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AUTHORITARIANISM, CONSTITUTIONALISM AND  
THE SPECIAL COUNCIL OF LOWER CANADA, 1838-1841.

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A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfilment of the requirements of the degree of Master of Arts.

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## ABBREVIATIONS USED IN FOOTNOTES

<i>DCB</i>	<i>Dictionary of Canadian Biography</i>
<i>JSCLC</i>	<i>Journals of the Special Council of Lower Canada</i>
<i>OSCLC</i>	<i>Ordinances of the Special Council of Lower Canada</i>
MMA	McCord Museum Archives
MCA	Montreal Constitutional Association
NAC	National Archives of Canada
QCA	Quebec Constitutional Association

## ABSTRACT

Following the 1837 Rebellion in Lower Canada, British authorities suspended the province's constitution. From April 1838 until February 1841, legislative power was vested in an appointed Special Council. This was a authoritarian institution, designed to facilitate the passage of a single legislative agenda, and not to act as a forum for debate. Even if the creation of the council marked a moment of imperial intervention, the changes imposed by the council were largely those envisioned by a Lower Canadian political movement, the Montreal Constitutional Association. As time went on, the Special Council's membership, powers and legislation increasingly reflected Constitutionalist values. However, not all Special Councillors shared the Constitutionlists' goals. Men like Pierre de Rocheblave and John Neilson consequently found themselves alienated from the council and its work. But those who opposed the Constitutionlists found themselves powerless to alter the course of events. In the end, the authoritarian nature of the Special Council meant that only one vision of the province's future could be put forward in the institution's legislation.

## RÉSUMÉ

Après la rébellion de 1837 au Bas-Canada, le gouvernement britannique suspend la constitution de la province. Un Conseil spécial, dont les membres sont nommés par le gouverneur, est créé afin de se charger de la législature du Bas-Canada durant trois ans, soit d'avril 1838 à février 1841. Cette institution est despotique puisqu'elle n'est pas un lieu de débat ce qui facilite l'adoption d'un seul programme législatif. Même si la création du Conseil spécial constitue une intervention impériale dans les affaires bas-canadiennes, les changements qu'il apporte sont conçus par un mouvement politique bas-canadien, voire le *Montreal Constitutional Association*. Les allégeances membres, les pouvoirs et la législation du Conseil spécial reflètent de plus en plus leurs valeurs de cet association. Les membres du Conseil spécial qui s'opposent aux intérêts du *Montreal Constitutional Association*, tels Pierre de Rocheblave et John Neilson, sont périodiquement écartés de leur pouvoir. Malgré les contestations de ces derniers, le despotisme du Conseil spécial restreint les législateurs qu'à ne considérer qu'une seule vision de l'avenir de la province.

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## INTRODUCTION

Legislative institutions were at the centre of the turmoil which marked Lower Canadian politics in the years leading up to the events of 1837 and 1838. Histories of the Rebellions inevitably focus on the Patriot party's rise to power through its control of the Legislative Assembly. The 92 Resolutions of 1834, voted on by the Lower Canadian assembly, became the manifesto of the Patriot party. Meanwhile, the Patriots' demand that the Legislative Council be made elective was a major bone of contention, while the defense of the appointed body was an important rallying point for anti-Patriot forces. The British Government's response to the Patriot demands — Russell's 10 Resolutions of 1837 — was approved by the Imperial Parliament and also marked a pivotal moment in Lower Canadian political history. By the summer of 1837, Lower Canada was in a state of complete political deadlock, a fact symbolized by the final meeting of the province's legislature. No legislation was passed during the session, which was quickly prorogued by a frustrated Lord Gosford. Ultimately, following the Rebellions of 1837-38, the 'cure' chosen by British authorities for Lower Canada's political ills was to create a single legislature for Upper and Lower Canada.

However, before union became a reality, Lower Canada was subjected to three years of what can easily be described as authoritarianism. An appointed legislature known as the Special Council of Lower Canada was given the power to make laws for the province from April 1838 until early February 1841. Six sessions of the Special Council were held under three different British governors, namely Sir John Colborne, Lord Durham, and Charles Poulett Thomson.<sup>1</sup> Although at least 44 individuals were appointed to the council, some never took their seats and no more than 26 attended at any particular session. In any case, they were all chosen by the governor, suggesting that agreement on major issues was virtually guaranteed. This predictability would make an institutional study of the Special Council seem a less-than-interesting proposition.

A more promising course of study would be to look at the significance and effect of the council's legislation on Lower Canada. After all, the period 1838-41 is one where historians have perceived a fundamental transformation of the the Lower Canadian state, and the legislation of the Special Council has been recognized as playing an important role in this

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<sup>1</sup>Although Colborne was made Lord Seaton in 1839, and Thomson was made Lord Sydenham in 1840, for the sake of uniformity I will refer to them both by their surnames throughout this thesis.

transformation. Jean-Marie Fecteau is far from alone in drawing a thick “ligne de partage” somewhere between December 1837 and February 1841, delineating an important shift in the balance and nature of political power in Quebec society.<sup>2</sup> As the temporary replacement for the deadlocked Lower Canadian legislature — sweeping away all traces of the latter’s popularly elected aspects — the Special Council passed dozens of ordinances which made significant changes in Lower Canadian law over the short and long terms. Brian Young claims that “the Special Council’s work subjected a whole envelope of social relations — the family, childhood, marriage, community, work, and region — to a regime of positive law and an expanding role for the state.”<sup>3</sup> Putting the changes imposed by the council in the contexts of the Rebellions, Allan Greer writes that

in the years following the fighting, the British colonial regime was not so much restored as reconstituted. The state, in its administrative and executive aspects, grew enormously in size, scope, and power. [...] The provincial Assembly of Lower Canada was gone for good; in its place, an appointed Special Council (1838-41) was free to pass unpopular measures in fields such as law, property, and municipal government.”<sup>4</sup>

Ultimately, the Special Council facilitated the disappearance of the province itself, since the British government looked to it for approval of plans for the legislative union of Lower and Upper Canada.

But the question remains of exactly whose will was being imposed through the Special Council. After all, authoritarianism, like democracy, is a relative term. The system of government established by the Constitutional Act of 1791 was far from a pure democracy. Political representatives in the assembly were chosen by a minority of the population — with few exceptions, property-holding males. Furthermore, Lower Canada was a colony. Its bicameral legislature included a council made up of members of a local elite but chosen by the representative of the British government in the province. Laws could be disallowed by the governor or in Britain, and the executive officers that oversaw their enforcement chosen by and responsible to the governor. In no way do I mean to suggest that the Special Council was more

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<sup>2</sup>Jean-Marie Fecteau, *Un nouvel ordre des choses: la pauvreté, le crime, l'État au Québec, de la fin du XVIIIe siècle à 1840* (Outremont: VLB Éditeur, 1989), 263.

<sup>3</sup>Brian Young, “Positive Law, Positive State: Class Realignment and the Transformation of Lower Canada, 1815-1866,” in Allan Greer and Ian Redforth, eds., *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992), 52.

<sup>4</sup>Allan Greer, “1837-38: Rebellion Reconsidered,” *CHR*, LXXVI:1 (March 1995), 16.

representative of the Lower Canadian populace than the Legislative Assembly had been. But why would any kind of consultative or advisory institution be needed in a regime that was characterized by submission to a single source of authority? One answer is legitimacy. But in whose eyes? Surely not the Lower Canadian electorate's, since a significant number of Special Councillors had been defeated in election bids in the years before 1838. Another answer might be the Special Councillors themselves. The Special Council ensured that local elites had a hand in shaping and implementing the Colonial Office's plans for Lower Canada. But this also implies that the changes imposed by the Special Council represented the wishes of groups in the colony as much as the interests of the British government.

Rather than taking the authoritarianism of the Special Council for granted, I focus on it directly in this thesis. I put back into question whose will was being imposed, how it was being imposed, and to what end it was being imposed. Thus, I highlight the importance of the Special Council not so much for what it *did* — the effect and effectiveness of so many ordinances — but rather for what it *was*. I do not undertake a study of procedure and law, delving deeply into the intricacies of the Special Council's operation and legislation, but rather deal with the broader issues of how this institution which ended a half-century-old tradition of partially-elected legislatures was conceived, perceived, and put to use. The conclusions I draw portray the Special Council far more as a tool of colonial politicians than of their imperial masters.

Specifically, I argue that the Special Council facilitated and reflected the rise to power of a particular political movement in Lower Canada: the Constitutional Association of Montreal. Although they never formed a majority of Special Councillors, the Montreal Constitutionalists took advantage of the situation created by the defeat of the Patriots to ensure that the single legislative will imposed by the Special Council corresponded to their own. They did not merely come to the aid of the imperial government in re-establishing British sovereignty in Lower Canada, but had a well-developed agenda of their own which envisioned fundamental constitutional change. The association's political program was founded on a differentiation of the interests of French- and English-speaking Lower Canadians, a promotion of Montreal-based mercantile interests, and a commitment to legislative union with Upper Canada as the only possible solution to Lower Canada's constitutional troubles. Through actions taken both in England and British North America in the immediate post-Rebellion period, they were successful in ensuring that imperial policy corresponded to their own goals. Ultimately, this

meant that the Special Council slowly but surely evolved into a tool for the implementation of their political will. While some Constitutionalist goals were widely shared by those who had opposed the Patriots, their program as a whole served to alienate many 'loyal' Lower Canadians, including Special Councillors. Thus, I highlight the power of the Constitutionalists to influence the business of the Special Council by exploring the alienation felt by Special Councillors like Pierre de Rocheblave and John Neilson at moments when they associated the business of the council with the goals of the Constitutionalists.

There is little to support such an approach to the Special Council in the existing historiography. In fact, only two published articles and one chapter of a doctoral thesis, have studied the institution in any depth.<sup>5</sup> Most historians have accepted the Special Council as an imperial measure, and have consequently paid very little attention to its relation to Lower Canadian politics: faced with a revolt led by a movement dedicated to colonial independence, the British government dealt with the problem by creating a legislature that was unchecked by any locally-elected body. The membership of the council has been portrayed as monolithic, containing only members whose loyalty to Britain could not be questioned and who would do the bidding of their imperial masters. In these respects, the way in which Allan Greer introduces his readers to the institution is representative of how the Special Council figures in histories of the Rebellions:

By the beginning of 1838 Lower Canada was no longer a colony governed by British Law; it was enemy territory occupied by military force. The constitution had been suspended, the elected Assembly replaced by a 'Special Council' packed with loyalists, and General Colborne himself now occupied the governor's palace. In the District of Montreal a régime of martial law prevailed as of 5 December 1837, and habeas corpus was no longer in effect. Even more draconian legal restrictions followed the insurrection of November 1838.<sup>6</sup>

Similarly, Fecteau explores the place of the Special Council's legislation in the exceptional measures taken in repressing the Rebellions purely in terms of the reimposition of imperial authority, not the interests of local groups who sought to benefit from the preservation of

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<sup>5</sup>The main thrust of each of these is discussed later in the introduction.

<sup>6</sup>Allan Greer, *The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada* (Toronto: University of Toronto Press, 1993), 332.

British power in Lower Canada.<sup>7</sup> For his part, Ian Radforth presents the Special Council as a convenient tool for Thomson with which to exercise his utilitarian impulses, hardly acknowledging the existence of local legislators on his council.<sup>8</sup> The consensus among historians seems to be that as part of a counter-revolutionary regime and entirely responsible to imperial authorities, the Special Council was a major step backwards backwards in terms of colonial autonomy, not an important moment in the province's political development.

Another obstacle to studying the Special Council is the way the narrative of Canadian history has been structured. The council finds itself caught in the shadow of the Rebellions, and fits poorly into stories of colonial autonomy which converge on 1849 and 1867. Indeed, rarely is any part of the period 1838-41 examined in detail. As one student of the period has observed,

Historians sympathetic to the élite gloss over this stage when its power was most naked and unpopular; students of self-government and of electoral politics find the period a wasteland. The concurrent proceedings in England to prepare a new constitution for both Canadas have drawn attention away from internal colonial events. So apart from Lord Durham's mission and a handful of specific issues like the abolition of seigneurial tenure in Montreal, the legislative history of Lower Canada during the rebellion years has almost escaped attention.<sup>9</sup>

The works produced in the "Canadian Centenary Series" are symbolic of this problem. Fernand Ouellet closes his study of *Lower Canada* in 1840, JMS Careless begins his examination of *The Union of the Canadas* in 1841, and the Special Council is relegated to either the introduction or the conclusion.<sup>10</sup> One exception to this rule would appear to be Jacques Monet, who devotes almost a third of *The Last Cannon Shot* to the period 1837-1842.<sup>11</sup> But Monet's interest in this period centres on individuals and groups who were excluded from the formal political process, and their preparations for a return to representative government. The Special Council is

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<sup>7</sup>Jean-Marie Fecteau, "Mesures d'exception et règle de droit: Les Conditions d'application de la loi martiale at Québec lors des rébellions de 1837-38," *McGill Law Journal*, XXXII (1987), 466-95.

<sup>8</sup>Ian Radforth. "Sydenham and Utilitarian Reform," in Greer and Radforth, *Colonial Leviathan*, 64-102.

<sup>9</sup>Phillip Goldring, "British Colonists and Imperial Interests in Lower Canada, 1820 to 1841," Ph.D. Dissertation, University of London, 1978, 11.

<sup>10</sup>J.M.S. Careless, *Union of the Canadas: The Growth of Canadian Institutions, 1841-1857* (Toronto: McClelland and Stewart, 1967); Fernand Ouellet, *Lower Canada, 1791-1840: Social Change and Nationalism* (Toronto: McClelland and Stewart, 1980).

<sup>11</sup>Jacques Monet, *The Cannon Shot: A Study of French-Canadian Nationalism, 1837-1850* (Toronto: University of Toronto Press, 1969), 11-105.

dismissed as illegitimate and portrayed as unfortunate remnant of the Rebellions Indeed, Monet is so eager to place the Special Council in the context of the Rebellions that he portrays it as a last-minute preparation of Colborne before he and his troops left Montreal for St. Eustache in late 1837:

At the first sign of the ‘troubles,’ Sir John Colborne had proclaimed martial law, suspended the constitution in favour of a special council [sic] made up of rabid French-baiting Tories, bureaucrats, and *vendus*, and then, at the head of a column of British regulars and their associated volunteers, had ridden off to give the rebels a stark surprise.<sup>12</sup>

In fact, Colborne did not have the power to suspend the constitution and call a Special Council until early April of the next year. Thus, the Special Council sits largely forgotten, stranded as it is in the median separating the road to rebellion from the road to responsible government.

Compounding this problem is the prevalence of what Greer refers to as the “‘police officer’s’ conception of just what constitutes rebellion.” Greer explains that rebellion

is essentially a crime. according to conservative historians, an illegal deed concerted in advance by ill-disposed traitors. More modern, liberal-minded writers try to avoid loaded vocabulary and strive to bring out the mitigating circumstances, but they still portray the revolt as a simple, unilateral *act*, something the rebels did — for whatever combination of social, economic, and political reasons. The behaviour of the government and of other actors is, in most accounts (though not those of the French Canadian nationalists), merely reactive: normal, unremarkable, unproblematic.<sup>13</sup>

In this context, the Special Council basically becomes a policeman. The exceptional nature of much of its legislation is recognized, but accepted as what one might expect given the exceptional circumstances created by the events of 1837-38. Thus, the Special Councillors were forced into extraordinary measures by the actions of the Patriots, and their own actions were not engines of change. On the contrary, they were necessary for a return to ‘normal.’ After all, up until their defeat in the Rebellions, the Patriots were the driving force in Lower Canadian politics. The history of Lower Canada in the 1830s has thus been largely structured around their rise and fall. Meanwhile, the lack of any significant body of historical literature structured on the development of non-patriot political groups leaves a void when this group is suddenly swept from the map following the events of 1837-38.

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<sup>12</sup>Monet, *Last Cannon Shot*, 12.

<sup>13</sup>Greer, “1837-38,” 5.

Thus, while an interesting subject in and of itself, a study of the Special Council can do much to improve our understanding of the political developments that came before and after the period 1838-41. In terms of domestic Lower Canadian political development, about all we know about the immediate results of the Rebellions of 1837-38 is that the Patriots were defeated. Unless we accept that there was only one political alternative to the Patriot program, or that all non-Patriot groups in Lower Canadian society benefitted equally from the outcome of the Rebellions, it is less clear exactly who won and how they consolidated their victory. In other words, we know that "By 1839 the province was again firmly under British control,"<sup>14</sup> but we know little about what groups in Lower Canada gained power from the way this control was re-established. Thus, the desire to achieve a better understanding of the Special Council goes beyond a need to correct minor inaccuracies or omissions in the historical record.

Undoubtedly, one reason the Special Council has generated relatively little interest among historians of Lower Canada and Quebec is that the institution left very few traces of itself. Its work tended to be eclipsed by more pressing concerns and more dramatic events in which it played at best a secondary role. Between early 1838 and early 1841, Lower Canada witnessed armed rebellion and equally violent reprisals, the reins of government were repeatedly passed from one governor to another, Lord Durham's *Report* was published, union was debated and then imposed, and Lower Canadians prepared for elections within this new political framework. These were the events that preoccupied contemporaries' attention, and that dominate the written record of the period, whether in the form of newspapers or correspondence. The *Ordinances of the Special Council*<sup>15</sup> — 218 in all — offer only clues to the specific institutional context in which they were passed. Meanwhile, *The Journals of the Special Council*<sup>16</sup> are far from the most detailed of legislative records. Although voting divisions were usually (though not always) recorded, no traces remain of debates and the deliberations of special committees. And since the journals were only published at the end of each session and meetings were held *in camera*, newspaper reports which help in understanding the proceedings of previous Lower Canadian legislatures do not exist.

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<sup>14</sup>Greer, "1837-38," 3.

<sup>15</sup>Special Council of Lower Canada, *OSCLC*, 6 volumes (Quebec: Printed by John Charlton Fisher & William Kemble, 1838-41).

<sup>16</sup>Special Council of Lower Canada, *JSCLC*, 6 volumes (Quebec: Printed by T. Cary and George Desbarats, 1838-41).

Faced with these challenges, I have drawn on a variety of sources to piece together the history of the Special Council. The personal correspondence of some Special Councillors, especially that of Pierre de Rocheblave, has proved to be an invaluable tool for understanding the institution and its members. I rely on documents produced by the Montreal Constitutional Association and other Constitutionalist organizations in order to understand their political outlook and goals, as well as the steps taken to achieve the latter. And in spite of their limitations, the sources mentioned in the previous paragraph have been used a great deal. The official correspondence of governors and officials in Britain hint at the relative degree of autonomy enjoyed by the council. Opinions expressed in Montreal newspapers are linked to individuals and groups represented on the council. Editorial comment in *The Quebec Gazette* provides insight into the relationship between John Neilson, Constitutionalism, and the Special Council. The council journals give glimpses of the day-to-day operation of the institution, and note exactly who was attending meetings. Finally, the council's ordinances are looked at not so much for detail, but for an appreciation of what roles the council was fulfilling at different times in its development. I believe that my use of these sources can make a positive contribution to what little work has already been done on the Special Council.

As noted above, the Special Council is a subject that has rarely been taken up. But while by no means creating the same level of interest as the hundredth anniversary of the outbreak of the Rebellions,<sup>17</sup> the centennial of the Special Council's last session did inspire a somewhat belated article. Over the course of 1943, editor Antonio Perrault published four installments of an article examining the Special Council in the journal of the Quebec Bar Association, *La revue du barreau*.<sup>18</sup> Following an introduction to the circumstances surrounding the council's creation, the article examines several of the Council's ordinances in detail. Perrault presents the Special Council as a sort of stalling tactic on the part of imperial authorities. While they attempted to find a permanent solution to the province's constitutional crisis, they passed the administration — in the most mundane sense — of the colony over to a group of hard-working councillors. The ordinances they passed “rélèvent chez les membres de ce Conseil le souci de s'intéresser à tous les aspects de l'existence des Bas-Canadiens et la

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<sup>17</sup>Jean-Paul Bernard, *Les rébellions de 1837-1838: Les patriotes du Bas-Canada dans la mémoire collective et chez les historiens* (Montreal: Boréal Express, 1983), 39-46.

<sup>18</sup>Antonio Perrault, “Le Conseil Spécial, 1838-1841,” *La revue du barreau*, III (1943): 130-144, 213-230, 265-274, 299-307.

volonté d'en promouvoir les intérêts."<sup>19</sup> Each ordinance is presented as a solution to a longstanding problem in Lower Canadian law, and a testament to the Councillors' skill as legislators. What his positive assessment lacks, however, is any sense of how the Special Councillors were involved in creating the 'problems' they attempted to solve, or might benefit from the way they were solved. For Perrault, notwithstanding some unfortunate though thoroughly necessary measures used to suppress the rebellion, the Special Council's authoritarianism was not a problem but a solution. His view of the law as autonomous of the social relations it attempts to regulate is exactly the type of 'nuts and bolts' study I have sought to avoid in this thesis.

Philip Goldring, who devotes a chapter of his 1978 PhD thesis to the Special Council, moves beyond a simple analysis of the council's legislation. Along with the North American Colonial Association, the British American Land Company, and the Constitutional Associations, he points to the Special Council as one of the four main institutions which "launched the British colonists' attempt to mould the colony's future." He claims that the council "met the British colonists' long-standing dream for a legislature which could advance colonial economic development, without assaulting the guaranteed religious and cultural privileges of the *Canadiens*."<sup>20</sup> Thus, while he claims that the "conventional image of the Special Council as a homogeneous body issuing a few arbitrary and unpopular edicts is contradicted not only by its way of doing business, but also by the mass of useful legislation it produced,"<sup>21</sup> he associates the council with what he sees as the well-defined goals of English-speaking Lower Canadians. Nevertheless, Goldring goes to great lengths to stress the fact that French Canadians, whether or not they were Special Councillors, were not strongly opposed to or adversely affected by the council's legislation. In fact, he claims that "French Canadians, by birth or adoption, dominated the first Special Council."<sup>22</sup> In some ways Goldring's study mirrors my own, in attempting to place the Special Council in a larger context and associating it with the agenda of a Lower Canadian political movement. However, in projecting a single political agenda on the whole of English-speaking Lower Canada, narrowly defining the

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<sup>19</sup>Perrault, "Conseil Spécial," 141-42.

<sup>20</sup>Goldring, "British Colonists," 142.

<sup>21</sup>Goldring, "British Colonists," 247.

<sup>22</sup>Goldring, "British Colonists," 238, 245-46.

political aspirations of French Canadians, and minimizing the effect of the post-rebellion period on the latter group, his picture of who benefitted from the Special Council becomes rather blurred.

More recently, Brian Young has examined the Special Council in the context of state formation. He argues that "the Special Council, which ruled Lower Canada from 1839 to 1841, played a central role in shaping state and institutional structures that were receptive to and supportive of capitalist relations."<sup>23</sup> Unlike Goldring, Young sees the Special Council as having promoted the interests of a specific class, rather than those of a cultural group. Thus, he describes a systematic program to reshape Lower Canadian society:

Suspending the Assembly and Legislative Council, British authorities replaced them with a Special Council in which the suspension of habeas corpus and the formation of new police forces were only the opening rounds. The council responded with alacrity to class concerns expressed so strongly on the post-rebellion period (...) <sup>24</sup>

But Young also points out that if the Special Council found unity in purpose, it bore witness to a certain diversity in membership. Thus, along with aspiring industrialists and elite merchants, "the council's members included former *patriotes* John Neilson and Frédéric-Auguste Quesnel."<sup>25</sup>

While Perrault's assessment of the Special Council leaves little room for analyzing politics and ideology, the two more recent studies bear witness to a certain tension created by the need to recognize both the council's authoritarian nature and the fact that it was not purely monolithic. Goldring and Young present the Special Council as one thing — a rallying point for the province's anglophone population, or a tool for implementing a program of positive law. However, at the same time there is the need to recognize the power of French Canadian councillors, and the presence on the council of a few 'former patriots.'

I attempt to resolve this tension by reconciling the Special Council's authoritarianism with its undeniable heterogeneity. In fact, the Special Council changed drastically over the three years of its existence. It was convened under three different governors, as well as under conditions of martial and civil law, rebellion and relative peace. Its membership underwent a

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<sup>23</sup>Young, "Positive Law," 52.

<sup>24</sup>Young, "Positive Law," 58

<sup>25</sup>Young, "Positive Law," 53. In fact, F.-A. Quesnel was not a Special Councillor, although he did sit on the Executive Council until the fall of 1838. Presumably, Young meant to refer to Jules-Maurice Quesnel.

dramatic evolution (even if it rarely underwent sudden change). Furthermore, at any given moment in time, the Special Council could be many things to many people, depending on their perspective on and understanding of the institution. Therefore, the Council must be assigned to a period, not just a moment, in history. It must be portrayed both as an agent and as a symbol of change. Thus, the authoritarianism of the Special Council was a nuanced one. While it was never absolutely at the service of a single will, one can attempt to establish what specific political agenda it ultimately served.

While my approach involves studying the Special Council as a authoritarian institution within the context of domestic political developments, the imperial context will not be ignored. Certainly, in a period when the power of English-speakers in Lower Canada is on the rise, I do not wish to deny that “the majority of Anglophone Canadians did share the sense of belonging to a common culture,” as part of a larger British nation. Nor do I deny the need to “place the imperial experience back where it belongs, at the centre of nineteenth-century Canadian history.”<sup>26</sup> The relationship between colonial politicians and imperial link is, needless to say, and important one, and attitudes towards Britain will be reconciled to understandings of and power relationships in the colonial context. Furthermore, historians have been far from wrong in portraying the Special Council as being at times manipulated directly by the long arm of British authority. It was, after all, created by imperial statute and summoned by a representative of the British Crown who answered to the Colonial Office. But how these imperial actions were influenced by specifically Lower Canadian interests and played themselves out in practice is another story altogether.

However broad its conceptual framework might be, the relevance of such a study can be, and deserves to be, put into question. It deals with the attitudes and actions of a very small and relatively homogeneous elite whose experiences had little to nothing in common with the vast majority of Lower Canadians. On the one hand, it obviously explores one aspect of political culture, namely the ideas and philosophies behind the actions of those operating in the political sphere, thereby recognizing the “inherent links between political practice and political

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<sup>26</sup>Phillip Buckner, “Whatever Happened to the British Empire,” *Journal of the Canadian Historical Association*, New Series, IV (1993-94), 32.

thought.”<sup>27</sup> But I also wish to contribute to an understanding of another aspect of political culture, one which questions the relevance of formal political processes and which addresses the at times fragile relationship between those who govern and those who are governed.<sup>28</sup> One way to achieve this would be to study how the Special Councillors’ actions affected and were viewed by larger society. However, I will limit myself to looking at how the Special Councillors themselves justified the power they exercised. While approaching the question from the top down, this will hopefully shed light on the nature of power relations between different segments of the Lower Canadian population.

I have divided this thesis into three chapters. Together, they explore the relationship between the development of the Special Council as a authoritarian institution and the rise to power of the Constitutional Association of Montreal as a political force in Lower Canada. The first chapter addresses the question of how the Special Council was authoritarian. It treats the creation, membership, operation, and legislation of the council with an eye to understanding how and to what extent the institution was a tool for imposing a single political will on the province. The second chapter presents the Montreal Constitutional Association as the Lower Canadian group which gained the most by the temporary constitutional regime established in 1838. Finally, chapter three explores the political outlooks of Special Councillors Pierre de Rocheblave and John Neilson, although the experiences of the former are dealt with in much more detail than those of latter. Both were men who became disenchanted with the Special Council at specific times when they perceived that it was being used as a tool to achieve the goals of the Montreal Constitutional Association. Throughout the thesis, I stress the idea of the Special Council as an evolving institution. However, it was evolving in such a way to promote the agenda of a particular Lower Canadian political movement and exclude other options.

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<sup>27</sup>A.B. McKillop and Paul Romney, “Introduction,” in S.F. Wise, *God’s Peculiar Peoples: Essays on Political Culture in Nineteenth-Century Canada* (Ottawa: Carleton University Press, 1993), xxvii.

<sup>28</sup>Keith Michael Baker, *Inventing the French Revolution* (Cambridge: Cambridge University Press, 1990), 5-11.

## CHAPTER 1 — AUTHORITARIANISM

A fundamental problem with studying any institution is the contrast between the relatively uniform picture it gives when viewed from the outside, and the heterogeneity one inevitably discovers when inspecting its internal workings. Such is the case with the Special Council. A study of its creation, membership, operation, and legislation reveals unexpected diversity and dramatic change over time. However, understanding that the Special Council cannot be associated with a single imperial directive, group of men, way of doing business, or type of legislation allows a step back to reevaluate the common thread that ties together the multiple aspects of a diverse institution. This understanding will help, in the chapters that follow, to reveal the relationship between the Special Council and the individuals and groups it brought together.

In this chapter, I argue that the common thread which holds together the diverse pieces of the Special Council is authoritarianism. That is to say, it was at all times an institution which was used to impose a single legislative will on Lower Canada. This stood in stark contrast to the situation before the Lower Canadian constitution was suspended. Previously, an elected assembly, an appointed council, and a British governor had conducted their business as separate institutions, and the legislative process had been defined by conflict. I begin with an overview of the imperial acts which regulated the institution's expanding powers, and the governors who applied them. Surprisingly, the Special Council was essentially created and controlled at a local level, and was anything but an efficient instrument of imperial control. Those Lower Canadians who were called on to act as Special Councillors represented a small elite, and as time went on they were more and more likely to be English speakers, residents of Montreal, and officers of government. The council's way of doing business evolved in such a way as to ensure that consensus, and not conflict, was consistently the order of the day. Finally, the legislation passed by the council changed along with its powers and the context in which it operated. The Special Councillors began their work by making ephemeral, though sometimes dramatic, changes to Lower Canadian law, and finished by fundamentally altering the province's legal and political frameworks. But in spite of all these developments, the Special Council remained a tool for efficient legislative action and not a forum for debate.

However much of an emphasis I put on domestic Lower Canadian political development, the Special Council was ultimately the creation of a British cabinet faced with the

dilemma of what to do with a colony which, in its eyes, could no longer be governed under its existing constitution. Furthermore, the Special Council was merely one piece of a larger imperial policy. It was conceived as a tool for Lord Durham to use for the passage of necessary provincial legislation while he investigated and reported on the constitutional problems of British North America. In fact, it was largely a last-minute addition to the British government's response to the situation in Lower Canada. At first, the cabinet considered suspending the Lower Canadian legislature for one year and calling a convention of delegates from all British North American colonies, but eventually agreed on a smaller convention of delegates from Upper and Lower Canada "to discuss amendments to the Constitutional Act of 1791 and the establishment of a federal union." However, when the idea of the convention was questioned in Parliament, "the cabinet withdrew the preamble and an act was passed which simply replaced the Lower Canadian Assembly until November 1840 with a Special Council appointed by the Governor General. In effect, the Cabinet gave Durham carte blanche."<sup>29</sup>

In fact, Durham convened only one session of the Special Council. This was not the first, but the second session, which Durham opened on 28 June 1838, exactly one month after assuming control of the government of Lower Canada.<sup>30</sup> However, in the words of one historian, Durham's council "hardly existed at all,"<sup>31</sup> and it will be largely ignored in this thesis. Instead of Lower Canadians, it was composed of members of Durham's entourage and military officers: Sir Charles Paget, Major General Sir James McDonnell, Charles Buller Jr., Colonel George Couper, Charles Grey, Major General John Clitherow, and Arthur Buller. They met only four times, between 28 June and 31 October 1838. Normal rules of Parliamentary procedure, followed at other sessions, were disregarded, meaning that ordinances were proposed, agreed to, and passed at the same meeting. One of these was the ordinance exiling several Patriot leaders to Bermuda. This was eventually disallowed by authorities in Britain, leading to Durham's hasty and unexpected return to England.<sup>32</sup> In any case, a few meetings of imperial officials where not a single vote was held says little about domestic Lower Canadian

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<sup>29</sup>Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1850* (Westport, CT: Greenwood Press, 1985), 239-41.

<sup>30</sup>Perrault, "Conseil Spécial", 139. The first session of the Special Council had been convened by Colborne before Durham's arrival. See below for details.

<sup>31</sup>Goldring, "British Colonists," 240.

<sup>32</sup>Buckner, *Transition*, 250-51.

politics. The Special Council I describe in this thesis is a legislative body convened for the first time in early 1838 and which evolved over the following three years. Durham's council was not a part of this evolution; rather, it interrupted it. Thus, the second session is mainly useful for contrasting the Special Council to what it might have been, not for showing what it was.

Three different acts were passed by the Imperial Parliament to regulate the Special Council. While significant for what they did — laying the legal groundwork for the creation of the Special Council and broadly defining its powers — these pieces of legislation are perhaps most important for what they did not do. They say next to nothing about who was to be appointed to the Council, where it was to meet, and how it was to conduct its business. The dates of its mandate and for its legislation to have effect were clearly arbitrary choices, which changed from one act to the next. Overall, the acts bear witness to a continually evolving vision of what role the Special Council was to play in Lower Canada's constitutional development. Meanwhile, the council itself was left largely to evolve within the Lower Canadian context and discover these roles for itself.

On 10 February 1838, "An Act to Make Temporary Provision for the Government of Lower Canada" was unanimously passed in the House of Lords, about three week after it was introduced in the Commons, where 262 of 278 members present gave their approval.<sup>33</sup> The act asserted that the provincial legislature could not be recalled under the provisions of the Constitutional Act of 1791 "without serious detriment to the interests of the said Province." Thus, in order to "make temporary provision for the Government of *Lower Canada*" and to allow Parliament to eventually "make permanent arrangements for the Constitution and Government of the said Province, upon such a basis as may best secure the rights and liberties, and promote the interests of all classes of Her Majesty's subjects," those provisions of the 1791 act relating to the Legislative Council and Assembly were suspended until 1 November 1840. But the province would not be left entirely without a legislature. The governor of Lower Canada was given the power to appoint "so many Special Councillors as to Her Majesty shall seem meet, and to make such Provision as to Her Majesty shall seem meet for the removal[, ] suspension, or resignation of all or any of such Councillors." Quorum for Special Council meetings was set at five, but there was no minimum or maximum number of councillors. The council was authorized "to make such Laws or Ordinances, for the peace, welfare, and good

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<sup>33</sup>Perrault, "Conseil Spécial," 135.

government” of Lower Canada as the legislature had been permitted to pass under the 1791 constitution. However, ordinances had to be introduced by the governor and would be temporary, ceasing to have effect on 1 November 1842, “unless continued by competent authority.” Furthermore, the Special Council could not levy taxes which had not existed previously in the province, alter the constitution, or subdivide Lower Canada into new administrative units. All ordinances which were passed had to be forwarded to the British Government “by the first convenient opportunity,” and could be disallowed within two years of being received.<sup>34</sup>

On 17 August 1839, this act was amended by another which modified the provisions relating to the Special Council, making the temporary legislature more powerful and its legacy more permanent. The minimum number of Special Councillors was set at twenty, and the quorum raised to eleven. The council was, for the first time, permitted to pass permanent legislation, provided that any such laws were laid before the British Parliament before they took effect. Furthermore, restrictions on the imposition of new taxes were lifted in the case of local improvements, police, “or other objects of municipal government.” The Special Council was also given the power to repeal or modify laws passed by the British Parliament or Lower Canadian legislature. Exceptions were made for ordinances “altering or affecting the Temporal or Spiritual rights of the Clergy [...] or altering or affecting the tenure of land.” However, an exception to the exception was made for any ordinance extinguishing the seigneurial rights of the Sulpicians at Montreal. One final alteration to the original act required that ordinances be published in the province’s official *Gazette* before they were passed.<sup>35</sup>

The sixth and final session of the Special Council began on 5 November 1840. It was held under the authority of the two acts already described, as well as that of “An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada.” However, one thing the 1839 act had not done was extend the Special Council’s mandate beyond 1 November 1840, although correspondence from the Colonial Office in June 1839 suggests that it was

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<sup>34</sup>1 Victoria c. 9, “An Act to make temporary provision for the Government of *Lower Canada*,” 1838, Chapter 9, 10th February 1838. Reprinted in the *JSCLC*, I, 18 April 1838.

<sup>35</sup>2&3 Victoria c. 53, “An Act to Amend and Act of the Last Session of Parliament for Making Temporary Provision for the Government of Lower Canada,” in Adam Shortt and Arthur G. Doughty, editors, *Canadian Archives Documents Relating to the Constitutional History of Canada, 1791-1840* (Ottawa: Printed by S.E. Dawson, 1907), 514-515.

originally intended to "prolong [...] its existence to the year 1842."<sup>36</sup> Nevertheless, while the union act does not explicitly refer to the Special Council, it does provide that the two acts already regulating it would remain in force until the proclamation uniting Upper and Lower Canada was issued. Apparently, this passage interpreted in such a way as to allow the Special Council to continue legislating for three months beyond its original mandate.<sup>37</sup>

Of course, by providing for the end of Lower Canada, the union act also provided for the end of the Special Council. But the council which was done away with was very different from the one originally created. Though always a temporary body, it had gone from making temporary laws to making permanent ones, from a potentially minuscule body to one where 11 members had to be present simply to conduct business, and from one designed to buy time while a permanent constitutional settlement was found, to one operating within the provisions of that very settlement. Leaving aside the second session convened under Durham, this evolution took place over the course of five different sessions, which were convened as follows:

Under Colborne,

- Session 1: 18 April to 15 May 1838
- Session 3: 5 November to 21 December 1838
- Session 4: 14 February to 13 April 1839

Under Thomson,

- Session 5: Part 1, 11-14 November 1839  
Part 2, 20 April - 13 May 1840  
Part 3, 28 May - 26 June 1840
- Session 6: 5 November 1840 - 9 February 1841

Before undertaking an examination of how the Special Council developed, it is useful to briefly examine the link between the governors responsible for the operation of the council and the British authorities who provided for its creation. In fact, Colborne and Thomson were largely given the power to shape and use the Special Council as they saw fit, and the lines of communication from Downing Street to Government House in Lower Canada were, through much of the Special Council period, neither straight nor strong. Thus, the Special Council was never really the efficient tool of direct imperial intervention. Furthermore, the changes in administrations give structure to a narrative of the Special Council's development, and drive

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<sup>36</sup>Normanby to Colborne, 12 June 1839, Colborne Papers, microfilm A-595, NAC.

<sup>37</sup>"An Act to re-unite the Provinces of Upper and Lower Canada, and for the government of Canada," in W.P.M. Kennedy, editor, *Documnets of the Canadian Constitution, 1759-1915* (Toronto: Oxford University Presss, 1918), 149-173.

home the point that the council did not merely exist in one moment under one governor for one purpose.

Colborne's Canadian career goes far in illustrating the constant state of uncertainty which surrounded the governorship of Lower Canada in the years surrounding the Rebellions. The job he undertook in early 1838 was not a sought-after one, nor did it promise a stable career. Complaints from Lower Canadian groups in the late 1820s contributed to the premature recall of Dalhousie, and Aylmer suffered the same fate in the mid-1830s. Dalhousie's replacement, Sir James Kempt, desired to "escape to Britain as soon as he decently could," neglecting to even open his commission as Governor.<sup>38</sup> The search for a commissioner to send to Canada in 1835 was a confused one, involving the serious consideration of at least five more or less reluctant candidates before Lord Amherst was appointed. He resigned shortly after arriving in Canada, and was replaced by Lord Gosford.<sup>39</sup> When the Colonial Office ultimately found itself unsatisfied with Gosford's performance, Lord Durham was chosen as his replacement in August 1837, but he did not accept the appointment until the beginning of the following year.<sup>40</sup> Things did not change after Durham's short-lived tenure as governor:

A tragic fate befell the men whom Britain sent to settle the affairs of Canada after the Rebellion of 1837. Four governors-general [...] served only seven years, two of them virtually repudiated by the home government, the other two by Canada; each was overtaken by death in or shortly after the office had been relinquished; each aroused a storm of controversy and became the target of bitter personal attacks.<sup>41</sup>

Given the frequency with which Lower Canadian governors came and went, the rather melodramatic tone of this passage seems almost appropriate.

For his part, Colborne was basically a political refugee from the executive's battles with the Upper Canadian assembly, and should have been in England long before rebellion broke out in Lower Canada. He had given up the governorship of the upper province in late 1835 amidst a storm of controversy and a nasty exchange of letters with Colonial Secretary Glenelg, full of thinly veiled threats and accusations. It was very much an understatement when the latter wrote that "the character of correspondence with you in which I find myself engaged impresses me

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<sup>38</sup>Goldring, "British Colonists," 31.

<sup>39</sup>Buckner, *Transition*, 186-189.

<sup>40</sup>Buckner, *Transition*, 238.

<sup>41</sup>Paul Knaplund, "Introduction," in *Letters from Lord Sydenham, Governor-General of Canada, 1839-1841 to Lord John Russell* (Clifton, NJ: Augustus M Kelley, 1973), 11.

with feelings of concern and reluctance.”<sup>42</sup> Colborne had slowly made his way to New York via Montreal by May 1836. While awaiting his passage home, he unexpectedly received a request from Glenelg to take command of the military forces in Lower Canada. Having accepted, and as the senior military officer in the province at the time of Gosford’s departure in early 1838, he also became Administrator of Government.<sup>43</sup> By this time, the tone of the Colonial Office’s correspondence had changed, praising Colborne’s military successes in the 1837 Rebellion and expressing pleasure at being able to assign the government of Lower Canada “to an officer of such eminent services and distinguished character.”<sup>44</sup> But the confusing and unexpected nature of Colborne’s assumption of these duties helps explain why the acts creating the Special Council and modifying its powers explicitly stated that they could be proclaimed by “any person authorized to execute the Commission of Governor,”<sup>45</sup> and that “the person authorized to execute the Commission of Governor of the Province of Lower Canada shall be taken to be the Governor thereof.”<sup>46</sup>

Colborne was formally informed of Gosford’s wish to retire, and the fact that the administration of the government would subsequently devolve to him, in a letter from Glenelg dated 17 November 1837.<sup>47</sup> On 27 February 1838, Colborne announced that he had belatedly assumed the administration of the government.<sup>48</sup> He expected to act as caretaker of Lower Canada’s government only briefly, until the arrival of a new Governor General, and he was officially informed of Durham’s appointment by late March 1838.<sup>49</sup> When Durham arrived several weeks later, Colborne immediately expressed his wish to resign as commander of the forces in Canada. In early July, he was informed that a search had begun for his successor, and

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<sup>42</sup>Glenelg to Colborne, Private and Confidential, Downing Street, 28 October 1835, Colborne Papers, microfilm A-586, NAC.

<sup>43</sup>*DCB*, IX, 141-142.

<sup>44</sup>Glenelg to Colborne, Downing Street, 19 February 1838, despatch no. 28, Colborne Papers, microfilm A-586, NAC.

<sup>45</sup>1 Victoria c. 9.

<sup>46</sup>2&3 Victoria c. 53.

<sup>47</sup>Glenelg to Colborne, Duplicate, Downing Street, 27 November 1837, Colborne Papers, microfilm A-586, NAC.

<sup>48</sup>Colborne to Glenelg, Montreal, 27 February 1838, despatch no. 1, Colborne Papers, microfilm A-586, NAC.

<sup>49</sup>Glenelg to Colborne, Downing Street, 28 March 1838, despatch no. 14, Colborne Papers, microfilm A-586, NAC.

that he should expect to be relieved “at an early date.”<sup>50</sup> Expectations quickly changed, and by mid-August, Lord Hill wrote to sympathize with Colborne’s ten-year Canadian exile but also to urge him to remain in charge of the British forces in Canada.<sup>51</sup> In early October, Colborne explained to a friend that he had been convinced by these arguments, and suggested that Durham would soon leave Lower Canada.<sup>52</sup> By the end of the month, British authorities had resigned themselves to Durham’s imminent resignation, and a despatch was immediately sent to Lower Canada informing both Durham and Colborne that the latter would once again become Administrator of Government when the former left the province.<sup>53</sup>

It was not until mid-December 1838 that a despatch was drafted informing Colborne “that during the interval which must lapse before the appointment of a permanent Successor to Lord Durham, the general administration of the affairs of those Provinces should be confided to you as *Governor General* of British North America.”<sup>54</sup> But the winter 1838-39 was the last Colborne had to spend in Canada, and thus his time as governor in name as well as practice was short lived. The following summer, he learned that cabinet had decided

that with a view to the timely preparation of a plan for the future government of Canada to be submitted to Parliament [...] that we should send out at once as Civil Governor of the American Provinces one who for having been in the Cabinet during the whole period that Canadian affairs have been under consideration & is in complete possession of all the views and opinions of the Government on the subject.

Charles Poulett Thomson was to be that new civil governor.<sup>55</sup> Thomson, who arrived in the fall of 1839, inherited a Special Council that had existed since April 1838, and oversaw its final two sessions.

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<sup>50</sup>Glenelg to Colborne, Downing Street, 7 July 1838, Colborne Papers, microfilm A-588, NAC.

<sup>51</sup>Lord Hill to Colborne, Horse Guards, 16 August 1838, Colborne Papers, microfilm A-591, NAC.

<sup>52</sup>Colborne to Sir Colin Campbell, Sorel, 4 October 1838, Colborne Papers, microfilm A-598, NAC.

<sup>53</sup>Glenelg to Durham, Downing Street, 26 October 1838, despatch no. 126, Colborne Papers, microfilm A-587, NAC. A copy of this despatch was sent to Colborne.

<sup>54</sup>Glenelg to Colborne, Downing Street, 12 December 1838, despatch no. 14A, Colborne Papers, microfilm A-587, NAC. Emphasis mine.

<sup>55</sup>Normandy to Colborne, Downing Street, 23 August 1839, Colborne Papers, microfilm A-599, NAC.

Thus, despite having been designed for Durham and convened for the longest consecutive period of time by Thompson, it was Sir John Colborne who played the largest role in defining who would sit on the Special Council, and laid the ground work for how it would operate and what it would do. As Durham decided to wait for spring rather than go immediately to Lower Canada via New York in the opening weeks of 1837,<sup>56</sup> Colborne was the first to convene a session of the Special Council and, notwithstanding Durham's brief interlude, continued to oversee its operation for almost two years. Furthermore, although he was no longer governor when it took effect, his lobbying was instrumental in having the 1839 act expanding the council's powers passed.<sup>57</sup> It was not until nearly two years after the creation of the Special Council that a modified version of it came to play the role for which it was originally conceived. That is, it was not until late 1839 that it began being effectively used by a representative of the Crown, fully of the Colonial Office's choosing, who employed the Special Council to help in the implementation of a long-term constitutional settlement for Lower Canada. For the previous two years, unexpected resignations, rebellions, and delays had meant that Colborne — who had “neither forgiven nor forgotten” his quarrel with the Colonial Office<sup>58</sup> — had repeatedly taken up the administration of the colony in a temporary fashion.

Glenelg forwarded the act providing for the creation of the Special Council to Colborne in a despatch dated 19 February 1838, and acknowledged on 31 March. Colborne was instructed to “at once appoint a Special Council in pursuance of Her Majesty's Instructions, carefully selecting for this office individuals in whom public confidence can be placed.” In accordance with the act, he was to appoint at least 5 “natural born or naturalized subjects of the Crown, of approved loyalty,” and who were at least 21 years old. However, so that Durham would be “wholly unfettered as to the choice of Councillors,” any appointments he made would have to be “clearly understood as only temporary.”<sup>59</sup> On 23 April 1838, Colborne reported on the opening meeting of the council, which had been held five days before:

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<sup>56</sup>Goldring, “British Colonists,” 237.

<sup>57</sup>Colborne to Normanby, Confidential, Montreal, 23 April 1839, Colborne Papers, microfilm A-587, NAC; Goldring, “British Colonists,” 115; Russell to Thompson, Downing Street, 7 September 1839, in Shortt, *Constitutional Documents*, 516-21.

<sup>58</sup>Buckner, *Transition*, 236.

<sup>59</sup>Glenelg to Colborne, Downing Street, 19 February and 31 March 1838, despatches no. 21 and 28, Colborne Papers, microfilm A-586, NAC.

You will perceive from the accompanying extract of the proceedings of the Council that Sixteen Members were present, and that five were prevented from attending by the bad state of the roads in the District of Quebec. [...]The Council at present consists of Twenty-one Members — Eleven of them are French Canadians and two others are natives of the Province.<sup>60</sup>

Colborne had sent a list of appointees earlier in the month, after several had consented to their appointments.<sup>61</sup>

Thus, from the beginning, the Colonial Office in no way imposed a choice of Special Councillors, nor do they appear to have kept very good track of the names that were submitted to them. When a list of Special Councillors had to be laid before Parliament in late 1838, Glenelg had to write to Colborne to obtain the information.<sup>62</sup> The freedom of Colborne, Durham and Thompson to chose Special Councillors contrasted with previous practice with regard to the choice of the crown's legislative advisors in the colony. For example, Gosford's reforms to the Legislative Council languished at the Colonial Office for so long that when they were approved, it was on the eve of the Rebellion and the Legislative Council of Lower Canada had sat for the last time.<sup>63</sup>

The following twenty-two men were originally appointed by Colborne:<sup>64</sup>

Charles E. Casgrain (Rivière Ouelle)	Marc P. de Sales Laterrière (Les Eboulements)
William P. Christie (Montreal)	Étienne Mayrand (Rivière du Loup)
James Cuthbert (Berthier)	Peter McGill (Montreal)
Amable Dionne (Kamouraska)	John Molson (Montreal)
Joseph Dionne (St-Pierre de Nicolet)	John Neilson (Quebec)
Joseph E. Faribault (Assomption)	Turton Penn (Montreal)
Samuel Gerrard (Montreal)	Toussaint Pothier (Montreal)
Barthélemie Joliette (Industrie)	Jules Quesnel (Montreal)
Paul Holland Knowlton (Brome)	Pierre de Rocheblave (Montreal)
Charles E.C. de Léry (Quebec)	

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<sup>60</sup>Colborne to Glenelg, Montreal, 23 April 1838, despatch no. 29, Colborne Papers, microfilm A-586, NAC.

<sup>61</sup>Colborne to Glenelg, Montreal, 6 April 1838, despatch no. 24, Colborne Papers, microfilm A-586, NAC.

<sup>62</sup>Glenelg to Colborne, Downing Street, 14 December 1838, despatch no. 17, Colborne Papers, microfilm A-587, NAC.

<sup>63</sup>Gérard Filteau, *Histoire des Patriotes* (Montreal: L'Aurore, 1975), 180-181.

<sup>64</sup>F.-J. Audet, "Membres de Conseil Spécial," *Bulletin des Recherches Historiques*, VII:3 (March 1901), 82-83; JSCLC, I, 18 April 1838. Audet notes that Thomas Brown Anderson (Megantic) was also offered an appointment when they were first issued on 2 April 1838, although Brown's name never appears in the JSCLC.

Ichabod Smith (Stanstead)  
James Stuart (Quebec)

William Walker (Quebec)

Although only 16 of them were present for the first meeting on 18 April 1838, all but Smith and Laterrière were attending regularly by the end of the session. The former had informed Colborne that he could not accept the appointment, and Thomas Austin of Lennoxville, was invited to replace him as a representative of the Eastern Townships.<sup>65</sup> When, following Durham's departure and the outbreak of the 1838 Rebellion, Colborne was again instructed to call together a Special Council in November of that year, it was virtually identical to that which he had appointed several months before. Along with the two who did not attend during the first session, A. Dionne, Knowlton, and Mayrand were also missing. George Moffatt and Dominique Mondelet, both of Montreal, were the only two additions.

Colborne's choice of Special Councillors was far from random. In fact, he had taken each district and city's representation in the Legislative Assembly and entered them into a calculation "equalizing proportionally the number of the Council to the different Districts yet restricting them to the number of 17." This allowed for five members from the District of Quebec, eight for Montreal, two for Three Rivers, one for Gaspé, and one for St. Francis, though obviously the total was eventually raised. Colborne's comments on the subject show that he was careful to make his council representative of different regions, of the two major ethnic groups (although apparently a little reluctantly in the case of French Canadians), and of the province's commercial interests. Thus, he noted that "For the District of Quebec, of the 5 members to be chosen 2 might be chosen having the *French Régime* Canadian names (to suit the times) 2 of English names & 1 to represent the commercial interests of the City of Quebec." Colborne nonetheless showed a certain ignorance of the regions outside of Montreal. Although he listed more than enough potential councillors from that district, he was unable to come up with anyone to represent the District of Gaspé, and he spoke rather vaguely about potential councillors from the District of Quebec: "The name of Taché is of respectable standing in the same part of the Country & I am told that one of the family is well qualified." But while he was given virtually no guidance from the British Government, Colborne was seeking and receiving

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<sup>65</sup>Colborne to Glenelg, Montreal, 23 April 1838, despatch no. 29, Colborne Papers, microfilm A-586, NAC.

advice on the subject from individuals in the colony. For example, he was *told* of the qualifications of one of the Tachés, while elsewhere he spoke of “the Lists put into my hand.”<sup>66</sup>

While Colborne largely achieved his goal of having a reasonable degree of ethnic and regional diversity, the men he called to the Special Council’s first sessions had a lot in common.<sup>67</sup> Specifically, they were all established members of Lower Canada’s political, social and economic elite. The very fact that they were all long-time residents of Lower Canada is significant, especially in light of Durham’s short-lived experiment with legislators from Britain. While it might be less true in the case of French Canadians, it is important to acknowledge that colonial elites often “saw themselves as provincial Englishmen.” And while they did not always dream of rising to prominence in the mother country, London was usually “the centre of their universe.”<sup>68</sup> But the men whom Colborne called to the council table all had deep interests and deep roots in the one small portion of the Empire where they resided, and when they did visit Britain, they did so primarily as representatives of specifically Lower Canadian political and economic interests.

All of the Special Councillors were major property owners, and regardless of where the property was held or the form of tenure, landholding invariably reveals itself to be the source of a councillor’s wealth and prominence. Some had holdings concentrated regionally in Lower Canada; others spanned the province and many extended to Upper Canada. Even today, the names of Joliette and Knowlton grace the map of Quebec, in recognition of their role in the development of those communities. Nine seigneurs — or men who controlled seigneuries through marriage — were among the original Special Council appointees: Cuthbert, Christie, Mondelet, Pothier, de Léry, Laterrière, Joliette, Christie, and Faribault. Meanwhile, McGill and Moffatt were Canadian Commissioners of the British American Land Company, of which Christie was a major shareholder.<sup>69</sup> Pothier, de Rochebalve and Molson were among those who had extensive land holdings concentrated in and around the emerging metropolis of Montreal.

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<sup>66</sup>“Special Councillors,” n.d., Colborne Papers, microfilm A-589, NAC.

<sup>67</sup>Unless otherwise noted, the information on the Special Councillors given in the pages that follow is drawn from their biographies in the *DCB*. See the bibliography for a list of references for *DCB* articles pertaining to Special Councillors.

<sup>68</sup>Buckner, *Transition*, 99-101.

<sup>69</sup>Goldring, “British Colonists,” 189.

Thus, whatever experience some of them might have as printers, lawyers or notaries, their power was rooted in property — whether urban or rural — as much as their professional skills.

None of the Special Councillors initially appointed by Colborne were strangers to Lower Canadian politics, nor to appointment or election to public office. Not surprisingly, they were uniformly opponents of the Patriots at the time that rebellion broke out in late 1837. It seems they were all justices of the peace and magistrates, and continued as such long after those who were associated with the Patriot party were purged from their ranks.<sup>70</sup> With the exception of Laterrière and A. Dionne, they had all been staunch opponents of the 92 Resolutions. Neilson and Casgrain had lost their seats in the Assembly in 1834 largely over this issue. Dionne continued as a member of the assembly until 1837, but by late in that year affirmed his alienation from the Patriot cause by accepting, along with Neilson, a seat in the Legislative Council (although the seat was never occupied as a result of the suspension of the constitution in 1838). The appointed Legislative Council predictably proved more fertile ground when it came to picking men to serve on the newly constituted body. Pothier had been appointed in 1824; Moffatt in 1831; and McGill, Laterrière, and de Rocheblave in 1832. Early on in the Special Council's mandate, the Executive Council was less well represented among Special Council appointees. De Léry had become an Executive Councillor in 1826, but lost his appointment in late 1838. Meanwhile, Stuart had been appointed to the Executive Council in 1827, Mondelet had followed in 1832, and both remained Executive Councillors through the Special Council period.

Regardless of whether or not they sat on the Executive Council, by being offered and (in most cases) accepting appointment to the Special Council in the wake of the 1837 Rebellion, all of the Special Councillors bore witness to a degree of reciprocal confidence and support which existed between themselves and those administering the province. In some cases, this political solidarity with executive power contrasted to the situation in earlier or later times. Mondelet had been stripped of his militia commission in a feud with Dalhousie during the 1820s, although he was also purged from the Assembly for accepting a seat on the Executive Council from Aylmer.<sup>71</sup> Neilson is another Special Councillor who is remembered as much for his opposition to the executive as his alliances with it, having been sent to England in 1822 and

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<sup>70</sup>Aegidius Fautaux, *Patriotes de 1837-38* (Montreal: Editions des dix, 1950), 37.

<sup>71</sup>Buckner, *Transition*, 157.

1828 as a delegate of the assembly to protest against a proposed union with Upper Canada and Dalhousie's administration. Neilson returned to the role of opposition leader in the legislature of the united Canadas, while in 1849, Molson and Knowlton were signatories to the annexation manifesto. But whatever their actions in the past or the future, they had all proven themselves, in their staunch opposition to the Patriots, to be strong supporters of the British regime in Lower Canada in the years surrounding the creation of the Special Council.

Colborne's Special Councillors were also the 'movers and the shakers' in the province's established mercantile and nascent industrial economies. This was sometimes literally true, as they moved up the ranks of firms, moved from one to another, or shook up their ownership. Earlier in the century, Moffatt, Pothier, de Rocheblave, Quesnel, and Mayrand had all played prominent roles in the North-West Company, and that company's merger with the Hudson's Bay Company. Moffatt was involved in the founding, operation and dissolution of a series of partnerships and companies, including Parker Gerrard and Ogilvy; McTavish, McGillivray, and Company; and Gillespie, Moffatt and Company. At Quebec, Walker was a partner at Forsyth, Richardson and Company. Often, Special Councillors collaborated at the heart of business projects. McGill and Gerrard joined Moffatt at Parker, Gerrard and Ogilvy. Separately, they created Peter McGill and Company and Gerrard, Yeoward, Gillespie and Company. A. Dionne was Casgrain's business partner, while de Rocheblave and McGill were both investors in Bernard, LaRocque and Company. The Bank of Montreal was tremendously well represented on the Special Council: Christie was a shareholder, Moffatt and Molson directors, Gerrard past president, and McGill current president. Different Special Councillors invested in and served on the corporations of the Champlain & St. Lawrence Railroad, the City Bank, the Lachine Canal, the Bank of Upper Canada, Montreal's St. Anne's market, and various aspects of the development of the Eastern Townships. Molson, whose banking, brewing, and steamship building has in retrospect gained him a reputation as Lower Canada's "first great capitalist,"<sup>72</sup> sat across from Joliette, who turned a corner of his wife's property into the thriving village of Industrie, and Quesnel, who had served as president of the Montreal Committee of Trade during 1836-37. Although concentrated in the hands of Montreal-based anglophones, strong economic power was clearly spread across the whole of the Special Council.

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<sup>72</sup>Young, "Positive Law," 51.

Given the context of the Rebellions, it is also important to note that the newly-appointed Special Councillors also wielded, or had wielded, considerable military power. Militia commissions abounded, especially among francophone councillors. Pothier, de Léry, de Rocheblave, Quesnel, Molson, and Mayrand had served as militia officers during the War of 1812. Among English-speaking councillors, service during the Rebellions was more common. Christie came out of retirement to serve as Lower Canadian Military secretary during 1837-38.<sup>73</sup> McGill was central to the organization of volunteer militia regiments in and around Montreal,<sup>74</sup> while Austin and Knowlton led regiments in the Eastern Townships. Whatever the conflict, they could all lay claim to being proven supporters of British authority in Lower Canada.

Thus, the Special Councillors appointed by Colborne in 1838 were a well-established elite whose members exercised various forms of power over Lower Canadians in their roles as seigneur, landlord, employer, creditor or military officer. But while the council's class complexion remained static, its membership did not. The changes brought about by new appointments during 1839-40 serve more to highlight differences between Special Councillors than similarities. The entire council was, of course, replaced during Durham's brief administration. But the changes at the beginning of the third session — the addition of Mondelet and Moffatt, and the absence of A. Dionne, Stuart, Knowlton, de Léry and Mayrand — were slight, and the latter three councillors returned to their seats by the beginning of the next session. The two additions served to "preserve the racial balance of the Council without broadening its political complexion."<sup>75</sup> Things changed more dramatically under Thompson. In November 1839, Stuart returned to his seat, while Edward Hale of Sherbrooke, Robert Unwin Harwood of Vaudreuil and John Wainwright of Argenteuil took theirs for the first time. April 1840 saw the arrival of Henry Black, Dominick Daly and Charles Ogden of Quebec; Charles Dewey Day of Montreal; Edward Hale of Pontneuf; and Frederick George Heriot of Drummondville. Colborne was apparently responsible for the appointments of Harwood and

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<sup>73</sup>Greer, *Patriots*, 291.

<sup>74</sup>Senior, *Redcoats*, 60-61, 105.

<sup>75</sup>Goldring, "British Colonists," 241.

Hale (of Sherbrooke), who were offered their seats in early August, but this marked the end of his influence on the Special Council.<sup>76</sup>

One obvious trend highlighted by the later appointments was the council's shifting ethno-linguistic balance. As half of the original appointees, French Canadians were always under-represented on the council in relation to their numbers in the province and, because Laterrière never took his seat, anglophones actually had a majority from the very beginning. And of the nine new members who took their seats in 1839 and 1840, there were no French Canadians. Jean-Baptiste Taché of Kamouraska was appointed to the council in late September 1839, but he never attended a meeting.<sup>77</sup> In fact, taking into account all the members who attended at any point during each of the Council's six sessions (excluding the second), the proportion of francophone councillors continually decreases: from 48%, to 37% in both the third and fourth sessions, to 26%, to 20%. The trend becomes even more evident when considering attendance at individual meetings. For example, though he returned in the fall of 1840 to attend regularly during the sixth session, Mondelet only attended one meeting during the third. In the sixth session, two of the four French Canadians who were still participating in the business of the council — Faribault and Joseph Dionne — stopped attending in mid-November 1840, while the council continued sitting until early February 1841. At times, despite his reputation as being "staunchly anti-French,"<sup>78</sup> Thomson seemed successful in slowing the disappearance of French Canadians. A. Dionne, who had not attended since the first session, returned for a one-month stint in the fifth, while the sixth was the only one during which Mondelet attended more than one meeting. But the fact remains that Mondelet was one of only two French Canadians appointed after April 1838, and the only one who ever took his seat. Thus, as the council expanded, their numbers shrank and French Canada became increasingly under-represented.

Goldring approaches this problem from another direction, attributing the fact that Mondelet was the last new French Canadian to accept and appointment to "the passivity and bitterness of *canadien* feeling after the second revolt was crushed."<sup>79</sup> A few cases do suggest

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<sup>76</sup>Audet, "Membres du Conseil Spécial;" Goldring, "British Colonists," 242. Goldring suggests that Colborne selected all of the Councillors who began sitting in late 1839.

<sup>77</sup>Audet, "Membres du Conseil Spécial."

<sup>78</sup>Buckner, *Transition*, 170.

<sup>79</sup>Goldring, "British Colonists," 242.

that French Canadians were avoiding participation in the Special Council's work. Laterrière's has been described as an old supporter of the *parti canadien* and a strong anti-unionist who avoided politics and refused or neglected military appointments from 1838 to 1845 as a result. Ill health was the excuse given by Laterrière and his colleague A. Dionne in letters of excuse presented to the council in November 1838; Dionne sent his regrets again in early 1839. However, a list of councillors compiled by Colborne in 1839 lists Dionne as having resigned. On the same list, "only excused himself the first session, but never attended," is noted after Laterrière's name.<sup>80</sup> No mention is made of ill health, the excuse also given by Barthélemy Joliette in February 1839.<sup>81</sup>

But poor attendance must be treated as a separate problem, one which cut across ethnic lines. Others have reached different conclusions. Goldring writes that "attendance was always high and once a member accepted his seat he generally occupied it during substantial parts of every session." He also points to the fact that "most of their names are sprinkled through the journals" as evidence of their dedication.<sup>82</sup> However, good attendance and dedication are not always recorded in the journals. Virtually no business was conducted during the first half of December 1838, and only two ordinances were considered during the rest of the month. There was no quorum on 12 occasions in late November 1840, and through much of December only four members were present. Thus, anglophone councillors were far from immune to truancy. Like Laterrière, Smith never took his seat. Stuart disappeared from May 1838 to November 1840, the fourth session was Penn's last, and Neilson resigned in mid-1840. On 17 November 1838, not only Mayrand, but also Walker, Austin and Knowlton were formally excused from attending the third session.<sup>83</sup>

Indeed, French Canadian distaste for the Special Council is a frequently cited but rarely explored phenomenon. Historians treat their readers to anecdotes, tales of a union vote called on short notice amidst the "November snows" in order to stifle French Canadian opposition to the measure, or of A. Dionne fearing for his life on his visits home.<sup>84</sup> But it is unclear whether Dionne would have been any less despised serving on the Legislative Council under Gosford. It

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<sup>80</sup>"Special Councillors already appointed," Colborne Papers, microfilm A-598, NAC.

<sup>81</sup>JSCLC, II, 10 November 1838; IV, 14 and 15 February 1839.

<sup>82</sup>Goldring, "British Colonists," 245-46.

<sup>83</sup>JSCLC, II, 17 November 1838.

<sup>84</sup>Goldring, "British Colonists," 261; Monet, *Cannon Shot*, 40.

is also unclear whether hostility surrounding the council was aimed at it specifically, or the fact that it formed part of a larger authoritarian regime. Of the instruments of counter-revolution used in Lower Canada, the Special Council must have seemed one of the most benign. While it gave them a mandate to do so through its legislation, the Special Council was not a volunteer militia prone to house burnings and property seizures, or a judiciary retroactively applying extraordinary measures to impose questionable treason conviction after questionable treason conviction. Regardless, Allan Greer had identified more than enough prominent French Canadians who were willing to come to the defense of British power in its nastiest forms in the years before and after the Rebellions.<sup>85</sup> Furthermore, an appointment to the Special Council could also be looked on as a means of preserving a French Canadian voice in politics.

The fact remains that if the French Canadian elite felt reluctant to sit on the Special Council, its members had fewer and fewer opportunities to act on these feelings. This suggests that perhaps French Canadian aversion to the council was the result of the council *becoming* an alien institution, not because it was essentially so. That only three of the ten names on a list of potential new councillors prepared in the summer of 1839 were French Canadian shows that, even at the drawing board, French Canadians were largely being overlooked in the construction of the Special Council.<sup>86</sup> The appointments which were actually made in the months that follow further indicate how the momentum was not on their side. Furthermore, compared to the new appointees, those francophones who retained their seats and continued to attend were older, with careers oriented to the pre- rather than post-rebellion period. In at least one case, they were literally dying off: de Rocheblave had stopped attending due to illness by the end of 1839, and was dead by the end of the next year. But advanced age and well-established careers were characteristic of most of the original appointments to the council, British or French Canadian. Their birthdates were clustered in the 1770s and 1780s, putting them in their late 50s, 60s and 70s. Indeed, the youngest appointees were francophones: Laterrière, Mondelet and Casgrain. But individual cases remain symbolic of a group of francophone Special Councillors whose political careers were quickly drawing to a close and an anglophone group who remained a

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<sup>85</sup>Greer, *Patriots*, 282-91.

<sup>86</sup>"Names of Persons who might be called to the Special Council," Colborne Papers, microfilm A-598, NAC. The names listed were: Charles W. Grant, Samuel Watt, R. de St. Ours, Joseph Masson, Hughes Heney, B.C. Gury, C.D. Day, F.G. Heriot, Robert Long, Edward Hale of Pontneuf, and Gabriel Marchand of St. John's.

force in Canadian politics long after the Special Council period. Mayrand spent only 13 days on the Legislative Council after union, resigning to pay more attention to his finances and real estate holdings. De Léry died in early 1842. Pothier went bankrupt and withdrew from political life in 1841, and died in 1845. His insolvent estate was managed by Gerrard, several years his senior, who took control of his seigneuries. Men like Walker, who was a legislative councillor until 1863, or Molson and Knowlton, who flirted with annexation in 1849, remained at the center of Canadian political life.

Meanwhile, the new — uniformly English-speaking — Special Councillors who arrived in late 1839 and early 1840 were, with the exception of Heriot, all born either in the last decade of the 18th century, or in the first decade of the 19th, making them considerably younger than their previously-appointed colleagues. For them, the Special Council proved to be a springboard for careers which would extend well into the second half of the 19th century. For several, appointment to the Special Council was the first step in their political careers; for virtually all of them, it was far from their last. Black, Ogden, Day, Daly, and Hale of Sherbrooke all won seats in the assembly under union and went on to receive numerous appointments. Harwood, defeated several times in elections for the assembly, found himself in the Legislative Council by the 1860s. Daly would end his career as governor of South Australia, with stops in Tobago and Prince Edward Island along the way. A couple of decades after serving on the Special Council, Day would figure prominently in another reworking of Lower Canadian law, namely the creation of the Lower Canadian civil code of 1866.<sup>87</sup> French Canadians, no longer being integrated into the Special Council by 1839, were conspicuously absent from this new wave of councillors. Young French Canadians were not invited to convert participation in the business of the Special Council into prominence in a later period. Rather, “performance in 1837 became a benchmark for a generation of francophone politicians.”<sup>88</sup>

A more subtle trend in the council’s membership was an over-representation of members from Montreal. Of course, this had much to do with the fact that the council’s meetings — with the exception of those held under Durham — were held in that city. While the District of Gaspé never did get its one representative provided for under Colborne’s

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<sup>87</sup>Young, *The Politics of Codification: The Lower Canadian Civil Code of 1866* (Montreal: McGill-Queen’s University Press, 1994).

<sup>88</sup>Young, *George-Etienne Cartier: Montreal Bourgeois* (Montreal: McGill-Queen’s University Press, 1985), 11.

calculations, Special Councillors tended to be fairly well distributed across the province. However, taking into account attendance, the Montreal councillors had a presence on the council which the population of the city and the district could not justify. Of the six Special Councillors who attended every session called by Colborne and Thomson, four were from the city of Montreal (Gerrard, McGill, Molson, Quesnel) and one from the district (Cuthbert). This leaves William Walker, who arrived late for the opening of the third and fifth sessions, and left before the end of the third, fourth, fifth and sixth. Indeed, members from other parts of the province were far more likely to show up after the beginning of a session, leave before it was finished, or not show up at all for a particular session. The appointments made in 1839 and 1840, which included only one Montrealer, might be seen as an attempt to address this situation. But the attendance of many of the new appointees was atrocious. Black, Heriot, and Hale of Pontneuf only showed up for parts of the fifth session. Wainwright attended for four days in late November 1839, and for only half of the sixth session. The more steady attendance of members from Montreal did not go unnoticed by contemporaries, who perceived its effect on council proceedings. For example, in late March 1839, de Rocheblave noted that

Nous ne sommes plus que dix au Conseil -- 8 desquels sont de cette Ville -- nous avons devant nous la mesure convenue entre Mr Buller et le Séminaire au sujet du changement de tenure pour l'Ile de Montreal dont le Séminaire ne paraît pas trop content dans les détails, le Conseil tel que composé ne paraît pas disposé à les traiter trop favorablement.<sup>89</sup>

This is not to suggest that Special Councillors from Montreal were conspiring to keep out-of-town members away. As Colborne's despatch regarding the first meeting of the council suggests, bad roads were reason enough to explain the truancy of the non-Montreal members.

Nonetheless, the fact that the council met in Montreal is far from trivial. While Lower Canada only had a fifty-year tradition of partially-elected legislatures, Quebec had been the seat of government since the founding of New France. Elinor Senior, by placing the Special Council in the larger context of developments surrounding the Rebellions, suggest that the fact that the council met in Montreal both symbolized and contributed to the developing economic and administrative ascendancy of that city over Quebec:

Military departments moved from Quebec to Montreal in keeping with the latter's new status, not only as military headquarters, but as the seat of government, for it was in

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<sup>89</sup>De Rocheblave to Bouthillier, Montreal, 25 March 1839, Bouthillier Collection, file 422, MMA.

Montreal that the Special Council under Colborne met. The city was now the centre of both military and civil administration and from it emanated the command of some additional 4,825 troops stationed south of the St. Lawrence, disarming and keeping an eye on the habitants generally.<sup>90</sup>

This passage also serves as a reminder that Colborne, who remained commander of the forces, was preoccupied with military concerns during most of his tenure, and no doubt wanted to stay close to both his troops and the areas in the District of Montreal where the rebellion had taken place or, in the case of the third session, was taking place. Meanwhile, there seems to have been an expectation that Quebec would regain its lost status when things returned to 'normal.' Thus, in discussing whether the council's meetings would be public, de Rocheblave explained that

la chose est inutile dans ce moment le Local ne les permet pas — à peine avons nous la place de nous retourner, mais je n'ai pas le moindre doute que qu'ant le Conseil siégera à Québec [il le fera] dans un Local qui le permettra ces Séances seront publiques.<sup>91</sup>

But things never returned to normal, the meetings never became public, and they never migrated to Quebec.

There is evidence to suggest that poor attendance by non-Montreal member had to do with more than just bad roads. The wide range of complaints expressed by *The Quebec Gazette* in late 1839 no doubt originated with its editor, Special Councillor John Neilson. *The Gazette* complained that

those who have attended the sessions regularly, from the District of Quebec, have spent some hundreds of pounds of their own property, besides neglecting their affairs, for the purpose of attending the sessions of Council. It is within our knowledge that several gentlemen actually refused a nomination to the Council. The task was, indeed, disagreeable and burthensome. Without the powers of a legislative body, the Council had only to say YES or NO to the Drafts of Laws that were submitted to it by the Governor, in whom, if there was any fault, it was a desire to legislate too much; to legislate beyond what was *necessary* to meet the *mere emergencies of the times* for which alone the Council was constituted.<sup>92</sup>

In early 1841, Edward Hale of Sherbrooke was so incensed by the insensitivity shown to his plight by those residing in Montreal that he had resorted to spreading rumors:

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<sup>90</sup>Senior, *Redcoats*, 200.

<sup>91</sup>De Rocheblave to Bouthillier, Montreal, 23 April 1838, Bouthillier Collection, file 420, MMA.

<sup>92</sup>*Quebec Gazette*, 30 December 1839. Emphasis theirs.

They and the Governor at their head seem to think that we are mere foot-balls, and must wait until they are ready for us, and the cause of having no Quorum today was that Ogden was going out with his children and said he would be hanged if he would be bothered. Perhaps the Governor thinks he is sure of keeping the Township Members and without us there would be no quorum so I have spread a report that we shall leave town on the 11th.<sup>93</sup>

In his correspondence with his wife, Hale identified himself with the group of what he referred to as the “country members,” who apparently shared his impression that their time was being wasted:

The public officers are sadly slow in preparing business for the Council and we have now nothing at all before us — a piece of neglect which might surely warrant our all going away. As it is I believe that Walker, Neilson, Uncle E and Casgrain will go away tomorrow which will reduce our numbers though still leave enough for a Quorum.<sup>94</sup>

He described a similar situation when the council reconvened a month later.<sup>95</sup> At one point, the combination of expense, wasted time, and homesickness even made Hale consider resigning.<sup>96</sup>

As Hale’s comments suggest, the relatively good attendance of a couple of the new non-Montreal members appointed by Thompson — Daly and Ogden — can be explained by the fact that they, as officers of government, were required to be in Montreal with the Governor General anyway. In fact, Thompson’s administration saw the infiltration of the Special Council as a legislative body by representatives of other branches of the government, a change that had been occurring gradually before he took over the reigns of government. In early summer 1839, Colborne appointed Special Councillors Pothier, McGill, de Rocheblave and Moffatt to the Executive Council.<sup>97</sup> Under Thomson, Provincial Secretary and Executive Councillor Daly, Attorney General Ogden, and Solicitor General Day, were appointed to the Special Council. While Colborne, in composing his original council, had excluded Black because he was a

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<sup>93</sup>Edward Hale to Eliza Hale, Montreal, 5 January 1841, Hale Correspondence, MMA.

<sup>94</sup>Edward Hale to Eliza Hale, Montreal, 7 May 1840, Hale Correspondence, MMA.

<sup>95</sup>Edward Hale to Eliza Hale, Montreal, 11 June 1840, Hale Correspondence, MMA. Hale wrote that “Members begin to be impatient Uncle E. talks of going away tomorrow night. Neilson, Harwood & others threaten the same and I see no great necessity for me to remain behind except that I have a strong desire to go through with the job.”

<sup>96</sup>Edward Hale to Eliza Hale, Montreal, 12 May 1840, Hale Correspondence, MMA.

<sup>97</sup>Colborne to Colonial Secretary, Montreal, 3 June 1839, despatch no. 40, Colborne Papers, microfilm A-587, NAC.

judge,<sup>98</sup> Thomson welcomed him into his council. Late 1839 also saw the return of Stuart, who had been Chief Justice of the province since the Durham administration. Finally, in a province which had spent so much time under martial law during the previous years, the appointment of *Colonel* Heriot to its temporary legislative body had significance that was at very least symbolic.

Goldring, in addressing these changes, explains that, "Under Poulett Thompson, a sharper spirit prevailed; the introduction of civil officers brought legislative draftsmen into direct argument with the body dissecting their drafts."<sup>99</sup> However, internal conflict was never a defining characteristic of the council. The new appointments could therefore be seen, not as a source of argument, but as an opportunity for collaboration. Thus, the change is significant in the way it wiped away any notion of the Special Council's independence and initiative as a legislative body.

This lack of independence becomes evident when examining the day-to-day operation of the council. Once again, Colborne received little to no guidance from Britain on the subject. Glenelg noted in a despatch that

The crown in the exercise of its prerogative, has repeatedly of late years established councils possessing Legislative authority in other British Colonies. It has been customary on such occasions to require that some fixed rules should be laid down for regulating the procedure of the Legislature for the purpose of maintaining order and regularity, and for the prevention of possible abuses.<sup>100</sup>

At the first meeting of the council Colborne laid before the council a set of 'Rules and Orders.' On the motion of Stuart, these were ordered translated into French and printed bilingually. The next day, the rules were amended slightly — allowing a presiding member to direct business in the absence of the governor — and approved by the councillors. They were sanctioned by Colborne, and then forwarded by him to London for the information of the Colonial Office.<sup>101</sup> Notwithstanding Durham's council, which ignored them altogether, the rules underwent only two further alterations. At the start of the third session in November 1838, a rule requiring 21

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<sup>98</sup>"Special Councillors," n.d., Colborne Papers, microfilm A-589, NAC.

<sup>99</sup>Goldring, "British Colonists," 246.

<sup>100</sup>Colborne, 21; 19 February 1838, No. 28. A copy of the rules used by the council at Cape of Good Hope was enclosed as an example.

<sup>101</sup>Glenelg to Colborne, Downing Street, 23 April 1838, despatch no. 29, Colborne Papers, microfilm A-586, NAC; *JSCLC*, I, 19 April 1838.

days notice before the Special Council could be convened was dropped, no doubt because that very session had been called on short notice in the midst of the 1838 Rebellion. Then, in late February 1839, a committee was struck with Colborne's blessing to revise the rules. The resulting change allowed for the creation of special committees to examine ordinances and propose amendments.<sup>102</sup>

Perrault describes the council's rules as similar to "ceux des assemblées délibérantes notamment aux règlements en vigueur dans les parlements à caractère britannique."<sup>103</sup> Thus, the *Journals of the Special Council* differ very little in terms of procedure from those of the Lower Canadian Legislative Council or, for that matter, of the Legislative Assembly. Business was directed by a presiding member. With a few exceptions, this role was filled by Cuthbert under Colborne, and Stuart under Thomson. Upon being introduced, proposed ordinances were given a first reading. A second reading — or after February 1839, referral to a committee — was then ordered. Amendments were considered at second reading or on submission of committee reports. Ordinances were then ordered transcribed in anticipation of a third reading, where they would receive final approval by the council and the governor. Except for the fact that the Special Council passed 'ordinances' instead of 'acts,' there was little in the conduct of its day-to-day business to suggest that the constitution of the province had been suspended. However, these similarities with Lower Canadian legislatures which had come before were merely superficial.

Digging deeper, cracks appear in the facade of procedural formality, cracks which reveal the power of the Special Council to legislate not only what, but also how it saw fit. Approved by a council whose members only expected to serve for a couple of months in early 1838, the rules were hardly written in stone. During Durham's administration, they were totally disregarded. Nor was the dedication of those who had approved them absolute. During the third session, they were suspended on four occasions. On 7 November, McGill and Pothier moved successfully that "in the present state of the Province it is necessary for the Public Security, that the Standing Orders of the Council, with respect to the second and third reading of the Ordinances now submitted by His Excellency [sic] the Administrator of Government, be suspended." The same scenario was repeated on 15, 19 and 23 November. The ordinances in

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<sup>102</sup> *JSCLC*, III, 5 November 1838; IV, 25 February and 2 March 1839.

<sup>103</sup> Perrault, "Conseil Spécial," 140.

question ranged from one suspending specie payments to one allowing treason suspects to be tried by courts martial. The council's actions say a lot about the circumstances under which the third session of the council took place. But the rules were also suspended during times of relative peace: in early May 1838, to allow passage of an ordinance providing for a survey of Lake St. Peter before the end of the first session; and in late November 1840, to amend an ordinance passed earlier in the session.<sup>104</sup>

The Special Council was essentially the tool of the Governor General. But the governor played an ambiguous role in the day-to-day business of the Special Council. While Durham presided over every meeting of his Council, Colborne and Thomson were rarely present during their councils' deliberations. They only showed up at council periodically to sanction ordinances which were being given third reading. Nevertheless, the rules conformed to the act creating the Special Council by stipulating that "no Law or Ordinance shall be made unless the same shall be first proposed by the Governor for adoption by the Council."<sup>105</sup> This rule had little effect on governors' attendance, or lack thereof. They simply had new ordinances delivered by their civil secretaries, or proposed them when they were at council to assent to ordinances.

However, the fact that all legislation had to be introduced by the governor should not be dismissed. It meant that the Special Council administered the legislative program of the governor, or at very least a legislative program to which the governor had accepted as his own. This situation signaled a decisive break with previous practice in Lower Canadian legislatures and a fundamental change in the relationship between the executive and the legislative branches of government in a colonial context. While it is tempting to ascribe the authoritarianism of the Special Council to the simple fact that it was an appointed body, Special Councillors had considerably less independence than their predecessors on the Legislative Council, who, once appointed, held their seat fairly permanently and could pursue their own personal or collective legislative program. Phillip Buckner explains that

Whereas in Britain a relationship between the executive and the legislature had evolved which gave the executive the initiative in government, in colonial government it was assumed that the initiative would rest with the legislature. Since the primary responsibility was to protect Imperial interests, its role was essentially negative.

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<sup>104</sup> *JSCLC*, I, 5 May 1838; III, 7, 15, 19, and 23 November 1838; VI, 30 November 1840.

<sup>105</sup> *JSCLC*, I, 19 April 1838.

This mainly meant that the power of the assembly inevitably expanded, but although “the colonial upper house was usually susceptible to executive management, [...] it was rarely a totally subservient body.”<sup>106</sup> Thus, it was colonial legislators, elected and appointed, who drove the legislative process, in as many different directions as they wished.

If Special Councillors wished to influence the course of legislation, they were limited to working within the system, modifying an agenda approved by the governor, as they could not pursue their own without first gaining his approval. While it was apparently never used, the governor retained the power to dismiss Special Councillors at his discretion, and councillors were well aware of this situation. In early June 1840, Edward Hale of Sherbrooke reported hearing rumors that the council would be replaced because he and his colleagues were

too independent & honest in our opinions to be convenient. The new one will certainly be composed of Officers of Govt and pliant voters, for there is certainly plenty of despotism in these *Liberal* Politicians.<sup>107</sup>

The new relationship between executive and legislative power was symbolized by the fact that while before 1838 both the Legislative Assembly and the Legislative Council met in buildings separate from the Château St-Louis at Quebec,<sup>108</sup> the Special Council met at Government House in Montreal. Thus, the legislative branch of government had been literally taken in by the executive.

Furthermore, as time went on, a rudimentary form of cabinet government seemed to be developing. In the first and the third sessions, there seems to be no consistent pattern or system to how ordinances were ushered through the council on their way to becoming law. But with the introduction of committees in the fourth session, the bulk of the work to be done in preparing any particular ordinance was confided to a handful of councillors specifically chosen for the task. This system evolved further under Thompson. He assigned new ordinances to an individual councillor, and this member would move its second reading, chair the committee considering it, and move that it be passed at third reading. While the officers of government and Executive Councillors who sat on the Special Council were not necessarily the ones entrusted

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<sup>106</sup>Buckner, *Transition*, 56-57, 65, 158.

<sup>107</sup>Edward Hale to Eliza Hale, Montreal, 7 June 1840, Hale Correspondence, MMA.

<sup>108</sup>Damase Potvin, *Aux Fenêtres du Parlement du Québec: Histoire, Traditions, Coutumes, Usages, Procédures, Souvenirs, Anecdotes, Commissions et autres organismes* (Quebec: Les Editions de la tour de Pierre, 1942), 11-16.

with new ordinances, they were expected to vote as a block. Edward Hale was among those who were not impressed by the efficiency of this arrangement: "I follow my own straight course & vote as I think best, but I would not at this moment be an Officer of Government for £1000 a year. Some of them have very hard swallowing I assure you." He gave the example of Black, who "was told as an Officer of Govt that he must vote in such a way — he said he would stay away all together & never sit in the Council again."<sup>109</sup> Some might expect such an arrangement on an appointed council, and would see little in the way of legislative innovation. On the other hand, Hale's comments show that it was not what contemporaries necessarily expected.

One conclusion these considerations suggest is that voting patterns on the Special Council are largely irrelevant. The system in which the councillors operated was designed to pass ordinances proposed by the governor, not to debate them. Votes were relatively rare, although they increased in later sessions along with the volume of business and the complexity of ordinances. Allegiances and alliances shifted constantly according to contexts and individual ordinances. Thus, nothing remotely resembling parties or voting blocks ever emerged. Votes, when they were not over minor adjustments to such things as fines, fees, or qualifications, tended to be over how or when the council would proceed, such as whether the rules should be suspended or whether consideration of a particular ordinance should be delayed. Whether a particular ordinance would be passed or not was rarely in question. Since the council journals were not published until the end of each session, even if a councillor wanted to make a symbolic display of defiance by voting against a particular ordinance, the public would not learn the details for weeks. For example, although the Special Council's resolutions on union were voted on in mid-November 1840, they were not published in Lower Canada until early February 1840, when *The Quebec Gazette* copied them from a London newspaper.<sup>110</sup> The situation is particularly surprising given that the editor of *The Gazette*, John Neilson, was present at Council when the resolutions were approved.

More important than how the Special Councillors voted, is what they voted on. Perrault, for his part, offers a thoroughly positive assessment of the Special Council's legislative achievements:

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<sup>109</sup>Edward Hale to Eliza Hale, Montreal, 7 June 1840, Hale Correspondence, MMA.

<sup>110</sup>*Quebec Gazette*, 7 February 1840.

L'assiduité des membres, la discussion des questions, dont quelques-unes très importantes, qui leur furent soumises, les modifications qu'ils apportèrent à certaines lois suggérées par le gouverneur, permettent d'affirmer que les membres de ce Conseil spécial apportèrent à leurs délibérations un sérieux, un sens des responsabilités que ne manifestent pas toujours les assemblées délibérantes. Cette impression est encore plus vive après l'étude des lois ou ordonnances adoptées par ce Conseil. Son oeuvre législative, édifiée en moins de trois ans, soutient avantageusement la comparaison avec celle édictée par nos parlements et nos législatures. Quelques-unes de ses ordonnances, modifiant ou maintenant des lois antérieurs, n'innovent pas. Mais la plupart révèlent chez les membres de ce Conseil le souci de s'intéresser à tous les aspects de l'existence des Bas-Canadiens et la volonté d'en promouvoir les intérêts.<sup>111</sup>

But the quality and variety described by Perrault must be contrasted to moments where the Special Council waded into legal uncertainty and legislative sloppiness. There is Durham's infamous deportation ordinance, by which he overstepped his constitutional authority, forcing the imperial Parliament to pass an act preventing those who had acted under its provisions from being sued or prosecuted. In fact, all of Durham's ordinances had to be reaffirmed by Colborne's council, since the Great Seal of the province had never been affixed to them.<sup>112</sup> In late 1838, the Colonial Office informed the Special Council that one of the ordinances they had passed during the first session was "considered to be so highly objectionable, that the Lords of the Treasury have recommended its immediate disallowance."<sup>113</sup> The council's registry ordinance seems to have been so lacking in legitimacy in some parts of the province that its provisions were only slowly enforced.<sup>114</sup> Furthermore, Goldring points to judicial reform as a "signal failure of the Special Council." Indeed, a major reorganization of the judicature which was never put into force and several smaller alterations which were quickly replaced by acts of the united Canadian Parliament end up being, in a review of the lower Canadian justice system, just so many "short-lived innovation[s] of the Special Council."<sup>115</sup>

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<sup>111</sup>Perrault, "Conseil Spécial," 141-42.

<sup>112</sup>Imperial Parliament, 1&2 Victoria c. 62, "An Act for indemnifying those who have issued or acted under certain parts of a certain Ordinance made under colour of an Act passed in the present Session of Parliament, intituled, 'An Act to make temporary provision for the Government of Lower Canada,'" reprinted in *OSCLC*, vol. 3; *OSCLC*, vol. 3, 1&2 Victoria c. 10, "An Ordinance to confirm certain Ordinances of the Governor of this Province and the Special Council for the affairs thereof, and to declare the period at which they respectively took effect."

<sup>113</sup>*JSCLC*, II, 30 November 1838.

<sup>114</sup>Young, "Positive Law," 56.

<sup>115</sup>Goldring, "British Colonists," 256-57; Donald Fyson, *The Court Structure of Quebec and Lower Canada, 1764 to 1860* (Montreal: Montreal History Group, 1994), 90-91.

But these are only footnotes in an enormous legislative oeuvre. In order to make a coherent presentation of this body of laws, Perrault, Goldring, and Young each divide it into categories. But their categorizations do not take into effect the changing contexts in which the ordinances were being passed. Even when changing powers, governors, and members are noted and analyzed elsewhere in the studies, these changes tend not to bear on the classifications of ordinances. Each of the categories used is applied to the council's legislation as a whole, rather than ordinances passed in individual sessions or under a particular governor.

By contrast, I seek to show how the legislation of the Special Council evolved along with the council itself. Below, I spend very little time explaining the significance of individual ordinances. This work has already been begun by others, including Perrault and Goldring, who go into great detail explaining several of the council ordinances; and Young, who paints the council's legislation with wider strokes. Several other authors, in studying areas of law affected by Special Council ordinances, place the latter in larger contexts.<sup>116</sup> But these authors take individual ordinances and place them in the context of Lower Canadian legal and political history. I am more interested in placing the legislation in the context of the Special Council's development, and then finding the place of this institution in the province's political and constitutional development. To this end, I avoid giving a synthesis of all six volumes of the *Ordinances of the Special Council*, and instead try to give an appreciation of what made each session different. The evolution this exposes, together with an appreciation of an evolving

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<sup>116</sup>For example, Bettina Bradbury examines the effect of the Registry Ordinance on family law and widows' rights in "Men Debate Dower: Patriarchy, Capitalism and Widows' Rights in Lower Canada," in *Proceedings of the Montreal History Group Conference on Power, Place and Identity: Historical Studies of Social and Legal Regulation in Quebec* (forthcoming, fall 1997). For a contemporary critique of the registry ordinance, see L.-H. LaFontaine, *Analyse de l'ordonnance du Conseil spécial sur les bureaux d'hypothèques* (Montreal: Louis Perrault, 1842). On the ordinances creating rural police forces, see Greer, "The Birth of the Police in Canada," in *Colonial Leviathan*, 17-49. On the Special Council ordinances relating to judicial reform, see Fyson, *Court Structure of Quebec*. On the role of the Special Council's legislation in the exceptional legal measures taken in reaction to the Rebellions, see Jean-Marie Fecteau, "Mesures d'exception et règle de droit: Les conditions d'application de la loi martiale au Québec lors des rébellions de 1837-1838," *McGill Law Journal*, 32 (1987), 465-95; and F. Murray Greenwood, "L'insurrection appréhendée et l'administration de la justice at Canada: Le point de vue d'un historien," *Revue d'histoire de l'Amérique française*, 34 (June 1980), 57-91. Introductions to studies on municipal government in Canada usually place the district councils ordinance in the context of its development; see C. R. Tindal and S Nobes Tindal, *Local Government in Canada* (Toronto: McGraw-Hill Ryerson, 1984), 17; and Kenneth Grant Crawford, *Canadian Municipal Government* (Toronto: University of Toronto Press, 1954), 28.

membership and way of doing business, will help in understanding the developments and experiences described in the chapters that follow.

The glimpses one gets of the Special Council's earlier sessions — Colborne's repressive measures and Durham's deportations — suggest that it was designed primarily as a means of suppressing and dealing with the Rebellions. However, the rarely-mentioned first session of the Special Council had far more to do with the short term needs created by years of legislative deadlock than with suppressing rebellion. In part, the council took its cue from imperial directives, as the reason Glenelg gave for instructing Colborne to convene a temporary council was that "some legislative enactments will be required within the Province in the interval which will lapse between the Proclamation of this Act and the arrival of the Earl of Durham." Colborne was to renew several acts of the provincial legislature that would expire on 1 May 1838, and suspend the *habeas corpus* act so that prisoners could be detained until Durham's arrival.<sup>117</sup> Thus, seven of the 25 ordinances passed in the first session, more than for any other purpose, were for renewing over a dozen provincial acts that were about to expire. An ordinance was passed defraying the cost of civil government from 1 April 1837 to first April 1838, while three others provided for grants to charitable, educational, and agricultural societies.<sup>118</sup> Funds were also appropriated for improvements to the Montreal's harbour, the building of a new jail in that city, and a survey of Lake St. Peter. The longest and most complex ordinance passed during the session was one incorporating the Bank of Montreal. Only six ordinances, including the suspension of *habeas corpus*, can be interpreted as reactions to the rebellion. They deal with a variety of subjects, such as the banishment of treason suspects, press censorship, and a reorganization of the province's militia. After all, the council's first session was convened several months after the armed engagements of November and December 1837, and the Patriot invasion from the United States in January had been a localized and short-lived affair.<sup>119</sup>

Called amidst the confusion surrounding Durham's hasty departure and the outbreak of a second rebellion in the fall of 1838, the third session of the Special Council finally saw it

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<sup>117</sup>Glenelg to Colborne, Downing Street, 19 February 1838, despatch no. 28, Colborne Papers, microfilm A-586, NAC.

<sup>118</sup>Similar appropriations of funds were made at each of the sessions of the Special Council.

<sup>119</sup>Senior, *Redcoats*, 153.

directly involved in the suppression of revolt. But doing so cast the Special Council in a rather unexpected role. When imperial legislators agreed to the suspension of the constitution in early 1838, they surely did not envisage the Special Council as a tool for actively putting down an unexpected rebellion several months in the future. If all had gone as planned, the Special Council would have legislated for a pacified province while Durham developed his plan for a long-term constitutional settlement for Lower Canada. Instead, 13 of the 15 ordinances passed during the council's third session can be described as having dealt directly with the suppression of the rebellion. These ordinances gave extraordinary power to the governor to arrest, detain, try, move, seize the property of, deport and pardon those charged with or suspected of treason. Courts martial were established to try treason suspects, and the criteria for such trials were applied retroactively to 1 November. The suspension of the Lower Canadian *habeas corpus* act was renewed, although two judges in Quebec City, and later one at Three Rivers, issued writs of *habeas corpus*. When Colborne subsequently suspended the judges, the Special Council backed up this action by providing for the appointment of assistant judges and by declaring that the imperial statute guaranteeing the right to *habeas corpus* in England had never been in force in Lower Canada.<sup>120</sup> This was the Special Council at its most blatantly authoritarian, dealing ruthlessly with a rebellion in its midst.

By the time Colborne had once again called the Special Council together in the Spring of 1839, in a period of relative peace but continuing martial law and British-US tensions, its role had changed once again. This time, the Special Council seemed to have found its vocation in aping the functions of a regular legislature convened under normal circumstances. However, the limited powers granted to the council meant that any changes it made to Lower Canadian law were temporary, and its legislation does not bear witness to any long-term plan or coherent legislative strategy. Nonetheless, the business conducted during the fourth session dwarfed all that had come before it. The first, second, and third sessions together spanned a period of less than eight months saw the passage of 25, nine, and 15 ordinances respectively. By contrast, during the two months from mid-February to mid-April 1839, Colborne gave his assent to 67 ordinances passed by his council, which fill 667 pages of bilingual text. The council set out to regulate everything from pork to ferries, from currency to bankruptcy. Some of these regulatory efforts were clearly the work of a political elite which had seen the power of the state seriously

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<sup>120</sup>Filteau, *Histoire des Patriotes*, 427-28; Young, "Positive Law," 53.

challenged twice in the previous two years. Thus, severe restrictions were put on taverns and tavern keepers, both of which had been identified as threats to the peace during 1837 and especially 1838.<sup>121</sup> There was also an obvious emphasis on public works. But while a board of works was established to oversee projects sanctioned by the council, it was just one of dozens of issues dealt with by the council, and the inability to pass permanent ordinances meant that the institution was as temporary as the council itself.

In many ways, the fifth session, the first convened under Thomson and the council's expanded powers, was a turning point. The council seemed to have stopped searching for a constitutional role to fulfil or temporary legislative needs to meet. Instead, it was consolidating the work it had already done and was giving context to the ambitious legislative project it was about to embark on. It was also being used as a consultative body on constitutional matters. The first part of the fifth session lasted for four short days in mid-November 1839, during which only two ordinances were passed. But the true significance of these meetings lies not in the few pages of legislation produced, but rather in a series of six resolutions passed on 13 November which approved of and accepted the idea of union with Upper Canada. In the case of five of the six resolutions, Stuart, Pothier, de Lery, Moffatt, McGill, de Rocheblave, Gerrard, Christie, Walker, Molson, Harwood, and Hale voted in favour; Cuthbert, Neilson and Quesnel were against. One resolution, dealing with the need for a civil list, was opposed only by Neilson. The role of the council in approving the idea of union is usually downplayed. It was, after all, "recent proceedings in the Legislature of Upper Canada," where the constitution had not been suspended, and not Lower Canadian concerns that had led to the decision by British authorities to delay implementation of union until approval had been obtained in the colonies.<sup>122</sup> In any case, it was unlikely that an appointed council would oppose a plan being promoted by the British government and their representative in the province. But in the context of the evolution of the Special Council's history as an institution, the action is more significant, as the council had for the first time become more than a tool for short-term lawmaking.

The shift from consultation back to legislation occurred when the Special Council met again the following spring. Ironically, while it now had extensive new powers to legislate, what

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<sup>121</sup>Young, "Positive Law," 52.

<sup>122</sup>Normanby to Colborne, Downing Street, 12 June 1839, Colborne Papers, microfilm A-595, NAC.

is striking about the session is the absolute lack of 'new' legislation. Except for regulating winter highways and addressing the want of notaries in the Gaspé, the Special Council used its newfound powers to alter the provisions of existing laws, rather than creating new ones. Over half of the 29 ordinances passed were for the purpose of rendering permanent — as many as 22 at a time — temporary ordinances of the Special Council and acts of the provincial legislature. Sometimes amendments were made, though this was usually not the case. A smaller group of ordinances extended the provisions of over a dozen acts and ordinances into the middle of the decade, while others amended existing legislation passed by the Special Council. Few of the remaining ordinances could be considered legislative innovation; they merely built on existing legislation. Police forces already established in other parts of the province were extended to the District of St. Francis, and the Montreal Harbor Commissioners saw their borrowing power increased. However, this was not a trend to be continued, but rather the laying of the groundwork for what would come a few weeks later.

The third part of the fifth session marked the most important turning point in the Special Council's work. While in the fourth session, Colborne's council had begun to change the face of Lower Canada with public works, Thompson's council was changing the very foundation on which the province stood. A couple of the twenty-one ordinances passed merely amended previously existing acts and ordinances. However, an important number tackled daunting legislative tasks that had spelled partial or complete failure during previous sessions and in previous legislatures. Along with several companies and organizations, the cities of Montreal and Quebec were incorporated. The ordinance creating a board of works was amended, its provisions were expanded, and it was made permanent. An ordinance reorganizing the province's judicial system was passed, which included the redrawing of the map of the province in such a way as to make the district of Three Rivers disappear. In the fourth attempt since 1835,<sup>123</sup> the Sulpicians' title to their land was finally affirmed, and the way was paved for the commutation of these lands to freehold tenure. With two years of its three-year existence behind it, the Special Council was just beginning to ensure that its influence would be felt long after it held its last meeting.

The sixth and final session of the Special Council was the only one convened under the authority of three separate imperial statutes, including the union act. It was by no means

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<sup>123</sup>Goldring, "British Colonists," 258.

impressive in absolute number of ordinances or the speed with which they were passed. Sydenham assented to only 33 from the beginning of November 1840 to early February 1841. However, the fact that these managed to fill 675 pages of bilingual text — even more than the fourth session, where more than twice as many ordinances were passed — speaks to the fact that they were ordinances of a very different nature to those of previous sessions. The sixth session produced a number of mammoth ordinances which continued the work of reworking the very legislative and constitutional foundations of Lower Canada. A new system of local government was imposed through ordinances regulating township and parish officials, and providing for creation of district councils. In one 80-page ordinance, land registration was imposed on the seigneurial parts of the province, and customary dower was eliminated. A slew of public works were authorized which dwarfed in variety and scope anything the province had seen. For example, a system of turnpike roads was established in and around Quebec and Montreal, and provisions were made for major improvements to the road linking Lower Canada to New Brunswick.

What was begun in the fifth session and continued in the sixth could be best described as an exercise in state formation. By reading through the ordinances passed during these sessions, and visualizing their implementation, one can see the state literally growing with every page. Ordinance after ordinance created corporations, commissioners, overseers and officers who were to regulate new roads, jails, registry offices, district councils, and jails. This expansion was a carefully planned and centralized one. Invariably, the governor was the one to control both patronage and the province's purse strings. Often, ordinances were to act in concert with ones which might otherwise seem unrelated. For example, the building of court houses, jails, and registry offices were provided for in anticipation of the implementation of the District Council, Judiciary and Registry Ordinances. The doling out of patronage apparently took place in a similarly well-planned-out manner. Thus, Edward Hale wrote in late 1840 that

There is nothing going on yet about patronage or appointments, nor do I suppose there will be any until after the Council is prorogued — everything is postponed to some indefinite day to be fixed by the Gov[ernor] by Proclamation hereafter — so that all the new schemes are intended to accord with each other.<sup>124</sup>

As with the shaping of the Special Council, this systematic reconstruction of the Lower Canadian state was largely a Lower Canadian undertaking. The Special Council's legislation

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<sup>124</sup>Edward Hale to Eliza Hale, Montreal, 27 December 1840, Hale Correspondence, MMA.

appears to have consistently originated not in London, but in the province itself. Goldring, in discussing the origin of council ordinances, barely mentions the imperial connection:

Colborne kept Gosford's Executive Council, which drafted some important legislation for him [...] The law officers and heads of departments contributed their share of legislation, and James Stuart was a tireless draftsman [...] Stuart also worked with Thompson's English legal advisor. Banking ordinances either came directly from the president of the Bank of Montreal, Peter McGill, or were amended at his suggestion.<sup>125</sup>

Even during the first session, where specific instructions were given by the Colonial Office, less than half of the ordinances passed can be traced to orders from London. In the correspondence between governors and colonial secretaries, despatches from Lower Canada forwarding ordinances which had been passed swamp the few coming from England which offer suggestions as to what might be proposed to the council. Indeed, such suggestions were often unheeded. In 1838, the council altered the plan to create Special Courts, choosing instead to allow courts martial to prosecute treason suspects. And despite the Colonial Office's insistence that he had "an equitable claim to his payment," the Special Council and the governor decided on at least two occasions not to consider appropriating moneys owed by the assembly to its agent, Roebuck.<sup>126</sup> Thus, in spite of the debacle created by Durham's deportation ordinance, imperial authorities left legislating for the colony up their representative and the councillors of his choosing.

It is not surprising then, that trends in the council's legislation were far from unrelated to other trends affecting the Special Council described in this chapter. As the council became a more permanent fixture in the province, its legislation became more ambitious and permanent. A Special Council increasingly British in its complexion was passing laws which were giving Lower Canada a similar complexion. An increasingly centralized and efficient Special Council was creating an increasingly centralized and efficient state. Perhaps most dramatically, a Special Council meeting in Montreal and increasingly dominated by Montrealers undertook a legislative program centered on Montreal. Both Young and Goldring identify the importance of the Special Council ordinances' "specificity to the district of Montreal." Young notes that Montreal corresponded "to the area of the rebellions and the region in which industrial

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<sup>125</sup>Goldring, "British Colonists," 248.

<sup>126</sup>Goldring, "British Colonists," 248; Normanby to Colborne, Downing Street, 7 June 1839, despatch no. 43, Colborne Papers, microfilm A-587, NAC.

production and capitalist relations in the countryside were the most advanced.”<sup>127</sup> Goldring explains that

Montreal was Colborne’s capital primarily for military reasons, but the work of the Special Council clearly favoured it at the expense of the rival port of Quebec. [...] Colborne’s first Council managed to pass in three weeks four measures of great interest to the Montreal Merchants [sic].<sup>128</sup>

But this specificity to Montreal continued far beyond the first session, and only intensified with time. Each and every session, more funds were appropriated for improvements to Montreal’s harbour. Ordinances providing for the build roads or railroads almost always related to projects in and around the city. On several occasions, the Bank of Montreal requested the Special Council to legislate on its behalf, and the council was happy to oblige. Sometimes, Montreal was used as a testing ground for more ambitious measures, such as new police forces, which were then imposed on other regions of the province. In any event, given Montreal’s new role as the seat of government and the dominance of the Special Council by members from that city, the whole of the council’s legislation could be perceived as an attempt by Montreal to impose its legislative will on the rest of the province.

With mandates, membership, procedures, and legislation which changed so substantially over the course of three years, is it even possible to speak of *the* Special Council? I believe that there was a set of values that drove the council’s work from beginning to end, and set it apart from legislatures that came before and after. These values underlie the message Colborne sent to Glenelg after the closing of the Special Council’s first session on 5 May 1838:

The measures which I proposed for the adoption of the Council were considered to be closely connected with the immediate welfare of Lower Canada, and I am persuaded few of them could have been delayed without further inconvenience and embarrassment to the political and Commercial Interests of the Province. [...] I have great pleasure in assuring your Lordship that the Members of the Special Council have conducted the business of the Session with unanimity and good feeling and I have reason to believe, that the Ordinances which have been made are approved generally in the Province.<sup>129</sup>

Urgency, unanimity, usefulness: these were the values that drove the Special Council’s business from beginning to end, despite all the changes the council underwent and the different contexts

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<sup>127</sup>Young, “Positive Law,” 57.

<sup>128</sup>Goldring, “British Colonists,” 250-51.

<sup>129</sup>Colborne to Glenelg, Montreal, 8 May 1838, Colborne Papers, microfilm A-586, NAC.

in which it operated. A sense of urgency was necessary to justify the intrusion of a temporary and radically different legislative system on Lower Canada. Of course, the idea of what urgently needed to be done was continually re-worked over the course of 1838-41. The council's role expanded from the continuation of lapsing legislation, to the suppression of rebellion, to the passage of new temporary ordinances, to the creation of a complex web of permanent ones reshaping the province's rapidly expanding corpus of laws. Urgency justified a need for unanimity, for if things had to be achieved urgently, then there was no alternative and there was no time or place for debate. Furthermore, if there was no alternative, then the Special Council ordinances must have been good for the province, and the very need for debate was removed. Hence the transformation of lawmaking in Lower Canada from a system bringing together different interests and institutions to one designed to efficiently approve a single, predetermined, legislative program. But the usefulness of the Special Council was a narrowly defined one. It was up to a governor and an increasingly homogeneous council to decide what was best for Lower Canada. The next chapter will explore how these two agendas — those of the governors and their councils — came together, by associating the evolution and legislative achievements of the Special Council with the goals of a specific Lower Canadian political movement, namely the Constitutional Association of Montreal.

## CHAPTER 2 — CONSTITUTIONALISM

Who won the Rebellions of 1837-38? To answer loyalist Lower Canadians only leads to the impossible question of who was loyal to what. Taking the trends affecting the Special Council as a guide, it could be said the post-Rebellion period was a time when political power in Lower Canada shifted into the hands of English-speaking, Montreal-based, mercantile and industrial interests. Thus, Young writes that “the collapse of the rebellions served to clear the political marketplace and facilitate the establishment of a society in which capitalist relations would dominate.”<sup>130</sup> But how did these class interests, grounded as they were in a small elite and a particular region of the province, translate into a political agenda which filled the void left by the Patriots? One simple answer would be to say that it did not have to, that the victory in Lower Canada was won by the British army, and consolidated by British politicians, whose actions happened to empower one group with whose empowerment they identified their own interests. Perrault seems to adopt this approach, as he develops a sharp distinction between the benign management of Lower Canadian affairs by the Special Councillors and changes to the political system and constitution developed and imposed by the British government:

Pendant que se déroulait, en particulier dans le district de Montréal, la rébellion qui marqua les années 1837 et 1838, pendant que s'apaisait peu à peu cette agitation populaire et que le Conseil spécial administrait temporairement les affaires publiques du Bas-Canada, les politiques londoniens se préoccupaient de la question canadienne; ils cherchaient le mode d'administration qu'il convenait de lui donner, non pas dans les intérêts à lui, Bas-Canada, mais principalement dans les intérêts de la Couronne anglaise et dans le but de maintenir la suprématie britannique sur les rives du Saint-Laurent.<sup>131</sup>

Thus, the council is portrayed as a stalling tactic, preserving the *status quo* while changes were considered on the other side of the Atlantic.

In this chapter, I will argue that there existed within English-speaking Lower Canada a movement which did not merely wait for the spoils of Patriot defeat to be handed over by a victorious imperial government, but which actively sought out power and the implementation of a well-defined political program. As shown by the previous chapter, the fundamental changes being made to Lower Canadian law during the Special Council period were conceived and imposed locally, not from across the Atlantic. While the suspension of the

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<sup>130</sup>Young, *Positive Law*, 51.

<sup>131</sup>Perrault, "Conseil Spécial," 299.

constitution placed unprecedented authority in the hands of the British governors who administered the province, it is hard to believe such a vast and fundamental program of change could be imposed by three men with a limited knowledge of local affairs, without guidance from and the collaboration of groups in the colony.

The years 1838-41 saw the ascendancy of the Constitutional Association of Montreal (MCA). While Constitutionalism is usually presented as a fundamentally diverse and moderate movement, the political agenda of the MCA was actually based on a rejection of French Canadians as legitimate participants in the political process, and a devotion to the legislative union of the Canadas as a long-term constitutional settlement. The Rebellions did not take Montreal Constitutionals by surprise. Rather, they were poised to take advantage of the situation created by the suspension of the constitution and creation of the Special Council, and developments on the council both facilitated and reflected the achievement of their goals. These included not only union but a series of changes to Lower Canadian law which had been demanded in the years before the Rebellions and were largely realized under the Special Council. Of the 156 members on the general committee of the MCA at the end of 1838, five were Special Councillors: McGill, Molson, Gerrard, Penn, Moffatt, and Day. In fact, these were among the Special Councillors who were most consistent in their attendance and the most active members of the MCA. McGill acted as chairman of the association during the Special Council period, while both Molson and Moffatt had taken up the leadership role in previous years.<sup>132</sup> But the political gains made by the Constitutionals went far beyond their power and numbers on the council. They played a pivotal role in organizing the volunteer regiments which helped the British army put down the rebellion, while gaining a reputation for ethnic exclusivity and excessive violence.<sup>133</sup> Presenting themselves as representative of the loyal population of Lower Canada, they also worked to shape imperial policy and ensure that they and the province's governors shared the same political values and were working towards the same ends. This ensured that as the Special Council evolved, it was increasingly being used to achieve Constitutionalist goals.

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<sup>132</sup>MCA, "The Annual General Meeting of this Association was held at the old Circus on Monday, the 31 December 1838 [...]," Badgley Collection, folder 9, MMA.

<sup>133</sup>Greer, *Patriots*, 186-87, 327-28, 351-352; Senior, *Redcoats*; Young, "The Volunteer Militia in Lower Canada, 1837-50," in *Proceedings of the Montreal History Group Conference on Power, Place and Identity*.

The role of ethnicity in the Rebellions has been the object of much study and debate.<sup>134</sup> However, the questions asked and argued over usually revolve around the role of French Canadian nationalism and anti-British feeling in driving the Patriot movement and as a cause of the Rebellion. Historians who perceive French Canadian nationalism as a positive force, like Gérard Filteau, have cast the Patriots not as a political party or movement, but as the “parti national des Canadiens français.”<sup>135</sup> Thus, the Rebellions become a fight for national liberation against the *status quo* of British colonial power, and the province’s British population is portrayed as anything but a force of change. Historians who view French Canadian nationalism as a negative force, like Donald Creighton, portray an economically progressive English merchant community impeded in their efforts by French Canadian nationalists pushing toward political instability and rebellion in a vain attempt to change the natural course of events.<sup>136</sup> Thus, while the anglophone elite is given the role of protagonist, its members are portrayed as a force of stability, a stability which French Canadian nationalism and political activity disrupt. For his part, Greer has dismissed ethnic strife as the root cause of rebellion, studying instead how French-English conflict increasingly became a feature of pre-existing social conflicts within Lower Canadian society.<sup>137</sup> But no matter how subtly or deeply explored nationalism and ethnicity are in the context of the Rebellions, historians focus primarily on the rebellious side. Thus, when Greer describes the increasingly ethnic nature of the conflict in 1838, he writes that

hostility to English-speakers and to native Indians was also more in evidence than it had been during the crisis of the previous year. [...] To some extent this was a matter of neutralizing active Volunteers who had proved themselves to be dangerous enemies in 1837, but it does appear that people were targeted purely on the basis of ethnic origin.<sup>138</sup>

What is of interest is that the Patriots began acting on ethnic considerations; that the volunteers had done so is secondary. This is not to say that Greer ignores nationalistic actions on the part of Lower Canadian anglophones. On the contrary, he stresses the need to take into account both

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<sup>134</sup>Gérald Bernier and Daniel Salée, “Les Insurrections de 1837-1838 au Québec: Remarques critiques et thématiques en marge de l’historiographie,” *Canadian Review of Studies in Nationalism*, XIII:1 (Spring 1986), 13-30.

<sup>135</sup>Filteau, *Histoire des Patriotes*, 12.

<sup>136</sup>Donald Creighton, *The Empire of the St. Lawrence* (Toronto: MacMillan Company of Canada, 1956).

<sup>137</sup>Greer, *Patriots*, 153-88.

<sup>138</sup>Greer, *Patriots*, 345-46.

the “Toryism of the anglophone oligarchy” and “the counter-nationalism of the English-Canadian mass.”<sup>139</sup> But as with other studies of politics and nationalism in the Rebellion period, where the Patriots are inevitably looked to as the instigators and main actors, the structure of Greer’s narrative prevents nationalist anglophone elements from taking the initiative; theirs is merely a *counter*-nationalism. Since no movement equivalent to the Patriots had been associated with English-Canadian nationalism, no alternative narrative has emerged, and studies of nationalism have focused on a single *question nationale*.<sup>140</sup>

The closest thing to a ‘national party of the English Canadians’ in Lower Canada that historians have identified is something called Constitutionalism. When compared to the volume of work on the Patriot movement, information on the approximately 19 Constitutional Associations<sup>141</sup> which emerged in the province during the mid-1830s is scarce, and in-depth studies virtually non-existent. Goldring treats them, along with the Special Council, as one of the four institutions which represented the political hopes and interests of British colonists in Lower Canada. He presents them as symbolic of the ability of “all classes of British colonists” to unite politically by the end of 1834, and gives four reasons why anglophones of various political persuasions were uniting against the Patriots: reforms to the colonial and British Parliamentary systems, Patriot rancor towards anglophones, a harder line to the Patriots by the colonial office, and increased British immigration.<sup>142</sup> But the timing of the creation of the Constitutional associations can be grounded in more concrete developments, namely the passage by the assembly of the 92 Resolutions in February 1834 and the defeat of numerous English-speaking politicians in the elections that followed. Thus, the associations presented themselves as promoting the interests of Lower Canadians of ‘British or Irish descent,’ whom

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<sup>139</sup>Greer, *Patriots*, 164.

<sup>140</sup>Gilles Bourque and Anne Legaré, *Le Québec: La question nationale* (Paris: François Maspero, 1979), 68-72. Particularly relevant to this question are Allan Greer’s comments on Upper Canada. While Bourque and Legaré claim that, “contrairement à ce qui se produisit dans le Haut-Canada au milieu de conditions semblables, les rébellions bas-canadiennes posent la question nationale,” Greer insists that “Upper Canada was also a divided society with friction between British immigrants and older settlers of Canadian and American origin.” Such a conception of Upper Canadian society suggests that the Lower Canadian case can be re-examined, looking for competing visions of what form the Canadian ‘nation’ should take among groups residing in the province, rather than simply portraying a French Canadian nation attempting to throw off a colonial power. See Greer, “1837-38,” 9-10.

<sup>141</sup>Goldring, “British Colonists,” 205

<sup>142</sup>Goldring, “British Colonists,” 209.

they claimed were vital to the province's prosperity but were under-represented in the halls of political power. They rejected the program of the Patriot party, accusing them of exploiting ethnic loyalties for political gain, and questioned the legitimacy of that party's control of the assembly.

The Constitutional Associations took on many shapes and sizes, and remain a rather nebulous entity in Lower Canadian historiography. Ronald Rudin presents the Rebellions as a rare moment of political solidarity among English-speaking Quebecers and, like Goldring, points to the Constitutional Associations as both a manifestation of and a tool for achieving this solidarity. Ironically, however, when he describes the associations, he stresses ideological diversity rather than unity of purpose:

Although they had decided not to support the Patriotes, there were still various political options open to the English speakers in the 1830s. The range of alternatives that existed was expressed in the meetings of the numerous Constitutional Associations that were formed between 1834 and 1837. These associations held rallies across Lower Canada, including the 'Great Loyal Meetings' of 1837 which were attended by 7000 people in both Montreal and Quebec City. To be sure, there were many English speakers within these associations who subscribed to the old ideas of the British Party. Nothing would have pleased them more than to crush the Patriotes and revitalize the role of the governor. There were also, however, people such as John Neilson who subscribed to an alternative somewhere between the extremes of the Patriotes and the British Party. Neilson hoped for the preservation of French political power via the assembly along with a continuation of a limited role for the governor. Accordingly, while some English speakers cheered the failure of the rebellions as an opportunity to finish the work of the Conquest, others such as Neilson hoped that the post-1837 era might see the creation of a political system in which English and French-speaking Quebecers might be able to work together.<sup>143</sup>

Thus, Rudin presents a vibrant and dynamic political community, united against Patriot extremism, but protected against extremism within its own ranks by its very diversity. It is not a movement toward one particular goal, but a necessary defensive pact against Patriot militancy, meriting Goldring's label as "a sort of intellectual dust-bin in which scraps of many political theories lay jumbled together."<sup>144</sup> While the Patriots pushed to a seemingly inevitable rebellion,<sup>145</sup> Constitutionals were patiently seeking out a range of constructive political

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<sup>143</sup>Ronald Rudin, *The Forgotten Quebecers: A History of English-Speaking Quebec, 1759-1980* (Quebec: Institut québécois de recherche sur la culture, 1985), 134-35.

<sup>144</sup>Goldring, "British Colonists," 94.

<sup>145</sup>The associations Rudin describes were formed years before the Rebellions began, yet he defines their goals in relation to the events of 1837-38.

alternatives. The more militant and nationalistic of these alternatives are not ignored, but are ascribed to a marginalized and tired British party, whose 'old' ideas seem out of place within the dynamism of Constitutionalism.

Elinor Senior treats Constitutionalism in more detail. Specifically, she presents the MCA as the institution which did the most to mobilize and coordinate resistance to the Patriots in 1837-38. In the introduction to her study of the Rebellions, Senior complains of the want of "an analysis of the loyalist forces that emerged in Lower Canada and filled the ranks of the volunteer organisation that the Commander of the Forces, Sir John Colborne, so swiftly and effectively mobilized within a few weeks in the fall of 1837."<sup>146</sup> The story of the 'loyalist forces' begins in 1834, when, in an increasingly tense political environment five "national organizations emerged in the city under the cloak of fraternal and charitable societies." By 28 January 1835, four of them — the St. George's, St. Andrew's, St. Patrick's, and German societies — had come under the political "umbrella" of the MCA, leaving only the St. Jean Baptiste Society, which Senior describes as "the social and fraternal wing of the *Patriote* party," outside of the coalition. Over the course of 1835, the MCA went about organizing ward committees and established a committee whose members "were to initiate steps for what they called a 'closer union of persons of British and Irish origin for mutual defence and support,' essentially measures tending toward a para-military organization of the British party." The result was the British Rifle Corps, which was promptly ordered disbanded by Gosford. However, "the more militant members went underground to form a semi-secret society, the Doric Club, which became the physical force wing of the Constitutionals." The MCA also had a strong voice in Montreal's English-language press. Senior identifies the Montreal *Morning Courier* as the official organ of the MCA, although Goldring notes that by February 1836 the association denied that any newspaper had the authority to speak for it.<sup>147</sup> Regardless, by the time of the 1837 Rebellion, both *The Gazette* and *The Herald* were trying to outdo each other in printing Constitutionalist literature and praising the institution. Finally, the MCA is shown by Senior to be the source of both the manpower and the institutional structure from which sprang the volunteer regiments when the Rebellions began in 1837. In fact, Senior claims that when Peter McGill applied to Governor Gosford for permission to form volunteer companies in

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<sup>146</sup>Senior, *Redcoats*, 1.

<sup>147</sup>Senior, *Redcoats*, 12-14; Goldring, "British Colonists," 221.

Montreal, he did so not as a Montreal magistrate or as a Legislative Councillor, but “as Chairman of the Montreal Constitutional Association.” Senior stresses the fact that the different organizations she describes were not simply coincidentally drawing from the same pool of loyal citizenry. Instead, they formed an intricately and solidly linked organizational web:

Members of the Doric Club were foremost in offering their services as volunteers. [...] Separating the members of the front organization, the Constitutional Association, from the quasi-military wing was as difficult as separating the *Patriotes* from the Sons of Liberty. After November 6<sup>th</sup> [1837] distinctions between the youth groups and the parent movements tended to be blurred.<sup>148</sup>

Thus, the MCA served as the political linchpin in a complex alliance of established fraternal organizations and emerging para-military affiliates.

But running through Senior’s portrayal of a powerful and well-organized movement is the theme of diversity so central to Goldring and Rudin’s descriptions of Constitutionalism. She first introduces the MCA while painting in broad strokes the range of Lower Canadians who opposed the Patriots in 1837-38:

Often loosely and abusively labelled the ‘British’ or ‘Tory’ party, these forces included Montrealers not only of British and American origins, but also the “Chouaguens” - the loyalist French Canadians - the Jewish community, the Indians of Caughnawaga and St. Regis, and, above all, the Irish Roman Catholics. No major work exists on the composition of the British party, nor of its role in channelling loyalist elements into national fraternal societies in 1834, thence into the Montreal Constitutional Association in 1835, with its paramilitary secret society - the Doric Club - and finally, into Ward Associations which were the link by which well affected Montrealers were mobilized into volunteer units. That Sir John Colborne tried to emphasize the loyalist character of this coalition, rather than its British aspects, was indicated by his choice of a French Canadian loyalist officer to undertake the initial mobilisation of loyalist volunteers.<sup>149</sup>

It interesting how Senior does not lift her pen when tracing a line from the whole of the loyal population, to the ‘British party’, to the MCA, to the volunteers. She seems to be suggesting that these groups were somehow one in the same, and that the MCA was a distillation of loyal sentiment in its purest and most effective form. The wide appeal of Constitutionalism is also stressed through the evocation of mass rallies, like the ones mentioned in Rudin’s introduction to the movement. Goldring opens his chapter on the Constitutional Associations with

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<sup>148</sup>Senior, *Redcoats*, 60-61.

<sup>149</sup>Senior, *Redcoats*, 1.

Constitutionalist delegate to London William Walker's triumphant return to Montreal in 1836 amidst thousands of cheering supporters, while Senior makes certain to note that a Constitutionalist rally drew 4 000 spectators on the same day as the famous Patriot meeting at St. Charles.<sup>150</sup> Historians have also been quick to point out instances where Constitutionalists, as the vanguard of anti-Patriot forces, appeared to be reaching out to and embracing loyalist French Canadians. Senior and Goldring both make note of bilingual speeches and banners, as well as prominent French Canadians delivering speeches at Constitutionalist rallies. Goldring notes that a 1834 Constitutionalist petition was signed by nearly 12 000 individuals, "including more than a thousand *Canadiens*."<sup>151</sup> Instead of stressing the cultural uniformity of the volunteer regiments organized by the Constitutionalists, Senior repeatedly mentions that Louis Guy, "a member of one of Montreal's most prominent French Canadian families," was named as an officer by Colborne in order to emphasize "that his policy was to work through a coalition of all loyalists."<sup>152</sup> Senior also points out that Montreal Constitutionalist cum commander of the volunteers JS McCord was "Irish-born and fluently bilingual," and that MCA member John Jones co-founded the "Tory French-language journal" *L'Ami du Peuple* with Pierre-Edourd Leclère.<sup>153</sup> Such examples are often contrasted to a Patriot movement which appeared increasingly hostile to non-French Canadians.

Senior nonetheless identifies cultural uniformity as a problematic aspect of Constitutionalism, and ultimately finds herself unable to equate Constitutionalism with loyalism or anti-Patriot feeling. For example, she concedes that "Montreal Orangemen sought shelter and strength under the umbrella of the Constitutional Association."<sup>154</sup> She presents Adam Thom, probably Lower Canada's most famous francophobe, and the presenter of an "electrifying speech" at a major rally of Montreal Constitutionalists in late 1837, as an integral member of the MCA.<sup>155</sup> Furthermore, she expresses disappointment at the fact that, in the midst of the political turmoil that marked the late 1830s,

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<sup>150</sup>Goldring, "British Colonists," 204; Senior, *Redcoats*, 37.

<sup>151</sup>Goldring, "British Colonists," 157-58.

<sup>152</sup>Senior, *Redcoats*, 60-61, 105.

<sup>153</sup>Senior, *Redcoats*, 43, 104.

<sup>154</sup>Senior, *Redcoats*, 105.

<sup>155</sup>Senior, *Redcoats*, 37.

the Constitutionals failed to take advantage of the opportunity still open to them to court the silent majority among the French Canadians in the province and to bring it firmly within their camp. Instead, they insultingly referred to 'a conquered people', and their first political manifesto set the tone by speaking of the 'dishonest imputations of the French Canadian leaders,' rather than of the *Patriote* leaders.

The patronising air adopted by the Constitutionals towards the habitants and the insulting tone they used toward the French Canadian leadership generally were not likely to draw within their orbit those members of the French community who had been abused by the *Patriotes* as 'bureaucrats' or '*chouaguens*'. Nor could the Constitutionals attract those who had become disenchanted with Papineau. What the Constitutionals needed was a good public relations man. But none appeared.<sup>156</sup>

Thus, the MCA begins to appear as an amputation of the loyal population, rather than a distillation of it. However, in keeping with historians' understanding of Constitutionalism as a fundamentally diverse and moderate movement, she blames the situation on bad marketing, not the nature or policies of the institution itself.

The outlook and goals of the MCA, as presented in the documents it produced, suggest otherwise. A good starting point for understanding the association's ideology is an "Address of the Constitutional Association of the City of Montreal, to the Inhabitants of the Sister Colonies," published in a one-page 'Extra' edition of *The Montreal Gazette* on the day after the battle of St. Eustache. The address begins as a history lesson, presenting the story of Lower Canada's political development as one of French Canadian privilege and British despair. It reviews Canada's constitutional development, enumerating the privileges gained by French Canadians first by the Conquest when they became British subjects; then by the Royal Proclamation of 1763 when they gained protection for their religion and language, and right to hold office; and finally by the Constitutional Act of 1791, which granted representative institutions in the context of a political unit with a French Canadian majority. Next, the address presents the inability of French Canadians to exercise their political rights responsibly as having led necessarily to rebellion:

The experience of fifty years of separation between the Provinces, and the present insurrectionary and seditious spirit exhibited in Lower Canada, plainly shew how far the advantageous results anticipated from that impolitic and undesired measure have been realized.

The possession of the right of almost universal suffrage, and of a numerical popular majority of the Provincial constituency, gave the complete command of the Representative branch of Legislature to the French Canadians, who soon exhibited a

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<sup>156</sup>Senior, *Redcoats*, 12.

perfect knowledge of their advantage, and of that exclusive spirit which has since invariably actuated all their proceedings, and grown into a firm determination to their final purpose of the destruction of the interests and rights of the Provincial inhabitants of British and Irish origin, and of the Provincial connexion subsisting with the Parent State.

The hardships resulting from French Canadian abuse of political power are exposed in a long list of grievances. These included the inability of British candidates to win election in predominantly French ridings; the temporary nature or non-existence of legislation "for the support of the interests or for the protection of the rights of inhabitants of British or Irish origin"; the refusal to institute registry offices, to abolish feudal tenure, or promote British immigration; the inadequate representation of British Lower Canadians in the assembly due to electoral boundaries; the weakening of the executive by the Assembly's demands to control all provincial revenues despite apparent settlements; attacks on the British American Land Company; and attempts to make the Legislative Council elective.<sup>157</sup>

By reducing all of the province's problems to the destructive influence of French Canadian political participation, and presenting the Rebellions as the result of the accumulation of these problems, the MCA was effectively defining loyalty in ethnic terms. Lest the large number and diversity of the grievances draw attention away from the central theme, the address goes to great lengths to convince its reader that French Canadians' very exercise of political rights, and not a political movement supported and led by French Canadians, was the problem. Thus, it affirms that

the natural consequence has been, that, in proportion as the French Canadian population has increased, those evils have likewise increased, until the repugnance to British interests and British connection has finally assumed the form of open and declared rebellion.

It is this exclusive French Canadian spirit alone which has given rise to all the discontent existing in this Province, it is this which has in fact made the question one of national origin and not of political party, in it is to be discovered the source of all the disturbances which have brought sedition and rebellion in their train, and in it alone is to be found a full and complete answer to the enquiry, to what causes the present unhappy condition of this Province is to be ascribed.

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<sup>157</sup>MCA, "Address of the Constitutional Association of the City of Montreal, to the Inhabitants of the Sister Colonies," *Montreal Gazette*, "Extra," 15 December 1837, Badgley Collection, folder 9, MMA.

Furthermore, in light of Senior's observations, it is important to note that the word 'Patriot' is not mentioned once in the entire address despite frequent use of 'French Canadian.'<sup>158</sup>

Indeed, the Constitutionlists had little positive to say about the ability of any class of French Canadians to make a positive contribution to the political life of the province. The peasantry was portrayed as too ignorant to perceive its own backwardness. The professional classes then played on the habitants' devotion to their institutions to increase their own power. Together, they formed a political force which worked to the detriment of British interests and British colonists, while leading directly to rebellion. Nor were the French Canadian upper classes immune from criticism. While recognizing the loyalty of some elements of the French Canadian gentry, *The Montreal Gazette* spoke of their "total impotency" in influencing the views of the habitants: "if they have any influence or power at all, it is in that quality of being loyal to their Queen, without the power of inoculating others with the same spirit."<sup>159</sup> Thus, in the eyes of the MCA, French Canadians were either rebellious or useless.

The name 'Constitutionalist' suggests a commitment to the constitutional *status quo*, and the "Address to the Sister Colonies" both expressed a commitment to all things British and describes the 1791 constitution as "essentially similar to that of the Parent State." But if French Canadians were fundamentally incapable of exercising their political rights responsibly, how would the situation ever improve under a constitution which created a political unit with a French Canadian majority? A clue to the MCA's attitude lies in the address' description of the 'separation between the Provinces' as an 'impolitic and undesired measure.' A circular letter from January 1836 put forth very clearly the association's views on the province's future more clearly: "A French majority in one Province has caused these documented evils — a British majority in the United Provinces will compel their removal."<sup>160</sup>

The MCA elaborated on its reasons for supporting a union of the Canadas in a *Representation on the Legislative Union of the Provinces of Upper and Lower Canada*, dated 23 March 1837 and signed by then-chairman George Moffatt. The document presents union as a panacea, describing it as

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<sup>158</sup>MCA, "Address to the Sister Colonies."

<sup>159</sup>*Montreal Gazette*, 7 December 1837.

<sup>160</sup>MCA, "Circular Letter of the Montreal Constitutional Association," January 1836, Sandham Scrapbook, IV, 60, CRM.

a measure, which under all the accumulated evils of the present political state of Lower Canada, is conceived to be the only remedy by which these evils can be overcome, the prosperity of the Provinces secured, and their ultimate connexion with the Parent State preserved.<sup>161</sup>

Like the "Address to the Sister Colonies," it offered a history lesson which enumerated the privileges conferred on French Canadians since the Conquest, a story whose logical end seemed assimilation to the province's growing British population, but which was turning out quite differently. French Canadian power exercised through control of the Legislative Assembly was contrasted to the fate of "British capitalists and British emigrants," who answered the call of 1763 to people the new colony, and that of the Loyalists, who "had sacrificed everything in support of the laws and Constitution of the Mother Country." Both groups came seeking protection and prosperity under the British constitution, and were sorely disappointed:

whatever might have been the political motives of the Imperial Government, in sanctioning the division of the Province of Quebec into two separate Governments, it cannot be denied, that the chief result of that measure has been, for fostering in Lower Canada, of a majority of her population, essentially foreign to their fellow subjects of British origin in both Provinces, in language, laws, institutions, habits and prejudices, the rendering of the condition of the two races entirely distinct, and the creating of a great and increasing feeling of irritation between them, which, if not checked by their entire amalgamation, must, at no distant period, be the occasion of enmity so inveterate, as only to be overcome by the horrors of civil war.<sup>162</sup>

While the predicted 'civil war' was a few months in the future, the document listed twelve examples of how British interests had already been sacrificed. They are nearly identical to the grievances listed in the "Address to the sister colonies," complete with a closing attack on "the persevering and unwearied endeavours of the French Canadian political leaders to destroy the Constitution of the Province, and to introduce a Republican form of Government, by rendering the Legislative Council elective."<sup>163</sup>

The *Representation on Union* went on to use the superiority of the British population of both provinces to justify a twofold process of political marginalization of French Canadians. Firstly, the deplorable situation in Lower Canada was contrasted to that enjoyed by the upper

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<sup>161</sup>MCA, *Representation of the Legislative Union of the Provinces of Upper and Lower Canada, by the Constitutional Association of the City of Montreal. Circular on the Legislative Union of the Provinces, &c* (Montreal: March 23, 1837), 3.

<sup>162</sup>MCA, *Representation on Union*, 6.

<sup>163</sup>MCA, *Representation on Union*, 8.

province. The latter was portrayed as a glowing example of the potential of a British colony, hindered only by unfairness on the part of Lower Canada with regard to division of duties and taxation of immigrants:

The enlarged views of the inhabitants of Upper Canada have boldly extended beyond their own time into distant years, and beyond their own frontiers into the rich and productive new settlements of the western portions of the American Union; but the great undertakings and increased facilities of communication, now in progress, as well as those in contemplation in Upper Canada, for the attraction of the trade of those fertile countries so rapidly growing into importance, will not only be rendered imperfect in their usefulness, but their anticipated advantages will become absolutely unavailing, from the want of a corresponding spirit in Lower Canada, to assist their advancement.<sup>164</sup>

The MCA recommended not only immediate union, but also equal representation, in recognition of Upper Canada's growing population and the fact that "the general intelligence of her population is immeasurably superior to that of the numerical majority in Lower Canada." Secondly, with reference to Lower Canada, the representation affirms that "the general trade of the Province is carried on almost exclusively by Colonists of British origin," while by way of some creative calculations the British population of the province is set at almost 50% of the total. These claims lead to a call for new county divisions and a franchise requiring "a certain amount of freehold estate," a move that would disenfranchise vast numbers of French Canadians and ensure that the majority of electors in both Upper and Lower Canada would be British.<sup>165</sup> Mining the same rhetorical vein, an 1836 MCA circular letter argued that British Lower Canada was more than an oppressed minority deserving a voice in the governance of the province. It was a minority which deserved to rule the province:

It were incredible to suppose that a minority, constituting nearly  $\frac{1}{3}$  of the entire population, imbued with the same ardour for improvements that honorably distinguishes their race throughout the North American continent, and possessing the undisputed control of all the great interests of the colony, would resign themselves to the benumbing sway of a majority.<sup>166</sup>

Such re-definitions of borders and political rights in order to create a British majority were merely the concrete applications of the principles put forward in the "Address to the Sister Colonies."

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<sup>164</sup>MCA, *Representation on Union*, 9-10.

<sup>165</sup>MCA, *Representation on Union*, 12-18.

<sup>166</sup>MCA, "Circular Letter."

Thus, in 1830s Lower Canada, Constitutionalism was not merely a descriptive term. It referred to a specific movement which rejected the constitutional *status quo* in favour of a union of the Canadas where French Canadians would form a minority. This determination to see fundamental constitutional change and to portray the colony's problems as the result of an ethnic, rather than a political struggle highlights the fact that they were attacking the Patriots only indirectly. Their complaints were really directed at the Colonial Office. Thus, the "Address to the Sister Colonies" explains that

Although hitherto the voice of supplication in favour of British and Irish Provincial grievances has been unheeded, amidst the clamours of an insurrectionary faction, these loyal subjects still confidently trust in the magnanimity of the Mother Country, and still anticipate from her justice an entire redress of their unmerited and patiently endured grievances.<sup>167</sup>

The long lists of grievances against the Assembly were merely symptoms of a greater problem, to which union — a measure which would require imperial intervention — was the solution. And, as the *Representation on Union* made clear, the Constitutionalists believed union to be "the *only* measure by which the continued peace, welfare and good government of the Provinces can be insured [sic], their connexion with the Parent State preserved, and a dismemberment of the Empire prevented."<sup>168</sup> Thus, while their professions of loyalty inspire visions of the Constitutionalists as staunch defenders of the British government in the face of an increasingly militant Patriot movement pushing towards independence, they were actually among the strongest critics of British policy in Lower Canada.

The Colonial Office's policy of conciliation, which sought to woo moderate Patriots to the side of the executive,<sup>169</sup> was viewed by the MCA and its allies as contributing to, rather than solving, the province's problems. Senior offers an excellent description of how Gosford alienated those who feared French Canadian influence in Lower Canadian politics:

In his efforts to conciliate the moderate wing of the *Patriote* party and those who had deserted Papineau, Gosford had done what the British party most feared. He had increased the French Canadian membership in both the Executive and Legislative Councils to such an extent that by October of 1837, the active members of both Councils were predominantly French. The Executive Council was composed of seven French Canadians and seven British Canadians. The Legislative Council was made up

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<sup>167</sup>MCA, "Address to the Sister Colonies."

<sup>168</sup>MCA, *Representation on Union*, 19. Emphasis mine.

<sup>169</sup>Buckner, *Transition*, 137-205.

of nineteen French Canadians and twenty British Canadians. A number of the latter were too old or ill to attend meetings. Most of the French Canadians appointed to both councils had impeccable loyalist credentials, but there were some who only very recently left the *Patriote* party. As far as the militants of the Constitutionals or ultra-British party were concerned, Gosford was 'completely in the hands of the French party.'<sup>170</sup>

The Constitutionalist press was nearly unanimous in its condemnation of Gosford.<sup>171</sup> For example, on the occasion of the governor's departure from Lower Canada, *The Montreal Gazette* wrote that

During the whole eventful period of the Administration in this Province of the late Governor-in-Chief, from the day of the arrival until the day of the departure of his Lordship, there is scarcely a single point of Government, whether emanating from himself, or the result of instructions from home, upon which we can rest with any degree of approbation or satisfaction.<sup>172</sup>

*Montreal Herald* editor Adam Thom consistently used the pages of his newspaper to attack the policies of the man he referred to as 'His excellency, Goosey Gosford.'<sup>173</sup> Constitutionalist attacks even followed Gosford across the Atlantic, where from his seat in the House of Lords the former governor downplayed the severity of the Rebellions, introduced anti-union petitions, voted against the union bill, and defended the loyalty of French Canadians. In a public letter dated at Liverpool on 11 July 1840, MCA member Benjamin Hart lashed out at him for all of these activities. Gosford was accused of misrepresenting the situation in the Canadas and attacked for his refusals to accept "the voluntary offer of the loyalists of Lower Canada to arm," refusals which were interpreted as proof of Gosford's "aversion to loyalty, [...] desire to promote the extreme of radicalism, and above all, to bestow powers on those who have sought to abandon their loyalty, and to introduce Republicanism into the Canadian Provinces."<sup>174</sup>

The Constitutionals' francophobia and belligerence towards anyone supportive of French Canadian political participation should not be altogether surprising. After all, the MCA had been formed to represent the political interests of British Lower Canadians in the context of

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<sup>170</sup>Senior, *Redcoats*, 23-24

<sup>171</sup>Goldring, "British Colonists," 224.

<sup>172</sup>*Montreal Gazette*, 24 April 1838.

<sup>173</sup>Kathryn M. Bindon, "Journalist and Judge: Adam Thom's British North American Career, 1833-1854," M.A. thesis, Queen's University, 1972, 42-44.

<sup>174</sup>"Open Letter, Benjamin Hart to Earl of Gosford," Liverpool, 11 July 1840, Sandham Scrapbook, IV, 90, CRM.

the electoral successes of the Patriot party, a movement increasingly associated with French Canadian nationalism. Furthermore, to put things in a larger context, such a process of defining British interests in opposition to a threatening French presence resembles Linda Colley's descriptions of the formation of a British identity:

Time and time again, war with France brought Britons, whether they hailed from Wales or Scotland or England, into confrontations with an obviously hostile Other and encouraged them to define themselves collectively against it. They defined themselves as Protestants struggling for survival against the French as they imagined them to be, superstitious, militarist, decadent and unfree. And, increasingly as the wars went on, they defined themselves in contrast to the colonial peoples they conquered, peoples who were manifestly alien in terms of culture, religion and colour. (...) men and women decide who they are by reference to who and what they are not. Once confronted with an obviously alien 'Them', an otherwise diverse community can become a reassuring or merely desperate 'Us'. This was how it was with the British after 1707. They came to define themselves as a single people not because of any political or cultural consensus at home, but rather in reaction to the Other beyond their shores.<sup>175</sup>

Virtually all of the elements described by Colley existed in the Lower Canada described in the MCA. The conquered colonial people was conveniently the French, and the French Canadians had lived up to their reputation as dangerous and incapable of exercising freedoms responsibly. The Constitutionlists presented a long history of conflict to confirm their vision of their fellow Lower Canadians; political battles had led slowly but surely to a military one. Furthermore, important numbers of Constitutionlists and an important portion of their constituency had been born and raised in Britain, experiencing the process of national cohesion described by Colley before arriving in Lower Canada. It seems almost natural that, given the society they found upon arriving in Lower Canada, they would see the province's political battles as divided along French Canadian / non-French Canadian lines. Of course, if in their eyes French Canadians as a group were incapable of enjoying free — “British” — institutions, then English-speaking Lower Canadians were a group that should not be impeded from enjoying them.

In other words, by arguing that French Canadians were not capable of exercising political freedoms responsibly, the MCA was implying that its own constituency — the somewhat awkwardly worded ‘Lower Canadians of British or Irish origin’ — had an innate ability to do so. In conceiving of exactly who the ‘Lower Canadians of British or Irish descent’

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<sup>175</sup>Linda Colley, *Britons: Forging the Nation 1707-1837* (New Haven and London: Yale University Press, 1992), 5-6.

were, the Constitutionalist embraced institutions which had shaped British nationalism over the course of the previous century. The British union of 1707 forms the very basis of Colley's study, and undoubtedly the Constitutionalist dream of union with Upper Canada was inspired by a longstanding British tradition of dealing with cultural differences by imposing political uniformity. Especially relevant to the Lower Canadian context is the Irish union of 1800 which, though largely ignored by Colley, brought its own process of "cultural influence and exchange."<sup>176</sup> Young has drawn on Colley's work to explore the role of the Volunteer regiments in cultivating an ideal of Britishness and manliness.<sup>177</sup> The thrust of many Constitutionalist demands speak to "a cult of commerce became an increasingly important part of being British,"<sup>178</sup> suggesting another parallel between British nationalism in Lower Canada and the mother country.

However, the points of British nationality sometimes had to be selectively applied to Lower Canada. Inspired by the union of 1800 as much as that of 1707, Lower Canadian Constitutionalist were trying to create a nationality which was more diverse than the one described by Colley. Constitutionalist discourse basically lumped together everyone who was not French Canadian, and their desired constituency might be better described as 'English-speaking' than 'British.' Thus, while Colley presents Protestantism as central to the forging of a British nationality,<sup>179</sup> religion was a rarely mentioned topic in the Constitutionalist's public discourse. Maintenance of their religion was sometimes among the list of privileges gained by French Canadians after the conquest, but Roman Catholicism was never used to differentiate them from their fellow Lower Canadians 'of British and Irish origin'. The Constitutionalist were acutely aware of the fragility of the cultural links they were forging. An interesting example is an 1835 letter to the editor of *The Quebec Gazette* from a Constitutionalist Scot admonishing the St. Andrew's society for not marching in the St. Patrick's Day parade, as the St. George's Society was planning to do.<sup>180</sup>

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<sup>176</sup>R.H. Foster, *Paddy & Mr Punch: Connections in Irish and English History* (London: Penguin, 1993), 281.

<sup>177</sup>Brian Young, "Volunteer Militia."

<sup>178</sup>Colley, *Britons*, 61.

<sup>179</sup>Colley, *Britons*, 11-54.

<sup>180</sup>"A member of the St. Andrew's Society to the Editor of the *Quebec Gazette*," 15 March 1837, Neilson, IX, 189-90, NAC.

But along with cultural differences, class also presented a challenge to the image of a politically united and politically capable British and Irish population. After all, by the time of the Rebellions, the majority of English-speaking Lower Canadians resembled the rank-and-file of the Patriots more than the leading merchants of Montreal.<sup>181</sup> Furthermore, since the franchise in Britain was far more restrictive than that in Lower Canada, Constitutionals could hardly argue that British immigrants had more experience in the exercise of political rights than the French Canadian habitants. But the MCA did not spring from this anglo-Canadian mass. It was created by a tight-knit Montreal social and economic elite which had come together for political purposes, and which defined the 'Lower Canadian of British or Irish descent' in its own image. Thus, it is important to appreciate how the creation of the MCA and the consolidation of its power was a top-down process:

The rapid coalition of loyalist forces in Montreal was possible because of the preliminary moves made by the Montreal Constitutional Association, which derived its strength from the four national societies [...]. A glance at the executive of the four national societies shows to what extent these were the core organizations to coalesce, [...]George Moffatt headed the English community in the St. George's Society. With him were John Molson, Henry Griffin, and Doctor Thomas Walter Jones; the latter Master of the Hunt as well. Doctor Daniel Arnoldi promoted the German society. Peter McGill headed the powerful St. Andrew's Society, and Sydney Bellingham was president of the St. Patrick's Society. Among the officers of the latter society, which in 1837 included both Roman Catholic and Protestant Irish, were John Samuel McCord, Robert Badgley, and Campbell Sweeny. All these leaders of the national societies were by 1835 officers of the Constitutional Association.<sup>182</sup>

This elite remained in control of the movement from beginning to end. While mass rallies were held and petitions distributed, the entire Constitutionalist outlook was founded on a rejection of popular sovereignty. Unlike the Patriot movement, the Constitutionals never mobilized the larger constituency it claimed to represent, and therefore the movement never felt the influence of popular-class concerns on its actions and objectives in the same way the Patriots did in 1837-38.<sup>183</sup> This class specificity is reflected in the program of the MCA, where so many of its preoccupations — land registry, improvements to navigation, macro-constitutional change — were those of an elite which traded in land, held government office, and conducted trans-Atlantic commerce. It is not surprising, then, that during its time as the official organ of the

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<sup>181</sup>Greer, *Patriots*, 164.

<sup>182</sup>Senior, *Redcoats*, 105.

<sup>183</sup>Greer, *Patriots*.

MCA — an association which claimed to represent the political interests of all of English-speaking Lower Canada — the *Morning Courier* claimed only to represent the “majority of the mercantile interest of Montreal.”<sup>184</sup>

But the goals of Lower Canadian Constitutionalists were not always so clearly defined. A MCA declaration from December 1835 even goes so far as to claim that “the Association numbers amid their ranks, many of the children of republican America, who venerate the land of their birth, and are proud of her institutions.”<sup>185</sup> Especially interesting is the 1835 Constitutionalist mission to London. A report submitted by MCA delegate William Walker<sup>186</sup> speaks of a rather awkward collaboration with the Quebec Constitutional Association and its delegate, John Neilson. Specifically, “the necessity of preserving a distinction between the objects of the two Associations” required twice the number of visits to members of Parliament and Colonial Office officials.<sup>187</sup> In these meetings, Walker only brought into questions the powers of the Legislative Assembly, not the legitimacy of the institution itself. He distanced the MCA from constitutional struggles of the past, presenting “the Petition and Resolutions proceeding from the Association at Montreal, as the first authentic expression of the sentiments of the British population of Lower Canada.” Thus, he

described the struggle of 1828, as one emphatically between the House of Assembly, representing the sentiments, or supposed sentiments, of a majority of the Canadian population, and the Local Administration; to which the people in the Province of British origin were in no shape parties.<sup>188</sup>

Furthermore, Walker seemed to have neither the mandate nor the will to promote the idea of union:

I ought not to omit informing the Association, that no allusion was made by Ministers to the intention at one time entertained of uniting the two Provinces; or to the annexation of the Island of Montreal to Upper Canada; and confining myself to the instructions of the Committee upon these heads, I, in consequence, abstained from urging either of the upon the Ministers.

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<sup>184</sup>Senior, *Redcoats*, 12.

<sup>185</sup>MCA, “Declaration of the Montreal Constitutional Association, at the General Annual Meeting held in Montreal, Dec. 7, 1835,” Sandham Scrapbook, IV, 61, CRM.

<sup>186</sup>Not the Special Councillor.

<sup>187</sup>MCA, *Mr. Walker's Report of his Proceedings in England, to the Executive Committee of the Montreal Constitutional Association* (Montreal: Printed at the Morning Courier Office, 1836), 9.

<sup>188</sup>MCA, *Mr. Walker's Report*, 13.

The latter measure I apprehended to be opposed to the sentiments of the Constitutionists of Quebec — of the people of the Townships — and of the population of British origin, settled in the upper part of the District, not within the limits of the territory proposed to be assigned to Upper Canada; and I knew that it would be resisted by Mr. Neilson.<sup>189</sup>

Presumably, Neilson would also resist the idea of legislative union, since he had been part of the delegation sent to London by the Legislative Assembly in 1822 to oppose the measure.

The Quebec Constitutional Association, of which John Neilson was only one of many prominent members,<sup>190</sup> provides an interesting contrast to its counterpart at Montreal. Compared to the documents produced by the MCA, a declaration issued by the Quebec association in late 1834 treated French Canadians not only in a sympathetic manner, but in one that showed respect for their political rights, drawing a clear distinction between the Patriot party and those who had voted for them:

The class of persons by whom Members of the Assembly are almost exclusively returned, - that is, the inhabitants of French origin, who form the majority, and whose character is in other respects most estimable, - has shewn itself peculiarly liable to be acted upon by ambitious and self-interested individuals, who, by exciting the latent national prejudices of the majority against their fellow-subjects of a different origin, can, as appears from late events, lead them astray by specious though perfectly unfounded representations addressed to their prejudices and passions.

The Quebec declaration also presented a more diverse portrait of the province's British population, and consequently a more limited notion of its common interests:

one hundred and fifty thousand souls, or one fourth of the whole, and comprises nearly all the Merchants, [?], Members of the learned Professions, a large body of skilful and wealthy artisans and Mechanics, and a great number of respectable and industrious agriculturalists, possess extensive real estate, and holds by far the greatest portion of the capital employed in the pursuits of trade and industry, all which interests are liable to be burthened, and in have been injuriously affected, in consequence of the proceedings of the said party and of the majority of the same origin by whom they have been supported in the Assembly of the Province.<sup>191</sup>

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<sup>189</sup>MCA, *Mr. Walker's Report*, 24.

<sup>190</sup>QCA, "List of the Committee of the Constitutional Association of Quebec," 22 November 1834.

<sup>191</sup>QCA, "Declaration of the causes which led to the formation of The Constitutional Association of Quebec, and of the objects for which it has been formed," Quebec, December 1834, 1.

The Quebec association sought six objects to be attained "by constitutional means": "a fair and reasonable" representation in the Assembly for "persons of British and Irish origin, and others His Majesty's subjects labouring under the same privation of common rights;" a reformed judicature; an improved Executive Council; the retention of a Legislative Council appointed by the Crown; the maintenance of the imperial connection; and a guarantee of peace and equal rights. Most significantly, the declaration closed with a defense of the political rights of French Canadians under the 1791 Constitution:

Declaring that we wish for no preferences or advantages over our fellow subjects of whatever national origin, nor for any infringement of the rights, laws, institutions, privileges and immunities, civil or religious, in which those of French origin may be peculiarly interested, and to which they are entitled, or which they enjoy under the British Government, and the established Constitution; desiring merely for ourselves the enjoyment of equal rights with our fellow subjects, and that the permanent peace, security and freedom for our persons, opinions, property and industry which are the common rights of British Subjects.<sup>192</sup>

The Quebec association's declaration served as the model for the constitutions at least one Constitutional association in the District of Montreal, namely that of Two Mountains.<sup>193</sup>

However, by the start of 1838, the MCA was better organized, had taken a much harder line, and had come to dominate the Constitutionalist movement in the province. Republicanism was no longer cherished as a sign of diversity within the association, but rather associated with treasonous French Canadian politicians. Instead distancing themselves from the debates of the late 1820s, Constitutionlists were ready to openly come to the defense of Dalhousie administration as a bulwark against bogus French Canadian grievances. A *Montreal Gazette* editorial described the controversial governor as a "great and good man," and questioned the legitimacy of complaints against him. Citing Dalhousie's receipt of a "gold-mounted sword, having on the guard a suitable inscription" from gracious authorities of the city of Bordeaux as evidence of the "excellent disposition and impartial demeanour of Lord Dalhousie towards an alien people," *The Gazette* asked,

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<sup>192</sup>QCA, "Declaration of causes," 3.

<sup>193</sup>"Rules and Regulations for the Government of the Constitutional Association of the County of the Two Mountains, established at a General meeting, held at St. Andrews, upon the 23d day of December, 1834, and predicated upon the same principles as the Quebec Association," Barron Collection, I, NAC. The stated "objects and Principles of the Association" were taken directly from the Quebec declaration.

Can it ever be seriously supposed, then, as it has often been insinuated -- nay, resolved and declared, -- that his Lordship could have any design to oppress the French Canadians of this Province -- the subjects of a British Sovereign? Surely not.<sup>194</sup>

Meanwhile those who, like Walker, held outlooks that did not correspond well with the MCA's stances on French Canadians and union were purged from the ranks of the organization.<sup>195</sup>

At the same time as the MCA was hardening in its increasingly conservative and francophobic views, the strength of organized Constitutionalism in the rest of the province appeared to be either dissolving or assimilating itself to the Montreal model. By the time of the Rebellions, the MCA had taken a leadership role in setting policy and taking action on behalf of the province's Constitutionalists. Thus, the 1838 report of the association's executive committee announced that "the several branch Constitutional Associations throughout the District signified their entire and hearty concurrence" with its policies, and that the Quebec association, "entertaining similar views upon the subject of the Union of the Canadas," had nominated a delegate to promote the measure in England.<sup>196</sup> For its part, the MCA had already sent its own delegates (see below). Furthermore, Goldring suggests that not much else remained of the Constitutionalist movement by the late 1837. He explains that "superficial unity" in the mid-1830s quickly gave way to

steady pressure from within to turn the associations into organs for social change rather than for constitutional stability [...] The main associations at Quebec and Montreal were active until the end of 1838. The separate 'Constitutional Union of Mechanics and Tradesmen' at Quebec and the more ephemeral unions in the countryside generally lasted long enough to elect executives for 1836. Together, the MCA and Q[uebec] C[onstitutional] A[ssociation] collaborated in two ventures which are worthy of note: the sending of delegates to brief the N[orth] A[merican] C[olonial] A[ssociation] and the Colonial Office in 1835 and 1837-38, and the creation of a sort of constitutionalists' Parliament, the Select General Committee which met twice in 1836. [...] the chief accomplishment of the Select General Committee seems to have been to force an open split in the Q[uebec] C[onstitutional] A[ssociation] on the question of reuniting the Canadas.<sup>197</sup>

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<sup>194</sup> *Montreal Gazette*, 5 May 1838.

<sup>195</sup> Goldring, "British Colonists," 231.

<sup>196</sup> MCA, "Report of 1838 General Meeting."

<sup>197</sup> Goldring, "British Colonists," 218-19.

Senior, for her part, presents organized Constitutionalism at Quebec as a pathetic imitation of what was happening in Montreal.<sup>198</sup>

In any case, the fact that Constitutionalists at Quebec had come to hold 'similar views' to those of the MCA is confirmed by a "Great Meeting of the British and Irish Inhabitants of Quebec" held on 31 January 1840. The meeting, attended by 800 to 900 people, was called to express "an utter detestation of the men who have brought such serious evils on this Province, and a determination to resist to the uttermost of their power, any attempts by whomsoever made, to bring about a return to the old system of French Canadian domination." Specifically, it sought to counter the efforts of the anti-union committee that was organizing a petition and, to the horror of those present, contained several English speakers, including John Neilson. Organizers of the meeting feared that "it might be inferred that the inhabitants of this City, of British and Irish origin participated in those views." In speeches, Neilson was portrayed as a turncoat, who had acted on behalf of British Lower Canadians in 1835 but had since abandoned them for an alliance with French Canadian politicians. The resolutions passed at the meeting came out in strong support of all the tenets of Montreal Constitutionalism: they rejected the legitimacy French Canadian political participation, and embraced union as the *only* means of ensuring stability and prosperity. To counter the anti-union committee's claim that only an appointed Special Council — and not the population of the province — had been consulted on the subject of union, one speaker at the meeting pointed to the delegations sent by the Montreal and Quebec Constitutional Associations in 1838 to promote the idea of union, and claimed that "the people of British and Irish origin very generally, almost unanimously, expressed themselves in favour of that measure."<sup>199</sup> Following the logic of the MCA, this represented the will of the loyal and politically legitimate portion of the Lower Canadian population.

Thus, as organized Constitutionalism was slowly fading away in the rest of the province, the MCA was fully prepared to take advantage of the opportunity offered it by the events of 1837-38. Senior presents the MCA as the "largest civilian organization in Montreal"

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<sup>198</sup>She explains that, "In the capital city, the local militant *Patriotes* never got much beyond a battle of words with their one journal and one committee. The young men of the Constitutional Association in Quebec City moved with about the same amount of vigour. They formed a loyalist club - the Loyal Victoria - in early September, somewhat in imitation of their Montreal counterparts in the Doric Club, and decided to meet 'once a month or oftener if necessary. Senior, *Redcoats*, 31.

<sup>199</sup>"Great Meeting of the British and Irish Inhabitants of Quebec," *Quebec Gazette*, 3 February 1840.

by late 1837.<sup>200</sup> This is most likely an understatement, as the MCA could easily be portrayed as the most powerful single force in Lower Canadian politics following the outbreak of the Rebellions. The Patriot rallies of that year destroyed any hopes of the Lower Canadian administration that the Patriot movement might be wooed into cooperation, and Gosford went from offering concessions to issuing arrest warrants. The Rebellions saw Patriot leaders and large numbers of the followers literally swept off the political scene, either by fleeing to the US or by finding themselves in the Montreal jail. The political void created by these events was one the Constitutionists had been waiting to fill since the Patriots' opponents had been virtually shut out of the Assembly in the elections of 1834. Perhaps more importantly, the Rebellions and the suspension of the constitution created a legal environment where a fundamental change like the Montreal Constitutionists' ultimate goal of union might be achieved. And as the splintering of the movement elsewhere shows, by 1837 the MCA was no longer just one constitutional association among many, while within Montreal it was firmly controlled by the city's wealthiest and most powerful anglophone men.

In the wake of the 1837 Rebellion, the MCA put its power to work in order to define the British North American political agenda in such a way as to promote its goals. As the driving force behind the organization of the volunteer regiments, the association's members not only gained tremendous and brutal power over the Lower Canadian population, but also placed themselves in a position where it was viewed as *the* source of active loyalism in the province, not to mention putting the provincial and imperial governments in its debt. By issuing its "Address to the Sister Colonies" in the closing days of the 1837 Rebellion, the MCA was able to turn its dominance of the anglophone press in Montreal — at a time when newspapers representing French Canadian or more liberal opinions were fast disappearing — to present its interpretation of events to important audiences within and without the province. In late December 1837, the MCA sent copies of its petitions and requests for support to the lieutenant governors, legislative councils, and legislative assemblies of the other British North American colonies, presenting itself as the legitimate voice of the Lower Canadian population. New Brunswick's legislators appear to have been particularly receptive to these efforts.<sup>201</sup> But

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<sup>200</sup>Senior, *Redcoats*, 61.

<sup>201</sup>New Brunswick's Legislative Council voted to have the constitutionalist petition entered "at large in their Journal," while the speaker of the Assembly informed MCA president Peter McGill that resolutions had been passed which "express the feelings of the entire population of this

activities went far beyond fostering a sense of British North American brotherhood through newspapers and correspondence. In the weeks following the outbreak of rebellion, the MCA began actively lobbying in Upper Canada in the hopes of gaining that province's support for union:

communications were at once opened with influential persons in that province, and petitions to the several branches of the Legislature then in session, were prepared and transmitted without delay, earnestly pressing the necessity and expediency of the measure, as well for the relief of their brethren of British origin in this province as for securing the prosperity of both provinces, and preserving their permanent connection with the Empire at large.

Thomas McKay, a member of the Upper Canadian assembly, was enlisted to promote the measure in his province and keep the Montreal Constitutionalists informed of developments.<sup>202</sup>

However, at the beginning of 1838, the most important decisions were not being made in North America, and the MCA also turned its attention across the Atlantic. It was up to the British cabinet to decide under what circumstances Lower Canadian politics would proceed. Two delegates from the MCA, former chairman George Moffatt and secretary William Badgley, arrived in England in early 1838 to help sway British opinion. They were armed with Constitutionalist literature and ready to see their views and objectives integrated into the Imperial Parliament's legislative response to the Rebellions. What shape this response would take was far from clear. Perrault mentions several different constitutional settlements which were submitted to and considered by the British government.<sup>203</sup> When the MCA delegates learned that, in the short term, British authorities would limit themselves to a suspension of the constitution, they turned their attention to the newly-appointed Governor General. Durham requested that they submit to him a list of grievances, which they divided into two categories:

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Province, we will not be behind any of Her Majesty's Colonies, whenever the hour of trial shall come, in a determination to preserve to the whole, the inestimable blessings of a British Connection." W. Odell to Badgley, Fredericton, 10 January 1838; W. Chipman to Badgley, Fredericton, 12 January 1838; Charles Simonds to McGill, Saint John, 12 March 1838; Badgley Collection, folder 9, MMA.

<sup>202</sup>MCA, "Report of 1838 General Meeting."

<sup>203</sup>These were, "laisser le Bas-Canada pour un temps indéfini sous la direction d'un gouverneur et d'un conseil spécial; ou unir le district de Montréal at Haut-Canada, le district de Gaspé et les Iles de la Madelaine au Nouveau-Brunswick, laissant le reste du Bas-Canada gouverné comme il l'était auparavant; ou fédérer toutes les privinces du Nord de l'Amérique, avec parlement central et législatures; ou unir le Haut et le Bas-Canadas sous un même parlement et un même gouvernement." Perrault, "Conseil Spécial," 301.

“Affecting the province in general” and “Affecting the British inhabitants in particular.” The seven grievances in the first category were rather vague, but touched on familiar themes. They demanded a “firm, energetic, and consistent system of government, which having for its object the prosperity of the Province shall at the same time secure to all the Provincial Inhabitants, without distinction of origin, the enjoyment of equal rights, without fostering national prejudices;” greater financial stability for the provincial government and a civil list; improved Legislative and Executive Councils; an improved and more independent judiciary; a court of impeachments; a system of elementary education funded through local taxation; and improvements to the navigation of the St. Lawrence. The delegates identified seven further issues which affected the British inhabitants in particular. These were the need for better representation in the provincial legislature, for land registry offices, and for dismantling seigneurial land tenure, especially on the island of Montreal; the lack of higher education for English speakers; the need for the incorporation of Quebec and Montreal; “The defective state of the law for the summoning of Juries;” and “the evils of temporary provincial Legislation.”<sup>204</sup>

The delegates also met with Glenelg and presented him a list of grievances virtually identical to that submitted to Durham. One notable addition complained of the newly-created Special Council, not so much for its existence, but for its impotence: “the prolongation of the foregoing grievances & others in consequence of the want of sufficient authority in the Governor & Council under the act of the present session of the Imperial Parliament to enact the remedial legislation.” Meanwhile, Badgley and Moffatt made clear what permanent constitutional settlement they sought. They complained of “the Division of the Province of Quebec, and the establishing of separate Legislatures for the Canadas, to which, as was predicted, the evils which afflict Lower Canada, [...] are to be mainly ascribed.” Only in a legislative union of Upper and Lower Canada could “be found the means of constitutionally extending to Her majesty’s loyal subjects residing in Lower Canada [...] to which they are justly entitled.”<sup>205</sup> For its part, *The Montreal Gazette* complained of the “unfortunate and impolitic extent to which the legislative powers of the Governor and Special Council have been limited by the provisions of the Imperial Statute.”<sup>206</sup>

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<sup>204</sup>“Address to Durham by Moffatt and Badgley, 9 April 1838,” Badgley, folder 10, MMA.

<sup>205</sup>“Heads of Grievances submitted to Lord Glenelg, 4<sup>th</sup> April 1838,” Colborne Papers, microfilm A-597, NAC.

<sup>206</sup>*Montreal Gazette*, 17 April 1838.

But Constitutionals quickly reconciled themselves to the institution. Indeed, the Special Council is central to understanding the importance of Constitutionalism during the period 1838-41. The council immediately and effectively took control of Lower Canadian politics out of the hands of the province's electorate, and entrusted legislative power to a small elite where English speakers — and Constitutionals — were much better represented. This temporary disenfranchisement effectively achieved the goals of union in the short term. Thus, *The Montreal Gazette* looked upon the Special Council as a return to the 'good old days' of politics in Lower Canada, before representative institutions were introduced:

Adverse, as we are, to any system of Government savouring of despotism, and contrary of such a scheme of government must always be to the rights and liberties of a British subject, it must be admitted that best and most suitable laws ever enacted in this Province obtained their authority during the former period that our affairs were administered by a Governor and Council. A calm and impartial view was taken of the true situation of the country. No party of factious feelings or prejudices, had as yet obtained admission into the councils of our rulers and lawgivers, to influenced their deliberations. The necessities of the Province were looked upon in the true spirit of philosophical guardianship, and the adequate remedy immediately applied. Legislation was not pushed beyond its legitimate boundaries, as was the case in a more recent period; every law and ordinance, was laid on its proper foundation -- the necessity of the case; and there were no law fancymongers and democratical innovators then in the land, to pollute it with their monstrous and insidious doctrines.<sup>207</sup>

And while the problem of the Special Council's limited powers persisted for almost two years, they were corrected long before the council's work was done.

Furthermore, Goldring's research clearly shows that when it was faced with a British cabinet unwilling or unable to proceed with union immediately, the MCA played an important part in the creation of the Special Council. Goldring gives as one of the reasons why a sizeable Special Council with considerable legislative power ultimately came into being, that in the wake of the 1837 Rebellion, British "policy was deeply affected and probably inspired from sources which had hitherto carried little weight in the counsels of imperial policy, the North American Colonial Association, and the Constitutional Association of Montreal."<sup>208</sup> The North American Colonial Association had collaborated with the Constitutionalist delegates to England in 1835, and the two organizations were officially linked through the colonial association's director, Robert Gillespie. Gillespie was an official member of the MCA, and he

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<sup>207</sup> *Montreal Gazette*, 7 April 1838.

<sup>208</sup> Goldring, "British Colonists," 236.

was named as the association's official delegate in the event that Badgley returned to Canada.<sup>209</sup> Goldring presents Gillespie as the vanguard of the MCA's mission to London. Thus, following some initial lobbying done by Gillespie, "the Montreal constitutionalists took charge themselves of the presentation of their case, as George Moffatt and later William Badgely arrived in London. The N[orth] A[merican] C[olonial] A[ssociation] withdrew from formal contact with the government." On 21 December 1837, Gillespie sent a letter to the Colonial Office suggesting the creation of a temporary appointed legislature. Two weeks later, he and Moffatt submitted

a draft act [...] which with minor exceptions became the bill enacted by the House of Commons on 26 January. [...] In short, the similarities between Gillespie's proposals and the plan enacted by Parliament seem too striking to be coincidental.<sup>210</sup>

However, the 'minor exceptions' Goldring notes included severe limitations on the council's powers.

Thus, it is not surprising that the act expanding the council's powers was also partly the brainchild of the MCA. Goldring describes it as a part of the North American Colonial Association's "plans," developed in collaboration with the MCA, and accepted by British officials who were "eager to hear any reasonable proposal."<sup>211</sup> Thus, in keeping with the concerns raised in the grievances presented to Glenelg,

[Badgley and] Moffatt had made it very clear in London that economic measures and legal reforms, not suppression of the revolt, were the chief reason for creating a special council. It should, they repeatedly told Glenelg, be authorized to amend the laws of mortgage and dower, create registry offices, reconstruct the judiciary, revive and improve the defunct corporations of Quebec and Montreal, abolish feudal tenure, especially in Montreal, and deal with a host of internal improvements, notably the St. Lawrence canal.<sup>212</sup>

Elsewhere, Goldring explains how "the Colonial Office was soon carried along by the constitutionalists (and the second rebellion) into letting it enact a systematic revision of many of the colony's laws and institutions."<sup>213</sup> In short, while not they were not entirely satisfied with

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<sup>209</sup>MCA, "Report of 1838 Annual Meeting."

<sup>210</sup>Goldring, "British Colonists," 167.

<sup>211</sup>Goldring, "British Colonists," 168.

<sup>212</sup>Goldring, "British Colonists," 248-49.

<sup>213</sup>Goldring, "British Colonists," 260-61.

the Special Council, the Constitutionals clearly had a hand in guiding its creation and its evolution.

Meanwhile, just as the average Special Councillor was becoming more likely to be a Montrealer, an anglophone, and a member of the executive, he was also more likely to be a member or supporter of the MCA. Furthermore, while it is important not to dismiss the importance of actually participating in the organization, some Special Councillors who do not appear to have been official members of the MCA can be considered strong allies of the association. For example, while he officially resided at Quebec, Ogden was instrumental in organizing volunteer regiments in Montreal,<sup>214</sup> and his duties as Attorney General would have kept him in the city for most of his time as a Special Councillor. Also, his political outlook likely corresponded to that of the MCA. For example, Senior quotes him as blaming problems with the magistracy on the “infusion of French Canadians of what are commonly called liberal principles [...] at a time when the quarrel had but too evidently assumed a national character.”<sup>215</sup> James Stuart could also be added to the list of Constitutionalist Special Councillors. A prominent member of the Quebec Constitutional Association, he had deep roots in Montreal’s anglophone mercantile elite and in earlier years he had been active in organized political action on behalf of this group. In mid-October 1822, Stuart was present at a meeting of the “Friends of the Re-union of Lower and Upper Canada,” chaired by John Richardson, and held in Montreal. The reasons given for supporting union were almost identical to those put forward by the MCA 15 years later: geography, missed opportunities for development, tariff disputes, and maintenance of the link with the mother country. Set apart as “one of the most important” reasons was that union would be a means of “extinguishing the national prejudices and hostility of feelings, derived from differences of origin [...] and in consolidating the population of both provinces into one homogeneous mass.” Among the 10 men named to a committee formed to draft a petition in support of the measure were four future leaders of the MCA: George Moffatt, John Molson, Samuel Gerrard, and Peter McGill. Not only was Stuart named to the same committee, but the final act of the meeting was to vote thanks to Stuart “for his excellent

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<sup>214</sup>Senior, *Redcoats*, 60.

<sup>215</sup>Senior, *Redcoats*, 38.

Speech, and Resolutions in support of the important business of the day."<sup>216</sup> Furthermore, he went to London the following year as delegate of the Montreal merchants to promote the idea of union.<sup>217</sup>

Stuart's links to the MCA are important to stress. It was Stuart who, in his capacities as Chief Justice of Lower Canada and Presiding Member of the Special Council, put the association's legislative program down on paper and ensured its passage. In his letters to the Lord John Russell, Thomson rarely referred to 'his' legislation without mentioning Stuart as its draftsman. Stuart even aided Thomson in the re-drafting of the union bill.<sup>218</sup> The legislation drafted or revised by Stuart with the blessing of Thomson and with the support of the Constitutionlists on the Special Council read like a list of grievances from a Constitutionlist petition. The passage of the registry ordinance offers a particularly good example of a victory achieved through the Special Council. For decades, land registration had been a contentious and often debated issue. Demands for registry offices had usually come from those who claimed to speak for British Lower Canadians; opposition from those claiming to protect French Canadian culture. In the years preceding the Rebellions, multiple attempts were made to introduce registry bills into the provincial legislature, and they all failed. For some Constitutionlists, it became a personal crusade: in 1836, Badgley authored a pamphlet on the subject, while Moffatt drafted a Legislative Council committee report which spoke of the 'evils' created by the absence of land registration.<sup>219</sup> Even before the MCA was consistently calling for union, demands for registry offices figured prominently and consistently in the documents it produced.<sup>220</sup> Finally, at the very last meeting of the Special Council, the Constitutionlists' wish was granted with the passage of a registry ordinance drafted by James Stuart.<sup>221</sup>

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<sup>216</sup> "At a Meeting of the Friends of the Re-union of Lower and Upper Canada, held this day at the Exchange St. Joseph Street, to devise measures for the promotion of that desirable object," Montreal, 14 October 1822, Sandham Scrapbook, IV, 36, CRM.

<sup>217</sup> *DCB*, VIII, 843.

<sup>218</sup> Thomson to Russell, Toronto, 23 January 1840, in Knaplund, *Letters*, 44-46.

<sup>219</sup> William Badgley, *Remarks on Register Offices* (Montreal: Herald Office, 1836); Bradbury, "Men debate Dower;" Evelyn Kolish, "Le conseil législatif et les bureaux d'enregistrement (1836)," *RHAF*, XXXV:2 (September 1981), 217-230.

<sup>220</sup> "An address by the Constitutionlists of Montreal to men of British or Irish Origin," 1834, is probably the earliest document released by the Montreal Constitutionlists. It Complains of "the want of a bill for the registration of acquisition of real property." Shortt, *Constitutional Documents*, 393.

<sup>221</sup> *JSCLC*, VI, 9 February 1841.

The importance of Stuart serves as a reminder that the nature of the Special Council was such that influence was more important than absolute numbers. That is to say, any attempt to steer the work of the council had to be made *before* that legislation was introduced by the governor. Hence the importance of a marked reconciliation between the Constitutionalists, British policy makers, and the Lower Canadian governor which occurred in the months following the beginning of the Rebellions. The situation in London in early 1838 was curious when compared to previous constitutional and political crises which had seen Lower Canadian groups send delegations to London. While the events of 1837-38 were certainly not an exact replay of previous Lower Canadian political conflicts, the diplomatic battle on the imperial front was unusually one-sided in early 1838. In 1822 Stuart had faced Neilson and Papineau; in 1828 Neilson, Cuvilier and Viger had faced Gale; and in 1835 the demands of Neilson and Walker were countered by those of Viger and Morin. The address to Durham clearly shows that Badgley and Moffatt were conscious of their situation as the only Lower Canadians personally petitioning the imperial government (notwithstanding the impending arrival of a delegate from Quebec, who would only reinforce the Montrealers' views). They stressed their status as representatives of the British inhabitants of Lower Canada rather than as delegates of the MCA. The division of the grievances they submitted to Durham between those that affected their constituency particularly, and those that affected all of the province's inhabitants, made them sound like a recently elected government pledging to represent all the citizens of the country, not just those that had voted with the winning side. Of course, the division also helped overcome the contradiction of an organization calling for the political marginalization of the majority of the province's population while claiming to desire a system of government which would secure equal rights.

In fact, the Constitutionalists were making friends in high places on both sides of the Atlantic. If Gosford was perceived and portrayed as the devil by the Montreal Constitutionalists, Colborne was hailed as a saviour. From early 1838 to his departure from the province late in the next year, Colborne was the object of a myriad of Constitutionalist addresses dripping with praise for the way he was using his 'despotic' powers. For example, an address presented to him at Montreal affirmed that "almost unlimited power, when regulated at once by vigour and humanity, by zeal in the service of the sovereign, and regard for the liberty of the subject, may be more beneficial in relation to a people politically uninformed, than even

the free Constitution.” In response, Colborne expressed his hope “that the Ordinances which have been passed by the Special Council, may relieve you from some of the embarrassments which the continued opposition to *constitutional* Legislation, for many years passed, must have produced.”<sup>222</sup> In mid-January 1839, *The Montreal Gazette* was unconditional in its praise:

Two years of anarchy and confusion, during which this eminent and indifatigable public servant has always exercised the duties of his station with credit to himself and advantage to the country, have satisfactorily proved to the Empire at large, the propriety, if not the necessity, of his appointment.<sup>223</sup>

For its part, *The Herald* began referring to Notre Dame Street as Colborne Street.<sup>224</sup>

Colborne was undoubtedly very sympathetic to Constitutionalism. He had settled in Montreal in early 1837, when the city’s anglophone elite was rallying around the Constitutionalist cause, a cause which corresponded well with Colborne’s hatred for both political radicalism and Colonial Office policy. Whereas Gosford had frustrated the Constitutionlists’ attempts to organize paramilitary affiliates by disbanding the British Rifle Corps, Colborne warmly welcomed their aid in suppressing the Rebellions. In fact, Senior states that the “step towards mobilization of local volunteers came about through the combined efforts of Colborne, Ogden, and Peter McGill.”<sup>225</sup> Hence the importance of Lady Colborne’s wording in a letter describing the mobilizations: “Sir John has stirred up Lord Gosford to arm the Constitutionals.”<sup>226</sup> In early 1838, Colborne appointed several Constitutionlists to the Special Council, and later that year named Moffatt and McGill to the legislative council. He even supported the Constitutionlists in their efforts to expand the council’s powers (see above, page 26). Furthermore, the legislation passed during the Special Council’s first sessions reflected Constitutionalist values. For example, special attention was paid to banking and public works in and around Montreal. Meanwhile, the extreme measures taken in suppressing the Rebellions suggested that the events of 1837-38 were not a localized and temporary occurrence, but an act of treason committed by the whole of French Canada. Outstripping the

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<sup>222</sup>Clipping from *Montreal Courier*, 18 June 1838, Colborne Papers, microfilm A-586, NAC. Emphasis mine.

<sup>223</sup>Clipping from *Montreal Gazette*, 15 January 1839, Colborne Papers, microfilm A-586, NAC.

<sup>224</sup>*Ami du Peuple*, 3 March 1838.

<sup>225</sup>Senior, *Redcoats*, 60.

<sup>226</sup>Senior, *Redcoats*, 61.

severity of the Rebellions themselves in terms of both time and space, the council's ordinances relating to the disturbances were as much political actions as they were police ones.<sup>227</sup>

But the Constitutionalists' saviour proved to be imperfect both in terms of his powers and his pronouncements. Colborne was never a strong supporter of union. Worse still, his objections to the measure seemed to be based on a feeling that the political opinions of French Canadians had to be taken into account. A despatch from mid-March 1838 bears witness to Colborne's belief that the Constitutionalists did not represent the whole of the province's loyal population, even if some of their legislative projects were widely accepted:

The French Canadians, condemning the conduct of the factious leaders of the Assembly, and also those who are decidedly averse to any change of Government, appear to agree with the British Population as to the necessity of carrying into effect many measures which the Constitutionalists have brought under the notice of Her Majesty's government; but the Union of the two Provinces will be strongly opposed by all classes of the French Canadians.<sup>228</sup>

Again, in August 1839, he warned the Colonial Office that "the proposed changes, or any that may be considered as departing widely from the constitution of 1791, will irritate and shock the firm friends of British Institutions in these Colonies while their political opponents will not be appeased by the concession."<sup>229</sup> This is not to say that Colborne would stand in the way of union. By the fall of 1839 Thomson could report that Colborne considered "Union the best plan to adopt,"<sup>230</sup> and in June 1840 Colborne himself conceded that the union bill had "been so far amended that any further delay seen in settling the permanent Government of the Province, would be attended with serious evils."<sup>231</sup> In any case, Colborne's opinions on the subject were not all that important. Whether as Administrator of Government or Governor General, his appointments were always temporary. He merely administered the province in anticipation of those representatives of the British government expressly charged with proposing of implementing fundamental constitutional change, namely Durham and Thomson.

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<sup>227</sup>Fecteau, "Mesures d'exemption," 477.

<sup>228</sup>Colborne to Glenelg, Private and Confidential, Montreal, 17 March 1838, Colborne Papers, microfilm A-586, NAC.

<sup>229</sup>Colborne to Normanby, Montreal, 20 August 1839, Colborne Papers, microfilm A-598, NAC.

<sup>230</sup>Sydenham to Russel, Quebec, 22 October 1839, in Knapland, *Letters*, 34.

<sup>231</sup>"Memorandum forwarded to Lord Melbourne," 20 June 1840, Colborne Papers, microfilm A-599, NAC.

Durham's short administration showed him to be an even better friend of Montreal Constitutionalism than Colborne. Durham was charged with finding a permanent solution to British North America's constitutional problems, and before he even left England representatives of the MCA were there to offer a well-developed yet simple plan for the future of Lower Canada. In any case, Durham was likely predisposed to accepting the MCA's point of view. Buckner describes how both he and the Colonial Office were viewing the constitutional future of Lower Canada in the same way as the MCA by the summer of 1837:

the Government knew that he would propose a measure designed to ensure that the English minority in Lower Canada would never again be placed under the authority of a legislative body dominated by French Canadians. No one in the Colonial Office or the Cabinet disagreed with this objective. The problem was how to do it: how to reduce the French Canadians to comparative political impotence while re-establishing in Lower Canada 'anything like a popular government.'<sup>232</sup>

Durham's short tenure must have left little doubt as to where he stood with respect to the idea of union. Thus, the report of the MCA's executive committee presented to the annual meeting in December 1838 hailed his time as governor

as an epoch from which their steady and progressive improvement was to be dated: they were disposed to place entire confidence in the rectitude of his intentions, and anticipated from his personal investigations and inquiries those legislative measures of public utility, which had been so long withheld from Lower Canada, as well as the completion of some comprehensive plan of Provincial Government.<sup>233</sup>

Clearly, Durham's mission gave the MCA the comfort and confidence that it was lacking in early 1838, when a delegation was quickly dispatched to London to ensure a Constitutionalist voice in the formulation of imperial polity.

The MCA's assessment of Durham's mission might seem surprising, since one of the governor's first acts was to eliminate Constitutionalist influence on the province's legislative process by appointing no Lower Canadians to his Special Council. This action has been ascribed to the fact that Colborne's council was "too strongly identified with a single faction," presumably the Constitutionlists.<sup>234</sup> But Durham's actions also eliminated any French Canadian voice in the government of the province.<sup>235</sup> Meanwhile, the new governor sought out

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<sup>232</sup>Buckner, *Transition*, 251.

<sup>233</sup>MCA, "Report of 1838 General Meeting."

<sup>234</sup>Buckner, *Transition*, 250.

<sup>235</sup>Monet, *Last Cannon Shot*, 19.

and was given the advice and guidance of Constitutionalist Special Councillors and their allies in other ways. Not only did he request a list of grievances from Badgley and Moffatt, he invited the latter to accompany him on his voyage to Lower Canada as an advisor. Durham also made James Stuart his Chief Justice and gave Adam Thom a prominent position on the commission examining local government in Lower Canada. More importantly, Thom returned to England with Durham to assist in the completion of the latter's *Report*. He was even rumored by some to be the *Report's* "chief author."<sup>236</sup>

Durham's *Report* is a powerful symbol of the MCA's power to influence imperial policy and provincial politics in the months following December 1837. While the document takes on the air of an independent evaluation of the province's political troubles, its similarities to Constitutionalist literature in both form and content suggest that it was a fundamentally partisan document. Just as the "Address to the Sister Colonies" affirmed that an 'exclusive French Canadian spirit' had 'made the question one of national origin and not of political part,' Durham claimed to have found "a struggle, not of principles, but of races."<sup>237</sup> Like the "Representation on Union," Durham spoke of the "evils inherent in the constitution of the colony," and was more than clear on the means to counteract these evils: "I believe that tranquility can only be restored by subjecting the Province to the vigorous rule of an English majority; and that the only efficacious government would be that formed by a legislative union."<sup>238</sup> Durham accepted the existence of a 'nationality' made up of the province's British and Irish population, using the term 'English' throughout the *Report* to refer to "all those who speak the English language."<sup>239</sup> He stressed the "want of education among the habitants," while declaring that province's English population was made up of "the most enterprising of every class of our countrymen" and was uniquely qualified to convert Canada "into a settled and flourishing country."<sup>240</sup> The *Report* contains a short summary of the province's history which seeks to present the lack of wisdom in granting political rights and privileges to French

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<sup>236</sup>Bindon, "Journalist and Judge," 9, 45-46, 95-96.

<sup>237</sup>Lord Durham in G.M. Craig, editor, *Lord Druham's Report* (Ottawa: Carleton University Press, 1982), 23.

<sup>238</sup>Durham, *Report*, 51, 158.

<sup>239</sup>Durham, *Report*, 150.

<sup>240</sup>Durham, *Report*, 30, 149.

Canadians, similar to those found in Constitutionalist documents.<sup>241</sup> Likewise, the examples he uses of French backwardness, feudal tenure and the lack of land registry offices, were favorite objects of Constitutionalist scorn.<sup>242</sup> Whether or not Durham had consciously or unconsciously borrowed from Constitutionalist documents when preparing the report, his conclusions meshed perfectly with the Constitutionalist agenda: Lower Canada's problems could only be solved by the political marginalization of the French Canadians, and the best means of achieving this was a legislative union of the Canadas. Greer suggests that Durham might have come to these conclusions independently, since "by the time Lord Durham visited Canada in 1838, hatred between English and French was at an all-time high."<sup>243</sup> But given Durham's penchant for choosing leading Constitutionlists as his advisors, it is more likely that he had help.

Thomson's mission to Lower Canada and the program of the MCA were a match made in heaven. The Constitutionlists could offer Durham a simple and well-articulated solution to Lower Canada's problems and, much to their pleasure, he adopted it as his own. Thomson — who had been "coached" on Canadian affairs by Durham — arrived in the province determined to implement "a coherent development policy for the Canadas" centred on union,<sup>244</sup> and was thus already converted to their outlook and goals. The discomfort of some Constitutionlists with Thomson's support for free trade quickly faded away, and the experience and memories of 11 November 1839 was enough to reaffirm the Constitutionlists' faith in the British government and the potential of the Special Council to help them achieve their ends. It was on that day that Thomson opened the council's fifth session by asking its members for their opinion on the subject of union, which the Queen had endorsed in her speech from the throne the previous spring. Moffatt, seconded by McGill, quickly moved that the governor's request be considered by a committee of the whole the following day. When the resolutions which came out of the next day's meeting were approved, Moffatt announced that he had prepared an address to the Governor General to accompany the resolutions. It declared that the councillors' "local knowledge" had shown union to be essential to the provinces' "future peace and welfare, and for the good, constitutional and efficient Government of them." The address was adopted

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<sup>241</sup>Durham, *Report*, 37-40.

<sup>242</sup>Durham, *Report*, 26.

<sup>243</sup>Greer, *Patriots*, 188.

<sup>244</sup>Radforth, "Sydenham," 70-71, 81.

on the motion of Moffatt, seconded by Gerrard, and received the support of 13 of the 15 members present. Only Neilson and Quesnel were opposed.<sup>245</sup> Much has been made of the circumstances of these meetings, called on short notice amidst poor weather and consequently short on members from outside Montreal.<sup>246</sup> But over-representation of Montreal members and Constitutionals had become the norm at Special Council meetings. Rather than an isolated act of injustice perpetrated by Thomson, the events of November 1839 really show how the Constitutionals had succeeded in having both imperial policy and the agenda of the Special Council fundamentally correspond to their own political program. It is unlikely that even with good weather and fair warning, any significant opposition to union could have been mustered.

Furthermore, the relationship between the objectives of Thomson and those of the Constitutionals went far beyond support for the *idea* of union. It extended to the preparations made over the course of 1840 and early 1841 in anticipation of union being proclaimed. During Thomson's administration, the council became overwhelmingly dominated by English-speakers and Constitutionals, while the council's legislation was quickly becoming a carbon copy of the legislative wish-list the Constitutionals had been asking for since long before the Rebellions. However, the connection between union and Special Council legislation has been approached only from the perspective of Thomson. Thus, he has been portrayed as using the council to pass measures such as district councils which were central to his vision of union but might not be passed by an elected united Canadian legislature.<sup>247</sup> But such measures were also central to Constitutionals' notions of what Lower Canada should be.

Thus, over the course of the Special Council's final two sessions, the major points of the Constitutionalist legislative agenda were slowly but surely implemented as part of the council's exercise in state formation. To be more precise, it was an exercise in state re-formation. During the Special Council period, the Constitutionals were able not just to ensure that union would become a reality, but also to begin the transformation of the province that they hoped union would make permanent. Behind each new legislative innovation lurked the ghost of Lower Canada, with its jealously guarded local power, reluctance to embark on public works, ambivalence to commercial interests, and reluctance to introduce English legal and

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<sup>245</sup> JSCLC, V, 11, 12, 14 November 1839.

<sup>246</sup> Monet, *Last Cannon Shot*, 40.

<sup>247</sup> Radforth, "Sydenham," 84.

social institutions. In its place, the Constitutionalists envisioned a centralized state with a strong executive, committed to promoting things commercial; an improved and integrated system of water, road, and rail transportation; municipal government; a landholding system slowly but surely moving towards freehold tenure; and the elimination of secret mortgages like customary dower. Through its legislation, the Special Council was paving the way for and acting within the context of union, while consciously rejecting what had come before.

However, the image of the latter years of the Special Council as ones where Montreal Constitutionalism achieves its greatest glory can be put into question. In fact, in the absence of documents published by the association, the MCA itself does not seem to have survived as a formal organization much beyond the end of 1838. Meanwhile, in describing the 'sharper spirit' which prevailed under Thomson's administration, Goldring explains that

the moderation of the constitutionalists was eroded by their impatience to push through favorite measures before the Council was replaced by the less predictable legislature of the United Canadas. Thompson eventually called Moffatt 'the most pig headed, obstinate, ill tempered brute in the Canadas.' The Special Council had worked admirably in the time of crisis; it responded poorly to better times and a civilian Governor, and might easily have broken down completely if allowed to last another year.<sup>248</sup>

Indeed, these years saw a Special Council which, on the surface, was at its most divided. Votes more frequent than ever before, and Constitutionalists often found themselves opposing officers of government, or each other. But the density and the volume of the legislation had also increased to unprecedented levels, while the rule that votes were about how and when legislation would be passed, and not whether it would be passed, was more true than ever.

In any case, there is far more to suggest that during the final sessions of the Special Council Thomson and the Constitutionalists were working together rather than against one another. The letter where Thomson derides Moffatt describes a conflict of personalities and approaches rather than one of parties and ultimate goals. Earlier in the same letter, the governor had even criticized Stuart, who was usually the object of unqualified praise in his correspondence:

tho' owing to the dilatoriness of the body, and the captiousness of Stuart, whose fault is that he can never be brought to cooperate with others, I do not advance so rapidly as I had hoped. The delay however is productive of good both here, and in the Upper

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<sup>248</sup>Goldring, "British Colonists," 102.

Province. The violent party at Quebec are losing ground, and in the other Province asperities are daily softening.<sup>249</sup>

Thus, while personalities were slowing the work of the Council, actual political enemies took the form of a 'violent party' far removed from the council chamber. There was one moment where conflict on the council itself was undeniable, that is the resignation of Stuart in late January 1841. But this was the result of a dispute between Stuart and Thomson over how the passage of the different bills dealing with the reform of the justice system would proceed, and not between members of the Council on any major points of policy. Ultimately, it appears to have had more to do with Stuart's stubborn personality than anything else. "No enemy caused his fall but his own pride and ungovernable temper — there was one burst of joy on all hands when the event was known," wrote one observer.<sup>250</sup> Furthermore, Thomson chose George Moffatt as Stuart's replacement as presiding member. A couple of months later, Moffatt would stand, along with fellow Constitutionalist Benjamin Holmes, as pro-union and pro-Sydenham candidates in Montreal during the general elections. Although Thomson is usually portrayed as almost singlehandedly ensuring that the elections of 1841 would bring the results he desired,<sup>251</sup> the "Constitutionalist network" has been identified as a vital tool without which "the Governor would not have been able to influence the elections as effectively as he did."<sup>252</sup>

The moments of dissension between Montreal Constitutionlists and their allies during the latter years must also be put in the context of the larger development of the Special Council. All of the trends affecting the Special Council's development had, by late 1840, created a Special Council where Constitutionlists had the luxury of arguing amongst themselves, rather than with those who had fundamentally different views. While rare, there were moments when

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<sup>249</sup>Thomson to Russell, Montreal, 20 December 1840, Private, in Knaplund, *Letters*, 106-107.

<sup>250</sup>G.W. Wickstead to J. Neilson, Montreal, 31 January 1841, Neilson Collection, X, 127-27, NAC.

<sup>251</sup>Irving Martin Abella, "The 'Sydenham Election' of 1841," *Canadian Historical Review* 47 (1966), 326-43; Radforth, "Sydenham," 74.

<sup>252</sup>Michael McCulloch, "The Death of Whiggery: Lower-Canadian British Constitutionalism and the *temptation de l'histoire parallèle*," *Journal of the Canadian Historical Association*, 1991, 203-204. In fact, McCulloch stresses the fact that Constitutionlists were leaders on both sides in the election. But those he points to on the anti-union side, such as John Neilson and Sydney Billingham, no longer associated themselves with the Constitutionlist cause by 1838, precisely because union had become the goal of Lower Canadian Constitutionalism. Their role in the elections merely reflects how complete their alienation from the movement had become by 1841. On this subject, see the section on Neilson at the end of Chapter 3.

the latter scenario had played itself out. Three Special Councillors — Cuthbert, Neilson, and Quesnel — had openly rejected union in the fall of 1839. Neilson and Cuthbert had also attempted to stand in the way of the first round of judicial reform in April 1839, when they claimed that the measure being passed was a permanent alteration masquerading as a temporary ordinance.<sup>253</sup> A first attempt at establishing registry offices was also made in the spring of 1839. A special committee which included McGill, Gerrard, and Penn declared that the bill was too complex to be proceeded on at that time, but that land registry and the abolition of customary dower were urgently needed in the province. However, Mondelet, also a member of the special committee, “expressed his dissent, not being prepared to give any opinion on this matter.”<sup>254</sup> But the stands taken by Special Councillors against the main points of the Constitutionalist program — whether firm like those of Cuthbert, Neilson, and Quesnel; or more mysterious like the pronouncements of Mondelet on registry — ultimately proved futile. Registry offices, permanent judicial reform, and the more general transition to union all move along smoothly, if somewhat slowly, during the final two sessions of the Special Council. Mondelet and Quesnel sat by and watched as the only two French Canadians left on the council by 1841. Cuthbert was replaced by Stuart as presiding member at the start of the fifth session, and abandoned his seat on the council for good after the union resolutions were voted on a few days later. Neilson, for his part, stopped attending on 9 May 1840. Thus, in terms of membership and policy, there was a consistent move towards, not away from, the Special Council becoming an efficient tool for achieving Constitutionalist aims.

But the Constitutionlists did not exploit the authoritarianism of 1838-41 by seeking out absolute power for themselves. Indeed, the act creating the Special Council ruled out this possibility. The council’s membership and legislation was, after all, controlled directly from the governor’s office. Constitutionalist control of the Special Council’s business was therefore tempered by the need to accommodate the agenda of the governor, who did not necessarily share the Constitutionlists’ outlook at all times and on all issues. Nonetheless, the MCA effectively took advantage of its own power and the post-Rebellion political environment to influence attitudes and actions. As British cabinets and British governors looked for a way of interpreting and dealing with the Rebellions, Constitutionlists were there, first to offer advice

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<sup>253</sup> JSCLC, IV, 10 April 1839.

<sup>254</sup> JSCLC, IV, 5-16 April 1839.

and, once the advice was largely accepted, to aid in its application. Thus, the Constitutionalist presence on the Special Council was as symbolic as it was real. Their most important victories were won far from the council table and at times when the council was not even in session.

The years 1838-41 did not see a return to 'normal,' which benefitted all those who had opposed the Patriots. Rather, they witnessed a fundamental transformation of the province which, to a dramatic degree, took place along the lines conceived by a single political movement which sought the disenfranchisement of French Canadians by means of the legislative union of the Canadas. In light of the achievement of most of its goals, the disappearance of the MCA as an active organization at some point after December 1838 can perhaps best be explained by the fact that Constitutionalist leaders had effectively found a place for themselves within the government of Lower Canada. No longer were Constitutionalist demanding changes in imperial policy as they had done through much of the 1830s. By 1841, they could comfortably accept the new *status quo*.

### CHAPTER 3 — ALIENATION

The Special Council and the Montreal Constitutional Association were not one and the same. While the council was central to the achievement of the Constitutionalists' political goals, it remains unclear to what extent the council was seen merely as a tool of Constitutionalism. Especially relevant to this question are those Special Councillors who were not members of the MCA. As was noted at the close of the last chapter, some of them took important symbolic stands against projects central to the Constitutionalist agenda. But overall, Special Councillors' attitudes to Constitutionalism are not easy to interpret. Were they simply collaborating with Constitutionalism as the most powerful and best organized alternative to the Patriots? Should presence on the council and support for some Constitutionalist measure be interpreted as support for Constitutionalism? Was everyone on the council more or less a Constitutionalist supporter, even if they sometimes disagreed with the movement's leaders on certain policies? In at least some cases, the answer to all these questions was no.

This chapter will argue that some non-Constitutionalist Special Councillors were acutely aware of the risk of the council becoming the tool of Constitutionalism. However, when their fears were realized, they found themselves powerless to change the situation. While the case of John Neilson is dealt with briefly towards the end of the chapter, I focus mainly on the experiences of Pierre de Rocheblave, whose participation in the Special Council's business would seem to suggest an acceptance of Constitutionalist goals. I draw primarily on de Rocheblave's correspondence with his brother-in-law Tancrède Bouthillier, who was working as Crown Lands Commissioner at Quebec city for most of the period 1838-40.<sup>255</sup> French Canadians were the group most obviously directly and alienated by the outlook held by the MCA, yet de Rocheblave left no significant record of dissent in the council journals. Most importantly, he voted in favour of the union resolutions in November 1839. One of Colborne's first nominees in the spring of 1838, de Rocheblave attended the council regularly up until the

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<sup>255</sup>This correspondence forms part of a larger collection of 144 letters written by de Rocheblave between November 1832 and August 1840, part of the Bouthillier collection at the archives of the McCord Museum of Canadian History (files 416-423). With one exception, only letters from de Rocheblave to Bouthillier have survived. Bouthillier's replies were likely destroyed when the house of de Rocheblave's was destroyed by fire in 1860. See *DCB*, VII, 738.

first part of the fifth session — the one at which the vote on the union resolutions took place — and died approximately a year later after losing a prolonged bout with a debilitating illness.<sup>256</sup>

However, although he entered the Rebellions first and foremost an opponent of the Patriots, he came out a staunch opponent of Constitutionlists and their goal of union. De Rocheblave resented the Constitutionlists' portrayal of French Canadians and their suggestion that they and their constituency were the only truly loyal Lower Canadians. Mostly, he feared that the Constitutionlists would exploit the upheaval and changes created by the Rebellions — including the Special Council — to increase their power and impose their will. Thus, he perceived the Rebellions and the radicalization of the Patriot movement as an unfortunate chapter in Lower Canada's history, and Constitutionalism as the greatest threat to its future. However, he found the post-Rebellion political climate and the nature of the Special Council prevented him from organizing effective opposition to the Constitutionlists' goals, and he eventually had to reconcile himself to them.

Like the Special Council, de Rocheblave occupies a very small place in Lower Canadian historiography. When historians do touch on his political career, his vote in favour of union is usually used to associate him with the political interests of the province's anglophone elite. For example, in a short article published in 1933, Francis-J. Audet describes de Rocheblave "l'un des disciples de l'union," explaining that after he was appointed to the Special Council, "il y vota ainsi que MM. Pothier et de Léry avec les Anglais, en faveur de l'union législative du Haut et du Bas-Canada."<sup>257</sup> Likewise, Robert Rumilly writes that

John Neilson, ensuite Jules Quesnel, ensuite James Cuthbert auront seuls combattu ce projet tant redouté par les Canadiens français, clergé en tête. Trois conseillers canadiens-français, Toussaint Pothier, Charles-Etienne Chaussegros de Léry et Pierre de Rocheblave ont mêlé leur vote à celui de George Moffat, de Peter McGill, de John Molson Jr, d'Edward Hale...<sup>258</sup>

The ellipsis which ends the last sentence says more than the text itself: de Rocheblave had not acted as a French Canadian, but had assimilated his interests to those of his English-speaking counterparts on the Special Council.

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<sup>256</sup>A mostly bedridden de Rocheblave describes his symptoms in a final set of letters from the spring and summer of 1840. Bouthillier Collection, file 423, MMA.

<sup>257</sup>Francis-J. Audet, "Louisianais qui géra la chose municipale," *La Presse*, 22 July 1933.

<sup>258</sup>Robert Rumilly, *Papineau et son temps*, II (Montreal: Fides, 1977), 174.

Although the presence of French Canadians on the Special Council — especially in its earlier incarnations — is undeniable, the Special Council is generally portrayed as a bastion of English power. As staunch opponents of the Patriots, the French Canadian councillors are assumed to have assimilated their interests to those of the Patriots' loudest opponents, the province's wealthy English-speaking merchant class. Thus, Rumilly dismisses the presence of francophone Special Councillors by explaining how Colborne created "un Conseil Spécial de vingt-deux membres, dont onze Canadiens français, *évidemment choisis parmi les hommes sûrs*."<sup>259</sup> Goldring goes so far as to place de Rocheblave in a category of Special Councillors he describes as "prominent Britons" and "leading constitutionalists," thereby lumping him together with Walker, Knowlton, McGill, Gerrard, Penn, Molson, and Moffatt.<sup>260</sup> Many words and concepts have been used to describe this phenomenon. For example, Filteau explains that "Le parti anglais était renforcé par un tout petit groupe de transfuges canadiens que l'on surnommait les *Chouayens*."<sup>261</sup> Monet prefers the term '*venu*,' which he defines as "a French Canadian who has become an ally of the British minority in Lower Canada."<sup>262</sup>

Of special interest is Greer's treatment of those members of the French Canadian elite who found themselves staunchly opposed to the Patriots by 1837. Whether or not they were welcomed by the discourse of Constitutionalism, Greer describes the French Canadian 'girouettes' of the 1830s as having become Constitutionalists. Addressing the situation of those who were alienated from the Patriote cause as the latter became increasingly driven by peasant grievances and anti-seigneurial sentiment, Greer focuses on the case of Pierre-Dominique Debartzch, seigneur of St. Charles:

Once a leading Patriot politician with his own radical newspaper, *L'Echo du Pays*, and a prominent supporter of the Ninety-Two Resolutions, Debartzch had for years provoked the province's Constitutionalists with his extreme and rhetorically violent anti-British stands. Two years before the Rebellion, however, he suddenly broke with Papineau and his other collaborators. Debartzch now preached moderation as he burrowed deeper into the bosom of the colonial administration. As of August 1837 he was on the Executive Council, and, according to the Patriots, he used his influence with Governor Gosford and General Colborne in the months that followed to urge harsh measures to re-establish order.

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<sup>259</sup>Rumilly, *Histoire de Montréal*, II (Montreal: Fides, 1970), 241. Emphasis mine.

<sup>260</sup>Goldring, "British Colonists," 238.

<sup>261</sup>Filteau, *Histoire des Patriotes*, 33. Emphasis his.

<sup>262</sup>Monet, *Last Cannon Shot*, 8.

Greer does not portray him as an isolated case, but gives other examples and notes that "*The Dictionary of Canadian Biography* lists other seigneurs who went from campaigning against the administration in the 1820s to a stance of active loyalism [in the 1830s]."<sup>263</sup> Meanwhile, Greer echoes the sentiments of Senior, affirming that "No one can understand the Rebellion or the developments leading to it without taking account of Constitutionalism as a militant mass movement among Lower Canada's English-speaking population."<sup>264</sup> But Greer proceeds to analyze the Rebellions as a drawn-out conflict between two groups, Patriots and Constitutionalists. The latter is conceived of as nebulous enough to assimilate the political energies of those elements of the French Canadian population who found themselves alienated by the Patriots. Thus, in describing a supporter of the 92 Resolutions who had broken with the Patriots by the time of the 1837 Rebellion, Greer writes that

The polarized climate of 1837 left no room for compromise positions of the sort Sabrevois de Bleury had favoured, however, and he therefore moved firmly into the Constitutionalist camp, helping to found an anti-revolutionary newspaper, *Le Populaire*, and joining francophobic Montreal merchants in loyalist rallies.

Further on, Greer refers to *Le Populaire* as a "Constitutionalist paper." Finally, a "Constitutionalist magistrate" whom Greer quotes as having "found that matters were out of hand in St. Eustache in the days following the battle there" was none other than Pierre de Rocheblave.<sup>265</sup> De Rocheblave's appointment to the Special Council — an institution which did so much to promote the interests of the MCA — a couple of months later would seem to validate Greer's classification.

Taking into account the major points of his biography, historians can be forgiven for casting de Rocheblave as an 'Englishman' so far as his political career is concerned. Born in Kaskaskia, in present-day Illinois, on 9 March 1773, de Rocheblave's family moved to Montreal following the American Revolution, where his father, Philippe-François, entered the fur trade. Pierre followed in his father's footsteps, becoming a founding member of the XY Company in 1798, and later holding important posts in the North-West and Hudson's Bay Companies, before retiring from the fur trade in 1827. Meanwhile, he served as a captain in the Canadian Voyageurs during the War of 1812, and later earned the rank of major. On 9 February

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<sup>263</sup>Greer, *Patriots*, 287-90.

<sup>264</sup>Greer, *Patriots*, 163-164.

<sup>265</sup>Greer, *Patriots*, 285, 289, 334.

1819, he married Anne-Elmire Bouthillier in Montreal, with whom he had nine children, although it appears that all but four died in infancy. After settling down in Montreal, de Rocheblave set about acquiring land in and around the city. His correspondence from the Special Council period, which includes many references visits to urban and rural tenants to collect rents, suggests that a large portion of his income came from his landholdings. He became a business partner in the firm of LaRocque, Bernard and Compagnie, and promoted the construction of the Champlain and St. Lawrence Railroad and the St. Anne's market. He was active in the Parish of Notre-Dame,<sup>266</sup> served as a justice of the peace and a magistrate. His 16-year political career began with his election to the assembly for the riding of Montreal West in 1824, when he was seen as a moderate supporter of the *parti canadien*. Aylmer appointed him to the Legislative Council on 9 January 1832. Following the suspension of the constitution in 1838, he was appointed first to the Special, then to the Executive Council by Sir John Colborne.<sup>267</sup> As time wore on, de Rocheblave seemed to be increasingly associated with those groups and institutions where anglophones were over-represented or which were associated with British power. He was a loyal soldier, a wealthy merchant, an aspiring industrialist, and a gracious recipient of political patronage.

Indeed, de Rocheblave was by no means a token moderate Patriot who was appointed to the Special Council out of political expediency. His correspondence with Bouthillier in the years and months preceding the Rebellions clearly show him to be staunchly — at times, violently — opposed to the Patriots. As a Legislative Councillor, while at times showing sympathy to Papineau's more moderate political objectives, he consistently deplored the tactics used by the Patriots as counter-productive. Specifically, he feared their actions would lead to a constitutional change being imposed by Britain: "Je craindrai toujours l'intervention du Parlement Impérial dans nos affaires locales."<sup>268</sup> After the spring of 1837, his condemnation became categorical. He was especially troubled by the disturbances caused to what he saw as a

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<sup>266</sup>Franklin Toker, *The Church of Notre-Dame in Montreal: An Architectural History* (Montreal: McGill-Queens University Press, 1970), 19.

<sup>267</sup>DCB, VII, 735-39.

<sup>268</sup>De Rocheblave to Bouthillier, Montreal, 16 January 1834, Bouthillier Collection, file 416, MMA. Unless otherwise noted, further references to the Bouthillier Collection will be to letters written by de Rocheblave to Bouthillier from Montreal.

naturally peaceful and contented peasantry. In late 1837, he angrily rejected the idea of recalling the legislature as a means of reaching a peaceful solution to the conflict:

Si je n'avais en vue que la pacification du moment je dirais d'assembler le Parlement de suite -- mais comme il faut porter ses vues plus loin, Je crois que ce serait un fort mauvais temps; ce n'est pas dans un moment où une partie du District est en Armes qu'il en faut parler.<sup>269</sup>

He even went so far as to draw up military plans for crushing Patriot resistance.<sup>270</sup> He was especially impatient with delays in the departure of troops for the region north of Montreal in early December.

But de Rocheblave saw the Rebellions through decidedly paternalistic eyes. He perceived himself as the leader and protector more than as the representative of French Canadians. This is evident in an address to the habitants of the District of Montreal issued by him and several other Montreal magistrates in mid-November 1837. Contrary to the view being presented by the Constitutionlists at the same time, the address portrayed the developing troubles as a revolt against authority, not of French against English. The problem was temporary, and not fundamental. It could be solved if the habitants simply returned to their homes and resumed their naturally peaceful and obedient lives:

Nous vous exhortons non seulement à vous abstenir de toute démarche violente; mais encore à rentrer paisiblement dans vos foyers, au milieu de vos familles, dans le sein desquelles vous ne serez aucunement inquiétés. C'est en vous confiant à la protection de la Loi et du Gouvernement Britannique que vous parviendrez à ramener la paix et la prospérité dans votre patrie. Déjà nous sommes informés que plusieurs des Paroisses qui avaient été égarées sont revenues de leurs erreurs et s'en repentent sincèrement.<sup>271</sup>

When the address did not succeed in avoiding rebellion, de Rocheblave continued in his belief that having the habitants return to their families would solve the province's problems. Thus, when he visited St. Eustache a few days after the battle there, he was seeking the same goals as those expressed in the magistrates' address:

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<sup>269</sup>5 December 1837, Bouthillier Collection, file 417, MMA.

<sup>270</sup>2 December 1837, Bouthillier Collection, file 417, MMA.

<sup>271</sup>"Aux Habitans du District de Montréal," n.d., Badgley Collection, folder 22, MMA. The address was signed by D.B. Viger, Pierre de Rocheblave, Louis Guy, Edouard Leprohon, Etienne Guy, P.E. Leclerc, William B. Donegani, Charles S. Rodier, Alexis Laframboise, Jules Quesnel, Felix Souigny, P.J. Lacroix, H.E. Barron. The fact that of the 13 signatories, only 1 has a name that is not French is significant given that the many of the city's Magistrates were prominent members of the MCA.

Je fus courir les Campagnes comme Je vous l'ai déjà dit pour tacher de faire rentrer les habitants qui avoient abandonnés leurs demeures et leur promettre qu'ils n'y seroient pas molestés J'ai assez bien réussi, et surtout à arrêter l'affreux Pillage ou brigandage qui se commettait dans les paroisses insurgés.<sup>272</sup>

Thus, he perceived the population of the countryside primarily as victims, rather than allies, of the Patriots.

There is a marked shift in tone in de Rocheblave's correspondence in the days following the military engagements of early December 1837 which clearly sets his political outlook apart from that of the Constitutionalists. He immediately became a critic of those who were suppressing the rebellion. Indeed, he seems to have had a rather naive vision of what would take place when Patriot and loyalist forces met. He wrote that Colborne had assembled a force that was "si imposante qu'il est à espérer qu'elle en imposera aux Rebelles et leur otera toute idée de résistance."<sup>273</sup> He had actually obtained a promise from Colborne before the battle of St. Eustache that no houses would be burned, and was deeply saddened to see smoke rising in the north on 15 December.<sup>274</sup> He strongly criticized the actions of the volunteers — "il était imprudent d'envoyer ces gens, sans avoir un homme d'influence à leur tête" — and deplored the "système de lever de contribution ou de pillage" practiced by the troops.<sup>275</sup> He stressed the need to form "compagnies de Canadiens" so that the loyalty of French Canadians might be proved while contributing to the restoration of order, but expressed regret that "dans l'état actuel des choses -- ils n'ont pas grands encouragement." Meanwhile, he downplayed the threat posed by those arrested as Patriot supporters. He described the 32 prisoners brought before him on 30 November as "des misérables déquénilles dont la moitié sont des innocents, après avoir pris leurs noms Je les ai envoyés en prison pour attendre un examen."<sup>276</sup> Unlike the Constitutionalists, he did not perceive a Lower Canada full of ignorant French Canadian peasants blindly acting on national prejudice in an attempt to rid the province of all things British. Rather, he perceived a naturally peaceful Lower Canadian peasantry momentarily led

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<sup>272</sup>21 December 1837, Bouthillier Collection, file 417, MMA.

<sup>273</sup>13 December 1837, Bouthillier Collection, file 417, MMA.

<sup>274</sup>15 December 1837, Bouthillier Collection, file 417, MMA.

<sup>275</sup>18 and 30 November 1837, Bouthillier Collection, file 417, MMA.

<sup>276</sup>30 November 1837, Bouthillier Collection, file 417, MMA.

astray by disruptive doctrines put forward by a few dangerous politicians. Thus, his was a loyalism which he set in direct opposition to that of the Constitutionalists.

De Rocheblave's attitude to the transfer of power from Gosford to Colborne in early 1838 also places him in opposition to the Constitutionalists. While the latter group virtually ignored the departure of Gosford, whose policies they had so resented over the previous two years, de Rocheblave reacted with a noticeable degree of distress. He seemed determined that Gosford be remembered fondly in Lower Canada:

Enfin ce que Je craignais est arrivé nous allons perdre Ld Gosford!! s'il est vrai qu'il est obtionel [sic] à lui de rester quelques temps de plus, Je serai mortifié pour lui même autant que pour nous s'il ne le ferai pas - il pourai dire alors que si le pays s'est insurgé sous lui - l'ordre a été rétabli sous lui et un couple de mois serait suffisant pour cela qu'il reste Jusqu'au Mai prochain alors une Frégate le viendrai [sic] chercher - il partirai [sic] avec la gloire d'avoir remis le tout dans l'ordre.<sup>277</sup>

The only comfort Gosford's departure provided was the knowledge that he would no longer have to suffer the "injures qu'on lui prodiguent de tant endroits."<sup>278</sup>

Of course, credit for suppressing the Rebellions did not go to Gosford, but rather to Colborne, and de Rocheblave worried about what the new Administrator of Government represented on the Lower Canadian political scene. When news arrived of Durham's appointment, Constitutionalists were wary of his reputation as a 'liberal',<sup>279</sup> and they probably would have preferred to see Colborne remain in command of both the military and civil affairs of the province. De Rocheblave placed these concerns in the context of anticipated attacks on French Canadian rights:

La nomination d'un Gou[verneur] général ne plait pas ici a ceux qui esparaient que S[i]r J[ohn] seconderait les mesures d'oppressions qu'ils avaient en vue - il est impossible de dire à quel degré de haine sont les esprits - je crois qu'une partie de la population couperait la Gorge à l'autre de différente origine.

Meanwhile, de Rocheblave actively campaigned against an illumination planned by the Constitutionalists to celebrate Colborne's new powers, a celebration he perceived as being "pas autant dans la vue de complimenter S[i]r J[ohn] que d'insulter à son prédécesseur." He also suggested that it would be used as an excuse for destruction of property, presumably that of

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<sup>277</sup>20 January 1838, Bouthillier Collection, file 418, MMA.

<sup>278</sup>8 February 1838, Bouthillier Collection, file 418, MMA.

<sup>279</sup>*Montreal Gazette*, 15 March 1838.

French Canadians who — like Gosford — did not show enough enthusiasm for the violent measures being taken by Colborne and his troops.<sup>280</sup>

But beyond resenting what Colborne represented in Lower Canadian politics, de Rocheblave also questioned the general's actions. He frequently suggested that Colborne was dragging out the state of martial law and military activity far longer than necessary. Faced with the arrival of 300 Glengary militiamen which seemed to him as much a provocation as a security measure, de Rocheblave asked,

Le commandant a-t-il des informations que nous autres Mortels n'avons pas? Comme je m'avise de vouloir trouver une raison pour expliquer la conduite de mes supérieurs. J'ai supposé que l'on voulait faire paraître le mal plus grand qu'il n'est, et qu'il n'a jamais été afin que le mérite de l'avoir étouffé en soit plus grand. Je suis fâché de ne pouvoir pas donner une explication plus charitable mais ma raison y répugne. J'ai déjà vu depuis quelques mois tant de choses inexplicables que je suis obligé de m'en tenir à cet opinion.<sup>281</sup>

Thus, when de Rocheblave took his seat on the Special Council, he had a significant lack of confidence in the man who had appointed him. But Colborne, for his part, was not altogether pleased with de Rocheblave's actions during the same period. When the latter's fellow magistrates (whose numbers included many leading Constitutionalists) refused to interfere in plans for the illumination in honour of Colborne, de Rocheblave asked the general himself to step in. De Rocheblave left the meeting utterly dissatisfied with the consideration Colborne had given to his concerns:

c'est un allarmé s'il n'est pas allarmiste toutes les précautions qu'il prend sont toutes nécessaires, signer une Pétition au Parlement contre l'Union des Provinces est exiter les gens &c &c je l'ai contredit en bien de points — chaque fois qu'il m'a laissé parler mais ce n'est pas souvent.<sup>282</sup>

The contrast to de Rocheblave's praise-filled descriptions of Gosford could hardly be more striking.

The allusion to an anti-union petition refers to de Rocheblave's presidency of the Association Loyale Canadienne (ALC), a political organization formed in early 1838 which staunchly opposed the Constitutionalists. The ALC brought together many prominent French Canadians from the Montreal area, including at least three of the magistrates who had joined de

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<sup>280</sup>14 February 1838, Bouthillier Collection, file 418, MMA.

<sup>281</sup>5 February 1838, Bouthillier Collection, file 418, MMA.

<sup>282</sup>19 February 1838, Bouthillier Collection, file 418, MMA.

Rocheblave in the signing address to the habitants of the District of Montreal. These were fellow Special Councillor Jules Quesnel, future Montreal sheriff H.E. Barron, and Edouard Leprohon. Other members of the ALC included Montreal merchant Austin Cuvillier.<sup>283</sup> A declaration published in early February 1838, which repeatedly stressed the need to remain loyal to Britain, opened with an attack on

les prétentions injustes de cette faction de nos co-sujets d'origine Britannique qui, dans le but avoué de ravir à la majorité des habitants de ce pays toute influence constitutionnelle, profite avec ardeur de la fausse position où nous ont placés les déplorable tentatives d'un petit nombre de nos compatriotes égarés, pour attaquer nos institutions avec acharnement et mauvaise foi.

French Canadians were urged to overcome their differences and unite in defense of these institutions. The Patriots, described as "les hommes qui ont guidé le Parti Réformiste" are presented as having had good intentions, but having gone too far in subscribing to "théories douteuses." Furthermore, the ALC attacked the Constitutionalists by defending the Constitution of 1791:

Les événements déplorable qui viennent de se passer ont fait triompher la faction qu'il était essentiel de contenir; elle s'empare aujourd'hui de faites isolées pour les rendre générales, et obtenir par là le renversement de toutes les institutions que nous tenons de la capitulation et de la bienveillance de feu Notre Auguste Monarque George III, de Glorieuse mémoire.<sup>284</sup>

Thus, a circular letter which accompanied the association's petitions to the Queen and both houses of the British Parliament stated that above all, it was necessary to "veiller à la conservation de tous les droits, libertés et privilèges [sic] qui nous sont garantis par la *Constitution actuelle*, ainsi que pour s'opposer à la réunion des deux provinces, demandée par une partie de la population anglaise de cette ville."<sup>285</sup> It would be hard to imagine a position

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<sup>283</sup>I have been unable to find a membership list for the ALC, and therefore cannot be sure of the extent of its popularity. A declaration issued by the association lists de Rocheblave as president, and Barron and H. Guy as secretaries. ALC, "Déclaration des vues et motifs de l'Association Loyale Canadienne du District de Montréal," Montreal, 1 February 1838. The membership of Leprohon and Cuvillier is mentioned in de Rocheblave's correspondence with Bouthillier. 24 January 1838 and 7 February 1838, Bouthillier Collection, file 418, MMA. Quesnel's involvement is discussed in *DCB*, VII, 446-50.

<sup>284</sup>ALC, "Déclaration," 2.

<sup>285</sup>ALC, "Il vient de se former, dans cette ville, une Association de Canadiens [...]," 1838. Emphasis mine.

more diametrically opposed to that of the MCA. Even the Patriots agreed with the Constitutionalist that major alterations had to be made in the province's constitution.

The ALC was allied with the Montreal newspaper *Le Populaire*. While this is the publication Greer describes as 'Constitutionalist,' the founding of which symbolized Sabrevois de Bleury's migration into the Constitutionalist camp, the newspaper's association with the ALC and the opinions expressed in its pages make Greer's label hardly seems accurate. Granted, prior to the 1837 Rebellion, no love had been lost between it and the Patriots. One of its reporters had received a punch from L.-H. LaFontaine for less-than-flattering comments he had made on the effects that the boycott of European goods on Mrs. LaFontaine's wardrobe. In September 1837, the Fils de la Liberté demonstrated in front of the newspaper's offices and vandalized the building.<sup>286</sup> A letter published in *L'Ami du Peuple* in late March 1838, and signed by 'Patriote', claimed that

le parti *patriote* dont je fais partie ne regardera jamais le *Populaire* comme son organe. (...) le *Populaire* cherche à faire croire qu'il y a conspiration pour l'abattre, parce qu'il est trop ami des canadiens. L'éditeur perd ses peines (...)<sup>287</sup>

But like de Rocheblave, in the wake of the Rebellions *Le Populaire* consistently downplayed the danger posed by the disturbances, thought that too many arrests had taken place, showed sympathy for those it consistently referred to as "prisoners politiques," and questioned the actions and motives of the Constitutionalist and the volunteer regiments they organized. *Le Populaire* dealt with the Constitutionalist's portrayal of themselves as the only loyal Lower Canadians by using "ultra-loyaux" as a pejorative term, ironically suggesting that one could be too loyal. Finally, like de Rocheblave, *Le Populaire* deeply regretted Gosford's departure and expressed hope that he might serve a representative of French Canadian interests in the mother country.<sup>288</sup>

Around the same time as de Rocheblave was organizing the ALC, *Le Populaire* and its Constitutionalist counterparts were constantly attacking each other. For example, *Populaire* editorial published on 9 March 1838 called for solidarity between French Canadians and the

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<sup>286</sup>André Beaulieu and Jean Hamelin, *La Presse québécoise des origines à nos jours. Tome premier, 1764-1859* (Quebec: Presses de l'Université Laval, 1973), 94.

<sup>287</sup>*Ami du Peuple*, 17 March 1838.

<sup>288</sup>*Le Populaire*, 2 March 1838.

province's Irish population in the face of British attempts at domination, effectively trying to undo the 'nation' constructed by Constitutionalist discourse:

Il existe, dans cette colonie, deux races que la conformité de leur religion, de leurs différents, de leurs persécutions dans la mère-patrie comme ici, de leur position dans ce pays, doivent réunir à jamais contre les envahissements de toutes les factions qui visent à l'exploitation d'une domination absolue. Les Irlandais et les Canadiens ont une même série de griefs à reprocher, si ce n'est à l'administration, du moins c'est aux hommes qui se glissèrent entre-eux et le pouvoir, pour les accabler du même joug sans lequel ils gémissent sur leur terre natale, pour lui imposer une servitude continuelle, pour les vouer enfin au mépris et à la calmonie.<sup>289</sup>

*The Montreal Gazette* called the editorial an "insolent and insidious article" and asked,

How dare those who know not their obligations and duties as British subjects, and are incapable of gratitude for the rights and privileges conferred upon them as such, presume to teach Irishmen how to conduct themselves on the present or on any other occasion?<sup>290</sup>

*L'Ami du Peuple*, reacted to the Irish editorial by referring to *Le Populaire* as "La Minerve Ressucité" and declaring that it had shown its true colours, "celles de l'hostilité la plus déclarée aux principes britanniques et constitutionnels et au gouvernement."<sup>291</sup> Meanwhile, reacting to the *Gazette* editorial praising Dalhousie, *Le Populaire* gave its own evaluation of the former governor's career, one where the only positive point to be made about the late governor's administration was its replacement by that of Sir James Kempt, who gloriously pacified "tout ce que son prédécesseur avait contribué aigrir."<sup>292</sup>

Ironically, the ALC's declaration was originally published by *L'Ami du Peuple*, the French-language organ of the MCA, which explained that it was doing so only because the association "a eu le malheur de perdre l'organe de son choix."<sup>293</sup> *Le Populaire* had been forced to suspend publication for several days in late March 1838, under mysterious circumstances.<sup>294</sup>

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<sup>289</sup>*Populaire*, 9 March 1838.

<sup>290</sup>*Montreal Gazette*, 15 March 1838.

<sup>291</sup>*Ami du Peuple*, 14 March 1838.

<sup>292</sup>*Populaire*, 7 May 1838.

<sup>293</sup>*Ami du Peuple*, 24 March 1838.

<sup>294</sup>*Le Populaire* claimed that it was the victim of censorship, explaining that the "ennemis des intérêts canadiens se sont ligués contre un journal qui leur importe d'abattre et leurs intrigues sont parvenues à exercer une influence indirecte, jusque sur l'impression de cette feuille, pour en supprimer la publication." However, the firm that printed the newspaper, Lovell & McDonald, claimed they had refused to continue printing it because of unpaid bills, a charge the editors of *Le Populaire* denied. Meanwhile, *L'Ami du Peuple* consistently mocked *Le Populaire's* claims that it was a victim

In the mean time, *L'Ami du peuple* raised objections to what it saw as the ALC's attacks on the province's British inhabitants. It even associated the ALC with the Patriots, claiming that the label of 'faction,' used by the association in its attacks on the Constitutionalist, would be better applied to "certains membres de la nouvelle association qui n'ont pas encore oublié les principes séditieux qu'ils avaient sucé avec Papineau, dont naguère ils étaient les admirateurs et les dévotés."<sup>295</sup> When *Le Populaire* resumed publication, its support for the ALC was unconditional. In describing the association, the newspaper once again appropriated Constitutionalist discourse and used it to its own ends:

Cette association, toute constitutionnelle, toute dans les droits des sujets de cette province, ne ressemble à rien à ce qui s'est fait jusqu'à ce jour. Elle assure des améliorations immenses, et est propre à satisfaire tous ceux qui n'ont d'autre but que la prospérité du pays. [...] Nous comptons que toutes les opinions canadiennes se rallieront à cette société et lui fourniront la force d'accomplir les bienfaits qu'elle promet.<sup>296</sup>

Clearly, in the wake of the Rebellions, battle lines were being drawn not only between Constitutionalist and Patriots, but also between Constitutionalist and other 'loyal' groups in the province.

But the Constitutionalist were a formidable opponent, and in spite of all the indignation and alliances that de Rocheblave brought to the ALC, the story of the association was ultimately one of failure. As early as 29 January, de Rocheblave expressed regret at having undertaken the presidency of a political association which was accomplishing so little:

Je regrette parfois m'être [sic] embarqué dans une Gallère qui vogue si lourdement — la plupart des feuilles pour la Campagne sont rendus a leurs destination mais j'ignore qu'elle succès elles obtiennent. Je crains bien que ce soit aussi long qu'ici — patience. [...] je crois m'apercevoir que nous sommes des nullités politiques.

He felt let down on many fronts. His fellow members, and fellow officers of the association apparently showed a lack of dedication. Thus, on 24 March 1838 he explained that

Notre association va toujours à l'ordinaire c'est[-à-dire] qu'elle ce [sic] traîne. Je doute que nous puissions atteindre le chiffre de 30 pour notre Comité. Nos Secrétaires [...] sont l'Ame de la société — cette Ame n'est pas très active au contraire. Mercredi

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of censorship. *Populaire*, 12, 14 and 21 March 1838; *Ami du Peuple*, 17 and 21 March 1838.

<sup>295</sup>*Ami du Peuple*, 24 March 1838.

<sup>296</sup>*Populaire*, 16 March 1838.

prochain nous connaissons notre nombre si toutefois ils veulent se rendre à l'assemblée plus ponctuellement qu'ils n'ont coutume.<sup>297</sup>

Low attendance mirrored the low level of financial resources available. The idea of sending an agent to London was quickly given up on, and in early February, de Rocheblave doubted that more than ten people could be found to donate more than £10 for that purpose.<sup>298</sup> There was also a debilitating degree of indecision among the members of the ALC when they actually did show up for meetings. De Rocheblave continually complained that the printing of the association's manifesto and petitions were delayed by the fact that they were constantly being changed. At one point, it was proposed that a loyal address which had already been circulated and signed by "grand nombre de personnes" be altered.<sup>299</sup>

It nonetheless remains unclear whether greater confidence, efficiency, or generosity on the part of the association's members would have brought greater success. Slowly but surely, over the course of January, February and March, it became evident to de Rocheblave that the number of signatures on the ALC's petitions and addresses would be counted in the hundreds and not the thousands. Success in the city was quickly given up on, while hopes for the countryside lingered somewhat longer before being dashed:

[N]ous apprenons que plusieurs correspondants à qui avait été envoyés des parchemins pour être signés n'ont rien fait du tout [...] pour avoir de la réussite il eut fallu des personnes pour parcourir toutes les Campagnes du District ce qui eut entraîné une dépense considérablement plus grande que nous la pourrions supporter.<sup>300</sup>

While de Rocheblave was successful in arranging for Gosford to present the ALC's petition in the House of Lords,<sup>301</sup> it does not appear that the documents ever left Lower Canada.

More than anything else, the political atmosphere in post-rebellion Lower Canada was not conducive to the success of an organization like the ALC, which stood in opposition to the Constitutionalists and sought to defend the loyalty of French Canadians generally. The organizers of the ALC consistently found themselves on the defensive. In discussing the preparation of the association's manifesto, de Rocheblave described an effort to make the

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<sup>297</sup>24 March 1838, Bouthillier Collection, file 420, MMA.

<sup>298</sup>7 February 1838, Bouthillier Collection, file 418, MMA.

<sup>299</sup>21 February 1838, Bouthillier Collection, file 418, MMA.

<sup>300</sup>24 March 1838, Bouthillier Collection, file 420, MMA.

<sup>301</sup>10 February 1838, Bouthillier Collection, file 418, MMA.

document “aussi modéré qu’il puisse être — en prenant garde de ne choquer aucun parti.” He went on to explain that “nos demandes (à l’exception de l’Union) sont si ressemblantes à celles des Constitutionnels que toutes les personnes de ce parti ne peuvent y objecter *raisonablement*.” However, he was prepared for unreasonable objections based on anti-French sentiment: “cependant cela vient de descendants Français et que tous ce qu’ils feront sera toujours mal fait. Je suppose bien qu’on y trouvera faute — mais je crois pouvoir repeter que ce sera à tort.”<sup>302</sup> Likewise, a month before, de Rocheblave had sarcastically referred to the association as “la société dites ‘des loyaux Canadiens’: nous la connaissons mais personne d’autre.”<sup>303</sup> In the countryside, where the success of the ALC’s petitions depended on large numbers of habitant signatures, de Rocheblave observed a rural population that had been once burned and was now twice shy:

depuis plusieurs années les Habitants ont été harassés par des assemblées de toutes espèces et par des Signatures qu’on leur a fait donner, et qui font un sujet de reproche contre eux — présentement ils sont fatigués par une demande de prêter un serment d’allégeance qu’ils ne comprennent pas — venir aujourd’hui leur demander de signer de nouveaux papiers qu’ils n’entendent pas mieux ne sera goûtés que du petit nombre et il ne faudra pas moins que toute l’influence du Clergé pour les faire signer généralement tous ces contretens sont longs et ennuyeux.”<sup>304</sup>

De Rocheblave even went so far as to caution his brother-in-law against having his name appear on the ALC’s membership list:

quelquefois un Officier Public a une délicatesse plus grande qu’une autre à ce sujet — cependant Je n’y vois absolument rien de contraire au bienséance, et encore moins au devoir — Moi Sheriffe Je ne signerait absolument aucun papiers de cette sorte — votre situation a-t-elle quelque analogue a celle là est ce que vous pouvez mieu dire que moi?

Two weeks later, de Rocheblave informed Bouthillier that his name would be stricken from the list at his request.<sup>305</sup>

Aside from attempting to organize political opposition to the Constitutionlists’ plans for Lower Canada’s future, de Rocheblave accused them of aggravating the province’s more immediate problems. That the months following the outbreak of armed hostilities in November

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<sup>302</sup>21 February 1838, Bouthillier Collection, file 418, MMA. Emphasis his.

<sup>303</sup>31 January 1838, Bouthillier Collection, file 418, MMA.

<sup>304</sup>22 January 1838, Bouthillier Collection, file 418, MMA.

<sup>305</sup>21 February 1838 and 2 March 1838, Bouthillier Collection, file 418, MMA.

1837 was a fertile time for rumors is widely recognized; each day seemed to bring more unfounded reports of invasion. To de Rocheblave's mind these were not the inevitable result of the disorder which accompanies armed conflict, nor even the work of Patriot agitators seeking to upset the recently re-established peace. Instead, as early as 20 January he perceived a plan to unnecessarily perpetuate a state of confusion and exploit anti-French Canadian feeling by those who were supposedly working towards a restoration of order:

les choses ne sont pas aussi mal dans nos Campagnes que l'on voudrai le faire croire - il y a tant de monde interessés à formenter pour profiter des troubles, que nous avons tous les jours des bruits les plus ridicules et que l'on prétens croire pour avoir occasion de débâterer contre les Canadiens. Je suis des plus fatigués de toutes ces menées et suis bien persuadé que si l'on voulait laisser les gens tranquilles ils seraient eux mêmes paisibles.<sup>306</sup>

By the beginning of the next month, he was prepared to point his finger directly at the volunteers, who he portrays as manipulating an aging Colborne:

il y a tant de gens qui profitent des troubles existants qu'il n'est pas surnaturel de penser que quelques uns d'eux se joignent aux autres pour propager l'agitation — il est si doux porter une uniforme avec Epouettes; et encore plus de recevoir une paye — que nombre que Je connais voudraient que les troubles durassent aussi longtemps qu'eux — Notre Chef est vieux et quel est son entourage?<sup>307</sup>

As late as the spring of 1839, de Rocheblave still believed that threats to order were being made up and exaggerated by his political opponents for their own gain. Reporting on a trip he had made to the Chateauguay area, whose inhabitants had been "plusieurs fois menacées par les Patriotes et ensuite par les Loyalistes," de Rocheblave explained that he was hearing

des rapports des mêmes Campagnes qui sont bien différents au mien; et ne puis m'empêcher de croire que des motifs intéressés font supposer des complots et des associations qui n'existent pas - cependant après ce qui est arrivé l'an dernier, l'on n'ose pas trop se fier aux apparences.<sup>308</sup>

Thus, while the second rebellion in the fall of 1838 had obviously shaken his faith that the Patriots were finished as a political and military force in the countryside, de Rocheblave was still far from convinced that the situation was as bad as many had made it out to be, or that the level of measures taken to restore order was justified.

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<sup>306</sup>20 January 1838, Bouthillier Collection, file 418, MMA.

<sup>307</sup>5 February 1838, Bouthillier Collection, file 418, MMA.

<sup>308</sup>24 November 1838, Bouthillier Collection, file 421, MMA.

Nor was de Rocheblave enthusiastic about the punishments meted out to those who eventually had to face trial, continually questioning whether they were justified. As the courts martial began in December 1838, de Rocheblave spoke of the number of new prisoners in hyperbolic terms: “le hangard de notre voisin Fry en est plein — la Prison en régorge.”<sup>309</sup> His comments on the executions carried out on 21 December portray them as having been carried out not in the name of justice, but for the pleasure of a powerful elite, with the effect of rendering everyone more indignant and bloodthirsty. Thus, they took place “au grand contentement d’une Populace dont la plus part sont habillés en drap superfins si ces deux Exécutions pouvaient leur suffire. J’en serai surpris car le peuple de tous les pays se montre de plus [en] plus cruel à la vue de ces spectacles.” It was with a similar mix of disgust and worry that he greeted the harsh sentences handed down over the next couple of months. Furthermore, he found himself personally involved in the court martial of at least one Patriot. During December 1838 and January 1839, he made frequent mention of the case of William Lévesque, who was apparently a dear friend of de Rocheblave’s daughter Hermine.<sup>310</sup> De Rocheblave was not alone in seeking to help Lévesque avoid being hanged, as he mentions that “plusieurs de nous ont été certifier de son character [sic].”<sup>311</sup> As with the trials in general, de Rocheblave put his emphasis on excessive punishment, never mentioning the crime that was allegedly committed.

But the counter-revolutionary regime which imposed itself on Lower Canada in the wake of the Rebellions also struck much closer to home for de Rocheblave. Defending the character of a young man whom he believed had been led astray was one thing; seeing close friends and colleagues ending up in the Montreal jail was another. On 12 April 1838, de Rocheblave learned that his longtime friend and business partner François-Antoine Larocque had been imprisoned. LaRocque was accused of high treason for having published a pamphlet containing an extract from the *Westminster Review* of that January in which the author “s’efforce à faire considérer la Rebellion dans ce pays comme une Guerre de Nation à Nation et

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<sup>309</sup>1 December 1838, Bouthillier Collection, file 421, MMA.

<sup>310</sup>14 December 1839, Bouthillier Collection, file 422, MMA.

<sup>311</sup>Lévesque had taken part in the attack on Odelltown on 9 and 10 November 1838, had been arrested on 14 November, and had been put on trial with 11 others on 24 December. He was the only one of the group to plead guilty. Not only de Rocheblave but also François-Roch de Saint-Ours and Jean-Roch Rolland testified on his behalf. Sentenced to death on 2 January, his sentence was commuted in September 1839. See *DCB*, VIII, 504.

non pas comme une Révolte.” In describing the situation, de Rocheblave seemed torn between censuring LaRocque — “il était plusqu’imprudent de faire publier une telle doctrine dans ce moment d’exitation” — and condemning what he saw as an unjust punishment. Beyond the fact that LoRocque should have been “mis sous caution sans être incarcéré,” there was an underlying absurdity to the situation:

il n’y a que les circonstances actuels qui peuvent faire regarder comme répréhensible la distribution d’un écrit auquel on ne fait nul attention en Angleterre auqu’el au moins on n’attache nulle idée de Culpabilité — si au lieu de faire réimprimer cet extrait on eut envoyé d’outre Mer 1000 Revues de plus la chose aurait elle été différent.<sup>312</sup>

In any case, de Rocheblave was happy to see LaRocque released on bail the next day.<sup>313</sup> But two of his fellow magistrates who had signed the address to the habitants of the District of Montreal were also in jail by late 1838, namely Denis-Benjamin Viger and William Donegani.<sup>314</sup> Viger had also served with de Rocheblave on the Legislative Council before the Rebellions. Finally, de Rocheblave felt that French Canadians in general had ceased being the object of both respect and patronage in the wake of the Rebellions. Following a meeting with his fellow magistrates on the subject of tavern licenses in late February 1838, he wrote angrily that “il paraît évident que l’on veut en bannir tous les Noms d’une origine.”<sup>315</sup> Likewise, when he learned in late 1838 that Frédéric-Auguste Quesnel would not be re-appointed to the Executive Council, he expressed his belief that “bien vite le nom de tous les Canadiens ne se trouveront sur aucune Liste, même purement honoraire.”<sup>316</sup>

Of particular concern to de Rocheblave was how this situation fit into the Constitutionalists’ larger political agenda. Most of his criticism of loyalist forces noted above was aimed not at troops from Britain, but rather those that had been recruited locally: Lower Canadian volunteers and Glengary militiamen from Upper Canada. De Rocheblave saw in their overzealous actions more than just petty efforts to discredit or punish French Canadians. Thus, he juxtaposed them to Badgley and Moffatt’s mission to England. The Constitutionalist delegation was presented as a hostile action to be defended against:

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<sup>312</sup>12 April 1838, Bouthillier Collection, file 420, MMA.

<sup>313</sup>14 April 1838, Bouthillier Collection, file 420, MMA.

<sup>314</sup>Greer, *Patriots*, 292; Monet, *Last Cannon Shot*, 42-43, 64.

<sup>315</sup>24 February 1838, Bouthillier Collection, file 418, MMA.

<sup>316</sup>29 November 1838, Bouthillier Collection, file 421, MMA.

Ne serait il pas prudent de dire à L[or]d Gosford, le prier de vouloir bien prévenir les Ministres ou ses Amis que nous aussi avons des représentations à faire au Parlement et qu'il est trop juste que nous soyons entendus devant que nous juger. Il est [sic] de célébrats qui font courir toutes sortes de bruits pardessous mains pour entretenir l'agitation dans les provinces.<sup>317</sup>

Using their power as Colborne's advisors and as volunteer militia officers, leading Constitutionalists were simultaneously cultivating images of the province as home to perpetually rebellious French Canadians and of themselves as *the* representatives of the interests of loyal Lower Canada, images they could use to push their larger political agenda on the British government.

The extent of Constitutionalist influence in the administration of the province was foremost in de Rocheblave's mind as the first meeting of the Special Council approached in April 1838. These concerns were aggravated by the fact that he remained largely in the dark with regard to who his fellow councillors would be, and he had to resort to gleaning information from newspapers and gossip. His frustration led him to consider approaching Colborne to discuss the subject in early April. He apparently did, as he later suggested with pride that he might be partly the reason that Jules Quesnel was to be appointed rather than Henry Black, although he by no means saw himself as close to the decision-making process: "Je suis aussi dans l'obscurité au sujet des nouveaux Conseillers Spéciaux que je l'étais le premier Jour."<sup>318</sup> In fact, even on the day before the first meeting, he was still unsure as to the Council's membership, and had no information to give to his curious brother-in-law: "Je suis si peu au courant des nouvelles du jour que je n'en connais pas les Membres que par ouï dire, encore une fois patience."<sup>319</sup>

Ultimately, de Rocheblave's uncertainty and fears of Constitutionalist ascendancy led him to have second thoughts about accepting his own appointment and to a reconsideration of the role of the council more generally. "Je commence à me repentir d'avoir accepté n'augurant rien de bon de la *Spécialité* de ce Conseil," he wrote on 9 April. He was particularly discouraged by the fact that Hughes Heney was no longer being considered for a place on the council, and by rumors that Moffatt would not be remaining in England for one or two years as

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<sup>317</sup>23 January 1838, Bouthillier Collection, file 418, MMA.

<sup>318</sup>9 April 1838, Bouthillier Collection, file 420, MMA.

<sup>319</sup>17 April 1838, Bouthillier Collection, file 420, MMA.

planned, but instead would be returning with Durham “pour aider ce dernier de ses Conseils.” Also of concern was “l’affinité entre notre futur Gouverneur et Ellice,” a subject Bouthillier had taken up with Gosford in the context of union as a means of anglicisation (see below). A fellow former Legislative Councillor shared de Rocheblave’s concerns in the face of these developments: “Mr Debartzch croit que le parti est pris en Angleterre de nous Anglifier — et que bientôt on ne serat plus scrupuleux sur les moyens.” But de Rocheblave feared the process had already begun through Colborne:

le choix du Personnel du conseil que l’on compose aujourd’hui me paraît un mauvais pronostie -- les plus violents partizans d’un coté sont choisis pour le composer; de 15 qu’il doit être l’on assure que 8 au moins sont d’origine bretonne ce qui donne tout à coup une majorité à la petite Minorité. Je ne doute pas du tout que tout ce que fait Sr Jn (excepté le personnel de ce Conseil) lui a été dicté par les grosses Peruques du loin, Je veux dire quant aux nombre des différentes races.<sup>320</sup>

A week later, a disappointed de Rocheblave confirmed the appointment of Molson to the Special Council, and mocked the apparent hypocrisy of another Montreal Constitutionalist who had been appointed:

il en est positivement ainsi que Penn qui est plus dangereux, en ce que ses principes étaient dit on très douteux ces années dernières, il était affiché sur des Placards il y a deux ans on le disait alors un Radical — c’y [sic] cela est il faut que ses opinions soient fort changés, car personne ne me paraît plus chaud partizans de l’autorité absolu.”<sup>321</sup>

One might have expected de Rocheblave, as an experienced politician and staunch opponent of the Patriots, to have been curious about the Special Council’s legitimacy or its powers to put down rebellion. Instead, he was filled with fears that the council would be an opportunity for English-speaking Lower Canadians, led by leading Montreal Constitutionlists, to gain power far beyond what their numbers in the province justified.

Of particular interest are de Rocheblave’s comments on two of Colborne’s English-speaking appointees, Neilson and Stuart. They show that he did not equate ‘Constitutionalist’ with ‘anglophone,’ although he did see Constitutionalism as a potentially seductive force for those English-speaking Lower Canadians who had been the victims of Patriot attacks. In the case of the Neilson, de Rocheblave’s attitude was more than positive: “de tous les Conseillers

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<sup>320</sup>9 April 1838, Bouthillier Collection, file 420, MMA.

<sup>321</sup>14 April 1838, Bouthillier Collection, file 420, MMA.

Spéciaux celui qui me plait davantage est Neilson, sa grande connaissance de nos Affaires locales, sa modération son attachement bien connus, pour les Habitants du Pays — et son aptitude dans ce Conseil.”<sup>322</sup> De Rocheblave nonetheless feared that Neilson “ne ferat aucun effet sur la partie exaltée.”<sup>323</sup> It was the power of this ‘exalted party’ that caused him to find much less comfort in Stuart’s appointment:

Je le connais moins et n’en peut pas parler avec autant de certitude, Je connais cependant et J’admire ses talents transcendants, sa politique ne m’est pas connu [...] si l’on considère ce que Mr S[tuar]t eu a souffrir du parti de ceux qui se disaient *Enfants du Sol* qui l’ont ruiné dans sa fortune (si un homme de son génie peut être ruiné) et fait tout leur possible pour détruire, pour anéantir son Character moral, et enfin le rendre odieu aux yeux de toutes la Province, cet homme peut il voir avec des yeux bien favorables la majorité des habitants de ce pays? S’il le fait il est réellement un Grand homme malgré tous Je ne le crois pas capable d’injustice même envers ses ennemis. Mais n’est il pas naturel qu’il désire la disparution d’une race qui lui a fait tant de mal, et qui lui a rendu si peu de Justice — en disant la disparution je n’entends pas par le fer et le feu; mais par une Jonction des deux Provinces, par un débordement de population qui engloutira la présente — si c’était là ses véritables sentiments (que je ne puis que supposer) la nature humaine est si faible que quelquefois on se laisse entrainer dans des mesures qui peuvent être préjudiciables mais qui favorise un plan chéri.

De Rocheblave did not fear the political power of English-speaking Lower Canadians. Rather, he feared the power of a particular political movement within the anglophone community and its ‘cherished plan’ of union, and that circumstances were such that the province might be swept away in a rising Constitutionalist tide of anglicification.

In spite of his fears and second thoughts, de Rocheblave ultimately did take his seat on the Special Council, and occupied it regularly for the next two years. However, he consistently found himself having to rationalize his support for many of the ordinances that were coming before the council. One measure that repeatedly cause him much distress was the suspension of Lower Canada’s *habeas corpus* act. The tone of apology was set in a letter written at the close of the council’s first meeting, where he described the suspension as being

de grand importance, mais pour quel tems? si c’est afin de rappeler la Loi Martial, qui ne devrait plus exister, et que la durée de la suspension ne soit que pour donner le temps au nouveau Gouverneur de voir autour de lui Je n’y prévois pas de grands inconvénients dans l’état actuel des choses et peut-être servirat [sic] elle de protection à nos habitants, qui dans leur ignorance pourrait encor se laisser entrainer dans des

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<sup>322</sup>14 April 1838, Bouthillier Collection, file 420, MMA.

<sup>323</sup>9 April 1838, Bouthillier Collection, file 420, MMA.

mesures coupables; si quelques choses n'empêchaient pas beaucoup de nos Rénégats de rentrer dans la Province et d'y causer du trouble.<sup>324</sup>

He seemed to feel better about supporting the measure a few days later, when he explained that it was

une mesure dont nous regrettons tous la nécessité (quant je dis tous je me trompe je devrai dire que nous devrions tous regretter) mais dans le moment présent je la regarde non pas comme un fardeau mais comme une sauvegarde pour nos habitants — qui si pareille loi n'était pas en existence pourraient en être induits en erreur par de misérables qui se sont expatriés et qui reviendraient recommencer à prêcher le trouble, et à inonder la province de leurs Papiers séditeux — de sorte que quelqu'ennemi que je sois de l'arbitraire Je préfère perdre une partie de ma liberté pour un moment, que de courir les risques de la perdre toute entière et ce pour un temps défini — il s'en suit que la Loi Martiale va-t-être abrogé.<sup>325</sup>

But martial law did not immediately disappear, and when, in the spring of 1839, the Special Council was again asked to renew the suspension of the *habeas corpus* act, de Rocheblave was far less enthusiastic in his support for the measure. He recognized that it represented something totally different for his Constitutionalist colleagues, and juxtaposed his hopes for peace with their supposed desire for war with the United States. De Rocheblave noted that the measure

est toujours regardée avec un oeil de jalousie par tous sujets anglais à passé avec peu ou point de discussion, il est vrai que l'exécutif aurait peut-être embarrassé si tous les prisonniers étaient mis en liberté au 1er Juin et aussi si tous nos Patriotes pouvaient rentrer dans la province — l'on peut dire aussi que jusqu'à présent l'on en a pas mesuré — l'on commence à croire que nous ne nous braillerons pas pour le moment avec nos voisins au grand détriment de la race "Volontaires". Je dis pour le moment — car je serais fort surpris si nous restions en paix avec eux pendant six mois de plus.<sup>326</sup>

Thus, while de Rocheblave sought to play a positive role in the preservation of the peace in Lower Canada, he continually worried that his support for such legislation would simply contribute — along with such measures as martial law — to the impression that the province was still in a state of disorder. Worse still, he feared that it might aid those who sought to profit from conflict, by aggravating English-French and British-US tensions.

Although it sometimes took a little rationalization on his part, De Rocheblave recognized the urgency and necessity of many of the measures dealt with by the Council. He

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<sup>324</sup>19 April 1838, Bouthillier Collection, file 420, MMA.

<sup>325</sup>23 April 1838, Bouthillier Collection, file 420, MMA.

<sup>326</sup>25 March 1838, Bouthillier Collection, file 422, MMA.

was willing to accept some excesses in the expectation that they would ultimately lead to an amelioration of the situation in the province. Having been a frustrated member of the Legislative Council in a deadlocked Lower Canadian legislature, and more recently the president of the chronically ineffective ALC, de Rocheblave could not help but appreciate the efficiency of the Special Council: “Les Ordonnances [...] ont été passée [sic] si rapidement qu’on eut dit que nous nous servions de Vapeur,”<sup>327</sup> he wrote on 25 April 1838. However, he did not necessarily equate efficiency with desirability or quality. Nonetheless, de Rocheblave was strangely comfortable with the passage of several controversial ordinances, even though his support for them was far from complete. In late November 1838, he noted that

les Ordonnances du Conseil Spécial se succèdent rapidement comme vous le voyez par la Gazette nous avons besoin de les multiplier si nous voulons qu’il en survivez quelques unes. Si le Parlement impérial en annule une partie et que les Juges de la Province doutent de la légalité des autres nous aurons de la peine à sauver ses Enfants Avotons, que nous chérissons tant quoiqu’il ne nous ai pas coutés de grands travaux à enfanter. Hier l’administrateur retira de devant nous une Ordonnance pour autoriser la création d’une Cour de Cinq Membres (Hommes de loix) pour juger pendant une Année (après la Cessation de la Loix martiale dites Juin Prochain) toute offences de Trahison & Meurtres et Arson qui pourront se commettre pendant ce temps sans l’intervention d’un jury — dans le grand zèle qui anime le Conseil Spécial nous en avons par un Amendement rendu l’effet rétroactif de manière à comprendre tous ce qui pouvait avoir été fait dans cette ligne depuis le 16 Novembre dernière — chose surprenante que nous nous trouvames que trois sur Neuf à opposer une pareille mesure — comme je vus l’ai déjà dit l’Administrateur retira l’Ordonnance de devant nous pour en substituer un autre moins *obnoxious* — elle ne nous a pas encor été présenté.<sup>328</sup>

Thus, de Rocheblave placed his faith in safeguards, specifically the power of the imperial government and local judges to reassess the council’s work. However, the idea for the creation of special courts to which de Rocheblave was so strongly opposed was supported by the British cabinet, while the overall story of the Special Council shows that the Crown very rarely exercised its right of disallowance. And de Rocheblave would soon see that the Special Council could impose its will on dissenting judges.

However great they might have been, de Rocheblave’s powers of rationalization and faith in legal safeguards did know bounds. These were reached, and almost traversed, in late 1838. In the context of a discussion of how French Canadians were accommodated on the

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<sup>327</sup>25 April 1838, Bouthillier Collection, file 420, MMA.

<sup>328</sup>29 November 1838, Bouthillier Collection, file 421, MMA.

Special Council, Goldring notes that “de Rocheblave withdrew briefly in December, 1838, when ordinances were rushed through nullifying the factious judgements of two *Canadien* judges; but he was back in his seat the next morning.” Further on in his discussion of the Special Council, Goldring describes the incident as “de Rocheblave’s emotional exit from the Council chamber.”<sup>329</sup> However, de Rocheblave’s exit was not so sudden or emotional as Goldring makes out, nor was his re-integration into the council so swift and complete. His actions were related to more than just the single ordinance rejecting the judges’ decisions. They took place within the context of an important re-evaluation of his place on the council and the council’s place in Lower Canadian politics.

In fact, the suspension of the Quebec city judges by Colborne led de Rocheblave to draft his letter of resignation from the Special Council. He first makes mention of the affair on 24 November, when Colborne had not yet reacted to the judges’ decisions. Although he was not prepared to come out in support of their decision — he had, after all, supported the ordinance suspending the *habeas corpus* act — de Rocheblave did not question the judges’ right to pass judgement on the council’s interpretation of Lower Canadian law. He seemed most concerned that the decisions might be interpreted as an act of French Canadians against the British administration, rather than a legitimate interpretation of the law by three judges who happened to be French Canadian:

nous avons été surpris de leur décision — et sans prétendre décider si elle est juste ou non, j’eus préférée que les Juges n’eurent pas été tous des Canadiens. Je crains beaucoup que cela nous menent à quelques choses de sérieux surtout pour les acteurs.<sup>330</sup>

Two weeks later, after de Rocheblave had learned of Colborne’s intention not only to suspend the judges, but also to replace them, he declared himself to be

déterminé à remettre à Son Excellence les Mandames ou Commissions de Conseillés qu’il a bien voulu me confier l’expérience du Mois passé me prouve que la détermination que j’étais prise de ne plus accepter cet emploi était sage; mais que j’avais mis de coté dans un moment d’exitation occasionné par une nouvelle révolte — dans ce moment J’ai cru que personne ne devait reculer devant le danger et j’ai concouru cordialement à toutes les mesures qui pouvaient mettre l’exécutif à même d’arrêter les progrès de l’insurrection présentement quelle est abbatue c’est avec regret que je vois poursuivre des moyens qui me semble vexatoires et plus propre à exiter le mécontentement qu’à le pacifier — dans la position ou je me trouve je ne peux pas

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<sup>329</sup>Goldring, “British Colonists,” 245–46, 250.

<sup>330</sup>24 November 1838, Bouthillier Collection, file 421, MMA.

faire le bien, et n'est pas assez d'influence pour empêcher le mal de sorte que j'ai tout l'odieu de mesures qui passent contre mon gré.<sup>331</sup>

Such was de Rocheblave's state of mind and attitude to the Special Council in the days preceding the meeting described by Goldring.

De Rocheblave's re-evaluation of the Special Council and his place on it continued over the following weeks. Three days after de Rocheblave discussed the possibility of resigning with his brother-in-law, Colborne introduced an ordinance to the Special Council which gave the governor the power to replace sick or suspended judges in the districts of Montreal, Three Rivers and Quebec. This ordinance proved to be the first one which de Rocheblave could not rationalize, and it forced him to re-evaluate his support for all of the other controversial ordinances he had succeeded in rationalizing. When McGill, seconded by Moffatt, proposed that the rules regarding second and third reading be suspended, he was opposed only by de Rocheblave and Quesnel. (The other members present were Cuthbert, Pothier, Christie and Penn.) De Rocheblave immediately withdrew, and the ordinance was then agreed to unanimously.<sup>332</sup> He did return to his seat the next day, although a letter dated 13 December shows that he far from being totally reconciled with the Special Council, and he was still considering resignation. He asked sarcastically,

comment il n'est pas venu à l'idé [sic] du faiseur d'Ordonnances que la même maladie pouvait aussi bien saisir les Juges de St. François et Gaspé, est plus que je ne puis dire, c'est un moyen de terreur qui planne sur la tête de nos Juges — et comment l'on croit que leurs Jugements en sera plus impartiaux Je ne puis le dire non plus. [...] Après mettre opposé à cet Ordonnance en ce qui regarde les 3 Rivières et ici je n'ai pas voulu assister à la Scéance et me suis retiré J'ai adressé ma résignation au Secrétaire Civil mais elle est dans ma Poche depuis hier. Je sçait qu'il y a beaucoup de pour et contre, et attends pour me décider à l'envoyer, quelques mesures qui me répugneraient à passer — nous sommes occupés à blanchir Col. Bowels, Young, &c &c il faudra donner plusieurs couches de peinture pour les rendre blancs.<sup>333</sup>

Thus, de Rocheblave's dissatisfaction went far beyond this one incident. In fact, he was able to draw a line directly from the suspended judges to the excesses of those who had directed the military operations he so often found unnecessary and excessive. For the first time since his appointment to the Special Council, he seemed to be questioning the very nature of the

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<sup>331</sup>7 December 1838, Bouthillier Collection, file 421, MMA.

<sup>332</sup>JSCLC, II, 11 December 1838.

<sup>333</sup>23 April 1838, Bouthillier Collection, file 420, MMA.

institution. The council no longer merely seemed to suffer from an over-representation of his political opponents; it now seemed to be essentially a tool of his political opponents. Its ordinances were being applied in the way they had conceived, and not the way de Rocheblave hoped they would take effect. But his disillusionment was not total, and he never did submit the letter of resignation he had drafted.

Furthermore, whatever his attitudes and actions were before the fall of 1839, de Rocheblave did, ultimately, vote with 'les Anlgais' in favour of union. Any attempt to re-evaluate his political outlook seems to stall at this point. To confuse matters even more, his disgust with how Lower Canada was being ruled had apparently changed to a desire to integrate himself more fully into the colonial regime by 1839. Not only did talk of resigning his seat on the Special Council cease, he accepted an appointment to the Executive Council from Colborne in mid-1839. Around the same time, he began to seek out a well-remunerated place for himself in the provincial civil service. His comments regarding the possibility of being appointed by Colborne as president of the board of works are downright shocking in light of the opinions he expressed during the previous year:

En faisant mention du board of Works, je n'étais que les efforts d'un noyé qui s'accroche même à une Paille. Je n'ai pas la loi devant moi mais me souviens bien que le Président quoique pas sous appointments régulier doit avoir son temps payé, [c'est-à-dire] celui qu'il emploie aux devoirs de sa charge. Je préférerais quelque chose de plus fixe, mais en attendant... J'aurais dû, comme j'en ai eu un moment l'idée[e] accompagner Sir Jn dans l'Automnes 37 et 38 dans ses courtes Campagnes mais ces bonnes idées passent trop vite — la crainte que l'on dit que c'était pour animer à la destruction m'a seule retenue — J'aurais dû aller the whole Hog — la superintendance des Polices Rurales données à G[ugy] m'aurait bien convenus [sic] — connaissant et étant si bien connus des habitants surtout des Comtés insurgés — mais enfin il a (G[ugy]) cet emploi et je n'ai pas de doute qu'il le remplira comme de juste.<sup>334</sup>

He seemed to be saying that he should have accompanied Colborne in 1837 and 1838 *even though* it was only to cause destruction. The advantage that having served during the Rebellions was giving men like Gagy in gaining government appointments seemed to be making de Rocheblave forget his disgust at what the forces of order had done at the time.

While glimpses of his usual paternal outlook appear when he addresses the subject of the rural police, his desire to relive the autumns of the two previous years was framed purely in terms of improving his chances at employment, not ensuring that the peasantry or French Canadians

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<sup>334</sup>18 May 1839, Bouthillier Collection, file 422, MMA.

generally were better treated. His search for employment continued at least until September when he had a friend informally put his name forward to Colborne as a candidate for the position of Sheriff of Montreal.<sup>335</sup> A few days later, he regretted not having officially applied for the post himself, not because he thought he would have been successful, or even because the names being considered were all Constitutionals — Boston, McCord, Ogden — but because he would have been “sur les rangs pour autre chose qui aurait pu se présenter.”<sup>336</sup> Thus, his political concerns of the previous year had vanished, apparently replaced by personal and material interests.

This change in priorities was no doubt partly a function of financial concerns. The economic crisis which Fernand Ouellet points to as a major factor in setting off the Rebellions<sup>337</sup> was apparently felt by both the Bouthillier and de Rocheblave families. “Nous ne louons rien”<sup>338</sup> summed up the state of the rental market in the spring of 1838. By 1839, collecting rents for buildings and land already rented proved to be next to impossible, although de Rocheblave did his best to look upon his dealings with tenants as good-naturedly as possible: “Ces bons Locataires sont toujours de mauvaise humeur -- mais je me souviens qu’il faut aimer ses Amis mêmes avec leurs deffaux.”<sup>339</sup> When Bouthillier instructed de Rocheblave to sell his shares in the Champlain and St. Lawrence Railway, the task proved impossible: “tel est la situation de la Province que personne veut acheter même à un escompte considérable -- quoique avec la paix et la tranquillité dans la province ces mêmes actions ce [sic] vendraient avec une prime.”<sup>340</sup> Meanwhile, floods had damaged warehouses and properties that de Rocheblave and Bouthillier owned on the waterfront.<sup>341</sup> In short, by the beginning of 1839, de Rocheblave was realizing that economic crisis, Rebellions, and natural disasters had brought about a situation where his income was no longer adequate to maintain the lifestyle to which he had become accustomed: “les Marchandises neuves nous arrivent de tous côtés, mais non pas

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<sup>335</sup> 11 September 1839, Bouthillier Collection, file 422, MMA.

<sup>336</sup> 16 September 1839, Bouthillier Collection, file 422, MMA.

<sup>337</sup> Ouellet, *Lower Canada*, 275-97.

<sup>338</sup> 29 March 1838, Bouthillier Collection, file 420, MMA.

<sup>339</sup> 30 August 1839, Bouthillier Collection, file 422, MMA.

<sup>340</sup> 29 November 1838, Bouthillier Collection, file 421, MMA.

<sup>341</sup> 2 March 1838, Bouthillier Collection, file 420, MMA.

l'argent pour les payer."<sup>342</sup> It would seem only natural that he would address this situation by seeking out one of the positions being created by the Special Council's ordinances, and would be wary of what effects voting against a measure like union might have on his chances of being appointed.

Nevertheless, how de Rocheblave was able to reconcile his actions to his political outlook remains a mystery. Unfortunately, no letters at all exist from the weeks surrounding the vote on the union resolutions. However, as early as April 1839, he was viewing union in what appears to be a positive light. He described it as a sort of trade-off between the political rights of French Canadians and the restoration of order:

Quelqu'il soit nous n'avons que peu à perdre au contraire à l'amour propre et nationalité près nous ne pouvons que gagner, en sortant de cet état d'incertitude et d'inaction où nous nous trouvons aujourd'hui. Je crois que pour quelques temps après, nous aurons une réaction qui donnerat quelques signes de vie à nos affaires, surtout si nous ne tombons pas en difficulté avec nos voisins.<sup>343</sup>

By mid-December of that year — as Thomson was seeking approval for the measure in Upper Canada — it was as if de Rocheblave had taken on the perspective of a neutral observer:

les nouvelles du haut Canada voyagent très lentement Je n'ai pas encor vu la réponse à la Harangue, l'on m'assure qu'elle n'en serat que l'écho — et sans doute que l'Union aura lieu sans de grands efforts — la dépeche des Ministres publiée dernièrement qui dit que certains officiers pourront êtres changés par chaque nouvelle administration, ne contribuons pas faiblement à ce but — J'ai hâte de savoir ce qu'il vat communiquer aux chambres par ces Messages.<sup>344</sup>

These passages, along with his vote in favour of the resolutions, show he was no longer violently opposed to the idea, but do not go very far in explaining why.

Fortunately, a series of letters from Bouthillier to Lord Gosford written between early 1838 and mid-1840 help shed light on de Rocheblave's mysterious conversion from being a staunch opponent to a lukewarm supporter of union. Bouthillier underwent the same conversion, and his changing attitudes are explicitly justified in the letters. The first of Bouthillier's letters to his "late and much regretted" governor was written in late March 1838, and showed his opinions on the subject of union to be virtually identical to those held by his

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<sup>342</sup>13 May 1839, Bouthillier Collection, file 422, MMA.

<sup>343</sup>11 April 1839, Bouthillier Collection, file 422, MMA.

<sup>344</sup>14 December 1839, Bouthillier Collection, file 422, MMA.

brother-in-law at the time. Colborne had just assumed the administration of the province, but Bouthillier's thoughts were on his successor. While refraining from attacking Durham outright — Gosford had given a favourable report of his fellow Lord — Bouthillier suggested that he and the British government might not be getting an altogether balanced view of the situation in Lower Canada from their advisors:

I am not without some apprehensions when I consider that a time like the present, when we most need it, we are without one friend near Her Majesty's ministers to advocate our cause. I have every confidence in the just and liberal intentions of the government and in an honest determination on the part of Lord Durham to deal equal justice to all, but both these may easily be defeated in the colony as it has unfortunately been the case before now, by the misrepresentations of prejudiced persons. Much will depend on the individuals who will be selected to compose the new Council, being a stranger to men in this province, I fear Lord Durham may be guided in making the selection by the advice of an individual who appears already to possess some influence with him, I mean Mr. Ellice. [...] I only know Mr. Ellice as the reputed author of the famous intruded union Bill of 1822, but if I am to judge of his disposition towards the Canadians by the provisions of that Bill, gloomy indeed must be our prospects if he or his friends attain power in Canada.

To these concerns he added his view of the situation in the colony at that moment, which appeared to him to be laying the groundwork for anglicization and union. While “both parties” claimed to support “equal justice for all,” Bouthillier noted that

the Canadians complain of a want of confidence in them and of an undue preference shown to the British, the latter would wish [to] rule as conquerors over the former setting at naught all that has been guaranteed to them by the most solemn acts.

Attempts to counteract these trends, and to put forward a French Canadian viewpoint to the imperial authorities were all meeting with failure. Specifically, the efforts of de Rocheblave and his allies to organize a petition were greatly hindered:

The distrust occasioned amongst the country people by the occurrences of last fall and winter, the rumours at one time of immediate invasion, the machinations of a few yet disaffected individuals, the cold water thrown upon it all in other quarters and lastly the strong opposition manifested against it by the English part of the population all combines to retard its progress, and now makes me doubt at times of its ultimate success.

Bouthillier called on Gosford to use his influence with the British government to help set things straight.<sup>345</sup>

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<sup>345</sup>Bouthillier to Gosford, Quebec, 27 March 1838, Bouthillier Collection, file 424, MMA.

However, Bouthillier's attitude to union had changed dramatically by March 1839. Amidst reports that the imposition of union was imminent, the tone surrounding the battle for French Canada's political survival had turned from one of desperation to one of pragmatism and resignation. Bouthillier still viewed union as a hostile measure supported by a power-hungry and chauvinistic British population, but all hopes of preventing it seemed to have been abandoned:

I must observe here that the french canadians [sic] do not view that measure with the same excess in reluctance as they formerly did, they are getting reconciled to it by degrees, not precisely as a matter of choice but as a means of avoiding greater evils. The reason of this change is that they find the rancorous [sic] disposition of the British population so great against them that they so not believe it possible for the present individuals of the two races here to unite for business, and they hope to find in the population of Upper Canada, with whom they have not been brought into personal collision, people more moderate and more disposed to listen to reason and justice. The Provinces can not be allowed to remain much longer in this present state of excitement and under a system of Government, which, experience has already proved, can be made so arbitrary. The project of Confederation does not seem to be relished by any of the Provinces, and the Canadians who at first were not particularly averse [sic] to it, are not at all partial to it now that they have been told by Lord Durham, thro' his organ Mr Thom, that it was only resorted to as a more effective means of overpowering them. Under all circumstances, in the present aspect of affairs, a union would probably be the more popular measure of the two and possibly the least embarrassing to Government for the present. I believe it would not be opposed by the french canadians if proposed on any thing like fair terms. Of course they would rather remain as they are and have their legislature restored to them, if left at their own choice, but this they almost despair ever obtaining again.<sup>346</sup>

It is nonetheless important to note Bouthillier's fundamental ambiguity to union. In fact, he made several pleas in favour of the 1791 constitution in further letters to Gosford. For example, commenting on Neilson's efforts to organize an anti-union petition, he observed that

The majority of the B[ritish] population hope it may lead to an extension of the suspension, they do not like the union and only consent it [sic] as a *pis aller*, they prefer it to a restoration of the constitution of 91 which they dread above all things. For my part, I think the best thing that could be done would be to restore the old constitution as it existed before the suspension [...] I have no doubt a new legislature would act very differently from their immediate predecessors - it is indeed the only way to restore permanent tranquility to this disturbed country.<sup>347</sup>

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<sup>346</sup>Bouthillier to Gosford, Quebec, 16 March 1839, Bouthillier Collection, file 424, MMA.

<sup>347</sup>Bouthillier to Gosford, n.d., c. February 1840, Bouthillier Collection, file 424, MMA.

But such hopes appeared to be vain ones, and union had become French Canadians' *pis-aller*, not only in the context of other possible constitutional settlements, but also in relation to the *status quo*. Thus, by 1840, Bouthillier was prepared to throw Lower Canada's political fate into the hands of the imperial Parliament:

I am so well convinced of the effects of delay that I would sooner have the union at once than put off any longer the settlement of our affairs. We are kept in a most harrassing state of anxiety. If attended with no other effect I trust this petition will at any rate cause the conditions of the union to be well discussed in Parliament, and I cannot bring myself to believe that a body so constituted would sanction an act of injustice.<sup>348</sup>

Bouthillier continued to compose letters to Gosford over the course of 1840, and they continued to express resignation in the face of an inevitable union, while voicing strong objections to the union bill's unfairness to French Canadians and Lower Canada.

Interestingly, as Bouthillier described French Canadians' reconciliation to the idea of union, he also described a warm relationship between them and the man sent to gain approval for the measure. In early 1840, following Thomson's trip to Upper Canada where he gained approval for union, Bouthillier wrote that

both previous to and since his journey to U[pper] C[anada] His Excellency at his entertainments and in his private intercourse has shown a good deal of attention to Canadian Gentlemen and families, to an extent, in some cases to excite the remarks and possibly the jealousy of some of the British, it seems as he endeavoured to repair in private the injustice he is doing [...] for the proposed measures are evidently intended against the french more as a *race* than as a political party. Amongst those who surprised all parties was Mr Lafontaine with his lady who received very marked attentions from H.E. at an evening party. Mr L[afontaine] could not but observe to a friend here the great contrast between the [...] he suffered some 12 months before in the Mont[real] goal [sic] and his present flattering reception at the Gt House.

Bouthillier proceeded to deny the anti-union movement organized at Quebec was an attempt to prevent Thomson from successfully completing his mission, suggesting that the success of Neilson's petition had more to do with terms "too humiliating to be submitted to without at least making known their sentiments upon the subject" than French Canadian opposition to the idea of union. In fact, he portrayed the petition as heralding "a return to much better feelings towards the Government" and the expression of a desire to maintain the imperial connection. He rejected Papineau's claim that almost all French Canadians wished that the Rebellions had

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<sup>348</sup>Bouthillier to Gosford, n.d., c. March 1839, Bouthillier Collection, file 424, MMA.

been successful, and pointed to the fact that in the countryside the petition was being signed under the guidance of the clergy as further evidence of good feeling.<sup>349</sup>

This curious evolution from opponent of union to admirer of the imperial official whose job it was to impose the measure is also evident in de Rocheblave's letters to Bouthillier. Excerpts from two letters, written a year-and-a-half apart, serve to illustrate the phenomenon. First, during October 1838, de Rocheblave drew on his brother-in-law's comments to Gosford in evaluating the situation in Lower Canada under Durham:

la remarque très juste que vous faites au Lord Gosford de notre apathie, et du découragement total où nous sommes tombés — pour un je puis dire que le découragement est si complet que je suis indifférent à tous ce qui peut arriver, croyant que rien ne se sera pis que l'état humiliant et incertain où nous sommes aujourd'hui; les déboires nous sont versés à pleines mains et de tous les cotés, nous sommes repoussés par tous comme si nous étions de la Caste des Parias — enfin vienne qui vienne nous ne pouvons pas être pis mais nous pouvons que gagner si la tranquillité et la prospérité peut encore reposer sur notre pays.<sup>350</sup>

By contrast, in early March 1840, he no longer felt so helpless and so shut out of the process of decision making on the province's future as he had in 1838. He wrote of the pleasure of spending an evening with Thomson on the latter's return from Upper Canada: "j'eus l'honneur de sa conversation presque toute la soirée — mais sur bien de sujets qui ne peuvent pas s'écrire." But one subject de Rocheblave found himself able to comment on was union, and he explained that Thomson was

mortifié de voir l'opposition à l'Union qui se prépare à Québec, et qui commence à se manifester dans ce District; non pas tant pour l'opposition même, que par l'agitation que cela peut causer dans les Campagnes, dont les habitants commençoient à respirer la douceur du calme, après la tempête — il ne parait pas craindre l'issue de l'opposition — à sa demande Je lui ai donné une longue liste de notables des Campagnes, ce n'était pas sans sourire que J'ai pu écrire le nom de l'Oncle de Made Bou[thillier].<sup>351</sup>

Thus, Thomson was couching acceptance of union in terms familiar and seductive to de Rocheblave: an opportunity to put an end to political turmoil and see the countryside returned to its 'natural' peaceful state. Furthermore, as he resigned himself to the policy of union, de Rocheblave found that Thomson was allowing him to play the role he had always cherished,

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<sup>349</sup>Bouthillier to Gosford, n.d., c. January 1840, Bouthillier Collection, file 424, MMA.

<sup>350</sup>18 October 1838, Bouthillier Collection, file 421, MMA.

<sup>351</sup>3 March 1840, Bouthillier Collection, file 423, MMA.

that of a paternal leader of French Canada. Meanwhile, Bouthillier's description of Thomson in the early weeks of his mandate as Lower Canadian governor is strikingly similar to the portrayal often made of Gosford on his arrival in the province: wooing French Canadians with personal attention and fanfare. Thus, in late 1839 and early 1840, Thomson was still a relatively unknown *bon vivant*, initially feared by many Constitutionalists for his support of free trade, and who had not yet come to symbolize the destruction of French Canadian legal and social institutions through the legislation of an increasingly anglophone Special Council.<sup>352</sup>

It is important to remember when considering attitudes to the three men who administered Lower Canada after Gosford, that only two were given the job of proposing or implementing changes in the province's constitution. Colborne, although he endured longer than expected, was always a temporary fixture entrusted with short-term political goals. Durham, on the other hand, was sent to find a long-term solution. While very few words are spoken about Durham in de Rocheblave's correspondence, none of them are kind. Even before his arrival he was feared as a partisan of Ellice and Moffatt. One can only assume that de Rocheblave was appalled at the fact that the few local advisors he accepted included Adam Thom, and equally appalled when his *Report* echoed the documents of the MCA. A glimpse of how de Rocheblave remembered Durham can be gleaned from his use of the expression "débarquer à la Durham" in reference to moments marked by excessive pomp and expense.<sup>353</sup> Thus, given the experience with Durham, it should not be altogether surprising that de Rocheblave would be more sympathetic to Thomson and his mission. Although Thomson was determined to implement union, at least he was willing to give a voice to de Rocheblave in the transition to a united Canada.

Does de Rocheblave's conversion to union mean that Greer's label of 'Constitutionalist' ultimately does fit, only Greer applied it a couple of years too early? The answer would still appear to be no. Both in Bouthillier's well-elaborated and de Rocheblave's more sketchy conversion to union, a hostile political movement based in the province's English-speaking population remains the enemy. When union was reluctantly accepted by these two brothers-in-law, it is not as the central plank in the platform of the MCA. Rather, they accepted it as a measure decided upon and being imposed by the British government. Both men

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<sup>352</sup>Monet, *Last Cannon Shot*, 35-36.

<sup>353</sup>23 September 1839, Bouthillier Collection, file 422, MMA.

had a vested interest in the maintenance of the British regime in Lower Canada, and the most obvious alternative to accepting the power of the Imperial Parliament to legislate the colony's constitutional foundation — the Patriot movement — had shown itself to be a threat to the social order de Rocheblave cherished. Thus, while they fought against union when it was a measure being pressed on the British government by the Constitutionals, their social status and political outlook gave them little choice but to work within the new constitutional framework when it became British policy. The alliance being forged in accepting union was with a British governor who appeared somewhat sympathetic to their interests, not a political movement against which they consistently defined themselves.

During his short time as a member of the Special Council, de Rocheblave was essentially fighting two battles simultaneously. On the one hand, he saw his role in the institution as a one of helping the executive finish the job of ending the disorder created by the Rebellions. Hence his willingness to assent to measures which seemed to him at times to be unnecessarily harsh. On the other hand, he saw the potential of the Special Council to give unprecedented political power to a hostile political movement which sought to capitalize on the disorder created by the Rebellions to promote its agenda. However, de Rocheblave apparently was never convinced that the executive had entirely adopted the Constitutionalist outlook, and the Special Council remained for him an institution where he could have some positive impact on the outcome of events. His experience with the ALC had taught him that swimming against the political current was a recipe for failure. When the Constitutionals had succeeded in making union imperial policy, de Rocheblave had little choice but to reconcile himself to the idea as the only way of achieving his original goal of ensuring that the province return to a state of calm.

It is unlikely that de Rocheblave was the only French Canadian Special Councillor who consciously and actively opposed Constitutionalism. Two of the individuals Greer identifies as fitting the pattern of a 'girouette' are Special Council appointees Marc-Pascal de Sales Laterrière and Dominique Mondelet.<sup>354</sup> Aside from de Rocheblave, four other Special Councillors could easily be added to the list: Joliette, A. Dionne, Mayrand and Quesnel.<sup>355</sup> It is likely that in the immediate post-Rebellion period, most of them had experiences similar to

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<sup>354</sup>Greer, *Patriots*, 289.

<sup>355</sup>See *DCB*, VII, 446-50, 716-18; VIII, 222-24; X, 502-03.

those which had brought to the fore de Rocheblave's discomfort with the Constitutionalists' dominance of the Special Council. For example, on 21 April 1838, before the start of the discussion on an ordinance to suspend *habeas corpus*, Quesnel, Faribault and Mayrand "were permitted by the Council to withdraw, they being related to some of the parties now in confinement for political offenses." Of particular interest is the case of Quesnel, who was an active member of the ALC and voted against the union resolutions. In early 1838, he had even written to Gosford complaining of the illumination honour of Colborne, as well as the latter's refusal to revoke martial law.<sup>356</sup> But like de Rocheblave, Quesnel apparently felt his political enemies could best be fought by working within the very system that was giving them so much power, as he continued regularly attending meetings of the Special Council until the temporary legislature was dissolved in early 1841.

Nor was anti-Constitutionalist feeling among Special Councillors limited to francophones. Arguably the most vocal and most enduring critic of union in Lower Canada was John Neilson. The fact that Neilson and Cuthbert made up two-thirds of the Special Councillors voting against union belies any notion that English-speaking Lower Canadians were united in their political views. And as de Rocheblave pointed out in his evaluation of Neilson and Stuart as potential Special Councillors, English-speaking Lower Canadians did not necessarily hold the same views as the MCA, even if the association claimed to speak for them. In fact, Neilson would seem a stronger opponent of Constitutionalism than de Rocheblave. While the latter was slowly reconciling himself to the idea of union, Neilson was consistently attacking it and the *Durham Report* as editor of the *Quebec Gazette*. After voting against the Special Council resolutions on union, he went on to organize a powerful and well-organized anti-union movement based at Quebec. Unlike the ALC's, Neilson's petition was signed by thousands of Lower Canadians and made its way to the Queen and both houses of the British Parliament.<sup>357</sup> Furthermore, Neilson's efforts to avoid union laid the groundwork for a well-organized network of opposition candidates in the 1841 election as well as a petition calling for the repeal of the Special Council's legislation. Ironically, it was a fellow Special Councillor, Dominick Daly, acting in his capacity of provincial secretary, who acknowledged receiving from Neilson a

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<sup>356</sup>Quesnel to Gosford, Montreal, 11 March 1838, Acheson Fonds, file 5, 63, NAC.

<sup>357</sup>Monet, *Last Cannon Shot*, 56-62.

“Petition from certain inhabitants of the late Province of Lower Canada praying for a repeal of all the Ordinances of the Special Council.”<sup>358</sup>

However, a certain historiographical confusion surrounds Neilson, and it remains unclear whether he was Constitutionalism’s best friend or worst enemy. On the one hand, he was the organizer of the most concerted opposition to the union of the Canadas. On the other hand, he had been a Constitutionalist leader and delegate, and historians like Rudin present him as proof positive of the intellectual diversity which existed with the movement (see above, page 59). His history of supporting the Assembly in its more moderate demands while breaking with Papineau when the latter became more radical, along with his insistence that French Canadians’ political rights be respected, showed the movement was far more diverse than the pronouncements of Adam Thom and George Moffatt might suggest. While it was undoubtedly accurate in 1835 when Neilson actively working on behalf of Lower Canadian Constitutionlists, Michael McCulloch has applied this ‘unity in diversity’ thesis to the period surrounding the 1841 elections. McCulloch claims that at the same time as Constitutionlists like Moffatt were providing invaluable help to Sydenham, “resistance to the union throughout the province, including that of the French Canadian majority, was also dominated by the Constitutionlists.” He gives as evidence the fact that Neilson and two other ‘Constitutionlists’ dominated the five-member anti-union committee at Quebec, while other ‘Constitutionlists’ stood as anti-union candidates across the province.<sup>359</sup> McCulloch stresses that opposition to the “abstract idea” union was not “a basic aspect of Constitutionlist thought.” Thus, he points to the fact that candidates recruited by the Quebec anti-union committee only had to be of the opinion that the union act be “repealed or *amended*.” Meanwhile, energy was being diverted to attacks on “Sydenham’s local legislation,” culminating in the petition mentioned above, rather than attacks on union.<sup>360</sup> However, McCulloch fails to give any appreciation of how ‘Sydenham’s local legislation’ corresponded to the goals of Constitutionalism as they were articulated at the time of the Rebellions, and how so many of the Special Council’s ordinances were intimately linked to the transition to union.

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<sup>358</sup>D Daly to Neilson, Kingston, 29 June 1841, Neilson Collection, X, 189, NAC.

<sup>359</sup>McCulloch, “Death of Whiggery,” 204.

<sup>360</sup>McCulloch, “Death of Whiggery,” 206.

Contrary to McCulloch, I believe that Neilson rejected the very idea of union, and in doing so was consciously rejecting Constitutionalism and the movement's insistence on the exclusion of French Canadians from the political process. In a *Quebec Gazette* editorial from March 1840, Neilson pointed out that the stated intent of the act creating the Special Council was that the Constitutional Act of 1791 would be revived in December of that year, and that he would in no way see this as an undesirable development. He went on to argue that given the "restoration of tranquility," there was no longer any excuse for not consulting a representative Lower Canadian legislature before proceeding with any constitutional change. While recognizing that the "conduct of the Assembly which was elected in 1834" might have destroyed the confidence of many in those who elected it, *The Gazette* declared that these apprehensions "may excuse, but cannot justify such a mark of weakness and apprehension:"

There is no constituency which has not erred. The constituency of Lower Canada had no opportunity given it to correct its choice of 1834, after the Assembly had repeatedly exhibited the most objectionable part of its proceedings. But if such an opportunity had been allowed them, and they had not availed themselves of it, the experience of Lower Canada and every other country having a representative body, does not justify the presumption that they will persist in error. [...] because the people and their representatives may have been deemed wrong in the expression of their wishes, they are to be held as being incapable of being right, to the extent of depriving them of their established Constitution.

The article cited several examples, including that of the Irish who, in spite of rebellion and ill treatment, remained "a loyal people." The Irish example was taken advantage of to draw a parallel with Lower Canada: "They have, indeed, had *their union, which they very much wish to get rid of*; although they were not given over to be taxed and legislated for, by a constituency forming a *minority* of the United Kingdom distinct from the people of Ireland." The article concluded, somewhat ironically, with a plea to the 'character of Englishmen':

Is it because the majority of the inhabitants of Lower Canada, happen to have for their forefathers, some eighty years ago, FRENCHMEN, that they are to form an exception to all other British born subjects, and be treated with flagrant injustice, in which the other inhabitants of Lower Canada are also to participate? Forbid it decency, forbid it the name and character of Englishmen.<sup>361</sup>

In short, Neilson believed that Lower Canada had erred but was at no point irretrievably lost; that French Canadians had rebelled, but that French Canada was not naturally rebellious. By

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<sup>361</sup>*Quebec Gazette*, 2 March 1840.

contrast, the entire Constitutionalist program was founded on a belief that the Lower Canadian electorate was fundamentally incapable of exercising political rights responsibly.

A clear distinction needs to be drawn between the Constitutionalism that existed in 1835, and that which existed by 1838. By the time he took his seat on the Special Council, John Neilson had rejected — and had been rejected by — the Constitutionalist movement. There was, of course, the 1840 meeting where Quebec Constitutionalists declared themselves to be in firm support of the outlook held by the MCA, and formally disowned Neilson and the English-speaking members of his anti-union committee (see above, page 77). However, given the prominent place Neilson once held in the movement, it could be argued that this reflected a disagreement among Constitutionalists who subscribed to different notions of what Constitutionalism stood for. Thus, McCulloch claims that there was an "underlying division *within* the [Constitutionalist] movement."<sup>362</sup> But 'Constitutionalist' was not a label Neilson was willing to apply to himself by the time of the Rebellions. For example, in letter to Gosford written a month and a half before he first took his seat on the Special Council, Neilson stated that union "is now the plan of the Lower Canada Constitutional Association," and clearly put himself forward as being opposed to the measure. Neilson was acutely and no doubt painfully aware of the fact that the movement he had helped to found was working towards goals fundamentally different from his own. In the same 1838 letter where he recognized that union had become the Constitutionalists' goal, he lamented the fact that the "project of the Constitutional Associations in favour of which they furnished petitions to the King and Parliament in 1835" had been abandoned in favour of union, a project "which they think would give them more power, as did the french [origin?] Petitioners theirs of 1828."<sup>363</sup> Also, in *The Quebec Gazette's* comments on the meeting where Neilson was accused of abandoning the Constitutionalist movement, it was suggested that Constitutionalists of 1840 were the ones who had wavered from their goals. To reinforce this point *The Gazette* printed several extracts from documents produced by the Quebec Constitutional Association in 1834 and 1835, and contrasted their contents to the opinions held by the Constitutionalists of 1840.<sup>364</sup>

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<sup>362</sup>McCulloch, "Death of Whiggery," 203. Emphasis mine.

<sup>363</sup>Neilson to Gosford, Quebec, 26 February 1838, Neilson Collection, XII, 544-49, NAC.

<sup>364</sup>"The Albion Hotel Meeting," *Quebec Gazette*, 3 February 1840.

Nevertheless, the question remains of how closely Neilson associated the Special Council with the goals of Constitutionalism. While the petition he submitted in 1841 would suggest he rejected the legitimacy of the institution, his steady record of attendance on the council suggests otherwise. In fact, in early 1838, he had prepared plans for how Britain should deal with the outbreak of rebellion, which included a suspension of the constitution and the creation of an appointed legislature. Furthermore, his prescription for what this council should do is strikingly similar to what actually was done in 1838 and 1839: renew temporary acts, vote funds for the civil government as well as charitable and educational institutions, provide for improvements sanctioned by a board of works or the home government,” and legislate generally for the province in the short term. Indeed, as a Special Councillor, he gave his support to such measures and, even after the vote on the union resolutions, continued to defend the institution. Neilson stressed the legitimacy, and even the desirability of the Special Council in *The Gazette*:

The suspension of the Constitution was unavoidable, upon a resort to arms, headed by the Speaker and the leading members of the *majority* of the Assembly. It was necessary to establish a temporary Legislative authority in the country, to meet emergencies; unless, indeed, an act similar to the Irish Insurrection Act had been passed, or the country been, at once, put under Martial Law.<sup>365</sup>

When *Le Canadien* questioned the authority of the Special Council to give its opinion on union, *The Gazette* countered by saying that the governor was free to ask the council’s opinion on any subject he wished, and that everyone knew that the Special Council did not represent the opinions of the Lower Canadian population at large.<sup>366</sup> Finally, when Neilson resigned from the council in June 1840, he did not cite political reasons, but rather the health of his wife and his duties as editor of *The Gazette*.<sup>367</sup> However, some have perceived his resignation as a protest against the Special Council’s “arbitrary practices.”<sup>368</sup>

But just as Constitutionalism had undergone a dramatic transformation, the Special Council that existed in 1838-39 must be distinguished from what the institution became in 1840-41. Neilson was willing to accept an appointed council, limited in its powers, even if it was dominated by Constitutionalists and openly endorsed union. But he was unwilling to accept

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<sup>365</sup> *Quebec Gazette*, 30 December 1839.

<sup>366</sup> *Quebec Gazette*, 20 November 1839.

<sup>367</sup> Neilson to Civil Secretary, copy, 14 June 1840, Neilson Collection, XII, 577, NAC.

<sup>368</sup> Monet, *Last Cannon Shot*, 66.

a council with expanded powers which actually went about implementing the Constitutionalists' long-range plans by paving the way to union with permanent ordinances that fundamentally altered Lower Canadian law. Thus, as the Special Council became more and more what the Constitutionalists wanted it to be, Neilson viewed it as increasingly illegitimate. When he outlined his plans for a temporary appointed legislature in 1838, he in no way conceived of one which would introduce fundamental changes to Lower Canada's laws or its constitution:

I do not think that the suspension would be necessary for more than three or four years unless the people should petition for its continuation, when it be removed making such amendments in the constitutional act as may be deemed necessary or advisable, publishing the bill a *year before* for the inspection of the inhabitants of the Province.<sup>369</sup>

In late 1839, he had made clear in *The Gazette* that although the Special Council had powers similar to those of the Legislative Council and Assembly, there were important differences: "The main difference consists in this, that the existence of the Special Council was to be only temporary, to the 1st November 1840; and that they had *no initiative*."<sup>370</sup> However, over the course of the course of 1840 and 1841, the Special Council began taking the initiative by passing a slew of permanent ordinances which would smooth the transition to a united Canada. It was precisely at the time when the Special Council began working towards what Neilson recognized as the ultimate goals of the Constitutionalists that he gave up his seat.

Thus, the petition against the Special Council ordinances submitted by Neilson was not the hypocritical act of a politician who, finding himself a candidate for a seat in an elected legislature, wished to distance himself from an embarrassing past. It was a recognition that the Special Council had become a very different institution from the one he had agreed to be a member of in early 1838. In fact, the petition he submitted in 1841 did not demand a repeal of all of the council's legislation, but claimed "an infringement of the Constitutional rights and liberties of the subject" had taken place and a "dangerous precedent" set when the Special Council, as an appointed body, had passed laws imposing "burthens." Singled out for criticism were those ordinances dealing with Winter Roads, Turnpike Gates, District Councils, Registry

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<sup>369</sup>Neilson to Gosford, draft, Quebec, 26 February 1838, Neilson Collection, XII, 544-49, NAC.

<sup>370</sup>*Quebec Gazette*, 20 November 1839.

Offices, and District Courts.<sup>371</sup> These were all ordinances passed after Neilson resigned from the Council in early 1840. He was not condemning the same Special Council in whose business he had actively participated for two years. He was condemning the Special Council which, by late 1840, had in his eyes had overstepped its authority and was being misused.

It is nonetheless important that men like de Rocheblave and Neilson not be perceived as forming a sort of opposition party on the Special Council. By its very nature, the Special Council was not an institution which allowed opposition to develop. The Special Councillors were called together to approve a single legislative agenda approved and introduced by the governor, not to debate it. They were not invited to suggest alternatives or debate the relative merits of different courses of action. The governor's power to introduce ordinances, appoint new members, or replace existing ones meant that Special Councillors had the choice of either reconciling themselves to the work being done on the council or removing themselves from it. The examples of de Rocheblave and Neilson serve to illustrate this fact. De Rocheblave's concerns over the Council's membership in early 1838 and his indignation at the suspension of the judges later that year led him to consider resigning, not allying himself with other Special Councillors in opposition to the Constitutionals. Likewise, Neilson fought against union and permanent legislation from without, rather than within, the council. That his efforts to avoid union were as unsuccessful as those as the ALC suggests that de Rocheblave's decision to accept union and Quesnel's decision to remain on the council until the very end were recognitions by the latter two councillors that the only way to have any influence at all on the legislative process during the years 1838-41 was to work with the agenda of the Special Council, rather than against it.

Furthermore, those Special Councillors who might be seen as forming an opposition to the Constitutionals were far from united in their actions. In 1838, Neilson did not share de Rocheblave's concerns over unfairness in the way the Rebellions were being suppressed. He eventually wrote in *The Quebec Gazette* that "Sir John Colborne used the high powers confided to him with discretion, and *without partiality* in regard to the unfortunate distinctions of national origin which had prevailed."<sup>372</sup> Thus, on 16 November 1838, when de Rocheblave

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<sup>371</sup>"The Petition of the Inhabitants of the late Province of Lower Canada," Neilson Collecton, XVI, 298-301, NAC.

<sup>372</sup>*Quebec Gazette*, 30 December 1839.

moved that an ordinance giving Colborne extensive powers to appoint new magistrates be amended so that no more than two new magistrates could be appointed in any one county, Neilson joined Moffatt, Gerrard, Christie, Molson and Penn in voting against the amendment.<sup>373</sup> By the time Neilson became disenchanted with the way the council was being used, de Rocheblave had voted in favour of union, along with his Constitutionalist counterparts, and had reconciled himself to the goals of the Thomson administration. Thus, while Neilson worked frantically to mobilize opposition to union, an ailing de Rocheblave sat by indifferently. Only the Constitutionalist Special Councillors seemed to have a clear idea of what they wanted to achieve and how they wanted to achieve it.

Constitutionalist and non-Constitutionalist Special Councillors did share some common ground. They had all accepted the need for an appointed legislature to help restore the authority of the British regime in Lower Canada. But when it came to deciding just how the Special Council would go about re-establishing the government's authority over the province, Special Councillors differed. Pierre de Rocheblave believed it to be a simple matter of keeping the countryside calm and free of Patriot agitators. John Neilson conceived of several years of limited despotism, where the constitutional *status quo* would be preserved until such time as the Lower Canadian electorate could redeem itself. However, the work of the Special Council came to reflect the views of the MCA, which held that the Rebellions had been the inevitable result of French Canadian political participation and a constitution which gave them a majority in the province's Legislative Assembly. Thus, to restore order effectively and permanently, the Special Council had to undertake a fundamental alteration of the province's laws and constitution. Much to the chagrin of Special Councillors like Neilson and de Rocheblave, who found themselves powerless to stop the process, the legacy of the Special Council was not merely a temporary suspension of the Lower Canadian Constitution. It was the end of Lower Canada.

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<sup>373</sup> JSCLC, III, 16 November 1838.

## CONCLUSION — RECONSTRUCTION RECONSIDERED

Quel jugement d'ensemble pouvons-nous porter sur le Conseil spécial et son oeuvre?

Les dénonciations et les attaques ne lui ont pas manqué. Sir John Colborne a projeté sur se Conseil spécial les lueurs des incendies que lui reprochent nos ancêtres de 1837-1838. Ceux-ci pouvaient-ils apprécier la valeur des actes législatifs posés par ce corps délibérant?

Denis-Benjamin Viger, à la session de 1841, prononça ces paroles: «Quoique nous, Bas-Canadiens, ayons eu un Conseil spécial créé expressément pour nous, chargé de nous faire des lois sans nous consulter...» A cent ans de distance, nous en sommes revenus de ces illusions. Nous avons appris, trop souvent à nos dépens, qu'il ne suffit pas qu'il y ait dans un parlement 245 députés et dans une législature 90 députés pour que les électeurs soient consultés et que «le peuple» contrôle sa législation. Il arrive, même sous un régime parlementaire, que certains hommes — eux-mêmes manoeuvrés par des coteries — préparent les lois, puis les font ensuite aveuglement adopter par leur partisans.

Le Conseil spécial, composé d'une vingtaine d'hommes, légiféra dans le sens des intérêts généraux du Bas-Canada. Le reconnaître n'est que justice.

— Antonio Perrault, 1943.<sup>374</sup>

The honor of being the first representative of our district is not worth much to you, and the bother and trouble [...] is no small matter to one so fond of home & so bound to it as you are. But now you are a public man, doomed to undergo the labors and to mix in the Stripes of a Representative Assembly, your best friends can wish you no better fortune than this — that when you shall see fit to retire, your enemies may have as little to say against you as at present.

— Andrew Robertson to Edward Hale of Sherbrooke, 5 April 1841.<sup>375</sup>

Antonio Perrault offers a shockingly anti-democratic assessment of the Special Council and its work. But the Special Council was not a democratic institution, and it is interesting how well Perrault is able to capture the spirit of the institution. Underlying the creation of the Special Council was a belief that representative institutions were a luxury, and that if British sovereignty and public order were to be maintained, Lower Canada could no longer afford them in the wake of the 1837 Rebellion. The Special Councillors were expected to work within the framework of a single legislative agenda proposed by the governor, not represent conflicting interests. While discussion and disagreement certainly occurred, there was no room for real debate or the promotion of alternative courses of action. While Perrault compares the Special Council to legislatures of the mid-twentieth century, a more relevant contrast could be made with those that immediately preceded the Special Council. Nothing could be more different

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<sup>374</sup>Perrault, "Conseil Spécial," 306-07.

<sup>375</sup>Robertson to Hale, Montreal, 5 April 1841, Hale Correspondence, MMA.

from the Lower-Canadian legislatures of the 1830s than a legislative body which was called together on the assumption that all of the members would more or less agree on what needed to be done and how it should be accomplished.

However, the letter of congratulation written to Edward Hale on the occasion of his election to the Legislative Assembly of the united Canadas serves as a reminder that even the Special Councillors themselves were not quite so anti-democratic as Perrault. They knew that their task was one of preparing for the return of what the council had done away with, a system where legislators were responsible to more than just themselves and a British governor. In short, they would have to once again become “public men.” Indeed, many of them were busy organizing election campaigns by late 1840, in anticipation of the proclamation of union early the next year. Thus, they conducted their work on the Special Council not just by working towards an end to the crisis that had necessitated its creation — the Rebellions — but also with an eye to what would come next.

For all the differences brought out in this thesis, the Special Councillors had a lot in common which set them apart from the vast majority of Lower Canadians. They represented an established elite which had seen the foundations of its power shaken by an increasingly radical Patriot movement. The Special Councillors had come together to see their power firmly reestablished, and to ensure that it would not be challenged again. They all agreed that something had gone horribly wrong with relationship between those who governed and those who were governed in Lower Canada. They all understood their job was to help fix the problem.

While nothing was further from their own experience than the lives of the peasant farmers who made up much of the Lower Canadian population, this latter group was constantly on the minds of the Special Councillors. Pierre de Rocheblave’s correspondence shows him to have been constantly preoccupied with finding a means of making the habitants once again the peaceful and law-abiding group he imagined them to be. To him, correcting the problems of the Rebellions involved a simple restoration of peace in the countryside. John Neilson thought in terms of an electorate that had erred and was waiting to redeem itself. As soon as Lower Canadians became more reasonable in their political demands, they could once again elect their own representatives to legislate for the province. Meanwhile, the political outlook of men like George Moffatt was predicated on the image of an ignorant French Canadian peasantry

whose influence in government had to be minimized at all costs. This would involve a fundamental transformation of the province's constitutional and political structure.

But only one such vision could prevail in a authoritarian institution like the Special Council, and the return to representative government in Lower Canada came about largely along the lines conceived by a single political movement, the Constitutional Association of Montreal. A well-organized and powerful Constitutionalist movement dedicated to the political marginalization of French Canadians through legislative union with Upper Canada took advantage of the post-rebellion political situation to make the will of the Special Council correspond to its own. Constitutionlists portrayed themselves as the legitimate voice of the loyal population of Lower Canada and successfully converted British officials to its goals. The extent of their influence was symbolized by the Special Council's membership, which steadily became dominated by English-speakers, Montrealers, and Constitutionlists. More concrete evidence lies in the fact that much of the council's legislation — not to mention the imposition of union — corresponded to the longstanding and well-articulated demands of the Montreal Constitutional Association.

Meanwhile, Special Councillors like Pierre de Rocheblave and John Neilson, whose political outlooks clashed with that of the Constitutionlists, found themselves alienated from the Special Council and its achievements. This was in spite of the fact that they should have been knowing their greatest political glory during the Special Council period. They had, over the previous years, been appalled at the Patriots' rise to power and that group's manipulation of the Lower Canadian political process to ends that they saw as dangerous, if not treasonous. Then, in 1838, the British government gave them the opportunity to help set things 'right' by offering them a seat on the Special Council. But they did not enjoy the fruits of victory over the Patriots, as they found themselves being defeated by a different political ennemy. In the months that followed their appointments to the council, their hopes were smothered rather than fulfilled. Attempts to take anti-Constitutionalist stands proved belated and futile. They found themselves with the choice of removing themselves from the Special Council — consequently removing themselves from a position of power — or reconciling themselves to Constitutionalist goals.

Thus, the Constitutionlists saw to it that the Special Council did not leave Lower Canadian politics the way it had found it. It is remarkable how the Special Council passed on its

priorities and its values to successor regimes. In the preceding chapters, I have frequently discussed how the Special Council's legislation fundamentally altered the province's legal and constitutional frameworks. From land registry to local government, from public works to union, historians have noted how the Special Council period was a turning point in Quebec's political development. These changes were not undone when representative government returned. Rather, as Young points explains, the Special Council's work of "shaping state and institutional structures" was "solidified and legitimized by the indigenous bourgeoisie that assumed power in the 1840s under responsible government."<sup>376</sup> Constitutionalist leaders could not indefinitely hold on the tremendous power they achieved through the Special Council. But when it ultimately became necessary for them to share power once again, it was on their terms.

But Young's comments risk suggesting that the Special Council was not an institution 'indigenous' to Lower Canada. Even if most of its English-speaking members had been born in Britain, the council was much more than a reaction of the British government to the Rebellions. It brought together a local elite whose members were primarily concerned with how political power should be organized *within* the Lower Canadian context. Furthermore, the vision of Lower Canada's political future that ultimately prevailed — that of the Montreal Constitutional Association — was not a hastily conceived reaction to rebellion. Rather, it had been carefully developed by a well-organized and powerful political movement with deep roots in the province. The British Rifle Corps and the Doric Club existed long before Colborne officially organized volunteer militias. Constitutionalist were calling for union as the only solution to the province's problems for years before Durham set foot in Lower Canada. The legislation passed under Thomson was as much a redress of frequently articulated Constitutionalist grievances as the expression of his own personal vision for Lower Canada. The changes brought by the Special Council did not originate in the minds of imperial emissaries concerned primarily with the interests of the British government in the wake of the Rebellions. They were conceived of by the leaders of the Montreal Constitutional Association long before the first shots were fired in late 1837.

On the opening page of her history of the Rebellions, Elinor Senior writes that "every rebellion is a story of failure, for if the insurgents are victorious, it is no longer rebellion, but

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<sup>376</sup>Young, "Positive Law," 50.

revolution.”<sup>377</sup> But although the Patriots failed in their revolution, there was nonetheless something truly revolutionary about the years 1838-41. The leaders of the Montreal Constitutional Association were more than successful in overthrowing the constitutional regime which had existed in Lower Canada prior to 1838, a goal which they had been working towards for several years. The most important weapon used to achieve victory in their revolution was the Special Council. Once they had converted imperial officials to their viewpoint, the council allowed them to impose their will largely unopposed.

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- "Black, Henry." Jacques Monet. X. 68-69.  
"Casgrain, Charles-Eusèbe." Antonio Lechasseur. VII. 61.  
"Christie, William Plenderleath." Françoise Noël. VII. 184-86.  
"Daly, Dominick." Elizabeth Gibbs. IX. 189-93.  
"Day, Charles Dewey." Carman Miller. XI, 237-39.  
"Dionne, Amable." Serge Gagnon. VIII. 222-24.  
"Faribault, Joseph-Edouard." Marthe Faribault-Beauregard. VIII. 287-89.  
"Gerrard, Samuel." Peter Deslauriers. VIII. 320-22.  
"Harwood, Robert Unwin." IX. 373-74.  
"Heriot, Frederick George." Marie-Paule R. Labrègue. VII. 397-400.  
"Joliette, Barthélemy." Jean-Claude Robert. VII. 446-50.  
"Knowlton, Paul Holland." Marion L. Phelps. IX. 433-35.  
"Laterrière, Marc Pascal de Sales." X. 431-32.  
"Léry, Charles Etienne Chaussegros de." Marc Duval and Ronald Lessard. VII. 169-70.  
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"McGill, Peter." Robert Sweeny. VIII. 540-44.  
"Moffatt, George." Gerald Tulchinski. IX. 553-556.  
"Molson, John." Alfred Dubuc and Robert Tremblay. VIII. 630-34.  
"Neilson, John." Sonia Chassé et al. VII. 644-49.  
"Ogden, Charles Richard." Lorne Ste. Croix. IX. 610-11.  
"Pothier, Toussaint." Philippe Pothier. VII. 702-04.  
"Quesnel, Jules-Maurice." Paul Desrosiers. VII. 716-18.  
"Rastel de Rocheblave, Pierre de." Pierre Dufour and Marc Ouellet. VII. 735-39.  
"Stuart, Sir James." Evelyn Kolish. VIII. 842-45.

N.B.: The William Walker whose biography appears in volume VII of the *DCB* is not the Special Councillor. Information on Special Councillor James Cuthbert can be found in the biography of his father: "Cuthbert, James." Jean Poirier. IV. 190-92.

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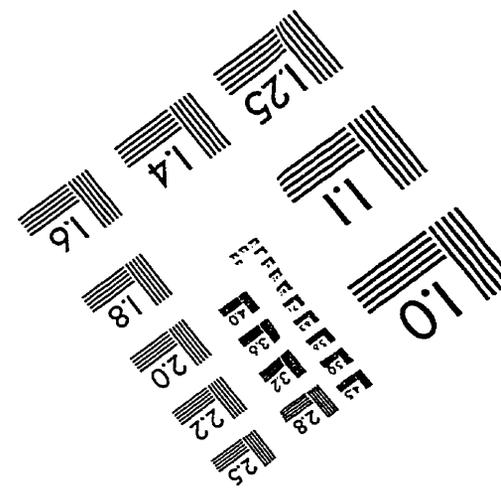
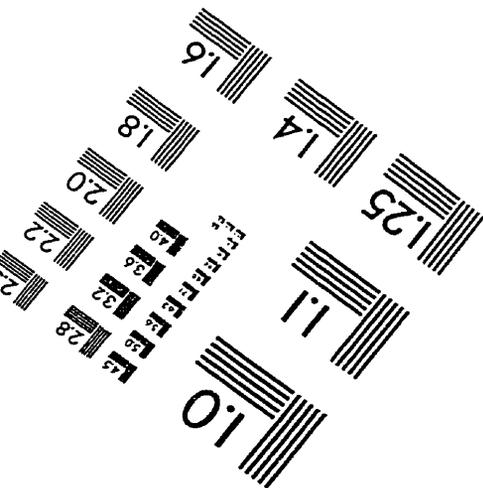
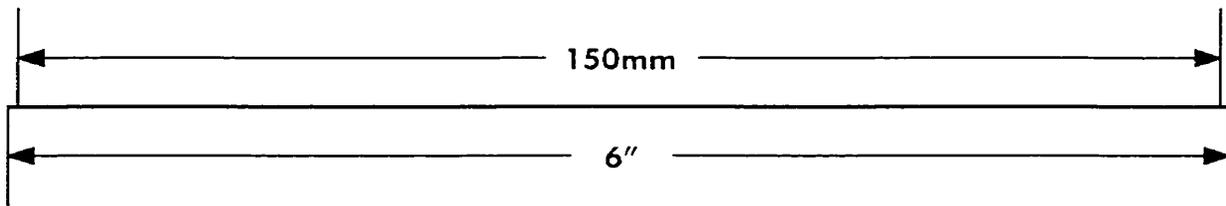
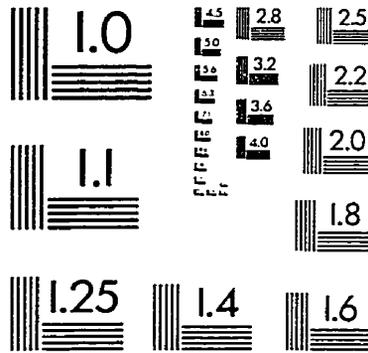
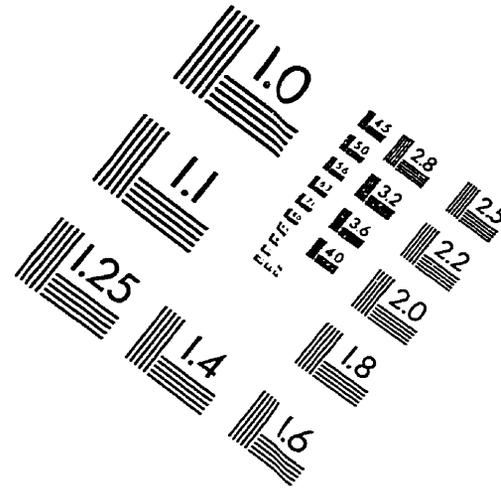
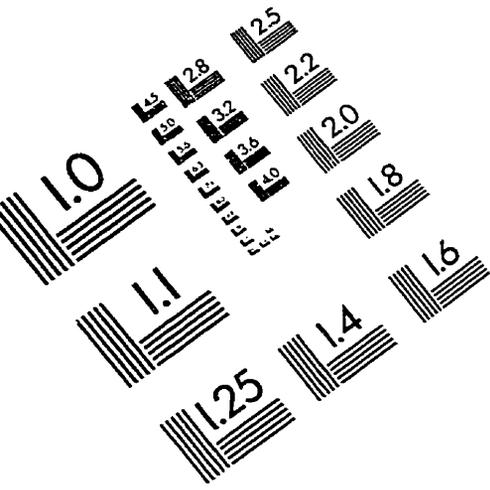
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