

Upper Canada's Union Debates (1822-23, 1839-40) Facing the 'French Fact'

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Résumé de l'article

Les deux débats de l'Assemblée du Haut-Canada sur l'union avec le Bas-Canada, en particulier le premier, montrent un éventail d'opinions beaucoup plus large que ce à quoi les contemporains s'attendaient. Les principaux membres défendent le caractère national unique du Canada français et dénoncent la tentative de la Grande-Bretagne d'utiliser sa colonie pour en supprimer une autre. Le premier débat est né de la tentative d'un membre whig de l'opposition de résoudre le problème de la répartition des recettes douanières entre les deux pays, ce qui a permis de sortir de l'impasse qui caractérisait déjà la basse province. Le deuxième débat, beaucoup plus tendu, s'est déroulé dans le sillage des rébellions de 1837, l'union étant un projet gouvernemental visant à "abattre les Français". Si le second projet de loi est adopté, sa mise en œuvre échoue car, une fois de plus, les membres de l'assemblée du Haut-Canada refusent de jouer le rôle dans lequel le gouvernement britannique les a cantonnés.

Upper Canada's Union Debates (1822–23, 1839–40)

Facing the 'French Fact'

by Peter A. Russell

The proposed framework of an “age of constitutionalism” provides a new perspective on the union of the Canadas:

People in many parts of the world debated how governments should be structured, what deliberative processes were appropriate, what limits on power should be imposed on authorities, who had a right to participate in government and hold office, and what rights were to be guaranteed to be protected.¹

In the older “age of revolution” paradigm, British North America fared poorly—failures in Lower Canada and a farce in Upper Canada. However, seen as part of a longer-term process, the armed uprisings played a major role in the motivation for constitutional change. Even when “a decision came down from on high” to unite the Canadas, the failure of its intended outcome reflected a pivotal discussion over the relations between

French and English.²

The 1840 Act of Union followed Lord Durham's famous report:

There was no way Britain would entrust power to a French majority. ...He saw French Canada becoming part of a unitary and democratic province with an ever-increasing English majority as the *Canadiens* salvation....

“There can hardly be conceived a nationality more destitute of all that can invigorate and elevate a people, than that which is exhibited by the descendants of the French in Lower Canada.”³

However, a voice in government denied this view, “French Canadians would flourish, abandon their old nationality, and acquire a new English-Canadian identity.”⁴

Why did Lord Durham's assimilation project fail?⁵ Twice Britain tried to merge Upper and Lower Canada. First Tory, then Whig governments sought to

¹ Elizabeth Mancke, “The Age of Constitutionalism and the New Political History,” *Canadian Historical Review* (hereafter *CHR*) 100:4 (December 2019), 625.

² *Ibid.*, 635.

³ Peter H. Russell, *Canada's Odyssey: A Country Based on Incomplete Conquests* (Toronto: University of Toronto Press, 2017), 110.

⁴ *Ibid.*, 111.

⁵ Lord Durham's *Report* recommended the assimilation of French Canadians by putting them into

Abstract

The Upper Canadian Assembly's two debates on union with Lower Canada, especially the first, show a much greater range of views towards it than contemporaries expected. Leading members upheld the unique national character of French Canada, denouncing Britain's attempt to use their colony to suppress another. The first debate grew out of attempts originating in a Whig member of the opposition to solve the division of customs revenue between the two, breaking the deadlock that already characterized the lower province. The second, much more strained came in the wake of the 1837 Rebellions with union as a government project to 'put down the French'. While the second bill passed, its implementation failed as, once again, Upper Canadian members of the assembly refused the play the role in which the British government had cast them.

Résumé: *Les deux débats de l'Assemblée du Haut-Canada sur l'union avec le Bas-Canada, en particulier le premier, montrent un éventail d'opinions beaucoup plus large que ce à quoi les contemporains s'attendaient. Les principaux membres défendent le caractère national unique du Canada français et dénoncent la tentative de la Grande-Bretagne d'utiliser sa colonie pour en supprimer une autre. Le premier débat est né de la tentative d'un membre whig de l'opposition de résoudre le problème de la répartition des recettes douanières entre les deux pays, ce qui a permis de sortir de l'impasse qui caractérisait déjà la basse province. Le deuxième débat, beaucoup plus tendu, s'est déroulé dans le sillage des rébellions de 1837, l'union étant un projet gouvernemental visant à "abattre les Français". Si le second projet de loi est adopté, sa mise en œuvre échoue car, une fois de plus, les membres de l'assemblée du Haut-Canada refusent de jouer le rôle dans lequel le gouvernement britannique les a cantonnés.*

impose union. However, they discovered that "the solution which they desired, that the French Canadians should cease to be disaffected and preferably cease to be French, was beyond the reach of legis-

lative fiat."⁶ These failures were primarily due to *canadien* resistance—a story often and well told.⁷ Much less attention has been paid to those English Canadians of Upper Canada who refused to play the

a union in which their language would be suppressed and they would be excluded from power. One can argue the fact of union and the eventual reduction of *canadiens* to a minority in the Province of Canada as Durham's success. We may describe the removal of the anti-French measures (language, gerrymandering) as a "collaboration" (echoes of the Nazi occupation) rather than a success in gaining power. However, Durham's plan was not to assimilate by sharing power in a united Canada. See Stéphane Kelly, *Petit Loterie: comment la couronne a obtenu la collaboration du Canada français après 1837* (Montreal: Boréal Press, 1997), 21-25. See the subsequent distinction between 'vendus' and 'the French party.'

⁶ Ged Martin, *The Durham Report and British Policy—A Critical Essay* (Cambridge: Cambridge University Press, 1972), 51-52.

⁷ The first union attempt failed to pass the House of Commons. The second failed to achieve its end of excluding French Canadians from the government less than two years after the attempt had begun. Maurice Séguin, *Histoire de deux nationalisms au Canada* (Montreal: Guérin, 1997); Jacques Monet, *The Last Cannon Shot: A Study of French-Canadian Nationalism, 1837-1850* (Toronto: University of Toronto Press, 1969); Helen Taft Manning, *The Revolt of French Canada* (Toronto: Macmillan, 1962); Allan Greer, *The Patriots and the People, The Rebellion of 1837 in Rural Lower Canada*, (Toronto: University of Toronto Press, 1993).

role assigned them by British policymakers.⁸ Some may have foreseen the refusal in light of the 1823-25 Upper Canadian union debates.

During the 1820s, Upper Canada's 'public sphere' had seen growth in the number of newspapers and their circulation. "The rapid expansion of print news, particularly periodicals, papers, and pamphlets, expanded both the content of political discourse and the numbers of informed and engaged participants."⁹ From 1819 to 1839, the number of communities with newspapers increased from six to thirty-nine. Between 1824 and 1829, when the population grew by one quarter, the number of families receiving a weekly probably doubled; just between 1828 and 1836 the number of papers doubled.¹⁰ Newspapers both expressed opinions and reported political discourse. These included debates in the legislature, as well as 'popular' forms such as public meetings and petitions. Thus, the conventional sources of political history in elite correspondence can be contrasted—and sometimes corrected—by the new 'mass' media.

In the union debates for the first time

in colonial/imperial relations, there was limited overlap between the two public spheres. During 1823-25, both John Strachan and John Beverly Robinson wrote pamphlets published in London. In 1840, out of despair at his inability to stop union, Chief Justice Robinson wrote a book to undercut Lord Durham's Report and the union bill it had spawned. None appeared to have had much effect on either the government or the general public.

English Canadian attitudes towards French Canadians are frequently misrepresented. Implacably hostile statements from men like John Richardson and George Moffat of the Montreal merchant elite or British figures such as Edward Ellice and Lord Durham have been 'fathered' onto the English-speaking upper province. In *Getting it Wrong*, Paul Romney sought to correct the view that "the Upper Canadian people struggle to assert their autonomy against the alien oppressor... the French in Lower Canada."¹¹ Some have characterized opposition to the union in Canada West as "anti-Catholic Francophobia."¹² However, examining the two debates over the

⁸ Sir John Sherbrooke attempted to warn high British officials that Upper Canada was not to be regarded as a "bastion of loyalty," but to no avail: William Ormsby, "The Problem of Canadian Union, 1822-1828," *CHR* 39:4 (1958), 280.

⁹ Mancke, "The Age of Constitutionalism," 626.

¹⁰ Jeffrey L. McNairn, *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854* (Toronto: University of Toronto Press, 2017), 120-29.

¹¹ Paul Romney, *Getting it Wrong: how Canadians forgot their history and imperilled Confederation* (Toronto: University of Toronto Press, 1999), 31.

¹² *Ibid.*, 29, 70; Donald Creighton, *John A. Macdonald* (Toronto: University of Toronto Press, 2018), 222: "... Canada West was still governed by the pressure and at the will of Canada East." J.M.S. Careless, *Brown of the Globe* 1 (Toronto: Dundurn Press, 1989), 119: "... the rising cry of French domination." See also A.I. Silver, "Ontario's Alleged Fanaticism in the Riel Affair," *Canadian Historical Review* 69:1 (1988),

prospect of a uniting the Canadas reveals a much broader range of attitudes, which displayed notable variation in levels of information and understanding. These discussions demonstrate staunchly held opinions sharply at odds with either Durham or the Montreal elite.¹³ Despite both union proposals arising out of conflicts with Lower Canada, leading Upper Canadians at times acknowledged and upheld the national character of French Canada.

In less than twenty years, Upper Canada's legislature debated proposals for union with the lower province twice. There was little overlap among the leading political figures in the two debates.¹⁴ The 1822 union bill arose out of unresolved conflicts over the division of customs revenues between the Canadas, collected at the port of Que-

bec. The rising population of Upper Canada meant that a rising proportion of the customs revenue should have gone to the province's hard-pressed government.¹⁵ However, the beginning of the long political deadlock between Louis Joseph Papineau's *canadiens* and Lower Canada's intransigent governor, Lord Dalhousie, endlessly delayed the necessary negotiations between the two colonies.¹⁶ Edward Ellice, a British opposition MP with extensive investments in the colonies, including the seigneurie of Beauharnois, was the catalyst in the House of Commons for the 1822 union bill.¹⁷ He persuaded the Tory government to solve the revenue deadlock and the Lower Canadian political stalemate by uniting the colonies. Incidentally, his solution would bring in English civil law, allowing him to sell the remaining

21-50, which shows that a narrow selection of extreme opinions was attributed to the whole population, despite contrary evidence.

¹³ The English members of the Lower Canadian assembly did not always reflect the Montreal merchant elite's views. In 1823, a majority of the English members voted with the French-speaking members for a resolution opposing the 1822 union bill. Colonial Office (hereafter CO) 45/76, *Lower Canadian Assembly Journals*, 1823, 246-47, 282, 330.

¹⁴ Only Christopher Hagerman and Archibald Mclean were in the assembly for both debates. Mclean was the Assembly Speaker. John Willson, prominent in the assembly's first debate, was in the Legislative Council in the second.

¹⁵ See, for example, Robert Nichol, 12 April 1821, *York Weekly Post*. Lower Canada argued that Upper Canadians consumed a lesser proportion of imports and just a division on the basis of populations would be unfair. See Yvan Lamonde and Claude Lorin (ed.), *Louis-Joseph Papineau—Un demi-siècle de combat* (Quebec: Quebec, 1995), 59-60.

¹⁶ Aileen Dunham, *Political Unrest in Upper Canada, 1815-1836* (Toronto: McClelland and Stewart, 1963), 64.

¹⁷ William Ormsby sees Attorney General Robinson's mission to Great Britain as the spark for the Montreal merchant elite sending word to Ellis, as well as Lower Canada's Receiver General, John Caldwell, and Solicitor General Charles Marshall, who were already in London: Ormsby, "The Problem of Canadian Union," 279-80.

¹⁸ Many Upper Canadians objected to the much higher property qualification for assembly candidates and the proposal to have the governor appoint non-voting members of the Executive Council to the assembly. These objections were noted in Lower Canada, Lamonde and Lorin, *Louis-Joseph Papineau*, 63-64

vacant land in his seigneurie in English land tenure. However, leading members of Ellice's own Whigs objected to the passage of colonial legislation without any input from the colonists. The interruption in considering the bill created an opportunity for widespread debate in both colonies.

Much of the Upper Canadian discourse focused on the bill's specific provisions as they would affect that colony alone.¹⁸ There was also direct discussion of an assembly that combined French and English; however, there was little comment on the bill's provision to give Upper Canada an equal number of seats (at a time when its population was one-half that of Lower Canada). The bill's provision that all the records of the Assembly would be in English and that, after fifteen years, only English would be allowed in debates evoked rather more Upper Canadian interest.¹⁹ Ultimately, the Assembly voted narrowly to take no position but to await imperial legislation. Lower Canadians put the most positive possible reading on this equivocal result: "quoique l'on ait demandé à Législature du Haut-Canada de donner son appro-

bation à cette mesure, elle a néanmoins refuse de le faire en référant aux requêtes des habitants de la Province, dont la majorité est décidément opposée à l'Union propose..."²⁰

Upper Canadian political leaders were divided on the union issue, but that division cut across both embryonic party lines and attitudes towards *canadiens*. The assembly of 1820-24 usually provided majorities for the provincial executive. However, it was the first to see a coherent opposition emerge, centred on Robert Nichol, W.W. Baldwin, and M.S. Bidwell.²¹ Amongst the Tories, there were sharp disagreements over union, which raised issues of how far political allies could politely disagree.²²

A division also arose on lines of geography as well as the relative weight of commercial vs. political/constitutional/religious factors. Niagara (Robert Nichol, W.H. Merritt), Kingston (John Macaulay, Christopher Hagerman), and eastern Upper Canada were more closely tied to the 'empire of the St. Lawrence.' The colonial capital (John Strachan, John Beverley Robinson, George Markland) felt more of the latter factors. Of

¹⁹ John Willson in the *Kingston Chronicle*, 8 November 1822. Archibald Mclean in the *Kingston Chronicle*, 7 January 1823. W.W. Baldwin in the *Kingston Chronicle*, 7 March 1823.

²⁰ Lamonde and Lorin, *Louis-Joseph Papineau*, 55-56.

²¹ In the early 1820s, the Upper Canadian Legislative Assembly had only begun to separate into supporters and opponents of the provincial executive.

²² John Macaulay spoke strongly in favour of union and was not open to adverse comment. See Jonas Jones to John Macaulay, 26 November 1822, Archives of Ontario (hereafter AO), *Macaulay Papers*. Both John Strachan and Jonas Jones had written to Macaulay to commend his speech, but each sought to politely disagree, to which Macaulay took offence: John Strachan to John Macaulay, 8 and 13 November 1822; Jonas Jones to John Macaulay, 8 November 1822, AO, *Macaulay Papers*. John Strachan would not discuss union with John Richardson because he was too vehement on the issue. John Strachan to Simon McGillivray, 1 November 1822, AO, *Strachan Papers*.

course, there were exceptions: for example, Jonas Jones (Grenville) opposed union.²³ The failure to unite in 1823 allowed moderate disagreements, while the reality of a union in 1839 resulted in much sharper conflicts, as Macaulay and Hagerman were ultimately forced to support a specific union proposal they had initially opposed, which in turn outraged John Strachan.²⁴

Some supporters of union regretted that the old province of Quebec had ever been divided. As a consequence of the 1791 Act, "two distinct interests were thus set up and acknowledged, where the natural position of the country and sound policy required, that only one should have been formed and promoted."²⁵ Not only had the division encouraged the growth of French-Canadian distinctiveness, but it also put Upper Canada at their mercy: "it is alarming to reflect, that such a people have it in their power, as long as these Provinces remain separate, to impose such restraints upon our external commercial intercourse as their caprice may dictate."²⁶ Pro-union Christopher Hagerman (Kingston) was among the most vehement critics of the Lower Canadian Assembly which he denounced as having an anti-commercial

spirit: "these gentlemen would be glad to maintain their feudal system, as repugnant to commercial spirit."²⁷ In a highly unusual move, L.P. Sherwood (Leeds) left the Speaker's chair to support union. He considered that while French Canadians had had a no "rational concept of liberty" when first granted their constitution, a change was now underway.

The French Canadians have already acquired a taste for rational liberty from the administration of the Criminal Law of England, from the trial by jury, and from the commercial intercourse with England. The growing predilection would be matured, and become a habitual feeling, by a more intimate connection with the people of Upper Canada who were all English.²⁸

A pro-union public meeting in Kingston declared:

We look to the union of the two Legislatures as the only scheme devised to make us one people, to infuse into the great mass of the population the same feelings of Britons, to mold us gradually into the shape and substance of a British colony.²⁹

Archibald Mclean (Stormont) opposed union but saw the assimilation of French Canadians as ongoing:

It must be evident that the English language is gaining ground very rapidly in Lower

²³ Robert L. Fraser, "Like Eden in Her Summer Dress: Gentry, Economy, and Society: Upper Canada, 1812-1840" (Ph.D. diss, University of Toronto, 1979), 261-82, 298-307.

²⁴ *Ibid.*, 318-23. John Beverley Robinson similarly condemned W.H. Merritt for acting purely from private economic motives rather than in the public interest as he saw it.

²⁵ *Ibid.*

²⁶ Cited in Ormsby, "The Problem of Canadian Union," 277-95.

²⁷ *Kingston Chronicle*, 1 November 1822.

²⁸ *Upper Canada Gazette Weekly Register*, 20 February 1823.

²⁹ *Kingston Chronicle*, 1 November 1822.

Canada.... The period is not very far distant, when English will become, as I think it ought to be in a British Province, the language of the Legislature and of the Courts of Justice.³⁰

To those who questioned whether such a ready assimilation was possible, Charles Jones (Leeds) proclaimed that if animals could be domesticated, "Shall it be said that the Canadians are more ferocious and less tractable?"³¹

While the colony's leaders divided sharply for and against the union, some on both sides agreed that the French Canadians were a distinct people, or in the terminology common in that era, a distinct race: "Our Brethren of Lower Canada, sprung from a distinct origin speak a different language, profess a different form of religion, are wedded to their own peculiar manners and customs."³² Those who favoured union either stressed the loyalty of the French Canadians and the ease with which the two peoples could work together or took the diametrically opposite position and urged union as a way to extinguish French-Canadian nationality in phrases that anticipate Lord

Durham's later report.³³ We can find a similar flexibility amongst those who opposed union.

Proponents of union held diverse views of French Canadians. "Rusticus," writing in the reform-minded *Upper Canada Herald* asserted,

It will be readily admitted that the French Canadians have proved themselves as loyal, as any portion of His Majesty's subjects in Canada; and have evinced the most determined opposition to frustrate the designs of the United States, whenever they presented themselves as enemies to the British government: They have nevertheless acted with the most determined resolution to preserve the Constitution as given to them from contamination³⁴

With that positive estimation of the French Canadians, they needed nothing else to make the union work, the sentiment being that "equanimity, conciliation and courtesy may attend it, that neither ungenerous triumph nor wounded minds may deform it."³⁵ However, a Wentworth County public meeting addressing the legislature felt no such assurance: "Your petitioners do not believe

³⁰ *Kingston Chronicle*, 3 January 1823. That may seem superficial (at best) to us, but Lower Canada's official agent in the House of Commons, Arthur Roebuck, made a similar remark in over a decade's time: "In everything except language, and a few inconvenient laws, the population of Lower Canada is essentially English." *Westminster Review* 26 (October 1836), as cited in Janet Ajzenstat, *The Political Thought of Lord Durham* (Montreal: McGill-Queen's University Press, 1988), 146. On Roebuck's role in the 1830s, see Peter Burroughs, *The Colonial Reformers and Canada, 1830-1849* (Toronto: McClelland and Stewart, 1969), 50-52.

³¹ *Kingston Chronicle*, Supplement, 26 March 1823.

³² *Ibid.*

³³ "...Such a measure should be adopted as would without any positive enactment sink the French name, their language and narrow ideas of commerce." John Strachan to Simon McGillivray, 1 November 1822, AO, *Strachan Papers*.

³⁴ *Upper Canada Herald*, 22 April 1823.

³⁵ *Kingston Chronicle*, 28 June 1822.

that two bodies so heterogeneous and discordant in all their parts as the Legislatures of Upper and Lower Canada must necessarily be, can unite.”³⁶ Other anti-union voices went further: assimilation was not only impossible but unjustifiable. Where John Strachan observed that to the British, the union was “for the purpose of instilling English feeling into the bosom of the French through the medium of Upper Canadians,” Tory Henry Ruttan, at a public meeting in the Newcastle District, objected to the use of Upper Canada as a weapon: “how great the injustice of thinking us participants in an event so humiliating and, I might add, degrading to our native and adopted country!”³⁷

While some denounced French Canadians indiscriminately as “superstitious and ignorant,” Robert Randall (Lincoln) declared, “he knew the French Canadians, he was bound to them by all the ties of friendship and gratitude; they were a learned, honourable, enlightened, and virtuous body of men.”³⁸ Although many Upper Canadians asserted they would accept union if the terms sufficiently favoured their colony, anti-union resolutions addressed to the legislature rejected

such opportunism. That of the Home District declared,

... This project would give us an invidious, and in our minds, an unconstitutional control to us over the equal rights of our fellow-subjects in Lower Canada; whose rights being as dear to them, as our rights are to us, we would grieve to see impaired against their wishes and consent.³⁹

Again, Wentworth’s petition made a similar point:...

If any ascendancy should be given to the representation of this province over Lower Canada, petitioners do not feel entitled to it from their population; and it would offer an injustice to their brethren of the lower province, with whom they have neither any desire to gain nor to break in upon their rights and place.⁴⁰

In the legislative debates of 1822-23, two members emerged as the most thoughtful commentators on the French Canadians concerning the proposed union. The long-serving, Tory assemblyman, John Willson (Wentworth), credited the 1791 Constitution Act with saving the early English-speaking settlers from assimilating into Frenchmen. “The French language being that of seven eighths of the Legislature, and of the people with

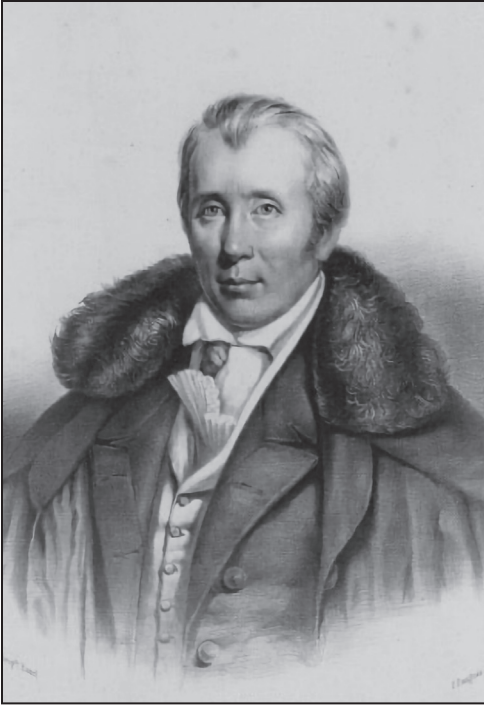
³⁶ As cited in Arthur G. Doughty and Adam Shortt (ed.), *Documents relating to the Constitutional History of Canada*, J. de L. Taché, Ottawa, 1918, volume 3, 143.

³⁷ John Strachan, “Observations on a ‘Bill for uniting the legislative councils and assemblies of the Provinces of Lower and Upper Canada ...’” (London: W. Clowes, 1824), 21. *York Weekly Register*, 5 December 1822.

³⁸ *Kingston Chronicle*, 26 March and 11 April 1823.

³⁹ CO 42/194, Petition of the Home District, 121. John Strachan was of quite a different mind: he considered everyone would favour a union if only the terms were favourable to Upper Canada. John Strachan to John Macaulay, 8 and 20 November 1822 as well as 2 December 1822, AO, *Macaulay Papers*, John Strachan to John Beverley Robinson, 27 February 1823, AO, *Strachan Papers*.

⁴⁰ CO 42/194, Petition of the County of Wentworth, 124.



William Warren Baldwin (April 25, 1775 – January 8, 1844)

An hon. Member said the French Canadians will be gradually melted down and in a few generations reduced to one language; this he (Mr. W) said, was a case that stood without precedent in the annals of mankind, since different languages and customs had existence on earth. Nothing but extermination could change the language and customs of a numerous and dense population, or transplanting and thinly interspersing them among another people, but this was not the age, neither was England the nation for the former nor yet for the latter, without the consent of each individual.⁴³

In other words, due regard for British liberty ought to prevent any British attempt to assimilate the French Canadians.⁴⁴

W.W. Baldwin (York and Simcoe) declared that “to speak of national prejudices with contempt argued a want of humanity, and, in a statesman, a want of wisdom. Every country had its prejudices—even proud England herself had

whom we were so closely connected in political interest, would have diffused itself through this part of the country.”⁴¹ In the present situation, he “denied the power of the House to meddle with the constitution....”⁴²

⁴¹ *Kingston Chronicle*, 8 November 1822. First elected in 1809, Willison served continuously until 1834. *Dictionary of Canadian Biography* (hereafter *DCB*), volume VII.

⁴² *Kingston Chronicle*, 1 November 1822. J.K. Johnson, *Becoming Prominent* (Montreal: McGill-Queen's University Press, 1989), 236-37.

⁴³ *Kingston Chronicle*, Supplement, 28 March 1823.

⁴⁴ On Tory ideas of “British liberty,” see Denis McKim, “Upper Canadian Thermidor: The Family Compact and the Counter-revolutionary Atlantic,” *Ontario History* 106:2 (Autumn 2014), 235-62. Michel Ducharme, *The Idea of Liberty in Canada during the Age of Atlantic revolutions, 1776-1838* (Montreal: McGill-Queen's University Press, 2014), 90; even William Lyon Mackenzie, at least early in his Upper Canadian career, preferred “British liberty” to “American liberty.” The contents of that liberty appeared to be historically granted liberties of Englishmen rather than Enlightenment abstractions: See Alex Martinborough, “Debating Settler Constitutionalism: Consent, Consultation, and Writing in a Transatlantic Debate, 1822-1828,” *Canadian Historical Review* 102:1 (March 2021), 31, 43 and E.A. Heaman, “Rights Talk and the Liberal Order Framework,” in Michel Ducharme and Jean-Francois Constant (ed.), *Liberalism and Hegemony: debating the Canadian liberal revolution* (Toronto: University of Toronto Press, 2009), 155-58.

her own prejudices.”⁴⁵ He insisted that implicit in the 1791 imperial statute was the requirement to consult the people governed by it before making substantial changes to it. He wrote:

Were they to be angry with the Lower Canadians because they spoke French—the elegant and fashionable language of Europe? Were they to be angry with the Lower Canadians for the difference of their manners, Laws and religion? If wisely considered all these prejudices must be considered as the sure foundation of the long continuance of the British Constitution.⁴⁶

He denounced those unionists who attempted “to coerce the Sister Province, in a manner insulting to the feelings of the French Canadians.”⁴⁷ Even among supporters, Sherwood rejected the proposed Canada Trade bill as an invasion of the Lower Canadian assembly’s jurisdiction. “It has a direct [sic] giving us a restrictive power on their proceedings and financial measures.”⁴⁸ Where Hagerman described the French Canadians as liberated by the Conquest from “a state little short of actual slavery,” Baldwin stressed that they were no longer to be thought of as “Frenchmen” as they were in the process of adapting:⁴⁹

Just as this change of condition was about to effect a change in their character, just as it was about to change the Frenchman into the Englishman; or rather, as it was about to

change the Frenchman into the Canadian; (for there might be, and there was, a Canadian character distinct from the French, and though not English was yet properly reconcilable to and perfectly consistent with English feelings, [the] English connection, and English Constitution)... this faction take alarm, and would deprive them of their rights, and break the public faith merely to gratify private ambition.⁵⁰

The complexity of this passage might well have reflected some confusion in Baldwin’s mind. He appeared to share the common notion that a constitutional and legal framework could change national character. Instead of urging a union of the provinces for that end, he argued that it was already taking place. But unlike his fellow anti-unionist, the Tory Archibald Mclean, he did not see the result as an Englishman but as a Canadian. The ‘Canadian’ evidently was a francophone whose love of English constitutional liberty meant that his continued national existence was “perfectly consistent with English feelings.”

John Strachan and John Beverley Robinson each published pamphlets after the proposed union bill—which both opposed—had been put off. Strachan deprecated the idea of banning the use of French in the legislature for “that galling insult which it appears to imply. It is natural for all men to speak the language of their parents,

⁴⁵ *Kingston Chronicle*, 7 March 1823.

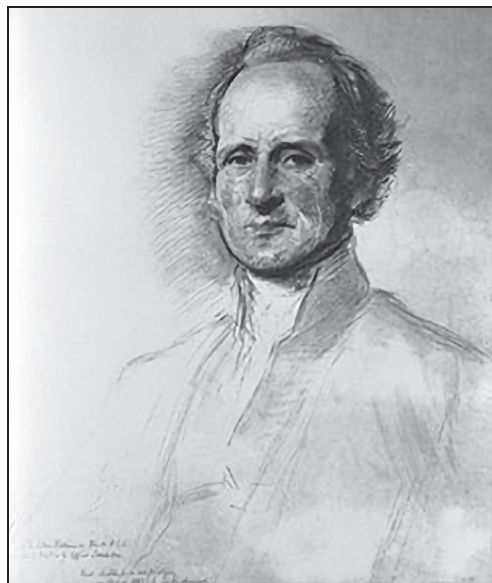
⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Upper Canadian Gazette Weekly Register*, 20 February 1823.

⁴⁹ *Kingston Chronicle*, 1 November 1822.

⁵⁰ *Ibid.*, 7 March 1823.



Right: John Strachan (1778-1867) and, above, John Beverley Robinson (1791-1863), drawing by George Berthon (courtesy Metro Toronto Library).

for it is connected to all our dearest and earliest associations.”⁵¹ Nevertheless, he contended, “The peasantry are in general so ignorant as to have no distinct notion of free government, few of them can either read or write.”⁵² Robinson was more circumspect, saying the French were “a hardy, frugal and contented population... attached by disposition and habit to monarchical government.”⁵³ However, both saw the Lower Canadian assembly as dominated by “a few malicious demagogues,” although Robinson added that this was a general problem in colonial legislatures.⁵⁴

Perhaps their greatest difference was about religion. Strachan pointed out that while Roman Catholics were protected by imperial statute, the Church of England depended on the colonial legislature: “To hurt the Church of England, the Roman Catholics of Lower Canada will readily join with all denominations.... But let us suppose, what is not a very violent supposition, that the Governor-in-Chief and his crown officers were sectaries, and may not the wildest things be carried out against the Church ...?”⁵⁵ By contrast, Robinson merely noted that

⁵¹ Strachan, “Observations,” 7.

⁵² *Ibid.*, 9.

⁵³ John Beverley Robinson, “Letter to the Secretary of State...” 26 December 1824, York, Upper Canada, 5.

⁵⁴ *Ibid.*

⁵⁵ Strachan, “Observations,” 33-35. James Stuart, “Letter to His Majesty’s Undersecretary of State,

protestants might find themselves in a minority. But his main fear was where Catholic and Protestant are in roughly equal numbers as religious strife might arise after it had long been absent.⁵⁶ Most agreements lay in seeking a more general colonial union, which could prevent “French domination” without the loss of “the Canadian or French character.”⁵⁷

Across all divides—Tory/Reform, anti-/pro-union—Upper Canadians made it clear that the 1791 Act was a constitution, not merely an imperial statute. “Rusticus” remarked that French Canadians “acted with the most determined resolution to preserve the Constitution as given to them from contamination.” The Home District resolution refused a union that would “give us an invidious and... an unconstitutional control” over “the equal rights of our fellow-subjects.” John Willson opposed any effort to “meddle with the constitution.” Even L.P. Sherwood, a Tory union supporter, opposed the Canada Trade Act (Robinson’s proud achievement) as it invaded the Lower Canadian assembly’s jurisdiction. British authorities were clearly warned against any future attempt at

constitutional change by mere imperial enactment.

Separated on most other issues, W.W. Baldwin and John Strachan opposed legislation against the French language. The latter called it “that galling insult.” Baldwin pointed to “the elegant and fashionable language of Europe” as one of those differences which were part of “the sure foundation of the long continuance of the British constitution.” The moderate Tory John Willson said, “Nothing but extermination could change the language and customs of a numerous and dense population.”

In Upper Canada, the legislative debate ended in an almost equal division which narrowly supported a resolution to accept whatever the imperial parliament decided.⁵⁸ The revenue crisis proved to be an insufficient motive for the British to re-unite the Canadas in the 1820s. Its immediate resolution came in the Canada Trade Act, which provided Upper Canada would receive one-fifth of the customs revenues at Quebec, with the promise that they would review this proportion every three years.⁵⁹ Edward Ellice’s private concerns were also han-

respecting a plan for a general union of the Canadas” (London: W. Clowes, 1824), 19 dismissed Strachan’s worries, noting that “the Roman Catholic Religion may be considered as an established religion in Canada, and those who profess it have no interest in advancing the views which Sectarians might entertain.”

⁵⁶ Robinson, “Letter,” 16. Ducharme, *The Idea of Liberty*, 141.

⁵⁷ Strachan, “Observations,” 9.

⁵⁸ CO 45/153, *Journal of the Upper Canadian Assembly*, 1823, 19 February, 467-69. The vote was 18-15. Reformer Baldwin voted with Tories Hagerman, Willson, Ruttan, and Jonas Jones (Grenville) in favour; Reformers Nichol and Randall voted against along with Tories Charles Jones (Leeds) and Archibald McLean. See also the *York Weekly Register*, 20 February 1823.

⁵⁹ Upper Canadian petitioners commonly credited the bill with resolving all problems. See especially the Kent and Glengarry county petitions, CO 42/194, 122, 127. Gerald M. Craig, *Upper Canada: The Formative Years, 1784-1841* (Toronto: McClelland and Stewart, 1963), 102.

dled separately: the Act passed allowed the division of his seignury to sell the ungranted part under terms of English civil law.⁶⁰

The Upper Canadian legislative debates came to inconclusive ends. The Council approved Strachan's resolution merely giving thanks for the gracious privilege of consultation without offering any advice in an exaggerated show of deference to an imperial Parliament which would legislate from its larger perspective.⁶¹ In spite of all the talk of the 1791 Act as a constitution not to be unilaterally altered, the Assembly narrowly voted to defer to the imperial Parliament. Many see W.W. Baldwin's vote in favour of this as puzzling. One way to read it is to reference his approval (vs. Strachan) of local petitions to Britain: let the people speak directly to this issue.⁶² The Assembly seemingly having no 'mandate' on a very substantial and entirely new issue should not be read as suggesting popular sovereignty. In 1823, the imperial Parliament's sovereignty was never in question.⁶³ The point was, who had the best right to give that Parliament advice?

Strachan thought it was people like himself. Baldwin considered local meetings, debates and petitions preferable.

The second major debate over union occurred under much different, more severe circumstances. Rebellions in both colonies, the suspension of representative government in Lower Canada (replaced by an appointed Special Legislative Council), and renewed threats of invasion preceded it. The second union bill—far from being a minor proposal—became the avowed purpose of the British government by 1839. In the face of its apparent inevitability, all but the most adamant resistance in Upper Canada melted away. The assembly after the 1836 election had a heavily Tory cast. There was now much greater pressure than in the early 1820s to keep in step with one's political partners.

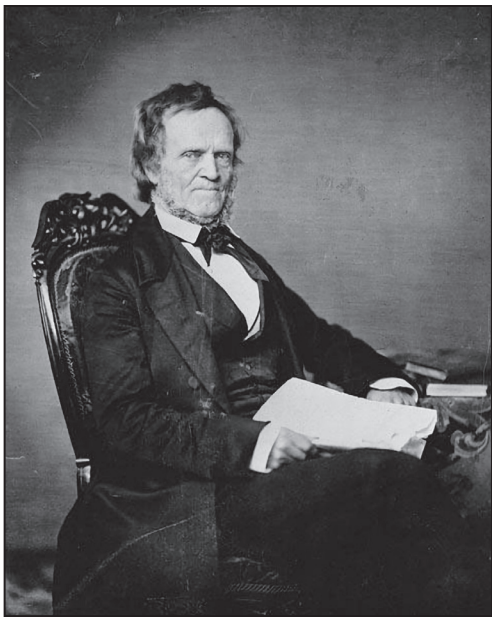
Despite the increased number of newspapers in 1838-40, the public sphere contracted, as did the scope of its comment. The most radical of the Reform editors—William Lyon Mackenzie—was in exile. Open treason and the trials which followed made visible dis-

⁶⁰ Between the two major debates came another, which proposed the annexation of Montreal as a solution to problems economic and political. Fraser, "Like Eden in Her Summer Dress," 288. See also R.B. Sullivan's memorandum "the City and Island of Montreal (with the intervening territory)" (annotated by Hagerman, Macaulay and Sir George Arthur, lieutenant governor of Upper Canada), in Charles R. Sanderson (ed.), *The Arthur Papers 2* (Toronto: University of Toronto Press, 1957), 254. However, the *Christian Guardian* (18 December 1839) denounced it as robbery to pay one's debts.

⁶¹ This was contrary to what Strachan had written to Macaulay on the propriety of the legislature giving advice rather than popular meetings: Martinborough, "Debating Settler Constitutionalism," 36.

⁶² Martinborough, "Debating Settler Constitutionalism," 38.

⁶³ Ducharme, *The Idea of Liberty*, 86. It is misleading to see "colonial sovereignty" in any of this. See Graeme Patterson, "Whiggery, Nationality, and the Upper Canadian Reform Tradition," *Canadian Historical Review* 56:1 (March 1975), 33. While "the idea of autonomous parliaments being linked only by allegiance to a common crown—was a very old one in Ireland," it was a kingdom, while Upper Canada was only a colony. See also Martinborough, "Debating Settler Constitutionalism," 42.



William Lyon Mackenzie (1795-1861)

sent risky.⁶⁴ It was the now impeccably loyal Egerton Ryerson and the *Christian Guardian* which could take such risks.⁶⁵

No Upper Canadian political figures defended the integrity of French Canada or expressed concern to uphold their political liberties until some Reformers saw the potential for combined action in a union to win a one-party responsible government. Tories foresaw such a combination only in their nightmares. Roman Catholic Bishop Alexander Macdonell had feared such an outcome even in the earlier union proposal. Scotch radicals,

Irish rebels, and American republicans of Upper Canada would welcome French radicals.⁶⁶ In the immediate aftermath of the Rebellions, many Upper Canadians came to see the *canadiens* as haters of all things British. If they could and would not assimilate, they had to be dominated by an all-English government. When union became a reality several years later, political leaders had to deal not with possibilities but with the practical means of carrying on the Queen's government before attitudes shifted again. William Draper, less than a year after union, informed the governor general that French Canadian support was essential to maintain a majority in the assembly: "the opportunity of securing the French party ought not to be lost upon any question affecting merely an individual member of the Government."⁶⁷

Given the more polarized character of Upper Canadian politics, it is especially regrettable that there was much less reform comment on union. Not only were there fewer reform members in the legislature, but reform-oriented newspapers tended to avoid the topic of French-English relations, especially in the years of rebellion. The publication of

⁶⁴ Jerry Bannister, "Canada as Counter-Revolution: The Loyalist Order Framework in Canadian History, 1750-1840," in Ducharme and Constant, *Liberalism*, 112. Over 100 people were eventually indicted for treason.

⁶⁵ *Christian Guardian*, 17 July 1839. Ducharme, *The Idea of Liberty*, 133.

⁶⁶ Fraser, "Like Eden in Her Summer Dress," 262.

⁶⁷ George Metcalfe, "Draper Conservatism and Responsible Government in the Canadas, 1836-1847," *CHR* 42:4 (1961), 306. See also Monet, *The Last Cannon Shot*, 103, who makes clear the difference between adding individual *canadiens* to the Executive Council, seen as 'vendus,' and adding the 'the French party' as a partner in power.

Lord Durham's report appeared to mean union was inevitable. Consequently, debates focused more on the *terms* of union than the *idea* of union.

Even before the British had finally responded to Durham's union recommendation, the Tory legislature had tried to lay down what those terms should be. Many of the conditions intended to favour Upper Canada appeared in the Union Act: a capital in Upper Canada, a combination of the two provinces' debts, higher property qualifications for assembly and council members, no change in legislative council personnel, and an equal number of members from each province.

Four general themes ran through the debates, which specifically dealt with the French Canadians. Far more than in 1823, Upper Canadian attention by 1839 focused on the French-Canadian professional middle class and the part it was said to play in Lower Canadian politics. The Catholic clergy and Catholicism, in general, drew public comment, unlike the earlier debate. Far more frequent were explicit Upper Canadian comments of French-Canadian hatred for all things English. Where Upper Canadians had once dwelt on their smaller population relative to the French Canadians, by 1839, they were confident that soon the *canadiens* would be outnumbered.

As the crisis in the lower province drew to its climax during 1837, some To-

ries complacently put their trust in the supposed virtues of the 'common man'.

Our worthy friend, *Jean Baptiste*, would feel inclined to ask the simple question of *pour-quoi* when he was invited forth to the field of battle, and desired to leave his home, where independently and happily he has hitherto 'pursued the even tenor of his way'.⁶⁸

While the simple peasants might, inexplicably, elect 'demagogues' to the assembly, it was patronizingly felt that such people could never take up arms to follow those same leaders.

The reform-leaning *Upper Canada Herald* sought to disavow all connection between any Reformer and the *Patriotes* of Lower Canada. It published a letter from William Lyon Mackenzie to the Irish *Patriote* Dr. O'Callaghan, which was supposed to show how little they had in common. It had to concede, however, "Mackenzie has lately attempted to get up some meetings in favour of the Lower Canadian faction, but that is only for public effect, and because the two parties, Papineau and his tail, and Mackenzie and his tail, though they hate each other mortally, yet hate the British Government and constitution more."⁶⁹

Even as General Sir John Colborne's troops marched into the countryside around Montreal, the editor of the *Upper Canadian Herald* lectured his fellow Upper Canadians based on his two-year residence in Montreal: "The men of property have remained in the radical ranks....

⁶⁸ *Chronicle and Gazette*, 18 October 1837. See also the *Upper Canada Herald*, 2 May 1837.

⁶⁹ *Upper Canada Herald*, 15 August 1837.

⁷⁰ *Upper Canada Herald*, 28 November 1837.

The radicals in Lower Canada are striving to preserve the feudal system, which benefits only men of property....⁷⁰ The paper called it “a perversion of language” to call the *Patriotes* ‘reformers,’ “for they resolutely maintain the hateful abuses of the feudal system of the dark ages.”⁷¹ According to the newly arrived Scottish Liberal, Adam Ferguson, men like Papineau “have led the poor *habitans* [sic] into rebellion, and then, like dastardly poltroons, left them in the lurch.”⁷²

The shock of seeing armed resistance in the six counties around Montreal hit both Tories and Reformers. Solicitor General William Draper considered that French Canadians were “*en mass* an ignorant and illiterate people” who had fallen prey to “traitors of French origin.” “Doubtless many were engaged in the late rebellion, but the Lower Canadians were a simple-minded people and easily deluded.”⁷³ The *Upper Canada Herald* was equally patronizing: “It is not kindness for a parent to allow his child to grow up without wholesome instruction and restraint, indulging all his passions to the utmost, and allowing him to become the victim of sharpers and black-legs.”⁷⁴

The Colony, that is the Assembly, think themselves well qualified to govern the coun-

try without your interference, and since you have left them unchanged when you had a fair opportunity of improving their character, they will soon show their gratitude by giving you a stab to the heart.⁷⁵

The warning must have sounded prescient just over a year later when several thousands of *Patriots* were drilling and electing officers to oppose the British. The previous union proposal had been about money. “Now the very existence as a British colony is at stake; as well as everything that is dear to us.”⁷⁶

Shocked out of complacent patronizing attitudes towards ordinary French Canadians, many Upper Canadians concluded simply that they “knew nothing of Englishmen but to hate them.”⁷⁷ Solicitor General Draper agreed: “From the early period they have cherished a national hostility towards the English....”⁷⁸ In a series of passionate speeches, Attorney General Hagerman—a union supporter in 1823, but by early 1839, an opponent—denied any hope of assimilating the French Canadians: “it was believed that by the introduction of British laws and the general diffusion of education and the English language, the deplorable events that have occurred during the last eighteen months might have been

⁷¹ *Ibid.*

⁷² *British Colonist*, 18 December 1839.

⁷³ *Chronicle and Gazette*, 6 April 1839.

⁷⁴ *Upper Canada Herald*, 31 December 1839.

⁷⁵ *Upper Canada Herald*, 25 April 1836.

⁷⁶ *British Colonist*, 18 December 1839. The comment was by James Crook, who had been in the Assembly in 1822. By 1831, he was a legislative councilor.

⁷⁷ *British Colonist*, 25 December 1839.

⁷⁸ *York Examiner*, 1 January 1840. His colleague, Christopher Hagerman, the Attorney General had already spoken along the same lines: *Chronicle and Gazette*, 3 April 1839.

averted.” But that “great and benevolent object was suffered to pass by.”

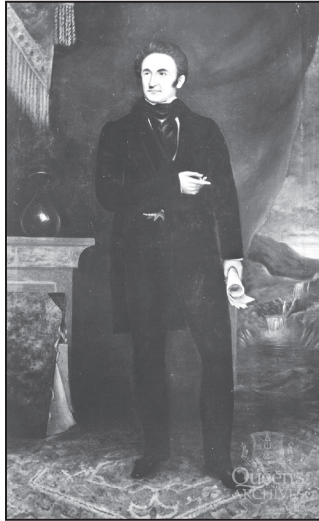
The latent jealousies that then existed among the Canadians were awakened by a supposed attempt on the part of the British to destroy their cherished institutions—language—religion and laws, and to subject them to a disgraceful thralldom; and to this feeling it is impossible to deny, is to be traced the recent rebellion in Lower Canada.⁷⁹

The die-hard ‘ultra-Tories’ based their rejection of union partly on this thesis that assimilation would never work because of the French Canadians’ inveterate hatred for all things British.⁸⁰

Strangely absent from the 1823 public debates had been any public mention of religion with respect to a proposal to place predominantly protestant Upper Canada in a union where they would be outnumbered two to one by Catholics.⁸¹ The Lower Canadian Catholic Church was ‘established’ in all but name. It had legal power to collect tithes from Catholics, its Bishop Plessis sat on the gov-

ernor’s council, and its parish structure provided what little local government

there was for most of the colony’s rural majority. By contrast, the Church of England in Upper Canada was struggling to maintain a mere claim to establishment that extended little beyond an exclusive right to the as-yet profitless Clergy Reserves and an attempt to control the governing of the colony’s future higher education. As that union proposal failed, there is no way of knowing how those two very different notions of



Christopher A. Hagerman (1770-1847). *Queen's University Archives*

establishment might have co-habited in a united Canada. In the crisis of 1837-41, the Conservatives were divided in their attitudes towards the Catholic Church and the prospect of living with a Catholic population nearly as numerous as the combined total of protestants.

The predominant Tory view favoured the Catholic clergy as a force for social stability in both provinces. A correspondent to the *Chronicle and Gazette* argued that “their influence in restoring the country to a sound and healthy state

⁷⁹ *Chronicle and Gazette*, 3 April 1839.

⁸⁰ Hagerman was not alone among the Tories, who were often deeply divided on union: Carol Wilton, *Popular Politics and Political Culture in Upper Canada, 1800-1850* (Montreal: McGill-Queen's University Press, 2000), 212-18.

⁸¹ John Strachan expressed his private concern about Catholic dominance: John Strachan to W. Horton, 5 June 1824, AO, *Strachan Papers*. See also Strachan, “Observations,” 33-35. The government’s bill provided for a British veto over the placement of Roman Catholic clergy, a clause that John Beverly Robinson dropped in his own proposed revision. Ormsby, “The Problem of Canadian Union,” 283.

must be great—very great.” Furthermore, “It is not to be presumed that a people who are exclusively Roman Catholic, who yield a cheerful and affectionate obedience to the powerful way which that Church is well known to exercise over its members...” would support a *Patriote* call to arms.⁸² Only those few ultra-Tories who held out against union pointed to the threat of Catholic dominance. J.W. Gamble (York) decried a union that “would be subversive of the Protestant religion.”⁸³

Reformers generally rejected the protestant cry. Adam Ferguson, in a letter to the *British Colonist*, denied “that we shall open wide the door to popery, and that Roman Catholics will inundate the land.”⁸⁴ The *Upper Canada Herald* did “not fear anything on that score. The Lower Canadian Assembly was always more liberal to other forms of faith than the Legislative Council was.”⁸⁵

On the eve of the rebellions, a correspondent of the *Chronicle and Gazette* had confidently asserted that “the disparity of population will rapidly diminish, and in a few years cease altogether.”⁸⁶ Similarly, Durham had pointed to Upper Canada’s recent rapid growth (and the presence of the English in Lower Canada) to argue that such a union need

never have a French-speaking majority in its legislature. The British government did not share his confidence, instead providing equal representation for the two provinces irrespective of population.

Tories were dissatisfied even with that level of over-representation. John Marks (Frontenac) worried about being “swallowed up and lost in the ocean of French Republicanism.”⁸⁷ Even the Speaker of the House entered the debate to declare that union of the colonies might produce “a French radical rebellious government” whose “first act of the Parliament would be to ask for a separation from the mother country.”⁸⁸ The most extreme expression came from an emotional Christopher Hagerman, who declared it was “indeed most distressing to contemplate the condition of a people one half of whom were waiting a favourable opportunity to destroy the other.”⁸⁹ As Hagerman’s remarks quoted earlier showed that the Tories no longer had confidence that the good influence of British laws and constitution would produce obedient subjects. In fact, the ultra-Tory *Patriot* had already noted that “the Parliament of Lower Canada [had been] working for years for the destruction of our connection with England; yet, to a great extent, they used constitutional

⁸² *Chronicle and Gazette*, 28 October 1837.

⁸³ *York Examiner*, 8 January 1840.

⁸⁴ *British Colonist*, 18 December 1839.

⁸⁵ *Upper Canada Herald*, 18 August 1840.

⁸⁶ *Chronicle and Gazette*, 4 October 1837.

⁸⁷ *British Colonist*, 15 March 1838.

⁸⁸ *Upper Canada Herald*, 7 January 1840.

⁸⁹ *Chronicle and Gazette*, 3 April 1839.

weapons.”⁹⁰ That led some to call for a change of British principles in order to disenfranchise a large number of French Canadians.

John Strachan contributed to both debates on union. He wanted an English ascendancy and terms highly favourable to his own province's interests, but he challenged what he considered coercion each time. While public records might only be kept in English, he opposed banning French in debates.⁹¹ By a general British North American union, John Strachan was determined that Lower Canada's French majority would lose its power.⁹² Yet he opposed union without what people would later call 'representation by population' or the disenfranchisement of French Canadians. In similar ways to John Beverley Robinson, the pre-eminent 'old school' Tory presented a strange mixture of, on the one hand, assimilationist authoritarianism with, on the other hand, respect for the basics of representative government and "French feelings" focused on language and religion.⁹³

On the continuance of the British connection, the Tories revealed a profound insecurity, which even the prospect of rapid population increase did

not remedy. Amidst the clash of arms, the editor of the *Chronicle and Gazette* reflected deeply on Upper Canada's location and prospects.

The more we mediate upon the isolated position of Upper Canada... the more we incline to advocate the expediency, the necessity of a reunion of the Province. The design of Papineau and his faction to make us practically feel this isolation... is no longer concealed but openly acknowledged.... [If he succeeds, we would be left with] the alternative of contending single handed with that faction, then successful, to gain our way to the sea—join common cause with them or the United States—or starve in the wilderness.⁹⁴

Tory John Cartwright (Lennox and Addington) returned to these dire prospects. "Shut out as we are from the ocean by a colony, whose inhabitants are hostile to everything British, and having in our front a nation whose government cannot restrain its subjects from committing aggressions upon us. What security have we?"⁹⁵ The British government's espousal of union brought many Tories to desperation. George Boulton (Durham) frankly concluded, "the people of Upper Canada were now about to be sacrificed to please the Lower Canadians and the people of England."⁹⁶

Tory newspapers responded with

⁹⁰ *Patriot*, 5 March 1841.

⁹¹ John Strachan to Simon McGillivray, 1 November 1822, AO, *Strachan Papers*.

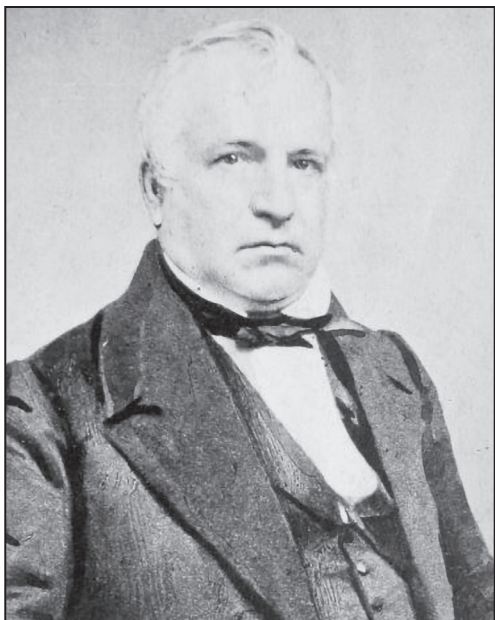
⁹² Strachan, "Observations," 35.

⁹³ Patrick Brode, *John Beverley Robinson: Bone and Sinew of the Family Compact* (Toronto: University of Toronto Press, 1984), 212, 215.

⁹⁴ *Chronicle and Gazette*, 25 November 1837. Henry Ruttan had also stressed Upper Canada's geographical dependence on Lower Canada: 5 December, 1822, *York Weekly Register*.

⁹⁵ *British Colonist*, 15 March 1838.

⁹⁶ *Toronto Examiner*, 7 April 1841. Michael Aikman (Wentworth) had earlier used much the same language: *British Colonist*, 29 December 1839. Even a modern historian can speculate that without the rebellion in Lower Canada, Upper Canada would have settled into peaceable ways after the turmoil of the 1836 election. Craig, *Upper Canada*, 241.



Louis-Hippolyte La Fontaine (1807-1864). William Notman photo, Courtesy McCord Stewart Museum.

predictable vitriol when the Upper Canadian Reform leader Robert Baldwin put Louis LaFontaine forward to replace him in a York County seat.⁹⁷ One of Hagerman's nightmares was such a Reform-*Partiote* alliance: "if the Legislatures of the two colonies should be united, he would ask whether there was not evident danger of a majority of the members being formed sooner or later that would ask for independence?"⁹⁸ Francis Hincks, who

had persuaded Baldwin to accept the idea of working with francophones, defended the move in his newspaper: "is it not manifestly our interest as well as our duty, to meet the people of Lower Canada with a good spirit and to endeavour to convince them that it will not be our fault if the old national origin cry should be revived?"⁹⁹ Even before Hincks' initiative, the *Upper Canada Herald* had dropped its attacks on the Lower Canadian leadership once the paper had decided to support the union. The *Christian Guardian* defended the 'Durham meetings' against a Tory JP who wanted them suppressed by force if necessary.¹⁰⁰ For Upper Canadian Reformers the combination of union with responsible government opened the possibility of taking real power for the first time. Francis Hincks, in April of 1839, wrote to Louis LaFontaine (whom he had never met) to explore the prospects for cooperation in a united Assembly. Probably for LaFontaine, the most mysterious part of the letter was Hincks' declaration "if we combine *as Canadians* to promote the good of all classes in Canada there cannot be a doubt that under the new constitution, worked out as Lord Durham proposes, the only party which would suffer would be the bureaucrats."¹⁰¹ The

⁹⁷ LaFontaine had been defeated by violence at the polls in Terrebonne, while Baldwin had been elected in both Hastings and 4th York and decided to sit for Hastings.

⁹⁸ *Chronicle and Gazette*, 3 April 1839.

⁹⁹ *Toronto Examiner*, 8 July 1840.

¹⁰⁰ *Christian Guardian*, 17 July 1839.

¹⁰¹ Francis Hincks to L.-H. LaFontaine, 12 April 1839, Louis-Hippolyte LaFontaine Papers, National Archives, volume 7-2623, translated by Jacques Moner SJ. See also John Ralston Saul, *Louis-Hippolyte La-Fontaine and Robert Baldwin* (Toronto: Penguin Canada, 2010), 98-99.



Louis-Joseph Papineau (1787-1871).

mystery would have been why an Irishman, less than seven years off the boat, thought of himself as a 'Canadian.'

The opportunity that the Upper Canadian Reformers had spotted was the possibility of achieving substantial change within the existing constitutional structure by treating the surviving *Patriotes* not as republicans but as a nation. Under L.J. Papineau's lead-

ership, the party had turned away from reforms of the existing constitution—removing judges from legislative bodies, Assembly control over provincial revenues, separation of the Executive and Legislative Councils, increased *canadien* participation on the councils (and other appointed posts), and Assembly members from the majority on the Executive Council—to a republican dead end.¹⁰² "Ironically," as Michel Ducharme expressed it—with breath-taking understatement—as those very reforms were being implemented, Papineau and his party insisted on the 'elective principle' which Britain would never consider.¹⁰³ Could republicans, chastened by military defeat, be turned back to the constitutionalism most (not all) had abandoned?

The stroke of offering LaFontaine the York County seat was made all the more poignant when it was W.W. Baldwin who accompanied the French-Canadian leader from Toronto to the constituency, met with the local Reform committee (who unanimously nominated him after twenty minutes of discussion), and then canvassed with him, meeting the voters. The man who strongly opposed union in 1823, as "insulting to the feelings of the French Canadians," now sought to protect those "feelings" in a union where the power would be shared between both groups.¹⁰⁴

¹⁰² Ducharme, *The Idea of Liberty*, 164-68.

¹⁰³ *Ibid.*, 163. Actually, he swings from "London refused reform of any kind ..." (76), "inertia broke the camel's back ..." (92), to the "fruitless struggle" (95), which caused the *Patriotes* to "lose all hope of reform" (102), to the conclusion that the 1837 clash of arms "was not largely the fault of imperial intransigence" (169).

¹⁰⁴ George E. Wilson, *The Life of Robert Baldwin* (Toronto: Ryerson Press, 1933), 131-33. Robert had wanted his father to take the York seat, before being approached to offer it to LaFontaine.

John Beverley Robinson stands out in these union debates for several reasons. Where others made speeches (briefly reported in newspapers) or, at most, wrote memoranda, he wrote a book. Consequently, his views are available in much greater detail and systematic exposition than anyone else's. He also occupied a unique place as a colonial official in London during the two major debates over reuniting the Canadas. As attorney-general in 1822 and chief justice in 1839, he was both intimately involved in the government's debates and constrained by his official status as part of that government. His conservative temperament was clear in his grounds for opposing both union proposals strenuously.¹⁰⁵ While he entered each debate from the position of conflicting with the Lower Canadian assembly majority, his experience in practical colonial politics led him to distinguish between French Canadians and the French-Canadian leaders in the Lower Canadian assembly. His apparent blanket condemnations of *canadiens* must be balanced against his more nuanced understanding of colonial politics

and his awareness of conflicting interests between the two Canadas which transcended the French-English divide. The latter insight led him to warn the British government against the presumption—common amongst the English-speaking leaders in Montreal—that a reliable anti-French-Canadian majority could be readily found in a united legislature. The events of 1841-42 would soon bear out the accuracy of his warning.

During both debates, Robinson struggled with the conflict between his role as a government officer and his desire to oppose government plans for uniting the Canadas. In 1822, he faced the added burden that he had no mandate to make any comment on the proposed union. By contrast, in 1839, Robinson acted in London not primarily as colonial chief justice but as an advocate of Upper Canadian interests in opposing the bill. Finding that his private advice did not carry the weight necessary to stop the union bill, he resorted to public opposition by publishing a book-length critique of the bill and its underlying assumptions. More than one historian has noted that going

¹⁰⁵ In an extraordinary flight of fancy, Janet Ajzenstat has striven to find “the liberal heart of Canadian toryism” in John Beverley Robinson: “Durham and Robinson: Political Faction and Moderation” in *Canada's Origins: Liberal, Tory, or Republican?*, Peter J. Smith and Janet Ajzenstat, (Ottawa: Carleton University Press, 1997). On the one hand, she ignores his political career, for example, his staunch defence of the establishment of the Church of England in Upper Canada, including its exclusive right to the revenues of the Clergy Reserves. For the political significance of an established church, see Denis McKim, “God and Government: Exploring the Religious Roots of Upper Canadian Political Culture,” *Ontario History* 105:1, (Spring 2013), 74-97. Ducharme and Constant, *Liberalism*, 9 suggest that a focus on Locke's religious principles (rather than property) would produce a very different result. On the other hand, she misrepresents his argument in 1840, again ignoring the province's political history. She baldly equates Mackenzie and Papineau and their level of support. There was no Reform “majority party”: it only twice briefly controlled the legislature (1828-1830, 1834-1836). William Lyon Mackenzie was never its leader. When Reform dominated the House of Assembly, M.S. Bidwell was elected Speaker. See also Janet Ajzenstat, *The Once and Future Canadian Democracy* (Montreal: McGill-Queen's University Press, 2003), 6, 99.

public was an admission of failure in his private advocacy.¹⁰⁶ His correspondence clearly shows his consciousness of this. Yet he felt he could not remain silent when so much was at stake. His failure in private representations led him to a public demonstration, which had an even slighter chance of success.

Both debates arose from conflicts involving Lower Canada's determination to achieve the fullest measure of self-government. Robinson's conservative temperament caused him to oppose the Lower Canadian assembly majority just as he challenged the Upper Canadian Reformers; however, he also opposed both union proposals as excessive changes unlikely to bring about their intended consequences.

Robinson believed in the necessity for what he called a "British ascendancy" (fearing the alternative "French ascendancy"). Like most of Lower Canada's English-speaking leaders, he believed in the eventual assimilation of the *canadiens*, regretted the Quebec Act had ever passed (what he believed was a turn away from such a policy), and looked forward to policies that may achieve such a goal. For example, he favoured extending the Special Council's rule for another ten years "to educate the French Canadians, to establish circuit courts among them, to spread the knowledge of the English language,

to give by degrees, if not immediately, the laws of England; and then, when Lower Canada has been thus made an English colony, to restore to it the English constitution."¹⁰⁷ He considered it unlikely that such a favourable outcome would flow from an immediate union of the Canadas.

He defended the Special Council against critics who termed it "a despotism." He pointed to the limits set by Parliament on its executive and legislative authority, "merely reverting to the form of constitution established" in 1774. He thought some amendments might be advisable for a body that would continue for a number of years, including having some elected members. Such a conservative anti-democratic stance might be expected from an 'old-fashioned' Tory. What would not be expected is his opposition to union proposals, which would create an artificial English-speaking majority by limiting the number of *canadien* voters: "If the French Canadians are not to be disfranchised, which they certainly ought not to be."¹⁰⁸ A union would not work in which French Canadians felt coerced.

Robinson repeatedly, if obliquely, questioned the assumption of French-Canadian animosity towards the British. Even after the rebellions, he insisted, "Taking them as a people, their character and conduct... I think that their *assumed*, settled, bitter, and permanent hostility to

¹⁰⁶ Brode, *Sir John Beverley Robinson*, 221; Robert E. Saunders, "John Beverly Robinson: His Political Career, 1812-1840" (unpublished master's thesis, University of Toronto, 1960); Terry Cook, "John Beverly Robinson and the Conservative Blueprint for Upper Canadian Community," *Ontario History* 64, (1972), 79-94.

¹⁰⁷ John Beverley Robinson, *Canada and the Canada Bill* (London: J. Hatchard and Son, 1840), 139.

¹⁰⁸ *Ibid*, 124.

their British fellow-subjects has been too much dwelt upon as the inevitable consequence of the difference of races.”¹⁰⁹

At times, he reflected the common stereotypes of “the Canadian habitants” [sic] “they are content to live in no better houses, wear no better clothes, travel over no better roads, and to be no greater men than their fathers.”¹¹⁰ Yet, a few pages later, those ‘fathers’ appear with an altogether different character.

The French Canadians were of a different stock, and circumstances turned their enterprise into another channel. Constant struggles with the Indian nations and the adventurous pursuits of Indian trading carried on from Labrador to the Mississippi, engrossed their energies [despite being] impeded by the disheartening influence of an oppressive and exacting government; an evil which British subjects have not to struggle with in any part of the empire.¹¹¹

Robinson’s perception of the *canadiens* was more complex than that of a simple Anglo-supremacist.

However, especially by 1839, Robinson commented of those problematic politicians that they were “not all of them French Canadians.”¹¹² Looking back to the conflict between the Canadas over the division of customs revenue, Robinson asked: whether they have been

French Canadians only who, in the Assembly of Lower Canada, have discovered an indisposition to comply with the reasonable wishes of Upper Canada in these respects—and whether, on the contrary, those members of British origin, who united with the French Canadians in their general political course, did not also unite with them upon such questions as concerned the interests of Upper Canada.¹¹³

Thus, Robinson did not see the Lower Canadian English as the automatic allies of Upper Canada. He mixed conventional references to the ‘unprogressive peasant habitant’ with recollections of earlier French-Canadian fur traders who had crossed the continent. Robinson could support a continuation of the Special Legislative Council for as long as ten years but strongly opposed any disenfranchisement of *canadiens* or their systematic under-representation in a united legislature. He saw the English-speaking minority of Lower Canada not as his natural allies because of language and ethnicity but as an element capable of hostility to Upper Canada’s interests as the assembly leaders.¹¹⁴ His conservatism is nowhere more evident than in his caution with respect to elected assemblies. The existence of an opposition in Lower

¹⁰⁹ *Ibid.*, 30.

¹¹⁰ *Ibid.*, 55.

¹¹¹ *Ibid.*, 59.

¹¹² *Ibid.*, 93.

¹¹³ *Ibid.*, 118, 124.

¹¹⁴ James Stephen at the Colonial Office had also observed that “the which, under other circumstances, Lord Dalhousie’s measures would have incurred from the English settlers, was silenced by the deeper motives which separated the two races from each other.” CO 537/137, “Confidential No. 26,” 19 September 1834, 9.

Canada was to be expected.

In the second union controversy, Upper Canadian perceptions of French Canadians became less diverse though their responses differed. Debate in the public sphere becoming more constrained by actual and feared treason contributed to such views. The cultural distinctions now seemed impervious to almost all. For a few Tories, that meant union would be a disaster, no matter what British policymakers said. But most fell into line, hoping the union's form would deny power to the *Patriotes* or their like. John Cartwright (Lennox and Addington) brought forward "the Cartwright conditions," which sought to ensure Upper Canadian dominance. These initially passed, then suspended at the demand of the new governor, Lord Sydenham, for a motion supporting an unconditional union, but eventually got reintroduced. At the other end of the Tory spectrum, John Willson, who had opposed union in the Assembly in 1823, fought it again in 1839, costing him his seat on the Legislative Council. Reformers came to accept the proposed union in the hope of making common cause with leaders of the French-Canadian majority to obtain power.

Unlike the earlier debates in Upper Canada, Lower Canadians found little to

encourage them in 1839-1840. *L'Aurore* described John Cartwright as the Anti-Christ. To accept union on such terms would be the equivalent of consent to "la déformation de sa soeur aînée."¹¹⁵ In a subsequent issue, however, the paper noted how close some of the votes had been (29-21, 28-25), remarking perhaps the end would come down to "une majorité d'une seule voix, pour l'honneur du Haut-Canada."¹¹⁶ Étienne Parent, who had remained a constitutionalist when the majority of the *parti Patriote* turned republican, may have hoped for better.¹¹⁷ "Nous nous attendions à trouver chez la population britannique du Haut Canada dans la personne de ses représentants, cet esprit de justice, de tolérance, de fraternité, de bienveillance avec lequel nous étions nous-mêmes disposés à entrer dans l'Union."¹¹⁸ But after reporting the debates in *Le Canadien*, he concluded, "Il n'y a rien de bon à retirer d'union, étant donné l'esprit qui règne dans le Upper Canada."¹¹⁹ On the other hand *L'Ami du Peuple* was in favour of immediate union even with a fixed civil list and the assumption of Upper Canada's debts.¹²⁰

The elections of 1840 produced a majority for Lord Sydenham. The 'sydenhamites' consisted of moderate Tories and Reformers from Upper Canada and

¹¹⁵ *L'Aurore*, 14 January 1840.

¹¹⁶ *L'Aurore*, 17 January 1840.

¹¹⁷ Ducharme, *The Idea of Liberty*, 65.

¹¹⁸ Jacques Monet, *The Last Cannon Shot*, 34.

¹¹⁹ Cited in Séguin, *Histoire de deux nationalisms au Canada*, 312.

¹²⁰ *L'Ami du Peuple*, 20 November 1839. However, it was scarcely a representative paper, often reprinting anti-French-Canadian articles from the Montreal *Courier*, for example, a lengthy attack on Papineau (23 November 1839). The *Courier* also supported the annexation of Montreal to Upper Canada as an alternative to union of the two Canadas: *L'Aurore*, 3 January 1840.

the over-represented British minority in Lower Canada. He used a combination of persuasion and discreet bribery (such as a British loan to complete canal works) in Upper Canada. In the lower province, he used gerrymandering to exaggerate the political weight of the English-speaking minority and physical intimidation at the polls to suppress the French-speaking vote. Upper Canadians also elected two small minorities at the 'extremes': Robert Baldwin's 'strict' Reformers, who wanted a responsible one-party government, and Alan Macnab's 'high Tories' who opposed the union altogether. Despite Sydenham's best efforts, most Lower Canadian representatives were *canadiens*, divided between an all-out opposition to union advocated by Denis Viger or cautious cooperation with Upper Canadian Reformers supported by Louis LaFontaine to seek responsible government, which the British had refused. If that cooperation was successful, it could defeat the assimilationist program of the union, for example, by giving the French official status in the legislature.

Under the direction of the new governor, the assembly leadership of the 'sydenhamite' ministry went to William Draper, a moderate Upper Canadian Tory. "Sweet William" had the difficult job of both addressing ultra-Tory fears and conciliating as much as he could the newly elected members from Canada East, as Lower Canada was now to be called. He directly addressed those fears: "Upper Canada was at the mercy of Low-

er Canada, and we would only prosper by a Union, which would so benefit the Lower Canadians as to lead them to revere British institutions, and unite with us to promote general improvements." He sought to counter anxiety by reviving the ideal that prosperity under British institutions could win French Canadian support for those institutions. However, this union government would not be a partnership with French Canadians—they were to be its subjects and eventually its beneficiaries.

Let us have a Union, based on British principles—which shall root out everything that is anti-British, and we shall crush existing evils. Let us act with a view to improve the people of Lower Canada, in their views and feelings, and then peace would be secured,—prosperity would attend both colonies, and in both attachment to British institutions and connection would be perpetuated.¹²¹

While the appeal worked to win some Upper Canadian Tory support for union with its references to 'Britishness,' the language of 'root out' and 'crush' seems harsh in light of the violence that Sydenham's supporters perpetrated to stop French Canadians from voting in the first union election.

After the disgraced election and the British government's instruction that French Canadians could not be admitted to the new colonial cabinet, Draper's support of a French Canadian, Augustin Cuvillier, as speaker of the new united Assembly was about all that he could manage at that time.¹²² Sydenham, using

¹²¹ *British Colonist*, 27 March 1839.

¹²² Francis Hincks was at work again, persuading LaFontaine to accept Augustin Cuvillier, a moderate

a characteristically up-to-the-minute metaphor, bragged to the Colonial Office that he now had the government of Canada “on the rails.” However, within a year, in the summer of 1842, Draper would be telling Sydenham’s successor that French Canadians had to be admitted into the cabinet for the Queen’s government to hold majority support in the Assembly. The first



John George Lambton, 1st Earl of Durham, by Thomas Phillips.

Baldwin-Lafontaine ministry marked the defeat of the assimilationist project, recommended by Durham and taken up by the British government of the day.

In 1822, the British government assumed it could merge colonies and amend colonial constitutional practices without so much as consultation. In 1839, it realized that it needed at least the appearance of colonial consent. Given the suspension of the Assembly, Lower Canada’s Special Legislative Council, packed with presumed supporters, seemed relatively easy,

though even there dissent appeared. Upper Canada required much greater attention—the offer of the most favourable terms, the threat of dismissal to break resistance. The imperial Parliament remained sovereign, but exercising its power had become limited by the need to attend to the colonists’ notions of what made a constitution.¹²³ To those who debated union in Upper Canada in

1823 and 1838-1840 considered that political and constitutional arrangements were not founded on the consent of the constituent parts. Elizabeth Mancke is correct to see “the roots of a Canadian political culture distinct from an American one because it highlights the acceptance of Parliament’s role as an imperial institution.”¹²⁴ The subsequent achievement of responsible government, on the one hand, and the defeat of assimilation, on the other, demonstrated that settlers, French and English, could have a hand in

who had broken with Papineau in 1832 but was now elected as an anti-union member, over more radical candidates for speaker. *DCB*, volume VII. See also Michael S. Cross, *A Biography of Robert Baldwin: Morning-Star of Memory* (Toronto: Oxford University Press, 2012), 68 on the reasons why Baldwin and Hincks supported Cuvillier.

¹²³ Nancy Christie (ed.), *Transatlantic Subjects: Ideas, Institutions, and Social Experience in Post-Revolutionary British North America* (Montreal: McGill-Queen’s University Press, 2008), Nancy Christie, “Introduction: Theorizing a Colonial Past—Canada as a Society of British Settlement,” 20.

¹²⁴ Martinborough, “Debating Settler Constitutionalism,” 41.

shaping their political futures together.

The ultimate failure of the assimilationist program arose largely from Lower Canadians' mass resistance to the destruction of their nationality. It was also due, in part, to Upper Canada's political leaders refusing the role assigned to them by Durham and the British government. "In essence the purpose of union was to use the English population in Upper Canada as an instrument for the political domination, and hopefully the cultural annihilation of the French population

of Lower Canada."¹²⁵ Instead, "the recommendations of Lord Durham were qualified by ongoing French Canadian activism and English Canadian support, including the governing partnership of Louis-Hippolyte LaFontaine and Robert Baldwin and the winning of responsible government in 1848."¹²⁶ The 1823-24 Upper Canadian union debate foreshadowed the diversity of English Canadian attitudes towards French Canadians. There was no automatic anti-French majority in Upper Canada.

¹²⁵ S.J.R. Noel, *Patrons, Clients, Brokers: Ontario Society and Politics, 1791-1896* (Toronto: University of Toronto Press, 1990), 126. Nor was an anti-French pro-union block to be found in the Assembly of Lower Canada in 1823, where the majority of English-speaking members voted against union.

¹²⁶ Mancke, "The Age of Constitutionalism," 636.