of a broader segment of the population.⁹⁹

Independent news rooms and their prevalence in other voluntary associations attests to the importance of print culture in this period. As a physical space created by readers, news rooms embodied two central themes of the public sphere: access to information and a sociability based on the mutual exchange of information and opinion.

Some subscribed to one or more newspapers. Some forwarded their newspapers to family and friends. Some banded together for access to a wider variety of periodicals. There were also other effective, if less formal, mechanisms for gaining access. The British Coffee House proposed a reading room. Newspapers were probably available in other leading hotels. A young Presbyterian lawyer at Toronto, Oliver Mowat, asked his younger brother at Kingston if he ever saw *The Church*, the organ of the Anglican hierarchy. The older Mowat had read the latest number "in MacDonald's barroom the other day while waiting for the glad sound of the dinner Bell."¹⁰⁰ Left alone in Cobourg while her husband inspected a farm, Susanna Moodie "had to get through the long day at

⁹⁸ Bishop McDonnell donated 106 volumes of the *Monthly Review* to the Kingston Institute. *Chronicle & Gazette*, 14 January and 14 April 1835. For Toronto see the catalogues in AO, MU2020. The Cobourg Mechanics' Institute also had a reading room. *Cobourg Reformer*, 3 March 1835.

⁹⁹ For the Institutes' fee in 1838 see Macdonald, "Literature and Society", p. 138. The £1 annual fee for the St. Catharines News Room. *St. Catharines Journal*, 23 March 1839, likely excluded most mechanics. Different ranks had different public places to read newspapers but they subscribed to the same ones.

¹⁰⁰ Oliver Mowat to John Mowat, 29 July 1844 and 20 November 1845; Peter Neary, ed., "'Neither Radical Nor Tory Nor Whig': Letters by Oliver Mowat to John Mowat, 1843-1846", *Ontario History*, (v. LXXI, n. 2, June 1979), pp. 106, 121, 131.

the inn in the best manner I could. The local papers were soon exhausted." She mentions the *Reformer*, but her plural reference suggests that the inn also had the *Cobourg Star*.¹⁰¹

Did the hundreds of taverns scattered across the province and frequented by Upper Canadians of all ranks also provide access to newspapers? Many served as community bulletin boards. The proprietors of the new *Royal Standard* asked tavern keepers to post "this Prospectus in some conspicuous place."¹⁰² J. J. Talman suggests that the power of the press "was enhanced by the innumerable taverns in the province, where the contents of one newspaper, probably much distorted by repetition and discussion, could influence several score of non-readers." While little has been published on colonial taverns since, Talman was almost certainly right.¹⁰³ When a visitor found himself in a Chatham tavern in 1840, a local Justice of the Peace introduced himself "by lending me a well-thumbed newspaper." After "this piece of civility," the local felt free to ask the visitor "a host of questions." When the traveller continued on to Detroit, he noted that "[t]he bar-room of the American was the only place in which a newspaper could be seen for five minutes."¹⁰⁴

Innkeepers certainly subscribed to newspapers. In 1826, the *Advocate's* Cornwall agent sent Mackenzie the names of ten new subscribers, listing five as innkeepers: 3 at Cornwall and one each at nearby MilleRoche and Williamsburg. Taverns were also centres of distribution for other subscribers. The four *Advocates* destined to MilleRoche were to be sent to the local innkeeper.¹⁰⁵ Mackenzie's opponents accused him of sending

¹⁰¹ Moodie, *Roughing it in the Bush*, (Toronto: McClelland and Stewart, 1989 [1852]), p. 83.

¹⁰² prospectus, *Royal Standard*, October 1836.

¹⁰³ Talman, "The Newspapers of Upper Canada a Century Ago", p. 15. The following discussion is indebted to conversations with Julia Roberts who is studying tavern culture in Upper Canada.

¹⁰⁴ Morleigh, *Life in the West: Back-wood Leaves and Prairie Flowers: Rough Sketches on the Borders of the Picturesque, the Sublime, and Ridiculous, Extracts from the Note Book of Morleigh in Search of an Estate*, (London: Saunders and Otley, 1842), pp. 203, 227. Note that the newspaper was "well-thumbed," indicating either intensive reading or extensive circulation. I owe this reference to Julia Roberts.

¹⁰⁵ AO Mackenzie-Lindsey Papers, Charles McDonell to William Lyon Mackenzie, 20 February 1826.

the *Advocate* "unbidden to Taverns and other places, to meet the eyes of the people in the Country in every quarter..."¹⁰⁶ In 1808, the *Upper Canada Gazette* had announced that "the Gazette for Subscribers living out of Town, will hereafter be left at the tavern of Messr. Deary & Campbell."¹⁰⁷

With the exception of places of worship, taverns were often the only spaces where large numbers of Upper Canadians regularly congregated and conversed. As such, they undoubtedly served as information clearinghouses. They were key places to learn or have confirmed the latest news or gossip. Travellers stopping at the local tavern extended the range of face-to-face communications.¹⁰⁸ Moreover, unlike sermons, charges to juries or other examples of early information diffusion, information in taverns was not exchanged in a controlled and hierarchical fashion by elites intent on instructing others. Taverns were places where people could mingle, hold a variety of meetings, and exchange gossip and news. Some of the talk undoubtedly concerned newspapers and politics.

When Joseph Willcocks was tried by the House of Assembly for libel in 1808, the only witness he called in his defence had overheard one of the witnesses against Willcocks "assert at a tavern in York, that he did not think Willcocks would be brought to trial."¹⁰⁹ In 1812, a reader of the *Kingston Gazette* at Gananoque informed the editor that a recent article on the medical profession had sparked discussion: "Three of them were disputing in a small Tavern where I happened to be last evening, on the propriety of the

¹⁰⁶ Samuel P. Jarvis, *Statement of Facts Relating to the Trespass, on the Printing Press in the Possession of Mr. William Lyon Mackenzie...* (York: R. Stanton, 1828), p. 10. I owe this reference to Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850*, (Toronto: University of Toronto Press, 1996), p. 169.

¹⁰⁷ *Gazette*, 27 August 1808. The post did not distribute these papers since "persons obliging enough to take them in charge, are requested, to call for them there."

¹⁰⁸ David Conroy, *In Public Houses: Drink & the Revolution of Authority in Colonial Massachusetts*, (Chapel Hill: University of North Carolina Press, 1995), pp. 45, 48.

¹⁰⁹ *Upper Canada Gazette*, 17 September 1808.

prescriptions of your correspondent."¹¹⁰ To take another example, in 1816 the editor of the *Niagara Spectator* complained about the lack of information regarding legislation recently passed at York, but "it is true we hear in Bar-Rooms and in the public Streets, that the District is divided and about County Towns &c..."¹¹¹

Taverns concerned the privileged less because of popular drinking habits and more because of the potential for unguarded expression and behaviour in these quasi-public, but largely unregulated, spaces. One critic of bar rooms in inns argued that

the glorious rendezvous of true liberalism is the bar room...their only use is to encourage loafers and idlers to congregate together to talk, spit and smoke, to run down the good fame of their neighbors, traduce the character of their betters, and abuse the government under which they live. They are nests of fifth, and arenas for political and other useless discussions...a man may drop in for a few minutes, free from all restraint, talk to Tom, Dick and Jerry about what concerns them not...¹¹²

Without the proper restraint of family, work, or social superiors, bar rooms provided democratic and liberal "arenas for political and other useless discussions."

Another commentator, as part of a general condemnation of Mackenzie, asserted that "[h]e may ape the man of talents in a low tavern, - a place he seems particularly fond of, - to circulate his opinion: but even here his want of principle is condemned and his follies are discussed and derided."¹¹³ After the rebellion, taverns were described as "hot beds of sedition and treason." Calls were renewed to ensure the loyalty of tavern-keepers. Why were authorities so concerned about the politics of tavern keepers if they were not

¹¹⁰ Candidus to Reckoner, *Kingston Gazette*, 6 May 1812.

¹¹¹ *Spectator*, 15 March 1816.

¹¹² Roger North, *Cobourg Star*, 19 June 1839.

¹¹³ *Scrutator, Patriot*, 29 September 1835. Note the similarity between the concern that Mackenzie could "ape the man of talents" in taverns and Richard Bonnycastle's concerns about temperance societies discussed in the previous chapter. The equation of government opponents with taverns was also not new. Anon., *Spectator*, 6 August 1818, referring to Robert Gourlay's supporters, complained that "[m]en who have hitherto confined their efforts to the forests, and often made them ring with the stroke of their axes, now assume the title of patriots, and awaken the echoes of the bar-room."

thought to provide important political spaces and influence their patrons?¹¹⁴

The growth of newspapers did not supplant face-to-face communication in taverns and inns. Some read newspapers in taverns, talked about what they had read in taverns, or heard others talk about their reading in taverns. David Conroy argues that, in colonial Massachusetts, "nonsubscribers, even the illiterate, could hear the news read and interpreted at taverns." The concept of the public sphere demanded that people be informed. Newspapers and pamphlets were the primary vehicles for that information, but as Conroy points out "public readings and discussions...in first, genteel taverns [and reading rooms] and, later, those for common men provided a physical representation symbolic" of the new critical public. Discussions in news rooms, voluntary associations and taverns provided tangible evidence for the existence of the public sphere.¹¹⁵

The single most striking feature of colonial newspapers after 1821 is the mass of close type devoted to third-person summaries of the debates of the House of Assembly. Here editors presented their readers with much of the raw material, or evidence, to make informed political judgements. The very existence and wide distribution of these reports were vital to the twin themes of this study: the creation of a public sphere and the

¹¹⁴ quoted in Talman, "The Newspapers of Upper Canada", p. 15. Some taverns were also associated with particular political positions as the Sir Francis Bond Head Inn, renamed after the Lieutenant-Governor's success in the 1836 elections. See F. L. Barron, "The Genesis of Temperance in Ontario, 1828-1850", (Ph.D. thesis, University of Guelph, 1976), p. 224. On this patronage in Toronto see Gregory S. Kealey, "Orangemen and the Corporation: The politics of class during the Union of the Canadas", *Forging a Consensus: Historical Essays on Toronto*, Victor L. Russell, ed., (Toronto: University of Toronto Press, 1984), pp. 47-50.

¹¹⁵ Conroy, *In Public Houses*, pp. 234, and 180n, 189, 219, 232-235, 237n, 298, 304-305. See also Brown, *Knowledge is Power*, pp. 18, 129.

declining ability of the theory of mixed monarchy to justify the colonial constitution.

In Britain, as part of the House of Commons' epic struggle with the Crown and later with the people "out-of-doors."¹¹⁶ the Commons jealously guarded its privacy. After 1770, magazines, followed by newspapers, began to offer relatively full reports of important debates, but not until the new Houses of Parliament, constructed after the fire of 1834, was there an official Reporters' Gallery. Jürgen Habermas emphasizes the coincidence with the Great Reform Bill of 1832. The reform of the franchise marked the end of the House of Commons' long road from privileged estate of the realm to national assembly. It now clearly received its legitimacy from representing the interests and the opinions of "the people." The availability of its deliberations was an integral part of that change. As Habermas concludes, "in the role of a permanent critical commentator," the British public "had definitively broken the exclusiveness of Parliament and evolved into the officially designated discussion partner of the delegate." Those who read newspapers "were no longer treated as people whom, like "strangers," one could exclude from the deliberations."¹¹⁷

Upper Canada's first parliament assembled at Newark in September, 1792.

Knowledge of this and other early parliaments was scarce. The inaugural issue of the first

¹¹⁶ For accounts of the complex story of parliamentary privilege and the press see J. R. Pole, *The Gift of Government: Political Responsibility from the English Restoration to American Independence*, (Athens: The University of Georgia Press, 1983), pp. 104-116; Peter D. G. Thomas, "The Beginning of Parliamentary Reporting in the Newspapers, 1768-1774", *English Historical Review*, (v. CCXCIII, October 1959), pp. 623-636; and A. Aspinall, "The Reporting and Publishing of the House of Commons' Debates, 1771 - 1834", *Essays Presented to Sir Lewis Namier*, Richard Pares and A. J. P. Taylor eds., (London: Macmillan & Co. Ltd., 1956), pp. 227-257.

¹¹⁷ Habermas, *The Structural Transformation of the Public Sphere*, pp. 60-66. See also Pole, *The Gift of Government*, chp. IV and pp. 117-138 for colonial America where assemblies also protected their privacy against royal governors, proprietors, the Privy Council, and fellow colonists. Only with the revolution did most assemblies regularly allow people to inspect their journals and visit the legislature. In most states, reporting legislative debates became common after 1785. At the national level, selected debates of the House of Representatives were reported from 1790. The Senate originally met in secret, but its debates were being published a few years later.

colonial newspaper only appeared the following April. When the second session opened at the end of May 1793, the *Upper Canada Gazette* carried Lieutenant-Governor Simcoe's opening speech and the addresses of both houses in reply. Just prior to the end of the session, the *Gazette* provided highly abbreviated journals of the Assembly from one week of the session and a list of the acts that received royal assent. Addresses from both houses to the King on affairs in France were also published. The *Gazette* later printed at least two of the colony's new statutes.¹¹⁸ Rumour and private correspondence undoubtedly added to the number of Upper Canadians with some knowledge of these early sessions but the number and amount of information must have been small.¹¹⁹

The incomplete survival of many early newspapers makes it difficult to ascertain precisely what was or was not published, but the outline is clear. The government's official organ usually published the viceregal speech opening the session, the replies of both houses, a list of the bills receiving royal assent, and the viceregal speech closing the session. At least some of the new statutes were then published. While other papers could copy from the *Gazette* or publish information from other sources,¹²⁰ until the establishment of the *Guardian* at Niagara in 1807 and the *Kingston Gazette* in 1810, there

¹¹⁸ *Upper Canada Gazette*, 6 June; and 4, 11, 18, and 25 July 1793.

¹¹⁹ This study does not deal with the related question of the publication of colonial statutes. Besides appearing in the *Gazette* and other papers after the close of the session, the Assembly occasionally voted funds to have statutes printed. There were complaints about the dissemination of the new statutes. See Camden, "To the Members of the Provincial Parliament", *Kingston Gazette*, 21 September 1816 and the Ernest Town grievances, *Chronicle*, 5 February 1818. Several early elections also occurred without mention in the *Gazette*, and although discussions of parliamentary business appeared in the *Kingston Gazette* in the form of letters to the editor, particularly in the fall of 1810, such printed information remained scarce.

¹²⁰ For instance, the *Niagara Herald*, 13 June 1801, commented on the proceedings of the Assembly from a few days before regarding the controverted York election of 1800. See *The Town of York, 1793 - 1815: A Collection of Documents of Early Toronto*, Edith G. Firth ed., (Toronto: University of Toronto Press, 1962), pp. 166-167.

were few long-standing or widely distributed rivals to the official *Gazette*.¹²¹

Even those with access to the *Gazette* learnt little: when parliament was in session, the leading issues the Lieutenant-Governor wished addressed, the titles of new statutes, and the contents of some of them. In 1793, the *Gazette* published abbreviated journals from one week of the session. It contained no division lists but it did reveal such parliamentary details as the resolutions and motions proposed, who moved and seconded them, and their fate. This minimal publicity, however, was more an exception than a precedent. Before 1817, selected journals appeared only three more times in the *Gazette*: from about three weeks of the second session of the third parliament (1802); a little more than one week of the fourth session of the fourth parliament (1808); and part of one day of the second session of the fifth parliament (1810). No journals were printed for the remainder of the fifth parliament and, due to the American invasion, the *Gazette* was not published during the sixth parliament.

The *Kingston Gazette* was the only colonial newspaper in existence throughout the war but it managed to publish little more than the speeches opening the first four sessions of the sixth parliament. For the fifth session (1816), it printed what had generally appeared in the official paper, including a list of the new statutes copied from the recently established *Spectator* at Niagara. In his first issue, the editor of the *Spectator* announced that he "extremely regrets, the want of opportunity of laying before the public, the proceedings of the present Session of the Legislature of this province." No member of either house had sent him the information. He called on his readers to "choose men [at

¹²¹ The prospectus of the *Kingston Gazette*, copied *York Gazette*, 16 July 1810, promised that the new paper would "exhibit, from time to time, a statement of Parliamentary proceedings..." but during the third and fourth sessions of the fifth parliament (1811 and 1812), it published nothing more than what usually appeared in the official *Gazette*.

the next election] who will pay some attention to your business." "[I]t is proper that you should from time to time be informed of what the parliament is doing." Rumour and speculation could be heard "in Bar-Rooms and in the public streets." but "we are all in the dark."¹²² The business of parliament was the public's business. It was already being discussed in public places.

The extent to which Upper Canadians were "all in the dark" soon changed. With a new King's Printer, Robert C. Horne, the *Upper Canada Gazette* was re-established in 1817. Besides the usual official speeches, addresses, and list of new statutes, he published a list of the members of both houses, the journals of the House for a substantial portion of the first session of the seventh parliament, a list of the acts reserved as well as those assented to, a brief summary of arguments given on one day (i.e. Member X argued that...), and a division from that day, (without names). The *Gazette* continued to provide fairly extensive reports of the journals for the second and third sessions (both in 1818), at least some of which were copied by the *Kingston Gazette* and the *Spectator*.

The first session of the seventh parliament also saw the second reporting of actual debates in the House. A member of the House, James Durand, was charged with contempt for his "Address to the Independent Electors of Wentworth," which had appeared in the *Spectator*. In March 1817, the *Upper Canada Gazette* published a fairly extensive summary of actual speeches made regarding the alleged libel which were copied

¹²² *Spectator*, 15 March 1816. This editorial may have elicited the desired response since the *Spectator* soon published an "extract of a letter from a gentleman at York to his friend lately returned to Niagara." The letter was a highly favourable (and cursory) review of the sentiments, legislation and members of the sixth parliament (1812-1816 and recently dissolved). It sought to fill the gap in published information created by the war (and to influence the elections of 1816?). See the *Kingston Gazette*, 11 and 18 May 1816, which attributed the letter to the *Spectator*. Letters were not the only source of information for the independent press. The *Kingston Gazette*, 7 April 1818, relied on a traveller from York for news that the House had just been prorogued and for a list of the bills that had passed both Houses.

in the *Kingston Gazette* and the *Spectator*.¹²³ Further information regarding this session (as well as several veiled criticisms) were contained in a letter from "A Canadian Commoner" to the *Kingston Gazette*. It complained that the session had been abruptly closed to prevent the House from considering resolutions to encourage emigration from the United States, and was critical of the size and administration of the Crown and Clergy Reserves. The letter incorporated the proposed resolutions, a list of the new statutes of the colony, and the longer list of bills passed by the House but defeated by the Legislative Council.¹²⁴

After the close of the next session, four issues of the *Spectator* contained columns entitled, "Resolutions, Address &c., &c., &c., of the Commons House of Assembly, and the Legislative Council, and the minutes of a By-Stander, at the bar of the House of Commons during the last session of Parliament."¹²⁵ Most of the material involved the dispute between the Assembly and the Legislative Council over the latter's right to amend bills appropriating public funds. Despite the grandiose title, these reports were dominated by official resolutions and editorializing by the "By-Stander." There was little attempt to report the arguments, let alone the actual speeches, of individual members of either House. Nonetheless, with the publicity given to the dispute between the two houses, the regular journals of the Assembly for the first three sessions of the seventh parliament, and especially the trial of James Durand, these three newspapers did much to lift the veil on the legislative process. Reports of the journals of the House for the fourth session do not

¹²³ *Kingston Gazette*, 22 March 1817, attributing the report to the official *Gazette*, and *Spectator*, 21 March 1817, without attribution. This issue of the *Spectator* notes that "we have received the York Gazette up to the 13th instant, but can obtain nothing later from the Provincial Parliament, than what will be found in our preceding columns" which covered the 26th of February to the 3rd of March. The official *Gazette* March 20th continued its coverage of the journals.

¹²⁴ A Canadian Commoner, *Kingston Gazette*, 12 April 1817.

¹²⁵ *Spectator*, 28 May, 11 and 18 June 1818. The first is marked "continued" but the previous issue is not extant.

appear to have been published. They re-appeared for the fifth.¹²⁶

Once reports of the journals appeared regularly in 1817 and 1818, pressure mounted for reports of the actual debates. The first public call for such reporting was probably a letter to the editor of the *Kingston Gazette* from a reader at Niagara in 1811. He was "a subscriber to two American papers, from which I receive the earliest foreign information." He did not need a colonial newspaper for foreign intelligence or the local news of Niagara, but "[o]ur parliament is now in session, and I wish you could procure and publish their debates: as I am now too aged and infirm to attend as an auditor..."¹²⁷ The debates of the Assembly had been accessible to those who could not "attend as an auditor" only once before, in 1808.¹²⁸ They appeared again briefly on a single issue in 1817 and would only be available to most newspaper readers from 1821.

In 1808, the government faced opposition in the House from Joseph Willcocks who had just taken his seat after winning a West York by-election. An associate of former Justice Robert Thorpe, Willcocks had also established the colony's first anti-government newspaper, the *Upper Canadian Guardian and Freeman's Journal* in July

¹²⁶ For material reported from the first two sessions see, *Upper Canada Gazette and Kingston Gazette*, February, March, and April 1817 and February, March and April 1818; and *Spectator*, 28 February 1817, and 9 April 1818. For the third session see *Kingston Gazette*, 20 October, 10 and 24 November and 8 December 1818 which were attributed to the official *Gazette*, (which is not extant for much of this and the following sessions). For the lack of journals for the fourth session and for their re-appearance in the fifth see *Kingston Chronicle*, 2 July 1819 and 3 March 1820.

¹²⁷ R. A. [Randy Absalom??], *Kingston Gazette*, 19 February 1811.

¹²⁸ Words spoken in parliament had never been entirely private or secret. Upper Canadians could visit the Assembly in open session. For particularly dramatic debates the number might be considerable. For the first debates published, when the House tried Joseph Willcocks for libel in 1808, "the bar and gallery were crowded with a concourse of spectators." *Gazette*, 17 September 1808. Visitors or members might offer anecdotes to friends or refer to the proceedings of the House on the hustings. In 1811, John Beverley Robinson informed his Kingston friend, John Macaulay, that Barnabus Bidwell was in York, "I suppose for the purpose of hearing our parliamentary discussions." AO, Macaulay Family Papers, John Beverley Robinson to John Macaulay, 15 February 1811. Apparently, Bidwell was a frequent visitor to the Assembly since "Vindex" argued that he was unfit to be a schoolmaster at the Ernest Town Academy in part because "he has been conspicuous at the bar of our house of assembly, and affected familiar intercourse with some of its members." *Vindex*, *Kingston Gazette*, 16 April 1811.

1807, shortly after his dismissal as sheriff of the Home District.¹²⁹ The official *Gazette* printed journals for the beginning of the session and took the unprecedented step of summarizing the speeches and positions of several identified members of the House. For the first time, newspaper readers were invited into the House of Assembly. This was not, however a precedent for the later publication of the debates. On the contrary, it revealed widespread fear of words.

Three days after taking his seat, Willcocks moved that "every member should have access to the journals and be permitted to take extracts from them." As the Solicitor-General D'Arcy Boulton pointed out, the first part was "idle" since "every member had unquestionably a right to see the journals." The latter part was different. Boulton feared that Willcocks, as a printer, "might make such extracts as suit his own private purposes, and the journals would appear to the public in an imperfect state." With the exception of the current session and briefly in 1793 and 1802, the journals had not appeared in newspapers in any state. To meet such concerns, Willcocks promised "to print the Journals in a perfect state...he would pledge himself to give the whole of them to the public as far as he was able." Samuel Sherwood, the member for Grenville, was "uncertain whether any individual member had a right to do that [to publish the journals]," although they, and summaries of selected speeches, were just then appearing in the official *Gazette*.¹³⁰ Willcocks' motion was defeated.

¹²⁹ See Elwood H. Jones, "Willcocks (Wilcox), Joseph", *DCB*, (v. V), pp. 854-859. For an unsympathetic treatment of government critics in this period see Henry H. Guest, "Upper Canada's First Political Party", *Ontario History*, (v. LIV, n. 4, December 1862), pp. 275-296.

¹³⁰ The right to publish the journals, in any state, beyond what the House ordered remained unclear. The issue arose again in 1831 when William Lyon Mackenzie distributed copies throughout the province. Mackenzie's actions were investigated by a committee of privilege but it was unclear whether or not he had breached any privilege. If he had, it was also unclear whether it was in distributing copies before fulfilling his printing contract with the House or whether any public distribution of the printed journals beyond the orders of the House was a breach of privilege. See the *Journals*, 10 February 1831 and the report of the select committee in an appendix. By 1831, the issue was not the public's access to information since the substance of the printed journals already appeared in the colonial press.

The House, however, was not finished trying to silence Willcocks. Captain David Cowan, the member for Essex, "begged to call the attention of the House to a Newspaper which he held in his hand, published by Mr. Joseph Willcocks. He alleged that a paragraph of that paper, would to the common sense of any person, amount to an accusation that the present House of Assembly had been bribed by the Governor, with lands, to vote against the interests of their constituents." Since Willcocks was already being prosecuted by the government in the courts for the same paragraph, the House postponed its own consideration of the alleged libel. The *Gazette* continued to report selected journals and printed the usual parliamentary items: a list of new statutes, Gore's speech proroguing the session and recently enacted statutes.¹³¹

During the elections of May 1808, Willcocks was returned, without opposition, by the 1st riding of Lincoln and Haldimand. In September, the *Gazette* announced that "[t]he publication of the proceedings of the last House of Assembly has been for some time forborne. We now, temporarily resume it, to discharge our duties to the enlightened and robust Constituents of J. Wilcocks, Esq." The *Gazette* printed summaries of the proceedings of the House for the 20th of February when the House decided to try Willcocks after learning that he had boasted on a public street that the House did not dare proceed against him. The *Gazette's* account of the trial was heavily slanted against Willcocks. His defence was largely dismissed as "virulent." Little was printed to allow readers to make an independent assessment. Apparently, Willcocks claimed to have been joking. More credibly, he argued that his boast had been made "without ever dreaming that these words would be repeated, or that he was surrounded by base spies and

¹³¹ *Gazette*, 27 January, 4 and 26 February, 2, 9, 16 March, 1 and 7 April 1808. So few copies of Willcocks' *Guardian* are extant, that it not clear what he was publishing of the proceedings of the House.

informers."

Samuel Sherwood demanded that the House maintain its dignity and compared the *Guardian* to "a pestilence in the land, that disseminated poison from one end of the colony to the other."¹³² In trying to prevent Willcocks from publishing the journals of the Assembly and in jailing him for libel in the *Guardian* and on a public street, the elected representatives demonstrated a pervasive fear of words - and, by extension, of those "out-of-doors" who might be listening. The antidote to Willcocks' poison was silence.

The *Gazette* had taken the unprecedented step of reporting words spoken in the Assembly but it would not do so again for more than a decade. The *Gazette* even disavowed "the unjustifiable intention, of leaving an impression upon his [Willcocks'] present judges." After all, it had resumed printing the debates long after voters had passed judgement. Rather, the *Gazette* appealed to a judge "independent of mankind, a high Power, who metes his own vengeance upon wilful depravation."¹³³ This was hardly a precedent for the regular publication of parliamentary debates. This first, brief and partial, unveiling of the legislative process was not an exercise in transparency or an appeal to the public. Rather, it revealed an abiding fear of words.

This fear was also evident when the *Gazette* again printed from the journals of the House for one day - in 1810. Another associate of Justice Thorpe, John Mills Jackson, had published a pamphlet which the House unanimously resolved was "a false, scandalous and seditious LIBEL: comprising expressions of the most unexampled insolence...and most manifestly tending to alienate the affections of the People from his

¹³² Willcocks and Sherwood, *Gazette*, 17 September 1808. For Willcocks' trial and the Assembly's use of its privileges, see William Renwick Riddell, "The Legislature of Upper Canada and Contempt: Drastic Methods of Early Provincial Parliaments with Critics", *Ontario Historical Society, Papers and Records*, (v. XXVII, 1925), esp. p. 193.

¹³³ *Gazette*, 17 September 1808.

Majesty's Government of this Province: to withdraw them from their obedience to the Laws of the Country, and to excite them to insurrection."¹³⁴ Criticism was insolence. Words could transform the relationship between ruler and ruled. They could incite revolution. They had to be controlled.

Once published, such control was impossible. Publication made words available to those who had not been present when they were spoken. No matter how limited the numbers, publication broadcast speech outside of its original social context and beyond the control of the institution within which it was uttered. Under conditions of greater publicity, government and social leaders could not select what was to be made known, to whom, and how it was to be interpreted. As Richard Brown has noted of the American context, "such a phenomenon of information moving freely, without the exercise of personal discretion and out of context, was a new phenomenon with important ramifications for the redistribution of cultural and political power."¹³⁵

Government control over what appeared in the *Gazette* and the Assembly's repeated efforts "to maintain its dignity," demonstrate that Upper Canadian leaders understood this phenomenon.¹³⁶ What had appeared in the official newspaper in 1808 and 1810 was not intended to initiate debate. It was to condemn and to silence. Unveiling the

¹³⁴ "Extracts from the minutes of the proceedings of the House of Assembly 10th March 1810", *York Gazette*, 21 March 1810. The address of the Assembly to Lieutenant-Governor Gore condemning the publication was also printed. Willcocks was among those voting for the sweeping indictment of Jackson's pamphlet. The extracts were also published as an appendix to [Richard Cartwright] *Letters from an American Loyalist in Upper-Canada, to his friend in England, on a pamphlet Published by John Mills Jackson, Esquire: entitled, A View of the Province of Upper Canada*, (n.d. n.p. [Halifax, 1810??]), pp. 105-108. The same fear underpinned the 34 prosecutions for seditious libel in the colony, mostly before 1820. Willcocks twice faced prosecution under the common law of sedition. Deportations under the colony's controversial Sedition Act fall under the same category. See Wright, "Sedition in Upper Canada", pp. 9, 24.

¹³⁵ Brown, *Knowledge is Power*, p. 41.

¹³⁶ On the relationship between government and the *Gazette*, see Benn, "The Upper Canadian Press", esp. pp. 102-106; and for the House and its privileges see Riddell, "The Legislature of Upper Canada and Contempt."

government before readers was too obviously a weapon that could be turned against the status-quo. Only with the rise of an independent press and a growing acceptance that those out-of-doors needed to be informed about legislative proceedings would transparency be attempted. In the meantime, silence and up-holding the privileges of the House - not incorporating the reading public into the deliberations of government - was the norm.

As already noted, it was not until 1817 when another member, James Durand, was accused of libelling the House, that reports of the debates were again published. Some of the debates during the fifth session of the seventh parliament (1820) may also have been published. An editorial in the *Canadian Argus and Niagara Spectator* for March 1820 claimed that "we have received a detailed Report of the Debate in the assembly, on Thursday last, on the subject of the Sufferers during the War; and on the Repeal of the 44th of the King under which Robert Gourlay was banished, and shall give it next week to the Public."¹⁷

From a position of relative scarcity, parliamentary news soon became abundant - and with considerable consequences. The fear of words remained, but silence was no longer an option. Who was thought to need such information was also changing. In July 1819, the *Kingston Chronicle* expressed its regret that during the fourth session of the seventh parliament, "we cannot gratify the reasonable curiosity of our readers with the

¹⁷ *Canadian Argus and Niagara Spectator*, 2 March 1820. It remains unclear whether the *Gazette* began reporting in 1820 (during the last session of the seventh parliament) or in 1821 (during the first session of the eighth parliament). This *Spectator* editorial does not say where it got the report, no relevant copies of the *Gazette* are extant, and no reports from it were copied in the *Chronicle*. Edward Allan Talbot, *Five Years' Residence in the Canadas...* (S. R. Publishers Ltd., Johnson Reprint Corporation, 1968, [1824]), p. 410, put the date for the first reports of debates at 1820 and this is accepted by Mary McLean, "Early Parliamentary Reporting in Upper Canada", *Canadian Historical Review*, (v. XX, n. 4, December 1939), p. 380. It is also adopted by Edith G. Firth, "Carey, John", *DCB* (v. VIII), pp. 124-126; when Carey was supposedly reporting the debates in the *Gazette* for the editor, Robert Horne. Charles G. Roland, "Horne, Robert Charles", *DCB*, (v. VII), pp. 417-418; only notes that the editor hired Francis Collins in 1820 to report the debates for the next session in 1821 when Carey began reporting in his *Observer*.

proceedings of our Provincial Parliament." since they had not been published in the *Upper Canada Gazette*. The paper went on to argue that "[i]t would certainly be desirable that every subject which is introduced into Parliament, and discussed with open doors, should be made still more public, through the medium of the different periodical Journals of the Province. In this way the community at large would not only be made acquainted with the manner in which every Bill is brought into the House, but by whom introduced and supported; by whom opposed, and the grounds upon which opposed." The reference to actual arguments in the House meant that the *Chronicle* was calling for the publication of debates as well as journals. Discussion in an open assembly was no longer sufficiently "public." Only publication by colonial newspapers could "gratify the reasonable curiosity" of "the community at large."

The *Chronicle* was also clear why such curiosity was "reasonable." "A full and correct report of the proceedings of the Legislature...would not, we think, fail to be a powerful antidote against corruption in its members. Their principles and conduct are in that way more immediately brought before the eyes of their constituents." Members would be more accountable. Returning to the subject weeks later, the *Chronicle* reiterated that reports of the proceedings of the House, not silence, were "antidotes against corruption" on the part of representatives. Such reports would also "prove the surest and safest protection of members against private misrepresentation of their parliamentary conduct." Information would flow in both directions. Increased transparency would bind reading public to legislature, elector to representative, governed to governors. The *Chronicle* was clear that the judge of these bonds was the people, who "would thereby be furnished with the only correct means of judging with what diligence, ability, and integrity their representatives were discharging the high trust committed to them, and

their confidence and support would be given or withheld accordingly." Increased knowledge was becoming essential to the performance of electoral duties.

This was a crucial step, which the *Chronicle's* correspondent at York refused to take. He explained the nature of the new road and assessment bills for the paper's readers. With these legislative outcomes, the people could "now see clearly that the object of the Government is exactly the same with their own...nor will it ever be possible for any incendiary to induce them to withdraw their confidence from an administration so anxious to promote their prosperity."¹³⁸ The correspondent was attempting to counter claims made by Robert Gourley and others with a brief explanation of two new legislative measures. Since lists of new measures and copies of the more important ones were regular features of colonial newspapers, the correspondent offered no additional access to the legislature. On the other hand, the *Chronicle* insisted that only a more substantial flow of information - only an invitation to the public to listen in on the assembly - would guard against the machinations of the disaffected.

Like the *Chronicle*, the American historian, J. R. Pole, emphasizes the difference between making the outcomes of legislative activity known and informing non-legislators about how those decisions were reached, the nature of the arguments for and against those decisions, and the degree of consensus or conflict they represented.¹³⁹ Announcing the results was very different from inviting broader deliberation. The latter involved a particular attitude toward the elected assembly and toward the rights and capacities of those beyond its walls.

¹³⁸ *Chronicle*, 2, 16 and 30 July 1819.

¹³⁹ Pole, *The Gift of Government*, pp. 88-89. The idea of reporting actual debates was not, however, foreign. Upper Canadians had seen such reports in American or British newspapers, the first issue of the *Gazette* copied a debate from the House of Lords, and reports from the Assembly of Lower Canada appeared with some frequency in 1817.

By the first session of the eighth parliament (1821), Upper Canadians could read the debates in the growing number of colonial newspapers. John Carey, recently from Ireland, did much of the early reporting and founded York's first unofficial paper, the *Observer*, in May 1820. Richard Horne, still editor of the *Gazette*, hired another recent Irish immigrant, Francis Collins, to report the debates. The reports of both York papers were copied by the two Kingston papers, the *Chronicle* and the *Upper Canada Herald*. The Assembly could have used its formidable powers to prevent the regular and widespread publication of its debates but it did not attempt to do so.

On the 8th of February, 1821, the *Gazette* announced the start of its parliamentary reporting:

from the great accession of talent as well as of number to the House of Assembly, the proceedings have acquired an interest much beyond what they ever before possessed, and the Gallery is generally crowded...We have commenced this week and shall endeavour to continue to give as full and impartial an outline of the Debates, as it is in our power to do so...¹⁴⁰

On the same day, the House voted that the *Gazette* "contains a gross misrepresentation of the proceedings of this House and is a breach of its privileges." Horne was summoned before the House. It was not an auspicious beginning.

Horne escaped with a reprimand from the Speaker, partially because he expressed his "extreme mortification," and partially because the offending notes had been taken by Collins. The House was not interested in pursuing the reporter. Rather, it wished to impress on the editor the risks he ran if a majority of the House were dissatisfied with how their words were reported. In fact, Robinson and Christopher Hagerman moved that the Speaker admonish Horne "that in reporting the Debates and Proceedings of this House

¹⁴⁰ *Gazette*, 8 February 1821. Forty representatives were elected in 1820 compared to 25 for the previous parliament.

he will be considered responsible for their correctness." While the majority were satisfied with a simpler admonition, the ominous warning remained implicit.¹⁴¹

The conviction for breach of privilege convinced Lieutenant-Governor Maitland that parliamentary reports of questionable accuracy should not appear in the *Gazette* under the imprint of the King's Printer. As George Hillier, his civil secretary, put it, "it has been judged expedient to divide Horne's publication and to separate what is official from what is not so."¹⁴² The distinction was important. The proclamations, notices, and advertisements from administrative officials that dominated the *Gazette* were "official." They appeared "by authority." To drive home the point, "By Authority" began to appear immediately under the masthead of the *Upper Canada Gazette*,¹⁴³ while Horne's new *York Weekly Post* was largely devoted to third-person summaries of the deliberations of the House. The government's official newspaper was to be received by readers in a particular way based, not on its content, but on its origin. It could be accepted without making an independent judgement because of the identity of the speaker. The etymological connection between an "authority" or an expert whose status meant that his (and it was almost always his) pronouncements were to be accepted, and from "authority"

¹⁴¹ *Journals*, 8 and 9 February 1821. Other papers that copied from the *Gazette* or the *Observer*, were also at risk. John Macaulay, co-editor of the *Kingston Chronicle*, had hired his own reporter but he had proven so incompetent that the *Chronicle* copied from the York papers. (The scarcity of stenographers in the colony continued to plague parliamentary reporting.) Thus Hagerman quickly wrote to John Macaulay warning him not to copy the offending report and continued to urge caution. See especially AO Macaulay Family Papers, Hagerman to Macaulay, ? [date torn but on or shortly after the 8th] and 17 February 1821.

¹⁴² AO, Macaulay Family Papers, George Hillier to John Macaulay, 23 February 1821. The *Gazette*, 15 February 1821, the week after Horne's conviction by the House, carried a revised version of the debates from the 8th, which Horne had "collected together from notes taken by individuals collated together." Horne also announced that "it being judged expedient that in future all official notices and other Government advertisements &c., should be completely distinct from the Newspaper," parliamentary debates would appear in a separate sheet.

¹⁴³ *Gazette*, 19 February 1821. The phrase "by authority" had been used before the term "King's Printer" became common after 1805. It occasionally appeared on the masthead after 1805 to more clearly differentiate it from other papers. Other newspapers occasionally used it to mark columns devoted to provincial statutes.

as the legitimate exercise of power to be met with obedience. remained strong. Neither was to be questioned.

None of this applied to the debates of the Assembly. Published reports necessitated a very different relationship between reader and text. Not only might the published version be an inaccurate reflection of the original speech, but the content was of a different order from an "official" text. Legislative speeches made arguments that others questioned. They made questionable assertions or were selective in their deployment of "fact." They were meant to cajole, ridicule, motivate and persuade. They were not meant to announce outcomes. Like an actual listener in the legislative chamber, the newspaper reader had to ascertain what the relevant facts and issues were and had to weigh competing arguments. Official notices in the *Gazette* were to be received by passive consumers. There was to be no need to inquire "behind" the announcement of any particular decision - no need to inquire into the process by which it had been reached. The debates of the Assembly invited, even required, Upper Canadians to inquire into how legislative outcomes had been reached. The publication of parliamentary debates transformed newspaper readers into participants in the legislative process.

While Horne (and other editors) continued to publish the debates after the Speaker's admonition, he took steps to lessen the likelihood of again running afoul of the House.¹⁴⁴ Despite these efforts, Horne continued to anger some members. Both Robinson and Hagerman felt slighted (and not without reason) by reports in the *Gazette* from

¹⁴⁴ He submitted proofs of Collins' reports "to the perusal of the gentlemen who spoke; and although this was extremely troublesome from the numerous and very great alterations it occasioned, we were thus enabled to give a substantially correct outline of the proceedings." Horne emphasized the extent of his previous efforts because, with the close of the session "the dispersion of the Members to their several homes, obliged us in a great measure to rely upon the Reporter's manuscript alone" and he was forced to apologize to Robinson and Robert Nichol for misquoting them. Earlier Horne had also apologized for not publishing every speech made by every member. *York Weekly Post*, 1 March and 26 April 1821.

Collins and in the *Observer* from Carey. Horne asked for and received the substance of their remarks against repeal of the colony's controversial seditious law. They expected to see their views in the *Gazette* to counter the arguments in favour of repeal emphasized in the *Observer*. The *Gazette*, however, failed to report the debate at all. Hagerman's reaction, in a letter to the co-editor of the *Kingston Chronicle*, demonstrated the profound implications of parliamentary reporting. Horne

gives as an excuse that he does not like to...[copy the arguments in favour of repeal from Carey]...and thinks it improper to give only one side of the question. what [?] delicacy! had we known this before[,] you [would] have received our remarks by the first post by which means the...antidote would accompany the poison contained in Mr Carey's paper and furnished him by persons who appear there to have taken the lead in the debate. as however. it is important that our real sentiments should be known to our constituents. I hope you will...give them a place in the next Chronicle...¹⁴⁵

Little wonder that Horne resigned as King's Printer, claiming that the position was "always peculiarly anxious and disagreeable."¹⁴⁶

More importantly, Hagerman's response demonstrates that members quickly realized that a new political world was being created.¹⁴⁷ The way to counter what government critics published in the *Observer* was to ensure that the speeches of government supporters were also published. The response to criticism was to multiply the number of arguments and opinions that came before newspaper readers. It was not to use the powers of the House to punish reporters. It meant broadcasting more, not fewer,

¹⁴⁵ AO, Macaulay Family Papers, C. A. Hagerman to Macaulay, 28 February 1821. See also John Beverley Robinson to Macaulay, 4 and 11 March 1821; and John Strachan to Macaulay, 15 March 1821.

¹⁴⁶ quoted in Charles G. Roland, "Horne, Robert Charles"

¹⁴⁷ George Hillier was as anxious as Hagerman to enlist friendly newspapers against published anti-government speeches in the House. He was particularly troubled by the fact that for "the Speeches on one side his [Carey's] report is full, ample and (I doubt not, by the after aid of the Speakers themselves) laboured - on the other, general and cursory...if Robinson or Hagerman are speaking the Reporter...takes his repose from the labor which the harangues of Nichol and the drivelling of Baldwin...impose on him." AO, Macaulay Family Papers, Hillier to Macaulay, 15 January and 12 February 1822. With the second letter, Hillier enclosed notes on a speech by Robinson he had ordered copied by an official attending the House.

words. Deliberations within the Assembly were now only one arena in a broader public debate. A decade later, Allan MacNab thought that Marshall Spring Bidwell's words "were given out for the purpose of their being taken down by the reporters and published to the world, and not as words intended for that house."¹⁴⁸ A new audience had been created that would come to see itself as the ultimate judge of all such words.

Allegations of unfairness and inaccuracy in published reports remained frequent, if often unsubstantiated.¹⁴⁹ In 1808, the House had attempted to impose silence and punish inappropriate talk. In February 1821, the House had used its privileges in an attempt to impose accuracy. This proved a clumsy and contested weapon that soon fell into disuse.¹⁵⁰ Between 1823 and 1850,¹⁵¹ the Assembly never used its privileges to prevent or influence the reporting of its deliberations. Rather, the House turned to actively encouraging the dissemination of its deliberations. Once the idea gained ground that the people *needed* to know what transpired in the elected house, it was a short step to the idea

¹⁴⁸ MacNab, *Hallowell Free Press*, 27 November 1832. Some, like James Small, also thought that extensive reporting "would tend to lengthen discussion" since members spoke more to appear active. Small, *Christian Guardian*, 11 December 1839. The length of the session, and therefore the amount of debate that could be reported, certainly increased, although largely for other reasons. Sessions varied, but during the first six parliaments they averaged 4 to 5 weeks. Most sessions from the 11th to the 13th parliaments were more than twice that length and some sittings lasted over 4 months.

¹⁴⁹ For an evaluation of these complaints, see, Talman, "The Newspapers of Upper Canada a Century Ago", pp. 17-18. Once the more radical papers of Mackenzie, Collins and Carey were joined in reporting the debates by the *Christian Guardian* in 1831 and the conservative *Courier* in the follow parliamentary session, the overall accuracy of the reports probably increased.

¹⁵⁰ From its initial use in 1821 until the end of the eleventh parliament (March 1834), only four other motions were made against editors for what had appeared in their newspapers. Three of these occurred in the eighth parliament. A motion during the third session to declare a paragraph of the *Observer* a libel was dismissed 3 to 21. Another, against Hugh C. Thomson of the *Upper Canada Herald*, concerned aspersions on the House, rather than the paper's reporting of its debates. On the final day of the second session, a paragraph of *Chronicle* was voted a breach of privilege by 23 to 1. At the beginning of the following session, a motion to simply adjourn debate on the matter passed 18 to 10. Only one such motion, against Carey and the *Observer* in February 1830, occurred outside the eighteen parliament. A motion to put the question was lost 13 to 15.

¹⁵¹ For the affray in 1850 between the House and reporters see, Elizabeth Nish, "Canadian Parliamentary Reporting", *Debates of the Legislative Assembly of United Canada*, Elizabeth Gibbs, general ed., (Montreal: Centre de Recherche en Histoire Economique du Canada Français), v. 1, 1841, pp. xxxvi-xxxviii.

that they had the *right* to know. The right to know was inseparable from the right to discuss - and thereby to criticize. The evolving right to judge undercut the legitimacy of ancient parliamentary privileges.¹⁵²

In November 1821, less than a week into the session following Horne's conviction for contempt, Charles Jones, leader of Brockville's conservatives, moved "that it is expedient that the debates of this House during the present Session be taken, and that a shorthand writer be employed [by the House] for that purpose." The motion passed 20 to 11. John Beverley Robinson apparently called it "the most undignified and disgusting motion that ever came before the House." If the reporter was an employee of the House, how could the House punish him for a breach of its privilege? Robinson "was sure no gentleman would object to the Reports being taken, but the idea of the members of that house paying persons for giving their speeches to the Public, was contrary to every parliamentary usage." It was certainly unprecedented.

Supporters of the motion argued that without financial assistance, newspapers could not hire a competent reporter or print even a fraction of the debates. Encouraging reporting meant fuller and more accurate reporting. For Jones, the motion was "to give his constituents the power of judging of his conduct...to give their constituents an opportunity of viewing their proceedings. That it was not parliamentary he did not care about it, if it did a public good." If the publication of parliamentary debates had changed the nature of newspaper readers, it had also changed the nature of representatives. The need, even right, to know what arguments a representative made, how he voted and what

¹⁵² James Mill's theory of democracy was heavily dependent on the publication and discussion of legislative debates by a press unshackled by parliamentary privileges. James Mill, "Liberty of the Press", *Political Writings*, Terence Ball ed., (Cambridge: Cambridge University Press, 1992 [1819-1823]), pp. 117-135, esp. p. 119.

interests he represented, entailed that representatives were to be chosen for what they said and did, not as a recognition of their social standing in the community.¹⁵³

Employing reporters remained contentious. Most sessions after 1821 debated whether or not the press needed encouragement to publish the debates and, if so, what the best means were. The House experimented with a number of options, none of which proved satisfactory.¹⁵⁴ No member, however, argued that their speeches should not be published and they continued to appear regardless of the action (or inaction) of the House. The arguments repeatedly made in favour of encouraging reporting, however, reveal something of the importance attached to their widespread dissemination.

John Willson of Wentworth consistently supported hiring a reporter. He prided himself on speaking for ordinary farmers and desired widespread education and a reformed judicial system. By 1820 he was increasingly seen as an independent conservative, although his earlier parliamentary career betrayed more radical sympathies.¹⁵⁵ Willson seconded the first motion in 1821 by arguing that "the house was

¹⁵³ Pole, *The Gift of Government*, p. 122.

¹⁵⁴ While critics of the executive tended to be more consistent in their support of employing reporters, the divisions were not entirely partisan. Charles Jones was a friend of Robinson and a leader of the Brockville family compact. Allan MacNab supported paying reporters in 1833 and 1834. Robert Nichol, often critical of the government, was a vocal opponent of employing reporters. Motions to employ a reporter or to pay those employed by local editors were passed in several sessions. In other sessions, the House purchased large quantities of newspapers that reported the debates, or awarded its printing contracts to printers whose newspapers reported the debates instead of to the lowest bidder, or responded favourably to petitions for payment for reporting in a previous session. In November 1836, the select committee on printing proposed giving all money usually voted to encourage reporting to only one newspaper, the new *Royal Standard*. As a daily, it would be able to provide more current and complete reports. In return for public assistance, it would make its proofs available to all other local editors. The House did not adopt the report. Thus, with few exceptions and much inconsistency, the majority of the House regularly provided some sort of financial support to the press. Some continued to worry about parliamentary privilege, emphasized that the reports, if really desired by the people, would appear without financial assistance, or concentrated on inaccuracies in some reports. The politics of editors applying for financial assistance affected some votes. Many of these editors were also members of the House. Predictably, once the House used its own printing business to reward selected printers or responded favourably to ad hoc petitions, the situation degenerated into a confused and partisan mess. See, McLean, "Early Parliamentary Reporting", pp. 382-389.

¹⁵⁵ Robert Lochiel Fraser, "Willson, John", *DCB*, v. VIII, pp. 945-947.

liable to sink into a degree of despotism. more dangerous than that of a monarchical despotism, without a proper check being placed upon their conduct."¹⁵⁶ Reporting debates brought the colony's newspaper readers into common deliberation with their representatives. It transformed them into the foremost check on the Assembly. The theory of mixed monarchy had given that role to the Lieutenant-Governor and Legislative Council - not to a reading public.

Willson supported the second attempt to employ reporters in January 1823 on sweeping grounds. The widest possible dissemination of the debates was the only adequate response to the people's "spirit of enquiry." It provided Upper Canadians with the knowledge of "what was passing within these walls" and empowered them "to decide upon the justice or injustice of their decisions." Moreover, "without free discussion, and the liberty of the press, there could be no security for the person or property of any individual. In a free country *every subject had a share in the Government, and therefore every subject not only has a right, but was in duty bound to enquire into the manner justice was administered, and into the public measures pursued.*"¹⁵⁷

Willson referred to "every subject" - not "every voter." The need to inform voters to improve their electoral choices had been an early argument for publishing the debates.¹⁵⁸ Willson's more inclusive language reflected the broader function he envisaged for the published debates. They would allow "every subject" "to decide upon the justice or injustice" of legislative decisions. Properly informed, the reading public

¹⁵⁶ *Observer*, copied, *Chronicle*, 14 December 1821.

¹⁵⁷ Willson, *Observer*, copied, *Chronicle*, 31 January 1823. [emphasis added] The following year William Lyon Mackenzie expressed similar sentiments (in his usual over-wrought style): "I will, through the medium of a free and unshackled press, make known the sentiments of your loyal, honest, and independent breasts...I will sit in the gallery of your house; and...record and promulgate the language of truth, as it is elicited by your body in argument and debate, until the most distant boundary of our land shall echo back the tidings..." *Colonial Advocate*, 28 October 1824.

¹⁵⁸ See for instance, the *Chronicle* in July 1819 and Charles Jones in 1821, both quoted above.

could assume a critical position vis-à-vis the state. They could help form public opinion. This was a larger role than voting in periodic elections and it encompassed more people.

During yet another debate on encouraging reporters, Willson argued that relative to Lower Canadians, Upper Canadians already "possessed some information." They merely lacked "the means of improving it:"

when a reporter gives a general statement from both sides, and that his report is laid before the public, it is easy to take a fair view of the proceedings, to judge the propriety of measures, and to draw proper conclusions...The publication of the debates in this Province for the last few years has been of infinite service - it has given the people of a remote part a disposition to read, and drew [has drawn?] their attention to seek after other information.¹⁵⁹

By exporting the deliberations of the House, Upper Canadians, regardless of geographical location, could "hear" arguments from both sides of public questions. They could make rational judgements. The more they did so, the more capable and confident they became.

Marshall Spring Bidwell made much the same point in 1827:

public opinion called for such information [contained in the debates of the House] and by affording it, the wishes of the people would be better known - the debates when given [create] great interest and excite attention - they become the subject of conversation, and an opportunity is afforded for enabling the public to express their sentiments on various subjects which are discussed, and by this means at the next Session the opinion of the public was better known.¹⁶⁰

Once the opportunity was presented, readers developed the necessary skills and a taste for ever more information. They were drawn into public deliberations and came to expect that information. Finally, they grew self-confident in their capacity, and thus their right, to judge. This process took time and the necessary skills and interest could only develop

¹⁵⁹ Willson, *Weekly Register*, 4 December 1823.

¹⁶⁰ Bidwell, *Upper Canada Herald*, 9 January 1827. Bidwell also argued that since the majority's opinion was expressed in the actions of the House, publication of the debates protected the minority, *Cobourg Star*, 29 November 1831.

if the debates were actively read. We cannot know what precisely was read or how individuals reacted to it, but parliamentary debates were published in large measure because newspaper readers demanded it. They were not filler.

The reports were copied in almost every newspaper. Different versions might appear, but a significant amount of parliamentary debate, including at least a sketch of the arguments on both sides of a dispute, was available to all newspaper readers. Many editors did not hire their own reporter. They merely copied from those who did. They printed and reprinted the debates to the point where they often had room for little else. The House struck a select committee to investigate the petition of George Gurnett, editor of the *Courier*, praying for remuneration for reporting the debates during a previous session. The committee examined "a file of his paper, containing about one hundred and thirty columns (chiefly small brevier type) of printed reports of Debates between the 31st of October 1832 and the 20th February 1833."⁷⁰ When applying for public money, Gurnett and his fellow printers made two claims: first, that printing the debates brought no new subscribers, and second, that their subscribers demanded the debates. A newspaper which paid its own reporter did not gain subscribers because other papers, in order to retain their readership, simply copied from them, (often without attribution). They could meet the demand without the expense.

Such arguments were convenient when petitioning for public funds. Did subscribers really demand extensive coverage of parliamentary deliberations? If they were not responding to demand, why did editors bother? Most had their own political agenda and an elevated sense of their contribution to society, but most were also small entrepreneurs dependent on subscribers in a competitive market. They had no trouble

⁷⁰ *Journals*, 11th Parliament, 4th Session, and adopted by the house, 10 February 1834.

filling their columns with other material when the House was not in session.

In December 1825, Henry Lasher, agent for the *Colonial Advocate* at Bath, wrote to William Lyon Mackenzie with the names of six local residents wishing to continue their subscriptions. Lasher made a point of telling Mackenzie that "as the above persons do not get any newspapers from York, they will expect you to give them the debates and principle [sic] proceedings of the Assembly during their present sitting...particularly of the Alien question."¹⁶² Earlier the same year, Mackenzie had noted that "it will be in the recollection of most of our readers, that our chief reason for coming to York [from Queenston], was, that we might be enabled to give an early and faithful account of the proceedings in parliament."¹⁶³

Other newspapers also made special arrangements to carry the debates. Some hired their own reporter(s) at considerable expense or changed their format to accommodate the increased material. At the beginning of one session, the *Courier* advertised in other papers that it had hired a reporter and "in order to furnish our readers with as prompt and detailed a report of the debates as possible, we shall issue Two Papers per Week from the commencement of the Session." The *Courier* was a conservative paper but "as it is our determination to give a fair, impartial, condensed report of all that occurs in the House, without the least regard to persons or parties, we may venture to Solicit the patronage of the public at large, who take an interest in the Parliamentary proceedings."¹⁶⁴ To take but one more example, two years later, the *Patriot* announced that it had purchased another printing press, hired a reporter, and would move to a semi-

¹⁶² AO, Mackenzie-Lindsey Papers, Henry Lasher to Mackenzie, 11 December 1825.

¹⁶³ *Colonial Advocate*, 27 January 1825.

¹⁶⁴ advertisement, *Western Mercury*, 17 November 1831. The *Mercury* announced a week earlier that it had hired its own stenographer to report the debates.

weekly format, in order to carry the debates of the upcoming session. "whether an allowance be granted by the House or not."¹⁶⁵ Such advertising revealed editors' expectation that readers made decisions about when to subscribe and about which newspaper to subscribe to, at least in part, on the basis of the parliamentary calendar and a paper's ability to publish the debates.¹⁶⁶

Whatever arrangements editors might make, parliamentary reports frequently crowded out other material. In February 1831, the *Christian Guardian*, which had only recently begun to report the debates, noted that

we have left out all the articles of temperance intelligence with which correspondents have favored us, and postponed our principal editorial articles, in order to present, undivided, Mr. Bidwell's masterly speech [on primogeniture]...and to bring down our parliamentary sketches to the latest date. Indeed, our parliamentary intelligence has thus far given such very general satisfaction, and is so loudly and anxiously called for in every part of the Province, as we learn from our correspondents, that we allow it a larger space than we at first intended.¹⁶⁷

Days before the rebellion, the paper noted that it had "devoted a large portion of our columns to the proceedings and debates of the Assembly, in compliance with the expressed wishes of many of our readers...although it may occasion a paucity of Editorial matter."¹⁶⁸ Readers of the colony's largest newspaper demanded "news" in the form of legislative debates before editorial comment.

The prospectus of the *Western Mercury*, published at Hamilton in January 1831,

¹⁶⁵ *Patriot*, 1 November 1833. Likewise, the *Royal Standard* intended to print daily during the session and thrice-weekly when the House was not sitting.

¹⁶⁶ In 1826, Mackenzie worried that his unpopularity was responsible for the paucity of London area subscribers to the *Advocate*. His local agent thought the problem lay elsewhere. "Some persons" had indeed approached him about subscribing "before the commencement of the Session," but when the *Advocate* appeared irregularly and slowly, they "sent for the Freeman" instead. AO, Mackenzie-Lindsey Papers, Law Lawrason to W. L. Mackenzie, 18 February 1826.

¹⁶⁷ *Christian Guardian*, 5 February 1831. The *Guardian*, 16 November 1831, claimed that upwards of 300 names had been added to its subscription list during the year it had begun to report the debates. The increase, of course, could have had other causes.

¹⁶⁸ *Christian Guardian*, 7 December 1836.

promised to provide the earliest European news and to copy literary pieces from foreign periodicals as well as "to give an account of the proceedings of our Provincial Parliament as early as they may be obtained from any other quarter." Two weeks later it apologized that "the debates in the House of Assembly have been so lengthy and so important, we have not had space for that general variety of news which we were desirous of giving." A little over a month later, it stopped apologizing: "As the majority of our readers seem to find a deeper interest in the debates of the House of Assembly, than any other description of news we could give them, our columns afford less variety than we should wish and such must continue to be the case until those debates are disposed of..." For the next session, the *Mercury* hired its own reporter at York. Two years later, it noted that "to make room for the parliamentary debates we have again abridged every other description of matter, conceiving they would be more acceptable to our readers than any thing else we could offer."¹⁶⁹ In a competitive market, editors could not afford to lose subscribers because they failed to carry a sufficient amount of the debates in as timely a manner as possible.¹⁷⁰ Editors devoted so much space and effort to reporting, or at least copying, parliamentary debates because their subscribers demanded it. The conclusion is inescapable - and with it, so were the consequences.

First, as already discussed, regular reports changed the nature of both newspaper readers and representatives. The skills and information required to participate in public

¹⁶⁹ *Western Mercury*, 20 January, 3 February, 17 March, 10 and 21 November 1831; and 21 and 26 November 1833. See also the *Patriot*, 6 December 1833. "Our columns being so exclusively devoted to our Parliamentary proceedings, leaves us without the opportunity of remarks on passing events..."

¹⁷⁰ This was one of the reasons John Macaulay was so obviously annoyed when the Assembly voted part of the *Chronicle* a breach of privilege. When he learned about the inaccuracies of Carey's reports "we consequently discontinued the reports, though by this course we diminished the sale of our papers." AO, Macaulay Family Papers, Macaulay to Levius P. Sherwood, 8 January 1823. The interruption, however, was brief. The *Chronicle* stopped reproducing Carey's reports in April 1822. The paper, under its new editor, Thomas Tomkins, began reproducing Carey's reports in January 1823, the beginning of the next session.

debate were exported beyond the Assembly. Readers were invited to sift through the debates for the relevant "facts" and arguments to come to their own conclusions. By so doing, they could evaluate the conclusions reached by their local representative and by the Assembly as a whole. Occasionally, the invitation was explicit: "How far the house was justifiable in this transaction" concluded one editorial "we shall leave our readers to judge from the debates, part of which will be found in this day's paper."¹⁷¹

Second, the mere fact of publication told Upper Canadians that the arguments made in parliament were relevant to them. Editors (by publishing the debates), and the House (by encouraging reporting), told newspaper readers that they ought to be informed about the colony's public business. Discussion of the public good could not be limited to legislators. Once the debates were reported, the proportion of colonial to foreign content in newspapers increased considerably. In 1822 the *Kingston Chronicle* thought that Upper Canada "has not yet acquired so large a reading public." With relative tranquility, newspapers "have almost altogether been looked at for gleanings of foreign news." "The prospect however begins to brighten...a taste for reading is beginning to manifest itself...far greater interest is given to our internal affairs, and to the proceedings of our Legislature. This interest has been much heightened by the publication of the debates of the House of Assembly."¹⁷² This interest, and the end of political tranquility, created a reading public preoccupied with domestic politics. By reading similar accounts of parliamentary deliberations, members of this public, regardless of social class or location, were invited to see themselves as members of the same discursive community.

Third, the publication of parliamentary debates altered the constitution, even if its

¹⁷¹ *Hallowell Free Press*, 20 December 1831. The transaction in question was the house's expulsion of William Lyon Mackenzie.

¹⁷² *Chronicle*, 4 January 1822.

formal institutions remained untouched.¹⁷³ Early supporters of encouraging publication of the debates often rested their case on the electoral function of some newspaper readers. Voting only reflected real choice if voters were informed. The publication of the debates ensured that representatives and public were bound together in a two-way flow of information. Representatives were to be accountable to the public. Thus, power flowed more obviously from the latter up to the former. Publication of the debates, however, did much more. Newspaper readers, whether or not they could vote, were invited to participate in public deliberations, to be members of the public sphere. If this public was capable of holding representatives accountable, if it could come to decisions about the common good, and if it was informed enough to act as a check on the Assembly, the rationale for the Governor and the Legislative Council provided by the theory of mixed monarchy was largely irrelevant.

The publication of the debates of the House undercut the Legislative Council in a second way. Reports of debates in the upper house were rare. When available, they were usually brief and were copied in fewer papers. In 1833, George Gurnett of the *Courier* made plans to publish the debates of the Council but his reporter could not hear the speakers. Gurnett expressed his regret "because we think it would be alike interesting to the country, and advantageous to that Hon. body, in the public estimation, that their proceedings should go forth to the country."¹⁷⁴

At the end of a session, all that most Upper Canadians knew of the Legislative Council was conveyed in the list of bills passed by the Assembly but lost in the upper house. A few years of reading the debates of the Assembly accustomed Upper Canadians

¹⁷³ Aspinall, "The Reporting and Publishing of the House of Commons' Debates", p. 227.

¹⁷⁴ *Courier*, copied, *Western Mercury*, 7 February 1833.

to transparency in government. The public needed reasons, not just decisions. In 1825 the *Upper Canada Herald* attacked the behaviour of the upper house but "[a]s the debates in the Council, if they have any, are not in the presence of the public, we do not know their reasons, but only the results of them, the rejection of many measures adopted by the House of Assembly, in accordance with the general sense and wishes of the people."¹⁷⁵ The Council stood outside the discursive community that bound together Assembly and public. By 1836, conservatives like Gurnett recognized the resulting decline in the Council's status. "If the Legislative Council wishes to be regarded with the admiration and respect that are paid to the House of Lords, it must, in homely phraseology, show its face." By doing so, "the public, being enabled to know what passes within the Chamber, will begin to take an interest in its proceedings, and no longer bestow an undivided attention on the Lower House."¹⁷⁶ Only by engaging in the deliberations of newspaper readers could the Legislative Council maintain itself as a co-ordinate legislature.

Newspaper readers listened to the Assembly's debates and participated in public deliberations. They watched as the House came to a decision, only to have that decision nullified by a body that did not seem to deliberate and whose reasons for acting were often unknown. This confirmed widespread suspicion that the Legislative Council was influenced more by private interest and appointed position than by arguments about the merits of the question. The Legislative Council stood outside the process of public deliberation. As that process carried more real and symbolic weight, the silence of the Legislative Council seriously undermined its legitimacy.

¹⁷⁵ *Upper Canada Herald*, 26 April 1825. The *St. Thomas Liberal*, 18 December 1834, referred to the Legislative Council as "[t]hat body, whose discussions on questions of the greatest importance to the province are never heard of, if any such thing as discussion ever takes place within its walls..." For the *British American Journal*, 20 May 1834, the Council operated "in so secret a manner, that the country knows nothing about its proceedings."

¹⁷⁶ *Courier*, 7 December 1836. Gurnett's warning went unheeded.

Colonial newspapers, (their number, readership, the associations they spawned, and their publication of parliamentary debates), were central to the development of the public sphere. Imperial officials and members of the colony's formal institutions no longer had a monopoly on political information or the public use of reason. Private members of society with access to the ever-expanding number of colonial newspapers were informed. On that basis, they were invited to participate in public deliberations. Some thought the public sphere capable of generating authoritative decisions about the common good, but it stood outside traditional institutions and theories. Once Upper Canadians believed that a public sphere existed - once a sufficient number of them saw themselves as capable of rational public judgement - changes in constitutional theory were inevitable. The third part of this study examines how the claims of the public sphere were integrated into that theory.

One question, however, remains. When did Upper Canadians come to see themselves as members of a public sphere? When did contemporaries find appeals to public opinion credible? Was it in 1793 with the publication of the colony's first newspaper, or a decade later when Robert Gourlay organized petitions and township meetings? Was it in the 1820's with the steady growth of the press and the publication of parliamentary deliberations? There are any number of plausible dates. Were enough Upper Canadians informed at the time of the Rebellion or, as some contemporaries argued¹⁷⁷, did the very outbreak of armed revolt demonstrate widespread ignorance? What constituted sufficient information? How many participants were enough? These

¹⁷⁷ R. T., *Bathurst Courier*, 22 December 1837.

questions, by their very nature, cannot be answered. No quantitative measure exists. This suggests that there was another major factor in the creation of the public sphere: politics.¹⁷⁸

The development of voluntary associations and the newspaper press were crucial to the credibility of the concept of a public sphere. Without them, appeals to collective decisions arising from informed public deliberation would have been incomprehensible or risible. Yet, the uneven success of many voluntary associations; their practice as opposed to their ideals; the role of bribery, patronage, and ignorance in politics; the continued existence of barriers to the community of newspaper readers; and the prevalence of lies, misinformation and scurrility in newspapers; make the development of voluntary associations and the press inadequate to chart a chronology for the acceptance of the public sphere.

Upper Canadians accepted the public sphere, in part, because the concept was increasingly employed by both sides of disputed questions to legitimate competing claims. Appealing to public opinion and making strenuous efforts to shape it, acknowledged its existence. Government, along with its critics, was forced to appear before this tribunal. By doing so, they legitimized it. The concept of public opinion made sense to people - it was conceivable - because of broad social, economic and cultural developments. Politics made it a functioning reality.

¹⁷⁸ I am heavily indebted here to Keith Michael Baker, "Public opinion as political invention", *Inventing the French Revolution: Essays on French Political Culture in the Eighteenth Century*, (Cambridge: Cambridge University Press, 1990), pp. 167-199.

CHAPTER FIVE

"a united public opinion that must be obeyed:" Politics and the Creation of Public Opinion

Public opinion, defined as a collective decision arrived at by informed, public discussion, assumed an increasingly prominent role in Upper Canadian political discourse. In fact, after the Rebellion, it was rapidly accepted as the final tribunal or court of appeal - a source of authority and legitimacy outside of and eventually above political institutions. Part of the explanation lies in the social and cultural developments described in the previous two chapters. They made the ideal of decision-making by open deliberation credible. Public opinion was also, as Keith Michael Baker has said of the French experience, a "political invention."¹ Political actors grappled with and tried to appropriate the power of public debate based on widely circulated print. By the Metcalfe crisis of 1843-44, competing political actors sought legitimacy through active participation in the public sphere. They used, and therefore helped to create, public opinion. Appeals to public opinion began as a rhetorical device, but this device was deeply rooted in the changing possibilities of social communication.

From the eighteenth-century, the terms "opinion" and "public opinion" carried different meanings. "Opinion" was usually contrasted with reason and allied with the passions. It required neither information nor reflection - and was thus subject to erratic

¹ As well as Baker, "Public opinion as political invention", *Inventing the French Revolution: Essays on French Political Culture in the Eighteenth Century*. (Cambridge: Cambridge University Press, 1990), pp. 167-199, see also Mona Ozouf, "'Public Opinion' at the End of the Old Regime", *Journal of Modern History*, (v. 60, supplement, September 1988), pp. 1-21.

fluctuations.² One commentator thought "the fickle variations of popular will are proverbial." Taste in clothing was a good example. "[F]ashion is under the tyrant-sway of fancy, and that is almost synonymous with folly and nearly allied to frenzy." This was a female domain. Wives squandered their husbands' money according to the whims of fashion:

But when this capricious tyrant whose only reason is to be always unreasonable, is allowed to usurp the rule over higher matters than the fantasies of dress, and sway the public mind in things which mightily affect the public welfare, we may justly pause, and ask the people if they are willing to be ruled by the moon - if they are willing to become in fact lunatics...

Good government could hardly rest on such a force. "Public opinion," however, came to mean the opposite of "opinion." The modifier "public" did not signify that the "opinions" concerned the state (public questions) or were the aggregation of the opinions of several individuals (a public). Rather, "public opinion" was the outcome of a process of informed deliberation. It bore no analogy to fashion or the feminine. It became the only basis for good government.

During Upper Canada's first half-century, appeals to a public or its collective judgement were usually made at times of acute political conflict - or, more precisely, when such conflict could not be contained within existing institutions or private channels of communication. Naturally, those who felt slighted by or excluded from these

² For the variety of meanings of "opinion," see J.A.W. Gunn, "Public opinion", *Political Innovation and Conceptual Change*, Terence Ball, James Farr and Russell L. Hanson, eds., (Cambridge: Cambridge University Press, 1989), pp. 247-265.

¹ *Upper Canada Herald*, 30 May 1837.

institutions and channels were among the first to seek an alternative source of legitimacy - an alternative way to bolster their claims. They appealed to the court of public opinion to oppose those who drew their legitimacy from social status, monarchical institutions or the imperial state. Thus, as discussed in chapter two, Marshall Spring Bidwell increasingly appealed to public opinion on intestacy law against the decision of the Legislative Council. Such appeals, however, only assumed a commanding position when all involved made them. When political contests were framed in terms of competing claims to represent public opinion and when all the combatants attempted to inform or manipulate that opinion, its ultimate authority had been recognized.

When, in 1799, the *Upper Canada Gazette* suspected that the Niagara *Constellation* wanted "to draw us into a paper war," it "passed them over in silence" rather than participate in "childish combat...A war of ink we despise."⁴ The preference for silence and a haughty refusal to engage in public debate was evident in the government and Assembly's response to criticism in 1807-08, discussed in the previous chapter. Joseph Willcocks founded the *Upper Canadian Guardian* in 1807 when the *Gazette* refused to continue publishing anti-government items. The *Gazette* did not engage the *Guardian* in debate which, according to one of its supporters, "has produced a great exposure, and has exhibited such transactions as we lament." A government supporter made the same point pejoratively: disaffection had been spread "by circulation with the aid of this Press, through a wider range..."⁵ The connection between opposition and the press, between exposing and reforming, and between the medium and the nature or

⁴ *Upper Canada Gazette*, 5 October 1799.

⁵ John Mills Jackson, *A View of the Political Situation of the Province of Upper Canada...* (London: Printed for W. Earle, 1809), p. 16; and [Richard Cartwright] *Letters from an American Loyalist in Upper Canada, to his friend in England...* (n.d. n.p. [Halifax, 1810?]), pp. 61-62.

"range" of the audience, was already intimate.

Besides the *Guardian*, criticism was also expressed in John Mills Jackson's *A View of the Political Situation of the Province of Upper Canada*. Published in Britain after its author had left the colony, it does not appear to have openly circulated in Upper Canada. It was addressed to the Colonial Secretary and dedicated to the British Parliament. Two supporters of the colonial government responded, but their pamphlets were neither extensively circulated in the colony nor addressed to the colonists. One, addressed to the Colonial Secretary, was published at Quebec and claimed to have entered the fray only because Jackson and others "have had the effrontery to bring their complaints before the public." The second was published at Halifax and addressed to a "friend in England."⁶ It could, however, be purchased at York, Queenston and Kingston, and the Agricultural Society of Niagara resolved to purchase and distribute 100 copies.⁷

The *Guardian* dismissed this second pamphlet as "the last speech of despotism" and objected to it being published anonymously. In a newspaper letter, "Falkland" countered that "it is with the truth and tendency of a work that the public is concerned, and not with the name of the author; and its merits will generally be estimated with greater impartiality when the writer is unknown."⁸ For Falkland, the *Guardian* was ignorant of the norms of the public sphere. To have engaged it in rational debate would be to admit it to an undeserved status. It spread falsehoods and behaved in a manner that

⁶ Anon., *To the Right Honorable Lord Castlereagh one of His Majesty's Principal Secretaries of State, &c. &c. &c.*, (Quebec, 1809), p. 1. The author included details "for the information of those who are desirous of settling in Upper Canada," suggesting its intended audience. There is no mention of it circulating in Upper Canada. [Cartwright] *Letters from an American Loyalist*, p. 4 notes the absence of Jackson's pamphlet in the colony. It did not appear in Willcocks' *Guardian*. He had joined the rest of the Assembly in declaring it a seditious libel. Anon., *To the Right Honorable....* p. 1 claims to have been given a copy while on a tour of Upper Canada.

⁷ *York Gazette*, 21 November; and Falkland, *Kingston Gazette*, 18 December 1810.

⁸ Falkland, *Kingston Gazette*, 18 December 1810 which quotes from the *Guardian*. Falkland may have been Richard Cartwright, author of the pamphlet in question.

could only prevail upon those incapable of rational debate. From this perspective, it made considerable sense to use the laws of libel and the privileges of the Assembly to silence the newspaper. Gentlemen with the education, experience, information, access to books, and leisure to benefit from the arguments made in the pamphlet Falkland was promoting formed part of a trans-Atlantic public. Outside that narrow circle, public contention was to be avoided.

Government supporters were not, however, unconcerned with the general disposition of Upper Canadians. Recent experience in America and France graphically illustrated the revolutionary potential of a mobilized populace. In 1810, John Strachan addressed his *Discourse on the Character of King George the Third* "to the inhabitants of British America." Strachan worried that "[e]ven the bulk of our own population in these colonies, are but very imperfectly acquainted with his true character...Our aged Sovereign stands at the head of a constitution which requires only to be known to be beloved..." Strachan intended his pamphlet to "assist in quieting the minds of my fellow subjects, and dissipate murmurs and discontent by proving them totally unfounded."⁹ Strachan's fellow subjects were to be informed enough to quiet their minds. Strachan addressed his fellow colonist, but did not intend to engage them in critical dialogue. They were to "know" the British monarch and constitution so that they could "love" them and thus, abandon any doubts they may have had. Such doubts were not forthright, reasoned arguments, but mere "murmurs." The populace was to be inoculated against falsehood. Their loyalty and deference, not their active participation or independent assessment, were being sought.¹⁰

⁹ Rev. John Strachan, *A Discourse on the Character of King George the Third. Addressed to the Inhabitants of British America*. (Montreal: Nahum Mower, 1810), advertisement.

¹⁰ Strachan saw "deliberation" as a way to decide how to preserve the British constitution, but this referred to the deliberations of the few who had studied its history and theory, not to those who might read his pamphlet or the *Guardian*. *Ibid.*, p. 54. This is another aspect of the cultural gulf revealed by early references to the science of politics discussed in chapter one. On informing people in non-democratic

Strachan's *Discourse* rested on a notion of "opinion" originally developed in the seventeenth century. Blaise Pascal declared opinion to be "Queen of the World." Rule by this queen was preferable to rule by the tyrant of force. Later, the same contrast was central to David Hume: "as force is always on the side of the governed, the governors have nothing to support them but opinion." Government rested on opinion, but this opinion was not conceptualized as the outcome of active, rational discussion. It resembled a type of political culture. Popular opinion, in this sense, was part of an amorphous, passive, and not necessarily rational family of terms that included national sentiment, public spirit, the public mind, and popular prejudice. Such terms had less to do with public debate and more to do with custom, character traits or a sort of innate common sense existing in a given population.¹¹ Strachan sought to thwart the efforts of demagogues because misled popular opinion could topple even the best regime. This opinion was not, however, capable of active and sustained participation in government.

Although Strachan's *Discourse* probably reached few of the "populace," it did reach some who felt qualified to pass judgement. "A Friend to Peace" objected to its strictures on the American constitution and people, but was confident that although "[t]he writer of them may be under the influence of prejudice...an unprejudiced Public, to whom

systems, see Richard D. Brown, *The Strength of a People: The Ideal of an Informed Citizenry in America, 1650-1870*, (Chapel Hill: University of North Carolina Press, 1996), pp. 43-44.

¹¹ Since it did not actively participate in government, popular opinion, in this sense, was compatible with a constitutional theory emphasizing the representation of different interests or social estates in potentially conflicting legislative institutions. See Daniel Gordon, "Philosophy, Sociology, and Gender in the Enlightenment Conception of Public Opinion", *French Historical Studies*, (v. 17, n. 4, Fall 1992), pp. 886-889; although his suggestion that Hume's "opinion" is little different than "interest" is not supported by his evidence. Moreover, Hume was not representative of eighteenth-century British thinking on public opinion. For Pascal see Paul A. Palmer, "The Concept of Public Opinion in Political Theory", *Essays in History and Political Theory in Honor of Charles Howard McIlwain*, Carl Witke ed., (Cambridge, Massachusetts: Harvard University Press, 1936), p. 234, although Palmer conflates very different meanings of the term.

they are addressed, will judge of them with impartiality."¹² Strachan had not intended to provoke active debate, but it was a potential consequences of any text that laid out arguments for a particular position or course of action. It was a consequence that was increasingly difficult to avoid over subsequent decades.

In 1818, the Legislative Council and the Assembly came to a standstill over the former's claim that it had a right to amend money bills - an assertion the Assembly unanimously rejected. The Legislative Council took its case to Upper Canadians, printing its resolutions and the Assembly's response. Members of a committee of the Assembly felt compelled "to express their indignant feelings on this most important occasion; and particularly as the Legislative Council by ordering their resolutions, together with those of your House (to which they are purposely annexed as an intended refutation) to be printed, submit to the public the justice and propriety of their proceedings." The Assembly was not alone in responding in kind to the Legislative Council. "A Commoner" told readers of the *Kingston Gazette* that "[t]he Council having ordered the Resolutions to be printed, the subject is now fairly before the public, at whose tribunal any inhabitant of the Province is, of course, at liberty to discuss the constitutional question."¹³ A few years later, correspondents felt no need to justify their participation or to consider what had been put

¹² "A Friend to Peace" [Barnabus Bidwell], *Kingston Gazette*, 9 October 1810. The editor noted that "[c]onsiderable attention has been recently excited by the appearance of the Rev. Mr. Strachan's 'Discourses.'"

¹³ For the resolutions see *Niagara Spectator*, 11 June 1818. "A Commoner" *Kingston Gazette*, 5 May 1818.

"fairly" before them.¹⁴

Parliament was quickly dissolved, cutting short these public appeals. Their force was further constrained by the limited amount of information published in the colony's few newspapers. Their implications, however, were made abundantly clear by the sudden and steep increase in political commentary by or in response to Robert Gourlay, including public meetings called to answer his questionnaire or to garner signatures for various petitions, or by the meeting of the "Upper Canadian Convention of the Friends to Enquiry" in July 1818.¹⁵ The mutually reinforcing relationship among newspapers, public meetings, and petitions that came to dominate later reform politics was already in place. Limits, however, remained. Gourlay praised the zeal of the inhabitants of the Midland and parts of the Newcastle districts, but noted that "[t]his spirit was manifested as near as might be to the limit of the circulation of the Kingston Gazette. Toward the middle of the Newcastle District few of the farmers are in the habit of reading and thence feel little interest in public concerns."¹⁶ The expansion and decentralization of the press described in the previous chapter was a crucial condition of public participation.

Gourlay's opponents organized public meetings and published addresses and responses to Gourlay's newspaper articles. Such efforts were fewer in number and did not explicitly appeal to public opinion. The "Clergy, Magistrates, Officers of Militia and other inhabitants" of Glengarry were indignant "at the attempts of desperate demagogues, to disturb the public mind" and "to create confusion." A Cornwall meeting assured the

¹⁴ For other examples of early deference to parliament, in the form of apologies for raising issues or statements of respect for its autonomy, see Camden and Amicus Curle, *Kingston Gazette*, 21 September 1816 and 18 November 1817. The printing of the Assembly's debates placed everything before the public. Deference was soon replaced by a sense of entitlement.

¹⁵ See Hartwell Bowsfield, "Upper Canada in the 1820's: The Development of Political Consciousness," (Ph.D. thesis, University of Toronto, 1976), pp. 6, 120-122, 150.

¹⁶ Gourlay, *Niagara Spectator*, 10 December 1818.

Lieutenant- Governor that "the good sense of His Majesty's subjects will ultimately prevail..."¹⁷ In the summer of 1818, an anonymous critic of Gourlay looked forward to the approaching harvest. Farmers were too ignorant of politics and the English language to say anything of value at public meetings or in newspapers. Fortunately, they would soon be too preoccupied with something they were more suited to.¹⁸ Using the common law of seditious libel against Gourlay and the editor of the *Niagara Spectator*, banishing Gourlay from the province, and prohibiting all province-wide meetings demonstrated both an awareness of the implications of politicizing non-legislators through public debate and an unwillingness to rely solely on the "good sense" of the people.

During the 1820's, a number of political contests furthered the process of creating a broader public beyond formal institutions.¹⁹ The number of newspapers grew. They began to publish the debates of the Assembly. In the summer and fall of 1822, public meetings and newspaper commentary considered the merits of the proposed union of Upper and Lower Canada.²⁰ The following year, however, the *Weekly Register* reminded its readers that criticism was "a dangerous weapon in the hands of the ignorant and an illiterate person."²¹ Throughout the decade, reformers organized petitions against the Naturalization Act (respecting the rights of former American citizens in the colony), the pretensions of the Anglican hierarchy, and other grievances. The scale of these efforts could not be ignored. To counter what it considered misrepresentations, the *U. E.*

¹⁷ Glengarry address, *Kingston Chronicle*, 15 January and Cornwall address, 8 January 1819.

¹⁸ anon., *Niagara Spectator*, 6 August 1818.

¹⁹ In general, see Bowsfield, "Upper Canada in the 1820's."

²⁰ See *Weekly Register*, 29 August, 5 September, and 3 October 1822; and *Kingston Chronicle*, 1 and 22 November, and 20 December 1822.

²¹ *Weekly Register*, 25 January 1823, cited in Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850*. (Toronto: University of Toronto Press, 1996), pp. 69-70. In this case, the point was reinforced by having ignorance and illiteracy personified by a woman.

Loyalist printed the Naturalization Bill. "[N]ow we only ask those who are interested in the matter, to read the Bill which is before them, carefully and attentively, and setting aside any representations which many have been made to them, to exercise their own unbiased judgements..."²² Aware of significant opposition but convinced of the merits of its case, the *Loyalist* was willing to test the proposition that truth was self-evident to all who sincerely studied the question. Others were less trusting of an audience of newspaper readers. There was also little sense of what to do with the test results.

The moderate reform *Upper Canada Herald* had already decided. Surveying recent political events in 1827, the paper concluded that "[p]ublic opinion is acquiring strength in every Government, in proportion to its freedom. In Great Britain its influence is more and more manifest." The same could not be said for the British colonies. "Instead of being controlled by a junta of bigoted advisers, the administrator of every Province should listen to the voice of the Public. By the public voice, we do not mean the clamour of interested partisans, but the general sense of the People at large, to which the measures of Government ought to be conformed."²³ Specific institutional mechanisms were secondary. The principle was clear: free governments were governments by public opinion. The "people at large," not three legislative institutions, should judge public measures.

On the basis of the 1828 election results, Francis Collins, editor of the *Canadian Freeman*, concluded that the people had elected an Assembly committed to ending the abuse of power. For Collins, the only remaining question, "now that public opinion has taken a stand from which it cannot be driven during the present generation," was "how

²² *U. E. Loyalist*, 24 February 1827.

²³ *Upper Canada Herald*, 31 July 1827.

will our ministerialists and officials act? ... Instead of setting public opinion at defiance, as heretofore, and forcing upon the country unjust and unpopular measures, will they consult the feelings of the people...? We fear not..."²⁴ Collins was overly-sanguine about the constancy of the electorate and ministerialists' resistance. Subsequent elections sent conflicting messages.²⁵ "Ministerialists" were usually sceptical about the abilities, moderation, and knowledge of the "people." They were also aware of the proto-democratic implications of the public sphere. Nonetheless, many began to adopt reformers' rhetoric and methods. Facing continued opposition and no longer able to guarantee the success of their measures by relying solely on traditional institutions, they began to appeal to the judgement of a wider segment of the population and to make a more concerted effort to influence those judgements.

In 1828 Francis Collins identified elections as the primary vehicle for public opinion. In the same year, William Warren Baldwin called for more county meetings as "[t]his course of expressing public opinion by county meetings, has not been so frequently pursued as it ought."²⁶ The same could not be said of the 1830's. William Lyon Mackenzie was the most energetic instigator of public meetings to legitimate his claim that he, not the government or its supporters in the press and the Assembly, represented

²⁴ *Canadian Freeman*, 14 August 1828.

²⁵ Collins became harshly critical of the Assembly elected in 1828 as too dependent on Mackenzie and the Methodists. *Canadian Freeman*, 19 August 1830. Thus, when the government gained a majority in 1830, he could still argue, 28 October 1830, that "the Press and Public Opinion, in the sudden and complete overthrow of the Ryersonian despotism, has [have] taught them a lesson...the Press will put forth its gigantic strength - and public opinion, stretching out the irresistible arm of its power, will arrest their progress."

²⁶ Baldwin, *Canadian Freeman*, 11 July 1828.

public opinion. The dozens of public meetings organized by, for or against Mackenzie and his colleagues between the fall of 1831 and the spring of 1833 brought the concept of public opinion into greater prominence.

In 1824, the first year of the *Colonial Advocate*. Mackenzie had argued that "[t]he difference between passive obedience and non-resistance, to a tyrannical government, as compared with free discussion of the public measures of a represented and responsible one, is known by our meanest peasant..."²⁷ Mackenzie's *Catechism of Education*, published in 1830, argued that the judgement of society was the ultimate motivation for and standard of human action. Proper systems of education and government would ensure that these collective judgements were based on merit and rewarded virtue and service rather than "servility and meanness to those above, and tyranny to those below."²⁸ Mackenzie had concluded that Upper Canada's government failed this test. Only servility to "a mushroom aristocracy" entrenched in the Legislative and Executive Councils offered advancement in Upper Canada while "[t]he road to honour, power, and preferment in the United States is public opinion."²⁹ Marshall Spring Bidwell came to the same conclusion in 1834: "public opinion does not have that influence here as it does in England...The government of England is a government of public opinion..." Policy conflicts, such as the one over primogeniture, taught Bidwell and others that the executive and Legislative Council could frustrate the people's judgement, no matter how rational, informed, or persistent it was.³⁰

²⁷ *Colonial Advocate*, 10 June 1824.

²⁸ *Catechism of Education: Part First*, (York: Colonial Advocate Press, 1830), pp. 22, 39-42, passim.

²⁹ Mackenzie, quoted, William Kilbourn, *The Firebrand: William Lyon Mackenzie and the Rebellion in Upper Canada*, (Toronto: Clarke, Irwin & Company Limited, 1977 [1956]), p. 106. No source is given, but the context suggests the 1834 election.

³⁰ Bidwell, *Christian Guardian*, 18 December 1834. As Gerald M. Craig put it, "[t]he basic complaint of the reformers was that public opinion was ignored in Upper Canada." *Upper Canada: The Formative Years, 1784-1841*, (Toronto: McClelland and Stewart Limited, 1963), p. 201.

In 1831-32, Mackenzie toured the province distributing pamphlets, calling public meetings, gathering signatures for grievance petitions, and helping to organize reformers into Political Unions. In December 1831, the Assembly expelled Mackenzie for libelling the House in the *Colonial Advocate*. He was re-elected and re-expelled in January 1832 and, although he was declared ineligible to sit again, he was re-elected at the end of the month. Mackenzie could not attempt to take his seat again because the Assembly was no longer in session. Instead, he spent several weeks travelling from public meeting to public meeting presenting grievance resolutions. He then left for Britain to present the petitions with the signatures of as many as ten thousand Upper Canadians,¹¹ to the Colonial Office. Other reformers also organized public meetings in their own areas and further meetings followed in 1833 when the Colonial Secretary's response to Mackenzie's mission became known.¹²

After his second expulsion from the House, Mackenzie called on both voters and non-voters to assemble at York. "Public opinion, clearly expressed, is set at defiance, and fundamental principles of the constitution openly violated...Up then and be doing!"¹³ It was not, however, only Mackenzie's supporters who were up and doing. The unprecedented level of public activity, Mackenzie's strident demands and the direct appeal to Britain, galvanized government supporters into action. In an October 1831 article entitled "Mr Mackenzie," the conservative *Kingston Chronicle* expressed its "unusual degree of reluctance" at having "to permit the pages of our paper to be debased

¹¹ Carol Wilton, "'Lawless Law': Conservative Political Violence in Upper Canada, 1818-41", *Law and History Review*, (v. 13, n. 1, Spring 1995), pp. 121-122.

¹² For the political events of this period, see Craig, *Upper Canada*, pp. 212-215.

¹³ Mackenzie, "An Appeal to the People", *Brockville Recorder*, 19 January 1832. They met "in order that due force may be given to public opinion..." Mackenzie hoped that "all the independent inhabitants whom this Address may reach, young and old, whether they be landowners or not landowners, who feel themselves animated by the pure spirit of liberty" would attend.

and defiled by even the name of the individual which we have placed at the head of this article."³⁴ The *Chronicle* was forced to break its self-imposed silence while others organized counter-meetings and loyal addresses, attempted to disrupt (occasionally with violence) opposition meetings, and formed their own association, the British Constitutional Society. Conservative newspapers welcomed the counter-publicity of loyal addresses, meetings, and organizations.³⁵

At York, local conservatives organized a General Committee and prepared a loyal address. They refrained, however, from calling a public meeting on the grounds that such meetings did not express public opinion. As the *Courier* explained, "we do not think that a large body of people collected together, and subjected to the various excitements which exist upon such occasions, affords the best means of ascertaining the real and unbiased sentiments of the people upon any question. We think that a calm appeal to the deliberate judgement of each individual of a community, upon any public question, is calculated to elicit by far the most accurate and certain evidence of the opinions of that community." The committee decided to present their address "to each individual of this town for signatures."³⁶ Mackenzie called a public meeting to pass resolutions countering this address, but its supporters organized to ensure that they had a majority at the meeting. Out-numbered, Mackenzie and his supporters withdrew to hold a separate meeting which was broken up by the first of three riots that day.³⁷

This was not the first use of violence against such meetings. Mackenzie had just been assaulted at Hamilton (19 March 1832). Violence also broke out at Amherst (4

³⁴ *Kingston Chronicle*, 22 October 1831.

³⁵ See for instance, *Western Mercury*, 8 March and 3 May 1832.

³⁶ *Courier of Upper Canada*, 17 March 1832. The reference to "every individual" suggests that conservatives, like Mackenzie, did not officially exclude non-voters.

³⁷ F. H. Armstrong, "The York Riots of March 23, 1832", *Ontario History*, (v. LV, n. 2, June 1963), pp. 61-72.

February 1832) and Farmersville (9 March 1833).³⁸ The *Hamilton Free Press* argued that the violence was used to destroy the people's "right of meeting and expressing their sentiments...or to deprive such meetings of the character of order and quiet deliberation..."³⁹ Such intimidation, the *Christian Guardian* concluded, could only be motivated by a desire "to prevent free discussion, and the expression of public sentiment with coolness and due consideration." It worried that "scarcely a question appears to be calmly considered & decided by an orderly vote, - all is carried by acclamation, so that the several motions are not decided by reason, judgement, sense of numbers, but by noise and violence."⁴⁰ The *Guardian* and the *Courier* agreed that public meetings often failed to express public opinion. They disagreed about whom to blame.

For his part in a Newcastle District meeting, the conservative *Cobourg Star* labelled G. M. Boswell an "advocate of Mr. Mackenzie's principles." Boswell countered that stigmatizing all who disagreed with government policy was an attempt to silence differences of opinions. It attacked his "liberty as a reasonable being...of evincing my sentiments." The first speaker, in favour of the grievance resolutions, had been drowned out by deafening shouts. This insulted Boswell and any one else who had "attended with the expectation of hearing the resolutions submitted for their approval temperately and fairly discussed." The refusal to hear the resolutions, was more than a personal insult. "I believe further that every Government unless its measures are subject to the controlling ordeal of public opinion has a tendency to despotism..." By attempting to silence opposition, conservatives were refusing to submit to that ordeal. Boswell listed the areas he believed to be in need of reform and concluded that "I may be in error, and many wiser

³⁸ Wilton, "'Lawless Law': Conservative Political Violence in Upper Canada", p. 118.

³⁹ *Hamilton Free Press*, copied, *Colonial Advocate*, 28 March 1832.

⁴⁰ *Christian Guardian*, 28 March 1832.

than I am may possess opinions very different from mine. - If however I be wrong, a yelling mob, or an opprobrious epithet can never convince me of my error - and an attempt to stifle temperate discussion can have no other tendency, than to confirm me in my opinion."⁴¹

The *St. Thomas Liberal*, a radical paper, also accused government supporters of attempting to silence criticism by equating it with Mackenzie. The *Liberal* was capable of judging the need for change on its own. Reformers "are the men who take the liberty to think for themselves - they do not receive opinions from others without careful examination." This should have protected them from the charge of being Mackenzie's dupes, but "[t]his is indeed their crime. - for arrogantly exercising this prerogative, they have incurred the displeasure of the self-styled patricians of British America. They have dared to investigate the public conduct of public men..."⁴² Moreover, such investigations were becoming paramount. The Colonial Secretary, responding to Mackenzie's mission, removed Attorney-General H. J. Boulton from office for supporting Mackenzie's expulsion from the Assembly. The *Canadian Correspondent* was grudging in its praise because Boulton "has been long since tried at the bar of public opinion..."⁴³ Rhetorically, the right of judgement had shifted from the Crown to public opinion. Legally, no such transfer had taken place. Rhetoric and law - claims to authority and actual power - were increasingly dissonant.

It would be a mistake, however, to suggest that conservatives limited their public activity to violence or branding opponents with epithets. Many remained wary of the

⁴¹ G. M. Boswell, *Cobourg Star*, 7 March 1832. George Morss Boswell was elected in 1841 as a moderate and supporter of Lord Sydenham.

⁴² *St. Thomas Liberal*, 13 October 1832.

⁴³ *Correspondent*, copied, *Cobourg Star*, 22 May 1833.

divisions excited or reinforced by public meetings,⁴⁴ but faced with unprecedented public opposition, conservatives adopted some of their opponents' tactics and rhetoric. They began to organize and marshal public support. The General Committee that had organized York's first loyal address became the British Constitutional Society. "[E]very male inhabitant of this town of good character, over 21 years of age, without distinction of rank, religion, or country" was invited to join an association dedicated to administering "an antidote to that poison which has been so industriously disseminated by the unprincipled inventors of grievances..."⁴⁵ Such efforts reflected the belief that the rational and unprejudiced could be brought to see through Mackenzie's cause. By countering Mackenzie with more than silence, these conservatives attempted to mould public opinion and, thereby, paid homage to its power.

Speaking at a Scarborough public meeting, Robert Douglas Hamilton praised Upper Canada's constitution and told his audience that, compared to the United States, "we find that our political liberty is equal." Public meetings were essential to preserve that liberty "against the encroachments of the government, as well as against the despotic roar of our fellow subjects." Hamilton warned his audience not to "trust either my propositions or conclusions, examine for yourselves, read fully and think freely...let me admonish you never to place implicit confidence in any man, however commanding his talents may be, for authority is not proof, and assertions are not arguments..." As Hamilton put it a few months later, "we do not err from thinking wrong, but from not thinking at all." Confident that critical thinkers would reject Mackenzie, Hamilton invited

⁴⁴ See for instance, *Western Mercury*, 3 May, 14 June and 12 July 1832; and *Cobourg Star*, 27 February 1833.

⁴⁵ resolutions of the Society and commentary, *Western Mercury*, 12 April 1832. Note again that the appeal was made to "inhabitants," not to voters. For more on the early days of the society see, F. H. Armstrong, "The Carfrae Family: A Study in Early Toronto Toryism," *Ontario History*, (v. 54, n. 3, 1962), pp. 161-181.

the public to judge his arguments, the government and the constitution.⁴⁶ Reacting to the York meetings, another supporter of the existing constitution made the same point. He advised his readers to avoid radical meetings and to "[t]hink for yourselves. Do not yield up your understandings and believe what any man says to you without trying every question by the test of your own judgements."⁴⁷ Of course, "any man" included government supporters as well as its critics.

In August 1832, Henry Ruttan, sheriff of the Newcastle District, "in order to afford my fellow subjects in this district some opportunity of forming a clear judgement" amidst "an effervescence of the public mind, entirely unparalleled in its history," felt "a duty to step forward and state my views on the great questions at issue..." He addressed himself to "the honest, sober, thinking part; those who do not make up their minds hastily and without consideration, but who are willing to set aside for a few moments, every impression which may militate against a dispassionate consideration of the subject under discussion." Ruttan undercut this common distinction between those capable of participating in the public sphere and those incapable by claiming that the first "form[s] a vast majority of the people of this District." Ruttan quoted an unnamed authority to the effect that "public opinion is seldom erroneous when founded on just information." His address, serialized in eight issues of the *Cobourg Star*, was an attempt to provide that information. One point was repeated in different forms: the people should "test everything by their own judgement and experience," or "[a] vast majority of our farmers and mechanics are now...generally men of reading and intelligence" capable of admitting "the correctness of the principles here advocated," or "we should take nothing for granted.

⁴⁶ Guy Pollock, *Courier*, copied, *Western Mercury*, 22 March and 21 June 1832. For more on the first speech see the introduction above.

⁴⁷ Simcoe, "To Men of Common Sense in Upper Canada", *Upper Canada Herald*, 4 April 1832.

until it is proved to us...assertion is rather too cheap...I say proved by the touchstone of our own deliberate judgement, formed from *the evidence of our own senses*."⁴⁸

Hamilton and Ruttan were confident that informed discussants would come to the same conclusions that they were expounding. By calling on the people to judge Mackenzie's claims, they invited the public to judge their own arguments and the government itself. By appealing to public opinion and by calling for the public exercise of reason, they helped create a public capable of judging the state. The logic of these implications was not fully explored in the early 1830's. The explicit aim was still limited: to defeat Mackenzie and the other radicals. Once this aim was accomplished, the public was to retreat from politics.

Political conflict ebbed and flowed between 1833 and 1836. For the concept of public opinion, these were years of elaboration, not significant change. Radicals and reformers remained its foremost, but not its sole, champions.

In 1833, the *St. Thomas Liberal* surveyed the western world and concluded that the power of the people had not only grown, it had changed. It no longer exploded in food riots, mobbings of tax-collectors or other "merely outbreakings of a sudden indignation; the result of some peculiar evil, and expiring almost at its birth." Popular power was now "the off-spring of knowledge, not of passion...founded on increased information, a discontent aided as well as produced by reason. This is the new and

⁴⁸ H. Ruttan "Address to the People of the Newcastle District", *Cobourg Star*, 1, 8, 15, 22 and 29 August and 5, 12 and 19 September 1832.

formidable power to which the last few years have given birth." It would continue to grow until aristocratic privilege, exclusiveness and "irresponsible legislators" disappeared, until it became "the sole existing power in the state - all others will yield to, or be merged into it." Several months later, it named this new power in an editorial entitled, "Public Opinion." This power was "a powerful check upon the malevolent action of man, whether in public or private station." but the editor worried that "[t]here is some danger of individuals rising to such a degree of wealth and independence; of official power and influence; and of forming family compacts for interested purposes, as to set public opinion almost at defiance." To forestall such troubling developments, public opinion had to be informed and united. At least identifying the enemy was easy. "Many plans are formed to elude the force of public opinion or to stifle its expression. But there is not a more sure criterion by which to judge that something is wrong, than when such attempts are made."

A year later, the *Liberal* made the connection to Upper Canada explicit by contrasting public opinion and the colony's constitution. The government operated according to "exclusive principles...whereby the few rule the many without regard to their opinion..." The "stoical insensibility of our rulers to the voice of public opinion" was foolish. It risked revolution. "Opposition may retard the claims of the people for a time, but it will whet their desires, and render them irresistible in the end." Constitutional reform, including "the entire control of the revenue by the commons, and the responsibility to them of the advisers of the crown for their official acts...", would redirect this restless power into peaceful channels. The *Liberal* was convinced that "[o]ur rulers are very sensible that so long as the Assembly is prevented from exercising these prerogatives, so long they will be able to carry on their own plans, and laugh at public

opinion."⁴⁹

Other radical newspapers also used the concept of public opinion to support various ends. In 1835, the *Cobourg Reformer* called for a greater study of the science of politics because "it is the advance of the popular mind and the expression of enlightened public opinion alone that can originate important and beneficial changes in our hitherto corrupt, expensive, and irresponsible government." A few months earlier, the *Reformer* noted that "Englishmen boast of their liberal institutions and their government by the enlightened opinion of the nation." but with open voting and a irresponsible Legislative Council, it was an empty boast in Upper Canada.⁵⁰ In August 1834, the *Canadian Correspondent* laid down the principle that "[p]ublic feeling and public opinion are the life and the aliment of social institutions." The colony's bitter partisanship could be ended only "by discussing fairly and argumentatively before the high tribunal of public opinion, the existence and the extent of the oppressions complained of, and the judgement of that tribunal, uninfluenced by men scrambling for power, would be heard and heeded by His Majesty's [British] Government."⁵¹ Not all radicals retained faith in the ultimate responsiveness of the British government to the unmediated voice of public opinion, but their faith in the reality and rhetorical value of that voice grew.

They also agreed that government supporters ignored, feared or attempted to

⁴⁹ *St. Thomas Liberal*, 1 August and 19 December 1833; and 18 December 1834. The editorial, "Public Opinion", was also copied, *Brockville Recorder*, 3 January 1834.

⁵⁰ *Reformer*, 30 June and 22 September 1835. The latter is discussed in more detail in chapter one above. Others also demanded the secret ballot to ensure that elections expressed public opinion. See *Colonial Advocate*, 13 February 1834, and Mathew Howard on the debate to incorporate York, *Brockville Recorder*, 14 February 1834. The *Reformer*, copied *Correspondent & Advocate*, 22 October 1835, dismissed the analogy between the British and Upper Canadian constitutions on the grounds that "the Privy Council [he should have said the Cabinet] changes with the current of public opinion, the Executive Council is permanent..." *Reformer*, 1 December 1835, argued that without the abolition of rotten boroughs, the Assembly could not be said to reflect public opinion.

⁵¹ *Canadian Correspondent*, 9 August 1834. See also *Correspondent & Advocate*, 29 January and 22 October 1835.

pervert public opinion. When James Radcliffe discontinued the *Reformer*, he took comfort in the knowledge that "ultimate success" awaited his cause. How could it be otherwise with "the growing symptoms of weakness and desperation. in the style resorted to by the advocates of misrule"? "The field of reason and of fair argument, has been abandoned...He who cannot reason may rail; and though he cannot refute, he can slander and call names."⁵² Government supporters made the same allegation. Radicals lied and fanned the passions. One such supporter recognized "the soundness of the doctrine which ascribes the healthful vitality of the British Constitution to the free discussion of public measures..." He was also "perfectly aware of the lesson taught by all history and experience - the difference namely between rational freedom and a wild and desperate licentiousness...that political discussions, besides being free, must also be temperate and well-regulated."⁵³ But who decided what was "temperate" or "well-regulated?"

Likewise, when the *Brockville Recorder* berated the *Patriot* for not combatting reformers with arguments, the *Patriot* responded with ridicule: "Combat ignorance and prejudice with argument! hew blocks of granite with a razor!!"⁵⁴ One side's temperate debate was another's ignorant appeal to emotion. Less dissatisfied with the political and constitutional status-quo, amidst bitter partisanship, finding scurrility in most newspapers, and recalling the violence at earlier public meetings, it is not surprising that conservatives and some moderates continued to be sceptical of appeals to public opinion. They were afraid that appeals to the public opinion masked appeals to numbers over wisdom, popular prejudices over reason, and ignorance over information.⁵⁵

⁵² Radcliffe, copied, *Patriot*, 19 August 1834.

⁵³ Vale to William Lyon Mackenzie, *Patriot*, 19 August 1834.

⁵⁴ *Patriot*, 8 May 1835.

⁵⁵ For conservatives, see Solon, *Patriot*, 6 February 1835; and for moderates seeking no institutional reforms, see the *Upper Canada Herald*, 21 July and 1 December 1835. Moderate reformers made similar points against radicals' demands for a directly elective Legislative Council. See *St. Catharines Journal*, 22

The level of public conflict was again on the rise early in 1835 as the power of voluntary associations was again harnessed. Radicals organized the Canadian Alliance Society. The first resolution of one branch declared that "government and the choice of those who administer it, should depend entirely on the preponderance of free unbiased opinion." Another branch called for the publication of a periodic "political Tract" to help "concentrate public opinion." The first resolution of a third declared that "the political condition of the inhabitants of this Province will never be ameliorated, nor their grievances redressed, except by a steady, firm and unanimous expression of public opinion."⁵⁶ Opponents were again galvanized into action. In April, they revitalized the British Constitutional Society, convinced "that we have only to make the electors of the Province understand the real state of the case, to induce one simultaneous and effectual demonstration of public feeling" to rid the Assembly of radicals. To this end, they resolved that "the inhabitants of the country in general, should be made thoroughly acquainted with the real situation of affairs, and the true state of the parties..."⁵⁷ It was, however, the election of 1836 that accelerated the rise of the concept of public opinion.

Privately, Sir Francis Bond Head, the new Lieutenant-Governor, had little use for the concept. Conciliating "party public opinion" was a "fatal error" since "every man in

October 1835; and anon., *Cobourg Star*, 21 January 1835.

⁵⁶ North of King and South of Techumseth, Fourth Riding of Lincoln, Whitchurch and King, copied, *Correspondent & Advocate*, 2 and 26 February; and 30 April 1835. See also *Correspondent & Advocate*, 12 March, 7 May, and 30 July 1835. The Society claimed 654 members by March and in July offered 200 copies of Mackenzie's Seventh Report of the Committee on Grievances for sale with the proceeds going to the Society. These copies were in addition to the 2,000 ordered printed by the House and the 500 included in the *Journals* of the House.

⁵⁷ resolutions and commentary, *Courier*, copied, *Cobourg Star*, 29 April 1835.

office should make public opinion follow *him*, and never attempt to follow *it*..."⁵⁸ Head's strenuous efforts to lead public opinion helped ensure that his successors had little choice but to follow it. His appointment of two reformers and a neutral administrator to the Executive Council was followed three weeks later by the resignation of the entire Council. The ex-Councillors published their justification. Head published his response. These two texts outlined conflicting interpretations of the constitution. They appeared in most colonial newspapers and were but the first instalment of an explosion of printed material in the spring of 1836.⁵⁹ John Beverley Robinson opposed Head's decision to allow publication of both sides of the conflict "for every body knows every thing - and all the shoemakers and tailors in town are discussing the _____ of the 'Cabinet pudding.'"⁶⁰

Publicly, both sides welcomed the exposure. The radical *Correspondent & Advocate* argued that "the public mind is becoming more and more informed on several subjects connected with the political constitution of this province." The following day, the conservative *Patriot*, referring to the *Correspondent's* editorial, admitted that "all this may be heedlessly swallowed by the ignorant, the idle and the dissolute, whose show of hands may gladden the heart of a renegade Priest [the *Correspondent's* editor], or a worthless Mayor of Toronto [W. L. Mackenzie]...but small is the chance, that such mendacity can operate upon an intelligent people, who have grown and prospered...Let

⁵⁸ Head to the Colonial Office, Despatch, 1 June 1836, copied, Sir Francis Bond Head, *A Narrative*, S. F. Wise ed., (Toronto: McClelland and Stewart Limited, 1969, [London, 1839]), p. 56.

⁵⁹ Some of the constitutional issues were discussed in chapter 1 above. The publication of reform material in the conservative *Patriot* was discussed in chapter four above. Addresses of public meetings, Head's reply's, letters, commentary, and Assembly debates on the dispute dominated colonial newspapers in March, April and May. The report of the select committee of the House investigating the dispute and the debate of the House on that report appeared as separate pamphlets as well as in colonial newspapers.

⁶⁰ Robinson to Sir John Colborne, 20 March 1836, cited Robert L. Fraser, "Like Eden in Her Summer Dress: Gentry, Economy, and Society: Upper Canada, 1812-1840", (Ph.D. thesis, University of Toronto 1979), p. 221.

the people reflect..."⁶¹ Other conservatives expressed similar confidence in the "intelligent" without the contempt. "Let the unprejudiced reader," announced the *Chronicle & Gazette*, "deliberately review this discussion, and weigh well the opinions and arguments which have been adduced in support of the different positions...let him carefully examine the constitution of the Province, and the peculiar circumstances of the case, and we venture to affirm that he must come to the conclusion that His Excellency is perfectly justifiable in pursuing the course he has adopted." A recent convert to Head's cause felt little need to comment, because "[o]ur readers are as fully capable of forming an opinion of the propriety of Sir Francis Head's conduct as we are: the facts are before them."⁶²

When the Assembly endorsed the ex-Councillors' constitutional arguments by refusing to grant the supplies, Head called new elections. Conservatives' confidence in 'the unprejudiced reader' was to be tested. Head's unusually vigorous campaigning has often been noticed but its theoretical implications have received less attention.⁶³ Head, the representative of royalty, personally appealed to the local electorate, not to simply choose certain representatives, but to decide constitutional questions: the relative functions of the Executive Council and Governor and, at least in Head's mind, membership in the British empire. By asking the electorate to accept his paternalism, Head was asking them to choose his interpretation of the constitution over that of his

⁶¹ *Correspondent & Advocate*, 21 March and *Patriot*, 22 March 1836, and 26 April 1836: "[t]he time has arrived when it behoves all Upper Canadians to consider well the position in which they stand," rejecting what had been told "by the arts of persuasion, and intimidation, practised through a thousand channels with unwearied application and industry..."

⁶² *Chronicle*, and *British Whig*, copied, *Patriot*, 8 April 1836. The *Whig*, also at Kingston, had formerly supported the reform cause.

⁶³ Craig, *Upper Canada, The Formative Years*, pp. 232-241; and Quentin Brown, "Swinging with the Governors: Newcastle District Elections, 1836 and 1841," *Ontario History*, (v. LXXXVI, n. 4, December 1994), pp. 319-336. Brown rightly emphasizes the autocratic and paternal nature of Head's electioneering, but by appealing to the people to guard their constitution he undercut the need for imperial paternalism.

former advisers and the majority of their own representatives. In his many speeches and replies to addresses, Head spoke in a direct and incisive manner that some found undignified or overly partisan. On the other hand, the *British Whig* thought it was "admirably suited to the comprehension and information of every yeoman in the Province."⁶⁴ Head led an electoral campaign whereby the people were to be informed, rallied, and ultimately, relied upon. As the Governor told the inhabitants of the Johnstown District, "it affords me consolation....that the yeomanry and farmers of Upper Canada, instead of allowing other people to think for them have at last been driven to the necessity of judging for themselves."⁶⁵

Head's supporters echoed the theme that "the people," if better informed and reasoned with, would throw off the doctrines espoused by the ex-Councillors and those, like William Lyon Mackenzie, Peter Perry, and Marshall Spring Bidwell, who had dominated the late Assembly. Previously, conservative contempt for reformers' arguments had often been coupled with vague expressions of confidence in the innate good sense of the people. The educated and informed could see through reform rhetoric. Others were better off tending to their respective occupations than bothering with political questions.⁶⁶ Such complacency had been punctured in 1832 and again in 1835, but it was the election of 1836 that clearly replaced it with an active campaign to enlist the minds, as well as the votes, of the electorate. Lanark residents resolved that although they had "hitherto refrained from intermeddling in the political strife of the Province...the present

⁶⁴ *British Whig*, 26 August 1836 cited, Sean T. Cadigan, "Paternalism and Politics: Sir Francis Bond Head, the Orange Order, and the Election of 1836", *Canadian Historical Review*, (v. LXXII, n. 3, September 1991), p. 332; although Cadigan uses the evidence of Head's style for very different purposes.

⁶⁵ Head's reply, *Brockville Recorder*, 3 June 1836. See also Head, *A Narrative*, p. 201. *The Patriot*, 6 May 1836, listed 20 addresses Head had received with a total of 8,746 signatures. It claimed, 27 June 1836, that the number of signatures had grown to the unprecedented total of 15,847.

⁶⁶ *Scrutator, Patriot*, 29 September 1835; *Patriot*, 22 March 1836; Address of the Grand Jury of the Home District, *Patriot*, 12 April 1836; and *Cobourg Star*, 17 June 1835.

crisis seems to this meeting to demand an unequivocal expression of public opinion" in favour of the British constitution and empire.⁶⁷

The British Constitutional Society was rejuvenated in the spring of 1836 "to disseminate throughout the country the most true and correct political information."⁶⁸ In his speech to the second meeting of the Society, Solicitor-General Christopher Hagerman insisted that the organization must "extend its ramifications and make it as general as possible." The isolated and ill-informed had to be "disabused" of the "clap-traps" of the Society's opponents. "[A]ll men who exercise their reasoning faculties" could be won over by "a few plain, dispassionate, well-written papers, containing an exposition of facts, as they really were..." Hagerman was well aware of the origins of such advice: "[w]e should, in our industry, at least, emulate our political enemies, who work with an ardor worthy of a better cause..." Individuals, not just the Society, had to be active - "we should reason and expostulate with such of the opposite party as we thought [think?] at all open to conviction." In fact, besides endeavouring "to shorten down asperities," members should invite opponents to attend the Society's meetings. The constitution and its supporters had nothing to fear from the searching inquiries of the rational - "we court publicity for our deeds, for they are not of darkness." Hagerman concluded, that "[t]he merits of the question, as it really stands...is but to be explained to those yeomen, and they

⁶⁷ *Bathurst Courier*, 6 May 1836; and also, Inhabitants of the River Trent to Head, *Patriot*, 3 May 1836; and Freeholders and Respectable Inhabitants on Younge Street to Head, *Cobourg Star*, 30 March 1836.

⁶⁸ *Patriot*, 3 May 1836. The Society attempted to meet this objective. John Kent, headmaster at Upper Canada College's preparatory school, told William Hamilton Merritt that "I have been so constitutionally busy of late...[a]s Secretary of the British Constitutional Society, which has circulated upwards of 100,000 copies of different documents through every part of the country..." National Archives of Canada, [NAC], William Hamilton Merritt Papers, MG 24, E1, v. 11, pp. 1456-1457; Kent to Merritt, 19 June 1836. Many, but not all, of these documents were probably more like posters and broadsides than reasoned arguments. Nonetheless, the effort and mobilization represented by this number remains remarkable.

will immediately set their face against agitation..."⁶⁹

Likewise, commenting on the widely-distributed Declaration of the Society, the *Cobourg Star* concluded that "ours is a cause, that will be ever invincible to the malice of its enemies, while it relies, not upon appeals to the passions, but to the honest judgement of the people." Conservatives should "strive to reason with those who may differ from us...Let the people consider this: let them judge for themselves...By the exercise of their reason, they cannot fail to be convinced."⁷⁰ Conservatives naturally assumed the rationality of their case, but their increasing faith that the people, or at least the electorate, could be brought to appreciate this and act accordingly had distinctly non-conservative implications. For instance, the *Bathurst Courier*, might rejoice that "the people are now aroused...they will no longer allow themselves to be deceived...and will now think and judge for themselves," but why should such a people be limited to rejecting demagogues?⁷¹ The question was even more pointed when "A British Reformer" told the *Patriot*, that "the time has now arrived when they [the yeomen] must assert the birthright of freeborn men, by judging of government for themselves, and by laughing to scorn those mendacious and wily partisans who would fain lead them by the nose to serve their own paltry ends."⁷² Yeomen capable of "judging of government" and rejecting false prophets were surely capable of active participation in government. They were capable of moving beyond the largely negative and electoral function most conservatives still assigned to them.

⁶⁹ Hagerman, 29 April 1836, reported *Courier of Upper Canada*, 5 May 1836.

⁷⁰ *Cobourg Star*, 25 May 1836. Similar sentiments were expressed by the *Chronicle & Gazette*, 30 March, 9 and 13 April, 1836. The editor printed 1,000 extra copies of the issue of the *Patriot* containing the Declaration as his subscription to the B.C.S. See *Patriot*, 17 and 20 May 1836.

⁷¹ *Bathurst Courier*, 13 May 1836.

⁷² A British Reformer, *Patriot*, 6 May 1836, the editorial commended the letter to its readers.

The results of the 1836 election surpassed conservatives' most sanguine hopes - a constitutionalist majority and the defeat of Mackenzie, Perry and Bidwell. When the Executive Council resigned, the conservative *Chronicle & Gazette* had argued that its program of responsible government was "absurd and visionary" since "public opinion when fairly settled should be consulted...but the sudden and transient fits of feeling often visible in the public mind could never be met with and complied with, without producing infinite confusion and disorder."⁷¹ The paper was confident that its readers could judge the crisis, and once loyal addresses materialized, the *Gazette* concluded that "the people may be safely relied on." They formed a "tribunal" exhibiting the characteristics usually reserved for British Governors: they were "too intelligent to be deceived - too honest to be partial, and too generous to be unjust."⁷² The favourable election results were the outcome of public opinion:

The difference of opinion that prevailed between Sir Francis Head and the late Executive Council, and the subsequent proceedings of the House of Assembly have been discussed - fully, freely, generally discussed among the people, and commented upon from the Hustings...the people have become too deliberate to be misled, and too reflecting to be deceived...Arguments upon either side of the late questions at issue were candidly received...They have of late evinced a determination to think, reason and judge for themselves...

The "people" had decided fundamental questions involving different interpretations of their constitution.

The editor also distinguished between the "wavering fickle multitude, that act not from reason, but from impulse," and the "intelligent portion of the people whose voice is

⁷¹ *Chronicle & Gazette*, 2 April 1836.

⁷² *Chronicle & Gazette*, 16 April 1836.

now heard." It was a common distinction, but this conservative newspaper was now convinced that a decisive portion of the electorate was capable of successful action based on its informed deliberations. The *Chronicle* had found a new source of legitimacy for the British constitution. Opponents no longer had to be silenced by the laws of sedition or by violence. The constitution was safe in the hands of the reasoned judgement of the electorate.⁷⁵ No wonder the *Chronicle* thought "a new era is dawning."⁷⁶

Similar sentiments were voiced at a celebratory dinner at Guelph. The chair summarized the campaign: "The Governor had flung himself on the loyalty, good sense and magnanimity of the people, and they had most gloriously responded to his call." Another of the seventy diners spoke fondly of the "great battle" where "the nest of plunderers, after a frothy struggle, yielded before the irresistible force of public opinion, the outer work of republicanism has been successfully stormed, and the vanquished have submitted to the victors..."⁷⁷ The vanquished, of course, read the election results differently. For the *Correspondent & Advocate*, Head had gained "the apparent sanction of public opinion...But he cannot lay the flattering unction to his soul, that the result of the Elections is the fair, impartial, unbiased expression of public opinion. His conscience

⁷⁵ Wilton, "'Lawless Law': Conservative Political Violence", pp. 132-134, argues that the violence of 1832-33 and the election of 1836 reflected the fact that officials had few instruments to deal effectively with "political dissent short of treason." Some of their supporters "filled the vacuum with political violence." With the success of the election of 1836, some conservatives saw a new way of grounding their claims that made violence counter-productive.

⁷⁶ *Chronicle & Gazette*, 6 July 1836. One reader was glad to see a new conservative paper after the 1836 election dedicated to providing daily parliamentary intelligence since "when the noisy confusion and insane struggles of selfish party have almost subsided," "men begin to reflect soberly and reason dispassionately." "I have no objection to the "war of opinion," that ordeal which proves men and measures..." D.P.S., *The Royal Standard*, 19 November 1836. Even Chief Justice John Beverley Robinson conceded that "[o]n speculative questions of policy individuals may innocently differ. It is, perhaps, not to be wished that they should not and certainly it is not to be expected...", charge to the Cornwall Grand Jury, *Patriot*, 31 October 1837.

⁷⁷ John Poole and Adam Fergusson, *Dundas Weekly Post*, 19 and 26 July 1836. Likewise, a new newspaper attributed this order "to the manly frankness of Sir Francis Bond Head who chose rather to appeal to the good sense of the People, in the sober language of rationation, than to have recourse to any physical power" to maintain the empire and the constitution. *Niagara Telegraph*, 16 November 1836.

tells him, that it is merely a sinister opinion propagated by himself and an unprincipled faction..."⁷⁸

The *Chronicle* and *Correspondent* both adopted the language of public opinion but it had yet to be fully integrated into constitutional theory. First, its role between elections was largely unexplored. Second, many conservatives did not share the *Chronicle's* faith in this new source of legitimacy. Even the editor of the *Courier*, an official of the British Constitutional Society, hoped that most Upper Canadians would again retire from politics once the election was over. The election was an emergency that had necessitated unprecedented appeals to ordinary Upper Canadians. The success of those appeals in routing the disaffected did not alter the fact that most people were incapable of positive and sustained political participation. With the emergency seemingly over, widespread political participation was again to be discouraged.⁷⁹

The revival of radicalism after the election undermined this position. Mackenzie was soon promoting his new organ, *The Constitution*: "let but an adequate opinion of their [the people's] wrongs be diffused and they burst their bonds asunder, and crush the oppressor. Revolutions do not arise from what men suffer, but from what they think."⁸⁰ In the summer of 1837, radical public meetings were again appealing to public opinion. The Lloydtown resolutions asserted the rights of free expression and assembly and concluded that "the array of public opinion, if properly brought into operation may be opposed, but cannot be controlled."⁸¹ The revival of a radical challenge dashed the hopes of those who saw the efforts of 1836 as an extraordinary response to an extraordinary

⁷⁸ *Correspondent & Advocate*, 6 and 13 July 1836; and 11 January 1837.

⁷⁹ *Courier*, 8 October 1836.

⁸⁰ *The Constitution*, 28 June 1837.

⁸¹ *The Constitution*, 9 August 1837. The last issue of *The Constitution*, 6 December 1837, contained a copied article from the *Hamilton Express* on another local Union meeting that declared that "the price of liberty and free government is continual watchfulness and discussion on the part of the people."

situation. The outbreak of armed rebellion in December 1837 made the hopes of those conservatives who had seen the recent election as a demonstration of the reliability of public deliberation appear woefully premature.

Governor Head, among others, saw evidence of Upper Canadians' overwhelming loyalty in the outcome of the Rebellion. Since the colony had no British regulars, the people had put down armed rebellion themselves. They had chosen to defend their constitution and empire. Head concluded that "there has never been a question more fairly submitted to the judgement of a free people, than that which, in Upper Canada has just ended, in the total defeat, moral as well as physical, of the opponents of the British Constitution."⁵² In short, the rebellion was the ultimate exercise in public opinion. Seeing the rebellion in this light offered no explanation of why a minority had resorted to arms. Moreover, if the colony was so overwhelmingly loyal, the post-rebellion crack-down and the siege mentality lurking in much tory rhetoric were unwarranted and counter-productive. To prevent a re-occurrence and to heal its ill-effects, the rebellion had to be placed within some broader historical framework. More reflection on the nature of citizenship and political obligation in a free country was the result.⁵³

Almost everyone quickly accepted an explanation that had been used against

⁵² Sir Francis Bond Head's Speech from the Throne, copied, *Patriot*, 2 January 1838. See also *Report from the Select Committee of the Legislative Council of Upper Canada on the State of the Province*, (February 1838), pp. 9-10; *Address [of the Legislative Council] To Her Majesty, On the State of the Province*, (February 1838), pp. 2-3; and *Address [of the House of Assembly] To His Excellency Sir Francis Bond Head...* (January 1838); and *Upper Canada Herald*, 19 December 1837.

⁵³ This line of thought was suggested to me by Constant's grappling with the French Revolution. See Biancamaria Fontana, *Benjamin Constant and The Post-Revolutionary Mind*, (New Haven: Yale University Press, 1991), p. 31.

earlier opposition.³⁴ The leaders of the rebellion, especially Mackenzie, were demagogues who were ambitious, self-serving, hypocritical, and evil. They were cunning enough to mislead, seduce, and flatter the ignorant, uninformed, unthinking portion of the population in order to gain undeserved political power and social standing.³⁵ In a colourful formulation of this explanation, order had broken down due to "a dabbling, meddling, scribbling, resolving; addressing, speechifying, pamphleteering, petitioning, book-making spirit, some for place and all for favour...and cease[d] not until they have beguiled the ignorant, the thoughtless, and the unwary."³⁶

Sermons gave this explanation further currency. The Rev. A. N. Bethune, Anglican rector of Cobourg, identified "sour and malicious spirits" as a principal cause of the rebellion. They had tried to persuade people that their "free and untrammelled limbs were really in bondage" by making so-called grievances "the engrossing topic of the domestic firesides or the social meeting." Egerton Ryerson agreed with little else in Bethune's ultra-tory sermon, but he took Psalm 64 as his text:

Hide me from the secret counsel of the wicked; from the insurrection of the workers of iniquity:
Who whet their tongue like a sword, and bend their bows to shoot their arrows, even bitter words:...
They search out iniquities; they accomplish a diligent search...

A Presbyterian minister at Niagara attributed the loss of "love of country" evident in

³⁴ S.F. Wise, "Sermon Literature and Canadian Intellectual History", *God's Peculiar Peoples: Essays on Political Culture in Nineteenth-Century Canada*, A. B. McKillop and Paul Romney, eds., (Ottawa: Carleton University Press, 1993), pp. 10-11.

³⁵ As well as the sources cited in note 82 above see M.N., *Upper Canada Herald*, 26 December 1837; *Upper Canada Herald*, 19 March 1837 and 20 March 1838; *Christian Guardian*, 13 December 1837; *Bathurst Courier*, 20 September 1839; *The Church*, 5 May 1838; *Niagara Reporter* copied, *St. Catharines Journal*, 31 May 1838; Darvy Cognovit, *Mirror*, 21 April 1838; Sir George Arthur to Lord Glenelg, 5 June 1838, *The Arthur Papers*..., Charles R. Sanderson ed., (Toronto: Toronto Public Libraries and University of Toronto Press, 1957), v. 1, p. 191; and J.K. *Plain Reasons for Loyalty Addressed to Plain People*, (Cobourg, September 1838), pp. 4-5.

³⁶ Aristides, *Patriot*, 1 May 1838.

rebellion to an over-exposure to all that was supposedly faulty, corrupt or selfish in government. These supposed faults had become "the subject of a constant newspaper reading, and the theme of endless talk in the family, and of exciting harangues when we assemble with village groups."⁸⁷ In sum, rebellion had resulted from the abuse of the public sphere.

Such an explanation was convenient. Those implicated in the rebellion could plead ignorance as a mitigating factor.⁸⁸ It allowed moderates and chastened reformers to contrast their respectability and constitutional approach with the rebels' motives, social composition and methods. For conservatives, it placed no explanatory weight on legitimate grievances and reinforced the connection between reason and their political dominance. However self-serving, the explanation was important because it was acted upon. Proposals for dealing with the aftermath of rebellion and preventing further conflict rested on this interpretation of its causes. If rebellion was the outcome of the misuse of the public sphere, most conservatives advocated, not its destruction through silence, censorship or violence, but renewed efforts to strengthen and redirect public deliberations. The efforts of the election of 1836 had to be redoubled. The colonial state and its supporters had to be enlisted to make Upper Canadians more governable. The result, however, was to make the people capable of governing the state.

Given the intimate connection between the reform movement and its newspapers, with Mackenzie again the archetype, it is not surprising that the radical press was singled out for particular blame.⁸⁹ While not publicly condoning violence against radical

⁸⁷ A. N. Bethune, *National Judgements Provoked by National Sins*, see the extensive review, *Christian Guardian*, 30 January 1839; Egerton Ryerson, *Civil Government - the late Conspiracy: A Discourse*, (Toronto, 1838); and Robert MacGill, *The Love of Country, A Discourse*, (Niagara, 1838).

⁸⁸ See for instance the Petition to Col. MacNab, by the Rebels in the London District, *Report, from the Select Committee of the Legislative Council...* (1838), appendix, p. 47.

⁸⁹ See for instance, R.T., "A few reasons for Radicalism", *Bathurst Courier*, 22 December 1837.

editors.⁹⁰ conservatives certainly rejoiced at the extinction of such radical organs as Mackenzie's *Constitution*, William O'Grady's *Correspondent & Advocate*, and John Talbot's *Liberal*. Such rejoicing, however, was short-lived. Reform organs such as the *Brockville Recorder*, the *Hamilton Express* and the *Toronto Mirror*, survived. Francis Hincks established the *Examiner* in 1838 "[t]o afford this body [of reformers] a channel of reciprocal communication ... [and] to afford the High Commissioner of the Canadas [Lord Durham] and the Lieutenant-Governor of this Province [Sir George Arthur] a view of our necessities..."⁹¹

Even more than the persistence of reform newspapers, the renewal of significant public agitation to advocate Lord Durham's recommendations at sixteen "Durham Meetings" ended conservatives' hopes for public "peace." The widespread dissemination of Durham's *Report* drew more conservative fire than its actual content, for which they had little but scorn. Coming so soon after the rebellion and with continued difficulties at the American border, such agitation was seen as ill-timed, at best. After driving Durhamites from the field, a force north of Toronto resolved that attempts "to renew political discussions on questions that have heretofore produced the most disastrous results...must...eventually lead to dissensions that can be followed by no other consequences than the revival of past disagreements" best buried "in oblivion."⁹² Too

⁹⁰ On the violence, see Douglas Fetherling, *The Rise of the Canadian Newspaper*, (Toronto: Oxford University Press, 1990), p. 24.

⁹¹ prospectus, *Examiner*, 11 July 1838. Durham solicited local views on the future government of the Canadas for his famous *Report*. The *Examiner* was determined to inform Durham's arbitration. Durham was the last Governor to play this rhetorical role of impartial but informed arbitrator. Public opinion soon assumed this role.

⁹² reported, *Bytown Gazette*, 7 November 1839. See also Arthur to Colborne and Bond Head, 19, 21, 26 August 1839, *Arthur Papers*, v. 2, pp. 211, 214, 219-220; *The Church*, 24 August 1839; and *Bytown Gazette*, 20 September and 25 October 1839.

many people were agitating questions that were too divisive too soon after armed revolt.⁹³ Nonetheless, and despite reform charges to the contrary, even the staunchest tory was unwilling to openly deny the right of public discussion.⁹⁴ It was easier to deny that the Durham Meetings contributed to such discussions. They were more "agitation" than "reflection."⁹⁵ Supporters, of course, saw them as vehicles for re-establishing the rights of public assembly and discussion, increasing the spirit of inquiry, and expressing public opinion.⁹⁶

Whatever their disappointment, conservatives were again forced to adopt the tools and strategies of their opponents. If Durham's *Report* was "poison," then the "antidote" was the dissemination of thousands of copies of conservative rejoinders, such as Christopher Hagerman's *Report of the Select Committee of the Assembly*, Sir Francis Head's *Narrative*, and the *London Quarterly Review's* favourable comparison of Head's policies with those of Durham.⁹⁷ The rebellion demonstrated the risk in letting criticism go unanswered. It had to be "promptly exposed and refuted."⁹⁸ The lesson drawn in 1839

⁹³ *Cobourg Star*, 21 August; Fidelis, *Cobourg Star*, 16 October; and *British Whig*, copied, *Western Herald*, 14 October 1839.

⁹⁴ The *Mirror*, 8 February 1839, charged that post masters were not distributing reform papers and a week later charged that the government feared education and insisted that a return of Habeas Corpus was required before public opinion could again be expressed. The *Hamilton Express*, copied *Mirror*, 26 July 1839, interpreted opposition to Durham meetings as attempting "to put a padlock on the mind" and amounted to telling the people "that they have no right to think..." Conservatives did counsel that less time should be spent on politics and more on providing for one's family. See J.K. *Plain Reasons*, p. 5; and *British Whig*, copied *Western Herald*, 14 October 1839.

⁹⁵ *The Church*, 23 November 1839, *Niagara Chronicle*, copied, *Cobourg Star*, 11 September 1839.

⁹⁶ *Canadian Oak*, *Brockville Recorder*, 15 August 1839; *Backwoodsman* [Peterborough], copied, *Brockville Recorder*, 29 August 1839; A Correspondent, *British Colonist*, 28 August 1839; and Egerton Ryerson, "*The Story of My Life: Being Reminiscences of Sixty Years' Public Service in Canada*," J. George Hodgins, ed., (Toronto: William Briggs, 1883), p. 259. For more on these meetings, see Carol Wilton, "'A Firebrand amongst the People': The Durham Meetings and Popular Politics in Upper Canada", *Canadian Historical Review*, (v. LXXV, n. 3, September 1994), pp. 346-375.

⁹⁷ The *Patriot* printed 2,000 copies of Hagerman's report and 5,000 cheap copies of the *London Quarterly Review's* critique. It hoped that they would be purchased by "the friends of good order" for gratuitous distribution, but only 2,000 had been disposed of a month later. *Patriot*, 10 May, and 5 and 30 July, 1839; and *Bytown Gazette*, 17 July 1839.

⁹⁸ *Chronicle & Gazette*, 20 August 1838.

by the organ of the Anglican hierarchy. (marking the anniversary of the beheading of Charles I), was "not to despise or neglect the power of the press." After quoting Lord Clarendon on the role of sedition in 1641. *The Church* concluded that the time had come in Upper Canada when

Politics, civil and ecclesiastical, when assailed by the Press, must be defended by the Press. It may not be dignified, it may be attended with some inconvenience, for a government to descend into the arena of daily discussion, and to defend its actions, as if it were on trial before a jury of the country, - it may be all this, and more - but it is nevertheless necessary for the preservation of the state."

The public sphere could not be ignored. The government must act "as if it were on trial" before the court of public opinion - a daily court no longer limited to choosing representatives at periodic elections.

A couple of months later, Henry Ruttan, late Speaker of the Assembly, presented a report of the select committee "appointed to enquire into the present mode of publishing the Statutes and other public documents and papers." The committee, ignoring its mandate, had investigated newspapers as a cause of the rebellion. It recommended that an official government newspaper be established to disseminate general political information as widely as possible. Radical newspapers, according to the report, had gone largely unopposed, particularly in "remote agricultural parts" where rebellion had been strongest. The report adopted a reform article of faith - free governments had nothing to fear from public scrutiny:

" *The Church*, 2 February 1839. The founding of this paper to garner lay support for the Anglican hierarchy was itself an example of this development. Its prospectus, *Cobourg Star*, 19 April 1837, noted that "[t]he method of effecting so desirable a result - of allaying hostility from without, and of strengthening concord and promoting tranquility within, by a Weekly Paper, is one, of which various experiments in this country as well as in the United States have tested the utility and the success..." It claimed 750 subscribers. On the denominational use of print, see Nathan O. Hatch, "Elias Smith and the Rise of Religious Journalism in the Early Republic", *Printing and Society in Early America*, William L. Joyce, David D. Hall, Richard D. Brown and John B. Hench, eds., (Worcester: American Antiquarian Society, 1983), pp. 250-277.

A Government Press therefore is not to be regarded as an instrument for arbitrary power. but as a firm ally of popular liberty - as a correspondence addressed by the Governor to the Governed. with a view of arriving at the true state of their feelings. opinions and wishes. - as a means of shedding truth and light. and clearing away the mist of error and falsehood - not of enwrapping the public in mystery and darkness.¹⁰⁰

Alan Fairford, another advocate of a government newspaper. cited Hannah More's efforts in Britain during the French Revolution as a positive model. They had proven more effective than a "rural police." The comparison with armed government forces highlights the emphasis some conservatives still placed on the negative functions of maintaining order and defeating demagogues rather than the more positive function of promoting informed discussion.

Nonetheless. printing a government newspaper assumed that readers were capable of evaluating information from alternative sources. Fairford believed that "it is not because the agricultural population either of England or of Canada are [sic] inaccessible to reason. that they are often led into a belief in the most palpable falsehoods;" but because their "craving for political information" had been met solely "by men hostile to every existing institution."¹⁰¹ Reluctantly and not without dissenters. conservatives recognized the capacity of newspaper readers and the ideals of the public sphere. People demanded political information. It was only prudent to expose them to arguments supporting the existing constitution.

The *Quebec Gazette*. a leading opponent of responsible government. pointed to an

¹⁰⁰ Ruttan's Report. dated 29 April 1839. was copied by the *Cobourg Star*. 3 July 1839. The Report was strongly endorsed by the *Star* and *Bytown Gazette*. 24 July 1839. The *British Colonist* and *Examiner* objected to the notion that there was nothing but "imaginary wrongs" in the province before the Rebellion and. along with the *Brockville Recorder*. protested the idea of using public funds for such partisan purposes. As the last put it. "allow reason and argument to have fair scope. and we are willing to abide by the consequences." *British Colonist*. 1 May and 24 July; both copied. *Christian Guardian*. 8 May and 31 July; *Examiner*. 8 May; and *Brockville Recorder*. 18 July 1839.

¹⁰¹ Alan Fairford. "The Press". *The Church*. copied. *Patriot*. 3 July 1838. The *Chronicle & Gazette*. 29 February 1839. repeated similar arguments when it advocated an official government organ.

inconsistency in its review of Ruttan's Report: "However much it may be desirable to stand well with the inhabitants of the colony, its [the government's] responsibility is not to them, but to the Imperial Government."¹⁰² However perceptive, this offered no solution. The *Niagara Reporter* began an editorial with the disclaimer that "we do not like discussions respecting theories of government in the public prints as the majority of the readers must be totally unqualified for forming decisive opinions." Nonetheless, such reluctance had to be overcome. The editorial was a lengthy critique of responsible government. "So much error has however already been imbibed by this channel, that through the same medium, endeavours must be made to counteract it."¹⁰³ Fighting argument with argument to inform popular deliberation was the essence of the public sphere.

Next to the press, education was a common conservative theme in the wake of the rebellion. The Grand Jury of the Gore District attributed the rebellion to the "want of a more general and better system of public instruction," while others simply blamed "ignorance."¹⁰⁴ Radicals could not have incited rebellion if more people had been able to evaluate motives, challenge arguments, and grasp their duties as subjects. Convinced that the rebellion had resulted from a lack of understanding of mixed monarchy, Dr. John George Bridges toured Upper Canada in 1839 delivering a lecture entitled, "A Digest of the British Constitution."¹⁰⁵ The purpose of such individual efforts, a government

¹⁰² copied, *Brockville Recorder*, 25 July 1839.

¹⁰³ *Niagara Reporter*, 18 January 1839.

¹⁰⁴ *Patriot*, 13 April, 1 May and 8 May 1838; *Niagara Chronicle*, 8 August 1838, copied *Christian Guardian*, 15 August 1838; *Niagara Chronicle*, copied *Western Herald*, 11 September 1838; David Walker, *Bathurst Courier*, 28 September 1838; and Amicus Mentis, *Bathurst Courier*, 11 December 1840.

¹⁰⁵ Bridges published the lecture and petitioned the Legislative Council to undertake its mass distribution. He reorganized his discussion as *The Every Boy's Book, or A Digest of the British Constitution Compiled and Arranged for the Use of Schools and Private Families*, (Ottawa Advocate, 1842). For more on Bridges see the following chapter.

newspaper, and improved schooling was the same. While there was the usual scape-goating of American teachers and text-books,¹⁰⁶ education, in its broadest sense, would "fortify the minds of our people against the wiles of the demagogue and the devices of the traitor."¹⁰⁷ For conservatives, every "proper" school was "a pillar of support to the fabric of social order and constitutional law," since "tyrants dare not oppress, and demagogues cannot delude, an intelligent people."¹⁰⁸

Reformers and radicals had been saying the same thing for years. Some conservatives still worried that too many people thought they were capable of governing the state, but they offered no positive alternative. Moreover, the number of people capable of rational deliberation was a matter of empirical observation and the standard being used. Both were easily challenged by reformers.¹⁰⁹ If the conservative press could bring people to see through demagogues and weigh competing arguments, the collective judgement of such a public deserved a more positive role in government. For some, education might be intended to make subjects more governable, but it would also make them more capable of governing. Increasingly, conservatives were participating in public debate and relying on the potential capacity of the people in much the same way as their opponents. The more abstract the question or the more popular the audience, the more wary conservatives were of appeals to public opinion. It was now only a question of degree.

¹⁰⁶ *Patriot*, 13 April, 1 and 8 May, 1838; David Walker and Dugald C. McNab, *Bathurst Courier*, 28 September 1838 and 18 January 1839; and *St. Catharines Journal*, copied, *Western Herald*, 13 June 1839.

¹⁰⁷ *The Church*, 5 May 1838 and also 23 June 1838.

¹⁰⁸ *Niagara Reporter*, copied, *Western Herald*, 31 July 1838.

¹⁰⁹ For tory doubts about popular capacities see *Niagara Chronicle*, copied, *Western Herald*, 11 September 1838; and *Niagara Reporter*, 18 January 1839. The former was bitterly attacked by the *Christian Guardian*, 20 February 1839, for libelling the people and for not supporting the selling of the Clergy Reserves to finance education. On the creation of political subjects, see Bruce Curtis, *Building the Educational State: Canada West, 1836 - 1871*, (London: The Althouse Press, 1988).

Despite these developments, conservatives still had not integrated the concept of public opinion into their constitutional outlook. The ideals of the public sphere they participated in and attempted to harness to their own ends were held in an increasingly untenable alliance with their constitutional theory. In the wake of the rebellion, self-styled moderates explicitly integrated constitutional theory and public opinion. The *Upper Canada Herald* agreed with conservatives that armed revolt had resulted from abuses of the public sphere.¹¹⁰ but it worried that conservative attacks on "agitation" went too far:

In every free state there will and must be opposition. Competition is the life of trade, and there must be opposition for the honours, power and emoluments of government as much as for the profits of trade. And the party competing with the possessors of government places and authority, must, of course, do so by proposing other plans professedly better than those of their opponents. The discussions thus raised may degenerate into personal contests, either verbal or written, but that is no good reason for wishing to suppress them altogether, in order to reduce civil society to the state of a stagnant pool. The contest of party though bitter and prolonged, are [sic] not only a thousand times better than the quietude of despotism, but are also productive of good by eliciting truth and talent, sharpening wit and wisdom, enforcing frugality, and compelling the useless drone to give place to the working bee....Bad must be the state of that government which is not made better by the conflict of opinions in political warfare.¹¹¹

Competition resulted in "truth and talent" not rebellion.

"Moderation," defined as the desire to persuade by rational argument rather than attack by "mutual abuse," was the lesson of the rebellion.¹¹² In order to act wisely and with strength, modern governments required active popular support, not loyal

¹¹⁰ *Upper Canada Herald*, 20 March and 10 April 1838.

¹¹¹ *Upper Canada Herald*, 22 May 1838.

¹¹² *Upper Canada Herald*, 24 July 1838.

acquiescence. To secure that support, the state "should govern itself by their [the people's] opinions when deliberately formed and expressed." Government could try to shape opinions on questions that had not been "fully discussed and determined by the people." After such discussion, however, "for the government to attempt to carry any measure in opposition to that deliberate judgement, is at once both foolish and criminal; - foolish because utterly useless; - criminal because it is an attempt to violate the conditions on which government exists...the welfare of the people, and they are the only final judges of what is adapted to promote their welfare..."¹¹³ Government based on public opinion was a prerequisite for state formation.

After the rebellion, other papers, such as the *British Colonist*, *Palladium of British America*, and *St. Catharines Journal*, rejected both political extremes. They were the natural proponents of calm deliberation and the general rationality of the public, and for dampening partisanship.¹¹⁴ The *Christian Guardian* asserted the utility of constitutional opposition while denouncing partisan extremism.¹¹⁵ It published an essay on the principles of government in 1839 that concluded that "not every hasty or transient ebullition of public feeling...but public opinion, temperately, legally, steadily, and with sufficient frequency expressed, is to be regarded by rulers as a rule of legislation...If public opinion, thus expressed, is to be utterly disregarded or but slightly heeded, then the principles and end of civil government are essentially changed and are perfectly

¹¹³ *Upper Canada Herald*, 18 September and also 23 October 1838.

¹¹⁴ *The Scotchman/British Colonist*, 1 February 1838, and 28 August 1839; *Palladium of British America*, 28 March 1838; and *St. Catharines Journal*, 26 January, and 2 March 1839; and 3 December 1840. In the first of these, the *Journal* rejected the version of responsible government advocated by the *Examiner* on the grounds that the people of Upper Canada were not yet capable of such self-government but supported checks to ensure that government responded to "a more calm and deliberate state of publick [sic] mind."

¹¹⁵ *Christian Guardian*, 7 January, and 18 March 1835, 30 November 1836; 9 May and 19 December 1838. The first of these editorials concluded that "discussion is favourable to truth of every kind."

inexplicable."¹¹⁶

It was no surprise, then, that the new governor, Charles Poulett Thomson, later Lord Sydenham, turned to Egerton Ryerson and John Wauby, editors of the *Christian Guardian* and the *Upper Canada Herald* respectively, in his attempts to mould public opinion.¹¹⁷ In March 1840, Ryerson urged the establishment of a government organ to promote the liberal-utilitarianism of the Governor and his supporters. As Ryerson told the Governor, the time was ripe for such an organ since "now is the time - perhaps the only time - to establish our institutions and relations upon the cheapest, the surest, and the only permanent foundation of any system or form of Government - the sentiments and feelings of the population."¹¹⁸ Ryerson wrote the prospectus for the new *Monthly Review* but declined to serve as its editor in favour of John Wauby. The *Review's* discussion of public opinion was taken almost verbatim from several editorials in the *Upper Canada Herald* quoted above.¹¹⁹

The vexed question of responsible government was now largely about how, not if, public opinion was to be integrated into existing institutions. Robert Baldwin and Francis Hincks' *Examiner* demanded that executive powers be vested in a colonial cabinet collectively responsible to the elected Assembly. This alone would ensure the primacy of public opinion. Instead, Colonial Secretary Lord John Russell, Governor Thomson and their local supporters insisted that the appointed governor had to remain the effective head

¹¹⁶ M.N., "The Necessity, the Origin, the End, and Principles of Civil Government", *Christian Guardian*, 3 April 1839.

¹¹⁷ Government advertising was transferred from the *Patriot* to the *Guardian*. The Governor also requested that Ryerson use the Methodist organ to correct what he saw as errors in other newspapers. *Patriot*, 21 and 25 February 1840; and Ryerson, "The Story of My Life", p. 264. Sydenham told Russell that the *Guardian* was "the only decent paper in both Canadas," quoted, C. B. Sissons, "Ryerson and the Elections of 1844", *Canadian Historical Review*, (v. XXIII, n. 2, June 1942), p. 161.

¹¹⁸ Ryerson, "The Story of My Life", pp. 264-266.

¹¹⁹ *The Monthly Review*, (v. 1, n. 2, February 1841), pp. 82-87.

of the executive. The *Christian Guardian* argued that Russell's famous despatch on responsible government "make[s] the House of Assembly the constitutional medium of Public Opinion without any intervention of heads of departments. Responsibility is connected with both systems; both systems contemplate a Government accordant with public opinion."¹²⁰

From this perspective, a colonial cabinet was not only incompatible with the imperial connection but it placed too much power in the hands of elected representatives. Canadian representatives should not be entrusted with as much power as their British counterparts, in part, because public opinion was not yet as readily deferred to in Canada as in Britain. As Thomson put it, "you must keep power in the Executive, to govern Colonies where the M.P.P.s have not the same discretion, or are under the same control of public opinion, as in older Countries."¹²¹ This need for an executive independent of elected representatives became the fault-line between those moderates and reformers who supported Governor Metcalfe and those who supported Robert Baldwin in the so-called Metcalfe crisis of 1843-44.

The Metcalfe crisis resembles the events leading up to the election of 1836. Both began as disputes between the British governor and his resigning advisers led by Robert Baldwin. It was the Metcalfe crisis, however, that secured the prominence of public

¹²⁰ *Christian Guardian*, 15 April 1840.

¹²¹ Thomson to Arthur, 15 May 1840, *Arthur Papers*, v. 3, pp. 67-68. See Ian Radforth, "Sydenham and Utilitarian Reform", *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, Allan Greer and Ian Radforth, eds., (Toronto: University of Toronto Press, 1992), pp. 64-102.

opinion. It was the first great example, and perhaps the best in English Canadian history, of the public sphere in action. The unprecedented scale of the debate incorporated more people into the public.¹²² intensified its discussions, and brought more information to bear on the increasing number of questions under its purview. The structure of the debate - its length, number of participants and accessibility - drew explicit statements about the ideals of the public sphere and the role of public opinion.

From his seat in the Assembly, Robert Baldwin, Attorney General for Upper Canada, confirmed repeated rumours of friction with the Governor-General by announcing that all but one member of the first reform Executive Council had resigned. Their majority in the House remained, but Baldwin explained that "a state of avowed antagonism" existed between the leaders of that majority and the Governor over the right of the Executive Council to offer its advice on all executive appointments. Speaking for the Governor, the sole remaining Executive Councillor, Dominick Daly, responded that reform leaders had demanded the "surrender" of the prerogatives of the Crown "for the purchase of Parliamentary support." They sought to make party membership rather than service to the Crown the grounds for appointment to office. Metcalfe adhered to responsible government but if "the late Council mean that the Council is to be supreme, and the authority of the Crown a nullity, then he cannot agree with them, and must declare his dissent from that perversion of the acknowledged principle."¹²³

From this opening volley, most of the contentious points were in play: the meaning of responsible government, its applicability to a colony, the exercise of royal

¹²² Voting turn-out was about 40% higher in 1844 than in 1841 but the increase may have been due to Baldwin's electoral reforms of 1842. John Garner, *The Franchise and Politics in British North America, 1775 - 1867*. (Toronto: University of Toronto Press, 1969), p. 106.

¹²³ Robert Baldwin and Dominick Daly, 29 November 1843. *Debates of the Legislative Assembly of United Canada*, Elizabeth Gibbs, general ed., (Montreal: Centre de Recherche en Histoire Economique du Canada Français), pp. 1034-1041.

prerogatives, the uses of patronage, and the legitimacy of political parties. The debate soon raised more abstract questions about the nature of good government. The length of the debate also added to its complexity and range. For some it began in 1842 when Baldwin and LaFontaine had been appointed to the Executive Council by Governor Bagot or when the conservatives' had attempted to revive, yet again, the British Constitutional Society. Rumours of a rift with Metcalfe began soon after the new Governor arrived and while the ministers resigned in November 1843, a new ministry was not formed until the autumn of 1844. Unlike Head, Metcalfe did not immediately turn to conservatives to form a new Council. Had Metcalfe been able to complete an Executive Council soon after the resignations or avoid a general election, a more limited debate might have resulted. The need to explain the year-long delay and mobilize the electorate created both the space and the need for a full-scale public debate. "Normal politics" were suspended for almost a year. The lines of opposition were also unclear. Metcalfe's supporters ranged from the *Cobourg Star's* total rejection of any form of responsible government to positions hardly distinguishable from Robert Baldwin's. His supporters were often as preoccupied with defining themselves against each other as against their common opponent.

With the adjournment of the Assembly, the ex-Ministers established the Reform Association. It published the verbatim proceedings of its first general meeting, its constitution, "several thousand copies"¹²⁴ of a lengthy *Address to the People of Canada*, an *Address to the Electors of Frontenac*, and planned a number of *Tracts for the People*, although the first, *The Resignation*, was the only one produced. The *Banner*, which claimed the largest circulation in the province, printed four times the usual number of its

¹²⁴ *Mirror*, 24 May 1844.

first issue of 1844 carrying speeches at a dinner for the late Administration.¹²⁵ As many as three thousand people attended a Reform Association meeting at Sharon.¹²⁶ What they portrayed as the "means of which correct and most important information is being diffused among the people." Metcalfe's supporters characterized as the means "to flood the country with addresses and harangues."¹²⁷ The Woodstock *Monarch* and *Patriot* reprinted Henry Ruttan's report of 1839 recommending a government newspaper to counter radicals' use of print.¹²⁸ An anonymous republican told the Governor that "Canada is not at present about to battle for her rights with a sword, she will do this with the tongue, and with the pen."¹²⁹ The Governor's supporters were indeed afraid that the Reform Association would achieve with the tongue and the pen what only six years before Mackenzie had failed to accomplish with the sword. They responded in kind.

Older attitudes toward large-scale participation in the public sphere survived. The *Monarch* wanted knowledge of the constitution more widely disseminated "by the free circulation of sound, loyal, and ably conducted newspapers. As little, or even less, objection could lie against this employment of a portion of public money as against the payment of an efficient police."¹³⁰ Another tory organ argued against the establishment of

¹²⁵ *Banner*, 1, 5 and 19 January 1844. In February 1844, James Lesslie, editor of the *Examiner*, told Robert Baldwin that the *Banner* had 1,700 subscribers to his 700. That would have made 6,800 copies of the speeches given at the Reform Association dinner. Cited in J.M.S. Careless, *Brown of the Globe, Vol. One: The Voice of Upper Canada, 1818-1859*. (Toronto: The Macmillan Company of Canada, 1959), p. 40.

¹²⁶ *Mirror*, 7 June 1844.

¹²⁷ *Mirror*, 24 May 1844; *Cobourg Star*, 5 June 1844; *Patriot*, 15 and 22 March 1844; A U.E. Loyalist, *Cobourg Star*, 27 March 1844; *Church*, 26 April and 24 May 1844; and "Letters of 1844 and 1846 from Scobie to Ryerson", C. B. Sissons, ed., *The Canadian Historical Review*, (v. XXIX, n. 4, December 1948), p. 407. From his exile in New York, William Lyon Mackenzie concluded that "these reform associations, judging them by their leaders wont do much. But they keep people talking." Ensuring that people kept talking was their central objective. NAC, MG 24 B18, v. 2, pp. 122-125; William Lyon Mackenzie Papers, Mackenzie to John Stewart, 6 June 1844.

¹²⁸ *Monarch*, 9 January and *Patriot*, 16 February 1844.

¹²⁹ "An Observer" to Metcalfe, *Woodstock Herald*, 2 March 1844.

¹³⁰ *Monarch*, 9 January 1844.

an organization to counter the Reform Association as inconsistent with tory ends: "The opinions of the people are governed really by the few, and if the few were really the best men, all would go well. But this is not the case, generally, either at public meetings, or in political associations."¹³¹ Many tories persisted in seeing knowledge and instruction as a means of preserving social order. They participated in the debate because their opponents were already in the field. Reformers, on both side of the Metcalfe crisis, tended to see knowledge as empowering the people.¹³² But it was too late for the reservations of some conservatives. Even their colleagues were paying little heed. They were too busy participating in the public sphere and holding others to its ideals. Those who fought by the pen would have to live by it. Moreover, the Governor, explaining his interpretation of the constitution directly to the people in replies to public addresses, was increasingly dependent, not on conservatives, but on moderate reformers such as Egerton Ryerson and the *British Colonist* - precisely those who were most emphatic about the role of public opinion.

Thus, while the ex-ministers could count on the support of two new papers, Francis Hincks' *Pilot* in Montreal and George Brown's *Globe* in Toronto,¹³³ their opponents were also active. In November 1842, Major John Richardson issued the prospectus for the *Canadian Loyalist & Spirit of 1812* at Kingston, since "it becomes the imperative duty of every Canadian, who has the power of wielding a pen in the field of

¹³¹ *St. Thomas Standard*, 30 May 1844. The paper was referring to attempts to establish an United Empire Loyalist Association.

¹³² For the distinction see J. A. W. Gunn, "Public Spirit to Public Opinion", *Beyond Liberty and Property: The Process of Self-Recognition in Eighteenth Century Political Thought*, (Montreal & Kingston: McGill-Queen's Press, 1983), pp. 260-315. For continued conservative distaste for full-scale public debate see *Church*, 24 May; *Cobourg Star*, 27 March, and 3 April; *The News*, 9 May; and *Patriot*, 15 March 1844.

¹³³ Brown was encouraged, morally and financially, by local reformers to found the *Globe* to fight for responsible government. Underlying the connection between printed communication and politics, the *Globe* was the first paper in the province to adopt the latest, and much faster, printing technology - the rotary press. Careless, *Brown of the Globe*, v. 1, pp. 41-46.

politics, to throw himself into the breach" created by Baldwin and LaFontaine's appointment to the Executive Council.¹³⁴ In May 1843 the "leading Conservative gentlemen" of the Brock district relieved the editor of the year-old *Monarch* of his pecuniary difficulties. Four months later, they placed the paper under a "Committee of Direction" to ensure its survival.¹³⁵ Likewise, as the election approached, Edward Ermatinger, a tory candidate, purchased the reform *St. Thomas Chronicle* and renamed it the *St. Thomas Standard* "to rescue this fine District from the power of a rampant radical majority."¹³⁶ Other papers established during the crisis, including the *Niagara Argus*, *Cornwall Freeholder*, *Prescott Packet*, and *British Canadian* at Toronto, were obliged to begin with declarations of support for one side or the other.¹³⁷

Metcalfé also received over 90 supportive addresses to which he wrote individual replies. Compiled, these addresses and replies formed one of fifteen English-language pamphlets published during the crisis. Over two thirds of the addresses were from Upper Canada. The address of the District of Newcastle arrived with 4,810 signatures, Victoria District's with 1,596, Talbot District's with 1,418, and even those of smaller localities such as the Township of Whitby and the Village of Carleton Place garnered 620 and 178 signatures respectively.¹³⁸ The more noteworthy addresses and replies were copied in almost every colonial newspaper. The Governor was well aware of their value in disseminating his interpretation of the constitution. A few of his replies found their way

¹³⁴ prospectus, *Canadian Loyalist & Spirit of 1812*, 29 June 1843.

¹³⁵ *Monarch*, 23 May and 12 September 1843.

¹³⁶ *St. Thomas Standard*, 16 May 1844 and 23 May 1846.

¹³⁷ See, for example, the prospectus for the *Packett*, copied, *British Whig*, 24 May 1844.

¹³⁸ *The Addresses presented to His Excellency The Right Hon. Sir Chas. T. Metcalfé*, (Toronto: H & W. Rowsell, 1844). The *Canadian Loyalist & Spirit of 1812*, 18 January 1844, noted that the Niagara address was signed by 149 men out of an electorate of 194. Henry John Boulton, chair of the Reform Association, was Niagara's elected representative. John William Kayle, *The Life and Correspondence of Charles, Lord Metcalfé*, (London: Richard Bentley, 1854), pp. 505, 531n, noted that drafts of the replies were in Metcalfé's own hand and concluded that "colonial communities are essentially address-presenting people."

into sympathetic newspapers before they arrived in the locality to which they were addressed.¹³⁹

Metcalfé's greatest coup, however, was to convince Egerton Ryerson to enter the debate. As Ryerson told Metcalfé's Civil Secretary:

some portions of these very proceedings [of the Reform Association] will meet them in a way they little expect - not, to be sure, before a jury of twelve men, as did the nine months' proceedings of O'Connell and his associates, but before the jury of the whole country, and upon principles sanctioned by the Constitution and history of England, which, I believe...will result in a triumphant acquittal and justification of the Vice-Regal defendant.¹⁴⁰

Ryerson became chief counsel for the defendant. The judicial analogy, with even the constitution and the governor on trial, underlined the primacy of public opinion.

In Ryerson's own words:

The ablest and most meritorious public men in the province were arrayed on the opposite side; but I felt that truth and justice did not rest on numbers - that there was a public, as well as an individual, conscience, and to that conscience I appealed, supporting my appeal by reference to the past professions of Reformers, the best illustrations from Greek, Roman, and English history, and the authority of the best writers on constitutional government, and moral and political philosophy, and the highest interests, civil and social, of all classes of society in Upper Canada.¹⁴¹

Sir Charles Metcalfé Defended began as letters to the *British Colonist* and ran to 182 pages. It concluded that "[t]he independent and impartial judgment which I myself endeavour to exercise, I desire to see exercised by every man in Canada."¹⁴²

¹³⁹ *Woodstock Herald*, 23 March 1844, reported that the reply to the Brock District Council was printed in a Montreal paper before it arrived in Woodstock. A similar claim was made by the *Hamilton Journal & Express*, copied, *Mirror*, 16 February 1844; regarding the reply to the Gore Address.

¹⁴⁰ Ryerson to Higginson, *The Story of My Life*, p. 318.

¹⁴¹ Ryerson, *The Story of My Life*, p. 329.

¹⁴² Ryerson, *Sir Charles Metcalfé Defended*, p. 164. Besides the *Colonist*, Ryerson's letters were copied in the *Chronicle & Gazette*, and less fully in the *Chatham Journal* and *Bytown Gazette*. The announcement and preface can be found in any number of papers including the *Banner*, *Brockville Recorder*, *Cobourg Star*, and *Examiner*. There were many other papers such as *The Church* that refused to copy them but advertised their existence by frequent criticism.

Critics were quick to dismiss it as too long, too laborious, and too technical.¹⁴³

Yet Robert Baldwin Sullivan, assuming the name Legion, felt compelled to respond point by point in letters to the *Examiner*, republished as the 215-page *Letters on Responsible Government*. The efforts of the Governor and Hugh Scobie, editor of the *British Colonist*, to distribute Ryerson's work suggest that, like Sullivan, they disagreed with those who dismissed the power of pamphlets. Scobie produced 2,000 extra copies of the *Colonist* to disseminate individual letters to his own subscribers. An issue of the *Colonist* containing one of them was sent to every subscriber of the *Christian Guardian*. He also distributed 10,000 free copies of Ryerson's less noticed 63-page *Reply to Legion* to friendly editors throughout Upper Canada. That made one *Reply* for about every seven electors. Copies of an earlier pro-Metcalfé pamphlet by Isaac Buchanan were made available to twice that number, or to more than one in four potential voters.¹⁴⁴

Given this unprecedented debate, it is not surprising that commentators were explicit about its ideals. As the *Chronicle & Gazette* put it, "the free circulation of political sentiment, like the free circulation of the air we breathe...is essential for the political health of the community."¹⁴⁵ Tories, moderates, and reformers alike frequently contrasted "reason," "argument," "judgment," and "calm discussion," with "abuse."

¹⁴³ *Globe*, 6 August, 11 June, and 9 July 1844; *The Church*, 7 June and 11 October 1844; *Mirror*, 12 July 1844; *Woodstock Herald*, 20 July 1844; and *Monarch*, 25 June and 23 July 1844; where the pamphlet was dismissed as a "farrago of historical names culled from a classical dictionary."

¹⁴⁴ Scobie to Ryerson, "Letters", pp. 397, 407, 410. These figures do not include distribution through normal newspaper circulation. For the ratio of population to voting public in 1861 see Garner, *The Franchise and Politics in British North America*, p. 115. Apparently, anyone who purchased one copy of the *British Colonist* could receive four copies of Isaac Buchanan's pamphlet to distribute "to counteract the misrepresentations so industriously circulated by the late Ministry." *British Colonist*, 5 January 1844. Two copies were also given to subscribers of the *Toronto Herald* according to the *Mirror*, 26 January 1844.

¹⁴⁵ *Chronicle & Gazette*, 27 August, 23 November, 21 December 1842; and also *Mirror*, 30 December 1842; "public meetings and public discussions, tend to enlighten the electors and beget a spirit of enquiry."

"effusions," "assertions," and "passion."¹⁴⁶ If reason and the merits of an argument were the sole standard, then it did not matter who made the argument. Much of the commentary during the crisis appeared anonymously. Editors condemned attempts to connect the person of the editor with the contents of an editorial. They could turn a newspaper into a "vehicle for abuse and personalities," and away from "rational gentlemanly debate."¹⁴⁷ As the author of an anonymous pamphlet put it, "for the purposes of an argument that is strictly political, and neither assails private character nor deals in other than notorious facts, there is no occasion for the writer's name to be made public. On the contrary, if he be a well known man, his name will be likely to prevent his argument from being read dispassionately."¹⁴⁸ The *St. Catharines Journal* came closer to the ideal than many by copying Ryerson's letters although it disagreed with them: "There is something to be learned from them: "There's music everywhere." Mr. R.'s character is no consideration with the reflecting - it is with argument that they have to deal. The authority of names is the argument of the weak, and little regarded by all who have claims for unbiased judgement and freedom of thought."¹⁴⁹

It is easy to be cynical about colonial political practice. In part, there were so many affirmations of the ideal of rational-critical discussion because of how short the reality fell. According to the *Bathurst Courier*, "fair and legitimate discussion is the proper course to follow...But the question is not being fairly discussed - quite the

¹⁴⁶ For example, *Cobourg Star*, 23 March 1842; *Monarch*, 8 September 1842; *Woodstock Herald*, 13 July; *Banner*, 12 January; and *The News*, 20 September 1844.

¹⁴⁷ *Cobourg Star*, 23 March 1842.

¹⁴⁸ anon., *Responsible Government for Canada....* notice. As R. B. Sullivan put it in reference to Ryerson, "I think it a piece of misjudged egoism, to mix the name of a public writer up with his arguments: it always is calculated to mislead." Legion, *Letters on Responsible Government*, (Toronto: Examiner Office, 1844), p. 16.

¹⁴⁹ *St. Catharines Journal*, 14 June 1844; and also *Mirror*, 12 July 1844.

reverse."¹⁵⁰ Nonetheless, contemporaries now measured their conduct against the ideals of the public sphere. The Metcalfe crisis did not live up to them, but it established their primacy and came closer than most political contests.¹⁵¹

The prominence given to the ideals of the public sphere helped to undermine the relevance of the theory of mixed monarchy. The Metcalfe crisis was formally a disagreement between the representative of the British Sovereign and leaders of the majority of the local Assembly. Who should judge? Ryerson thought it was the imperial government, but

Mr. Baldwin practically renounces the Imperial authority by refusing to appeal to it, and by appealing through the Toronto [Reform] Association to the people of Canada. If the people of Canada are the tribunal of judgement on one question of constitutional prerogative, they are so on every question of constitutional prerogative. Then the Governor is no longer responsible to the Imperial authority, and Canada is an independent country.¹⁵²

Public opinion would adjudicate. There was nothing illogical in appealing to the public to convince them that they were not the judge on this point. But by having to publicly debate the point, Ryerson conceded that they had the power, if not the right, to decide and that they had the ability to understand the arguments. They were to judge who should

¹⁵⁰ *Bathurst Courier*, 27 February 1844.

¹⁵¹ Thus there is much in C. B. Sissons' conclusion, that "its judgement informed by full and free discussion, Canada West had spoken for moderation." Sissons, "Ryerson and the Elections of 1844", p. 176.

¹⁵² Ryerson, *Sir Charles Metcalfe Defended*, pp. 11, 34-35, 80, 83, 130. Sullivan thought this a "slavish doctrine," Legion, *Letters on Responsible Government*, pp. 19, 56-60, 135. The *Chronicle & Gazette*, 24 January; *Canadian Loyalist & Spirit of 1812*, 8 February and *The News*, 23 May 1844 agreed with Ryerson that the final umpire was the imperial government. The point was hotly disputed by the *Examiner*, 3 July, *Montreal Times*, and *St. Catharines Journal*, 29 March 1844.

judge. If they were capable of such judgements were they not also capable of governing themselves? If they were capable of knowing when to defer to others, had they not outgrown the need for a Governor and the monarchical system he represented?

Mixed monarchy incorporated the checks of royal governor and appointed upper house, in part, because of the presumed incapacity of the people to govern alone. As the next chapter argues, the Governor and his conservative supporters accused the ex-Councillors of trying to subvert mixed monarchy by advocating a form of responsible government that would extinguish these checks. Metcalfe's moderate supporters also charged that the constitutional position of the Reform Association would monopolize power in the Assembly, but their emphasis was different. As the *British Colonist* put it:

The present opponents of Sir Charles Metcalfe, with Mr. Baldwin as their mouthpiece, would extend the direct power of the Assembly beyond its legislative limits, under a mixed monarchical government, overlooking the stubborn fact of its being a united public opinion that must be obeyed, and not the furious dictum of the individual, petty though for the time, popular tyrant.¹⁵³

In other words, the people's representatives should not be the sole interpreters of public opinion. Nonetheless, local public opinion, not a mixture of three social estates or three forms of government, was the basis of good government. It "must be obeyed." The preference, expressed here by the *Colonist*, for more than one directly elected assembly, was compatible with the American system of two legislative chambers and an elected presidency. The central question then revolved around different mechanisms for expressing public opinion - not around balancing monarchy, aristocracy, and democracy.

¹⁵³ *British Colonist*, 20 September, and 12 November 1844.

Public opinion was the only safe basis for modern government. Public opinion was what governments were to be responsible to. Ogle Gowan argued that the major benefit of responsible government would be to "place the Executive government of the province, at the *head* of public opinion, instead of leaving it at the *tail*."¹⁵⁴ Public opinion, no longer the rhetorical preserve of those excluded from political institutions, had to be incorporated into the very structure of those institutions. Government based on public opinion called for democratic participation but it was participation of a certain type: calm deliberation rather than violent action; submission to the decisions of the majority rather than continued resistance. It seemed to steer a middle ground between the despotism of monarchy and the tyranny of democracy; between the irresponsibility of pre-1840 government in Upper Canada and the anarchy of Jacksonian democracy. Government in the United States was seen by many Upper Canadians, as well as by de Tocqueville, as driven by the passions of the mob rather than public opinion.¹⁵⁵ Government by public opinion promised a system where authority came from the people but was still firmly tied to reason; where people were formally equal but where the government and the privileged remained opinion-leaders; where debate and agitation were beneficial but where government rested on the peaceful and stable outcome of those conflicts; where universal access was proclaimed but where the effective participation of some was still limited.¹⁵⁶

¹⁵⁴ *An Important Letter on Responsible Government*, (Toronto: Examiner Office, 1839), p. 7.

¹⁵⁵ *Western Herald*, 5 June 1838; "the inestimable privilege of expressing our opinions - of freely discussing matters of church and state...can no longer be enjoyed in the "great republic in the world." The very temples of liberty are razed to the ground, to gratify the demonic vengeance of an irresponsible mob." Robert Baldwin Sullivan was adamant that "public opinion does not practically prevail in the United States." "Report on the State of the Province, 1838", *Arthur Papers*, v. 1, pp. 161-162.

¹⁵⁶ Keith Michael Baker, "Public opinion as political invention", esp. pp. 190-197, argues that the concept in France occupied a middle ground between French absolutism and the perceived anarchy of British politics. The concept also occupied a middle ground in Upper Canada but against Jacksonian America. It never took on the idealist or Rousseau characteristics of unity that Baker ascribes to it in France.

What counted as "reasonable," "moderate" or "informed" was not self-evident. The knowledge and consistency of the "public" could always be contrasted with the ignorance and fickleness of the "people." Attempts to exclude certain groups or opinions from the "public" continued, but the criteria for legitimate exclusion had shifted. Instead of social standing, law or prescription, exclusion was now to be based on denigrating a group or individual as irrational or ill-informed.

Such a shift did little in the short term to alter the status of marginalized groups in politics, including women. Many were undoubtedly aware of the political debates around them, read or even owned newspapers, frequented public spaces, and perhaps attended political meetings. The anonymity of much of the published discourse did not, in theory, preclude participation by individual women. Not only was such participation undoubtedly rare, but, more importantly, it was not participation by women as such but by anonymous writers assumed to be male. Seven women did vote in the 1844 election to ensure the defeat of a reform candidate, but their participation prompted reformers to explicitly exclude women from Upper Canada's franchise for the first time when they consolidated electoral laws in 1849.¹⁵⁷ At its most political, the public remained almost exclusively male. Gendered language, such as referring to a strong case as a "manly argument," persisted, although Cecilia Morgan argues that the use of such language was declining by the 1840's. She notes that 'public man' was increasingly portrayed as a universal, impartial figure without connection to private or familial interests.¹⁵⁸

The revolution represented by the new status of public opinion should not,

¹⁵⁷ Both the *Patriot* and *Upper Canada Herald* were owned by widows of their former owners. A toast to the "ladies" was proposed at the end of a meeting of the Reform Association, although the public record is almost always silent regarding their presence. *Globe*, 25 September 1844. Garner, *The Franchise and Politics in British North America*, p. 159.

¹⁵⁸ Morgan, *Public Men and Virtuous Women*, p. 197.

however, be under-estimated because its universalist language and potential were not immediately realized in practice. It welcomed the opinions and participation of more Upper Canadians than the theory of mixed monarchy. Moreover, by offering a "utopian promise" of universal access based on formal equality and the ability to reason, the public sphere was "permeable to themes and persons representing the interests of those excluded."¹⁵⁹ The excluded would later claim admission to the public sphere using the arguments of the public sphere itself. Public opinion promised a government based on reason and participation rather than unquestioning obedience, domination, violence, birth, revelation, or tradition. Against such alternatives it was a revolution, even if one at first largely limited in practice to male property-owners.

By charting the rise of the concept of public opinion in some detail, this chapter has emphasized the degree to which the concept was part of a rhetorical strategy. It provided an alternative source of legitimacy for those who felt excluded from traditional institutions. The resulting public contests for power drove supporters of those institutions, however reluctantly, to participate in public debate, to make their own appeals to public opinion and to attempt to mould it. The rise of voluntary associations and newspapers provided the sites, expectations, and mechanisms for such social communications. By 1844, it was generally recognized that those who won the war of opinion had the right to govern. Commentators continued to debate the relative merits of different institutional mechanisms to achieve a government by discussion. The goal was no longer in dispute.

¹⁵⁹ Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory*, (Cambridge Massachusetts: The MIT Press, 1992), p. 227.

In 1844, Robert Baldwin Sullivan rightly pointed out that "in 1794 [1791?] when a representation was given to the Canadas, there was no popular opinion, properly so called...[but a]s the population became numerous, and as education became more generally diffused; and as the people became more accustomed to a representation, popular opinion grew with the growth of the country." Like this chapter, Sullivan added a political dimension to the rise of public opinion. For Sullivan, those whose power rested on social status or the institutions of mixed monarchy had refused to defer to public opinion.¹⁶⁰ What Sullivan portrayed as a straightforward struggle between the voices and detractors of public opinion, this chapter has portrayed as a much more confused contest of many actors, including the government itself. Each struggled with and attempted to appropriate an emergent public sphere. Consciously or not and with different goals and levels of sincerity, these actors recognized, participated in, and attempted to manipulate that sphere. They helped to invent "a united public opinion that must be obeyed."

¹⁶⁰ Legion, *Letters on Responsible Government*, p. 86.

PART THREE

FACING THE ALTERNATIVES

... looking at Westminster through the wrong end of a telescope ...

Charles Dickens at Halifax, 1842

The amount of time that people are willing to waste in hearing each other talk is a very important constituent of our political life.

Sir Oliver Franks on British democracy, 1963

CHAPTER SIX

"we are become in every thing but name, a Republic:" The Metcalfe Crisis and the Demise of Mixed Monarchy

Historians have long recognized the importance of periods of crisis in articulating and transforming political language. The debate and mobilization required by the American Revolution destroyed familiar concepts or gave them new meanings.¹ The Metcalfe crisis was the final signpost on Upper Canada's conceptional road to democracy. It lacked the scale of the American Revolution, but it forced the articulation and rethinking of the basics of political discourse in Upper Canada. As the previous chapter argued, the Metcalfe crisis established the primacy of the ideals of the public sphere. It was no coincidence that the same crisis revealed the incapacity of the theory of mixed monarchy to sufficiently capture either the ideal or the reality of Upper Canada's constitution. It also exposed the marginal place occupied by the language of social estates. Debates about the nature of good government and the ideal social structure were not new, but the Metcalfe crisis was a crucible. It was the great political and intellectual trial that found long-standing assumptions and principles wanting.

From the end of November 1843, when all but one member of the first reform Executive Council resigned, to the elections of November 1844, Upper Canadians debated

¹ Gordon S. Wood, *The Creation of the American Republic, 1776 - 1787*, (New York: Norton, 1972, 1969) and Terrance Ball and J. G. A. Pocock, eds., *Conceptual Change and the Constitution*, (Lawrence: University Press of Kansas, 1988).

the meaning of responsible government, the nature of empire, the scope of royal prerogatives, the safest method to dispense patronage, and the legitimacy of political parties. Only by incorporating various themes into ever more encompassing arguments could something resembling order be imposed. Whereas the debate in 1836 between Sir Francis Bond Head and his former advisers had begun with competing legal interpretations of the Constitutional Act of 1791, the Metcalfe crisis was dominated by competing interpretations of the *spirit* of that act, the *principles* of the British constitution, and the *rights* of British subjects. Moreover, as the previous chapter argued, mobilizing the electorate almost a year after the resignations created both the space and the need for a full-scale public debate. A variety of positions received serious scrutiny, in part because the governor's supporters ranged from staunch tories to leading reformers. They defined themselves against each other as well as against the ex-Ministers and their supporters, organized as the Reform Association. The natural response to more elaborate criticism from a range of perspectives was to further refine one's own position, to reach for principles that had remained implicit, to fashion new rhetorical weapons and to begin to integrate these developments into a coherent whole. The Metcalfe crisis was a crucible that both intensified and clarified an on-going process of conceptual innovation.

Some bemoaned the proliferation of issues. The 'real' point of contention was being clouded with spurious cries of "loyalty to empire" or "responsible government in danger."² The *Niagara Chronicle* thought the central question was straightforward, but it was "getting mixed up (intentionally, of course) with long tirades about liberty...it is getting so complicated, as to be in danger of being forgotten."¹ Others argued that Upper

² Anon., *Responsible Government for Canada: An Enquiry as to the Causes and Consequences of the Late Ministerial Resignations*, (Montreal, Kingston, Hamilton and Toronto, 1844), p. 8.

¹ *Niagara Chronicle*, copied, *Monarch*, 18 May 1844.

Canadians were in general agreement on the essential principles of good government. For these commentators, the debate should have been limited to how agreed-upon principles were to be applied to a case where the facts were in dispute. The principles themselves required no further elaboration.

Such attempts to contain the debate failed. Trying to demonstrate how the ex-Ministers had falsely applied sound principles, Egerton Ryerson was still one of the most public and wide-ranging participants in the debate.⁴ The previous chapter noted the quantity of printed material generated by the crisis and made accessible to an impressive number of Upper Canadians. It was not, however, only a matter of quantity. The Metcalfe crisis generated the richest body of constitutional theorizing in English Canadian history.

The *Patriot*, a leading conservative organ, summarized the significance of the resignations in a single question. "Which will Canada have, a Monarchy or a Republic?"⁵ This appears melodramatic - a transparent attempt to paint the ex-ministers as revolutionary and disloyal. Such rhetoric, however, was grounded in the theory of mixed monarchy. For the *Patriot*, a republic or a democracy (the terms were interchangeable) was a system of government where all power derived from the people. Democracy was not defined by the frequency of elections, the number of elective posts, or the size of the

⁴ *Chronicle & Gazette*, 26 June, *Woodstock Herald*, 6 July, and 19 October 1844; and Egerton Ryerson, *Sir Charles Metcalfe Defended Against the Attacks of His Late Counsellors*, (Toronto: British Colonist Office, 1844), pp. 12, 32, 162.

⁵ *Patriot*, 5 December and *Monarch*, 12 December 1843.

electorate. These were questions of mere mechanics. Democracy was a rejection of King, Lords, and Commons as a mixture of monarchy, aristocracy and democracy.

When they discussed the British constitution in abstract terms, doctrinaire Upper Canadian Tories still relied on a theory of mixed monarchy little altered since the eighteenth-century. Early in 1843, a reader of the Woodstock *Monarch* enlisted Plato, Cicero and Polybius in support of his contention that the British constitution had achieved that mixture or balance praised by the wisest men of antiquity.[^] It was also this balanced constitution that the editor of the *Ottawa Advocate* sought to popularize. Back in 1839, Dr. John George Bridges, convinced that the Rebellion had resulted from a lack of understanding of the constitution's true principles, had toured Upper Canada delivering a lecture entitled, "A Digest of the British Constitution." He published the lecture and petitioned the Legislative Council (unsuccessfully) to undertake its mass distribution. When Baldwin and other reformers were appointed to the Executive Council in 1842, Bridges reorganized his discussion of the three estates into a set of eighteen lessons, published as *The Every Boy's Book, or A Digest of the British Constitution Compiled and Arranged for the Use of Schools and Private Families*. Rumours of an impending rift between Metcalfe and his reform advisers in the fall of 1843 prompted him to offer 1,500 copies of his book for free distribution. Both lecture and book described the British constitution solely in terms of its three estates: "regal," "aristocratical," and "democratical." Neither mentioned the existence of a cabinet of ministers, an organized opposition in the House of Commons or any of the other developments in British

[^] J. R. Y., *Monarch*, 5 January 1843.

constitutional practice since the 1790's.⁷ The ability to describe the British constitution as it actually functioned had been sacrificed to the elegance of an out-dated theory.

From the vantage point of this theory, labelling the ex-ministers "democrats" or "republicans" was not entirely inaccurate, if also useful, rhetoric. The Governor-General's supporters were united in the belief that the demand of the ex-Councillors to act as a unified cabinet of ministers, capable of meeting without even the presence of the governor, responsible to the Assembly and advising the Crown on all appointments to office would deprive Upper Canada of this constitution. It was, however, Metcalfe's more conservative supporters who made the most use of the theory of mixed monarchy. Acceding to the demands of the late ministers, *The News* told its readers, would amount to the "surrender of the most valuable safeguards" of the British constitution located in "the monarchical and aristocratical powers." "Strictly speaking, we may possess three estates; but they will consist no longer of the monarch, the aristocracy and the democracy; we shall have a *pure democracy*, assuming perhaps, three different forms, but remaining of one substance."⁸ Institutional forms might persist, but all power would flow from "one substance" - the people. The Orillia Constitutional Society condemned "the principle of the present system of Responsible Government so generally democratic as to divest the Governor General of adequate powers for Colonial purposes, and to deprive us of every benefit of the British Constitution."⁹ Thus, concerns about Upper Canada's colonial status were only one, and usually a secondary, concern.

⁷ *A Digest of the British Constitution; Compiled by Dr. Bridges, and Delivered by Him as a Lecture at Many of the Principal Towns in Upper Canada*, (Montreal: John Lovell, 1839) and *The Every Boy's Book*, (Ottawa Advocate Office, 1842). Bridges' notice for free distribution was copied in the *Monarch*, 28 November 1843. By insisting that Parliament controlled the King's Privy Council only through its judicial power of impeachment, Bridges denied the existence of a cabinet politically responsible to Parliament.

⁸ *The News*, 2 May, copied. *Banner*, 12 January 1844. See also *The News*, 15 August 1844.

⁹ *Chronicle & Gazette*, 11 March; and *Patriot*, 24 February 1843. See also Canadian, *Monarch*, 16 January 1844; *Monarch*, 12 December 1843; and *Church*, 6 September 1844.

This type of charge was developed in two basic directions: first, critics argued that, under the proposals of the ex-ministers, the Executive Council would dominate all three branches of the legislature; or, second, they argued that the House of Assembly would dominate the two other estates. Governor and Legislative Council would be powerless against either the cabinet or the Assembly. The ex-ministers' demands would create "oligarchical despotism on the one hand, and democratic despotism on the other."¹⁰ During the Assembly's debate on the resignations, Sir Allan MacNab emphasized the dictatorial power the ex-ministers' demands would give to the Executive Council.¹¹ This line of argument was bolstered by the contention that any responsibility of the Executive Council to the Assembly was chimerical since the Assembly was dominated by office-holders and others dependent upon the executive. Ogle Gowan's *Statesman* estimated that thirty-seven members favourable to the Baldwin-LaFontaine government were influenced by office-holding: "the majority in the popular branch being actually and bona fide responsible to the Government instead of vice versa."¹² The Executive Council would control the representatives of the people as well as the Crown.

The theory of mixed monarchy made a particularly prominent appearance in the conservative reaction to the recent appointment of six new Legislative Councillors. These reform appointees were widely believed to have pledged themselves to vote for the ministers' choice of provincial capital, Montreal, as a condition of their appointment. With the addition of these new members, the Council reversed an earlier resolution in favour of Kingston. The parliamentary principle that any question once decided could not

¹⁰ *Montreal Gazette*, copied, *British Colonist*, 22 December 1843.

¹¹ MacNab, *Debates of the Legislative Assembly of United Canada*, Elizabeth Gibbs, general ed., (Montreal: Centre de Recherche en Histoire Economique du Canada Français), 1 December 1843, p. 1095.

¹² *Statesman*, copied, *Patriot*, 24 February 1843; and *Cobourg Star*, 6 March 1844.

be re-introduced in the same session was violated. Thirteen Councillors, all from Upper Canada and including the Speaker, withdrew in protest for the remainder of the 1843-44 parliament. In his last speech before leaving the chamber William Henry Draper declared it was "far better that the country should possess no Legislative Council than that its honor should be sacrificed, and that it should stand as a weathercock to yield to every passing wind."¹³ *The News* pointed out that "if the Executive Council can control the organization of the Upper House for particular purposes, the three estates of Parliament are a mere sham." The *Patriot* lamented that the Executive Council seemed willing "to trample into the dust the independence of one branch of the Legislature - to dash aside every constitutional barrier."¹⁴ Once they also broke with the Governor over demands for powers he was unwilling to concede, reformers were charged with disrespect for both the Legislative Council and the Crown.

The theme of "mixed monarchy in danger" received influential support from the Governor himself. In his replies to the Addresses of the Districts of Ottawa and Brock and the County of Russell, Metcalfe charged his former advisers with attempting to subvert mixed monarchy. They demanded that the Governor be their "subservient tool," "that the Legislative Council should be elected by the Executive Council," and that the House of Assembly should "nominate the Executive Council:"

The authority of the Crown and the Legislative Council being thus annihilated, and every balance in the constitution destroyed, the whole power of the state would be usurped by either the Executive Council exercising undue interference over the House of Assembly, or by the House of Assembly exercising unlimited interference in the Executive Administration. It would be either a despotic and exclusive oligarchy, or

¹³ quoted, *The News*, and *Cobourg Star*, 29 November 1843.

¹⁴ *The News*, copied, *Patriot*, 7 November; *Patriot*, 10 and 21 November; *Chronicle & Gazette*, 4 and 8 November; and *Cobourg Star*, 29 November 1843.

an absolute unqualified democracy.¹⁵

This was not "the constitution of any state in existence; for even in the most republican constitutions the powers of government are more carefully distributed among different authorities." Metcalfe, one of the three estates, was attempting to preserve the constitutional balance by resisting "the tyranny of an oligarchy which would trample" both the people and the Crown.¹⁶

Similar charges were levelled by those reformers and moderates who came to Metcalfe's defence. Their emphasis, however, was somewhat different. Like Metcalfe and the conservatives, the *Bytown Gazette* worried that ministerial control of patronage would ultimately lead to an over-concentration of power. Its primary concern, however, was the preservation of ministerial responsibility, not mixed monarchy. Ministers could abuse the powers of patronage to sustain themselves in office. The ex-ministers had attempted to free themselves from their responsibility to the people by bribing the people's elected representatives.¹⁷ An anonymous pamphlet agreed that the ex-ministers, not the Governor, posed the real threat to responsible government. Ministerial responsibility was now "the essential feature of British monarchy." Its loss would transform the constitution into "either an unbalanced Monarchy of the older time of civil wars and dethronements, or else a Republic." Canada had to choose between the British constitution and "Absolute Democracy."¹⁸ Thus the Sydenham reformer, Isaac Buchanan,

¹⁵ Reply to the County of Russell, *The Addresses Presented to His Excellency The Right Hon. Sir Chas. T. Metcalfe*, (Toronto: H. & W. Rowswell, 1844), p. 138 and see also reply to the District of Brock, p. 141.

¹⁶ Reply to District of Ottawa, *Addresses and Replies*, p. 134.

¹⁷ *Bytown Gazette*, 14 December 1843, 11 January, and 4 July 1844.

¹⁸ Anon., *Responsible Government for Canada*, esp. pp. 2, 7, 9, 11-12, 20. The *Belleville Intelligencer*, copied, *Canadian Loyalist & Spirit of 1812*, 28 December 1843, also supported responsible government as the practice of mixed government, but, uniquely, it invoked the separation of powers. Responsible government concerned only the legislative function while the Governor's autonomy was preserved in his executive capacity. This approach was clearly inadequate to deal with the question of patronage.

charged Robert Baldwin with abandoning "the principle of Responsibility to the People *under Monarchical institutions.*"¹⁹

Egerton Ryerson, another Sydenham reformer, repeatedly defined the British and Canadian constitutions as mixed or consisting of King, Lords and Commons.²⁰ Had Metcalfe conceded the powers demanded by the ex-Councillors, "Canada would have been an oligarchy, instead of a mixed monarchy."²¹ Their demands, by stripping the Governor of independent authority, would "convert our monarchical government into the worst kind of democracy."²² Ryerson also made the seemingly obvious point that "unless the whole notion of a fixed [mixed?] monarchy, and a balance of three powers is a mere fiction and a dream, the royal portion of the composition must be allowed to have some power to produce some effect upon the quality of the whole."²³ Ryerson did not, however, suggest that the British constitution had no room for a body of advisers to the Crown pledged to resign whenever they could not take responsibility for an executive act. "Responsible Government is the *practice* of that mixed form of government after a certain mode."²⁴ Responsible government was a series of complex conventions and understandings about how each of the three estates was to exercise its powers in harmony with the other two. The ex-Councillors threatened to undermine mixed monarchy by demanding that the Governor promise never to make an appointment without their advice, by their disrespect for the Governor-General, by attempting to attach a rigid and precise definition to ministerial responsibility, and especially by their determination to act as a

¹⁹ Isaac Buchanan, *First Series of Five Letters, Against the Baldwin Faction, by an Advocate of Responsible Government, and of the New College Bill*, (Toronto: British Colonist Office, 1844), p. 18.

²⁰ Ryerson, *Sir Charles Metcalfe Defended*, pp. 19, 72, 82, 99, 102, 148-149, 169.

²¹ Egerton Ryerson, *The Hon. R. B. Sullivan's Attacks Upon Sir Charles Metcalfe Refuted by Egerton Ryerson: Being a Reply to the Letters of "Legion"*, (Toronto: British Colonist Office, 1844), p. 60.

²² Ryerson, *Sir Charles Metcalfe Defended*, p. 148.

²³ *Ibid.*, p. 102.

²⁴ *Ibid.*, p. 82.

disciplined political party.

Ryerson was also distressed by the cavalier attitude the former advisers took toward the Legislative Council. They demanded that the Speaker of the Upper House be appointed only on the Executive Council's advice. This seemed to make members of that House "mere nominees" of the leaders of the Assembly rather than "a third estate of the Canadian realm."²⁵ This was also one of the grounds cited by Thomas Parke, a reformer and Surveyor-General, for breaking with his long-time colleagues. In a widely distributed public letter, Parke maintained that the Legislative Council, as "one of the three independent Legislative bodies," could only maintain its position if appointments to it were made without reference to the people's representatives or cabinet ministers.²⁶

In July 1844, the moderate *British Colonist* also charged the ex-ministers with attempting to subvert mixed monarchy. They "recklessly throw aside the acknowledged constitutional checks." They had a "grasping desire to concentrate all power in their own hands." They threatened the harmony essential to a constitutional system composed of "various branches, possessing co-ordinate powers."²⁷ For those moderates and reformers supporting the governor, responsible government was a "method," "mode," or "practice" to ensure harmony among these branches. The ex-ministers threatened that harmony. These supporters of the governor worried about the concentration of power, but they were worried mostly that ill-considered or hasty legislation could not be prevented without the institutional checks of Governor and Legislative Council. For tories, the need for "sober second thought" was only one part of the case for mixed monarchy. They focussed less

²⁵ *Ibid.*, p. 97.

²⁶ Thomas Parke to Adam Hope, originally *St. Thomas Chronicle*, copied, *Patriot*, 17 May; *Chronicle & Gazette*, 11 May; *British Colonist*, 10 May; and *Examiner*, 29 May 1844. Commentary can also be found in *Monarch*, 21 May; *Hamilton Journal & Express* copied, *St. Catharines Journal*, 17 May, *Cobourg Star*, 22 May, *Mirror*, 10 May; and *Niagara Chronicle* copied, *British Colonist*, 21 May 1844.

²⁷ *British Colonist*, 2 July 1844.

on the perversion of responsible government by the ex-ministers and more on the danger any form of ministerial responsibility posed to the existence of three independent estates - and to the constitutional place two of them secured for the privileged in society.

Thus, when the *British Colonist* renewed its attack just prior to the elections, it argued that mixed monarchy was to be preferred because it best represented public opinion, not because it represented three social estates or because a decision arising from the clash of three independent legislatures would produce the best outcome:

The present opponents of Sir Charles Metcalfe, with Mr. Baldwin as their mouthpiece, would extend the direct power of the Assembly beyond its legislative limits, under a mixed monarchical government, overlooking the stubborn fact of its being a united public opinion that must be obeyed, and not the furious dictum of the individual, petty though for the time, popular tyrant.²⁸

One body of the people's representatives should not be the sole interpreters of public opinion. Institutional checks, or a mixed system, were required to ensure that a ministry supported by the majority of the Assembly reflected public opinion rather than popular passion and to safeguard minority rights. Such principles may have led the *Colonist* and others to support Governor Metcalfe, but this was not an endorsement of the theory of mixed monarchy. Conservative supporters of that theory had found strange bedfellows.

The ex-ministers and their supporters in the Reform Association adopted four basic responses to the charge that their constitutional demands entailed the destruction of

²⁸ *British Colonist*, 20 September 1844 and 12 November 1844 where monarchy was seen as a restraint on "those petty conquerors, the representatives of temporary majorities, from riding rough-shod, (as is the case in every republic) in the exercise of their brief authority, over the minority for the time being."

mixed monarchy: first, they argued that it was the Governor and his allies, not themselves, who posed the greatest threat to mixed monarchy; second, they ignored the charge and attempted to shift attention; third, they tried to redefine the theory of mixed monarchy in a way that made it consistent with their constitutional position; and fourth, they argued that the British constitution itself was no longer mixed or balanced. Taken together, these responses demonstrated that the theory of mixed monarchy no longer provided an agreed-upon framework for constitutional debate in Upper Canada. What had once been common wisdom was, by 1844, the nostrum of a marginalized party.

As we have already seen, the first strategy, turning the charge of subverting mixed monarchy against the Governor, had long been at the core of constitutional discourse in Upper Canada. There was certainly nothing about the Metcalfe crisis that deprived Robert Baldwin and his supporters of this strategy. Indeed, after the Assembly expressed its continued confidence in the ex-ministers, it would have been easy to rehearse well-worn arguments that the Governor threatened the balance of the constitution by disregarding the wishes of the Assembly. George Brown's *Globe* showed how this line of argument might have been developed. For Brown, the contention that the late ministry had attempted to monopolize all the powers of the state was ridiculous; "the Governor... representing the Sovereign, holds one-third of the power of the whole Estates, and appoints another third, viz., the Legislative Council, leaving only one-third for the popular voice." Far from a nullity, the Governor could become a despot.²⁹ He, not the Executive Council or the Assembly, posed the greatest threat to constitutional balance. Given the structure of most previous constitutional debates, this type of argument should have been pervasive. In fact, it was exceedingly rare.

²⁹ *Globe*, 15 October 1844.

Supporters of the late ministry still talked about three branches and were more than willing to emphasize the formal similarities between British and Canadian institutions,³⁰ but, with a few notable exceptions, they preferred to discuss the motives of their opponents, the inevitability of party government, the rights of British subjects, the need for popular control of patronage and the centrality of ministerial responsibility. In fact, the second strategy, simply ignoring the charge of subverting mixed monarchy, was adopted by the Irish Catholic *Mirror* at Toronto. It was as if it was no longer worthy of reply. The *Mirror* copied none of the leading texts that made the charge. It commented on none of them and it refrained from using the language of mixed monarchy in its own editorials. Alternative discourses were available and preferred.

Henry John Boulton, chairman of the Reform Association, adopted the third strategy of attempting to redefine the theory of mixed monarchy. Perhaps he was particularly wedded to the theory since, in the 1830's, he had been a leading conservative and had served as Attorney-General. In a speech to the Association, Boulton described the British Constitution as "a mild, free, and popular form of mixed monarchy" since "the Sovereign has a large share of power, although by the admixture of popular controul, no arbitrary authority." Thus, he frequently used the term "mixed" to refer to a "Government in which the voice of the people is to mingle with the command of the Sovereign," or to a government in which there was no despotic power because there was no "power acting independently of the people." Getting to the core of his linguistic strategy, Boulton asked:

³⁰ See for instance, William Hume Blake, Reform Association of Canada, *"The Globe" Extra. Proceedings at the First General Meeting of the Reform Association of Canada...25 March, 1844*, (Toronto: The Globe, 1844), p. 17; *Examiner*, 13 March, and 2 October 1844, and Zeno, *The "Crise" Metcalfe and the Late Cabinet Defended*, (Quebec: W. Cowan & Son, 1844), pp. 30, 39, 43.

How can a monarchy be regarded as a mixed or popular Government, if the Monarch can act independently of the people?...The very principle of mixed monarchy imports that the Sovereign can do no official act alone...Herein consists the distinction between a mixed Monarchy and an absolute Sovereignty...

Mixed monarchy now meant that the monarch acted only through advisers responsible to the people. Canadian monarchy was a popular form of government because it contained a mixture - not a mixture of three estates or of three co-ordinate legislative bodies, but of the people and the monarch in the exercise of executive power. Boulton proved what no one disputed, that Canada's monarchy was not absolute. Boulton tried to make Baldwinite responsible government compatible with mixed monarchy by making it "the very principle" of the mixture itself. Thus, he concluded that "in theory we now, thanks to the Reform party, have a sound system of mixed government."¹¹ Responsible government and mixed monarchy were not merely compatible - they were the same thing.

The theory of mixed monarchy was too entrenched for such blatant manipulation. More importantly, the Reform Association could insist on the primacy of ministerial responsibility by adopting the fourth strategy: arguing that the British constitution was no longer a mixed or balanced constitution. Boulton's mixture of monarch and people occurred not among Governor, Legislative Council and Assembly and certainly not in society as a whole, but in the cabinet. Of all the ex-ministers' supporters, George Brown made the most extensive use of the terminology of mixed monarchy and balance. He could do so because he had gone the furthest in integrating the cabinet into his constitutional theory. Ministerial responsibility, not mixed monarchy, was the essence of the British constitution to be emulated in Canada.

Brown, speaking at another meeting of the Reform Association, praised the

¹¹ H. J. Boulton to the Reform Association, 23 September 1844. *Globe*, 25 September 1844.

"checks on unjust or hasty legislation" found in the British constitution which ensured "the just balance of power..." The cabinet. "one of the most important and best working departments of the System," was the site of this balance. A representative of the people who proved worthy of the confidence of his colleagues became an adviser to the Crown, "the life, the moving power of every wheel in the whole machine of Government - he is the very government itself." Thus "the Sovereign and the cabinet together form one power in the State - Royalty as practically embodied in the British Constitution."³² Egerton Ryerson countered that this made the monarch "a mere name." "It appears, then, that the British world has been sadly astray in saying, "King, Lords and Commons." Mr. George Brown will teach them better."³³

Brown conceded that "a Cabinet Council is unknown to the British Constitution. Such is the ancient theory of the constitution certainly, but the practice is entirely opposed to it."³⁴ Ministerial responsibility was the practice and, as the *Bathurst Courier* put it, "the British Government is nothing more or less than Responsible Government."³⁵ The cabinet, not the tripartite balance, "covers the weakness of Sovereign, saves the country from Revolution and confusion, checks the aggressions of the Democratic principle, and forms an indispensable link in the political fabric."³⁶ Brown was hostile to American republicanism, but the alternative for Canada was parliamentary government and a limited

³² George Brown to the Reform Association, "*The Globe Extra*," *Proceedings*.... pp. 30-31. See also the *Globe*, 11 June; 1 and 15 October 1844; and *Banner*, 8 December, copied, *Chronicle & Gazette*, 20 December 1843.

³³ Ryerson, *Sir Charles Metcalfe Defended*, p. 72. Ryerson had already argued that "the power of the Cabinet Council, as distinct from that of the Sovereign is unknown in the British constitution, which consists of King, Lords and Commons only" and had used De Lolme to argue that ministers were formally only "voluntary instruments or advisers." *Ibid.*, p. 19.

³⁴ *Globe*, 11 June 1844.

³⁵ *Bathurst Courier*, 23 January 1844. Thus the Harrison Resolutions of September 1841 defining responsible government, virtually ignored by the press in 1841, were being called "the constitutional charter" or "Canada's Magna Carta" during the Metcalfe crisis.

³⁶ *Globe*, 11 June 1844.

franchise, not mixed monarchy. The "ancient theory of the constitution" had been replaced by a modern one.

Governor Metcalfe's critics had abandoned the traditional theory of mixed monarchy. Those moderates and reformers whose support he desperately needed had significantly diluted, if not abandoned, it as well. The theory of mixed monarchy was now largely the property of a single party which, on its own, was unable to provide sufficient support for the Governor in either the Assembly or the country. This marginalization mirrored a parallel decline in the currency of corporatist and hierarchical ideals for the social structure. As chapter two argued, the case for the common law of primogeniture faltered as relative equality came to define the healthy social order. Upper Canada became a democracy not because Upper Canadians were socially or politically equal but because, by the time of the Metcalfe crisis, they saw themselves as politically equal. They told themselves that their society lacked the extremes of wealth and status that undermined such political equality. The acceptance of the public sphere helped to create this fictitious and homogeneous entity, "the people." Members of the public were equal in the process of deliberation. The public was either synonymous with or represented the "people." The eclipse of the theory of mixed monarchy ensured that this entity was seen as the social foundation and ultimate source of authority in any new constitutional order.

The intimate relationship between constitutional arguments and social assumptions was evident in disputes about the evolution of the British constitution. As

the *Globe's* distinction between ancient theory and modern practice suggests, different aspects of British constitutional history were being mined for analogies and precedents.¹⁷ Many conservatives were not oblivious to changes in British constitutional theory and practice since the eighteenth-century. The *Montreal Herald* conceded that ministerial responsibility defined Britain's contemporary constitution, but this had occurred only after centuries of evolution. According to the *Herald*, Canada was no more ready for ministerial responsibility in 1844 than England would have been ready for the constitution of 1688 in 1215. The argument drew the *Examiner's* fury:

...Talk then of the constitution of 1215, or 1688 or 1828. We know what we require...The example of England is before us; not the rebellious England of 1688; when she drove out her own anointed King, and placed an usurper on his throne; but of the England, when in 1831, she wrenched from the hands of her entrenched Aristocracy the boon of Parliamentary Reform...Let no "men in their senses," then, talk to us of the various phases of the British constitution. We do not want any of its phases but the present one...

This almost unprecedented denigration of the Glorious Revolution was probably provoked by the implications the *Herald* drew from its history of the British constitution. As in Britain, Canada's constitution could only evolve "gradually, and according to the progressive wealth, intelligence, and social independence" of its own society.¹⁸ As discussed in chapter one, Sir Francis Bond Head had made the same point in 1836. Differences between the British and Canadian social structures required differences in their constitutional arrangements. For social reasons, British ministerial responsibility was not applicable to Canada.

¹⁷ Egerton Ryerson was prone to choose examples from the reign of George III but for Robert Baldwin Sullivan "the question is not what George III did - for he did many things that were wrong." Sullivan drew his own precedents from the nineteenth century, particularly the ministerial changes associated with Catholic Emancipation and the Reform Act. Ryerson, *Sir Charles Metcalfe Defended*, pp. 19-20, 56, 73, 148-149; *The Hon. R. B. Sullivan's Attacks upon Sir Charles Metcalfe Refuted*, p. 21; and Legion, *Letters on Responsible Government*, (Toronto: Examiner Office, 1844), pp. 30-31, 39-42, 164, 202.

¹⁸ *Examiner*, 24 January 1844.

Robert Baldwin was convinced that the arguments against responsible government were so weak that his opponents were reduced to the "old worn out ditty of its incompatibility with Colonial dependence." To lay this ditty to rest once and for all, Baldwin asserted that British subjects, whether they lived in Britain or British North America, had the same "inalienable" and "absolute constitutional rights" to free and representative government. The British constitution was merely one "model" of how those rights might be exercised. Canadians had a right to insist on whatever form of self-government they thought best. Their self-government, however, did not extend to international trade and foreign relations. These two "matters of common interest" required co-ordination in London. For Baldwin, "this arose not from any principle involving the superiority of the people of one part of the Empire over those of another, but from the *necessity* arising out of local position." Britain co-ordinated imperial trade and foreign policy, not from right, but from practical necessity. Otherwise, the governments of Britain and Canada, as well as their peoples, were equal. Canada's government and its social structure were self-sufficient.³⁹ Baldwin's definition of the empire as a federal structure, allowing for ministerial responsibility at either level, ignored the degree to which critics of his constitutional theory saw Canada's colonial status as a sociological rather than a juridical condition. Those conservatives who continued to advocate the theory of mixed monarchy bequeathed to Upper Canada in 1791 did so not because it still conformed to current British practice, but because they argued that it still held out the greatest promise for good government in Upper Canada.

³⁹ Robert Baldwin to the Reform Association, *Examiner*, 3 January 1844 and *Globe*, 25 September 1844. The *Examiner* insisted, 24 May and 6 December 1843, that "Canadians are to be governed upon the principles of democratic and not trans-atlantic policy," and that Canada would remain part of the empire only if it were governed according to "British Freedom, which recognise[s] no sovereignty incompatible with the well understood wishes of the People as expressed through their Representatives."

Like the *Montreal Herald*, the *Patriot* argued that, the Reform Association "need not have had to resort to [such British constitutional authorities as] Hallam, De Lolme or Mackintosh" to prove that ministerial responsibility existed in Britain. "They might with equal reason have quoted the veracious history of "Jack and the Beanstalk," to prove that fairy tales are popular among children."⁴⁰ The question was not what kind of constitution Britain had but what kind of constitution Canada should have. The *Canadian Loyalist & Spirit of 1812* made the same point by quoting from reformers' own textbook, Lord Durham's *Report*: "When we transplant the Institutions of England into our Colonies we ought, at least to take care before hand that the Social State of the Colony should possess those peculiar materials on which alone the excellence of those Institutions depends in the Mother Country."⁴¹

For these critics, Britain's social structure had first sustained mixed monarchy and now prevented parliamentary government from degenerating into democracy. Upper Canada lacked such a social structure and, therefore, local parliamentary government could not avoid such degeneration. A "Canadian" told "the Friends of a Mixed Monarchical Government in Canada," that "disguise it as you will, an amount of responsibility to the people, (of one class only in this colony) equal to the amount of responsibility to all the many classes in England, is republicanism neither more nor less."⁴² This social argument was developed along two fronts: first, emphasis was placed on the quality of the men elected to the Assembly or those appointed to office; and second, emphasis was placed on reinforcing the institutions of mixed monarchy to compensate for Canada's lack of a resident monarch and aristocracy.

⁴⁰ *Patriot*, 5 April 1844; 29 August 1843; and 23 December 1842.

⁴¹ Durham, *Canadian Loyalist & Spirit of 1812*, 28 December 1843.

⁴² correspondent, *Monarch*, 16 January 1844.

For the *Patriot*, full-scale ministerial responsibility as practised in Britain was inapplicable in Canada because of "the poverty of the Colony, and the absence of a large class of educated men of independent fortunes who might aptly form the Representative body."⁴³ Without such a class, responsible government would simply result in corruption since few members could hold ministers accountable in the face of their offers of office and emoluments. "Where an aristocracy is unknown - where large bodies of tenantry look not with trust and reverence on the landlord they hold under, votes can only be canvassed and gained by personal knowledge of, and local contact with the holders of these votes." Such an electorate encouraged the selection of legislators who were willing to "lie, fawn, wheedle, pimp [and] cajole" the electorate. Lacking independent wealth, such legislators sought to make a living from politics. They were therefore forced to do the bidding of the executive at the same time that they told the people whatever it took to get re-elected. "From such it would be childish to look for any heroic devotion to the maintenance of constitutional truth, or any sublime resistance to either the advances of arrogant prerogative or democratic assumption." Only with further social evolution "can Responsible Government, have a fair chance of success in a colony." Constitutional balance was under threat in 1844 because the ex-Ministers, by their use of patronage, had tried to take advantage of Canada's social imbalance.⁴⁴

Given this opinion of the electorate and their representatives, it is not surprising that the *Patriot* took a jaundiced view of the Executive Councillors and those they appointed to office. Popularity and identification with the electorate had become more important than merit. "A familiarity with the use of the adze and the handsaw will

⁴³ *Patriot*, 23 December 1842.

⁴⁴ *Patriot*, 30 and 16 August 1844; and 23 August and 23 December 1842

constitute strong claims on the office of Surveyor-General." whereas, in Britain, people like Francis Hincks "would sink to their proper level," under the salutary weight of rank, hereditary privilege, wealth and education.⁴⁵ Statesmen were the product of years of study and experience. Even the colony's naturally gifted were too preoccupied with subsistence and too little exposed to the refinements of civilization.⁴⁶ Twice, exhorting fellow conservatives to counter the Reform Association, the *Patriot* screeched, "The Philistines are upon us."⁴⁷

Before their resignation, the Baldwin-LaFontaine ministry had come under considerable fire for the poor quality and excessive partisanship of their appointments, especially to the local magistracy. The *Patriot* thought that popularity should be irrelevant. A knowledge of the law and honesty were certainly necessary, but even these were not sufficient qualifications:

England is an essentially monarchical country - and if Canada desires to retain her institutions, she must conform as far as possible to British practice. The most respectable of the gentry of every section of the Country ought to form, without any reference to politics or elections, the local Magistracy. We must not drop too eagerly into the bathos of republicanism and democratic equality. Even the most ignorant of the population will know and appreciate the presence of a respectable magistrate seated on the bench, and regard with very different feelings his administration and exposition of the law, and the ridiculous exhibition of authority from one from their own ranks...⁴⁸

The *Patriot* was merely repeating one of the platitudes of contemporary political theory: monarchy rested on deference to social superiors while democracy rested on equality. In a monarchy, political and legal positions were to flow from pre-existing social standing. Appointment to office by the Crown was a recognition of social standing, not its creation.

⁴⁵ *Patriot*, 30 August and 19 March 1844.

⁴⁶ review of Isaac Buchanan's letters, *Monarch*, 12 March 1844 and C. B., *Monarch*, 2 March 1843.

⁴⁷ *Patriot*, 20 September and 1 October 1844; and *Monarch*, 13 October 1842.

⁴⁸ *Patriot*, 13 June; *Cobourg Star*, 2 August; and *Church*, 3 November 1843.

Authority exercised by one's peers was simply "ridiculous." The people were merely "the third estate."⁴⁹ Thus, after the resignations, the *Patriot* claimed that the appointment of the "illiterate and disaffected" did more than ignore merit. It was "gradually sapping and undermining the venerable fabric of the British constitution" to the point where the "whole super-structure" was at risk.⁵⁰

But surely it was dangerous to emphasize the social differences between Britain and Canada. Canada might lack a social structure that could prevent ministerial responsibility from degenerating into democracy, but it also lacked the aristocracy essential to mixed monarchy. After all, the *British Colonist* had praised Egerton Ryerson precisely because, in his arguments supporting the Governor, he had sought "to popularize the British Government, so as to suit our colonial position."⁵¹ Some, like the *Montreal Gazette*, were willing to deny that Canada could ever have a transcript of the British constitution in any of its forms. Even if Metcalfe prevailed, "without a Monarchy and a House of Peers" Canada would still risk "the crudest and worst form of democracy, that of One Absolute Chamber."⁵²

This was not the response of most Tories to the problem of relating mixed monarchy to the colony's social structure. Rather, they urged extra vigilance and further bulwarks to protect mixed monarchy from a hostile social setting. The *Monarch* and the *Church* advocated an established Church to strengthen the monarchical principle.⁵³ The empire itself could act as a check. If Canada lacked the social materials of good government, Britain did not. Better to trust the balanced interests and classes in Britain

⁴⁹ *Patriot*, 14 February 1843.

⁵⁰ *Patriot*, 12 December 1843.

⁵¹ *British Colonist*, 4 June 1844.

⁵² *Montreal Gazette*, copied, *British Colonist*, 22 December 1843; correspondent, *Montreal Gazette*, copied, *Church*, 16 February 1844; and also *Montreal Courier*, copied, *Church*, 5 July 1844.

⁵³ *Monarch*, 15 December 1842.

than the undifferentiated mass of Canadians represented in the local Assembly.⁵⁴ Third, it was necessary to preserve the Crown's independent power over patronage. Impartiality and merit, not popularity, had to guide appointments.⁵⁵ The ambitious should look up to the Crown and not down to the multitude.

For other Tories, a fourth approach seemed best. If Canada lacked an aristocracy, it was not too late to create one. The *Canadian Loyalist & Spirit of 1812* rehearsed the argument that a Canadian Assembly made up of "adventurers and speculators" could not be compared to a House of Commons which was "an honorable and independent, and, for the most part, an aristocratic body." Canada's poor imitation needed to be checked more than the Commons. Such a check could no longer come from the existing Legislative Council. Members of "that body are distinct, only in name." Its members were too similar to those elected to the lower house: far from hereditary peers whose "*interest as their duty and their inclination [was] to check any undue assumption of the Commons.*" A Canadian Order of Knighthood was needed. In time, it would "ripen" into an hereditary aristocracy sitting in the Legislative Council.⁵⁶ The idea was endorsed by the *Church*, *Cobourg Star* and *Monarch*.⁵⁷ As the first recognized, only a return to the ambitious policy of Simcoe could reinvigorate mixed monarchy.⁵⁸

Many conservatives recognized that such a policy was either too late or undesirable, but whether or not they advocated the creation of a Canadian aristocracy,

⁵⁴ *Monarch*, 12 March 1844.

⁵⁵ The centrality of impartiality to sovereignty is emphasized by Mark Francis, "Metcalf and Images of Authority in Mid-Nineteenth-Century Canada", *Governors and Settlers: Images of Authority in British Colonies, 1820-1860*, (London: Macmillan, 1992), pp. 186-212.

⁵⁶ *Canadian Loyalist & Spirit of 1812*, 28 December 1843; and 4 January 1844. The weakness of the Legislative Council without an aristocracy was also stressed by *Church*, 6 February 1841; and 5 July 1844.

⁵⁷ *Cobourg Star*, 17 January 1844, and *Church*, copied, *Monarch*, 12 September 1843.

⁵⁸ *Church*, 3 November 1843. Facing a social structure that worked against their ideals, conservatives were forced to be the institutional innovators of the new world.

they shared a belief in the need for social hierarchy to be reflected in constitutional theory and practice.⁵⁹ One commentator identified education, religion, honour, morality, courage, and patriotism as the "heroic virtues" a political system needed to reward. Responsible government, on the other hand, gave place only to numbers and rewarded anyone who could gain a majority almost regardless of the means.⁶⁰ Responsibility to mere numbers or to the majority of a community composed of only one class had to be avoided. Instead, what was needed was a political system that recognized and made room for the best in society and the best in each individual.

Tories made themselves vulnerable by using these social arguments. They knew that many would "sneer" at the idea of a colonial aristocracy. They were well aware that "aristocracy" and "hierarchy" were terms of abuse for reformers.⁶¹ It was also difficult to argue that the undifferentiated mass of the people were incapable of self-government when they were the very audience for such arguments, when it was their reason being appealed to, and when it was their votes being sought. Moderates and those reformers who supported the Governor made none of these social arguments, and even many conservatives shied away from the extremes of the *Patriot* or *Monarch*. The unpopularity of these social arguments was also evident from the obvious relish supporters of the ex-ministry took in attacking them.

⁵⁹ Here they were merely participating in the nineteenth-century debate about equality versus aristocracy as essential for good government. See David Paul Crook, *American Democracy in English Politics, 1815 - 1850*, (Oxford: Clarendon Press, 1965).

⁶⁰ C. B. [Captain Beales?], *Monarch*, 13, October 1842.

⁶¹ *Canadian Loyalist & Spirit of 1812*, 4 January 1844; and Beales to the Brock Constitutional Society, 2 February 1843; and *Church*, copied, *Cobourg Star*, 17 January 1844.

The Reform Association's assault on aristocratic principles proceeded along three fronts: first, they denied that Canada had an aristocracy; second, they denied that this prohibited Canada from enjoying parliamentary government; and third, they insisted that Canada's lack of an aristocracy and formal hierarchy was to be praised, not regretted. In essence, Tories maintained that the British constitution, even after the introduction of ministerial responsibility, was essentially aristocratic *because* of the British social structure, while supporters of the Reform Association thought that the British constitution was essentially democratic *despite* that social structure.²

According to the *Globe*, Tory government "holds that there is a certain class, on whose brows is stamped [sic] *Legislator*, or *Ruler* of the mass, without regard to their qualification for such an office."³ Likewise, the *Examiner* dismissed the notion that an Upper Canadian gentry existed who should monopolize government appointments. Instead, there was only "an assumed caste" of ambitious men who cloaked "their selfishness and the haughty superciliousness" of their demands in talk of a virtuous gentry:

Canada, we contend knows no *aristocracy* beyond that which is based upon the industry and intelligence of those who are the sinews of her strength. Here are not ducal coronets, no proud and princely domains, no jewelled splendour to contrast with fags and hunger...the happiness of the many, in preference to the aggrandisement, the pride, the insolence and the haughty bearing of the few.⁴

Many conservatives, Sir Charles Metcalfe, and the Colonial Secretary, Lord Stanley, asked how this truncated social structure could support mixed monarchy or prevent parliamentary government from degenerating into unchecked democracy. In his reply to

² See J. R. Jennings, "Conceptions of England and Its Constitution in Nineteenth-Century French Political Thought", *The Historical Journal*, (v. 29, n. 1, 1986), pp. 65-85.

³ *Globe*, 22 October 1844.

⁴ *Examiner*, 25 January 1843.

the Ottawa District. Metcalfe stressed the essential difference between Britain and Canada; "between one in which a wealthy aristocracy possesses great influence, and another in which no such influence exists." Canada was younger, poorer, and less civilized than Britain. It simply lacked the means of producing "a nice balance of counterpoising influence."⁶⁵

Francis Hincks' *Pilot* thought that Metcalfe had rendered great service to the Reform Association with this reply:

We are told that here there is no wealthy aristocracy possessing great influence, and powerful enough to resist the wishes of the people. The Prerogative of the Crown is here to be the instrument by which public opinion is to be kept in check...There is not...any danger of the people being gulled by an alarming picture held up before them of the consequences of their getting too much power into their own hands...⁶⁶

Canada needed no institutional checks to counteract a quasi-egalitarian social structure. Public opinion needed no such supervision. Good government rested on that opinion and not on any "nice balance of counter-posing influence." The *Banner* conceded that aristocracies had been of some benefits in cultivating civilized manners and the fine arts. It simply feigned ignorance of how the lack of an aristocracy was relevant to the question of responsible government. "Is it meant to be said that the people of Canada who have the franchise are less qualified to exercise it than the same class in Britain or Ireland?"⁶⁷

The response of the Reform Association, in its *Address to the People of Canada*, was much the same. It argued that the only difference between Britain and Canada was that the latter could not interfere in the two imperial matters of war and commerce. The

⁶⁵ Metcalfe to the Ottawa District, *Addresses and Replies*, p. 134. R. B. Sullivan ridiculed the debate in Britain as the place where Canadians learned "how unfit we are for the management of local affairs, how unworthy our assembly is to possess control over an Executive Government, representing as that Assembly does, not the aristocracy, but the "humbler classes" of the Colonists." *Legion, Letters on Responsible Government*, p. 71.

⁶⁶ *Pilot*, copied, *St. Catharines Journal*, 5 April 1844.

⁶⁷ *Banner*, 29 March 1844.

Association did not see "upon what constitutional principles the want of a spiritual and temporal aristocracy should deprive you of constitutional government." Since property was represented in the Assembly, there was "no other interest...whose protection requires the existence of an aristocracy." There were no interests independent of the people and therefore there was no need for any power not responsible to the people.⁶⁸ No social entity, no interest, no judgement and therefore no political institution existed apart from the people. None ought to.

Two letters to the *Globe* in 1844, one by "Common Sense" and the other from "A Friend to British Interests," echoed these points. "A Friend" agreed that Canada lacked an aristocracy but this hardly meant that Canadians should be denied the power over the executive "which the Commons of England with such disadvantages, were yet enabled to wrest from the Crown."⁶⁹ "Common Sense" thought it an "unnatural doctrine" that "the want of an aristocracy should deprive us of the free enjoyment of the British Constitution." The fact that many Britons were tenants influenced by their landlords seemed an absurd reason why the Commons should be trusted with greater political weight than a Canadian Assembly. It simply meant that the British electorate was "more oppressed" than the Canadian. The British constitution operated better, that is, more democratically, in Canada than it did in Britain, precisely because the former lacked "such disadvantages"⁷⁰

If there was only one estate in Canada, and if that estate was at least as capable of operating the British constitution as the British themselves, then the denial of Baldwinite

⁶⁸ Reform Association of Canada [John Macarar?], *Address to the People of Canada by the Reform Association...* (Toronto: Examiner Office, 1844), pp. 10-12.

⁶⁹ A Friend to British Interests to Charles Metcalfe, *Globe*, 9 July 1844.

⁷⁰ Common Sense, "Want of an Aristocracy Considered", *Globe*, 10 September 1844.

ministerial responsibility was insulting. Metcalfe was not protecting the constitution from the encroachment of another, co-ordinate, branch. He was "spurning a free people." Canadians were in danger of be treated as "serfs" or "slaves" rather than capable, worthy, intelligent and patriotic freemen.⁷¹ Robert Baldwin Sullivan thought only "the newness of the feeling of love of country as applied to Canada" explained why there was not even more indignation at the suggestion that there was "some essential difference between Colonists and the British people. - some humiliating distinction...something which makes the Provincial Parliament untrustworthy."⁷² Supporters of the ex-ministry were quite willing to (mis)interpret tory rhetoric as claiming that individual Canadians were inferior to individual Britons. The tory claim was more that the proportions of social classes found in Canada (or the absence of some) worked against mixed monarchy and favoured democracy. On this essential point, supporters of the ex-ministry did not disagree.

The frequent references to Canada's yeomanry served the dual purpose of underlining the virtuous independence of most Upper Canadians and contrasting this with the more hierarchical structure of British society.⁷³ Just after the elections of 1844, the *Globe* responded to charges in the London *Times*, that British America lacked gentlemen and was "a pauper colony, without capital, without intelligence, without dignity," that could only degenerate into a "vulgar republic." Given the recent election of "so many

⁷¹ *Globe*, 9 July and 15 October 1844; *Examiner*, 6 December 1843, 28 February, 2 October and 6 November 1844. The claim that there were insufficient statesmen in Canada to form a responsible ministry was refuted by Zeno, *The "Crise" Metcalfe*, p. 23. The *Globe* also thought Ryerson's letters to Canadians on British precedents on procedures were patronizing as well as tedious. "Instead of being troubled with any odd notions, such as the unsophisticated breast of a freeman in the backwoods is apt to be filled with, about equal rights, good government...What an inestimable advantage, to have rules and laws laid down among us poor ignorant colonists." *Globe*, 11 June and 9 July 1844.

⁷² Legion, *Letters on Responsible Government*, p. 151.

⁷³ *Globe* 6 August and 10 September 1844; Peter Perry to the Reform Association, *Examiner*, 10 January and 23 October 1844; and Adam Fergusson to the Reform Association, *Chronicle & Gazette*, 25 May 1844.

servile Tories," the *Globe* conceded that there was some lack of intelligence, but Canada still compared favourably with "any agricultural district of England." Once there were more books and newspapers disseminating "sound information...the population of Upper Canada will exercise an independence of which the yeomen of England, from their relation to their landlord, can have no conception." Greater access to the means of social communication, such as books and newspapers, would ensure the success of public opinion.

The *Globe* admitted that there were few of "high rank and station" in Canada, but insisted that there was also little poverty:

That is the best state of society which gives competence to the greatest number - that competence standing between poverty and riches, we have high authority for believing to be the most satisfactory state. There is doubtless a dignity and grace in high rank, and when accompanied by becoming virtues, society derives polish and improvement from such a class, which arises in all civilized countries in the course of time. Universality of education, which is the great refiner, renders a high class less necessary in the meantime.⁷⁴

This was the same social ideal that Marshall Spring Bidwell had articulated in the early 1830's as part of his opposition to the common law of primogeniture, (discussed in chapter two). By the Metcalfe crisis, this social ideal was more widely accepted. Its constitutional implications were also more clearly drawn. Democracy and public opinion rested on a social foundation dominated by actual or potential male heads of household who were informed and educated.

The *Times* and those who agreed with it were, however, talking about more than "polish." The truncated nature of colonial society meant that the great mass of adult male property-owners formed the social basis of colonial politics. In the Governor and

⁷⁴ "The Tory London Press on the American Colonies", *Globe*, 10 December 1844.

Legislative Council. Canada had political institutions designed to counter-balance that social basis, but it lacked the social materials to give life to those checks. Reformers, whether or not they supported the ex-ministers, were proud of Canada's social structure. It might prove necessary to have legislative institutions other than the Assembly, but no such institution, however designed, was to act independently of the people or without reference to public opinion.

If the people of Canada were equal to the people of Britain, they were also equal to each other. This was the logical inference from a truncated social structure thought to lack the extremes of wealth and poverty found in Europe. "Equality of civil and religious rights" or "equal justice to all" were pervasive slogans. Supporters of the Governor used them to attack the notion that appointments to office should be made on the basis of party. The Reform Association used them to insist on the political equality of all members of the public. Even the normally circumspect *Christian Guardian* extended the notion of equality beyond the political and religious sphere to include an outright rejection of hereditary aristocracy.⁷⁵

Tories saw such claims of equality as precisely the sort of self-serving flattery that made colonial politics too democratic. They also charged that the Reform Association limited its definition of the "people" to those who supported the temporary majority in the Assembly. The minority, who should be able to look to an impartial Sovereign for protection, were proscribed by an Executive Council supported by its majority in the

⁷⁵ *Christian Guardian*, 30 October 1844.

Assembly.⁷⁶ There were also frequent charges of hypocrisy. As Captain Beales told the Brock Constitutional Society:

...the republicans [reformers] were themselves aristocrats in every thing but politics. Of two mechanics, a carpenter or shoemaker, one a butcher and the other a good workman, they would chose the best...in all affairs of life, except politics, they were aristocrats, and they always looked for the best, but in politics, they preferred such a one provided he would praise and flatter some imaginary thing called the people...they preferred him to the best statesman in the world...who would not flatter them by telling them what all history refutes - that they were the fountain of all power.⁷⁷

Beales had a point. The leaders of the Reform Association did not advocate equality of condition any more than he did.⁷⁸ But they did believe in political equality and the capacity of people to participate in the formation of public opinion. Leaders were still needed to guide and execute - they were no longer to check or thwart.

Reformers insisted on the very line between the social and the political that Beales denied. Just as their appeal to the public sphere required the assumption of equal and rational readers, so too their rejection of mixed monarchy assumed the existence of equal, rational and independent voters. These voters were more capable of knowing and acting on their own interests and those of their community than anyone else. Reinforced by voluntary associations, the concept of the public sphere insisted that an egalitarian space could be carved out where the inequalities and hierarchies of other realms of social experience were held in temporary abeyance. The same was now true of constitutional theory. The *relevance*, not the *existence*, of socio-economic distinctions was denied.

⁷⁶ U.E.L., *Cobourg Star*, 27 March 1844.

⁷⁷ Beales to the Brock Constitutional Society, *Monarch*, 2 February 1843.

⁷⁸ Before the Metcalfe crisis, the *Banner*, 18 August 1843, praised the British constitution for balancing popular rights with "the influence of property, rank, and station." The moderate *Woodstock Herald*, 27 July and 3 and 10 August 1844, also defended ranks based on ability and merit during the crisis.

The Metcalfe crisis was a political and intellectual trial of the first order. It demonstrated the inadequacy of the theory of mixed monarchy and hierarchical social ideals. Neither could provide an agreed-upon basis for constitutionalism in Upper Canada. Canada retained its Governor, Legislative Council and House of Assembly, but these institutions were disengaged from the social forms that had given them meaning and from the constitutional theory that had knit them into a coherent whole. Metcalfe and his supporters won the election battle in Upper Canada, but they lost the conceptual war. Constitutional self-understanding required a new paradigm.

It was no surprise that the Metcalfe crisis prompted Robert Baldwin to clearly articulate the federal view of the empire, or Robert Baldwin Sullivan to make important strides toward a theory of political parties based on public opinion (discussed in chapter eight), or George Brown to elevate the cabinet to a central place in constitutional theory. They were working out the theory of parliamentary government. Other reformers would come to advocate an alternative constitutional structure based on a more robust reading of the equality and power of public opinion promised by the outcome of the Metcalfe crisis. Conservatives were in need of a new constitutional program. After the Metcalfe crisis, there were really only three alternatives: parliamentary government, radical democracy, or the checks and balances of American republicanism. Upper Canada's constitutional agenda over the next two decades was to choose. Mixed monarchy, or any other form of government that did not acknowledge political equality or the primacy of public opinion, was out of contention. Thus, the *Canadian Loyalist & Spirit of 1812* was surely right in 1843 to conclude that, "we are become in every thing but name, a Republic."⁷⁹

⁷⁹ *Canadian Loyalist & Spirit of 1812*, 30 November 1843.

CHAPTER SEVEN

Publius of the North: Tory Republicanism and the American Constitution

In the introduction to the second edition of his classic, *The English Constitution*, Walter Bagehot refused to apologize for being pre-occupied with comparisons between the American and British constitutions:

The practical choice of first-rate nations is between the Presidential government and the Parliamentary; no State can be first-rate which is not a government by discussion, and those are the only two existing species of that government. It is between them that a nation which has to choose its government must choose.¹

Bagehot had, unwittingly of course, captured Upper Canada's constitutional position after the Metcalfe crisis. As the previous chapter concluded, the crisis removed the theory of mixed monarchy from contention and ensured that its replacement was some form of government by discussion.

How to realize government by discussion was the central preoccupation of constitutional debate from the election of a reform majority in 1848 to the formation of the Liberal-Conservative coalition in 1854. Could government by discussion be achieved by infusing its principles into existing institutions or were new institutions required to reflect its principles? The Metcalfe crisis destroyed the older understanding of the constitution, but produced no corresponding change in institutional form. Lord Metcalfe had predicted that the subversion of mixed monarchy would result in "either the Executive Council exercising undue interference over the House of Assembly," or "the House of Assembly exercising

¹ Walter Bagehot, "Introduction to the Second Edition", *The English Constitution*, R. H. S. Crossman ed. (London: Fontana/Collins, 1963, [1867, 1872]), p. 310.

unlimited interference in the Executive Administration. It would be either a despotic and exclusive oligarchy, or an absolute unqualified democracy."² Perceptive conservatives and reformers struggled to fashion a constitution capable of escaping Metcalfe's dire prediction. Neither succeeded entirely.

The loss of the mixed monarchy paradigm posed the greater challenge to conservatives. They had been its most vocal champions and the most hesitant about the claims of government by discussion. A significant minority of conservatives, however, met the challenge. Between 1848 and 1854, they advocated a program of radical constitutional change that bears striking resemblance to the American Federalist project.³

The history of the conservatives in this period has been told often.⁴ It has been the story of their belated acceptance of responsible government. Tory ideals went up in smoke with the parliament buildings in 1849. The passage of the Rebellion Losses Bill with the consent of both the Governor and the British Parliament was the final and inescapable recognition of local self-government. It has been the story of Sir Allan MacNab's transformation from High Church Toryism to the politics of railroads and the emergence of John A. Macdonald as the undisputed leader of the moderate conservatives in Upper Canada.

² Lord Metcalfe, reply to the County of Russell, *The Addresses Presented to His Excellency The Right Hon. Sir Chas. T. Metcalfe*, (Toronto: H. & W. Rowsell, 1844), p. 138.

³ In this chapter "Federalist" generally refers to those who drafted and advocated the ratification of the Constitution of 1787 and not to the party that formed in opposition to Jeffersonian Republicans. Robert Vipond has also seen a connection between Federalists and Upper Canadian constitutional debates. He argues that, during the debates about Confederation, Upper Canadian reformers developed a view of federalism that was parallel to that of the Federalists, although they may have been unaware of the similarities. This chapter seeks to demonstrate that the level of understanding had been much higher, that the Federalists had been an explicit model, and that their relevance to Upper Canadians extended beyond the question of federalism to incorporate the entire institutional structure of the Federalist project and its utility as a conservative response to democracy. Vipond, "Confederation and the Federal Principle", *Liberty & Community: Canadian Federalism and the Failure of the Constitution*, (Albany: State University of New York, 1991), chap. 2.

⁴ See for instance, Donald Creighton, *John A Macdonald: The Young Politician* (Toronto: University of Toronto Press 1952); and Donald R. Beer, "Toryism in Transition: Upper Canadian Conservative Leaders, 1836 - 1854," *Ontario History* 80, 3 (September 1988): 207-225.

In fact, MacNab and Macdonald were probably the two least articulate conservative leaders during this period. For others, such as Ogle Gowan, John W. Gamble, William H. Boulton, and Henry Sherwood, this period was not marked by a painful transition to responsible government but by the advocacy of an alternative. That alternative was American republicanism. In essence, conservatives were faced with the same questions as the Federalists after the American Revolution. What were the social sources of conservatism in the New World? How could stability be maintained in the absence of monarchy or aristocracy? If all power came from the people, how were property and authority to be protected from the passions and short-sightedness of the mob? The Federalists argued that a new constitution ratified by the people, a strong federal union, an upper house elected on different principles from the lower, and an elected chief magistrate with extensive executive powers could meet these challenges. Democracy was an inescapable reality, but elective institutions could be fashioned to avoid its defects. Many of the most thoughtful and dynamic conservatives in Upper Canada agreed. They debated a series of proposals: a written constitution ratified by the people, an elective Legislative Council, an elective governor, British North American union, and imperial representation. The two conservative groups faced a similar problem and offered similar solutions. Upper Canadian conservatives both implicitly and explicitly drew on the earlier Federalist experience and the constitution of 1787.

American state constitutions after 1776 appeared as radically democratic because of

the supremacy they gave to directly elected assemblies. Executive power was severely curtailed. Two states dispensed with a single chief magistrate altogether and in another eight the governor was chosen by the legislature. While all states except Pennsylvania retained an upper house, they were directly elected by the people and proved ineffective. For the Federalists, the result was what Alexander Hamilton called "impending anarchy." Instability, international ridicule, inter-state conflict, paper money schemes, debtor legislation, interference with the judiciary and a general concentration of powers had resulted. "An elective despotism," Thomas Jefferson declared, "was not the government fought for." The American Revolution made any thought of the British balance of King, Lords and Commons, or the mixture of monarchy, aristocracy and democracy, unthinkable. At its most basic, the Federalists' greatest achievement was to devise a system of democratic institutions resting squarely on popular sovereignty but still encapsulating the benefits of the three classical forms of government. Sovereignty remained in one unified body - the people - who in turn delegated it through a written constitution to two levels of government and to separate institutions corresponding to executive, legislative and judicial functions.⁵

For Upper Canadian conservatives, the details were different but the central problem was the same. While not as dramatic as the American Revolution, the Metcalfe crisis of 1843-44 had also removed the theory of mixed monarchy from contention. The formation of the Baldwin-LaFontaine Reform ministry in 1848, signalled an experiment with parliamentary government. As Lord Elgin warned the Colonial Secretary, Earl Grey, "the

⁵ My debt to Gordon S. Wood, *The Creation of the American Republic 1776 - 1787* (New York: W. W. Norton & Company 1972) is considerable. Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge Massachusetts: The Belknap Press of Harvard University 1993) has also been influential. For background see "Introduction," in Isaac Kramnick, ed., *The Federalist Papers* (London: Penguin Books 1987). For Hamilton see *Federalist Papers*, no. XV: 146 and for Jefferson see *Notes on the State of Virginia*, cited in Kramnick, "Introduction," 25.

working of the system of Government established in these Colonies is about to be subjected to a trial...".⁶ Parliamentary government, or what was more commonly referred to in Canada as responsible government, was defined by Earl Grey as requiring

the powers belonging to the Crown to be exercised through Ministers, who are held responsible for the manner in which they are used, who are expected to be members of the two Houses of Parliament, the proceedings of which they must be able generally to guide, and who are considered entitled to hold their offices only while they possess the confidence of Parliament, and more especially of the House of Commons.⁷

For conservatives, this system was both too democratic and too tyrannical. It was too democratic because all power was assumed by the elected Assembly. The Governor and Legislative Council, previously corresponding to the King and Lords of mixed monarchy, were unable to check the people's representatives. Responsible government was also tyrannical because Ministers holding the confidence of the Assembly could direct not only the Governor and the upper house but also the Assembly itself.

As the Toronto *Independent* saw it, parliamentary government in Canada "is at best a grand sham - a mock monarchy - a one-sided democracy. That it enables some half dozen men by patronage, fear, and corruption, to control the majority of the Lower House; to pack the Upper House, and humbug the Governor."⁸ This critique of responsible government can be found in various forms in every conservative newspaper in Upper Canada.⁹ The rise of

⁶ A. G. Doughty, ed., *The Elgin-Grey Papers, 1846 - 1852* (Ottawa: Public Archives of Canada 1937) Lord Elgin to Earl Grey, 5 Feb. 1848 and Grey to Elgin, 22 March 1848, vol. 1, 122-123, 125-127

⁷ Earl Grey, *Parliamentary Government Considered with Reference to a Reform of Parliament, An Essay* (London: Richard Bentley 1858), 4. Much of the conservative case against parliamentary government in Canada as described below can be found in Grey's last chapter, "Parliamentary Government in the British Colonies," *ibid.*, 198-219.

⁸ *Independent*, 3 April 1850

⁹ See for instance, *British Colonist*, 30 Oct. 1849; *Amherstburg Courier* copied *British Colonist*, 10 Sept. 1850; *Hamilton Spectator*, 21 June 1848 and 7 Feb. 1849; *Independent*, 27 Feb. 1850; *Patriot*, 5 Sept. 1851; and *Cobourg Star*, 2 Feb. 1848. There were also frequent complaints about corruption due to the abuse of patronage and power, the expense of patronage and the trappings of monarchy, the difficulties in applying the general precepts of responsible government to concrete cases, and the instability caused by doubts about the

the cabinet meant a new "democratic oligarchy" that dictated to the Governor, the Legislative Council, and to the other members of the Assembly.¹⁰ Far from being responsible to public opinion, once a cabinet gained control of a parliamentary majority through its extensive patronage, it could ignore the people with impunity. As the *Hamilton Spectator* put it, "[t]he days of the Stuarts have returned upon us in a different shape. The Divine right of Kings has given place to the uncontrolled privileges of the People, with this simple difference, that the opinions of the people can only be expressed by the gentlemen who find their way to Parliament."¹¹

This critique made a particularly prominent appearance with the passage of the Rebellion Losses Bill. In outline, conservatives' arguments against ministerial responsibility had not changed since the Metcalfe crisis - except that dire predictions had been replaced by an interpretation of recent political experience. Earlier fears were confirmed. As Allan MacNab put it, "they [the cabinet] had now however got possession of King, Lords and Commons."¹² On the advice of his ministers, Elgin had created enough new Legislative Councillors to ensure the passage of the measure and had himself given it royal assent. The swamping of the upper house, the agreement of Elgin to a bill to compensate those whom Tories believed to be rebels, and the refusal of the British parliament to intervene meant that a

system's durability. Given the loss of protection in the British market and the refusal of the British parliament to interfere with the Rebellion Losses Bill, the oldest conservative argument against responsible government - that it was incompatible with membership in the empire, was virtually absent in this period. Only an ultra-tory commentator for the *Hamilton Spectator*, 25 Aug. 1849, bothered to mention it.

¹⁰ Address of the Central Committee of the British American League, *British Colonist*, 7 May 1850

¹¹ *Hamilton Spectator*, 24 July 1850

¹² Elizabeth Gibbs, general ed., *Debates of the Legislative Assembly of United Canada* (Montreal: Centre de Recherche en Histoire Economique du Canada Français), MacNab, 16 Feb. 1849, 764. See also *Debates*, MacNab, 14 May 1849, 2294; and *Hamilton Spectator*, 17 March 1849.

Canadian ministry supported by a majority in the Assembly was without limits.¹³ Even the elected Assembly "is pure despotism in the hands of Oligarchy, the worst of all Governments."¹⁴ The Legislative Council and the Governor were "mere *pageants* to make up a show".¹⁵ "They may still be ornamental; they have lost their use."¹⁶

Parliamentary government operated differently in Britain than in Canada. Canada lacked an aristocracy, resident monarch, large landowners, and a dependent tenantry. Britain had a more restricted franchise and legislators with the wealth and independence to resist the blandishments of executive patronage. Such a social structure ensured a role for conservative-hierarchical principles even with the responsibility of the Queen's ministers to the House of Commons. In Canada, as in the United States, a relatively egalitarian social structure had resulted in unchecked democracy.

Lord Elgin's arrival in the colony was marked with a pamphlet by "Fumius" entitled *On Responsible Government, as applied simply to the Province of Canada*. According to this author, the system in Britain was noted for "its harmonious working," but "in Canada, all the evils that can spring from the system are to be met with, while few of its benefits are anywhere manifest." Regardless of the party in office, Canada possessed "none of the proper germs from which can spring the requisites necessary to the perfection of Responsible Government."¹⁷ The *Cobourg Star* admitted that England was a democracy, but it was one

¹³ See Phillip A. Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1860* (Westport Connecticut: Greenwood Press 1985), 316; and Ged Martin, "The Canadian Rebellion Losses Bill of 1849 in British Politics," *The Journal of Imperial and Commonwealth History* 6, 1 (Oct. 1977): 3-22.

¹⁴ *Cobourg Star*, 6 June and 5 Sept. 1849

¹⁵ *Hamilton Gazette*, 3 June 1850

¹⁶ *British Colonist*, 3 Aug. 1849

¹⁷ Fumius, *Letter to His Excellency the Right Honorable Lord Elgin, on Responsible Government, As applied simply to the Province of Canada...* (Montreal: Donoghue & Mantz Jan. 1847), 6-7, 10. For Fumius the crucial social difference was Canada's lack of independent legislators - a lack also stressed by *VOX British Whig*, 24 Feb. 1849; A British Canadian, *Hamilton Spectator*, 16 Feb. 1848; and *Yorkshire Patriot*, 9 Jan.

"duly coerced by an adequate weight of aristocratic power, - constituting a government founded on the stability of the patrician, but invigorated by the activity of the plebian race."¹⁸ Conservatives repeatedly referred to Canada as a young country, lacking the social material for a patrician class to provide leadership and the personnel for a Canadian House of Lords.¹⁹ As "A British Canadian" wrote in the *Hamilton Spectator*, "there is in North America a very general feeling of repugnance to the growth and spread of Aristocracy, and this feeling is not confined to the people of the United States - it extends to Canada."²⁰ The *Hamilton Gazette* judged responsible government a failure because of the "present transitional state" of Canadian society.²¹

Many conservatives concluded that whatever similarity there was in institutional form, Canada did not possess a transcript of the British constitution.²² As one letter to the editor concluded, "the elective principle seems indigenous to the American soil."²³ This central principle of Tocquevillian political science was echoed by the *British Colonist* when it concluded that "political institutions will not bear transplanting."²⁴ In this single phrase,

1850.

¹⁸ *Cobourg Star*, 1 March 1848. See also *British Colonist*, 26 Aug. 1853; "Such [party government] is also the case in England; where, however, there are modifying circumstances that do not exist here." Even the ultra-tory correspondent for the *Hamilton Spectator* recognized that responsible government operated in England but a Canadian governor could never fulfil the role of an hereditary monarch. A British Canadian, *Hamilton Spectator*, 25 Aug. 1849

¹⁹ For instance, A British Canadian, *Hamilton Spectator*, 4 Nov. 1848; *Quebec Mercury* copied *British Colonist*, 8 Dec. 1848; "how much less is Canada yet arrived at such a state of advancement as to be governed by Responsible government through the well understood wishes of the people;" *Minutes of the Proceedings of the Second Convention of the Delegates of the British American League* (Toronto: Patriot Office 1849), P. Vankoughnet, 5 Nov. 1849, xxxvi; *Independent*, 27 Feb. 1850; and *Patriot*, 23 Jan. 1850

²⁰ A British Canadian, *Hamilton Spectator*, 24 Nov. 1849

²¹ *Hamilton Gazette*, 19 and 23 Aug. and 13 Sept. 1852

²² For instance, A British Canadian, *Hamilton Spectator*, 4 Nov. 1848; *Independent*, 27 Feb. 1850; *British American*, 7 May 1852; *Alpha Hamilton Spectator*, 28 March 1849; and J. W. Gamble to the Yorkmills Branch of the British American League, *British Colonist*, 29 Jan. 1850.

²³ *VOX British Colonist*, 28 June 1850; and also A British Canadian, *Hamilton Spectator*, 24 Nov. 1848; *Independent*, 1 Nov. 1849; and *Second Convention of... the British American League*, Wilson (Quebec), 3 Nov. 1849, xxiv

²⁴ *British Colonist*, 16 Jan. and 26 March 1852

the *Colonist* turned its back on a central axiom of Upper Canadian political discourse: that Upper Canada was to have "the image and transcript" of the British Constitution as promised by the first Lieutenant-Governor, John Graves Simcoe.

Reinforcing the point, another commentator concluded that "he did not know that there was any part of the world in which there was more equality as to the position in life and circumstances of our existence than in this Colony. He contended that the tendencies of this community are as democratic as they can be."²⁵ This social argument formed the basis of much conservative thinking between 1848 and 1854. For some, it led to two related conclusions: first, that Upper Canada was a democracy, and, second, that the American system of government was a more relevant model than the British.

Not all conservative commentators accepted such a bold formulation of their thought, but most agreed that voting reformers out of office was no solution.²⁶ With the passage of the Rebellion Losses Bill and cries of "French domination," repeal of the union with Lower Canada was a common call.²⁷ Since this implied that responsible government would function effectively in a separate Upper Canada,²⁸ repeal of the union was also inadequate. A sense of

²⁵ *Second Convention of...the British American League*, McKenzie, 5 Nov. 1849, xxxviii

²⁶ Except *Second Convention of...the British American League*, Miller and D'Arcy Boulton, 2 and 5 Nov. 1849, x, xxxvii-xxxviii. Tory papers frequently charged reformers with perverting the constitution, but this rarely led to calls for measures to ensure electoral success under the existing constitution. Of course, those Tories who resisted significant constitutional change implied that electoral means were adequate. This became the position of the *Hamilton Spectator*, 9 Nov. 1850; "do we hope to remove the abuses which have crept into a system by destroying that system entirely?"

²⁷ *RC Patriot*, 26 Feb. 1849; *Cobourg Star*, 4 April 1849; and *British Whig*, 21, 24 and 27 March and 5 April 1849; and *Debates*, William H. Boulton, 10 May 1849, 2238-2239

²⁸ This point is made explicitly by *RC Patriot*, 26 Feb. 1849 and the *British Whig*, 5 April 1849. It was also the theoretical underpinning of the *Patriot's* support for the principle of double majority, 27 Jan. 1852.

crisis brought on by the cumulative impact of Britain's move to free trade, economic depression, the revolutions of 1848, political defeat, the swamping of the Legislative Council, the Rebellion Losses Bill, the burning of the Parliament buildings, the annexation movement, and the rise of Clear Grit radicalism, forced something of a return to first principles. Thus the *British Colonist* demanded "a thorough *theoretical* investigation of our existing constitution...[to] occasion the ultimate adoption of those wise checks and safeguards by which not only the present incumbents in office, but all their future successors should be deprived for ever of power to tyrannise."²⁹ The logic of their arguments and their political frustrations drove many conservatives to a more ambitious and theoretically sophisticated constitutional agenda. Other conservatives might criticize responsible government, but they offered no alternative.

Canvassing a number of such alternatives in the aftermath of the Rebellion Losses Bill, the *British American* agreed that "one thing is certain, the country cannot remain as it is."³⁰ This period was indeed marked by numerous proposals from conservatives, including annexation to the United States, British North American union, imperial federation and a myriad of changes to Canada's institutional structure. Conservatives such as Henry Sherwood, John Strachan - son of the Bishop of Toronto, J. W. Gamble, and William Boulton presented their proposals in the form of draft constitutions for Upper Canada. Criticizing reformers or responsible government was not enough. Thus, the reform *Guelph Advertiser* divided its opponents into two groups: "Liberal Conservatives" who advocated democratic constitutional changes and "old croakers" who were destined to drop "into

²⁹ *British Colonist*, 14 Aug. 1849. For the concept of a "resort to first principles" I am indebted to the first chapter of Gerald Stourzh, *Alexander Hamilton and the Idea of Republican Government* (Stanford: Stanford University Press 1970).

³⁰ *British American*, 7 and 14 July 1849

oblivion." While the "Liberal Conservatives" included several legislators, they were more prominent in the conservative press than in the parliamentary party. In an article entitled "Republican Tories," George Brown's *Globe*, itself fending off constitutional demands from more radical reformers, expressed sympathy for Sir Allan MacNab's organ, the *Hamilton Spectator*, as it resisted republican proposals from other conservative newspapers.³¹ Upper Canada's political world had fractured along new and interesting lines. The emergence of "Republican Tories" was one result. Although many of their writings and speeches were incidental and fragmented, and despite public antagonism between some of their spokesmen, what emerged was remarkably coherent.³²

Conservative proposals for constitutional change assumed Canadians' right to frame their own constitution. The Act of Union could then be seen as an imperial imposition - and an unsuccessful one. The vague conventions of an unwritten constitution could be replaced. Canada's relationship with Britain was as much a matter of local self-determination as the constitution the people would govern themselves by.³³ These various proposals were part of a public debate in Upper Canada rather than attempts to persuade officials in the Colonial Office. Constituent power - sovereignty - lay with Upper Canadians, not in London.

³¹ *Guelph Advertiser*, 24 April 1851 and *Globe*, 21 Nov. 1850. Moderate reform papers, (like the *Brockville Recorder*, 10 May and 2 and 9 Aug. 1849), tended to question the sincerity of conservatives who advocated constitutional reforms. More radical reform organs, (like the *North American*, 21 May and 8 Nov. 1850), welcomed them as potential allies who demonstrated the inevitability of democratic progress. For the failure of these conservatives to create an organizational alliance with the Clear Grits, see Samuel Thompson, *Reminiscences of a Canadian Pioneer For The Last Fifty Years* (Toronto: McClelland and Stewart Limited 1968, [first published 1884]), 181. Paul G. Cornell's focus on trends in legislative behaviour creates the impression that after 1848 conservatives, with the exception of W. H. Boulton, were an undifferentiated and rather shadowy category. *The Alignment of Political Groups in Canada, 1841-1867* (Toronto: University of Toronto Press 1962), 29, 102-105

³² Beer, *To Make a Nation*, 219 makes the same point about the literature of the Federalist period.

³³ *Independent*, 14 Nov. 1849, and 30 Jan. 1850; *British Whig*, 20 Jan. 1849, *Cobourg Star*, 21 Nov. 1849; *Alpha Hamilton Spectator*, 28 March 1849; *Debates*, W. H. Boulton, 17, 24, and 28 June 1850, 606, 765, 881-882; and resolutions for a convention, *Debates*, H. Sherwood and W. H. Boulton, 28 July 1851, 1068-1070; and *Second Convention of...the British American League*, O. Gowan, 3 Nov. 1849, xxiii; "let us not be under the constitution which she [Britain] has dictated to us, but under the constitution which we approve of."

While even annexationists recognized the formal and legalistic need for imperial sanction, politically, morally and constitutionally, these conservatives had accepted the existence of what the *Patriot* referred to as the "sovereign people."¹⁴ Thus, most conservative proposals included a provision for constituent assemblies or conventions to frame the new constitution. Such a mode of proceeding was radical indeed. Previously, Robert Gourlay and William Lyon Mackenzie had been among the few to advocate conventions. In response to Gourlay's efforts, an act was passed prohibiting province-wide meetings while Mackenzie's call for a convention was seen as tantamount to treason. The reaction is understandable. The creation of new popular bodies to assume legislative or constituent functions was a direct attack on the legitimacy of existing institutions. It questioned their ability to govern and their exclusive claims to represent the people. The American invention of constitutional conventions rested on the assumption of popular sovereignty. It asserted the primacy of a constitution over legislation and of the people over legislators. This was a complete rejection of parliamentary sovereignty whereby institutions could be limited only by internal mechanisms rather than a higher man-made law. A few conservative proposals for a convention went even further to include ratification by direct popular vote following the precedent set by the 1780 Massachusetts state constitution.¹⁵

While most of these proposals called for either provincial or imperial legislation to authorize such a convention, the British American League held two conventions of its own in

¹⁴ *Patriot*, 12 Oct. 1853

¹⁵ Calls for a constituent convention were made by Sherwood, W. H. Boulton and O. Gowan, *Debates*, 28 July 1851, 1068-1070; 13 May 1853, 3058-3062, and by Alpha, *Hamilton Spectator*, 28 March 1849. The *Independent*, 14 Nov. 1849, and J. W. Gamble, *Second Convention of...the British American League*, 1 Nov. 1849, 5, went the extra step of requiring direct popular ratification. The *Independent* also adopted Jefferson's notion of the people exercising constituent authority each generation. For the importance of the idea of a convention in the American context see Beer, *To Make a Nation*, 346 and Stourzh, *Alexander Hamilton*, 60.

1849.³⁶ Since they were composed of elected delegates from supposedly non-partisan local associations, some seemed to suggest that they could themselves frame a new constitution for Canada to be ratified by either the people or the British Parliament. Thus, during the first convention at Kingston, Hugh Ruttan, editor of the *Cobourg Star*, boldly declared that "the constitution under which Canada is living just now is a very bad one, and therefore, they had a perfect right to alter it, and they were met there for the express purpose of altering it."³⁷

The *British Whig* denied the legitimacy of this meeting, but nonetheless called for a broader gathering of the people's delegates, since "a Convention might almost be considered as the Government...attention must be paid to the wishes and desires of a people, when constitutionally assembled."³⁸ That such wishes could be authoritatively expressed outside legislative institutions was an American invention incompatible with British theory and practice. Reporting on the British American League, the reform *Mirror* concluded, "the right of the people to meet in solemn convention, and calmly, and unopposed by government, to discuss great fundamental questions of state, and national policy, has been confirmed."³⁹

Conservatives, not Goulray or Mackenzie, smashed the prohibition against such extra-

³⁶ The League was formed in 1849 with local branches throughout Upper Canada and Montreal and Quebec. The branches elected 150 delegates to the Kingston convention in July, which adopted a platform of British North American union, retrenchment and economic protection. The second convention, at Toronto in November, attracted significantly fewer delegates but was more radical in its agenda. To avoid an open revolt over the issue of an elective Legislative Council, the question was referred back to local associations. See Chepas D. Allin, "The British North American League, 1849," *Ontario Historical Society, Papers and Records* 13, (1915): 74-115, and Gerald A. Hallowell, "The Reaction of the Upper Canadian Tories to the Adversity of 1849: Annexation and the British American League," *Ontario History* 63 (1971): 41-56. An excellent account remains unpublished, W. N. T. Wylie, "Toronto and the Montreal Annexation Crisis of 1849-1850: Ideologies, Loyalties and Considerations of Personal Gain" (MA thesis, Queen's University 1971).

³⁷ Ruttan, 27 July 1849, reported, *Globe*, 2 Aug. 1849. At the second convention Gamble made his plea for a convention and written constitution while another delegate asserted "the Constitutional right to alter the fundamental principles of the Constitution when circumstances required it." *Second Convention of...the British American League*, Hamilton, 6 Nov. 1849, lix and Gamble, 3 Nov. 1849, 5, vix-xx

³⁸ *British Whig*, 8 May 1849

³⁹ *Mirror*, 9 Nov. 1849. For the British context, see T. M. Parssiren, "Association, convention, and anti-parliament in British radical politics, 1771 - 1848," *English Historical Review* 88 (July 1973): 504-533.

parliamentary bodies.

While continued membership in a monarchical empire limited explicit avowals, after 1848 there were almost no public denials of popular sovereignty from conservative organs except the *Hamilton Spectator*.⁴⁰ Conservatives who opposed constitutional change might still employ the language of mixed monarchy.⁴¹ As an alternative to responsible government, however, mixed monarchy had few supporters. In advocating an hereditary peerage and a royal court for Canada, the *Hamilton Gazette* and *Spectator* were displaying a mixture of logical consistency and practical absurdity.⁴² An older generation of tories, largely withdrawn from political life, might sound a similar note. In 1851, John Beverley Robinson predicted to his old teacher and friend, John Strachan, that "we shall have some years of coarse, vulgar democracy, enough to worry us in our time, our sons, or at least our grandsons will see the beginnings of a reconstruction of the social edifice...after men have seen one fallacy after another in the democratic system exposed and have suffered enough from this mistake..."⁴³ Conservatives still engaged in electoral politics could not wait for the people to become nostalgic for old tory principles, especially when there was no practical plan for resurrecting them.

⁴⁰ For explicit rejections of popular sovereignty see *A British Canadian*, *Hamilton Spectator*, 15 Dec. 1849 and *Hamilton Spectator*, 9 Feb. 1850, and against conventions, 11 May 1850. *A British Canadian* also fought the idea that democracy was inevitable in North America, that Canadians were capable of self-government and that public opinion was absolute; 12 June 1850, 19 Feb. 1851 and 5 March 1851. *The Patriot*, 6 Feb. 1850, also attacked J. W. Gamble's notion that monarchy itself was based on popular sovereignty.

⁴¹ See especially the successful amendment of Ermatinger and Rolland McDonald at the first convention of the British American League against an elective Legislative Council, reported *Globe*, 31 July 1849; "Devoted in their attachment to the principles of Monarchical Government, and revering the mixed forms of Government established by the British Constitution..." See also *Hamilton Gazette*, 10 May 1852, and *A British Canadian*, *Hamilton Spectator*, 25 Aug. and 17 Nov. 1849.

⁴² *Hamilton Gazette*, 3 June 1852 and *A British Canadian*, *Hamilton Spectator*, 24 Nov. 1849. A colonial peerage was also advocated by the Bathurst District Branch of the British American League, *Patriot*, 19 Jan. 1850.

⁴³ Robinson to Strachan, 8 April 1851, in Patrick Brode, *Sir John Beverley Robinson: Bone and Sinew of the Compact* (Toronto: University of Toronto Press 1984), 273

Most had come to recognize, like the Federalists before them, that their task was to manage a democratic society, not to create a monarchical one. Canadians were self-governing; the task was to fashion institutions to make self-government safe. Many conservatives might have quoted John Dickenson at the Philadelphia Convention of 1787: "a limited Monarchy he considered as one of the best Governments in the world. It was certain that equal blessings had never yet been derived from any of the republican form. A limited monarchy however was out of the question. The spirit of times" made it impossible.⁴⁴ The choice for conservatives was now between a grudging, scarcely articulated, acceptance of parliamentary government and the advocacy of an alternative form of democracy. Choosing the latter, the *British Colonist* concluded that, "when you have made a step in the direction of democracy, the next best thing to do, is to find a suitable check, not to try to reverse the action taken."⁴⁵

The Toronto *Independent* found that check in the American constitution. As it told the monarchical *Hamilton Spectator*, "if he be a true conservative, he should join with us and assist in introducing the more conservative principles of the American Government with as little delay as possible."⁴⁶ The *Independent*, as an annexationist paper, extolled the advantages of American republicanism over Canadian parliamentary government. Its editor,

⁴⁴ Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven: Yale University Press 1966), vol. 1, John Dickenson, 2 June 1787, 86-87

⁴⁵ *British Colonist*, 28 Oct. 1853. Even those who doubted the applicability of mixed monarchy to Canada, praised its operation in Britain or retained it as an abstract ideal. See for instance, *British American*, 7 May 1852, and *British Colonist*, 26 Aug. 1853.

⁴⁶ *Independent*, 12 Dec. 1849

Hugh Willson. described himself as a "moderate conservative"⁴⁷ and emphasized constitutional, rather than economic, reasons for annexation.⁴⁸ Canada had a democratic oligarchy rather than the British constitution. "Canadians have waited long enough for the revelation of this new principle in politics, which is to produce a King and Lords." The Federalists had already come to terms with this problem. "We believe," declared Willson, "that a Republican form of government, surrounded and guarded by checks like those of the American States, is better than a badly regulated Colonial Democracy, divested of every Conservative principle."

The American federal constitution was nothing more than the British constitution modified to the social circumstances of North America. Canada had the "forms and resemblances" of the British constitution while the United States had the "reality":

and consequently [they] have more of the conservative principles, essential to the vitality of all good governments: - that their systems, whilst they are eminently popular being based wholly on the people, afford such ample checks upon the Democracy, as effectually to prevent those demoralizing and disorganizing tendencies which unhappily for Canada, threaten to overturn the whole fabric of society.

That an "eminently popular" government could contain checks on democracy; that it could be conservative, was the essence of the Federalists' achievement.⁴⁹

As another annexationist told the Literary Society of Dundas, annexation offered Canada something closer to the British constitution than it had managed within the empire:

⁴⁷ *Independent*, 25 Oct. 1849. Willson was also the secretary of Toronto Annexation Society. For relations with the Montreal Society and the financing of the *Independent* see the letters contributed by Arthur G. Penny, "The Annexation Movement, 1849-50" *Canadian Historical Review* 5, 3 (Sept. 1924): 236-261. The *Hamilton Spectator*, 5 Sept. 1849, noticed Willson's conservative credentials with regret. Willson had been a frequent contributor to the *Spectator*.

⁴⁸ *Independent*, 25 Oct., 21 Nov. 1849, and 2 Jan. 1850. For a re-assessment of the ideas and supporters of the annexation movement see Michael S. McCulloch, "English Speaking Liberals in Canada East, 1840-1854" (Ph.D. thesis, University of Ottawa 1985), esp. 411-471.

⁴⁹ *Independent*, 25 Oct. 1849, 27 Feb., 27 March and 3 April 1850

The sovereign people...divests itself...of its sovereignty, - and confers it upon chosen agents divided into three estates...The people require that at certain intervals the power shall all revert to itself...This system might not unaptly be called an elective limited monarchy.⁵⁰

Annexation meant that Upper Canadians could frame their own state constitution while joining federal institutions designed to preserve conservative elements despite the democratic social structure of the new world.⁵¹

The number of vocal conservative annexationists in Upper Canada was small, but the reaction of fellow conservatives is revealing. Even the *Hamilton Spectator* published a series of letters from "Alpha" favouring a constitutional convention, pointing out the benefits of annexation, and praising American independence as an application of British principles.⁵² Other conservative organs, such as the *Patriot*, *Cobourg Star* and *British Colonist*, saw annexation as an understandable, if not preferred, response to just and widely shared complaints. The *British Colonist* concluded that the annexationists "thought every remedy hopeless, which was consistent with allegiance, and in that we differ from them..."⁵³

Conservative annexationists wanted to replace parliamentary government with American

⁵⁰ Dr. Wraith, "Address to the Literary Society of Dundas," *Independent*, 2 Jan. 1850

⁵¹ *Independent*, 25 Oct. 1849 and 27 March 1850. Willson pointed out, correctly, that in their own state constitution, Upper Canadians did not have to adopt universal suffrage or the election of officials and judges. An acceptance of popular sovereignty and an elective legislature and executive were all that were required by the guarantee in the 1787 constitution that each state of the union have a republican constitution.

⁵² Alpha *Hamilton Spectator*, 28 March, 4 April, 11 April and 18 April 1849. The *British Whig*, 16 Dec. 1848, and 13 Oct., 15 Oct. 1849, and 5 Feb. 1850, supported annexation for economic and commercial reasons but abandoned the idea when Earl Grey's despatch declaring Britain's intention to maintain the empire was published.

⁵³ *British Colonist*, 30 Oct., 4 Sept. 1849; Anglo-Canadian *British Colonist*, 11 May 1849; *Cobourg Star*, 17 Oct. 1849; and *Patriot*, 5 July 1849

republicanism by joining the union. A significantly larger number of conservatives wanted to do the same thing without joining the union.

One of the most prominent and thoughtful of these was John William Gamble, a local magistrate. "Constitutionalist" (Tory) member of the Assembly elected in 1838, successful businessman, loyalist descendant and High Church Anglican.⁵⁴ His constitutional programme included neither annexation nor complete independence, but otherwise, differed little from that of conservative annexationists. Speaking to the people of the First Riding of York, Gamble made his debt to the Federalists explicit: "it was necessary to follow the same course which had been pursued by the wise men who drew up the American Constitution."⁵⁵ While he was unsuccessfully opposed by a second conservative candidate who argued that fully democratic institutions were incompatible with conservatism, Gamble claimed to hold the same political principles as Allan MacNab.⁵⁶ He argued that only new political institutions reflecting the progressive and democratic nature of Upper Canada could

⁵⁴ The *Examiner*, 8 Sept. 1852, a radical reform paper, referred to Gamble as "the High Church republican." See Barrie Dyster, "Gamble, John William", *Dictionary of Canadian Biography*, vol. 10, (Toronto: University of Toronto Press 1972), 299-300.

⁵⁵ Gamble's speech was reported, *Patriot*, 9 Dec. 1851. Thus the *Examiner's* attempt, 7 Nov. 1849, at ridicule fell a bit flat when it referred to Gamble as "the Washington of a 'peaceful revolution'." The following synthesis of Gamble's constitutional position is taken from *Second Convention of...the British American League*, 1, 3 and 5 Nov. 1849, 4-6, xiv-xx, xlii-xliii; J. W. Gamble to the Yorkmills Branch of the British American League, *British Colonist*, 29 Jan. 1850; Gamble's nomination speech to the First Riding of York, *Patriot*, 9 Dec. 1851; and his speeches on A. N. Morin's resolutions in favour of an elective Legislative Council, *Debates*, 13 and 28 May 1853, 3058-3062 and 3159-3163. That Gamble repeated his program in 1853 counters interpretations that see such arguments as a temporary loss of faith in British forms due to the shocks of 1849.

⁵⁶ Gamble won the 1851 election against the incumbent and prominent reformer, James Hervey Price, and a Clear Grit, as well as a second conservative candidate. "A Friend to Conservatism" *Patriot*, 21 Nov. 1851, also accused Gamble of being a democrat rather than a conservative. "A Westonian" had already written to the *Patriot*, 2 Dec. 1850, that "with regard to the charge brought against Mr. Gamble, as to a change in that gentleman's political creed, it may simply be remarked, that he is not alone among the Conservatives in that particular." Gamble considered himself a conservative, not only because he sought to introduce a system of checks and balances, but also because, after 1849, he opposed free trade and the secularization of the clergy reserves. Interestingly, Gamble deserted the party in 1856 when MacNab was manoeuvred out of the premiership. He repeated his critique of responsible government and called for an elective, written constitution such that "power would be placed in the hands of the three branches of the legislature, which at present was held by one." *Debates*, Gamble, 29 May 1856, 2284-2290

implement them. British forms in Canada had resulted in cabinet dictatorship, tyranny of the majority, instability and party government. "Compared with this, are not the elective institutions, associated with those checks common to the free republics of the United States, conservatism itself?" Thus the Federalists had "preserved more of the spirit of the British constitution than we have in Canada." Employing a distinction crucial to the Federalists, Gamble wanted to design a federal union based on the "concentration" of power in the people without its "centralization" in any one institution.

Thus Gamble advocated a directly elected governor to protect minorities and check "sudden ebullitions of popular feeling" with a legislative veto. "Instead of prerogatives that cannot be exercised, I propose substituting defined powers." A Canadian governor, like his American counterpart, would be willing to use the veto since it was directly delegated to him by the people. Gamble advocated an elected upper house on the same principle; the people were the only source of authority in the state. While Gamble actively supported the reform government's proposals in 1853 for a directly elected Legislative Council, he was true to the American model by preferring indirect election by municipal councils.⁵⁷ Serving the same purpose as the American states, these electoral bodies would act as an intermediary between the people and the upper house. They would "filter" and "refine" popular choices. Indirect election, a smaller number of members, and rotation would ensure the conservative character of an upper house. Again, following the Federalists, the separation of powers would be preserved by barring office-holders from legislative bodies, by giving the upper house the power to ratify executive appointments, and by empowering two-thirds of the legislators to

⁵⁷ In 1852, the Hincks-Morin government introduced resolutions to make the Legislative Council elective. As part of the deal with Hincksite reformers, a revised plan was implemented in 1856 by a government headed by Sir Allan MacNab and led in the Assembly by John A. Macdonald.

over-ride the governor's veto. All of this required a written constitution, drafted by a specially elected convention and ratified by direct popular vote. Further checks could be achieved in a federal union of British North America. In short, a similar social structure made the United States the appropriate constitutional model for Upper Canada from within a common Anglo-Saxon heritage of "civic freedom."⁵⁸

The argument was clever. Perhaps it was too clever. Gamble's own Yorkmills Branch of the British American League, responded, "how Mr. Gamble can suppose that this evil [dominance by a democratic Assembly] can be counteracted by making the Constitution more democratic we are at a loss of conceive."⁵⁹ Other conservatives, like William Henry Boulton, the Member for Toronto, were at no such loss. Gregory Kealey has rightly emphasized the role played by leaders of the Orange Lodge, especially Boulton and Ogle Gowan, in moving conservatives to a more populist position.⁶⁰ Not only did these leading Orangemen decide that a return to British mixed monarchy was impossible, but, somewhat ironically, given the Lodge's connection to loyalty to empire, they turned to American republicanism for an alternative to British parliamentary government. In supporting a constitutional convention and elected Legislative Council, Boulton compared the constitution of the state of New York with that of Canada, and concluded that "the one was a government

⁵⁸ Gamble also argued that such a program would allow the tory party to regain popular support. He favoured increasing the powers of local governments, representation by population, and was also willing to entertain the possibility of universal manhood suffrage. See *British Colonist*, 4 August 1852 and *Debates*, 22 Feb. 1853, 1668 and 2 March 1853, 1839. He is best remembered for his arguments in favour of a protective tariff to create a diversified and self-sufficient Canadian economy.

⁵⁹ *Patriot*, 6 Feb. 1850

⁶⁰ Gregory Kealey, "Orangemen and the Corporation: The politics of class during the Union of the Canadas," in Victor L. Russell ed., *Forging a Consensus: Historical Essays on Toronto* (Toronto: University of Toronto Press 1984), esp. 62. The most articulate conservative republicans appear to have shared little in terms of religious denomination, nationality, or economic experience to account for their constitutional theorizing or to differentiate them from other conservatives.

of checks, the other a rampant democracy."¹ He repeated these sentiments to Toronto voters during his successful bid for re-election in 1851.² With a very different social structure, Boulton announced that "there was nothing in the English system that was applicable to our state." Faced with the same problem, Americans had adopted a constitution of checks and balances that proved the "wisdom and sagacity of those who framed it."³

Speaking to the House two years later, Boulton quoted James Madison from the *Federalist Papers*, Montesquieu, and Thomas Jefferson on the need for a separation of powers to prevent tyranny. After surveying the experience of Maryland, Pennsylvania, Georgia and New Hampshire, Boulton concluded that good government required a second legislative chamber. In North America, only popular suffrage could give such a body legitimacy. A smaller number in the upper house would mean larger constituencies which could be won only by prominent men transcending parochial interests and perspectives. With longer tenure, these men would form a conservative check on the lower house. At the same time, Boulton advanced the case for an "independent Governor" capable of taking responsibility for his own actions.⁴

Boulton proposed his own draft constitution to the House on June 24th, 1850. It was a mixture of the American federal and the New York state constitutions. The Legislative Council was to be elected and given the power to approve executive and judicial appointments. Office-holders were barred from the legislature. The Governor and his

¹ *Debates*, W. H. Boulton, 3 June 1850, 377

² Boulton's nomination speech, *Patriot*, 2 Dec. 1851. Boulton was re-elected with thirty more votes than Henry Sherwood who criticized the extent of Boulton's proposals.

³ *Debates*, W. H. Boulton, 21 May, 3 June, 17 June, 1850, 77, 376-377, 606, 765-766, 769-770

⁴ *Debates*, W. H. Boulton, 8 Oct. 1852, 930-934. Boulton was not present for the remainder of the debate on an elective Legislative Council since he was unseated for failing to meet the property qualification. Earlier, Boulton had advocated the abolition of the property qualification as unsuited to a democratic society in the new world.

Lieutenant were to be appointed for life or elected by the people. The Governor was entrusted with executive powers and could veto legislation within ten days. His veto could be overridden by two-thirds majorities in both houses. Other provisions, such as the role of the Lieutenant-Governor, impeachment and fixed elections, were modeled on the American federal constitution, while provisions on legal reform and retrenchment were copied from New York state.⁶⁵

The *Hamilton Spectator* refused to discuss the principles of Boulton's resolution since they were "republican in nature," but its own Toronto correspondent conceded that "sooner or later the elective principle which they embody will be carried out."⁶⁶ The *Patriot*, the leading conservative organ in Toronto, took the resolutions more seriously. While it devoted most of its commentary to parts of the plan it disapproved of, it laid down two general principles:

- 1st. That the whole of the Judiciary and Executive must be more or less *independent* of the People *directly*.
- 2nd. - That all other officers, responsible to, and paid by the people, through their various councils, &c., must be removable by, or in other words, dependent upon those bodies.⁶⁷

These principles emphasized the separation of executive and legislative functions, underpinned the *Patriot's* support for an elected upper house, and left open the possibility of indirect election by subordinate bodies or electoral colleges.

The *Cobourg Star*, once one of the most ultra tory organs in Upper Canada, went further, concluding that "where the source of political power is vested in the people at large, the institutions of government, both Executive and Legislative must originate from, and rest

⁶⁵ Boulton's resolution is printed in *Debates*, 24 June 1850, 789-795.

⁶⁶ *Hamilton Spectator*, 29 June and 3 July 1850

⁶⁷ *Patriot*, 16 July and also 27 March 1850

upon the same source, in order to act as checks, real efficient checks, the one on the other."⁶⁸ In September, 1849 it was advocating an upper house elected by provincial assemblies in a federal union of British North America, but moved on in early November to support a directly elected Canadian upper house. Its editorial of November 21st, 1849 concluded that Canada was a "purely democratic community" where stability and the public good could only be achieved by a directly elected Governor and Legislative Council and a suffrage extended to "the whole permanent taxpaying community."⁶⁹

Much of the debate about elective institutions occurred in connection with the British American League. At its first convention a minority were in favour of an elective Legislative Council but were defeated by a vague motion endorsing monarchical government. The majority, including John A. Macdonald, adopted a platform of retrenchment, British North American union, and economic protection.⁷⁰ At the second convention of the League at Toronto, about half the delegates were in favour of at least an elective Legislative Council, with two of the leaders, John Gamble and Ogle Gowan, pushing further. Gowan demanded a settled constitution, an elective Legislative Council and any other reforms "to leave nothing in the neighbouring Republic for us to envy."⁷¹ After his report to the Elizabethtown Branch, it adopted resolutions in favour of household suffrage, and an elective Governor, Legislative Council, and local officers. The Brockville Branch also resolved in favour of both an

⁶⁸ *Cobourg Star*, 20 March 1850. Like W. H. Boulton and the Federalists, the *Cobourg Star*, 19 Dec. 1849, argued that larger constituencies for the upper house "would require of the candidate, that he should be more than locally known before he could obtain the suffrage of so large a constituency."

⁶⁹ *Cobourg Star*, 5 Sept., 7 and 21 Nov., 19 Dec. 1849 and 20 March 1850

⁷⁰ For the majority and their resolution on an elective Legislative Council see notes 36 and 41 above. Macdonald was an enthusiastic supporter of the first convention as a means to create "an economic movement," while avoiding key constitutional questions. See J. K. Johnson, ed., *The Papers of The Prime Ministers, Volume 1, The Letters of Sir John A. Macdonald, 1836-1857* (Ottawa: Public Archives of Canada 1968), Macdonald to David Barker Stevenson, 5 July 1849, 155.

⁷¹ *Second Convention of...the British American League*, Gowan, 2, 3 and 5 Nov. 1849, ix, xxiii, xxxi

elective Governor and Legislative Council. Gowan's organ, the *Brockville Statesman*, continued to advocate elective institutions while Gowan himself made his constitutional agenda a central part of his 1851 election campaign in Leeds.⁷²

Faced with the Elizabethtown and Brockville resolutions, conservatives opposed to constitutional change abandoned the League. Ironically, the *Hamilton Spectator* thought that in comparison to such resolutions, "the well balanced constitution of the United States is Conservative and practically Monarchical."⁷³ The League's first historian concludes that a majority of the branches resolved in favour of the elective principle, but the available evidence suggests otherwise.⁷⁴ Nonetheless, the question was debated by conservatives throughout Upper Canada with a significant minority advocating various organic changes to the Canadian constitution. In a public letter, Stuart Easton Mackechnie, leading industrialist and future mayor of Cobourg, declared that "in a community so purely democratic as ourselves, we will never obey any authority in the Province not of our own choosing."⁷⁵ The Haldimand Branch of the League elected Mackechnie as their representative.

⁷² On the *Statesman*, see copied articles, *Patriot*, 5 Jan. 1850 and *Guelph Advertiser*, 24 April 1851. Gowan's election speech at Coleman's Corners was copied, *Brockville Recorder*, 20 Nov. 1851. Gowan's demand for elective officials was rare among conservatives but, like the Clear Grits, he saw it as a means of reducing the ability of the cabinet to build a majority by reducing its patronage. By mid-1852, Gowan was exercising editorial control over the leading conservative organ in Toronto, the *Patriot*.

⁷³ *Hamilton Spectator*, 15 Dec. 1849. The Elizabethtown Branch was not unanimous, see the letter of resignation of Benjamin Chapman to the editor, *Brockville Statesman*, copied *Brockville Recorder*, 3 Jan. 1850. The *Patriot* thought an elected Governor was too radical and would mean not only the end of the League but also annexation, 12 Dec. 1849.

⁷⁴ Allin, "The British North American League, 1849," 111. The *Examiner*, 16 Jan. 1850, also argued that the majority of the branches had declared in favour of the elective principle. There is direct evidence that besides the Elizabethtown and Brockville branches, the Montreal, Peterborough, Lloydtown, Oakland and Haldimand branches resolved in favour of at least an elective Legislative Council. The Hamilton, Richmond Hill, Wolford, Dereham, East Flamboro', Trafalgar, and Bathurst District branches resolved against introducing the elective principle with varying degrees of vehemence. The *Patriot* claimed that all nine branches in the Gore District, all but one in the Brock District and most in the London and Niagara Districts opposed the elective principle. For resolutions from the various branches see, *Patriot*, 5, 9, 19, 23 and 30 Jan., and 9, 13, and 20 Feb. 1850; *Cobourg Star*, 9 Jan. 1850; *Hamilton Gazette*, 27 Dec. 1849; and *Hamilton Spectator*, 8 Dec. 1849.

⁷⁵ Mackechnie to the Haldimand Branch of the British American League, *Patriot*, 20 Feb. 1850

A federal union of British North America was, like the separation of powers, an attempt to check democratic excess without denying democracy itself. From 1849, union had widespread conservative support. It was a central plank of the British American League and was advocated by such party organs as the *Cobourg Star*, *Patriot*, *British Colonist*, *British American*, and *St. Catharines Constitutional*. Henry Sherwood, former Attorney-General and contender for the leadership of the party, was another vocal proponent and published a detailed draft constitution.⁷⁶

Arguments in favour of union touched on themes of commerce, defence, illusions of transcontinental grandeur and international stature, but these conservatives stressed constitutional reasons. Union with other colonies would solve constitutional problems within *Upper Canada* itself. Sherwood's draft constitution was overwhelmingly preoccupied with the structure of institutions at both levels. Scant attention was paid to the federal division of powers.⁷⁷ Federalism would submerge Lower Canada in a larger English polity while re-creating a distinct *Upper Canada*, but it would also provide another check, create a larger scope for the ambitious, break down local particularism, and destroy existing factions.

Peter J. Smith has investigated the various plans for inter-colonial union developed by American loyalists and *Upper Canadian* conservatives. Checking the excesses of elected assemblies and providing better outlets for the ambitious were among the aims of these

⁷⁶ While the *Patriot* initially supported a legislative union, the vast majority of the schemes were for a federal union. Federalism was central to the idea rather than merely a pragmatic acceptance of regional diversity.

⁷⁷ Sherwood would have granted the new federal level the powers necessary to create and manage a national economy while, following the American constitution, reserving all other powers "for peace, welfare and good government" to the provinces.

earlier proposals. In supporting inter-colonial union after 1848, conservative constitutional reformers could draw on long-standing aspects of colonial conservatism.⁷⁸ This connection to older colonial assumptions helps explain the support for federal union from conservatives hostile to other constitutional changes, but continuity should not be over-emphasized. Earlier conservative proposals were constructed in an attempt to resist democratic tendencies and to create a more hierarchical social structure. Conservative republicans advocated inter-colonial union because they accepted popular sovereignty and believed that a relatively egalitarian social structure was irreversible.

In 1849, Hugh Ruttan argued that federal union would meet a series of ends: "justice," "domestic tranquility," and "defence." Ruttan made no mention of the United States but his list is almost identical to that in the preamble to the American federal constitution.⁷⁹ Likewise his description of justice as "the great end of all Governments" is a close paraphrase of the formulation in *The Federalist Papers*, no. 51, where Madison discussed the relationship between the separation of powers and federalism. This was also Ruttan's topic. For Ruttan, as for Madison, justice would be served since both federalism and checks and balances would prevent the exercise of arbitrary power by any single individual or institution. Regarding justice, Sherwood's draft constitution also copied the American constitution's protection for the rule of law through special status for *habeas corpus* and prohibitions on

⁷⁸ Peter J. Smith, "The Ideological Origins of Canadian Confederation," *Canadian Journal of Political Science* 20, 1, (March 1987): 3-29, and "The Dream of Political Union: Loyalism, Toryism and the Federal Idea in Pre-Confederation Canada," in Ged Martin ed., *The Causes of Canadian Confederation* (Fredericton, New Brunswick: Acadiensis Press 1990), 148-171. Smith over-emphasizes the continuity and coherence of these proposals by construing them as a loyalist-tory "tradition" persisting throughout the nineteenth-century and based on the civic humanist strand in eighteenth-century political thought.

⁷⁹ "We the people of the United States, in Order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty..."

bills of attainder and *ex post facto* legislation. While Sherwood suggested an appointed viceroy as the independent head of the executive, much of his draft was an exact replica of the American separation of powers, including a Supreme Court, elected provincial upper houses and a federal upper house elected in equal numbers by provincial assemblies.⁸⁰

Ruttan's second end, "domestic tranquility," would be achieved by the destruction of local factions. Smaller units of government were more concentrated; representatives were closer to the people and were pre-occupied with local or parochial interests; demagogues operated more effectively; and the legislature was dominated by factions. In short, smaller units of government were more democratic. Larger units contained more potential representatives to choose from, "lessen[ed]," as the *Patriot* put it, "the proportion of representation" to people⁸¹, and created forums where more general, or "higher" issues would prevail. As a reader told the *British Colonist*, union offered "the prospect of a termination to the present system of cliques...the narrow strides of our present political arena would be merged in the wider field..."⁸² Sherwood spoke for many conservatives when he argued that "hitherto the exertions of public men have been confined within the limits of contracted localities...a more extended stage for action should be afforded to them."⁸³ Seats at the higher level would both attract the right sort of candidate and create statesmen, rather than local politicians or demagogues who appealed to divisive passions and interests.

⁸⁰ Henry Sherwood, *Federative Union of the British North American Provinces* (Toronto: Lovell and Gibson, 1851)

⁸¹ *Patriot*, 29 March 1849

⁸² Cleander *British Colonist*, 13 May 1851

⁸³ Henry Sherwood, *Federative Union: British North American Provinces* (Toronto: Hugh Scobie 1850), 8. This pamphlet originally appeared as letters to the *Colonist* and was reprinted in 1851 with the addition of a detailed draft constitution. See also Cleander to *British Colonist*, 13 May 1851. Fumius, *On Responsible Government*, 12. *Debates*, H. Sherwood, 3 June 1850, 370, and *Second Convention of...the British American League*, Strachan, 6 Nov. 1849, xlviii-xlix.

As Ruttan himself put it, "factions are more violent in small than in large communities, and that they are even more dangerous and enfeebling...A Federal Government is calculated to disarm the violence of domestic faction by its superior influence, and to diminish the exciting causes and leave fewer chances of success to their operations." After discussing how union would contribute to defence and commerce, Ruttan concluded that

A Federal Constitution aims at these ends by the arrangements and distributions of its powers, by the introduction of checks and balances in all its departments; by making the existence of the Provincial Government an essential part of its own organization: by leaving them the management of all local affairs, and at the same time by drawing to itself those powers only which concern the common good of all...the blessings of liberty secured by the federal government are far more certain, more various and most extensive than they would be under their own distinct independent sovereignties.³⁴

While a few conservatives might support union simply as a means to swamp French Canada,³⁵ many, including John Strachan, son of the Bishop of Toronto, were willing to support elective institutions in a federal union that they would not consider for Canada alone.³⁶ Such a union would also allow for the adoption of the American model of a Senate indirectly elected by provincial or state assemblies. The Senate would protect both the people from a concentration of power in the executive and the provinces from concentration at the centre.³⁷ Many of these arguments were the same for conservative annexationists since

³⁴ *Cobourg Star*, 1 Aug. 1849, copied *Hamilton Spectator*, 4 Aug. 1849. Aspects of the argument are repeated in the *Star*, 15 Aug., 5 Sept. and 17 Oct. 1849. Notice again how similar Ruttan's phrasing "the blessings of liberty secured" is to the preamble to the American constitution. Upper Canadians appear here closer to the arguments of Alexander Hamilton than to those of James Madison. Both thought that union would destroy local factions but Madison relied on creating a greater plurality of interests and thus making the formation of majorities on anything but the public interest more difficult.

³⁵ *Second Convention of...the British American League*, Col. Playfair, 5 Nov. 1849, xlv. The Dereham branch of the League also supported union without elective institutions, *Patriot*, 19 Jan. 1850.

³⁶ *Second Convention of...the British American League*, Rolland MacDonald, VanKoughnet, D'Arcy Boulton, 5 Nov 1849, xxxii, xxv-xxvi, xxxvii and Strachan, 6 Nov. 1849, 20, xlviii-xlix. Strachan proposed a draft constitution with the potential for elective upper houses at both levels of government.

³⁷ Support for an elective federal Senate after the union included *British Colonist*, 20 Nov. 1849, and *Patriot*, 27 March 1850 and 8 Aug. 1851: "Elective Institutions derive an important part of their interest from their bearing upon the Union."

annexation was little more than federal union with American states rather than with other British colonies.⁸⁸

George Duggan, a major supporter of federal union in the British American League, talked of creating a "great nation" and "a united people."⁸⁹ The assimilation of French Canadians was only one aspect of this goal. Ending party, local, ethnic, and regional divisions was another. Through political and commercial interchange, union would help to create a "common interest" and would give concrete expression to a politically homogenous nation - a people capable of self-government.

Conservative proposals that made assumptions about self-determination, popular sovereignty, and elective institutions, had inescapable implications for membership in the British empire. The overwhelming majority of conservatives supported neither annexation nor immediate independence, but as William Boulton put it, "it was absurd to expect to maintain the connection by crying loyalty, and shouting hurra[h] for the Queen."⁹⁰ Indeed, for those supporting substantial constitutional change, the major stumbling block to electing the Governor was his position as the only formal link to empire, not as some sort of surrogate

⁸⁸ See for instance, *Independent*, 27 March 1850; and Col. Prince's widely copied letter to Arthur Rankin supporting Canadian independence, *Independent*, 6 March 1850.

⁸⁹ George Duggan to the British American League, reported, *Globe*, 2 Aug. 1849. Similar phrases were repeated in the Address of the Central Committee of the British American League, *British Colonist*, 7 May 1850.

⁹⁰ *Debates*, W. H. Boulton, 3 June 1850, 377

Canadian monarch.⁹¹ Monarchy had once stood at the centre of conservative thought. Through the exercise of power by British governors and the imperial state, monarchy had been presented as a vital force in the local government of the colony. Monarchy had also stood at the pinnacle of a providential and hierarchical society, serving as a means of conceptualizing authority and sovereignty within the colony itself. After 1848, most conservatives retained a cultural commitment to a member of the British royal family as the hereditary head of the empire, but monarchy no longer served as a primary means of organizing either the image or reality of Upper Canada's constitution and society.

While this was also true for Upper Canadian reformers and those conservatives who accepted parliamentary government, conservatives in favour of creating checks, particularly along American lines, needed to disentangle the Governor's roles as imperial officer and head of the local executive in a way that was compatible with both local sovereignty and empire. Sherwood's option of a viceroy was his alone.⁹² Imperial federation was the only logical solution.⁹³ Indeed, Hugh Willson advocated independence and annexation only after his motion that imperial representation was a necessary part of inter-colonial union was

⁹¹ For instance, when discussing W. H. Boulton's idea that the Governor might be popularly elected or appointed for life, the only criticism the *Patriot* offered of the former was "that the unity of the Empire could hardly be preserved." It said nothing about monarchy or even about the dangers of an elective chief magistrate it perceived after the 1848 American presidential elections: *Patriot*, 16 July 1850 and 7 Jan. 1848. The constant tory complaint that Elgin had proven powerless and useless implied a rejection of symbolic monarchy. No wonder several found the American model more congenial. The *British Whig*, 2 May 1849, called for the abolition of the office; "what is Royal authority in this province but a mere pageant...?" Agricola to *British Colonist*, 6 April 1850, had doubts about an elected chief magistrate on the American model but argued that talk of an elective Governor was a waste of time since England would refuse out of "national pride." None of this amounted to a defence of monarchy.

⁹² But see also P. S. Hamilton of Nova Scotia, who, in 1864, advocated a hereditary viceroy for British North America since, without a stable executive, "our political institutions are essentially republican." Quoted in Smith, "The Ideological Origins of Canadian Confederation," 21-22.

⁹³ For context see Ged Martin, "Empire, Federation and Imperial Parliamentary Union, 1820-1870," *The Historical Journal* 16, 1 (1973): 65-92.

defeated at the first convention of the British American League.⁹⁴

The concept of the empire as a federation was developed by North American colonists during the 1760's and 1770's in response to metropolitan attempts to strengthen the role of the British Parliament in the colonies. Robert Baldwin's use of the concept during the Metcalfe crisis as a means of advocating local self-government without implying separation from Britain was discussed in the previous chapter. Reformers, however, were generally wary of the related idea of colonial representation in London since it might consolidate the empire and undermine the case for an Upper Canadian constitution responsible to local opinion. Upper Canadian conservatives had occasionally discussed the idea of colonial representation to strengthen jurisdictional and cultural ties to Britain.⁹⁵

After 1848, conservative constitutional reformers revived these proposals, but they were now shaped by an acceptance of Canada as a self-governing entity where sovereignty resided in its own population. Representation in the British parliament would perpetuate the imperial tie on an increasingly narrow range of issues. It was not meant to extend Britain's residual constitutional role in Upper Canada. Sherwood's plan for federal union gave the empire exclusive jurisdiction over defence and foreign affairs but explicitly excluded it from all other areas. Imperial representation would retain the tie in a manner consistent with Canadian popular sovereignty. Even given its greatly reduced jurisdiction, only by making the empire democratic, could it be a real force in Upper Canada.

⁹⁴ Hugh Wilson to the first convention, reported, *Globe*, 2 Aug. 1849. See also the first issue of the *Independent*, 25 Oct. 1849.

⁹⁵ For the development of the concept of the British empire as a federation see Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607 - 1788* (Athens: University of Georgia Press 1986), esp. 91 and 103. For reformers' adoption of the same position see Robert Baldwin to the Reform Association, reported, *Globe*, 25 Sept. 1844. For an earlier discussion of colonial representation in the conservative press, see the series of essays beginning in the *Kingston Chronicle*, 3 Sept. 1831.

Thus, while a range of conservatives could agree on the value of imperial federation once the Governor was constrained by local advisers, its connection to organic constitutional change was evident.⁹⁶ As Stuart Easton Mackechnie put it, "with Imperial Representation we would be much better off were we to elect our own Governor."⁹⁷ Likewise, the *Cobourg Star*, advocating Canadians' right to frame their own democratic constitution, argued that only elected representation at Westminster could maintain the imperial connection.⁹⁸

The most comprehensive and theoretical exposition of the case for colonial representation was found in thirteen lengthy and widely copied essays in Ogle Gowan's *Patriot*. Drawing lessons from Greek, Roman, British and American history and from French, Swiss, American, Scottish and English philosophers, the essays argued that Canadians had "the *natural and inherent right* to be heard" in the councils of the empire. Sounding very much like the American Whigs before the Revolution, the essays asked, "what principle of the British Constitution dictates obedience to those laws, by Britons who have no voice in their imposition?" Advanced colonies were "Independent Sovereignities" demanding representation in London on the same principles that gave American states representation in Washington. As the last essay concluded, "we do not ask Separation, but we demand Equality."⁹⁹

⁹⁶ Both the *Hamilton Gazette*, 26 April and 19 Aug. 1852; and the Bathurst District of the British American League, *Patriot*, 19 Jan. 1850, advocated elected colonial representation without other constitutional changes.

⁹⁷ Mackechnie, *Patriot*, 20 Feb. 1850. Other supporters of elected imperial representation as part of a broader package included John Strachan, *Second Convention of...the British American League*, 5 Nov. 1849, 20; Cleander to *British Colonist*, 13 May 1851; and *British Whig*, 12 Feb. 1850, which saw representation as an "inalienable right" of British subjects.

⁹⁸ *Cobourg Star*, 12 Dec. 1849

⁹⁹ The essays, "Colonial Representation," appeared in the *Weekly Patriot* from 30 June to 22 Sept. 1852. Like British North American Union, integration into the empire would also open up higher positions for the ambitious, and help to create a community of interest transcending local divisions.

From the beginning, Canadian constitutional discourse had been clouded by a confusion among the three constitutions at issue: the British, the Canadian and the imperial. Conservative constitutional reformers went a considerable distance in overcoming this conceptual confusion. The British constitution as expressed in the institutions and procedures at Westminster could not be replicated in Canada. Likewise, the imperial constitution was distinct from the constitutions of its constituent parts. Canada's own constitution had to be an application of the principles of good government to its own circumstances. The British constitution was a model praised throughout the world but it was not the only one. In the tradition of the comparative science of politics, conservative constitutional reformers searched for the best form of good government based on their experiences in Canada.¹⁰⁰ What these conservatives, (and the Clear Grits,) offered was a made-in-Canada constitution which, like its American counterpart, could have become a potent symbol of national purpose. The price of their failure is still being paid.

With their party in disarray, a significant and vocal minority of conservatives found the best model in American republicanism. They stressed the degree to which its institutions were derived from Britain and were a better approximation of British principles than Canadian responsible government. They also pointed to the elective colonial constitutions of seventeenth-century Rhode Island and Connecticut. This emphasis on the "British-ness" of their proposals is hardly surprising given the political realities of Upper Canada in this

¹⁰⁰ As noted in chapter one, the conservative *Royal Standard*, 19 November 1836, listed the *Federalist Papers* as one of three works on the science of politics that might have shed light on the controversy between Sir Francis Bond Head and his former advisers.

period. What is striking is their willingness to be explicit about their debt to the American Federalists in the face of charges of disloyalty, closet annexationism and opportunism. Nonetheless, these conservatives did not delude themselves. What they were proposing may have been as close to mixed monarchy as was possible in North America, but its differences were more profound than its similarities. What they proposed was not a mixture of three forms of government: monarchy, aristocracy, and democracy; but rather an institutional structure for democracy alone. Thus, the American Federalist project as advocated in Upper Canada rested on the basic assumptions that the people were capable of governing themselves and were the only social entity recognized by the constitution. In their proposals for an upper house, conservatives did not attempt to create a new social class or the rule of the virtuous few - but a chamber of sober second thought.¹⁰¹ Mixed monarchy's corporatist social vision was jettisoned.

Rather than corporate social bodies, incompatible interests, or political principles that required special representation, these conservatives had adopted "government by discussion" as the basic premise of good government in a democracy. For Canada, American republicanism was more capable of achieving a government based on rational public debate about the common good than parliamentary government. Thus the *Patriot* framed its demands for elected imperial representation in terms of being "heard" and having "voice." The British American League sought a constitutional convention precisely because it would be "an arena where the advocates of every shade of conflicting opinion can assemble and contend for their particular views...Then when the arguments have been duly weighed, the vote taken, the decision had, each must submit to the thus expressed opinion of the whole.

¹⁰¹ On the importance of this distinction, see Beer, *To Make a Nation*, 285.

and adopt it as the voice of his country."¹⁰²

Institutional reform was driven by the same principle. As a creature of the cabinet, the present Legislative Council was a rubber-stamp. It was useless not because it lacked power but because it did not deliberate - it did not debate proposed legislation and act according to the outcome of that debate. Even the Assembly was not a true deliberative chamber. The power of the ministry ensured the compliance of the Assembly rather than an independent assessment of the merits of ministerial proposals. Removing office-holders, giving the power of appointment to a separate executive, and destroying local factions would transform the lower house into a deliberative chamber. Finally, a Governor, as the puppet of his ministers, voiced their opinions rather than acting on his own. Checks and balances would prevent the concentration of power and ensure that any decision arising from such a process of deliberation approximated the common good.

Even the conservatives' demands for the assimilation of French Canadians must be seen in this light. Repeal of the union, annexation and British North American union all offered an escape from "French domination." The need for this escape was expressed in the vocabulary of "government by discussion." As a "race," French Canadians were not ready for such a government; they were preoccupied with "bitter prejudices and silly dreams of Nationality", "bigoted", "never progress" and were held in a "species of vassalage" to their Church, a feudal land system and political demagogues.¹⁰³ As the *St. Catharines Constitutional* put it, French Canadians were "too ignorant to judge for themselves, and

¹⁰² Address of the Central Committee of the British American League. *British Colonist*, 7 May 1850

¹⁰³ Anglo-Canadian *British Colonist*, 11 May 1849; *British American*, 14 July 1849; *Cobourg Star*, 4 April 1849; *Cornwall Constitutional*, 20 March 1851; A British Canadian *Hamilton Spectator*, 16 Feb. 1849; *Address of the Hamilton Branch of the British American League*, 4; and P. B. DeBlaquiere to Henry Sherwood, *British Colonist*, 31 Dec. 1850

slavishly submissive to their leaders."¹⁰⁴ This deference to leaders worked against the best interests of French Canadians, but it also created a solid bloc of votes in the Assembly based on the claims of nationality rather than political principle. "whilst the British inhabitants, following the example of all really free governments, are divided into parties entertaining quite distinct and opposite opinions upon important public questions."¹⁰⁵ With the addition of only a minority from Upper Canada, such a bloc ensured a subservient majority in the Assembly and "by this means public opinion is disregarded."¹⁰⁶ French Canadian nationalism was incompatible with "government by discussion" in either its parliamentary or republican forms.

While conservatives borrowed freely from the American model, they were not slavish. Different circumstances meant that they were much less concerned than the Federalists had been about "interests," the militia, foreign influence, and property. Moreover, they did not propose transplanting mechanisms, such as the electoral college, that had failed to function as anticipated. They also did not propose importing the first ten amendments to the American federal constitution, the Bill of Rights. More importantly, they focused on the institutional forms advocated by the Federalists. Conservatives had traditionally singled out universal suffrage, the ballot and frequent elections as the roots of the republic's problems. In the debates surveyed here, the ballot was a peripheral issue, the legislative terms suggested were substantially longer than those found in the United States, and most conservatives either favoured the existing franchise or supported only gradual or partial extensions. Just as these conservatives thought that the British model was not entirely appropriate, neither was the

¹⁰⁴ *St. Catharines Constitutional*, 25 June 1851

¹⁰⁵ *Address of the Hamilton Branch of the British American League*, 4

¹⁰⁶ *Ibid.*

American.

After 1848, many conservatives advocated a form of the well-balanced republic of Washington and Adams, with which the Loyalists had been familiar - and not the later mobocracy of Jackson and Van Buren.¹⁰⁷ Conservative republicans never fully confronted the question of why, once Canada had adopted many of the institutions of the former, it would not evolve toward the latter. Would a more restricted franchise, longer terms of office, and open voting be sufficient to sustain the Federalist project in Canada? Could conservatives successfully defend such mechanisms after the adoption of republican institutions? Such questions were never really addressed. Perhaps part of an answer can be found in the reaction of one Upper Canadian newspaper to the publication, in 1851, of *Rule and Misrule of the English in America* by Nova Scotia's leading tory, Thomas Haliburton. Haliburton argued that responsible government had destroyed governors and Legislative Councils in British America and, with similar social structures, only American Federalists offered a viable conservative alternative.¹⁰⁸ At the conclusion of a laudatory review, the *British Colonist* commented that "the trouble is to establish monarchical institutions, without a king or aristocracy, among a people who have predilections that way."¹⁰⁹ Canadians were not Americans and had learnt from the history of the republic. Ironically, the Federalist dream of a well-balanced compound republic would succeed in Canada, albeit in a modified form, where it had failed in the United States. When, during the *Confederation Debates*, none other than John A. Macdonald declared that the American constitution was "one of the

¹⁰⁷ The earlier connection is well documented by Jane Errington and George Rawlyk, "The Loyalist - Federalist Alliance of Upper Canada", *American Review of Canadian Studies*, (v. 14, n. 2, 1984), pp. 157-176. The constitutional distinction between the presidencies of Washington and Jackson is also central to Vipond, "Confederation and the Federal Principle."

¹⁰⁸ T. C. Haliburton, *Rule and Misrule of the English in America* (New York: Harper & Brothers 1851)

¹⁰⁹ *British Colonist*, 16 Jan. 1852

most skillful works which human intelligence ever created: is one of the most perfect organizations that ever governed a free people." he was expressing a degree of discrimination about the principles and forms of good government that marked Upper Canadian conservatism from the beginning.¹¹⁰

After 1848, constitutional discourse in Upper Canada was dominated by arguments about the appropriate institutions to realize "government by discussion." A vocal minority of Upper Canadian conservatives turned to the American Federalists to help formulate an alternative to responsible government. By accepting the reformers' premise of popular government resting on a relatively egalitarian social structure, conservative constitutional reformers helped to narrow ideological divisions. They were also an important part of the coalition that passed legislation in 1856 creating an elective Legislative Council. Furthermore, their adoption of American forms may have prompted other conservatives to accept parliamentary government as the lesser of two evils. The return of conservatives to office, something that had appeared almost impossible in 1848-49, removed the political pressure that had prompted far-reaching self-examination. The parliamentary leadership of MacNab and Macdonald also marginalized the ideas and contribution of their colleagues. When conservatives returned to office, reformers had already presented Upper Canadians with the two other alternatives to mixed monarchy: parliamentary government and radical democracy. They are the subject of the next chapter.

American republicanism was an alternative not taken. The sense of crisis that prompted it did not persist. This opportunity, seized by the conservatives discussed in this

¹¹⁰ P. B. Waite, ed., *Confederation Debates of the Province of Canada* (Toronto: McClelland and Stewart, Limited 1963), J. A. Macdonald, 6 Feb. 1965, 43

chapter and by the Grits, discussed in the next, was lost. Nonetheless, Upper Canadians, both conservatives and reformers, settled on parliamentary government not from lack of an alternative or serious reflection, or from some sort of innate conservatism or blind devotion to all things British, but because most came to accept it as the best institutional structure based on principles of political equality, popular sovereignty and government by discussion. Although not ultimately successful, conservative constitutional reformers proved to be conservatives first and monarchists second; Canadians first and Britons second; and, more thoughtful and discerning than they have been given credit for.

CHAPTER EIGHT

Mistaking "the shadow for the substance:" Laying the Foundations of Parliamentary Government

The Metcalfe crisis marked the demise of the theory of mixed monarchy. Its aftermath appeared a more promising period for reformers than conservatives. Many had been formulating alternatives to mixed monarchy long before the crisis. In Upper Canada, they had lost the election of 1844, but had won the conceptual war. Electoral success in 1848 allowed them to implement, and thus forced them to define further, their constitutional principles. Ironically, by revealing significant differences, this process destroyed their unity at the moment of their greatest achievement. Nonetheless, the constitutional principles of modern reformers became the new paradigm. Collectively, they defined parliamentary government. The minority of conservatives discussed in the previous chapter advocated a democratic republic. Other conservatives were stubbornly inarticulate or intentionally vague. When the disintegration of the reform party created an unexpected opportunity for their return to office in 1854, these conservatives had little choice but to adopt the constitutional framework of their opponents. Most had already come to terms with parliamentary government.

This chapter examines reformers' alternatives to mixed monarchy after the Metcalfe crisis. It does not, however, attempt to survey their social and political thought. Rather, it makes two claims: first, that the concept of public opinion framed the debate. Time and again, constitutional arguments turned on the promise and limitations of government by discussion. This chapter also argues that, while Upper Canadians adopted

parliamentary government, reformers failed to fully articulate or successfully defend some of its foundational principles. Responsible government achieved only a partial victory. The shadow was mistaken for the substance.

For reformers, election victory in 1848 was the culmination of "the long, the arduous, and the sometimes almost hopeless struggle for establishing Responsible Government in its integrity." Lord Metcalfe's electoral triumph in 1844, along with his constitutional principles, were erased. Lord Elgin's non-interference in the election of 1848 ensured that "the voice of the people was truly expressed" - and that expression was an unequivocal verdict in favour of responsible government.¹

Self-congratulations lasted longer than unanimity. The verdict may have been for responsible government but its meaning remained unclear. Moreover, some reformers were quickly disillusioned with the results. The formation of a reform government in 1848 marked the end of a chapter in "the struggle for responsible government." It did not conclude the book.

Nonetheless, the meaning of key terms shifted. Debate still occurred in a bipolar world, but the poles were now parliamentary government and republicanism, not monarchy and democracy. Prior to the Metcalfe crisis, republicanism had usually been synonymous with democracy: a system of government where all power came, directly or

¹ *Guelph & Galt Advertiser*, 28 January 1848; and *Examiner*, 9 February 1848. See also, *Globe*, 5 January 1848; *Provincialist*, 18 January 1848; and Robert Baldwin, *Debates of the Legislative Assembly of United Canada*, (Montreal: Centre de Recherche en Histoire Economique du Canada Français), 3 March 1848, p. 185.

indirectly, from the people. This usage was eclipsed by a narrower definition.

Republicanism now referred to a particular form of democracy. In a republic, both the executive and legislature were elective and separate. Parliamentary government was another form of democracy where, roughly, the executive was a committee composed of those (mostly elective) legislators who were supported by the majority of their fellow legislators.

The definition of monarchical government also shifted. It no longer referred to three separate legislative institutions or a mixture of monarchy, aristocracy and democracy. The British constitution might occasionally be referred to as "well-balanced" or a "happy medium,"² but references to "King, Lords and Commons," once ubiquitous, were now noticeably rare.³ Monarchy no longer entailed that there was a non-elective or non-democratic component to law-making. Rather, monarchy represented a cultural commitment to a hereditary head of state from the British royal family. As the *Whitby Reporter* explained, "[m]onarchy...is separable from all the forms of accidents with which we have been accustomed to see it associated..."⁴ An appointed judiciary or property qualifications for voting and holding office were tagged "monarchical" to distinguish them from American alternatives. They could as easily have been called "parliamentary."⁵ Britain and the United States still represented the two poles of constitutional debate, but they were now models of the two major forms of democracy.

² See, *Mirror*, 9 September 1853; *Globe*, 6 September, and *Cobourg Courier*, copied *Mirror*, 25 February 1848.

³ For exceptions among reformers see, *Globe*, 21 March 1849; *Examiner*, 11 October 1848; and "John Galt", *Huron Signal*, 21 July 1848.

⁴ *Whitby Reporter*, 15 June 1850; "Loyalty is the homage of a nation to a ruler whose acts are the embodiment of the public will; it cares nothing for the name by which he is known..." *St. Catharines Journal*, 11 September 1851; "Canada for the people - not for the Queen. (except as a constitutional and legal fiction)...will we trust be the creed of every man."

⁵ See for instance, *Globe*, 23 August 1849; and 23 March 1850.

Robert Baldwin insisted that "between the two system - Monarchical and Republican...there was not a mere formal difference." and the "essential difference...was altogether in our favour." Baldwin resisted demands for further constitutional change but he had not reverted to pre-rebellion conservatism. He was describing ministerial responsibility, contrasting it with the separation of legislative and executive functions in the United States. Monarchical meant parliamentary. Baldwin advocated parliamentary government because, unlike American republicanism, the people's representatives could remove the executive at any time.⁷ Baldwin preferred what he persisted in calling "monarchical" because it was more responsive to the people's will - it was more democratic - than republicanism.

The debate between moderate reformers, like Baldwin, and more radical reformers, the Grits, was essentially whether or not parliamentary government was as democratic as Baldwin claimed. Baldwin insisted on the differences between parliamentary and republican government because commentators of all descriptions were minimizing those differences. Since both were forms of democracy, the debate centred on institutional mechanisms to achieve the same ends. These mechanisms were judged by pragmatic, utilitarian standards. The broader struggle between monarchy and republicanism - between two antagonistic world views - had already been fought.

George Brown's *Globe*, a leading supporter of parliamentary government, repeatedly insisted that Canada was "as free as any country in the world," and like Baldwin, argued that Canada was more democratic than the United States.⁷ Declarations

⁷ Baldwin, *Debates*, 3 June 1850, pp. 372-375.

⁷ *Globe*, 25 September 1847, 15 April 1848, 17 November 1849, 7 November 1850, and 13 April 1852. As the paper's correspondent put it, 21 March 1855. "I think our existing form of government quite as well entitled to the designation of "Elective Institutions" as those of any other country." See also James Hervey Price, *Globe*, 18 December 1849; that the Canadian constitution was "as free as any constitution on earth;" and *St. Catharines Journal*, 25 October 1849, 21 March 1850 and 25 May 1854.

of popular sovereignty and democracy, once revolutionary, quickly became matter-of-fact platitudes shared by all reformers.⁸ Moderates stressed the democratic nature of the British constitution to ensure its continued relevance. Radicals did likewise to emphasize that the question was now a pragmatic one about democratic techniques.⁹ As the radical essayist, "Reformer," put it, "Which is best for us?...Under whatever name a government may exist - whether democracy, republic, or monarchy - one grand principle is acknowledged, and that is the right of the people to govern themselves." Likewise, the *Bathurst Courier* asserted that, "[e]ven under a limited monarchy such as ours (whose tendency however is towards Republicanism), the voice of the people is all-powerful."¹⁰

For the *Courier*, the "voice of the people" was supreme. That voice was public opinion. The pre-rebellion period had suffered from "irresponsible government" - a case study of "the effects of power on men who riot in the intoxication of perfect freedom from the controul of public opinion."¹¹ Government independent of public opinion had disappeared. First and foremost, responsible government meant a government responsible

⁸ See, *Examiner*, 9 May 1849 and 19 April 1854; *Brockville Recorder*, 22 November 1849 and 29 January 1852; *Mirror*, 9 May 1850; *Huron Signal*, 15 November 1849; and Dunbar Ross, *Debates*, 24 June 1850, p. 787.

⁹ Francis Hincks, *Debates*, 24 January 1849, p. 199; *Brockville Recorder*, 1 August 1850; *Bathurst Courier*, 12 August 1851 and 8 September 1854; and *Provincialist*, 29 March 1849. The same strategy could be used by emphasizing the British origin of American republicanism, see, *Mirror*, 22 October 1852.

¹⁰ Reformer, [Charles Clarke], *Mirror*, 19 October 1849; and *Bathurst Courier*, 20 September, copied, *North American*, 9 October 1850. See Kenneth C. Dewar, "Charles Clarke's 'Reformer': Early Victorian Radicalism in Upper Canada", *Ontario History*, (v. 78, n. 3, September 1986), pp. 233-252.

¹¹ Publicola to Lord Elgin, *Examiner*, 6 October 1847. Sir Francis Head's contention that public opinion should be created by the leader rather than followed by him, as quoted in chapter five, was explicitly dismissed in this period, *Mirror*, 31 October 1851. The first issue of William Lyon Mackenzie's *Weekly Message*, 25 December 1852, also contrasted the two periods since now, no "Sir Francis Head interdicts the free exchange of thought."

to public opinion.

The *Examiner* referred to public opinion as "the most reliable part of the constitution."¹² The concept was no longer contested. It was no longer an external force impinging on the constitution. It was now an integral part of the constitution. Reform newspapers were replete with repetitious declarations of the power and justice of public opinion. They were certain that public opinion would prevail and that it was the foundation of all free governments.¹³ The worth of any constitution was measured by its responsiveness to public opinion.

With government so closely yoked to the public sphere, heavy responsibilities were imposed upon Upper Canadians. Increased deliberation on important public issues was among "the natural consequences of the possession of Responsible Government. Hitherto men have fought for the right to be heard - that right has been granted, and now they tell their wants." Responsible government was equated with the "right to be heard." Another commentator urged every male "to acquaint himself," "to watch," "to observe," and to "point out" desirable measures to his representative. "Every one should read about these subjects, *think* about them...*every man should be a politician*."¹⁴ Making "every man feel his own share of the responsibility of good and bad government" was seen as "the greatest good" of the new order.¹⁵

Some promoted new political associations or the greater use of public meetings, petitions and the press, but the point was the same - "with the dawn of Responsible Government in Canada, was commenced the study of its science by the mass of the

¹² *Examiner*, 11 January 1854.

¹³ See for instance, *Huron Signal*, 4 February 1848; *Globe*, 23 February 1848; A., *Examiner*, 28 April 1847; *Examiner*, 21 March 1849, and 9 July 1851; *Bathurst Courier*, 17 June 1851, and 19 November 1852; and John Rolph, *Debates*, 27 August 1852, p. 155.

¹⁴ *Bathurst Courier*, 16 April 1852.

¹⁵ O.P., *Brockville Recorder*, 6 December 1849.

people...they are learning that to obtain and keep a good government for the majority, they must apply themselves to a vigorous and constant investigation of all the propositions that come before them."¹⁶ The *Huron Signal*, published at Goderich in the only recently developed Huron Tract, worried that the public sphere was not yet sufficiently robust to sustain government by discussion. Sheer distance and being "removed from towns, from circulating libraries, and even from intelligent society" remained obstacles. Nonetheless, the *Signal* consoled itself that newspapers were cheaper and more readily available in Upper Canada than in Britain. Post offices were also "pretty thickly established."¹⁷ In more established areas, commentators were more sanguine. According to a reader of a Brockville newspaper, the majority of Upper Canadians "read and consequently reflect more than in days gone by, and must now have the why's and wherefore's before moving in or approving of any great change."¹⁸

Eight years after its founding, the *Globe* celebrated the progress of the Canadian press. According to its count, in 1844 there had been only 34 newspapers in Upper Canada; in 1852 there were 77. Most were also larger and published more frequently. Assuming an average subscription list of 800 and multiple readers for each copy, the *Globe* calculated that there were "about 600,000 users of newspapers out of a population of 950,000."¹⁹ The validity of this estimate is less important than the conviction that the reading public was so extensive. It was certainly more inclusive than the electorate. The public sphere was now an established, sociological, fact. With responsible government, it assumed its appropriate function: the authoritative tribunal of public men and measures.

¹⁶ *Brockville Recorder*, 8 November 1849; *Globe*, 19 April 1848; *Provincialist*, 8 November 1849; and *An Elector*, *Port Hope Watchman*, 28 November 1851. As chapter one noted, the science of government had been democratized.

¹⁷ *Huron Signal*, 4 February 1848.

¹⁸ *Leeds*, *Brockville Recorder*, 27 December 1849.

¹⁹ *Globe*, 8 April 1852. Foreign newspapers, as well as journals and reviews, were not included.

Every man could be his own politician because every man was his own reader.

Reformers frequently situated this transformation within a broader progressive history - the western world's struggle for liberty. The *Globe* was more specific about the stages by which Upper Canada had joined the rank of free nations. The "hardy pioneer of the forest," largely isolated from government, dominated the first stage. The structure of government developed during the second stage, but corrupt and self-interested placemen ruled over "the rights and interests of the people" too pre-occupied with "the toils of daily life." Nonetheless, the second stage spawned the very forces that would destroy it: "a new stage is foreshadowed, by a rising public opinion, a bolder tone in the public press, a deeper interest in public affairs." The rise of public opinion ushered in the third stage, when "all matters affecting the common weal are determined at the bar of public opinion...and the fact becomes impressed on every mind that there is but one class, THE PEOPLE - who entrust certain authority to men from among themselves to carry out *their* wishes." The Metcalfe crisis "thoroughly woke up the people. Constitutional questions were the topics of the day....Lord Metcalfe's attempts to overturn self-government, advanced the Liberal cause ten years; the people were forced to learn their own power."²⁰ This was the *Globe's* version of the transformation discussed in previous chapters: the rise of the concept of public opinion, its impact on constitutional theory, the elimination of all political forces, except "the people," and the Metcalfe crisis as the crucible.

Reformers like Robert Baldwin and the *Globe*, argued that British parliamentary

²⁰ *Globe*, 19 April 1848.

government could best express this transformation. Parliamentary government rested on the same assumptions as the public sphere. Without those assumptions, all forms of representative government had only pragmatic justifications. Representative government was ideal, not because the state was too large or too populated for people to assemble at one place, but because it was morally superior to direct democracy. It was not just more convenient. It better embodied government by discussion.²¹ For its supporters, the parliamentary system was superior to other forms of representative government because of its relationship to the public sphere.

According to Earl Grey's *Parliamentary Government* (1858), the key advantages of the British system turned on the question of open deliberation. First, because the executive was a committee of the legislature, it was subjected to the constant "ordeal of free discussion" in the body that could destroy it. Second, because parliament chose the executive, it was "not only the authority which virtually decides the contest for power....but also the arena in which the contest is mainly carried on. Its debates are the means by which rival parties chiefly seek to recommend themselves to the House itself and to the Public." Direct popular election of the executive would only encourage flattery and appeals to their passions. Third, since the visible contest for power took the form of the public use of reason, parliamentary government "has tended to raise these contests above those of a mere selfish or personal character...and though the practice of politicians has fallen lamentably short of their theory, the habit of Parliamentary debates...has tended to raise by degrees the standard to which men are expected to conform in public life." Finally, these debates "instruct the Nation." "If men's passions and feelings were not so

²¹ Carl Schmitt, *The Crisis of Parliamentary Democracy*, Ellen Kennedy, ed. and trans., (Cambridge Massachusetts: The MIT Press, 1992 [1923, 1926]), pp. 2, 34-5, 45, passim.

much excited by political struggles, it is not likely they would read, as they do, the debates in parliament in which these subjects are discussed, and in which, amidst all the trash and sophistry that disfigure them, the keen encounter of intellects seldom fails in the end to lead to the discovery of truth and to the triumph of sound reason over error."²²

Canadian supporters of parliamentary government also advocated the system on the grounds that it was the best means to infuse existing institutions with the principles of the public sphere. It allowed public deliberations to determine the wants and wishes of a society and to select legislators. In turn, those legislators formed an electoral college for the executive. They also informed public debate and scrutinized that executive. Tyranny was avoided through a series of checks, not between three legislative institutions, but between the cabinet and the assembly and between the assembly and the people.

Thus, the Governor and Legislative Council were no longer co-ordinate legislatures. The Toronto *Mirror* was only more vivid than most:

England might to-morrow lapse into Republicanism; and unless in the neighbourhood of Whitehall, the change would scarcely be perceptible. Her Lordly Commoners, and her Common Lords might amalgamate, and nothing but the Herald's office would be abolished, or a little change of dress be apparent at the opening of Parliament....As to the Monarchy, nothing would be required but a little shortening of robes of State, and the substitution of a plain Straw bonnet for an expensive and very unmeaning *Crown*.²³

Canada, with an appointed Governor rather than an hereditary monarch and a nominated Legislative Council rather than an ancient peerage was even more republican. The Governor's power was often dismissed as "nominal."²⁴ What, asked the *Provincialist*, "is

²² Earl Grey, *Parliamentary Government Considered with Reference to a Reform of Parliament, An Essay*, (London: Richard Bentley, 1858), chapter 2, "Advantages of Parliamentary Government", pp. 16-35. Bagehot's better known, *The English Constitution*, (1867) should also be interpreted in this context.

²³ *Mirror*, 31 March 1848.

²⁴ See, *Examiner*, 9 May 1849; *North American*, 28 May 1850, and more generally, *Globe*, 30 January 1847, 31 October 1850 and 17 October 1854; and *Mirror*, 9 May 1850. As with the conservatives, the debate about appointed versus elected governor hinged on his role as imperial representative, not as

that high personage any thing more than an individual, if not formally elected, at least fairly approved of by the people to personify, represent, or embody the will of the nation...?"²⁵

The Legislative Council was also demoted. Robert Baldwin rejected proposed reforms, but recognized that it could no longer be a co-ordinate legislature or estate. The Council was now "so acted upon by public opinion, that it would not oppose the popular will." It had a new, but clearly subordinate, function in a government by discussion: "it might not be prepared to pass every measure immediately - it might be necessary that the people should discuss some subjects more fully, and express their views more decidedly, before they would move."²⁶ Others found the Council useless or offensive. Upper Canadians did not need Walter Bagehot's *The English Constitution* (1867) to tell them that only some elements of their constitution were "efficient" while others were only "dignified."

The conservative critique of parliamentary government focussed on this demotion of the Governor and Legislative Council. Conservative republicans, discussed in the previous chapter, wanted to reinvigorate these checks by making them elective. For reformers, public opinion was the principal check on government. The relationship between cabinet and Assembly offered additional safeguards. Many reformers quickly judged these checks inadequate and began to search for new ways to ensure the

surrogate Canadian monarch.

²⁵ *Provincialist*, 4 October 1849.

²⁶ Baldwin, *Debates*, 3 June 1850, pp. 373-375.

responsibility of both the executive and legislature to public opinion. The debate among reformers involved a number of issues to be discussed in turn: the future of the Legislative Council, the cabinet's place in the Assembly, the abuse of the power of patronage, the strength of political parties, the autonomy of representatives, the extent of the franchise, and representation in the Assembly.

Conservatives and dissatisfied reformers, (or 'Grits'), made similar criticisms of parliamentary government. The latter, however, demanded "elective institutions" less to create new checks on the Assembly and more to reinforce the democratic nature of the entire constitution and to limit the power of the cabinet. Like conservative republicans, they praised the American system of government and borrowed freely from it, but, unlike conservative republicans, they did not distinguish between the republics of Washington and Jackson. Grits demanded an elective Governor, Legislative Council, and local officials, and an extended franchise, the ballot and cheaper government. These demands were labelled revolutionary and republican by moderate reformers such as the *Globe*.²⁷ But, were they? Did the Grit platform represent a complete repudiation of parliamentary government?

Grits certainly resisted the notion that responsible government had been "achieved" in 1848. Canada's constitution was to continue evolving. Responsible government was an experiment which many judged a failure,²⁸ but what had failed: parliamentary government as such or the version promoted by moderates who opposed further institutional reform? Some Grits wanted to import most of American republicanism. Others seemed to prefer a more radical version of parliamentary

²⁷ See especially, *Globe*, 23 March 1850.

²⁸ See, *Examiner*, 29 May and 26 June 1850; and *North American*, 13 December 1850, and 21 February 1851.

government. There was often considerable confusion between the two options.

In 1854, the *North American* claimed that "we came to the conclusion some years ago that this undefinable, intangible, elastic system called Responsible Government...is not suited to a new country like Canada...The experience of thirty States with populations and interests very similar to our own has proved the advantage of giving small discretionary powers to public officers. Checks and limitations are the only safe-guards against abuse."²⁹ This appears as a fairly straight-forward preference for republicanism, but the Grit platform of 1850, published in the same paper, was considerably less straight-forward than the *North American* recalled. Its first plank was "elective institutions." This included the governor, Legislative Council and local officers.

The first, an elective governor, appears most obviously republican, but this was neither necessarily true nor was the measure a priority for the Grits. They advanced it on the grounds of consistency and because a Canadian would be more familiar with Canada than a British peer. The current governor, Lord Elgin, also thought that colonists should eventually elect their own governor.³⁰ As he understood, if the functions of this office did not change, an elective head of government was compatible with parliamentary government. Grit advocates of an elective governor failed to elaborate on the functions of this office. Only if the elective governor could choose cabinet ministers without reference to the majority in the legislature would this measure entail republicanism. Grit demands for an elective Legislative Council will be discussed in the next section of this chapter.

²⁹ *North American*, 16 February 1854.

³⁰ *North American*, 30 October, and 8 November 1850, and 3 January 1851. Lord Elgin to Earl Grey, 23 March 1850, *The Elgin-Grey Papers, 1846 - 1852*, A. G. Doughty, ed., (Ottawa: Public Archives of Canada, 1937), v. 2, p. 609: "It is, I think, possible that the time may come when it may be expedient to allow the Colonists to elect their own Governors." See also, *Examiner*, 30 August 1848. *Examiner*, 27 March 1850, concluded that Canadians did not really care how the Governor was chosen since the functions of the office were so limited.

The Grits also proposed a number of measures to limit the cabinet's power and to further separate executive and legislative bodies. These included fixing the time of parliamentary sittings, more frequent general elections, and prohibiting the expenditure of public money without the prior consent of the Assembly. Grits were either unclear or inconsistent about whether these proposals were meant to modify or to replace parliamentary government. The Grit platform concluded with a slogan: "We must have Elective Institutions, wholly Elective institutions, and nothing but Elective Institutions." These institutions, designed by a constitutional convention, would be codified in a written constitution.³¹ None of this, however, solved the central ambiguity. Implemented altogether and at once, the Grit platform would probably have destroyed parliamentary government. Some intended as much. Some would have had few regrets. Others seemed to support these proposals to improve, not replace, ministerial responsibility. Many Grits wavered between these goals, perhaps reflecting their changing levels of enthusiasm for the various reform ministries in office between 1848 and 1854.

Focussing on the specific demands of their platform, Grits seem to have failed. Moderate reformers successfully resisted most of their specific demands: Britain continued to appoint Canada's governor, most local officers continued to be appointed by the cabinet, the parliamentary term was not shortened, and universal suffrage and the ballot were still in the future. The Legislative Council was made elective, but this innovation was reversed at Confederation.

³¹ Peter Perry, *Debates*, pp. 1620-1622, introduced a motion in August 1850 for a constitutional convention. Several municipal councils debated the idea. As in the conservatives' proposal for a convention, parliamentary sovereignty was denied, Canadians' right to settle their own constitution was affirmed, and the convention itself would generate a stable consensus after hearing all points of view. See, *Examiner*, 21 August; *Bathurst Courier*, 13 September and 11 October; *North American*, 16 and 23 August, and 9 October 1850; and A Looker On, *Whitby Reporter*, 16 November 1850. On the right to frame a written constitution see *Provincialist*, 8 November 1849; *Mirror*, 23 November 1849; and *Examiner*, 1 January 1854.

Two major modifications are required to this picture of failure. First, as already noted, elective institutions were not necessarily incompatible with parliamentary government. Second, Grit arguments and assumptions gained more acceptance than their proposed institutional changes. Some of these arguments and assumptions were incompatible with parliamentary government. Moderate reformers fended off Grit demands for institutional change, but were less successful countering the assumptions behind those proposals. Poorly grounded, parliamentary government was less resilient in the face of later practices that transformed it into cabinet government. The power of the executive and political parties increased relative to that of the Assembly and individual representatives to the point where the checks between cabinet and Assembly, and between the people and their representatives, became the constitutional fictions of this century.¹² Ironically, some of the Grit proposals, attacked at the time as incompatible with parliamentary government, might have contained the growing power of the cabinet and political parties. They might have sustained parliamentary government.

The campaign for elective institutions scored one major success, the Legislative Council. After 1848, its future was the single most debated issue. The theory of mixed monarchy had provided it with a secure rationale. The Council was a co-ordinate branch of the legislature to represent an aristocracy. It prevented despotism on the part of the monarchical Governor and anarchy arising from the democratic Assembly. Parliamentary

¹² See especially Thomas A. Hockin, "Flexible and Structured Parliamentarism: From 1848 to Contemporary Party Government", *Journal of Canadian Studies*, (v. 14, n. 2, Summer 1979), pp. 8-17.

government provided no such security. Earl Grey's *Parliamentary Government* barely mentioned the House of Lords. Walter Bagehot's *The English Constitution* was more thorough, but largely relegated the Lords to the "dignified" part of the constitution.

Whatever the theory, as chapter one argued, without hereditary peers the Council never looked sufficiently like the House of Lords. Before the rebellion, it had thwarted much of reformers' legislative agenda, including the abolition of primogeniture.

Demands for an elective upper house grew as a result. After 1848, the appointed house was even more vulnerable. What justification could a non-elective legislative body have in a democracy? The Council moved from harmful barrier to atavistic appendage.

The future of the Legislative Council re-emerged on the public agenda when France abolished its upper house in 1848. The new reform ministry's appointment of a sufficient number of sympathetic men to the Legislative Council in 1849 to gain a majority in the Council and to secure the passage of the Rebellion Losses Bill graphically illustrated the Council's lack of independence. Demands to make the Legislative Council elective were made by several conservative newspapers and in the British American League, discussed in the previous chapter. Reformers raised the issue in the Assembly in 1850. It was a plank in the Grit platform of the same year. In 1853, the Hincks-Morin government introduced a series of resolutions supporting an elective Legislative Council. The British parliament passed legislation enabling Canada to amend its own constitution pertaining to the Legislative Council - surely the ultimate recognition of independence. Many proposals were canvassed, but the Assembly, now led by Allan MacNab and John A. Macdonald, was nearly unanimous on the principle. In March, 1855, a bill to create an elective upper house passed second reading by a vote of 80 to 4.

The near-unanimity marks the distance travelled since the 1830's, when support

for an elective upper house had been largely limited to radicals. Everyone now admitted that Canadians controlled their own constitution and that any institution, to be effective, had to be elective. The near-unanimity, however, was deceiving. Some moderate reformers, including Francis Hincks, argued that an elective Legislative Council was a desirable extension of parliamentary government. Other moderate reformers, including Robert Baldwin and George Brown, opposed an elective Legislative Council on the grounds that having two elective houses was incompatible with parliamentary government. Radical reformers were also divided. Some wanted to abolish the Council. Others thought that the power of the people would be greater if the Council were elective. Some radicals saw an elective Council as a first step toward American republicanism. This was also the position of conservative republicans. Nonetheless, neither abolition of the Legislative Council nor its democratization was necessarily incompatible with parliamentary government.

There were certainly few reformers who defended the existing Legislative Council. None did so using the assumptions of mixed monarchy.¹¹ All were agreed that Canada neither had nor desired an aristocracy. After 1848, the Council merely echoed the majority in the Assembly. In future, each new ministry would appoint a sufficient number of Councillors to ensure it had a workable majority in the upper house. People could feel nothing but jealousy and disrespect for such an institution whose deliberations were unknown and unimportant.¹⁴ The Council was an "expensive farce."¹⁵ Combined

¹¹ Besides Baldwin, note 26 above, see also *Brockville Recorder*, 22 November 1849; *Globe*, 18 May 1850 and 13 April 1852; and George Brown, *Debates*, 19 October 1852, p. 1113.

¹⁴ For a few of the critiques from all types of reformers see, H. J. Boulton, 22 May 1850, *Debates*, pp. 134-135; *Reformer*, *Mirror*, 19 October 1849; *Dundas Warder*, copied, *Mirror*, 18 January 1850; *Mirror*, 22 March and 5 July 1850; *Examiner*, 22 May 1850; *Bathurst Courier*, 8 October 1852 and 27 May 1853; *North American*, 19 May 1853; and *Daily Leader*, 11 July and 15 October 1853, and 14 July 1854.

¹⁵ Constant, *Bathurst Courier*, 14 June 1850.

with the demands for restructuring, such ridicule brought declining attendance in the Council to the point where quorum was increasingly difficult to achieve.³⁶ Many reformers were suspicious when their conservative opponents began to consider an elective Legislative Council. Conservatives had generally supported the appointive system so long as it had thwarted reform majorities in the Assembly. Now that it did not, some conservatives were demanding that the Council be restructured. Radicals had supported making it elective in the 1830's to remove a barrier to public opinion. The Council was no longer such a barrier.³⁷ If the problem was no longer what the Legislative Council did, but how little it did, why not abolish it?

Despite considerable support in the reform press, abolition was not seriously debated in the Assembly. Commenting on the new French constitution of 1848, the *Examiner* noted that without an aristocracy or ranks, democracies had no need for two legislatures. "If the public will be truly and fully expressed in one House, we cannot see why that will should be counteracted or expressed a second time in another House."³⁸ In 1851, the *Examiner* also dismissed a central tenet of British and American constitutional theory that still incorporated "the fiction about 'checks and balances,'" but in reality, representative government was to express public opinion. Any check on that expression was a negation of representation itself.³⁹ At various times, abolition was also supported by the *Mirror*, *Bathurst Courier*, *Niagara Mail*, *Dumfries Reformer*, *Canadian Free*

³⁶ For further details see S. C. Hart, "The Elective Legislative Council in Canada under the Union", (M.A. thesis, Queen's University, 1960).

³⁷ Publicola to Lord Elgin, *Examiner*, 29 September 1847; *Examiner*, 4 July 1849; *Mirror*, 16 November 1849; Caution, *Brockville Recorder*, 22 April 1852; and George Brown, *Debates*, 19 October 1852, p. 1107.

³⁸ *Examiner*, 13 December 1848.

³⁹ *Examiner*, 26 February 1851.

Press and Huron Signal.⁴⁰ They simply pointed out that Canada had been governed since 1848 by ministers responsible to one house with little or no interference from the Legislative Council. There was no need for two houses. There were no electors or potential legislators other than "the people."⁴¹ A second chamber would either be useless by echoing the Assembly or dangerous by checking the Assembly.

The argument for abolition was vulnerable on one key point. Could public opinion be safely expressed by one elected body? History seemed to provide few, if any, examples of one legislature producing successful government.⁴² Some supported a second chamber on the classical grounds that any concentration of power in a single body or individual was tyranny. "Executive despotism" was too likely without the check of a second elected chamber.⁴³ Given reformers' concern about the power of the cabinet, it is surprising how little use was made of this line of argument. Many probably supported an elective Legislative Council, in part, because they wanted to limit the concentration of power they perceived under parliamentary government, but this was not the basis of most of their arguments. Instead, it was the nature of the public sphere. "A U. E. Loyalist" favoured abolition because "public opinion is a child of slow growth, and when it comes

⁴⁰ *Mirror*, 22 March, 5 and 12 July 1850; Constant, *Bathurst Courier*, 14 June 1850; *Bathurst Courier*, 23 April and 8 October 1852, and 20 May 1853; *Niagara Mail*, copied, *Examiner*, 5 May 1852; *Dumfries Reformer*, copied, *Globe*, 7 October 1854; *Canadian Free Press*, 3 April 1851, and 14 October 1852; and *Huron Signal*, 18 May 1849, and 21 February 1850. The Toronto *Mirror* and *Examiner* changed their position once they supported the Hincks-Morin government which proposed an elective Legislative Council.

⁴¹ A few reformers did begin to see some merit in having a second house whose secondary function was to represent and protect property after manhood suffrage was achieved. Since property still formed the basis of taxation, it should retain some sort of place in the legislature. *Dundas Warder*, copied, *North American*, 22 November 1850; *Paris Star*, copied, *Canadian Free Press*, 17 April 1851; and *Examiner*, 5 May 1852 and 26 January 1853.

⁴² *North American*, 19 May 1853.

⁴³ See for instance, *Mirror*, 22 October 1852 and D. Christie, *Debates*, 28 May 1853, p. 3166. John A. Macdonald made the same sort of argument, but aimed at limiting the Assembly, not the cabinet. He supported an elective Legislative Council on the grounds that there were insufficient safeguards to prevent the Assembly from usurping executive and judicial functions. Referring to Montesquieu, Macdonald called for an elective upper house to put "an end to a system in which there existed the unchecked power of a single Legislative chamber. Macdonald, *Debates*, 27 March 1855, p. 2495.

to maturity, and is the opinion of the majority, it ought to be the law of the land."⁴⁴ The primacy of public opinion was the common objective, but other reformers believed that one body could not be trusted to differentiate between the "slow growth" of public opinion and the excitement of popular passions. One house might prove unable to resist popular prejudices in favour of the mature conviction of public opinion.⁴⁵

John Rolph, one of the Grits who joined the Hincks-Morin government in 1851, argued that misrule and a disregard for the legitimate wishes of the people in the 1830's had resulted in popular excitement. Such excitement was now produced by

those commotions of the public mind springing from freedom itself; from the free and independent expression of opinion upon all great concerns of the country; *from the conflict of opposing views in the arena of free discussion*; from the battles for party ascendancy under a government based upon party principles. Knowing that under this un-restricted freedom of mind, of the tongue, and of the press, there will be occasional excesses, it is an act of wisdom for the people, as in other free countries, to guard against them.

With an elective Legislative Council, "the political safety-valve and the constitutional ballast are adjusted and regulated by the people themselves."⁴⁶ As one editor put it, "the very fact of the universal freedom of speech and action which found its reflex in the popular branch, called for another House." It would act as a "barrier against the effects of

⁴⁴ A U. E. Loyalist, *North American*, 18 September 1850.

⁴⁵ "Constant," the Toronto Correspondent of the *Bathurst Courier*, 14 June 1850, was in favour of abolition but argued that if a check was needed to prevent hasty legislation, there were alternatives to a second elected legislative chamber. He proposed that "all bills to be presented to the Assembly should be published two or three months before the meeting of Parliament. Were this the case members would have time to make up their minds and from the discussions which would naturally arise after their announcement, I think the House would be much better qualified to come to a proper decision concerning them than what it is possible for them to be under the present system, or even with an elected council." Again, the common belief in government by discussion and the paramount role of public opinion in constitutional debate is striking. This proposal mirrors provisions of the radical Pennsylvania constitution of 1776.

⁴⁶ Rolph, *Debates*, 28 May 1853, p. 3157. [emphasis added] The Grit member for Wentworth, D. Christie, echoed Rolph: "in the present constitution of the human mind, there was a disposition to precipitancy and to the undue exercise of authority. The indulgence of those propensities was nowhere so dangerous as in legislation, and therefore must be carefully guarded against by a system of checks. Those checks could alone be found in a second house." *Debates*, 28 May 1853, p. 3166.

restlessness and precipitation."⁴⁷ An elective upper house would not check public opinion. Rather, it would ensure that government responded to public opinion and not the excitement and ferment that were unavoidable consequences of public deliberation.

Far from an attack on parliamentary government, this argument was essential to it. In Britain, respect for the aristocracy and the House of Lords, a more limited franchise, and a more patrician class of politicians enabled parliament to differentiate between popular passion and public opinion - and to ignore the former. Was the Canadian Assembly able or willing to resist every outburst of popular enthusiasm? Lord Elgin was not sure and, therefore, strongly supported an elective Council. While he praised Baldwin's sincerity in opposing an elective upper house and his attachment to "what he imagines to be the likeliest thing to the British Constitution he can obtain...in this instance I cannot but think that he mistakes the shadow for the substance."⁴⁸ Earl Grey, Colonial Secretary and soon-to-be-author of a principal study of parliamentary government, agreed.

So did a large number of reformers. Francis Hincks praised the British constitution as the "very best in the world." "[D]esiring to retain to this country its integrity," he proposed an elective Legislative Council.⁴⁹ Britain had two legislative chambers while Canada had, in practice, only one. Nomination by the Crown could not legitimate legislators. As another reformer insisted, "it is not to secure Executive responsibility that the Legislative Council is to be made elective; that point is already attained through the other House. The change proceeds upon a belief that the people will

⁴⁷ *Mirror*, 15 December 1854.

⁴⁸ Lord Elgin to Earl Grey, *Elgin-Grey Papers*, 23 March 1850, v. 2, p. 613.

⁴⁹ Hincks, *Debates*, 13 May 1853, p. 3069; A. Morin, *Debates* 19 October 1852, p. 1091; R. Spence, *Debates*, 28 March 1855, p. 2526; and *Daily Leader*, 15 October 1853. John A. Macdonald, *Debates*, 27 March 1855, p. 2526, agreed that this was "a measure which by giving a real existence to the Upper House would assimilate our constitution more closely to the British."

elect better legislators than the crown can appoint for them."⁵⁰

The objectives were quite limited. A "court of review" or "revision" - a chamber of sober second thought - was to be created, not a second body performing the same functions as the Assembly.⁵¹ According to Hincks, "the great object" was "increasing the weight of the Council in public estimation." Despite being elected, Legislative Councillors would have no new legislative functions.⁵² The right to originate money bills, and therefore "the practical control over the ministry of the day" would remain with the Assembly. There would be no need for the ministry to resign if one of its measures were defeated in the Legislative Council.⁵³ In fact, Hincks insisted that an elected Legislative Council would remain weaker and less influential than the British House of Lords. Precedents developed from the relationship between the House of Commons and the House of Lords would still govern relations between the Canadian Assembly and an elected Legislative Council.⁵⁴ The continuity in function was symbolized by the continuity in name, despite a proposal to adopt the more imposing-sounding "Senate."

The two houses had to be similar enough to ensure co-operation and harmony.

⁵⁰ *Mirror*, 23 March 1855; and also, *North American*, 1 April 1852; *Brockville Recorder*, 22 April and 6 May 1852; *Mirror*, 22 October 1852; *Elora Backwoodsman*, 20 January 1853; and *Examiner*, 26 January 1853.

⁵¹ "Court of review" was William Lyon Mackenzie's term, while "revision" was both D. Spence and John A. Macdonald's. Mackenzie to the Earl of Aberdeen, *Mackenzie's Weekly Message*, 3 March 1854; Spence and Macdonald, *Debates*, 16 and 22 March 1855, pp. 2242, 2495.

⁵² Once the Council was made elective, however, it could be a court of impeachment like the British House of Lords.

⁵³ There was, however, an important disagreement between two reform organs supporting an elective Council. The *North American*, 26 May 1853, disagreed with the *Daily Leader* that the ministry needed only the confidence of the Assembly. The *North American* did not think that the government needed to pass all its legislation through the upper house but argued that, in general, it must have the confidence of both houses. This the *Leader*, 23 February 1853, rejected as making ministerial responsibility impossible.

⁵⁴ Hincks, *Debates*, 8 October 1852, 13 May 1853, and 27 March 1855, pp. 927, 3068, 2501. Indeed, John Rolph went so far as to suggest that the Legislative Council would never address the Crown on its confidence in a ministry sustained by the lower house, *Debates*, 28 May 1853, p. 3157. Others continued to see the House of Lords as the relevant model. See *Brockville Recorder*, 26 May 1853 and, after the reform, see especially, Dunbar Ross, *The Seat of Government Question...Also The Composition and Functions of the Legislative Council...* (Quebec: E. R. Fréchette, 1856), pp. 20-23.

They were to be chosen by the same electorate and were both responsible to public opinion. At the same time, the upper house had to be different enough to act as a check - "preventing precipitate decision" and forcing a particular bill to be "delayed," "abandoned," or "modified."⁵⁵ Again, it was John Rolph who best framed these requirements in terms of government by discussion. Electing the second chamber would "produce a practical affinity without identity [between the two houses], and admit of that friendly collision which only serves to elicit the truth."⁵⁶

George Brown, member of the Assembly and editor of the *Globe*, was the most tenacious critic of an elected Legislative Council. In the end, he stood nearly alone.⁵⁷ Canadians already enjoyed "the ready and entire control over public affairs." Conservatives' support for an elective Legislative Council made sense, since such a Council was designed "to fetter public opinion." Reformers should oppose the change for the same reason. The cabinet already guarded against hasty legislation by introducing most measures and generally guiding the Assembly.

Moreover, Brown repeatedly insisted that an elective legislature could not be limited to revising or delaying particular bills. The House of Lords and the existing Legislative Council deferred to a determined lower house because they recognized the superior legitimacy given by popular suffrage. If Legislative Councillors were elected, they would not yield. Instead, they would claim an equal duty to represent the people and

⁵⁵ D. Christie, *Debates*, 28 May 1853, p. 3167 and also J. Langton 13 May 1853, p. 3073; and J. A. Macdonald, 16 March 1855, pp. 2247-2250.

⁵⁶ Rolph, *Debates*, 28 May 1853, p. 3157.

⁵⁷ The following synthesis of Brown's position is taken from the *Globe*, 23 March and 19 October 1852; and 14 and 21 May 1853; and *Debates*, 19 October 1852, pp. 1104-1115; 13 May 1853, pp. 3071-3073; 16 March 1855, pp. 2242-2247; and 27 March 1855, pp. 2472-2485. The only noticeable shift in Brown's position was an increasing insistence on representation by population between Upper and Lower Canada in the legislature. The only other reformer in the Assembly to employ similar arguments was J. Wilson, *Debates*, 28 March 1855, pp. 2519-2523. For signs of second-thoughts by supporters of the coalition of 1854 see, *Daily Leader*, 23 February 1855 and anon., *Arguments Against an Elective Legislative Council*, (Toronto: Leader and Patriot Office, 1856.)

an equal ability to express public opinion. Even the stipulation that money bills were to originate in the Assembly would prove futile. "How can a control over money bills be denied to the Council after it is made elective? Representatives of the people, like ourselves [members of the Assembly], why should they not have the same power over all bills that we have?" An elective legislature would become "an active political engine," not "a Court of Review."

Two such engines were incompatible with parliamentary government and part of American republicanism where all bodies were subordinate to a written constitution and where the tenure of the executive was independent of the legislature. A Canadian ministry would have to maintain a majority in each of two elective legislatures. If the two did not contain a majority from the same party, how could a ministry serve two masters? If the government was to remain responsible to public opinion, only one house could claim to embody that opinion. Parliamentary government entrusted vast powers to the cabinet. Such a concentration was safe only because the cabinet could be removed swiftly by a vote of the Assembly:

The omnipotence of the popular will, as expressed through this House, and the prompt, efficient control we, the House of Assembly, exercise over the Executive, is the very mainspring of our constitutional system. How could it continue, if there were another House that might oppose that Assembly. Without that ready and efficient check over their proceedings, the vast power entrusted...to the Ministry of the day, would be dangerous to the State.

The Assembly's check would be weakened if the ministry could shift blame for measures to another elected legislature or use its majority in one house to thwart the majority in the other. How would a Governor act if a vote of confidence were passed in one house and a vote of non-confidence in the other? Constant friction, deadlock, and new elections would fuel calls for a written constitution and an executive independent of the legislature.

In short, Brown agreed with conservative republicans like John W. Gamble that an elective Legislative Council was only the first step toward republicanism. There was "no half-way house" between parliamentary government and republicanism. One system fused executive and the legislative functions. The other separated them. If the status quo could not be maintained, Brown preferred that the Legislative Council be abolished.

Whether or not an elective upper house would be a court of revision or as active as the Assembly - whether or not it would destroy parliamentary government - depended on the details. What explicit limitation would be placed on the powers of the upper house? Could the Crown dissolve it in the same manner as the Assembly? What qualifications would be required of potential Councillors? What would be their term of office? Would they be elected and retire as a group or in rotation? How large would the new Council be and what size of constituency would this entail? Would those appointed under the old system be removed or would the elective element be introduced gradually? The answers to such questions would determine the degree of similarity between the two houses and thus the likelihood of deadlock. They would also determine what, if anything, could be done once deadlock occurred. Significant disagreements on these questions can be detected among reformers and between the reform government that introduced the measure and the Liberal-Conservative coalition that passed it.

Nevertheless, the debate on the principles of an elective Legislative Council revealed three major points. First, it provided further evidence of the paramount role of public opinion and the public sphere in constitutional debate after 1848. There was no estate or interest that required representation in a second legislature. The nature of the public sphere made a second house necessary. Second, "elective institutions" were not necessarily revolutionary. Canada was already a democracy and no alternative to direct

popular election was seriously considered. Third, this was a Canadian question. Canadians would decide by deliberation how best to achieve a government by discussion.

The Grit demand for an elective Legislative Council was victorious, but moderate reformers ensured that it was not incompatible with parliamentary government. The widespread desire to give ministerial responsibility a fair trial, the fear of further constitutional change, divisions among the radicals, and the desire to retain cultural similarities with Britain to demarcate Canada from the United States, all worked in their favour. Supporters of parliamentary government were successful against frontal attacks. They proved less successful against more subtle threats. They proved unable to clearly and forcefully establish some of the essential underpinnings of parliamentary government. The eventual result, as Lord Metcalfe had predicted, was not parliamentary government but cabinet government - not government by discussion but government by democratic oligarchy.

One of those major underpinnings was the nature of the cabinet and its relationship to the Assembly. For Walter Bagehot, "the efficient secret" of the British constitution was the fusion of executive and legislative powers in the cabinet. The cabinet was a committee of the legislature and survived only as long as it retained a working majority in the legislature. Yet, it was also the executive. It could dissolve the legislature, it alone could propose fiscal measures, and, with the majority that sustained it, it was able to give direction to the legislature. As Bagehot saw it, "the English system, therefore, is not an absorption of the executive power by the legislative power; it is a

fusion of the two...It is an executive which can annihilate the legislature, as well as an executive which is the nominee of the legislature."⁵⁸

It was certainly no secret, efficient or otherwise, that the power of the Canadian cabinet represented the eclipse of the older theory of a tripartite balance between co-ordinate legislative bodies. At its most formalistic, Baldwinite responsible government transformed the old Executive Council of the Governor's advisers into a committee of departmental ministers collectively responsible to the elected local assembly. There was no surprise that this entailed a greater role for the cabinet as well as for the Assembly.

George Brown's discussion of the cabinet during the Metcalfe crisis was discussed in chapter six. Those who displayed talent and energy in the "stormy arena" of the Assembly rose in the estimation of the public and their fellow representatives to become ministers. Thus, the people, indirectly through their representatives, elected the executive. Since ministers spoke collectively as the advisers to the Crown, "they appear in no shape as a party." The people's indirect control over the executive ensured harmony between the formal institutions of Crown, Legislative Council and Assembly and between the state and public opinion.⁵⁹ In 1847, the *Globe* insisted that it was "in the Councils of the Executive that the popular branch finds its power, and it is through that channel that harmony is preserved between the different estates of Parliament and the mass of the people."⁶⁰

Robert Baldwin was also clear about the power of the cabinet. The cabinet grew out of the legislature, but the public had confidence in a ministry "because they deem

⁵⁸ Walter Bagehot, *The English Constitution*, R. H. S. Crossman ed., (London: Fontana/Collins, 1963 [1867]), pp. 65, 69.

⁵⁹ George Brown to the Reform Association, "*The Globe Extra. Proceedings at the First General Meeting of the Reform Association of Canada...25 March, 1844*, (Toronto: The Globe, 1844), pp. 30-32.

⁶⁰ *Globe*, 16 June 1847.

them capable of exercising a proper influence over the Legislature." The cabinet promoted certain legislative initiatives and prevented others. "Ministers of the Crown ought to be representatives of public opinion...[they] ought to be those who concur with the great masses of the community upon those questions on which public opinion is settled for it was to that end that they are called on to influence the Councils of the Sovereign." In order to carry out that function, "the Ministers of the Crown ought to possess such a majority as will enable them to pass the measures" they deemed in conformity with public opinion.⁶¹ Two years later, near the end of his parliamentary career, Baldwin insisted that while "the deliberative views of the people effectually made themselves felt on the Administration through the Legislature." Cabinet ministers also acted as "watchers on the tower."⁶²

For many reformers, perhaps most, the cabinets led in Upper Canada by Baldwin and later by Francis Hincks were more than "watchers on the tower." Henry Boulton, former chairman of the Reform Association, soon judged responsible government a failure. It centralized power "into the hands of a few men, who were nominally responsible to the country, but who in reality possessed no responsibility at all."⁶³ Responsibility was "pretended" or a "delusion" since the cabinet had engulfed the powers of the legislature.⁶⁴ According to William McDougall's *North American*, the cabinet initiated most legislation, vetoed measures it disliked, and claimed to speak for public

⁶¹ Baldwin, *Debates*, 3 March 1848, 186-191. As the *Globe*, 21 May 1853, bluntly put it, "the Ministry too, under our system, acts as a check upon the single house."

⁶² Baldwin, *Debates*, 3 June 1850, pp. 372-374.

⁶³ Henry Boulton, *Debates*, 22 May 1851, p. 35. Boulton broke with the Baldwin-LaFontaine administration at the end of their first legislative session on the grounds that the Cabinet was assuming too great a role in the legislative work of the Assembly, *Debates*, 20 March 1848, pp. 508-512.

⁶⁴ See for instance, *Reformer*, *North American*, 23 August and 13 September 1850; *North American*, 31 January 1851, 6 and 27 January 1853; *Examiner*, 22 November 1848, 29 May and 21 August 1850 and 3 January 1855; Resolutions of the Municipal Council of Lanark and Renfrew Counties, *Bathurst Courier* 11 October 1850; *Bathurst Courier*, 13 September and 15 November 1850; *Guelph Advertiser*, 3 November 1853; *Brockville Recorder*, 12 September 1850; and *Mirror*, 29 March 1850.

opinion more than the people's own representatives. It attempted to limit parliament "to say "Yea" or "Nay" to the propositions of the Government." In presenting the Grit platform, the *North American* insisted that "we are actuated solely by a desire to render the Executive and Members of Parliament, as independent of each other as it is compatible with the general interest for them to be."⁵ It was unclear whether or not that degree of independence was compatible with parliamentary government.

Under the title, "Executive and Legislative Powers of Government," the *Examiner* contrasted the republican separation of powers with the fusion of powers in "the English system." In the latter, the cabinet initiated important legislation. The *Examiner* argued that this sound principle had been carried to extremes in Canada and was "accompanied by vices unknown in England." Initiating important measures and being prepared to resign on matters of principles were one thing but it was a "quite different thing for them [the cabinet] to usurp or control the entire functions of the Legislature." The cabinet had become a more important legislative institution than the actual legislature. The article concluded, rather vaguely, that "the line between the Executive and Legislature powers ought to be more distinctly drawn."⁶ Voicing its concerns on another occasion, the *Examiner* asked, "why should a Cabinet minister argue? Who is simple enough to imagine that one in his position is to bend to those rules which guide men who, wielding no official influence or patronage, depend solely on the strength of their arguments, and the goodness of their cause?"⁷ The cabinet's overwhelming power was incompatible with government by discussion.

The *Examiner* recalled that the Assembly's independence had been a central

⁵ *North American*, 14 February 1851 and 30 December 1852.

⁶ *Examiner*, 17 April 1850.

⁷ *Examiner*, 26 February 1851.

imperative of the theory of mixed monarchy.

Now, however, all this is changed. The executive cannot disregard the action of the legislative assembly; the vote of that house is the tenure on which the government holds the reigns of power. Various means of tempering the Assembly are therefore resorted to, for the purpose of maintaining a majority; or, in other words, of keeping a particular ministry in power.⁶⁸

Ministerial responsibility had purchased harmony between legislative institutions at the cost of the Assembly's independence. The *Examiner* added a touch of historical irony: "Tyranny assumes a variety of shapes...In Canada, it was formerly an undisguised oligarchy. But is a masked oligarchy much better?"⁶⁹ The *Examiner* failed to recall that this had been Lord Metcalfe's objection to ministerial responsibility.

Of the "various means of tempering the Assembly," the cabinet's control of patronage was the most widely condemned. The ministry could purchase sufficient support in the Assembly to nullify any responsibility to that body. Conservative republicans, (with the exception of Ogle Gowan), proposed barring office-holders from the Assembly. Officials were to be nominated by an independent governor and confirmed by the legislature. Reform critics demanded that the power of patronage be given directly to the people.⁷⁰ The first proposal was incompatible with parliamentary government, but the second was not. The *Provincialist* summed up the logic of election. If the people would "retain in their own hands and gift the power to bestow office," office-holders would serve the people rather than the executive.⁷¹

Even reformers who favoured the current system of appointment mounted no

⁶⁸ *Examiner*, 22 May 1850.

⁶⁹ *Examiner*, 21 August 1850.

⁷⁰ See for instance, *Examiner*, 11 September 1850; *North American*, 14 February and 2 May 1851; *Mackenzie's Weekly Message*, 29 September 1853; and *Reformer, Mirror*, 31 August and 28 September 1849, and 15 February and 22 March 1850; *Reformer, North American*, 23 August 1850; and *An Old Reformer, Journal & Express and Provincialist*, 15 October 1849.

⁷¹ *Provincialist*, 13 December 1849.

significant opposition to the idea of electing officials, with the exception of judicial positions.⁷² Partially, this was the result of the timing of the Grit demand. It was a response to discontent with the Baldwin-LaFontaine ministry's handling of patronage. The question in 1848-1850 was not whether officials should be appointed or elected, but whether office-holders should be non-partisan and serve during good behaviour or whether they should be supporters of the party in power and be replaced with each change of administration. Reformers were united on the first position. Moderate reformers maintained it when their more radical colleagues, dissatisfied with the results, began to demand elective officers.

When he swore in the Baldwin-LaFontaine ministry, Lord Elgin worried that "there will be an attempt I fear to deal harshly, Yankee fashion, in some instances with subordinate officials - for the twofold purpose of punishing political opponents and providing places for political friends."⁷³ Henry Boulton also warned that many feared that a ministry would be supported only by legislators it had purchased with favours or appointments. "If a Minister would come down to the House and show that it was acting with sagacity and honesty he would succeed in acquiring confidence though he refused all these petty offices to this, that or the other member."⁷⁴

The Baldwin-LaFontaine ministry came under considerable pressure to make room for more reformers in office after decades of perceived exclusion. No reformer questioned that all new appointments should go to qualified reformers. Robert Baldwin Sullivan had provided the justification during the Metcalfe crisis. The majority party, "for

⁷² Only the *Brockville Recorder*, 12 September 1850, insisted that the government must have access to some patronage. On judicial appointments see also, *Brockville Recorder*, 29 May 1851.

⁷³ Lord Elgin to Earl Grey, 22 January 1848, *Elgin-Grey Papers*, v. 1, p. 119.

⁷⁴ H. Boulton, *Debates*, 3 March 1848, p. 213-214.

the purpose of government." was "said to be public opinion." The argument that the Governor should make appointments without reference to party was, therefore, suggesting "the substitution of one man's opinion for public opinion." Sullivan concluded that "it is not merely upon the principle that those who have won the victory have a right to the spoils of war, but upon the more just and necessary supposal, that those who contended successfully for opinions may be most safely entrusted with their practical maintenance and enforcement."⁷⁵ Tories had appointed mostly Tories. Reformers would do the same, but with a justification grounded in government by public opinion.

As James Hervey Price told the Assembly, "I would call them [cabinet ministers] insincere to their principles if, believing that they were right, and that it was necessary for the prosperity of the country that they should have the confidence of the people[,] they did not place individuals in office, in every part of the country who agreed with them in politics."⁷⁶ No reformer dissented. The prospectus of one reform paper said it would promote the "equality of man with man, in regard to his rights and privileges, and advocate the leaving of all offices of trust and distinction open to all, but accessible only to the meritorious friends of the majority of the people."⁷⁷ Patronage was not the dirty secret of responsible government.⁷⁸ It was part of its essence. Office-holders, like the executive, had to be made responsible to public opinion.

The more difficult question was what to do with the non-reformers already in office. Most reformers, including the newspaper just quoted, rejected the American

⁷⁵ Legion, *Letters on Responsible Government*, (Toronto: Examiner Office, 1844), pp. 24-25, 78, 139, 141-144.

⁷⁶ Price, *Debates*, 3 March 1848, p. 204. See also, *Examiner*, 19 April 1848; *Bathurst Courier*, 7 March 1851; *Provincialist*, 2 May 1848; and *St. Catharines Journal*, 13 May 1852.

⁷⁷ prospectus, semi-weekly *Provincialist*, 14 October 1848.

⁷⁸ See J. B. Brebner, "Patronage and Parliamentary Government", *Canadian Historical Association Report of the Annual Meeting with Historical Papers*, (1938), pp. 22-30.

"system of clearing" whereby officials were replaced by every new government.⁷⁹ Only James Lesslie's *Examiner* dissented. Responsible government entailed "that every change of ministry be followed by a re-distribution of all administrative offices whatever." The only means to ensure "an identity of opinion" among officials was to give "wider scope to the operation of the beautiful principle, which distinguishes our government from oligarchies and despotisms, of allowing public opinion, as expressed at a general election, to influence the administration of affairs and to change the individuals entrusted therewith."⁸⁰

No reformer doubted that a responsible executive had the power to dismiss all office-holders, that it should not allow avowed enemies to administer its policies and that it must be able to trust administrators with executive secrets. Furthermore, reformers were committed to removing office-holders from the electoral process and thus preventing them from using their influence to pervert the "free expression of the popular mind." This had, after all, been a common theme of their critique of the "Family Compact."⁸¹ The *cause célèbre* was the dismissal of James Moir Ferres from his post as a revenue inspector for participating on the losing side in the election of 1848. Conservatives defended Ferres' right to participate in elections as a free citizen and without fear of revenge from the new government. Reformers disagreed. If officials could be active partisans, electoral purity would be compromised and new governments would have little choice but to replace all administrative officers with their own supporters. Ferres was dismissed to

⁷⁹ See for instance, *Globe*, 12 February; *Bathurst Courier*, 21 April; *Provincialist*, 22 February and 2 May 1848; and *Guelph Advertiser*, 20 September 1849.

⁸⁰ *Examiner*, 19 April 1848.

⁸¹ See for instance, *Globe*, 12 February and 15 April; and *Bathurst Courier*, 12 April 1848.

prevent the politicization of administrative officers.⁸² Other opponents of the ministry, notably Egerton Ryerson, in charge of schools in Upper Canada, were not dismissed. Reformers remained equally committed to a non-partisan public service and to awarding all new appointments to their friends. The two principles were not contradictory. Calls for the popular election of local officers were not only unsuccessful, they were largely ignored.

The question of patronage was inextricably linked to that of party. Patronage was more useful in building and maintaining political parties than in buying the votes of legislators or electors. Reformers never tired of repeating that responsible government was party government.⁸³ They repeated it because it had been controversial. It was also true. While the idea and reality of political groupings were nearly as old as representative institutions in the Canadas, the total acceptance of political parties was impossible as long as the theory of mixed monarchy remained the principal way of understanding the constitution.⁸⁴

As the first chapter pointed out, the theory of mixed monarchy did allow for legitimate political conflict. Conflict was inherent in the notion of balance, but it was to occur between social estates or between the legislative institutions they represented. The

⁸² For able defences of Ferres's dismissal, see Hincks and Baldwin, *Debates*, 8 February 1849, pp. 543-546, 550; and 5 March 1849, pp. 1124, 1132. See also Lorne Ste. Croix, "James Moir Ferres", *DCB*, v. IX, pp. 257-258.

⁸³ For instance, Baldwin, *Debates*, 22 January 1849, p. 96; and Hincks, 13 May 1853, p. 3069.

⁸⁴ On the relationship between mixed monarchy and party, I am heavily indebted to J. A. W. Gunn, "Influence, Parties and the Constitution: Changing Attitudes, 1783 - 1832", *The Historical Journal*, (v. XVII, n. 2, 1974), pp. 301-328.

concept of party could be squared with this constitutional theory under four circumstances. First, the existence of parties was compatible with constitutional theory when a reform dominated House confronted a tory dominated Legislative Council, but party conflict persisted in Upper Canada even when government supporters were in control of the Assembly. Second, party could be squared with mixed monarchy if tories were the party of the pseudo-aristocracy and reformers were the party of the yeomanry. This, however, was more reform rhetoric than electoral reality. Conservatives enjoyed too much electoral success to depict them solely as the party of the Legislative Council or the elite.

Third, party and constitutional theory cohered if one party favoured executive prerogative while the other was wedded to legislative supremacy. Again, party conflict was transformed into conflict among institutions. This was a prevalent motif in reformers' self-image but it failed to capture political reality. Both parties were present in the Assembly where the supposedly pro-executive party often held a majority. A key goal of the supposedly pro-Assembly party was to control the executive. In short, it was usually a strain to present every battle as, not between parties, but between those committed to different social or institutional elements in the balanced constitution.

Fourth, the theory of mixed monarchy could accommodate temporary combinations to destroy a self-interested clique that threatened the constitution balance. Such temporary combinations to re-establish equilibrium were still some distance from permanent alignments designed to advance different principles and policies. Once good triumphed over bad - once supporters of the constitution had vanquished its foes - there would be no need for such a combination. This was justification behind the various manifestations of the British Constitutional Society in the 1830's, discussed in chapter

five. Supporters of mixed monarchy organized to rally Upper Canadians to defeat the enemies of mixed monarchy. Once the constitution was safe, the Society, as well as the public information and participation it had called for, were no longer required.

Finally, as long as royalty or its representative had an active and political role, organized and sustained opposition could not escape charges of disloyalty. The inability of mixed monarchy to adequately reflect the reality of partisan conflict in Upper Canada was one of its major weaknesses. Parties, of various types, existed before the demise of mixed monarchy, but they remained only tangentially related to constitutional theory.⁸⁵

Those who accepted the ideals of the public sphere had a new framework within which to understand political parties. The legitimacy of parties had been one of the major fault-lines between Egerton Ryerson and Robert Baldwin Sullivan during the Metcalfe crisis. Acceptance of the ideals of the public sphere led them to opposite conclusions. Ryerson rejected parties, but he did not dwell on the ageless fear of divisions within an organic community.⁸⁶ He also did not rely on images of factious, ambitious and selfish cabals that had dominated earlier critiques of party. He accepted the conflict inherent in public debate. He rejected organized parties because of their effect on that debate. In 1838, Ryerson declared that "party spirit has been the bane and curse of this country for many years past. It has neither eyes, nor ears, nor principles, nor reason."⁸⁷ One of his most persistent charges against the Reform Association during the Metcalfe crisis was that "the first article of their creed is *party*; and therefore truth, and

⁸⁵ Considerable work has been done on parties in Upper Canada. Published accounts include Eric Jackson, "The Organization of Upper Canadian Reformers, 1818-1867". *Historical Essays on Upper Canada*, J. K. Johnson, ed., (Toronto: McClelland and Stewart Limited, 1975), pp. 96-121; and David Mills, *The Idea of Loyalty in Upper Canada, 1784-1850*. (Kingston and Montreal: McGill-Queen's University Press, 1988), esp. chp. 7.

⁸⁶ Helpful here is Terence Ball, "Party", *Political Innovation and Conceptual Change*, Terence Ball, James Farr, and Russell L. Hanson, eds. (Cambridge: Cambridge University Press, 1989), pp. 155-176.

⁸⁷ *Christian Guardian*, 11 July 1838.

reason, and justice succumb to party."⁸⁸ Party loyalty had replaced individual reasoning. Party produced what the *Woodstock Herald* called "zeal not according to knowledge."⁸⁹

Yet, other champions of the public sphere gave party its best defence. To meet Ryerson's critique, they needed to make party at least compatible with, and preferably essential to, the public sphere. Thus, the *Upper Canada Herald* defended party contests as a means to elicit truth. Opposition generated debate and only a party could sustain such opposition.⁹⁰ Robert Baldwin Sullivan went further. He defined parties as "a number of persons professing an opinion, or opinions, in which they agree." Since unanimity was almost impossible, a majority and minority party formed. The majority party, "for the purpose of government," was "said to be public opinion." Therefore, "if we wish to put down party, we must begin by putting down public opinion."⁹¹ Members of a public could safely disagree among themselves while deliberating according to accepted norms. Unanimity, not conflict, was to be met with suspicion. For the *Leader*, unanimity of principle was "alarming" since it "would annihilate everything without so much as a reasonable discussion of the merits of anything." When a "body goes in a horde" it might represent "not the progress of conviction but the wholesale surrender of opinion."⁹² Regular opposition was a sign of political health - a sign of vigorous public debate. Unanimity reflected stagnation or expediency.

The theory of parliamentary government integrated Sullivan's definition of

⁸⁸ Egerton Ryerson, *Sir Charles Metcalfe Defended Against the Attacks of His Late Counsellors*, (Toronto: British Colonist Office, 1844), p. 87, passim.

⁸⁹ *Woodstock Herald*, 13 July 1844.

⁹⁰ *Upper Canada Herald*, 22 May 1838 and 22 September 1840.

⁹¹ *Legion, Letters on Responsible Government*, pp. 24-25, 78, 139, 141-144.

⁹² *Daily Leader*, 23 February 1855.

political parties.⁹³ Parties were central to parliamentary government because they determined both of its central relationships: between the executive and legislature and between the legislature and the people. Parties had to be cohesive enough in the legislature to provide stable support for the cabinet, but not so cohesive that they sustained that cabinet regardless of its behaviour between elections. Parties had to be cohesive enough to organize representatives, electors and arguments into competing camps, but not so strong as to turn individual representatives into mere delegates of the popular will rather than semi-autonomous participants in public deliberations. The fragile balances of parliamentary government were nowhere more evident. It was on the question of party, not on elective institutions, that Grits demonstrated either lack of understanding of parliamentary government or their desire to destroy it.

Nonetheless, reformers were agreed that political parties were inseparable from the public sphere. In 1854, the *Bathurst Courier* echoed Robert Baldwin Sullivan:

The very essence, the very life as it were of popular institutions...is the fact that the voice of the many constitutes the chief guide in practical legislation. Where all are equally entitled to give free expression to their views there must necessarily be a great diversity of opinion; but notwithstanding this, there are always certain great principles of state policy round which all minor diversities generally arrange themselves and go to form one great party.⁹⁴

For another reform organ, "it is through party that public principle is defined and purified."⁹⁵

Reformers also agreed on the respective roles of the majority and minority parties. The majority party provided the principles and personnel for the executive. Under the

⁹³ Very helpful on this relationship is Angus Hawkins, "Parliamentary Government and Victorian Political Parties, c. 1830 - c. 1880", *English Historical Review*, (v. 104, July 1989), pp. 638-669; but see also, Hockin, "Flexible and Structured Parliamentarism".

⁹⁴ *Bathurst Courier*, 8 September 1854 and *North American*, 15 April 1852.

⁹⁵ *Globe*, 10 March and 18 September 1847.

theory of mixed monarchy, the Assembly had checked the other estates and its vigilance ensured that they acted with probity. This role was now played by the minority party within the Assembly. The *Canadian Free Press* welcomed party division because it "secures integrity to the party in power, and as the strength of the latter increases beyond a fair working majority, and that of the former decreases, so will also diminish the care and caution shown by an administration."⁶⁶ The clash of parties had replaced the clash of legislative institutions.

Reformers could not, however, agree on the appropriate degree of party cohesion. Supporters of an administration usually demanded sufficient party unity to sustain that administration and pass its legislation. Reformers critical of the same administration usually demanded looser party discipline in the Assembly and generally accused the administration of placing party loyalty above principle and public opinion.⁶⁷

Radical reformers were more frequently hostile to party discipline, especially when it sustained a ministry dominated by moderate reformers. Representatives were to be independent enough to reflect their constituents' views before those of their party. The *Hamilton Journal & Express* was adamant that "representative governments cannot be conducted without a proper organization of parties," but advocated reforms to "enable party supporters to become also independent members."⁶⁸ The radical essayist,

Reformer, also sought independent representatives who would be "able to cast off the

⁶⁶ *Canadian Free Press*, 1 August 1849 and 20 March 1851; *Brockville Recorder*, 6 April 1854: "In all free countries, there are at least two political parties...The more active and vigilant these parties are, the greater the guarantee that the rights and liberties of the subject will be protected." The same sentiments were repeated by the *Mirror*, 28 November 1851; *Provincialist*, 2 May 1848; and *St. Catharines Journal*, 15 September 1852 and 14 July 1853.

⁶⁷ William Lyon Mackenzie was one of the few reformers whose opposition to a reform ministry seemed to include a critique of party as such. His endorsement of the argument that party simply implied a "sacrifice of individual judgement," underscored the conceptual gulf between the 1830's and the 1850's - and the difficulty Mackenzie had in bridging it. *Mackenzie's Weekly Message*, 17 February 1854. Mackenzie was, of course, trying to justify his career as a maverick or loose-fish.

⁶⁸ *Journal & Express*, copied *Mirror*, 12 April 1850.

trammels of party, and vote from principles instead of expediency." Ideologues in opposition were always prone to view the compromises necessitated by party loyalty as a barrier to the fulfilment of their own agenda: to characterize "the machinery of party" as "a dead-weight upon our public energies." Once they supported an administration, the benefits of the party unity that sustained it became more evident.⁹⁹

Moderate reform commentary on parties also shifted. For instance, the *Globe*, when it supported the Baldwin-LaFontaine ministry, insisted that the reform party rally around its chosen leaders and submerge minor differences. When it went into opposition against the Hincks administration, it complained bitterly about calls for party unity.¹⁰⁰ Such positions were certainly self-serving, but they were not inherently inconsistent. The *Globe* opposed the Hincks administration because it believed that its primary aim was to maintain itself in office and not to implement the principles endorsed at the previous election.¹⁰¹ Parties should not be so cohesive as to sustain such a ministry. They should, however, be cohesive enough to maintain a more principled ministry.¹⁰²

Perhaps the *Guelph Advertiser* best summarized the nature of party cohesion in the Assembly. Calling on reform representatives to give more consistent support to the administration, the editor insisted that "we do not mean to be understood that a slavish blindness should be accorded to them, that the party should have no views but those put forward by their leaders, or do nothing but what they bid; but we contend that a liberal

⁹⁹ Reformer, *Mirror*, 12 October 1849; and *Elora Backwoodsman*, 3 November 1853. See for instance, the *Bathurst Courier's*, 10 March 1854, call for party unity and the need to see party leaders as generals of an army despite its earlier campaign against the Baldwin-LaFontaine administration. Likewise, the *Journal & Express*, copied, *Mirror*, 6 February 1852, which talked of independent members in the Assembly while opposing the Baldwin ministry and supported the Hincks ministry because "we like strong party government" which would appoint only reformers to offices.

¹⁰⁰ *Globe*, 6 January 1853.

¹⁰¹ *Globe*, 15 January 1852.

¹⁰² At least some of the ministerial instability from 1854 to 1864, often seen as a major problem and cause of Confederation, instead marked the high point of parliamentary government in Canada. See Hockin, "Flexible and Structured Parliamentarism."

construction ought to be put on their acts and the best motives imputed to them."¹⁰³ Of course, "a more generous support" to one observer was "slavish blindness" to another. Parliamentary government transformed executive-legislative relations into a question of party cohesion in the legislature. The more cohesive parties were the greater the power of the cabinet over the legislature and vice versa.

The debate about party cohesion, however, extended outside the Assembly. It determined how closely legislators were tied to their constituents. In the abstract, reformers agreed on the need for channels of communication between representatives and their local party supporters. County associations promoted discussion among reformers and between the electorate and their representative. At a township meeting one enthusiast reported that, "the opinions and views of different individuals are there brought together and expressed. The knowledge of all upon the different topics discussed is conveyed to each, and the ideas of each are made known to all, and much information is thus acquired by all who will take the trouble to learn."¹⁰⁴ Associations promoted unity and gave representatives a clearer sense of the principles upon which they were expected to act.

Like public opinion itself, these associations were not limited to elections: "Let them [reformers] meet, talk over and suggest what measures they consider will be beneficial...let the results of these deliberations to forwarded to the Representative."¹⁰⁵ As the *Examiner* said of the Hamilton Reform Association, "they would give public opinion a control over the executive."¹⁰⁶ Reformer quoted de Tocqueville on the value of public associations in a democracy as a means of procuring and more equally distributing the

¹⁰³ *Guelph Advertiser*, 21 October 1852.

¹⁰⁴ W. H. Blanchard, *Brockville Recorder*, 17 June 1852.

¹⁰⁵ *Brockville Recorder*, 22 August, 12 September, 7 and 28 November 1850; *St. Catharines Journal*, 11 October 1849 and 15 August 1850; *Huron Signal*, 24 October 1850; *Guelph Advertiser*, 14 March 1850, 14 April 1853, and 8 June 1854; *Bathurst Courier*, 19 November 1852; and *Globe*, 10 April 1854

¹⁰⁶ *Examiner*, 26 September 1849.

benefits of civilization.¹⁰⁷ The value of associational life in the formation of the public sphere, discussed in chapter three, was now fully integrated into constitutional theory.

While all reformers valued unity and public deliberation, those disappointed by the action or inaction of elected reformers were the most insistent about the value of local party associations. The *Provincialist* summed up the faith well:

let the press speak out - let associations or clubs be formed at which great political questions and the tendency of our institutions shall be continually discussed, until the entire community thoroughly understand public matters; and then every ministry, instead of assuming to dictate to the people and calling upon them for support "lest their opponents should come to power," would at once take their cue from the people and act accordingly.¹⁰⁸

Radical reformers demanded that representatives vote according to the majority view of their constituents. If public opinion was to govern the state, any autonomy given to the people's representatives merely substituted the representative's will for the people's.

Such arguments undercut parliamentary government. If members echoed their constituents, parliamentary debate was of little use. Parliament would merely aggregate votes determined elsewhere. The prime battlefield for executive power would shift from parliament to the public as a whole. Passionate appeals to prejudice and irresponsible promises were more likely to gain influence with the public than with the people's representatives. At best, parliament would be reduced to a convenient place to formulate compromises. There would be less public use of reason to persuade other members or the nation at large. In fact, if there were other ways of aggregating the decisions of local electorates, there would be no need for parliament at all.

Robert Baldwin warned against the argument that "representatives ought to be the

¹⁰⁷ Reformer, *Toronto Mirror*, 8 February 1850.

¹⁰⁸ *Provincialist*, 29 October and also 15 October 1849.

mere indices of their constituents." During a debate in 1850 on the ever-controversial clergy reserves question, Baldwin declared that "he would never be a mere slave of any constituency." On certain questions, members "were bound to carry out their own opinions, no matter at what sacrifice." Baldwin read Edmund Burke's famous speech to the electors of Bristol to remind his fellow legislators of their duty to act as representatives, not delegates. Baldwin wanted them to vote according to what they thought was morally right and in the interests of the "whole community." They were then to appear before their constituents and give their honest opinions. If the electorate disliked those opinions or distrusted their judgement, they would not re-elect them.¹⁰⁹

It was a tough sell. Both Burke and Baldwin were defeated at the elections that followed their refutation of the delegate theory of representation. In Baldwin's case, during the same debate, a fellow reformer expressed surprise at his position. If the public had come to an ascertainable conclusion, "a member was bound by the opinions of his constituents."¹¹⁰ In the press, only the little-noticed *Hastings Chronicle* fully endorsed Baldwin's position.¹¹¹ Even the moderate and usually sympathetic *Brockville Recorder* was more cautious. While it granted that members might differ from their constituency on matters of detail or on issues where there had been no public discussion, it insisted that "on all matters which have been discussed and decided by the represented, the member is bound either to support the views of those who have delegated their power to him, or resign his charge."¹¹² This, rather than Baldwin's position, was the new orthodoxy among

¹⁰⁹ Baldwin, *Debates*, 19 June 1850, pp. 658-659.

¹¹⁰ J. Scott of Bytown, *Debates*, 19 June 1850, pp. 702, 705.

¹¹¹ *Hastings Chronicle*, copied, *Mirror*, 20 June 1851.

¹¹² *Brockville Recorder*, 18 September 1851. Similarly, *Guelph Advertiser*, 16 March 1854, was willing to wait for explanations before condemning reformers in the Assembly because "often they see things in a different light, and from a more advantageous position that the body of the people occupy, and are thus doing their best to serve us when we are not aware of it."

supporters of parliamentary government.

During a large meeting of Grits at Markham, Peter Perry began humbly: "he appeared before them to receive their instructions." While a representative could not sacrifice his "constitutional principles," "instructions" could apparently overcome other sorts of principles.¹¹³ The *Bathurst Courier* also attacked Baldwin's position. Burke was no longer relevant. Institutions and the public had progressed since the late eighteenth-century: "We set down the liberalism of Burke as the Toryism of the present." It was saying much the same thing about Baldwin himself. Likewise, the *North American* asked, "if the Representative is not bound to carry out the wishes of his constituents, whom does he represent?"¹¹⁴

The issue came into sharp focus when, prior to the 1851 elections, several county conventions attempted to tighten the links between representative and local party. Local reform conventions to nominate candidates and pass a variety of resolutions were far from new. The demand that candidates commit themselves in writing to a "platform" or "party creed" was original. More innovative still was the demand for a written pledge to resign if local "Committees of Vigilance" decided that the representative had abandoned the platform. This approach was adopted in Waterloo, Halton, Oxford and Perth counties. The movement was clearly prompted by a sense among some reformers that the previous reform executive had abandoned reform principles and that the reform majority in the Assembly had failed to enforce adherence to those principles.

When A. J. Ferguson in Waterloo and John Wright in Halton subscribed to platforms, including a pledge to resign when called upon to do so, the *Guelph Advertiser*

¹¹³ Perry, *Examiner*, 20 March 1850.

¹¹⁴ *Bathurst Courier*, 5 July 1850 and *North American*, 28 June 1850. See also *Bathurst Courier*, 18 October 1850 and *Journal & Express*, 6 July, copied, *Bathurst Courier*, 12 July 1850.

rejected claims that they had given up their independence by submitting to the dictation of party committees. If reformers in the Assembly did their duty, the Committee of Vigilance would not even meet. Pledges were "only a formal recognition of a principle of honor in reality existing between every member of Parliament and his constituents."¹¹⁵ Nonetheless, giving an extra-parliamentary body the power to establish party principles, to judge the performance of representatives between elections, and to force their recall, was more than a codification of existing principle. If accepted, it threatened parliamentary government more effectively than extending the elective principle.

A convention of Oxford County reformers attempted to exact a pledge from Francis Hincks. They resolved that "at any time when two-thirds of this Convention in Committee assembled shall consider that the representative of this County has by his act forfeited the confidence of the said committee representing the reform party of the County of Oxford, he be pledged to resign his seat in Parliament." Hincks angrily rejected the platform. He argued that his oath as a cabinet minister committed him to advise the Crown according to his own views and not those of a committee of local reformers.

This was a weak rebuttal. As commentators quickly pointed out, Oxford was looking for a representative, not choosing a cabinet minister. The *Examiner*, established by Hincks, called his argument "untenable" since denying that electors could demand a guarantee of fidelity from their representative was tantamount to denying "the right of a tradesman to demand a note from his debtor." Rarely has the delegate theory of representation been put so succinctly. As "Constant" told the *Bathurst Courier*, for Hincks "to feel insulted because his employers want to know his qualifications for their

¹¹⁵ *Guelph Advertiser*, 6 November 1851.

services, is as rich a piece of insolence and humbug as ever I heard of."¹¹⁶ If representatives could abandon the principles that secured the votes of the majority of a constituency, there was no way to guarantee that the Assembly would reflect public opinion.

Supporters of parliamentary government advanced three main arguments against such pledges. The first came from Hincks' organ, the *Montreal Pilot*. The election of candidates bound to local conventions would change the nature of parliament. "Instead of being an august and independent deliberative body, [it] would be mentally more dependant than, physically speaking, the slaves of the Southern states." Legislation involved "accommodation, of various interests and opinions...hence the absurdity of pledges which precludes the possibility of accommodation, and thus defeats the end of Legislation itself." If government by discussion related to the legislature as well as the public at large, members of the former required some autonomy to sustain "an independent deliberative body."¹¹⁷ Grits valued independence from the executive, but parliamentary government also demanded some independence from the local electorate.

The second argument against pledges concerned the type of men who would be elected. The *Mirror* predicted that "[t]he direct tendency of this tyrannical system of binding down candidates so as to deprive them of all freedom of thought and action, is to fill the Legislature with those unprincipled and incompetent men, who are ever ready to swallow any platform" just to be elected.¹¹⁸ The *Brockville Recorder* agreed that it was better to have an honest member than one willing to curry favour: "it may be that his

¹¹⁶ *Examiner*, 12 November, Constant, *Bathurst Courier*, 14 November 1851. On the conventions see also, *Bathurst Courier*, 12 September, 17 October and 21 November; *Guelph Advertiser*, 18 September, 16 October, 6, 13, and 20, November; *Globe*, 18 October; *St. Catharines Journal*, 13 November; and *Canadian Free Press*, 23 October and 20 November 1851.

¹¹⁷ *Montreal Pilot*, copied, *Guelph Advertiser* 13 November 1851.

¹¹⁸ *Mirror*, 7 November 1851. See also *Mirror*, 12 and 5 July and *Huron Signal*, 4 April 1850.

opinions do not, in every particular, square with all whom he addresses, still, his character for honesty is a guarantee that whatever his sentiments may be, they are not advanced from motives of selfish interest, but from a desire to direct public opinion aright."¹¹⁹

Francis Hincks provided a third reason why such pledges were incompatible with parliamentary government. On the hustings, he declared that "he would not submit to be made the victim of a clique or a faction."¹²⁰ Tying members too closely to local conventions would transfer power from parliament to political parties. Extra-parliamentary parties helped articulate competing principles and kept representatives informed. If such organizations became too powerful, however, they would replace the public as the primary focus for representatives' loyalty. Power within a party would be more important than the ability "to direct public opinion aright."

At least some supporters of extra-parliamentary control were aware of these implications. As "Plain Dealer" wrote to the *Guelph Advertiser*, if the "Tory dogma that the Parliamentary representative has nothing to do but follow his own opinion" was to be finally overthrown, pledges to local conventions were inadequate. A provincial convention "acting as a watch-guard of reform interests, and embodying the living heart and soul of the Reform," was required.¹²¹ A few years later, the *Globe*, pointing to the American experience, warned against such conventions. Professional politicians and party wire-pullers had replaced the statesmen of the early republic. "Party lines were drawn more closely, until at length parties became huge meshes to encumber and entrap the people." The creation of "complicated party machinery" tended "to limit popular

¹¹⁹ *Brockville Recorder*, 3 and 10 April 1851.

¹²⁰ Hincks, *Guelph Advertiser*, 4 December 1851.

¹²¹ "A Plain Dealer," *Guelph Advertiser*, 27 November 1851. Most other enthusiasts for cohesive parties advocated only local conventions. Partly this was to avoid comparisons with the American convention system, but it also reflected Canada's constitutional structure. With no province-wide elected offices, the idea of a province-wide convention took longer to take root.

influences within narrow channels." to disgust "men of lofty sentiments and enlarged capacity," and "enabled cunning, unscrupulous minorities to secure the avenues to posts of honour and emolument, eventually placing the interests and policy of a great people in the hands of men who have proved their readiness to sacrifice everything at the shrine of personal avarice and ambition."¹²² What some reformers saw as a logical extension of voluntary associations and the public sphere into politics would, for others, undermine those very forces.

Chaining representatives to local party organizations undermined parliamentary government: it transferred power from parliament to local parties and deliberations to persuade fellow participants would be replaced by irresponsible rhetoric and party theatrics aimed at passive spectators. The educational function of parliament would be lost. Supporters of parliamentary government won the battle in the early 1850's. The Oxford convention capitulated in the face of Hincks' hostility. Extracting pledges did not spread to most constituencies in 1850-51 or to subsequent elections. Nonetheless, political parties, both inside and outside of parliament became more cohesive, especially after Confederation. The consequences were precisely what supporters of parliamentary government had feared.

The question of party cohesion was only one aspect of the Grit approach to the Assembly. Grit proposals for the Assembly itself were potentially more threatening to parliamentary government than making the other two branches elective. Again, Grits

¹²² *Globe*, 16 January 1854.

were more successful in framing the debate and garnering support for their assumptions than in achieving specific institutional reforms.

If the executive was responsible to public opinion by virtue of its responsibility to the Assembly, the Assembly had to mirror public opinion. As one editor put it, "a government is free only in proportion as the Legislature is a faithful reflex of public sentiment."¹²³ Parliamentary government, however, saw the Assembly as a vital participant in the public sphere, not its mere "reflex." Disgruntled reformers emphasized the Assembly's role in expressing public opinion to the exclusion of its role in shaping that opinion. Peter Perry told a crowd of reformers that "the people would not forget that their [the assembly's] powers were not given them to act as an independent body, but to represent the wishes of those who sent them there, whose servants they are, and whose privileges they are bound to protect."¹²⁴ The master-servant analogy was common Grit rhetoric.

Pledging representatives to local party platforms was intended to ensure that the Assembly as a whole reflected the opinions of the provincial majority. Limiting the cabinet's power would also allow the Assembly to reflect public opinion without interference. A third set of proposals were intended to achieve the same end. As a Hamilton newspaper asked, "can the true opinion of the community be ascertained" when there was a limited franchise, unequal constituencies and intimidation at open polls?¹²⁵ Only if a greater proportion of adult men could freely register their deliberate judgement in constituencies of the same size would each voter contribute equally and honestly to the

¹²³ *Examiner*, 26 February 1851.

¹²⁴ Peter Perry, *North American*, 10 September 1850. For the master-servant analogy, see *Bathurst Courier*, 2 August 1850.

¹²⁵ *Express*, copied *Mirror*, 10 May 1850.

outcome. Without these reforms, "there is no safety in the present system. If public opinion is truly expressed in the House as now constituted, it is a mere accident."¹²⁶

Of the three issues, (the franchise, representation and the ballot), the secret ballot was the least debated. Support was linked to extensions of the franchise. Many feared adding those males most dependent on customers, creditors and landlords to the electorate without the secret ballot. Protected by the ballot, "his [an elector's] vote is the expression of his own deliberate choice; and not the mere slavish registering of the will of another."¹²⁷ Nonetheless, this question remained peripheral for both supporters and opponents.¹²⁸

The same cannot be said about the franchise or representation. Indeed, in Britain, constitutional reform was synonymous with reforming representation in the House of Commons. Moreover, British debates about representation often turned on the likely consequences for parliamentary government. The full title of Earl Grey's book was *Parliamentary Government Considered with Reference to A Reform of Parliament*. While not opposed to further reforms after those of 1832, the book was a warning that some proposals to further extend the franchise or to further equalize the size of constituencies would destroy parliamentary government. Chapter four, "Reasons of the Success of Parliamentary Government," centred on how the House of Commons was different from other elected legislatures. A restricted franchise and unequal constituencies ensured that it contained a "variety of elements." Those wedded to abstract principles of equality and democracy risked forgetting the lessons of experience. The latter demonstrated that the

¹²⁶ *North American*, 30 December 1852.

¹²⁷ *Examiner*, 13 March, also *Provincialist*, 1 April 1850, and *North American*, 24 January 1851.

¹²⁸ For statements of relative indifference, see *Globe*, 28 March and *North American*, 8 November 1850; and *Daily Leader*, 18 October 1854.

so-called impurities and "irregularities of our Representation...constituted so important a part of the machine of our Government." Some members were elected by democratic constituencies; others were returned for smaller constituencies or subject to some sort of influence. This ensured that the House contained members holding unpopular views and representing varied classes and interests. Greater homogeneity might result from a system of equal constituencies and universal suffrage. Government by discussion required variety.

According to Grey, if the House merely mirrored the population, there would be nothing stopping it from invading executive or judicial jurisdiction or from attacking all those who refused to conform to the majority. "There would have existed no appeal against any abuse of power by the House of Commons, to the opinions of a larger public than that by which it was elected." A purely democratic body might become "an irresistible engine for carrying into effect any measure, however violent, which the passions of the People might dictate." The Commons must respond to public opinion, but it must also ensure "due consideration of objections to measures for which there is a popular cry, and to afford means for testing by discussion the soundness or fallacy of conflicting arguments." A legislature based on universal suffrage and equal constituencies would be less able or less willing to distinguish between popular passions and public opinion.¹²⁹

In Upper Canada reform had never centred on the questions of franchise and representation. The increased role of the Assembly by the late 1840's did, however, give new urgency to these questions. Historians have often equated democracy with universal

¹²⁹ Grey, *Parliamentary Government*, pp. 58-83. Walter Bagehot also attacked the "ultra-democratic theory" as incompatible with parliamentary government. *The English Constitution*, pp. 161-181.

suffrage. Anyone advocating a limited franchise was, therefore, an opponent of democracy.¹¹⁰ While some Grits began to make this equation between democracy and universal suffrage, it was still far from universally accepted. The debate about the franchise did not hinge on whether Canada was a democracy. Neither was it about individual rights. The question turned on which franchise would ensure that the legislature expressed public opinion. Equally important, the debate in Upper Canada was not conducted with an eye to the implications for parliamentary government.

Peter Perry was one of the Grits advocating universal suffrage. Only if every sane adult male had the vote would Canadians not "deprive ourselves of any portion of the mind...We want no aristocracy in Canada, but of mind."¹¹¹ No reformer, even those strongly opposed to universal suffrage, disagreed that mental capacity was the principal criterion. The *Globe*, defending a moderate property qualification, summarized its argument in these terms: "We have often contended that under a limited suffrage the expression of the public mind is more truly obtained than by a system of universal suffrage." Universal suffrage would result in the creation of undemocratic party machines that were required to manage a "tumultuous constituency." For the *Globe* "the best standard of qualification would certainly be the intelligence and integrity of the voter." but until phrenology was more advanced, a property qualification was the only practical means to exclude the "worthless and intemperate" from the electorate.¹¹²

The *Brockville Recorder* took this argument to its logical conclusion. It supported

¹¹⁰ See for instance J.M.S. Careless, "Mid-Victorian Liberalism in Central Canadian Newspapers, 1850-67", *Canadian Historical Review*, (v. 31, n. 3, September 1950), pp. 221-236 and Bruce W. Hodgins, "Democracy and the Ontario Fathers of Confederation", *Profiles of a Province: Studies in the History of Ontario*, (Toronto: Ontario Historical Society, 1967), pp. 83-91.

¹¹¹ Perry, *Examiner*, 20 March 1850. For the Clear Grits on the franchise see *St. Catharines Journal*, 15 February 1849, 4 July and 12 September 1850 and 11 December 1851; *Mirror*, 22 March 1850; *Provincialist*, 1 April 1850; and *North American*, 17 January 1851.

¹¹² *Globe*, 28 January 1851; 22 March, 19 July 1848; and 1 June 1850.

"a literacy line" to exclude any male who was incapable "of forming an enlightened opinion as to the fitness or unfitness of Parliamentary Candidates."¹³³ Politics was inseparable from printed communication. On the other side of the issue, the *Huron Signal* supported universal suffrage, "not because every man is qualified to exercise this privilege with discretion and intelligence but because there never has been, and perhaps never can be, any intellectual standard of qualification agreed on and the property qualification is an insult to the higher qualities of our nature."¹³⁴ The intellectual distance between these reform newspapers, the *Globe*, *Recorder*, and *Signal*, was not great.

The leading Grit ideologue, Reformer, advocated a householder franchise as a preliminary step to universal manhood suffrage. His justification was rooted in the development of the public sphere. A limited franchise had been appropriate "when wealth was necessary to and almost synonymous with intelligence: when books were sealed to the majority; when the cloister and the hall held the wisdom of the nation; and when the popular voice was the mere echo of the will of the privileged few." This was no longer the case. "A wonder-working press is busily scattering broadcast its truths; a mysterious spirit of knowledge...is let loose in the land...every laborer has become a thinker." "The pages of De Tocqueville and Montesquieu are seen as often in the hands of the 'proscribed' as in those of their more fortunate brethren." "The poor may remain poor still; but they are not necessarily ignorant." Newspapers, schools, and improved roads were now common. Isolation from knowledge and public deliberation was now rare.¹³⁵

Thus, the debate was framed in terms of the public sphere. In fact, the *Huron*

¹³³ *Brockville Recorder*, 30 November 1854.

¹³⁴ *Huron Signal*, 12 September 1850 and also 21 July and 18 August 1848.

¹³⁵ Reformer, *Mirror*, 10 August 1848, 17 August 1849, and 22 February, 29 March, and 7 June 1850. See Dewar, "Charles Clarke's 'Reformer'", p. 237.

Signal defined universal suffrage as "the omnipotence of public opinion."¹³⁶ No reformer doubted the role of education in making the extension of the franchise safe. No one doubted that exercising the franchise would itself further that education.¹³⁷ The *Globe*, for one, was certainly less sanguine than *Reformer* or the *Signal*, about how universal the capacity to publicly reason had become, but the degree of consensus is still remarkable. Almost no reformer attempted to justify a property qualification as such. Thus, it is not surprising that there was little debate and even less opposition to the adoption of an assessment or tax-payer franchise and voter registration by the Hincks government in 1853.¹³⁸ Given the widespread belief in progress, universal suffrage seemed only a matter of time.

As the *Huron Signal* recognized, the shift in the defining characteristic of the franchise from economic independence and property-ownership to mental capacity did not, in principle, exclude women. The majority of the men attending a meeting of the Brockville Debating Club in January 1851 responded in the affirmative to the question: "Should women exercise political rights and discharge political duties in common with men?" A year later, a female reader of Whitby's *Ontario Reporter* demanded equal rights with men, including the right to vote, in part, because "males and females are constituted essentially alike in mind."¹³⁹

¹³⁶ *Huron Signal*, 18 August 1848.

¹³⁷ For the reciprocal relationship between education and the vote see for instance, *Globe*, 4 March 1852; *Examiner*, 27 March 1850; *Brockville Recorder*, 29 May 1851; *North American*, 17 January 1851; and *St. Catharines Journal*, 8 January 1852.

¹³⁸ On the relative consensus see *Guelph Advertiser*, 9 March 1854, which predicted that the reform would expand the electorate by 50%. Hincks' organ in Toronto, the *Daily Leader*, 22 September 1853, concluded that the bill brought the franchise "as near as the state of general intelligence would justify, to manhood suffrage." On the franchise in this period see John Garner, *The Franchise and Politics in British North America, 1755 - 1867*, (Toronto: University of Press, 1969), pp. 105-108.

¹³⁹ *Huron Signal*, 18 August 1848; AO, Brockville Debating Club, Record of Proceedings, 1850-1855; and Martha F. H. Thomas, *Ontario Reporter*, 10 April and 18 September 1852. As she put it in her second letter, "you [the *North American*] ask what is the use of giving woman the rights of suffrage, which she must exercise in obedience to her husband...What use then are reason and conscience to her, if they must be

Little of this discussion concerned the impact of the franchise on parliamentary government. The *Globe* warned against the growth of parties and feared that public opinion might be lost among the voices of the ignorant, but it mounted no direct defence of a restricted franchise as essential to parliamentary government. Moreover, the *Globe* was often isolated on this issue. Silence was also conspicuous on the question of representation.

LaFontaine attempted in 1849, 1850 and again in 1851 to increase the number of representatives from both Upper and Lower Canada from 42 to 75. This would have created new constituencies in recently populated areas while not abolishing smaller constituencies.¹⁴⁰ There was a general consensus among reformers that the number of representatives should be increased. Constitutional reasons were offered as the principal justification. A larger house would be more independent of the executive. Cabinets could not retain power by bribing a few members. Ministers themselves would be a smaller proportion of members in the larger House. The talent pool from which they were drawn would also be larger. Overall, as Lord Elgin told Earl Grey, there would be "a better chance for the formation of a sound public opinion if it [the Assembly] were enlarged."¹⁴¹ It was, however, equality, not the size of representation, that reformers found crucial.¹⁴²

exercised in obedience to her husband[?]"

¹⁴⁰ Garner, *The Franchise and Politics*, pp. 95-96. Each of LaFontaine's bills received large majorities but did not overcome the two-thirds hurdle required by the Act of Union. An increase to 65 members per section was secured by the Hincks-Morin ministry in 1853.

¹⁴¹ Elgin to Grey, 11 October 1848, 27 May 1847 and 4 January 1849, *Elgin-Grey Papers*, v. 1, pp. 45-6, 245-6, 279. See also, *Globe*, 11 November 1848; *Examiner*, 15 December 1847 and 22 November 1848; *Provincialist*, 21 November 1848; *Reformer*, *Mirror*, 19 April 1850; *Freeholder* [Cornwall], 9 July 1850; *North American*, 28 February 1851; H. J. Boulton and Notman, 21 March 1849, *Debates*, pp. 1481, 1488; Adam Fergusson, L. H. LaFontaine and William Hamilton Merritt 17 May and 28 June 1850, *Debates*, pp. 51-2, 887, 893.

¹⁴² The *Globe* thought fairness could be achieved by enlargement rather than redistribution. Smaller constituencies were easier to corrupt, but would have less influence in a larger House. These small constituencies could not be abolished since their representatives were unlikely to vote to abolish their own seats. The Act of Union's requirement of a two-thirds majority made their consent essential.

In the early 1850's, the slogan "representation by population" was a demand for fairness *within* Upper Canada rather than between Upper and Lower Canada. As early as 1847, the *Examiner* noted that inequality between constituencies enabled a minority of voters to elect a majority of the representatives. Canada had a "wretched caricature" or "mock system" of representative government. In 1850, the paper calculated that the largest 18 constituencies in Upper Canada contained 435,893 people while the remaining 25 [24?] contained a population of only 287,194.¹⁴³ The *Brockville Recorder* noted that Brockville, with a population of 3,000, returned one representative while the united counties of Leeds and Grenville returned only two members with a population of over 43,000.¹⁴⁴ There was a strong element of partisanship here since conservatives were usually more successful than reformers in towns and cities. As reformers saw it, the yeomanry in the counties were under-represented compared to rotten boroughs.

"An Elector" told the *Port Hope Watchman* that

no system of representation can be right, where political power is unequally divided. All men should be equal in this respect. To do otherwise is to constitute a minority into a majority, and this is virtually to annihilate representative government. Representation, should therefore be based on population.¹⁴⁵

The logic was relentless. It was an article of faith among reformers that population was the only appropriate basis for representation.¹⁴⁶ They debated the relative importance of the issue, the details of various proposals, the speed at which reform could be achieved, and the necessity of dealing with the inequality between Upper and Lower Canada. These

¹⁴³ *Examiner*, 17 November 1847; and 27 November 1850.

¹⁴⁴ *Brockville Recorder*, 9 May 1850.

¹⁴⁵ "To the Electors of the County of Durham." *The Port Hope Watchman*, 28 November 1851.

¹⁴⁶ See for instance, H. J. Boulton, 21 March 1849, *Debates*, p. 1481; Richards, 28 June 1850, *Debates*, pp. 899-900; Reformer, *Mirror*, 19 April 1850; *Freeholder*, 9 July 1850; *North American*, 28 February 1851, 2 December 1852, and 31 March and 7 April 1853; and *Canadian Free Press*, 21 February and 3 April 1851.

were largely strategic or pragmatic considerations. There was no defence of unequal or irregular constituencies; no argument that they were essential to parliamentary government.

The only reform paper to argue against representation by population within Upper Canada was the exception that proves the rule. The *Daily Leader*, the principal organ of Hincksite reformers, argued that since "a member of parliament is the representative of those, and those only, who elect him; not of those whom the law incapacitates from voting" constituencies were equal if they contained the same number of electors regardless of the number of inhabitants. This was a complete rejection of virtual representation. As the *Leader* made clear, if a representative "were held to represent the non-voters in his constituency, he must, so far as they are concerned be self-elected. But self-election is usurpation, and usurpation is destructive of all freedom."¹⁴⁷ The *Leader* rejected representation by population but did not defend unequal constituencies as useful in a parliamentary system. Moreover, its intellectual grounds only served to highlight parliamentary government's shaky foundations. On this occasion, the *Leader* accepted that representatives were directly tied to local voters. They were not representatives of the nation or of a broader public opinion. Once this was accepted, the logic of binding representatives more firmly to their local party, of reducing their autonomy in the Assembly, and of reducing the legislature to little more than the most convenient place for aggregating votes made considerable sense. But it was not parliamentary government.

In 1848, the *Examiner* advocated a Canadian Reform Bill. It began from the premise that "representation is simply the sending of substitutes to deliberate and decide on public affairs; the personal attendance of the whole constituent body being

¹⁴⁷ *The Daily Leader*, 22 September 1853.

impractical."¹⁴⁸ Grit proposals for the franchise, representation, and party cohesion rested on this assumption. They denied that representative government was morally or intellectually superior to direct democracy. This assumption minimized or excluded meaningful dialogue within political institutions and between those institutions and the public. It undermined parliamentary government. On two issues, suffrage and representation, moderate reformers failed to challenge this assumption. On the third, party cohesion, they mounted the challenge, but it was neither unanimous nor very forceful. Parliamentary government's supporters had failed to lay a secure conceptual foundation.

Why had moderate reformers failed to more clearly articulate and defend some of the most important principles of parliamentary government? Not from lack of opportunity. Many of the arguments used by the Grits might have provoked such a response. Ignorance also seems an inadequate explanation. The classic expositions by Earl Grey and Walter Bagehot had yet to be written, but the basics were already well-known.

Perhaps part of the explanation lies in political tactics. Moderate reformers had to counter the Grit claim that ministerial responsibility was insufficiently democratic. Emphasizing the need for relative autonomy of elected representatives from their constituents was bound to be unpopular with a large number of reformers. Emphasizing how different parliamentary government was from either direct democracy or the simplest

¹⁴⁸ *Examiner*, 22 November 1848.

representative government (where the people's delegates met in a single body to pass laws and control the executive) would only have confirmed suspicions that parliamentary government was essentially conservative and oligarchic. Nonetheless, such tactical considerations are not a complete explanation. They reduce the debate to an instrumental level. Moreover, reformers like Robert Baldwin and George Brown were willing to take strong, vocal and unpopular stands against arguments they believed to be incompatible with ministerial responsibility. Even so, they often failed to convince fellow reformers. Furthermore, a tactical explanation begs the central question. Why were such arguments politically unpopular among Upper Canadian reformers? Why, when they made the attempt, were Baldwin, Brown and others often unable to gain wider support from fellow partisans for the premises of parliamentary government?

A large part of the answer lies in a central theme from several previous chapters - Upper Canadians perceived their social structure as profoundly different from Britain's. This perception had been central to the weakness of the theory of mixed monarchy in Upper Canada. In 1853, the *Mirror* concluded that "the forced analogy between states of society so utterly dissimilar as those of Great Britain and Canada, is entirely untenable."¹⁴⁹ Such a conclusion retained its constitutional implications after the demise of the theory of mixed monarchy.

Reformers advocating further constitutional change after 1848 were convinced that "the notion of an 'exact transcript' is a superstitious dream, a fanatical delusion." Canadians could respect the great principles of the British constitution but they had to choose its best features, abandon its worst, and adapt the whole to Canadian society.¹⁵⁰

¹⁴⁹ *Mirror*, 20 May 1853.

¹⁵⁰ *Examiner*, 22 May 1850; A Radical Reformer, *Mirror*, 28 December 1849; and Reformer, *Mirror*, 19 October 1849 and 1 March 1850.

Canada was a new, North American, country lacking both aristocracy and serfdom, both courtiers and mobs. Commentators thought it had a relatively homogeneous population dominated by actual or potential landowners. In short, Upper Canadians perceived their society as dominated by precisely those classes which democratic theory had long singled out as the most knowledgeable and virtuous. According to H. J. Boulton, "there was no country under the sun, in which, from the peculiarly agricultural character of its population, eighty per cent were agricultural, democracy was more firmly established."¹⁵¹

The belief that Upper Canada possessed such a social structure, (and the corollary that Britain did not), had implications for parliamentary government. Could parliamentary government be transferred to a different social structure with any more success than the previous attempt to transplant mixed monarchy? Was there no danger that it would operate in ways that were incompatible with its essence once it was rooted in a different social structure? Superficially, the problem seemed significantly less pressing than it had for mixed monarchy. At first glance, parliamentary government only required a belief in the existence of the public sphere - and not in a hierarchical social structure.

The contrary belief, that different social structures still necessitated different political institutions, was evident in many reformers' evident impatience when Baldwin and others relied on British precedents. The *Examiner* provided one of the more thoughtful analyses of this problem. A lengthy editorial pointed out that the British constitution was a set of living principles that had gradually developed over centuries to the point where it was fully adapted to the social structure, circumstances and intelligence of the British people. Upper Canadians were different in each of these three ways. Upper

¹⁵¹ Boulton, *Debates*, 22 May 1850, p. 135. See also, A., *Examiner*, 28 April 1847; *Reformer*, *Mirror*, 1850; *North American*, 10 January 1851 and *Daily Leader*, 14 July 1854.

Canada was marked by "our general equality as to wealth - our freedom from the encumbrances of patrician and plebian orders." Regarding circumstances, Upper Canada was "contiguous to a country, pre-eminent among the nations for its full enjoyment of representative government." Finally, with respect to intelligence, "our people are unquestionably better acquainted with the principles of self-government than those of the Parent State." The greater development of elected municipal institutions and a more widespread system of education ensured that it was "within the power of every one to obtain, a political knowledge, which renders them more capable of exercising the higher rights of subjects with more discretion than the bulk of the population of England."

For the *Examiner*, these three differences had inescapable constitutional implications:

We may be anxious to retain an exact transcript of the great theoretical principles of the British Constitution, as to the popular rights of free and just representation, and as to the responsibility of the Advisers of the Crown, yet it must be apparent that even were the workings of that Constitution perfectly adapted to the circumstances and the wants of the Parent State, it would by no means correspond to the circumstances of this country or the genius of its people. We are a different people in our thoughts, our habits, our acquirements and in many of our institutions. If we choose to live in Canada, we cease to be British. While we cherish feelings, preferences, and wishes the most loyal, we are not, we cannot be British. This, by no means makes us American. We do not pretend to say most Canadians sympathize with American institutions. It is sufficient to us, that we know our own circumstances and capabilities for self-government.¹⁵²

Two British governors, Sir Francis Bond Head (discussed in chapter one) and Sir Charles Metcalfe (discussed in chapter six), had opposed ministerial responsibility because of how they thought it would operate in colonial society. During the Metcalfe crisis, the *Examiner*, among others, agreed that Upper Canadian society would alter British

¹⁵² *Examiner*, 21 April 1852.

responsible government, but approved of the difference. Conservative republicans, discussed in the previous chapter, made similar observations but disapproved of the resulting difference. The *Examiner* now a Grit organ, came to a similar conclusion.

But what, precisely, were the implications for parliamentary government of the differences between Britain and Upper Canada? One was probably a greater pragmatism about political institutions. The utility of new practices had to be proven. There was no habit or weight of tradition behind them. It was impossible to venerate what was new. Moderate reformers were attempting to infuse the old forms of Governor, Legislative Council and Assembly with new principles that had developed slowly, painfully, in the social and political context of another country. The principles were new to Upper Canada and had to be tested according to their local and present utility. Thus, one of the first goals of radical reformers was to get beyond names, labels and old forms to concentrate on designing a constitution strictly in accordance with the principle of responsibility to public opinion.¹⁵³

Such impatience was also evident in the general disdain for the aristocratic and monarchical remnants of mixed monarchy. Calls for fiscal retrenchment were about more than saving tax-payers' money. They betrayed a preference for "republican simplicity" over the "appearance of Royal Dignity, without the substance." "It is futile to expect," thought Reformer, "that the mere boundary of a river will always keep us in love with the pageantry, cumbrousness, and expense of a monarchy." Upper Canada's social equality made "the pageantry of vice-regal establishment" a positive evil. The remnants of the tory party survived because "by its love of pomp, glitter, its tinsel, and its appeal to

¹⁵³ On the tyranny of names and historical forms see, *C., Provincialist*, 3 September 1849; and *Huron Signal*, 20 June 1850. On greater utilitarianism see, *St. Catharines Journal*, 29 November 1849.

prejudice, it secured as its votaries the ignorant on the one hand, and the aristocratic on the other."¹⁵⁴ Cheap government was republican government. The British constitution retained feudal remnants alien to Canada.

Walter Bagehot agreed. He is most often remembered for his distinction between the "efficient" and the "dignified" elements of the British constitution. Less remembered is his argument that the "dignified" elements were essential to parliamentary government. Britain was a "disguised republic," but the disguise was crucial. The public sphere in Britain did not encompass most of its population. According to Bagehot, "the working classes contribute almost nothing to our corporate public opinion." It was, therefore, necessary to have a "double government." Those outside the public sphere were misled by the dignified show of monarchy and aristocracy while the middle classes recognized that actual power rested in the Commons and Cabinet. Parliamentary government survived because the majority "defer to what we may call the theatrical show of society." Parliamentary government required that legislators and cabinet ministers be of the highest quality. They were restrained, not by formal laws as in a republic, but by conventions and tenuous balances. Bagehot concluded that a "deferential community, even though its lowest classes are not intelligent, is far more suited to a Cabinet government than any kind of democratic country....A country of respectful poor, though far less happy than where there are no poor to be respectful, is nevertheless far more fitted for the best government."¹⁵⁵

Some Upper Canadian reformers had doubts about the ability of the property-less

¹⁵⁴ *New Era*, *Brockville Recorder*, 8 November 1849; and *Reformer*, *Mirror*, 2 November 1849, 8 February, 1 March, 22 March, and 5 April 1850. Much of this debate was sparked by a Finance Committee investigation into the salary of the Governor-General. See, *Bathurst Courier*, 26 July 1850.

¹⁵⁵ Bagehot, *The English Constitution*, pp. 176, 238, 247-250.

and transient to participate in the public sphere, but they never described their society as deferential (let alone praised such a society) and they never argued that the majority of their fellows needed to be distracted by theatrical show and pageantry. The belief that the majority of Upper Canadian males were actual or potential independent heads of household and newspaper readers made Bagehot's description of the social underpinnings of British parliamentary government irrelevant for Upper Canada. Upper Canadian supporters of ministerial responsibility did not see the "dignified" ornaments as essential. The *Globe* did admit, however, that "British Responsible Government without the prestige of a monarchy and peerage, and without the social restraints of older countries, is yet but an experiment."¹⁵⁶

Bagehot called this experiment "the unroyal form of Parliamentary government." He argued that, besides Britain's deferential structure, there was only one other type of society capable of sustaining parliamentary government. In a nation "where there is no honest poverty, where education is diffused, and political intelligence is common" parliamentary government without its "dignified" elements might be possible. According to Bagehot, "the idea is roughly realised in the North American colonies of England." The "greatest difficulty" in such communities was a scattered population" since "where population is sparse, discussion is difficult." Once this was overcome, "a people really intelligent, really educated, really comfortable, would soon form a good opinion."¹⁵⁷ Parliamentary government might be compatible with social democracy if the public sphere was especially vigorous.

¹⁵⁶ *Globe*, 13 April 1852. Brown said the same thing in the Assembly a few months later, *Debates*, 19 October 1852, p. 1112: "It has to be confessed, that the question whether the immense power given to the Executive, under our system, can be worked out on this democratic continent, with advantage to the public, is still undecided...we may be forced to place the check of republicanism on the Administration." Some Grits and the conservatives discussed in the previous chapter were already convinced.

¹⁵⁷ Bagehot, *The English Constitution*, p. 245.

As the early sections of this chapter argued, government by discussion placed heavy demands on Upper Canadians. In Britain, the best were selected for parliament and cabinet because those incapable of judging were kept deferential to the choices of those who were capable by the pageantry of Britain's "dignified" constitution. Upper Canada lacked those "dignified" elements and few wanted them. To preserve parliamentary government under such circumstances required an almost heroic belief in the capacities of a much broader public. It had to choose between competing party principles. It had to hold governments accountable for what they promised at previous elections. It had to generate a public opinion immune to demagogues, the ignorant, and the fickle. It also had to recognize its limitations. Parliament had to be left to represent public opinion rather than competing local interests or party organizations. It also had to be left with sufficient autonomy to deliberate and inform the public. Parliament, and not the electorate, had to be left free to choose the executive and hold it accountable between elections. Supporters of parliamentary government needed to convince Upper Canadians that this complex mixture of capacity and limitation was essential to the best form of government.

In their long campaign for a government responsible to public opinion, reformers stressed only half this equation, the capacities of "the people." By continuing to emphasize it, moderate reformers countered Grit demands for institutional reforms. This emphasis, however, made it difficult to gain sufficient recognition for those principles of parliamentary government that set limits to the public's direct role. Furthermore, since there was no power in the state but "the people," such limits had to be self-imposed. If reformers agreed that "the people" were so capable of self-government, why did they need to accept these limits? Why were they incapable of holding the executive directly accountable? Why should their representatives have any significant degree of autonomy

from those who elected them? If "the people" created public opinion and if public opinion was the source of all authority, why did Parliament need to be insulated from a more direct link to the people? In its formative years, supporters of parliamentary government were unable to provide answers to these questions - or, rather, they were unable to provide answers that many fellow reformers found convincing. Establishing that the majority possessed certain capacities through the mechanism of the public sphere proved far easier than establishing that not everything was best achieved through their own direct use of that mechanism.

Earl Grey, a decade earlier and with far greater knowledge of Upper Canada than Walter Bagehot, was considerably more cautious about colonial parliamentary government. In the final chapter of *Parliamentary Government*, Grey argued that corruption was likely to be more widespread in colonies since there were fewer men capable of undertaking public business without having to earn a living at the same time. The power of patronage had greater influence in societies that lacked a leisured class. Social democracy might entail corruption rather than the near-universal and wise public sphere Bagehot later predicted. Furthermore, party spirit was more bitter in a colony. In smaller societies, "hostile partisans were there brought more immediately into contact with each other." They debated local matters of improvements and taxation, rather than more national and elevating issues, such as foreign policy, that tempered party spirit in Britain. In colonies, "[m]embers of the local government must often be aware that its acts will have a material influence on the interests of persons well known to them, and who are regarded by them as friends they wish to serve, or as political enemies." Parliamentary government exacerbated such problems. "Where this spirit prevails, and where sometimes one faction, sometimes another, is invested with the whole power of the

Government, it is obvious that little fairness towards opponents is to be expected."¹⁵⁸

By 1854 much of the criticism of ministerial responsibility in Upper Canada also centred on the abuse of patronage and corruption. Francis Hincks was himself embroiled in scandal. Increased government involvement in railroad construction exacerbated the problem. Parliamentary government seemed to shield all but the worst offenders behind cabinet solidarity, party discipline and the concentration of patronage power in a single set of hands.¹⁵⁹ Was corruption an inescapable part of colonial parliamentary government? Did the perceived abuses of patronage constitute the unavoidable price of parliamentary government? Was the price worth paying? Were Upper Canadians both capable of widespread participation in the public sphere and of recognizing the limitations which were essential to parliamentary government?¹⁶⁰ Reformers arrived at no conclusive answers to these questions before they lost control of the cabinet in 1854.

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Perhaps supporters of parliamentary government were victims of their own success. They had founded both their critique of mixed monarchy and their support for parliamentary government on the claims of the public sphere. To modify British

¹⁵⁸ Grey, *Parliamentary Government*, pp. 198-219. See also Peter Burroughs, "Liberal, Paternalist or Cassandra? Earl Grey as a Critic of Colonial Self-government", *The Journal of Imperial and Commonwealth History*, (v. XVIII, n. 1, January 1990), pp. 33-60.

¹⁵⁹ See for instance, *Examiner*, 12 April 1854 and 3 January 1855; and *North American*, 29 December 1853, and 31 May and 27 December 1854. Even such an ardent supporter of parliamentary government as George Brown wondered aloud if it was compatible with public probity. *Debates*, 19 October 1852, p. 112, and 27 March 1855, p. 2482.

¹⁶⁰ Moderate reformers began to have doubts. *The Daily Leader*, the Hincksite reform organ in Toronto, expressed growing concerns about the capacity of the people in local institutions, the potential for a tyranny of the majority, and the need to protect minorities by limiting the power of parliamentary majorities. *Daily Leader*, 7 September 1853; 18 November 1854; and 30 January, 30 June and 23 August 1855.

parliamentary government. (beyond an elective Legislative Council), or to adopt aspects of American checks and balances seemed too much like an admission of defeat - a loss of faith in Upper Canada's public sphere. Canada's "unroyal form of Parliamentary Government" placed almost utopian expectations on that public. The balance between those expectations and the institutions best suited to Canada's social and political reality proved elusive. Parliamentary government became the new constitutional paradigm, but its supporters had failed to convince fellow partisans of some of its essential assumptions. In fact, they admitted defeat. They stopped trying. Instead, many sought refuge with moderate conservatives in the Liberal-Conservative coalition of 1854. The questions did not go away, only the concerted attempt to find answers.

CONCLUSION

Upper Canada's Chief Justice, John Beverley Robinson, chose the opening of the permanent building of the provincial Normal School in November 1852 to lecture his audience on the two great constitutional experiments entrusted to them. These two experiments have also preoccupied this study. While

[i]t is common for us to hear of that great experiment in government in which the best republic near us is engaged...we have an experiment of our own going on...and an experiment of no light interest to our glorious mother country, or to mankind. We occupy a peculiar and a somewhat critical position on this continent...to demonstrate that all such freedom of action as is consistent with rational liberty, with public peace, and with individual security, can be enjoyed under a constitutional monarchy as fully as under the purest democracy on earth...

For the science of politics, Upper Canada was the principal testing ground for constitutional monarchy's ability to survive and prosper in the new world. Robinson, like most Upper Canadians, largely ignored the rest of British North America.

Those concerned with the fate of governments and their relationship to liberty had a second reason for studying Upper Canada. During the colony's first decades, the experiment with constitutional monarchy had mostly been in the hands of gentlemen, like Robinson, who united a knowledge of the science of politics with the experience of social and political leadership. By the time Robinson helped to open the provincial Normal School, this was no longer the case. The fate of the constitution was now in the hands of a far larger number of Upper Canadians. Thus, the constitutional history of Upper Canada was also a laboratory

to prove that in proportion as intelligence increases what is meant by liberty is better understood, and what is soundest and most stable in government is better appreciated and more firmly supported.

Collectively, Upper Canadians would help answer one of the most pressing problems of nineteenth-century political theory: were the people intelligent enough to sustain free, liberal government? There was some logic in marking a milestone in public education by delivering a lecture on the constitution.

If constitutional monarchy, the system favoured by Robinson, was to survive, the public had to believe that it was the best. No other grounds were legitimate:

monarchy is not blindly preferred among us from a senseless attachment to antiquated prejudices, nor reluctantly tolerated from a sense of duty or a dread of change: but that on the contrary it is cherished in the affections and supported by the free and firm will of an intelligent people, whose love of order has been strengthened as their knowledge has increased - a people who regard with loyal pleasure the obligations of duty which bind them to the Crown, and who value their kingly form of government not only because they believe it to be the most favourable to stability and peace, but especially for the security it affords to life and property, the steady support which it gives to the laws, and the certainty with which it ensures the actual enjoyment of all that deserves to be dignified with the name of freedom.¹

Robinson's conviction about the merits of constitutional monarchy was as old as Upper Canada. Its supporters had always insisted that it was the best possible form of government. Its superiority, they argued, could be demonstrated to the rational and unprejudiced. As the first chapter of this study pointed out, this argument made its supporters vulnerable to claims that other systems were better adapted to Upper Canada or that the colony had not captured the essence of the original.

Of much more recent origin was Robinson's recognition that only "the free and firm will of an intelligent people" could sustain the province's constitution. Active and reasoned support, not deference or passive obedience, were required. Only if constitutional monarchy rested on the settled convictions of public opinion would it

¹ Robinson, *North American*, 2 December 1852. Privately, Robinson took a more jaundiced view of recent constitutional history. See his letter to John Strachan cited in chapter seven above.

endure. Government by public opinion had replaced government by gentlemen. The spread of voluntary associations and printed communications, discussed in part two of this study, were important conditions for this shift. The most privileged could no longer claim a monopoly on the norms and information required to sustain public deliberations about the common good. They could not monopolize the right to judge.

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There was, however, something disingenuous about Robinson's terminology. The label 'constitutional monarchy' could be applied equally to Lieutenant-Governor John Graves Simcoe's statement that Upper Canada had "the very image and transcript" of the British constitution and to the preamble of the *British North American Act* that Canada was to have "a Constitution similar in Principle to that of the United Kingdom." Yet, much had changed between 1791 and 1867. The former referred to an alternative to democracy; the latter to a form of democracy. Fundamental changes were camouflaged by the label, 'constitutional monarchy.'

Carl Schmitt, the controversial German critic of parliamentary democracy under the Weimar republic, emphasized the distinction between persisting forms and changing moral foundations:

the epoch of monarchy is at an end when a sense of the principle of kingship, of honor, has been lost, if bourgeois kings appear who seek to prove their usefulness and utility instead of their devotion and honor. The external apparatus of monarchical institutions can remain standing very much longer after that. But in spite of it monarchy's hour has tolled. The convictions inherent in this and no other institution then appear antiquated; practical justifications for it will not be lacking, but it is only an empirical question whether men or organizations come forward who can prove themselves just as useful or even more so than these kings and through this

simple fact brush aside monarchy.²

A monarch as head of state did not constitute monarchical government.

What John Graves Simcoe had meant by constitutional monarchy was outlined in the first chapter of this study. The inability of the people to govern themselves on their own was among the assumptions of mixed monarchy. When non-legislators were appealed to as if they were capable of informed, rational political judgements - and when they began to see themselves as such - the foundations of mixed monarchy were gradually, painfully, unevenly, but also inevitably, undermined. Chapters three through five of this study examined some of the contributing forces: the growth of voluntary associations and the newspaper press and the political imperatives of public conflict. The Metcalfe crisis, discussed in chapter six, demonstrated that, despite institutional continuity, mixed monarchy was no longer compatible with the ways in which the politically articulate understood themselves and their collective future.

Upper Canadians embarked on a new constitutional experiment to bring institutional forms into line with the newly established fount of authority: public opinion. The major alternatives, American republicanism and British parliamentary government, were discussed in chapters seven and eight. Just as mixed monarchy was grounded in very particular views about authority, the social structure, individual capacities, and forms of sociability, so too was the form of government by discussion adopted in Upper Canada.

This study comes to an end with the coalition of moderate reformers and conservatives in 1854. The coalition was a pivotal event in Canadian constitutional and political history. It can be portrayed as a success-story: the triumph of moderates over

² Carl Schmitt, "Preface to the Second Edition (1926): On the Contradiction between Parliamentarism and Democracy", *The Crisis of Parliamentary Democracy*, Ellen Kennedy, trans., (Cambridge, Massachusetts: The MIT Press, 1992, [1923, 1926]), p. 8.

extremists, a victory for the politics of accommodation, the preservation of the British constitution and membership in the empire over republicanism and annexation, and the founding of the post-Confederation party system. The coalition, however, also signalled failure. For moderate conservatives, it was their failure to fashion their own constitutional program. They returned to office, but only having accepted the constitutional principles of their former opponents. For moderate reformers, it was their failure to win whole-hearted support for some of the principles of parliamentary government from their fellow partisans. For more radical reformers and conservative republicans (and one is tempted to add, for future Canadians), it was the failure of the on-going process of constitutional self-discovery.

The years preceding the Liberal-Conservative coalition formed a unique period of constitutional debate. It was unclouded, unlike previous debates, by Upper Canada's membership in a monarchical empire. The divisive battles of the 1830's about the nature of Canada's social structure and the relative merits of monarchy and democracy were over. The bipartisan annexation movement swept away many of the taboos on what could be said aloud and in print. There was also broad agreement that, whatever its precise form, Canada would have a government by discussion. The constituent convention advocated by both conservatives and reformers was intended to create a special forum, divorced from ordinary politics, where each constitutional position could be articulated, discussed, compared and judged. It would be the ultimate exercise of the public sphere. The desired outcome was a widely understood, widely accepted, made-in-Canada constitution capable of finding a secure place in the hearts, as well as in the minds, of Canadians.

The public debate of alternative constitutional ideas petered out, but the debate

was left unfinished. It was cut short by politics and by fear. After the coalition, the range of voices narrowed significantly. Among coalition opponents, the *Globe* swallowed the *North American*, *Examiner* and *Mackenzie's Weekly Message*. Other reform organs, such as the *Daily Leader*, supported the coalition. Conservative organs either supported the coalition or disappeared. This may have been the result of consensus, but it was a premature consensus. The forms of parliamentary government were established, but the Grits had exposed the fragility of the support for some of its principles. How it might have been further adapted to reflect Canada's changing circumstances was largely left unaddressed. Parliamentary government withstood frontal attacks from both conservatives and reformers. It was much less successful in distinguishing itself from a government of a single legislature elected by the people but controlled by a committee of its own members. Perhaps Lord Metcalfe had the ultimate revenge.

Parliamentary government atrophied in both Canada and Britain for similar reasons. Ironically, even as Walter Bagehot was publishing his classic defence, *The English Constitution* in 1867, parliamentary government was in decline. The creation of party machines to manage an ever-increasing electorate and later, the creation of a vast bureaucracy to administer complex programs helped destroy parliamentary government in both countries. Ministries were less and less likely to be defeated in the House of Commons between elections. Straight party votes were more and more common. Attempting to convince fellow representatives was increasingly pointless. Appeals were made directly to the electorate. Power shifted from parliament to a much less publicized, much less accountable, tangle of Cabinet, bureaucracy and party.¹ The connection

¹ For Britain, see R.H.S. Crossman, "Introduction", Walter Bagehot, *The English Constitution*, (London: Fontana/Collins, 1963, [1867]), pp. 35-39. For Canada, see Thomas A. Hockin, "Flexible and Structured Parliamentarism: From 1848 to Contemporary Party Government", *Journal of Canadian*

between these developments and the structure of the public sphere awaits its historian.

Bagehot had written *The English Constitution* to explain the actual operation of parliamentary government as well as its superiority to republicanism. The outlines of his explanation and that given to Upper Canadians by Robert Baldwin, George Brown and others continues to serve as the common understanding of parliamentary government. It still accounts for much of the form and appearance of the Canadian constitution. It no longer describes, explains, or justifies the actual exercise of political power. By the early 1840's, the theory of mixed monarchy had met a similar fate. However, unlike the theory of mixed monarchy, the theory of parliamentary government has yet to be replaced.

.....

As Bagehot and his contemporaries understood, far more important than the fate of particular political institutions was the continued vitality of the principles and practices that sustained them. As chapter eight argued, Bagehot's classic exposition of parliamentary government was firmly rooted in his assessment of the public sphere. The most fully developed statement of the connection is found in his less known, *Physics and Politics or Thoughts on the Applications of the Principles of "Natural Selection" and "Inheritance" to Political Society*. As his subtitle suggests, Bagehot was attempting to apply recent scientific theories emphasizing the movement from simple to complex organisms and the role of competition in determining future forms to politics. He argued that the political history of a society could best be understood as a movement from an

Studies, (v. 14, n. 2, Summer 1979), pp. 8-17; and especially, Eugene Forsey, *Freedom and Order: Collected Essays*, (Toronto: McClelland & Stewart Limited, 1974), esp. essays 6-10.

early stage marked by permanence, an emphasis on status, and a "thick crust of custom" to later stages marked by variability, choice, and toleration for difference. Competition among tolerated elements in the later stages prevented the development of new customs that would attempt to impose uniformity and stasis.

These elements took the form of arguments about common interests. Competition between them took the form of public deliberation. Bagehot called the final stage of social development, "The Age of Discussion." Public deliberations were "the root of change and progress." They broke "the yoke of fixed custom...the mere putting of a subject to discussion, with the object of being guided by that discussion, is a clear admission that the subject is in no degree settled by established rule, and that men are free to choose in it. It is an admission that there is no sacred authority..." Somewhat optimistically, Bagehot also argued that once a subject had been submitted to the "ordeal" of public discussion, "you can never again clothe it with mystery, or fence it by consecration: it remains forever open to free choice and exposed to profane deliberation." Government based on discussion not only broke through dead tradition, it was also progressive because it rewarded intelligence, rather than force, habit or social status. Third, it taught the necessity and virtue of toleration. In Britain (and as this study has argued, in Upper Canada), "the discussion about this [English] constitution and the discussions within it, the controversies as to its structure and the controversies as to its true effects, have mainly trained the English political intellect, in so far as it is trained." Constitutional history and the history of public discussion were inseparable.

Despite this story of progress, Bagehot did not abandon all caution. First, he understood that in public deliberations, all "arguments are produced under conditions; the argument abstractly best is not necessarily the winning argument. Political discussion

must move those who have to act; it must be framed in the ideas, and be consonant with the precedent, of its time, just as it must speak its language." Public deliberation was the best form of collective decision-making, not because it produced some transcendental, timeless, truth, but because the best possible outcome emerged from competition among all available arguments. Toleration for opposing views and a willingness to see debates re-opened ensured that the outcome of previous deliberations did not harden into "fixed custom."

Bagehot's insistence that a discursive consensus was conditional highlights a second element of caution. The constitution and the decisions reached within it had to be subjected regularly to public deliberation because there was no sacred text, no scientific theory and no great legislator capable of superseding public opinion. As Stefan Collini, Donald Winch and John Burrow have argued, "nineteenth-century theories of human history, in Comte, Spencer, Marx, characteristically culminate in a supersession of politics: its antagonisms and uncertainties are marks of imperfections to be overcome. Bagehot's is the only notable one which...actually culminates in the emergence of full political life, in the Age of Discussion, and sets nothing beyond it."⁴ There was no salvation or 'quick-fix' beyond public debate.

Finally, although Bagehot spoke of tremendous progress, he recognized that government by discussion was "a plant of singular delicacy." Before the invention of mass printing and political representation, the state had to be small enough for people to gather together to hear orators. Such small states were weak because of external aggression and because internal passions and prejudices were more likely to break out in

⁴ Stefan Collini, Donald Winch, and John Burrow, *That noble science of politics: A study of nineteenth-century intellectual history*, (Cambridge: Cambridge University Press, 1983), pp. 180-181.

such face-to-face situations. Even with printing, representation and the safeguards of parliamentary government, public discussion could still excite prejudice and passions. For Bagehot, the ultimate requirement of government by discussion was moderation; an openness to opposing arguments, a willingness to admit the possibility of one's own error, a desire to debate in a reasoned and calm manner without appealing to others' prejudices, an eagerness to inquire into and criticize the actions of legislators, but without forsaking discretion. Bagehot remained optimistic in the early 1870's because he thought that government by discussion inculcated the very moderation it required. "A strong idiosyncratic mind, violently disposed to extremes of opinion, is soon weeded out of political life, and a bodiless thinker, an ineffectual scholar, cannot even live there for a day. A vigorous moderateness in mind and body is the rule of a polity which works by discussion..."⁵

.....

While Walter Bagehot remained optimistic, Carl Schmitt concluded that the age of discussion was over by the 1920's. Schmitt rejected parliamentary democracy because he thought that its unique moral foundation was no longer applicable. Government by discussion had been replaced by "modern mass democracy," by the clash of interests and by political parties, extra-parliamentary pressure groups, and a "propaganda apparatus." The second half of Jürgen Habermas's *The Structural Transformation of the Public Sphere* also argues that the liberal public sphere was eclipsed over the last century. A

⁵ Walter Bagehot, *Physics and Politics or Thoughts on the Application of the Principles of "Natural Selection" and "Inheritance" to Political Society*, Hans Kohn ed., (Boston: Beacon Press, 1956 [1867-1872]), esp. pp. 114-148.

print culture fostering the exchange of information and opinion was replaced by a mass media designed to entertain and to market a variety of consumer goods ranging from dishwashers to political leaders.⁷ In the Canadian context, executive dominance of parliament and, later, claims to authority by expanding bureaucracies based on expertise rather than public discussion might be added to the list. With parliamentary democracy, as with monarchy, “[t]he convictions inherent in this and no other institution then appear antiquated: practical justifications for it will not be lacking but it is only an empirical question...”⁸ The accuracy of these assessments are a subject for another project. In 1854, at the end of this study, many of the forces identified by Schmitt, Habermas, and others as corrosive to the liberal public sphere remained many decades in the future.

In fact, in 1854, the Kantian enlightenment remained incomplete. As Kant himself had insisted, enlightenment was neither a body of doctrine nor a specific event. It was a process - a process of intellectual maturity for individuals and a community of discussants. By 1854, a liberal public sphere existed in Upper Canadian, although some had already begun to voice concerns about de Tocqueville's 'tyranny of the majority.' Its claims were integrated into the province's constitution. Nonetheless, the claims of marginalized groups, including women and non-propertied men, had yet to be fully recognized. A few already saw where the logic of their arguments led. In upcoming decades, marginalized groups demanded incorporation into the public sphere on much the same grounds that government's opponents used to insist, by the 1830's, that public opinion govern the state: first, that the perspectives of those excluded from existing

⁷ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, Thomas Burger, trans., (Cambridge, Massachusetts: The MIT Press, 1989, [1962]), esp. chp. 5-7.

⁸ Schmitt, "Preface to the Second Edition", pp. 7-8.

institutions were not voiced by those included, and second, that the excluded not only had an important perspective to offer, but also had the information, reason, and norms of sociability required to effectively offer that perspective in the common deliberations of their community. The uneven and contested inclusion of other voices, the nature and result of their participation, the impact of external forces on the public sphere and the relationship between that evolving social space and persisting political institutions define Canada's engagement with liberal democracy in this century. Extending the right to judge without weakening its critical power remains a central challenge of that democracy.

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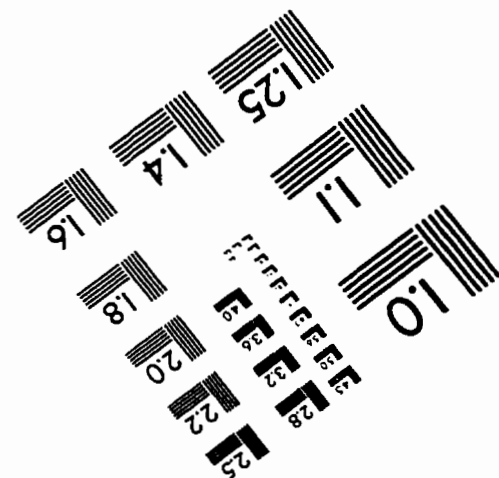
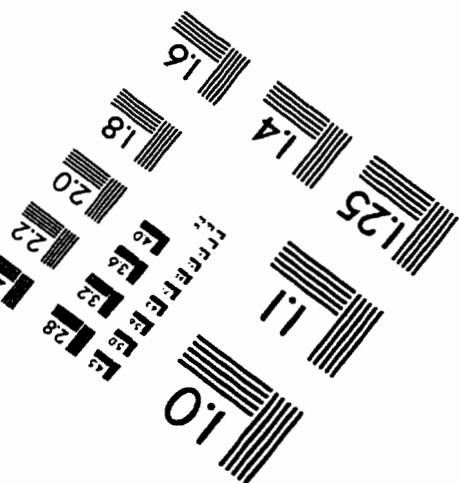
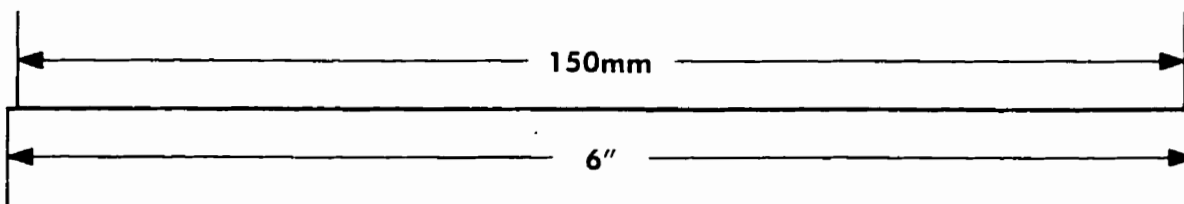
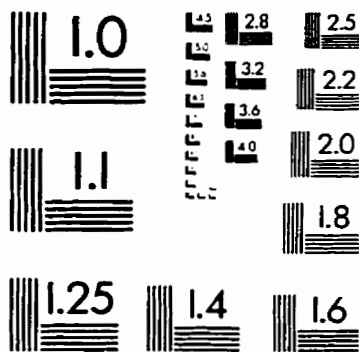
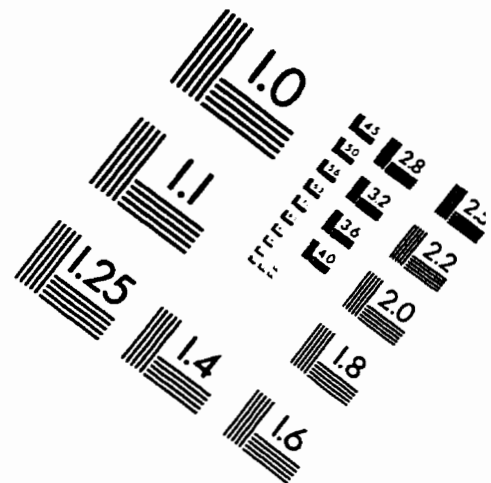
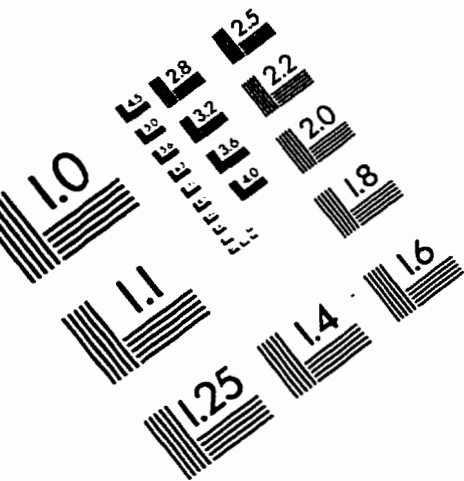
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