

Lord Durham's Report  
New Edition, Second Thoughts

Janet Ajzenstat  
ajzens@mcmaster.ca

Every generation of Canadians reads the Durham Report, or learns *of* it. It was published in 1839 and has been in print ever since. The scholarly articles, books, and discussions are legion. In the 1840s, British North American reformers hailed it as the charter of free government because it promised the overthrow of the colonial oligarchies (the Family Compact, the Chateau Clique, and the “official parties” in the Maritime provinces). Twenty years later, the Fathers of Canadian Confederation found in it the model for a national legislature, the Parliament of the British North American union. In the last years of the nineteenth century and the first years of the twentieth, Englishmen turned to it for instructions on ruling the Empire’s “senior Dominions;” in subsequent decades they found a prescription for the Commonwealth of Nations. It is the one text in Canada’s political history that is routinely prefaced by the adjective, “famous.” We do not speak of the *famous* British North America Act or the *famous* Statute of Westminster. We do not speak of the *famous* Canadian Charter of Rights and Freedoms. We do speak of the *famous* Durham Report.

Consider this statement by C.P. Lucas, editor of the 1912 edition: “To all times and to all sorts and conditions of men [Lord Durham] has preached the doctrine, that for peoples, as for individuals, the one thing worth living for is to make, not to destroy, to build up, not to pull down: to unite small disjointed elements into a single whole; to reject absolutely and always the doctrine of *Divide et Impera*, because it is a sign of weakness, not of strength; to be strong and fear not; to speak unto the peoples of the earth that they go forward.” Few commentators equal Lucas in enthusiasm, but some come close. In 1929, Durham’s biographer, Chester New describes the Report as “one of the few events of world-history of which one can say that this is the beginning of something absolutely new under the sun.” He continues: “when the unique type of empire which it created has completely worked out its destiny, it will be time to venture a final estimate of [the Report’s] significance.” Introducing the edition of 1963, Gerald Craig advances an only somewhat more modest assessment: “no attempt to debunk or to deflate the great Report would be very successful ...Despite all its shortcomings and defects it remains one of the most vigorous and perceptive expositions of the principles and practices of free government in the history of the English-speaking peoples.”

The Report has had two “lives,” so to speak. It treats two issues of perennial interest, distinct but ultimately connected. Each has been the subject of continuing debate and disagreement. There is first the matter of imperial rule and colonial liberation. Recall Chester New’s suggestion that the Report created a “unique” type of empire. At the time New was writing it was commonly said that Durham proposed to give the British North Americans some of the freedoms associated with political independence – but only some freedoms – in order to forestall their bid for complete emancipation. The formula was described as unique because it called for strengthening the Empire by loosening imperial ties. But some of Durham’s contemporaries tell a different story. They argue that he meant to give the British North Americans *all* the freedoms of independent nations. He intended nothing less than colonial emancipation! Some of these early readers, chief

among them Durham's ministerial colleagues in Britain, are appalled by the idea; Durham had been sent out to save the Empire, not to savage it. Others, like Nova Scotia's Joseph Howe are elated. They rejoice in the idea of colonial autonomy and they argue that in place of imperial rule Durham recommended, or foresaw, a new era of voluntary and effective cooperation among the former colonies, and between the former colonies and Britain. In short, some readers concluded that Durham had found a formula to bring under one aegis, democracy and global peace, or perhaps I should say, English-speaking peace, British peace. It was an idea to make the heart leap.

The second question of perennial interest, and the occasion of the second controversy, is this: did Durham suppose that the exercise of "the principles and practices of free government," to use Craig's phrase, requires a population steeped in British "culture?" Many passages in the Report indeed suggest that that he expected the French Canadians to adopt not only the institutions of British democracy but also the culture, the social ways of life typical of the Mother Country. Gerald Craig reminds us – as if Canadians needed reminding – that the extraordinary praise for the Report is not unqualified. If it is often called famous, it is sometimes said to be "infamous." In the eyes of many, Craig among them, the Report's great defect is its suggestion that the French should assimilate to an English Canadian way of life. According to Craig Durham was wrong on two counts. He was wrong to entertain the idea of assimilation (wrong from a moral standpoint, we might say), and wrong, hopelessly wrong, to suppose that uniting the provinces would accomplish this objective. Indeed, most Canadian scholars argue that after the union of Upper and Lower Canada in 1840, the French used the political institutions of the united province – the very institutions that Durham had recommended - to successfully defend the French Canadian way of life.

C.P. Lucas too had his doubts about Durham on French Canada. The empire that Lucas contemplated was composed of cultural groups, peoples, nationalities, ethnicities, religions and races from every region of the globe. His question is this: did Durham's apparent ignorance of culture's deep roots wreck the formula for freedom and empire? Behind Lucas' doubts, and behind argument's like Craig's, a broader question lingers. Durham proposes the introduction of the constitutional principle we call responsible government, the principle that defines parliamentary systems. He intends the French Canadians to live with their English neighbours in a parliamentary democracy. Is he wrong to suppose that the practice of parliamentary democracy requires – or encourages – cultural homogeneity? Is it entirely wrong to suppose that liberal democracy, despite all hopes to the contrary, erodes particular cultures?

*The "standard interpretation" (1929 to the present)*

Today the issue of colonial emancipation is almost forgotten. Most Canadians reading the Report focus on the second great question, and most come to Gerald Craig's conclusion: the recommendation for responsible government is no doubt praiseworthy but Durham's expectation that the French Canadians would assimilate is, to put it briefly, offensive. As Chester New says: "[The] great weakness of the Report – all the more striking because it marked Durham's only failure in the sphere of political prophecy – is its treatment of the French-Canadians." He continues: Durham "came to Canada, with the prejudices of the British ruling class against the French-Canadians as a rebellious and contumacious race and an intense English feeling which sometimes closed the door to broader sympathies." His "woeful ignorance" of the variety of political opinion in the French population and his failure to respect French-Canadian pride "marred what was in many respects a brilliant analysis of the situation in Lower Canada."

Craig follows New to the letter. “From the perspective of our own times,” he argues, “the sections on the French Canadians appear to be the faultiest and the most misguided in the whole Report – the one great blot in an otherwise admirable and enlightened analysis.” He adds in a well-known passage, “Lord Durham could not know as clearly in 1839 what we know today, that it is foolhardy and naïve to speak of breaking down the customs of a well-established and organized ethnic and cultural community.”

The views submitted by New and Craig have become in this country what I call the “standard interpretation” of the Report: Durham was either prejudiced, as New argues, or merely ignorant, as Craig suggests. There have been a few squawks of protest from revisionist scholars (I am one); there are a few textbooks that break the pattern, but in the main the standard interpretation retains its clout. In English Canada, it taken for granted. It has become a habit of mind.

As received wisdom it has done something, perhaps much, to shape relations between French and English Canadians. It undoubtedly gratifies English-speakers, especially those of “British stock.” By expressing our disapproval of Durham on assimilation we say *mea culpa* for the sins of conquest and empire, and centuries of British snobbery. And we swear allegiance to liberal doctrines of cultural tolerance. But consider: the standard interpretation depicts French Canadians as “the other,” to use a post-modern term, as a people not-like-us. It suggests moreover that Quebec’s culture is static (it is “naïve to speak of breaking down the customs of a well-established and organized ethnic and cultural community”). And it hints at the idea that decisions about Quebec’s future are up to “us,” the English-speakers. However pleasant it may appear to Quebecers that under the influence of the standard interpretation, English Canadians are led to regard Quebec as a distinctive society, it remains a fact that the interpretation conjures images of backwardness. It encourages the idea that French Canadians are hostile to change. At the time Gerald Craig was writing (the early 1960s) Quebec was in the process of transforming its economic and social institutions in radical fashion. But caught in the toils of the standard interpretation, Craig could not see the changes. Of course, English Canadians have never depended solely on the standard interpretation of Lord Durham’s Report for their understanding of French-English relations. I wish merely to point out that the standard interpretation has injected a note of confusion. It has not made it easier for Canadians to define nationhood, nationality, and culture.

What *did* Durham mean to accomplish by the union of Upper and Lower Canada? He says outright that the British “race must ultimately prevail.” The British must be “placed in the ascendant.” Lower Canada must be “thoroughly assimilated to British ways and institutions.” These passages and others like them leave a deep wound. I do not believe that anyone of French origin reading them will ever warm to Durham. One thing we can say is that he did not envisage a static future for French Canada. Durham was a mover and shaker and he wanted the French to get a move on; he wanted them to advance into the sunny uplands of progress and prosperity. Indeed he thought they were already on the move; French Canadian businessmen and political elites were beginning to build a modern commercial society; they were interested in new technologies (“means of communication”) and in social and constitutional reform. He makes it very clear, moreover, that some Englishmen and some British policies were impeding French Canadian ambitions. It suited Englishmen who had acquired seignories to keep their tenants down on the farm. It suited the English elites of Montreal to keep the French out of political office. Durham treats Englishmen with these views harshly.

Nevertheless we want to know whether he envisaged the eradication of the French Canadian “identity,” that is, the French way of life. Indeed what we really want to know is whether the

adoption of modern political principles and business practices is compatible with maintenance of a distinctive identity and sense of cultural continuity. It will be easier to tackle this subject if we first look at the other great issue, the one of all-consuming importance for most of Durham's British commentators: would the prescription for democracy destroy the Empire? It may seem as if we are taking a detour – a detour of approximately one hundred years - but long before it is over we will find that it is bring us back again to the issue of assimilation.

*Responsible government and empire (the 1840s)*

Responsible government promised self-government in the colonies; it promised, as I have said, at least a degree of independence from imperial control and perhaps a great deal of independence. But in 1839, understandably, the British Government had its doubts about emancipation. In June of that year, four months after the Report was published, Lord John Russell put this resolution before the British Parliament: "That while it is expedient to improve the composition of the Executive Council of Lower Canada, it is unadvisable to subject it to the responsibility demanded by the Legislative Assembly of that Province." It looked for a time as if the British Whigs would reject Durham's responsible government proposal.

Responsible government has two aspects. The first concerns the regime's head of state. In parliamentary democracies the governor or monarch represents the populace in its entirety; she also represents the *idea* of parliamentary democracy. But she does not govern; she must refrain from advocating politics and refrain from party politics. As Frank MacKinnon puts it, the monarch *has* the powers of state, but does not *wield* them. This aspect of responsible government is spelled out in the Constitution Act, 1867 (formerly called the British North America Act, 1867), in sections 9, 11, 12, and 13.

The second aspect of responsible government concerns the wielders. The monarch or governor is instructed by advisors, her "ministers,," her "Cabinet" (in the colonies, the Executive Councillors); they wield the power. But – this is the crucial proviso - to maintain their right to *wield*, they must have the approval of the majority of the people's elected representatives in the lower chamber (in the colonies, the Legislative Assembly; today, the House of Commons) on measures of great importance, including especially, taxing and spending bills. The idea is perfectly familiar. Durham described it; we live with it today; and it is enshrined in the Constitution Act, 1867 in sections 53 and 54. (One hears it said that the Constitution Act, 1867 does not contain a reference to responsible government, or a formula for it. I cannot understand how this false idea arose.)

The consequence is that those who are running the country or colony, the party elites in office, answer to the people's representatives in the popular chamber and thus to the electorate and the people at large. In Durham's words (in a passage referring to British practice), "When a ministry ceases to command a majority in Parliament on great questions of policy, its doom is immediately sealed; and it would appear to us as strange to attempt, for any time, to carry on a Government by means of ministers perpetually in a minority, as it would be to pass laws with a majority of votes against them." Once responsible government was established in the British North American colonies (for many of them, in 1848) the old oligarchs were shown the door. To use a slogan of the period, responsible government meant Power to the People - in a British system of parliamentary checks and balances. It is true that after 1848 the Colonial Office and Westminster Parliament still retained the right to look in on what was happening in the colonial legislatures and even to veto measures that would adversely affect British interests. But as a

matter of fact Britain almost never interfered; on domestic matters, certainly, the colonists ran the show.

To repeat: under the old system the colonial Executive Council answered to the Governor and the Governor reported to the Colonial Office and thus to the Parliament of Westminster. The wielders of power in the colonies looked across the ocean to the centre of empire. (That was the theory; in practice their relative lack of accountability gave them a good many opportunities to do political favours for friends and family.) But now their heads were to be wrenched around and they would have to look to the interests of their constituents and the people of the province, on pain of losing office. What would keep them attuned to imperial matters? The question for Lord John Russell and others of like mind was whether the colonies would run away immediately or merely drift off over the course of the years.

A prominent Upper Canadian with views like Russell's was John Beverley Robinson. In *Canada and the Canada Bill* (1840) Robinson describes the operation of responsible government in the Westminster Parliament with greatest approval, but opposes it for his own beloved province, arguing that its introduction would sever the imperial connection and thus deprive Upper Canada of British trade preferences and the security afforded by the British military presence. He is scathing on the subject of the meddlesome Lord Durham.

The classic defence of Durham on responsible government is found in a collection of four open letters to Lord John Russell published in the fall of 1839 by Nova Scotia's "tribune of the people," Joseph Howe. It is a superlative commentary; Howe is the colonial "Durham" par excellence. The letters range over many topics, but the burning issue between Howe and Russell can be stated in a sentence. Russell believed that political disagreements between the colonies and the home country would require formal procedures of resolution; on some questions, perhaps not many, the colonists would have to defer to Westminster. Howe did not accept the idea that disagreements would arise; he thus saw no need for formal procedures. In Howe's opinion, the introduction of responsible government would put an end to the major quarrels between colony and metropolis. And should petty difficulties make themselves known, "the good sense of all parties concerned may be safely trusted to avoid any violent or unpleasant collision."

Throughout, Howe claims to be speaking for Durham. Responsible government would end rebellion and promote an era of cooperation. Between the parliamentary nations, there would be accord. Among democracies, there is peace.

I would argue that Howe perfectly captures Durham's intention. Charles Buller, and Edward Gibbon Wakefield, Durham's chief aides and researchers on the Canada tour, offer an interpretation very like Howe's. But later commentators disagree. It seems to these later readers inconceivable that an experienced political man like Durham would put his faith in feelings of mutuality and "good sense." They agree that Durham meant to save the Empire but they suggest that what he had in mind was a kind of imperial dualism, sometimes called "dyarchy," which would officially allocate some powers to the colonies, and others – the crucial powers of control and compliance – to the British.

Chester New subscribes to the dyarchist interpretation; the vision of empire he calls "unique" is a form of dyarchy. But let us see for ourselves. Here is the crucial passage from the Report; it mentions "matters" of concern to the British, and it refers to British "control." "The matters, which so concern us, are very few. The constitution of the form of government, - and the regulation of foreign relations, and of trade with the mother country, the other British Colonies, and foreign nations, and the disposal of the public lands, are the only points of which the mother country requires a control." Gerald Craig comments: "Responsible government was the dynamic

idea in the *Report*, but it must not be forgotten how severely the idea was qualified by Lord Durham. It would apply to what he called internal legislation, and he would withhold only those matters that concerned the relations of the colonies with the mother country.” Durham argues that the “matters” of concern to Britain are few. Craig says that the “reserved areas, while only four in number, made up about three-quarters of the possible subjects for colonial legislation, and represented a more severe restriction on colonial legislative jurisdiction than the British government had been prepared to exact earlier in the decade.”

Craig’s interpretation has a superficial plausibility but it owes too much to New and to the dyarchists, men who were interested above all in discovering in the Report a formula for imperial rule in the Empire’s hey day. Howe got the Report right; Durham did not regard the four “matters” as areas of conflict; his discussion was intended rather to forestall objections to the grant of responsible government and to reassure the Colonial Office that the emancipated colonies would *not* subvert British interests. Thus he argues that the colonists wanted a British constitution. There would be little or no quarrel about the first of the “reserved” items. On trade preferences and foreign affairs, including military assistance, the contention is similar; the interests of colonists and the British converged. Perhaps the most likely proposal to arouse controversy concerned “public lands.” The British would be able to reach into the colonies to determine disposal of certain properties. But here too Durham sees no difficulties; the measure was intended to facilitate organized emigration from the home country, and in Durham’s opinion emigration from the homelands was something the colonists were desperate to encourage; thus he speaks of the measure’s “reciprocal benefits.” The fact is that Report is saturated with the idea of political independence and freedom. As we shall see, it is this idea of independence and freedom that appeals to Durham’s French Canadian commentators.

In the imperial metropolis the talk about dyarchy’s possibilities continued for decades and the Report was read and re-read. A new edition was published in 1902, the first since 1839, and reprinted in cheaper format in 1905; the first book on the Report was published in 1903, and the first biography of Durham in 1906. In 1912, Lucas published his three-volume edition, which includes his book-length introduction and an invaluable selection of the Report’s appendixes and official dispatches, as well as Charles’ Buller’s first-hand account of the Durham mission.

#### *Empire and “culture:”(the 1890s to the 1930s)*

The early twentieth-century Empire was a huge enterprise, including the Dominions, India (an empire in its own right, the “Empire of India”), Crown Colonies, Chartered Companies, Protectorates, and Spheres of Influence. Administering it had become a great exercise in definition, the point of which was to determine who, what peoples, what “races,” are capable of self-government. In those heady years of British power, many concluded that while it is one thing to say that countries settled by Britons can rule themselves, it is another to suppose that “lesser breeds without the law,” in Kipling’s phrase, are competent. And Durham again was brought on board to support this position, or to elucidate it. Thus Lucas was prepared to countenance responsible government in the “sphere of settlement” (the “senior Dominions,” like Canada), but not in the “sphere of rule.”

Lucas and the “high imperialists,” as I shall call them, are struggling with the idea of “culture.” I mean by culture, way of life, the social mores of a particular population. The centrality of this notion in modern political and social thought is something I cannot do more than hint at here. It originates in the late eighteenth century as a reaction to the universalism of seventeenth-century thinkers like John Locke. Locke argued that men and women, *whatever their country of origin,*

*whatever their race or community, whatever their period in history*, are entitled to “life and liberty.” More than this, men and women whatever their origin and time, whatever the conditions of their life, know themselves to be so entitled. The thesis revolutionized the politics of the seventeenth century and remains of crucial importance; it informs all modern rights codes, all demands for popular sovereignty, all pleas for national freedom. A glance at today’s newspaper reveals its continuing impact. But if Locke is still influential, so too is the eighteenth-century reaction.

The “reactors,” the Romantics as they are often called, contend that the most cherished characteristics of men and women, individually and as members of communities, are not captured by a doctrine of universalism. Individuals and communities are shaped by their particular experiences, by their origins, and history. History tells us who we are; *culture* gives us our “identity.” Vast and gusty pronouncements about humankind and universal rights miss the point.

The high imperialists make a gesture in Locke’s direction when they praise parliamentary institutions and assert the superiority of free government, the rule of law, and surety for individual liberty. But they are deeply indebted to Romanticism and above all they are indebted to the Romantic idea that political institutions emerge from culture. They believe that culture runs deep; institutions are a by-product, epiphenomenal. Thus the imperialists suppose that England owed its parliamentary institutions and freedoms to its peculiar history, and they ask whether peoples without a history such as England’s are destined to endure in perpetuity the rule of despots, rajas, and sheiks. Some imperialists are strict determinists; they accept the idea that inferior cultures are doomed to remain inferior. Others argue that culture can be changed. A population that has known only absolute rule can be encouraged to develop a culture of freedom. But those who adopt this line usually suggest that the development will take decades or centuries; hence the “white man’s burden” with its obligation to rule in the interim and to educate for the future.

The high imperialists are caught between the Scylla of Locke’s universalism and the Charybdis of “culture.” All their thoughts on empire are informed by a deep contradiction. Locke encourages them to think that there are no naturally subordinate individuals or races, and that absolute rule, even when tempered by good administration, even when undertaken on a promise of increased freedom in the future, is an offence against nature and nature’s God. Their Romantic heritage argues that liberty in Locke’s definition may *not* be natural; it may not be everyone’s highest good. Thus time and again the business of Empire found the British praising the “English” institutions dear to Locke (parliamentary government, freedom, equality under the law) while imposing English forms of absolutism.

In the imperialists’ scheme of things, the French Canadians were an anomaly. Lucas was convinced that non-Europeans could not participate in the British culture, or could participate only after long years of tutelage. Non-Europeans could and should be subjected to *rule*. But the French in Canada (and the Dutch in South Africa) were European “races.” As Europeans they should *not* be ruled by a foreign power. And yet they were not of “British stock.” Would the French in Canada be comfortable with British institutions? *Were* they comfortable? Though Lucas was writing seventy years after Durham and more than forty years after Confederation, he says almost nothing about the French Canadians of his own day, except to suggest that Durham’s definition of liberalism was antiquated: “it seems curiously at variance with Liberalism, especially as Liberalism has been interpreted in later days. He adds: “modern life makes for greater courtesy and forbearance as between peoples and races.”

Canadians like New and Craig, advocates of the standard interpretation, inherit the imperialists' quandary. Like their predecessors they are indebted to both Locke and the Romantics. Writing in 1972, Peter Burroughs argues that Durham's "attitude is not hard to explain ... knowledge concerning cultural differences between nations was still primitive." Supposedly, what Durham supremely did not know is that culture is primary and deep-rooted. Recall Craig: "Lord Durham could not know as clearly in 1839 what we know today, that it is foolhardy and naïve to speak of breaking down the customs of a well-established and organized ethnic and cultural community." Breaking down a culture is like "terra-forming," like hewing bedrock. So far the Canadian standard interpretation holds fast to the teachings of the former generation.

There is this difference. The imperialists, as I have suggested, favoured terra-forming; it might take generations to get results, but as a job for the modern man (and even the modern woman) with all their advantages of wealth and education, it was a commendable undertaking. New, Craig, and Burroughs in contrast, look on it as something akin to a crime against humanity. The high imperialists are still Whigs in their enthusiasm for adventure and change; their writings are alive with the nineteenth-century idea of progress. Even after World War I, Durham's British commentators are still Whiggish in this sense. They begin to dream of a great association of parliamentary peoples, the Commonwealth of Nations. The first sentence of Craig's Introduction reads: "Lord Durham's *Report* has come to occupy such a central place in the history of the Commonwealth of Nations that no apology is needed for making it readily available to students and readers." Statements like this are a reflection of the original imperial passion - though a pale one.

Taken all in all, the standard interpretation of the Report in Canada has a musty, conservative air. New, Craig and Burroughs praise liberal freedoms but never confront Durham's contention that a people that is "left behind" in the march of progress is denied the freedom and the equality to which it is morally entitled. They see opposition between the proposals for responsible government and assimilation; they cannot see, or at any rate they do not explore the idea that Durham believed the proposals interdependent.

#### *Where are we in the twenty-first century?*

Are we bounding into the future as a band of happy visionaries? One thing is clear: like the high imperialists and like adherents of the standard interpretation, we are divided souls. Insofar as we swear by universal codes of rights, and democracy defined in terms of individual freedom we are Lockean. Insofar as we regard political institutions, including even bills of rights and liberal democracy, as the expression of historically situated cultures, we are Romantics. We ask whether it is appropriate to export to other parts of the globe, or to force on other parts, political institutions that originated in the West. And we have become markedly diffident about asserting the superiority of Western democracy. We wonder whether cultures in other regions will not give rise in the future to more benign institutions than ours, perhaps more democratic institutions, democratic in a different definition. We wonder whether in the past those regions had superior institutions that Westerners have carelessly or deliberately obliterated.

The standard interpretation is now at one remove from us. English-speakers still copy it into their textbooks, but I think that some no longer believe it. Most still accept Craig's rejection of assimilation, but some, perhaps many, have trouble appreciating his assessment of responsible government. (The Report "remains one of the most vigorous and perceptive expositions of the principles and practices of free government in the history of the English-speaking peoples.")



Canadians today are in the process of forgetting why they once thought the parliamentary system admirable. We are losing confidence in the old English Constitution.

The process had already begun in the 1960s and 1970s, when Craig and Burroughs were writing. As Jack Granatstein reminds us, historians were abandoning the study of constitutional law. Political scientists were abandoning the study of regimes. Craig and Burroughs themselves say little in defence of the substantive features of responsible government; they praise it but do not tell us why it is praiseworthy. As a nation we were embarking on what Peter Russell calls Canada's "constitutional odyssey," a project of "mega-constitutional" reform. Before the odyssey was over (it died an uneasy death in the national referendum of 1992, which voted down the package of constitutional reforms known as the Charlottetown Accord), it had convinced many that the political institutions of our past, the very institutions described in the Durham Report and enshrined in the Constitution Act, 1867, are inadequate for our purposes today, and that our best hope for the future lies in creating new ones. But if we are to understand Durham on assimilation we must recapture, at least provisionally, the argument for parliamentary government. It is time to look – briefly - at the French Canadian commentators on the British Constitution from 1791.

#### *The French Canadians (1791 to 1848)*

The English Constitution came to French Canada as an imposition, or perhaps as a gift, and from the beginning the French had reason to examine it carefully. Remember the original question: are the institutions of liberal democracy compatible with maintenance of a distinctive identity and sense of cultural continuity? The French Canadians of British North America, with a passionate sense of continuity, and – as I shall show – a tradition of informed admiration for the British Constitution, may help us to "escape through the horns of the dilemma." The man to begin with is Pierre Bédard, the first leader of the majority party in the Legislative Assembly of Lower Canada.

When the British granted Lower Canada a representative legislature in 1791, the English in the province might well have supposed that it would be their task to teach the French how to conduct themselves in their new situation. Perhaps they happily anticipated a long period of tutelage. If so, they reckoned without Bédard. Trained in the classical manner of reading legal and philosophical texts, Bédard drew up for himself a course of study on England. He read William Blackstone and Jean Louis de Lolme. He studied English history, especially the Civil War; he read the English Bill of Rights and related documents, and he followed current affairs in the debates of the Westminster Parliament. Among his English contemporaries he admired Edmund Burke and Charles James Fox. (Fox was also one of Durham's heroes.) In brief, he situated himself in the mainstream of Whiggish political thought, or perhaps we could allow ourselves to say that he inclined to the radical end of the Whig spectrum. Year after year, he berated the British Governor, James Henry Craig, for withholding responsible government. (Bédard was the first person in British North America to recommend the principle for adoption in the colonies, and the first in the colonies, I believe, to describe it fully). He argued that as subjects of the British monarch, French Canadians should enjoy English rights and liberties in full measure and he made himself a positive nuisance. Durham, who was himself something of a Whig rebel, could have been his pupil.

From 1806 to 1810 (when the Governor seized his press and threw him and his associates in jail), Bédard published his program of reform and excerpts from his readings in his journal of political opinion, *Le Canadien*. He is perhaps Canada's best student of parliamentary government and a

great journalist-teacher. The important thing for the argument here is that he derived from his readings this fundamental Lockean principle, that there is no just government without the consent of the governed. He concluded that insofar as the Governor was attempting to deny the French Canadians equal rights, insofar as he was attempting to treat them as a subordinate people, he was violating the law of the British Constitution.

New suggests that Durham was “woefully ignorant” of the variety of constitutional opinion in Lower Canada. He might be right. Durham had been sent to discover the cause of the 1837 Rebellion and to pacify the colonies and it is understandable that he would give much of his attention to the leaders of the rebel party, especially in the lower province, men like Louis-Joseph Papineau. Before he left England he interviewed Papineau’s agent in the British House of Commons, John Arthur Roebuck, and when he arrived in British North America he used Roebuck’s notes and arguments as a guide to political sentiments in both Upper and Lower Canada. But Papineau and Roebuck were not friends of the British Constitution and responsible government; Papineau at this time was impatient with parliamentary checks and balances, and with partisanship and the parliamentary game of political “ins” and “outs.” In this essay I cannot spell out the quarrel between the constitutionalists and anti-constitutionalists that characterized the Canadas in the 1830s. It will be enough to say that Bédard and Durham are on the constitutionalist side; they are both indebted to Locke. But caught up in his attempt to explore the causes of the Rebellion Durham missed his natural allies. He paid too little attention to Bédard’s great disciple, Etienne Parent. His focus on the *Parti patriote* was perhaps necessary, but it had the consequence, just as New suggests, that he appears relatively ignorant of the tradition of support in Lower Canada for the British Constitution.

Recall the resolution in the Westminster Parliament on the occasion of Lord John Russell’s speech of June 1839: “That while it is expedient to improve the composition of the Executive Council of Lower Canada, it is unadvisable to subject it to the responsibility demanded by the Legislative Assembly of that Province.” Some French Canadians, among them Etienne Parent, were *demanding* responsible government. They did not see responsible government as a foreign imposition. They saw it as the source of liberation. That was Russell’s understanding certainly and in his 1839 speech he was trying to find a way to make concessions without giving them the thing-in-itself.

After Bédard, Parent is Lower Canada’s most perceptive student of constitutional law. Almost alone among Durham’s contemporaries, almost alone among the commentators in every period, Parent treated with great seriousness Durham’s contention that the assimilation of the French Canadians might be necessary if they were to enjoy the benefits of British freedom. As commentator on the Report, Parent is at least Joseph Howe’s equal. Howe is a political man; he is thinking primarily about what the British and the colonists should do in the immediate aftermath of the Report. Though Parent undoubtedly influenced the course of political events in his province, he is principally a theorist; there is something of the ivory tower about him; he is looking down the decades and centuries. Howe has nothing to say on the subject of culture and assimilation. Parent sees the many ramifications.

In the spring and summer of 1839, he published a translation of the Report in instalments in *Le Canadien*, and then again in pamphlet form; his series of articles on the Report ran for months. He had long admired the British constitution and had long endorsed responsible government. He accepted the logic of Durham’s either/or: either self-government and assimilation, or the continued subordination of the French with the consequent attenuation of freedom. He chose responsible government; he chose freedom and, it appeared, he was prepared to pay the price. As

Jacques Monet says, Parent believed that “assimilation, though regrettable, would not be too high a price, but ‘une oeuvre désirable à l’accomplissement de laquelle tout le monde doit travailler cordialement.’”

In the May 15, 1839 issue of *le Canadien*, Parent wrote, “Nous inviterons nos compatriotes à faire de nécessité vertu, à ne point lutter contre le cours inflexible des événements.” In the October 23 issue, he said: “... les canadiens-français n’ont plus rien à attendre ... pour leur nationalité. Que leur rest-il donc à faire dans leur propre intérêt et dans celui de leurs enfants, si ce n’est travailler eux-mêmes de toutes leur forces à amener une assimilation qui brise la barrière qui les sépare des populations que les environnent de toutes parts.” (Marcel-Pierre Hamel, editor of *Le Rapport de Durham* [1948] says: “Etienne Parent, lui aussi, eut un terrible moment de faiblesse.”)

He took some comfort from the idea that the introduction of responsible government and the union of Upper and Lower Canada would encourage an alliance of the progressive elements in the two provinces. Like many at the time, including Durham, he anticipated cooperation between the French and English reformers. Thus he concluded that although the French nationality might be submerged, something of its highest aims would be retained.

And yet he could not help thinking that there must be a way to reconcile the two beloved “goods” – British freedom and the French Canadian way of life. In later essays he begins to pull back from his original decision to “pay the price.” He looks for a compromise. He notes in this connection that the British administration had guaranteed rights of the French people, including rights that preserved their cultural distinctiveness, at the surrender in 1759, and in the Proclamation Act of 1763, the Quebec Act of 1774, and the Constitutional Act of 1791. Since he understood Durham to be arguing that responsible government would decrease political discontent in the colony and would foster gratitude and appreciation of British institutions thus strengthening the imperial connection, he is able to suggest that the introduction of responsible government would preserve at least some of the traditional guarantees of nationality.

Consider John Neilson’s struggle with this dilemma. The editor of the *Gazette de Québec*, Neilson was as busy as Parent in the summer of 1839, superintending debate on the Report in French Canada. Like Parent he is passionately attached to both the French nationality and the British constitution. And like Parent again he believes that Durham had correctly described the choice before French Canadians. But Neilson puts nationality ahead of freedom and for this reason argues against responsible government. As Jacques Monet says, Neilson had a taste for the status quo. He believed that the representative institutions of the old Constitution of 1791 could be made to work adequately, if not perfectly, once the troublemakers of the 1837 Rebellion had been dealt with. He had as much confidence as Parent, or more, in the guarantees of particularity in the Acts of 1763, 1774 and 1791. But he did not agree with Parent that responsible government was compatible with the imperial connection; on this topic his argument resembles Lord John Russell’s. Thus he had more than one reason to reject responsible government. It was inherently suspect and it would undermine imperial guarantees.

Parent has a second and more promising line of thought on freedom and nationality; he makes a second attempt to “escape through the horns.” He fastens on the idea of federation, perhaps a union of the several British North American colonies, including the Maritime provinces – a scheme contemplated by Durham - in which Lower Canada would enjoy its own parliamentary institutions, and would thus be in a position to maintain its distinctive social institutions. But the time was not ripe. Shortly after Durham embarked for his return to England (November 1, 1838), the second Rebellion broke out. No British ministry was going to trust the French province with

separate political institutions at that time. But I think we can say that Parent had seen the future. And a short generation later, all had changed.

*The view from Confederation*

Let me summarize the argument so far. Bédard argues that the British Constitution will not tolerate rule by the English “race.” Parent sees – it is the dilemma that bedevils him – that the Constitution will not tolerate rule by the French “race.” (It should be pointed out that in the mid-nineteenth century “race” did not necessarily include the idea of inherited characteristics. During the debates on Confederation in the Province of Canada George-Etienne Cartier speaks of the three great “races” in the United Kingdom. He means the English, Irish, and Scots. No one listening to Cartier took exception. Cartier refers to the French Canadians as a “race.” The English Canadians were one “race” and the French were another.)

The British Constitution is meant to protect against rule by a permanent majority; it is designed to keep the political game going in the hope that majorities form and reform. Durham understood very well that the French Canadian party had been denied the right to political office and he proposed to correct the injustice. The introduction of responsible government would allow representatives of the French-speaking majority in Lower Canada to take their seats in the Executive Council. But he could not accept Papineau’s formula. In Durham’s opinion, to allow the French to govern without the checks and balances of the parliamentary system was merely to exchange one form of absolutism for another. Unconstrained rule by the French majority would soon become as intolerant as unconstrained rule by the Governors and their cronies. He concluded that what was needed was to get rid of factors that encouraged the identification of party with “race.” When “race” intrudes, politics grinds to a halt, winners preen and posture, losers sulk, resentment grows by leaps and bounds and violence threatens. His point in uniting the Canadas was to throw the French and English political elites together so that they would appeal to the electorate on political and not on “racial” issues.

Durham calls his remedy, “British.” Was it? Locke is an English philosopher, an exemplar of the early English Enlightenment. But remember Locke’s insistence that his teaching applies universally. We might say that Durham was welcoming the French Canadians to “universalism.” And we might say that they did not need his welcome. They had already thought matters through for themselves and seen the value of Locke’s doctrine.

But our principal question remains unanswered. We still want to know whether universalism is implacably hostile to expressions of particularity. Must we, as the price of political justice and equality, banish completely all affection for national culture and origin? Today’s communitarian thinkers argue that Locke’s classical liberalism offers at best a prescription for unfeeling robots. They have a point! But the communitarians typically give too little to the idea and the appeal of liberal justice. It is one of Parent’s strengths that he does not underestimate liberalism’s appeal. He sees *two* distinguishable “goods.” The passionate and very human preference for particularity is one good. Dispassionate, even-handed justice is the other.

Looking back from the twenty-first century we may wonder what the fuss was about. Surely some program of multiculturalism or multi-nationalism does the trick! And indeed many liberal democracies depend on such programs and they work more or less well. In the nations that have welcomed immigrants, and especially – it is a curious fact - in the nations most heavily influenced by John Locke’s individualism, we have found ways to allow particular loyalties considerable scope while defusing adverse effects. Remember Lucas’s hopeful comment: “modern life makes for greater courtesy and forbearance as between peoples and races.”

In my opinion the essential tension identified by Locke, Durham, Bédard, and Parent always remains. But there are devices for coping. Politics is a matter of compromise; even fundamental principles must be bent sometimes – a little - on occasion. The literature on this topic fills whole libraries; excellent contributions appear every year, not a few by Canadians. (A thorough study would begin with Locke’s own writings on toleration.) In this essay I can only hint at how Durham’s harsh logic and Parent’s reluctant acceptance of it, contributed to the development of Canadian toleration.

Consider the division of legislative powers in the Canadian federation as it was described in the legislative debates of the Confederation period. In a nutshell, the proposal was to allocate to the federal parliament issues of general concern to everyone in the federation without exception, and to give the provincial parliaments the issues of nationality and particularity. At the federal level, we may say, Durham’s formula was to obtain in all its rigour; in the Parliament of the united British North American colonies particularity would be ignored.

Of the many legislators who address this topic in the province of Canada, and in the Atlantic provinces, I will cite three, George-Etienne Cartier, H.V. Langevin, and George Brown. They are speaking in the Legislative Assembly of the united province of Canada in support of the resolution on Confederation. The date is 1865. Cartier presents the division of powers as means to preserve particularity: “Some parties ... pretended that it was impossible to carry out federation, on account of the differences of races and religions. Those who took this view of the question were in error. It was just the reverse. It was precisely on account of the variety of races, local interests, etc., that the federation system ought to be resorted to and would be found to work well.” Langevin, makes the same point: “Under the new system ... our interests in relation to race, religion and nationality will be better protected.” But Langevin says more: in the legislature of the “general government” of the federation, “there will be no questions of race, nationality, religion, or locality, as this legislature will only be charged with the great, general questions which will interest alike the whole confederacy and not one locality only.” And Langevin makes it clear, as perhaps Cartier does not, that the better protection for “interests in relation to race, religion and nationality,” depends on the absolute exclusion of those interests from the federal Parliament.

George Brown reinforces Langevin’s point. One-time leader of the Liberal party, in these debates he is allied with the Conservatives, Cartier and Langevin, in the party known as the Great Coalition: “Mr. Speaker, I am ... in favour of this scheme because it will bring to an end the sectional discord between Upper and Lower Canada. It sweeps away the boundary line between the provinces so far as regards matters common to the whole people – it places all on an equal level – and the members of the federal legislature will meet at last as citizens of a common country. The questions that used to excite the most hostile feelings among us have been taken away from the general legislature and placed under the control of the local bodies. No man hereafter need be debarred from success in public life because his views, however popular in his own section, are unpopular in the other – for he will not have to deal with sectional questions; and the temptation to the government of the day to make capital out of local prejudices will be greatly lessened, if not altogether at an end.”

To repeat: The contention is that the general legislature of the federation (soon to be known as the Parliament of Canada) will consider no question relating to “race.” For that very reason it will command the allegiance of everyone, creating out of the separate loyalties that dominated political debate before Confederation, one country. And it is because Confederation is to be one country in this sense that it can allow and protect at the provincial level, expression of those

separate loyalties. I hardly need to say that other speakers raise objections; many want to know what Cartier and his colleagues had to say about the “racial” minorities within the provinces. How would they fare? And I hardly need to say that the Canadian constitutional division of legislative powers has undergone many changes in the years since Confederation, some initiated by constitutional amendment, some brought about by the courts, and some, it appears, the more or less unanticipated result of ongoing political pressures. The elegant scheme defended by Cartier, Langevin, and Brown has been washed away. We have forgotten the scheme, we have forgotten the argument for it, and we have most certainly forgotten Lord Durham’s role.

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