Privilege at the Polls:
Culture, Citizenship, and the Electoral Franchise in Mid-Nineteenth-Century British North America

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Lorsqu'un peuple commence à toucher au cens électoral,
on peut prévoir qu'il arrivera, dans un délai plus ou moins long,
à le faire disparaître complètement.

Alexis de Tocqueville, *De la démocratie en Amérique* (1835)

Go to England – with her qualification to Republican America
or despotic France where Universal Suffrage has been in operation
and see if Nova Scotia does not favourably contrast with all or any of them.

Joseph Howe, to Nova Scotia's House of Assembly (1854)

Abstract

This dissertation explores electoral enfranchisement in mid-nineteenth-century British North America from a cultural perspective. It argues that colonists across the Province of Canada, New Brunswick, Nova Scotia, and Prince Edward Island used electoral franchise legislation as a crucial means to negotiate what citizenship should entail, and whom it should encompass, within their local colonial contexts. Aside from the formal exclusion of women, British North Americans agreed upon very little when it came to their electoral franchises. With the advent of responsible government in the 1840s, a spate of provincial and municipal franchise reforms swept across the provinces. Constant disagreements – which sometimes turned violent – resulted in repeated franchise amendments as British North Americans tried to account for competing cultural and electoral ideals. In the process, British North American legislatures found ways to emasculate inhabitants politically on the bases of gender, race, class, ethnicity, religion, and age. As the provinces altered their franchises, British North Americans simultaneously had to navigate conflicting legislation at different levels of government. By means of franchise law, this dissertation examines the ways in which British North Americans – both in discourse and in practice – challenged and codified shared cultural ideals of citizenship. Cultural categories mattered enormously to British North Americans: so much so that they built them into their formal structures of political participation.

Résumé

Cette thèse étudie l'octroi du suffrage en Amérique du Nord britannique au milieu du XIX^{e} siècle dans une perspective d'histoire culturelle. Elle montre que, dans le cadre de contextes coloniaux différents, les colons se sont servis des lois sur la qualification électorale comme principal outil afin de négocier les modalités de la citoyenneté et déterminer qui pourrait y accéder tant dans la Province du Canada, au Nouveau-Brunswick, en Nouvelle-Écosse ainsi qu'à l'Île-du-Prince-Édouard. Les qualifications électorales faisaient l'objet de bien peu de consensus au sein des habitants de l'Amérique du Nord britannique, exception faite de l'exclusion officielle des femmes. Dans le sillage de l'avènement du gouvernement responsable dans les années 1840, une vague de réformes des lois électorales municipales et provinciales déferla sur les provinces. D'incessants différends, s'exprimant parfois violemment, se traduisirent par de nombreux amendements législatifs, les habitants de l'Amérique du Nord britannique défendant des idéaux culturels et électoraux concurrents. Au cours de ce processus, les entités législatives d'Amérique du Nord britannique trouvèrent des façons d'émasculer politiquement des individus sur la base du genre, de la race, de l'ethnicité, de la classe, de l'appartenance religieuse et de l'âge. De surcroît, au fur et à mesure que les provinces modifièrent leurs qualifications électorales, les colons devaient s'y retrouver parmi plusieurs lois sur l'octroi du vote en vigueur à un même moment, celles-ci différant selon le palier de gouvernement. Par le biais de l'analyse des transformations législatives de l'admission au suffrage, cette thèse examine les façons dont, tant dans les discours que dans la pratique, les habitants de l'Amérique du Nord britannique contestèrent et codifièrent les idéaux culturels en matière de citoyenneté. Les catégories culturelles étaient extrêmement importantes aux yeux de ces colons, au point où ils les intégrèrent aux structures officielles de la participation politique.

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Introduction

This dissertation examines how British North Americans envisioned electoral enfranchisement across four eastern British North American colonies during the mid-nineteenth-century. Nominally, the electoral franchise refers to the various laws that govern who may vote at a given election. For those who inhabited the united Canadas, New Brunswick, Nova Scotia, and Prince Edward Island, the franchise meant so much more than this narrow definition suggests. Most colonists viewed the franchise not as a right, but as a privilege. Because one's vote helps steer the course of government, British North Americans did not want to offer enfranchisement to just any person. Colonists had to *earn* the political empowerment that the franchise bestowed. They had to *prove* themselves worthy, as individuals, to speak for the public good. The franchise thus acted as a threshold, not only politically but also culturally. Those who met its qualifications – based upon some combination of gender, race, class, ethnicity, religion, and age – became the equal citizens of a broader political community. Those who did not found themselves relegated, legally, to a subservient political status. The following pages explore – both in discourse and in practice – how Canadians, New Brunswickers, Nova Scotians, and Prince Edward Islanders used franchise legislation as a central means to negotiate what citizenship should entail, and whom it should encompass, within a mid-nineteenth-century colonial context. Through the inclusions and exclusions found within electoral franchise laws, British North Americans codified their cultural ideals and embedded them within state structures of political power.

By the late-eighteenth century, the Canadas, New Brunswick, Nova Scotia, and Prince Edward Island had all received representative institutions from Great Britain. To ensure a successful transplant of the British parliamentary system, the Colonial Office had largely imposed the same electoral system employed within the imperial centre. At the time, England still relied upon a variant of the 40-shilling freehold for its franchise. The law stipulated that any person who owned real property worth at least 40 shillings sterling annually could vote at election time. Real estate, according to England's landed elite, physically embodied a voter's individuality, his political independence, and his stake in his country. Although gender-neutral language had technically offered enfranchisement to both male *and* female property-owners, British common law had effectively forbade women from voting at English elections. Only property-owning English*men* voted because only they had the character and fortitude necessary to hold the reins of state. As the British North American colonies consolidated their legislative machinery, they eventually employed different versions of this legislation as well.

British North Americans soon found themselves stuck with their freehold franchises whether they liked them or not. Any alteration first had to meet the approval of the colonial governors. Early governors took a dim view of progressive franchise reform. Only New Brunswick and Prince Edward Island had secured new franchises during the late-eighteenth and early-nineteenth centuries, and only then because their executives requested something more restrictive.[1] Years had to pass before the potential for change. That potential arrived in the

[1] Instead of a 40-shilling freehold, New Brunswick employed a £25 real value freehold as of 1795 (for the province's first election in 1785, the fact that most settlers had not yet received formal grants had resulted in a franchise that permitted all male residents of three months to vote). Those who owned freehold property within a constituency but resided outside of it faced an even steeper £50 real value qualification under the same law. Because of its small population and its peculiar land distribution, Prince Edward Island originally granted the vote in the 1770s to all Protestant men living in the colony. By the 1830s, the Island had synchronized itself with the 40-shilling freehold as well. See: Chief Electoral Officer of Canada, *A History of the Vote in Canada* (Ottawa: Public Works and Government Services Canada, 1997), 13-16. Also see: John Garner, *The Franchise and Politics in*

1840s. The Rebellions in Lower and Upper Canada had ensured that politics could not go on as before. Reaction and reform quickly followed. Municipal self-government emerged first.[2] Responsible government nominally arrived soon after: first in Nova Scotia, New Brunswick, and the Canadas in 1848, and then on Prince Edward Island in 1851.[3] Essentially, responsible government refers to a parliamentary system where executive power resides within the legislature. The governor follows the will of the premier and his cabinet, and the premier and his cabinet adhere to the decisions of the Assembly. In the British North American context, responsible government meant legislative autonomy. The Colonial Office could no longer suppress legislation from London, and colonial governors could no longer interfere with bills they did not like. Any manner of franchise reform could now take place, so long as it met the legislature's approval.

With responsible government, the people of each colony suddenly possessed the power to alter their franchises without imperial intrusion. British North Americans soon questioned whether the 40-shilling freehold truly represented the ideal elector. Aside from the formal exclusion of women – which had occurred across British North America by 1851 – colonists

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British North America, 1755-1867 (Toronto: University of Toronto Press, 1969), 54-55; D.G. Bell, *Early Loyalist Saint John: The Origin of New Brunswick Politics, 1783-1786* (Fredericton: New Ireland Press, 1983), 101-107.

[2] For instance, see: Greg Marquis, "The Contours of Canadian Urban Justice, 1830-1875," *Urban History Review* 15.3 (February 1987): 269-273. Also see: C.F.J. Whebell, "The Upper Canada District Councils Act of 1841 and British Colonial Policy," *Journal of Imperial and Commonwealth History* 17.2 (1989): 185-209. Chapter 4 of this dissertation also discusses local self-government in greater detail.

[3] Phillip Buckner offers the standard account of responsible government in Canada. See: Phillip A. Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1850* (Westport, CN: Greenwood Press, 1985), 290-332. I say "nominally" because New Brunswick fits somewhat awkwardly into Buckner's timeline. Buckner recognizes this himself. While the colony theoretically received responsible government in 1848 alongside Nova Scotia and the Province of Canada, New Brunswick's governor did not fully accept his responsibility to the executive until 1856. For the most complete discussion of this situation, see: Greg Marquis, "Contesting Prohibition and the Constitution in 1850s New Brunswick," in *The Grand Experiment: Law and Legal Culture in British Settler Societies*, eds. Hamar Foster, Benjamin L. Berger, and A.R. Buck (Vancouver: UBC Press for the Osgoode Society, 2008), 237-238. For Buckner's discussion of New Brunswick, see: 306-309.

agreed upon very little when it came to their franchise laws.[4] Franchise reforms nevertheless swept across the eastern provinces throughout the middle decades of the nineteenth century. The resulting legislation varied considerably. British North Americans readily experimented with their electoral franchises as they tried to better account for competing local political and cultural ideals. Constant disagreement – which sometimes turned violent – resulted in repeated franchise amendments. In the process, the British North American legislatures found ways to emasculate inhabitants politically on the bases of gender, race, class, ethnicity, religion, and age. British North America's different levels of government, moreover, created further complications. Municipal franchises did not always match those of the Houses of Assembly, which in turn rarely matched those of the elective Legislative Councils. Enfranchisement at one level offered no guarantee of enfranchisement at another. The collision of these different franchises, and their competing cultural values, formed multiple layers of inclusion and exclusion across the British North American provinces. Colonists had to figure out what that meant in terms of citizenship. No one had an easy answer.

[4] In adhering to variations on the 40-shilling freehold, early-nineteenth-century British North American franchise legislation did not strictly prohibit women from voting. Subsequent chapters will discuss this situation in more detail. For other discussions of the subject, see: Garner, 155-160; Bettina Bradbury, *Wife to Widow: Lives, Laws, and Politics in Nineteenth-Century Montreal* (Vancouver: UBC Press, 2011), 260-288; Gail Cuthbert Brandt, Naomi Black, Paula Bourne, and Magda Fahrni, *Canadian Women: A History*, third edition (Toronto: Nelson, 2011), 113-115. The struggle for women's suffrage in Canada began approximately three decades later. See: Catherine L. Cleverdon, *The Woman Suffrage Movement in Canada*, second edition (Toronto: University of Toronto Press, 1974); Carol Lee Bacchi, *Liberation Deferred?*: *The Ideas of the English-Canadian Suffragists, 1877-1918* (Toronto: University of Toronto Press, 1983).

Historiography

This dissertation draws its most direct inspiration from the historiographies of early enfranchisement and franchise reform found within Canada and Great Britain.[5] For Canadian historians, John Garner's *The Franchise and Politics in British North America* has stood as the standard account of Canada's pre-Confederation franchises for the past half-century. Over the course of its fifteen chapters, the text investigates every alteration to every British North American provincial franchise between 1755 and 1867. Garner leaves no stone unturned. If a bill or law touched upon the franchise – even tangentially – it finds a place within his text. Garner, moreover, does not satisfy himself with mere legislative change. As he rightly argues: "The growth and modification of the franchise cannot be treated purely as a study of change in the technical qualifications. The setting in which the franchise operated and its modifying influence have to be considered" as well.[6] Garner thus devotes his final two chapters to various extralegal manipulations of the franchise: namely, controverted elections and what he calls the "spread of electoral corruption."[7] In terms of sheer breadth, Garner's work remains unmatched. Such comprehensiveness ensures its continued use as a key reference for early Canadian franchise law.[8] The dissertation that follows offers no exception.

That said, *The Franchise and Politics in British North America* has begun to show its age in terms of approach and analysis. The text offers a political history in its purest sense. Legislators manipulated the franchise and British North Americans went along for the ride.

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[5] This is not to say that American histories of the franchise have no place within this dissertation. The most relevant American historiography, however, has tended to follow precedents set first in Great Britain. Footnotes throughout this introductory chapter indicate some noteworthy American works in this regard.

[6] Garner, 177.

[7] Ibid., 214.

[8] Other Canadian historians share the same opinion. Renaud Séguin, for instance, stresses that "[i]l est nécessaire de mentionner que malgré mon désaccord avec certaines de ses interprétations, je ne peux que souligner la qualité de la recherche de cet ouvrage qui en fait, encore aujourd'hui, une référence obligée sur le sujet." See: Renaud Séguin, "Pour une nouvelle synthèse sur les processus électoraux du XIX^{e} siècle québécois," *Journal of the Canadian Historical Association* 16 (2005): 77n3.

Political partisanship meant everything. In Garner's own words: "the colonists and the politicians of British North America…were prone to drift from one franchise to another with little forethought but with sharp sensitivity to shifting pressures and to political advantages."[9] Garner bases this claim on a belief that "the franchise and its extension did not become a political issue of any magnitude in the British North American colonies."[10] To measure magnitude, Garner juxtaposes nineteenth-century England with its embryonic North American colonies. British North America, for instance, never had a Chartist movement.[11] It did not experience a Peterloo or a Hyde Park Riot.[12] It never passed anything as celebrated as the Great Reform Act.[13] British North American relationships with the franchise look positively languid when compared with these earlier English examples.

Garner explains this supposed complacency through the British North American colonial experience. From the very beginning, Garner asserts, British North America's franchises approached "near universality." The 40-shilling freehold "conferred on the colonies of Nova Scotia, New Brunswick, and the Canadas was transformed into virtual manhood suffrage by the abundance of land and the generosity of the Crown in its disposal."[14] By the 1840s, changing land policies meant that free land had become harder to acquire. The franchise reforms of the

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[9] Garner, 10.
[10] Ibid., 3.
[11] For Chartism, see: Gareth Stedman Jones, *Languages of Class: Studies in English Working Class History 1832-1982* (Cambridge: Cambridge University Press, 1983), 90-178; Malcolm Chase, *Chartism: A New History* (Manchester: Manchester University Press, 2007).
[12] For Peterloo, see: Chase, 12-13. For the so-called Hyde Park Riots, see: James Vernon, *Politics and the People*: *A study in English political culture, c. 1815-1867* (Cambridge: Cambridge University Press, 1993), 214. Also see: "The Reform Demonstration in Hyde Park," London *Times*, 24 July 1866, 9; "The Hyde Park Rioters," ibid., 25 July 1866, 5; "The Rioting in Hyde Park," ibid., 9; "The Riots in Hyde Park," ibid., 26 July 1866, 10; "The Hyde Park Rioters," ibid., 27 July 1866, 5.
[13] Chapter 1 of this dissertation discusses the British Reform Act of 1832 in greater detail.
[14] Garner, 4.

1850s supposedly addressed any disenfranchisement that may have resulted.[15] British North America's franchises had thus remained "by no means restrictive" right through to Confederation.[16] This sweeping history leads Garner to his peculiar conclusion: that "the franchise did not become, as in England, the centre of disputation…because *no numerous or important segment of the population was excluded from its exercise*."[17] Colonists apparently did not care about the franchise because, supposedly, everybody had it.

In reality, exclusionary franchise laws disenfranchised thousands upon thousands of British North Americans throughout the mid-nineteenth century. These "unimportant" persons included women, Indigenous peoples, minors, seniors, leaseholders, squatters, seasonal labourers, relief recipients, and anyone who had not sworn loyalty to the British Crown. Garner even highlights many of these disenfranchised groups, sometimes devoting entire chapters to them.[18] He always does so, however, from the perspective of the legislature. If politically marginalized British North Americans had really wanted or deserved the vote, they would have kicked up more of a fuss. Petitions would have rained upon their elected representatives. Legislators would have staked entire careers on their behalf. Because of this apparent non-presence, Garner confers little political agency upon the disenfranchised. He only sees them as interesting when they tried to circumvent the electoral system or when politicians used them in their political games. The franchise acted upon them, and not the other way around.

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[15] Ibid. Garner repeats himself in the same paragraph to emphasize the point: "Franchises which had been restrictive at home became, when transplanted to the British North American colonies, tantamount to manhood suffrage in the circumstances of their new environment."
[16] Ibid., 217n2.
[17] Ibid, 4 (emphasis added). Roman Wasyl Franko, in his dissertation on Ontario's post-Confederation franchises, has also questioned Garner's formulation. According to Franko: "It would be perhaps more accurate to say that there were periodic revisions in the definition of what groups were considered important." See: Roman Wasyl Franko, "Towards Liberal Democracy in Ontario: The Franchise and Policy-Making 1868-1888," PhD dissertation (Queen's University, 1992), 476.
[18] Take, for instance, Garner's seven-page chapter on "Minors, Women, and Indians." See: Garner, 154-161.

By the 1990s, historians of politics and the franchise had started to deconstruct analyses like that of Garner. In England especially, new histories of the vote began to emerge. This scholarship viewed franchise legislation, franchise reform, and electoral participation as a part of broader discussions about power, identity, culture, and political belonging. The earliest of these, coming out of the University of Manchester, addressed the problems of power and agency. In 1989, University of Manchester historian Frank O'Gorman published his groundbreaking work on England's unreformed electoral system prior to 1832. O'Gorman takes great pains to reveal the many ways disenfranchised persons not only participated in Hanoverian elections, but exercised real political power at them as well. Previous historians – John Garner amongst them – had generally placed this sort of extralegal involvement under the category of electoral corruption. Because the disenfranchised had no vote, they had no reason to attend the polls. O'Gorman argues that such characterizations ignore both the local contexts of early elections and the political wills of those who participated.[19] The electoral rituals of Hanoverian England ensured that disenfranchised persons – through their voices *and* their bodies – always had a role to play at election time. Candidates won nominations through vocal supporters and shows of hands. Torchlit processions showed strength in numbers. Authorities even tolerated a modicum of violence as a way to diffuse high political tensions. These traditions emphasized the communal nature of elections at this time. They also revealed the ways disenfranchised persons exercised political agency without having votes themselves. Far from being political nonentities, the disenfranchised had power enough to decide early elections based upon their collective decisions.

[19] Frank O'Gorman, *Voters, Patrons, and Parties: The Unreformed Electoral System of Hanoverian England, 1734-1832* (New York and Oxford: Oxford University Press, 1989), 1-11.

In a later essay, published in 1992, O'Gorman extends his analysis through to 1860. Much of what appeared in his previous work remains.[20] O'Gorman, however, sees a change within English electoral processes by the 1830s. "During the middle third of the nineteenth century," he argues, "the traditional culture of the English election campaign went into decline." The avenues for extralegal participation became fewer and fewer. With the secret ballot and written nominations by 1872, they would disappear altogether. O'Gorman can only offer a few hazy reasons for this shift: namely, the "increasing respectability of the 1832 electorate, the growth of literacy and the development of party organizations."[21] These broad brushstrokes left ample room for further study.

The following year, in 1993, James Vernon published his landmark study of English politics through to the Reform Act of 1867. One of O'Gorman's postgraduate students, Vernon builds upon his supervisor's work by emphasizing the performativity of nineteenth-century English elections. "Then as now," Vernon asserts, "elections were so much more than the psephologists allow, rather they ritually followed a sequence of events which spoke to the disenfranchised as well as the electors, and enabled both to voice their approval or disapproval of, not only the available candidate, but the whole edifice of official politics."[22] Everyone had a role to perform within the electoral "dialogue" between rulers and the ruled. How individuals chose to perform their roles had the potential to subvert or affirm authority.[23] In Vernon's

[20] In O'Gorman's words: "The excitement of an election campaign affected the entire community. Election rituals were designed to appeal to non-voters as well as voters.…[N]on-voters played an active part in the election drama. They were far from acting the part of political fodder for their social superiors." See: ibid., "Campaign Rituals and Ceremonies: The Social Meaning of Elections in England, 1780-1860," *Past & Present* 135 (May 1992): 100.
[21] Ibid., 113-114.
[22] Vernon, 80.
[23] Ibid., 102.

words, "different groups sought to impose themselves and their interpretation of events" through the manipulation of electoral narratives.[24]

Like O'Gorman, Vernon sees a new electoral system coming into effect in the years following 1832. Unlike his colleague, he sees the new system as both regulatory and disciplinary in nature. Parliament had instituted electoral reforms as a means to better manipulate the electoral drama in its favour. Registers of electors, shortened election periods, and the multiplication of polling places – all established by the Reform Act of 1832 – allowed authorities to diffuse the participation of voters and non-voters alike. If "officials [had] usually had the upper hand in shaping the events and meanings of electoral poetics," they now tightened their control in hopes of stifling counter-narratives to their authority. The disenfranchised still had political agency, and they still cared about electoral outcomes.[25] Electoral reforms had simply channeled this collective power, bit by bit, down less politically disruptive paths.

As the Manchester school restored political agency to the legislatively marginalized (and then complicated that agency considerably), another group of English historians took up the franchise from a different perspective. These scholars wanted to better understand why individuals faced electoral enfranchisement or disenfranchisement in the first place, and how others hoped to justify it. England's political historians had certainly asked these questions before. By the mid-1990s, however, historians had sharper theoretical tools at their disposal. More robust cultural histories had emerged in response to those unsatisfied with the "linguistic turn." Race, gender, and class had become more than individually-useful, culturally-constructed categories of analysis.[26] Dissenters aside, historians (like their colleagues in other disciplines)

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[24] Ibid., 99.
[25] Ibid., 99-102.
[26] This sentence draws its inspiration from Joan Scott's work on the concept of gender. See: Joan Wallach Scott, *Gender and the Politics of History*, revised edition (New York: Columbia University Press, 1999).

now viewed these categories as interrelated and interconnected at all times. Cultural identities mutually informed and constituted one another as parts of broader frameworks. As cultural ideals changed over time, cultural hierarchies formed and reformed in the contexts of state, nation, and empire. New definitions of inclusion and exclusion emerged in response to ideas of hegemony. Catherine Hall had marched at the forefront of this cultural history revolution through texts like *Family Fortunes* (with Leonore Davidoff) and *White, Male, and Middle Class*.[27] In 1994, she published the first true cultural history of the franchise as well.

In the essay "Rethinking Imperial Histories," Catherine Hall focuses her attention on England's Reform Act of 1867. Whereas the previous reform of 1832 had enfranchised England's male bourgeoisie, the Reform Act of 1867 extended the vote to "substantial numbers of working men." To do so, it had repealed the monetary property qualifications for urban electoral ridings. Hereafter, urban Englishmen merely needed a stable residence to vote at England's parliamentary elections. Hall argues that, with this change, "a new definition was given to the political nation."[28] The Reform Act of 1867 had divorced England's parliamentary franchise from property ownership for good. Now, cultural identities and cultural hierarchies served to ground national citizenship. As Hall phrases it: "Class, 'race,' ethnicity and gender…provided the lines on which boundaries could be drawn up," and "'race,' gender, labour and level of civilization now determined who was included in and excluded from the political nation."[29] For Hall, these cultural boundaries developed in the context of nation *and* empire. As Parliament debated franchise reform, it also debated constitutional government in Jamaica and

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[27] See: Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class 1750-1850* (Chicago: University of Chicago Press, 1987); Catherine Hall, *White, Male, and Middle Class: Explorations in Feminism and History* (London and New York: Routledge, 1991).
[28] Catherine Hall, "Rethinking Imperial Histories: The Reform Act of 1867," *New Left Review* (November/ December 1994), 7.
[29] Ibid., 10; 29.

the political status of women at home. Black Jamaicans, who "had been condemned to a racialized form of subjecthood," served as ready foils for White, householding, working-class men. To further establish the total independence of White workingmen as citizens, "white British women, of every social class, had been firmly positioned within their separate sphere." The Reform Act of 1867 had thus reconfigured the English nation, in Hall's words, around "the white brotherhood of Britain."[30] A new cultural ideal of citizenship had been created by means of England's franchise law.

As Hall developed her analysis, other English historians formed their own cultural interpretations of English franchise reform. In a 1996 essay, Keith McClelland has offered his own cultural reading of the 1867 Reform Act. (Catherine Hall draws upon this paper in an unpublished form).[31] McClelland wants to better understand "the ways in which the citizen was constructed in terms of gender as well as class."[32] For him, the Reform Act had set two precedents. First, it had "fundamentally modified the system by which property ownership was virtually the sole criterion for the franchise." Second, it had "legitimated a new figure, the working-class citizen."[33] This process of legitimation had not occurred overnight. Reformers had to find ways to separate respectable artisans from ignorant wage-slaves and wage-earning women.[34] In other words, they had to create gendered differences between manly workingmen, unmanly labourers, and women of all social statuses. The Reform Act of 1867, according to McClelland, offered the first legislative attempt to work out these new gendered electoral ideals. Hall and McClelland, alongside Jane Rendall, have since reworked and combined their essays to

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[30] Ibid., 29.
[31] Hall, "Rethinking Imperial Histories," 10.
[32] Keith McClelland, "Rational and Respectable Men: Gender, the Working Class, and Citizenship in Britain, 1850-1867," in *Gender and Class in Modern Europe*, eds. Laura L. Frader and Sonya O. Rose (Ithaca and London: Cornell University Press, 1996), 281.
[33] McClelland, "Rational and Respectable Men," 280-281.
[34] Ibid., 285.

form the only book-length cultural history of the franchise in publication.[35] *Defining the Victorian Nation* still presents the most comprehensive interpretation of England's Second Reform Act to date.[36]

Other temporally broader analyses have since followed those of Hall and McClelland. Later in 1996, Anna Clark published her essay on gender, class, and franchise reform in England from 1832 to 1928. Riffing on many of the same themes as McClelland, Clark minimizes more structural explanations to argue that, "[u]ntil 1918, masculinity was the fundamental basis for citizenship in Britain." She then proceeds to outline the shifting manly ideals that had resulted in England's shifting franchise legislation: from male "propertyholding, to marrying and leading a household, to defending the empire with violence."[37] It took something as cataclysmic as the First World War, Clark concludes, to explode "conventional notions of masculinity" and the "old Victorian notion that only the respectable head of household, firmly established in his community, deserved the vote."[38] More recently, in a 2007 essay entitled "Fit to Fight but Not to Vote? Masculinity and Citizenship in Britain," Sonya O. Rose revisits many of the same cultural themes as Clark. Rose adds that the First World War had not actually given birth to a new gendered conception of citizenship. Instead, it had merely ossified late-nineteenth-century ideals

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[35] American historian John Gilbert McCurdy and English historian Ben Griffin have incorporated elements of this approach to the franchise into their broader studies of citizenship and culture. McCurdy, on the one hand, explores how bachelors rose from the status of social anomaly to respectable citizen within an early-American context. Griffin, on the other hand, investigates nineteenth-century British politics from a distinctly gendered perspective. The franchise, as such, plays a considerable role in his story. See: John Gilbert McCurdy, *Citizen Bachelors: Manhood and the Creation of the United States* (Ithaca and London: Cornell University Press, 2009); Ben Griffin, *The Politics of Gender in Victorian Britain* (Cambridge: Cambridge University Press, 2012).

[36] See: Catherine Hall, Keith McClelland, and Jane Rendall, *Defining the Victorian Nation: Class, Race, Gender and the Reform Act of 1867* (Cambridge: Cambridge University Press, 2000). For Rendall's earlier essay, see: Jane Rendall, "Citizenship, Culture and Civilisation: The Languages of British Suffragists, 1866-1874," in *Suffrage and Beyond: International Feminist Perspectives*, eds. Caroline Daly and Melanie Nolan (Auckland, NZ: Auckland University Press, 1994), 127-150. I have not included Rendall's essay in the broader historiography because it does not emphasize franchise legislation itself. When it does mention the franchise, it relies upon McClelland's work.

[37] Anna Clark, "Gender, class and the constitution: franchise reform in England, 1832-1928," in *Re-reading the constitution: New narratives in the political history of England's long nineteenth century*, ed. James Vernon (Cambridge: Cambridge University Press, 1996), 230.

[38] Ibid., 251-252.

of "imperial masculinity" and the soldier-citizen that had grown out of "[i]mperial priorities, national efficiency, and, later, fears of racial degeneracy."[39] England's 1918 extension of the franchise to servicemen, munitions workers, and their wives and mothers had thus represented the legislative culmination of nearly 50 years of changing cultural ideals.[40] The appearance of these ideals in franchise law reflected their hegemonic status within English definitions of citizenship.

It took until the new millennium for these new approaches to the franchise to find their way into Canada's political historiography. Veronica Strong-Boag published the first of these in 2002. In the same way that Hall, McClelland, and Rendall grounded their arguments in the Reform Act of 1867, Strong-Boag finds her touchstone in Canada's Franchise Act of 1885. The Franchise Act, upon its passage, had established Canada's first fully autonomous federal franchise that applied (more or less) equally across the provinces.[41] Strong-Boag looks to this legislation, and the debates that surrounded it, to better understand how early Canadian legislators conceived of national citizenship from the perspectives of gender, race, and class. "[T]he political elites of the newly confederated nation," Strong-Boag concludes, "were sufficiently in agreement to distinguish between men of European origin, the preferred British subjects, and those – women, Natives, and Asians – whom they designated as properly subordinated."[42] Statute law had thus become the arena where national cultural ideals of gender,

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[39] Sonya O. Rose, "Fit to Fight but not to Vote? Masculinity and Citizenship in Britain, 1832-1918," in *Representing Masculinity: Male Citizenship in Modern Western Culture*, eds. Stefan Dudink, Karen Hagemann, and Anna Clark (New York: Palgrave Macmillan, 2007), 141-142.
[40] Ibid., 145-146.
[41] See: Colin Grittner, "'A statesmanlike measure with a partisan tail': The Development of the Nineteenth-Century Dominion Electoral Franchise," MA thesis (Carleton University, 2009), 91-140. Also see: ibid., "Macdonald and Women's Enfranchisement," in *John A. Macdonald at 200: New Reflections and Legacies*, eds. Patrice Dutil and Roger Hall (Toronto: Dundurn Press, 2014), 27-57.
[42] Veronica Strong-Boag, "'The Citizenship Debates': The 1885 *Franchise Act*," in *Contesting Canadian Citizenship*, eds. Robert Adamoski, Dorothy E. Chunn, and Robert Menzies (Peterborough, ON: Broadview Press, 2002), 90.

class, and race found their most forthright expression. Strong-Boag's cultural reading of Canadian franchise legislation, and the inclusions and exclusions it contained, has helped prompt further questions and suggestions from historians such as Adele Perry.[43] Even so, it has yet to find a true equivalent within Canada's historiography, nineteenth-century or otherwise. (Timothy Stanley's recent work around the Franchise Act of 1885 may offer an exception.)[44] This dissertation takes heed of Strong-Boag's example and runs with it. Instead of looking at just one franchise law, it looks to several from across British North America. The shared goal remains the same, though: to better understand British North American citizenship, cultural politics, and cultural exclusion through the lens of electoral franchise legislation.

The Manchester school has, more recently, found a small place within Canada's nineteenth-century historiography as well.[45] In a 2005 article, Renaud Séguin draws explicitly upon O'Gorman's and Vernon's arguments to press for a more nuanced approach toward nineteenth-century electoral scholarship. While Séguin focuses on nineteenth-century Quebec, his insights hold relevance for the British North American context more broadly. The communal nature of English elections had migrated across the Atlantic alongside England's electoral and franchise laws. Waves of British migration during the nineteenth century only served to reinforce this collective outlook toward electoral processes. Early British North American elections had thus followed many of the same patterns found in Hanoverian and early-Victorian

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[43] See: Adele Perry, "Women, Racialized People, and the Making of the Liberal Order in Northern North America," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*. eds. Jean-François Constant and Michel Ducharme (Toronto: University of Toronto Press, 2009), 287-291.

[44] See: Timothy Stanley, "'The Aryan Character of the Future of British North America': Macdonald, Chinese Exclusion, and the Invention of Canadian White Supremacy," in *Macdonald at 200*, 115-140.

[45] It has also found a place within American historiography, albeit at a slightly earlier date. For example, see: Mary P. Ryan, *Civic Wars: Democracy and Public Life in the American City during the Nineteenth Century* (Berkeley: University of California Press, 1997); Glenn C. Altschuler and Stuart M. Blumin, *Rude Republic: Americans and Their Politics in the Nineteenth Century* (Princeton, NJ: Princeton University Press, 2000). Other Canadian historians, moreover, have looked at other ways disenfranchised British North Americans participated in local political processes. Carol Wilton, for instance, emphasizes petitioning and public meetings. See: Carol Wilton, *Popular Politics and Political Culture in Upper Canada, 1800-1850* (Montreal and Kingston: McGill-Queen's University Press, 2000), 223.

England. While franchise laws may have formally circumscribed electoral involvement, local customs (unique to each region or community) allowed ample room for non-voter participation. Séguin goes so far as to argue "[l]'autorité de « l'usage du pays » rivalisait souvent avec le code électoral."[46] To truly understand British North American elections, then, historians must always find ways to include "les dynamiques locales dans les processus électoraux."[47]

British North American electoral traditions and rituals, of course, did not exist inside political or cultural vacuums. As in England, colonial authorities eventually sought ways to control non-voter electoral participation. British North Americans themselves soon witnessed increasingly centralized and bureaucratized electoral processes.[48] Even so, Séguin does not see these colonial attempts at state formation as immediately successful. "Malgré les efforts des autorités centrales," he asserts, "les communautés rurales semblent conserver, jusqu'aux années 1850, une autonomie notable en ce qui concernes le déroulement de la campagne électorale et de l'élection."[49] Disenfranchised colonists, it would then seem, took just as much interest in local elections as their disenfranchised cousins in England. Local customs allowed them to wield just as much political power as well. Historians such as Dan Horner and George Emery have applied similar approaches to the study of early Canadian elections. While Horner asserts that "those who did not qualify for the franchise possessed something of a collective vote" in 1840s Montreal, Emery argues that in Oxford County, Ontario, "non-electors had a marginal role in

[46] Séguin, "Pour une nouvelle synthèse," 83.
[47] Ibid., 100.
[48] Ibid., 98. In this respect, Séguin draws upon earlier work by Allan Greer and Ian Radforth on state formation in mid-nineteenth-century Canada. See: Allan Greer and Ian Radforth, introduction to *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, eds. Allan Greer and Ian Radforth (Toronto: University of Toronto Press, 1992), 3-16.
[49] Ibid., 100.

elections during [his] period of study (1837-75)."[50] This dissertation follows the path set by these authors. It assumes that all British North Americans took something of an interest in their electoral statuses; it treats both the enfranchised and the disenfranchised as political actors; and, it seeks to reveal how disenfranchised persons empowered themselves in the wake of British North America's constantly changing franchise laws. The franchise may have helped delimit electoral participation, but those who did not fit its cultural ideals still had ways to make themselves heard.

Themes and contributions

At its most basic level, this dissertation offers a new perspective on the electoral franchise and electoral franchise reform in mid-nineteenth-century British North America. It highlights how colonial experiments with franchise legislation found themselves inextricably linked to locally-contested cultural values and hierarchies. This is not to say that partisan politics played no role. They undoubtedly did, and continued to do so as political parties congealed into the 1860s. Partisan pressures, however, found themselves repeatedly expressed and channeled through a variety of cultural categories. Franchise debates always turned upon differing ideas of gender, class, race, ethnicity, religion, and age (all born out of local circumstances). Legislators' fleeting conclusions found themselves codified within local franchise statutes. Through franchise law, legislators, in essence, put cultural beliefs into practice in one of the most formal

[50] Dan Horner, "Taking to the Streets: Crowds, Politics and Identity in Mid-Nineteenth-Century Montreal," PhD dissertation (York University, 2010), 226; George Emery, *Elections in Oxford County, 1837-1875: A Case Study of Democracy in Canada West and Early Ontario* (Toronto: University of Toronto Press, 2012), 172.

ways possible: they offered official political participation to those who fit certain cultural archetypes and they withheld it from those who did not. How British North Americans responded – whether verbally, physically, or electorally – offers direct commentary as to their own cultural values and the cultural values espoused within their franchises. The following chapters proceed through legislative genealogies to emphasize both the cultural saturation of franchise law and the legislative working-out of cultural hierarchies as they changed over time.

This dissertation draws upon the cultural anthropologist Clifford Geertz (and his subsequent commentators) to structure its understanding of culture and cultural analysis. Geertz's "concept of culture," as he describes it, "is essentially a semiotic one." If "man [sic] is an animal suspended in webs of significance that he himself has spun," then Geertz sees culture as the webs themselves.[51] From this perspective, culture is the world of meaning in which we have surrounded and entangled ourselves. Culture does not exist solely within individual human minds because meaning does not exist solely within individual human minds. It is instead something public, something shared, something created, something acted out, and something acted upon.[52] Put differently by the historian Simon Gunn, culture consists of "complex networks of interacting discourses, socially located and permeated by forces of conflict and power."[53] Investigations of culture, historical or otherwise, look to these networks or webs (and the strands that comprise them) to understand their forms, purposes, and interactions within human lives.[54] Going beyond proofs of so-called social construction,[55] these analyses seek to

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[51] Clifford Geertz, *The Interpretation of Cultures: Selected Essays*, 2000 edition (New York: Basic Books, [1973] 2000), 5.
[52] Ibid., 10;12. Also see: Richard A. Shweder, "Cliff Notes: The Pluralisms of Clifford Geertz," in *Clifford Geertz by His Colleagues*, eds. Richard A. Shweder and Byron Good (Chicago and London: The University of Chicago Press, 2005), 2.
[53] Simon Gunn, *History and Cultural Theory* (Harlow, UK: Pearson Longman, 2006), 81.
[54] In the words of anthropologist James Peacock, Geertz contributes "[m]ost importantly, a concept of culture and a demonstration of the importance of culture in life as a whole and especially as a way of defining meaning and

"[sort] out the structures of signification…and [determine] their social ground and import."[56] Phrased somewhat differently, "the task of the student of culture is to peel back the layers of meaning in which actions and events are encased, to decipher and redescribe them."[57] Amongst these layers or strands, this dissertation views categories like gender, race, class, ethnicity, religion, and age as central. Not only do they act as main components within societal webs of significance, but they also help shape those webs and help order their contents.[58]

Geertz also sees a potential danger in cultural analysis. By looking for ever-deeper shared meaning, students of culture might "lose touch with the hard surfaces of life – with the political, economic, stratificatory realities within which men [sic] everywhere are contained – and with the biological and physical necessities on which those surfaces rest…" To prevent cultural analysis from turning into "a kind of sociological aestheticism," Geertz offers two suggestions.[59] First, he recommends an emphasis on the local, the small-scale, and the particular. By narrowing one's focus, one does not "generalize across cases but…generalize[s] within them."[60] Some historians have interpreted Geertz's stress on the local as a call to microhistory.[61] This dissertation sets its sights slightly wider to four mid-nineteenth-century British North American provinces. Even so, the largest of these provinces – the Province of Canada, when taken as a whole – still had a population of under three million during the 1860s.

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shaping meaning in the midst of action and change." See: James Peacock, "Geertz's Concept of Culture in Historical Context: How He Save the Day and Maybe the Century," in *Clifford Geertz by His Colleagues*, 54.

[55] For a critique of this term, see: Ian Hacking, *The Social Construction of What?* (Cambridge, MA, and London: Harvard University Press, 1999), 39-40.

[56] Geertz, *The Interpretation of Cultures*, 9.

[57] Gunn, 60.

[58] According to Simon Gunn: "Geertz's approach is concerned with the small-scale and the detailed instance rather than with grand concepts such as power and culture. This is not because the latter are irrelevant to cultural analysis…but because he was not concerned to construct general theories on the basis of examples, but to use such examples to illuminate the differences between cultures…" Nothing here precludes the understanding of cultural categories at a more localized level. See: ibid., 60-61.

[59] Geertz, *The Interpretation of Cultures*, 30.

[60] Ibid., 26. Also see: Gunn, 61; Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983).

[61] For a discussion of this interpretation, see: Gunn, 63-64.

Prince Edward Island's population rested below 100,000. Geertz himself sees these numbers as well within the local as he defines it.[62] Second, Geertz recommends that scholars "train such [cultural] analysis on such [political, economic, and stratificatory] realities and such necessities in the first place."[63] While Geertz has rooted his own analyses in number of topics – from nationalism and violence to death and time – this dissertation turns to formal political structures. By grounding its study of culture in legislative politics, and the electoral franchise more specifically, this dissertation offers another angle through which to parse British North American contests over cultural norms, values, and hierarchies.[64]

In taking this cultural approach to the study of British North American franchise legislation, this dissertation seeks to do more than simply rework John Garner's conclusions. It also strives to further re-imagine mid-nineteenth-century British North American politics and their meaning within colonists' everyday lives. In doing so, this dissertation participates in and contributes to a new political history that has emerged over the past two decades. Still conceptually amorphous, the new political history differs from the old in both its goals and its subject matter.[65] New political historians interest themselves in the politics of culture, as opposed to political culture. According to them, political debates, political decisions, and political actions serve as windows into how people of the past socially and culturally constructed the world around them. Theoretical and methodological approaches borrowed from social, intellectual, cultural, and legal histories allow the new political historian to open these windows to their fullest. While ornery old politicians and musty legislative benches still figure largely,

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[62] See: Clifford Geertz, *Available Light: Anthropological Reflections on Philosophical Topics* (Princeton and Oxford: Princeton University Press, 2000), 137. Also see: Shweder, "Cliff Notes," 2.
[63] Geertz, *The Interpretation of Cultures*, 30.
[64] In doing so, this dissertation plays into an idea that "[t]he thrust of both cultural theory and cultural history has…been to denaturalize those categories that appear most fundamental and transhistorical: gender, sex, the person." One could of course add race, class, ethnicity, religion, and age to this list. See: Gunn, 149-150.
[65] For a slightly different phrasing, see: Bradley Miller, "Emptying the Den of Thieves: International Fugitives and the Law in British North America/Canada, 1819-1910," PhD dissertation (University of Toronto, 2012), 6-7.

they have lost their monopoly over political personality and space. A constant dialogue occurred (and continues to occur) between the high politics of the legislature and the lower social negotiations of the public square, the general store, and the private home. The new political history seeks out these conversations – both inside and outside the legislature – to better understand past political and cultural worldviews.

Ideas of citizenship and the state have central roles to play within this new political history.[66] As American historian William Novak has argued, historical studies of citizenship (and the forms of membership it entails) have the potential to cross disciplinary boundaries for political historians especially. More specifically, "[c]itizenship directs attention precisely to that point where bottom-up constructions of rights consciousness and political participation meet the top-down policies and formal laws of legislatures, courts, and administrative agencies." It moreover "deals with what has become a preeminent social and political question of our time – inclusion and exclusion based on identity."[67] Because of this latter point especially, cultural historians of the franchise have particularly recognized the potential of citizenship as a conceptual framework. From Catherine Hall in 1994 through to Sonya Rose in 2007, cultural histories of the franchise have continued to revolve around ideas of citizenship and its definitions in practice. Electoral enfranchisement, of course, did not (and does not) represent the sole means of constructing citizenship. Canadian historians have pointed to other nineteenth-century markers as well, including the payment of taxes, jury duty, and rational participation within the

[66] As Sonya Rose has neatly phrased it, citizenship "is a multidimensional framework that provides the basis upon which people can make claims on the political community concerning rights and duties, political and ethical practices, and criteria for membership. And it is on the basis of the discursive framework of citizenship that the state or community can expect or demand reciprocity from its members." See: Rose in *Representing Masculinity*, 133.

[67] William J. Novak, "The Legal Transformation of Citizenship in Nineteenth-Century America," in *The Democratic Experiment: New Directions in American Political History*, eds. Meg Jacobs, William J. Novak, and Julian E. Zelizer (Oxford: Princeton University Press, 2003), 85.

public sphere.[68] Within the realm of citizenship, however, electoral enfranchisement offers perhaps the most explicit points of contact between a population and the state. The franchise thus offers an important lens through which to understand negotiations of citizenship and the cultural identities of those included in and excluded from imagined political communities, whether in British North America or elsewhere.

One might point out, of course, that the idea of citizenship presents certain problems within a British North American context. British North America did not technically have citizens: it had subjects of the British Crown. The distinction stems from individuals' loyalties. British North American colonists, in the words of Robert Bothwell, "ow[ed] their allegiance to monarchs and not republics or city-states."[69] In both instances, loyalty conferred a series of legal advantages or privileges (as well as duties). For the subject, however, the Queen or King bestowed these privileges directly: privileges did not derive from one's membership within a particular community. Some historians have emphasized these distinctions as both revealing and crucial within a British North American context.[70] Perhaps they were, at least from a legal or epistemological standpoint. British North Americans certainly did not belong to any sort of unified national entity. Colonists, as Bothwell relates, "were not equal in political rights to their fellow-subjects in Great Britain, as long as they resided in the colonies."[71] Even so, mid-nineteenth-century British North Americans readily employed the language of citizenship in

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[68] For example, see: Elsbeth Heaman, "'The Whites are Wild about It': Taxation and Racialization in Mid-Victorian British Columbia," *Journal of Policy History* 25.3 (July 2013): 357-360; R. Blake Brown, "Three Cheers for Lord Denham: Reformers, the Irish, and Jury Reforms in Nova Scotia, 1833-1845," *Journal of the Canadian Historical Association* 16 (2005): 139-167; Jeffrey L. McNairn, *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854* (Toronto: University of Toronto Press, 2000), 232-233.

[69] Robert Bothwell, "Something of Value? Subjects and Citizens in Canadian History," in *Belonging: The Meaning and Future of Canadian Citizenship*, ed. William Kaplan (Montreal and Kingston: McGill-Queen's University Press, 1993), 27.

[70] As Ian McKay points out, "there were legally, revealingly, and crucially, as yet no Canadian 'citizens.'" McKay unfortunately does not expand any further on his statement. See: Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," *Canadian Historical Review* 81.4 (December 2000): 634.

[71] Bothwell, "Something of Value?," 33.

reference to themselves and their neighbours. Inhabitants viewed themselves, and described themselves, as citizens of their respective provinces, cities, and municipalities. British subjecthood represented but one step toward this greater idea of citizenship and whatever privileges and duties it entailed. In Bothwell's words, "[e]ach colony decided…whom it would admit to citizenship."[72] Citizenship in one colony did not necessarily confer citizenship in another; and, the "values of colonial citizenship, the benefits that membership in the colonial community conferred, were different from those of the mother country."[73]

Bothwell's essay, while helpful, offers only an entry point into the historical study of Canadian citizenship. Ian McKay has argued that the fuller "history of 'citizenship' remains largely unwritten in Canada."[74] That situation is changing. McKay himself has offered the concept of liberalism as a means to access the history of citizenship in Canada. In an influential essay on "The Liberal Order Framework," McKay has re-imagined Canada as a historically-specific liberal project of rule.[75] This bourgeois liberal project, which began after the Canadian Rebellions of 1837 and 1838, sought "to extend across time and space a belief in the epistemological and ontological primacy of the category 'individual.'" Three central principles served to guarantee, protect, and reproduce the individual's independence (or, in other words, individuality) within the liberal order: liberty, equality, and property. Liberal individuals have the natural right to do what they want (within the scope of the law); they have equal access to this right; and, they may exercise it to accumulate real and personal property. McKay goes on to argue that nineteenth-century Canadian liberalism weighed these tenets hierarchically. Without the rational self-possession and self-sufficiency granted and confirmed by real property, a person

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[72] Ibid.
[73] Ibid., 34.
[74] McKay, "The Liberal Order Framework," 634n38.
[75] Ibid., 620-621.

could never truly secure his or her independence in relation to others. Canada's liberal order thus placed "formal equality on the bottom and property at the top" in terms of ideological importance. McKay sees the political inequalities of nineteenth-century Canada as stemming from this hierarchical formulation of liberal values: a formulation that, according to him, quickly became hegemonic in the years following 1840. Those without property faced subordination as "deficient individuals" and found themselves precluded from "the burdens and responsibilities of full individuality." For McKay, then, liberal citizenship refers to a form of political belonging accessed first and foremost through the formal acquisition of landed property. Because only property owners had the capacity for full citizenship, only they deserved a vote within the Canadian liberal order.[76]

More than anything, McKay's thesis has challenged Canadian historians to see (or to re-see) their works as part of a broader intellectual picture.[77] Now that we better know what to look for, historians have discovered liberal fingerprints all over nineteenth-century British North America and Canada. McKay's assertion that a property-oriented liberalism defined nineteenth-century Canadian citizenship has proven more contentious. Several scholars have already commented on the rigidity of McKay's propertied framework and that it may only account for one strain of Canadian liberal thought. Jeffrey McNairn, for instance, has questioned how McKay defines and weighs Canada's liberal order. A "more pluralized view of liberalism," he suggests, "may still surprise us" in what it reveals. Namely, "[s]uch a history 'would reconstruct a variety of Canadian' liberalisms as, 'in a sense a kind of experiment,' each grappling with the

[76] Ibid., 623-625.
[77] As Michel Ducharme and Jean-François Constant argue: "McKay's work is, first and foremost, an aggressive and original call to study the establishment of the liberal order in Canada in a way that responds to the evolution of Canadian historiography during the last forty years." See: Michel Ducharme and Jean-François Constant, "Introduction: A Project of Rule Called Canada – The Liberal Order Framework and Historical Practice," in *Liberalism and Hegemony*, 21.

'recurrent problems' it faced in its opposition in competing ways of seeing the world."[78] McNairn's broader work in this regard offers a counterpoint to McKay's propertied liberal order. If McKay points to propertied independence as central to early Canadian citizenship, McNairn stresses intellectual independence as its growing alternative. An emergent public sphere (at least in Upper Canada) insisted "on the irrelevance to political standing of most differences arising from such characteristics as occupation, religion, and national origins."[79] Informed opinion, according to those who championed deliberative democracy, meant more in terms of political independence than any amount of land one possessed. Property may have reigned supreme at the polls before responsible government, but it did not necessarily mean that propertied conceptions of citizenship were hegemonic, or even popular.

Robert McDonald has similarly questioned McKay's pan-Canadian propertied liberal order. Taking a page from limited identities, he urges historians to narrow the scopes of their reconnaissance and to look for regional variants of Canadian liberalism.[80] Local conditions and local circumstances, McDonald argues, may have resulted in different "dialogue[s] within the liberal family of values and beliefs."[81] Instead of valorizing property first and foremost, some British North Americans may have viewed liberty or equality as far more important when defining colonial citizenship. The tensions between different liberal ideologies may have thus worked themselves out differently from place to place. A liberalism based upon real estate, for example, offered little to colonists who had inadequate access to good land. Those excluded

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[78] Jeffrey L. McNairn, "In Hope and Fear: Intellectual History, Liberalism, and the Liberal Order Framework," in *Liberalism and Hegemony*, 86.
[79] Ibid., *The Capacity to Judge*, 436.
[80] For the original articles, see: Ramsay Cook, "Canadian Centennial Celebrations," *International Journal* 22.4 (Autumn 1967): 659-663; J.M.S. Careless, "Limited Identities in Canada," *Canadian Historical Review* 50.1 (March 1969): 1-10. Also see: P.A. Buckner, "'Limited Identities' Revisited: Regionalism and Nationalism in Canadian History," *Acadiensis* 30.1 (Autumn 2000): 4-15.
[81] Robert McDonald, "'Variants of Liberalism' and the Liberal Order Framework in British Columbia," in *Liberalism and Hegemony*, 339.

from property ownership altogether – whether legally, customarily, or financially – had similarly little to celebrate. Situations such as these paved the way for potentially more democratic forms of belonging based upon different combinations of cultural ideals.

By emphasizing liberty or equality over property, some regional liberalisms may have proven more democratic than others. Even so, one cannot truly classify nineteenth-century British North America or Canada as democracies. Adele Perry and Robin Jarvis Brownlie remind us that even the most inclusive liberal order either excluded or repulsed the majority of British North Americans and Canadians. Perry, for her part, urges historians "to better acknowledge the pervasively gendered and racialized character of the liberal order and understand that it rarely functioned in straightforward terms."[82] Liberal theory itself, she argues, pivoted on "the privatization of women and the relegation of non-western peoples to a different space of humanity and political life."[83] British North Americans and Canadians, from the outset, had built their liberal order around the twin concepts of imperialism and patriarchy. No matter what privileges colonists may have ascribed to landed property, they had coded their liberal ideal as both White and male. Black Canadians, Asian Canadians, Indigenous peoples, and women of all backgrounds had their individuality preconditioned, restricted, or denied so as to fully demarcate this White male liberal subject.[84]

Herein, however, lies the paradox of the liberal order. If the liberal project sought to exclude, it equally sought to assimilate. Brownlie emphasizes this point in particular with regard to Canada's First Nations population. The Canadian state, she argues, "sought to turn culturally distinct, communally oriented opponents into individualistic, private-property-owing liberal subjects." Although most First Nations peoples "sought separate identities, group rights, and

[82] Perry, "Women, Racialized People, and the Making of the Liberal Order," in ibid., 291.
[83] Ibid.
[84] Ibid., 275.

distinct property regimes that stood in direct contradiction to a homogenizing liberalism," not all Indigenous men chose to resist.[85] Brownlie points out that "Aboriginal individuals at various times have embraced different levels of assimilation."[86] By doing so, these individuals acquired what Brownlie terms White status within Canadian society (where Whiteness acted as "both a shorthand for full citizenship and a prerequisite for it.")[87] While such a status may have conferred a complete set of constitutional privileges, it did little to alter lived realities of racial hierarchy.[88] As Brownlie frames it, then, assimilation and exclusion lived in constant tension with one another within Canada's liberal order. First Nations peoples who embraced liberal citizenship, alongside other racialized groups, had their individuality simultaneously confirmed (legally) and questioned (culturally) when placed beside the White ideal. Although Brownlie does not overtly distinguish between racialized men and racialized women, the latter would have found themselves subordinated doubly in terms of both gender and race. So long as the privatization of White women placed them outside the liberal order, racialized women would suffer the same exclusion as well.

This dissertation builds on the work of scholars like McKay, McNairn, McDonald, Perry, and Brownlie to further reflect upon the contested nature of citizenship across mid-nineteenth-century British North America. Liberal propertied ideals, without a doubt, found significant support at every level of government and within every British North American colony. In some places, this property-based liberalism would indeed dominate ideologically when it came to defining citizenship. Yet, these same propertied ideals always had their detractors. No matter where one travelled in British North America, one always found colonists who "reasoned

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[85] Robin Jarvis Brownlie, "A Persistent Antagonism: First Nations and the Liberal Order," in ibid., 299; 315.
[86] Ibid., 315.
[87] Ibid., "'A better citizen than lots of white men': First Nations Enfranchisement – an Ontario Case Study, 1918-1940," *Canadian Historical Review* 87.1 (March 2006): 47.
[88] Ibid., 49.

otherwise."[89] Their strength and their numbers depended largely upon the human and physical geographies unique to each province. Sometimes these alternative conceptions of citizenship won the day and severed the connections between property, independence, and formal political participation. At other times these new visions won out, only to see the links between property and citizenship re-established soon after. In all cases, shifting conceptions of gender and race – alongside other cultural categories such as class, ethnicity, religion, and age – served to delimit political inclusions just as thoroughly as landed property ever would. A glance towards mid-nineteenth-century franchise law exposes these deep disagreements surrounding British North American citizenship as colonists sought to form and re-form their states around competing sets of cultural ideals.

Sources, methodology, and structure

The study of enfranchisement in mid-nineteenth-century British North America poses two challenges in particular when it comes to source material. The first has to do with geography. Canada is a big country. Regional differences abound: not only from province to province, but often from county to county or parish to parish. The second has to do with document creation and preservation. Comprehensive government recordkeeping had only begun to emerge in the British North American provinces during the mid-nineteenth century. Official transcripts of parliamentary debates (the traditional source for political historians) only appeared

[89] See: Ian McKay, *Reasoning Otherwise: Leftists and the People's Enlightenment in Canada, 1890-1920* (Toronto: Between the Lines, 2008), 4-10

around this time. Electoral records, as routinely generated government documents, often found themselves routinely destroyed or misplaced once elections ended. Poll books frequently went missing, whether purposely or through indifference. The relative scarcity of archival documents, especially polling records for the earliest years, demands a creative use of what survives. Legal statutes, legislative reports, political papers, personal accounts, court transcripts, tax records, and period newspapers provide the bulk of the material for this dissertation. The local press in particular serves a double role. Not only does it contain a range of regional editorial opinion; it also offers reports of legislative debates at a time when official copies did not always exist. These sources, when combined, open something of a window into how British North Americans, both inside and outside the legislature, felt about their franchises and the changes made to them.

This dissertation proceeds geographically and thematically to account for those British North American colonies that had received representative institutions by the turn of the nineteenth century, and it does so for three levels of government. It broadly takes the mid-nineteenth century as its temporal framework. Canadian historians sometimes refer to this timeframe as the Union period (1840-1867). At one end, one finds the union of the Canadas in the wake of the Lower and Upper Canadian Rebellions. At the other, one finds the formation of a federal state that soon included the four provinces discussed within this dissertation. The chapters that follow fall variously within these three or so turbulent decades. Some begin earlier chronologically (such as Chapters 1 and 4). Some stretch further toward the turn of the twentieth century (such as Chapter 3). The franchise laws themselves – and the heated debates that surrounded them – have guided these decisions.

The first three chapters explore the various franchises implemented for British North America's Houses of Assembly. Chapter 1 examines the property-based franchises of the United

Canadas and New Brunswick. The provinces of Upper Canada, Lower Canada, and New Brunswick – like most other British North American provinces – had received variations on the English 40-shilling freehold franchise by the end of the eighteenth century. For the Canadas, this meant a 40-shilling freehold qualification for the counties and a £5 freehold/£10 leasehold qualification for towns and villages. For New Brunswick, this translated into a £25 clear value freehold franchise for residents and a £50 clear value freehold franchise for non-residents. Even after responsible government, and the legislative autonomy it granted, Canada and New Brunswick retained variants of these earlier property-based franchises. British antecedents and the general availability of land help to explain this adherence to propertied liberal values.

Moving eastward, Chapter 2 investigates Nova Scotia's rapidly changing franchise legislation between 1851 and 1863. According to Nova Scotia's original franchise law, any woman or man who met the province's property qualification could technically vote at colonial elections. With responsible government in 1848, Nova Scotians quickly challenged this ideal. Multiple conflicting definitions of citizenship emerged, each endorsing a particular gendered ideal as mediated by race and class. In 1851, the province codified the model citizen as male through women's disenfranchisement and upheld the community-minded ratepayer as the manly ideal. At the same time, it politically emasculated Black Nova Scotians. After massive electoral corruption, the colony experimented with legislation that claimed to enfranchise all men as potential patriarchs. Poorer men and First Nations peoples, however, found themselves excluded. Further corruption prompted further reconceptualization and by 1863 Nova Scotia upheld the prosperous male property-owner as the archetypal citizen. As Nova Scotians struggled over these conflicting definitions of citizenship, franchise law became the makeshift laboratory in which to test their suitability.

Chapter 3 examines another experiment with the electoral franchise, but this time on colonial Prince Edward Island. Responsible government had reached the Island by the winter of 1851. Two years later, in 1853, Islanders moved away from a property-based franchise to one grounded in statute labour. So long as a man performed his annual four days' work on the public roads – something required of all men anyway – that man could vote at elections to the province's Legislative Assembly. Instead of heralding the male property owner, this new law championed the man who used his labour to serve and improve his community. Because of limited land distribution, liberal ideals of manliness based upon property ownership fit local conditions poorly.[90] A statute labour franchise better reflected the cultural ideals upheld by Prince Edward Island's unpropertied majority. Unable to find a more suitable alternative, Islanders clung to this franchise into the earliest years of the twentieth century.

The dissertation's final two chapters shift their attention away from British North America's lower houses and toward other levels of colonial governance. Chapter 4 focuses on the municipal sphere and discusses municipal enfranchisement from a Montreal perspective. As British North America's metropolis, as well as one of its earliest incorporated cities, both political leaders and ordinary colonists alike looked to Montreal to figure out how, and for whom, municipal government needed to work. Imperial authorities had originally conceived of municipal enfranchisement as a means for political education. Broad electoral participation served to school as many people as possible in the ways of constitutional self-government. These ideas butted up against a British North American belief that municipal corporations should act solely for their propertied stakeholders. As Montrealers debated these principles, local

[90] Taking its direction from Gail Bederman, this chapter employs the term 'manliness' instead of 'masculinity.' Bederman argues that 'masculinity' was not commonly used until the end of the nineteenth century and only then to describe a form of manliness that idealized rough behaviour. This dissertation supports Bederman's contention in the Canadian context. See: Gail Bederman, *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago and London: The University of Chicago Press, 1995), 16-20.

ethnic, religious, and political tensions erupted into outrageous displays of street violence on municipal election days. Through municipal electoral participation, Montrealers from all walks of life probed and tested the limits of early Canadian citizenship. The city's rapidly changing municipal franchise reflected the contentious outcomes of these tests.

The dissertation then ends in Chapter 5 with a study of British North America's Legislative Council franchises. By the 1850s, the British North American colonies had received imperial permission to establish elective Legislative Councils. Debates ensued across the colonies as to whether they should act on London's consent. The Province of Canada did so in 1856. Prince Edward Island did the same in 1862. New Brunswick came close in 1851. Nova Scotia came even closer in 1858. A new group of forward-thinking conservatives had particularly supported the idea of transforming Legislative Councils into elected bodies. Responsible government had stripped British North America's upper houses of much of their former purpose. Instead of protecting British interests and checking democratic excess, Legislative Councillors now served the political parties that appointed them and rubberstamped party legislation. Mixed constitutional government had lost the balance of powers that guaranteed the rights of all colonists. The elective principle, these new conservatives believed, would wrest Legislative Councils away from the colonial executives, rebalance the colonial constitutions, and rectify the deficiencies of responsible government. High property qualifications for Council franchises would restore the importance of wealth, class, and social status when it came to framing British North American law. Through Legislative Council reform and legislation, the chapter serves as a flipside to Ian McKay's liberal order framework and examines how mid-nineteenth-century conservatives responded to proposed liberal projects of rule.

These chapters, when taken together, reveal the extent to which mid-nineteenth-century British North Americans took their citizenship seriously. Colonists contested it; they experimented with it; they fought for it; and, they viewed it through the lens of their own shifting cultural values. Electoral franchise laws presented British North Americans with a way to demarcate their places within a colonial framework, and to question for whom their colonial states ought to work. These same laws offer historians a window into these important negotiations, and how standards of citizenship have changed over time.

Chapter 1

Propertied Enfranchisement in the Province of Canada and New Brunswick

If a propertied definition of citizenship prevailed anywhere in British North America, it did so within its two largest provinces: the United Canadas and New Brunswick. Much like Nova Scotia, both the Canadas and New Brunswick had received property-based electoral franchises over the course of the eighteenth century. These franchises, which both built off of the same 40-shilling legislation, had remained more or less stable through to the late 1840s when Great Britain confirmed responsible government. With executive responsibility, British North Americans wielded greater control over their provincial franchises than ever before. In the Province of Canada, the responsible system took hold almost immediately. Between 1848 and 1867, Canada's provincial elections operated under no fewer than five different franchise laws (those of 1849, 1853, 1854, 1855, and 1858). In New Brunswick, elements of the responsible system arrived more in fits and bursts.[1] Over the same nineteen years, New Brunswickers amended their franchise legislation only once (in 1855). No matter how many reforms these provinces made or did not make, one aspect remained constant: both refused to waver from provincial franchises grounded in real property. British antecedents, when combined with a perceived abundance of land, gave Canadians and New Brunswickers little reason to experiment with more fundamentally democratic forms of political belonging.

[1] Again, see: Greg Marquis, "Contesting Prohibition and the Constitution in 1850s New Brunswick," in *The Grand Experiment: Law and Legal Culture in British Settler Societies*, eds. Hamar Foster, Benjamin L. Berger, and A.R. Buck (Vancouver: UBC Press for the Osgoode Society, 2008), 237-238.

Part I

Propertied Enfranchisement before Responsible Government

The British parliament had employed a property-based franchise for centuries before exporting it to British North America. William Blackstone, in his 1765 *Commentaries on the Laws of England*, traced the 40-shilling freehold as far back as the mid-fifteenth century and the early reign of Henry VI. No matter the era, the underlying principle remained more or less the same. As Blackstone explained it, "[t]he true reason of requiring any qualification, with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other."[2] Originally, this formulation had grown out of feudal notions of freedom and vassalage. Parliamentarians of the 1430s had chosen the 40-shilling freehold "because that sum would...furnish all the necessaries of life, and render the freeholder, if he pleased, an independent man."[3] Independence, in this case, was meant quite literally. Besides the landed gentry, peasants who held lifetime or hereditary 40-shilling freeholds earned the title of freeman. Their freedom stemmed from their sole fealty to the king. Peasants who did not possess freeholds – otherwise known as villeins – lived as vassals to their manor lords. Villeins belonged to a given estate as chattel and remained tied to it for life. If a lord sold his villein's tenement, then the villein was sold along with it.[4] Just like the estate itself,

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[2] William Blackstone, *Commentaries on the Laws of England*, book I, fourth edition (Oxford: The Clarendon Press, 1770), 171.
[3] Ibid., 172.
[4] Michael Prestwich, *Plantagenet England, 1225-1360* (Oxford: Clarendon Press, 2005), 446. Also see: Gerald Harriss, *Shaping the Nation: England, 1360-1461* (Oxford: Clarendon Press, 2005), 214-215. Blackstone also qualifies that "copyholders were [at this time] little better than villeins, absolutely dependent on their lord." See: Blackstone, book I, 172.

a villein's will was nominally that of his lord. Landed gentry thus spoke for their vassals as part of their total estate.

By Blackstone's time, feudalism in England had long since fallen apart. The Tenures Abolition Act of 1660 had confirmed large landholders' absolute title to their estates.[5] Former villeins found themselves separated from their landholdings and, to an extent, thrust into waged labour (where they either formed a "rural proletariat" or a class of "common-field peasants" depending on who one asks).[6] With vassalage abolished, freedom and independence no longer had the same literal connotations as before. Despite these changes, property-based franchises remained fully in force. The 40-shilling freehold had continued to operate in the counties to reflect the nation's "landed interest."[7] Freeman and freeholder franchises, moreover, operated in nearly half of England's 203 boroughs as well (alongside burgage franchises, where enfranchisement came attached to specific properties, and corporation franchises, where propertied councilmen selected parliamentary representative themselves).[8] Ideas of landed independence had thus lived on. Only now they came tempered by new justifications, namely a commercial understanding of human relations and a Protestant's view of human nature.

In an ideal world, Blackstone argued, "every member of the community, however poor, should have a vote in electing those delegates, to whose charge is committed the disposal of his

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[5] England, "An Act takeing away the Court of Wards and Liveries and Tenures in Capite and by Knights Service and Purveyance, and for settling a Revenue upon His Majesty in Lieu thereof" (12 Car. II, c. 24), section 4. Also see: Christopher Hill, *Intellectual Origins of the English Revolution Revisited*, revised edition (Oxford: Oxford University Press, 1997), 318-326; Harold Perkin, *The Origins of Modern English Society*, second edition (New York and London: Routledge, 2002), 45.

[6] For the Marxian interpretation, which in turn draws upon Eric Hobsbawm's work, see: Hill, 325. For the emphasis on a continued peasant past, see: J.M. Neeson, *Commoners: common right, enclosure, and social change in England, 1700-1820* (Cambridge: Cambridge University Press, 1993), 297-330. For the quotation, see page 299.

[7] Ibid., 172

[8] See: Chris Cook and John Stevenson, *A History of British Elections Since 1689* (New York: Routlege, 2014), 233-234. Also see: Nancy LoPatin-Lummis, "The 1832 Reform Act Debate: Should the Suffrage Be Based on Property or Taxpaying?," *Journal of British Studies* 46.2 (April 2007): 322.

property, his liberty, and his life."[9] Even with the end of feudal tenure, humanity did not inhabit such a world. Economic dominion had replaced physical dominion. Seven-year parliamentary sessions (as opposed to earlier three-year ones) offered greater opportunity for profit and power than ever before.[10] The lust for both spoke not only to the fallenness of men: it drew them from the pilgrim's path.[11] As bribery increased, Blackstone insisted that a more inclusive franchise would give "a great, an artful, or a wealthy man, a larger share in elections than is consistent with general liberty."[12] The wealthy already exploited their wealth to amass further power. Enfranchising those who depended upon others for shelter (such as leaseholders or renters) would only make things worse. Men without property – or, in Blackstone's words, "persons of indigent fortunes" – apparently had neither the means nor the morals to resist. Property ownership, through the 40-shilling freehold, still offered the best assurances of independence on election day.

The value of money had of course changed by Blackstone's time. Forty shillings during the reign of Henry VI was worth considerably more than 40 shillings under George III. Blackstone himself cited that 40 medieval shillings held an equivalent value of 20 pounds sterling toward the end of the eighteenth century.[13] Even with this one thousand percent inflation, England's mid-Georgian electorate remained small. Frank O'Gorman calculates that only four percent of the English and Welsh populations held legal votes during the second half of

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[9] Ibid., 171.
[10] Frank O'Gorman, *Voters, Patrons, and Parties: The Unreformed Electoral System of Hanoverian England 1734-1832* (New York and Oxford: Oxford University Press, 1989), 13.
[11] Just as it did Messrs. Mony-Love and Hold-the-World, who both hailed from the market town of Love-gain in the County of Coveting. See: John Bunyan, *The Pilgrim's Progress*, ed. W.R. Owens (New York and Oxford: Oxford University Press, 2003 [1678]), 99-103. Also see: Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph*, first Princeton Classics edition (Princeton and Oxford: Princeton University Press, 2013), 9.
[12] See: O'Gorman, *Voters, Patrons, and Parties*, 13. Also see: Blackstone, book I, 171.
[13] Blackstone, book I, 173.

the eighteenth century. This figure translated into 17.2% of all adult males.[14] England's franchise law, in other words, found five slavish men for every self-sufficient one. Based upon Blackstone's formulation, then, freehold franchises had continued to serve their restrictive purpose despite three centuries of economic, political, and epistemological change.

By the 1790s, justifications for propertied enfranchisement had begun to shift again under new ideological and cultural values. England had entered its so-called age of reform.[15] The spread of industrialization had led to a new commercially- and industrially-based English middle class. Urban populations had begun to swell and some towns found themselves massively underrepresented in parliament.[16] England's nascent bourgeoisie, reliant upon their own incomes rather than rank and office, increasingly bristled at aristocratic leadership under these conditions.[17] Like the aristocracy, this new middle class emphasized the importance of landed property. Unlike the aristocracy, it did not live off of land rents or other ancient privileges. Landed property, for middle class men, served as a means to establish one's business, provide for one's family, and fashion one's refuge from public life.[18] Keith McClelland argues that, as this middle class grew, "[v]irtue became attached to the cultivation of domesticity in which a man was independent and respectable by means of being able to maintain a dependent wife and children within the household."[19] Although landed property remained central, it had undergone

[14] O'Gorman, *Voters, Patrons, and Parties*, 179.
[15] For instance, see: Joanna Innes, "'Reform' in English public life: the fortunes of a word," in *Rethinking the Age of Reform: Britain 1780-1850*, eds. Arthur Burns and Joanna Innes (Cambridge: Cambridge University Press, 2003), 71-97.
[16] Ibid., 181.
[17] Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (Chicago: The University of Chicago Press, 1987), 21.
[18] Ibid., 20.
[19] Keith McClelland, "'England's greatness, the working man'," in *Defining the Victorian Nation: Class, Race, Gender and the Reform Act of 1867*, co-authors Catherine Hall, Keith McClelland, and Jane Rendall (Cambridge: Cambridge University Press, 2000), 100-101.

something of a redefinition.[20] Respectability and independence no longer called for hereditary landholdings or even freehold title in many cases. England's Whigs, as the political champions of this new middle class, sought to address these growing liberal values through widespread electoral reform.[21]

The so-called Great Reform Act of 1832 redrew England's electoral maps and extended local enfranchisement. England's counties, on the one hand, saw only the slightest of changes. The old 40-shilling freehold remained in effect, but now had a £50 tenancy qualification added to it. England's boroughs, on the other hand, had their boundaries and their franchises totally redrawn. Now, any man who merely *occupied* premises worth at least £10 sterling annually received a borough vote at parliamentary elections.[22] Urban leaseholders, no matter their borough's former status, now voted beside their freeholding neighbours. Based upon O'Gorman's numbers, and those of Chris Cook and John Stevenson, this leasehold qualification helped to create 216,000 to 220,000 new voters between 1831 and 1832. These figures represented nearly a fifty percent increase to the overall size of England's electorate.[23] Most of the newly enfranchised, according to Catherine Hall and her colleagues, belonged to "the pre-industrial middling sort, including shopkeepers and skilled artisans as well as the professional

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[20] LoPatin-Lummis, "The 1832 Reform Act Debate," 323.
[21] See: Michel Ducharme, *Le concept de liberté au Canada à l'époque des Révolutions atlantiques (1776-1838)* (Montreal and Kingston: McGill-Queen's University Press, 2010), 17-45.
[22] John A. Phillips and Charles Wetherell, "The Great Reform Act of 1832 and the Political Modernization of England," *American Historical Review* 100.2 (April 1995): 414.
[23] See: O'Gorman, *Voters, Patrons, and Parties*, 179. Also see: Cook and Stevenson, 252-253. In another recent monograph, Jeremy C. Mitchell cites that England's electorate grew from approximately 344,000 to 653,000 voters between 1831 and 1832 (an increase of 309,000). O'Gorman has previously argued that this 1831 figure only counted voter turnout, and not the total electorate itself. John A. Phillips and Charles Wetherell cite that "[t]he absence of electoral registers and peculiarities of the system such as plural voting create enormous obstacles to measuring the size of the unreformed electorate, but the best-informed estimates suggest that immediately before the Reform Bill more than 400,000 Englishmen held a franchise of some sort." For Mitchell, see: Jeremy C. Mitchell, *The Organization of Opinion: Open Voting in England, 1832-68* (New York: Palgrave Macmillan, 2008), 27. For O'Gorman, see: O'Gorman, *Voters, Patrons, and Parties*, 178-199. For Phillips and Wetherell, see: Phillips and Wetherell, "The Great Reform Act of 1832," 413.

and manufacturing middle classes."[24] The Reform Act of 1832 had thus granted formal political participation to England's growing bourgeoisie. It had also enforced "an exclusive definition of the propertied male citizen" (in James Vernon's words).[25] Whig parliamentarians had chosen the £10 figure to specifically exclude England's emergent working class.[26] Proof of middle-class independence had come at the expense of working-class representation. A registry of voters, instituted for the first time, further guaranteed that the middle and working classes remained electorally (and culturally) distinct. Even with hundreds of thousands of new electors, the reformed electorate still only comprised 4.6% to 4.7% of the total English and Welsh populations.[27] Whereas 17.2% of adult men had a vote in 1765, 18.4% did so in 1832.[28] Nevertheless, the Great Reform Act was celebrated across the British world as a momentous leap in the progress of modern liberty. It would set the template for propertied liberal citizenship within the empire for decades to come.

The Canadas' and New Brunswick's early franchises, as based upon English models, had come with much of this ideological baggage attached. In fact, the two sets of legislation, both passed in 1791, reflected the rivaling conceptions of propertied enfranchisement that swirled around contemporary Britain. Upper Canada's and Lower Canada's original franchises, as found within the Constitutional Act, had arrived through Whig interventions in parliament. Charles Fox, as perhaps the most talented Whig parliamentarian of his generation, had considered a

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[24] Catherine Hall, Keith McClelland, and Jane Rendall, introduction to *Defining the Victorian Nation: Class, Race, Gender and the Reform Act of 1867* (Cambridge: Cambridge University Press, 2000), 2.
[25] James Vernon, *Politics and the People: A study in English political culture, c. 1815-1867* (Cambridge: Cambridge University Press, 1993), 333.
[26] Michael Brock, *The Great Reform Act* (London: Hutchinson University Library, 1973), 321. Also see: LoPatin-Lummis, "The 1832 Great Reform Act Debate," 329.
[27] See: O'Gorman, *Voters, Patrons, and Parties*, 179. Also see: Mitchell, *The Organization of Opinion*, 27.
[28] Again see: O'Gorman, *Voters, Patrons, and Parties*, 179. Also see: ibid., "The Electorate Before and After 1832," *Parliamentary History* 12.2 (June 1993): 175-176.

uniform £5 property qualification for the Canadas altogether too aristocratic.[29] Citing English precedent, differing local conditions, and the diffusion of constitutional liberties,[30] he fought for and won a 40-shilling franchise for county ridings (whether in freehold, en fief, or en roture) and a £5 freehold/£10 leasehold qualification for urban ones.[31] While celebrated amongst his followers, Fox's success had come at a price. The debate had ultimately ruptured Fox's 25 year partnership with another Whig luminary, Edmund Burke. With this separation, the Whigs' united front had shattered irreparably on the floors of Parliament.

British legislators had debated the Canadas' Constitutional Act during the spring of 1791. At the same time, French revolutionaries were fashioning a new constitution of their own. France still pursued a constitutional monarchy at this point. Their approach had, in turn, received considerable support "from the majority of thinking Englishmen."[32] Fox had hoped to bolster his Canadian arguments through references to the French example. Burke, however, viewed the French situation in a much different light. Unlike most Whigs, Burke had condemned the revolution almost from the start (as manifested in his *Reflections on the Revolution in France*, published only seven months earlier).[33] Instead of absolutism's overthrow, he only saw upheaval and violence. To Burke, Fox's attempt to embed Jacobin principles within a colonial constitution went entirely beyond the pale. Not only had Fox

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[29] John W. Derry, *Charles James Fox* (London: B.T. Batsford, 1972), 302.

[30] An anonymous Whig pamphlet published in 1791 reflected this argument. It cited "that the laws of this country [England], where money is more plentiful, considering a freehold of forty shillings per annum a sufficient qualification, do strongly decide against the cause of this Bill which requires a freehold of five pounds per annum as a qualification in a country where money is less plentiful, the price of labour much higher, and the best directed industry less productive." See: *Thoughts on the Canada Bill, Now Depending in Parliament* (London: J. Debrett, 1791), 22-23. For Fox's representation, see: John Garner, *The Franchise and Politics in British North America 1755-1867* (Toronto: University of Toronto Press, 1969), 74.

[31] See: Great Britain, "An Act to repeal certain parts of an Act, passed in the fourteenth year of His Majesty's reign, intituled, *An Act for making more effectual provision for the Government of the Province of Quebec, in North America*; and to make further provision for the government of the said province" (31 Geo. III, c. 31), section 20.

[32] Derry, 295.

[33] See: Edmund Burke, *Reflections on the Revolution in France, and on the Proceedings in Certain Societies in London Relative to that Event. In a Letter intended to have been sent to a Gentleman in Paris* (London: J. Dodsley, 1790).

resisted nominated offices for the Canadas, but he had also enfranchised middling townspeople (through the leasehold qualification) and French-speaking peasants (through landholdings en fief and en roture).[34] The public breach that followed split the Whigs in two.[35] Intellectually, Burke's much more moderate Whiggism became the basis for modern British conservatism. Nineteenth-century English liberals, on the other hand, heralded Fox as their archetype and exemplar. Tellingly, the Great Reform Act, when it passed 40 years later, invoked the same freehold and leasehold qualifications as found within the Canadas' Constitutional Act. Through Fox's efforts, Upper Canada and Lower Canada had received reformed electorates from the very start.

New Brunswick's 1791 franchise, as ultimately fashioned by the Colonial Office, proved nowhere near as reformist in its design. The £25 freehold franchise it contained mirrored Blackstone's discussion of enfranchisement more than anything else. John Garner has argued that recently arrived American Loyalists had insisted on adhering to contemporary English practices as closely as possible when it came to their franchise.[36] Having just escaped one revolution – where they had lost both property and rank – they refused to live under the elements of another. In fact, New Brunswick's 1791 franchise followed traditional English models much more closely than one might think. Forty shillings sterling annual value converted to £25 clear value in local currency at a ten percent capitalization.[37] Subsequent British North American franchise legislation tended to employ a ten percent capitalization to determine annual value as

[34] Hilda Neatby, *Quebec: The Revolutionary Age, 1760-1791* (Toronto: McClelland and Steward, 1966), 260.
[35] L.G. Mitchell, *Charles James Fox and the Disintegration of the Whig Party 1782-1794* (London: Oxford University Press, 1971), 166.
[36] Garner, 56.
[37] While John Garner cites that £25 clear value was worth more than 40 shillings annual value, he fails to account for the conversion between local currency and pounds sterling. See: ibid., 55.

well (perhaps for ease of calculation).[38] The city of Saint John, moreover, had been granted a dual freeholder and freeman's franchise. In this way, it functioned much like a contemporary English borough. Freeholders received votes as stakeholders no matter their estates' value. Freemen – men who had purchased hereditary citizen status within the city – had votes so long as they held personal estates worth £25.[39] Under the city charter, Black inhabitants and non-British subjects could not become freemen no matter their personal wealth. Unmarried women also found themselves disenfranchised. As T.W. Acheson describes it, the goal here was to create a racialized and patriarchal ruling elite that operated along hereditary lines.[40] Although the project ultimately failed, its design spoke to an older conception of propertied enfranchisement that reformers eventually sought to end.[41]

By the beginning of the nineteenth century, provincial elections in both the Canadas and New Brunswick operated under these variations on the 40-shilling freehold. The Canadian version reflected the reformist impulses of Charles Fox and his followers. The New Brunswick iteration had a more conservative philosophy at its foundation. In England, these franchises – both unreformed and reformed – had resulted in relatively modest electorates. Even as late as 1860, fewer than one in twenty Englanders could vote at the nation's general elections.[42] These same laws, once they reached the Canadas and New Brunswick, transformed into significantly more inclusive legislation. Historians from W.L. Morton to John Garner to Garth Stevenson have gone so far as to argue that, aside from the United States, these provinces boasted some of

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[38] Canada's Elective Franchise Act of 1853 provides a good example. See: Province of Canada, "An Act to extend the Elective Franchise, and better to define the qualifications of Voters in certain Electoral Divisions, by providing a system for the Registration of Voters" (16 Vic., c. 153), section 1.
[39] New Brunswick, 31 Geo. III, c. 17, section 14.
[40] T.W. Acheson, *Saint John: The Making of a Colonial Urban Community* (Toronto: University of Toronto Press, 1985), 31-32.
[41] Acheson cites that "before 1850 there were nearly as many labourers admitted to the freedom as all persons from high-status and white-collar occupations combined." See: ibid., 32.
[42] Mitchell, *The Organization of Opinion*, 27.

the widest franchises anywhere in the world.[43] In the absence of complete polls books and voters' registries, it is impossible to quantitatively prove this claim. Even so, land acquisition and landholding patterns across all three of these provinces ensured a provincial franchise equally accessible to most European men.[44]

Although Cole Harris may have labelled British North America *The Reluctant Land*, the Canadas and New Brunswick proved the least reluctant of the original colonies.[45] Upper Canada, as a separate political entity, had in fact grown out of the profound European desire for landed property itself.[46] British and American migrants, displaced by war and economic hardship, had flooded into northern North America by the end of the eighteenth century.[47] The rich, abundant, and (nominally) empty farmlands of Upper Canada looked particularly enticing to those thousands of new arrivals. First Nations peoples found themselves increasingly hived off on to reserved lands – held for them communally and in trust – to make way for settlers' almost unbridled acquisitiveness.[48] Until 1826, the Crown allocated Upper Canadian lands

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[43] W.L. Morton, "The Extension of the Franchise in Canada: A Study in Democratic Nationalism," *Report of the Annual Meeting of the Canadian Historical Association* 22.1 (1943): 73; Garner, 3-4; Garth Stevenson, *Ex Uno Plures: Federal-Provincial Relations in Canada, 1867-1896* (Montreal and Kingston: McGill-Queen's University Press, 1993), 8.

[44] Abolitionists in North America liked to remind their readers that "[t]he laws of England or her province know no such distinction as white or colored." The constitution's reliance upon property qualifications – both in Great Britain and in Canada – meant "that the colored man not only possesses the invaluable privilege of the Elective Franchise, but is eligible to office." See: J.E. Ambrose, "Colored People in Canada – Advantages," Windsor *Voice of the Fugitive*, 12 March 1851, 1. Also see: "The Runaway Slaves," Toronto *Globe*, 10 January 1860, 2.

[45] See: Cole Harris, *The Reluctant Land: Society, Space, and Environment in Canada before Confederation* (Vancouver: UBC Press, 2008).

[46] Ibid., 309.

[47] See: John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal and Kingston: McGill-Queen's University Press, 2003), 12-45; James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783-1939* (Oxford: Oxford University Press, 2009), 81-89; Peter A. Russell, *How Agriculture Made Canada: Farming in the Nineteenth Century* (Montreal and Kingston: McGill-Queen's University Press, 2012), 12.

[48] See: Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times*, third edition (Don Mills, ON: Oxford University Press, 2002), 163-165; J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, third edition (Toronto: University of Toronto Press, 2000), 99-124. Also see: John Clarke, *Land, Power, and Economics on the Frontier of Upper Canada* (Montreal and Kingston: McGill-Queen's University Press, 2001), xxxii; 456.

almost for free.[49] Worthy settlers simply had to pay the associated fees and duties to get 200-acre grants of their own (although sometimes this proved easier said than done).[50] Anyone who received such a grant almost always met the province's 40-shilling franchise.[51] By the time this so-called free land policy had ended, the Crown had granted upwards of 13 million acres. This figure, according to Harris, represented "almost 90 acres for each of the some 150,000 people in the colony," women and children included.[52]

Even after the state had changed its land policy, migrants to Upper Canada had little trouble getting on to the land. By the second quarter of the nineteenth century, a full two-thirds of all Upper Canadian land grants were held in speculation. Instead of turning to the government, newly-arrived homesteaders merely had to seek out these speculators to acquire suitable properties for themselves.[53] Under these conditions, Upper Canadian land remained almost unlimited in its supply right through to the 1850s.[54] In fact, Doug Owram reveals that "the last 'wild' land in the western peninsula...had been sold" as late as September 1855.[55] This continued diffusion of landed property, according to scholars such as Marvin McInnis, had

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[49] See: Gerald M. Craig, *Upper Canada: The Formative Years, 1784-1841*, Wynford edition (Don Mills, ON: Oxford University Press, 2013), 139-141. Also see: J.K. Johnson, *Becoming Prominent: Regional Leadership in Upper Canada, 1791-1841* (Montreal and Kingston: McGill-Queen's University Press, 1989), 53.

[50] Harris, 317-318. Also see: J.K. Johnson, *In Duty Bound: Men, Women, and the State in Upper Canada, 1783-1841* (Montreal and Kingston: McGill-Queen's University Press, 2014), 26. Because of these fees, and the cost of travel to get deeds granted and registered, Johnson has referred to Upper Canada's supposed free land policy as a "myth." See: Johnson, *In Duty Bound*, 46.

[51] See: Garner, 4. Also see: George Emery, *Elections in Oxford County, 1837-1875: A Case Study of Democracy in Canada West and Early Ontario* (Toronto: University of Toronto Press, 2012), 10.

[52] Harris, 318.

[53] Clarke, 457.

[54] Douglas McCalla, *Planting the Province: The Economic History of Upper Canada, 1784-1870* (Toronto: University of Toronto Press for the Government of Ontario, 1993), 68. Also see: Harris, 352-356; Terry Crowley, "Rural Labour," in *Labouring Lives: Work and Workers in Nineteenth-Century Ontario*, ed. Paul Craven (Toronto: University of Toronto Press, 1995), 42; David Gagan, *Hopeful Travellers: Families, Land, and Social Change in Mid-Victorian Peel County, Canada West* (Toronto: University of Toronto Press for the Government of Ontario, 1981), 14; Leo A. Johnson, "Land Policy, Population Growth and Social Structure in the Home District, 1793-1851," *Ontario History* 63.1 (March 1971): 59.

[55] Doug Owram, *Promise of Eden: The Canadian Expansionist Movement and the Idea of the West, 1856-1900* (Toronto: University of Toronto Press, 1980), 43.

created a relatively homogenous class of smallholders across Canada West by 1861.[56] Under these circumstances, colonists expected to own land (and the more land the better). Elites and non-elites alike shared in this ambition as a form of collective good.[57] Not only did land sustain life, it granted autonomy, independence, and prestige (if not necessarily prominence).[58] Although tenant farmers generally held between one-quarter and one-half of all occupied farmland during the nineteenth century, most Upper Canadians viewed tenancy as only a temporary condition.[59] With three percent of landless farmers acquiring land tenure every year, land ownership always remained the very realistic goal.[60] Gordon Darroch and Lee Soltow have argued that, even as late as 1871, "the prospects that a farming man would become a landowner before his fortieth birthday were remarkably good."[61] With land so easily obtainable, Upper Canadians had little reason to reassess cultural emphases placed upon real property. Some may have advocated greater rights for rural leaseholders (as titled individuals themselves) but the majority refused to go any further than that.

Lower Canadian land policies differed tremendously from those of Upper Canada. Instead of British common law, the Coutume de Paris governed property relations across much of the province. Under the French regime, most of Lower Canada's best farmlands (found along

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[56] Marvin McInnis, "The Size Structure of Farming, Canada West, 1861," *Research in Economic History*, supplement 5 part B (1989): 328-329. Also see: Gordon Darroch and Lee Soltow, *Property and Inequality in Victorian Ontario: Structural Patterns and Cultural Communities in the 1871 Census* (Toronto: University of Toronto Press, 1994), 20.

[57] Catherine Anne Wilson, *Tenants in Time: Family Strategies, Land, and Liberalism in Upper Canada, 1799-1871* (Montreal and Kingston: McGill-Queen's University Press, 2009), 214.

[58] Clarke, xxxii; Harris, 331. Also see: Johnson, *Becoming Prominent*, 61. Also see: Douglas McCalla, *Planting the Province: The Economic History of Upper Canada, 1784-1870* (Toronto: University of Toronto Press for the Government of Ontario, 1993), 9; 87-88.

[59] Wilson, 3. More specifically, Wilson cites that, between 1844 and 1848, 42.7% of Upper Canadians and 33.2% of Lower Canadians leased rural land. See: ibid., appendix B, 231.

[60] Jeffrey L. McNairn, *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854* (Toronto: University of Toronto Press, 2000), 262.

[61] Darroch and Soltow, 65. Darroch and Soltow also argue that "continuing access to the land for the young would have encouraged many families to believe their quest for landed security, independence, and patrimony would be rewarded. The prospect was neither mere ideology nor illusion." In fact, "[i]n 1871 by age 50 over 85 per cent of farmers were in fact owners." See: ibid., 63-64.

the Saint Lawrence River valley) had been portioned off as seigneuries. Seigneurs held the land in feudal tenure, and the habitant majority worked parcels of it in exchange for rents and dues. After the Conquest, the British kept this system largely in place.[62] Although habitants did not own the land they farmed, they still held title to it: normally en roture, which established a number of deferential obligations to the seigneur for a minimum of 40 acres, but also en fief, which established obligations directly to the Crown.[63] The Constitutional Act of 1791 had enfranchised all Canadians who held land in this way to the yearly value of 40 shillings sterling. Because all seigneurial landholdings met the 40-shilling annual value, the act had in fact introduced a property qualification that was "perhaps the lowest anywhere at the time" (in the words of Fernand Ouellet).[64] Habitants who could not obtain land on overcrowded seigeuries tended to leave for the United States.[65] As a result, the vast majority of habitant households had access to the franchise during the first half of the nineteenth century. Allan Greer has gone so far as to argue that "almost every family" had a vote.[66] With such a wide franchise, few had reason

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[62] Harris, 234-238. Also see: Allan Greer, *Peasant, Lord, and Merchant: Rural Society in Three Quebec Parishes 1740-1840* (Toronto: University of Toronto Press, 1985), 81.
[63] Garner, 75; 77.
[64] See: Fernand Ouellet, *Economic and Social History of Quebec, 1760-1850: Structures and Conjunctures*, trans. Institute of Canadian Studies, Carleton University (Toronto: Macmillan of Canada, 1980), 552.
[65] Ibid., 547.
[66] Allan Greer, *The Patriots and the People: the Rebellion of 1837 in Rural Lower Canada* (Toronto: University of Toronto Press, 1993), 113-114. Also see: ibid., "Historical Roots of Canadian Democracy," *Journal of Canadian Studies* 34.1 (Spring 1999): 9-10. This argument in turn draws upon Governor Sir James Henry Craig's oft-quoted characterization of Lower Canadian enfranchisement. In an 1810 letter to Lord Liverpool, Craig explained that "[w]ith respect to a qualification for the Electors...I feel much greater difficulty in proposing an alteration, forty shillings yearly value of their land, scarcely excluded one farmer in a thousand, in fact, nearly every family possesses a farm, and every farm is of a value exceeding that amount; the farms in general run so nearly of the same value, or vary only on account of being in a more or less favorable part of the Province, that any qualification under the general average would bear the right of suffrage very near where it now is, and if it were established at a higher rate, it might perhaps narrow the right below its fair limits; It [sic] undoubtedly would be desirable that the very lower class should be excluded, but I think the number is not yet so great as to induce the risk of what would be a greater inconvenience, to effect their exclusion, for I should consider as such the reducing of the number of Electors within too narrow bounds." See: Craig to Liverpool (1 May 1810), in *Statutes, Treaties and Documents of the Canadian Constitution 1713-1929*, ed. W.P.M. Kennedy, second edition (Toronto: Oxford University Press, 1930), 233.

to complain about the province's property qualification, except to gripe about feudal land tenure itself.[67]

In those parts of Lower Canada settled later through Crown grants – such as the Eastern Townships – landholding and enfranchisement patterns generally followed those of Upper Canada. Grantees tended to meet the 40-shilling freehold so long as they had their grants confirmed. Leaseholders – who also occupied one-quarter to one-half of Township land – legally did not unless they lived in one of the Townships' villages. This does not mean that leaseholders remained disenfranchised. Jack Little has shown that local customs frequently ignored the letter of the law and gave many of these tenants a vote regardless.[68] In other words, provincial enfranchisement in Lower Canada proved exceptionally broad where common law prevailed as well. Like those on the seigneuries, these Lower Canadians had little reason for dissatisfaction with their franchise law.[69] Only those who believed leasehold tenure ought to confer formal enfranchisement had any reason to grumble.

As one moved further eastward in British North America, the quality of the soils began to diminish.[70] Most settlers who arrived in New Brunswick had looked to establish farmsteads nonetheless. Before 1827, heads of households could apply for 100-acre Crown grants plus an additional 50 acres per dependent child.[71] John Garner has calculated that, through New Brunswick's £25 freehold franchise, "the minimum grant would have enfranchised all married

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[67] With the abolition of seigneurial tenure in 1854, habitants now held their lands en franc-aleu (basically a form of freehold tenure) and paid yearly rentes constituées to their former seigneurs. This title continued to grant enfranchisement at Canadian elections. See: Province of Canada, "An Act for the abolition of feudal rights and duties in Lower Canada" (18 Vic., c. 3), section 14.

[68] J.I. Little, *State and Society in Transition: The Politics of Institutional Reform in the Eastern Townships, 1838-1852* (Montreal and Kingston: McGill-Queen's University Press, 1997), 10-11.

[69] Their greatest complaint was that they had too few polling places. See: Garner, 80.

[70] In the words of Béatrice Craig: "Most of the soil of the Saint John Valley is good by Maritime and New England standards, which means less than first rate." See: Béatrice Craig, *Backwoods Consumers and Homespun Capitalists: The Rise of a Market Culture in Eastern Canada* (Toronto: University of Toronto Press, 2009), 139.

[71] Harris, 189.

couples with two children."[72] After 1827 – once most of the best farmlands had been scooped up – the Crown raised land prices to a minimum three shillings per acre.[73] At this baseline value, New Brunswickers needed to possess 167-acre freeholds to qualify for provincial enfranchisement. Land, of course, tended to sell for more than the minimum. Béatrice Craig reveals that, during the 1830s, 200-acre farms on granted land sold for an average of £138 (or just under 13 shillings an acre). At that price, a farmer who purchased previously-settled land needed to own as little as 37 acres to secure the franchise. Tenant farmers again did not qualify. Prevailing land prices meant, however, that tenant farmers who produced average surpluses could purchase an established farm in fewer than five years.[74] Even freeman's status in Saint John proved more inclusive than any equivalent found in England.[75] These numbers all suggest a particularly open or accessible franchise by any contemporary standard.

Gail Campbell has since put the province's early franchise to the test in this regard. By means of an Albert County case study, Campbell has evaluated the inclusiveness of New Brunswick's £25 freehold qualification over the course of the mid-nineteenth century. Her findings further reveal an exceptionally broad franchise.[76] "If the men of 1851 were typical," she argues, "over 70 percent of the men of Albert County were able to achieve legal access to the franchise." This number was nearly four times higher than that of England under the Great Reform Act. Campbell goes on to demonstrate that "[a] further 8 per cent who were not legally

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[72] Garner, 57.
[73] Harris, 189
[74] Craig, *Backwoods Consumers*, 162-163.
[75] Acheson, 32. Scott See reminds the reader that "[n]otions that the city resembled even a crude model of egalitarian self-government must surely dissipate when the equation's missing three-quarters is considered." See: Scott W. See, *Riots in New Brunswick: Orange Nativism and Social Violence in the 1840s* (Toronto: University of Toronto Press, 1993), 29.
[76] Gail G. Campbell, "The Most Restrictive Franchise in British North America? A Case Study," *Canadian Historical Review* 71.2 (June 1990): 187.

entitled to vote were allowed, by custom, to exercise the franchise."[77] With such lenient legislation already in place, New Brunswickers apparently felt no need to press for more democratic franchise reforms. Campbell concludes that although

> [t]he suffrage had not yet become a universal right...it was, nonetheless, a right that the vast majority of young men could realistically expect to gain, and to gain legally. Indeed, it was probably because reasonable expectations were so readily fulfilled that there was no agitation for the extension of the suffrage in Albert County.[78]

Much like the Canadas, New Brunswick had upheld its property-based franchise because it matched the majority's expectations of property accumulation.[79] Individuals across these provinces viewed it as natural to accrue landed property. Those who did not pursue this goal were seen as either abnormal or inferior, or they moved away entirely. With little structural incentive to pursue sweeping reforms, it would take wholesale constitutional change to alter these franchises at all.

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[77] Ibid., 169.
[78] Ibid., 188.
[79] Campbell's subsequent 2007 essay on electoral reform in New Brunswick repeats parts of this argument but in a condensed form. The essay also stretches much further into the Confederation period. For her section on mid-nineteenth-century franchise reform, see: Gail Campbell, "Defining and Redefining Democracy: The History of Electoral Reform in New Brunswick," in *Democratic Reform in New Brunswick*, ed. William Cross (Toronto: Canadian Scholars Press, 2007), 275-279.

Part II

Propertied Enfranchisement in the Province of Canada

With the Act of Union in 1840, Lower Canada and Upper Canada became Canada East and Canada West. Together, they formed the united Province of Canada.[80] For their first half-century of existence, the two colonies shared only a name: now they shared a legislature. Parliamentary politics, beginning in 1841, operated through a combined Legislative Assembly. Although Canada East held sixty percent of the province's total population, each half had received an equal 42 seats apiece. Lord Elgin, as governor general, confirmed responsible government for the united Canadas seven years later in 1848. A mid-January election had swept Reformers from both parts of the province into power. Louis-Hippolyte LaFontaine, as Reform leader for Canada East, held a dominant 33 of 42 seats. LaFontaine's counterpart in Canada West, Robert Baldwin, garnered an additional 24.[81] With their majority secured, and responsible government nominally in place, these Reformers set about reinforcing their positions. This meant reshaping provincial politics in their own liberal self-image.

Alongside municipal corporations and expanded representation, Canada's new Reform government looked to overhaul provincial electoral laws in 1849.[82] Although the union of the Canadas had occurred almost a decade earlier, elections still took place under a hodgepodge of local legislation that had formerly passed in both provinces. This legal jumble, although a mess on paper, had affected electors themselves very little. From a voter's perspective, the franchise

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[80] See: Great Britain, "An Act to re-unite the Provinces of *Upper* and *Lower Canada* and for the Government of *Canada*" (3 & 4 Vic., c. 35), section 1.

[81] J.M.S. Careless, *The Union of the Canadas: The Growth of Canadian Institutions 1841-1857* (Toronto: McClelland and Stewart, 1967), 117-120.

[82] For municipal corporations, see: Province of Canada, "An Act to provide, by one general law, for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships, and Villages in Upper Canada" (12 Vic., c. 81). For the Reformers' unsuccessful attempt at expanded parliamentary representation (from 84 to 150 seats), see: ibid., *Debates of the Legislative Assembly of United Canada*, volume VIII, part II (1849), 6 March 1849, 1149.

had remained the same: county residents still had to meet the 40-shilling franchise qualification and urban inhabitants still had to own dwellings worth £5 annually or rent the same for £10 annually.[83] Many legislators, in contrast, had encountered growing frustration since the Act of Union. While most understood the electoral laws for their own part of the province, many had no clue as to how elections worked in the other half. This situation had proven especially problematic in House committees that oversaw disputed elections.[84] Assemblymen made decisions as to electoral outcomes without fully understanding (or perhaps even caring about) the particular legal processes that governed them. Considering how poorly Tory-dominated House committees had treated Reform candidates in the past, Reform leaders viewed change as a necessity.[85] The Reformers' Election Act of 1849 sought to consolidate the Canadas' electoral statutes into one comprehensive (if not entirely straightforward) measure.[86] As LaFontaine himself explained when presenting the bill: "On ne peut trouver une seule clause de ce bill sans qu'elle ait rapport aux deux Canadas également."[87] Elections would operate on the same footing, and electors would encounter the same officials, no matter where one travelled in the province.[88]

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[83] The Act of Union had explicitly carried over the Canadas' previous electoral and franchise laws. See: Great Britain, 3 & 4 Vic., c. 35, section 1

[84] In the words of Norfolk's Henry Boulton: "hon. gentlemen on election Committees were in many cases totally ignorant of the election of that part of the Province to which they did not themselves belong." See: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume VIII, part II (1849), 16 March 1849, 1390.

[85] John Garner has discussed the controverted elections process in the Province of Canada in some detail. As he argues: "Large in number and seldom settled in a judicious manner, controverted elections in the Province of Canada played as important a part in the outcome of the elections as did the exercise of the franchise itself." For the quotation, see: Garner, 202. More generally, see: ibid., 202-210.

[86] The following year, William McDougall at Toronto's radical *North American* had characterized "Mr. Baldwin's interminable Election law of last session" as "more bulky than the laws of a whole session of many of the American Legislatures..." See: "Our Platform," Toronto *North American*, 22 November 1850. For another version, see: Lord Elgin to Earl Grey, 27 November 1850, in *The Elgin-Grey Papers 1846-1852*, volume II, ed. Arthur G. Doughty (Ottawa: J.O. Patenaude, 1937), 750.

[87] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume VIII, part II (1849), 6 March 1849, 1151.

[88] In this regard, LaFontaine saw "[t]he chief alteration being the permanent appointment of the Sheriffs of Counties as Returning Officers, instead of leaving the appointment at the discretion of the Executive at present." County Sheriffs received their appointments from the Executive as well, just not at election time. See: ibid., 1149. Also see: ibid., Province of Canada, "An Act to repeal certain Acts therein mentioned, and to amend, consolidate, and

Although John Garner viewed the legislation as "prosaic," it served to rationalize an electoral process that Tories had exploited to the Reformers' disadvantage.[89]

Aside from electoral procedures, a unified election law had also called for a unified franchise. The Reformers here had a golden opportunity to separate provincial enfranchisement from its eighteenth century roots. This they did, but perhaps not in the ways many had hoped. Canada's leading Reformers, if anything, were moderates at heart. In the words of Robert Baldwin's most recent biographer, Michael S. Cross, they represented an "element that prepared to countenance change, but not rapid change; that accepted a wider measure of popular participation in governance, but not democracy; that recognized the future was speeding down on them, but wished to preserve the best of a gentry past."[90] The Canadas already boasted a reformed electorate in the English sense (and a very inclusive one at that). Reformers like Baldwin and LaFontaine believed that further extensions to the franchise would only grant citizenship to undeserving men – men who lacked propertied independence and tangible connections to the common good.[91] The Election Act of 1849 adhered to these constitutional principles insofar as it did not touch the property qualifications of 1791. Freehold property and seigneurial possession still reigned in the counties; £5 freeholders and £10 leaseholders still voted in the towns and cities. For the sake of convenience, the new legislation even converted each qualification from pounds sterling to local currency (44/5¼ shillings, £5.11.1¼, and £11.2.2½ respectively).[92] The Reformers, in fact, made only two substantive changes to the

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reduce into one Act, the several Statutory provisions now in force for the regulation of Elections of Members to represent the People of this Province in the Legislative Assembly thereof" (12 Vic., c. 27), sections 2-3.

[89] Garner, 105.

[90] Michael S. Cross, *A Biography of Robert Baldwin: The Morning-Star of Memory* (Don Mills, ON: Oxford University Press, 2012), 284.

[91] Ibid., 294.

[92] See: Province of Canada, 12 Vic., c. 27, sections 30-33.

province's franchise. One of them arrived with total unanimity; the other gave reason to oppose the bill entirely.

The first of these franchise reforms passed into law without debate whatsoever.[93] Deep within the legislation, past the other enfranchisement clauses, section 46 declared "[t]hat no woman is or shall be entitled to vote at any such Election, whether for any County or Riding, City or Town."[94] The Canadas' original franchise – as found within the Constitutional Act of 1791 and upheld by the Act of Union in 1840 – had never made such a provision. Instead, it had merely stipulated that Assemblymen "shall be chosen by the majority of votes of such persons as shall severally be possessed" of the necessary property qualification.[95] Such genderless language had also prevailed in Great Britain for much of its history. There, the common law had compensated for statute law to prevent women from voting. Not only had these unwritten rules disenfranchised women as women; they had also limited a woman's legal capacity to meet the 40-shilling freehold. Eighteenth-century imperial legislators had assumed that similarly worded legislation would yield the same patriarchal results in British North America as well.

In early Upper Canada and Canada West, where the common law held sway, conditions largely mirrored those in Great Britain. Common law customs dictated that women, from the very beginning, could not vote at Upper Canadian elections. The Constitutional Act had nonetheless created something of a loophole. So long as a woman met the act's property qualifications, she could (as a "person") technically claim enfranchisement as a constitutional privilege. This, of course, proved easier said than done. Marriage still represented the preferred civil status for women at the time. As Lori Chambers notes, it "offered significantly greater

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[93] I have discussed this change briefly elsewhere. See: Colin Grittner, "Macdonald and Women's Enfranchisement," in *Macdonald at 200: New Reflections and Legacies*, eds. Patrice Dutil and Roger Hall (Toronto: Dundurn Press, 2014), 33-34; 46-47.
[94] Province of Canada, 12 Vic., c. 27, section 46.
[95] Again see: Great Britain, 31 Geo. III, c. 31, section 20.

material security than remaining a spinster."[96] Under the common law, married women had no legal right to possess landed estate of their own. All property they brought into marriage transferred to the sole ownership of their husbands. From a civil standpoint, married women ceased to exist.[97] Only wealthier women who had never married, or widows who had no heirs, tended to possess landed property themselves. In these instances, the common law guaranteed full property rights.[98] As to whether property rights conferred electoral privileges, it ultimately came down to the legal interpretations of individual returning officers. Those who upheld codified statutes over uncodified customs – such as the returning officer for Halton, Canada West, in 1844 – allowed women to represent their properties and cast their votes. Those who did not turned the same property-owning women away from the polls. The most current historiography suggests that, in Upper Canada at least, this latter group vastly outnumbered the former.[99]

A much different set of circumstances prevailed in Lower Canada and Canada East. The Coutume de Paris, as opposed to British common law, had governed the colony since its creation. Common law restrictions on women's enfranchisement had thus found no legal basis across most of Lower Canada. Aside from those who lived in the Eastern Townships, women who met the Constitutional Act's property qualifications had every right to vote at the province's general elections. Regulations governing women's property ownership further helped in this regard. Much like the common law, nothing in the Coutume de Paris prevented single women from accumulating landed property themselves. Unlike the common law, such property

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[96] Lori Chambers, *Married Women and Property Law in Nineteenth-Century Ontario* (Toronto: University of Toronto Press for the Osgoode Society, 1997), 15.
[97] Peter Baskerville, *A Silent Revolution?: Gender and Wealth in English Canada, 1860-1930* (Montreal and Kingston: McGill-Queen's University Press, 2008), 5.
[98] Chambers, 14.
[99] Garner, 159. Also see: Gail Cuthbert Brandt, Naomi Black, Paula Bourne, and Magda Fahrni, *Canadian Women: A History*, third edition (Toronto: Nelson, 2011), 115.

remained attached to these women even during marriage. The Coutume dictated that, upon marriage, a woman's property entered into a community of goods. Although the husband legally managed these goods on the couple's behalf, he could not alienate his wife's landed property without her consent. If a wife outlived her husband, these lands would return to her sole control alongside half the estate she and her husband had accumulated together.[100] Through these regulations, widows especially qualified for enfranchisement in early Lower Canada and Canada East (so long as candidates had not agreed to refuse women voters beforehand).[101] Between 1792 and 1849, Nathalie Picard has discovered that at least 857 women had successfully cast votes in the District of Montreal alone.[102] Of these 857, just under three-quarters (638) had identified themselves as widows.[103] Poll books reveal that such women frequently voted in blocks, whether to support each other through strength in numbers or to quickly turn the tide of a contest.[104] Because only one in five of these poll books appears to have survived, Picard's figure of 857 represents a mere baseline.[105] Conceivably, the number of women voters in the Montreal region reached well into the thousands. Although no one has undertaken similar quantitative studies for the Districts of Gaspé, Quebec, and Three Rivers, they could conceivably yield hundreds upon hundreds of additional women voters as well.[106]

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[100] See: Bettina Bradbury, *Wife to Widow: Lives, Laws, and Politics in Nineteenth-Century Montreal* (Vancouver: UBC Press, 2011), 63-65. Also see: Robert C.H. Sweeny, "Property and Gender: Lessons from a 19th-century town," *London Journal of Canadian Studies* 22 (2006/2007): 14.

[101] Hugues Heney and John Molson, for instance, had "agreed not to take female Votes" during the 1824 general election for Montreal East. The returning officer had apparently accepted this agreement as appropriate. See: Bibliothèque et Archives nationales du Québec – Montréal [hereafter BAnQ-M], TL19 Fonds Cour du banc du roi/reine du district du Montréal, S41 Registres du scrutin 1820-1842, D19 "Liste d'électeurs Montréal – Quartier Est Août 1824," 14-15. Also see: Bradbury, 262-275; Greer, *The Patriots and the People*, 204-205.

[102] Nathalie Picard, "Les femmes et le vote au Bas-Canada de 1792 à 1849," MA thesis (Université de Montréal, 1992), 70-73; xxxi-xlviii.

[103] Ibid., 104.

[104] For example, see: BAnQ-M, TL19 S41 D17, "Liste d'électeurs Montréal – Quartier Est Mars 1820," 20.

[105] Picard, 71; 103.

[106] That said, Catherine Cleverdon has argued that "[e]vidence appears that voting by women in Three Rivers was quite commonplace in 1820." Gail Cuthbert Brandt, Naomi Black, Paula Bourne, and Magda Fahrni have since corroborated Cleverdon's anecdote. David De Brou has similarly highlighted women voters in early-nineteenth-

Throughout the 1849 debate, the Reformers never once explained why they formally pursued women's disenfranchisement. John Garner has hypothesized that partisan considerations prompted the change. At the aforementioned Halton election of 1844, seven women voters had pushed the Tories to victory by a meagre four votes. "The Reformers," according to Garner, "were not to forget this incident." As part of their general rationalization of electoral law, Reform leaders had apparently looked to prevent such frustrations in the future.[107] Still, partisanship alone cannot explain why women's disenfranchisement passed the House so easily or through such a broad consensus. Great Britain's Reform Act of 1832, and the imperial precedent it set, may have helped in this regard. For the first time in any British electoral legislation, the Reform Act had categorically excluded women from the new franchise qualifications. This stipulation, in turn, had grown out of increasingly prevalent separate sphere ideologies. Parliament had statutorily denied votes to women to further demarcate patriarchal bourgeois independence. In the words of S. Richardson, the Reform Act, "which was a liberating event for many middle-class men, acted as a constraint upon the activities of their wives, sisters, and daughters."[108] British women (to paraphrase Catherine Hall) had found themselves securely positioned within their separate sphere.[109] Soon after London had formally disenfranchised women, its North American colonies began to follow suit. By the time Canadians addressed the question in 1849, two other provinces (Prince Edward Island in 1836 and New Brunswick in 1843) had long since beaten them to the punch. Canada's Reformers had

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century Quebec City. See: Catherine L. Cleverdon, *The Woman Suffrage Movement in Canada*, second edition (Toronto: University of Toronto Press, 1974), 215; Brandt, Black, Bourne, and Fahrni, 113; David De Brou, "Mass Political Behaviour in Upper-Town Quebec, 1792-1836," PhD dissertation (University of Ottawa, 1989), 94-98.

[107] Garner, 159. Also see: Brandt, Black, Bourne, and Fahrni, 115.

[108] S. Richardson, "The Role of Women in Electoral Politics in Yorkshire during the Eighteen-Thirties," *Northern History* 32.1 (January 1996): 134.

[109] See: Catherine Hall, "The nation within and without," in *Defining the Victorian Nation: Class, Race, Gender and the Reform Act of 1867*, coauthored by Catherine Hall, Keith McClelland, and Jane Rendall (Cambridge: Cambridge University Press, 2000), 233.

thus done nothing new, even in a British North American context. The fact that women's disenfranchisement passed the Canadian legislature without mention speaks volumes as to how culturally self-evident separate spheres had become.

The Election Act's second and more contentious reform arrived at the behest of the province's solicitor general, Lewis Drummond. At the committee stage, Drummond had tabled an amendment that sought to enfranchise "persons holding promises of sale." Although such persons did not hold absolute title to their land, he believed "these persons were really proprietors" and so they "ought to have the right to vote."[110] A representative for Shefford, in the Eastern Townships, Drummond had thought of the region first and foremost. Upwards of 5,000 French Canadians held Township lands under promises from the British American Land Company. These documents, according Drummond, "[had been] drawn up in such a manner as to entitle the parties holding them to vote" under the province's seigneurial qualifications. Because the Eastern Townships operated under common law, confusion had arisen as to whether such promises could rightfully confer enfranchisement. Drummond, through his amendment, looked to clarify the situation for his constituents and to ensure the votes of those promised them.[111]

Although Drummond's clause eventually passed into law, it did not do so quietly. John McConnell, of neighbouring Stanstead, accused Drummond of enfranchising "large numbers of poor French Canadians...very few [of whom] had paid part of the purchase money yet..." McConnell could not countenance a franchise that granted votes to those without full title to their land (and who would probably vote for Drummond to boot). Other leading members of the

[110] Ibid., *Debates of the Legislative Assembly of United Canada*, volume VIII, part II (1849), 16 March 1849, 1392.
[111] Ibid., volume VIII, part III (1849), 18 April 1849, 1954-1955.

opposition voted against the legislation because of this clause specifically.[112] Drummond, in response, claimed that his challengers sought to "make...distinction[s] between one class and race and another..." He asked whether it was "because they were poor, or...because they were French Canadians, that they were not to enjoy the rights of British subjects?"[113] Whereas Drummond argued for equality in landed property, his opponents argued for equality in freehold tenure. Where Drummond courted his French Canadian supporters, English Tories sought to limit French Canadian influence. These kinds of distinctions – simultaneously legal, cultural, and ideological – would remain fundamental to Canadian franchise reform over the upcoming years.

A half-century earlier, in 1792, Edmund Burke had warned that franchise reform should always "proceed by insensible degrees." Only through gradual and cautious constitutional amendment might the nation derive "all the benefits which may be in change, without any of the inconveniences of mutation."[114] LaFontaine and Baldwin had certainly channelled this Burkean moderation into their Election Act of 1849. Although the legislation had tweaked the province's electoral laws, it had done nothing drastic, unprecedented, or even surprising. The same

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[112] These included Sir Allan MacNab, William Badgely, and Henry Sherwood (the future, current, and former Conservative leaders within the lower house). See: ibid., 25 April 1849, 2043. The independent member Alexander Tilloch Galt had also voted against the legislation because of the clause. Aside from his role in the Legislative Assembly, Galt also served as Canadian commissioner to the British American Land Company. Galt rejected the amendment because it gave settlers even less incentive to settle their Company accounts. See: ibid. Also see: Jean-Pierre Kesteman, "Galt, Sir Alexander Tilloch," *Dictionary of Canadian Biography*, volume XII, 349.

[113] Ibid., *Debates of the Legislative Assembly of United Canada*, volume VIII, part III (1849), 18 April 1849, 1954-1955.

[114] More fully, Burke argued that: "All we can do, and that human wisdom can do, is to provide that the change shall proceed by insensible degrees. This has all the benefits which may be in change, without any of the inconveniences of mutation. This mode will, on the one hand, prevent the *unfixing old interests at one*; a thing which is apt to breed a black and sullen discontent, in those who are at once dispossessed of all their influence and consideration. This gradual course, on the other side, will prevent men, long under depression, from being intoxicated with a large draught of new power, which they always abuse with a licentious insolence. But, wishing, as I do, the change to be gradual and cautious, I would, in my first steps, lean rather to the side of enlargement than restriction. See: Edmund Burke, *A Letter from the Right Hon. Edmund Burke, M.P. in the Kingdom of Great Britain, to Sir Hercules Langrishe, Bart. M.P. on the Subject of Roman Catholics of Ireland, and the Propriety of Admitting Them to the Elective Franchise, Consistently with the Principles of the Constitution as Established at the Revolution* (London: J. Debrett, 1792), 81. Emphases in text.

eighteenth-century property qualifications as found within the Constitutional Act had remained fully in force. Despite calls for patience, this restrained approach had exasperated more aggressive Reformers to no end.[115] These radicals, republicans, and socialists increasingly pronounced, in the words of S.F. Wise, that "responsible government had turned out to be a hollow deception...a clever device to admit a slightly larger class to power and preferment."[116] Many of those who had fought for executive responsibility wanted more than to simply root out Tory favouritism. They saw the responsible system as a means to secure further democratic reforms: ones that ended structural impediments to provincial citizenship and opened enfranchisement to the vast majority of Canadian men.[117]

Amongst French-speaking Canadians, the Act of Union had generated demands for reform well before responsible government came into effect.[118] Lord Durham had detailed the Union's assimilative design in his 1839 *Report on the Affairs of British North America*. By offering Canada West proportionally larger representation, Durham had calculated that "the French, when once placed...in a minority, would abandon their vain hopes of nationality" and "acquiesce to their new state of political existence."[119] French-speaking Canadians, in response, had redoubled their efforts in asserting a separate national identity. A resurgent Catholic Church – buoyed by an ultramontane appeal to papal authority over secular power – helped lead the way in this regard. By extending its reach into social politics, the Church established itself as a

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[115] For example, see: W.O.B., "A Voice from Lanark No. III," Toronto *Globe*, 20 October 1849, 1.
[116] Sydney F. Wise, "Through the Lace Curtain: Canadian Views of American Democracy in the Pre-Civil War Period," *Canadian Association for American Studies Bulletin* 2.2 (Winter 1967): 59-60.
[117] Kenneth C. Dewar, "Charles Clarke's 'Reformator': Early Victorian Radicalism in Upper Canada," *Ontario History* 78.3 (September 1986): 237.
[118] Yvan Lamonde, *The Social History of Ideas in Quebec, 1760-1896*, trans. Phyllis Aronoff and Howard Scott (Montreal and Kingston: McGill-Queen's University Press, 2013), 242. Also see: Fernande Roy, *Histoire des idéologies au Québec aux XIX^e^ et XX^e^ siècles* (Montreal: Boréal, 1993), 29-30.
[119] Lord Durham, *Report on The Affairs of British North America*, ed. G.M. Craig (Ottawa: Carleton University Press, 1982), 159.

parallel cultural alternative to the Union's hostile provincial state.[120] Although Church leaders may have denounced modern liberal individuality, Jean-Marie Fecteau argues that the Church worked to present a more inclusive and more egalitarian idea of collective liberty to those who joined its flock.[121] Instead of railing against the Union, the Church had opted to carve out space within it. From there, it offered an attractive and influential refuge from an inhospitable parliamentary world.

For a younger generation of French-Canadian liberals, ultramontanism provided (at best) an unappealing distraction from Lord Durham's disciplinary scheme. The Union still existed, and its project remained the same, no matter what superstructure the Catholic Church built on top of it. For these French-Canadian intellectuals, representation by population and the Union's outright repeal offered the only permanent solutions. Initially, these liberals threw their support behind the old Patriote himself, Louis-Joseph Papineau, as he returned to provincial politics in 1847. Papineau had similarly categorized the Union as disgraceful and made its dissolution under responsible government a top priority.[122] From the outset, however, Papineau knew he championed a cause "qui sera refusé[e]."[123] The English-speaking majority still viewed the Union favourably, and not in the least because Canada East continued to pay off the debts of Canada West.[124] By January of 1849, Papineau and his supporters had come to realize that LaFontaine himself had no plans to separate the Canadas. Responsible government continued to

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[120] See: Roberto Perin, "Elaborating a Public Culture: The Catholic Church in Nineteenth-Century Quebec," in *Religion and Public Life in Canada: Historical and Comparative Perspectives*, ed. Marguerite Van Die (Toronto: University of Toronto Press, 2001), 89-102. Also see: Lamonde, 245-249; Roy, 33-38.
[121] Jean-Marie Fecteau, *La liberté du pauvre : crime et pauvreté au XIX^e siècle québécois* (Montreal: VLB Éditeur, 2004), 63; 276-280; 343-350.
[122] Fernand Ouellet, "Papineau, Louis-Joseph," *Dictionary of Canadian Biography*, volume X, 576. Also see: Lamonde, 261-266.
[123] See: Louis-Joseph Papineau, *Adresse aux électeurs aux Comtés de Huntingdon et de St. Maurice* (Montreal: n.p., 1847), column 2.
[124] See: Durham, 159. Also see: Michael J. Piva, *The Borrowing Process: Public Finance in the Province of Canada, 1840-1867* (Ottawa: University of Ottawa Press, 1992), 1-48.

reveal itself as "une déception": a system that did little more than allow majorities to ride roughshod over everyone else.[125] In response, these intellectuals turned to increasingly radical politics. Inspired by the 1848 revolutions in Europe – and centred around l'Institut canadien de Montréal and Montreal's *L'Avenir* – they had increasingly endorsed republican institutions, democratic government, and universal male suffrage.[126] In doing so, they drew upon the most extreme Patriotes of the late-1830s who, in their Declaration of Independence of Lower Canada, had proclaimed Lower Canada "to be a REPUBLIC" and "that every male person, of the age of twenty-one years and upwards, shall have the right of voting..."[127] They even went so far as to advocate annexation to the United States.[128] Although the Catholic Church helped limit such ideas to a minority of French Canadians, these young democrats contributed to a growing ideological unrest that crisscrossed the province by the early 1850s.[129]

English-speaking Canadians had reacted against perceived Reform complacency as well. Kenneth Dewar has revealed that a strain of British radicalism had emerged forcefully across Canada West by the middle of the nineteenth century. Typified by journalist and politician Charles Clarke, this ideology adhered to a belief that the greatest historical change of the nineteenth century "was an unprecedented diffusion of intelligence that made universal manhood

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[125] Papineau, column 2.
[126] For *L'Avenir*'s platform ("sous les couleurs du parti Démocrate-Progressiste"), see: "L'Avenir," Montreal *L'Avenir*, 30 March 1850, 2. Also see: Lamonde, 266-272; Roy, 39-43.
[127] Lower Canada, *Report of the State Trials before a General Court Martial held at Montreal in 1838-9: Exhibiting a Complete History of the Late Rebellion in Lower Canada*, volume II (Montreal: Armour and Ramsay, 1839), appendix 14, 563 (emphasis in text).
[128] By late 1849, *L'Avenir* published in favour of annexation in almost every issue. For a brief selection, see: "Les États-Unis," *L'Avenir*, 28 July 1849, 2; Un Québecois, "L'Annexation," ibid., 4 September 1849, 2; "Les États-Unis D'Amérique Contre La Province Du Canada," ibid., 12 October 1849, 2; "Les États-Unis D'Amérique Contre La Province Du Canada," ibid., 26 October 1849, 2; "Progrès de l'Annexation," ibid., 2 November 1849; "Annexation. Glorieuses Nouvelles," ibid., 23 November 1849, 3; "L'Annexion, Competition," ibid., 21 December 1849, 3. Also see: Jacques Monet, *The Last Cannon Shot: A Study in French Canadian Nationalism* (Toronto: University of Toronto Press, 1969), 345-351; Lamonde, 266-269; Ouellet, "Papineau, Louis-Joseph," 577.
[129] Lamonde, 275; Roy, 43-46.

suffrage both just and practicable."[130] Through popular education and the growth of a public sphere, Canadian men had become morally fit for their full participation within provincial politics.[131] Property qualifications on citizenship, from this point of view, appeared as nothing more than "'feudal' remnant[s]" – antediluvian values that privileged so-called accidents of birth.[132] Legislators and colonists who still championed property-based franchises did so only out of their own "self-interestedness."[133] Clarke's arguments of early 1850, according to Dewar, had set the template for mid-nineteenth-century democratic values in Canada West.[134] These ideals, in turn, would receive their fullest expression as Reformers debated and divided over their pursuit.

Clarke, under the pseudonym Reformator, had first outlined his thoughts on franchise reform in the Toronto *Mirror* of 8 February 1850.[135] By March, the article (alongside his other articles) had spread across Canada West.[136] Reform gatherings and associations soon enough debated how far they might pursue an expanded electorate, amongst other radical ideas. By the spring, meetings around Toronto had endorsed franchise reform of some kind. While Markham and Guelph reformers sought "a very great extension of the Elective Franchise, particularly to the Counties," those in Belleville and Brooklin (Whitby) went a step further and called for an

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[130] Ibid., 237.
[131] Ibid., *Charles Clarke: Pen and Ink Warrior* (Montreal and Kingston: McGill-Queen's University Press, 2002), 64. Also see: McNairn, 232-233. In Clarke's own words: "In the present day, when men are beginning to feel that they <u>are</u> men, and when the old method of settling differences opinions by sound knocks, and slashes, and shootings, and tumblings, is giving way to argument and honest expressions of opinion, it is necessary that every member of the human family should be prepared to say his say, and take his part in the battle of life with a moving tongue in his head…" See: Archives of Ontario [hereafter AO], F26 Charles Clarke fonds, "Lecture on the Objects and Organization of the Sons of Temperance" (1851), 3. Emphasis in text.
[132] Dewar, "Charles Clarke's 'Reformator'," 237. Also see: McNairn, 226.
[133] Dewar, *Charles Clarke*, 63.
[134] Ibid., 100.
[135] Reformator, "Tracts for the Time No. II," Toronto *Mirror*, 8 February 1850, 3.
[136] Ibid., *Bathurst Courier*, 8 March 1850, 1.

"extension of the Elective franchise to Householders as well as Freeholders..."[137] Pickering's reformers heard an even more radical resolution: that "a general extension of the franchise should be conceded, at least extending as far as to leaseholders and householders, with a view when the country may demand it, to embrace universal suffrage..." This motion had ultimately proven too bold for those who attended Thomson's Tavern on 30 March. While reform-minded Pickeringites had agreed "[t]hat the franchise ought to be extended," they would only go so far as to include "tenants under Bond or Lease of land or houses of the assessed annual value of £5 currency."[138] A much more moderate George Brown (in his Toronto *Globe*) congratulated "the Pickering men" for their rejection of "loose and revolutionary sentiments."[139] Even so, onlookers saw the rupture taking place. A "new republican party" had formed around those principles championed by Charles Clarke.[140] Brown called them the Calebites, after the elderly maverick and "political weathercock" Caleb Hopkins.[141] Charles Donlevy at the Toronto *Mirror* saw them as "the disgusted Reformers."[142] After some wrangling, these radical reformers ultimately preferred the name "Clear Grits."[143] In the months to come, these Clear Grits became some of the strongest proponents of an expanded franchise anywhere in British North America.

Reform meetings in Canada West continued on through 1850. By June, Grit commentators felt safe to say that "[h]ousehold suffrage is the Clear Grit standard" (as opposed

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[137] See: "Meeting at Markham," Toronto *Globe*, 21 March 1850, 2. "Reform Meeting at Guelph," ibid., 2 April 1850, 3. Also see: "Hastings Reform Association," ibid., 2 May 1850, 3; "The Brooklin Meeting," ibid., 30 March 1850, 2; "The Brooklin Meeting," ibid., 6 April 1850, 2.
[138] "Meeting at Pickering," ibid., 11 April 1850, 2.
[139] Ibid.
[140] See: "The Calebite Platform," ibid., 28 March 1850, 2; "The Upper Canada Reform Party," ibid., 4 April 1850, 2.
[141] Again, see: "The Calebite Platform," ibid., 28 March 1850, 2; "The Calebites," ibid., 11 April 1850, 2. For the quotation, see: "The Halton Election," Toronto *Mirror*, 22 February 1850, 2. Also see: Michael S. Cross "Hopkins, Caleb," *Dictionary of Canadian Biography*, volume X, 359-360; Leo A. Johnson, "The Halton By-Election, March 1850: A Politician's View," *Ontario History* 60.3 (September 1968): 147-148.
[142] "Parties As They Are," Toronto *Mirror*, 25 August 1850, 2. Also see: Curtis Fahey, "Donlevy, Charles," *Dictionary of Canadian Biography*, volume VIII, 228.
[143] See: "Party Names," Toronto *Globe*, 11 April 1850, 3. Also see: George M. Jones, "The Peter Perry Election and the Rise of the Clear Grit Party," *Ontario Historical Society Papers and Records* 12 (1914): 172.

to "Universal Suffrage," as attributed to them by some commentators).[144] The following November, William McDougall at the *North American* had finalized the Clear Grits' ten-point platform.[145] Amongst elective institutions, biennial elections, and commercial autonomy, the program's third plank endorsed an "Extension of the Elective Franchise – to all Householders and Housekeepers."[146] Within days of its publication, the governor general, Lord Elgin, had forwarded it to the Colonial Office with his commentary. As a whole, Elgin viewed the Grits' platform as actually "pretty modest."[147] It did not go to the extremes of Papineau's followers and press for annexation. Nor did it go so far as some British radicals in Great Britain who demanded equality through "the nationalisation [and redistribution] of landed property" (while similarly supporting household suffrage).[148] In fact, Elgin really only worried about calls for an elective governor. Even then, he saw the Grits as "a little divided on the point..."[149]

Elgin had ultimately recognized that even more extreme voices inhabited Canada West. William Lyon Mackenzie – the same William Lyon Mackenzie who had led the Upper Canadian Rebellion in 1837 – had returned to the province in 1849 a pardoned man. A Jacksonian democrat through and through, he soon attacked even the Clear Grits for their "hypocrisy"

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[144] For the Clear Grit position, see: Constant, "From our Toronto Correspondent," *Bathurst Courier*, 21 June 1850, 3. For the earlier moderate interpretation, see: "The Upper Canada Reform Party," Toronto *Globe*, 4 April 1850, 2.
[145] William McDougall had founded Toronto's *North American* in the spring of 1850 to speak for the emergent Clear Grits. Its prospectus, which it repeated in every issue, stamped itself firmly in favour of "an extended and uniform franchise..." For example, see: "Prospectus of the North American," Toronto *North American*, 21 May 1850, 2. Also see: Suzanne Zeller, "McDougall, William," *Dictionary of Canadian Biography*, volume XIII, 633.
[146] "Our Platform," Toronto *North American*, 22 November 1850. Also see: Lord Elgin to Earl Grey, 27 November 1850, in *The Elgin-Grey Papers 1846-1852*, volume II, 750.
[147] Lord Elgin to Earl Grey, 27 November 1850, in *The Elgin-Grey Papers 1846-1852*, volume II, 749.
[148] The National Reform League had established its platform on 16 March 1850 in London. For the quotation, see: National Reform League, *Propositions of the National Reform League, for the Peaceful Regeneration of Society* ([London?]: [1850?]), 3. Also see: Gregory Claeys, *Citizens and saints: Politics and anti-politics in early British socialism* (Cambridge: Cambridge University Press, 1989), 268-284; Miles Taylor, *The Decline of British Radicalism, 1847-1860* (Oxford: Clarendon Press, 1995), 159-173. The National Reform League, in turn, received attention amongst Canadian Reformers (and especially when the British Parliament debated electoral reform in 1851 and 1852). See: "English Reform," Toronto *Globe*, 30 October 1851, 3.
[149] Lord Elgin to Earl Grey, 27 November 1850, in *The Elgin-Grey Papers 1846-1852*, volume II, 749. Elgin offered an editorial from the 15 November 1850 edition of the *Bathurst Courier* to make his point. See: ibid., 751-752.

towards reform.[150] Mackenzie's profoundly levelling beliefs, coupled with his reputation as a rebel leader, made him a lightning rod for the most revolutionary political elements across Canada West. One Dr. John Kirk went so far as to advise Mackenzie: "do not be afraid of extending the Franchise it will render the foundations of Society Broader and Stronger.…And above all see that Socialism has equal rights with the rest without so much as mentioning the name."[151] Although populists like Mackenzie and socialists like Kirk may have formed a marginalized and disparaged minority, they too called for sweeping electoral reforms. When combined with the Grits, these radicals formed a substantial (if not totally cohesive) political force that took the Canadian legislature by storm.

By the end of 1851, both Baldwin and LaFontaine had resigned from public office. The pace of reform had ultimately outstripped them. Francis Hincks and Augustin-Norbert Morin now took up their respective roles. The Reformers had formed a new government in 1852, but their hold on power proved more tenuous than ever. Hincks, the political pragmatist, now relied upon the more dogmatic Grits to prop up his side of the ministry.[152] In fact, it had taken endorsements from Canada West's two leading Grit representatives – John Rolph and Malcolm Cameron – to secure Hincks his Oxford County Reform nomination.[153] In exchange, Hincks had

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[150] See: Wise, "Through the Lace Curtain," 54-55. Also see: Frederick H. Armstrong and Ronald J. Stagg, "Mackenzie, William Lyon," *Dictionary of Canadian Biography*, volume IX, 506.

[151] AO, F37 Mackenzie-Lindsey Family Fonds – William Lyon Mackenzie Correspondence, "Letter from John Kirk to W.L. Mackenzie, congratulating Mackenzie on his reelection to provincial assembly, 19 April 1851," 7692. During Europe's 1848 year of revolution, the much more moderate Toronto *Globe* attacked socialism and universal manhood suffrage in the same breath: "In France, one of the first consequences of the triumph of the Republican Party was an attempt to seize the railroads and the Insurance Companies, one of the most daring and profligate proposals ever heard of. The Socialism and Communism of the Ultra party have since shown themselves sufficiently, and left their mark in torrents of blood. Universal Suffrage was divided against itself, and nothing saved France but the arm of Military power. We object *finally* to Universal Suffrage, because, when it has once been adopted, there is no remedy, however great the evils which may arise from it, excepting Revolution and Military Despotism." See: "Universal Suffrage," Toronto *Globe*, 12 August 1848, 2 (emphasis in text).

[152] See: William G. Ormsby, "Hincks, Sir Francis," *Dictionary of Canadian Biography*, volume XI, 411. Also see: ibid., "Sir Francis Hincks," in *The Pre-Confederation Premiers: Ontario Government Leaders, 1841-1867*, ed. J.M.S. Careless (Toronto: University of Toronto Press for the Ontario Historical Studies Series, 1980), 161-162.

[153] "Oxford Convention," Toronto *Globe*, 18 October 1851, 2. Also see: Emery, 73-74.

to make two concessions. First, he had to guarantee Cabinet positions for both Rolph and Cameron within the new government (and thereby ostracize more moderate legislators like John Sandfield Macdonald).[154] Second, he had to pledge to Oxford reformers that he would pursue a version of the Clear Grit platform. In other words, an "Extension of the Elective franchise" became one of the "conditions on which Mr. Hincks's nomination stands..."[155] Hincks himself put a positive spin on the situation, recalling that he "had no difficulty agreeing upon a programme embracing secularization of the Clergy reserves, the increase of the Representation, the extension of the franchise, the abolition of seigneurial tenure, the extension of the principle of election to the Legislative Council, and the encouragement of railway enterprises."[156] While George Brown railed against Hincks's loose principles, Clear Grits celebrated their new "Union of the Reform Party" under what they called the "Hincks-Rolph Cabinet."[157] These conditions of compromise, which tenuously held reformers together, paved the way for much more inclusive franchise laws across the Province of Canada.

The Clear Grits, alongside other Canadian radicals, did not have to wait long for new franchise legislation. Less than three months after the new parliament opened, Francis Hincks had introduced the so-called Registration of Voters Act. Despite its title, the law redefined the provincial franchise for all categories of Canadian voters. Its preamble announced its purpose: that "it is *right* to extend the Elective Franchise to certain classes of persons who are now

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[154] Macdonald never forgave Hincks for this treatment. See: Bruce W. Hodgins, "Macdonald, John Sandfield," *Dictionary of Canadian Biography*, volume X, 463.
[155] "Oxford Convention," Toronto *Globe*, 18 October 1851, 2. Also see: Garner, 107.
[156] See: Sir Francis Hincks, *Reminiscences of his Public Life* (Montreal: William Drysdale, 1884), 253.
[157] See: "Our Position," Toronto *Globe*, 11 March 1852, 2. Also see: "The Necessity for Union," Toronto *North American*, 31 October 1851, 4; "Parliament," *Bathurst Courier*, 20 November 1852, 1. For a sampling of other Reform editors' opinions, see: "The New Ministry. Opinions of the Reform Press. The New Ministry and the State of the Parties," Toronto *North American*, 31 October 1851, 4. Subsequent commentators in the 1860s called it the Hincks-Rolph administration as well. See: Henry J. Morgan, *Sketches of Celebrated Canadians, and Persons Connected with Canada, from the Earliest Period in the History of the Province Down to the Present Time* (Quebec: Hunter, Rose & Co., 1862), 471.

excluded from voting at Elections of Members of the Legislative Assembly of this Province..."[158]

As the legislation's author, Hincks more thoroughly explained what he meant by these words. According to him, franchise reforms were

> very generally desired, particularly in the western section of the Province. In that part of the country, it has been found that the principle of confining the franchise to the forty-shilling freeholders has excluded a very large class of respectable and wealthy farmers, some of whom have been in the habit of leasing farms to a very considerable extent, and of obtaining lands on lease from the crown and from corporations....It was also the intention of the Government to reduce the qualification of city voters from £10 sterling – which was found to be very inconvenient, as it is a higher rental than that paid by the majority of small householders, and excludes a large number of persons in the towns from exercising the elective privilege.[159]

On the basis of these arguments, new franchise qualifications would apply both rurally and within cities and towns. The Clear Grits, as kingmakers, would receive their expanded franchise. An already inclusive electorate would become even more inclusive. Still, the most diehard radicals would have found themselves disappointed. While incremental change was well and good, Hincks's franchise did not go so far as some would have liked.[160]

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[158] Province of Canada, "An Act to extend the Elective Franchise, and better to define the qualifications of Voters in certain Electoral Divisions, by providing a system for the Registration of Voters" (16 Vic., c. 153), preamble. Emphasis in text.

[159] Ibid., *Debates of the Legislative Assembly of United Canada*, volume XI, part II (1852-1853), 26 October 1852, 1231. William McDougall, at the Clear Grit *North American*, later repeated Hincks's emphasis on equality and justice: "This bill, giving as it does the right of suffrage to a large class of persons who upon every sound principle of public policy, are equally entitled to it with the bulk of those who now exercise that right, must be regarded as a liberal and just measure – such a measure as we have a right to expect from a *reform* ministry." See: "Meeting of Parliament," Toronto *North American*, 8 February 1853, 2 (emphasis in text).

[160] The *Bathurst Courier*'s legislative correspondent, for instance, would have "rather see[n] a bill introduced establishing universal suffrage as the law of the country. In Canada we have not a great deal to fear from such an extension, and I believe it would prove most advantageous to the best interest of the country. There are many young men in our cities and towns, and even in the country, of great intelligence, who are deprived by the present laws from the exercise of the franchise; and I would venture to affirm that there are not a few who have the direction of public sentiment and the formation of public opinion, to a great extent, in their own hands, on account of their connection with the Press, who, because of their livelihood, cannot cast their vote for the Representative of the people." See: "Quebec Correspondence of the 'Courier'," *Bathurst Courier*, 11 March 1853, 2.

As Hincks summarized the Registration of Voters Act, he ensured to clarify that his goal was never manhood or household suffrage.[161] Large American newspapers like the *New York Times* had already commented favourably upon proposed Canadian reforms like "the Extension of the Franchise." Not only was Canada (and the "Hon. Mr. Hincks") "going fast ahead"; the *Times* predicted that such reforms would culminate in Canada's independence from Great Britain.[162] Hincks became further associated with political extremism as Canadian journals reprinted the *Times*'s comments.[163] While some democrats may not have minded such talk, Hincks still had a party of moderates to appease. With Clear Grits holding the balance of power, Hincks had to satisfy his traditional supporters that Canada would never become the chaotic United States or, even worse, revolutionary France. Property qualifications had to remain in place to keep the province within a British constitutional fold. The Clear Grits may have envisioned democratic reforms, but Hincks gave them liberal ones. The province's abundance of land ultimately smoothed over these distinctions so that both sides could come away more or less happy.

While the Registration of Voters Act had retained property qualifications for urban constituencies, it had lowered them considerably. Under both the Constitutional Act of 1791 and the Election Act of 1849, urban tenants had to pay £10 sterling in annual rent before they qualified to vote. The same tenants now only had to pay £7.10.0 local currency to secure the same privilege (a reduction of nearly forty percent).[164] To justify the change, Hincks had argued that "the £10 franchise in the towns was found a very inconvenient one, for 10*l*. [pounds local] currency was a common amount paid for rent, whereas the qualification was in sterling money,

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[161] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume XI, part III (1852-1853), 22 February 1853, 1669.
[162] "Canadian Progress and Education," *New York Times*, 27 October 1852, 4.
[163] For example, see: "What Foreigners think of us," Windsor *Voice of the Fugitive*, 18 November 1852, 1.
[164] Province of Canada, 16 Vic., c. 153, section 1.

by which means all those nominally paying 10*l*. rent were disqualified."[165] Although rents varied considerably, a £7.10.0 local currency rental qualification would have enfranchised the majority of middling urban households. It certainly did so in Montreal, as British North America's largest and perhaps most expensive city.[166] In fact, of any class of urban men, the Registration of Voters Act would have really only disenfranchised the province's labouring population. While some Montreal labourers paid £8 annually in rent, most paid somewhere around £7 or less.[167] The £7.10.0 restriction appears purposely chosen to keep an emergent Canadian working class away from the hustings. Hincks had essentially admitted as much when he rejected a £5 rental qualification as "much too low."[168] The Registration of Voters Act had thus expanded Canada's urban electorate, but only so far as propertied respectability allowed.

The Registration of Voters Act had produced an expanded electorate in the counties as well, but it did so in a less straightforward manner. According to the legislation, "[e]very male person entered on the last Assessment Roll...as the owner, tenant, or occupant of real property of the assessed actual value of fifty pounds or upwards, or the yearly assessed value of five pounds or upwards" ought to vote at the province's elections.[169] This new £5 qualification for rural ridings (at yearly value and in local currency) had more than doubled the old 40-shilling sterling franchise. Hincks himself had acknowledged the increase, but he argued "that there would in

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[165] Ibid., *Debates of the Legislative Assembly of United Canada*, volume IX, part III (1852-1853), 22 February 1853, 1669.
[166] Robert Sweeny and Grace Laing Hogg argue that throughout the 1840s and into the early 1850s, "[p]rices for both land and buildings in Montréal were high; indeed, in some years they may well have equalled or surpassed those prevailing in much larger European cities." See: Robert C.H. Sweeny and Grace Laing Hogg, "Land and People: Property Investment in Late Pre-Industrial Montréal," *Urban History Review* 24.1 (October 1995): 48. Also see: Robert C.H. Sweeny, *Why Did We Choose to Industrialize? Montreal, 1818-1849* (Montreal and Kingston: McGill-Queen's University Press, 2015), 233-242.
[167] See: Sherry Olson, "Ethnic Partition of the Work Force in 1840s Montréal," *Labour/Le Travail* 53 (Spring 2004): 183.
[168] See: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IX, part III (1852-1853), 22 February 1853, 1669. For more on working-class formation in Canada, see: Gregory S. Kealey, *Toronto Workers Respond to Industrial Capitalism 1867-1892* (Toronto: University of Toronto Press, 1980), 3-17.
[169] Ibid., 16 Vic., c. 153, section 1.

reality be but a very trifling difference..."[170] Hincks had perhaps raised the county restriction to compensate for an even greater change to county enfranchisement. Under the Registration of Voters Act, property ownership no longer formed the sole basis for county enfranchisement. Rural leaseholders (as tenants or occupants) had received the franchise alongside rural freeholders as well. The radical *Bathurst Courier* (drawing upon the Toronto *Examiner*) predicted that such a change would extend the franchise "to a class hitherto under disabilities, and probably numbering one-fifth of the adult population."[171] With land distribution spread so widely across rural Canada, York County's John William Gamble expected that "almost every [male] person of the age of 21 years would have a vote in the election of members of the counties."[172] While tenancy may not have fit nicely into the freeholder ideal described by Ian McKay and Catherine Anne Wilson, tenancy franchises had operated in both the Canadas and Great Britain for years.[173] This privilege, Hincks concluded, ought to extend outward from the cities so that "another class of proprietors...who laid large sums into the general revenue" may vote.[174] The Clear Grits' push for greater inclusiveness had thus resulted in a modified baseline for political belonging. While real property continued to ground provincial citizenship within the Canadas, Hincks's new franchise had looked beyond freehold property to encompass titled landholding more generally.

On top of these new qualifications, a considerable procedural change had affected the franchise as well. The Registration of Voters Act, as its title indicates, had implemented a voters' registry for the province. Local assessment replaced land deeds and rental contracts as

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[170] Ibid., *Debates of the Legislative Assembly of United Canada*, volume IX, part III (1852-1853), 22 February 1853, 1668.
[171] "The Reform Party," *Bathurst Courier*, 4 November 1853, 2.
[172] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IX, part III (1852-1853), 22 February 1853, 1668.
[173] Wilson, 217.
[174] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IX, part III (1852-1853), 22 February 1853, 1669.

the burdens of proof for enfranchisement. By means of the annual assessment rolls, the legislation tasked municipal clerks to assemble and update alphabetical voters' lists. Any man who wished to vote in the province needed to see his name on one of those lists. Those who could not convince local officials to enter their names – or those ineligible for assessment, such as First Nations men who lived on reserved land – found themselves disenfranchised automatically.[175] Through knowledge of population (to draw upon Bruce Curtis) the Reformers had hoped to further centralize and rationalize provincial electoral processes. These goals, in turn, played into a broader liberal project of making the Canadas more "governable."[176] Disciplined elections made for more intelligible election results, or so the theory went. In any case, the legislation as a whole passed through the legislature with little opposition. Even most Conservatives had offered it their support.[177] Lord Elgin, in turn, granted the legislation his assent on 14 June 1853. To give municipalities time to adjust the assessment rolls and prepare the voters' lists, the Act's final section stated that it "shall not apply to any Election for which the first polling-day shall be before the First day of January, one thousand eight hundred and fifty-five."[178] In other words, municipal assessors and municipal clerks had just under a year and a half before the Registration of Voters Act came into full effect.

As the 1 January 1855 deadline approached, a new coalition government had taken power. The Hincks-Morin Reformers had joined Sir Allan MacNab's moderate Conservatives to

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[175] Province of Canada, 16 Vic., c. 153, sections 5-6. Also see: Sidney L. Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press for the Osgoode Society, 1998), 31; 107.
[176] See: Bruce Curtis, *The Politics of Population: State Formation, Statistics, and the Census of Canada, 1840-1875* (Toronto: University of Toronto Press, 2001), 4-10.
[177] See: "The Clear Grit Platform," Toronto *Globe*, 4 August 1853, 2.
[178] Province of Canada, 16 Vic., c. 153, section 12. Also see: "The Franchise Bill," Toronto *North American*, 14 June 1853, 2.

form an uneasy alliance based upon shared economic concerns.[179] With little of substance holding the ministry together, the threat of a general election constantly lurked close by. Unfortunately for the government, the province's voters' registry – as demanded by the Registration of Voters Act – proved nowhere near completion. Newspapers like the Toronto *Examiner* and Montreal *Witness* had done their best to urge municipal clerks onward, but seemingly to no avail.[180] While some municipalities had managed to prepare full sets of lists, most others had failed in this regard. Francis Hincks, in hindsight, had asked too much of the province's municipal machinery.[181] Alongside the Registration of Voters Act, the Hincks-Morin government had also passed new assessment legislation for Canada West in 1853. Municipal clerks had to base their voters' lists on the annual assessment rolls. Before local assessors could complete those rolls, they first had to get their hands on the new assessment law (which, in turn, only came into effect on 1 January 1854).[182] Once they received the statute – if they received it at all – they then had to act upon it within the space of just a few months.[183] Normally, local assessors could rely upon Hugh Scobie's yearly *Municipal Manual* to outline the province's various municipal statutes. Scobie's death in December of 1853 had delayed the *Manual*'s next edition until 1855.[184] Assessors thus had to cross-reference the new legislation themselves to

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[179] See: Careless, *The Union of the Canadas*, 192-194. Also see: Peter Baskerville, "MacNab, Sir Allan Napier," *Dictionary of Canadian Biography*, volume IX, 525-526.

[180] These journals reminded municipal clerks that "[a] neglect of this duty would cause the disfranchisement of the Township where it was neglected." See: "Important to Municipal Authorities," *Montreal Witness*, 4 October 1854, 1 (from *The Examiner*).

[181] See: Garner, 108.

[182] See: Province of Canada, "An Act to amend and consolidate the Assessment Laws of Upper Canada" (16 Vic., c. 182), section 91.

[183] The Toronto *Globe* would later make the exaggerated claim that "[t]he county officials, whose duty it was to prepare the lists, &c., were not made aware of their duty and except in a few cases entirely omitted to perform it. There was no proper machinery provided for insuring the prompt and universal operation of the law. In many counties the officials never heard that such a law existed till it was repealed." See: "The Franchise," Toronto *Globe*, 22 February 1858, 2.

[184] For the fourth edition of the *Municipal Manual*, see: Hugh Scobie, *Scobie's Municipal Manual for Upper Canada: In Reference to Municipalities and the Municipal System Established in Upper Canada*, fourth edition (Toronto: Hugh Scobie, 1853). For the fifth edition, which does not indicate authorship, see: *The Municipal*

fully understand it. The more time they took, the less time they gave municipal clerks to formally prepare, judicially revise, and officially ratify their completed voters' lists (all before 1 September, the date proscribed by law).[185] While some commentators cried "neglect," the combination of new legislation with such a tight timeframe offered municipal officials little chance for success.[186]

The Registration of Voters Act had provided no recourse for such events. Canada's new franchise needed voters' lists to function, and the province had too few at the ready. If the MacNab-Morin government fell, and an election followed, most Canadians would have found themselves disenfranchised no matter their property, wealth, or social standing. Some legislators had discovered, moreover, that assessors "had used the registration machinery for political purposes..." Apparently, "in this respect one party was just as bad as the other."[187] These legislators viewed extant voters' lists as partisan documents more than anything else. The new attorney general for Canada West, John A. Macdonald, had included himself within this group. He

> mentioned the case of two townships where the assessors had used their power for political purposes. In one township the Reform assessor put down a great number of Conservatives as possessing property of £45 in value – nothing less than £50 giving the right to vote, and he regretted to say the Conservative assessor, on the other side of the river, had acted just in the same way towards the Reformers.[188]

Manual, for Upper Canada: Revised and Corrected, Embracing the Latest Changes and Alterations in the Laws Affecting Municipalities in Upper Canada, with an Analytical Index, and Complete List of the Acts which it May Sometimes Be Necessary to Consult (Toronto: Thomson & Co., 1855). Also see: David Ouellette, "Scobie, Hugh," *Dictionary of Canadian Biography*, volume VIII, 790.

[185] See: ibid., 16 Vic., c. 153, section 5, subsections 1-2.

[186] Again, see: "Important to Municipal Authorities," *Montreal Witness*, 4 October 1854, 1 (from *The Examiner*).

[187] These quotations come from John Sandfield Macdonald. See: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume XII, part IV (1854-1855), 13 December 1854, 1771.

[188] See: ibid., 1772.

In hopes of addressing such problems, Macdonald threw together hasty franchise legislation in the final weeks of 1854.[189]

Despite Macdonald's desire "to carry out the intention of the late act," the new Elective Franchise Temporary Extension Act looked makeshift in every way possible.[190] From the outset, the legislation stipulated that the franchise found within 1853's Registration of Voters Act would not come into effect until 1 January 1856.[191] Until that time, the province reverted to the Election Act of 1849.[192] In other words, the Canadas' original 40-shilling franchise had remained in effect. The government, however, did not want to disenfranchise anyone through legislative regression.[193] It thus applied the qualifications found within the 1853 legislation as well (minus anything that had to do with assessment).[194] By combining the most inclusive elements of both laws, this mishmash of old and new fashioned a franchise even more inclusive than before. Six months later, Macdonald went a step further and made the legislation more permanent. The Elective Franchise Temporary Extension Act of 1854 had become the Elective Franchise Extension Act of 1855. Despite the apparent vote of confidence, Macdonald admitted that the new law should only "continue in force, until, if possible, a better system of registration

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[189] As the Elective Franchise Temporary Extension Act phrased it in its preamble: "there is reason to apprehend that in many parts of this Province, the Lists of Voters required by the Act of the now last Session hereinafter cited, may not be completed by the first day of January, one thousand eight hundred and fifty-five, so that if the said Act were brought fully into force on that day, great injustice might be done in many cases..." See: ibid., "An Act to amend an Act intituled, *An Act to extend the Elective Franchise, and better to define the qualifications of Voters in certain Electoral Divisions, by providing a system for the Registration of Voters*" (18 Vic., c. 7), preamble.

[190] For the quotation, see: "Legislative Proceedings," Toronto *Globe*, 16 December 1854, 2 (debates of 13 December 1854). Also see: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume XII, part IV (1854-1855), 13 December 1854, 1771-1772. The Act itself imposed this wordy title. See: Province of Canada, 18 Vic., c. 7, section 10.

[191] Province of Canada, 18 Vic., c. 7, section 1.

[192] Ibid., section 2.

[193] As the *Globe*'s reporter characterized the legislation: "it may be said to give the franchise to all to whom the late bill gave it." See: "Legislative Proceedings," Toronto *Globe*, 16 December 1854, 2.

[194] See: Province of Canada, 18 Vic., c. 7, sections 2 and 6.

could be devised."[195] Although the 1855 legislation had formally repealed Hincks's Registration of Voters Act, its days appeared numbered as well.[196] The Elective Franchise Extension Act, like its immediate predecessor, remained a slapdash affair. A gaggle of discordant property qualifications and a string of quickly-drafted oaths barely held it together. The true test would come two and a half years later when Canadians went to the polls. The test did not go well.

John A. Macdonald had emerged from the December 1857 general election battered and bruised. For the past two years, he had led Canada West's Liberal-Conservative party (as the conservative-reform alliance now called itself) and he had governed the province as co-premier. Despite his skills at political organization, his party had taken a drubbing at the hands of George Brown and his newly reconstituted Liberal party (composed of former Clear Grits and other less moderate Reformers).[197] Macdonald had managed to retain power, but only because George-Étienne Cartier's Conservatives had dominated Canada East. With only half of the province on its side, the new Macdonald-Cartier administration looked unstable.[198] Macdonald had not helped his cause by losing control of his franchise. Poorly worded oaths within the Elective Franchise Extension Act had resulted in so-called "corruptionist outrages" across the province.[199]

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[195] Ibid., *Debates of the Legislative Assembly of United Canada*, volume XII, part VI (1854-1855), 20 April 1855, 2883.
[196] Ibid., "An Act to repeal two certain Acts therein mentioned, and to extend the Elective Franchise of this Province" (18 Vic., c. 87), section 1.
[197] J.K. Johnston and P.B. Waite, "Macdonald, Sir John Alexander," *Dictionary of Canadian Biography*, volume XII, 594. Also see: J.M.S. Careless, "Brown, George," ibid., volume X, 97.
[198] Donald Creighton, *John A. Macdonald: The Young Politician* (Toronto: Macmillan, 1952), 259-260. Also see: J.M.S. Careless, *Brown of the Globe. Volume I: The Voice of Upper Canada, 1818-1859* (Toronto: Macmillan, 1959), 246-248. Also see: ibid., *Union of the Canadas*, 207-208.
[199] "Corruptionist Outrages," Toronto *Globe*, 21 January 1858, 2. These supposed outrages had merely added to the usual forms of treating and bribery found at all open elections. William Hamilton Merritt, for instance, had spent exactly $1,092.03 to secure his 1858 re-election for Lincoln County, Canada West. Unlike most politicians, Merritt had not destroyed his accounts after he had settled them. A quick glance reveals that Merritt had spent most of his money on teams of horses to bring voters to the polls and open houses to "entertain" his supporters. See: AO, F662 William Hamilton Merritt family fonds, volume 26 Elections &c., Neil McGraham to Hamilton Merritt, 4 January 1858; Jacob Pasquell to W.H. Merritt, 12 January 1858; G.W. Merritt to Geo. Saimmons, January 1858; W.H. Merritt to the Proprietor of the Post, St. Catharines, January 1858; "The Lincoln Election," n.d.

"[U]nscrupulous persons," according to a blustery George Brown, had exploited these defects in "a hundred ways." The leasehold and occupancy oaths, more specifically,

> [did] not say that the lease shall be a written one, nor that the occupant shall be actually a resident. The words of the oath are, 'in possession as tenant or occupant,' and a man may be a tenant without residing on the property, as possession in the law means the right of possession, and as a lease by parole or word of mouth is good for a year, thousands have voted, and hundreds have taken the oath who were neither the tenants nor occupants contemplated by the Legislature. Young men living with their parents have voted on a suppositious tenancy of one or two acres of the father's farm. Occupants of shanties on the lines of railways have voted as occupants, though they never intended or expected to become 'owners' of the property on which they voted. They have taken the oath without hesitation, because on reading it there is nothing to exclude their cases.[200]

Because of such looseness, some constituencies had received hundreds of votes more than their total populations (women and children included). One Quebec City riding, which consisted of approximately 300 voters, had apparently filled its poll books with over 1,500 names (including that of Lord Palmerston amongst other contemporary celebrities).[201] As Brown thundered from his pulpit, he revelled in Macdonald's apparent failure. Not only had Macdonald's half-baked oaths exposed a weak legal mind; just as important, they had furthered the cause of reform and given up Canada West in the process.

As soon as the new parliament opened in February of 1858, the franchise question resurfaced yet again. In his speech from the throne, the governor general himself declared that

> [t]here are no statutory provisions more important to the country than those which regulate the franchise, and the trial of controverted elections. Being of opinion that the present acts require amendment, I trust that you will do all in your power to improve and simplify the existing system. I believe, too, that it would be expedient to secure the proper registration and protection of all qualified voters.[202]

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[200] "The Franchise," Toronto *Globe*, 22 February 1858, 2.
[201] See: "L'élection de Québec," *Courrier du Canada*, 4 January 1858, 2; "Débats sur l'élection de Québec," ibid., 8 March 1858, 2-3; "The Quebec Election," *Montreal Witness*, 24 February 1858, 1; "Quebec Election Case," Toronto *Globe*, 5 March 1858, 2. Also see: Garner, 110.
[202] Province of Canada, *Journals of the Legislative Council of the Province of Canada*, volume XVI, 26 February 1858, 24. Also see: "Provincial Parliament. Legislative Council," Toronto *Globe*, 27 February 1858, 2 (Speech from the Throne dated 26 February 1858).

Reformers from both parts of the province had shared the same opinions for quite some time.[203] Quebec's Grand Jury – after what its members had just witnessed in the city – similarly "urged, in their presentment, the necessity of a registration of voters, or some other system to prevent the abuse of the electoral franchise."[204] Still smarting from the last election, Macdonald offered his legislative response two months later. The new Elective Franchise Act promised to finally implement a voters' registry for the province and to adapt the franchise accordingly. Macdonald himself acknowledged that "the results of the last general election showed clearly the necessity of a complete system of registration...to prevent the continuance of gross frauds which had been practised."[205] To qualify for enfranchisement, county voters would now have to appear "on the then last Assessment Roll...as the owner, tenant or occupant of real property of the assessed value of two hundred dollars or upwards, or of the yearly assessed value of twenty dollars or upwards..."[206] Men who lived in towns or cities would similarly have to own or rent property to "the assessed value of three hundred dollars or upwards or of the assessed yearly value of thirty dollars, or upwards..."[207] Forty-shilling freeholders proved too difficult to assess according to Macdonald, so they found themselves excluded from the legislation.[208] With these qualifications established, municipal clerks would employ the assessment rolls to prepare voters' lists on an

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[203] Antoine-Aimé Dorion and Joseph Papin (leading democrats from Canada East) had tried to add a voters' registry and assessment franchise to the Elective Franchise Extension Act in 1855. Although they had both failed in their attempts, they had received support from their Grit colleagues in Canada West. See: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume XII, part VIII (1854-1855), 25 May 1855, 3679. For George Brown's support for voters' registration, see: "The Franchise," Toronto *Globe*, 22 February 1858, 2.
[204] See: "Election Frauds and Election Riots," *Montreal Witness*, 27 January 1858, 4.
[205] "Legislative Assembly," Toronto *Globe*, 28 April 1858, 2 (debate of 27 April 1858). Also see: Province of Canada, *Parliamentary Debates* (Scrapbook Debates), reel 2, 27 April 1858, 68.
[206] Province of Canada, "An Act to define the Elective Franchise, to provide for the Registration of Voters, and for other purposes therein mentioned" (22 Vic., c. 82), section 2, subsection 2.
[207] Ibid., section 2, subsection 1.
[208] "Legislative Assembly," Toronto *Globe*, 28 April 1858, 2 (debate of 27 April 1858).

annual basis. Any man who did not see his name on one of those lists would not receive a vote at Canada's general elections.[209]

Antoine-Aimé Dorion (the man who now led the democratic charge in Canada East) knew he had seen this legislation before.[210] Although its franchise clauses read differently, "there was no doubt this was a re-enactment of the law repealed by the present Administration in 1855."[211] Macdonald had condemned Hincks's Registration of Voters Act as unworkable three years earlier. Now, it would appear, he looked to reinstate the same legislation with only a few cosmetic alterations. Dorion had a point. Even the new dollar-value franchise qualifications had merely taken those imposed by Hincks and changed them into decimal currency.[212] The method of preparing voters' lists had, moreover, remained the same. Macdonald had contemplated hiring "revising barristers as in England, but the expense would be so enormous that he had concluded it was better on the whole to work with such machinery as existed."[213] Canada's municipal bodies would once again shoulder the burden of maintaining the province's voters' lists.

Macdonald's Elective Franchise Act had checked all the right boxes for his Liberal-Conservative party. Former Grits held the balance of power in Canada West, and these former Grits demanded a voters' registry. Macdonald had not only given them what they wanted; he had repackaged Grit legislation to do so. Liberals from across the province found it difficult to

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[209] Province of Canada, 22 Vic., c. 82, sections 4-10.
[210] Jean-Claude Soulard, "Dorion, Sir Antoine-Aimé," *Dictionary of Canadian Biography*, volume XII, 261-262.
[211] Dorion went on to argue that "[a] similar Bill to that now produced was passed by Mr. Hincks' Government in the session of 1852-3, for the purpose of securing the registration of votes, and it was to come into operation on the 1st January 1855; but in the early part of the session of 1854-5, the Ministry very unwisely repealed it, to the great disadvantage of the country; for since that time the most outrageous frauds had been perpetrated." See: "House of Assembly," Toronto *Globe*, 12 May 1858, 2 (debate of 11 May 1858).
[212] The Currency Act of 1853 had stipulated that "the dollar shall be one-fourth of a pound." See: Province of Canada, "An Act to regulate the Currency" (16 Vic., c. 128), section 2.
[213] See: "House of Assembly," Toronto *Globe*, 12 May 1858, 2 (debate of 11 May 1858). While in committee, Macdonald later repeated that "[t]he English system was so exceedingly expensive that it could not be recommended." See: Province of Canada, *Parliamentary Debates* (Scrapbook Debates), reel 2, 7 June 1858, 105.

resist the very law they had championed only five years earlier. Despite a divided Assembly, the Elective Franchise Act passed its third reading sixty votes to four.[214] More important for Macdonald, he had retained the House's confidence with legislation that both suited him personally and supported his party's interests. Like any good Whig, Macdonald had made it clear that "[h]e was not in favour of universal suffrage, but completely opposed to it."[215] He believed that "in this country, where we were all bent on acquiring and improving our properties, and defining the rights of property, that property ought to have a great influence on the qualification of electors." Hincks's former legislation had done just that: it "allow[ed] every person having a domicile, or an interest in the soil, the right to vote."[216] With George Brown sharing the same general opinion, property qualifications had thus remained on the province's franchise.[217] Even so, Macdonald did not necessarily see these qualifications as restrictions. With land still widely available – especially when compared with the rest of British North America – he argued that "laborers and young men alone would be excluded."[218]

Macdonald's characterization was not entirely true, though. Alongside day labourers and young Canadians, First Nations peoples also faced disenfranchisement through the Elective Franchise Act. Macdonald had perhaps not mentioned this latter group out of a misplaced sense of optimism. Although he knew full well that assessment-based property qualifications would exclude most First Nations men (because the province did not assess reserved land) he had passed legislation the year before that looked to rectify the situation. The so-called "Act to encourage the gradual Civilization of the Indian Tribes in this Province" participated in a new

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[214] Province of Canada, *Journals of the Legislative Assembly of the Province of Canada*, volume XVI, part II (1858), 13 August 1858, 1013-1014.
[215] "House of Assembly," Toronto *Globe*, 12 May 1858, 2 (debate of 11 May 1858).
[216] Province of Canada, *Parliamentary Debates* (Scrapbook Debates), reel 2, 11 May 1858, 81.
[217] In this regard, Kenneth Dewar calls Brown a "doctrinaire mid-Victorian liberal." See: Dewar, *Charles Clarke*, 100.
[218] Province of Canada, *Parliamentary Debates* (Scrapbook Debates), reel 2, 11 May 1858, 81.

Indian policy that viewed assimilation as the only means to remove "all legal distinctions between [the Indian Tribes in this Province] and Her Majesty's other Canadian Subjects..."[219] The previous system, Macdonald argued, had simply not worked. Reserved lands, religious schooling, and "grants of money" had apparently "been destructive of habits of self-reliance on the part of the Indians." In their place, Macdonald wanted to offer "grants of land of 50 acres each, not to be held in fee simple, but for life, and to descend to the children of the grantee."[220] The assumption here, John Milloy argues, was that "the full civilization of the tribes could be achieved only when Indians were brought into contact with individualized property."[221] Once First Nations men became individual freeholders, they transformed into full propertied citizens within the province's liberal order. Any racial distinctions would apparently disappear as these men gained privileges such as the vote. London's John Wilson framed the change more crassly: it "[made] a white man of an Indian."[222] Considering repeated Indigenous demands for formal political equality – alongside Indigenous petitions for freehold property – Macdonald may have

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[219] Province of Canada, "An Act to encourage the gradual Civilization of the Indian Tribes in this Province" (20 Vic., c. 26), preamble. For broader discussions of this new policy, see: John L. Tobais, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," in *As Long as the Sun Shines and the Water Flows: A Reader in Canadian Native Studies*, eds., Ian A.L. Getty and Antoine S. Lussier (Vancouver: UBC Press, 1983), 42; John S. Milloy, "The Early Indian Acts: Developmental Strategy and Constitutional Change," in ibid., 58-59; Robin Jarvis Brownlie, "A Persistent Antagonism: First Nations and the Liberal Order," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*. eds. Jean-François Constant and Michel Ducharme (Toronto: University of Toronto Press, 2009), 299-300; Edmund J. Danzinger Jr., "We Have No Spirit to Celebrate with You the [Great] Columbian Fair: Aboriginal Peoples of the Great Lakes Respond to Canadian and United States Policies During the Nineteenth Century," in *Lines Drawn Upon the Water: First Nations and the Great Lakes Borders and Borderlands*, ed. Karl S. Hele (Waterloo, ON: Wilfrid Laurier University Press, 2008), 3-6; Dickason, 228-229; Miller, 123-144.
[220] "Legislative Assembly," Toronto *Globe*, 16 May 1857, 2 (debates of 15 May 1857). Also see: Province of Canada, 20 Vic., c. 26, sections 7 and 10.
[221] Milloy, "The Early Indian Acts," 58.
[222] "Legislative Assembly," Toronto *Globe*, 16 May 1857, 2 (debates of 15 May 1857). For more on this equation between citizenship, First Nations peoples, and Whiteness, see: Robin Jarvis Brownlie, "'A better citizen than lots of white men': First Nations Enfranchisement – an Ontario Case Study, 1918-1940," *Canadian Historical Review* 87.1 (March 2006): 47-49.

hoped for a strong positive response from First Nations peoples themselves.[223] The Liberal-Conservatives, after all, needed as many potential supporters as they could get.

From the perspective of Canada's First Nations, the Gradual Civilization Act was deeply flawed. Macdonald had apparently failed to consult with chiefs or band councils when he drafted the legislation and it showed.[224] First off, not just any Indigenous man qualified under the act. Those who desired land grants had to present themselves, in person, to the local Indian Commissioner (one of Macdonald's patronage appointees). If the Commissioner

> shall report in writing to the Governor that any such Indian of the male sex, and not under twenty-one years, is able to speak, read and write either the english or the french language readily and well, and is sufficiently advanced in the elementary branches of education and is of good moral character and free from debt, then it shall be competent to the Governor to cause notice to be given...that such Indian is enfranchised [released from legal liabilities] under this Act.[225]

Historians have since noted the severity of these restrictions. The Act had essentially imposed tests that, according to J.R. Miller, "many – perhaps most – Euro-Canadians in the Canadas could not have satisfied in the 1850s."[226] Any First Nations man who managed to negotiate this

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[223] For the demands, see: Donald B. Smith, *Sacred Feathers: The Reverend Peter Jones (Kahkewaquonaby) and the Mississauga Indians*, second edition (Toronto: University of Toronto Press, 2013), 238-239. For the petitions, see: Maxime Gohier, "La pratique pétitionnaire des Amérindiens de la vallée du Saint-Laurent sous le Régime britannique : pouvoir, représentation et légitimité (1760-1860)," PhD dissertation (Université du Québec à Montréal, 2014), 569.

[224] "Legislative Assembly," Toronto *Globe*, 16 May 1857, 2 (debates of 15 May 1857). Also see: Allan Sherwin, *Bridging Two Peoples: Chief Peter E. Jones, 1843-1909* (Waterloo, ON: Wilfrid Laurier University Press, 2012), 74; Donald B. Smith, "Macdonald's Relationship with Aboriginal Peoples," in *Macdonald at 200: New Reflections and Legacies*, eds. Patrice Dutil and Roger Hall (Toronto: Dundurn, 2014), 67 This stands in contrast with earlier Canadian Indian legislation. See: Ted Binnema, "Protecting Indian Lands by Defining Indian: 1850-76," *Journal of Canadian Studies* 48.2 (Spring 2014): 17.

[225] Province of Canada, 20 Vic., c. 26, section 3. Indigenous men unable to read or write had to jump through even tighter hoops. If an Indian Commissioner found such a man "able to speak readily either the English or the French language, of sober and industrious habits, free from debt and sufficiently intelligent to be capable of managing his own affairs," that man entered a three-year probationary period. So long as "such Indian has during such term conducted himself to [the Commissioner's] satisfaction," he eventually received his 50 acres. See: ibid., section 4.

[226] Miller, 140. Also see: Sidney L. Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press for the Osgoode Society, 1998), 33; Daniel Rueck, "Enclosing the Mohawk Commons: A history of use-rights, landownership, and boundary-making in Kahnawá:ke Mohawk Territory," PhD dissertation (McGill University, 2013), 154.

gauntlet received his 50 acres.[227] While the land came free of charge, no one could rightfully call it free land. Instead, the state would (questionably) take those 50 acres "out of the lands reserved or set apart for the use of his Tribe."[228] It is here that the Act's coercive project truly revealed itself. While Macdonald's government had certainly hoped to transform First Nations men into individual proprietors, it also wanted to convert reserved lands into freehold estates.[229] By means of the Gradual Civilization Act, the state looked to pick apart the reserved land system 50 acres at a time.[230]

First Nations men had much more to lose than their community's cohesiveness, however. The moment any Indigenous man submitted to the Gradual Civilization Act, the legislation declared that he "shall no longer be deemed an Indian."[231] Materially, this meant that First Nations men had to give up "all claim to any further share in the lands or moneys then belonging for the use of his Tribe, and shall cease to have a voice in the proceedings thereof."[232] Personally, it resulted in a formal change of name. Any Indigenous man who accepted "civilization" had to adopt a Christian name and surname "by which he shall thereafter be legally designated and known."[233] These men also had to agree that their children, in essence, became wards of the state. If such a man died "leaving any child under the age of twenty-one years, the Superintendent General of Indians shall become *ipso facto* the tutor of such child as to property and rights in Lower Canada, and the guardian of such child as to property and rights in Upper

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[227] Province of Canada, 20 Vic., c. 26, section 7.
[228] Ibid.
[229] Macdonald had also mentioned that "[t]he question was often asked whether steps were being taken to procure a surrender of the Indian Reserves, which were in the midst of settled parts of the country, and retarded improvement. This Bill [the Gradual Civilization Act] was not for that purpose, – but where the Government could induce the Indians to sell such lands, they did so." See: "Legislative Assembly," Toronto *Globe*, 16 May 1857, 2 (debates of 15 May 1857).
[230] Milloy, "The Early Indian Acts," 58-59; Brownlie, "First Nations and the Liberal Order," 301-302; Smith, *Sacred Feathers*, 238-239
[231] Province of Canada, 20 Vic., c. 26, section 3.
[232] Ibid., section 7.
[233] Ibid., section 5.

Canada, until it shall attain the age of twenty-one years." The child's mother would no longer have a role to play in that child's life (aside from holding the child's share of her husband's estate in trust).[234]

These coercive aspects of the Gradual Civilization Act, when taken together, proved far too egregious for the province's First Nations leadership. Modest tracts of reserved land did not nearly compensate for the dismantlement of Indigenous identities, territories, and structures of power.[235] While some young Indigenous men viewed the Act as a way to destabilize traditional hierarchies – and thereby claim greater authority and wealth themselves – the majority sided with their chiefs and band councils.[236] Calls for the legislation's repeal soon emerged from both within First Nations communities (who denounced it as destructive) and amongst their White neighbours (who wanted First Nations lands for themselves).[237] Tellingly, historians have only discovered six men who petitioned for citizenship under the Gradual Civilization Act. Of these six, moreover, only one had managed to pass its educational and moral tests. Unfortunately for Charles Hill of the Mohawk Institute, he never received his 50 acres either. No matter what the legislation decreed, the Council of the Six Nations had simply refused to subdivide its lands and remove them from reserved status.[238]

Macdonald's coercive attempt at First Nations enfranchisement had ultimately failed. Most First Nations men who lived on reserved lands had chosen to remain without votes as the

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[234] Ibid., section 11.
[235] Smith, "Macdonald's Relationship with Aboriginal Peoples," 68.
[236] See: Gohier, 570-576; Daniel Rueck, "Commons, Enclosure, and Resistance in Kahnawá:ke Mohawk Territory, 1850-1900," *Canadian Historical Review* 95.3 (September 2014): 359. Also see: Smith, "Macdonald's Relationship with Aboriginal Peoples," 68.
[237] According to the Brantford *Expositor*, by way of the Toronto *Globe*, "a petition is being circulated through the counties of Brant and Haldimand, the object of which is to obtain the repeal of the laws passed in 1856 and 1857 for the protection, enfranchisement and civilization of the Indians. These laws, though well intentioned, have operated greatly to the disadvantage of both the Indians and their white neighbours, as everybody knows, and the sooner they are modified the better for all parties concerned." See: "Important Petition," Toronto *Globe*, 24 February 1858, 2. Also see: Library and Archives Canada [hereafter LAC], RG 10 Indian Affairs fonds, volume 245, part 1, "Minutes of Great Council, 20-29 September 1858," 145510-145511.
[238] See: Miller, *Skyscrapers Hide the Heavens*, 143-144; Gohier, 570.

lesser of two evils. While Macdonald may have gladly accepted whatever First Nations support he could get, he had certainly not counted on it to push his party to victory. The electoral machinery as first established by the Registration of Voters Act had offered Macdonald a much more reliable method of securing Liberal-Conservative majorities. Herein lay the crux of the Liberal-Conservative strategy. Macdonald had just lost an election in Canada West; he never wanted that to happen again. Through careful planning, the new voter registration system looked to secure Liberal-Conservative supremacy in the province for years to come.

Voter registration across the Canadas took three general steps. First, municipal assessors determined property values and indicated them on their assessment rolls. Second, municipal clerks used these rolls to ascertain who met the province's property qualifications. From there, they created the local voters' lists.[239] Third, anyone who wished to challenge the accuracy of these lists brought their appeals before the County or Superior Court. The legislation dictated that, in all instances, "decision[s] of such judge[s] shall be final and conclusive."[240] While the province had little control over municipal assessors or clerks, Macdonald's government had spent much of 1857 creating bureaucratic positions and making judicial appointments.[241] By George Brown's count "[t]wo hundred and twenty-seven Bills have been passed into law during the [1857] session" alone, more than in any other year during the union period.[242] In Canada

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[239] For Canada West, see: Province of Canada, 22 Vic., c. 82, section 4, subsection 1. For Canada East, see: ibid., section 5, subsections 2-3.

[240] For Canada West, see: ibid., section 4, subsection 2-3. In Canada East, municipal boards of revision heard complaints as to the voters' lists first. Even so, anyone who wished to appeal a municipal board's judgment could bring his petition before the courts. See: ibid., section 5, subsections 4-6.

[241] The government had confirmed this division of powers in 1858 with its new municipal legislation for Canada West. See: ibid., "An Act respecting the Municipal Institutions of Upper Canada" (22 Vic., c. 99), sections 150 and 162. The same legislation also affirmed that "the Governor in Council shall appoint for the Junior County, a Judge, a Surrogate, a Sheriff, one or more Coroners, a Clerk of the Peace, a Registrar, and at least twelve Justices of the Peace…" See: ibid., section 49.

[242] See: "Parliament Prorogued," Toronto *Globe*, 11 June 1857, 2. Also see: Johnson and Waite, "Macdonald, Sir John Alexander," 596. While Johnson and Waite focus on Macdonald's "legislative initiatives," Brown had seen things differently. Brown argued that "[t]he Ministerial legislation [of 1857] has been only remarkable for the skill with which every troublesome question affecting their own stability has been evaded, and the unblushing manner in

West especially, judges held their positions through Liberal-Conservative patronage. While Macdonald tried to downplay the situation, Liberal leaders in Canada West soon recognized the scheme.[243] If

> [a] great deal will depend upon the integrity of the assessors – still more [will depend] upon the impartiality of the County Judge.…Remembering, too, the manner in which the Corruptionists [Liberal-Conservatives] have filled county judgeships – how notoriously inefficient men have been appointed as the reward of unscrupulous partizanship – we may well remind our friends of the value of vigilance in watching the revision as it is to be conducted in the County Court. From the decision of the County Judge there will be no appeal. And the only guarantee we can have for the faithful performance of a task singularly tempting to a fiery partizan, will consist in the watchfulness of the public.[244]

With this legislation, judicial appointees had received ultimate control over the province's electorate. Those who enjoyed their judgeships (and wanted to keep them) had to balance the forces that pulled at their consciences. On one shoulder stood the figure of Justice, demanding cold impartiality; on the other stood John A. Macdonald, offering an outstretched hand. The further judges moved toward their smiling attorney general, the better the chances of Liberal-Conservative success.

As 1858 turned into 1859, Canada's not-so-new Elective Franchise Act came into full effect.[245] Assessed landed property, held under full title, became the official baseline for provincial enfranchisement across both Canadas East and West. After 67 years, the old 40-shilling freehold had finally given up the ghost. Some commentators have since wondered why

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which the patronage of the Crown has been extended, and the burdens of the people increased, to bolster in office the present incumbents of the Treasury Benches."

[243] According to Macdonald: "It was fortunate that the Act would come into operation early in the life of a new parliament, which it might be presumed, would last for 4 years. At the distance then of three years from a General Election, the assessor and the Court of Revision, no matter what their political feelings, would have no special interest in getting up a partisan roll. And three years hence, in the prospect of a General Election, any sudden rush of new names would at once call the attention of the Court of Revision and of all parties interested." See: Province of Canada, *Parliamentary Debates* (Scrapbook Debates), reel 2, 4 June 1858, 106.

[244] "Political Organization – Registration of Voters," Toronto *Globe*, 4 December 1858, 2.

[245] See: Province of Canada, 22 Vic., c. 82, section 22.

Macdonald thought this franchise might succeed when it had failed only five years earlier.[246] The legislation certainly did not get off to a promising start. Once again, according to the Toronto *Globe*, the act's "purport [had not been] generally understood before the 1st October, and in many townships the rolls were not made up in time." Questions had arisen as to "whether the townships are defranchised by the delay of the clerk."[247] Despite earlier experiences, Canada's franchise history had seemingly come to repeat itself. With the province's electoral system now reworked in the Liberal-Conservatives' favour, Macdonald responded with an amendment in 1859 "to remove anything like doubt with reference to the Bill of last session, in so far as regards the preparation of the rolls before the first October in every year; and also establish heavy penalties in case the proper officers neglected to return the rolls by that date."[248] Starting immediately, any municipal clerk who "shall omit, neglect or refuse to complete the [voters'] lists on or before the first day of October in each year...shall incur a penalty of two hundred dollars."[249] Substantial fines now served to induce voters' lists from municipal clerks, whether they had received the year's assessments or not. Although such negative reinforcement may have resulted in rushed registries, Macdonald most likely did not mind. The more errors made at the municipal level, the longer the voters' lists spent with his judicial appointees. Barely hanging on to government, Macdonald accepted any edge he could get.

In the end, Macdonald's amendment had apparently done enough. Canada's provincial elections would operate under the Elective Franchise Act all the way through to Confederation. Under its auspices, the Liberal-Conservatives would take back Canada West in 1861 only to lose

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[246] See: Garner, 112.
[247] "Registration of Voters' Act – Legal Doubts," Toronto *Globe*, 9 February 1859, 2.
[248] "House of Assembly," ibid., 5 March 1859, 2 (debate of 4 March 1859). Also see: Province of Canada, *Parliamentary Debates* (Scrapbook Debates), reel 2, 4 March 1859, 73.
[249] See: Province of Canada, "An Act to amend and explain *An Act to define the Elective Franchise, to provide for the Registration of Voters, and for other purposes therein mentioned*" (22 Vic., c. 10), section 2.

it again in 1863.[250] No matter the political results, a propertied definition of citizenship had remained firmly embedded within the province's franchise law. Ian McKay's propertied liberal order had seemingly prevailed, but in a way that esteemed all individual landholdings rather than just freehold estate.[251] While some demanded higher or lower property qualifications, a continued abundance of fertile land had generally smoothed these differences over. Women, labourers, and First Nations peoples certainly had reason to complain, but most White Canadian men did not. This latter group upheld the province's propertied ideal because it suited their cultural views on real property accumulation.

[250] Donald Creighton's summary of the 1863 general election perhaps phrases it best. In his words, "[t]he Conservatives had done badly in Canada West. The scant victory of 1861 had been converted into a defeat as serious as that of 1857." See: Creighton, 343-344.
[251] Again, see: Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," *Canadian Historical Review* 81.4 (December 2000): 624.

Part III

Propertied Enfranchisement in the Province of New Brunswick

Between 1795 and 1855, New Brunswick employed the same property-based franchise for each of its provincial elections. Colonists who wished to vote in their county of residence first had to possess freehold property worth £25 clear value. Those who hoped to vote outside their county needed to possess £50 worth of the same. Although these property restrictions remained in place for sixty years, their persistence did not stem from complacency. New Brunswick's legislators had altered their electoral and franchise laws several times before responsible government. Perhaps the most extensive of these changes passed through the legislature in April of 1843. Electoral violence the previous winter – across Fredericton, Saint John, and the twin villages of Chatham and Newcastle – had "intimidated" legislators toward new legislation.[252] In hopes of preventing future disturbances, the new Election Act outlined in painstaking detail the various duties of all electoral participants as well as the copious penalties for those who ignored them. It even went so far as to indicate specific houses, by owner's name, as parish polling places (such as Ezekiel Seeley's for the Parish of Blissville, Sunbury County).[253] With actions and locations so minutely circumscribed, no one could feign ignorance as to proper electoral behaviour. Or, so the thinking went.

Alongside new electoral procedures, the Election Act of 1843 also modified the province's franchise. The £25 resident and £50 non-resident freehold restrictions remained the same. Property ownership continued to reign. Legislators, however, had added gendered

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[252] Scott W. See, "Polling Crowds and Patronage: New Brunswick's 'Fighting Elections' of 1842-3," *Canadian Historical Review* 72.2 (June 1991): 151. Also see: ibid., *Riots in New Brunswick*, 22. Also see: Gordon M. Winder, "Trouble in the North End: The Geography of Social Violence in Saint John, 1840-1860," *Acadiensis* 29.2 (Spring 2000): 42.

[253] See: New Brunswick, "Act to improve the Law relating to the Election of Representatives to serve in the General Assembly" (6 Vic., c. 44), section 5.

qualifiers to the franchise statutes. Instead of "persons," now only "male persons" found themselves eligible as voters.[254] Kim Klein has discovered that, between 1785 and 1843, no fewer than 83 women had voted at New Brunswick elections.[255] Ambiguities in statute law had once again allowed this to happen. Close contests in particular, Klein asserts, prompted candidates to draw out as many potential voters as possible. Women who met the province's property qualifications – normally widows or those who had never married – served to bolster a candidate's electoral ranks. In the absence of legislative transcripts, Klein hypothesizes that the spread of bourgeois separate sphere ideologies had resulted in women's disenfranchisement.[256] Considering how women's disenfranchisement played out both in the Province of Canada and elsewhere in British North America, this premise is almost certainly correct. The aforementioned electoral violence may have helped as well, but only to offer further evidence of the dangers of public life.[257]

If New Brunswick's House of Assembly felt pressure to pass such reforms, the province's Lieutenant Governor, Sir William Colebrooke, took a more measured approach. Colebrooke withheld his assent to the legislation for more than a year after the Assembly had passed it. Open elections, where everyone knew how everyone else voted, generated rough behaviour as par for the course. Compared with Colebrooke's earlier experiences in the Royal Artillery – across Ceylon, India, Java, Sumatra, and the Persian Gulf, where he fought to suppress both piracy and the slave trade – New Brunswick's disturbances looked almost banal.[258] It took a summer by-election in Chatham and Newcastle to fully reveal the need for greater

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[254] Ibid., 6 Vic., c. 44, section 16. Compare this with: ibid., 31 Geo. III, c. 17, section 3.
[255] Kim Klein, "A 'Petticoat' Polity? Women Voters in New Brunswick Before Confederation," *Acadiensis* 26.1 (Autumn 1996): 71-72.
[256] Ibid., 74-75.
[257] See: Brandt, Black, Bourne, and Fahrni, 114.
[258] Phillip Buckner, "Colebrooke, Sir William MacBean George," *Dictionary of Canadian Biography*, volume IX, 145.

electoral regulation. During the contest, villagers had gone so far as to capture the villages' cannons, ransack their stores for gunpowder, and make armed raids across the Miramichi.[259] Many were injured; one man died.[260] Colebrooke kept the militia on hand for nearly half a year – from August 1843 to January 1844 – to show the flag and prevent further disturbances.[261]

The events in Chatham and Newcastle had escalated well beyond the usual violence endemic to all open elections. By commandeering the towns' cannons, the villagers had challenged the state's monopoly over militarized force. Colebrooke could not allow elections to get so out of hand again. New Brunswickers had proven that they needed the increased regulation as contained within the new Election Act. By the time Colebrooke left New Brunswick in March of 1848, he had assented to two additional electoral statutes (in 1845 and 1848). Combined, they added to and consolidated the province's electoral procedures.[262] Neither amendment, however, made any further changes to the province's franchise qualifications. On the supposed eve of responsible government, electors in New Brunswick continued to be "male persons of the full age of twenty one years, not subject to any legal incapacity, every one of whom shall have a freehold in such County, of the value of twenty five pounds,…and in case such persons do not reside in such County, shall have a freehold in such County of the value of fifty pounds…"[263]

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[259] See: Public Archives of New Brunswick [hereafter PANB], RS8 Executive Council: New Brunswick Microfilm Series, Elections 5/2 Northumberland County Election Disturbances, file 28 – "Report of John Robinson Esqr. of proceedings at Election," 3 August 1843, 1-7. Also see: See, "Polling Crowds and Patronage," 141-150.

[260] For the report of assaults, see: PANB, RS8, Elections 5/2, file 24 – "Reports of Messrs. Allen & Robinson," 24 July 1843, 3. For reports on James Ryan's death by blunt force trauma, see: ibid., file 25 – "Inquest on James Ryan 21st July with the Atty. Genls. Report," 1 August 1843. Also see: ibid., RS514 Northumberland County Coroner 1806-1922, series B Inquisitions 1806-1922, Inquisition regarding James Ryan, 1843.

[261] See: See, "Polling Crowds and Patronage," 149; 151.

[262] They did so by updating the locations of polling places, the powers and responsibilities of electoral officers, and the fines for electoral misconduct. See: New Brunswick, "An Act relating to the Election of Representatives to serve in the General Assembly" (8 Vic., c. 108). Also see: ibid., "An Act relating to the Election of Representatives to serve in the General Assembly" (11 Vic., c. 65).

[263] Ibid., 11 Vic., c. 65, section 17.

Colebrooke's replacement, Sir Edmund Head, arrived in New Brunswick in April of 1848. Before crossing the Atlantic, the Colonial Office had charged him with "implement[ing] in New Brunswick a considerable advance towards 'Responsible Government,' in particular some measure of ministerial responsibility."[264] Head's subsequent actions looked much different than those of other British North American governors. New Brunswick had held a general election in October 1846. Aside from eight or so outliers, men who rejected the idea of reform filled the legislature. Head had no justification to call another election, so he worked with what he had. Through his power of appointment, he filled various vacancies in the Executive Council with men of different ideological stripes. He kept older Tories like Edward Barron Chandler and Robert L. Hazen in their executive positions, but added to them leading reformers like Lemuel Allan Wilmot and Wilmot's chief lieutenant, Charles Fisher. In doing so, Head had hoped to establish a coalition executive (as opposed to a party government) that boasted near-universal support.[265] This coalition executive, by necessity, was also a coalition of compromise. Government policy had to lean towards moderation to ensure consensus within the Council. Immediate electoral reforms would not be forthcoming despite New Brunswick's so-called transition to responsible government.[266]

Pressure for electoral change had nonetheless begun to build. The inspiration had, at least in part, grown out of England's Great Reform Act of 1832. In 1840 and 1842, for instance, a younger Charles Fisher had twice proposed "to extend the Elective Franchise to

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[264] James A. Gibson, "Head, Sir Edmund Walker," *Dictionary of Canadian Biography*, volume IX, 381.
[265] See: ibid. Also see: D.G.G. Kerr, *Sir Edmund Head: A Scholarly Governor* (Toronto: University of Toronto Press, 1954), 34-36; W.S. MacNutt, *New Brunswick. A History: 1784-1867* (Toronto: Macmillan, 1963), 285; 292; 318-320.
[266] See: Phillip A. Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1850* (Westport, CN: Greenwood Press, 1985), 308.

Leaseholders."[267] Fisher had himself lived in England when the Reform Act had passed (where he attended one of the Inns of Court).[268] Alongside his fellow barristers-in-training, he rejoiced when the £10 leasehold qualification had enfranchised London's "commercial interests" for the first time.[269] Fisher had hoped to bring these same middle-class privileges home to middle-class New Brunswickers. The province's stodgy House of Assembly did not share in Fisher's enthusiasm however: it believed that New Brunswick had a wide enough franchise already. Based upon the House's icy response, a reformed electorate would have to wait.

Three other legislators – John Ambrose Street, James Brown, and James Boyd – had pounced upon another aspect of the Great Reform Act. Instead of reforming New Brunswick's freehold franchise, this trio had hoped to rationalize it and reinforce it (according to John Garner and Gail Campbell) by means of a voters' registry.[270] From 1844 to 1848, Street, Brown, and Boyd had tabled legislation to that effect no fewer than five times.[271] Although the votes divided closely, parsimonious legislators ultimately considered the scheme too costly and too unreliable. Like other British North American provinces, New Brunswick did not yet have the bureaucracy to efficiently and consistently produce annual voters' lists. Many worried that, should the province attempt to create these lists, inevitable errors would make election results even less reliable than before.[272] This reform would have to wait as well. Despite the setbacks, these

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[267] New Brunswick, *Journal of the House of Assembly of the Province of New Brunswick* (1840), 28 January 1840, 11. Also see: ibid. (1842), 21 January 1842, 11.
[268] C.M. Wallace, "Fisher, Charles," *Dictionary of Canadian Biography*, volume X, 284-285.
[269] PANB, F71 *Debates of the House of Assembly of New Brunswick, 1855*, 24 February 1855, 49.
[270] Garner, 63; Campbell, "The Most Restrictive Franchise?," 166-167.
[271] Street tabled his bills in 1844 and 1845; Brown tabled his in 1846 and 1847; and, Boyd followed in 1848. See: New Brunswick, *Journals of the House of Assembly of the Province of New Brunswick* (1844), 27 February 1844, 112. Also see: ibid. (1845), 30 January 1845, 8. Also see: ibid. (1846), 6 February 1846, 31. Also see: ibid. (1847), 10 February 1847, 69. Also see: ibid. (1848), 10 February 1848, 129.
[272] G.E. Fenety, *Political Notes and Observations; or, A Glance at the Leading Measures That Have Been Introduced and Discussed in the House of Assembly of New Brunswick, under the Administrations of Sir William M. G. Colebrooke, Sir Edmund Walker Head, Hon. J. H. T. Manners-Sutton, and Hon. Arthur H. Gordon, Extending Over a Period of Twenty Five Years. Together With an Appendix to Each Chapter, Embracing a Notice of All Important Local Occurrences Since 1840*, volume I (Fredericton: S.R. Miller, 1867), 143-144; 219-222.

questions refused to disappear. By mid-century, calls to overhaul New Brunswick's electoral system had taken on greater stridency both inside and outside the legislature.

If England's Reform Act had provided the precedent for electoral reforms, then local conditions provided the impetus. The legislature had designed New Brunswick's Election Acts to normalize provincial elections by means of strict regulation. In subsequent practice, they had done nothing of the sort. Escalating social tensions between Irish Catholics and Irish Protestants, when combined with open voting, had meant that New Brunswick's elections went on much like before.[273] Things had become so bad in Saint John and Fredericton that these two cities resorted to the secret ballot for municipal elections in 1851.[274] By 1853, correspondents to local newspapers could enumerate six problems that, in some way, beset all provincial contests. In the words of the anonymous XIV, writing to the *New Brunswick Reporter*, these "most prominent vices inseparable from our present system of election are Bribery, Drunkenness, Intimidation, Perjury, Ruinous Scrutinies, and loss of public time." New Brunswick's six electoral plagues, according to XIV, had corrupted every aspect of the province's politics. It behooved New Brunswickers to find a curative quickly.

XIV had three recommendations of his own in this regard. First, he advised "a registration of voters" to demarcate voters from non-voters. This change looked to keep non-voters away from the hustings. Second, he suggested the secret ballot to keep electoral decisions private. Men with violent intentions could not (conceivably) act upon what they did not know. Third, he urged an "extension of the Franchise, or at least allowing it the benefit of votes that

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[273] Scott See points to 1849 as the year this social violence peaked in New Brunswick. See: See, *Riots in New Brunswick*, 163-182.

[274] See: Winder, "Trouble in the North End," 42. Also see: Campbell, "Defining and Redefining Democracy," 277. Also see: Garner, 67. Under the Municipal Authorities Act passed the same year, all future municipal bodies would operate by secret ballot as well. See: New Brunswick, "An Act to provide for the establishment of Municipal Authorities in this Province" (14 Vic., c. 38), section 7.

might appear doubtful." New Brunswick's elections might be simplified considerably if the state offered voters the benefit of the doubt. In summation, XIV argued that this tripartite scheme

> would lessen the cost of Elections – it would add to the legitimate number of voters – it would shut out a host of unprincipled non-electors. It would diminish the tendency to roits [sic] and disturbances – it would prevent perjury – it would render bribery unsafe and therefore greatly reduce it – it would make the Sheriff's return certain and final and therefore prevent scrutinies – it would greatly diminish the amount of intimidation, whether arising, positively, from ledger or other influences, or negatively, from the fear of giving offence – and it would give the honest and upright candidate, a fair chance against the vicious and the unprincipled.[275]

For the sake of electoral purity, XIV had proposed a near-total overhaul of New Brunswick's electoral processes. He included franchise reform as part of this solution, but only insofar as it might further reduce fraudulent voting. The question now became whether New Brunswickers felt comfortable making such drastic (and, in some cases, unprecedented) changes to their electoral and franchise laws.

Writing to one of New Brunswick's leading reform journals, XIV lived on the far side of contemporary New Brunswick politics. Where he saw nuisance, others saw tradition. Where he observed necessary improvement, others perceived needless change. Many may have believed, for instance, that the province had addressed four of New Brunswick's electoral vices already. By 1850, the Sons of Temperance had arrived from Maine and embedded themselves across the province. As their principal mandate, they sought to stamp out poverty and crime by eliminating their perceived cause, strong drink.[276] Leading politicians like Samuel Leonard Tilley dominated the Sons' central executive.[277] Under the weight of their influence (and a massive nine thousand

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[275] XIV (pseudo.), "Communication," *New Brunswick Reporter*, 11 March 1853, 2.
[276] Established in New York in 1842, the Sons of Temperance had crossed into New Brunswick from Maine in 1847 to establish the organization's first British North American offshoot. See: J.K. Chapman, "The Mid-Nineteenth-Century Temperance Movement in New Brunswick and Maine," *Canadian Historical Review* 35.1 (March 1954): 49-50. Also see: Gail Campbell, "'Smashers' and 'Rummies': Voters and the Rise of Parties in Charlotte County, New Brunswick, 1846-1857," Canadian Historical Association *Historical Papers* (1986): 98-100.
[277] C.M. Wallace, "Tilley, Sir Samuel Leonard Tilley," *Dictionary of Canadian Biography*, volume XII, 1051.

signature petition) New Brunswick passed British North America's first probationary liquor law in 1852. Modelled after the Maine Law of 1851 – which was, in fact, the first true prohibition law anywhere on the continent – it made illegal the manufacture and sale of non-medicinal spirituous liquors in the province.[278] New Brunswickers who had no access to booze theoretically had no way to consume it. If the province snuffed out drunkenness at elections, then bribery, intimidation, and perjury must soon die off as well.[279] XIV had written his letter to the *Reporter* in March of 1853. The prohibition act would come into effect a mere four months later, on 1 June.[280] If prohibition worked, perhaps New Brunswick did not need such sweeping changes to its electoral laws after all.

Prohibition did nothing to prevent the last two vices on XIV's list however: ruinous scrutinies and loss of public time. These two problems worried public men perhaps most of all. Under the province's Elections and Controverted Elections Acts, any candidate who wished to challenge the results of his contest could do so in two ways. The first occurred immediately after the election in the form of a Sheriff's scrutiny (otherwise known as a Sheriff's court of revision). As chief returning officers, County Sheriffs had the authority to edit county poll books in light of convincing evidence.[281] The second took place much later and in front of the House of Assembly. Upon receiving word of an "undue election or return" – whether through corrupt means or shrieval misconduct – the Assembly would form a smaller committee of five to

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[278] New Brunswick, "An Act to prevent the traffic in Intoxicating Liquors" (15 Vic., c. 51), sections 1-2. Also see: Campbell, "'Smashers' and 'Rummies'," 100. Also see: Craig Heron, *Booze: A Distilled History* (Toronto: Between the Lines, 2003), 152-153.
[279] For a connection between the Liquor Act and electoral reform, see: *New Brunswick Reporter* [editorial], 1 April 1853, 2.
[280] New Brunswick, 15 Vic., c. 51, section 17.
[281] Ibid., 11 Vic., c. 65, section 8.

adjudicate the complaint.[282] Both bodies had the power to overturn election results. By the mid-nineteenth century, this system (which had proven rickety to begin with) had all but twisted under its own weight.[283] Strong connections between public office and private interest, as discussed by Paul Craven in the context of Charlotte County, had long since extended to the House of Assembly.[284] In the absence of formal political parties until the mid 1850s, candidates fought one another as individuals for the spoils of victory (namely, the privilege of initiating private money bills).[285] With so much to potentially gain, losing candidates sometimes turned to the controverted elections process – whether rightly or wrongly – in hopes of coaxing victory out of defeat.

These post-election contests, whether before the Sheriff or the Assembly, were extraordinarily cutthroat affairs. No matter who initiated the petition or who proved triumphant, candidates knew going in that they may find themselves penniless when it ended.[286] Those who protested votes by disenfranchised persons brought their grievance before the County Sheriff. Opposing candidates (or their proxies) would submit lists of disputed votes and the reasons for each dispute. The Sheriff would then – under the watchful eye of the interested parties – go through the lists name by name to determine the ultimate eligibility of each contested vote.[287]

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[282] Ibid., "An Act to regulate the trials of controverted Elections or returns of members to serve in General Assembly" (9 Geo. IV, c. 37), section 1. The clerk of the Assembly would select eleven names at random, and each of the two rival candidates would strike off three names each. See: ibid., sections 3 to 6.
[283] Originally, the House of Assembly's Committee of the Whole heard controverted elections in New Brunswick. The legislature had passed its Controverted Elections Act of 1828 to specifically remedy a system that had "obstruct[ed] public business, occasion[ed] much expense, trouble and delay to the parties, [and was] defective for the want of those sanctions and solemnities which are established by Law in other trials." See: ibid., preamble.
[284] Paul Craven, *Petty Justice: Low Law and the Sessions System in Charlotte County, New Brunswick, 1785-1867* (Toronto: University of Toronto Press for the Osgoode Society, 2014), 10; 38.
[285] MacNutt, 340. For perhaps the most comprehensive works on political party formation in New Brunswick, see: Campbell, "'Smashers' and 'Rummies'."
[286] New Brunswick, 11 Vic., c. 65, section 8.
[287] This did not always happen. Following the 1850 general election, Andrew Wetmore (the representative for John Richard Partelow) continually refused to furnish such lists. After two weeks, and a formal protest from Partelow's opponents, the Sheriff returned the writ without completing the scrutiny. Wetmore protested the Sheriff's actions in

More often than not, these lists stretched on for pages. By the 1850s, Sheriffs might receive documents that held upwards of 350 objections each.[288] Candidates had learned early on that it cost next to nothing to challenge a name found on the poll book (aside from drafting the challenge itself).[289] It cost significantly more to prove whether that name met the province's freehold qualification. Deeds had to be checked; residences had to be confirmed; witnesses had to be called. Sometimes it took multiple days and multiple sworn statements to determine whether just one or two voters possessed legal votes (as it did at a Westmoreland by-election in 1852).[290] One of Robert K. Gilbert's lists alone contained 231 disputed names, to say nothing of that of his rival, Robert Barry Chapman.[291] Scrutinies thus turned into wars of attrition. For every day the scrutiny lasted, each candidate needed representation. Sometimes candidates represented themselves, but more often than not they hired lawyers. Either way, it meant significant financial losses: whether by missing days of work or by paying legal fees. The longer a scrutiny lasted, the more each side had to pay.[292] Those with the most to spend, or those willing to spend the most, held the advantage in this high-stakes electoral game.[293]

The Sheriff's decision did not always ensure victory, however. Petitions against fraudulent voters often came coupled with accusations of corrupt practices (like the

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an apparent attempt to waste further time. See: PANB, RS60 Election Court Records, series C Lists Correspondence Matters, C1850 – Gray, John (Saint John County).

[288] See: ibid, C1855 – Harding, Leonard (Carleton County). Leonard Harding had disputed 324 of Richard English's votes. English, the sitting member, responded with 351 challenges of his own.

[289] See, for example, the case of Henry T. Partelow: ibid., C1838 – Partelow, Henry T.

[290] Ibid., C1852 – Chapman, Robert B. (Westmoreland County).

[291] Ibid., RS24 House of Assembly Sessional Records, 1852/zz, file 1 "List of votes given for Robert Barry Chapman, objected to by Robert Keech Gilbert." Chapman and Gilbert had multiple heated contests against one another.

[292] The only sure winners in this game appear to have been the County Sheriff and his paid subordinates. Provincial accounts seem to suggest, that by the 1855 general election, Sheriffs received two guineas (£2.2.0) for every day they presided over a scrutiny. The Saint John County Sheriff alone submitted £82.11.0 in scrutiny fees. See: ibid., 1855/re, file 2 "Report on Sheriff's Accounts for Holding Elections; Mar. 12, 1855."

[293] In the words of the *New Brunswick Reporter*: "Everyone knows that our elections had become a mere farce – a game at which the most adroit and wealthy [snufflers?] were sure to win the stake." See: *New Brunswick Reporter* [editorial], 4 May 1855, 2.

aforementioned bribery, drunkenness, and intimidation). Only the House of Assembly, and its committees of five, had the authority to pass judgment in these cases.[294] The controverted elections process – much like the scrutiny process – favoured the very wealthy, the very confident, or the very reckless. To begin, petitioners had to enter into a £200 recognizance. So long as the committee did not find the petition "frivolous or vexatious" the petitioner got his money back.[295] The real expense came in terms of witnesses. The petitioner, and the petitioner alone, bore "all costs, expences [sic] and fees which shall become due to any witness who shall have been summoned on behalf of the person or persons so subscribing such petition, or to the party who shall appear before the House or committee in opposition to such petition..."[296] Depending upon the petition's scope, or the parties objected to, the number of witnesses may have had no end. This was especially true when the petitioner's opponent looked to harass the petitioner through his pocketbook.

Perhaps worst of all, controverted elections committees worked at a seemingly glacial pace. Committee members, as members of the House of Assembly, only sat in committee during the legislative session. G.E. Fenety argued that, as these committees tried to separate "the genuine from the spurious votes," the "real business of the House" came to a standstill.[297] When the legislative session prorogued, the committee went on hiatus for the next three-quarters of the year.[298] The proceedings themselves entered a state of limbo. After travelling all the way to Fredericton, witnesses may have had to make the trip again once the committee reconvened (again at the petitioner's expense). The surviving evidence indicates that few mid-century committees arrived at their decisions in *less* than a year. A Westmoreland enquiry launched on

[294] New Brunswick, 9 Geo. IV, c. 37, section 10.
[295] Ibid., section 15.
[296] Ibid.
[297] Fenety, volume I, 220.
[298] New Brunswick, 9 Geo. IV, c. 37, section 24.

5 March 1851, for example, did not report until 6 April 1852.[299] Even after thirteen months, its members merely concluded that "after mature consideration...it is evident that Justice cannot be done to the parties concerned or the constituency of the County by further investigation before the Committee inasmuch as the County Records and the certificates of the Registrar cannot be relied upon..."[300] The following year, a committee struck to investigate a Charlotte County petition took an even longer fourteen months (from 17 January 1852 to 22 March 1853).[301] Charlotte had already obtained some experience in this regard. One of the worst controverted elections in the province's history had grown out of its county election of October 1846. The committee, which first sat in early 1847, took a staggering three years to settle the matter. The petitioner, James Boyd, "had spent nearly, if not altogether, all that he was worth in carrying his point."[302] Boyd's opponent, George Stillman Hill, had also gone to considerable lengths in his investigation.[303] Legislators increasingly understood that such a system had to cease, if not for the public good, then out of mutual self-interest. The misfortunes that befell Boyd and Hill had the potential to befall anyone who sat in the Assembly.

The government's election bill of 1853 ultimately took shape around this worry first and foremost.[304] Tabled by Attorney General John Ambrose Street – the same John Ambrose Street who had proposed voters' registries in 1844 and 1845 – it had apparently arrived on the advice of

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[299] PANB, RS24, 1853/re, file 2 "Committee on privileges on Westmoreland Election."
[300] Ibid.
[301] Ibid., 1853/re, file 6 "Charlotte Election."
[302] Ibid., F71, *Debates of the House of Assembly of New Brunswick, 1855*, 24 February 1855, 52. Charles Fisher, a lawyer by training, had professionally represented Boyd at this controverted election. He recalled that "he never was so tired of any professional business that he ever undertook, as he was of that scrutiny." See: ibid., 51.
[303] See: ibid., MC1001 Hill Family fonds, MS2IIA 4c "George Stillman Hill – Political Career – Correspondence Re: Elections – From James McKenzie re: questionable voters," 26 December 1846.
[304] In the words of the Saint John *Courier*: "We do not regard an extension or diminution of the suffrage as of much importance. It is of much more consequence that those who do vote should have a free choice." See: "Vote by Ballot," Saint John *Courier*, 19 March 1853, 2.

the Lieutenant Governor himself.[305] Initially, the legislation contained only two modest revisions. First, "it provided for the extension of the suffrage to *Leaseholders*, which," according to G.E. Fenety, "was certainly a desideratum." Such a change would have finally aligned New Brunswick's franchise with those of England and the Province of Canada. It would have also made the verification of landed property much less complicated (especially since many leaseholders voted out of custom anyway). Second, the bill looked to establish "a certain number of Commissioners, who, among other duties, were to determine all disputed elections, without taking up the time of the House."[306] For many Assemblymen, this latter proposal did not go nearly far enough. They viewed the secret ballot, and the secret ballot alone, as the sole "curative of all the difficulties attendant upon elections – such as the preventing of scrutinies, the independence it would insure [sic] to voters, &c. &c."[307] Only the "vote by ballot would, to a great extent, prevent bribery and intimidation [and...s]crutinies, those fearful scourges,...ruining the parties engaged therein, and spreading bitter heart-burnings..."[308] Despite the attorney general's opposition, and nominally that of the Executive, the House amended the bill to include the secret ballot by a majority of one.[309] For the secret ballot to work properly – and to avoid ballot-stuffing in particular – the province also needed a voter's registry. Legislators thus passed an amendment to establish voters' lists as well (taking advantage of municipal bureaucracies

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[305] Garner, 66.
[306] Fenety, volume I, 453.
[307] Ibid.
[308] X (pseudo.), "Communication," *New Brunswick Reporter*, 25 March 1853, 2. In a subsequent edition of the *Reporter*, its editor cited that: "Of all places in British America the Ballot is most required in New Brunswick. Here we have no established parties to bring men under such influences to the polls, as are capable of counteracting the paltry bribe of an unscrupulous candidate. The voters of the country are therefore left afloat, to contend with the joint temptation of their own cupidity and a dishonest canvass." See: *New Brunswick Reporter* [editorial], 1 April 1853, 2.
[309] As the Saint John *Courier* revealed: "From what has accidently been said by several Members of the Executive, in the Assembly, on the subject of Vote by Ballot, we observe that this will be an open question with the Government." See: "Vote by Ballot," *The Courier*, 19 March 1853, 2. Also see: *New Brunswick Reporter* [editorial], 22 April 1853, 2. Also see: Fenety, volume I, 456; Garner, 66.

established two years earlier).[310] By the time the Assembly had finished with the legislation, it looked almost nothing like its original design.

In the eyes of John Ambrose Street – a man who had resisted responsible government to the end – such legislation could never pass muster.[311] He particularly disliked the secret ballot, which he categorized as a dead letter in Great Britain and a total failure in the United States.[312] With the election bill so radically altered, the attorney general simply chose to cast it aside: reform would arrive on his terms or it would not arrive at all.[313] The election bill did not reappear the following year either. The timing no longer made sense for Street. A general election loomed on the horizon – scheduled for that June – and the legislature could never implement the bill's machinery in such a short amount of time.[314] Rumours had also circulated that the bill's vice-regal champion, Sir Edmund Head, would soon leave for Canada to replace Lord Elgin as governor general.[315] No one knew the politics of his replacement. The Liquor Act, moreover, had failed completely. Not only had it proven unpopular; it was essentially unenforceable.[316] Anyone who had banked on prohibition as an answer now looked for new,

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[310] Fenety, volume I, 457. Also see: New Brunswick, 14 Vic., c. 38.
[311] See: W.A. Spray, "Street, John Ambrose," *Dictionary of Canadian Biography*, volume IX, 767.
[312] Fenety, volume I, 454. By the mid-nineteenth century, almost every American state had implemented a written ballot for local and federal elections. Ballot papers did not follow a standardized model. Political parties printed and distributed most ballots themselves – in proprietary shapes and colours – as a way to monitor votes. The system was hardly secret. Employers frequently provided their employees with ballots beforehand and political parties sometimes imitated the ballots of other parties to siphon off votes. Illiterate voters proved particularly susceptible in this regard. Ballot box tampering had also become rampant across the United States. Unscrupulous individuals often tried to stuff additional ballots into ballot boxes when they saw the opportunity. Sometimes, these individuals stole the ballot box altogether. Preventing either proved difficult at overwhelmed polls. Street would have read about these abuses of the secret ballot in the local press. See: Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 28; 142. Also see: Glenn C. Altschuler and Stuart M. Blumin, *Rude Republic: Americans and Their Politics in the Nineteenth Century* (Princeton: Princeton University Press, 2000), 75-77. Also see: Mary P. Ryan, *Civic Wars: Democracy and Public Life in the American City during the Nineteenth Century* (Berkeley: University of California Press, 1997), 145; 149.
[313] See: *New Brunswick Reporter* [editorial], 22 April 1853, 2. Also see: Garner, 66.
[314] PANB, F71, *Debates of the House of Assembly of New Brunswick, 1854*, 18 February 1854, 9.
[315] Kerr, 116.
[316] See: Chapman, "Temperance in New Brunswick and Maine," 53; MacNutt, 350-31; Campbell, "'Smashers' and 'Rummies'," 100. Perhaps most amusingly, G.E. Fenety wrote that because "the Law resulted in little better than a failure in its working, a reference to the points of the discussion is hardly requisite." See: Fenety, volume I, 441.

more dynamic solutions. As Head left the province and New Brunswick went to the polls, the time was ripe for liberal reform.

D.G.G. Kerr, in 1954, cited the common argument that "it was not until Head's departure that New Brunswick was able to *win* real Responsible Government under a reform ministry led by Charles Fisher."[317] Kerr, the sympathetic biographer, viewed the situation as more complicated. He emphasized that while Head's choices may not have been ideal, neither were his circumstances. Head had no recognizable party structure with which to work, so he formed a 'responsible' Executive Council himself. While this executive may have received initial support amongst Assemblymen, its members held their positions at the lieutenant governor's pleasure. Executive Councillors ultimately owed their responsibility to Head, and not to the House. With Head gone and reformers uniting, the new Attorney General, Charles Fisher, had ample room to manoeuvre. "The policy of the present government," Fisher declared, "would be practical – it would be progressive – it would be conservative of every thing good, and destructive of every thing evil in the political and social condition of the people of this country – gradual and safe reform, as opposed to violent and reckless change."[318] Fisher wasted no time in moving toward these broad goals.

As one of his first official acts, Fisher responded to the Speech from the Throne with a promise of wholesale electoral reform.[319] A mere eight days later, on 9 February 1855, he read his legislation for the first time.[320] It passed the Assembly in less than a month.[321] Much like the bill of 1853, the "Act to regulate the Election of Members to serve in the General Assembly"

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[317] Kerr, 34 (emphasis in text).
[318] PANB, F71, *Debates of the House of Assembly of New Brunswick, 1855*, 1 February 1855, 2.
[319] In Fisher's words: "The serious evils from the present law demand[ed] a careful revision of the whole electoral system." See: ibid., 1 February 1855, 2.
[320] Ibid., 9 February 1855, 19.
[321] Ibid., 3 March 1855, 75.

(soon better known as Fisher's Act) looked first and foremost toward electoral purity. "It was admitted on all hands," Fisher cited at the outset, "that the present system of electing members to serve in the General Assembly was exceedingly defective. The number of scrutinies now before the House, as well as those that had been withdrawn, was quite sufficient testimony that a change in the Election Law had become necessary." To rectify these troubles, Fisher's legislation contained everything the House and XIV had wanted in 1853 (and then some). First, it established the secret ballot for general elections.[322] Fisher argued that the ballot had already proven its worth within the province's municipal sphere. Not only had it stopped bribery and intimidation in Saint John and Fredericton, but "it had brought people to the Poll that open voting would not, and any system that brought all the respectable classes to the Poll in greater numbers than any other, was a better system than any other."[323] In Fisher's bourgeois world, respectable property holders ought to have untrammeled access to the privileges of citizenship.[324] Individual rights overshadowed whatever moral economy the crowd still held.[325] The secret ballot thus provided another level of protection for the propertied liberal individual. When the clause finally passed, New Brunswick became the first British North American colony to fully close its open system of voting.

Second, Fisher's Act implemented a registry of voters that worked in tandem with the ballot box.[326] Secret balloting meant that Sheriffs could no longer strike out fraudulent votes days after an election. The province now had to do that work beforehand to keep fraudsters away from the hustings. The voters' registry had additional benefits as well. With electoral lists

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[322] Ibid., "An Act to regulate the Election of Members to serve in the General Assembly" (18 Vic., c. 37), section 27.
[323] PANB, F71, *Debates of the House of Assembly of New Brunswick, 1855*, 24 February 1855, 51-52.
[324] See: Eric DeWitt Ross, "The Government of Charles Fisher of New Brunswick 1854-1861," MA thesis (University of New Brunswick, 1954), 39.
[325] For more on the moral economy of the crowd, see: E.P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past & Present* 50 (February 1971): 78. For a recent discussion of moral economies in a British North American context, see: Sweeny, *Why Did We Choose to Industrialize?*, 135-136.
[326] New Brunswick, 18 Vic., c. 37, sections 4-12.

produced annually, post-election scrutinies would become much simpler affairs (which further explains why they were proposed in the 1840s).[327] Either a man had his name on the registry or he did not. Sheriffs would now only have to deal with impersonation cases following an election, and hand out the requisite £10 fines.[328] Fisher had, moreover, taken a page from the Province of Canada: he gave parish assessors and revisors nearly two years to prepare the registry before that part of the legislation came into effect.[329] He even inserted a clause stipulating that "[i]f from any cause the Register of Electors for any polling district is not made up in any year, the Register last made up shall be used in its stead."[330] Despite these precautions, the much more conservative William End still found reason to gripe.[331] He feared that "the complicated machinery of the bill before the House – the revisors and assessors, whose duties being in many hands – must multiply the chances of error...and the opportunities of committing fraud." In other words, End worried about parish officials manipulating local voters' lists for their own political purposes (as they had already done in Canada and Nova Scotia). Even End had to admit, though, the province needed electoral reform of some kind. In the absence of any other suggestion, "he was content to give it a fair trial."[332]

Third, and finally, Fisher's Act extended the provincial franchise. Of all the modifications, this one proved the most contentious. New Brunswickers, understandably, had conflicting opinions as to which direction the franchise should take. Fisher himself acknowledged as much. One part of the province might "perhaps go the full extent of Universal Suffrage, another would be content to extend the franchise to leasehold property and there stop,

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[327] See: ibid., section 11.
[328] Ibid., section 38.
[329] Ibid., section 69.
[330] Ibid., section 13.
[331] See: Bernard Pothier, "End, William," *Dictionary of Canadian Biography*, volume X, 271.
[332] PANB, F71, *Debates of the House of Assembly of New Brunswick, 1855*, 28 February 1855, 68.

and another who would not go beyond the freehold qualification."[333] Fisher's list, moreover, failed to include indifferent individuals like Charlotte County's James Brown who believed "[t]he extension of the franchise is not of so urgent a character as the other principles in the bill."[334] Although Fisher knew he could not satisfy everyone, he still felt that he could ensure "the fair representation of intelligence and property" in the province.[335] In 1840 and 1842, that had meant a leasehold franchise in addition to the £25 freehold. Now, in 1855, the idea called for something different. "With respect to the extension of the franchise to leasehold property," Fisher explained,

> he would say at once that he found that scheme impracticable to be carried out in conformity with the other new elements introduced in the present Bill. The difficulty of including leasehold property with a simple and cheap mode of registration was insurmountable. He had therefore adopted another mode, which...would very nearly answer the same end. He had kept strictly in view real estate as the ground work of the franchise, but while he acceded to that description of property the superiority he could not give his assent to the doctrine that the superiority of real estate was so great over that of other kinds of property that all else should be excluded from representation.[336]

The outcome of these views proved simultaneously familiar and experimental. Real property remained the cornerstone for provincial enfranchisement in New Brunswick, but now it came with novel additions found nowhere else in British North America.

The Act's first section, in just one sentence, outlined New Brunswick's new provincial franchise. It declared that:

> Every male person of the age of twenty one years or upwards, being a British subject, not subject to any legal incapacity, who shall have been assessed for the year which the Registry is made up, in respect of real estate to the amount of twenty five pounds, or personal property, or personal and real amounting together

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[333] Ibid., 24 February 1855, 50.
[334] Ibid., 55-56. Michael Swift argues that "[l]ike most other MHAs Brown did not have strong party affiliation, though he was closest to such Reformers as Lemuel Allan Wilmot and Charles Fisher." See: Michael Swift, "Brown, James," *Dictionary of Canadian Biography*, volume IX, 86.
[335] PANB, F71, *Debates of the House of Assembly of New Brunswick, 1855*, 24 February 1855, 49. Also see: Ross, 45.
[336] PANB, F71, *Debates of the House of Assembly of New Brunswick, 1855*, 24 February 1855, 51.

> to one hundred pounds, or one hundred pounds of annual income, shall be qualified to vote for Representatives of the County or City for which he shall be so assessed; if there be no assessment for the Parish in any year, then the possession of the qualification shall of itself be sufficient.[337]

Fisher had retained several aspects of the previous franchise. The gendered language remained the same: only men continued to vote. The £25 real property qualification carried on more or less intact as well. Instead of registrars of deeds, however, local assessors now determined property values for the purposes of enfranchisement (much like the Canadas' franchises of 1853 and, later, 1858). This transition produced an important change. Based upon the letter of the law, assessors did not differentiate between freehold and leasehold property. Whether freeholders or leaseholders, Fisher cited, "they were all assessed in real estate."[338] The new £25 property qualification had thus ended New Brunswick's freehold monopoly on provincial enfranchisement: property owners and tenants now voted equally on similar tracts of land.

The section's other stipulations broadened New Brunswick's franchise even further. Aside from £25 property holders, men who possessed £100 of personal property, or earned more than £100 a year, also received provincial votes. It is here where one fully glimpses Fisher's liberal project. Gail Campbell has revealed that, in rural New Brunswick at least, the Election Act of 1855 had produced very little change in terms of enfranchisement. Those men who had voted earlier out of custom now simply did so under the protection of the law.[339] New Brunswick's cities and towns would see the most significant electoral transformations. The £100

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[337] New Brunswick, 18 Vic., c. 37, section 1.

[338] PANB, F71, *Debates of the House of Assembly of New Brunswick, 1855*, 24 February 1855, 51. This analysis stands in contrast to that of John Garner, who viewed the £25 amount as applying to only freeholders. Charles Fisher clearly did not intend it that way. See: Garner, 68. The Chief Electoral Officer of Canada has since repeated Garner's interpretation. See: Chief Electoral Officer of Canada, *A History of the Vote in Canada* (Ottawa: Public Works and Government Services Canada, 1997), 18; 46.

[339] Campbell, "The Most Restrictive Franchise?," 181. New Brunswick's Speaker of the House, Daniel Hanington, had similarly believed in 1855 that "[i]n the county which he had the honor to represent [Westmoreland], he did not think that the extension of the franchise would make much difference..." In others, however, he "thought that the proposed change would...give towns and villages an influence at general elections that might operate unfavorably on the rural districts." See: PANB, F71, *Debates of the House of Assembly of New Brunswick, 1855*, 2 March 1855, 72.

personal property qualification particularly favoured local artisans, tradesmen, and merchants who ran their own shops, sold their own goods, and owned their own tools. The £100 income restriction, moreover, offered votes to urban professionals and even senior clerks (men who may not have found it convenient to own urban real estate).[340] Fisher's Act had, in essence, enfranchised New Brunswick's respectable middling classes. Echoing the Great Reform Act, it had given "an impetus to the industrial and commercial interests in the community...as mechanics, as merchants, [and] as professional men." As Fisher himself argued: "It was preposterous to deny the merchant with £3,000 of goods, and the intelligent clerks and mechanics, the right to vote, when the man that blacked their boots could vote, because he happened to own a piece of wild land that the crows would not live on."[341] Much like the Reform Act as well, Fisher's legislation extended middle-class privileges at the expense of working-class representation. As of 1861, New Brunswick labourers – who composed 21% of the province's adult male population – earned at most $300 (or £75) per year.[342] This sum, of course, fell well below the income qualification established by the new election law. New Brunswick's reformers had thus singled out one-fifth of the adult male population to prove the independence of the other eighty percent. Real property still provided the most direct access to provincial enfranchisement, but now the province's other respectable sorts – men who had financial interests in the country – received electoral voices as well.

Fisher's Act became the law of the land on 1 November 1855. Soon after, more conservative-minded New Brunswickers called for its immediate amendment (if not its outright repeal). The expanded electorate had proven the least of their concerns. Even the cranky Fredericton *Head Quarters* had thought that a broader ratepayers' franchise might furnish a more

[340] See: Garner, 68-69. Also see: Chief Electoral Officer of Canada, 16.
[341] PANB, F71, *Debates of the House of Assembly of New Brunswick, 1855*, 24 February 1855, 51.
[342] Chief Electoral Officer of Canada, 16-17.

wholesome electorate.[343] Instead, the biggest complaint concerned the voters' registry. As had happened in the Province of Canada, parish officials had failed to complete the registries on time.[344] Only five counties had voters' lists prepared by mid 1856 and no one knew when the others would finish theirs.[345] When anti-temperance conservatives (otherwise called Rummies) won the 1856 general election, it looked as though New Brunswick's election laws might change again. That government, however, lasted for less than a year. The new Liberal party of New Brunswick – led by none other than Charles Fisher – swept back into prolonged power.[346] Under its watch (and despite problems with the voters' registry) Fisher's Act remained in full force for years to come. It had taken 60 years for New Brunswick to finally alter its £25 freehold franchise. If New Brunswick's 1795 property-based franchise had suited the great majority of New Brunswickers from the outset, then the province's more inclusive 1855 property-based franchise continued to do the same. The next great leap would take place another three decades later in 1889.[347] Property qualifications would finally begin to fade as a 12-month residency franchise came into effect.[348]

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[343] In its editor's words: "We do not think popular feeling will tolerate a retrogressive measure, and therefore hope the Government will introduce a Bill extending the franchise to all British male subjects of age, who are rated, and who can produce certificates that their taxes are paid." See: *The Head Quarters* [editorial], 5 November 1856, 2.

[344] A government circular to all County Clerks of the Peace reveals what the various parishes and counties did or did not accomplish. See: PANB, RS816N Provincial Secretary Elections Administration Records, file N "Answers to Election Law Circulars 1857."

[345] See: *The Head Quarters* [editorial], 25 March 1857, 2. Also see: Garner, 70. By March of 1861, James Brown could still report that inhabitants of the "new settlement in Lepreau," Charlotte County, "are not registered, never having been assessed..." See: PANB, MC295 James Brown papers, MS3 Correspondence, file 3/221, James Brown to R.V. Hanson, 16 March 1861.

[346] See: Campbell, "'Smashers' and 'Rummies'," 112; 116.

[347] New Brunswick's *Consolidated Statutes* of 1877 reworded Fisher's Act to account for decimal currency. It stated that: "Every male person of the age of twenty-one years or upwards, being a British subject, not subject to any legal incapacity, who shall have been assessed for the year which the registry is made up, in respect of real estate to the amount of one hundred dollars, or personal property, or personal and real amounting together to four hundred dollars, or four hundred dollars of annual income, shall be qualified to vote for Representatives of the county or city for which he shall be so assessed; if there be no assessment for the parish in any year, then the possession of the qualification shall of itself be sufficient." See: New Brunswick, *The Consolidated Statutes of New Brunswick, 1877*, "Elections to the General Assembly," c. 4, section 1.

[348] See: ibid., "An Act to consolidate and amend the Law relating to Elections to the General Assembly" (52 Vic., c. 3), section 21. Even then, Fisher's franchise remained to an extent intact. While adult male New Brunswickers

Part IV

Conclusion

The colonies of Upper Canada, Lower Canada, and New Brunswick had all entered the nineteenth century possessing variations on England's 40-shilling freehold franchise. Upper Canada and Lower Canada had obtained Whiggish versions of the law thanks to Charles Fox and his amendments to the Constitutional Act. Besides 40-shilling freeholders and roturiers in the counties and seigneuries, £10 leaseholders had received the vote within urban ridings as well. Canadian enfranchisement, from the outset, had looked beyond property ownership to find respectable citizens who held landed title under different terms and conditions. New Brunswick's older variant of the 40-shilling franchise, received at nearly the same time, had not done the same. Freehold property, and freehold property alone, conferred colonial citizenship across the vast majority of early-nineteenth-century New Brunswick (so long as that property held a clear value of at least £25 local currency). Only Saint John, as the province's sole borough, offered any exception with its freeman's qualification. Although the Canadian and New Brunswick franchises weighted real property differently, they had both nonetheless resulted in exceptionally broad electorates throughout the first half of the nineteenth century. Abundant access to decent land had meant that the 40-shilling franchise (whether unreformed or reformed) offered little impediment to full political participation across either of the Canadas or New Brunswick.

Over the next half century, the political conditions of these three colonies changed considerably. Upper Canada and Lower Canada merged to form the Province of Canada in

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could now vote on a 12-month district residency qualification, they could also vote in any district where they had been assessed for $100 in real estate, $400 in personal property, or $400 in income. See: ibid.

1840. Responsible government arrived in 1848, just as it did in New Brunswick by the mid 1850s. Populations in both provinces had increased dramatically, costs of living had fluctuated, and vacant lands had become scarcer and scarcer. Despite these changes, property-based franchises had remained firmly entrenched within Canadian and New Brunswick state structures. This is not to say that these laws remained static. Subtle amendments had passed in both provinces throughout the 1850s that expanded provincial franchises considerably. In the Province of Canada, disagreements over the extent, scope, and definition of reform had led to the enfranchisement of new classes of leaseholders. Whereas the Constitutional Act had granted urban tenants the vote in 1791, the Registration of Voters Act did the same for rural tenants in 1853. Landed property had fully replaced freehold tenure within the province's liberal ideal, and women, labourers, and First Nations peoples remained largely disenfranchised. Unfortunately for Reformers, problems with the voter registration system had resulted in the legislation's revision and repeal. The political desire for voters' lists had run up against state incapacities to produce them reliably. Even so, by 1858, the province's Liberal-Conservatives had adopted the Registration of Voters Act as their own. John A. Macdonald had recognized the clientelist possibilities of such legislation. If county judges had ultimate control over the province's voters' lists, Macdonald had ultimate control over judicial appointments. A property-based franchise had not only suited Macdonald ideologically; it also gave judges enough leeway to make favourable partisan decisions. Canada's property-based franchise had thus lasted through to Confederation not only because it appealed to the propertied liberal values upheld by most White Canadian men. It also suited the broader designs of party politicians like Macdonald, who ultimately viewed propertied enfranchisement as a means to weaken his opponents and secure future electoral victories.

In New Brunswick, the £25 freehold franchise had similarly suited provincial emphases on landed property. Although most New Brunswick men would not have had the franchise at the age of 21, most presumed to receive it some time early in their lives. Because of these expectations, calls for franchise reform did not sound so loudly as those for other electoral reforms. Intimidation, corruption, and interminable scrutinies had plagued New Brunswick elections into the second half of the nineteenth century. New Brunswickers had looked for every possible means to prevent them, from prohibition to voters' registries to even the secret ballot. Some even mentioned extensions to the franchise as a way to remove doubts over voter qualifications (especially considering so many men voted out of custom anyway). When changes to the franchise finally arrived in 1855, they merely sought to encompass a small slice of middle-class New Brunswickers who had already proven their respectability. Just as England and the Province of Canada had established reformed electorates, Reformers in New Brunswick looked to do the same. These Whiggish ideas of propertied enfranchisement, and the broader electorate they created, would govern the New Brunswick's franchise well into Confederation.

Chapter 2

Gender, Race, and Industry: Nova Scotia's Electoral Franchises, 1851-1863

Much like those of Canada and New Brunswick, Nova Scotia's original electoral franchise hinged solely upon the legal possession of real property. For the first half of the nineteenth century, only Nova Scotians who owned real property worth 40 shillings annually had the privilege of voting at colonial elections. That all changed when Nova Scotia attained responsible government in 1848. With greater authority now vested in the Legislative Assembly, franchise reform soon followed. In 1851, Nova Scotia became the first British North American province to detach its franchise from the land. Through a ratepayers' franchise, men who paid their annual county and poor rates (or, in other words, taxes) could vote alongside their property-owning neighbours. The ratepayers' franchise did not survive long. Facing widespread discontent, legislators voted in 1854 to eliminate economic restrictions upon the franchise altogether. By establishing what Nova Scotians called universal suffrage, the province implemented perhaps the most inclusive franchise found anywhere within the British Empire. Universal suffrage, however, did not last long either. As of 1863, the province passed new legislation that once again grounded the franchise in landed property. Nova Scotian men would now have to legally possess $150 worth of real property, or a combined $300 worth of real and personal property, before they could vote. Approximately one-quarter of the province's electorate found itself disenfranchised as a result. No other British North American province would reattach its franchise to landed property in this way.

This chapter explores this speedy series of changes to Nova Scotia's electoral franchise between 1851 and 1863. With the advent of responsible government, the governor could no longer protect the 40-shilling freehold. Multiple conflicting ideas of citizenship emerged, each centred upon gendered ideals of industry as mediated by race and class. The Elective Franchise Act of 1851, for example, offered the vote to men who paid their taxes and thereby satisfied their obligations to the community. It also officially disenfranchised women for the first time. The Elective Franchise Act of 1854, on the other hand, professed to enfranchise all Nova Scotian men as equally competent citizens of the province. Despite its claim to universal suffrage, the legislation also contained restrictions based upon residency, indigence, and race that significantly reduced its universality. With the Election Act of 1863, only the prosperous male property-holder could vote thereafter. As mid-nineteenth-century Nova Scotians debated the nature of provincial citizenship, franchise law became the makeshift laboratory in which to test proposed definitions. In the end, those who equated landed property with independence, ideal manliness, and full citizenship would take the day, but only at the greatest of political costs. Legislators who valued their careers would think twice before broaching the subject of franchise reform again.

Although Nova Scotia's past franchises have not received a great deal of attention, this chapter is certainly not the first to explore these laws. The most thorough discussions remain two of the earliest: those found in J. Murray Beck's *The Government of Nova Scotia* (published in 1957), and John Garner's *The Franchise and Politics in British North America* (published in 1969). For Beck, the debate ideologically revolved around the question: "Ought the lower House to be representative of a broader cross-section of the population than the one constituted by the

forty-shilling freeholders?"[1] In his analysis, Beck focuses on how Nova Scotia's politicians interpreted the British constitution and the extent to which it embraced democracy. Those who viewed the spirit of British institutions as essentially democratic supported what Beck calls universal suffrage. Alternatively, those who viewed the constitution as much more conservative in scope supported the British property-based franchise. After some wrangling, Beck views the conservatives winning the debate and codifying their understanding of British constitutional practice.[2] Garner's interpretation, published a decade later, takes direct aim at that offered by Beck. For Garner, any "progressive modifications of [Nova Scotia's] franchise were not the products of an unfolding of the democratic ideal but rather the by-products of the search for public favour by political parties."[3] In other words, politicians implemented new franchise legislation so their parties could attract adherents and win colonial elections. Once again, partisan politics proved ascendant within Garner's interpretive framework.

Undoubtedly, both analyses contain elements of truth. Some legislators certainly discussed the merits of democracy during the 1850s and 1860s. Partisan gain, moreover, must have entered into some politicians' minds. Even so, there is more to the story here. For Beck and Garner, the franchise existed within the realm of high politics. Legislators altered the franchise as they saw fit (whether for philosophical or partisan purposes) and the electorate generally expanded or contracted as a result. From this point of view, the electorate appears as an abstract mass: its size is more important than its composition. Seemingly minor restrictions of the franchise are glossed over. One must remember, though, that voters are people. They come from different cultural backgrounds and they possess their own distinct cultural identities.

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[1] J. Murray Beck, *The Government of Nova Scotia* (Toronto: University of Toronto Press, 1957), 115.
[2] Ibid., 115-118.
[3] John Garner, *The Franchise and Politics in British North America, 1755-1867* (Toronto: University of Toronto Press, 1969), 28.

Because Nova Scotia's franchise took distinctions of gender, race, and class into account, studies of franchise legislation must do the same. Nova Scotia's political historiography currently lacks this important perspective.

The 40-Shilling Freehold

Nova Scotia first moved away from a property-based franchise in 1851. The legislation had found its genesis during the previous decade. As part of the 1847 colonial election, Nova Scotia's Reformers, more or less led by the journalist Joseph Howe, advanced the idea of franchise reform alongside their advocacy of responsible government.[4] The colony's property-based franchise was flawed. Although every county had its own deed office, provincial law did not require the registration of land titles. Healthy fees charged by deed registrars discouraged registration even further.[5] With so many land transfers off the books, Nova Scotia's land policy had fallen into disorder.[6] Without an up-to-date register of deeds, electoral officers had no real way of testing a voter's property qualifications. Instead, these officials depended upon oaths

[4] Garner, 30. After the Reformers won the 1848 provincial election, it was James Boyle Uniacke, and not Howe, who would lead the party within the legislature. According to J. Murray Beck, "Howe's loss of the premiership was more in name than in substance, for to many it was his ministry all the same." See: J. Murray Beck, "Howe, Joseph," *Dictionary of Canadian Biography*, volume X, 363.

[5] Brian Cuthbertson, *Johnny Bluenose at the Polls: Epic Nova Scotian Election Battles, 1758-1848* (Halifax: Formac Publishing, 1994), 6. The registrar of deeds for Richmond County, James Turnbull, certainly believed this was the case in 1840 when he testified that he did "not think that under the Common Law it was necessary for Deeds to be recorded." See: Nova Scotia Archives and Records Management [hereafter NSARM], RG5 Legislative Assembly fonds, series E Elections, volume 19, "Minutes of Election at Richmond," 21.

[6] Daniel Samson, *The Spirit of Industry and Improvement: Liberal Government and Rural-Industrial Society, Nova Scotia, 1790-1862* (Montreal and Kingston: McGill-Queen's University Press, 2008), 53.

administered on the Bible to guarantee voters owned the land they claimed.[7] Reformers viewed this situation as electorally problematic for two reasons.

First, conscientious landowners often resisted taking oaths at the polls. Many God-fearing Nova Scotians would only swear as to their property if they knew with complete confidence that they had a valid land title. Since the colonial state itself could not always verify land ownership, this sort of certainty was never easy to attain. In his leading work on the subject, Brian Cuthbertson enumerates the many ways that land tenure could be disputed at the polls: from "not having a freehold according to the terms of a will"; to "owning land which was not paid for"; to "holding land but receiving no emoluments from it."[8] James Boyle Uniacke – Nova Scotia's first Reform government leader – found this situation particularly unfair for the morally upright.[9] A lawyer himself, he recognized that "many an acute legal mind is puzzled to decide upon these questions" of land ownership.[10] Needless to say, the "old grey headed man [who] comes forward to vote upon a property he has held for forty or fifty years" would have had even greater difficulty when "the bible is handed him and he is required…to call the Almighty to witness that there is no legal defect in [his] title." Uniacke viewed franchise reform as a way to ensure "a man so situated…who refused to swear" would not be penalized for his principled decision.[11] As one contributor to the Halifax *British Colonist* phrased it in 1850, Nova Scotia's franchise law should promote, and not punish, "an avowed recognition of Christianity."[12]

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[7] Cuthbertson, 6.
[8] Ibid., 7.
[9] While Howe may have led Nova Scotia's Reformers as a party for all intents and purposes, Uniacke acted as their leader within Nova Scotia's legislature. As J. Murray Beck relates in his short biography of Uniacke, "the title of 'premier' was, as yet, little used in Nova Scotia." See: J. Murray Beck, "Uniacke, James Boyle," *Dictionary of Canadian Biography*, volume VIII, 903-906.
[10] "Provincial Parliament. House of Assembly," Halifax *Novascotian*, 21 April 1851, 4 (debate of 20 March 1851).
[11] Ibid.
[12] Timothy Clover (pseudo.), "The Suffrage and its Limits," Halifax *British Colonist*, 14 September 1850, 2.

Second, Reformers believed that corrupt electoral practices had festered under the 40-shilling freehold. In the absence of a reliable land register, disenfranchised men had more than one way to skirt the franchise's property qualifications. The easiest was to simply lie at the hustings. True, fines for electoral fraud had reached £20 by 1839. Dishonest voters, however, had little to worry about: electoral officers had no real way of exposing false oaths aside from an intimate knowledge of a man's landholdings. Cuthbertson argues that even after an election "it was difficult and expensive to prosecute electors for fraudulent voting."[13] For those who wished to avoid a bold-faced lie, another option existed: the short-term property transfer. In the days preceding an election, wealthier Nova Scotians could temporarily parcel out small tracts of land to neighbours who did not own property themselves. After the election, the land would return to its original owner. Although a man technically had to possess land for six months before voting on it, it took very little effort to misdate a deed or bill of sale. Again, electoral officers were essentially powerless in such circumstances. All they could do was administer another oath.[14]

As with the rest of British North America, a complete collection of controverted election records no longer exists for Nova Scotia. It is therefore impossible to quantify just how common questionable electoral practices had become under the 40-shilling freehold. The evidence that survives, however, seems to justify the Reformers' position. Relying upon newspaper reports, poll books, and petitions, Cuthbertson reveals that false oaths and temporary property transfers played a role in essentially every election from the 1790s onward. This was especially true at close contests where drunkenness helped loosen colonists' scruples. Because most candidates

[13] Cuthbertson, 7.
[14] Ibid.

kept open houses for their supporters – where they provided lodgings, food, and alcohol – such drunkenness was apparently widespread.[15]

Of all the elections that took place in pre-responsible Nova Scotia, the 1840 Richmond election perhaps epitomized everything problematic with the 40-shilling freehold. Cuthbertson in fact highlights it as the pinnacle of Nova Scotian electoral corruption before 1848. The contest saw James McKeagney and William Clarke Delaney, both local lawyers, vie for Richmond's lone county seat. Although McKeagney won the election, Cuthbertson argues that he only did so by means of "the most disgraceful recruitment of voters so far, bringing to the hustings paupers, vagrants, minors, non-residents, strangers from the United States, and Indians last seen pitching their tents on the beaches of Dartmouth and paddling in Halifax regattas."[16] Certainly, questionable oaths posed a major problem at Richmond in 1840. The House of Assembly had nullified the election because of them.[17] Nevertheless, Cuthbertson bases his opinion solely on the losing candidate's – Delaney's – formal complaint.[18] In doing so, he presents his reader with only part of the story.

Fortunately for historians, the minutes to Richmond's 1840 electoral scrutiny (a rarity) still survive. While these transcripts reveal that many men voted when they should not have –

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[15] Ibid., 4-5.
[16] Ibid., 283.
[17] Nova Scotia, *Journal and Proceedings of the House of Assembly* (1841), 16 March 1841, 103.
[18] Cuthbertson, 332. The petition itself claimed "that Youths under age, Men from the County of Cape Breton, possessing no Freehold in the County of Richmond, wandering Indians, of the Forest, and others, not duly qualified, voted for Mr. McKeagney, and took the Oath of qualification; and that, at the close of the Poll, Mr. McKeagney had a nominal majority of six, and was accordingly duly elected…" See: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1841), 16 February 1841, 38. Laurence O'Connor Doyle employed similar language when he petitioned Richmond County's sheriff, John Fuller, to continue his scrutiny after James McKeagney wished to terminate the proceedings. As Doyle put it, "many of the Freeholders of the County of Richmond persist in demanding a full and thorough Scrutiny of the votes given at the late Election said Freeholders being anxious to vindicate their rights from invasion by the attempted votes of numbers of persons residing out of and not possessing a Freehold in the County of Richmond by unsettled and wandering Indians and minors." See: NSARM, RG5, series E, volume 19, "Minutes of Election at Richmond," 52.

some because they did not understand the law,[19] some because the local priest told them they could,[20] and some because they simply wanted to[21] – they also demonstrate the almost insurmountable difficulties Nova Scotians faced under the 40-shilling freehold. Without a reliable land record, Richmond's registrar of deeds James Turnbull had no way of knowing what land belonged to whom. Several times during the scrutiny his testimony devolved into speculation as to whether colonists owned land in the county.[22] When men like Charles Potty of L'Ardoise voted on property "his father gave him…but that he has no deed or paper whatever," Turnbull was especially powerless.[23] In the cases of Constan Landris, Fabien Samson, Benjamin London, and Simon Le Blanc, Turnbull did not know what deeds he possessed.[24] Other county officials, such as county surveyor Dougald B. McNab, faced similar uncertainties. When cross-examined, McNab could not determine whether Andrew FitzHarris's land fell within the county limits.[25] Several witnesses ended up debating the true course of the county line.[26] Even the most basic questions vexed those at Richmond. Without a record of vital statistics, men with common names (such as John McKenzie, John Campbell, and John Johnson) were confused with

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[19] Sebastien Vigneaux of Arichat admitted, for example, that "[h]e is no Lawyer" but still believed that "a man's title gives him the right to vote. If he is 20 years on a piece of land he has a right to vote." See: NSARM, RG5, series E, volume 19, "Minutes of Election at Richmond," 21.

[20] One witness testified that Father McKeagney, a local priest and the candidate's brother, had misleadingly told his parishioners – including Edward Buck of River Bourgeois – that "if they had performed statute labor they had a right to vote." Unable to read the franchise law themselves, illiterate men often had to rely upon others. If it offers any indication, 15 of the 45 who testified at the Richmond scrutiny could not sign their names. See: ibid., 59. Also, James McKeagney's two elder brothers, Henry and Patrick, were both priests on Cape Breton. Henry presided over the Sydney parish while Patrick tended to the St. Peter's mission. Although the testimony in question does not specify which brother supplied the misinformation, the proximity of St. Peter's to River Bourgeois makes Patrick the likelier culprit. See: Cuthbertson, 277; 283.

[21] See, for example, the cases of Mark Petipas of Arichat, David Condon of Point Michaud, the Cloris brothers of Grande Anse and False Bay, and Alexander McDonald of St. Peter's: NSARM, RG5, series E, volume 19, "Minutes of Election at Richmond," 54; 80; 83; 87; 92.

[22] See the cases of Andrew FitzHarris, William Markill, and John McKay, amongst others: ibid., 5-6; 29; 43.

[23] Ibid., 94.

[24] Ibid., 23; 29; 35.

[25] Ibid., 1.

[26] Ibid., 1-5.

neighbours of the same name.[27] No one could definitively tell, moreover, whether certain voters (such as Henry Bouat or Charles Scott) had reached the voting age of 21.[28] The court managed to catch the underage John Stone of St. Peter's only because his mother had recently divulged his birthday.[29] Richmond's scrutiny was almost as big a fiasco as the election itself.

The province's Reform party wanted this situation to change. Nova Scotia needed a franchise that all inhabitants could easily understand. In a perfect world, the new law would also avoid the massive cost of overhauling the province's land policy. Yet, Reform leader Joseph Howe was no radical. He viewed the property-based franchise as central to British constitutionalism and its "system of mixed power." Only through checks and guards such as the 40-shilling freehold could the constitution guarantee the freedoms of all Nova Scotians.[30] Howe would later challenge anyone to compare England's "qualification to Republican America or despotic France where Universal Suffrage has been in operation and see if…[it]…does not favourably contrast with all or any of them."[31] Howe's biographer, J. Murray Beck, has taken the argument a step further. Beck asserts that Howe had always believed "anyone worth his salt could easily acquire a 40-shilling freehold in Nova Scotia."[32] Howe had in all likelihood envisioned only minor modifications to the 40-shilling franchise (such as the voter registration system he proposed in 1845).[33] Not all Reformers had come to the same conclusions, though.

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[27] Ibid., 17; 27; 30.
[28] Ibid., 65; 70.
[29] Ibid., 63-64.
[30] "Provincial Parliament. House of Assembly," *British Colonist*, 11 February 1854, 2 (debate of 8 February 1854).
[31] Ibid., 7 February 1854, 2 (debate of 4 February 1854).
[32] J. Murray Beck, *Joseph Howe Volume II: The Briton Becomes Canadian 1848-1873* (Montreal and Kingston: McGill-Queen's University Press, 1983), 43. Also see: Library and Archives Canada [hereafter LAC], MG24-B29 Joseph Howe fonds, volume 6 Letters from Howe, "Draft of Report on general state of the Province – to accompany Blue Book for 1847," 161.
[33] Garner, 29. In 1863, Howe declared to the House of Assembly that he was "always opposed to disturbing the 40s. freehold qualification." See: "Provincial Parliament. House of Assembly," *Novascotian*, 30 March 1863, 4 (debate of 19 March 1863).

Changing times meant that, perhaps, some salt-worthy Nova Scotians were found outside of the province's property-owning class.

Nova Scotia's property-based franchise had rested upon the idea that property connected a man to his community and provided him with the necessities of life. Because the property-owner depended upon no one else to provide for his household, others trusted him to make wholly independent decisions on election day. By the mid-nineteenth century, Nova Scotians who upheld a property-based notion of citizenship had developed further ways to justify their favourite franchise. Property, for these adherents, measured a man's industry. It took industry to acquire land, and it took further industry to make it productive. A property-based franchise thus rewarded men for their industrious behaviour and, through it, the contributions they made to the local economy. Joseph Howe certainly believed this. So too did Nova Scotia's Conservatives, led by J.W. Johnston. Speaking for himself and his party, Johnston defended "a franchise based upon *the soils*" as "the greatest inducement to industry and saving." It "[taught] a man that he entered into a new state of social being on becoming a freeholder; invested with new dignity, and had new claims of attachment to his native land, and a new interest of framing its laws." Because "land was easy of acquirement in this country," Johnston saw no reason to deviate from a citizenship rooted in real property.[34]

Without a doubt, Johnston possessed some extraordinary parliamentary skills. A lawyer by training, and a gifted one at that, he could argue circles around the average assemblyman. Johnston, however, was never a man of the people. Born into a wealthy Loyalist family, his biographer has since described him as aristocratic, aloof, and withdrawn.[35] Politically, he

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[34] "Provincial Parliament. House of Assembly," *Novascotian*, 7 April 1851, 6 (emphasis in text).
[35] David A. Sutherland, "J.W. Johnston and the Metamorphosis of Nova Scotia Conservatism," M.A. thesis (Dalhousie University, 1967), 186. Also see: ibid., "Johnston, James William," *Dictionary of Canadian Biography*, volume X, 386.

defended "the existing social order." Socially, he "went into company rarely and then almost exclusively among Halifax's élite."[36] Johnston thus had a much different perception of property than many British North Americans. While he and his wealthy friends may have found it easy to acquire real estate, the average mid-nineteenth-century Nova Scotian would have had much greater difficulty.

Early Nova Scotia – in the words of both Graeme Wynn and Daniel Samson – was a province of "bounded possibilities."[37] Good agricultural land was limited to stretches that bordered its coast and skirted its river valleys. Those who ventured further into the province's interior would have found mainly rocky terrain and poor soils. Some of these more marginal lands could be farmed, some simply could not. While fortunate settlers coaxed enough out of the ground to feed their families, most inhabitants of the Nova Scotian interior had to supplement their crops with seasonal labour for mere subsistence.[38] (Indeed, Rusty Bittermann, Robert MacKinnon, and Graeme Wynn suggest that only one in five mid-nineteenth-century Nova Scotian farmsteads "was autonomous and…entirely secure in their competency.")[39] As of 1800, colonists had already scooped up the province's most arable land. By 1827, only the poorest tracts were left.[40] When thousands of immigrants flooded into the province during the second quarter of the nineteenth century[41] – and came into competition with a new generation of native-

[36] Ibid., "Johnston, James William," 386.
[37] Graeme Wynn, "A Region of Scattered Settlements and Bounded Possibilities: Northeastern America 1755-1800," *The Canadian Geographer* 31.4 (December 1987): 319-338; Samson, 21.
[38] Cole Harris, *The Reluctant Land: Society, Space, and Environment in Canada before Confederation* (Vancouver: UBC Press, 2008), 211-213.
[39] Rusty Bittermann, Robert A. MacKinnon, and Graeme Wynn, "Of Inequality and Interdependence in the Nova Scotian Countryside, 1850-1870," *Canadian Historical Review* 74.1 (March 1993): 36-37.
[40] Samson, 23.
[41] T.W. Acheson, "The 1840s: Decade of Tribulation," in *The Atlantic Region to Confederation: A History*, eds. Phillip A. Buckner and John G. Reid (Toronto and Fredericton: University of Toronto Press and Acadiensis Press, 1994), 315. Also see: Samson, 24.

born Nova Scotians – the era of abundant, inexpensive land had already ended.[42] Samson concludes that "the possibilities of establishing a farm of one's own were significantly poorer than they had been a generation earlier."[43] For those who wished to stay in Nova Scotia, tenancy became one of the few ways to get on to the land. Only the wealthiest or most fortunate could afford to purchase decent property, no matter what J.W. Johnston believed. A sizeable leaseholding class took shape in the colony as a result. According to Nova Scotia's 40-shilling franchise, a voter needed to own his property outright: the mere possession of property was not enough. Leaseholders thus faced summary disenfranchisement no matter their improvements to the land, their contributions to the economy, or their taxes paid to the state. As Reformers began to draft new franchise law, they took these discrepancies into consideration.

The Elective Franchise Act of 1851

The Reformers tabled their new franchise act in early 1851. Within a British North American context, the legislation was revolutionary for two reasons. First, it stipulated that "Every Elector…shall be a Male, twenty-one years of age."[44] At this time, Nova Scotia remained the last British North American province to at least formally allow women to vote. While common law traditions prohibited women from voting, the law's unwritten nature allowed some leeway in its interpretation. Historians have indeed found women attending the polls in

[42] Samson, 40.
[43] Ibid., 209.
[44] Nova Scotia, "An Act to extend the Elective Franchise" (14 Vic., c. 2), section 1.

Nova Scotia as late as 1840.[45] When the question of women's enfranchisement arose in 1851, however, the province's House of Assembly responded much like elsewhere: with laughter. Legislators refused to take the subject seriously. It took literally less than a minute for women's disenfranchisement to pass into statute law.[46] With that decision, the province had formally defined citizenship as a male privilege. Only men legally voted in Nova Scotia's provincial elections until well into the twentieth century.[47]

With the franchise established as a patriarchal prerogative, Nova Scotians had other questions to answer. How far should the privileges of patriarchy extend? Or, to rephrase, what sort of man was manly enough to vote? The legislation's answers were similarly revolutionary, but in a much more radical way. The new Franchise Act contained no property qualifications whatsoever. Instead, it merely demanded that male Nova Scotians

> be qualified as it by Law now required, or shall have been assessed for, and paid, in the year next preceding such Election, Poor or County Rates, in the County for which he shall vote; and every such person shall be entitled to vote for the County and the Township within the County in which his assessment shall have been enrolled.[48]

Under the new legislation, Nova Scotian men only had to pay their two local taxes – their county rates and their poor rates – to qualify for the franchise. If anyone questioned whether they had paid their taxes, the legislation simply demanded that they "produce a Receipt for such Poor or County Rates, signed by the Collector thereof, and shall deliver such Receipt to the presiding

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[45] Garner, 155-159. Also see: Cuthbertson, 9.
[46] When Robert McGowan Dickie moved that women should indeed vote, Laurence O'Connor Doyle responded that "this is a very fair proposition. If ladies voted for the Governor in India, why should they not for members of this House? *(Laughter)*." This laughter ended the debate on the subject. See: "Provincial Parliament. House of Assembly," *Novascotian*, 7 April 1851, 6 (debate of 12 March 1863). Emphasis in text.
[47] Women in Nova Scotia faced provincial disenfranchisement until 1918. See: Chief Electoral Officer of Canada, *A History of the Vote in Canada* (Ottawa: Public Works and Government Services Canada, 1997), 64.
[48] Nova Scotia, 14 Vic., c. 2, section 1.

officer…"[49] As Nova Scotia's Speaker of the House, William Young, would phrase it: "the Assessor's Book would take place of the present complicated system and destroy the frequency of oaths…which would wonderfully simplify the present system."[50] But nothing is ever so straightforward. Because of the way county rates and poor rates functioned, no two Nova Scotians would pay the same for their enfranchisement. Everything depended upon where a man lived and what he happened to own.

While Nova Scotia's county and poor rates operated independently from one another, the state had organized both around the principle of assessment. The process of establishing the annual county rate began at the county court of general sessions. There, local freeholders and county officials petitioned for monies necessary to erect, maintain, and repair public works (such as buildings, roads, bridges, hay scales, etc.), to remunerate public officials (such as treasurers, jailors, constables, and town criers), and to pay for the upkeep of prisoners.[51] Based upon these petitions (and its own knowledge) the county's grand jury would "present any sums of money necessary in their judgment" and "ascertain what portion each township and place shall contribute."[52] If a grand jury saw no need for additional funds, it would not set a county rate. For those times when rates were needed, the grand jury furnished the court with "the names of such number of the freeholders of the county as the court shall direct, to be assessors…for the several townships and places in such county, and the court shall appoint not less than half the persons named."[53] In the following months, county rate assessors would visit every homestead to place "an equal pound rate on the real and personal property in their respective occupation or

[49] Ibid., section 6. Also see: "Bidding for Popular Favor. Elective Legislative Council, and a Lower Franchise," Halifax *Acadian Recorder*, 1 February 1851, 3.
[50] "Provincial Parliament. House of Assembly," *Novascotian*, 7 April 1851, 6 (debate of 12 March 1851).
[51] Nova Scotia, *The Revised Statutes of Nova Scotia, 1851*, "Of County Assessments," c. 46, sections 2-4.
[52] Ibid., section 2.
[53] Ibid., section 7.

possession within the country…"[54] In other words, Nova Scotians had to pay a variable percentage of all their worldly possessions – both moveable and immoveable – to pay for county upkeep. If a man owned nothing of value, he did not have to pay county rates.

Nova Scotia's poor rates, on the other hand, fell under the jurisdiction of the province's townships.[55] To determine the local poor rate, every township held two public meetings annually to "vote such sums of money as they shall judge necessary for the support of the poor for the current year or until the next meeting…"[56] The amount required could fluctuate wildly from year to year and from place to place. According to the province's poor law, townships were obliged to maintain every "old, blind, lame, impotent, or other poor person not able to work" so long as they had paid poor rates in years' past and had no family for support. The statute also encompassed "children of deceased parents."[57] If a township had voted to build a poor house, the cost of its erection, maintenance, and management would come out of the local poor rates as well.[58] To collect this money, township meetings would "choose not less than five nor more than ten inhabitants to be assessors of poor rates."[59] Like county rate assessors, poor rate assessors would "assess the sum voted at the meeting upon the inhabitants of the township for which they were appointed, by an equal pound rate upon the real and personal property in their respective occupation within the same…"[60] The only way to avoid Nova Scotia's poor tax was to somehow persuade assessors that one could not "pay a rate of at least one shilling annually."[61]

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[54] Ibid., section 10.
[55] For more on the poor law in a broader British North American context, see: Suzanne Morton, *Wisdom, Justice and Charity: Canadian Social Welfare through the Life of Jane B. Wisdom, 1884-1975* (Toronto: University of Toronto Press, 2014), 29-31.
[56] Nova Scotia, *The Revised Statutes of Nova Scotia, 1851*, "Of the Poor," c. 89, sections 15 & 17.
[57] Ibid., sections 6 & 8.
[58] Ibid., section 20.
[59] Ibid., section 17.
[60] Ibid., section 21.
[61] Ibid., section 24.

Through the 1851 Franchise Act, then, a male Nova Scotian had to pay a *minimum* of one shilling in rates (or 25 cents Halifax currency) before he received a vote.

As someone who believed in the privileges of property, Reform leader Joseph Howe would have never endorsed such legislation. In fact, he would have probably done everything in his power to fight it.[62] Perhaps this is why Howe's fellow Reformers waited until 1851 to table their new franchise law. Howe had travelled to London, England, in early-November 1850 to secure a railway loan.[63] He would not return to Nova Scotia until the following April (where, according to J. Murray Beck, he "found politics...a mess, as I expected"). By that time, the House of Assembly had closed for its summer recess. Without Howe to "keep the discordant elements of the party in line," Howe's more radical friend and colleague Laurence O'Connor Doyle had essentially free reign to act.[64] Doyle jumped at his opportunity to do so on the first day of the new legislature, 23 January 1851, when he read his party's franchise bill for the first time.

Doyle's defence of the ratepayers' franchise challenged Howe's more limited view of political participation. Instead of property, Doyle employed the language of industry and labour to justify the Reformers' new law. According to him, the "land in this country was a mere chattel – it was a commodity in the market – it was not inalienable; and therefore it was but part of that wealth, which the labour and industry of the people created…" Put differently: "Property

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[62] Reform representative William Chambers argued in 1863 that "[h]ad Mr. Howe, who was at that time in England, been present, I do not believe that measure would ever have received the sanction of the Legislature. He was always opposed to this tinkering with the franchise, and expressed his disapproval on his return." See: "Provincial Parliament. House of Assembly," *Novascotian*, 20 April 1863, 5 (debate of 4 April 1863). J. Murray Beck has argued something similar. See: Beck, *Joseph Howe Volume II*, 43.

[63] On 1 November 1850, Howe, in his own words, had "proceed[ed] to England to rep. the Province in ref. to the N. A. & E. [North American & European] Railroad, and to effect a loan of £800,000 Sterling for the construction of this work…" See: LAC, MG24-B29, volume 43 Diary etc. 1850, 1852, 1855, 10. Also see: Beck, *Joseph Howe Volume II*, 35.

[64] See: William Annand, ed., *The Speeches and Public Letters of the Hon. Joseph Howe*, volume II (Boston: John P. Jewett & Company, 1858), 55-56. Also see: Beck, *Joseph Howe Volume II*, 42.

sprang from *labour*, and not labour from property; so that if there were to be a distinction here, it ought to give the preference to labour."[65] Because "labour and industry, being the source of all wealth, was the true foundation for the electors of Representatives to make laws and dispose of the taxes of the people," Doyle believed that it "had become sufficiently apparent to attach the assessment for County Rates" to the franchise. Because the province calculated its rate through local assessment of real *and* personal property – either owned *or* occupied – a franchise based upon ratepayment better accounted for the labour and industry of all Nova Scotian men. It also rewarded community-minded individuals who dutifully satisfied their annual debts to the state. Doyle thus concluded that by attaching the franchise to the payment of rates, "[i]t opened the franchise to all the industry of the country."[66]

Reform government leader James Boyle Uniacke seconded Doyle in this regard. As he phrased it to the Legislative Assembly, he could "see no reason why the House should not adopt the Bill before them." Building upon Doyle's links between labour, industry, and taxation, Uniacke "affirm[ed] that every man who pays his taxes has a right to vote in the election of him who is invested by law with the right of taxing him."[67] While the propertied man paid his taxes through the wealth he derived from land, the unpropertied man did the same by means of his labour. In doing so, both evinced the same industrious qualities that marked true citizens of the province. For Uniacke, then, both sorts of men deserved equal access to the franchise. Richard Nugent of the *Sun* wholeheartedly (if not frenetically) agreed. If "TAXATION AND REPRESENTATION are inseparable," then "EVERY CITIZEN, BORN or NATURALIZED,

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[65] This sentence was penned by Richard Nugent, editor of the *Halifax Sun*. See: "Rights of Man-Slavery in Nova Scotia," *Halifax Sun*, 17 January 1851, 2.
[66] "Provincial Parliament. House of Assembly," *Novascotian*, 7 April 1851, 6 (debate of 12 March 1851).
[67] Ibid., 21 April 1851, 4 (debate of 20 March 1851).

not being a convicted felon, *an idiot*, *or a madman*, HAS A RIGHT TO THE EXERCISE OF THE FRANCHISE."[68]

To make their case, Doyle and Uniacke drew upon long-standing provincial discourses encompassing ideas of industry and improvement. Daniel Samson, in his work on liberal government in Nova Scotia, argues that Nova Scotians increasingly esteemed a particularly Scottish, Protestant, and gendered idea of industry since the late-eighteenth century.[69] Through individual initiative and hard work, a man did more than simply improve himself and his situation in life. By means of self-regulation (to draw upon the work of Bruce Curtis) he also improved his community and his province more generally.[70] Liberal Nova Scotians equated this sort of industrious self-improvement with modernization, progress, respectability, and ideal manliness.[71] B. Anne Wood contends that by the mid-nineteenth century, "[d]isciplined work habits and a strong will to succeed" – always "interpreted in gendered terms" – had become the "new character ideal."[72] Franchise legislation that rewarded industrious behaviour would have therefore made sense, at least in theory, to a growing number of Nova Scotians.

That being said, Reformers' connections between industry, taxation, and labour may have looked less familiar in a British North American context (at least according to recent historiography). In his work on Canada's liberal order, Ian McKay has argued that nineteenth-century Canadian liberalism "entailed a hierarchy of principles, with formal equality at the bottom and property at the top."[73] As the liberal project progressed, property ownership came to

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[68] "Rights of Man-Slaves in Nova Scotia," *Halifax Sun*, 17 January 1851, 2 (emphases in text).
[69] See: Samson, 54-79.
[70] Bruce Curtis, *Ruling By Schooling Quebec: Conquest to Liberal Governmentality – A Historical Sociology* (Toronto: University of Toronto Press, 2012), 19.
[71] Samson, 316.
[72] B. Anne Wood, *Evangelical Balance Sheet: Character, Family, and Business in Mid-Victorian Nova Scotia* (Waterloo, ON: Wilfrid Laurier University Press, 2006), xxi; 161.
[73] Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," *Canadian Historical Review* 81.4 (December 2000): 624. Also see: ibid., "Canada as a Long Liberal Revolution: On Writing

demarcate the fully-developed individual and citizen. Men without property found themselves "excluded…from full individuality."[74] Channeling McKay's assertions, Samson also argues that the "spirit of industry and improvement" manifested itself in property ownership. Mid-nineteenth-century Nova Scotia was a "society [where] property, competency, and self-government defined political subjects." A "propertied independence…marked the base point for an independent citizenry" and, because of it, "the poor found themselves increasingly removed from emerging democratic debates." Those without property, Samson concludes, simply did not possess the "industriousness, manliness, temperance, and respectability…that began to define the liberal subject."[75]

Doyle's and Uniacke's defence of their new Franchise Act complicates this story considerably. According to them, real estate mattered little when it came to full participation within the colonial state. Through the performance of labour and the payment of taxes, Nova Scotian men – no matter how poor in terms of property – proved their industry, their manliness, and their capacity for citizenship. It was therefore only just that these men received the vote in return. Instead of a property-based liberalism, the perceived equality created by labour and taxation took precedence in Nova Scotia's Legislative Assembly in 1851. Doyle and Uniacke had employed the language of industry well enough to convince their fellow Reformers that "the measure is just and proper in itself."[76] When provincial elections took place in August of 1851, a

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the History of Actually Existing Canadian Liberalisms, 1840s–1940s," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, eds. Jean-François Constant and Michel Ducharme (Toronto: University of Toronto Press, 2009), 358; 376-86.

[74] McKay, "The Liberal Order Framework," 622; 626.

[75] Samson, 311; 316.

[76] A Reformer, "TO THE FREEHOLDERS AND RATEPAYERS OF THE PROVINCE OF NOVA SCOTIA," *Novascotian*, 16 June 1851, 5. Within the House of Assembly, the bill passed along party lines, with the Conservatives "to a man having recorded their names against it." See: "The Franchise Act," *Novascotian*, 14 April 1851, 2. Also see: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1851), 20 March 1851, 750-751.

new "large, intelligent and influential class" of industrious men attended the polls for the first time.[77] Justice was apparently served.

This question of justice, however, may have had another side to it. On the one hand, most Reformers had found it just to reward industrious leaseholding men with the privilege of enfranchisement. On the other, some Reformers viewed it as a "glaring injustice" that these Nova Scotians could not vote when lazy men did so simply because they owned barely-productive patches of land.[78] Tellingly, contemporary examples of idle property-ownership tended to refer to the same two places: Preston and Hammond's Plains. Both located about 25 kilometres outside of Halifax, the colonial executive had originally demarcated the two towns as refugee settlements for American slaves escaping the War of 1812.[79] Upon their arrival, these new Black colonists received provisional grants for farmland from the government.[80] These grants were later confirmed in 1841.[81] As James W. St. G. Walker frames it, these "tiny farms, of no more than ten acres of marginal land, were not sufficient to support the refugees at Preston, Hammond's Plains, or elsewhere."[82] Anyone who attempted to work the soil had "to expend

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[77] "The Franchise Act," *Novascotian*, 14 April 1851, 2.
[78] "The Franchise Bill," *Halifax Morning Sun*, 27 March 1863, 2. For a more general indictment of the property-based franchise and the injustices associated with it, see: "The Ballot," *Acadian Recorder*, 16 February 1856, 2.
[79] During the late eighteenth-century, Preston had also received Black Loyalists escaping the American Revolutionary War. According to James W. St. G. Walker, it was the "[m]ost important of the semi-integrated concentrations [of black settlers]…where fifty-one black families gained fifty-acre farms as part of several larger loyalist grants." Preston's Black landowners deserted the town in 1792 to accept the Sierra Leone Company's offer of land in the new West African colony. The government in Halifax had selected Preston "as the first new black settlement" after the War of 1812 because of its "history of black occupation." See: James W. St. G. Walker, "The Establishment of a Free Black Community in Nova Scotia, 1783-1840," in *The African Diaspora: Interpretive Essays*, eds. Martin L. Kilson and Robert I. Rotberg (Cambridge, MA: Harvard University Press, 1976), 210-211; 225; 228.
[80] Ibid., 228-229. Also see: C.B. Fergusson, *A Documentary Study of the Establishment of the Negroes in Nova Scotia between the War of 1812 and the Winning of Responsible Government* (Halifax: The Public Archives of Nova Scotia, 1948), 12-13.
[81] Fergusson, *A Documentary Study*, 50.
[82] Walker, "The Establishment of a Free Black Community," 229. Also see: ibid., *The Black Loyalists: The Search of a Promised Land in Nova Scotia and Sierra Leone 1783-1870* (Halifax: Dalhousie University Press, 1976), 390.

immense effort to clear a very small plot, then face a tiny harvest."[83] Walker concludes that "from the outset…the refugee settlements were doomed to poverty and economic marginality."[84] Instead of compassion, many Nova Scotians had responded with "a burst of anti-black sentiment" and "persistent white hostility" that upheld Black Nova Scotians as idle and incapable of industry.[85] Moreover, British travellers to Nova Scotia helped compound these attitudes by "[r]outinely portraying blacks in Halifax as poor and indolent or as prospering only when serving whites."[86] According to David A. Sutherland, these kinds of "negrophobic comments appeared in newspapers of every political persuasion" within the province.[87] As of mid-century, Preston and Hammond's Plains remained marginalized farming communities still largely inhabited by Black Nova Scotians.[88]

The men of Preston and Hammond's Plains, as largely 40-shilling freeholders, had every right to vote at provincial elections. For those convinced by racist caricatures of Black Nova Scotians, their electoral participation had tipped the scales of justice a bit too far. The fact that most Black Nova Scotians had voted Conservative during the 1847 election (and, indeed, took up arms against Reform supporters) had done nothing to improve Reformers' opinions in this matter.[89] Richard Nugent – the *Sun*'s emphatically Reform-minded editor and erstwhile disciple

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[83] Harvey Amani Whitfield, *Blacks on the Border: The Black Refugees in British North America, 1815-1860* (Burlington, VT: University of Vermont Press, 2006), 52-53.
[84] Walker, *The Black Loyalists*, 390.
[85] Ibid., 392; David A. Sutherland, "Race Relations in Halifax, Nova Scotia During the Mid-Victorian Quest for Reform," *Journal of the Canadian Historical Association* 7 (1996): 42.
[86] Jeffrey L. McNairn, "British Travellers, Nova Scotia's Black Communities and the Problem of Freedom to 1860," *Journal of the Canadian Historical Association* 19.1 (2008): 50. Also see: ibid., "'Everything was new, yet familiar': British Travellers, Halifax and the Ambiguities of Empire," *Acadiensis* 36.2 (Spring 2007): 43-47; 50.
[87] Sutherland, "Race Relations in Halifax," 42. As an example of this racist invective, Sutherland cites the Halifax *Morning Herald* and its characterization of Black Nova Scotians as "an unproductive, destitute, and *begging* class." See: ibid. (emphasis in text).
[88] For firsthand testimonials of this ongoing poverty, see: NSARM, MG15 Ethnic Groups, volume 9.
[89] David A. Sutherland contends that, during the election, "Conservative newspapers insisted that blacks were citizens who had a right to express their political opinions, particularly since many of them met the property qualification required to vote. Liberal editors countered by claiming that blacks were mercenaries, who had been drawn downtown [in Halifax] by offers of free food." See: Sutherland, "Race Relations in Halifax," 47.

of Joseph Howe – harped on this topic especially.[90] As the legislature debated the ratepayers' franchise, Nugent wondered aloud why "the Negro of the Plains, squatted upon his acre of granite rock, and whose yearly occupation may be summed up in two words, berry-picking and begging, has the precedence of the city householder" and "three-fourths of the Mechanics and Labourers – the producing population of the Township of Halifax." He viewed it as patently unfair that "the skilful, industrious Artizan, and Labourer, *not being a property-holder*, must stand aside while the sturdy black Beggar, issuing from his Hut in the bush, casts his vote" simply because "[t]hat Sable-Gentleman is a *Gentleman Freeholder*."[91] Punctuating his outrage with nasty rhetorical flourishes, Nugent asked his readers "[h]ow long shall the unenfranchised classes of this community tolerate quiescently such an insulting injustice as that?":

> Shall illiterate, negro beggars, hundreds of them hardly raised in intellectual capacity above the inferior order of the animal creation, continue to be invested with the Elective Franchise, and the intelligent handicraftsmen, and labourers in masses – remain, as now, shut out? Can a system, so subversive of the undeniable rights of those large and valuable classes of the population – so repugnant to every sense of justice – be patiently ended in uran age, when men, everywhere, are struggling for 'the rights of man'?[92]

Indeed, as late as 1863, the *Sun*'s editor continued to stress the injustice done to the province's tenantry when "the gentleman freeholder, from Preston or the Plains, shouldering his bag of broken victuals, might push his way to the hustings and turn an election."[93]

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[90] According to J. Murray Beck, "Richard Nugent was one of many apprentices whom Howe helped to educate at his home on Sunday evenings." "Still a favourite of Howe" in 1846, "he accompanied him on his trips to Lunenburg and the eastern counties…adding to his store of political knowledge and regaling his readers with stories of rising liberal fortunes." See: J. Murray Beck, "Nugent, Richard," *Dictionary of Canadian Biography*, volume VIII, 656-657. David A. Sutherland, moreover, portrays Nugent as a liberal improver who valued the personal characteristic of industry above all else. Indeed, Nugent recommended that Nova Scotians copy "that spirit of enterprize, which forms a feature so distinctive of the American character." See (and cited in): D.A. Sutherland, "Nova Scotia and the American Presence: Seeking Connections Without Conquest, 1848-1854," in *New England and the Maritime Provinces: Connections and Comparisons*, eds. Stephen J. Hornsby and John G. Reid (Montreal and Kingston: McGill-Queen's University Press, 2005), 149.

[91] "Rights of Man-Slavery in Nova Scotia," *Halifax Sun*, 17 January 1851, 2 (emphasis in text).

[92] Ibid; "The Franchise," ibid., 26 February 1851, 2.

[93] "The Coming Session," *Halifax Morning Sun*, 28 January 1863, 2. In a later issue, Nugent would continue to lament that "it was quite possible for a body of 'Gentlemen Freeholders' – gentlemen of colour – property-owners,

By virulently Othering Black Nova Scotians in this way, Reformers such as Nugent raised what Sutherland has called "fundamental questions about how to define 'the people.'"[94] This particular definition – in reference to Victorian Nova Scotia's already marginalized Black communities – interwove ideas of gender, class, and race to reinforce notions that property ownership did not guarantee an ideal electorate. If the ideal citizen was the industrious man, then some Nova Scotians believed that a ratepayers' franchise better encapsulated this manly ideal. Racialized Black bodies and behaviours, as commonly understood by White Nova Scotians, acted as proof. While the male inhabitants of Preston and Hammond's Plains continued to vote on their property, their voices commanded even less influence (and their vulnerability increased) as Halifax labourers took to the polls beside them.[95] The Franchise Act of 1851 had completely upturned old ideas that emphasized property-ownership over everything else. A gendered and racialized labour theory of value proved ascendant. It did not matter, apparently, that the real economic hardships of Black Nova Scotians were pushed further to the margins. For many White Nova Scotians, these problems weighed very little upon the province's scales of justice.

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residents at Hammond's Plains and elsewhere, to turn the scale at an Election, and thus, not improbably, determine the fate of *a* Government while the tenant-holders and tax-payers of the metropolis and elsewhere, were denied a voice in the legislation of their country." See: "The Franchise Bill," ibid., 27 March 1863, 2 (emphasis in text).

[94] Sutherland, "Race Relations in Halifax," 47.

[95] Ibid., 48.

The Elective Franchise Act of 1854

The Franchise Act of 1851 did not survive on Nova Scotia's statute books for long. Massive electoral corruption during the 1851 provincial election forced legislators to rethink their experiment with a ratepayers' franchise. Conservatives both inside and outside the legislature had prophesized the new legislation's corrupting influence earlier that year. Because enfranchisement under the ratepayers' franchise hinged upon the possession of a tax receipt, local tax assessors and collectors wielded considerable power around election time. This included the authority to add or strike names from the province's assessment rolls, and to issue or withhold tax receipts. More insidiously, these officials could exercise these powers on a party basis. Assessors and collectors received their appointments from magistrates and grand juries. Yet, as Windsor's James DeWolf Fraser pointed out, magistrates received their appointments "by the government who have the power."[96] With "party Government and party Magistrates, and party edifices of all sorts" now in place, Guysborough's John Joseph Marshall similarly predicted that the new legislation would "place the whole franchise of the Country in the hands of the party Sessions, and the party Grand Jury reflecting the opinions of that Sessions."[97] Despite Reform rejoinders that "[t]he people of Nova Scotia are not corrupt," Conservative leader J.W. Johnston saw no way to "place the assessors above temptation" of partisan pursuits.[98] He even went so far as to declare that "the extension of the franchise to every man in the country would be of infinitely less evil than the basis of assessment."[99] These were strong words from a man who had always defended property-based definitions of citizenship.

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[96] "Provincial Parliament. House of Assembly," *Novascotian*, 21 April 1851, 4 (debate of 20 March 1851).
[97] Ibid., 7 April 1851, 6 (debate of 12 March 1851). For more opinions of this kind, see: "The Elective Council," *British Colonist*, 16 March 1850, 2; "Legislative Council," ibid., 12 March 1850, 2.
[98] "Provincial Parliament. House of Assembly," *Novascotian*, 21 April 1851, 4; 5 (debate of 20 March 1851).
[99] Ibid., 7 April 1851, 6 (debate of 12 March 1851).

Although they had lost the 1851 provincial election, the Conservatives had found some self-satisfaction in that their premonitions had come true.[100] After the polls closed, allegations of electoral fraud quickly emerged. Controverted elections proceedings soon followed. Multiple times during these proceedings, losing candidates accused state agents of manipulating the local rate assessment for party purposes. Ebenezer F. Munro, for example, accused partisans in Londonderry of both withholding and altering the assessment rolls (otherwise known as rate bills) to "qualify persons to vote against the petitioner."[101] Truro's Peter Suther Archibald similarly asserted that "in several instances the sheriff did not deliver to presiding officers copies of rate bills" but received these lists "from other sources."[102] Perhaps most galling of all, Charles J. Campbell of Victoria, Cape Breton, insisted "that a large number of persons amounting to twenty-five or upwards, pretending to be rate-payers…produced forged receipts of rates, and thus succeeded in getting their names on the poll book."[103] These charges supplemented even wilder accusations within the party press of polling officers accepting "rate payers for 1850 regardless of the time *when* the Rate was *paid*"; of "withholding...assessment rolls"; of "collectors attending at the hustings, furnishing receipts for payment...to their friends and refusing them to Conservatives"; and, of "[o]ther collectors furnishing receipts...to minors and others, who had not been assessed, but who had voted upon such receipts."[104]

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[100] Conservatives would continue to gloat about their successful prediction in years to come. For example, Guysborough's John Joseph Marshall reminded the House during the franchise debates of 1854 that "[w]hen it was proposed to depart from the old 40s. freehold, and adopt the principle for assessment, I opposed the measure; my opposition was overruled but the prognostication of the dissatisfaction, and fraud, I then made as naturally ensuing from that departure have all been fulfilled." See: "Provincial Parliament. House of Assembly," *British Colonist*, 9 February 1854, 2 (debate of 7 February 1854).
[101] Nova Scotia, *Journal and Proceedings of the House of Assembly* (1851 – second session), 10 November 1851, 19-20.
[102] Ibid., 27.
[103] Ibid., 15.
[104] "Election Law," *Novascotian*, 1 September 1851, 3 (emphases in text); *British Colonist* [editorial], 25 March 1852, 2.

In response to such pervasive conduct, the House of Assembly formed an internal committee the following year to find ways of preventing it. Notably, the committee included the Franchise Act's chief sponsor, Laurence O'Connor Doyle, its chief opponent, J.W. Johnston, and a curious group of Conservative stalwarts, political moderates, and a Reformer who "continued to distinguish himself as a leading opponent of the Reform ministry."[105] From the outset, the committee members recognized that "[o]bjections to the details of the bill that passed last session for extending the franchise, are universal."[106] It was bad enough that "[t]he reception of receipts, as evidence of qualification, has been, it is believed, the fruitful source of fraud – and certainly of irregularity and contrariety." Even worse was "the liability of the appointment of assessors being made under party bias, or temporary local agitation for the purpose of affecting the assessment with a partial and party tendency; and of the appointment of collectors under the same influences."[107] From the outset, the committee had intended to fix the system by means of amendment. After deliberation, though, the committee reported that "they have not succeeded in devising amendments to this system which would not leave some of the mischiefs unredressed, and open occasion for new embarrassments."[108] Conservatives and Reformers had both agreed that the ratepayers' franchise had failed the province. No one, however, could find a way to salvage it.

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[105] Aside from Doyle and Johnston, the committee included Robert Murray of Pictou, Benjamin Smith of Hants, Thomas Killam of Yarmouth, James McLeod of Cape Breton, John C. Hall of Kings, and Stewart Campbell of Guysborough. For the political affiliations of these Members of the Legislative Assembly, see: C. Bruce Fergusson, ed., *A Directory of the Members of the Legislative Assembly of Nova Scotia 1758-1958* (Halifax: The Public Archives of Nova Scotia, 1958), 57; 148; 179; 231; 264; 319. R.A. MacLean mentions that Stewart in particular was "[c]onsidered a political moderate by his peers." K.G. Pryke refers to Killam as the Reformer who "continued to distinguish himself as a leading opponent of the Reform ministry." Killam would be re-elected as a Conservative in 1855. See: R.A. MacLean, "Campbell, Stewart," *Dictionary of Canadian Biography*, volume XI, 149; K.G. Pryke, "Killam, Thomas," ibid., volume IX, 426-427.

[106] Nova Scotia, *Journal and Proceedings of the House of Assembly* (1852), appendix 87, 411.

[107] Ibid., 412.

[108] Ibid.

At the end of its report, the House committee suggested how to proceed. Instead of simply repealing the ratepayers' franchise, its members recommended a considerably more democratic course of action. "[*I*]*n lieu of that franchise*," the committee urged, "the house should substitute a franchise based on *universal suffrage*, qualified by residence."[109] Unfortunately, the committee's report does not explain the logic behind such a seemingly radical proposal. Nova Scotia already possessed the most expansive provincial franchise in British North America to date. Now, it seemed that the colony's franchise was not expansive enough. Although the House may have expected this kind of language from Laurence O'Connor Doyle, Conservatives and moderates had formed the majority of the committee. Moreover, Conservative leader J.W. Johnston had acted as its chairman. Nova Scotians would have to wait for the following legislative session to receive further explanation.

Things became clearer in January of 1853. The day after the legislature reopened, new franchise legislation found itself before the Legislative Assembly. The Reformers still formed the government and James Boyle Uniacke still held the title of government leader. Joseph Howe, moreover, had made it a point to return from England in December this time so he could attend the new session.[110] Instead of the Reform majority, however, it was J.W. Johnston who "asked leave to introduce a bill for the regulation of the Elective Franchise framed upon the report of the committee, of which he was chairman last session." The new bill had two purposes according to Johnston. First, it would "[repeal] the rate paying Franchise act that operated very mischievously."[111] Second, and much more boldly, it would "[provide] that every male resident

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[109] Ibid. (emphases in text).
[110] Howe had left for England on 28 October 1852 at the "last moment," once again to pursue railway interests. Howe had returned by Christmas so he could champion those interests in the House of Assembly. See: LAC, MG24-B29 Joseph Howe fonds, volume 43, 146. Also see: Beck, *Joseph Howe Volume II*, 59-61.
[111] "House of Assembly," *Novascotian*, 31 January 1853, 2 (debate of 21 January 1853); "Provincial Parliament. House of Assembly," ibid., 21 March 1853, 7 (debate of 5 March 1853).

– over 21 years of age and having been 12 months in this Province shall be permitted to vote at the election of members to serve in the General Provincial Assembly."[112] Put another way, Johnston had moved that "[a]ny man being a Novascotian, and having residence in a County or Township one year…shall be entitled to vote at all Elections for the General Assembly without other or further qualification."[113] Nova Scotians quickly equated the new legislation with universal suffrage.[114] The bill technically resembled manhood suffrage more than universal suffrage. It in no way advocated women's enfranchisement. Like most nineteenth-century British North Americans, Nova Scotians spoke a highly gendered language that employed the two terms synonymously. Whatever contemporaries chose to call it, the bill promised to extend Nova Scotia's franchise as far as those of many American states.[115]

Although Johnston's legislation passed its third reading in 1853, it subsequently died in committee. The Legislative Council had "strangled" it with amendments (namely, secret ballot provisions designed to divide an already divided House even further).[116] By the time Johnston tabled his legislation for a second time in January 1854, Nova Scotians had had ample time to decide how they felt about it. "All were satisfied," in the words of Hants's Benjamin Smith, "that the Assessment Franchise was rotten to the core."[117] No amendment could likely prevent

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[112] Ibid.
[113] "Provincial Parliament. House of Assembly," ibid., 21 March 1853, 7 (debate of 5 March 1853).
[114] "The Strife," *Acadian Recorder*, 19 February 1853, 3. Also see: "In the Assembly," *British Colonist*, 22 January 1853, 3; "Retrospect of the Week," New Glasgow *Eastern Chronicle*, 1 February 1853, 3; "The Legislature," *Yarmouth Herald*, 31 March 1853, 2. Johnston himself used the term "universal suffrage" to describe his bill. See: "Provincial Parliament. House of Assembly," *Novascotian* 21 March 1853, 7 (debate of 5 March 1853).
[115] See: Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 363-367. As Joseph Howe would put it in 1854, "[t]here are but two countries in the world where they have universal suffrage, these are France and the United States." See: "Provincial Parliament. House of Assembly," *British Colonist*, 7 February 1854, 2 (debate of 4 February 1854).
[116] "Provincial Parliament. House of Assembly," *British Colonist*, 9 February 1854, 2 (debate of 7 February 1854). Also see: Nova Scotia, *Journal and Proceedings of Her Majesty's Legislative Council of the Province of Nova Scotia* (1853), 26 March 1853, 69-71.
[117] Ibid. While Smith's assessment was generally accurate, two members of the Assembly – Yarmouth's Thomas Killam and Kings County's Edward Lothrop Brown – testified that the ratepayers' franchise had worked well in

"assessors into whose hands large powers had been committed" from "prostitut[ing] them for political purposes."[118] Nevertheless, the alternatives continued to divide Nova Scotians.[119] Earlier, Reform Speaker William Young had come "to the conclusion that we must either go back to the 40s. freehold qualification or move forward to universal suffrage."[120] After yet another internal investigation in February, legislators had boiled it down to two options: reject Johnston's bill and implement what the committee (vaguely) called the "possession and occupation" of property; or, accept Johnston's bill and travel further down the rabbit hole of democratic political participation.[121] Conservatives and Reformers would stake out positions on both sides of the debate.

Those who desired a property-based franchise had, in essence, worried deeply about the sort of men Johnston's legislation would enfranchise. They did not feel safe entrusting these men with the reins of state. Although Joseph Howe may have declared that "I am not afraid of universal suffrage," he, alongside a large number of Nova Scotians, clearly was. For his part, Howe considered the idea of manhood suffrage ludicrous when Nova Scotia allowed its people "to remain in ignorance." He feared that demagogues would entrance the population and that "despotism" would blanket the province if the colonial state did not first "provid[e] for the universal education of our people, before we force on them privileges and powers, of which they

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their constituencies. The fact that they had won their contests most likely encouraged such sentiments. See: "Provincial Parliament. House of Assembly," ibid., 11 February 1854, 2 (debate of 8 February 1854).

[118] Ibid.

[119] As the editor of New Glasgow's *Eastern Chronicle* phrased it: "All seemed to feel that in departing from the old franchise, the Legislature has made a great mistake, but how to remedy the evil was the great difficulty." See: "Legislative," *Eastern Chronicle*, 16 February 1854, 2.

[120] "Provincial Parliament. House of Assembly," *Novascotian*, 21 March 1853, 7 (debate of 5 March 1853).

[121] Ibid., *British Colonist*, 7 February 1854, 2 (debate of 4 February 1854). Delivering its final report on 21 February 1854, the committee consisted "of a member from each county." Johnston, this time, was not one of the members. See: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1854), 2 February 1854, 406; 21 February 1854, 445.

may not know the nature."[122] Great Britain did not permit those without property to vote, and "yet the old constitution of England stands proudly in its strength: more stable and enduring, better sheltering liberty, and diffusing more widely over the face of the earth those principles which every freeman values."[123] Legislation that enfranchised the unimproved, according to Howe, put these freedoms into jeopardy.

Howe's language found ready adherents amongst his fellow legislators. On the Conservative side of the aisle, Pictou's Martin Isaac Wilkins viewed the "terrific political hobgoblin called Universal Suffrage" as the" monster…that is the Destroyer of Constitutions." Although tabled by his own party leader, Wilkins believed the bill would improvidently "impart to the uneducated and unpropertied masses the important right of voting." These masses – which included "rogues and vagabonds" and "fellows that may have secured their vote by residence in the Penitentiary for five years" – would in turn vote for whomever charmed or bribed them. "[D]ecay and desolation" would follow. Despite his admiration for the man, Wilkins feared that Johnston had "never in the whole course of his career made a greater mistake than on this particular occasion."[124]

Nova Scotia's next Reform premier, William Young, found that he (for once) shared common ground with the Tory Wilkins. Young also saw it as "a hazardous experiment" and "anti-British" to "wildly...admit to the suffrage masses of men who possess neither property nor intellectual training." For him, "the principle of universal suffrage cannot be introduced without swamping, controlling and extinguishing the large class of independent thinking men who have within themselves the elements of thought, and are the representatives of accumulated

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[122] "Provincial Parliament. House of Assembly," *British Colonist*, 7 February 1854, 2 (debate of 4 February 1854).
[123] Ibid., 11 February 1854, 2 (debate of 8 February 1854).
[124] Ibid., 16 February 1854, 1 (debate of 10 February 1854); 7 March 1854, 1 (debate of 25 February 1854).

property."[125] By correlation, Johnston's bill threatened to enfranchise mindless, slavish men who depended upon others to tell them what to think – the very definition of the illiberal, unimproved man as discussed by Daniel Samson. While many of these illiberal men already inhabited Nova Scotia, even more were on the way. As Edmund McDonald of the *Eastern Chronicle* most starkly phrased it:[126]

> In two or three years the country will be flooded with hordes of illiterate immigrants and railway labourers, a class of people who generally compensate themselves for their lack of intelligence by an excess of bigotry, and it should be a matter of consideration whether or not it is wise to concede such an extension of the franchise as would enable this class of persons to control the political institutions of the country to the detriment of the legitimate owners of the soil.[127]

To avoid impending disaster, McDonald warned that "Members should act with prudent caution."

In the end, nearly three-fifths of these members disregarded McDonald's advice. Of the 46 assemblymen who voted on Johnston's bill, a combination of 34 Reformers and Conservatives ultimately supported it. To justify their endorsements, these legislators riffed upon one of two general themes. As J. Murray Beck has pointed out, some members approached the matter from constitutional first principles.[128] To them, a privilege, once conferred, became a right. The Legislative Assembly, it followed, had no business stripping rights from Nova Scotians. Conservatives and Reformers alike arrived at this conclusion. While the Conservative Benjamin Zwicker "could not consent to disfranchise any man who had been once enfranchised," the exceptionally progressive Laurence O'Connor Doyle equally believed that "no steps

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[125] Ibid., 7 February 1854, 2 (debate of 4 February 1854); 11 February 1854, 2 (debate of 8 February 1854).
[126] McDonald was another one of Joseph Howe's journalist apprentices. According to D.A. Muise, McDonald had purchased the *Eastern Chronicle* in 1847 to "further the interests of the Reform party in Pictou County." See: D.A. Muise, "McDonald, Edmund Mortimer," *Dictionary of Canadian Biography*, volume X, 460.
[127] "Retrospect of the Week," *Eastern Chronicle*, 1 February 1853, 3.
[128] Again, see: Beck, *The Government of Nova Scotia*, 115-118.

retrogressive be taken – we must either move onward or remain stationary."[129] Doyle's sometime colleague, Edward Lothrop Brown, similarly felt that a property-based franchise "is a step backward, and one which it seems to me inconsistent and almost impossible to take."[130] Indeed, even the highly Conservative Lewis Morris Wilkins (brother of Martin Isaac Wilkins) recognized that "members round these red benches have been returned by rate payers" and that it would be grossly indecent to "disfranchise those who sent us here."[131] Joseph Howe had quickly discovered that more than one could play at his game. Howe (amongst others) had hoped to evoke fears that universal suffrage led down the path to despotic rule. Legislators such as Zwicker, Doyle, Brown, and Wilkins saw the potential for a more immediate despotism. After all, what could be more despotic than the people's representatives wrenching provincial citizenship from the people themselves?

For his part, J.W. Johnston tended to hover around this general position during the debate. His attention was clearly divided, though. Not only did he have to defend his legislation, but he had to defend himself against repeated personal attacks. Puzzled as to why the province's top Conservative acted as "a *thorough Radical*," and tabled a franchise that smacked of "*extreme Liberalism*," his opponents repeatedly accused him of "arch hypocrisy" and political desperation of the worst kind.[132] In response, Johnston declared that, despite his universal suffrage legislation, he still "fairly and frankly avowed myself the friend of the [40-shilling]

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[129] For Zwicker, see: "Provincial Parliament. House of Assembly," *British Colonist*, 11 February 1854, 2 (debate of 8 February 1854). For Doyle, see: ibid., 11 February 1854, 2 (debate of 8 February 1854).

[130] Ibid., 11 February 1854, 2 (debate of 8 February 1854). Brown's entry in the *Directory of the Members of the Legislative Assembly of Nova Scotia* lists him as first a Liberal in 1851, then a Conservative in 1864, and then a Liberal once again in 1868. Furthermore, according to K.G. Pryke, it was "[w]ith the support of another Reformer, Edward Lothrop Brown of Horton Township, [that Thomas] Killam played an important role in helping the Tories defeat Howe's railway plans in 1853." It goes to show that nineteenth-century politicians could still carry on successful political careers without brownnosing their party leaders. See: Fergusson, *Directory*, 43; Pryke, "Killam, Thomas," 426.

[131] "Provincial Parliament. House of Assembly," *British Colonist*, 18 February 1854, 2 (debate of 13 February 1854).

[132] "What Is Mr. Johnston Going To Do For Nova Scotia? Chapter II," *Novascotian*, 27 February 1854, 8 (emphases in text).

property qualification." He simply saw no way for Nova Scotia to reasonably retrace its steps. For Johnston, it came down to a choice: universal suffrage on the one hand; or, partisan government through a partisan franchise on the other. Because "the present system cannot be worked…therefore universal suffrage is our only refuge."[133] Johnston thus insisted that radicalism had nothing to do with this legislative change. Instead, "true Conservatism," he believed, "should give purity and stability to free institutions." If universal suffrage offered political purity, then Nova Scotia needed universal suffrage legislation.[134] Of course, very few Western conservatives would have arrived at such a remarkable conclusion. Edmund Burke, as the father of modern conservatism, certainly had not.[135] But, Johnston had already understood that. A few years later, in a prescient moment of self-awareness, he wondered:

> When the constitutional history of Nova Scotia comes to be written, it will be enquired, 'Who was this Johnston, the tory [sic], – the man that was held up by the newspapers as the greatest obstructive to liberal principles?' The student of this history will read with wonder that he was the man who advocated Simultaneous Polling, Universal Suffrage, Municipal Corporations, Elective Legislative Councils, Union of the Colonies, and he will turn to some old dictionary to discover what the word 'Tory' meant, and what was the signification of 'Liberal' in the days of their forefathers. We have been testing the claims of names![136]

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[133] "Provincial Parliament. House of Assembly," *British Colonist*, 9 February 1854, 2-3 (debate of 7 February 1854).

[134] Ibid., 11 February 1854, 2 (debate of 8 February 1854).

[135] In 1769, Burke had argued that "it would be more in the spirit of our constitution, and more agreeable to the pattern of our best laws, by lessening the number [of voters], to add to the weight and independency of our voters. And truly, considering the immense and dangerous charge of elections; the prostitute and daring venality, the corruption of manners, the idleness and profligacy of the lower sort of voters, no prudent man would propose to encrease such an evil, if it be, as I fear it is, out of our power to administer any remedy." By 1792, Burke had changed his opinion. Although he believed that any franchise reform ought "to be gradual and cautious, I would, in my first steps, lean rather to the side of enlargement than restriction." For the 1769 quotation, see: Edmund Burke, *Observations on a Late State of the Nation*, third edition (London: J. Dodsley, 1769), 96-97. For the 1792 quotation, see: ibid., *A Letter from the Right Hon. Edmund Burke, M.P. in the Kingdom of Great Britain, to Sir Hercules Langrishe, Bart. M.P. on the Subject of Roman Catholics of Ireland, and the Propriety of Admitting Them to the Elective Franchise, Consistently with the Principles of the Constitution as Established at the Revolution* (London: J. Debrett, 1792), 81.

[136] "The Legislature. House of Assembly," *British Colonist*, 17 March 1857, 2 (debate of 14 February 1857). This speech encapsulates, perhaps more than any other, Johnston's political beliefs and his conservative vision for Nova Scotia. Chapter 5 will return to this vision in the context of elective Legislative Councils and Legislative Council franchises.

No matter what his opponents labeled him, Johnston viewed himself as a defender of good government. In this case, good government pointed towards universal suffrage, no matter what Edmund Burke may have believed.

Another group of legislators took a different stance, one that would have irritated Burke even more. According to these members, the province needed to extend the franchise to as many men as possible. Again, this position found support on both sides of the aisle. Yarmouth Reformer Thomas Killam, for instance, "was always in favour of extending the suffrage to the widest possible extent" because he "did not value the property qualification so highly as some hon. Members."[137] Killam's fellow Reformer, Gloud Wilson McLellan, thought it similarly unfair to see a "man coming up and voting on an old rattletrap of a shanty, neither wind tight nor water tight, and the windows stuffed with rags, while the man who owns a ship of a thousand tons has no vote at all."[138] On the opposition benches, Digby Conservative John Chipman Wade would "'go the whole hog'" and "go for Universal Suffrage" because "[h]e would not deny votes…but would give them both to the sawyer and the day laborer."[139] John Holmes – a man whose long political career supposedly "reflected faithfully the ideals of Nova Scotia's Conservative tradition" – went so far as to affirm "that every man that is amenable to the laws of the country should have some voice in electing those who make them" and that he "should be sorry to pass a law which would deprive any of their privileges."[140] Alexander Lawson – the reform-minded editor of the *Yarmouth Herald* – applauded these legislators for their stellar "development of liberal principles." For him, "old honest liberal principles" promoted "rights

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[137] "Provincial Parliament. House of Assembly," *British Colonist*, 11 February 1854, 2 (debate of 8 February 1854).
[138] Ibid., 18 February 1854, 2 (debate of 13 February 1854).
[139] Ibid., 9 February 1854, 2 (debate of 7 February 1854).
[140] D.A. Sutherland, "Holmes, John," *Dictionary of Canadian Biography*, volume X, 353. For Holmes's speeches, see: Provincial Parliament. House of Assembly," *British Colonist*, 9 February 1854, 2 (debate of 7 February 1854); ibid., 18 February 1854, 2 (debate of 13 February 1854).

and privileges and laws, just and equal to all." If liberalism meant the formal equality of all Nova Scotian men, as men, and not just property-owners, then "the widest extension of the franchise" had to follow.[141] Again, ideas of progress and improvement, unattached to ideas of property, appear to have held sway.

Based upon these arguments, then, Nova Scotia's 1854 Franchise Act passed its third reading and became law that March. Once legislators had finished wrangling over details, the final legislation stipulated that

> [a]ll natural born and naturalized subjects of the crown of Great Britain, having been and being domiciled as hereinafter limited, and being males over the age of twenty-one years, shall be entitled to vote for members to serve in general assembly provided they shall at the time of voting have had their usual place of abode for at least one year next before voting in the counties for which they shall vote for county members, and in the townships for which they shall vote for township members, and provided also that such naturalized subjects so voting, and such natural born subjects as were not born in Nova Scotia, shall, in addition, have resided in the province for at least five years next before voting…[142]

To temper its language even further, the statute's seventh section went on to assert that "[n]o person shall lose any part of his residence by being on board ship, or in any seminary of learning, or otherwise temporarily absent for any period less than one year."[143] Property and monetary qualifications had thus vanished from the province's franchise.[144] For the next year, Nova Scotians could brag about having the most inclusive franchise anywhere within the British

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[141] *Yarmouth Herald* [editorial], 25 May 1854, 2 (emphasis in text). Ian McKay, in his short biography of Lawson, sees the *Herald* as "reflecting the 'improving' assumptions of the earnest mid-Victorian artisan who had adopted 'Knowledge is power' as its founding motto." Although the newspaper was "increasingly identified with the Liberal party," the editorial's attack on Howe's Reformers as "*despotic*" reveals that Lawson had yet to seek that association in 1854. See: Ian McKay, "Lawson, Alexander," *Dictionary of Canadian Biography*, volume XII, 538.
[142] Nova Scotia, "An Act concerning the Elective Franchise" (17 Vic., c. 6), section 2.
[143] Ibid., section 7.
[144] If a man owned property and wished to vote upon it, he could continue to do so if he chose. It was by no means a requirement, though. See: ibid., section 8.

Empire.[145] The grand experiment with universal suffrage – or at least what colonists called universal suffrage – had begun.

Despite their language, Nova Scotians had never intended to implement a true universal suffrage. Legislators had again laughed women's enfranchisement off the Assembly floor.[146] Even the more appropriate label of manhood suffrage proves misleading. In this case, manhood suffrage was never really manhood suffrage either. The new act's formulation meant that two groups of men found themselves largely left outside of provincial citizenship: poorer Nova Scotians on the one hand, and First Nations on the other. These two groups faced disenfranchisement for essentially the same reasons: their perceived lack of industry, permanency, and independence.

When the House committee of 1852 originally suggested universal suffrage, it simultaneously (and contradictorily) recommended restrictions to limit universal suffrage's universality. First, the committee advised "restraining the universal suffrage, by a residence of considerable duration…to prevent the mischief that might result from an influx of new electors, having no fixed stake, local or provincial, and no interest in the county or township; and by which the real sense of the constituency might be set aside." Second, the "committee would also guard against the introduction, under the universal franchise, of persons in circumstances not calculated for the independent or understanding exercise of the right of franchise, as persons receiving township or other public aid, Indians, &c."[147] As the Legislative Assembly refined the legislation, these recommendations found their way into the Franchise Act of 1854.

Although the act did not contain any property or monetary qualifications per se, it did impose restrictions based upon residency and indigence. Male Nova Scotians had to have lived

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[145] The colony of South Australia would enact similar legislation in 1855.
[146] "Provincial Parliament. House of Assembly," *British Colonist*, 7 February 1854, 2 (debate of 4 February 1854).
[147] Nova Scotia, *Journal and Proceedings of the House of Assembly* (1852), appendix 87, 412-413.

in their electoral districts for one year; and, those not born in the province had to have resided in Nova Scotia for at least five years. These qualifications did not apply to property owners because they could continue to vote upon their freehold property (or properties if they owned land in multiple townships or counties).[148] Consequently, the Franchise Act's residency restrictions targeted poorer Nova Scotians in particular. Those who had recently arrived in the province encountered the greatest disadvantage. No matter what they contributed to the public purse, new settlers faced a five-year moratorium on citizenship if they did not purchase real property of their own. Most immigrants to Nova Scotia at this time would have fallen into this category. That said, even the one year local residency requirement hit poorer labourers hard. Although the Franchise Act allowed for temporary absences from one's permanent residence, one needed a permanent residence in the first place for the stipulation to apply. Because poorer labourers often travelled seasonally for work, the locations of these residences became subjects of dispute.[149]

Sheriff's court minutes for the 1859 Hants election (another rarity) reveal the ways in which seasonal labourers faced disenfranchisement under the Franchise Act of 1854. Hants at this time consisted of two electoral divisions, each containing a number of smaller electoral districts. Voters had to attend the polls for the district in which they legally resided. The sheriff's court for Southern Hants passed without objection: Joseph Howe and William Chambers had won by such wide margins that it made no sense to challenge individual votes. The contest for Northern Hants and its two legislative seats was much closer: only 30 votes divided the four candidates, and a mere three votes separated the bottom three. Over the course of four days, Sheriff John Allison heard objections against the votes of 30 different men. Some

[148] Again see: Nova Scotia, 17 Vic., c. 6, section 8.
[149] Harris, 213-215.

of these challenges were more procedural. The vote of William Franklin, for instance, faced opposition because "after reading the oath 3 times, he persisted still in voting – being in liquor at the time."[150] Ezra Churchill (one of the winning candidates) also had his vote challenged because he had voted for himself twice.[151] These sorts of objections, however, formed a minority. Four out of every five times, party officials attacked the votes of seafaring or labouring men who travelled for work. Their itinerancy had made them easy targets.

Sailors such as Samuel Caldwell faced the most obvious challenge in this regard. As a "hand in a vessel," Caldwell's work had carried him halfway around the world in the years prior to 1859. He had "shipped in Boston a year ago last March bound to Walton, arrived at Walton in July last," and "sailed up the Straits of Gibraltar." Travelling so far, it took Caldwell over a year to find his way back to Hants. Despite Caldwell's neighbours still viewing him as a member of the community, Sheriff Allison "decided to strike off the vote of S. Caldwell" as a result of his long absence.[152] In the grand scheme of things, Caldwell may have considered himself one of the lucky ones: he had found steady work. Other seafaring men, such as William Thomas, had to combine shipping with seasonal labour just to make ends meet. In Thomas's case, the court heard testimony that he had been

> employed at Tennecape [sic] from December till middle fall cutting wood, [then] he was hired for 3 months 2 miles from Tennecape [sic] river towards Pelite – March shipped in a vessel & went to Portland, he was home 2 days after cutting cordwood. Left for Portland same time in April, he came back in May to Walton…remained 4 days & went back to Tennecape [sic] Kempt Dist.[153]

In such circumstances, it became very difficult to tell where a man lived, let alone whether he had lived there long enough to vote. Thomas's search for work had taken him across Nova

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[150] Ibid., 38.
[151] NSARM, RG5, series E, volume 19, Poll book: Hants County 1859, "Sheriff's Poll Book General Election 1859," 13-14.
[152] Ibid., 31.
[153] Ibid., 40.

Scotia's Fundy coast and even into Maine. The court's first two witnesses had no clue where Thomas fixed his permanent residence, or whether he had one at all. Sheriff Allison eventually allowed Thomas's vote to stand, but only because Thomas's father, Charles, testified on his behalf. Most seasonal labourers were not so fortunate to have family members so close at hand.

Time and again, Sheriff Allison heard stories like that of William Thomas. More often than not these stories did not have happy endings.[154] Take the case of Edward Fielding. Sheriff Allison heard testimony from one William Harris that Fielding had

> moved to Windsor 2 years last June, moved all his furniture, then moved to Beech Hill in Horton, he returned to the district again in February, went back to Horton next Spring. Came back to Newport village to his father in laws [sic] that time – left again for Horton the first time he left he went to Col. Butler's to work, then he returned to Newport village, had worked with Col. Butler from June 1856 till February 1857, he did not then live at the village – he told me he would go to Horton, he returned to the village in the fall of '57, did not take his furniture, he remained 6 or 8 weeks, he said he would go to Beech Hill because he could get better wages there, – he returned this spring for 7 weeks before Election, worked with me one day this spring, said he would go away this summer for work.…I don't think he left the village again I saw him the village on Monday last.[155]

Harris's convoluted testimony makes it very difficult to determine where Fielding actually lived at any given moment. Fielding himself probably cared little about such niceties: he had simply wanted to find the best wages he could. It seems, however, that Fielding had travelled too much for the sheriff's liking (and had not taken enough of his possessions with him). Based solely upon Harris's word, Allison struck Fielding's vote from the poll book. Even if Fielding had come to his own defence, it may not have mattered. Earlier, Moses Greene – an unmarried labourer who had voted in Kempt – had testified on his own behalf that

> I was born in Kempt, my father died 13 years ago, my mother died 4 ½ years ago, my home is Kempt was brought up by my half brother John...brother's house my home, go to my brothers once or twice a year, voted at Kempt last Election I was

[154] Sheriff Allison sustained twenty of the thirty objections he heard at his sheriff's court in 1859.
[155] Ibid., 34-35.

> working for Mr. Smith at that time, I work now by the day. *I thought Kempt was my proper place to vote, have no home elsewhere.*[156]

Greene believed that he had voted in the right place because he considered his brother's house his home. Another man testified, however, that Greene lived out of the district because he "board[ed] with Widow Robinson." Based upon this latter testimony, the court ruled that Greene had voted incorrectly and "that the vote of Moses Greene be struck out of the poll Book."[157] Sheriff Allison had apparently known where Greene lived better than Greene did himself.

Based upon Hants's 1859 sheriff's court, then, men such as Samuel Caldwell, William Thomas, Edward Fielding, and Moses Greene lived on the margins of Nova Scotian citizenship. While the Franchise Act of 1854 had technically offered them the vote, that vote was predicated upon residential stability. Residential stability, however, relied upon economic stability. Men who had steady jobs did not have to travel to find work and did not spend time unemployed. As a result, residential stability served to measure a man's industry. Itinerancy and industry did not coincide within this broad Victorian framework. In fact, legislators ensured elsewhere in the Franchise Act that men who could not support themselves through their own labour found themselves disenfranchised instantly. According to section three of the legislation, "[n]o person who shall have received aid as a pauper under any poor law in this province, or aid as poor persons from any public grant of government money, within one year before the day of polling, nor any Indian, shall be entitled to vote under this act."[158] House of Assembly reports reveal that section three had originally referred to beggars instead of paupers.[159] Gloud Wilson McLellan

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[156] Ibid., 24 (emphasis added).
[157] Ibid., 23-24.
[158] Nova Scotia, 17 Vic., c. 6, section 3.
[159] Colchester's Reform representative, Adams George Archibald, had originally moved "that the Bill be referred back to Committee for the purpose of adding a clause prohibiting all beggars, whether voting on the Freehold or Universal Suffrage, who have received eleemosynary aid within three years before the Election." See: "Provincial Parliament. House of Assembly," *British Colonist*, 4 March 1854, 2.

had requested the amendment only because the term beggar was not legally precise.[160] Although the Franchise Act of 1854 made claims to universal suffrage, legislators had structured it in such a way that the poorest men still could not vote. Those who needed others' help to sustain themselves faced immediate disenfranchisement; those who managed to make ends meet but had difficulty doing so faced the threat of disenfranchisement as well. Everything depended upon how well a man measured up to the equation of industry, permanency, and independence.

As section three makes clear, however, ideas of industry, permanency, and independence were also racialized. Alongside paupers or beggars, the act's third section also formally disenfranchised all Indigenous Nova Scotians for the first time (seemingly as paupers or beggars as well). White settler expansion and encroachment, followed by the formation of reserves during the 1820s and 1830s, had increasingly confined First Nations to the most marginalized and infertile lands.[161] Poverty intensified amongst these peoples as a result. Officials in Nova Scotia's Department of Indian Affairs blamed this destitution upon Indigenous Nova Scotians themselves. As Deputy Commissioner Abraham Gesner phrased it in 1847, "[t]he time has now evidently arrived where it is necessary for those unfortunate people to cultivate the soil and…to induce them to habits of steady industry."[162] Five years later, in 1852, Gesner's project remained the same: "to induce the Indians to enter upon and settle those extensive tracts of land which

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[160] Ibid.

[161] See: William C. Wicken, *The Colonlization of Mi'kmaw Memory and History, 1794-1928: The King v. Gabriel Sylliboy* (Toronto: University of Toronto Press, 2012), 98; 142-143. Also see: Martha Elizabeth Walls, *No need of a chief for this band: The Maritime Mi'kmaq and Federal Electoral Legislation, 1899-1951* (Vancouver: UBC Press, 2010), 44-45.

[162] NSARM, MG15, volume 4 (Indians 1847-1851), file 32a, letter from Abraham Gesner to Sir Rupert D. George, 7 June 1847, 4. Gesner reiterated the same idea on the following page of his letter. He believed that "to establish them [First Nations] upon their lands and to aid them in acquiring useful knowledge, habits of temperance and industry are objects written of the Government and such as cannot fail to ameliorate the condition of the Indians and to relieve the Province at last of an unpleasant burden." See: ibid., 5. More generally, see: Wicken, 142.

have been wisely reserved for their use."[163] Because of the soils' poor quality, most First Nations households simply could not grow enough to eat. According to William C. Wicken, "most families made up the difference between what they were able to make through farming and what they needed to feed their households…by fishing, hunting, gathering berries, and making baskets and various wood products for sale."[164] This meant constant movement on and off reserves. Even then, poverty followed for many. In a December 1849 petition to the lieutenant governor, fifteen Mi'qmaw men (speaking for their thirty-five children) cited that "the failure of the crops of some years past, also the scarcity of fish, and consequently there being no demand for such labor as we were wont to perform, and lastly the scarcity of game with which we were plentifully supplied in former times" had rendered them "destitute in the extreme."[165] These men had tried farming their reserved lands, and they had tried pursuing work elsewhere, both to no avail. Despite these real attempts to make ends meet, the colonial state only saw a burdensome group of people who perpetuated their own hardships by refusing to stay in one place and behave as industrious settlers.

This is not to say that Indigenous Nova Scotians had faced automatic disenfranchisement because of racialized notions of poverty. During the 1840 Richmond election, no fewer than nine First Nations men successfully cast votes on the last day of polling.[166] At the sheriff's court that followed, Laurence O'Connor Doyle objected to each one of these votes. Doyle never once

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[163] NSARM, MG15, volume 4a (Indians 1851-1852), file 130, report from Abraham Gesner to Joseph Howe, 4 March 1852, 2. Gesner had since been promoted to Commissioner of Indian Affairs.
[164] Wicken, 131-132.
[165] NSARM, RG1 Commissioner of Public Records collection, volume 432 Indian Affairs (1832-1866), file 56, petition by Newel Joe et al. to His Excellency Lieutenant Governor Sir John Harvey, 8 December 1849, 1-2.
[166] Ibid., RG5, series E, volume 19, "Minutes of Election at Richmond," 94. These men were: Francis Neven, Thomas Francis, Paul Andrew, Matthew Maurice, Alex Scotchman, Ambroise Basque, Julien Basque, Peter Scotchman, and Peter Francis.

mentioned the poverty of these First Nations voters (even if some of his witnesses did).[167] Instead, Doyle "protest[ed] against the reception of the votes given by Francis Neven and the other Indians whose names are on the poll book inasmuch as from their migratory and innate habits the very idea of fixed and settled property is repudiated."[168] In the testimonies that followed, the court learned that these men all lived at Chapel Island and that they had resided there long enough for others to recognize them. Richmond's county surveyor Dougald B. McNab even had "a faint recollection of having seen a Grant or Crown Lease of Chapel Island in trust for them."[169] Even so, Indigenous men such as Francis Neven and Thomas Francis had their votes annulled as "wandering Indian[s]" with "no fixed place of abode any more than the others" and the "same roving habits as the rest of the Indians settled here today and there tomorrow."[170] Richmond sheriff John Fuller never pursued whether these First Nations men had their grants confirmed or not. Nor did he request that they testify in their own defence. So long as White colonists believed that First Nations were "wanderer[s] like the rest of [their] tribe," these men could never meet the province's standards for citizenship.[171]

By the early 1850s, this perception had changed little. Stories of First Nations peoples attending the polls almost inevitably questioned whether they had the right or the ability to do so.[172] When Nova Scotia's White majority advocated First Nations enfranchisement, it tended to

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[167] For example, in his brief testimony against the vote of Ambroise Basque, Maurice Kavanagh ensured to mention that Basque "is a decrepit old Indian. His wife is continually begging at Arichat and elsewhere." See: ibid., 82.
[168] Ibid., 74.
[169] Ibid.
[170] Ibid., 73-74.
[171] Ibid., 94.
[172] For example, John Murphy broached the subject in reference to the 1851 provincial election and the remarks of one Big Jim Thompson: "Whereas, at the General Election held in the above County on the 28th inst., and in the part of the Electoral District, of which the Nine Mile River forms a part, matters would have got on very well if it was not for the uncourteous, ungentlemanly, low, vulgar, and uncouth manner of some of the Conservatives at the Polling, and more especially of one James Thompson, or commonly known as Big Jim Thompson, – which I suppose means big for slander, big for insolence and big for low breeding – that while one of the Indians or Micmacs was giving his vote, and the question was proposed if he would be sworn, he, Thompson, replied that he

do so as part of a broader civilizing project designed to fashion established farmers out of iterant hunters. For example, Cape Breton's surveyor general, H.W. Crawley,[173] had used his annual reports of the early 1850s to recommend that First Nations receive "a voice in the election of representatives for the Counties and Townships."[174] Crawley believed that First Nations electoral enfranchisement was "of the first importance to the perpetuation of their lands – so long preyed upon, and in great part sequestered by trespassers and squatters."[175] Without these lands, First Nations settlement could never take place.

As Crown surveyor, Crawley reported to the Provincial Secretary, Joseph Howe. In Howe, Crawley found a sympathetic audience. The ubiquitous Howe had enthusiastically accepted the role of Nova Scotia's first Indian Commissioner in 1841 as he "prophesied great things because of the change being effected in the Indians by the temperance movement."[176] During the franchise debates of 1853-1854, Howe had taken up Crawley's recommendation. "[A]t the risk of again being thought not serious," Howe asserted, "the aborigines of the soil were generally as manly a race, and as able to give their votes as any in the Province."[177] Ichabod Dimock, the Reform representative for Newport (Hants County), offered a similar but more thorough argument. He felt it counterproductive to "deprive them of the only privilege exalted them in their own estimation" when "we were offering inducements constantly for the

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would sware [sic] to anything and so would all his Creed…" See: John Murphy, "To the Inhabitants of the County of Hants," *Novascotian*, 8 September 1851, 6.

[173] According to Stephen J. Hornsby, Crawley (Cape Breton's surveyor general since the 1830s) had "a lifetime of experience of settlement in Cape Breton." See: Stephen J. Hornsby, *Nineteenth-Century Cape Breton: A Historical Geography* (Montreal and Kingston: McGill-Queen's University Press, 1992), 53; 125.

[174] NSARM, MG15, volume 4a, file 124, report from H.W. Crawley to Joseph Howe, 13 February 1852, 5.

[175] Ibid.

[176] Beck, *Joseph Howe Volume I: Conservative Reformer 1804-1848* (Montreal and Kingston: McGill-Queen's University Press, 1982), 236-237. Also see: Walls, 50.

[177] "Provincial Parliament. House of Assembly," *British Colonist*, 18 February 1854, 2 (debate of 13 February 1854).

Poor Aborigine to settle and become civilized."[178] If Nova Scotia's White majority looked to assimilate First Nations peoples, then the electoral franchise was seen as a means of doing so.

To an extent at least, J.W. Johnston agreed with Dimock and Howe. When framing the Franchise Act of 1854, Johnston argued that "there was no intention of excluding the Indians who were settled in the country." Indeed, he affirmed, "he was the last one that would propose such a thing" and disenfranchise "majestic, princely looking Indian[s]…who are settled on our soil – own property and obtain a livelihood by industrial pursuits."[179] Johnston had in fact designed the Franchise Act's eighth section to overrule the legislation's other clauses so that "[n]othing in this act shall extend to limit or otherwise affect the franchise founded upon freehold as by law established…"[180] So long as a First Nations man left his reserve and acted as an industrious member of the province, the legislature saw no reason to prevent him from voting. Parroting the same claims made by Laurence O'Connor Doyle a decade earlier, Johnston explained that "the only reason for the exclusion of the Indians, was their migratory habits."[181] Because White legislators viewed Indigenous Nova Scotians as naturally iterant (and, by extension, lethargic) those who had not proven their worth as industrious men found themselves summarily disenfranchised. The long-standing European stereotype of the "lazy Indian" had again prevailed, and in such a way that allowed Nova Scotia's White majority to justify a

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[178] Ibid., *Novascotian*, 28 March 1853, 6 (debate of 14 March 1853).
[179] Ibid. Johnston's reference to traditional First Nations lands as legally owned by White Nova Scotians ("our soil") received no comment from his fellow legislators. The following year, Johnston qualified how First Nations peoples supposedly viewed this ownership. According to him, Indigenous Nova Scotians saw themselves as "a conquered people – obliged to submit by force, but had a Chief of their own and could not own [sic] fealty to any other." See: "Provincial Parliament. House of Assembly," *British Colonist*, 18 February 1854, 2 (debate of 13 February 1854).
[180] Again, see: Nova Scotia, 17 Vic., c. 6, section 8.
[181] "Provincial Parliament. House of Assembly," *British Colonist*, 18 February 1854, 2 (debate of 13 February 1854).

racialized vision of universal suffrage.[182] Itinerancy and industry were again viewed as incompatible within the realm of provincial citizenship. First Nations men thus faced disenfranchisement in 1854 for the same reasons as other poor men. The difference was that it took White Nova Scotians far less to prove their industry, and thereby their manliness, than any of their First Nations neighbours.

The Election Act of 1863

The Elective Franchise Act of 1854 would stay on Nova Scotia's statute books for nine years and two provincial elections. On paper, at least, the broad electorate it created did not seem to hurt the Liberals. Although Joseph Howe suffered personal defeat at the 1855 provincial election, his party took the contest by a handy margin of 13 seats. Two years later, in 1857, the province's Liberal government would resign. Howe had directed a string of imprudent and intemperate remarks toward Nova Scotia's Irish Catholic population. As the party's rhetoric became more militantly Protestant (and bitterly anti-Catholic) ten Liberal Catholics and two Liberal Protestants crossed the floor in protest. Despite their political humiliation, the Liberals would win the 1859 provincial election by a majority of three.[183] In victory, the party learned some valuable lessons. First, Liberal politicians experienced firsthand the political risks of promoting sectarian conflict. It comes as little surprise, then, that the party set out to assuage

[182] John Sutton Lutz, *Makúk: A New History of Aboriginal-White Relations* (Vancouver: University of British Columbia Press, 2008), 31-37.
[183] Beck, *Joseph Howe Volume II*, 95; 118-119; 136.

Catholic rancor once it formed the new government.[184] Second, Liberal politicians had come to fully understand the disadvantages they faced in electioneering. These disadvantages were by no means new to the party. The Conservatives had always had larger coffers at election time. Halifax's merchant elite, alongside corporate interests such as the General Mining Corporation, had seen to that financial strength over the years.[185] In an era when candidates attracted supporters through food, drink, and even cash bribes, those with the deepest pockets had the best chance of securing undecided (or indifferent) voters. While the Liberals had plenty of cash on hand as well, they generally could not keep up with Conservative generosity. As Gloud Wilson McLelan privately warned Joseph Howe and William Young in 1850: "You may depend the longer an Election is hanging the worse for you, the Liberals can't generally stoop to the Drunkeness and Bribery that their opponents will…"[186] While McLelan framed his assessment in terms of morality, the Liberals were certainly no saints. The question of finances, or lack thereof, had created the electioneering problems the party increasingly faced.

With the Franchise Act of 1854, financial shortcomings had become amplified like never before. Because the legislation had created so many new voters, candidates now encountered far more men to treat, bribe, and cajole. The Liberals, as a party, were still in arrears from the 1855 provincial contest.[187] The 1859 Cumberland election reveals how the province's broad franchise

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[184] Beck, *Joseph Howe Volume II*, 160-161.
[185] See: Samson, 179-180.
[186] NSARM, MG100 Miscellaneous collection, volume 183, file 48, letter from G.W. McLelan, February 1850, 2.
[187] As late as 1859, the Liberals had still not completely paid for the 1855 election. Amherst tavern keeper Stephen Treen alleged that Liberals (and Joseph Howe in particular, as the Liberal candidate) still owed him £64.8.0 of £99.8.0 for "articles and…accommodations for your friends." This he had "done cheerfully and spared neither pains nor expense to serve the Party." The bill accounted for of over 450 meals, 83 gallons of spirits, 6 gallons of wine, and 6 bushels of oats for horses. Treen had "of course considered that I was dealing with men of honor and had not a shade of doubt but a reasonable [sum] would be cheerfully and promptly paid me, such however has not been the case and although I have exhausted every means to obtain it, empty promises are all that I have yet received with the exception of £30.0.0 from William F. Cutten Esq., one of the committee, & £2 from James Fullerton Esq." Unless Howe wished to antagonize Treen deliberately, it seems that electoral victories did not guarantee strong party finances for the Liberals. See: ibid., MG2 Political Papers, volume 737 William Young Political Papers – 1859 Election, file 329, Stephen Treen to Joseph Howe, 20 April 1859.

had pushed Liberal finances to the breaking point. In the most important contest of the election – indeed, "one of the most interesting and exciting that has occurred for many years in this Province" – former Liberal premier William Young and de-facto Conservative leader Charles Tupper vied for the same Cumberland County seats.[188] Young was the outsider who, as premier, had watched his own ministry fall two years earlier. Tupper came from one of the county's most renowned families and had outpolled Joseph Howe at his very first election. Yet, Cumberland was a heavily Protestant county and Young's party championed Protestant interests. Tupper had instead courted Nova Scotia's Catholic minority since 1856.[189] These "unparalleled circumstances" created an electoral microcosm in Cumberland, where leading party policies and personalities came into direct conflict and "cause[d] the affairs of most other constituencies to sink into comparative insignificance."[190] To maintain credibility, both Young and Tupper needed to win. If their parties had planned to spend any money or buy any votes, here was the place to do it.

The Crown had called the election for 12 May 1859. By the beginning of April, electioneering had already started. Even at this early date, Young's Liberal agents had started to realize their monetary disadvantage. On 4 April, W.W. Rogers informed Young from Pugwash that the Conservatives "are using money pretty freely." Even though "we are meeting them, to the best of our ability," Rogers felt that "the odds is [sic] against us."[191] Eight days later, on 12 April, Young learned from W.Y. Theal the true extent of the Conservatives' extravagance: "Our opponents are dealing out money, flour and Rum very freely already and in some instances it is

[188] "The Contest in Cumberland," *Eastern Chronicle*, 28 April 1859, 2.
[189] Phillip Buckner, "Tupper, Sir Charles," *Dictionary of Canadian Biography*, volume XIV, 1014-1015.
[190] "The Contest in Cumberland," *Eastern Chronicle*, 28 April 1859, 2.
[191] NSARM, MG2, volume 737, file 322, W.W. Rogers to William Young, 4 April 1859, 2.

said five pounds have been given per vote among the loose fish."[192] To put that cash amount into perspective, a Nova Scotian could purchase over a dozen *gallons* of whiskey at the local tavern and stupefy himself for the rest of the election.[193] On the same day, Henry Oldright confirmed Theal's assessment. In a confidential letter to Young, he wrote that

> as regards money, we must spend some, but none need be lost. I do not like this advancing money – it is demoralizing to a constituency & a bad precedent, but we must meet the enemy with their own weapons. They are full of money – are actually forcing it upon people – £5 votes in abundance. The difference between us & them is this – £100 will do as much for us as £500 for them.[194]

While Oldright had faith that "[t]he hearts of the people are with us," it still did not change the fact that the Tory war chest allowed for massive bribes at will.

As the election drew nearer, Oldright's faith began to waver. Although he may have felt "ashamed to trouble [Young] so much about money matters," "[t]he fact is, however, that parties who never before used their monied influence to force their political opponents to vote for them are doing so now, & we must meet them."[195] Oldright saw Young's campaign falling behind, and that it needed more money to make up lost ground. By 9 May, Oldright's faith had given way to desperation:

> Had to advance £25 out of my own pocket. On account of not receiving any money from you, telegraphed to-day to McCully to send us £200 [in] tonight's mail. We must have some money here at once. They are passing our fellows in all directions. I ventured to promise a man £25 on Saturday. Please write as soon as possible.[196]

Jonathan McCully, one of Howe's appointees to the Legislative Council, eventually sent the £200 as requested. By Oldright's account, this brought Liberal debts in Cumberland to

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[192] Ibid., file 325, W.Y. Theal to William Young, 12 April 1859, 1-2.
[193] Whiskey sold at around eight shillings per gallon at Nova Scotia elections at this time. See: ibid., file 329, Stephen Treen to Joseph Howe, 20 April 1859.
[194] NSARM, MG2, volume 737, file 326, H. Oldright to William Young, 12 April 1859, 3-4 (emphases in text).
[195] Ibid., file 352, H. Oldright to William Young, 4 May 1859, 1 (emphasis in text).
[196] Ibid., file 361, H. Oldright to William Young, 9 May 1859, 2 (emphasis in text).

£262.18.9.[197] Because Oldright's calculations did not include donations, the party's total expenses were probably even higher. What is more, Young's Central Finance Committee had spent £50 more than it could raise. "[W]ithout any funds to liquidate the liability," committee member W.F. Cutten believed it "impossible to obtain an efficient Central Committee at any future Election for some time to come."[198] Even though the Liberals had scrounged for every penny, and then had broken the bank despite their efforts, the Conservatives had apparently outspent them still. In the end, both Young and Tupper each secured one of Cumberland's three county seats.[199] Young must have felt disheartened that he could not unseat the pro-Catholic Tupper in such an overwhelmingly Protestant riding. Conservative spending must have certainly helped Tupper in this regard. Joseph Howe certainly thought so a few years later, as he repeatedly dwelled upon the subject.[200] If the Cumberland election of 1859 offers any indication, Nova Scotia's Liberals could no longer keep up with the Conservatives financially. A smaller provincial electorate might have relieved some of these financial woes.

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[197] Ibid., file 39, H. Oldright to William Young, 16 June 1859, 1-2. In a rather ambivalent biography, P.B. Waite asserts that McCully was a "convinced Reformer" by 1837. When McCully died in 1877, he left an estate valued at $100,000. Although wealthy, £200 was still a considerable sum for anyone in 1859. See: P.B. Waite, "McCully, Jonathan," *Dictionary of Canadian Biography*, volume X, 456.

[198] NSARM, MG2, volume 737, file 38, W.F. Cutten to William Young, 14 June 1859, 2-5.

[199] Historians have agreed that the contest turned primarily along religious lines. See: J. Murray Beck, "Young, Sir William," *Dictionary of Canadian Biography*, volume XI, 947; Buckner, "Tupper, Sir Charles," 1015.

[200] When Howe discussed the prevalence of bribery under the 1854 Franchise Act, he specifically used Cumberland as his example: "Take Cumberland; and let us suppose that there are in that county 5,000 voters, 4,800 of these come up to the polls and record their votes according to their party predilections, honestly and independently; – these are the men who represent the property and intelligence of the country, – but they are not the persons who turn the election. The remaining 200 who make a trade of their franchise, who can be had are brought up, who have their debts forgiven – these are the men who carry the election." See: "Provincial Parliament. House of Assembly," *Novascotian*, 30 March 1863, 4 (debate of 19 March 1863). Four days later, Howe had returned to the same subject: "Take the contest in which the hon'ble member for Cumberland and the present Chief Justice were engaged at the last election: do we not all know that each party was charged by the other with having bribed that constituency; and that it was almost admitted all round that immense sums had been expended among a portion of the people at that election, on purchasing that refuse of the population – that class void of intelligence, – education[,] public spirit, or intelligence, which it is the design of this House to preclude from experiencing the franchise. At one time, sir, I went into Cumberland and managed to create a pretty strong feeling in my favor, and won that county by a handsome majority; afterwards I lost my seat, but not before my impressions were strengthened as to the pliability of a portion of the constituency, and I would say to the hon. member for Cumberland that if he represents that county for 20 years, I shall not be surprised to find him a grey-bearded man with but little money in his pocket (Laughter.)" See: ibid., 30 March 1863, 5 (debate of 23 March 1863).

Formally at least, Nova Scotians seemed to have had few problems with their province's expansive franchise. During its new term of office (from 1860 to 1863), the province's Liberal government received only one petition calling for a smaller provincial electorate. Moreover, the 30 inhabitants of the Ovens Gold Mines (in Lunenburg) who had signed the petition were most likely local land owners who wanted to disenfranchise newly arrived miners.[201] In fact, one could argue that earlier property transfers, forged tax receipts, and false oaths reflected popular resistance to franchise restrictions. More colloquially, though, universal suffrage still had its share of detractors. On 26 January 1863, the Yarmouth Free Discussion Club debated the question: "Would not a repeal of the universal suffrage act be beneficial?" Several members jumped to the legislation's defence. J.D. Dallinger believed that "[h]owever many imperfections there may be in universal suffrage, the people enjoy it, and no earthly power has the right to take it from them." Immediately after Dallinger, A.T. Waterman declared that "universal suffrage is the right of every man." William H. Jenkins soon followed, affirming that "[i]t would be an act of gross injustice to disenfranchise any portion of the community because they were poor." Despite these impassioned pleas, the majority of Yarmouth's debaters ultimately sided with Samuel Flint, Esq., who "did not believe in universal suffrage."[202] The report unfortunately fails to note the final tally; nor does it fully explain why the Free Discussion Club adopted the stance it did. The fact that a mid-century shipping boom had ushered in regional prosperity – and that

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[201] NSARM, RG5, series P Petitions, volume 18, 30 March 1863, 112. Troubles arose soon after the Ovens gold rush began in 1861. Resident farmers had suddenly found themselves swamped by hundreds of itinerant outsiders looking to strike it rich. See: J. Oscar Young, *History of the Ovens: A Story of the 1861 Gold Rush* (N.p.: n.d.), 4-5; 20. In a letter to Sir Gaspard Le Marchant, Joseph Howe offered a decidedly rosier retrospective of the Ovens: "Gold was discovered while we were in office.…By prudential activity and hard study, arrangements were made and law proposed which covered the whole ground. There are now nine distinct fields in operation, and yet there has been no confussion [sic] no lawlessness and no suffering any where…" Howe, of course, never had to live at the Ovens. See: LAC, MG24-B29, volume 35 Private Letters 1863-1868, Howe to Sir Gaspard Le Marchant, 23 October 1863, 9.

[202] "Yarmouth Free Discussion Club. Universal Suffrage," *Yarmouth Herald*, 29 January 1863, 2. Also see: "Yarmouth Free Discussion Club. Universal Suffrage," *Yarmouth Tribune*, 4 February 1863, 2.

Yarmouth had little economic hinterland for tenant farmers – may help explain the Club's decision.[203] Flint's subsequent argument perhaps points to a different explanation, however: one that revolved around political party discourses.

In Yarmouth, at least, Samuel Flint was a person of influence. Although he started off as a humble sailor, he had become a ship's captain and multiple-ship-owner before the age of 40.[204] Soon after the new Liberal ministry took office in 1860, it appointed the 55-year-old Flint as one of Yarmouth's Justices of the Peace.[205] When Flint argued against universal suffrage at the town's Discussion Club, his position ensured that others listened. Flint had made it clear that he "was not in favor of going back to the 40s. franchise." He "did not want to cut off the respectable middle class," no matter whether they owned 40-shilling freeholds or not. Flint simply wanted to disenfranchise "the ignorant trash who are bought at elections." He did not want such men voting because "it was the rabble who made the law" under universal suffrage, and "our little Nova Scotia was drifting in the same way."[206] Flint offered this advice at the end of January, 1863. By the end of March, the province's Liberal government (now led by Joseph Howe as premier) had tabled franchise reform. Perhaps tellingly, the Liberals' legislation

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[203] Yarmouth was, at this time, western Nova Scotia's largest and most important international port. The town, according to David Alexander and Gerry Painting, saw heavy investment in shipping throughout the 1860s. See: David Alexander and Gerry Painting, "The Mercantile Fleet and its Owners: Yarmouth, Nova Scotia, 1840-1889," *Acadiensis* 7.2 (Spring 1978): 3; 26. Also see: Julian Gwyn, "Golden Age or Bronze Moment? Wealth and Poverty in Nova Scotia: the 1850s and 1860s," in *Canadian Papers in Rural History*, volume VIII, ed. Donald H. Akenson (Gananoque, ON: Langdale Press, 1992), 209; George S. Brown, *Yarmouth, Nova Scotia: A Sequel to Campbell's History* (Boston: Rand Avery Company, 1888), 201

[204] At various points, Flint owned the 78-ton schooner Clyde, the 233-ton brig Southampton (which wrecked on Devil's Island near Halifax in 1850), the 113-ton brigantine Dasher, and the 148-ton brigantine Lady Sale (which wrecked on the Liverpool Bar in 1852). See: J. Murray Lawson, *Record of the shipping in Yarmouth, N.S.: containing a list of vessels owned in the county of Yarmouth since its settlement in 1761, chronologically arranged: also a list of vessels lost during the same period, giving the names of crews, amounts of insurances, cargoes, voyages, and other details; a list of vessels owned in Yarmouth January 1st, 1876; and other information in reference to the mercantile marine of the county* (Saint John, NB: J. & A. McMillan, 1876), 44; 46; 48; 53; 147; 151; 164.

[205] Brown, 312.

[206] "Yarmouth Free Discussion Club. Universal Suffrage," *Yarmouth Herald*, 29 January 1863, 2. Also see: "Yarmouth Free Discussion Club. Universal Suffrage," *Yarmouth Tribune*, 4 February 1863, 2.

coincided with Flint's suggestion almost perfectly. Taking direct aim at Nova Scotia's expansive franchise, the "Act to regulate the Election of Members to serve in the General Assembly" stipulated that

> [e]very male subject of her Majesty, by birth or naturalization, being of the age of twenty-one years, and not disqualified by law, who shall have been assessed for the year for which the registry hereinafter provided is made up, in respect of real estate, to the value of one hundred and fifty dollars, or in respect of personal estate, or of personal and real estate together, to the value of three hundred dollars, shall be qualified to vote at elections of members to serve in the House of Assembly, for the County, Township, or Electoral Division in which he shall be so assessed.[207]

In other words, Howe's Liberals had chosen to reinstate a property-based franchise for provincial elections (this time centred upon property assessment). Only men who had their names on Nova Scotia's assessment rolls for the requisite amount could hereafter vote provincially.[208] Although it is impossible to arrive at a precise figure, contemporaries agreed that the legislation disenfranchised at least one-quarter of Nova Scotia's electorate.[209] To justify such a measure, the Liberals offered the same arguments as Flint to the Free Discussion Club: too many disreputable men had apparently taken too many bribes at too many elections under universal suffrage.

The Election Act had lingered within Nova Scotia's House of Assembly for longer than it should have. To the opposition's annoyance, the Liberals had introduced it twice before its first

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[207] Nova Scotia, "An Act to regulate the Election of Members to serve in the General Assembly" (26 Vic., c. 28), section 1.
[208] Ibid., sections 3-27.
[209] These estimates varied substantially depending upon who gave them. Some believed that the Election Act would disenfranchise a third of the province's electorate. The most strident Conservatives went so far as to suggest that it would disenfranchise one out of every two voters. Nova Scotia's principal Liberal organs – Halifax's *Chronicle* and *Novascotian* – pegged the number at one-quarter. Many of those against the legislation agreed with this number. For the one-half assertion, see: "The Franchise and Representation Bills," New Glasgow *Colonial Standard*, 31 March 1863, 2. For the one-quarter assertion, see: "The New Franchise Bill," *Novascotian*, 30 March 1863, 1 ("*From Tuesday's Chronicle*"). John Garner has since argued that "[i]f manhood suffrage had increased the electorate by 44 per cent, it might be assumed the reversion to an assessment franchise would reduce the electorate by a comparable amount." As for his numbers, Garner himself admits that the "statistics of populations and vote returns are fragmentary and do not permit a conclusive assertion." See: Garner, 35; 217.

reading only to withdraw it after prolonged discussion.[210] When Attorney General Adams Archibald made the first of these introductions on 19 March, he simply mentioned that the "Province of Nova Scotia desires a qualification which will give to the owners of property the government of the country."[211] As the debate stretched on, Archibald's Liberal colleagues took the lead in explaining what he meant. Joseph Howe was the most articulate in this regard. The way he saw it, universal suffrage "has been tested in the unfailing crucible of experience, and by experience has it been condemned." With the democratic United States "passing through one of those social convulsions" – if one can properly call the American Civil War a social convulsion – Nova Scotia had to ensure that only "sterling men of the country" received votes on election day. The Franchise Act of 1854 had apparently done the opposite. It had given "to a portion of the population, possessed of the least intelligence, an undue amount of political power…a power largely abused at the last two elections." Those who voted under universal suffrage – "the refuse of society" who were "too dissipated, too idle, too thriftless to acquire property" – had "basely trad[ed] away their independence for lucre." This situation had not surprised Howe in the least. Such men, according to Howe, "live by elections": they "would be glad if a contest occurred every month" if it meant another bribe to "squander recklessly in dissipation."[212] By taking so many bribes, unpropertied men had apparently proven they lacked the manly qualities necessary for provincial citizenship. Howe conveniently forgot to mention that his own party had offered many of these bribes in the first place.

Not all Liberals ignored their party's complicity in this regard. If Howe had presented the most coherent defence of his party's franchise reform, Southern Hants's other Liberal

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[210] Guysborough's Stewart Campbell thought "that the time of the House was being willfully wasted" in this regard. See: "Provincial Parliament. House of Assembly," *Novascotian*, 6 April 1863, 5 (debate of 28 March 1863).
[211] "House of Assembly," *Halifax Morning Sun*, 20 March 1863, 2 (debate of 19 March 1863).
[212] "Provincial Parliament. House of Assembly," *Novascotian*, 4 May 1863, supplement 1 (debate of 6 April 1863); ibid., 30 March 1863, 4 (debate of 19 March 1863); ibid., 30 March 1863, 5 (debate of 23 March 1863).

representative, William Chambers, offered by far its nastiest. Much like Howe, Chambers had argued that Nova Scotia's elections were dominated by "the dregs – the refuse – the idle – the useless of society; men without property – without position – devoid of moral sentiment and open to be purchased by the first political angler that makes his appearance." In doing so, he equated unpropertied men with "the vile, the useless – the paupers of the Province, – [the] Sabbath breaker and the drunkard; open to a bribe however small." For Chambers, those who voted merely on residency were not real men at all: they were "degraded persons," or "men of straw," from whom "our political system required a purgative." Unlike Howe, Chambers acknowledged his party's place within the world of electoral fraud. This was by no means an admission of guilt, though. The political circumstances of Nova Scotia meant that the province's two "parties are pretty equally divided." As a result, "this floating mass of political corruption is looked to by both sides as the pivot on which the election turns." By disenfranchising the "servile, ignorant and useless class," the electorate would consist only of "the farmer – the merchant – the mechanic – the professional man": men so morally upright that a bribe, if offered, would turn their stomachs.[213] If that happened, Chambers believed that politicians would no longer have to stoop to bribery. The Halifax *Journal* (by way of the *Yarmouth Tribune*) summed up this Liberal position nicely: "The possession of property, as a general thing, presupposes, and is an index of industry….In taking away universal suffrage, therefore, we are not departing from 'manhood suffrage.' *We are keeping more strictly within it*."[214] Ideal manhood for the Liberals in 1863 meant spurning bribes, working hard, and owning property through hard work. From this point of view, Nova Scotians who failed to live up to these requirements had no right to call themselves men. Since full citizenship within the colonial state was a manly prerogative, these

[213] "Provincial Parliament. House of Assembly," ibid., 20 April 1863, 5 (debate of 4 April 1863).
[214] "Universal Suffrage or Not!," *Yarmouth Tribune*, 15 April 1863, 2 (emphasis added).

not-quite-men deserved disenfranchisement. The Election Act of 1863 did just that. It did not hurt either that the Liberals' financial position had suddenly become more secure.

The Liberals and their Election Act faced widespread condemnation as soon as Adams Archibald tabled it. Within the House of Assembly, the opposition Conservatives formed a united front against the legislation. Some viewed franchise reform as counterproductive because Nova Scotia had prospered under universal suffrage.[215] Others, including J.W. Johnston, claimed that universal suffrage best suited the province "because here there was equality of condition."[216] An even greater number, including Charles Tupper, attacked the Liberals for their return to "an assessment system that had been prolific of corruption and base practices."[217] Invoking the problems of 1851, they asserted "that political influences might have an effect upon assessors, revisors and even grand juries" and that "the bill was begotten to benefit the party in power."[218] Just as many Conservatives denounced disenfranchisement itself, and the Liberal hypocrisy it embodied. Not only was it "ungenerous and unwise to take away the franchise," the Liberals had offered only the flimsiest reason for doing so. Any intelligent legislator "would not so much place the blame of bribery and corruption upon the voters, as upon those who were depraved enough to approach electors with a bribe."[219] What the province really needed was a better punishment for electoral fraud,[220] and not "to strike down with one blow, 16,000 of the

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[215] See John Tobin's speech on 5 April 1863, when he "endeavor[ed] to show to the House that since 1851, when the forty-shilling freehold suffrage was abolished, the productive wealth of this country has doubled." See: "Provincial Parliament. House of Assembly," *Novascotian*, 27 April 1863, 5 (debate of 5 April 1863).
[216] See: ibid., 4 May 1863, 5 (debate of 6 April 1863).
[217] Tupper himself made this declaration on 2 April 1863. See: ibid., 13 April 1863, 7 (debate of 2 April 1863).
[218] See the speeches of Cumberland's Robert Donkin and Alexander Macfarlane: ibid., 20 April 1863, 6 (debate of 5 April 1863); ibid., 6 April 1863, 5 (debate of 28 March 1863).
[219] See: ibid., 20 April 1863, 6 (debate of Monday 5 April); ibid., 13 April 1863, 6 (debate of 2 April 1863).
[220] In a letter to the *Morning Sun*, PROGRESS, BUT NOT BACKWARDS put it best when she or he wrote: "untill [sic] you pass a law, making bribery on the party of candidates, punishable by fine and imprisonment, bribery will luxuriate like corn on the prairies!" Interestingly, the *Sun* published PROGRESS's letter "without at all agreeing with some of the writer's sentiments. There are several features in the bill which commend themselves to our view." See: PROGRESS, BUT NOT BACKWARDS, "The Franchise," *Halifax Morning Sun*, 30 March 1863, 2.

youth, the bloom, the flower, and the pride of the Province, and reduce these young men to the wretched condition of the Pariahs of Hindustan."[221]

While this language may sound harsh, it paled in comparison with that of the Conservative and independent press. By the legislation's second reading on 31 March, newspaper editors had already attached to it (and its creators) all sorts of creative descriptors. Halifax's premier Conservative organ, the *British Colonist*, had quickly labelled it the "Disfranchisement Bill."[222] Its editor had never seen "a more despicable and nefarious attempt…to subvert the first principles of free institutions" than through this "detestable, un-British, sneaking Bill."[223] The Antigonish *Casket* soon adopted the disenfranchisement phrase as well.[224] The liberal *Yarmouth Herald* similarly denounced that "[w]ithout warning – without reason assigned or pretended, one-fourth of the manhood of the tax-paying portion of the community, is to be struck out of political existence by a stroke of a pen."[225] New Glasgow's Conservative journal, the *Colonial Standard*, amped up its rhetoric much further. It viewed the legislation as "a blow from behind, a stab in the dark…rivaling in the manner of its execution, the cowardly and revolting treachery of an Asiatic tyrant, or a Barbaric despot."[226]

Of all Nova Scotia's newspapers, H.W. Blackadar's *Acadian Recorder* (published out of Halifax) offered by far the most scathing critique.[227] The *Recorder* had found a better descriptor

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[221] One can thank John Tobin for this particularly outrageous indictment toward the end of the debate. See: "Provincial Parliament. House of Assembly," *Novascotian*, 27 April 1863, 5 (debate of 5 April 1863).
[222] "The Disfranchisement Bill," *British Colonist*, 26 March 1863, 2. Also see: "The Disfranchisement Bill. Second Article," ibid., 28 March 1863, 2; "The Disfranchisement Bill. Third Article," ibid., 31 March 1863, 2; "The Disfranchisement Bill. Fourth Article," ibid., 2 April 1863, 2.
[223] "The Franchise Bill," ibid., 21 March 1863, 2; "The Disfranchisement Bill," *British Colonist*, 26 March 1863, 2.
[224] "From the Antigonish Casket [April 2]," ibid., 7 April 1863, 4; "The Representation Bill," Antigonish *Casket*, 9 April 1863, 2.
[225] "Political Proscription," *Yarmouth Herald*, 9 April 1863, 2.
[226] "The Franchise and Representation Bills," *Colonial Standard*, 31 March 1863, 2.
[227] According to Lois K. Kernaghan, "[d]uring the 1850s…the tone of the *Recorder* became somewhat conservative. The political patronage of the Liberal administration under responsible government alienated Blackadar, perhaps in part because he had been overlooked for the office of queen's printer…In any case, during Blackadar's final years,

for the Election Act: the "Garrotter's Bill."[228] By means of "low blackguardism,"[229] the Liberals had found a way

> politically to garrott [sic] thousands of men they used with pride to call the free and independent electors of Nova Scotia. They would 'sneak' up in the dark and silence at one brutal blow intelligent 'Young Nova Scotia.' They treacherously silence the students, the clerks, the school teachers, the artisans of the Colony. Politically they cut out the tongues of almost every young 'male subject of Her Majesty' who has come forward with his good right arm and his best blood to defend the homes of the mothers and daughters of Nova Scotia, and to stand foremost to maintain the honor and the glory of the British flag, in this corner of the Queen's dominion. They are bound to go any length to stifle the voices of those who have a most unquestionable right to pass upon their acts. Was there ever a more outrageous despotism?[230]

Considering "the gutter of bribery and corruption out of which Mr. Archibald was dragged," who, demanded Blackadar, were the Liberals to "call us the 'scum of the earth,' the 'dregs of gutters,' dogs and low creatures"? Based upon the *Recorder*'s vitriol, it is perhaps surprising that the paper was "not in favor of Universal Suffrage." The *Recorder* approved even less, however, "of coming back like a thief in the night, as it has been said" and "trampl[ing] on one after another of the most sacred rights of the people" through a "scheme so destitute of a spark of honesty, manliness, or precedent."[231] The majority of Nova Scotian men ultimately agreed with this assessment: it was the Liberals who were the unmanly ones, and certainly not themselves.

If colonists outside the legislature had seen no reason to complain before, the Election Act of 1863 certainly changed all that. It was bad enough that the Liberals "trick[ed] thousands of intelligent electors out of their rights of exercising the franchise." Now, according to ONE OF YOUR NUMBER in the *British Colonist*, "they added insult to injury by traducing you [the men

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the *Recorder*, although maintaining a liberal platform, denounced the vicissitudes of party politics." See: Lois K. Kernaghan, "Blackadar, Hugh William," *Dictionary of Canadian Biography*, volume IX, 54.

[228] "The Garrotter's Bill," *Acadian Recorder*, 28 March 1863, 2. Also see: "Disfranchisement," ibid., 4 April 1863, 2; Review, "Retrospection – IV," ibid., 11 April 1863, 2.

[229] "Disfranchisement," ibid., 4 April 1863, 2.

[230] "The Garrotter's Bill," ibid., 28 March 1863, 2.

[231] See: ibid. Also see: "Disfranchisement," ibid., 4 April 1863, 2.

they wished to disenfranchise]; styling you 'the men of straw,' 'the scum of society,' 'the men of the gutter,' &c., &c….revil[ing] you in the Press and abus[ing] you in the Parliament, [calling] you all insulting names and circulat[ing] them far and wide…"[232] Between 24 March and 7 April, a total of 67 similarly-worded petitions from across Nova Scotia – consisting of over 3000 signatures based upon the 38 that survive – were placed before the House of Assembly to protest the legislation.[233] These petitions all requested (through varying degrees of grammatical skill) that "so harsh a measure as that of forcibly taking away one of the dearest privileges and most sacred trusts that can be enjoyed by a freeman will not be resorted to without the opportunity being afforded to all classes of the Electors to express their wishes upon so important a subject."[234] The Liberals had dismissed these petitions almost immediately.[235] Historian John Garner has done much the same. Because the Conservatives had most likely generated them – which they probably did – Garner argues the signatures did not reflect "any fixed attachment to manhood suffrage."[236]

Fundamentally, these sorts of assertions are unfair: they deny agency to contemporary Nova Scotians as political actors. The evidence, moreover, does not bear them out. Poorer Nova

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[232] "Correspondence," *British Colonist*, 5 May 1863, 1.
[233] NSARM, RG5, series J Journals of the House of Assembly, vol. 9 (1862-1863), 145-168.
[234] Ibid., series P, volume 18, 102-111; 115-148. While the vast majority used the same printed form letter, one petition from Annapolis was copied out by hand. In it, the same section requested that "so harsh a measure as that of forsably taking away one of the Dearest privileges and most sacred trusts that can be enjoid by freeman will not be resorted to without the opertunity been aforded to all Clases of the electors to express their wishes upon so important a subject." See: ibid., 102-103.
[235] In the words of Inverness's Liberal representative Hiram Blanchard – law partner of then-Solicitor General Jonathan McCully, who had drafted the Election Act of 1863 alongside Adams Archibald – he "has had sufficient experience in the getting up of petitions to be quite aware that if one were set afoot to pull down the Province Building, signatures by the hundred could be obtained; therefore it is, that unless I know the names of those who have signed their names to documents of this kind, I do not feel at all inclined to give to them any great weight, significance or effect." Blanchard would become Nova Scotia's first provincial premier at Confederation. See: "Provincial Parliament. House of Assembly," 13 April 1863, 4 (debate of 31 March 1863). Also see: William B. Hamilton, "Blanchard, Hiram," *Dictionary of Canadian Biography*, volume X, 70-71.
[236] Garner, 37. Garner goes on to conclude that, in Nova Scotia, "[t]he distaste for manhood suffrage was rooted in the society of small farmers, merchants, and owners of fishing smacks. These men took pride in their independent status and disapproved of political power being entrusted to men unable to be their own masters." See: ibid.

Scotians who served the public weal took greatest offence to the Election Act. The Volunteer Engine Company of Halifax, for example, petitioned the House of Assembly on 6 April 1863 that "they may be exempted from disfranchisement on account of their public services."[237] These firemen protected their neighbours' lives and property, all the while risking their own safety in the process. They believed they deserved the vote because of it.[238]

Nova Scotia's militiamen and volunteer riflemen were perhaps even more upset. At the beginning of 1863, the Liberals had overhauled Nova Scotia's defence policy in response to the ongoing American Civil War. New laws meant that militia duty had once again become obligatory for fit Nova Scotian men. The lieutenant governor, Lord Mulgrave, had moreover championed a new, enlarged force of volunteer riflemen. By the end of the year, he had managed to convince over 4,000 men to join in the defence of their country.[239] Considering the "manly, energetic" response to Lord Mulgrave's call, A VOLUNTEER (writing to the *British Colonist*) believed that the province's volunteer riflemen should be the last group to suffer disenfranchisement. Yet, the Liberals' Election Act did just that. Even though volunteering meant substantial sacrifices in terms of money (for equipment) and time (to drill), "a large majority of us [volunteer riflemen] must be disfranchised" under the new legislation. A

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[237] NSARM, RG5, series J, volume 9, 157. Unfortunately, the original petition no longer appears to exist (or at least not within NSARM's collections of petitions addressed to the House of Assembly).

[238] An amendment to that effect, tabled a few days later by Leonard Shannon of Halifax, failed on a party vote. It requested that "[t]he Captain officers and men of the Volunteer Engine Company in the City of Halifax being of the age of twenty one years shall be entitled to vote at elections of members to serve in the House of Assembly for such city whether they may have been assessed in respect of real or personal Estate or not." See: ibid., 178-179. According to his biographer, Shannon was "[a]ctive in community affairs." He had "joined the 2nd Halifax Militia Regiment in December 1837, eventually retiring as an honorary lieutenant-colonel." See: Della M.M. Stanley, "Shannon, Samuel Leonard," *Dictionary of Canadian Biography*, volume XII, 966.

[239] At the beginning of 1863, according to Joseph Howe, "there were but a few companies of volunteers, the old Militia law was obsolete and the Militia was never called out. By revising the old laws and recasting them granting £5,000 a year for defence and making it obligatory to enroll and turn out we have now 4,000 Volunteers armed clothed and disciplined, and the whole Militia force of the Province have been drilled this summer under officers who are compelled to qualify or resign. This is a great change. Lord Mulgrave deserves great credit for the zealous energy displayed in urging these measures." See: LAC, MG24-B29, volume 35, Joseph Howe to Sir Gaspard Le Marchant, 23 October 1863, 10.

VOLUNTEER had never witnessed anything "more ungenerous, more unkind, more unjust – nay, more unmanly and insulting, than such treatment." He pronounced that "we would be unworthy of the name of men if we did not resent this outrageous, insulting infringement upon our rights." To make their displeasure known, the writer offered a powerful suggestion: "that every Vlounteer [sic] in Nova Scotia will do what every one of them of my acquaintance has determined upon – cease to be a Volunteer when this measure becomes law" and "'ground arms,' doff our uniforms, and withdraw from a service in which we have never met with anything but ignominy from his Lordship's Government." Considering that volunteer riflemen "are the very first to be called out for active service when necessity occurs," A VOLUNTEER had made a considerable threat.[240] The Liberals, through the Election Act, had questioned the manliness of young volunteer riflemen. A VOLUNTEER promised to show the government how a man responded when the legislation passed.

Similar warnings soon streamed in from other riflemen and their supporters. They cautioned, in the words of PROGRESS, BUT NOT BACKWARDS, that the legislation "will certainly cool the ardor and patriotism of many of our young volunteers, because it makes 'nobodies' of them 'according to law.'"[241] The same held true for Nova Scotia's militiamen. In another letter to the *British Colonist*, A MILITIAMAN argued that "the Militia men are as deeply insulted and as badly used as the Volunteers." The author himself stood to be

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[240] A VOLUNTEER, "To the Volunteers of Nova Scotia," *British Colonist*, 31 March 1863, 2.

[241] PROGRESS, BUT NOT BACKWARDS, *Halifax Morning Sun*, 30 March 1863, 2. Also see: A YOUNG NOVA SCOTIAN, "To the Young Men of Nova Scotia," *Colonial Standard*, 21 April 1863, 4 (from the *Halifax Express*); "The Disfranchised Volunteers," *British Colonist*, 7 April 1863, 2; *British Colonist* [editorial], 9 April 1863, 2. For a response to A YOUNG NOVA SCOTIAN's "low, filthy abuse," see: "The Opposition Press," *Novascotion*, 13 April 1863, 1 ("*From Thursday's Chronicle*"). The *Novascotian*'s editor cites: "we have the editors of the *Colonist, Recorder, Express* and *Reporter*, and their writers, prophesying what the Volunteers are going to do. The threat, not half concealed, is, that they are going to rise in open rebellion, and the country is to be governed, we suppose, by martial law, or mob law, or something worse….When those of our own friends, that love law and order, who may, by the action of this Bill, be disfranchised for the present – when they are made acquainted with the fact we now publish, we feel quite certain that they will concede, that the time has arrived – *fully arrived* – when such a bill should pass; and they will rejoice, that, even at some personal sacrifice on their part, the prospect promises that, henceforth, such lawless spirits will be shorn of much of their power for mischief" (emphasis in text).

disenfranchised by the Election Act, even though government demanded "no less than *fifteen days of my time* for Militia drill." In response, he declared forthrightly that

> I *will not* do Militia duty. They may take me to gaol and keep me there until I rot; but having without any fault of mine, or any complaint being made against me, been robbed of one of the rights that I most dearly prize, I am not going out to waste fifteen days pandering to Lord Mulgrave's vanities. If I am sent to gaol, I know that I shall have plenty of the best of company there; and if the Government are going to push through the Franchise Bill and call out the Militia both, they may as well vote a heavy sum to enlarge the prisons of the country.[242]

A MILITIAMAN had made the same threat as A VOLUNTEER. With the American states fully mobilized for civil war, Nova Scotia needed as many men in uniform as possible. The province could not afford a mass defection of its militia (especially when its volunteer riflemen threatened to lay down their arms as well). Yet, the writer suggested just that. If "the Government wish to knock us down then kick us for falling," then A MILITIAMAN did not see a government worth defending.[243] Like many of his peers, he would rather walk away than have his manly worth so publicly questioned.

The situation never escalated to such extremes. Nova Scotia's militia records for 1863 contain no letters of discontent or resignation,[244] and the province's militia continued to drill throughout the year.[245] Although the Liberals' Election Act had passed the House of Assembly

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[242] A MILITIAMAN, "Disfranchised Militia," *British Colonist*, 4 April 1863, 3 (emphases in text).
[243] Ibid.
[244] See: NSARM, RG22 Nova Scotia Militia, volumes 3; 7-11; 14-15; 17-20; 25; 27; 34-36.
[245] For instance, R.B. Sinclair had "inspected the 11th Halifax Regiment of Militia at Grant Lake on Friday last and…[u]nder their commanding officer Lieut. Col. Sawyer the men performed a number of Battalion evolutions steady and well." See: Ibid., volume 3 Staff Office papers 1844-1866, file 283, R.B. Sinclair (AGM) to Major General Hastings Doyle (Commander of the Local Forces of Nova Scotia), October 1863. In a letter to the editor dated 24 December 1863, an unnamed correspondent to Sydney's *Cape Breton News* similarly related that on "the 19th inst. the 18th Battalion of the County of Inverness Militia was inspected by Lt. Col. Read, Inspecting Field Officer of Militia for the Island of Cape Breton. Considering the season of the year was unfavourable for the occasion, and must have rendered it inconvenient for many, particularly those distant, to attend, the number of the stalwart young men of Inverness who for the first time appeared on parade, to be inspected in the character of soldiers after a few days' of drill only, was indeed satisfactory – exhibiting a general and truly laudable desire in all to be taught the art of self-defence, the first birthright of all freemen, and eliciting from Colonel Read, in the course of a short and *apropos* addressed to those present, sentiments of satisfaction on his part and encouragement to the

on a strict party vote, H.G. Pineo's defection within the Legislative Council had resulted in an amendment to the legislation. The restrictions upon Nova Scotia's franchise would still come into effect, but only *after* the provincial election of 28 May 1863.[246] All those men disenfranchised by the Election Act retained the electoral right to air their grievances. Votes in this case would speak louder than words. The election resulted in the most lopsided victory in Nova Scotia to date. The Conservatives won 41 seats; the Liberals took a mere 14.[247]

Everyone agreed as to the reason why. While the Conservative *British Colonist* saw "a cumulation of causes," it highlighted the "disreputable trick…displayed in the Franchise and Representation Bills."[248] The *Acadian Recorder* similarly cited that the Act had "awakened the slumbering ire of an outraged people."[249] Although "not prepared for so extensive a reaction in public opinion," the staunchly Liberal *Novascotian* also recognized that "the class of persons to be disfranchised" had taken "sweet revenge upon the Government that prepared the measure." In retrospect, "the result ought not, after all, excite so very much surprise."[250] At a more personal level, Joseph Howe – who had himself suffered a stunning defeat by 500 votes – had learned that the Election Act "was perhaps the strongest element in our defeat."[251] Howe later explained to the Duke of Newcastle that "the rather plucky effort to buy back from universal suffrage" had sunk his government. Although Howe celebrated the new property-based franchise, its "immediate effect upon the Administration was disastrous."[252] By the end of the

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Battalion…" See: "Communications" [letter to the editor], Sydney *Cape Breton News*, 2 January 1864, 2 (emphasis in text).
[246] "The Franchise Bill," *British Colonist*, 21 April 1863, 2. Also see: Beck, *Joseph Howe Volume II*, 169.
[247] Beck, *Joseph Howe Volume II*, 173.
[248] "What Did It?," *British Colonist*, 9 June 1863, 2.
[249] "The Result," *Acadian Recorder*, 30 May 1863, 2.
[250] "The Government Defeated," *Novascotian*, 1 June 1863, 2 ("*From Saturday's Chronicle*").
[251] LAC, MG24-B29, volume 3 Letters to Howe 1860-1863, A.C. McDonald to Joseph Howe, 2 June 1863, 779-780.
[252] Ibid., volume 35 Private Letters 1863-1868, Joseph Howe to the Duke of Newcastle, 8 July 1863, 2. Also see: Garner, 37.

year, Howe still maintained he had done the right thing. True Nova Scotians had not defeated the Liberals, only "the rascals who would have been disfranchised."[253] Howe's liberal mind still could not process the alternative. Where Howe had seen rascals who swamped an election, others saw citizens who aired legitimate grievances. Three franchises later, Nova Scotians had still not agreed upon where one category ended and the other category began.

Conclusion

The franchise acts of 1851, 1854, and 1863 illustrate the extent to which citizenship fluctuated in mid-nineteenth-century Nova Scotia. As Nova Scotia's legislature formally linked the franchise to patriarchy, the debate soon revolved around the sort of man patriarchy must encompass. All seemed to agree that industry should act as the measure of a man, yet Nova Scotians could not settle upon which sort of man best fit this archetypal mould. In trying to find the ideal citizen, legislators first touted the community-minded White ratepayer whose labours improved the province. After widespread fraud, they then decided on the established male resident. After further fraud, these legislators finally returned to the prosperous male property-holder, but only through the narrowest of votes. Even then, Nova Scotians remained deeply divided on the subject. The Liberals had implemented the Election Act of 1863, and the electorate had soundly removed them from office for their troubles. The newly-elected Conservatives wanted nothing to do with the franchise question. The lopsided 1863 election

[253] LAC, MG24-B29, volume 35, Joseph Howe to Sir Gaspard Le Marchant, 23 October 1863, 12. Also see: Beck, *Joseph Howe Volume II*, 173.

results had demonstrated just what could happen when a party tinkered with the vote. The Conservatives' promised franchise debates of 1864 soon became the promised debates of 1865, which in turn became the promised debates of 1866.[254] Franchise reform, by then, had lost its sense of urgency. Railways and confederation had reared their heads. They soon came to dwarf all other political subjects in the province.

[254] See: Nova Scotia, *The Debates and Proceedings of the House of Assembly* (1864), 2 May 1864, 2. Also see: ibid. (1865), 7 March 1865, 69. The franchise did not find its way into the Assembly's Orders of the Day in 1866.

Chapter 3

Statute Labour, Manliness, and the Electoral Franchise on Victorian Prince Edward Island

During the summer months, statute labourers were a common sight on the highways and bridges of mid-nineteenth-century British North America. Colonists demanded well-maintained roads. Their access to local markets depended upon them. Unfortunately, the Canadian climate does not suit dirt roads particularly well. As the spring thaw softened the ground, passing carts and buggies would chew up the earth, leaving behind a morass of deep wheel grooves and exposed tree roots. The late spring sun would then bake the cratered soil in place, to the peril of ankles and axles alike. Without the necessary wealth on hand, the British North American colonies (and the Maritime colonies in particular) did not have the means to effectively collect, distribute, and monitor a cash-based road tax to pay for repairs. Instead, the fledgling colonial states called upon every able-bodied male inhabitant to spend a few summer days as a statute labourer on the local roads.[1]

Prince Edward Island was no exception. Statute labour on Victorian Prince Edward Island, however, meant much more than 32 hours of filling ruts, clearing stumps, digging ditches, and leveling thoroughfares. As of 1853, men over the age of 21 who performed their annual statute labour could vote for members of the Legislative Assembly at the Island's colonial elections. No other Canadian colony or province, before or since, has ever attached its electoral

[1] Robert Summerby-Murray describes a similar set of circumstances in early Canada West and Ontario. See: Robert Summerby-Murray, "Statute Labour on Ontario Township Roads, 1849-1948: Responding to a Changing Economy," *Canadian Geographer* 43.1 (1999): 36-52.

franchise to the performance of statute labour in this way. Prince Edward Island stands unique in this respect. No passing fad either, Prince Edward Island's offer to statute labourers remained the cornerstone of the province's franchise into the twentieth century. This chapter explores Victorian Prince Edward Island's enduring relationship with an electoral franchise based upon the performance of statute labour. It argues that the Island's peculiar franchise law codified gendered ideals of manliness upheld by the Island's leaseholding majority.

As previous chapters have suggested, culturally constructed knowledge about sexual difference helped define British North American enfranchisement from the beginning.[2] On Prince Edward Island, before 1853, only men who contractually possessed real property through freehold or leasehold voted at provincial elections. As of 1830, the Island government, at the behest of the Island elite, had pegged the amount of ratable land required for enfranchisement at 40 shillings annually. In other words, before a man could vote, the colonial state required him to certify that he had improved his lands to the yearly value of 40 shillings (through dwellings, structures, fences, plowed acreage, et cetera). Moreover, according to the legislation, leaseholders had to have signed at least 21 year leases to qualify for enfranchisement. Although no evidence exists that any Island woman actually voted during the nineteenth century, women who met these qualifications could technically vote until 1836 as well.[3] In a colony where property ownership was atypical, land values varied dramatically,[4] lease rates were reasonably

[2] See: Joan Wallach Scott, *Gender and the Politics of History*, revised edition (New York: Columbia University Press, 1999), 2.
[3] John Garner, *The Franchise and Politics in British North America, 1755-1867* (Toronto: University of Toronto Press, 1969), 45-46; 155.
[4] For example, in 1860, the Island's House of Assembly spent two separate days debating whether the lands of Princetown held any value whatsoever. See: Prince Edward Island, *The Parliamentary Reporter: Containing an Abstract of the Debates and Proceedings of the Legislative Council and House of Assembly of Prince Edward Island, for the Year 1860. Being the Second Session of the Twenty-First General Assembly* (Charlottetown: John Ings, 1860), 3 March 1860, 39; 5 March 1860, 45.

low,[5] and informal leases were not uncommon,[6] such qualifications represented sizeable enough hurdles for many Island men.

Very much in the British tradition, the Island's legislative elite had designed these restrictions to ensure that only 'respectable' men would vote. Respectability in this case – as discussed by scholars such as Leonore Davidoff, Catherine Hall, and, more recently, Kathleen M. Brown – stemmed from bourgeois notions that property ownership conferred upon a man the stability and independence necessary to safely and honestly exercise the suffrage.[7] A man's property permanently connected him to his community and, ideally, provided him and his family with their necessities of life. Because a man literally depended upon no one else to provide for his household, others trusted that he could make an independent decision on election day. Prince Edward Island's Conservative Party in particular employed such arguments as they sought to keep domestic servants, unruly boys, manual labourers, lethargic farmers, itinerant strangers, "migratory birds," and all other groups of disreputable men away from the hustings.[8] In doing so, these legislators defended a liberal order that valued landed property as the hallmark of the autonomous liberal individual.[9] Men who did not own real property were viewed as "deficient

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[5] Ian Ross Robertson, *The Tenant League of Prince Edward Island, 1864-1867: Leasehold Tenure in the New World* (Toronto: University of Toronto Press, 1996), 20. In an unpublished manuscript, R.T. Naylor cites that old leases on small plots of land could demand as little as £2 in rent per year. See: R.T. Naylor, "The Politics of Money and Finance in Colonial Prince Edward Island," (Montreal: eScholarship@McGill, McGill University, 2006), chapter 9, 2.

[6] Rusty Bittermann, *Rural Protest on Prince Edward Island: From British Colonization to the Escheat Movement* (Toronto: University of Toronto Press, 2006), 52; 197. Also see: J.M. Bumsted, "Parliamentary Privilege and Electoral Disputes on Colonial Prince Edward Island: Part Two," *Island Magazine* 27 (March 1990): 15; Naylor, chapter 9, 2.

[7] Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1750-1850* (Chicago and London: The University of Chicago Press, 1987), 199; Kathleen M. Brown, "'Strength of the Lion…Arms Like Polished Iron': Embodying Black Masculinity in an Age of Slavery and Propertied Manhood" in *New Men: Manliness in Early America*, ed. Thomas A. Foster (New York and London: New York University Press, 2011), 177-179.

[8] "House of Assembly," Charlottetown *Royal Gazette*, 7 March 1853, 1.

[9] Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History", *Canadian Historical Review* 81.4 (December 2000): 624; ibid., "Canada as a Long Liberal Revolution: On Writing the History of Actually Existing Canadian Liberalisms, 1840s-1940s" in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009), 358; 376-386. Margaret E. McCallum argues

individuals" within this liberal order – as Ian McKay characterizes it – and "were not to be trusted with [the vote]."[10] Francis Longworth, a Conservative who represented Charlottetown for over two decades, would have thoroughly agreed. Franchise law that did not respect property ownership, according to him, placed "the basement class of our social edifice in a position to over-rule all the others."[11] For Island Conservatives like Longworth, no man could truly call himself a man without owning land of his own.

In 1851, the political landscape on Prince Edward Island changed when the British government granted the colony responsible government. Throughout the Island's early history, Island lieutenant governors had been some of the most strident opponents to an inclusive Island franchise. As late as 1850, Sir Donald Campbell had sought more stringent restrictions upon Prince Edward Island's suffrage. Fearing the reforms that would surely follow responsible government, Sir Donald circumvented the Island's Legislative Assembly and requested the imperial parliament sustain the colony's property-based franchise. He had also demanded new residency restrictions for tenant voters. Instead of requiring leaseholders to possess leases that lasted 21 years or longer, the governor's legislation would have required leaseholders to *reside* on the Island for at least 20 years before qualifying to vote.[12] In the end, the Colonial Office had little interest in altering Prince Edward Island's constitution from afar on the eve of responsible government. With responsible government conferred, the governor lost any power to affect electoral composition. Liberal Premier George Coles, soon after he entered office, took the

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something similar within a specifically Prince Edward Island context: "In nineteenth-century, liberal democratic societies, property ownership made a person a citizen, by enabling him to develop individual autonomy while making him dependent on the state to protect the conditions of autonomy." See: Margaret E. McCallum, "The Sacred Rights of Property: Title, Entitlement, and the Land Question in Nineteenth-Century Prince Edward Island," in *Essays in the History of Canadian Law. Volume VIII: In Honour of R.C.B. Risk*, eds. G. Blaine Baker and Jim Phillips (Toronto: University of Toronto Press for the Osgoode Society, 1999), 367.

[10] McKay, "The Liberal Order Framework," 625.

[11] "Extension of the Elective Franchise Bill," Charlottetown *Haszard's Gazette*, 26 February 1853, 2. Also see the House of Assembly debates in the same issue.

[12] "House of Assembly. Franchise Bill – continued," *Royal Gazette*, 26 April 1852, 2. Also see: Garner, 47.

opportunity to radically alter the Island's franchise law. In doing so, his government offered the colony's vote to Island men who specifically did not possess substantial real property themselves.

Prince Edward Island's Liberals had fought in favour of the Island's tenant majority ever since it coalesced as the Reform Party in the 1840s. After receiving Prince Edward Island from France in the 1760s, the British government had divided and distributed its lands to a small cadre of British gentlemen. Ian Ross Robertson contends that, even by 1841, less than one-third of Islanders actually owned their own land.[13] Despite their minority status, Island legislation had heavily favoured the Island's freeholders. The Tory compact, which had advised the governor throughout Prince Edward Island's early history, had seen to that. The majority of Island men – small leaseholders of predominantly British stock – had little official recourse to affect changes that may have satisfied their own needs.[14] It was this imbalance that Island Liberals in part banded to combat. The Franchise Act of 1853 played a key role in this project.

It took some grammatical contortions, but the Coles Liberals managed to cram their sentiments on electoral citizenship into the second section of their new Franchise Act. As before, a voter had to be a "male person of the age of twenty-one years and upwards…a British subject, and not subject to any legal incapacity."[15] This man also had to have lived in his electoral district for "the space of twelve calendar months previous to the teste of the writ of the

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[13] Ian Ross Robertson, "Coles, George," *Dictionary of Canadian Biography*, volume X, 183. R.T. Naylor similarly argues that while the number of freeholders doubled on Prince Edward Island between 1841 and 1861, so too did the number of leaseholders. By 1860, Naylor concludes, 60% of Island farmers still rented their land. See: Naylor, chapter 9, 1.

[14] Bittermann, *Rural Protest*, 49. While the Island's tenantry struggled to access the corridors of power in Charlottetown, it did have other means to confront the colony's political system. Bittermann argues that the rural tenantry "increasingly challenged the status quo. In the countryside, the 1832 session of the assembly was followed by widespread rent resistance, diminishing deference to those associated with landlordism, heightened awareness of class oppression, and increasing political activity. This in turn led to open resistance to private and civil authority." See: ibid., 85.

[15] Prince Edward Island, "An Act to Extend the Elective Franchise" (16 Vic., c. 9), section 2.

Election."[16] From this point, the legislation gave the potential elector two ways to qualify for his enfranchisement. Property possession opened the first of these avenues. The Franchise Act enfranchised men who owned or leased any "land, house, warehouse, shops, or other buildings or premises within any Electoral District in this Island, of the clear yearly value of forty shillings."[17] If a man owned property in multiple districts, he could vote in each of these districts. This stipulation found its basis in the Island's previous Franchise Act of 1830.[18] The principle of 'one man, one vote' had not emerged statutorily anywhere in British North America by this time.

For those Island men not fortunate enough to own or lease sufficient real property, the act provided them with another option. According to section two, Islanders

> who shall by Law be liable to perform statute labour on any of the highways, streets or bridges of this Island, or to pay a sum of money or rate therefor [sic], or in lieu thereof, or who, being otherwise so liable, shall be specially exempted therefrom by Statute on account of holding any office, situation or employment, shall, in respect of such his qualification, be entitled to vote at any Election hereafter to be held for the election of a Member, or Members, to represent in the General Assembly of this Island the Town, Common and Royalty, or Electoral District…wherein he may be liable, or unless exempt as aforesaid, would be liable to perform Statute Labor or pay a sum of money or rate therefor [sic], or in lieu thereof.[19]

In other words, the new law decreed that those men liable to perform statute labour (who had indeed either performed or commuted their statute labour) could henceforth vote in provincial elections. As of 1851, the Island's statute labour legislation had reaffirmed that all male Islanders "between the ages of Sixteen and Sixty years, shall, when appointed or required thereto, either by himself or some sufficient substitute…work for the space of Four days, or

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[16] Ibid.
[17] Ibid.
[18] Ibid., "An Act to alter, amend and suspend certain parts of an Act made and passed in the Forty-seventh Year of His late Majesty's Reign, intituled *An Act to repeal an Act made and passed in the Forty-first Year of His present Majesty's Reign, intituled 'An Act for the better Regulation of Elections,' and to regulate Elections for Members to serve in General Assembly in future*" (11 Geo. IV, c. 8), sections 1-3.
[19] Ibid., 16 Vic., c. 9, section 2.

Thirty-two hours, in every year" on the Island's roads, regardless as to whether they owned land or not.[20] Conceivably, all adult male Islanders under the age of 60 would have thus qualified for the vote through their statute labour.

Despite some descriptions to the contrary, the Coles government did not seek to implement manhood suffrage with the Franchise Act of 1853.[21] If it had wished to do so, it could have easily removed all qualifications from the Island franchise. Within the current historiography, John Garner offers the most nuanced understanding of the legislation.[22] Garner argues that "the Island mind did not equate the statute labour franchise with manhood suffrage.…[Islanders] considered manhood suffrage to imply that all adult males were entitled to the franchise as an inherent attribute of citizenship, whereas the statute labour franchise gave the vote to all adult males because they had a duty to discharge towards the community."[23] Although correct, Garner does not tease out how Prince Edward Island's unique legislation fit into contemporary beliefs concerning citizenship and manliness.

Like most British North Americans, George Coles and his fellow Liberals did not view enfranchisement as a right, but as a privilege. To earn this privilege, according to them, one had to make an active contribution to society as a whole. When defending his party's new Franchise

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[20] Ibid., "An Act to consolidate and amend the Laws relating to Statute Labour and the expenditure of Public Moneys on the Highways" (14 Vic., c. 12), section 3. One finds the same wording in Prince Edward Island's previous statute labour law of 1843. See: ibid., "An Act to consolidate and amend the Laws relating to Statute Labour, and the Expenditure of Public Moneys on the Highways" (6 Vic., c. 1), section 3.

[21] See: W.S. MacNutt, "Political Advance and Social Reform, 1842-1861," in *Canada's Smallest Province: A History of Prince Edward Island*, ed. Francis W.P. Bolger (Charlottetown: The Prince Edward Island 1973 Centennial Commission, 1973), 126; Ian Ross Robertson, *The Tenant League*, 31; Chief Electoral Officer of Canada, *A History of the Vote in Canada* (Ottawa: Public Works and Government Services Canada, 1997), 15. Mid-nineteenth-century visitors to the Island also referred to province's "universal [manhood] suffrage" law (and the "Radical House" it returned). See: Archives of Ontario [hereafter AO], F31 Samuel Peters Jarvis and William Dummer Powell Papers, file 604 "Letter from Samuel Jarvis to his wife Mary," 4 August 1854, 3.

[22] Alongside Garner, J.M. Bumsted also takes the restrictions within the Franchise Act of 1853 seriously. Bumsted's study, however, does not focus on why these restrictions took the shape they did. See: J.M. Bumsted, "Parliamentary Privilege and Electoral Disputes on Colonial Prince Edward Island: Part One," *Island Magazine* 26 (September 1989): 22.

[23] Garner, 49.

Act, Coles maintained that "the laboring and productive classes, who pay taxes and discharge all the duties and obligations of useful and honest citizens, are quite as much entitled to a voice in the legislation of the country as their apparently more fortunate brethren, the possessors of property."[24] Coles's most able lieutenant, the journalist Edward Whelan, agreed wholeheartedly with his chief. Whelan affirmed that

> with respect to the policy of extending the privilege to servants and other labourers – to the men of no property – he could imagine no evil consequences would arise. This class, it is true, might have no fine edifices or broad acres to boast of; but their services were not only as essential to the maintenance of the social fabric as the services of a more fortunate class of men, but they were, in fact, more serviceable to society – for without labour, or the instruments of labour, society would soon fall into its original elements – and wealth and property, which are the offspring of labour, must cease to exercise any influence in the social scale.[25]

Islanders of the day would have quickly recognized Coles's and Whelan's class-oriented arguments. The language of labour had found wide credence across Prince Edward Island ever since the colony's Escheat movement had popularized it two decades earlier.[26]

Escheat refers to the process whereby land title reverts to its original owner.[27] The Escheat movement on nineteenth-century Prince Edward Island grew out of the Crown's earlier distribution of Island lands. With few opportunities to buy land of their own, new settlers to Prince Edward Island had to rent from the colony's landlords.[28] These settlers soon understood the full burden of their commitments. Because of crop failures, economic depression, and the difficulties associated with land clearance, many tenants owed substantial arrears by the 1830s. To collect back rents, landlords had the power to strip tenants of everything. Personal

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[24] "House of Assembly," *Royal Gazette*, 7 March 1853, 1.
[25] Ibid.
[26] Following Bittermann's lead, this chapter employs 'escheat' to refer to the act of land title reversion and 'Escheat' to refer to the 1830s Island movement that endorsed it as its goal. See: Bittermann, *Rural Protest*, 5.
[27] Ibid.
[28] According to Bittermann: "While many of the proprietors who concerned themselves with organizing settlement chose to rent rather than sell their lands, the establishment of the mode of tenure within townships was a matter of proprietorial choice; it was not stipulated in the terms of the township grants." See: ibid., 12.

possessions could be taken through distraint; immovable property could be seized through eviction. Rural Prince Edward Islanders, to protect themselves and their families, increasingly advocated the escheat of large Island estates. Through escheat, they hoped to free themselves from their landlords' threats and eventually purchase their land from the Crown. By 1832, the Escheat movement had become a central feature of Prince Edward Island politics.[29]

As thousands joined the movement during the 1830s, Escheators progressively adopted a class-based language to describe their posture toward the land question. Both Rusty Bittermann and Margaret McCallum reveal how this language revolved around a labour theory of value that viewed tenant labour as the source of landed wealth on Prince Edward Island.[30] Island landlords, according to Escheators such as William Cooper, would own nothing more than rolling patches of wilderness without their tenants' efforts. These efforts invested the colony's tenants in their land, staked their claim to it, and earned them the right to own it.[31] Through this logic, Escheators portrayed Prince Edward Island's tenantry as its industrious and productive labouring class. Wealthy Islanders such as Francis Longworth had thus got it wrong: if anyone formed a basement class, it was the colony's landlords. Living off the labour of others, like social parasites, these large proprietors needed their tenants far more than their tenants would ever need them.[32]

As the Escheat movement faltered during the early 1840s, class rhetoric on Prince Edward Island lost some of its ferocity. The importance of class identities, however, would carry through to the era of responsible government. Indeed, in the words of Bittermann, "one of the most striking aspects of the historical record bearing on the land question over these years is the

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[29] Ibid., 53-60.
[30] McCallum alternatively employs terms such as "producer ideology" and "labour theory of property entitlement." The meaning remains the same, though. See: McCallum, "The Sacred Rights of Property," 367; 372.
[31] Bittermann, *Rural Protest*, 74; McCallum, "The Sacred Rights of Property," 372-373.
[32] Bittermann, *Rural Protest*, 165.

persistence of the ideas, language, and historical claims that Escheat made in the public arena."[33] Although George Coles and Edward Whelan opposed escheat at the time as "mischievous," they employed the class-based language of the Escheat movement to promote their party's Franchise Act.[34] Just like the Escheat leaders of yesteryear, these Liberals celebrated the Island's labouring class and underscored its fundamental importance to Island society. In fact, one of those Escheat leaders, William Cooper, had openly endorsed Coles's and Whelan's position. Buoyed by the Chartist revival he witnessed a few years earlier in England (and its concerted attacks against rank and property), Cooper had actively sought to re-enter Island politics by 1853.[35] As part of this campaign, the 67-year-old Cooper contended that "[t]he Bill for the extension of the Elective Franchise confers a rank and honor on that most useful class of men who labour" so that "they are placed on a footing as Electors with the owners of property."[36] Cooper and Coles were sniping at each other's land policies by this time. A particularly heated and personal conflict would soon emerge between the two.[37] Even so, Cooper embraced the Liberals' Franchise Act as an advancement of tenant privileges and labouring-class justice. In promoting a statute labour franchise, however, neither Coles nor Whelan nor Cooper believed it sufficient for a man to labour solely for self-gain. Islanders also needed to offer their labour to the community and fulfill their obligations to the state to confirm their place within the electorate. Taxation provided the means to satisfy both criteria.

By 1853, statute labour represented one of the few taxes imposed upon Prince Edward Islanders. As part of their grant agreements, landlords had to pay yearly quit rents to the

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[33] Ibid., 273.
[34] Rusty Bittermann, *Sailor's Hope: The Life and Times of William Cooper, Agrarian Radical in an Age of Revolutions* (Montreal and Kingston: McGill-Queen's University Press, 2010), 204. By 1860, both Coles and Whelan had "begun to publicly advocate escheat proceedings." See: Ibid., 208.
[35] Bittermann, *Sailor's Hope*, 130. Bittermann reveals that Cooper had taken an active interest in Chartist politics since at least the late 1830s. See: ibid., 94.
[36] "To the Electors of the First District of King's County," *Royal Gazette*, 11 July 1853, 4.
[37] Bittermann, *Sailor's Hope*, 199-206.

Crown.[38] These unofficial taxes applied only to the landowning minority on the Island. Upon the town's incorporation in 1855, residents of Charlottetown would have to pay an annual poll tax. But this tax applied only to Charlottetowners, who represented at the time just over ten percent of the Island's total population.[39] Only two direct taxes, then, applied broadly across the Island during the mid-nineteenth century: the school tax and statute labour (which was sometimes referred to as the road tax).[40] The school tax, moreover, had only come into effect in 1852 with the passage of the Free Education Act.[41] Although Islanders may have liked the idea of free education, they certainly disliked the increased tax burden it placed upon them. Ian Ross Robertson has gone so far to suggest that "largely because of the sudden rise in taxation occasioned by the Free Education Act" the Coles government lost the colonial election of July 1853.[42]

By attaching the electoral franchise to the performance of statute labour, the Liberals linked the vote to one of the very few obligations the government placed upon Island men, and that Island men did not necessarily mind fulfilling. Because payment took the form of labour, any able-bodied man could reasonably afford to cover his tax and discharge his duty to the community even if he had little cash on hand. Island men from all walks of life – no matter their race, religion, or economic situation – could theoretically claim their stakes in colonial affairs. On the basis of this highly democratic principle – one that favoured labouring-class interest over

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[38] Although Prince Edward Island's quit rent system required landlords to pay fees to the Crown to secure their land tenure, quit rents are not technically property taxes. See: Bittermann, *Rural Protest*, 11.
[39] The poll tax would replace statute labour for the residents of Charlottetown. See: Prince Edward Island, "An Act to make certain alterations in the Laws for the performance of Statute Labor on, and the improvement of, the Highways" (23 Vic., c. 43), section 15.
[40] For decades, indirect taxes (i.e., tariffs and duties) had supplied Prince Edward Island's government with the lion's share of its revenues. See: Bittermann, *Rural Protest*, 45.
[41] Prince Edward Island, "An Act for the Encouragement of Education, and to raise Funds for that purpose, by imposing an additional Assessment on Land in this Island, and on Real Estate in *Charlottetown* and *Common*, and *Georgetown* and *Common*" (15 Vic., c. 13). For the act's taxation stipulations, see sections 50-54.
[42] Robertson, "Coles, George," 185.

a liberal faith in property ownership – the Coles government opened the colony's franchise to a new group of voters: able-bodied, industrious, productive men who faithfully discharged their annual obligation to the community. For the Coles Liberals in 1853, both the ideal citizen and the ideal man fit this description.

But what about male Islanders who did not so easily fit this ideal? Although the Franchise Act of 1853 greatly extended Prince Edward Island's franchise, a male resident still had to satisfy three basic criteria to receive a vote: he had to be liable to perform statute labour; he had to be over the age of 21; and, he had to have actually performed that labour. While George Coles may have asserted "that every man of 21 years and upwards, who paid the Road Tax, should also possess the right to vote," these restrictions resulted in the disenfranchisement of several groups of Island men.[43] For example, Prince Edward Island's statute labour law exempted both schoolteachers and men aged 60 years and over from statute labour. The Coles government passed this law itself in 1851. Though some schoolmasters and sexagenarians would have qualified to vote through the Franchise Act's property qualification, many still would not have possessed sufficient real property. These men, by law, would have been disenfranchised due to their occupation and age. Incensed at this turn of events, the editor of the Conservative *Islander* demanded to know why the government imposed

> on persons over 60 years of age the necessity of acquiring a property qualification – freehold we presume – before they shall be entitled to vote. This condition seems to be inserted because the law provides they shall not do statute labour after that age. And why does the law so provide? It must be because, after a man has served the public for *forty-five years* on the roads, he has deserved so well of the community that he should be awarded exemption for the remainder of his life.[44]

According to the *Islander*'s editor, men over the age of 60 had already offered enough service to the community throughout their lifetimes. Penalizing these older men because of their age –

[43] "House of Assembly," *Haszard's Gazette*, 23 February 1853, 2.
[44] "The Franchise," Charlottetown *Islander*, 4 March 1853, 3 (emphasis in text).

although they represented "the most intelligent of our population" and "otherwise contribute[d] hundreds of pounds annually to the revenue" – made little sense to the *Islander* except as a partisan ploy.[45] Grandiosely, it contended that the Coles government simply wanted to disenfranchise intelligent Islanders. The fact that schoolteachers – one "of the most useful and intelligent [professions] amongst us" – could not vote because of their statute labour exemption only helped fuel the *Islander*'s allegations.[46] No intelligent voter, after all, would vote for the Coles government.

Unfortunately for historians, Coles and his allies offered no defence against such criticism during the franchise debates of the 1850s. If the Coles government desired to stand by the principle that only able-bodied men who discharged their state-mandated obligation to the community should vote, then disenfranchising unpropertied schoolteachers and men over the age of 60 made some sense. Because of their statute labour exemption, these men neither had to work with their hands to improve their community's roads nor did they have a particularly formal connection to the colonial state through taxation. As a result, they did not technically meet the manly ideal espoused by the Coles government in its Franchise Act. Such logic of course would not have impressed Prince Edward Island's older inhabitants or its educators. Even as late as 1877 some Islanders continued to complain of the franchise law's inescapable prejudice against the "Teacher[']s privilege" and "the old infirm man of over 60 years of age."[47] These exempted men still could not work for their vote, even if they wanted to.

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[45] "The Franchise and Education," ibid., 17 March 1854, 2.
[46] "The Elective Franchise Bill," ibid., 12 August 1853, 2.
[47] "Tyranny of Pride and Inexperience," Charlottetown *Presbyterian and Evangelical Protestant Union*, 22 November 1877, 4.

Island males under the age of 21 faced age-based discrimination of a different sort.[48] Although the Coles government pegged the voting age at 21, the Island's statute labour law mandated that "every Male person, between the ages of Sixteen and Sixty years" perform statute labour. By 1879, the starting age for statute labour would increase to 18.[49] Even so, the obvious discrepancy remained: that younger Island residents liable to perform statute labour did not receive the franchise in exchange for their annual roadwork. Like their older neighbours, they too fulfilled their obligation to the community through their labour, but, they obtained nothing in return. Neither the governing Liberals nor the opposition Conservatives bothered to mention this discrepancy. Both parties tacitly agreed that political manhood began when it always had across the English-speaking world: at the age of 21. In practice, however, Islanders had difficulty appreciating the distinction made by their legislators. Because they performed statute labour, many young males understandably felt that enfranchisement should follow. Unfortunately, very few Prince Edward Island electoral records remain for the years before 1877. It is therefore impossible to know exactly how many legally underage males presented themselves at the polls after 1853.[50] As the legislative and bureaucratic record indicates, the government soon understood that these numbers eclipsed all previous totals.

Before 1860, men simply had to swear that they had performed their statute labour to receive a vote. As of 1860, that option disappeared: men who desired to vote now had to present

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[48] Since the publication of this chapter, American historian Corinne T. Field has explored the artificiality of voting ages (and particularly that of 21) within a nineteenth-century American context. See: Corinne T. Field, "'If You Have the Right to Vote at 21 Years, Then I Have:' Age and Equal Citizenship in the Nineteenth-Century United States," in *Age in America: The Colonial Era to the Present*, eds. Corinne T. Field and Nicholas L. Syrett (New York and London: New York University Press, 2015), 69-85. For the previous iteration of this chapter, see: Colin Grittner, "Working at the Crossroads: Statute Labour, Manliness, and the Electoral Franchise on Victorian Prince Edward Island," *Journal of the Canadian Historical Association* 23.1 (2012): 101-130.

[49] Prince Edward Island, "The Public Roads Act, 1879" (42 Vic., c. 1), section 22.

[50] Without these electoral records, it is also impossible to emulate historians such as Gail Campbell and George Emery in their quantitative analyses of nineteenth-century Canadian elections. See: Gail G. Campbell, "The Most Restrictive Franchise in British North America? A Case Study," *Canadian Historical Review* 71.2 (June 1990): 159-188. Also see: George Emery, *Elections in Oxford County, 1837-1875: A Case Study of Democracy in Canada West and Early Ontario* (Toronto: University of Toronto Press, 2012).

a certificate signed by a statute labour overseer attesting to that fact. Overseers also received legislative instructions as to how they should treat "any person between the ages of twenty and twenty-one years." Whenever an overseer issued a certificate to a 20-year-old, the overseer had to mark the certificate "under age."[51] So-called underage statute labourers had apparently attended the polls in sufficient numbers to warrant new legislation. Conservative legislator Francis Longworth testified during the debate of 1860 that "[a]t present young men employed in shipyards and other places, were in the habit of voting on the Statute labor qualification" especially.[52] At a time when family Bibles still served as the best sources for vital statistics, it was exceptionally difficult for electoral officers to ascertain a voter's age. As a result, young men, such as Alexander Robertson of Georgetown, presented themselves at the hustings as statute labour voters with little fear of rejection. Only if a personal acquaintance of the young man testified against him at a subsequent scrutiny – as did Robertson's father, John W. Robertson, who was obliged to do so as Georgetown's Road Commissioner – would the young man have his underage status revealed.[53] Although the state rooted out the younger Robertson, many other 20-year-olds had undoubtedly slipped through the cracks.

By 1862, Prince Edward Island's bureaucracy had begun to act upon the new legislation. For the statute labour season of that year, the Island's Road Office issued new printed instructions to all of its Road Commissioners – men responsible for all the road work in a given district – as to how their overseers should treat young statute labourers. According to the departmental letter signed by the Road Office's Road Correspondent John William Morrison, Road Commissioners "will take care to instruct the Overseers not to grant a Certificate to any person who is under Twenty years of age; and that when a Certificate is granted to any person

[51] Prince Edward Island, 23 Vic., c. 43, section 15.
[52] Ibid., *The Parliamentary Reporter*, 5 March 1860, 47.
[53] Ibid., *Journal of the House of Assembly of Prince Edward Island* (1859), appendix A, 4.

between Twenty and Twenty-one years of age, it must be marked 'Under Age'."[54] Not only would 20-year-old statute labourers receive the label of under age; those under the age of 20 would receive no written evidence of their statute labour at all. Without a certificate, casting a successful vote became exceptionally difficult.

This system, however, was by no means foolproof. According to the new legislation, a statute labour certificate could take on just about any form: from an officially printed document to a few scribbles on a scrap of paper.[55] Because falsification and forgery took so little effort, the task of recording the ages of statute labourers took on much greater importance. While the submission of incomplete statute labour returns had always been a problem on Prince Edward Island, the Road Office took additional pains by 1864 to remind Road Commissioners that "it is absolutely necessary that the Overseer should attest to his return before a Magistrate and also the age of each person should be stated."[56] So long as the Road Office knew the age of every Islander who performed his statute labour, the colonial state would have the means to sniff out legally underage statute labour voters. Through knowledge of population, to borrow from Bruce Curtis's work on the Canadian census, the Island state had greater power to discipline and regulate conceptions and behaviours of inclusion and exclusion.[57] Even with these new precautions, the perceived problem of underage voting apparently did not go away. Prince Edward Island's Road Office continued to distribute its instructions regarding underage statute labourers until at least 1869.[58] Island legislation, then, did not seem to coincide with sentiments of many Islanders themselves. Once the state began to make demands of young male Islanders,

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[54] Public Archives and Records Office of Prince Edward Island [hereafter PARO PEI], RG11 Public Works fonds, series 2 Correspondence & Letterbooks, volume 153, Jno. Wm. Morrison to Benjamin Haywood, 1 May 1862, 74.
[55] Prince Edward Island, 23 Vic., c. 43, section 15.
[56] PARO PEI, RG11, series 2, volume 153, Jno. Wm. Morrison to Alexr. Robertson, 8 April 1864, 121.
[57] Bruce Curtis, *The Politics of Population: State Formation, Statistics, and the Census of Canada, 1840-1875* (Toronto: University of Toronto Press, 2001), 311-315.
[58] PARO PEI, RG11, series 2, volume 153, Road Office circular (1869), 164.

and once they dutifully responded to those demands, these young male Islanders became men. As men, they believed that they should vote.

Aside from keeping underage voters away from the polls, Prince Edward Island's road certificate system served another purpose: to prevent men who shirked their statute labour from voting. The new Island government of 1860 argued that the previous year's election offered ample evidence in favour of such a system. Upon moving for the legislation's second reading, Thomas Heath Haviland contended that "[a]t the last general election much trouble arose" because "parties who have no right to vote [were] frequently allowed to come forward and exercise the privilege, to the injustice of those who possess the requisite qualification."[59] Francis Longworth was even more to the point than his colleague Haviland. "Last session it had been proved before the House," he asserted,

> that parties had voted two or three times, when they had no legal right to do so. The class of electors who vote merely on the statute labor qualification, were not so well known as the owners of property, and some check was absolutely necessary to prevent the abuse of the franchise….The measure would have the effect of preventing illegal voting, and causing parties to work on the roads or pay their commutation.[60]

Because statute labour voters did not require written evidence of their statute labour, returning officers had to take the word of these voters that they had in fact completed their statute labour. Men antithetical to the manly ideal espoused by the Franchise Act of 1853 – namely dishonest, indolent, unreliable men who evaded their duty to the community – could consequently vote simply by lying at the hustings. Electoral scrutineers had very little means to challenge these men.

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[59] Prince Edward Island, *The Parliamentary Reporter*, 3 March 1860, 37.
[60] Ibid., 5 March 1860, 46-47.

During the nineteenth century, at least 64 controverted elections were tried on Prince Edward Island.[61] Of these scrutinies, the minutes to only one appear to have survived in full: that of the 1859 Georgetown election. At this particular scrutiny, the two rival candidates, Roderick McAulay and Andrew A. Macdonald, questioned a total of 23 votes.[62] Of these 23, the candidates challenged only three statute labour votes. Only one of these challenges was based upon the assertion that the man in question had not performed statute labour. [63] Moreover, the only reason that anyone questioned Louis Nicholas's vote was because of his "addict[ion] to the migratory habits of the Mic Mac tribe."[64] Not really "migratory" at all, Nicholas had lived in Georgetown for "six or seven years past; five or six in all events."[65] Even so, Nicholas's fellow Georgetowners still viewed him as an outsider due to his Indigenous identity. The two statute labour overseers who testified against Nicholas, Alexander Robertson and George Parker, erroneously "did not think Indians were liable to perform Statute Labour."[66] As a result, they had not called upon Nicholas for road work. These two overseers would later admit that Nicholas could have performed his statute labour under the supervision of another overseer.[67] The court also heard testimony from Georgetown's Road Commissioner, John W. Robertson, that he "consider[ed] Indians, male persons between the age of sixteen and sixty, liable to

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[61] Bumsted, "Part One," 22.
[62] Prince Edward Island, *Journal of the House of Assembly* (1859), appendix A, 1.
[63] The other two challenges against statute labour votes concerned the age of the aforementioned Alexander Robertson and the Georgetown residency of one Daniel McDonald. See: ibid., 4-6; 9-12.
[64] Ibid., 2. This racialized emphasis on First Nations' instability recurred time and again across British North America. These beliefs would not disappear on Prince Edward Island any time soon either. Twenty years later, one continues to encounter screeds against "the uneducated beggar or Indian who may be here to-day and gone to-morrow." See: "The Abolition of the Legislative Council," *The Presbyterian and Evangelical Protestant Union*, 12 June 1879, 4. Martha Walls points out that, "like many of their non-Aboriginal neighbours, the Mi'kmaq moved to make most efficient use of the resources available to them." See: Martha Elizabeth Walls, *No need of a chief for this band: The Maritime Mi'kmaq and Federal Electoral Legislation, 1899-1951* (Vancouver: UBC Press, 2010), 28.
[65] Prince Edward Island, *Journal of the House of Assembly* (1859), appendix A, 2.
[66] Ibid., 2-3.
[67] Ibid.

perform Statute Labour, according to the laws of the land."[68] Despite these confessions, the court ultimately rejected Nicholas's vote even though Nicholas had sworn that he had performed statute labour.[69] Based upon the proceedings at Georgetown, then, only racial prejudice could challenge the vote of a statute labourer who otherwise met the criteria of the Franchise Act.[70] According to the Island government, too many Island males had exploited the colony's franchise legislation in this way during the 1859 election. As long as a man acted like a man by fully discharging his duty to the community, then such a man may vote. Too few Island men, however, had apparently met this standard of manliness.

When the Coles Liberal government passed the Franchise Act of 1853, it had placed tremendous faith in the manly characters of Island males. While many men every year without fail would work on the colony's public roads, others would inevitably find ways to avoid their responsibility. In the words of the Charlottetown *Patriot*, "[t]he Statute labor was very hard on industrious men whose time was valuable, and exceedingly light upon those who looked upon the days spent on the roads, pretending to repair them, in the light of a season for loafing and frolicking."[71] This had always been a problem on Prince Edward Island. Statute labour took place "between the Twentieth Day of June, and the Twentieth Day of July annually," after farmers had planted their crops and before they began haying.[72] Neighbours would come together during this seasonal lull, under the supervision of an overseer, who was normally another neighbour, to complete their roadwork. Statute labour therefore offered an exceptional opportunity for socialization, especially if a lenient overseer and a cask of ale were involved.

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[68] Ibid., 3.
[69] Ibid., 27 April 1859, 44.
[70] Island legislators during the mid-nineteenth century paid no attention to the Island's Indigenous population when framing the electoral franchise. The Franchise Act of 1853 itself contains no racially-based restrictions. Indeed, Georgetown's returning officer originally recorded Louis Nicholas's vote based on Nicholas's oath.
[71] "The Session," Charlottetown *Patriot*, 19 April 1877, 2.
[72] Prince Edward Island, 14 Vic., c. 12, section 12. As long as statute labour remained on the Island's statute books, it would be performed by the end of July. See: ibid., section 8.

By the second half of the nineteenth century, Island legislators had become quite adept at complaining about the ineffectiveness of statute labour. On one side of Prince Edward Island's House of Assembly, George Coles outright "deprecated the practice." As leader of the opposition in 1860, Coles argued "he would rather exact 1 s. 6 d. a day as commutation than continue the practice [of statute labour]. Very little benefit resulted to the roads from it. The people, generally, made it the occasion of a frolic."[73] On the other side of the legislature, Francis Longworth agreed with his Liberal adversary. Longworth believed that "more work can be obtained…than is usually performed under the statute labor provision" if every statute labourer paid three shillings per year instead of performing the labour themselves.[74] For that reason the government to which Longworth belonged wished to reduce the payment required to commute one's statute labour to three shillings "expressly with the object of rendering it more advantageous to a party to pay the money than to perform the labor."[75] According to another Conservative, Edward Thornton, "[n]o man could reasonably refuse to pay the price of a bushel of oats, rather than perform Statute Lrbor [sic] on the roads."[76] That bushel of oats apparently improved the Island's roads to a greater extent than the 32 hour's labour provided by many Island men. Documentation from the Island's Road Office helps corroborate these anecdotes.

Time has treated Prince Edward Island's nineteenth-century public works records much more kindly than it has the Island's electoral records. Ledgers, correspondence, and returns regarding statute labour still survive for the better part of the nineteenth century. From this archive, one gleans some of the problems inherent to a road maintenance system essentially sustained by forced labour. For the most part, Islanders had fewer problems labouring on nearby

[73] Prince Edward Island, *The Parliamentary Reporter*, 23 March 1860, 57.
[74] Ibid., 5 March 1860, 47.
[75] Ibid., 23 March 1860, 56.
[76] Ibid.

roads. According to the testimony of one Mr. Owen before the Legislative Assembly, "[p]eople worked hard on the bye-roads, if they did not on the main."[77] The *amount* of labour performed, however, varied widely based upon factors such as location and supervision. With respect to location, statute labourers had little incentive to work hard on roads that they themselves seldom travelled. Such roads could be as far as five miles from one's homestead.[78] For example, the inhabitants of Harbour Mouth, Keppoch, Kinbough, and Belvien all complained to the Road Office in 1843 that "their Statute labor and commutation money is applied exclusively upon the main road leading from Charlotte Town ferry to Geo[rge] Town and that their own local roads remain neglected and in some parts of the season difficult and almost impossible for loads of produce, especially during spring and autumn."[79] These Islanders did not see the purpose of statute labour if it did not offer much benefit to themselves. Only after the Road Office promised that it would allocate additional funds to their local roads did these men pick up their tools once more.[80]

Once the statute labourers reached the worksite, statute labour overseers had little means to compel their charges to work hard. Before 1840, overseers did not have to testify as to where work was performed or how long the work took to complete. Without any real accountability, overseers feared little retribution when they did not complete the tasks assigned to them. Road Correspondent Peter Macgowan believed, in 1840 that "[t]he oath from the overseer," instituted in response to this problem, "has had the good effect of getting much more done than formerly."[81] Even after overseers had to swear to the labour performed, problems still arose concerning the overseer. Realizing their general lack of authority, many overseers (as related in

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[77] Ibid.
[78] See: Prince Edward Island, 14 Vic., c. 12, section 10.
[79] PARO PEI, RG11, series 1 Road Ledgers, volume 1, Peter Macgowan to J.H. Haviland, 8 June 1843, 66.
[80] Ibid., 67.
[81] Ibid., Peter Macgowan to Joseph Higgins, 16 November 1840, 16.

one reminiscence) accepted that many statute labourers would only "perform some nominal work upon the roads; but…never performed the whole of the work which the law required."[82] In some instances, statute labourers would simply refuse to work for certain overseers. For example, "several Inhabitants of Lot 14" refused to work under the authority of one Mr. McGregor because Mr. McGregor "lives in Lot 16."[83] Irritated by these difficulties, the Road Office eventually preferred to pay for labour if it meant quality work.[84] Prince Edward Island's new Conservative government hoped to rectify this perceived tradition of indolence through the certificate system.

The 1860 alteration to Prince Edward Island's statute labour franchise reflected the contested nature of manliness on the Island at the time. By this time both political parties had agreed that only honest and industrious men who diligently discharged their obligations to the community should vote at general elections. Those Islanders who wasted their time on the public roads thus posed a problem for the colony. By means of the certificate system, statute labourers now had a tangible incentive to complete their annual obligation. If a given statute labourer did not perform his duties as expected, the overseer could simply withhold the labourer's certificate. Only through strong regulation, the government believed, could the state discipline Island men to reflect dominant notions of manliness. The appearance of forged statute labour certificates soon offered some resistance to the government's disciplinary project. Even so, those few surviving nineteenth-century Prince Edward Island electoral records indicate that the certificate system had the desired effect. Island poll books (essentially all from the 1880s and 1890s) reveal that every man who did not provide a statute labour receipt to the returning

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[82] Prince Edward Island, *The Parliamentary Reporter*, 1 May 1879, 71.
[83] PARO PEI, RG11, series 2, volume 152, John Ball to Donald MacInness, 9 July 1856, 60.
[84] This relegation of statute labour can be seen in the Road Office's growing preoccupation with road contracts throughout the 1850s. Instructions from the Road Commissioner to make do with statute labour because of funding shortages also offer evidence. On this latter point, see: ibid., John Ball to R.W. Mason, 17 June 1857, 85.

officer had his vote rejected.[85] Only men who produced written evidence of their statute labour, which doubled as written evidence of their manhood, had their votes counted.

Prince Edward Island would not revise its franchise law again until 1877. By then, the province's franchise had taken on even greater importance. Until 1885, the Dominion of Canada had no dedicated federal franchise law of its own. The British North America Act stipulated instead that the provincial franchises would double for the federal franchise.[86] When Prince Edward Island joined Confederation in 1873, its statute labour franchise (Canada's most inclusive at the time) served to elect the Island's six parliamentary representatives in Ottawa as well. Nevertheless, an even greater number of Islanders had become fed up with statute labour by this time. If the "system of Statute Labor on the Highways was a relic of barbarism, unworthy of the present time" in 1860,[87] it had become a "perfect farce" by 1877, where "more harm than good was done to the roads" and men simply "spent their time in talking and amusing themselves."[88] Both political parties agreed that "almost anything would be an improvement on the old Statute Labor Act."[89] In response, Liberal Premier Louis Henry Davies and his coalition government abolished statute labour altogether and replaced it with a poll tax. Every Island man would now have to pay an additional dollar annually to the public treasury. In return for this dollar, his name would appear on the newly created list of electors.

Prince Edward Island's new franchise actually relied upon three separate pieces of legislation to function properly: the Assessment Act of 1877, the Registration of Electors Act of 1877, and the Roads and Bridges Act of 1877. The Assessment Act applied the poll tax to all

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[85] See: PARO PEI, RG3 Prince Edward Island House of Assembly fonds, series 4 Election Papers, subseries 2.
[86] See: Great Britain, "An act of the Imperial Parliament for the Union of Canada, Nova Scotia and New Brunswick, and the government thereof; and for purposes connected therewith" (30 Vic., c. 3), section 41.
[87] Prince Edward Island, *The Parliamentary Reporter*, 23 March 1860, 57.
[88] Ibid., 4 April 1877, 161-162.
[89] Ibid., 162.

Island males aged at least 21 years and established machinery for its collection. It also empowered the government to legislate and levy property taxes to make up for any fiscal shortfalls.[90] The Registration of Electors Act declared that every Island man who paid his poll tax would have his name registered on the province's voters' lists. Only men whose names appeared on these lists would receive a ballot on election day.[91] (The Electors Act also established the secret ballot on Prince Edward Island, to the chagrin of some.)[92] The Roads and Bridges Act eliminated the annual statute labour. Poll taxes would pay for most of the Island's roadwork instead.[93]

In theory, this legislative triptych should have modernized Prince Edward Island's highway management system, streamlined its electoral process, and helped resolve its recurring money shortages.[94] In practice, the three acts proved a combined failure. The bureaucratic machinery was cumbersome, it cost too much to operate, and it failed to meet the Island's requirements. For the year 1878, Prince Edward Island amassed approximately $34,000 through the Assessment Act.[95] It had cost the Island almost $4,000 to gather just that amount.[96] Yet, Prince Edward Island ended up spending $62,563.43 for road work that year. Queen's County

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[90] Ibid., "The Assessment Act, 1877" (40 Vic., c. 2), sections 7-8.
[91] Ibid., "The Registration of Electors and Ballot Act of Prince Edward Island, 1877" (40 Vic., c. 20), sections 16 and 55.
[92] Men such as Queen's County assemblyman George Wastie Deblois maintained that "[t]he system of open voting was most manly." See: ibid., *The Parliamentary Reporter*, 10 May 1879, 120.
[93] Ibid., "An Act relating to Roads and Bridges" (40 Vic., c. 6), sections 1 and 6.
[94] Largely because of heavy railway investment, Prince Edward Island ran constant deficits in the early 1870s. By 1873, the province's economy had fallen so far into the red that it had only two options: impose direct taxation or join the Dominion of Canada. It chose the latter. The $800,000 loan the Island received from the Dominion upon Confederation helped mask the Island's financial woes. By the late 1870s, the Island's economic troubles had bubbled to the surface once more. See: F.W.P. Bolger, "Long Courted, Won at Last" in *Canada's Smallest Province*, 216; 230. Also see: Nancy MacNeill MacBeath, "Sullivan, Sir William Wilfred," *Dictionary of Canadian Biography*, volume XIV, 983.
[95] Prince Edward Island, *Journal of the House of Assembly of the Province of Prince Edward Island* (1879), appendix D, 4. Also see: ibid., *The Parliamentary Reporter*, 8 May 1879, 100.
[96] Ibid., *Journal of the House of Assembly* (1879), appendix D, 4.

spent nearly $23,200 of the $34,000 collected on its roads and bridges alone.[97] Needless to say, those poll taxes the Island managed to collect in no way covered what the Island's highways required.[98]

Even more important, Islanders loathed the idea of a poll tax. Prince Edward Island had accepted Confederation in 1873, and the cash settlement that accompanied it, expressly to avoid direct taxation in a monetary form.[99] As Island historian Nancy MacNeill MacBeath contends, "Islanders were in no mood to expand their contributions to the provincial treasury" after having sold their province's independence to the Dominion. In response to the direct taxation imposed by the Assessment Act, "the electorate expressed its 'indignation' in numerous meetings across the province."[100] So too did the Island's opposition press. Indeed, the acerbic editor of *The Presbyterian and Evangelical Protestant Union* devoted over a dozen sequential editorials to the "tax curse" and the "haughty, tyrannical" legislators who imposed it.[101] Although a farce to many, the statute labour system at least permitted all Island men to contribute to their community no matter their financial situation. Statute labourers, moreover, knew precisely where and how the state employed this contribution.[102] With the poll tax, the tax collector took a man's money whether he had the dollar to spare or not. Once his dollar had left his pocket, it left his sight

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[97] According to the Provincial Auditor's report, Queen's County had spent $23,197.78 on its roads and bridges in 1878. King's County had spent $19,940.08, and Prince County had spent $19,423.35. See: ibid., 40-47.
[98] On top of that, the creation and revision of voters' lists cost an additional outlay of between "three and four thousand dollars per annum." See: ibid., *The Parliamentary Reporter*, 9 May 1879, 117.
[99] Bolger, "Long Courted, Won at Last," 216.
[100] MacBeath, "Sullivan, Sir William Wilfred," 982.
[101] These quotations derive from "The Tax Act. No. XII," *The Presbyterian and Evangelical Protestant Union*, 25 October 1877, 4. For the first in this string of editorials, see: "The Tax Act," ibid., 7 June 1877, 6.
[102] Jeffrey McNairn has made a similar argument with regard to late-Georgian Upper Canada. In an unpublished paper, McNairn asserts that many colonists viewed statute labour as a means to control their obligations to the state in terms of taxation. A statute labourer had greater command over his body than any cash-based road tax he paid. From this perspective, the statute labour system was not backward at all. See: Jeffrey L. McNairn, "Contribution and Consent: Statute Labour and Governance in Upper Canada," paper presented to the annual meeting of the Canadian Historical Association, University of Waterloo, 28 May 2012.

forever.[103] If the government invoked the Assessment Act to levy a property tax, then a whole new series of government agents would traipse through a man's homestead, disturb his family, and demand even more of his hard-earned cash.[104]

This is not to say that Islanders simply refused to pay their poll tax. Of course, some made that choice. For others, one dollar was simply too much to spare. One could have bought, for example, 25 pounds of oatmeal at the Charlottetown market for that amount of money.[105] Peter Gavin, a Prince County Conservative, testified before the Legislative Assembly that "[t]here was a large amount of arrears for poll tax for last year due from the young men" in particular.[106] In fact, the provincial treasurer's yearly statement indicated that $8,367 worth of poll taxes remained uncollected for 1878 alone.[107] It did not help matters that tax collection took place in June and July, before the annual harvest, when specie was scarcest. It also did not help that the Island economy had taken a turn for the worse by the end of the 1870s. Prince Edward Island had largely spent the funds it had received at Confederation and its shipbuilding industry had begun to falter as "iron and steam … replace[d] wood and sail."[108]

Those Islanders who paid their poll tax, however, certainly demanded their place on the Island's voters' lists. The surviving court of revision records for 1878 – the only year in which Prince Edward Island maintained both courts of revision and the poll tax franchise during the nineteenth century – indicate that 716 poll tax voters were added to the voters' lists of King's

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[103] Indeed, in the words of Archibald J. MacDonald of Georgetown: "One of the grievances felt by the people under the existing law was that the sum collected under the poll tax was taken away from the District where it was obtained and spent in other localities." See: Prince Edward Island, *The Parliamentary Reporter*, 6 May 1879, 75.
[104] The Island government imposed such a property tax almost immediately after passing the Assessment Act of 1877.
[105] "Prices Current," Charlottetown *Examiner*, 27 July 1874, 3.
[106] Prince Edward Island, *The Parliamentary Reporter*, 6 May 1879, 88.
[107] Ibid., *Journal of the House of Assembly* (1879), appendix C, 16.
[108] Lorne C. Callbeck, "Economic and Social Developments Since Confederation" in *Canada's Smallest Province*, 336.

and Queen's Counties.[109] These names represented approximately 46 percent of all names added to the voters' lists by these two counties' courts of revision. They were included, in addition to all those poll tax voters already on the voters' lists, because they had voted the previous year.[110] The fact that Prince Edward Island's official state organ, the *Royal Gazette*, would print the names of all men remiss in paying their poll taxes must have swayed many hesitant Islanders toward payment.[111] It is not hard to imagine that many men would not have liked to have seen their manliness so publicly questioned as defaulters. The press campaign of 1878, which reminded Islanders to "SEE THAT YOUR POLL TAX IS PAID, AND MAINTAIN YOUR RIGHT TO VOTE," must have also shepherded additional men to the tax collector. In no way sponsored by the government of the day, this campaign sought to register as many Islanders as possible to vote the perpetrators of the Assessment Act out of office.[112] When the Davies coalition government resigned after a 6 March 1879 vote of non-confidence, the electorate had its opportunity to do so.[113]

The Island's fierce reaction against the Assessment Act had unglued the Davies government. At the subsequent election that April, the Conservatives, re-united under the leadership of William W. Sullivan, "were returned by the largest majority ever recorded in the assembly to that time."[114] Upon returning to the House of Assembly, Premier Sullivan swiftly responded to the irritated electorate. Through the Road Act of 1879 and the Registration of

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[109] PARO PEI, RG3, series 4, subseries 3, volumes 1-8. A total of 1,548 names were added to the Island's voters' lists in 1878 through the Courts of Revision. Unfortunately, the records for the courts of revision held in Prince County appear not to have survived.
[110] Ibid. The King's County court of revision had even more men apply as poll tax voters than Queen's County. There, 50 percent of all additions were listed as poll tax voters. The comparably greater poverty of King's may account for this statistical difference.
[111] "The Tax Act. No. XII," *The Presbyterian and Evangelical Protestant Union*, 25 October 1877, 4; "The Freeman's Right and Privilege," ibid., 4 July 1878, 4; "Electors Attention," ibid., 20 June 1878, 4.
[112] "Electors, Attention!," *The Examiner*, 7 June 1878, 1 (emphasis in text). Also see: "Electors Attention," *The Presbyterian and Evangelical Protestant Union*, 20 June 1878, 4.
[113] J.M. Bumsted, "Davies, Sir Louis Henry," *Dictionary of Canadian Biography*, volume XV, 259.
[114] MacBeath, "Sullivan, Sir William Wilfred," 982.

Electors Repeal Act of 1879, the Island's Conservative government repealed both the Roads and Bridges Act of 1877 and the Registration of Electors Act of 1877.[115] As a result, the state would call upon Island men to perform statute labour once again. In return, these statute labourers would again qualify to vote at provincial elections.

Although the statute labour franchise dated back 26 years by this point, Islanders had yet to find a system that they preferred more. True, the government's purchase and distribution of large Island estates in 1875 ensured that many more Islanders owned their own land in 1879 than in 1853.[116] Even so, nineteenth-century estimates based upon the Island's electoral lists (which unfortunately no longer survive) upheld that for every eight men who voted on the basis of property twelve men voted on the basis of qualifications offered to those without sufficient estates.[117] While many leaseholders managed to pay their poll tax, "a good many poor people complained that no provision was made to permit them to work upon the roads instead of paying the poll tax."[118] Many Island men desired to contribute to their community, but they needed the extra dollar to provide for their families. A statute labour franchise better accounted for these fiscal disparities amongst the unpropertied. Assemblyman Robert Shaw perhaps most neatly summed up this general belief. "If a man preferred to work rather than pay a poll tax," Shaw asserted to the provincial legislature, "it was an injustice to deprive him of that privilege. Many people in the country found it easier to do two or three days work than to pay a tax, more particularly, at this time when money was scarce, and if they were allowed to work instead of

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[115] Prince Edward Island, "The Public Roads Act, 1879" (42 Vic., c.1); ibid., "An Act to repeal 'The Registration of Electors and Ballot Act of Prince Edward Island,' with its Amending Acts, to revive certain Acts and parts of Acts, and make other provision respecting Elections" (42 Vic., c. 2).
[116] A momentous occasion for Prince Edward Island, the Land Purchase Act forced owners of large estates to distribute their lands by sale to their tenants. See: ibid., "Land Purchase Act, 1875" (38 Vic., c. 32).
[117] "Abolition of the Legislative Council," *The Examiner*, 30 May 1879, 1.
[118] Donald Farquharson, a Liberal representative for Queen's County, made this assertion. See: Prince Edward Island, *The Parliamentary Reporter*, 6 May 1879, 76.

pay, it would be regarded as a very great boon."[119] Island men had experienced the alternative to statute labour and they categorically rejected it. When it came to "asserting their political manhood" – in the words of the *Alberton Pioneer* – working on the Island's highways remained the best fitness test.[120] At the behest of the electorate, statute labour, manliness, citizenship aligned yet again on Prince Edward Island.

In the end, the story of Victorian Prince Edward Island's statute labour franchise comes back to its land question. With property ownership limited to a small minority, bourgeois ideals that grounded a man's manliness in real estate fit the colony poorly. The Liberals' statute labour franchise of 1853 offered an alternative philosophy that diverged from the nascent liberal order: instead of the material wealth that surrounded him, a man's idealness as a citizen depended upon the manly characteristics he possessed within himself. The performance of honesty, responsibility, industry, productivity, and diligence mattered more when judging a man's fitness as a man than any tract of land. Those who would not or could not conform to such characteristics through statute labour – the loafer, the sexagenarian, and the occupationally exempt – faced disenfranchisement. Young statute labourers had thus every right to feel aggrieved. They had met the manly ideal set before them and they shared in it, yet the state still denied them their just reward. So they voted anyway and continued to vote whenever they could. Although the statute labour franchise met with some resistance, the majority of Islanders ultimately accepted it and the gendered ideal of citizenship it espoused. When the Davies coalition government replaced the statute labour franchise with a poll tax franchise in 1877,

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[119] Ibid., 84. One of Shaw's colleagues, John Lefurgey, made essentially the same argument when he spoke following Shaw. According to Lefurgey, "[t]wo years ago money was more plentiful than to-day, and it was then more convenient to pay the $1.00 poll tax than to work two or three days Statute Labor. Now money was scarce and wages low, and it was easier to work than pay. Poor men found it much easier to work on the roads than to raise money to pay their Poll Tax. Still if they were able and desirous to commute their labor they were at liberty to do so. The Act was framed in a liberal spirit, and with a view to using as little harshness as possible in its working." See: ibid., 85.

[120] "Registration of Votes," *Alberton Pioneer*, 29 August 1877, 2.

Island voters chased that government out of office a year later in a landslide result. To placate the irate electorate, the incoming ministry acted promptly: it eliminated the poll tax franchise as soon as it entered office and reinstated the statute labour franchise. Indeed, this intersection of statute labour, manliness, and citizenship fit the local conditions of Prince Edward Island so well that Islanders would cling to it for another 22 years. A new ratepayers' franchise would eventually replace the statute labour franchise in the first year of Edward VII's reign in 1901.[121] No Canadian province would marry its electoral laws to the performance of statute labour again.

[121] Prince Edward Island, "The Public Roads Act, 1901" (1 Ed. VII, c. 1), sections 1 and 36. Also see: ibid., "An Act to amend 'An Act respecting the Legislature'" (1 Ed. VII, c. 4), section 3.

Chapter 4

Elections and Electoral Participation in Mid-Nineteenth-Century Montreal:
A Local Study in British North American Municipal Enfranchisement

Nineteenth-century British North Americans did not only vote at provincial elections. With municipal corporations slowly emerging across the colonies by mid-century, colonists eventually chose representatives for city, town, and district councils as well. Although smaller in scope, municipal elections were much more than mere sideshows. By the 1850s, British North Americans' experiences with electoral participation came most regularly from the municipal sphere. Annual municipal elections – as opposed to quadrennial ones – meant that mid-nineteenth-century colonists confronted their municipal franchises four times more often than those at any other level of government. The frequency of these encounters opened up regulatory possibilities.[1] For some, municipal franchises offered a way to educate new citizens in a world where ideas of citizenship fluctuated so greatly. For others, these same franchises served to define municipal corporations, their function, and for whom they rightfully operated. These outlooks, in turn, clashed with older, more violent forms of popular participation that viewed elections as broader community events. As British North Americans contested the possibilities and purposes of municipal enfranchisement (and the place of violence within it) their competing answers manifested themselves within municipal acts of incorporation.

[1] Despite the frequency of these encounters, historians of Canada's electoral franchises have generally ignored the municipal franchise as a part of their studies. In the words of Michèle Dagenais: "The important question of the municipal franchise would certainly merit additional attention, and the evolution of the norms defining who could vote remains to be traced." See: Michèle Dagenais, "The Municipal Territory: A Product of the Liberal Order?" in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, eds. Jean-François Constant and Michel Ducharme (Toronto: University of Toronto Press, 2009), 219n34.

Mid-nineteenth-century Montreal – as one of Canada's oldest and most important municipal bodies – serves as the archetypal setting for this chapter. By the 1830s, Montreal had become British North America's largest urban centre as well as its commercial metropolis.[2] Despite its size and significance, the town's day-to-day operations still fell under the jurisdiction of executively-appointed magistrates. The Colonial Office in London had preferred to handle local governance this way since the American Revolution.[3] Only Saint John, New Brunswick, had received a city charter by the second quarter of the nineteenth century, and only then because thousands of New York Loyalists had moved in during the 1780s.[4] Montreal, however, needed what Saint John had. Underpowered and overburdened magistrates no longer proved responsive enough.[5] As the city expanded rapidly, strong (and frequently competing) ethnic, religious, and linguistic communities sought to carve out spaces of their own.[6] After a failed 1828 petition, Montreal received its first act of incorporation in 1832.[7] The provincial legislature allowed this

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[2] Paul-André Linteau, *History of Montreal: The Story of a Great North American City*, trans. Peter McCambridge (Montreal: Baraka Books, 2013), 72. Also see: J.M.S. Careless, *The Union of the Canadas: The Growth of Canadian Institutions 1841-1857* (Toronto: McClelland and Stewart, 1967), 1.

[3] See: Bruce Curtis, "Representation and State Formation in the Canadas, 1790-1850," *Studies in Political Economy* 28 (Spring 1989): 63. For more, see: Engin F. Isin, *Cities Without Citizens: Modernity of the City as a Corporation* (Montreal and New York: Black Rose Books, 1992), 99-101; Elizabeth Mancke, *The Fault Lines of Empire: Political Differentiation in Massachusetts and Nova Scotia ca. 1760-1830* (New York and London: Routledge, 2005), 26-27.

[4] T.W. Acheson, *Saint John: The Making of a Colonial Urban Community* (Toronto: University of Toronto Press, 1985), 27.

[5] For more on the many duties of local magistrates, see: Donald Fyson, *Magistrates, Police, and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837* (Toronto: University of Toronto Press for the Osgoode Society, 2006).

[6] Historical geographers Sherry Olson and Patricia Thornton have identified the three most prominent, or at least most sizable, of these groupings: French Catholics, Anglo-Protestants, and Irish Catholics. See: Sherry Olson and Patricia Thornton, *Peopling the North American City: Montreal 1840-1900* (Montreal and Kingston: McGill-Queen's University Press, 2011), 11. This is certainly not to say that other self-identified communities did not have a place in the city. See: Gerald Tulchinsky, *Canada's Jews: A People's Journey* (Toronto: University of Toronto Press, 2008), 62-90; Frank Mackey, *Done With Slavery: The Black Fact in Montreal, 1760-1840* (Montreal and Kingston: McGill-Queen's University Press, 2010); Bruno Ramirez, *Les premiers italiens de Montréal: L'origine de la Petite Italie du Québec* (Montreal: Boréal Express, 1984).

[7] See: Lower Canada, "An Act to incorporate the City of Montreal," (1 Will. IV, c. 54). Although the Lower Canadian legislature passed the act in 1831, the governor reserved his judgment on it. The legislation would not receive its royal assent until 12 April 1832, and the governor would not proclaim that assent until 5 June 1832. In his sprawling two-part history of Montreal until the First World War, William Henry Atherton cites that "[a]s early as 1786, on the invitation of the Superior Council, they had reported in favour of the incorporation by charter of a

temporary charter (and the freeholders' franchise it therein contained) to expire in 1836.[8] Assemblymen had refused to hear a provision that enfranchised tenants municipally.[9] Another four years had to pass before Montreal received its second act of incorporation and its first permanent franchise.

Montreal's 1840 city charter arrived at a time of acute instability across British North America. The British army and Canadian militia had only recently suppressed the Rebellions of 1837 and 1838. The hardest fighting had spiraled out of Montreal in particular. A newfound economic prosperity, moreover, had sparked the town's great transformation. Montreal would soon become not only British North America's first modern industrial city, but the first industrialized city within the British Empire outside of Great Britain itself.[10] Montrealers would soon have to confront modern urban life before anyone else in the colonies.[11] Politics, as a

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municipality, but notwithstanding, the system of government by justices of the peace was continued. At a meeting of October 23, 1821, the citizens again agitated for a charter. In 1828 a great meeting was held on December 6th and resolutions were passed to the effect that in the flourishing state of the growth of the population and the progress of trade the government by magistrates was not sufficient to provide for municipal advance in the future; that among the evils due to insufficient power granted to the magistrates was the inefficiency of police regulations and the want of an efficient system of bookkeeping in the appropriation of the revenues of the town; the deplorable state for many years of the water front and the lands adjoining the 'little river,' which by their unhealthy condition, had become dangerous to the well being of the great part of the surrounding population; the lack of means and authority for undertaking and executing a preconceived and general plan of improvement, it being left to the individual to put obstacles to the proper growth of the town which narrowness of view and self-interest might suggest to the delay in growth and the increase of avoidable expenses. The citizens concluded by demanding from the legislature the incorporation of the town." See: William Henry Atherton, *Montreal 1535-1914. Volume II: Under British Rule, 1760-1914* (Montreal: S.J. Clarke Publishing, 1914), 181.

[8] See: Lower Canada, 1 Will. IV, c. 54, section 2.

[9] See: William Kennedy and Adam Thom, "General Report of the Assistant Commissioners of Municipal Inquiry," *Appendix C to Report on The Affairs of British North America, from the Earl of Durham, Her Majesty's High Commissioner* (London: The House of Commons, 1839), 35; 41.

[10] Robert C.H. Sweeny, *Why Did We Choose to Industrialize? Montreal, 1818-1849* (Montreal and Kingston: McGill-Queen's University Press, 2015), 29.

[11] See: ibid.; Gerald J.J. Tulchinsky, *The River Barons: Montreal businessmen and the growth of industry and transportation, 1837-53* (Toronto: University of Toronto Press, 1977), 203-205; Robert Lewis, *Manufacturing Montreal: The Making of an Industrial Landscape, 1850 to 1930* (Baltimore and London: The Johns Hopkins University Press, 2000), 223. It is impossible within the constraints of this footnote to list all the effects of industrialization on nineteenth-century Canadians. On the positive side, industrialization meant that fortunes could be increasingly made in the city and jobs could be found. On the negative, the pull of the city meant increased crowding in unsanitary conditions and greater economic uncertainty as labourers gave up the means of production to work for frequently insufficient wages. For the Montreal context, see for example: Bettina Bradbury, *Working Families: Age, Gender, and Daily Survival in Industrializing Montreal* (Toronto: McClelland & Stewart, 1993);

result, could no longer go on as before. Such realizations ushered in an era of both political reaction *and* political experimentation. Montreal's municipal franchise found itself at the centre of these changes. With little in the way of precedent to follow, Montrealers were forced to negotiate amongst themselves what municipal citizenship should look like in an industrializing British North American city, whom it should include, and what it should offer. As pressures on the franchise arrived from multiple directions, the city's civic elections would operate under no fewer than five different franchise laws between 1840 and 1867.[12] Civil debate competed with public violence when it came to shaping municipal enfranchisement in mid-nineteenth-century Montreal. Rational consideration, as we shall see, did not always win.

The Incorporation Ordinance of 1840

Montreal received its first set of permanent electoral and franchise laws within the so-called "Ordinance to Incorporate the City and Town of Montreal" of 1840. As its title suggests, the legislation was not so much granted as imposed upon the city. In the aftermath of the Rebellions, the British parliament had suspended the Lower Canadian legislature and replaced it

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Bettina Bradbury and Tamara Myers, introduction to *Negotiating Identities in 19th- and 20th-Century Montreal* (Vancouver: UBC Press, 2005), 12-13; Olson and Thornton, *Peopling the North American City*.

[12] Although local historians have touched upon the city's municipal franchise, they have not agreed upon the most basic legislative facts. See: Atherton, 182-184; Andrew Sancton, *Governing the Island of Montreal: Language, Differences and Metropolitan Politics* (Berkeley: University of California Press, 1985), 24; Michèle Dagenais, *Democracy in Montréal: From 1830 up to the present* (Montreal: Ville de Montréal, 1992), 16; Jean-Pierre Collin and Michèle Dagenais, "Évolution des enjeux politiques locaux et des practiques municipals dans l'île de Montréal," in *Enjeux et expressions de la politique municipal (XIIe-XXe siècles)*, eds. Denis Menjot and Jean-Luc Pinol (Montreal: L'Harmattan, 1997), 203; Dany Fougères, "La ville modern, 1840-1890," in *Histoire de Montréal et de sa région. Tome I: Des Origines à 1930*, ed. Dany Fougères (Quebec: Les presses de l'Université Laval, 2012), 410-411; Linteau, 82.

with the infamous Special Council of Lower Canada. Convened at the governor's pleasure and composed of his favourites, the Special Council essentially operated on the governor's behalf. Under these legislative conditions, it was Lord Durham himself who wanted elective municipal institutions for the city of Montreal. To that end, he had foisted an act of incorporation upon his Councillors with the expectation of a quick rubberstamp.[13] The legislation fell by the wayside when Durham left Canada unexpectedly in October 1838. Although Durham's successor, Charles Poulett Thomson, did not always agree with Durham's management of Canada, the two had found common ground when it came to municipal bodies.[14] Taking up Durham's cause, Thomson pressed his Special Council to pass Durham's charter.[15] In doing so, he had the Special Council empower him to appoint new municipal officers to govern Montreal's civic affairs. This collection of twelve councillors, six aldermen, and a mayor would run the city until its next municipal election. The new act of incorporation scheduled the contest for 1 December 1842.[16]

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[13] Steven Watt, "State Trial by Legislature: The Special Council of Lower Canada, 1838-1841," in *Canadian State Trials II: Rebellion and Invasion in the Canadas, 1837-1839*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press for the Osgoode Society, 2002), 263.

[14] Thomson received the title of Baron Sydenham on 19 August 1840 while in Canada. For the sake of consistency, this chapter employs the name Thomson throughout. See: Phillip Buckner, "Thomson, Charles Edward Poulett, 1st Baron Sydenham," *Dictionary of Canadian Biography*, volume VII, 859.

[15] According to Ged Martin, "Sydenham [Thomson] mentioned Durham in his despatches only to complain about the debts caused by his predecessor's free-handed spending." In a subsequent footnote, however, Martin admits that Thomson "also cited Durham's views on local government in a despatch." See: Ged Martin, *The Durham Report and British Policy: A Critical Essay* (Cambridge: Cambridge University Press, 1972), 77-78. Also see: Brian Young, "Positive Law, Positive State: Class Realignment and the Transformation of Lower Canada, 1815-1866," in *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, eds. Allan Greer and Ian Radforth (Toronto: University of Toronto Press, 1992), 50-63; Ian Radforth, "Sydenham and Utilitarian Reform," in ibid., 64-102.

[16] See: Special Council of Lower Canada, "An Ordinance to Incorporate the City and Town of Montreal" (3 & 4 Vic., c. 36), sections 6-7. This three-tier ranking system within Montreal's city council requires some explanation. Before 1851, anyone vying for the position of councillor, alderman, or mayor first had to be elected to represent one of the city's six wards. All of these representatives started out as councillors. As the lowest-ranking council member, councillors had to own at least £500 of real property to qualify for the position. Councillors had a vote at all council motions and made up the rank-in-file for the council's standing committees. Aldermen, on the other hand, had to own at least £1,000 worth of property to qualify. Elected amongst the councillors themselves, aldermen also had a vote at council motions. Unlike councillors, however, only aldermen had the power to chair the council's standing committees. This role gave aldermen considerable control over the city's municipal business.

Given the Special Council's less-than-democratic reputation – to say nothing of Thomson himself – Montrealers may have expected punishing property qualifications for their new city franchise.[17] After all, the Montreal region had not exactly endeared itself to the colonial executive in recent years. The most reactionary imperialists still demanded reprisals for the violence of 1837 and 1838.[18] Given this political context, Montreal's 1840 municipal franchise was surprisingly democratic. Instead of imposing minimum property values, or even the city's former freeholders' franchise, the legislation merely required "persons" to "be possessed, at the time of the election, of a dwelling-house within the said Ward, held by them respectively in freehold, or for a term of years, or for a term not less than one year…not as a boarder or lodger, and having an outer door by which a separate communication with the street may be afforded."[19] In other words, property values and rental rates had no direct bearing upon a Montrealer's municipal enfranchisement. So long as a person owned or leased some sort of street-facing dwelling in the city, that person qualified to vote for councillors *and* tax assessors at Montreal's municipal elections.[20] Because the legislation never defined the term "person," it technically included women as well (much like the Canadas' provincial franchise).[21] A comprehensive

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The mayor, under the Special Council's ordinances, played two roles at council meetings. First, he voted on city business like any other councillor. Second, he ruled on points of order and broke deadlocks at council meetings. Montrealers did not directly elect the mayor at this time. Again, it fell to the city council to elect a mayor from amongst itself. According to the second act of incorporation, any council member could hold the position of mayor. See: ibid, sections 9, 10, 27, 36, 37. These regulations received further clarification in an 1841 Special Council amendment to the city charter. See: Special Council of Lower Canada, "An Ordinance to amend the Ordinance to Incorporate the City and Town of Montreal," (4 Vic., c. 32), sections 5, 9, 11.

[17] Although Thomson may have had British Reform credentials to his name, his style of governance was anything but progressive. Michael S. Cross, for instance, has characterized Thomson as an "arbitrary" and "dictatorial" leader who "masqueraded as a friendly liberal." See: Michael S. Cross, *A Biography of Robert Baldwin: The Morning-Star of Memory* (Don Mills, ON: Oxford University Press, 2012), 42-54. Also see: Irving Martin Abella, "The 'Sydenham Election' of 1841," *Canadian Historical Review* 47.4 (December 1966): 326-343.

[18] See: Allan Greer, *The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada* (Toronto: University of Toronto Press, 1993), 352-353.

[19] Special Council of Lower Canada, 3 & 4 Vic., c. 36, section 11.

[20] Ibid., section 14.

[21] By means of poll books archived at the Bibliothèque et archives Nationales du Québec à Montréal, Nathalie Picard has identified the instances of women voting at Lower Canadian and Canada East provincial elections in the district of Montreal. Unfortunately, Montreal's municipal poll books for the years following 1840 appear not to

household suffrage thus lay at the heart of Montreal's 1840 municipal franchise. Ideas of class, ethnicity, religion, and even gender did not matter from a legal standpoint when it came to local enfranchisement. In fact, the legislation contained only one real proviso. While a householder's cultural background may not have affected access to the franchise, his or her standing as a ratepayer certainly did.

As early as the 1790s, Montreal collected the lion's share of its revenues through direct taxation. Lower Canada's Road Act of 1796 had instituted property taxes in the town for the better maintenance of highways, bridges, and public squares.[22] A subsequent 1799 amendment extended these taxes to business and animal owners as well.[23] To carry out the work, the acts also imposed statute labour upon the town's adult male inhabitants.[24] As of Montreal's second incorporation in 1840, these annual dues amounted to a property tax of 2.5 percent, or six pence to the pound; a flat road tax of two shillings six pence on all men in lieu of the statute labour; a water tax for those connected to the city's water works; a horse tax of seven shillings six pence for horse owners; and, a whole coterie of business taxes based upon profession and trade.[25] A Special Council amendment quickly raised the property tax ceiling to 6⅔ percent, or one shilling

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have survived in the same way. I have thus yet to find any evidence that women actually voted in Montreal's municipal elections. Robert Sweeny has revealed that Montreal's original 1832 act of incorporation had denied women proprietors the vote at municipal contests. Perhaps this tradition had carried over into the city's second incorporation but in a less formal manner. See: Nathalie Picard, "Les femmes et le vote au Bas-Canada de 1792 à 1849," MA thesis (Université de Montréal, 1992), iv-v. Also see: Robert C.H. Sweeny, "Property and Gender: Lessons from a 19th-century town," *London Journal of Canadian Studies* 22 (2006/2007): 18.

[22] Lower Canada, "An Act for making, repairing and altering the Highways and Bridges within this Province and for other purposes," (36 Geo. III, c. 9), section 57.

[23] Ibid., "An Act to amend An Act passed in the thirty sixth Year of His present Majesty's Reign, intituled 'An Act for making, repairing and altering the Highways and Bridges, within this Province, and for other purposes,'" (39 Geo. III, c. 5), sections 5 and 23.

[24] Whereas the 1796 act demanded statute labour from all men aged 18 to 60, the 1799 act revised these numbers so that statute labour began at the age of 21. See: ibid, 36 Geo. III, c. 9, section 52. See also: ibid., 39 Geo. III, c. 6, section 21.

[25] See: Kennedy and Thom, "General Report of the Assistant Commissioners of Municipal Inquiry," *Appendix C to Report on The Affairs of British North America*, 37-39.

six pence to the pound.[26] According to the city's new municipal franchise, Montreal householders had to have paid *all* of their taxes if they wanted to vote in the city's municipal elections. For the wealthiest Montrealers – those with multiple business interests and multiple large properties – their enfranchisement could have cost them hundreds of pounds annually. Poorer male householders, on the other hand, may have only had to pay the two and a half shilling road tax to satisfy the ratepayers' clause. Poorer female householders – if any ever voted – may not have had to contribute anything at all.[27] Despite significant disparities in terms of class, ethnicity, social status, and taxes paid, all of these Montrealers stood beside one another as voters on municipal election days.

Although the Special Council may have enacted Montreal's peculiar municipal franchise, it had had very little say in its design. Governor Thomson had received the legislation from his predecessor Lord Durham, and Lord Durham had essentially fashioned it himself. According to Durham's biographer, Chester New, "Radical Jack" had championed radical franchise reform in England since at least 1818. For Durham, a franchise – and especially a municipal franchise – based upon ratepayment and household suffrage did the most good. On the one hand, it was narrow enough to exclude the transient "rabble" who would destroy social order through

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[26] See: Special Council of Lower Canada, 4 Vic., c. 32, section 14. This figure, based upon maximal interest rates, generally reflected the observed average rate of return to capital in both Britain and France at this time as well. See: Thomas Piketty, *Capital in the Twenty-First Century*, trans. Arthur Goldhammer (Cambridge, MA and London: The Belknap Press of Harvard University Press, 2014), 202. My thanks to Daniel Simeone for pointing this out.

[27] The ratepayers clause reads as follows: "…Provided always that when and so soon as any rate or rates, assessment or assessments shall be laid by and under the authority of this Ordinance, no such inhabitant house-holder shall be entitled to vote at the election of councillors as aforesaid, unless he shall have been rated to and in respect of the rates or assessments as aforesaid…" The sentence's awkwardness creates some ambiguity as to its meaning. On the one hand, it could read that any householder who satisfied the city's assessors had a vote at Montreal's municipal elections. The city's later franchise laws support this interpretation. On the other hand, it could read that only those who had *paid* rates of some kind qualified to vote. The French version of the clause ("…nulle telle personne tenant maison aura droit à voter à telle élection de Conseillers comme susdit, si elle n'ait été assujettie à ou cotisée pour les droits et cotisations comme susdit…") seems to support this latter understanding. A lack of evidence makes either interpretation possible. See: Special Council of Lower Canada, 3 & 4 Vic., c. 36, section 11.

irresponsibility and degradedness.[28] On the other hand, it was inclusive enough to "rally as large a portion of the…people as possible around the existing institutions of the country," and to show "they were also invested with privileges most valuable to them [that] rested on the basis of national unity."[29] In fact, before Durham had ever reached Canada, he had succeeded in getting such a franchise implemented across England. The Municipal Corporations Act of 1835 had not only established annual municipal elections for Englanders, it had made householding and ratepayment the two standards for municipal electoral participation. Durham's contemporaries called it the "Durham suffrage."[30] It formed the basis for English municipal enfranchisement for the rest of the nineteenth century.[31]

When Lord Durham arrived in Canada in May of 1838, he had brought his Durham suffrage with him. The violence around Montreal had convinced him that Montrealers especially needed further lessons in national unity, political propriety, and British constitutional behaviour.[32] Municipal institutions offered such instruction. In his own words, "the people should have…been *trained* for taking their part in the concerns of the Province, by their experience in the management of that local business which was most interesting and most easily intelligible to them."[33] The fact that the legislature had refused to renew Montreal's earlier city charter made the situation all the more inexcusable. Durham singled out

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[28] Chester W. New, *Lord Durham: A Biography of John George Lambton, First Earl of Durham* (Oxford: Clarendon Press, 1929), 44.
[29] Durham cited in ibid., 314-315.
[30] John A. Phillips and Charles Wetherell, "Parliamentary Parties and Municipal Politics: 1835 and the Party System," *Parliamentary History* 13.1 (February 1994): 59.
[31] Great Britain implemented a new municipal franchise in 1869. The Municipal Franchise Act continued the Durham suffrage, but in such a way that enfranchised ratepaying women as well. See: Great Britain, "The Municipal Franchise Act, 1869" (32 & 33 Vic., c. 59).
[32] Chester New asserts that "[t]he need of municipal government in Canada was realized by Durham to some extent before he left England, and he determined to institute an investigation and secure a thorough-going report of the situation." See: New, 369.
[33] Lord Durham, *Report on The Affairs of British North America*, ed. G.M. Craig (Ottawa: Carleton University Press, 1982), 67. Emphasis added.

> the want of municipal institutions…[as]…most glaringly remarkable in Quebec and Montreal. These cities were incorporated a few years ago by a temporary provincial Act, of which the renewal was rejected in 1836. Since that time these cities have been without any municipal government; and the disgraceful state of the streets, and the utter absence of lighting, are consequences which arrest the attention of all, and seriously affect the comfort and security of the inhabitants.[34]

With these ideas in mind, Durham formed a commission of inquiry into Lower Canada's municipal institutions in August of 1838. Durham's chief secretary, Charles Buller, was entrusted as chief commissioner. Another political radical, Buller had sat on the British parliamentary committee on Irish municipal incorporation the year before. Before that, he had attempted to implement municipal institutions in Australia. More importantly, he also shared Durham's views on the educational potential of municipal institutions. Buller had asserted to the House of Commons that municipal political participation "forms a most admirable apprenticeship for the higher electoral duties of the people." It "accustoms [the people] to choose among their neighbours those who are most able and upright"; and, it "teaches the habits of mutual forbearance and concession, so necessary in political matters."[35] Durham thus had little need to instruct Buller on the commission's importance. Montreal – alongside every other city, town, parish, and township – needed local institutions whether its inhabitants wanted them or not. The chief commissioner merely had to suggest what form they should take.[36]

Buller quickly appointed two assistant commissioners to do most of the work. The first, William Kennedy, had played an integral role in English municipal reform in 1835. The second, Adam Thom, acted as Durham's principal Canadian advisor during his time in North America.[37] With regard to municipal political participation, the duo had one "great object" according to

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[34] Ibid., 68-69.
[35] Great Britain, *Parliamentary Debates of the House of Commons*, 3rd series, volume 36, 20 February 1837, col. 700.
[36] Lord Durham, "The Commission," *Appendix C to Report on The Affairs of British North America*, 3.
[37] See: New, 419; 513. Also see: Kathryn M. Bindon, "Thom, Adam," *Dictionary of Canadian Biography*, volume XI, 874-876.

Buller: "To leave to local management whatever can be safely intrusted to it, and in such local management to give a voice to as large a number of the people as can use the suffrage for the common advantage."[38] Although Buller never defined what he meant by "common advantage" – as Michèle Dagenais has pointed out – he evidently wanted as wide a municipal franchise as possible. An apprenticeship, by definition, needs apprentices. Kennedy and Thom did not seem to need any clarification at any rate.[39] Two months of cursory research later, the assistant commissioners had found that "ignorance" lay at the heart of Lower Canada's problems.[40] "The mass of the people," they claimed, had "been allowed the exercise of the greater privilege of electing provincial representatives, while, with singular inconsistency, they [had] been denied the minor right…of choosing municipal authorities." Such backwardness had filled the Lower Canadian Assembly with rebels and traitors. Echoing Durham and Buller, Kennedy and Thom saw widespread municipal participation as the solution. A well-constructed municipal sphere, they asserted, should act as a "school of practical citizenship." Through direct engagement at municipal elections, the people would "gradually [acquire] a disciplined knowledge of their social duties" (which included paying one's taxes and keeping the peace). This discipline, in turn, would act as "a wholesome preparatory for the discharge of the superior trust" of provincial enfranchisement.[41]

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[38] Charles Buller, "Municipal Commission," *Appendix C to Report on The Affairs of British North America*, 5.
[39] According to Dagenais, "[t]his comment alone could well be the object of extended analysis, not least because of the rich insinuations it contains, which merit further explanation, such as the idea of 'common advantage.'" See: Dagenais, "The Municipal Territory," 219n34.
[40] Kennedy and Thom, "Preliminary Report of the Assistant Commissioners of Municipal Inquiry," 6. Although Kennedy and Thom gave "precedence to Quebec and Montreal" in their inquiries, they themselves admitted that "[i]nstead of visiting Montreal and the townships and seigneuries, as we proposed, we were forced to content ourselves with examining some of the executive officers, who act in these localities…" For more on the construction of this so-called French-Canadian ignorance, see: E.A. Heaman, "Constructing Ignorance: Epistemic and Military Failures in Britain and Canada during the Seven Years War," in *Essays in Honour of Michael Bliss: Figuring the Social*, eds. E.A. Heaman, Alison Li, and Shelley McKellar (Toronto: University of Toronto Press, 2008), 93-118.
[41] Kennedy and Thom, "Preliminary Report of the Assistant Commissioners of Municipal Inquiry," 6-7.

Upon the report's publication, these ideas on Canadian municipal institutions hopped across the Atlantic and back again. John Stuart Mill gave them momentum in his December 1838 analysis of the Durham mission. Mill applauded Durham's "free municipal institutions" as "not only the grand instrument of honest local management, but the great 'normal school' to fit a people for representative government, which have never yet existed in Canada."[42] Perhaps more a monitorial school than a normal school, Mill pressed for a broad franchise to guarantee strong enrollment.[43] Ten months later, the Colonial Secretary, Lord John Russell, emphasized much the same thing in his instructions to the new Canadian governor, Charles Poulett Thomson. Again, referring to Durham's reports, Russell cited that:

> The establishment of Municipal Institutions for the management of all local affairs, will be among the most important of the subjects to which your attention will be called.…Your acquaintance with the system of municipal government in this country [England], will point out to you that there is no mode in which local affairs can be so properly administered, and that they form…the most appropriate and effectual means of *training* the great body of the people to the higher branches of legislation.[44]

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[42] John Stuart Mill, "Lord Durham's Return," in *Collected Works of John Stuart Mill*, volume VI: "Essays on England, Ireland, and the Empire," ed. John M. Robson (Toronto: University of Toronto Press, 1982), 457. This essay was originally published in: *London and Westminster Review*, XXXII (December 1838): 241-260. Also see: Curtis, "Representation and State Formation," 71.

[43] Normal schools, on the one hand, taught teachers how to teach. By means of a careful curriculum and a controlled environment, normal school students would acquire a standardized training that they could apply when they graduated. The goals here were two-fold: to produce qualified teachers who knew how to teach; and, to control what teachers taught and how they taught it. Monitorial schools, on the other hand, revolved around large-scale schooling. With class sizes often approaching 100 or more students, monitorial schools educated through repetition (as opposed to understanding). By repeating something often enough – such as reading or writing – a student would eventually learn how to do it. Or so the principle went. Nineteenth-century Canadian municipal institutions (and British ones for that matter) offered similar training through repetition. Because municipal elections took place annually, local populations received steady practice as to how one properly takes part in a British constitutional framework. The people could then draw upon these repetitive experiences every fourth year when the more important provincial elections took place. For more on early nineteenth-century normal schools and monitorial schools in the Canadian context, and the role they played in state formation, see: Bruce Curtis, *Ruling by Schooling Quebec: Conquest to Liberal Governmentality – A Historical Sociology* (Toronto: University of Toronto Press, 2012), 120-184; 297-325. As for Mill's thoughts concerning the franchise during the late-1830s, see: John Stuart Mill, "Reorganization of the Reform Party," in *Collected Works of John Stuart Mill*, volume VI, 467. Mill published this essay in April 1839, only four months after his praise of the Durham mission.

[44] "Lord John Russell to the Right Hon. C. Poulett Thomson" (7 September 1839) in *Documents of the Canadian Constitution 1759-1915*, ed. W.P.M. Kennedy (Toronto: Oxford University Press, 1918), 519. Emphasis added.

The system to which Russell referred included the Durham suffrage. Thomson, for his part, had already accepted Durham's conclusions. His experiences in Canada had, moreover, only assured him of their accuracy. As he phrased it in a return letter:

> the opportunity I have now had…of observing the social condition of the people…has convinced me that the cause of nearly all the difficulty in the government of every one of them, is to be found in the absence of any well organized system of local government.…The people receive no training in those habits of self-government which are indispensible to enable them rightly to exercise the power of choosing representatives in Parliament.[45]

Like the English luminaries who surrounded him, Thomson had also placed his faith in the educational potential of municipal institutions. In fact, as Ian Radforth has revealed, Thomson wanted these institutions spread as far and as wide as possible through the establishment of district councils.[46] A municipal franchise based upon householding and ratepaying – alongside annual municipal elections – served to unlock their potential. Its broad inclusiveness ensured those who most needed political training received it on a yearly basis and in a controlled environment. Montreal received the Durham suffrage in 1840 on the basis of these beliefs.

Governors Durham and Thomson had championed the Durham suffrage as a post-Rebellion solution to the Canadas' political problems. The Montrealers closest to them, however, never shared in their lordships' enthusiasm. Despite Charles Buller's specific instructions, William Kennedy and Adam Thom had concluded that only those who "occup[ied]…buildings assessed at the annual value of 12*l*. [pounds local] currency and upwards, on which the assessment shall have been paid" should vote at municipal elections at Montreal and Quebec.[47] The recommendation probably originated with Thom in particular.

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[45] "Poulett Thomson to Russell" (16 September 1840) in *Documents of the Canadian Constitution*, 552.
[46] See: Radforth, "Sydenham and Utilitarian Reform," in *Colonial Leviathan*, 83.
[47] Kennedy and Thom, "Heads of Bills for incorporating the Cities of Quebec and Montreal," *Appendix C to Report on The Affairs of British North America*, appendix 1, 54. The assistant commissioners had discussed a £10

Aside from being a spokesman for Montreal's English-speaking merchant elite and Durham's eyes and ears in Lower Canada, Thom was also a notorious anti-French bigot whom French-language newspapers had labeled "a hateful fanatic."[48] Based upon the commission's inquiries, and his earlier experiences at city elections, Thom knew exactly what such a franchise would do.

Thom's preferred 12*l*. franchise had two interrelated objectives. First, it sought to limit municipal citizenship to only those who held substantial property within the city. This adhered to a view that municipal corporations, like any other corporation, existed to profit their stakeholders. Education through enfranchisement made no sense if it allowed those who possessed and contributed little to overrule (and spend the money of) those who possessed and contributed a lot. Second, it offered an ethno-religious safeguard for Montreal's Anglo-Protestant minority. Twelve pounds local currency equated to £10 sterling. Since 1791, Canadian cities had employed £10 sterling rental qualification alongside a £5 sterling freeholder qualification for provincial contests. Over the course of their inquiries, the commissioners had determined that British Montrealers had "been deterred from the purchase of real property" because of "the unimproving and unstable system of general government." Whereas French Canadians (the "old race of settlers") tended toward property ownership, Anglo-Protestants had felt more comfortable with tenancy.[49] Sherry Olson has since confirmed these impressions. French Canadian Montrealers, according to her numbers, owned at least 27.5% of the all dwellings they occupied during the 1840s. British Protestants only owned 18.5%.[50] In terms of affluence, however, Montreal's English-speaking Protestant communities still prevailed. Of the

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household qualification earlier in the report. They were most likely referring to £10 sterling in that instance. See: ibid., "General Report of the Assistant Commissioners of Municipal Inquiry," 40.

[48] Bindon, "Thom, Adam," 874. For more on Thom's anti-French prejudice, see: Jacques Monet, *The Last Cannon Shot: A Study of French-Canadian Nationalism* (Toronto: University of Toronto Press, 1969), 19.

[49] Kennedy and Thom, "General Report of the Assistant Commissioners of Municipal Inquiry," 41.

[50] Sherry Olson, "Ethnic Partition of the Work Force in 1840s Montréal," *Labour/Le Travail* 53 (Spring 2004): 181.

top 10% of Montrealers according to wealth, 62% were English-speaking Protestants.[51] A municipal franchise that adopted the province's £10 sterling householder franchise (but scrapped the £5 sterling freeholder franchise) would have thus favoured Montreal's wealthier British renters over its poorer French Canadian property owners. In Kennedy's and Thom's words, the "[p]oor and ignorant Canadians" would no longer have "an undue influence in the urban government of the province"; and, "wealthy, enterprising and industrious strangers…who were chiefly British" would dominate civic affairs.[52]

Durham and Thomson had obviously ignored these recommendations. The poor and the ignorant – no matter their cultural backgrounds – represented their target audience. Still, it did not stop others from trying. When Montreal's new charter came before the Special Council in June 1840, the Council's most wealthy English-speaking Montrealers – George Moffatt, John Molson, and, Montreal's next mayor, Peter McGill – also balked at the Durham suffrage. Like Thom, they saw the need for some sort of monetary qualification for municipal enfranchisement. Considering the amounts they themselves paid in city taxes, they recoiled at poorer Montrealers controlling the public purse. Unlike Thom, however, ethnic prejudices did not overtly motivate their actions. Instead, they introduced an amendment to the Special Council that contained the aforementioned £5 sterling freehold and £10 sterling rental qualifications.[53] In other words, they had hoped to turn the Canadas' provincial franchise into Montreal's municipal franchise as well.[54]

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[51] Ibid., 177.
[52] Kennedy and Thom, "General Report of the Assistant Commissioners of Municipal Inquiry," 40. One finds similar language on the following page (41) of the document as well.
[53] See: Lower Canada, *Journals of the Special Council of the Province of Lower Canada*, volume 5 continued, 16 June 1840, 155.
[54] In framing their amendment, Moffatt, Molson, and McGill may have found inspiration in Toronto's municipal franchise as well. When first incorporated in 1834, Toronto employed a franchise based upon householding and ratepayment. A mere three years later, in 1837, the Upper Canadian legislature had found it "expedient to alter and amend the law relating to the qualification of persons voting at any future election for the Aldermen and Common

The first of these qualifications was negligible enough for Montrealers who owned real property. Even for the city's poorest proprietors, their properties' "yearly assessment value would rarely be less than 6*l* [pounds local currency]."[55] The £5 sterling freehold qualification – which equated to £6 local currency – would have thus enfranchised the majority of property-owning Montrealers (French Canadians included). The £10 rental qualification, on the other hand, was highly prejudicial, but not necessarily on the basis of ethnicity. Because many Montreal labourers tended to rent properties at £6, £7, or £8 annually, such a restriction would have disenfranchised a large portion of the city's labouring class.[56] True, French Canadian labourers tended to pay the lowest rents in the city. Even so, Sherry Olson reveals that Irish Catholics and Irish Protestants would have been similarly affected (especially in the city's easternmost and westernmost districts).[57] Class, in this case, apparently trumped ethnicity or religion for Moffatt, Molson, and McGill. In the end, the amendment went nowhere. The governor had his Chief Justice, James Stuart, vote it down.[58] Still, the fact it was tabled in the first place reveals the very real tensions that lay behind Montreal's municipal franchise in 1840, whom it should include, and the purposes behind it. These same tensions would haunt debates over municipal citizenship in Montreal for years to come.

Council-men of the City of Toronto." The new legislation required all voters to own or rent property worth an annual value of £10. William Kennedy and Adam Thom had drawn attention to Toronto's new franchise in their general report. Moffatt, Molson, and McGill may have seen it there as well. For Toronto's original municipal franchise, see: Upper Canada, "An Act to extend the Limits of the Town of York; to erect the said Town into a City; and to Incorporate it under the name of the City of Toronto" (4 Will. IV, c. 23), section 18. For the 1837 amendment, see: ibid., "An Act to alter and amend an Act passed in the fourth year of His Majesty's reign, entitled, 'An Act to extend the limits of the Town of York, to erect the said Town into a City, and to Incorporate it under the name of the City of Toronto'" (7 Will. IV, c. 39), preamble and section 27. For the reference in the general report, see: Kennedy and Thom, "General Report of the Assistant Commissioners of Municipal Inquiry," 40 (footnote).

[55] Kennedy and Thom, "General Report of the Assistant Commissioners of Municipal Inquiry," 40.

[56] Olson, "Ethnic Partition of the Work Force in 1840s Montréal," 183.

[57] See: ibid., "Ethnic Partition of the Work Force in 1840s Montréal," 195; 200-201.

[58] Lower Canada, *Journal of the Special Council of the Province of Lower Canada*, volume 5 continued, 16 June 1840, 156.

The Incorporation Amendment Act of 1845

Montreal's 1840 municipal franchise lasted a grand total of five years and three elections. If the municipal sphere "represented a chosen field of experimentation for liberal governance" – as Michèle Dagenais phrases it – then Montreal's experiment with the Durham suffrage seems to have failed in the eyes of Montreal's city council.[59] While Montreal voters may not have faced property qualifications at election time, council candidates certainly did. The £500 property requirement ("after payment of his just debts") meant that only affluent Montrealers ran for municipal office. The colossal £1,000 requirement for aldermen – who held six of the council's eighteen seats – only served to compound this concentration of wealth.[60] It comes as no surprise, then, that Montreal's first elected city councils consisted of the city's professional, business, and landholding elite.[61] None of these men shared in Durham's and Thomsons's aristocratic paternalism. Indeed, only a small minority (namely Montreal's third mayor, Joseph Bourret) ever defended the Durham suffrage for any reason.[62] These elite men, once in office, only needed the slightest of nudges to turn against the city's householding and ratepayment franchise. Montreal's first municipal elections, instead, gave them all a mighty shove.

In the British North American world of open elections, where everyone knew how everyone else voted, the potential for violence remained high. Fists and clubs had the power to turn contests as readily as stump speeches and the party press. For candidates, violence – by way

[59] Dagenais, "The Municipal Territory," 202.
[60] Again, see: Special Council of Lower Canada, 3 & 4 Vic., c. 36, sections 9-10.
[61] William Henry Atherton offers the composition of Montreal's first elected city council (of 1843): "Mayor, Joseph Bourret; aldermen, Joseph Masson, Benjamin Holmes, William Molson, Joseph Roy, Joseph Redpath, C.S. De Bleury; councillors, James Ferrier, Pierre Jodoin, Peter Dunn, William Lunn, William Watson, Olivier Frechette, Pierre Beaubien, P.A. Gagnon, François Trudeau, François Perrin, and John Mathewson." See: Atherton, 183.
[62] Bourret believed that "all persons paying taxes, (except for the commutation of statute labour) should be entitled to vote at Municipal Elections, without having any reference to the rent they pay." See: Province of Canada, *Appendix to the Fourth Volume of the Journals of the Legislative Assembly of the Province of Canada* (1844-1845), appendix S.S., 7 (8 February 1845). Bourret was Montreal's second mayor after its second incorporation (following Peter McGill) and its third mayor overall.

of hired muscle – helped to (literally) clear the way toward electoral victory. For the disenfranchised, violence offered an extralegal means to both make themselves heard and sway elections without having votes themselves. A group of "illiterate and unsophisticated men," according to one condescending Halifax newspaper, could prevent "hundreds of respectable electors from going near the polls."[63] Because of Montreal's particular ethnic, religious, and linguistic tensions, contests in the city tended to see greater violence than elsewhere. The deadly 1832 Montreal by-elections had only served to aggravate these passions.

In May of 1832, Montreal held provincial by-elections for both its East and West Wards. During the early evening of 21 May, stone-throwing amongst partisans had resulted in British soldiers positioning themselves at the corner of St. James and St. François-Xavier streets. Dr. William Robertson – Montreal's senior magistrate and member of its Anglophone elite – called upon the troops to open fire. The single volley killed three men (Casimir Chauvin, François Languedoc, and Pierre Billet) and wounded four more. According to James Jackson, the three men killed had no direct involvement in the election itself: they had simply been "in the wrong street at the wrong time."[64] Many French-speaking Lower Canadians, including Patriote leader Louis-Joseph Papineau, painted Robertson as a murderer who had abused his powers. Montreal's Patriotes soon heralded Chauvin, Languedoc, and Billet as martyrs to the Patriote cause. Anglophone elites, in response, tried to heap blame on the Patriotes for inciting the violence in the first place.[65] As both camps staked out their positions, their animosity towards

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[63] "The Provocation Game," Halifax *Acadian Recorder*, 19 February 1859, 3.
[64] James Jackson, *The Riot That Never Was: The military shooting of three Montrealers in 1832 and the official cover-up* (Montreal: Baraka Books, 2009), 330.
[65] See: Jackson, 104-123; 331-332. Also see: E.H. Bensley, "Robertson, William," *Dictionary of Canadian Biography*, volume VII, 750-751. For other discussions of the 1832 Montreal by-election, see: Bettina Bradbury, "Women at the Hustings: Gender, Citizenship and the Montreal By-Elections of 1832," in *Re-Thinking Canada: The Promise of Women's History*, eds. Mona Gleason and Adele Perry, sixth edition (Toronto: Oxford University Press, 2006), 73-94; France Galarneau, "L'élection partielle du quartier-ouest de Montréal en 1832 : analyse politico-sociale," *Revue d'histoire de l'Amérique française* 32.4 (March 1979): 565-584; Elinor Kyte Senior, *British*

each other intensified. These hostilities, amplified by such events, continued to play out at local elections over the years to come.[66]

Montreal's first act of incorporation, which came into effect in 1833, had done little to reel in this sectarian electoral violence. For the province's 1834 general election, the Patriote-controlled city council had assigned the city watch to keep the peace. So long as British regulars remained in their barracks, the deadly extremes of 1832 had fewer ways to repeat themselves. As Donald Fyson reveals, however, Patriote councilmen had also hoped to secure Montreal's polls for the city's Patriote candidates. To do so, "the council had quite illegally increased the number of watchmen by several hundred" and filled these positions with Patriote sympathizers. Montreal's Tory opposition responded by mustering a small private army of its own. Over the course of the election, the two groups clashed repeatedly and ferociously as they patrolled the city's streets.[67] Fernand Ouellet recounts how in Montreal's West Ward "[t]he election lasted fourteen days, and was marked with violence from beginning to end. On the fifteenth day, the chief returning officer, faced with a frighteningly riotous situation, declared [Patriotes Louis-Joseph] Papineau and [Robert] Nelson elected, though their majority was only forty votes."[68] Papineau himself had called the contest "la farce la plus glorieusement dégradante qu'eussent jamais joué [sic] les gentilshommes bretons dans un pays où ils en ont si souvent joué [sic] dans

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Regulars in Montreal: An Imperial Garrison, 1832-1854 (Montreal and Kingston: McGill-Queen's University Press, 1981), 11-23; Dan Horner, "Taking to the Streets: Crowds, Politics and Identity in Mid-Nineteenth-Century Montreal," PhD dissertation (York University, 2010), 221.

[66] Mary Anne Poutanen, *Beyond Brutal Passions: Prostitution in Early Nineteenth-Century Montreal* (Montreal and Kingston: McGill-Queen's University Press, 2015), 230.

[67] Donald Fyson, *Magistrates, Police, and People*, 173. Also see: ibid., "La gouvernance municipale avant la municipalité : Montréal, 1760-1840," in *La gouvernance montréalaise : de la ville frontière à la métropole*, eds. Léon Robichaud, Harold Bérubé, and Donald Fyson (Montreal: Éditions MultiMondes, 2014), 38.

[68] Fernand Ouellet, *Lower Canada, 1791-1840: Social Change and Nationalism*, trans. Patricia Claxton (Toronto: McClelland and Stewart, 1980), 234.

le genre tragico-burlesque."[69] The 1834 general election would be Lower Canada's last. By the end of 1837, the Patriotes had taken up arms against the imperial state. Colonial authorities had suspended the provincial legislature and martial law prevailed across the District of Montreal.[70] Open fighting continued in the region off and on through to the autumn of 1838, when British and Canadian troops suppressed the final two uprisings. Parliamentary rule would only resume in 1841, after the formal amalgamation of Canadas East and West into the united Province of Canada.

By the Union period, alcohol, axe-handles, and firearms had become well-engrained within the so-called "Montreal way of electioneering" (as Reform leader Robert Baldwin learned).[71] Brutal beatings, if not murders, were now almost expected. Montreal's British garrison found itself repeatedly called out to restore order, sometimes to deadly effect.[72] Although such violence had originated at the provincial level, it soon carried over to the newly reestablished municipal sphere. Indeed, Montreal's municipal elections fed off the raw emotions of its provincial contests. This was especially true after the province made Montreal its capital in October 1843. Problems began in earnest the following February when Benjamin Holmes resigned his Montreal seat in the provincial Assembly. The subsequent by-election, scheduled for 11 April, pitted bilingual Irish Reformer Lewis Drummond against William Molson, "a

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[69] Louis-Joseph Papineau, "Aux Libres et Indépendans [sic] Électeurs du Quartier Ouest de Montréal," *La Minerve*, 8 December 1834, 1. For the complete letter, see: ibid., 4 December 1834, 1-2; 8 December 1834, 1-2.
[70] Greer, *The Patriots and the People*, 332. Also see: Jean-Marie Fecteau, "'This Ultimate Resource': Martial Law and State Repression in Lower Canada, 1837-8," in *Canadian State Trials II: Rebellion and Invasion in the Canadas, 1837-1839*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press for the Osgoode Society, 2002), 215-234.
[71] Quoted in Michael S. Cross, "'The Laws Are Like Cobwebs': Popular Resistance to Authority in Mid-Nineteenth Century British North America," in *Law in a Colonial Society: The Nova Scotia Experience*, eds. Peter Waite, Sandra Oxner, and Thomas Barnes (Toronto: Carswell, 1984), 122.
[72] According to Elinor Kyte Senior, riot control "had become almost a normal military operation during Montreal elections" of the 1840s. See: Senior, *British Regulars in Montreal*, 72.

notorious Tory who needed an interpreter to speak to his French electors."[73] Drummond proved victorious, but not because of his policies. Drummond's backers had united French Canadian and Irish canal/dock workers against Molson, whom they depicted as anti-French and anti-Catholic. Between the end of March and mid-April, these forces (aided by "whisky and enthusiasm") waged an increasingly ferocious campaign against Molson's supporters and their properties.[74] The week of 11 April in particular saw electoral mobs swarming the city, taking polls by force, and attacking one another on sight. Blood ran through the streets, and one man died, as the two camps resorted to their pistols. When the smoke cleared on 17 April, Drummond's men had forced Molson's resignation.[75] Sore feelings on both sides would not dissipate so quickly.[76]

A general election followed the by-election in 1844. The legislature had dissolved in September; polls opened in late October. Montreal's chief returning officer, John Young, had requested "a large addition to the Police Force" to keep the peace. The city council did not have the funds to oblige, so British military authorities filled in.[77] Montrealers had not seen precautions like these since the Rebellions. Soldiers were positioned on McGill Street, the Champs de Mars, and Custom House Square. The latter boasted a field gun just in case. The Provincial Cavalry patrolled the streets. Round-the-clock armed guards hoped to prevent harassment at the polls. Two further detachments of troops – one from Chambly and one from

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[73] Jacques Monet, "La Crise Metcalfe and the Montreal Election, 1843-1844," *Canadian Historical Review* 44.1 (March 1963): 14.
[74] Ibid., 16. See also: J.I. Little, "Drummond, Lewis Thomas," *Dictionary of Canadian Biography*, volume XI, 281; Horner, "Taking to the Streets," 210-217; Senior, *British Regulars in Montreal*, 61-66.
[75] Senior, *British Regulars in Montreal*, 65. Also see: Monet, "La Crise Metcalfe," 17-19; ibid., *The Last Cannon Shot*, 169-178.
[76] For a more sterile account of these events, see: Sir Francis Hincks, *Reminiscences of his Public Life* (Montreal: William Drysdale, 1884), 123-131.
[77] Archives de la Ville de Montréal [hereafter AVM], VM1 Fonds Conseil de Ville de Montréal, S10 Procès-Verbaux, D24 – volume 15 (October 1844-December 1844), 9 October 1844, 18.

Saint-Jean-sur-Richelieu – arrived while the election was underway.[78] Despite these measures, Jacques Monet argues that the city's "usual preference for violence over votes" shaped the election.[79] Even those historians who cite the military's success in keeping order admit that disturbances plagued the contest.[80] The troops could not keep hired toughs, armed with "bowie knives and pistols," from entering the city.[81] These bullies included an army of canal workers from Lachine that numbered in the hundreds.[82] McGill Street and the Hay Market (now part of Victoria Square) saw the worst of the fighting. Partisans skirmished not only amongst themselves but with the soldiers as well. In an official protest following the election, the two defeated Reform candidates (Lewis Drummond and Pierre Beaubien) accused the troops of actively and violently suppressing Reform supporters. Although the polls had stayed open for only two days, "the city bore all the appearance of being in a state of siege."[83]

Just over a month after these events, Montreal readied itself for its third municipal election under the new city charter. Troops had patrolled the city in the meantime. An "uneasy quiet" had generally prevailed.[84] Apprehensions increased, however, as the 2 December election date approached. Three days before the polls opened, Alderman Benjamin Holmes (the same Benjamin Holmes who had resigned his provincial seat in February) gave notice "to enable the Corporation in the event of a riot and the destruction of Property, through the Agency of any mob, or riot, to assess the Citizens to such extent as will make good the loss sustained by Individual Citizens."[85] Holmes never got the chance to formally table his proposal. On 1 December, the day before the election, a pre-election brawl broke out at the Hay Market. It

[78] Senior, *British Regulars in Montreal*, 68; 70.
[79] Monet, *The Last Cannon Shot*, 192.
[80] Senior, *British Regulars in Montreal*, 70.
[81] See: ibid., 69. Also see: "Latest News," Montreal *Gazette*, 22 October 1844, 2.
[82] Little, "Drummond, Lewis Thomas," 281; Monet, *The Last Cannon Shot*, 192; Senior, 70.
[83] Senior, *British Regulars in Montreal*, 71.
[84] Ibid.
[85] AVM, VM1 S10 D24, volume 15 (October 1844-December 1844), 29 November 1844, 72-73.

took 300 soldiers and two field guns from the local garrison to suppress it. Without new regulations or harsher punishments, Ludger Duvernay at *La Minerve* had expected the earlier violence to repeat itself. "L'impunité nourrit l'impudence et le crime," he insisted, "et on devait s'attendre à voir se renouveler à nos élections municipales, les mêmes scènes qui ont déshonoré notre ville, il y a à peine un mois."[86]

Fighting resumed the next day, despite the military's presence. As before, hired "strangers" had entered the city to sway the proceedings. The Queens Ward – just to the west of the commercial centre – saw the worst of the clashes. A group of Irish Catholics had bunkered down within Patrick Brennan's public house. From there, they took potshots at the polls and defended themselves from their largely Anglo-Protestant opposition. John Johnson of Belfast was shot and killed when he and his compatriots attempted to storm the tavern. Once again, it took the local garrison to lift the siege. Nineteen defenders were arrested; Brennan's establishment was wrecked.[87] (Indeed, the city eventually awarded Brennan £125 in damages.)[88] Although "something like order was restored" in the Queens Ward, no one could describe the

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[86] "Élections municipales," *La Minerve*, 2 December 1844, 2.
[87] Senior, *British Regulars in Montreal*, 71-72.
[88] Brennan's case is a convoluted one. He first petitioned the city council on 20 December "to be compensated for the destruction of his property in the Queens Ward by a riotous assemblage, at the time of the Municipal election there, on the 2 Inst." He asked for £125. On 3 January 1845, the council's Police Committee (composed of Henry L. Routh, Daniel Gorrie, and John Glennon) reported that it had "no authority to dispose of the City funds in the manner described, and [was] unauthorized to enquire into, or determine upon the statements contained in Mr. Brennan's Petition." Frustrated, Brennan then turned to the provincial government. He petitioned the Legislative Assembly on 20 January "to be indemnified for the destruction of his property in consequence of the riots during the last municipal elections for the said city [of Montreal]." Nothing came of this petition either. Five years later, though, Brennan would receive some satisfaction. On 20 February 1849, the Police Committee (now composed of André Ouimet, William Smyth, and Joseph-Ubalde Beaudry) discussed the petition again. Having "heard Mr. Brennan, and [having] examined several witnesses produced by him," the committee members were now "of opinion that without any provocation given by him damage to the extent complained of was done to the premises and property of Mr. Brennan, at the period adverted to; and that such compensation as the Council may determine, shall be allowed Mr. Brennan for the loss suffered by him." The council voted Brennan the £125 on 11 April 1849. It said nothing about the five years he had to wait before restitution. For the first petition to the city council, see: AVM, VM1 S10 D25, volume 16 (9 December 1844-29 January 1845), 20 December 1844, 21-22. For the response, see: ibid., 21 January 1845, 90-91. For the petition to the Legislative Assembly, see: Province of Canada, *Journals of the Legislative Assembly of the Province of Canada* (1844-5), volume 4, 20 January 1845, 176. For the second petition to the city council, see: AVM, VM1 S10 D50, volume 41 (2 March 1848-26 April 1849), 11 April 1849, 77-78.

election itself as orderly. Armed men both on foot and horseback had "swept the polls from one side to the other."[89] Louis-Hippolyte LaFontaine's assessment appeared correct: Montreal's 1844 municipal contest "[was] carried by no other means than the bludgeon."[90]

Montreal's city council found easy targets to blame: the poor, the brutish, and the ignorant. If one believed Durham and Thomson, municipal electoral participation taught the untutored how to rationally participate in the public sphere. Instead, the city's councillors saw the opposite. The Durham suffrage had only offered a broad education in the continued effectiveness of urban violence. Montreal's so-called "school of practical citizenship" needed far more rigorous entry standards. Of course, individual councillors would never acknowledge their own complicity in what had taken place. They could not. Dan Horner has identified a bourgeois discourse within mid-nineteenth-century Montreal that idealized a "restrained masculinity" and conceived of "public violence as the antithesis of respectable decorum."[91] Montreal's monied elites, according to Horner, adhered to this discourse as a way to legitimize their authority. In doing so, they marginalized the claims of those who embodied alternatives to liberal governance and unbridled economic growth.[92] Any admission of guilt thus meant a disavowal of respectability. For Montreal's city councillors, the blame had to fall on those beneath them.

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[89] During the Assembly debates on the Incorporation Amendment Act, Lewis Drummond called "on the House to pass the bill if they did not wish to bear the responsibility of more bloodshed. He alluded to the riots of December [1844]; he said there was no repelling force by force. It was well known that the…elections were carried by a body of armed cavalry…At one of the polls a body of armed men appeared, and the electors on the other side, not wishing to risk their lives, withdrew…He appealed to the Christian feelings of members to prevent a repetition of the scenes of bloodshed which then took place, by amending the law." See: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IV, part I (1844-1845), 27 March 1845, 2498.

[90] Ibid., 2496.

[91] Horner has made this argument in several places. For the quotations used here, see: Dan Horner, "Solemn Processions and Terrifying Violence: Spectacle, Authority, and Citizenship during the Lachine Canal Strike of 1843," *Urban History Review* 38.2 (Spring 2010): 41. Also see: ibid, "Taking to the Streets," 16; ibid., "'Shame upon you as men!': Contesting Authority in the Aftermath of Montreal's Gavazzi Riot," *Histoire Sociale/Social History* 44.87 (May 2011): 38; 40; 45.

[92] Ibid.

Mere days following the 1844 municipal election, the city council petitioned the legislature to amend Montreal's act of incorporation. The posh Tory, Clément Sabrevois de Bleury, had appropriately championed the request.[93] In the investigation that followed – led by de Bleury himself – a number of Montreal councillors revealed their thoughts on the city's franchise. Aside from Joseph Bourret, each one recommended a higher rental qualification to reduce the number of voters.[94] Councillor François Perrin, for instance, suggested £6 local currency.[95] Such a franchise would have still offered most working families a vote. Councillors François Trudeau, William Lunn, Benjamin Holmes, and Mayor William Ferrier instead preferred a £10 rental qualification.[96] This franchise would have disqualified most Montreal labourers, alongside anyone else without steady work. Mayor Ferrier offered his reasoning: that these inhabitants contributed nothing of worth to the city.[97] Their participation in civic elections had actually hindered the stability of the corporation.

In the end, de Bleury split the difference and recommended an £8 rental qualification. He felt safe that it did not "[set] the labourer over the man of wealth and intelligence."[98] The Legislative Assembly eventually accepted the proposal, albeit in a slightly modified form. Montreal's Incorporation Amendment Act of 1845 enfranchised those "possessed…of a dwelling-house…held by them respectively in freehold, or for a term of years, or for a term not

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[93] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IV, part I (1844-1845), 17 December 1844, 387; 20 December 1844, 535. Also see: In Collaboration, "Sabrevois de Bleury, Clément-Charles," *Dictionary of Canadian Biography*, volume IX, 696-697.
[94] Again, see: Province of Canada, *Appendix to the Fourth Volume of the Journals of the Legislative Assembly of the Province of Canada*, appendix S.S., 7 (8 February 1845).
[95] Ibid., 14 (26 February 1845).
[96] Ibid., 5 (20 January 1845); 8 (10 February 1845); 11 (24 February 1845).
[97] On the one hand, Ferrier asserted that he "would have every householder contributing to the revenue of the Ward, entitled to vote at the election of a Representative for the Ward." On the other hand, he wanted to disenfranchise anyone who paid less than £10 in rent whether they paid their taxes or not. It would therefore seem that Ferrier viewed the smaller contributions of poorer Montrealers as unworthy of his (and the city's) recognition. See: ibid., 5 (20 January 1845).
[98] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IV, part I (1844-1845), 27 March 1845, 2498. Of course, de Bleury fails to explain how wealth and intelligence necessarily go together, or how labourers have neither.

less than one year, the annual value whereof, if held in freehold, or the rent paid therefor [sic], if otherwise held, shall not be less than eight pounds, current money of the said Province…"[99] In other words, the Assembly had imposed an £8 qualification on both leaseholders *and* freeholders. Leaseholders now had to pay a minimum of £8 in annual rent before they could vote; freeholders now had to own property worth £8 annually before they did the same. This latter restriction would have disenfranchised many of Montreal's poorest property owners (whose assessments hovered around £6 annually). French Canadian Montrealers would have thus taken the hardest hit. All voters, moreover, still had to "have paid the amount of all rates and assessment with the said City of Montreal, that may have been due and payable"; and, they still required "an outer door, by which separate communication to the street may be afforded."[100] The council had even tabled safeguards to prevent disenfranchised Montrealers from deceiving or pushing their way to the hustings. A voter's name now had to be on a voters' list, and a voter now had to produce a voter's certificate.[101] Election officials even had the power to detain anyone on sight and call upon any and all British subjects to carry out the arrest.[102] Electoral

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[99] Ibid., "An Act to amend and consolidate the Provisions of the Ordinance to Incorporate the City and Town of Montreal, and of a certain Ordinance amending the Ordinance, and to vest certain other powers in the Corporation created by the said first mentioned Ordinance" (8 Vic., c. 59), section 10.

[100] Ibid.

[101] Ibid., sections 11 and 12. The Incorporation Ordinance of 1840 had made provisions for these two sections, insofar as it granted the city council power to pass by-laws to their effect. It appears that the council preferred to give them greater weight by ensconcing them directly within the city charter. See: Special Council of Lower Canada, 3 & 4 Vic., c. 36, sections 19 and 20.

[102] Section 25 of the amendment notes: "That every Alderman, Councillor, or other person holding any such election, shall have power and authority to maintain and enforce order and keep the peace at the election held by him, and all officers and non-commissioned officers of militia, constables, and other peace-officers, and also all others Her Majesty's subjects, within the limits of the Ward of the City, for such election is held, or who shall be present thereat, are hereby required to be aiding and assisting him therein; and if any person or persons shall commit violence, or be engaged in any affray or riot, or be armed with clubs, staves, or other offensive weapons, or wear or carry any flag, ribbon, or cockade, or other badge or mark whatsoever, to distinguish him or them as supporting any particular candidate or candidates, or in any wise disturb or threaten to disturb the peace or order at such election, or wilfully prevent or endeavour to prevent any elector or person from coming to vote thereat, or in any wise disrupt the Poll, or the business thereof, the said Alderman, Councillor, or other person holding any such election, shall have power and authority, on view, or on the oath of one credible witness…to arrest, or confine, or commit to any officer of militia, or any peace officer…Provided the time of such arrest, confinement or imprisonment shall not exceed twenty-four hours…" See: Province of Canada, 8 Vic., c. 59, section 25.

violence had to diminish if disreputable men had no reason to approach the polls (or so the logic went). The lesson in Montreal had thus changed: only those capable of orderly contributions to the city deserved municipal citizenship. Montreal's wealthier stakeholders apparently did so. Its poorer residents did not.

Montreal's city council had disenfranchised poorer Montrealers for their apparent disorder at civic elections. A secondary motivation may have lingered in the background, though: one that the corporation did not want investigated too heavily. If the council had condemned poorer Montrealers for the use of their electoral bodies, it also denounced them for the use of their electoral voices. Of course, individual councillors had no problem with the votes cast for themselves. Their mood soured, however, when it came to Montreal's other elected position: that of city assessor. Each of Montreal's six wards had two assessors at this time. The position lasted only a year, anyone could hold it, but no one had to do so consecutively. These rules worked out well, because no one really wanted the job. Under the earliest bylaws, Montreal's assessors had only one function: to evaluate all the property in the city. To do so, they nominally had to visit all properties in their jurisdiction and ascribe a value to each. These estimates in turn formed the basis of the annual property tax. The city relied upon this tax for most of its annual revenue. Despite their importance, assessors received no training, no remuneration, and no thanks. As Gregory Levine has described it: "The duties were arduous and the co-operation of the citizens was limited." [103] No one outside the treasurer's office truly liked the taxman. Unsolicited nominations were common, as well as acclamations on election day.

[103] Gregory James Levine, "Criticizing the Assessment: Views of the Property Evaluation Process in Montreal 1870-1920 and Their Implications for Historical Geography," *Canadian Geographer* 27.3 (1984): 279.

Although anyone who refused the position faced a £50 fine,[104] many tried to weasel their way out nonetheless.[105]

Montrealers did not want to pay high taxes. Jacques L'Heureux has argued that French Canadians especially resisted municipal institutions as "machines à taxer."[106] Most Montreal voters had thus every incentive to nominate those who would lowball their assessments. The lower the assessment, the lower the taxes. Montreal's city council, however, did not see things the same way. It needed the highest tax revenue possible to go about its business. Business, at this time, meant expanding the city to increase property values.[107] The corporation had consequently set its sights on huge swathes of privately-owned property both inside and outside the city limits. It just so happened – in the uncanniest of coincidences – that many of these property owners also sat on Montreal's city council. Olivier Berthelet provides an early example. Best known as a philanthropist, Berthelet had purchased huge stretches of property

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[104] See: Special Council of Lower Canada, 3 & 4 Vic., c. 36, section 29.

[105] The act of incorporation offered some exemptions for Montrealers to exploit. The fine did not apply to persons "disabled by lunacy or imbecility of mind" or persons "above the age of sixty-five years, or who already have served such office, or paid the fine for not accepting such office, within five years next preceding the day on which he shall be so re-elected." Also, full pay officers and certain public servants could refuse the position without penalty. As for elected assessors who wished to escape their positions, city council records reveal the reasons they offered. Some, like Hubert Paré in 1843, sought exemptions because they had served in previous years. Others hoped to convince the council of their incapacity. William Ludlaw petitioned in 1848 for his release "from serving as an assessor for the West Ward on account of his age and of his being deaf." Charles Wilson (who would become Montreal's first popularly elected mayor in 1851) went so far as to get a doctor's note from the Board of Health to prove his incapacity due to "ill-health." Although Wilson's biographer calls him "a sturdy little man," he was apparently not sturdy enough to act as assessor in 1847. If all else failed, one could simply do what David Brown did in 1850 and skip town. For the legislation, see: ibid. For Paré, see: AVM, VM1 S10 D13, volume 5 (December 1842-March 1843), 13 March 1843, 113. For Ludlaw, see: ibid., VM1 S10 D45, volume 36 (13 March 1848-18 April 1848), 29 March 1848, 46. For Wilson, see: ibid., VM1 S10 D40, volume 31 (19 April 1847-18 May 1847), 18 May 1847, 91; Philippe Sylvain, "Wilson, Charles," *Dictionary of Canadian Biography*, volume X, 715. For Brown, see: ibid., VM1 S10 D52, volume 43 (7 November 1849-1 May 1850), 19 April 1850, 125.

[106] Jacques L'Heureux, "Les premiers institutions municipales au Québec ou « machines à taxer »," *Cahiers du Droit* 20 (1979): 330-331. Also see: Collin and Dagenais, "Évolution des enjeux politiques," 194.

[107] See: Sherry Olson, "City Streets as Environmental Grid: The Challenge of Private Uses and Municipal Stewardship," in *Metropolitan Natures: Environmental Histories of Montreal*, eds. Stéphane Castonguay and Michèle Dagenais (Pittsburgh: University of Pittsburgh Press, 2011), 150. Also see: Michèle Dagenais, "At the Source of a New Urbanity: Water Networks and Power Relations in the Second Half of the Nineteenth Century," in ibid., 103.

around Montreal on speculation during the 1830s.[108] Charles Poulett Thomson appointed him to the city council in 1840. In August of 1841, as a member of the council's Road Committee, Berthelet recommended that it "be authorized and instructed to negotiate for the purchase of the property necessary to prolong McGill to Youville Street, and Wellington to McGill Street."[109] By September, Berthelet and the committee had entered into negotiations with the owner: one Olivier Berthelet. Berthelet had originally demanded £3,000, but he eventually took £2,500.[110] The Road Committee, it seems, only had £2,500 available for the year anyway.[111] Berthelet, in essence, had spent his committee's entire annual budget on a land deal with himself.

Berthelet had not done anything new here, even for 1842. Municipal representatives across the nineteenth-century Western world routinely mixed personal business with municipal affairs.[112] For many, it represented the main reason to hold municipal office. This proved especially true in Montreal, where a concentration of wealth and a conjunction of interests (to borrow Ben Forster's phrase) ruled over the city like nowhere else in British North America.[113] Montreal's city councillors, like its assessors, did not receive a salary. They instead found their compensation through municipal contracts, purchases, and land transactions. It was particularly easy to plunder Montreal's treasury before June 1845: council committees did not have to

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[108] See: Léon Pouliot, "Berthelet, Antoine-Olivier," *Dictionary of Canadian Biography*, volume X, 52. Brian Young explicitly refers to Berthelet as a Catholic philanthropist. See: Brian Young, *In Its Corporate Capacity: The Seminary of Montreal as a Business Institution, 1816-1876* (Montreal and Kingston: McGill-Queen's University Press, 1986), 99.

[109] AVM, VM1 S10 D11, volume 2 (March-December 1841), 21 December 1841, 142.

[110] Although Montreal's accounts state the property belonged to both "F. Pillette and O. Berthelet," council minutes state that the committee only contacted Berthelet. For the minutes, see: ibid., 4 September 1841, 152. For a copy of the account, see: Province of Canada, *Appendix to the Fourth Volume of the Journals of the Legislative Assembly*, appendix S.S., table 8, 33.

[111] See: AVM, VM1 S10 D14, volume 6 (April-June 1843), 1 May 1843, 53.

[112] See: Alan DiGaetano, "Creating the Public Domain: Nineteenth-Century Local State Formation in Britain and the United States," *Urban Affairs Review* 41.4 (March 2006): 432.

[113] Ben Forster, *A Conjunction of Interests: Business, Politics, and Tariffs 1825-1879* (Toronto: University of Toronto Press, 1986).

account for their expenses until then.[114] Even after, city councillors found a myriad of ways to line their pockets through their positions. Gerald Tulchinksy reveals that, during the 1850s, investors to rival railways packed the city council and competed over which one Montreal would support financially.[115] From a twenty-first century perspective, this system reeks of corruption. It is perhaps unfair, however, to demonize its participants completely.[116] Although Benjamin T. Jones contends that Victorian liberalism marginalized notions of the common good, and replaced them with individual self-interest, Montreal's municipal officeholders shared a more fluid outlook.[117] This "aristocratie financière" (as Dany Fougères calls them) claimed that its efforts benefited the city as much as it benefited themselves.[118] Everyone profited when a transaction satisfied both the common good *and* the individual good.[119] Montreal's city treasurer soon discovered the costliness of this philosophy. Land deals like that of Berthelet rapidly inflated the municipal debt. Despite the corporation's youth, Montreal needed money badly. In late 1842, the council pursued an emergency three-year loan of £15,000 as "the sole means of continuing the public improvements of the City." With the loan secured by January 1843, Councillors

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[114] AVM, VM1 S10 D28, volume 19 (16 May 1845-1 July 1845), 11 June 1845, 47-52.
[115] Tulchinksy, *The River Barons*, 177-184. Of course, Montreal was not alone in this. As Paul Romney argues in the context of nineteenth-century Toronto: "At a time when municipal and provincial legislators were unsalaried…the railway interest has something to offer to almost everyone who counted…" See: Paul Romney, "'The Ten Thousand Pound Job': Political Corruption, Equitable Jurisdiction, and the Public Interest in Upper Canada, 1852-6," in *Essays in the History Canadian Law, Volume II*, ed. David H. Flaherty (Toronto: University of Toronto Press for the Osgoode Society, 1983), 189.
[116] This is probably truer of Berthelet than most. During his lifetime, Berthelet had apparently donated more than $400,000 to Montreal's Catholic religious and educational institutions. He had, moreover, given away outright large portions of the land he bought on speculation as charitable gifts. His biographer has gone so far as to call him Bishop Ignace Bourget's minister of finance. See: Pouliot, "Berthelet, Antoine-Olivier," 52-53.
[117] Jones argues more fully that "[t]he liberalism that grew out of the philosophy of Immanuel Kant and John Locke is intrinsically tied to individual rights. In this paradigm of thought, freedom from interference is paramount, and even the greater good of society is not imperative enough to violate the individuals' right to peacefully and lawfully conduct their affairs….Civic republicanism turns this theory on its head and argues that the freedom from domination is paramount and that the common good of society needs to be advanced even at the expense of individual rights." See: Benjamin T. Jones, *Republicanism and Responsible Government: The Shaping of Democracy in Australia and Canada* (Montreal and Kingston: McGill-Queen's University Press, 2014), 219.
[118] Dany Fougères, *L'approvisionnement en eau à Montréal : Du privé au public 1796-1865* (Sillery, QC: Septentrion, 2004), 357.
[119] Tulchinsky, *The River Barons*, 181-182.

shifted their attention to the city assessment to refill the corporation's coffers and to repay what they had just borrowed.[120]

By 1844, city hall had pinpointed problems with both the assessors and the assessed. The assessors, on the one hand, had done exactly what the electorate had wanted: undervalue property across the city. While this may have delighted many Montrealers, it displeased Alderman William Lunn to no end. Within council, he publicly chastised the elected assessors and their ignorance "as to the value and extent of their duties – more especially in reference to vacant lots…which have been hitherto erroneously and illegally assessed below their value…"[121] Montreal's revenues would remain unpredictable because of "mistakes of Assessors and their Clerks."[122] The assessed, on the other hand, deserved just as much blame: they had elected these negligent assessors in the first place. Montreal's council, as it tended to do, singled out the "labouring and poorer classes of Society" in particular. Not only had they artificially reduced city assessments; their hesitancy to pay the reduced amounts had forced the city to hire extra tax collectors.[123] Montreal's poorer residents, through their decisions, had apparently cost the corporation untold sums of money. The incorporation amendment of 1845 had thus offered the council a solution. By disenfranchising poorer Montrealers, councillors looked to weed out those who stunted the city's economic growth. Only a substantial landed stake in the city offered proof that one had its best interests at heart. These propertied individuals, more than anybody

[120] More fully, the council's Finance Committee had reported on 20 December 1842 that "the perspicacious and satisfactory manner in which said statements are drawn out, leaves no doubt whatever on the minds of your Committee, that the sole means of continuing the public improvements of the City, is the obtaining, without delay, at least £15,000- as a loan to the Corporation upon the issue of its Bonds payable in three years." See: AVM, VM1 S10 D13, volume 5 (December 1842-March 1843), 20; 63-64.
[121] Ibid., VM1 S10 D19, volume 10 (December 1843-February 1844), 16 January 1844, 107-108.
[122] Province of Canada, *Appendix to the Fourth Volume of the Journals of the Legislative Assembly*, appendix S.S., table 5, 30.
[123] AVM, VM1 S10 D23, volume 14 (August-September 1844), 23 August 1844, 29.

else, deserved to elect Montreal's assessors.[124] It did not matter that Montreal's city council had broken the bank: the city's poorer residents would pay for it with their municipal citizenship. Durham's educational project had begun to unravel in the hands of Montreal's local legislators.

The Incorporation Amendment Act of 1851

Montreal's municipal franchise of 1845 had contained a number of goals: to curb violence at municipal elections; to restrict electoral participation to the corporation's more reputable stakeholders; and, to promote the city's economic growth. Within a year, it had failed (again) in all respects. The city's 1846 municipal election – the first under the new civic franchise – was by far the most outlandish yet. A special legislative committee that followed revealed all the sordid details. As before, "several Wards of this City" had been "carried…by open and undisguised violence."[125] Lachine's Irish canal workers had once more marched into the city. In Jacques Monet's colourful words: "There were shots, sticks, stones, and blood staining the streets."[126] The Assembly's subsequent investigation focused upon two wards in particular: the St. James Ward (to the east of the commercial centre) and the St. Lawrence Ward (to the north). The events of both had defined the entire contest.

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[124] The 1845 amendment included a further stipulation to ensure higher assessments from Montreal's assessors. Section 19 of the act empowered the city council to appoint "a fit and proper person to be a Third Assessor for each of the said Wards." Theoretically, this third assessor would always have the council's economic interests at heart. See: Province of Canada, 8 Vic., c. 59, section 19.

[125] Ibid., *Appendix to the Fifth Volume of the Journals of the Legislative Assembly of the Province of Canada*, appendix E.E.E., 1.

[126] Monet, *The Last Cannon Shot*, 230.

The St. James Ward election most resembled the contests of 1844. Thirty minutes after the polls opened on 2 March, "a great number of persons came up, commenced creating a disturbance, and appeared all at once armed with axe-handles." After "they struck several, and wounded some severely," they surrounded the hustings to prevent the supporters of Jacques Grenier and Joseph Hogue from casting votes.[127] As J.C.A. Poitras (Hogue's agent) described it, "it was sufficient for one to have a Canadian or an Irish face to be pushed back and turned out of the poll."[128] English party candidates Daniel Gorrie and William Connolly had come for a fight, especially against the better known Grenier.[129] The army's arrival broke up the crowd. Some were arrested, and "between 60 and 70 axe-handles and bludgeons and other weapons" were confiscated.[130] Most, however, managed to scatter into the surrounding streets. From there, they blocked approaches to the polls. When the army pulled back in the early afternoon, the crowd reconvened (many of whom were drunk by this time).[131] For twenty minutes, Grenier's and Hogue's supporters – now "also armed with sticks" – controlled the hustings.[132] Pushing and shouting (which police superintendent William Ermatinger accepted as "usual upon all elections") again gave way to armed violence. Ermatinger himself "was received with a shower

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[127] Ibid., 4-5.
[128] Ibid., 6.
[129] See: Tulchinsky, *The River Barons*, 15.
[130] These figures come from the testimony of Montreal's police superintendent, William Ermatinger (a post he held until 1855). Ermatinger felt it particularly noteworthy that these "other weapons" included "two or three life-preservers – alluding to an instrument loaded at each end with a couple of ounces of lead and consisting of a whale-bone tied together with twine." The sheer number of weapons reveals the size of the crowd (especially considering the army and police only confiscated a fraction of them). See: Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix E.E.E., 5. For more on Ermatinger on election days, see: W. Brian Stewart, *The Ermatingers: A 19th-Century Ojibwa-Canadian Family* (Vancouver: UBC Press, 2007), 109-110. Also see: Elinor Senior, "Ermatinger, Frederick William," *Dictionary of Canadian Biography*, volume IX, 242-243.
[131] Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix E.E.E., 6.
[132] Ibid.

of stones." Once the soldiers returned, "few…voters could get to the poll."[133] Gorrie and Connolly took the contest handily.[134]

Pervasive violence had beleaguered the St. James Ward election. Even so, the contest appeared downright orderly when compared to that of the St. Lawrence Ward. Sitting mayor James Ferrier and his running-mate John Kelly faced stiff competition from Alfred Larocque and Louis Comte. Ferrier had sat on Montreal's city council since his appointment there in 1841. While all councillors had to be reasonably wealthy, he was far and away the most well-off. Gerald Tulchinsky cites that "[w]ith Joseph Masson and Harrison Stephens he [Ferrier] was considered among the wealthiest Montrealers of the mid 19th century."[135] Ferrier's principal opponent, Alfred Larocque, was an affluent man in his own right. A lawyer by training, he sat as an alderman on the city council from 1843 to 1850. Kelly and Comte, who owned competing building firms, served to round out their respective tickets.[136] Things remained peaceful for the first hour and a half, despite a large crowd having formed around the hustings. Shots rang out at ten-thirty to signal the attack. "[T]wo hundred or more men armed with axe-handles" rushed the poll from nearby yards and buildings.[137] Voters scattered, many of them robbed of their voters' certificates. These individuals were essentially disenfranchised without them.

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[133] Ibid., 5. The position of police superintendent was by no means a safe one in mid-nineteenth-century Montreal. Aside from this instance, Ermatinger suffered two other stonings while on duty. In 1849, he (alongside Captain Walter Jones) took the brunt of the projectiles aimed at Lord Elgin during the Rebellions Losses violence. Four years later, in 1853, Ermatinger took another pelting when he tried to intervene in the Gavazzi Riots. See: Senior, *British Regulars in Montreal*, 94; 115. Also see: Stewart, 111-118.

[134] Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix A.A., 10.

[135] Gerald J.J. Tulchinsky, "Ferrier, James," *Dictionary of Canadian Biography*, volume XI, 315.

[136] Ibid., *The River Barons*, 15; 151-152. Also see: Sherry Olson and Patricia Thornton, "The Challenge of the Irish Catholic Community in Nineteenth-Century Montreal," *Histoire Sociale/Social History* 35.70 (November 2002): 337.

[137] J.H. Dorwin offered these figures in particular. See: Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix E.E.E., 1. Other witnesses were not as precise. Nelson Davis, for instance, merely testified that "a great many persons armed with axe-handles and bludgeons…appeared." See: ibid., 2.

Most astonishing of all, the mayor himself, William Ferrier, had apparently orchestrated this violence. Onlookers had testified that Ferrier snuck away from the poll when the axe-handle men arrived and mounted a waiting horse. From that position, he had apparently marshaled his supporters about like some battlefield general. The most direct of these accusations came from J.H. Dorwin. Although he could not "say that [Ferrier] commanded…the rioters, but it was generally observed as if [they]…were under his control."[138] Nelson Davis offered similar testimony with regard to Ferrier. He had also seen "a person, who I know to be Mr. Ferrier's coachman, mounted on a grey horse belonging to Mr. Ferrier; he was leading on the rioters, sometimes armed with an axe-handle, and at others with a heavy whip." Besides Ferrier's coachman, Davis had "observed a Mr. Lewis armed with an axe-handle, who is in the employ of Messrs. Bryson and Ferrier, leading the rioters, and exclaiming, 'keep them from the poll.'"[139] Ferrier had apparently tried to keep his hands clean through his paid subordinates. The chaos that surrounded him, however, had ensured his involvement. A Mr. Boston described how he

> heard another person who stated that he was a supporter of Larocque and Comte, complain that his certificate of qualification had been taken out of the City Council Office without his consent; thereupon Mr. Ferrier…came up to him and said, 'I'll take you up to the poll, and tell them you are qualified, and then you will have nothing to complain of.' Instead of taking him up to the poll, Mr. Ferrier however led him to the crowd, left him there, and turned back to the place he came from…; the man he left near the crowd was driven back, and did not succeed in reaching the poll.[140]

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[138] Besides Nelson Davis, William Smith and one Mr. Boston made similar claims. For Dorwin's testimony, see: ibid., 1. For Davis, Smith, and Boston, see: ibid., 2; 4. Ferrier's notorious actions of 2 March 1846 (and his subsequent forced retreat from municipal politics) did not make it into his *Dictionary of Canadian Biography* entry. He is instead portrayed as a man "with the strictest integrity,…a well-balanced judgment,…deep convictions, [and] firm Christian principles." See: Tulchinsky, "Ferrier, James," 315-316.

[139] Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix E.E.E., 2.

[140] Ibid., 4. This Mr. Boston was probably John Boston, lawyer and future sheriff of Montreal. See: AVM, VM1 S10 D56, volume 47 (30 December 1851-10 April 1852), 10 April 1852, 122. Also see: Carman Miller, "Boston, John," *Dictionary of Canadian Biography*, volume IX, 61-62.

Through such tactics, Ferrier had secured the hustings for himself and Kelly. The two quickly took the lead in polling.

Larocque and Comte had no shortage of muscle of their own, though. J.H. Dorwin estimated that a full two-thirds of the ward backed the French Canadians.[141] Once these supporters regrouped – and armed themselves – the poll could have easily changed hands. Understanding this, Ferrier had already taken precautions. Ferrier, as sitting mayor, had authority to call upon the local garrison in times of riot. One John Collins testified that "[t]he polling went on briskly until about ten o'clock; at that time Mr. Ferrier sent Robert Cook to Town Major McDonald [sic] for the troops. There was no appearance of disturbance then, beyond a little loud talk."[142] The 52nd Regiment arrived on Ferrier's command soon after the axe-handle men appeared. Town Major Colin Macdonald could not explain why Ferrier had signed the requisition order thirty minutes *before* the violence ever started.[143]

With the troops on hand, the situation took a different tone. Observers testified that "Mr. Ferrier himself was generally placed between the troops and the rioters."[144] From there, he "took command of the Troops" alongside Major Mark Evans of the Royal Artillery.[145] Evans had received "orders from the Town Major to place myself under the Mayor."[146] For the rest of the day, the garrison acted as Ferrier's elite guard. Soldiers took aim at any group that approached.

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[141] Although one must take it with a grain of salt, it is very possible that Larocque and Comte did have the majority of the ward on their side. In her work on 1840s Montreal, Sherry Olson has compiled district by district statistics on the city's social attributes. According to her figures – which she derives from the 1842 Lower Canadian census – French Canadians made up 55% of the ward's households. If one combines French Canadians and Irish Catholics, that number rises to 75%. Assuming that the election turned along ethno-religious lines – as the St. James Ward contest seems to indicate – then Larocque and Comte very well may have had two-thirds support. See: Olson, "Ethnic Partition of the Workforce in 1840s Montréal," table 9, 202.

[142] Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix E.E.E., 2.

[143] See: ibid., 3.

[144] While J.H. Dorwin gave this testimony in particular, William Smith corroborated it in his account of the events. See: ibid., 1; 3.

[145] Ibid., 2.

[146] Ibid., 6.

Only Ferrier's coachman, who rode between the crowd and the troops, could warn the soldiers off.[147] Needless to say, none of Larocque's or Comte's supporters ventured anywhere near Ferrier. The polls themselves took on a new danger as well. Nelson Davis recalled that

> [a]fter the arrival of the Troops there were but a few votes recorded in favor of Larocque and Comte; and one of the few that came forward to vote after this time, an old Canadian, was beaten by the mob directly as he turned from the booth. The troops, although but a short distance from where this man was beaten, did not interfere; in fact the troops did not interfere during any part of the day; they were separated into three divisions on their arrival, and these divisions were from time to time marched from one place to another, apparently according to the suggestions given by Mr. Ferrier, who accompanied the Officer in command, and kept alongside of him whenever he moved a division under his control.[148]

Under these conditions, Ferrier and Kelly could not help but take the contest.[149] Although the Legislative Assembly eventually condemned the result, Ferrier held his council seat for the rest of the year (despite fleeing to the Middle East in the meantime).[150] For his dedication to the

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[147] See: ibid., 4.
[148] Ibid., 2.
[149] "Les Élections Municipales," *La Minerve*, 5 March 1846, 2. Also see: Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix A.A., 10.
[150] Ferrier had not only sat on the city council throughout 1846, he had once again run for the mayoralty. The following offers a brief account of what Jacques Monet calls "[l]'affaire des deux maires." On 9 March 1846, Montreal's city council convened after the election to select a new mayor from amongst its members. William Lunn proposed the sitting mayor, Ferrier, and Joseph Bourret proposed John Easton Mills, who had recently lost his seat in the Legislative Assembly. The vote split, each man receiving ten votes each. The problem was that Ferrier – still the sitting mayor – had voted against Mills's nomination. The amended act of incorporation stipulated that "such Mayor or Chairman shall not in any case, while so presiding, have a vote as a member of the Council, nor unless the votes be as aforesaid equally divided." Ferrier thus did not have the authority to cast a vote. The council adjourned before Mills could call the point of order. The next council meeting took place on 11 March. By then Mills had taken the oath of office. Ferrier replied "that he could neither recognize the pretension of Mr. Mills to the Mayoralty, nor acquiesce in his request to be put into the Chair." Mills's supporters left the council chamber in protest and the remaining councillors elected Ferrier as mayor. On 25 April, Mills's supporters called for a special meeting of the council, knowing that Ferrier was unavailable and that they would have a majority. Mills took the chair as mayor, and this time Ferrier's supporters marched out in protest. It eventually took the Court of Queen's Bench to resolve the situation. On 16 December, the council received word that Ferrier did not follow proper procedure in selecting a new mayor. Mills should have held the position, and Ferrier owed him damages. Ferrier would not sit on Montreal's city council again. For Monet, see: Monet, *The Last Cannon Shot*, 230. For the events within the city council, see: AVM, VM1 S10 D33, volume 24 (9 March 1846-6 July 1846), 38-39; ibid., VM1 S10 D36, volume 27 (26 November 1846-11 January 1847), 16-19 and 41-44; Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix A.A., 10-15. For the legislation governing the powers of Montreal's mayor, see: Province of Canada, 8 Vic., c. 59, section 44.

English party cause, the province's Tory government appointed Ferrier to the Legislative Council in 1847.[151] Kelly, on the other hand, would not be so lucky.

Montreal's municipal franchise of 1845 had no defence against the outrages of 1846. The newly disenfranchised still had their bodies to affect electoral outcomes. Aside from an appeal to the army, the nascent corporation had little means to prevent their physical participation. When British regulars took positions at the polls, elections generally ground to a halt. Free electoral participation did not come easily under threat of bayonet. This proved equally true for both the enfranchised and the disenfranchised. The tendency of some Montrealers to scuffle with the troops made for especially volatile situations.[152] Montreal's new franchise, moreover, had equated aggression and ignorance with privation and poverty. It offered no recourse when wealthier Montrealers – in other words, the enfranchised themselves – resorted to electoral violence. James Ferrier, as one of the city's richest men, provides the most extreme example. His wealth and position had not only allowed him to pursue violence without consequence; they had also allowed him to command it. If bourgeois Montrealers found their manly ideal in a restrained masculinity, then Ferrier certainly ignored it here. His role in the St. Lawrence Ward ran against everything Montreal's new franchise represented.

Ferrier, however, did not stand alone. Countless Montreal voters had taken to the polls in 1846 with both their certificates *and* their fists at the ready. J.C.A. Poitras and Joseph Grenier described the same emblematic scene from the St. James Ward. After the violence had begun, "an elector of Gorrie and Connolly's party" came forward to vote. In one hand, he held his

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[151] Tulchinsky, "Ferrier, James," 316. Ferrier sat on the Legislative Councils of Canada and Quebec for the next 41 years. He also sat as a Canadian senator from 1867 until his death in 1888.

[152] Recall the elections of 1844, for instance. Moreover, during the 1846 St. James Ward election, candidate Joseph Grenier had requested that police superintendent William Ermatinger "cause an opening or avenue to be made by the Troops for the purpose of ensuring a free ingress and egress to and from the poll." Ermatinger replied that he "was there for the maintenance of the peace, and that I could not make use of the Troops for the purpose which he required." See: Province of Canada, *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix E.E.E., 5.

voter's certificate outstretched for the returning officer. In the other, he grasped "a stick…covered with blood." When Poitras and Grenier complained about the "axe-handle stained with blood," the partisan returning officer (William Footner) merely told the voter to "keep your stick down."[153] The man cast his vote despite the protest. Even direct evidence of premeditated assault did not offer sufficient grounds for disenfranchisement. The stick and the vote continued to serve the same purpose at Montreal's elections, even with a new franchise in place. It thus surprised no one when violence shook subsequent municipal contests in 1847, 1850, and 1851, and the provincial election of 1848.[154] Pistol balls again pockmarked the city's walls as foot chases resumed through streets (and into old ladies' shops).[155] More heads were broken by the enfranchised and disenfranchised alike. The 1846 election had offered only one

[153] The full version of Poitras's testimony goes as follows: "I saw an elector of Gorrie and Connolly's party come to vote with a stick in his hand covered with blood: having remarked the fact to the Returning Officer, he said to that elector, 'keep your stick down.'" Similarly, Grenier testified that when "the voters of Messrs. Gorrie and Connolly came forward and voted…among them was an individual holding in his hand an axe-handle stained with blood. Mr. Footner, the Returning Officer, said to him, 'keep down your stick,' on my remarking him permitting a person thus armed to come and vote." See: ibid., 4; 6. At this time, city councillors doubled as returning officers on election day. An architect by trade (who had designed Montreal's Bonsecours Market) William Footner was one of the more partisan members of Montreal's English party.

[154] For the 1847 contest, see: Senior, *British Regulars in Montreal*, 72. According to Jean-Louis Roy, the 1850 municipal election was "particulièrement violent." In the context of Montreal, that is saying a lot. The election revolved in part around the Montreal Annexation Manifesto (signed 12 December 1849) and its call to court entry into the American union. Montreal's central wards – the city's financial heart – proved particularly interested. Benjamin Holmes, for instance, took the city's West Ward for the annexationists and represented their interests within Montreal's city council. See: Jean-Louis Roy, *Édouard-Raymond Fabre: libraire et patriote canadien (1799-1854)* (Montreal: Hubertise, 1974), 168. See also: Lorne Ste. Croix, "Holmes, Benjamin," *Dictionary of Canadian Biography*, volume IX, 396-397. For Police Committee reports on damages suffered during the 1850 municipal election, see: AVM, VM1 S10 D52, volume 43 (7 November 1849- 1 May 1850), 19 April 1850, 131-132; 1 May 1850, 158-159. See also: Ibid., VM1 S10 D53, volume 44 (10 May 1850-23 December 1850), 9 December 1850, 148-149. As for the 1851 municipal contest, the Toronto *Globe* (drawing upon the Montreal *Pilot*, *Gazette*, and *Transcript*) reported that supporters of all parties came to the polls "armed with bludgeons or fire-arms." The *Globe* went so far as to argue that "[i]t is time that Canada were delivered from the reproach brought upon it by Montreal outrages. If matters are so, that the citizens cannot assemble to vote without attacking each other like as many savages, it would serve them right to disfranchise the city for a few years, until they shall have learnt to conduct themselves like members of a civilized community." See: "Riot in Montreal," Toronto *Globe*, 11 March 1851, 2.

[155] After the 1848 provincial election, the city council's Police Committee awarded Mrs. Widow Addy six pounds six shillings "for the damage done to her premises by a mob at the election for a member of Parliament held in this City on the 11th January last past.…Mrs. Addy attended with six witnesses and satisfied your Committee…that so far from firearms having been discharged from her premises, there were none in the house, and that the fury of the mob was excited solely by the circumstance of an individual having fled into, and hurriedly through the shop to avoid their pursuit, just as a shot was fired at them." See: AVM, VM1 S10 D46, volume 37 (1 May 1848-28 June 1848), 1 May 1848, 4-6.

lasting lesson for Montrealers: that they should use horse-drawn sleighs to outmanoeuvre the troops.[156]

The outrageous violence of Montreal's most recent elections had convinced many that the city needed new election laws once again. As Ludger Duvernay declared in *La Minerve*: "Ce système atroce et barbare doit avoir uue [sic] fin."[157] No one necessarily knew, however, what these laws should entail. Higher property qualifications, although imposed only recently, had certainly not worked. Municipal contests seemed as bad, if not worse, than before. Provincial Assemblyman James Leslie made the first formal proposal on 27 April 1846, not even two months after the dust had settled on the local election of that year. No one in British North America had attempted what he suggested, whether at the provincial or the municipal level. His proposal: "to establish the vote by ballot in the Election of Councillors and Assessors of and for the city of *Montreal*."[158] Leslie sought to close Montreal's system of open voting.

Canadians during the middle part of the nineteenth century tended to cringe when anyone mentioned the secret ballot. The majority (outside of New Brunswick) still viewed it as both un-British and unmanly. George Emery argues that open voting "suited societies that were organized around patron-client relationships of deference. An elector in a client relationship commonly desires that his vote be known to his patron in return for benefits received and favours expected."[159] Amid the cultural tensions of mid-nineteenth-century Montreal, such deferential relationships had devolved into something more exploitative. Not only had James Ferrier compelled his employees to vote for him, but he had expected them to fight for him as well.

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[156] Senior, *British Regulars in Montreal*, 72.
[157] "Les Élections Municipales," *La Minerve*, 5 March 1846, 2. In a subsequent edition, letter writer UN PASSANT agreed that "[d]e tous côtés il est donc désirer que de pareils outrages cessent…" See: UN PASSANT, "Pour La Minerve," ibid., 9 March 1846, 2.
[158] Province of Canada, *Journals of the Legislative Assembly of the Province of Canada* (1846), volume 5, 27 April 1846, 166. Emphasis in text.
[159] George Emery, *Elections in Oxford County, 1837-1875: A Case Study in Democracy in Canada West and Early Ontario* (Toronto: University of Toronto Press, 2012), 167.

Other elites running for municipal office surely demanded something similar. John Molson, for instance, had fired every brewery employee who had sided against him during the elections of 1844.[160] For many, the choice between flexing some muscle and losing one's job was really no choice at all. The secret ballot offered means to weaken these clientalist structures of electoral violence. A shroud of voter anonymity would descend. After all, if no one knew how anyone voted, no one knew whom to beat up.

Unfortunately for Assemblyman Leslie – and the people of Montreal – his ballot amendment died a swift death on the Assembly floor. Even so, it had struck a chord. During the subsequent investigation into Montreal's 1846 municipal election, chairman Lewis Drummond had asked several witnesses what measures they would adopt to prevent future violence. Each responded similarly: that "the vote by ballot would be the best remedy for this state of things." J.C.A. Poitras even went so far as to advocate both the secret ballot and the removal of all polls into city hall. Police superintendent William Ermatinger offered the plainest explanation: "the vote by ballot ought to be resorted to in these elections, as the only means of preserving peace in a mixed population like that of this City."[161] Montreal's particularly volatile combination of ethnicity, language, religion, and class had pushed its inhabitants toward increasingly experimental electoral measures. These measures would soon enough find their way into further municipal legislation.

Montreal's city council delivered its next set of charter amendments to the provincial legislature in June 1851.[162] It had taken that long because the Assembly (which had since left the

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[160] The provincial government also did much the same thing with workers along the Lachine Canal. See: Monet, *The Last Cannon Shot*, 177.
[161] Drummond had posed this question to two others: Joseph Grenier and J.C.A. Poitras. See: ibid., *Appendix to the Fifth Volume of the Journals of the Legislative Assembly*, appendix E.E.E., 4-6.
[162] Province of Canada, *Journals of the Legislative Assembly of the Province of Canada* (1851), volume 10, 23 June 1851, 101.

city after Montrealers torched the parliament building) refused to debate partial measures to Montreal's many problems.[163] Even as the legislature mulled over the bill, the city council debated what measures it should ultimately include. By the end of July, eleven of fourteen councillors had decided that franchise reform alone could not stop street violence at Montreal's municipal elections. The most restrictive qualifications meant nothing when the enfranchised themselves chose bloodshed over rational debate. Based upon this logic, the council informed the legislature that "it would be expedient to establish and adopt the system of voting by ballot for the election of Councillors."[164] The council had found no alternative than to request the secret ballot.

Montreal's new Incorporation Amendment Act passed into law a month later. The municipal franchise it contained followed a slightly different wording than before (one that now referred to "male persons" instead of simply "persons"). Renters still had to pay a minimum £8 annually in rent. Property-owners, however, now only had to own real estate worth forty shillings annually. To compensate, the legislation subsequently (and contradictorily) restricted the vote to only those

> who shall have been assessed under the Laws and By-Laws in force…in a sum of not less than Eight Pounds, current money aforesaid, upon the dwelling-house so occupied, and part of a dwelling-house in which an inhabitant shall reside as a householder or occupier, but not as a boarder or lodger, and having an outer door under his sole control, by which a communication with the street may be afforded …provided the annual value thereof, or the rent paid therefor, as aforesaid, be not

[163] The year before, in 1850, Benjamin Holmes had personally tabled amendments to Montreal's act of incorporation. The bill made it through to the Committee of the Whole, but no further. Holmes probably should have known better than to push for only certain amendments when Montreal's charter required a more thorough overhaul. As chairman to an 1843 special committee on earlier revisions to the city charter, he had concluded that "it would be more consistent to delay further proceedings until such time as the whole subject…should be fully and maturely weighed, with a view either to repeal, *in toto*, the existing Ordinances incorporating the City of Montreal, and affording time to prepare a new Bill, embracing such changes and such amendments…as would best meet the subject in all its bearings." See: ibid., *Journals of the Legislative Assembly of the Province of Canada* (1850), volume 9, 23 July 1850, 176; 3 August 1850, 235. See also: ibid., *Appendix to the Third Volume of the Journals of the Legislative Assembly of the Province of Canada* (1843), appendix K.K., 1.

[164] AVM, VM1 S10 D55, volume 46 (18 July 1851-11 December 1851), 25 July 1851, 15.

> less than Eight Pounds, and the rate of assessment thereon be on a sum not less than Eight Pounds, current money aforesaid, per annum.[165]

In other words, property-owners still needed to own property to the assessed yearly value of £8 before they could vote. Anyone who did not pay their taxes for the year continued to face disenfranchisement at Montreal's municipal elections.

The Incorporation Amendment Act of 1851 had thus made only the minutest of alterations to Montreal's municipal franchise. The greatest changes instead came in the form of electoral procedures and positions. Montreal's city council had asked for the secret ballot, and the Legislative Assembly had obliged. Voters' certificates now doubled as electoral ballots. Each certificate had three blank lines stamped on it. The elector wrote his choice for mayor on the first, and his two choices for councillor on the second and third.[166] Voters had upwards of three weeks to contemplate their decisions.[167] The legislation emphasized that, during this time, no one had any obligation to reveal for whom they voted.[168] Electors then dropped their certificates into one of nine ballot boxes, each corresponding to one of Montreal's nine wards. The legislation stipulated that each box must have five locks – one for each member of the Board of Revisors – and that the locked boxes must always remain within City Hall.[169] The Incorporation Amendment Act had thus internalized *and* centralized Montreal's municipal elections (just as J.C.A. Poitras had suggested in 1846). Electoral decisions now played out

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[165] Province of Canada, "An Act to amend and consolidate the provisions of the Ordinance to incorporate the City and Town of Montreal, and of a certain Ordinance and certain Acts amending the same, and to vest certain other powers in the Corporation of the said City of Montreal" (14 & 15 Vic., c. 128), section 11.
[166] Ibid., section 19. For voters unable to write, the section stipulated that they may have their certificates filled out in the presence of two witnesses.
[167] The legislation stipulates that municipal elections ran "from the fifteenth day of the month of February until Thursday intervening between the first and second Mondays in the month of March each year, both days inclusive." See: Province of Canada, 14 & 15 Vic., c. 128, section 19.
[168] According to the legislation: "That at the time of producing and depositing the said Certificate, the said Voter shall be under no necessity of declaring or making known for whom he may vote either for Mayor or Councillor, and no entry or record of the party or parties voted for shall be made by the City Clerk, but only an entry of the name of the party voting and the date when he shall produce and deposit as aforesaid his said Certificate and vote…" See: ibid.
[169] Ibid., sections 18 and 19.

privately and on paper, instead of openly and before one's peers. Public sites of political confrontation, in the words of Elaine Hadley, gave way to more subdued and less spectacular (but perhaps more sublime) surroundings.[170] The corporation, moreover, now only had one venue to police. Electoral officers had full control over who entered, who exited, and who participated. Potential troublemakers faced a gauntlet of armed constables who, for the first time, congregated at one location. Montreal had thus placed all of its electoral eggs in one central basket. Through concentrated and persistent surveillance, it hoped to sort the rotten ones out.

If Montreal's 1851 charter sought to end municipal electoral violence, it also looked to solve another of the city's recurrent problems. After a decade of exasperation and indebtedness – much of it self-made – the corporation had finally asserted total control over the city's assessment. Voters' certificates did not have a fourth blank space for the position of assessor because the city council now appointed municipal assessors itself.[171] Three years earlier, Mayor John E. Mills had "directed the attention of the Council to the neglect and omissions on the part of the assessors for the present year" and requested the Finance Committee to investigate further.[172] The report that followed in early 1848 offered a scathing rebuke of Montreal's system of assessment. Inconsistent valuations had apparently robbed the city of thousands of pounds in revenue. Montrealers themselves had no way of predicting what they might have to pay in a given year. With these problems in mind, the Committee had concluded that "[t]o have the

[170] Elaine Hadley, *Living Liberalism: Practical Citizenship in Mid-Victorian Britain* (Chicago and London: The University of Chicago Press, 2010), 46.
[171] Province of Canada, 14 & 15 Vic., c. 128, section 34.
[172] AVM, VM1 S10 D42, volume 33 (1 July 1847-26 August 1847), 12 August 1847, 102.

assessments properly made, the assessors must all be appointed by the Council and paid for their services."[173] Later in 1848, the city council struck another committee to investigate

> the present defective system of electing assessors, the unsatisfactory manner in which the assessment has been made this year, and the amendments which the experience of your Committee, and that of their predecessors in office, for many years past, has convinced them it will be necessary to obtain from the Legislature before either the citizens or Council can hope to witness a fair and impartial assessment of property throughout the whole city.[174]

Unsurprisingly, this committee arrived at the same conclusion as before. In the words of its members: "the evils thus briefly adverted to can only be remedied by a complete change in the manner of selecting the assessors. Instead of being elected as hitherto by the Citizens, the assessors ought all to be appointed by the Council; and as is the case in New York, and other cities on this continent, as well as in Europe, they should be remunerated for their services."[175] Only appointed and waged assessors, it would seem, guaranteed an appropriate assessment.

With Montreal's assessors now selected by its city council, the position took on an air of patronage. Assessors hereafter received an annual salary. In 1852, the city council pegged these stipends between £7.10.0 and £18. Assessors responsible for more populous wards received the higher payment.[176] A year later, in 1853, the city's assessors demanded a raise to £250 each for their services.[177] The city council, in response, agreed to pay assessors £100 per year no matter the ward.[178] Soon enough, city councillors fought amongst themselves to install family and friends into the position. The assessment office, for many, became a stepping stone into municipal politics. Those who hoped to retain the job for consecutive years had to keep their valuations up. Needless to say, assessment values in Montreal rose after 1851 in an already

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[173] Ibid., VM1 S10 D44, volume 35 (13 December 1847-3 March 1848), 14 January 1848, 45. Emphasis in text.
[174] Ibid., VM1 S10 D48, volume 39 (13 October 1848-13 December 1848), 13 October 1848, 10-11.
[175] Ibid., 13-14.
[176] Ibid., VM1 S10 D56, volume 47 (30 December 1851-10 April 1852), 24 March 1852, 97.
[177] Ibid., VM1 S10 D62, volume 53 (25 September 1853-25 January 1854), 12 December 1853, 66.
[178] Ibid., 11 January 1854, 101. By 1859, an assessor's salary remained at £100. See: ibid., VM1 S10 D74, volume 65 (29 December 1858-27 May 1859), 15 April 1859, 75.

expensive city.[179] The wealthiest men – like those who sat on the city council – served to benefit most. Montrealers who struggled to make ends meet received nothing but a higher tax bill. If anyone objected, the council merely asked:

> But are not the Council the representatives of the Citizens? Are not their interests identical, and are not the members of the Council persons usually selected on account of their wealth, ability and property, individually and collectively as much interested as any other equal member of the Citizens in guarding against excessive assessments[?] The Council being elected by the Citizens and invested with extensive and important trusts by their will and desire, no reasonable objection can exist to their being empowered to nominate the assessors of the City.[180]

Through the Incorporation Amendment Act, the city council had further affirmed its perceived purpose. Montreal, as a corporation, worked not for its inhabitants, but for its propertied stakeholders. The concerns of class and wealth superseded those of anyone else. To protect these elite interests, city assessment had to remain under the sole purview of city hall.

Incorporation Amendments of the 1860s and the End of Municipal Education

Montreal's 1851 municipal legislation governed the city's elections for the next nine years. Over that time, municipal electoral violence began to recede. The secret ballot and centralized polling had apparently served their purpose. This is not to say that violence disappeared altogether from Montreal's mid-nineteenth-century electoral landscape. Provincial contests still proved ferocious within the city. Those that passed without "disturbances, riots and

[179] Again, see: Robert C.H. Sweeny and Grace Laing Hogg, "Land and People: Property Investment in Late Pre-Industrial Montréal," *Urban History Review* 24.1 (October 1995): 48; Sweeny, *Why Did We Choose to Industrialize? Montreal, 1818-1849*, 233-242.
[180] Ibid., VM1 S10 D44, volume 35 (13 December 1847-3 March 1848), 14 January 1848, 45.

bloodshed" gave the city's Grand Jury reason to celebrate.[181] From time to time, such aggression seeped back into Montreal's municipal sphere. In 1854, for instance, electoral officer and city councillor Joseph Papin suffered a "murderous attack" as he tried to clear a path to the ballot boxes. Despite a heightened police presence, the assailant had managed to escape into the crowd.[182] The following year, the corporation felt compelled to make better "arrangements for ensuring an orderly and peaceable conduct of the civic Elections in February next and for especially managing and conducting said elections."[183] Even by 1860, heated mayoral contests continued to demand special arrangements.[184] For the year's municipal election, the corporation had erected barriers to corral voters and provided separate spaces for rival candidates. It had also demanded the presence of every policeman in the city.[185] Despite these precautions, violence still broke out. Montreal's lightly armed police force remained powerless against crowds that broke the peace. It fell upon the local militia to stop the fighting.[186] The corporation, for its part,

[181] At the 1852 January Quarter Sessions, the "Grand Jury feel it but justice to advert to the gratifying fact that for once a peaceable election has taken place in the city of Montreal." See: ibid., VM1 S10 D56, volume 47 (30 December 1851-10 Apr 1852), 31 January 1852, 24 (from Grand Jury report dated 14 January 1852).
[182] For the report of the attack, see: ibid., VM1 S10 D63, volume 54 (1 February 1854-13 June 1854), 15 March 1854, 44. For the circumstances surrounding the attack, see: ibid., VM1 S10 D64, volume 55 (14 June 1854-17 November 1854), 21 June 1854, 10. Papin's bad luck did not end with a knock on the head. Later in 1854, the Superior Court of Lower Canada ruled that "Joseph Papin was not qualified by law to be a Councillor for the said City, for the said Joseph Papin not having been a Resident Householder within the said City of Montreal for one year next before the said Election." See: ibid., 3 September 1854, 91-92 (emphasis in text).
[183] Ibid., VM1 S10 D65, volume 56 (11 December 1854-12 April 1855), 12 December 1854, 10.
[184] This particular contest saw two notable Montrealers, C.S. Rodier and Benjamin Holmes, both vie for the city's mayoralty. Rodier had made his fortune as a merchant and land speculator in the city. He had also offered one of the city's earliest voices for municipal incorporation. Holmes, on the other hand, we have encountered before. Electoral violence seemed to follow Holmes throughout his political career. His resignation as Assemblyman in 1844 had led to the violent by-election of that year. His call for annexation during the 1850 municipal election, moreover, had led to further violence. Now that Holmes ran for mayor in 1860, the city council feared for Montreal's safety. For Rodier, see: Frederick H. Armstrong, "Rodier, Charles-Sérephin," *Dictionary of Canadian Biography*, volume X, 624-625. For Holmes, again see: Ste. Croix, "Holmes, Benjamin," 396-397.
[185] See: AVM, VM48 Fonds Board of Revisors, Book 1 1846-1882, "Special Committee to Manage the Elections, 1860," 7 February 1860, 97; 18 February 1860, 98.
[186] City councillors had requested the governor to ensure the militia's readiness. See: ibid., VM48, Book 1, 20 February 1860, 100. See also: ibid., VM1 S10 D76, volume 67 (1 February 1860-4 July 1860), 30 May 1860, 86.

received a hefty $2,625 militia bill for services rendered.[187] Even with the volunteers called out, Montreal's 1860 municipal election paled in comparison with those of the 1840s. The hostility encountered had not approached anywhere near the same threshold. The police had made their arrests.[188] Polling had concluded satisfactorily.[189]

Montreal's 1860 municipal election had proven that, with the right precautions, the corporation could contain moderate municipal electoral violence. It also confirmed, however, that the city still had room for improvement.[190] Municipal disorder of any kind prevented propertied individuals from getting heard. Further changes to Montreal's municipal franchise arrived mere months later. According to the new legislation, "[e]very male person, being an inhabitant householder in the city, whose name shall be entered on the said last Assessment Roll, as the tenant or occupant of a dwelling house…of the assessed value of three hundred dollars or upwards, or of the assessed yearly value of thirty dollars or upwards" received a vote at

[187] City hall's Finance Committee reported that "in consequence of the riot at the February election, and the apprehensions entertained for the lives of the citizens, and the freedom of election, it was found necessary to have recourse to the military, in order to maintain the peace. The active militia force was, accordingly, called out. The Committee now thought that the Council had no other alternative than to grant the force such pay as they were entitled to by law. The accounts furnished amount to $2,625, of which $2,140 are for men, and the cavalry and artillery horses at $1 per diem, and 50 cents extra for refreshments, and $1 per diem for each horse – the rates allowed by law. The balance, $485, is claimed by the staff and officers. The first item should be paid less $135, for Balchin's account for refreshments. As to the amount claimed by the officers, the Committee was advised by its attorney that this claim was not a legal one there being no provision in the law entitling the officers to make such a claim." See: ibid., no date, 149.

[188] The city's Recorder's Court, for instance, had sentenced one James Joyce "to a fine of $40, and to an imprisonment of two months for riotous conduct at the late election." Joyce's father, David, had unsuccessfully petitioned for his son's release. See: ibid., VM1 S10 D76, volume 67, 10 April 1860, 139.

[189] Rodier took the contest 1899 to 1875 in a vote that reflected Montreal's linguistic divide. While Rodier carried Montreal's predominantly French-speaking wards, Holmes dominated the English-speaking ones. Despite the narrow margin of victory, both candidates seemed to accept the result. See: ibid., 12 March 1860, 14-15.

[190] As Michèle Dagenais writes: "In spite of those new procedures, there were many irregularities in voting proceedings in the nineteenth century, and violent demonstrations were common. Citizens were not required to submit any proof of identity at voting time. Many often voted under a fictitious name, submitting certificates belonging to other electors. Groups gathered outside polling stations or around city hall in order to intimidate electors and even prevent them from voting. Election officials did not always show great zeal or authority when problems occurred." See: Dagenais, *Democracy in Montréal*, 16.

Montreal's annual municipal elections.[191] As always, voters had to have paid their taxes before casting their votes.

These qualifications would have looked exceedingly familiar. Montreal's new municipal franchise borrowed its language almost word for word from Canada's most recent provincial franchise. The Elective Franchise Act of 1858, one might recall, had enfranchised all male city-dwellers who owned or occupied property to "the assessed value of three hundred dollars or upwards or of the assessed yearly value of thirty dollars, or upwards."[192] In other words, legislators had imposed the same franchise qualifications used for provincial elections on to Montreal's municipal elections as well. State officials across British North America had complained for years that colonists either did not understand their franchise laws or readily mistook different franchise regimes.[193] Montrealers now had no way to claim confusion between different franchise legislation. That excuse disappeared. Those who did not belong at the city's municipal elections needed to know, without question, that they did not belong. In the process, the province had placed an essential instrument of its liberal order on to the city of Montreal. Landed property ruled the city just as landed property ruled the province. A subsequent 1866 amendment to the city charter would perpetuate the same property assessment franchise. Owners of multiple properties now received votes in every district where they owned property.[194]

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[191] Province of Canada, "An Act to amend the provisions of the several Acts of the Incorporation of the City of Montreal" (23 Vic., c. 72), section 4, subsection 1.

[192] Ibid., "An Act to define the Elective Franchise, to provide for the Registration of Voters, and for other purposes therein mentioned" (22 Vic., c. 82), section 2, subsection 1.

[193] One of Toronto's city clerks offered perhaps the clearest expression of this frustration. As late as 1874 Stephen Radcliff complained that: "As a general thing those who are appealing [to vote] know very little about the Provisions of the various Acts governing these Voters Lists and imagine that all they have to do is to say they want a voters name on the Lists, quite irrespective of his actual right as a voter. As a general rule the fact of being assessed is altogether ignored and the right to be placed on the Voters Lists is claimed, not matter how lately the appellants have come into possession." See: Archives of Ontario [hereafter AO], RG22-5874 York County Court Voters' List records 1867-1875, Stephen Radcliff of the Toronto City Clerk's Office to County Judge George Duggan, 15 September 1874.

[194] Province of Canada, "An Act to amend the provisions of several Acts relating to the City of Montreal, and for other purposes" (29 & 30 Vic., c. 56), section 2. Also see: Dagenais, *Democracy in Montréal*, 16.

Montreal's city council had apparently seen no reason to demand more extensive changes. Poorer Montrealers remained disenfranchised; municipal violence continued to decline. Montreal had confirmed its purpose: it worked both through and for its corporate stakeholders.

Bruce Curtis has argued that colonial authorities, until the Union period, attempted to rule Canadians by means of public schooling. A formal education, they believed, disciplined people to govern themselves and to participate responsibly within the bounds of British representative institutions.[195] By 1841, that project had apparently failed in Lower Canada. Publicly-funded schools never got the money they needed. "The people," according to Curtis, had "played truant from J.S. Mill's Great Normal School of representative government."[196] Liberal administrators like Lord Durham and Charles Poulett Thomson had designed early municipal institutions and municipal franchises to pick up the slack. If Canadians did not learn to act as good citizens at school, they might learn to do so through repetitive experience at annual municipal elections. Imperial authorities, in essence, advocated education through performance. The individual colonist, while perhaps not yet the ideal citizen, could understudy the role within a controlled local setting. He could live what citizenship entailed and he could develop the muscle memory to repeat it. Behaviours of proper citizenship would transform into instinct. With any luck, their lordships hoped, colonists might bring these new instincts into the weightier sphere of provincial politics.

Montreal, as British North America's most important urban centre, witnessed how this educational project worked itself out firsthand. The violence of 1837 and 1838 had led to Montreal's first permanent municipal franchise in 1840. As public violence continued throughout the 1840s, franchise reforms followed suit. Although conceived by imperial

[195] Curtis, *Ruling by Schooling Quebec*, 3.
[196] Ibid., 429.

authorities as a disciplinary tool, the municipal franchise soon became a site of contest over the city's purpose and for whom it should operate. Elite Montrealers never shared in the same faith as their imperial rulers. They did not see any potential in most of their city's inhabitants. For them, the municipality ought to operate for those who held a tangible stake in it: namely, its wealthier property-holders.

As these elite Montrealers found their way on to the city council, they set about altering their municipal franchise to realize a decidedly liberal vision of the city. These views clashed with older forms of political participation where electoral violence had the power to shape outcomes as much as rational debate within the public sphere. Poorer Montrealers who found themselves disenfranchised found ways to participate electorally, whether with their voices or with their bodies. Fists and clubs still wielded considerable power within the old way of electioneering. Wealthier Montrealers understood this well: they even encouraged it when it served their purposes (all the while laying the blame upon those less fortunate than them). Montreal's city council, in response, repeatedly attempted to minimize community involvement within municipal elections. Franchise reforms attempted to ensure that the municipality worked for its wealthier property-holding classes. The Incorporation Amendment Act of 1845 had gone part way toward this liberal goal; the Incorporation Amendment Act of 1851 had, in essence, completed the task. Subsequent municipal franchises of 1860 and 1866 merely served to reify liberal ideas of citizenship that revolved around the rational possession of city property. Canada's liberal order had – officially – become Montreal's liberal order. Like Curtis's district schools, Durham's school of practical citizenship had closed its doors for good.

Chapter 5

Elective Legislative Councils, Council Franchises, and the Forlorn Hope of Conservatism

This final chapter returns to the sphere of provincial politics to explore one last group of elective legislative bodies: the provincial Legislative Councils. When the British North American colonies received their first legislatures during the eighteenth century, each possessed an upper house appointed by its lieutenant governor. These Legislative Councils, packed with the governor's trusted favourites, served to curb democratic excess, protect class and status privileges, and check legislation that did not sustain British interests. Legislative Councillors filled these roles through to the 1840s and the advent of responsible government. Under the responsible regime, colonial governors now acted on the instruction of their Executive Councils seated within the legislatures. Colonial premiers and their cabinets now selected appointees to the upper chambers themselves. This new legislative situation troubled a growing number of British North Americans who preferred the old colonial constitutions. Responsible government supposedly referred to a government responsible to the people. Yet, under this new division of powers, Legislative Councillors found themselves responsible to only those men who had granted them their positions. Constitutional government had become party government, and narrow party interests had replaced collective group interests. A subservient Legislative Council had no real power to check misguided measures or represent anyone but their political masters. Any manner of party legislation was now possible, no matter how disagreeable to the country as a whole.

In 1849, the year following responsible government, calls rang out anew for elective Legislative Councils. The Colonial Secretary at the time, Earl Grey, formally consented to the idea less than two years later. Over the next decade, interest in the subject intensified across British North America. By 1859, every colonial assembly had endorsed the principle of a popularly elected upper chamber. Canada, Nova Scotia, and Prince Edward Island went on to accept the legislation in detail as well. Of these provinces, however, only two would take the final leap. The Province of Canada implemented its elective upper house in 1856, and Prince Edward Island did the same in 1862. Although the outcomes may have differed, the debates surrounding elective Legislative Councils generally unfolded around the same ideological and cultural positions. British North Americans from across the provinces kept a watchful eye on each other's arguments. Self-declared radicals and republicans, at one extreme, wanted elective institutions spread as widely as possible. Unflinching Tories, at the other, sneered at anything that did not match the House of Lords. Between these two poles lay the true contest over the colonial upper houses. A new conservatism had formed in the wake of responsible government: one that still favoured the old mixed constitutions (of Crown, Lords, and Commons) but sought new means to restore their essence. These conservatives in particular pressed for elective Legislative Councils in hopes of re-establishing what they viewed as constitutional balance. At the heart of their strategy lay franchise and electoral law. Responsible government proposed increasingly egalitarian lower houses. Newly reconstituted Legislative Councils, with strict property qualifications for Councillors and electors, could outflank this democratic advance and restore power and influence to the guardians of class, status, and property. British North America's conservatives would have new troops on the ground to carry on the war against liberal governance.

Historiography

Discussions of British North America's elective Legislative Councils trace back to the early days of Canadian history as a profession. At the first ever meeting of the Canadian Historical Association (in 1922), D.C. Harvey presented a paper on "The Passing of the Second Chamber in Prince Edward Island." An institutional study in its purest sense, Harvey outlined the changes made to the Island's Legislative Council throughout its history. The transition to an elective Legislative Council lay at the centre of Harvey's story. Prince Edward Island had implemented its statute labour franchise in 1853. The following year, in 1854, partisan disputes over executive appointments had turned into a "feud over a definition of the meaning of Responsible Government." By the late 1850s, this feud had grown into something bigger as the Island's two legislative houses worked against each other politically, legislatively, and diplomatically. As Harvey described it, Islanders increasingly called for an elective Legislative Council as the only workable solution.[1] Once the Colonial Secretary offered his opinion on the matter, the elective principle evolved further. Harvey concluded that by 1862

> [t]he aim of those who strove for an elective Legislative Council was to secure a Second Chamber that could claim equally with the Assembly to speak for the community but so constituted as 'to reflect their settled wishes and principles rather than their transitory impulses.' To this end they sought, on the advice of the Duke of Newcastle, to create two constituencies, one to reflect the wishes of manhood suffrage, the other to reflect the more sluggish interests of property.[2]

In other words, Harvey viewed partisan infighting as the catalyst for Council reform on colonial Prince Edward Island. Ideas about enfranchisement and property interests played a role, but only after Island legislators got the Colonial Secretary involved.[3]

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[1] D.C. Harvey, "The Passing of the Second Chamber in Prince Edward Island," *Report of the Annual Meeting of the Canadian Historical Association* 1.1 (1922): 27-28.
[2] Ibid., 31.
[3] Newcastle had in fact involved himself, as we shall see later in this chapter.

In many ways, Harvey's essay set the template for the rest of the twentieth century. Harvey viewed the push for an elective Legislative Council as the product of internal politics. He thus studied Prince Edward Island and its elective upper house in isolation from the other provinces. Those who immediately followed Harvey did much the same. Ideas of expediency and partisanship, placed within narrow provincial frameworks, have dominated most work on the elective Legislative Councils. Instead of Prince Edward Island, however, scholarly attention has focused on the Province of Canada. Beginning with Duncan McArthur in 1930, followed by Shirley E. Carkner Hart in 1960, historians have offered detailed descriptions as to how Canadians received their elective upper house in 1856.[4] Even scholars who imply a broader approach, such as Robert A. Mackay in *The Unreformed Senate of Canada*, have strayed only briefly from the Canadas' cozy confines.[5] Historians have thus documented the Canadian experience thoroughly, but hardly touched upon that of the other provinces. Nova Scotia and New Brunswick have received next to no attention, aside from a few sentences by J. Murray Beck and W.S. MacNutt.[6] Colonists in these provinces debated the elective principle just as fiercely throughout the 1850s and set precedents for others to follow. Their voices, when combined with those from across British North America, offer a richer understanding of elective Legislative Councils and the conservative motivations of those who supported them.

Since the turn of the twenty-first century, provincial emphases have changed little when it comes to elective Legislative Councils. Scholars have continued to focus almost solely on the united Canadas to the neglect of the other colonies. That said, geographical inertia has not meant

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[4] See: Duncan McArthur, "A Canadian Experiment with an Elective Upper Chamber," *Proceedings of the Royal Society of Canada* 24 (3rd series, section II, 1930): 79-88; Shirley E. Carkner Hart, "The Elective Legislative Council in Canada under the Union: Its Role in the Political Scene," MA thesis (Queen's University, 1960).
[5] Robert A. Mackay, *The Unreformed Senate of Canada*, revised edition (Toronto: McClelland and Stewart, 1963), 26-32. Mackay originally published this work in 1928.
[6] See: W.S. MacNutt, *New Brunswick. A History: 1784-1867* (Toronto: Macmillan, 1963), 363-364; J. Murray Beck, *The Government of Nova Scotia* (Toronto: University of Toronto Press, 1957), 104-105.

historiographical stagnation. Intellectual historians such as Jeffrey McNairn and David E. Smith have done much to revitalize the subject through a deeper understanding of mid-nineteenth-century political thought. Both authors, writing concurrently, claim very much the same thing: that a dialectic between conservatism and republicanism gave rise to the Canadas' elective Legislative Council. According to its opponents, responsible government had twisted and unhinged the province's mixed constitution in 1848. Earlier ideas of mixed government had meant that every legislative branch had both purpose and power. Houses of Assembly spoke for the people's interests; Legislative Councils spoke for the rights of property and religion; lieutenant governors spoke for the Crown. Under responsible government, authority found itself concentrated with the executive seated within the Assembly. The legislative checks that safeguarded British liberties had vanished. In essence, government had become (in McNairn's words) "both too democratic and too tyrannical."[7] The Assembly had too much power over legislation, and the executive had too much power over the Assembly.

McNairn and Smith argue that Canadian conservatives looked to the republican United States for their solution. McNairn, for his part, emphasizes the template offered by American Federalist thought. Following the American Revolution, state assemblies wielded almost supreme power. General instability had resulted across the union. The Federalists, in response, crafted the American federal constitution in 1787. Through it they established a model separation of powers that rested "squarely on popular sovereignty, but that still encapsulated the benefits of the three classical forms of government" of King, Lords, and Commons.[8] McNairn

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[7] Jeffrey L. McNairn, *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854* (Toronto: University of Toronto Press, 2000), 275.
[8] Ibid., "Publius of the North: Tory Republicanism and the American Constitution in Upper Canada, 1848-54," *Canadian Historical Review* 77.4 (December 1996): 508.

concludes that these conservative checks upon "democratic excess...[were] the essence of the Federalist achievement."[9]

While Smith ultimately agrees with McNairn in principle, he questions some of the details.[10] The American senate, as established by the federal constitution, would not operate electively until 1913. With this in mind, Smith argues that American *state* constitutions provided Canadian conservatives with working models for successfully balanced separations of power.[11] Just as elected state senates served as important and respected checks within state legislatures, an elective Legislative Council could fill the same role within the Canadian parliament.[12] By the mid-1850s, Canada's conservatives had agreed that an elective upper house offered the best way to rebalance the constitution. Through this decision, Smith concludes, "Canadians came closer than at any time in their history to facing the republican option."[13]

In his liberal reconnaissance of Canadian history, Ian McKay has argued that "the Rebellions of 1837, Lord Durham's Report, and the Act of Union of 1841 taken together...could be interpreted as the high point and defeat of liberalism's civic humanist adversary."[14] McNairn and Smith share a different interpretation: republican ideas lived on in British North America. They did so, however, in a repackaged and repurposed form. Canada's "conservative republicans" (to borrow again from McNairn) had translated elective republican institutions into

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[9] Ibid., *The Capacity to Judge*, 284. More generally, see: ibid., 284-302.
[10] Michel Ducharme questions these details as well. Ducharme points out that American Federalists like John Adams and Alexander Hamilton shared very different values than Jeffersonian Republicans. In fact, he argues that Federalist thought shared more with British constitutionalism than anything else. See: Michel Ducharme, *Le concept de liberté au Canada à l'époque des Révolutions atlantiques (1776-1838)* (Montreal and Kingston: McGill-Queen's University Press, 2010), 44.
[11] As Augustin-Norbert Morin argued in 1852 (as he sought to implement Canada's elective Legislative Council): he "did not consider the plan that had been submitted, as approximating the Constitution of the United States..." See: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume XI, part II (1852-1853), 19 October 1852, 1091.
[12] David E. Smith, *The Republican Option in Canada, Past and Present* (Toronto: University of Toronto Press, 1999), 87-89.
[13] Ibid., 89.
[14] Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," *Canadian Historical Review* 81.4 (2000): 632.

the language of British constitutionalism.[15] They had found a way to fit an American-inspired upper house into the traditional system of mixed monarchy. The chapter that follows does not seek to contradict McNairn or Smith on these general points. It does, however, take a closer look at the elective bodies conservatives hoped to establish. By 1855, all but three American states had eliminated the property qualifications on their state franchises.[16] These state franchises – grounded in republican ideals of White male equality and popular sovereignty – governed all state elections including those for state senators.[17] While British North American conservatives may have pursued the elective principle, they fundamentally resisted any broader application of republican government. Anything that approached manhood suffrage was viewed as anathema for the elective Legislative Councils. If the lower houses served the people, then the upper houses needed to serve class, status, and wealth. The elective principle and high property qualifications – for electors, candidates, or both – offered British North American conservatives the best means to achieve this constitutionalist goal.

[15] McNairn, *The Capacity to Judge*, 302. McNairn also employs the phrase "Tory republicanism" to describe the same phenomenon.

[16] As Alexander Keyssar describes it: "In 1855, the three states with property requirements were Rhode Island, New York, and South Carolina; however, Rhode Island exempted native-born citizens, New York's requirement only applied to African Americans, and South Carolina offered a residency alternative." See: Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), Table A.3 "Chronology of Property Requirements for Suffrage: 1790-1855," 348n1.

[17] By 1850, in fact, most state franchises governed a wide number of state elections. Most American states had made county judgeships, sheriffs, and justices of the peace elective positions alongside seats in the state assemblies and senates. See: Laura J. Scalia, *America's Jeffersonian Experiment: Remaking State Constitutions 1820-1850* (DeKalb, IL: Northern Illinois University Press, 1999), 8; 122.

Conservatism, Responsible Government, and Elective Legislative Councils

British North America's new governor general, Lord Elgin, arrived in Canada on 30 January 1847. As he settled into Monklands – the governor's official residence in Montreal – a curious document awaited his attention. Addressed to him personally, and signed under the name Fuimus, it suggested that Elgin reconsider his mission on the continent. The Colonial Secretary had tasked Elgin with confirming responsible government for the British North American provinces.[18] Fuimus viewed this course as a mistake. "By one of Your Lordship's penetration," the author claimed, "it will not be difficult to discover that, in Canada, all the evils that can spring from the system are to be met with, while few of its benefits are anywhere manifest."[19] Canada did not have a landed aristocracy – "men of high and independent minds and ample means alone" – to fill the ranks of its political elite. New money ruled in its stead. Colonial parliaments thus stood at a dangerous precipice. Private interests had increasingly replaced the public good when it came to parliamentary business. Legislatures became the playgrounds of greedy opportunists. Responsible government, according to Fuimus, completed this transformation. Without an independent executive, nothing prevented the murder of political integrity "on the altar of self-interest." Nothing stopped "vicious Administrations [from bestowing] rewards upon those of their supporters who were immediately interested in their success." Responsible government, in other words, slaked the "fetid thirst" of only those who sought wealth, prestige, and power. Evil would breed evil as country legislators trampled justice underfoot and violated the public faith.[20] With the apocalypse laid out, Fuimus implored the

[18] W.L. Morton, "Bruce, James, 8th Earl of Elgin and 12th Earl of Kincardine," *Dictionary of Canadian Biography*, volume IX, 89.
[19] Fuimus, *Letter to His Excellency the Right Honorable Lord Elgin, on Responsible Government, As applied simply to the Province of Canada; Together with his Lordship's Celebrated Speech, Delivered in the House of Commons, as Lord Bruce, in 1841, Deprecating, in the Strongest Terms, All Appointments to Office by a Tottering Ministry, Not Enjoying the Confidence of the People* (Montreal: Donoghue & Mantz, 1847), 6.
[20] Ibid., 7-8.

governor to "strike at the root of all those party jealousies and heart-burnings" and end the responsible system.[21] Elgin had the power to save British North America. Fuimus begged him to use it.

Fuimus's name – Latin for "we were" – invoked the days of pre-Rebellion colonial rule. The old constitution had its limitations, certainly. Hierarchy and privilege grounded its ideas of liberty and equality more than anything else.[22] Yet, the old constitution had balance. Balance ensured that colonial governments protected collective rights, and not just the interests of individual members or parties.[23] Fuimus tried to warn Elgin of this, but Elgin pressed forward with responsible government anyway. A year and a half later, the governor saw the consequences firsthand. The Canadian government had endorsed the most unjust and self-serving party legislation imaginable, at least to conservative eyes. The so-called Rebellion Losses Bill compensated anyone in Canada East who had lost property during the uprisings of 1837 and 1838, including those who had fomented sedition.[24] The government had to stack the Legislative Council with sycophants and toadies to get the legislation to pass. Canadian conservatives denounced Elgin for "appointing to the Legislative Council twelve new members within a few months, to enable the Administration to carry out measures the principle of which had not been previously affirmed by the Assembly." They also censured "the conduct of her Majesty's Secretary for the Colonies, in transmitting to the Governor-General blank mandamuses

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[21] Ibid., 12.
[22] See: Ducharme, *Le concept de liberté au Canada*, 8; 172-181.
[23] For the conservative language of collective rights, see: E.A. Heaman, "Rights Talk and the Liberal Order Framework," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, eds. Jean-François Constant and Michel Ducharme (Toronto: University of Toronto Press, 2009): 147-175.
[24] So long as an individual had not received a formal conviction, he or she qualified for compensation under the act. In the words of J.M.S. Careless: "Tory charges that the real aim was to indemnify the rebels, and the urgings of worried Upper Canadian reformers, did bring [Attorney General] LaFontaine at least to exclude the relatively few Lower Canadians who had been exiled or convicted in the courts from obtaining compensation under an amended bill. Further than this he would not go." See: J.M.S. Careless, *Union of the Canadas: The Growth of Canadian Institutions 1841-1857* (Toronto: McClelland and Stewart, 1967), 123-124.

for Legislative Councillors, to be filled up in this colony at the suggestion of the ministry of the day."[25] Although Elgin himself viewed the measure as "not indeed altogether free from objection," he also "[did] not see how my present Gov^{t} could not have taken any other course in this matter."[26] Elgin did not worry so much about the Rebellion Losses Bill itself. His fears more so lay with potential responses it might garner once it received his assent.[27]

After he delayed as long as he could, Elgin signed the bill into law on 25 April 1849.[28] By the end of the day, the market building that housed Parliament burned in the darkness. The opponents of responsible government had wielded the torches. Elgin himself suffered a shower of eggs and stones as he raced out of the city. When Parliament reconvened in late May, stones rained upon the governor once again.[29] The former parliament building, now only a shell of its former self, crumbled on passers-by and (ironically) provided them with ammunition.[30] Such violence, moreover, had radiated outward from Montreal. Demonstrations in Quebec, Bytown, Hamilton, and Toronto devolved into brawls. Effigies of Elgin smouldered in larger cities and smaller towns alike.[31] Fuimus's prophesy, by all appearances, had come true. The responsible

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[25] See: British American League, *Minutes of the Proceedings of a Convention of Delegates of the British American League, Held at Kingston (Canada West) on the 25th, and Adjournment the 26th, 27th, 28th and 31st Days of July 1849* (Kingston: The Chronicle and News Office, 1849), 30 July 1849, 14.

[26] Lord Elgin to Earl Grey, 1 March 1849, in *The Elgin-Grey Papers 1846-1852*, volume I, ed. Arthur G. Doughty (Ottawa: J.O. Patenaude, 1937), 300.

[27] See: Lord Elgin to Earl Grey, 14 March 1849, in ibid., 307-309. Also see: Lord Elgin to Earl Grey, 12 April 1849, in ibid., 338-339.

[28] See: Province of Canada, "An Act to provide for the indemnification of parties in Lower-Canada whose property was destroyed during the Rebellion in years one thousand eight hundred and thirty-seven, and one thousand eight hundred and thirty-eight" (12 Vic., c. 58).

[29] See: Barbara J. Messamore, *Canada's Governors General, 1847-1878: Biography and Constitutional Evolution* (Toronto: University of Toronto Press, 2006), 62-63. Also see: Morton, "Bruce, James," 89-90.

[30] After the fire, Montreal's city council formed a special committee "to examine and report upon the state of the Ruins of the Parliament house." The committee reported on 14 November 1849 that the ruins posed an incredible danger to Montrealers. As the upper part of the ruins crumbled away, stones fell on the walkways below. In the interests of public safety, the committee recommend that the city surveyor demolish the upper portion of the building "in such a way as to prevent their being used (as they now are) for unseemly and unwholesome purposes." See: Archives de la Ville de Montréal [hereafter AVM], VM1 Fonds Conseil de Ville de Montréal, S10 Procès-Verbaux, D52 – volume 43 (7 November 1849-1 May 1850), 14 November 1849, 12-13.

[31] According to William Hamilton Merritt: "Among the various meetings held at St. Catharines, regarding the petition to the Home Government for the recall of the Governor, (who had signed the Rebellion Losses Bill and

system had produced the Rebellion Losses Bill, and the Rebellion Losses Bill had resulted in mayhem. As their world collapsed around them, Canadians who preferred the old constitution looked for ways to recover what they had so recently lost.

Canada's Rebellion Losses controversy had pushed British North American conservatives toward elective Legislative Councils. The idea emerged soon after the Rebellion Losses Bill came into effect. As Peter Way notes, Canadian conservatives responded to the legislation "by organising Constitutional Societies to promote conservative policy."[32] The largest of these societies, the British American League, formed in the days preceding Elgin's fateful trip to parliament.[33] From the outset, the League's various branches (formed by conservatives of all stripes and backgrounds) focused on two main questions: whether Canada should reassess its relationship with Great Britain; and, whether constitutional change might fix Canada's broken Legislative Council.[34] On the first point, League members agreed overwhelmingly: Canada must remain loyal. Only the ungrateful viewed salvation in

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dissolution of the House), one amounting to an attempt to burn the Governor General and Cabinet in effigy." See: J.P. Merritt, *Biography of the Hon. W.H. Merritt, M.P., of Lincoln District of Niagara, Including an Account of the Origin, Progress and Completion of Some of the Most Important Public Works in Canada, Compiled Principally from his Original Diary and Correspondence* (St. Catharines, ON: E.S. Leavenworth, 1875), 353. For the most recent work on the subject, see: Ian Radforth, "Political Demonstrations and Spectacles during the Rebellion Losses Controversy in Upper Canada," *Canadian Historical Review* 92.1 (March 2011): 1-41. Also see: Peter Way, "The Canadian Tory Rebellion of 1849 and the Demise of Street Politics in Toronto," *British Journal of Canadian Studies* 10.1 (1995): 10-30; Michael S. Cross, "Stony Monday, 1849: The Rebellion Losses Riots in Bytown," *Ontario History* 63.3 (September 1971): 177-190.

[32] Way, "The Canadian Tory Rebellion of 1849," 20.

[33] The British American League's Montreal branch had a founding charter dated 23 April 1849. As its executive phrased it, the path of constitutional change "so vast in attainment, so powerful in agency, and yet so simple in contrivance, are expressible in a single word: and that word is – ORGANIZATION." See: British American League (Montreal), *Rules and Regulations of the Montreal Branch of the British American League* (Montreal: n.p., 1849), 1; 5. Emphasis in text.

[34] Cephas D. Allin, *The British North American League, 1849* (Toronto: The Ontario Historical Society, 1915), 9. As branch charters make abundantly clear, the League viewed the Legislative Council as a mere shadow of its former self. The Montreal branch, for instance, viewed the Council as requiring definite "modification and improvement." The Hamilton branch took the argument a step further in declaring that "[t]he Legislative Council has been rendered subservient to, and is but an echo of the House of Assembly..." For the Montreal charter, see: British American League (Montreal), 4. For the Hamilton charter, see: British American League (Hamilton), *Address of the Hamilton Branch of the British American League, with the By-Laws, for the Guidance of the Association* (Hamilton: The Spectator, 1849), 3-4.

independence or annexation to the United States. On the second point – the Legislative Council – opinions were much more divided. A growing minority from across the province had begun to advocate aggressive solutions to extreme problems. Only the elective principle, these conservatives argued, could truly revitalize Canada's emaciated upper house.[35]

The British American League held its first general convention in Kingston, Canada West, in late-July 1849. Delegates, above all else, sought to reaffirm Canada's loyalty to the Crown in light of recent cross-provincial violence. Before they had the opportunity, they found themselves bickering over elective Legislative Councils. As the convention's first item of substantive business, Thomas Wilson (founder of the Quebec branch) moved that "it is essential to the interests and liberties of the people of Canada that the Legislative Council should be elected, and not appointed by the Crown." Wilson lost his motion 89 to 19 after prolonged debate. Tory demands for the old constitution, and nothing less, bested more imaginative answers.[36] Despite the rebuff, the elective principle continued to grow in popularity within conservative circles. At the League's second convention, held four months later in Toronto, Wilson tabled the motion again. He emphasized that it "would be virtually and in fact a much more conservative body than we have at present" because significant property qualifications on both voters and candidates would secure conservative principles.[37] This time, the vote split almost evenly.[38] In fact, the decision was so close (and the debate so heated) that it threatened to tear the assembly

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[35] Allin, 10.

[36] British American League, *Minutes of the Proceedings of a Convention of Delegates of the British American League, Held at Kingston (Canada West)*, 26 July 1849, 7-8. Wilson's motion lost to an amendment that read: "The British American League is composed of a large portion of the inhabitants of Canada who have always been firm in their allegiance to the British Crown, and who still desire that Canada shall remain a dependency of the British empire. Devoted in their attachment to the principles of monarchical government, and revering the mixed forms of government established by the British Constitution, they only desire the enjoyment of the immunities and privileges for which that constitution provides when the government is fairly and honestly administered for the benefit of all classes of the community."

[37] Ibid., *Minutes of the Proceedings of the Second Convention of Delegates of the British American League, Held at Toronto, C. W., on Thursday, November 1, and by Adjournment on the 2nd, 3rd, 5th, 6th and 7th of November 1849* (Toronto: The Patriot Office, 1849), 3 November 1849, appendix, xxv.

[38] Ibid., 5 November 1849, 14. For the broader debate and vote, see: ibid., appendix, xxix-xlvi.

apart. To save the League, the delegates unanimously dissolved the convention and referred the question back to the local branches.[39] Answers trickled in soon enough. By January 1850, the majority of League associations had voted in favour of the elective principle.[40]

The British American League never held a third general convention to ratify the local results. The question of elective Legislative Councils had laid bare the ideological divisions between its two schools of conservatives. Although a majority of branches had endorsed the elective principle, the League's sizeable Tory component refused to accept the outcome. A letter from J.W. Gamble to the members of the Yorkville branch reveals the extent of these divisions. Gamble, a leading Leaguer from Vaughan, Canada West, supported the elective principle wholeheartedly. The Yorkville branch had not only disagreed with Gamble's position; it had done so openly and publicly. In the words of Gamble:

> It is with much concern that I have read in the *Patriot*, a resolution passed by you in reference to my views on the question of elective institutions. Had those views been met by argument, or any position I assumed been controverted by you in the slightest degree, some benefit might have arisen from its publication; but passing over the direct personal allusion to myself, which, to say the least, conveys a sort of censure upon the presiding officer of the central committee of the League, a course not likely to strengthen their hands, I submit, whether any advantage to be derived, from parading before the public merely conflicting opinions of members of an association, whose utility depends upon its unanimity, and whose measures, to carry weight with them, must be based upon some show of reason and sound sense, is not more than doubtful.[41]

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[39] Ibid., 7 November 1849, 24. John Langton of Peterborough, Canada West, tabled this motion at the very end of the convention. As he phrased it: "after the division on the question of elective institutions, the minority felt that the question would not rest there, and they therefore agreed to remain till the close of the Convention and take part in the proceedings, on the understanding that the Convention should then be dissolved and the matter referred to their constituents for the purpose of settling the matter in dispute." See: ibid., appendix, lix.

[40] While the majority had already spoken, not all League branches had responded by late January. According to the Toronto *Independent* (who in turn riffed upon the Toronto *Patriot*): "The majority of the Branches of the British American League have already decided in favour of an elective Legislative Council, but against an elective Governor. Two votes have lately been added in favour of, and the other against the adoption of an elective Legislative Council: the latter was the Newcastle District, the former was Montreal; but when the importance of the Montreal Branch, presided over by the Hon. Geo. Moffatt, is considered, its vote is intitled [sic] to great respect." See: "Getting on by Degrees," Toronto *Independent*, 23 January 1850, 3.

[41] J.W. Gamble, *To The Members of the Yorkville Branch of the British American League* (Vaughan, ON: n.p., 1850), 1.

Older Tories used such direct tactics, alongside their broader influence, to forestall any further assemblies.[42] Without a mandate, the League's executive pursued the subject no further: its public address of May 1850 made no mention of the Legislative Council whatsoever.[43]

The League's ultimate silence, however, did not prevent conservatives elsewhere from taking notice. Between its two conventions, the League made entreaties to potential sympathizers across the Maritimes. Personal letters on League principles went out to "prominent and influential citizens in Halifax." League delegates met with John Robertson and Charles Simonds of the New Brunswick Colonial Association in October 1849.[44] The two groups agreed to meet again in Halifax to discuss, amongst other things, Legislative Councils and a broader union of the colonies.[45] (The New Brunswick Colonial Association eventually endorsed the elective principle as well.)[46] League pamphlets circulated around Maritime urban centres.[47] Newspapers throughout the eastern colonies highlighted the League, its conventions, and the arguments of its delegates. Editors kept a keen eye on the idea of an elective upper house, whether they supported it or not.[48]

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[42] Allin, 39.

[43] For an iteration of the address, dated 1 May 1850, see: "Address of the Central Committee of the British American League, to their Brethren, Countrymen and Fellow Colonists," Toronto *British Colonist*, 7 May 1850, 2.

[44] In 1857, Simonds, as Speaker of New Brunswick's Legislative Assembly, tellingly "denounc[ed] responsible government as an abominable system in which members...merely warred for office." See: MacNutt, *New Brunswick*, 362.

[45] The League had agreed to pursue this meeting at its first convention and appointed a committee to that effect. See: British American League, *Minutes of the Proceedings of a Convention of Delegates of the British American League, Held at Kingston,* 12-13. See also: Allin, 24-26.

[46] "An elective legislative council" formed the sixth plank within the New Brunswick Colonial Association's manifesto of June 1850. This manifesto, in turn, received press coverage across British North America. See: "New Brunswick Colonial Association," Toronto *North American*, 21 June 1850, 3.

[47] The *St. John Morning News* had reported that "[a] number of pamphlets, explanatory of the principles of the 'League' were recently sent to this city, and circulated among the cits [sic]." The Toronto *Independent* reprinted the article on 25 October 1849. See: "New Brunswick on the Canada League and Annexation," Toronto *Independent*, 25 October 1849, 4.

[48] For a brief sample from two newspapers, see: "The Address of the British League," Fredericton *Head Quarters*, 15 August 1849, 2; *The Head Quarters*, 16 January 1850, 3; "The League," Halifax *British Colonist*, 16 August 1849, 2; "The League," Halifax *British Colonist*, 18 August 1849, 2; "Latest by Telegraph," Halifax *British Colonist*, 12 January 1850, 2; "From Canada," Halifax *British Colonist*, 22 January 1850, 2.

By mid-1850, the British American League had almost totally fallen apart: the elective principle had torn it into two warring camps. The League's reaction against responsible government, and its rejuvenated brand of conservatism, had nevertheless travelled across British North America. These ideas, including elective Legislative Councils, would soon worm their way into colonial legislatures. From there, they took on a life of their own.

Elective Legislative Councils and the Conservative Resolutions of 1850

Canadian conservatives had led the charge for elective Legislative Councils in 1849. As the British American League floundered in early 1850, conservatives from Nova Scotia picked up the torch first. One historian has argued that responsible government had crippled the "Tories by the sea."[49] Party organization had supposedly suffered as traditional class prerogatives shifted to the new provincial executive within the Assembly. Charismatic Nova Scotian reformers like Joseph Howe rubbed salt into wounds in hopes their opponents would never recover. Howe himself had written an anonymous open response in May of 1849 to the British American League's first manifesto. Not one to mince his words, Howe relied upon ridicule rather than ideas to make his case against the League and its president, George Moffatt. "As you have appealed to North Americans in your address," Howe wrote, "and as the mob of Montreal have favored us with their interpretation of its contents, I am induced to inquire whether it be the true one, and whether pelting the Queen's representative, dispersing our parliaments and burning our

[49] Allin, 23.

books, are to be indispensable preliminaries in joining the British American League?"[50] J.W. Gamble had warned Leaguers not to give their opponents mixed messages, and Howe had pounced on the most mixed message of all. After all, how did constitutionalists hope to defend the constitution when they attacked constitutional authorities themselves?

Despite his invective, Howe's efforts went in vain. The legislative session of 1850 opened to a newly reinvigorated Nova Scotia Conservative party. Over the recess, party members had circled their wagons around ideas of constitutional balance and mixed monarchy. Responsible government had, according to them, "placed the Local affairs of the Province in the hands of the Executive Council unrestrained by any control on the part of the Lieutenant Governor or the Imperial Government."[51] Executive oligarchy and party interests now reigned supreme. Propelled by these concerns, Conservative leader J.W. Johnston read a series of sweeping resolutions to Nova Scotia's House of Assembly on 19 March 1850.[52] Of these, Johnston saved perhaps the most extreme for last. The present "construction of the Legislative Council," he asserted, neither coincided "with the harmonious working of the present mode of government" nor with "its useful influence as a Legislative Body." Nova Scotia's Conservatives demanded change. Their leader suggested nothing short of "the Election of the Legislative Council by the people."[53]

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[50] See: A Nova Scotian [Joseph Howe], "To the Hon. George Moffatt, President of the British American League, Montreal," 8 May 1849, in *The Speeches and Public Letters of the Hon. Joseph Howe*, volume II, ed. William Annand (Boston: John P. Jewett & Company, 1858), 384-385.

[51] See: J.W. Johnston, *Speech Delivered by the Hon. J. W. Johnston, in the House of Assembly, On the 19th March, 1850, on Introducing Resolutions for Defining the Nation and Foundation of the Self-government of Nova Scotia in Her Local Affairs: and in Favor of an Elective Legislative Council* (Halifax: The British Colonist, 1850), 5.

[52] Johnston tabled the original motion the day before, on 18 March 1850. The Clerk of the House read the resolutions the following day to open the debate. See: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1850), 18 March 1850, 565; 19 March 1850, 569.

[53] See: Johnston, *Speech Delivered by the Hon. J. W. Johnston*, 5. For a revised version of the same resolutions, see: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1850), 27 March 1850, 600-602.

Johnston's *conservative* resolution for an elective Legislative Council signalled the first of its kind in British North America's history. To justify his party's position, Johnston took a page from the British American League and grounded his arguments in the Rebellion Losses controversy. The "Canadian Rebellion Reward Bill," as he called it, had proven that the upper branches of government no longer had the power to reel in questionable legislation. Johnston thanked heaven that Nova Scotia had yet to face a similar crisis. Still, the province's new Reform government had started to act in ways that sowed those discordant seeds. Despite imperial policy, the executive had dismissed 100 Nova Scotian magistrates without cause or explanation only to appoint 250 new replacements. Reformers now sat on county benches across the province; friendship served as their primary qualification. Earl Grey, in the Colonial Office, had refused to interfere. The new executive had thus revealed its willingness to exploit responsible government, even at the expense of local justice.[54] A lieutenant governor who had real authority, at least in terms of imperial policy, might have prevented such abuses. Johnston certainly proposed a resolution to that effect.[55] That said, Johnston also believed that lieutenant governors needed to stay out of local affairs as much as possible (unless, of course, those affairs undercut British interests). The role of checking the Executive had to fall elsewhere.

Johnston viewed an elective upper house as the only way to curb the province's party government. As it stood, Nova Scotia's Legislative Council acted as "but the subservient instrument of the Provincial Government." The majority of Councillors had received their

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[54] Johnston, *Speech Delivered by the Hon. J. W. Johnston*, 6-8; 15. In the words of the Halifax *British Colonist*: "The principal thing that has occupied the Executive since their assumption of power, has been turning occupants out of office and stepping themselves into the berth, or bestowing it on one of their sycophants..." See: "A Greedy Executive," Halifax *British Colonist*, 15 September 1849, 2.

[55] According to Johnston's first resolution, the "Lieutenant Governor of this Colony should be unquestionably recognised as an Imperial functionary, charged with the protection of national interests and as the official organ of communication between the Parent State and the Colony, but holding no relation to Colonial affairs beyond the ceremonials of Office." See: ibid., 5. Also see: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1850), 27 March 1850, 601.

positions from the government of the day. They sat not for their talent but "for securing party measures." Johnston argued that an elective upper house would break this Executive dependency and "weaken those influences that result in merely party adhesions."[56] Independently elected Councillors would again command the respect of Nova Scotians.[57] To guarantee this complete independence – and to ensure that the two houses did not parrot one another – the Legislative Council needed its own electorate. Johnston drew upon imperial precedent to give his arguments authority. The British parliament, only a month earlier, had allowed the Cape Colony to pursue an elective Legislative Council.[58] Lord John Russell, the Prime Minister himself, had spoken in its favour. Russell had but one caveat: that the Council should be "composed of parties elected by persons of a somewhat higher qualification than those who elect the Representatives, and that they should be persons of the class of Magistrates."[59] By invoking Russell, Johnston made clear his party's vision for Nova Scotia's upper house. Through the elective principle, the weight of the people would fall behind the province's Legislative Council. A popular mandate would allow it to stand toe-to-toe with the House of Assembly. Strict franchise and candidacy qualifications would furthermore ensure that Legislative Councillors spoke for different provincial interests. Johnston never mentioned specifics in the 1850 resolutions, but he certainly envisioned a franchise that at least equalled the province's 40-shilling freehold. With such provisions in place, Nova Scotia's upper house

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[56] Johnston, *Speech Delivered by the Hon. J. W. Johnston*, 5.
[57] As Johnston asserted during the debate on his party's resolutions: "This change, of itself, could not fail to have some effect in weakening the adhesions of party, the subsistence of party animosities without, wrought in that interval, would influence the feeling of the new members, and effect a further modification in the measures of the Body....The changing opinions of the people would alter from time to time the views of the Council, and would work incomparably better than the present system, which cannot command the respect of the country." See: Johnston, *Speech Delivered by the Hon. J. W. Johnston*, 12.
[58] See: Martin Wight, *The Development of the Legislative Council 1606-1945* (London: Faber and Faber, 1947), 71-72.
[59] Johnston, *Speech Delivered by the Hon. J. W. Johnston*, 11.

would do more than stand on its own as an important legislative body. It would again come to serve its traditional constituencies: class, status, property, and wealth.

Johnston, in the end, failed in his resolution. A similar motion within the upper house had failed as well.[60] The province's Reform majority had aligned against constitutional change, marshalled by none other than the old reformer himself, Joseph Howe. Once upon a time, in 1837, Howe had actually advocated an elective Legislative Council. Back then, though, Nova Scotia's upper house still acted as the governor's executive. The old Councillors had embodied all that was wrong with Tory rule. They met in secret. They held their seats for life. They "treat[ed] with indifference the wishes of the People, and the representations of the Commons." As "a remedy for these grievances," Howe had resolved in 1837 that "His Majesty be implored to take such steps, either by granting an Elective Legislative Council, or by other such re-construction of the local Government as will ensure responsibility to the Commons..."[61] An elective upper house, at the very least, meant a representative upper house. Compared with the

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[60] The week before, on 12 March 1850, John Morton had tabled resolutions in the Legislative Council that requested "an humble address be presented to her Majesty praying her to remodel the Legislative Council, and to confer on the people the privilege of electing its own members, and thus at all time to ensure their harmonious co-operation with the house of Assembly." The resolution failed by a vote of 11 to 9 with "*every Liberal in that body voting against them*." This chapter focuses on Johnston's resolutions for several reasons. First, he was the Conservative leader. Second, his resolutions carried more weight. Morton's resolutions demanded a petition to the Queen while Johnston's demanded wholesale change to government policy. Third, the resolutions in both houses stemmed from a broader unified Conservative push for constitutional change. For instance, the House of Assembly had adjourned on 12 March at the Legislative Council's behest to allow the Assemblymen to re-gather in the Council chamber and listen to Morton's resolutions. For Morton's resolutions and the subsequent debate, see: "Provincial Legislature. Legislative Council. Question of Elective Council," Halifax *British Colonist*, 16 April 1850, 1; 18 April 1850, 1-2; 20 April 1850, 1-2; 25 April 1850, 1-2. For the contemporary analysis, see: "Legislative Council," ibid., 14 March 1850, 2 (emphasis in text). For the adjournment, see: "The Legislature," *Acadian Recorder*, 16 March 1850, 2; Nova Scotia, *Journal and Proceedings of the House of Assembly* (1850), 12 March 1850, 546-547.

[61] See: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1837), 3 March 1837, 89-91. The final version of the address read: "As a remedy for these grievances, we implore Your Majesty to grant us an Elective Legislative Council; or, to separate the Executive from the Legislative Council; providing for a just Representative of all the great interests of the Province in both; and by the introduction into the former of some Members of the popular Branch, and otherwise securing responsibility to the Commons, confer upon the People of this Province, what they value above all other Possessions, the blessings of the British Constitution." See: ibid., 13 April 1837, 199-200. The Colonial Office ultimately chose the second option and divested the Council of its judicial and executive functions. See: Beck, 100-102; Mackay, 25-26.

"evils arising from [the] imperfect structure of the Upper Branch," any sort of change looked better in the eyes of Howe.[62]

Such a motion was hardly unique within late-Georgian and early-Victorian British North America. Reformers from across the colonies had advocated elective upper houses by the early-1840s as a way to strike at Tory autocracy.[63] With the concession of responsible government, these same reformers no longer needed the elective principle; they had viewed it as a means to an end and not an end in of itself.[64] The responsible system had done enough to defang Legislative Councils across British North America. The former bastions of Tory strength now lay docile at the feet of the people. Those who had fought for responsible government – men like Joseph Howe – refused to unchain Cerberus once more. The province's Conservatives, however, had aimed to do just that. Through the elective principle, they sought to give Nova Scotia's enfeebled Legislative Council both greater authority and greater independence. In response,

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[62] Nova Scotia, *Journal and Proceedings of the House of Assembly* (1837), 13 April 1837, 198.

[63] Jeffrey McNairn reveals, for instance, that Marshall Spring Bidwell, reform leader in the Canadian Legislative Assembly, advocated an elective Legislative Council in 1836. Louis-Georges Harvey and Michel Ducharme more broadly point out that colonial reformers across Lower and Upper Canada sought elective Legislative Councils to reconfigure power relations in the colonies. Prince Edward Island reformers of the 1840s made similar demands for an elective upper house. As Rusty Bittermann has shown, the Legislative Council "established in 1839 was overwhelmingly composed of Escheat's Island opponents – indeed, many of its members had recently been driven out of electoral politics by the movement's rise." Island reformers thus viewed the elective principle as a way to undercut Tory intransigence regarding the land question. Edward Whelan's Charlottetown *Palladium* phrased it this way: "how is it possible for a Council to become a 'curse' if it derives its power from the people it is designed to represent? The more likely, *we* think, is it to become a '*curse*' when the people have no influence over it, especially in a country where an irresponsible Government is permitted to exist; because it can act independently of the people – disregard their interests with impunity – and enslave them as far as its power will permit it to do so." See: McNairn, *The Capacity to Judge*, 32-35. Also see: Louis-Georges Harvey, "The First Distinct Society: French Canada, America, and the Constitution of 1791," in *Canada's Origins: Liberal, Tory, or Republican?*, eds. Janet Ajzenstat and Peter J. Smith (Ottawa: Carleton University Press, 1997), 79-107. Also see: Michel Ducharme, "Closing the Last Chapter of the Atlantic Revolution: The 1837-8 Rebellions in Upper and Lower Canada," *Proceedings of the American Antiquarian Society* 116.2 (October 2006): 424-425. Also see: Rusty Bittermann, *Rural Protest on Prince Edward Island* (Toronto: University of Toronto Press, 2006), 237. Also see: "Gossip with the Islander" Charlottetown *Palladium*, 6 June 1844, 2-3 (emphases in text). In the same issue, Whelan calls upon "loyal and deserving" Prince Edward Islanders to unite and demand governance "according to the spirit and principles of our constitution." See: "Action," ibid., 1-2.

[64] As McNairn phrases it, the reformers' complaints "did not, however, lead to the abandonment of the analogy with the British constitution. They only seemed to invite its more insistent application so that the assembly could claim all the powers and privileges of the British House of Commons." Radicals, on the other hand, valued elective institutions in of themselves as the conduits of popular sovereignty. See: McNairn, *The Capacity to Judge*, 35.

Howe, as Provincial Secretary, gutted Johnston's resolutions. Instead of constitutional complaints, Howe affirmed that "the forms of Government...which exist in this Province, have been established and adopted, after ten years' discussion and conflict, with the full knowledge and approval of the People of Nova Scotia." Instead of an elective Legislative Council, he deemed it inexpedient "to suggest any change in the Institutions of this Province."[65] The Reformers carried these amendments 23 to 15. If the responsible government generation had any say, an elective Legislative Council would never see the light of day in Nova Scotia.

The opening battle over British North America's upper houses had resulted in a loss for conservative forces. Howe's Reformers had proven too strong numerically for Johnston's constitutionalist arguments. This early setback did not prevent conservatives elsewhere from opening up new fronts. The Nova Scotia debate had taken place in late-March 1850. Almost simultaneously, Prince Edward Island's Edward Thornton had given notice of a motion "to render the Legislative Council ELECTIVE." The conservative Thornton had seen how responsible government had corrupted upper houses elsewhere in British North America: he hoped to rescue the Island's Council before it suffered the same "degradation of a servile dependence upon the government." Unfortunately for Thornton, the legislative session closed before he could act on his notice. Prince Edward Island would have to wade into responsible government without an upper house "truly 'responsible' and useful to the public."[66]

Island newspapers had reported Thornton's notice on 22 March 1850. By 22 April, the locus of debate had jumped from Nova Scotia and Prince Edward Island to New Brunswick. New Brunswick's government had gotten wind that "the further privilege of electing the

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[65] The same resolutions go on to qualify that "the same system of Government, has, with equal deliberation, and after many sacrifices, been established by the people of Canada and New Brunswick, while it is eagerly sought by the Inhabitants of Prince Edward Island and Newfoundland" as well. See: Nova Scotia, *Journals and Proceedings of the House of Assembly* (1850), 602-603; 605.

[66] "The Legislative Council," Charlottetown *Islander*, 22 March 1850, 3 (emphasis in text).

Legislative Council is intended to be granted by Her Majesty's Government to the Colonies in Australia and Southern Africa, as enunciated by Lord John Russell in the House of Commons on the eighth day of February last..."[67] Sylvester Zolieski Earle moved in response "that the Legislative Council of this Province ought to be elected by the People, under such restrictions as may be conducive to the Public welfare." By the end of the very same day, the debate had closed. Twenty-six Assemblymen had voted in favour of the resolution; only five had rejected it.[68] New Brunswick's House of Assembly, in just a few hours, had done what Nova Scotia's and Prince Edward Island's could not: it had officially endorsed the idea of an elective Legislative Council.

New Brunswick's particular political situation had allowed Earle's resolution to pass. Reformers did not have nearly the same provincial presence as they did in Nova Scotia. When responsible government had (nominally) arrived in 1848, New Brunswickers had not gone to the polls. Instead, Lieutenant Governor Sir Edmund Head had formed a coalition government. The province's most talented Liberals had joined a larger group of influential Conservatives, creating an executive that "command[ed] a wide basis of support." Only "sectional and local eccentricities" slowed the government down.[69] One thus witnessed Assemblymen of all

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[67] New Brunswick, *Journal of the House of Assembly of the Province of New Brunswick* (1850), 22 April 1850, 334. In fact, Russell's colonial policies had made news across British North America. Toronto's *British Colonist*, for instance, published a synopsis of them on 5 April 1850. The list included: "(1) – That the Canadian Government already does, even with its nominated Upper Chamber and Imperial veto, very closely approximate the Constitution of this country. (2) – That the Cape, nevertheless, should have an Elective Upper Chamber. (3) – That Australia must retain its present one-third nominated Single Chamber, though objectionable, because he [Russell] understood that new South Wales approved of it. (4) – That Guinea should have an extended franchise; and in other colonies still unripe for popular representation, Elective Councils might at once be introduced." See: "Lord John Russell's Colonial Policy," Toronto *British Colonist*, 5 April 1850, 1. Halifax's *British Colonist* also showed its interest, and especially in the Australian example. As it explained to its readers, "[t]he new law for the better government of Her Majesty's Australian Colonies (13 and 14 Victoria, cap. 59) will shortly be proclaimed in the respective Colonies....Electoral districts are to be established in New South Wales where freeholders, householders to £10 a year, and landowners, may vote in the election of members of the Legislative Council." See: "The Australian Colonies," Halifax *British Colonist*, 7 November 1850, 2.
[68] New Brunswick, *Journal of the House of Assembly of the Province of New Brunswick* (1850), 22 April 1850, 334.
[69] MacNutt, *New Brunswick*, 318-320.

ideological stripes endorsing the elective principle: from former opponents to the responsible system like John Richard Partelow;[70] to prominent reformers like Charles Fisher and Lemuel Allan Wilmot;[71] to the government's "only consistent opposition" in William Johnstone Ritchie.[72] The language of loyalty as found within the resolution helped to unify these different groups. Instead of attacking party government, the Assembly simply asserted that "Her Majesty's Subjects in this Province, from their intelligence loyalty, and attachment to the Mother Country, are justly entitled to all the privileges thus generously bestowed by the Imperial Government upon other Colonies having a Local Legislature."[73] More marginal colonies had received the right to elective Legislative Councils; loyal New Brunswickers certainly deserved it as well. The province's legislature, however, did not have the power to change its constitution itself. Colonial authorities in London had to give their blessing first.

Once New Brunswick's Assembly had agreed upon the elective principle, it set about drafting a petition to the Queen. The legislators completed their work on 25 April. Aside from earlier assurances of loyalty, the document fleshed out the reasons why New Brunswick needed an elective Legislative Council so badly.[74] These arguments echoed the ones heard in Nova Scotia and Prince Edward Island a month earlier, only less strident. The problem again boiled

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[70] See: W.S. MacNutt, "Partelow, John Richard," *Dictionary of Canadian Biography*, volume IX, 622-623.
[71] C.M. Wallace argues that "Wilmot and Fisher were accused of deserting their principles in 1848" when they joined Sir Edmund's coalition government. See: C.M. Wallace, "Wilmot, Lemuel Allan," ibid., volume X, 712.
[72] See: MacNutt, *New Brunswick*, 320. See also: Gordon Bale and E. Bruce Mellett, "Ritchie, Sir William Johnston[e]," ibid., volume XII, 896.
[73] New Brunswick, *Journal of the House of Assembly of the Province of New Brunswick* (1850), 22 April 1850, 334.
[74] As the petition phrases it: "In the original colonization of this Continent, the principle of election was applied to the second Branch, and we believe Your Majesty now proposed to extend that principle to some of Your Colonial Dominions. If there be a Colony in Your Empire where Your Majesty can with safety rely upon the patriotism and loyalty of Your Subjects, it is New Brunswick." This sentence makes several comparative implications. First, it suggests that the Crown could trust the loyalty of New Brunswick over that of its Australian and South African colonies. Ideas of race and class tinged these words. Second, it insinuates that the Crown could trust New Brunswick more than any of its other British North American colonies. New Brunswickers had never attacked the Queen's representative or fomented open rebellion (unlike the Canadians). See: ibid., 25 April 1850, 349.

down to the changes brought about by responsible government. "The extension of the principle of self-government," the petition asserted,

> has so increased the power of the House of Assembly over the Legislative Council, in consequence of the appointment to Seats in that House being virtually vested in the Executive Council, that the Legislative Council does not now retain the constitutional check which that Branch is called upon to exercise according to the theory of our mixed form of Government.[75]

New Brunswick's Assembly, in other words, believed that it (and its future iterations) wielded too much authority under the responsible system. It wanted a return to the old constitutional balance where the "Monarchical, Aristocratic and Democratic elements" equalized each other and secured "so large a measure of religious, political and civil liberty." To this end, New Brunswick's legislators "humbly suggest[ed], that an Elective Legislative Council could be so formed as to secure a more perfect constitutional balance in the adjustment of our Provincial Government than any other attainable in the present state of Colonial Society."[76] By the end of the same day, the petition had found its way into the hands of the lieutenant governor. He, in turn, promised to forward it to the Colonial Office.[77] New Brunswick's Assemblymen had done all they could do in pursuit of an elective upper house. They now waited as other British North Americans looked on.[78]

New Brunswickers would not receive their reply until the next legislative session. In the meantime, the Canadian legislature had finally taken up the idea of an elective Legislative Council. With the Maritime examples already before them, Canadians had quickly gone from leader to laggard when the debate opened toward the end of May. As Parliament got underway, Canadian legislators knew they had to prepare a conciliatory address to Lord Elgin. The

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[75] Ibid.
[76] Ibid., 348-349.
[77] Ibid., 355-356.
[78] For example, the Halifax *British Colonist* reprinted an article congratulating New Brunswick's legislature on the motion. See: "Elective Legislative Council," Halifax *British Colonist*, 4 May 1850, 2.

violence of 1849 – directed at both Her Majesty's institutions and Her Majesty's representative – had put Canadians' allegiances into serious doubt. They had to reassure the governor that "the great majority of the people of the Province" remained loyal to Great Britain and that the demonstrations across the province did not "find favor with any considerable portion of Her Majesty's Canadian subjects."[79] Parliament heard a draft of this address on 22 May 1850. On the same day, Norfolk's Henry Boulton suggested an addition. Instead of a mere "encrease of Parliamentary Representation," he recommended an "extension of the elective principle to the Legislative Council, which this House observes with great satisfaction has lately been recommended by Her Majesty's Government to the Imperial Parliament, while framing a new Constitution for one of the sister Colonies."[80] For conservatives like Boulton, the precedent set by the sister colonies had come none too soon.

Henry Boulton had burned a lot of bridges during his time in public office. Although he styled himself as an independent conservative, he had entered political life in 1818 as the Tory solicitor general for Upper Canada (succeeding John Beverly Robinson). By 1829, he had risen to attorney general (again succeeding Robinson). From this latter position, he had used his authority to expel the radical William Lyon Mackenzie from parliament in both 1831 and 1832. The Colonial Secretary, in turn, expelled Boulton from office for his legally-questionable zealotry. Resentful, Boulton had sided with the Reformers by the early 1840s in support of responsible government. Reform leader Robert Baldwin offered Boulton a safe Reform seat in 1848 (in Norfolk County on Lake Erie). Conservatives, in turn, labelled Boulton an office-seeker and a traitor. By 1850, Boulton bristled under Reform rule. According to Boulton's biographers, "he was again an 'independent' member, advocating...the elective principle in the

[79] Province of Canada, *Journals of the Legislative Assembly of the Province of Canada*, volume IX (1850), 22 May 1850, 17.
[80] Ibid., 18.

Legislative Council."[81] Boulton did not care that Robert Baldwin found the elective principle both objectionable and "inconvenient."[82] His adherence to constitutional balance called for an elective upper house. He "did not know that he would receive the support of members on either side of the House, in obtaining elective institutions; but he was not afraid to propose them."[83] With those words, another bridge burned behind him.

Boulton adopted the constitutionalist language of security to justify an elective Legislative Council.[84] He believed, bluntly, that "the elective principle was necessary for the security of the country." The Rebellion Losses Bill had almost brought Canada "to the verge of a revolution." It had "alienated men from their allegiance, and driven some to desire independence and other[s] annexation." It had proven that "there was a degree of extraordinary power lodged somewhere, with which it was not safe to entrust any set of men." If the current government could "fill the [Legislative] Council with men pledged to carry that Bill," nothing prevented future governments from acting "in the same high handed manner, if they found such a course necessary for their purpose." Canada no longer had a balanced government; power concentrated itself in the Assembly. The time had thus "arrived when steps should be taken to prevent any particular body of men from retaining a power, which they could not exercise without danger." Only a "perfectly independent" elective upper house could exercise the "wholesome control" Canada needed.[85]

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[81] Henry Boulton thus offers a good example of political party fluidity during the early-to- mid-nineteenth century. See: Hereward and Elinor Senior, "Boulton, Henry John," *Dictionary of Canadian Biography*, volume IX, 69-72.
[82] Even before Boulton could discuss his amendment, Robert Baldwin offered his objections. Baldwin believed that it "was not the time for discussing those details of the business of the Session" and "deemed the present a very inconvenient manner of procedure." See: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IX, part I (1850), 22 May 1850, 134.
[83] Ibid., 135.
[84] As Michel Ducharme argues, pre-Rebellion British North American constitutionalism revolved around an ideological triptych of liberty, property, and security. See: Ducharme, *Le concept de liberté au Canada*, 236.
[85] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IX, part I (1850), 22 May 1850, 134.

Boulton had offered arguments tested elsewhere in British North America. His tactics, however, made them essentially unpalatable. Boulton asserted – rightly – that the Lower Canadian Patriotes had demanded an elective Legislative Council in 1834 as part of their Ninety-Two Resolutions.[86] Several Lower Canadian legislators who sat in 1850 "had heretofore supported the elective principle by recorded votes, as by the ninety-two resolutions." Louis-Hippolyte LaFontaine, the current Attorney General for Canada East, and Louis-Joseph Papineau, "the author of the ninety-two resolutions," numbered amongst them.[87] Boulton suspected – wrongly however – that an invocation of the Ninety-Two Resolutions somehow strengthened his cause. The Rebellion Losses Bill had only recently opened up the old wounds of 1837 and 1838. Few wanted to tear at them any further by passing Patriote legislation. Canadian loyalty appeared tenuous enough as it stood. Papineau's two-and-a-half hour speech did not do any favours either. Aside from endorsing the elective principle, he declared that "[t]he day would come when these colonies would be prosperous and happy, [and] that time would commence with the annexation of the United States."[88] Of the 64 Assemblymen present for the final vote, only 13 supported Boulton's motion. That number included Papineau, Boulton, and Boulton's nephew, William Henry Boulton. The elder Boulton had lost his motion badly, just as he predicted he would.

The Boulton family was nothing if not persistent. Henry Boulton had already commandeered two days of the House's time over the elective principle. By the beginning of June, he already promised to take more. Unswayed by the earlier response, he tabled another

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[86] Resolutions 17 and 29 most forcefully enunciate these demands. See: Lower Canada, *Journals of the House of Assembly of Lower Canada* (1834), 21 February 1834, 313; 316.
[87] Ibid., 23 May 1850, 177. Papineau had actually prepared the Ninety-Two Resolutions alongside Elzéar Bédard, Louis Bourdages, and Augustin-Norbert Morin. Morin also sat in the Assembly in 1850, but did so as Speaker of the House. See: Fernand Ouellet, "Papineau, Louis-Joseph," *Dictionary of Canadian Biography*, volume X, 574. Also see: Jean-Marc Paradis, "Morin, Augustin-Norbert," ibid., volume IX, 570.
[88] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IX, part I (1850), 23 May 1850, 177.

address on 3 June "praying that an Act may be passed providing that the Legislative Council of this Province shall consist of ____ Members...to be elected for six years, by persons possessed of real estate to their own use, of the annual value of ____ pounds, or shall pay an annual rent of ____ pounds, for real estate occupied by such voter."[89] Boulton had left the franchise qualifications blank for future consideration. He clearly had a high enough property qualification in mind; otherwise, he would not have put the valuation in pounds (as opposed to shillings). Papineau, for the record, seconded the address.[90] He even softened his words this time and "alluded in terms of praise to the action which the [British American] League had taken on the subject."[91] Despite the more conciliatory tone, the motion failed by nearly the same vote as before: 14 supported it, 49 rejected it. By the end of the session, two similar motions (this time by the younger Boulton) received a mere seven votes each.[92] Canadian legislators had overwhelmingly aligned themselves with the old Tory William Benjamin Robinson and

> avail[ed] ourselves of the opportunity afforded by the introduction into this Assembly, of propositions of a Revolutionary and Republican character, to declare our firm attachment to the Crown and Government of *Great Britain*... [and]...to assure Your Majesty that we decidedly disapprove of, and condemn all such attempts to disturb the Constitution, as tending to agitate the public mind.[93]

The temper of the times in Canada called for caution. Tories like Robinson did not want to alter the Legislative Council; Reformers like Baldwin and LaFontaine did not want to alter the responsible system. Only troublemakers like the Boultons and Papineau hoped to enact further reforms. Those positions would change soon enough.

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[89] Ibid., *Journals of the Legislative Assembly of the Province of Canada*, volume IX (1850), 3 June 1850, 40.
[90] See: ibid.
[91] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume IX, part I (1850), 3 June 1850, 369.
[92] See: ibid., *Journals of the Legislative Assembly of the Province of Canada*, volume IX (1850), 24 June 1850, 91-94. Also see: ibid., 5 August 1850, 245.
[93] Ibid., 28 June 1850, 106 (emphasis in text). William Robinson was the younger brother of Peter Robinson and Chief Justice John Beverly Robinson. According to his biographer, William was "like his brothers...strongly Tory in his sympathies..." See: Julia Jarvis, "Robinson, William Benjamin," *Dictionary of Canadian Biography*, volume X, 622.

Conservative Legislation and Legislative Council Franchises in New Brunswick and Nova Scotia

By the end of 1850, every British North American province had heard conservative notices for elective Legislative Councils. Nova Scotia, New Brunswick, and the Province of Canada had, moreover, put those resolutions to a vote. Nova Scotian Reformers had defeated the motion handily and a combination of Tories and Reformers had done the same in Canada. Only in New Brunswick did the elective principle manage to get the Assembly's support. The address had left for the Colonial Office by the end of April 1850; it received the Earl Grey's attention on 25 November.[94] Nine long months later, on 13 February 1851, New Brunswick had its reply: it was good news for conservatives. The imperial government, Grey cited, "feel[s] no objection to the extension of the principle of election to the upper House of the Legislature, according to the prayer of the Address of the House of Assembly." New Brunswickers could pursue and pass elective legislation if they so desired. Conservatives across the colonies had received the precedent they needed.[95]

Grey had told New Brunswickers that he would "abstain...from offering any suggestion as to the manner in which any Act for this object should be framed." In adherence with responsible government, he apparently did not wish to manipulate local legislation. Grey, however, had trouble keeping his opinions to himself. This made the news even better for British North American conservatives. Grey believed it necessary "to render [the two legislative

[94] According to Grey, the "extreme importance of this subject...has induced me to reserve it for consideration for so long a period as the recess of the Legislature of New Brunswick would allow." See: New Brunswick, *Journal of the House of Assembly of the Province of New Brunswick* (1851), 13 February 1851, 42.

[95] Grey ensured to end his despatch with a discussion of precedent. First, he cited that "[t]he subject of the composition of an Elective Legislative Council was recently much considered by the Committee of her Majesty's Privy Council for Trade and Plantations, to which the question as to the expediency of establishing Representative Institutions to the Cape of Good Hope had been referred by Her Majesty. Although the external circumstances of that Colony, and its social condition, are widely different from those of New Brunswick, and its legislation can obviously form no precedent for that of a Province which has been for many years in the enjoyment of a Representative Government, yet some of the questions which were then discussed are of general application." Second, Grey "[did] not see any sufficient reason for requiring that the adoption of the proposed change in the Constitution of New Brunswick should be made contingent on its being extended to the other North American Provinces..." See: ibid., 42-43.

houses] mutually independent of each other...for securing that constitutional check to which the House of Assembly alludes...as characteristic of British institutions." Franchise law offered the means to do so. Although he refused to go into specifics, Grey thought "it right to express my trust that [no law] will be passed, the effect of which would be to establish such a franchise, or mode of election, as to render the Legislative Council a mere second House of Assembly, and which should not maintain a substantial distinction of character between these two bodies."[96] With the 40-shilling freehold still the norm across British North America (recall that Nova Scotia did not alter its franchise until 1851), this non-suggestion meant one of two things: either the Legislative Council must have much more restrictive property qualifications, or it must turn to manhood suffrage. Only radicals advocated manhood suffrage in 1850. The Earl Grey was certainly no radical.[97]

The more adaptable opponents to responsible government now had their marching orders. If they wanted their Legislative Councils as counterweights to the Assemblies, the Colonial Office had no problem with the elective principle so long as it came with strict property qualifications attached. Indeed, it even encouraged the institution as far as propriety allowed. The real test would come on British North American soil. Outside the legislatures, conservatives had to convince their neighbours that the elective principle would not add to legislative costs or disrupt British rule. Inside the legislatures, High Tories still had aristocratic pretensions and Reformers still remembered the old colonial oligarchies. The Legislative Councils themselves posed yet another problem. Any elective legislation first had to meet with the Councils' approval. Those in favour of the elective principle had to, in essence, convince Legislative

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[96] Ibid., 42.

[97] For instance, see: Alan Lester, *Imperial Networks: Creating identities in nineteenth-century South Africa and Britain* (London: Routledge, 2001), 148-149. Also see: Peter Burroughs, "Liberal, Paternalist or Cassandra? Earl Grey as a Critic of Colonial Self-Government," *Journal of Imperial and Commonwealth History* 18.1 (January 1990): 33-60.

Councillors to give up their lifetime job security and trudge through the messy (and frequently violent) world of electoral politics. Many Councillors, as one might expect, did not relish the scenario.

New Brunswickers had obtained permission for an elective upper house first. Unfortunately for those who supported the principle, they also encountered Councillor intransigence first. A fortnight after he received the Colonial Secretary's blessing, New Brunswick's government leader, Edward Barron Chandler, tabled a bill before the Legislative Council to "mak[e] certain alterations in the Constitution of the Legislative Council of this Province."[98] Chandler had sat in the province's upper house since 1836. From there, he had hoped to "impose his version of responsible government on the province."[99] The elective principle fit within his constitutionally-balanced, conservative vision (or re-vision) of the responsible system. Chandler already knew that he had the House of Assembly on his side; now he needed to test the Legislative Council's receptiveness. The test did not go well. After requesting and reading the colonial despatches, 10 of 17 Councillors voted to postpone discussion of the bill until the next session.[100] Such a manoeuvre effectively killed the legislation without having to discuss its contents.

With the elective bill disposed of, Councillors prepared an address of their own to the Lieutenant Governor. The appointed upper house, the address asserted, continued to serve its constitutional purpose. It had "hitherto performed its function with every consideration of the public interest; and while preventing on the one hand improvident expenditure, hasty and

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[98] New Brunswick, *Journal of the Legislative Council of the Province of New Brunswick* (1851), 27 February 1851, 62.
[99] This despite his biographer's assertion that "he was not an innovator" and that "[i]n essence, he was a practical man living in a climate that did not produce, or even gladly suffer, novel political theories." See: Michael Swift, "Chandler, Edward Barron," *Dictionary of Canadian Biography*, volume X, 158; 160.
[100] New Brunswick, *Journal of the Legislative Council of the Province of New Brunswick* (1851), 2 April 1851, 119.

imprudent legislation, it has on the other carefully avoided all captious or factious opposition to any well digested measure." From this point of view, the elective principle only served to upset the balanced government New Brunswickers already enjoyed. Instead of a "constitutional check," the Legislative Council would become "a second House of Assembly." The two houses would quarrel for legislative control. Nothing would get accomplished. Soon enough, the elective principle would have to extend to all public offices as well: "Responsible Government must of necessity be abandoned, and Democratic Institutions adopted, and the Constitution be subject to constant changes." With all this in mind, the address concluded that "the County is not prepared for, nor favourable to, such an organic change in the Constitution of this Province."[101] New Brunswick's mixed constitution, according to the majority of Councillors, still served the province (and served it well). Councillors still had the autonomy to fulfill their constitutional responsibilities, and they still had the authority to rebuff ill-conceived legislation. In their eyes, they proved both points by defeating the elective principle.

New Brunswick's legislature had thus reached an impasse over elective Legislative Councils. The upper house had preferred its appointed status and Councillors had reaffirmed their independence by striking down legislation that questioned that very independence. Chandler's Legislative Council bill, as a result, disappeared into the abyss of postponed legislation. It would not reappear the following year. New Brunswick's pursuit of an elective Legislative Council had reached its zenith. Although conservative newspapers (like the Fredericton *Head Quarters*) periodically broached the subject,[102] Chandler's coalition

[101] Ibid., 25 April 1851, 164-165.
[102] For example, see: "The Elective Principle," Fredericton *Head Quarters*, 1 February 1854, 2; "The Elective Principle," ibid., 1 March 1854,

government had moved on.[103] Future conservative measures for elective Legislative Councils – namely those of Francis McPhelim in 1856, 1858, 1859, 1861, and 1862 – went nowhere.[104] Reform governments had no interest in giving greater freedom to the province's upper house.[105] New Brunswick would retain its appointed Legislative Council so long as it kept an upper chamber.[106]

New Brunswick's conservatives had faltered in the face of Councillor self-interest (or, as the Saint John *News* called it, "*Despotism*").[107] Other British North Americans had nevertheless noticed the progress they had made. Nova Scotia's leading Conservative, J.W. Johnston, certainly did at any rate.[108] In 1850, Johnston had tabled a resolution in favour of an elective Legislative Council. He may have preferred to table legislation, but the Colonial Office had yet

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[103] According to W.S. MacNutt: "New Brunswick contemplated the reform reluctantly. The feeling grew that the people could be adequately represented in the second chamber if appointments were more widely diffused, so that all counties, religious denominations, and commercial interests should have spokesmen. This was the principle that was followed. Steadily the legislative council grew in numbers, assuming a quasi-representative character." See: MacNutt, *New Brunswick*, 363-364.

[104] McPhelim's biographer describes McPhelim as "a leading Conservative" between 1850 and 1865. As a conservative at this time, he sat in opposition for most of his career. See: P.M. Toner, "McPhelim, Francis," *Dictionary of Canadian Biography*, volume IX, 527-528. Every time, McPhelim's measures met with one of two fates: they either saw the legislative session end before they could move through committee (in 1856, 1859, 1861, and 1862); or, the Assembly gave them a three-month hoist (in 1858). For the original motions, see: New Brunswick, *Journal of the House of Assembly of the Province of New Brunswick*, 11 April 1856, 222; ibid., 24 February 1858, 111; ibid., 19 February, 1859; ibid., 21 February 1861, 35; ibid., 20 February 1862, 40. Assemblyman William Scovil also tabled elective Legislative Council legislation in 1866. It similarly reached no further than its second reading. See: ibid., 24 and 25 March 1866, 45.

[105] In fact, Reform premier Charles Fisher limited the Legislative Council's freedom even further in 1855. In the words of W.S. MacNutt: "Fisher's government reduced the legislative council's stature and capacity to interfere with its programme by enacting that the president of that body should be a member of the executive council." See: MacNutt, *New Brunswick*, 364.

[106] New Brunswick's appointed Legislative Council would survive through to 1890. According to Gail Campbell, "this reform was never construed as ideologically motivated. Among other things, it was touted as a cost-cutting measure... Most voters and assembly members supported the abolition of the Legislation Council, although a few worried about the concentration of power in the elected assembly." New Brunswickers had apparently resigned themselves to this concentration of power in the four decades since they petitioned the Colonial Office. See: Gail Campbell, "Defining and Redefining Democracy: The History of Electoral Reform in New Brunswick," in *Democratic Reform in New Brunswick*, ed. William Cross (Toronto: Canadian Scholars' Press, 2007), 284.

[107] The Halifax *British Colonist* reprinted the *News*'s editorial to give weight to its own conservative arguments in favour of an elective Legislative Council. See: "From the St. John News," Halifax *British Colonist*, 6 January 1852, 2 (emphasis in text).

[108] As Johnston explained to the House of Assembly in 1852: "The New Brunswick address having received Earl Grey's approval, a bill was introduced into the Legislature of that Province carrying out the principle thus conceded – it, however, met its fate in the Legislative Council, by I believe, not a large majority." See: "Provincial Parliament. House of Assembly," Halifax *British Colonist*, 4 March 1852, 1 (debate of 21 February 1852).

to officially recognize the principle. In early 1851, Johnston proposed a similar resolution.[109] With Joseph Howe out of the province, this second resolution garnered much greater support. In fact, the majority agreed that "the time has arrived when the Elective principle ought, in our opinion, to be extended to that Body." Despite the endorsement, the resolution ultimately failed (again). The same majority had also deemed it "wise to defer the consideration of so organic a change in the Constitution until the General Election shall have been held during the present year."[110] Even if the resolution had passed unamended, it did not necessarily mean anything: Nova Scotia's government had no obligation to act on a mere resolution. Only legislation guaranteed to put the elective principle into effect. New Brunswick's Legislative Council bill, however, had given Johnston the opening he needed. Its failure, moreover, showed Johnston how he must proceed.

Nova Scotia's legislative session of 1852 opened in mid-January. By the end of the month, Johnston was on his feet again to propose an elective Legislative Council. He did not have a mere resolution in hand this time. Following the example set by New Brunswick, Johnston upped the ante and presented actual legislation.[111] Nova Scotians now had a clear view of Johnston's vision for the province. It worried Liberal supporters. Johnston had managed to adapt the language of reform to a conservative's view of the mixed constitution. The elective principle was "a step in advance" not only because it gave Nova Scotians "the power of choosing their own law-givers," but also because it had the "effect of giving to our constitution that

[109] The 1851 resolution read: "That the present mode of appointing Members of the Legislative Council is unfavourable to the independence, usefulness, and respectability of that body, and the just and wholesome influence of public sentiments upon its acts; and that in the opinion of this House the Members of the Legislative Council of Nova Scotia ought to be elected by the people." See: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1851), 20 February 1851, 688.
[110] Ibid., 5 March 1851, 708. The revised resolution passed 25 to 21.
[111] Nova Scotia, *Journal and Proceedings of the House of Assembly* (1852), 31 January 1852, 62.

stability without which any constitution is worth but little."[112] Stability, here, came through constitutional balance; constitutional balance, in turn, came through property. The House of Assembly had just implemented a ratepayers' franchise for its general elections. Its inclusiveness meant that the House now spoke for the people more than ever before. The Legislative Council needed strict property qualifications to ensure the people's voice did not overwhelm that of class, status, and wealth. As Johnston made clear:

> The qualifications for Councillor were that he should be first thirty years a British subject – five years resident in the Province, and that he should be seized of Real Estate in fee simple, and from all incumbrances [sic], of the value of £1000. Those for an Elector were that he should be 21 years of age – a British subject, and have resided one year in the county or city where the Election was held, and should possess Real Estate to the value of £100, the property to be registered 6 months prior to the Election.[113]

British North Americans had never seen qualifications this high before, whether for electors or for candidates. Johnston understood that some might object.[114] He however "thought it better to place them at rates so high as to preclude eavil [sic] or opposition from any, no matter how conservative in principle."[115] Within Johnston's conservative framework, high property qualifications would prevent the iniquities that occurred when the people received too great a legislative voice. He had designed his Council franchise to bring this sort of balance back to Nova Scotia.

As with the resolutions of 1850 and 1851, Johnston had tabled his 1852 legislation from the opposition benches. Appealing across the aisle, he called upon his fellow legislators to

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[112] For the first quotation, see: "Hon. Mr. Johnston's Speech on the Elective Legislative Council Bill – *Concluded*," Halifax *British Colonist*, 6 March 1852, 2 (debate of 21 February 1852). For the second, see: "Provincial Parliament. House of Assembly," ibid., 3 February 1852, 2 (debate of 31 January 1852).
[113] "Provincial Parliament. House of Assembly," ibid., 3 February 1852, 2 (debate of 31 January 1852).
[114] Joseph Howe commented that "[i]n many of the more distant counties you will scarcely find more than one or two men worth £1000." See: ibid.
[115] Ibid.

approach it with "a spirit of entire independence and freedom from party ties."[116] That, of course, did not happen. Joseph Howe mocked the elective principle as only he could. Nova Scotians, he glibly remarked, must certainly accept "those precious constitutions which have lately been offered to the Keffirs of the Cape of Good Hope, and the convicts of Australia!"[117] The resolution ultimately received a three months' hoist.[118] Johnston, however, could not call the session a total loss. Learning from the New Brunswick example, he had convinced his fellow Conservatives within the Legislative Council to table a resolution declaring "[t]hat it is the opinion of this House, that Members of the Legislative Council should be elected for limited periods by the people, under certain restrictions and limitations."[119] The resolution passed by only one vote. So too did the subsequent address to the Queen. Nova Scotia's Legislative Council had thus spoken, if only by the narrowest of margins: "whenever Your Majesty shall think proper to sanction such a change, no obstacle will be raised on their part, to the carrying out of a measure which may be deemed necessary to the satisfactory conduct of the public affairs in this Province."[120] Conservative colonists – both inside and outside the province – quickly recognized what had occurred: Nova Scotia had taken another step toward the elective

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[116] "Hon. Mr. Johnston's Speech on the Elective Legislative Council Bill – *Concluded*," ibid., 6 March 1852, 2 (debate of 21 February 1852).

[117] "Provincial Parliament. House of Assembly," ibid., 11 March 1852, 2 (debate of 23 February 1852). The *British Colonist*'s editor called "Mr. Howe's speech in reply against the principle of electing the second branch...the lengthiest, the least argumentative, and certainly the most splenetic of any he has delivered this Session. All things considered, a very temperate address could hardly be expected from the Hon. Provincial Secretary." See: ibid., 24 February 1852, 2.

[118] The motion to further consider the bill in three months' time passed 25 to 14. See: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1852), 6 March 1852, 133-134.

[119] Ibid., *Journal and Proceedings of Her Majesty's Legislative Council of the Province of Nova Scotia* (1852), 1 April 1852, 49.

[120] Ibid., 3 April 1849, 63. The nine Councillors who voted against the address provided a dissentient report of their own. Much like New Brunswick's Legislative Council, these dissenting Councillors voted against the elective principle because it "would destroy the analogy between the Constitution of this Country and that of the Parent Government;" it "is inconsistent with Responsible Government;" it will open "the elective principle to the appointment of the Lieutenant Governor, the Judges, and other Public Officers;" and, it will "thus render the whole system republican." See: ibid., 64.

principle.[121] The delays could not go on forever. Petitions both for and against the idea continued to arrive within the Assembly.[122] The province, sooner or later, would have to fully discuss the merits of an elective upper house.

The debate arrived in 1858.[123] J.W. Johnston and his Conservatives had come to power the previous year. Nova Scotians had shown their displeasure with Liberal political and religious policies. Our old friends at the Yarmouth Free Discussion Club captured some of this sentiment when it passed two resolutions in January 1855. The first declared that the Liberal "Government of Nova Scotia, by their opposition to the principles of Universal Suffrage, Municipal Incorporations, and Elective Legislative Councils should forfeit the confidence of the Liberal party in the Province." The second recommended that "the Electors of Nova Scotia should, at the next Election, exert their influence, to choose men to serve in the General Assembly who will support the principles of Elective Councils, Municipal Incorporations, and an Elective Governor."[124] Both the Liberals and the Conservatives balked when it came to an elective governor. Conservatives, however, continued to press for an elective upper house in the face of

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[121] The Saint John *New Brunswicker* reported, for instance, that "[t]he Legislative Council of Nova Scotia has adopted the elective principle for that body, by a majority of one. This is an important step in the progress of reform in these colonies, and shows that the majority of the members of the Legislative Council of the sister Province are keeping pace with the advancing spirit of the age, in thus placing their seats at the control of the popular voice. They are the first to recognize a principle which must eventually be adopted throughout the whole of the British North American colonies....We believe that with an elective Legislative Council in New Brunswick, not chosen in the same manner as the House of Assembly, but on a more Conservative principle, we should have a body possessed of a far greater desire to advance the general interests of the country. Nova Scotia has taken the lead in this important matter, and the action of the Legislative Council in that Province will hasten the accomplishment of a reform which we believe would be attended with a great benefit to all these colonies." The Halifax *British Colonist* reprinted the article with great approval. See: "Elective Legislative Council," Halifax *British Colonist*, 22 April 1852, 2.

[122] In February of 1853, for instance, the inhabitants of Digby County sent a total of five petitions to the House of Assembly with reference to the elective principle. Three of these (comprising over 200 signatures) supported the "elective principle for the Legislative Council as a better fit within system of responsible government." The other two upheld the principle of appointment. See: Nova Scotia Archives and Records Management [hereafter NSARM], RG5 Legislative Assembly fonds, series P Petitions, volume 13, numbers 24-25; 27-29.

[123] Johnston had tabled his elective Legislative Council bill in 1853 as well. The debate did not get past its first reading. See: Nova Scotia, *Journal and Proceedings of the House of Assembly* (1853), 21 January 1853, 223.

[124] The *Yarmouth Herald* had originally published this report. Again, Halifax's *British Colonist* had reprinted anything that endorsed an elective Legislative Council. See: "Free Discussion," Halifax *British Colonist*, 27 January 1855, 2.

Liberal resistance. Now that they held the balance of power, it came as no surprise that they announced an elective Legislative Council as part of their speech from the throne.[125] Johnston tabled the bill soon after.[126]

Much like Nova Scotia's other franchise laws, the elective legislation had evolved over the interceding years. Elections for the House of Assembly had operated under the province's so-called manhood suffrage law since 1854. Johnston and the Conservatives, one might recall, proved instrumental in its enactment. The legislation, in fact, had played a part in Johnston's broader Conservative scheme. The House of Assembly now truly spoke for the people. An elective Legislative Council, now more than ever, needed to speak for wealth, status, and property. Johnston, in essence, wanted a clean division of powers between the masses and the classes. With House elections governed by British North America's most inclusive franchise, an elective Legislative Council no longer needed such strict qualifications for either candidates or electors. As Johnston described the new legislation: "the length of time for which the members should be elected, may be six or eight years; the qualification of members may be supposed not too high at £500 real estate; of electors, the well known property qualification of 40s. freehold."[127] Johnston had avowed his preference for the old 40-shilling freehold since 1851. The Liberals had disowned it despite his entreaties. Johnston's party now (seemingly) had the power to reinstitute Nova Scotia's first franchise, if only in a different place.

The debate dragged on for days once the bill reached the Committee of the Whole. Much of it centred on the conservatism of elective Legislative Councils. Legislators seated in the opposition benches had tremendous difficulty coordinating their opinions. Some men, like

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[125] Nova Scotia, *The Debates and Proceedings during the Third Session of the Twenty-First Parliament of the Province of Nova Scotia* (1858), 4 February 1858, 4.
[126] See: ibid., *Journal and Proceedings of the House of Assembly* (1858), 12 February 1858, 420.
[127] Ibid., *The Debates and Proceedings during the Third Session of the Twenty-First Parliament of the Province of Nova Scotia* (1858), 4 February 1858, 28.

Joseph Howe and Stewart Campbell, viewed the legislation as wholly un-conservative – even radical. Howe asserted that "this tinkering with the constitution is out of place; that it is the duty of the Crown officers, to preserve the form of government, unless change appears absolutely essential, and not to impose on us such a ridiculous hybrid, mongrel sort of constitution, as we shall have if this bill pass."[128] Campbell, moreover, made clear his "desire to maintain [the Legislative Council's] similarity to its great original the house of Lords." Only by doing so could Nova Scotia uphold "that conservative principle which is the peculiar characteristic of a constitutional upper branch."[129] A vote for an elective Legislative Council meant a vote for radical politics, at least according to these formulations.

Howe and Campbell saw their arguments unintentionally countered by two of their Liberal colleagues: William Annand (Howe's most loyal follower in the Assembly) and William Young (the leader of the opposition).[130] These two argued that elective legislation epitomized high conservative values and all the popular disdain they embodied. Annand, on the one hand, "felt that its introduction into our constitution would strike a fatal blow at the system of government which it cost us so much time and labor to attain."[131] Young, on the other, stressed that "[t]o introduce a bill of this kind, founded on county representation, – the members of Council being elected by constituencies whose right to vote involves the possession of a superior

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[128] Ibid., 26 February 1858, 105.
[129] Ibid., 3 March 1858, 113. Stewart Campbell sat as Speaker of the House of Assembly at this time. As Speaker, he normally did not have the right to participate in House debates. Because House Committees have different chairmen, the Liberal Campbell took the opportunity to make his opinions known. See: ibid., 110.
[130] We have already encountered William Young in Chapter 3. William Annand deserves some mention here. According to Annand's biographer, Annand "had acquired the nickname 'Boots' for his unswerving loyalty to Howe through the various party alignments precipitated by railway and religious issues." In 1858, Annand published an edited collection of Joseph Howe's speeches to that date. See: David A. Sutherland, "Annand, William," *Dictionary of Canadian Biography*, volume XI, 23. See also: William Annand, ed., *The Speeches and Public Letters of the Hon. Joseph Howe* (Boston: John P. Jewett & Company, 1858).
[131] Nova Scotia, *The Debates and Proceedings during the Third Session of the Twenty-First Parliament of the Province of Nova Scotia* (1858), 26 February 1858, 108.

franchise, is to strike a death blow to the power of this house."[132] These two Liberals believed they understood Johnston's game. A newly reinvigorated Legislative Council – governed by higher franchise qualifications – could claim to represent the wealth and property of Nova Scotia. A body that represented wealth had greater right to dictate how government spent that wealth. Control over revenues would conceivably shift from the lower house to the upper. Legislative Councillors, in Young's words, "would at once claim the right of moving what votes they pleased; and, sitting for life as they will until the present members die off, will gradually usurp the function of this branch of the Legislature and denude this house of all real practical power."[133] Although it may have appeared radical, Johnston's game was as conservative as it got. If Nova Scotia received its elective Legislative Council, class, status, wealth, and property would rule the province once more.

The Committee of the Whole bickered for nearly two weeks before it called a vote on any part of the bill. The first of these came from Stewart Campbell: he wanted to scrap the bill altogether (or, at least for the next three months). The result could not have come any closer. Campbell's motion garnered 26 votes for and 26 votes against. The Committee's chairman, John Ryder of Yarmouth, cast the tiebreaking vote against the motion. Three years earlier, Yarmouth's Free Discussion Club had pushed for a representative who favoured elective Legislative Councils and the rest of Yarmouth had followed in electing Ryder. Those earlier efforts had now paid dividends within the legislature. A subsequent vote on the bill's first clause divided the exact same way: 26 for and 26 against. Chairman Ryder again sided for an elective upper house. While Conservative newspapers cooed at their apparent victory, Johnston

[132] Ibid., 107.
[133] Ibid.

ultimately refused to pass his legislation by so close a margin.[134] By 10 March 1858, the Assembly had resolved "[t]hat under these circumstances it is inexpedient to press the further consideration of a question of so much importance at the present session; but this house does record its opinion that the interests of the people of Nova Scotia require that the legislative council should be elected by the people."[135] Nova Scotia's legislature had again endorsed the elective principle, but the province still did not have an elective upper chamber. Perhaps cowed by the results, Johnston did not table his legislation the following year. Liberal legislators mocked him incessantly for it.[136] Soon enough the Conservatives fell from office and Joseph Howe took over as premier in 1860. With Howe dictating policy, and Johnston approaching retirement, the window of opportunity for an elective Legislative Council had closed in Nova Scotia for good.

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[134] For example, see: Halifax *British Colonist*, 9 March 1858, 2. William Young had similarly asked whether "any government [would] carry out such a bill with this majority?" See: Nova Scotia, *The Debates and Proceedings during the Third Session of the Twenty-First Parliament of the Province of Nova Scotia* (1858), 8 March 1858, 145. For the votes, see: ibid., 145-146.

[135] Ibid., *Journal and Proceedings of the House of Assembly* (1858), 10 March 1858, 476-477.

[136] In response to the 1859 speech from the throne – and the confidence motion it garnered – William Annand commented that "[i]t was the habit of the hon. gentlemen opposite to taunt us when they were in opposition for not bringing down measures; let me ask how many measures have been submitted by the present government since they came into power?...True, they had the hardihood to submit for the consideration of this House the Elective Legislative Council Bill, a measure which they could not carry and on which they suffered a signal and inglorious discomfiture. Where is it now? Has the hon. and learned leader of the opposition lost faith in the propriety and beneficial effects of that bill which with unwearied pertinacity, he pressed on the consideration of this House for years, occupying its time and distracting the attention of public men from measure of general public utility? Or, sir, are we to conclude that his faith in the strength of his government is shaken and that he dare not test the sense of this House on the principle of that bill." William Chambers (the same William Chambers who would go on to rant about the dregs of society in 1863) took an even lower road when he asked: "what measures have they carried to advance the interests of the country? Not one solitary measure. Last session the Elective Council Bill was announced, but owing to their weakness and imbecility they were obliged to withdraw it. Sir, the speech of the present session is remarkable for containing nothing – not a single measure is propounded." For Annand's speech, see: Nova Scotia, *The Debates and Proceedings during the Fourth Session of the Twenty-First Parliament of the Province of Nova Scotia* (1859), 9 February 1859, 44. For Chambers's speech, see: ibid., 7 February 1859, 32.

Conservative Legislation and Council Franchises in Canada and Prince Edward Island

New Brunswick and Nova Scotia would never have elective Legislative Councils despite the precedents they had set. Conservative arguments for mixed monarchy, constitutional balance, and propertied enfranchisement could not sway enough people to pursue further changes to responsible government. Those same arguments, however, had a different effect in the two other British North American provinces. Although they arrived later to the party, the provinces of Canada and Prince Edward Island eventually took the path less travelled and opted for elective upper houses. Conservative constitutionalist principles cleared the trail (eventually) in both places.

Norfolk's Henry Boulton had forced the Canadian legislature to debate elective Legislative Councils in 1850. Both political parties had united to smother the discussion. By September 1852, the subject had reappeared before the Legislative Assembly, but this time from a much different source. Reform premier for Canada East, Augustin-Norbert Morin, had tabled a series of six resolutions on the constitution and composition of Canada's upper house. The very first of these stipulated:

> That under the circumstances in which the Province of Canada is placed in a social, political, and economical point of view, the introduction of the Elective principle into the Constitution of the Legislative Council would not only impart greater weight to the important Branch of the Legislature than it can have under existing arrangements...but would also ensure greater efficiency in carrying out that system of Government which obtains in the Mother Country, as has been happily introduced into this Province.[137]

At first glance, Morin's language appears to echo that of conservatives from across British North America: Canada apparently needed an elective Legislative Council to fully realize its new system of responsible government. Morin approached the subject, however, from a much

[137] Province of Canada, *Journals of the Legislative Assembly of the Province of Canada*, volume XI, part I (1852-1853), 24 September 1852, 197.

different, much more progressive perspective. In 1834, he had prepared the Patriotes' Ninety-Two Resolutions alongside Louis-Joseph Papineau. Morin had advocated an elective Legislative Council ever since (much like Papineau as well). Indeed, Morin believed in the elective principle to such an extent that he had threatened to resign as a Reformer in 1851 if the party did not formally pursue the measure. Morin (the Reformer) and Papineau (the Rouge) now found themselves at odds within the Legislative Assembly by 1852. In advocating the elective principle, Morin hoped to steal some of Papineau's thunder in the process.[138]

Morin's subsequent resolutions reveal his progressive vision for Canada's upper house. Aside from the elective principle itself, he also proposed qualification thresholds for both potential electors and potential Legislative Councillors. With regard to the franchise, Morin suggested that "persons qualified to vote at the Election of Members of the Legislative Assembly in each Division...elect one proper person...to sit in the Legislative Council..." In other words, Morin believed that the Legislative Council should operate under the same franchise as the Legislative Assembly. He saw no ideological necessity for different franchises for different houses of parliament. His proposed qualifications for Councillors were similarly loose. Morin's third resolution specified:

> That the persons qualified to be elected Members of the Legislative Council should be all Subjects of her Majesty by birth or naturalization, of the full age of twenty-one years, and residing in this Province, who may have been Members of the Legislative Council of *Upper* or *Lower Canada*, or of this Province, or who shall have been elected Members of the Legislative Assembly of this Province, or of either of the said late Provinces, or are or have been Wardens or Mayor of a Municipal District or County, or of a Union or Division of Counties, or of any City or Town in this Province.[139]

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[138] Paradis, "Morin, Augustin-Norbert," 570-571.
[139] Ibid., *Journals of the Legislative Assembly of the Province of Canada*, volume XI, part I (1852-1853), 24 September 1852, 197 (emphases in text).

Based upon this wording, then, any man who sat on one of the province's legislative bodies (whether provincial or municipal) ought to qualify as a Legislative Councillor as well.[140] Candidate restrictions under the Municipal Corporations Act of 1849 set the bar as low as simple homeownership.[141] Compared with J.W. Johnston's proposed legislation for Nova Scotia – tabled earlier that year – Morin's qualifications did not look much like qualifications at all.

Canada's Legislative Assembly debated Morin's resolutions for the rest of 1852 and into 1853. Reformers had come to accept an elective Legislative Council as part of their party's platform. Many, however, refused to go as far as the more egalitarian Morin. Conservatives, for their part, had come around to the idea as well. They too saw the elective principle as a way to overcome perceived deficiencies found within the responsible system. Morin's resolutions soon changed to match the House's ideological tenor. On the one hand, the franchise remained the same. Henry Sherwood's motion to place a £10 freehold qualification and a £30 rental qualification on Council electors had failed spectacularly.[142] The old Tory had managed to drum only a handful of votes in its favour.[143]

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[140] In Morin's own words: "People might ask; who are to be the electors? He would reply that the Government had not thought fit to express the opinion that there should be any difference between the electors for the two branches, as persons qualifying as electors for a Member of the House of Assembly, would assert that they were also qualified to vote for a Member of the Legislative Council; and thus, although there might be a difference in theory, there would be none in practice, and the attempt to distinguish between the two classes, would only lead to confusion. The Government had been asked whether it was their intention to establish a property qualification for Legislative Councillors – he would say that he did not consider it a point of great importance; but he did not think that that choice should be left entirely unlimited. There is a class of persons in the country sufficiently numerous to select from them sixty Legislative Councillors, and composing a class which has already enjoyed the confidence of the country to a high degree. He referred to those persons who now hold, or who may have held seats in the Legislative Council, or the House of Assembly, wardens of counties, and mayors of cities." See: Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume XI, part I (1852-1853), 24 September 1852, 662-663.

[141] See: ibid., "An Act to provide, by one general law, for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships, and Villages in Upper Canada" (12 Vic., c. 81), section 34.

[142] Ibid., *Journals of the Legislative Assembly of the Province of Canada*, volume XI, part II (1852-1853), 31 May 1853, 929-930.

[143] Sherwood had been one of the most vocal opponents to Papineau's Ninety-Two Resolutions in 1834. See: Donald Robert Beer, "Sherwood, Henry," *Dictionary of Canadian Biography*, volume VIII, 798.

Qualifications for candidates, on the other hand, had transformed dramatically between 1852 and 1853. While former members of the Legislative Assembly still qualified as before, municipal officeholders did not. Instead, any non-parliamentarian who hoped to sit as a Legislative Councillor first needed to "[possess] for their own use and benefit of real property situated in this Province, held in free and common Soccage, or *en fief*, or *en roture*, or *en franc aleu*, of the value of one thousand pounds, currency, over and above all debts due and chargeable upon the same..."[144] One found the same £1,000 property qualification within Nova Scotia's proposed legislation as well. George-Étienne Cartier, at one point, had even broached a £2,000 property qualification. He did not necessarily think "that £2000 should be the amount, but at all events, the qualification ought to be a respectable one."[145] On the government benches, Francis Hincks echoed his conservative opponent wholeheartedly. Speaking immediately after Cartier, he thought that "if you adopt the principle of a qualification of £1000 or £1500, or whatever the amount be fixed at, that if you adopt pecuniary qualification [sic] there would not be any public dissatisfaction."[146] Further amendments to Morin's proposals would soon fashion something of a hybrid system. According to a new, seventh resolution, "under the proposed change in the Constitution of the Legislative Council, it is inexpedient that any pecuniary qualification should be retained for being eligible to the Legislative Assembly."[147] Under this scheme, thousand pound property-owners had the potential to sit beside propertyless former Assemblymen. By

[144] Province of Canada, *Journals of the Legislative Assembly of the Province of Canada*, volume XI, part II (1852-1853), 31 May 1853, 924 (emphases in text).
[145] Ibid., *Debates of the Legislative Assembly of United Canada*, volume XI, part IV (1852-1853), 13 May 1853, 3065.
[146] Ibid.
[147] Province of Canada, *Journals of the Legislative Assembly of the Province of Canada*, volume XI, part II (1852-1853), 31 May 1853, 924.

2 June 1853, Morin had transformed the resolutions into an address to the Queen.[148] It sailed out for England just over a month later.

The Canadian legislature, in 1853, had overwhelmingly endorsed an elective Legislative Council. Yet, it did not do so unanimously. Like elsewhere, cranky old Tories like Henry Sherwood still bristled at increased democratic participation. Reformers, too, had taken pause. Just as Joseph Howe had championed anti-elective sentiment in Nova Scotia, George Brown had taken up the cause for Canadians. Brown rallied against an elective Legislative Council because, in his own words,

> [i]t is a Tory measure...and will be resisted by every man who truly favours the cause of progression....In this country it emanated from the Tory league, and in Nova Scotia it was submitted to Parliament by the Tory Attorney Geberal [sic], Mr. Johnstone [sic], and resisted by the progressive party on the ground that it was destructive to responsible government, that bane of Toryism.[149]

Although a former Patriote had introduced the elective principle for Canada, Brown had recognized its stripes. The Nova Scotia example had taught him well. An elective Legislative Council had found such willing support amongst conservatives (like Cartier) because it took direct aim at the responsible system.[150] As Brown's *Globe* asked and answered:

> would this second elective chamber destroy Responsible Government? Of course it would....We can understand the heat of the Tories, – we cannot understand the haste of Reformers to pull down a Constitution which gives them full and direct power. After fighting thirty years to obtain a position, and finding it to realize all our expectations – shall we fling it away without one solid complaint, to run after a theory?[151]

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[148] Ibid., 2 June 1853, 944-946.

[149] Province of Canada, *Debates of the Legislative Assembly of United Canada*, volume XI, part I (1852-1853), 19 October 1852, 1105; 1107.

[150] J.M.S. Careless makes a similar argument in his biography of Brown. Careless, however, frames his argument through partisan politics rather than the history of ideas. See: J.M.S. Careless, *Brown of the Globe. Volume I: The Voice of Upper Canada* (Toronto: Macmillan of Canada, 1959), 161-162. Also see: *Arguments Against an Elective Legislative Council* (Toronto: The Leader and Patriot Office, 1856), 9-10.

[151] "An Elective Legislative Council," Toronto *Globe*, 13 April 1852, 2. Once Morin's resolutions passed the House, the *Globe* commented: "It is the Tories who support Mr. Morin and he is entitled to their confidence. A house elected for six years, a property qualification of £1000, the members of the present House, nominated by the Crown, to have a large majority for the next four years! What are these but Conservative enactments? Instead of

Like Howe, Brown had fought long and hard for responsible government. Now, only five years later, he witnessed his supposed allies playing into conservative hands. No one wanted to listen to him or his forewarnings. Brown would learn soon enough just how far Canada's conservatives planned to carry their elective ideal.

The Colonial Office had received the Canadian petition in January 1854.[152] The Duke of Newcastle, in his first stint as Colonial Secretary, argued before Parliament that "Britain should not interfere in questions of constitutional changes in the colonies."[153] By June, London had authorized Canada to alter its Legislative Council however it saw fit.[154] Now as co-premier alongside Sir Allan MacNab, Morin resubmitted his elective legislation in the autumn of 1854. The bill died shortly thereafter when the Assembly prorogued. During the subsequent recess, Morin had resigned from office due to failing health.[155] In his absence, a more conservative ministry formed under the direction of MacNab and Sir Étienne-Paschal Taché. Tellingly, the bill reappeared the following year in a more restrictive form (tabled this time by Joseph-Édouard Cauchon).[156] The new legislation had removed the hybrid qualification for potential Councillors

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advancing in liberal opinions we are going back – instead of the control of the public will being more direct it is more remote....This is done by the liberal Clear Grit administration, that which is said to be more advanced than any which has preceded it. No wonder that Conservatives rejoice, that the Montreal *Gazette* and the *Patriot* defend the scheme warmly and that it is supported by Conservative votes." See: "Elective Legislative Council," ibid., 4 June 1853, 2.

[152] Great Britain, *Papers Relative to the Proposed Changes in the Legislative Council of Canada. Presented to both Houses of Parliament by Command of Her Majesty, June 1854* (London: George Edward Eyre and William Spottiswoode, 1854), no. 3: "Copy of a Despatch from Lieut.-General Rowan to the Duke of Newcastle."

[153] F. Darrell Munsell, *The Unfortunate Duke: Henry Pelham, Fifth Duke of Newcastle, 1811-1864* (Columbia, MO: University of Missouri Press, 1985), 255. Newcastle had also argued that Parliament "ought to legislate for a principle, and not for a colony." See: Newcastle in ibid., 256.

[154] "The Elective Legislative Council," Toronto *Globe*, 12 June 1854, 2. Also see: "The Legislative Council Measure," ibid., 17 July 1854, 2.

[155] Paradis, "Morin, Augustin-Norbert," 571.

[156] In fact, as Andrée Désilets notes, "Cauchon, with his 'brother in arms' Louis-Victor Sicotte, was responsible for the defeat of the Hincks-Morin government in 1854 which signalled the formation of the Liberal-Conservative coalition." See: Andrée Désilets, "Cauchon, Joseph-Édouard," *Dictionary of Canadian Biography*, volume XI, 160. With regard to the elective principle itself, Jean-Marc Paradis reveals that "it was not until 1856 that the MLAs passed such a bill [for an elective Legislative Council], and it was accompanied by amendments that limited the effect of Morin's proposals." See: Paradis, "Morin, Augustin-Norbert," 571.

and retained only the £1,000 property qualification.[157] That bill also died, this time after the Legislative Council refused to discuss it.[158]

Canada's final debate on the elective principle eventually arrived in 1856. Although the bill retained the £1,000 property restriction for potential Councillors, many legislators had felt that the restriction was not yet high enough. Calls for the astronomic £2,000 property qualification had resurfaced over the past year. George-Étienne Cartier continued to deny that the number originated with him (all the while his opponents, perhaps rightly so, "accus[ed] him of being an aristocrat").[159] It eventually took the Legislative Council itself to put the £2,000 figure in place. Many Councillors had again proven resistant to the legislation. Pierre Boucher de Boucherville went so far as to claim that "the changes contemplated by this Bill...will create confusion, lower the position of Legislative Councillors, and pave the way to anarchy."[160] As part of its many amendments, the Council refused to change its constitution without first doubling the property qualification to £2,000 for future Councillors.[161] The Assembly acquiesced 62 to 14.[162] Six years after Henry Boulton had first broached the subject, the province of Canada had an elective Legislative Council. It was the first of its kind in British North America.

Canada's "Act to change the Constitution of the Legislative Council by rendering the same Elective" had implemented most everything George Brown had dreaded. The elective

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[157] See: Hart, 151-152.
[158] Province of Canada, *Journals of the Legislative Council of the Province of Canada*, volume XIII (1854-1855), 21 May 1855, 500-501.
[159] Ibid., *Debates of the Legislative Assembly of United Canada*, volume XII, part V (1854-1855), 16 March 1855, 2236.
[160] Ibid., *Journals of the Legislative Council of the Province of Canada*, volume XIV (1856), 18 April 1856, 202. A group of ten other Councillors (including the one and only James Ferrier) also claimed that "the elective principle...gives an undue preponderance to the popular element, diminishes the proper influence of the Crown, and destroys the balance that had acted as a check upon both..." See: ibid.
[161] Ibid., 22 April 1856, 212.
[162] Ibid., *Journals of the Legislative Assembly of the Province of Canada*, volume XIV (1856), 7 May 1856, 467.

principle had placed the lower and upper houses on a theoretically equal footing, both backed by popular opinion. The two, moreover, shared the same property-based franchise.[163] In 1856, that still meant the 40-shilling qualification for many in both Canadas East and West. Two years later, however, the same Conservative government would finally peg the provincial franchise at a minimum $200 worth of real assessed property. Men who resided in cities or towns would need to possess $300 of the same. The £2,000 property qualification for future Councillors (which equated to $8,000 local currency) provided by far the greatest barrier, though.[164] If the Legislative Council was meant to represent a landed aristocracy within mixed monarchy, then such a gargantuan restriction certainly reinforced that purpose. Only the richest of Canadians at the time owned so much freehold property.[165] As Canada's wealthiest inhabitants took their seats within the Legislative Council, they would (theoretically) defend the interests of accumulated wealth. The people already had their house; the landed gentry could once again reclaim theirs. Elections began the very same year.

As Canada passed its Elective Legislative Council Act, conservatives on Prince Edward Island looked on with envy. They, too, had viewed their Legislative Council as broken; and, they, too, had pursued the elective principle in 1850. With the Canadian example now before them, Island conservatives (both inside and outside the legislature) began their push once more

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[163] Province of Canada, "An Act to change the Constitution of the Legislative Council by rendering the same Elective" (19 & 20 Vic., c. 140), section 12.

[164] In the words of the legislation itself: "No person shall be eligible or shall sit or vote as a Legislative Councillor unless he be a British Subject by birth or naturalization, resident in Canada, for the full age of thirty years, and be legally or equitably seized as of freehold, for his own use and benefit, of lands or tenements held in free and common soccage, or seized or possessed, for his own use and benefit, of land or tenements held in *fief*, *franc-aleu* or *roture* in this Province, of the value of two thousand pounds currency over and above all debts, charges and dues..." See: Province of Canada, 19 & 20 Vic., c. 140, section 4.

[165] George-Étienne Cartier himself had only paid £1,600 for his well-appointed three-story Montreal residence in 1848. See: Brian Young, *George-Etienne Cartier: Montreal Bourgeois* (Montreal and Kingston: McGill-Queen's University Press, 1981), 31.

for an elective Legislative Council.[166] The debate that unfolded drew upon all that had taken place within the other British North American provinces. Conservative Assemblyman Heath Haviland Jr. made the first move on 12 March 1855 when he tabled elective legislation from the opposition benches. The bill, short on details, went nowhere.[167] Haviland tried again the following year, this time accompanied by a number of petitions.[168] Prince Edward Island's Liberal premier, George Coles, parried with a three months' hoist.[169] Much the same thing occurred the subsequent year as well: Haviland presented conservative elective legislation on 7 April, and the Liberals, on 11 April, postponed the debate.[170]

By 1859, Island voters had returned the Conservatives to power. Public meetings, in the meantime, had demanded an elective Legislative Council to better realize "true" responsible government.[171] Fourteen winning Conservatives had pledged themselves to the elective principle

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[166] The Charlottetown *Islander*, for instance, had declared itself "FOR elective institutions, and AGAINST Responsible Government..." See: "Who Support the Islander?," Charlottetown *Islander*, 22 June 1855, 2 (emphases in text). For the *Islander*'s broader political philosophy, see: "Our Policy," ibid., 6 April 1855, 2.

[167] Haviland had left franchise and candidacy qualifications blank. See: "Legislative Summary," ibid., 23 March 1855, 2 (debate of 12 March 1855).

[168] Prince Edward Island, *Journal of the House of Assembly of Prince Edward Island* (1856), 22 March 1856, 83. The House of Assembly received a total of six petitions in 1856 for an elective Legislative Council, and formally heard five of them. Alexander Laird tabled the most interesting of these. "[D]ivers persons styling themselves Electors of Prince Edward Island" had argued "that they are now taxed for the purpose of paying the Legislative Council, while having no voice in their appointment, and pray[ed] that an Act may be passed, this Session, to make the Legislative Council Elective." The Speaker had declined the petition from St. Eleanor's "on the ground that the Petition, being a printed one, it is contrary to parliamentary practice to receive such." See: ibid., 22 March 1856, 78; 85. Also see: ibid., 27 March 1856, 86; 102, 112. Member for Second Prince, William E. Clark, had asserted moreover that he "believed that many of the signatures attached to petitions in favor of an elective Legislative Council, had been obtained by false representations." Clark offered no evidence to support this claim. See: "House of Assembly. Summary of Proceedings," Charlottetown *Islander*, 23 May 1856, 1 (debate of 29 March 1856).

[169] Prince Edward Island, *Journal of the House of Assembly of Prince Edward Island* (1856), 10 April 1856, 127.

[170] Ibid. (1857), 7 April 1857, 78; 11 April 1857, 93-94.

[171] A "Public Meeting of the Electors of this District, held this day at the house of Mr. James Moynagh, Souris East" had moved and resolved that: "Whereas the Legislative Council of this Island, as at present constituted, do not recognize any local authority, and consequently are not responsible to the people, thereby having it in their power to suppress the most useful and important Bills passed by our Representatives in the House of Assembly, without any means of redress on the part of the people; *Therefore*, *Resolved*, That as in the opinion of this meeting we do not enjoy Responsible Government whilst such a state of things exist, a petition praying that the Legislative Council of this Island may be elective, be immediately prepared, and that every available constitutional means be resorted to in order to remove this barrier between the people and Responsible Government, as understood in its true meaning." See: "Public Meeting at Souris," Charlottetown *Islander*, 12 March 1858, 2.

during the year's general election.[172] Soon after the new session opened, Heath Haviland tabled his elective legislation once again. The government benches had made Haviland a little more smug this time around. He assured his fellow Assemblymen that the elective "principle would...now command a majority of this House." Elective Legislative Councils "had been established in the greater part of Her Majesty's Colonies, at the Cape of Good Hope, Australia, and Canada"; Prince Edward Island would have one as well. The House of Assembly merely had to work out the details. Haviland, for his part, had based his bill on the Canadas' Elective Legislative Council Act.[173] Like the Canadian legislation, the bill did not initially suggest a new franchise for future Legislative Council elections (recall that the Island's House of Assembly had employed a statute labour franchise since 1853). Instead, the legislation's conservatism would derive from candidacy qualifications. In the lower house, Assemblymen had to own £200 worth of real property to qualify for their seats. Legislative Councillors would alternatively need to own £700 worth above all other encumbrances. Haviland mentioned that he might reduce the latter qualification to £500, but he would go no further than that.[174]

The subsequent discussion followed similar patterns seen elsewhere in British North America.[175] Old reformers like Edward Whelan flatly rejected an elective Legislative Council as an attack against both responsible government and tenant rights. More succinctly, he argued that "the effect of it here would be to place the whole legislative power of the Upper Branch in the

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[172] Prince Edward Island, *Parliamentary Reporter* (1859), 10 May 1859, 59.
[173] The Duke of Newcastle recognized the similarity himself when he read over the bill. See: ibid., *Journal of the House of Assembly of Prince Edward Island* (1862), appendix G, "Despatch from the Secretary of State to Lieut. Governor Dundas, relative to the Bill to change the Constitution of the Legislative Council," 4 February 1862, 2.
[174] Ibid., *Parliamentary Reporter* (1859), 10 May 1859, 59.
[175] Frank MacKinnon describes the debate as follows: "A somewhat unusual but significant fact in this development was that the defenders of the upper house were the reformers who had sought to make the government responsible to the people, while the opponents who clamoured to remove it from its privileged and protected position were the Conservatives." By 1859, there was nothing unusual about conservative demands for an elective upper house. Moreover, this somewhat simplistic characterization leaves out more radical reform demands for elective Legislative Councils. That said, MacKinnon does capture the general shape of the debate (a shape we have seen elsewhere in British North America). See: Frank MacKinnon, *The Government of Prince Edward Island* (Toronto: University of Toronto Press, 1951), 100.

hands of the proprietors [i.e. landlords]."[176] Radical Islanders like William Cooper, on the other hand, supported the elective principle as a means to strengthen popular sovereignty. To that end, he endorsed the legislation but rejected the property qualification, citing that "£700 was out of all just proportion to the circumstances of the Colony. £300 would be quite enough, and would afford the people a wide range of selection."[177] Tenant farmer and rural populist Cornelius Howatt echoed Cooper in this regard. He too believed that a "£700 qualification for candidates was too high...It looked too aristocratic, and appeared intended to set aside the pretensions of the farmers in aspiring to a seat in the Council. It should be reduced to £500."[178] At the other end of the political spectrum, Colonel John Hamilton Gray (whose family formed part of "the ruling upper class of the Island") also objected to the bill as it stood.[179] Gray accepted the elective principle, but he deemed "the qualification was too low. It should be much higher; £700 was not enough, £3000 would be more preferable, as it would ensure the return of men having a stake in the country, alive to its prosperity, whose real interests were identified with, and inseparable from those of the people."[180] Not even the more prosperous Canadians had sought candidacy qualifications so exceedingly high.

By the end of 1859, Prince Edward Island's House of Assembly had passed its elective Legislative Council both in principle and in detail. Haviland had cut down the candidacy qualification to £500 himself.[181] The government, however, postponed the bill after its third reading because it worried that an obstructive Legislative Council would reject the measure out

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[176] Prince Edward Island, *Parliamentary Reporter* (1859), 10 May 1859, 82.
[177] Ibid., 61. Also see: ibid., 10 May 1859, 80
[178] Ibid., 63. David Weale argues that "[t]hroughout his political career Howatt was something of a rural populist, frequently claiming that his views reflected the native wisdom of the farming community he represented." See: David Weale, "Howatt, Cornelius," *Dictionary of Canadian Biography*, volume XII, 452.
[179] See: David E. Weale, "Gray, John Hamilton," *Dictionary of Canadian Biography*, volume XI, 369.
[180] Prince Edward Island, *Parliamentary Reporter* (1859), 10 May 1859, 63; 80.
[181] See: "A Bill, to be entitled, 'An Act to change the constitution of the Legislative Council, by rendering the same Elective,'" Charlottetown *Islander*, 5 August 1859, 1 (section 7)

of hand.[182] Haviland's bill did not reappear until 1861. By then, the Conservatives had engineered a majority within the Legislative Council.[183] The subsequent debate proved exceptionally short. It took legislators only one morning and two afternoons to pass the Elective Legislative Council bill without amendment.

It was at this point that the Duke of Newcastle became involved (now in his second stint as Colonial Secretary). When Canada requested its elective upper house six years earlier, the Colonial Office (also under Newcastle's direction) had given Canadians free reign to act. His lordship, this time around, did not extend the same courtesy to Prince Edward Island. Because of its great "constitutional importance," Newcastle had "been desirous to give [the elective Legislative Council] a very careful consideration." Although his lordship accepted the principle, he questioned many of the particulars. For him:

> An Upper Chamber is valuable as an element of stability, and the principal value of an Elective Upper Chamber I conceive to be this, – that while, in virtue of its elective character it may claim equally with the Assembly to speak the voice of the community, it may yet be so composed as to reflect their settled wishes and principles rather than their transitory impulses.[184]

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[182] See: Prince Edward Island, *Parliamentary Reporter* (1859), 10 May 1859, 91. According to the Charlottetown *Islander*, the Assembly had "declare[d] that the Council consists of gentlemen not possessed of the education to fit them for the business of legislators, and placed there only for their supposed subserviency; and they add that it is impossible to work with a Council so entirely opposed to the Ministry. They have by way of [reach?] passed a Bill to make that body elective, by a majority of 23 to 2 on the principle, and 17 to 9 on the third reading. They despair, however, of getting this adopted by the Council, and they therefore pray Her Majesty to order the reconstruction of that body, so as to prevent them from obstructing public business." See: *The Islander* [editorial], 24 June 1859, 2.

[183] In April of 1860, the Conservative government had taken it upon itself to appoint five new members to the Legislative Council. This raised the number of Legislative Councillors from 12 to 17. The Charlottetown *Examiner* called it "The Swamping of the Legislative Council." The *Examiner*'s editor drew a direct connection between the new appointments and the government's elective Legislative Council bill. According to him: "the Leader of the Government declared that the Executive did not intend to bring forward the Elective Council Bill this Session [1860], which was passed in the House last Session, and printed for general information, with the understanding that as soon as a majority could be secured in the Upper House favourable to the views of the Government, the Bill would be passed. The Government have now a majority in the Council sufficient to carry any measure; but we are confident that so long as they can get their work done under the nominated system which they abused so much in former years, they will never think of sending their nominees to constituencies who won't elect them." The *Examiner* was certainly wrong on this last point. See: "The Legislative Council," Charlottetown *Examiner*, 24 April 1860, 3. Also see: "The Swamping of the Legislative Council," ibid., 22 May 1860, 3; "The Swamping of the Council," ibid., 12 June 1860, 2.

[184] Prince Edward Island, *Journal of the House of Assembly of Prince Edward Island* (1862), appendix G, 1.

In other words, "an Upper Chamber is generally intended to represent not only the settled principles, and what on a large scale is called the traditionary [sic] policy of the country; but, also, to a certain extent, its property, experience and education."[185] To accomplish these goals, Newcastle urged changes to both candidacy and franchise qualifications. He felt that restrictive candidacy qualifications might cut off the most appropriate potential candidates. "[T]o make a Council what it ought to be," according to Newcastle, "the property qualification should be applied not to the candidate but to the voter....In Prince Edward Island, I would enforce a tolerably high property qualification in the case of the electors, but of the candidates I would only require that he should be a British subject, resident in the Colony, and 30 years of age."[186] Newcastle never defined for Islanders what he meant by tolerably high. Compared with Prince Edward Island's statute labour franchise, any property qualification would have looked higher, whether tolerably or not.

Newcastle did not make his suggestions lightly. In fact, they read more like thinly-veiled instructions than anything else. Newcastle's experiences over the previous two years had modified his outlook on imperial unity and British North American autonomy. In the summer of 1860, his lordship had become the first sitting Colonial Secretary to visit the British North American provinces.[187] Queen Victoria had tasked him with advising her son, the Prince of Wales, during the prince's three-month North American tour.[188] In this role, Newcastle learned firsthand the British North American capacity for disobedience. Prince Edward Island had posed no problems for the royal entourage. In Canada West, however, the Orange Order had insisted

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[185] Ibid., 2.
[186] Ibid.
[187] James A. Gibson, "The Duke of Newcastle and British North American Affairs, 1859-64," *Canadian Historical Review* 44.2 (June 1963): 142.
[188] Ian Radforth, *Royal Spectacle: The 1860 Visit of the Prince of Wales to Canada and the United States* (Toronto: University of Toronto Press, 2004), 38.

on publicly fêting the prince in full regalia. Newcastle had expressly forbidden such a course, affirming that Orange demonstrations "were disapproved of by the queen and Parliament" as both notorious and offensive.[189] The Prince of Wales could not be seen recognizing such a religiously militant organization. Many Orangemen, in response, openly defied his lordship's commands. At one point they even tried to commandeer the royal coach (including the prince and the duke who sat inside) and drive it under an Orange arch.[190] Newcastle, for his admonitions, had his effigy burned across the province.[191] Soon after the royal party returned home, the Orange Lodge's Grand Master, John Hillyard Cameron, presented a formal denunciation to Queen Victoria herself. The address contained 150,000 signatures against the duke's actions.[192] Newcastle must have understood by now just how far British North Americans might pursue their parochial political goals when left to their own devices.

With the outbreak of the American Civil War in April of 1861, Newcastle's anxieties over political militancy and imperial unity had increased even further.[193] That same year, Prince Edward Island had not only sent him the elective Legislative Council bill but also legislation concerning the Island's land question. A Land Commission struck in 1860 had advised the compulsory conversion of leasehold property into freehold by means of arbitration. Newcastle, as Colonial Secretary, refused to give the legislation his assent. Aside from privileging tenants' claims over proprietors' rights, it also contained stipulations that went beyond the commission's mandate (namely, the empowerment of third-party arbitrators). Newcastle also knew that his

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[189] Ibid., 185.
[190] Ibid., 194.
[191] See: ibid., 203. Also see: D.G.G. Kerr, *Sir Edmund Head: A Scholarly Governor* (Toronto: University of Toronto Press, 1954), 212.
[192] Ibid., 202.
[193] Gibson, "The Duke of Newcastle," 154.

prime minister, Lord Palmerston, had close friends who owned substantial Island lands.[194] The decision, while applauded by proprietors, "aroused disappointment and anger to such a degree [on Prince Edward Island] that the early 'sixties were to bring riot and violence."[195] John Garner has thus hypothesized that "Newcastle's insistence on a restrictive [Legislative Council] franchise may not have been divorced from a consideration of the Island land question." Alongside Newcastle's earlier experiences in British North America, and the contemporary situation in the United States, "[h]is advice may have been prompted by fear of a revival of latent radicalism of the tenantry."[196] A mass of statute labour voters might find a few wealthy men to represent their radical causes (like escheat) at the Legislative Council. Conceivably, wealthier voters who owned a significant amount of landed property were much less likely to do the same. For Newcastle, an electorate composed of the latter brought an element of stability at an otherwise unstable time. A conservative Legislative Council could thereafter deal with the Island's land question itself.

When Newcastle responded to the elective Legislative Council bill, he had only recently rebuffed the Island's land settlement legislation. Nothing stopped him from rejecting Island legislation yet again. This is how the Island government interpreted Newcastle's despatch at any rate. When Heath Haviland tabled the Elective Legislative Council bill once more in 1862, he had new resolutions at the ready. The first of these read:

> That any male person of the age of twenty-one years or upwards, who shall own a freehold or leasehold qualification of the value of one hundred pounds currency, and shall have been in possession of the same for a period of at least twelve

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[194] Ian Ross Robertson, *The Tenant League of Prince Edward Island, 1864-1867: Leasehold Tenure in the New World* (Toronto: University of Toronto Press, 1996), 35-36.
[195] W.S. MacNutt, "Political Advance and Social Reform, 1842-1861," in *Canada's Smallest Province: A History of P.E.I.*, ed. Francis W.P. Bolger (Charlottetown: The Prince Edward Island 1973 Centennial Commission, 1973), 134.
[196] John Garner, *The Franchise and Politics in British North America 1755-1867* (Toronto: University of Toronto Press, 1969), 51.

> months previous to the teste of the writ of Election, shall be entitled to vote for a member to serve in the Legislative Council in this Island.[197]

Haviland believed that the Assembly could not impose anything less than a £100 freehold and leasehold franchise without first "endanger[ing] the measure, by again preventing it from receiving the Royal Assent."[198] The opposition countered with a maximum £50 property qualification. As Joseph Wightman declared: "I object to the qualification being fixed at £100 as being far too high, and, consequently, as disfranchising numbers of the people, as there are many men occupying farms of not more than 50 acres, who would not wish to swear that their property was worth £100."[199] Subsequent court of revision records reveal that Wightman had good reason to be worried. Even by the late 1870s, fifty acres of land did not prove sufficiently valuable to secure enfranchisement.[200] Some Conservatives, however, fretted that £100 was far too low despite these warnings. They suggested a property qualification of at least £200, if only to guarantee his lordship's approval.[201]

In the end, the final "Act to change the Constitution of the Legislative Council" imposed Haviland's £100 freehold and leasehold franchise.[202] This valuation would later translate to

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[197] Prince Edward Island, *Parliamentary Reporter* (1862), 20 March 1862, 62.
[198] Ibid.
[199] Ibid., 21 March 1862, 66.
[200] As mentioned in Chapter 3, nineteenth-century Prince Edward Island only held courts of revision in 1877 and 1878 (under the auspices of the Registration of Electors Act of 1877). Court minutebooks reveal the difficulties 50-acre farmers encountered under the £100/$325 freehold and leasehold qualification. In August of 1877, for instance, William Cairns of Lot 35 objected to the fact that his name did not appear on the Queen's County Legislative Council voters' list. The Court ruled that Cairns's qualification was "insufficient" because he only owned a "46 ¾ acres Freehold Lot." The same thing happened to one John Gillis McLeod the following year. The County Court of Queen's County ruled that McLeod had "no vote" because his "50 Acres Freehold on Lot 62" was "not worth £100." For Cairns's case, see: Provincial Archives and Records Office of Prince Edward Island [hereafter PARO PEI], RG2 Legislative Council fonds, series 2 Election Papers, subseries 2 Revision of List of Electors 1877/1878, volume 3 "Revision of List of Electors for Second Electoral District for the Legislative Council for Queen's County," 2-3 ("Fourth Circuit of the County Court of Queen's County held at or near the Ten Mile House on Friday the Seventeenth day of August Ano. 1877"). For McLeod's case, see: ibid., 12-13 ("County Court of Queen's County First Circuit of Revision held at Belle Creek Lot 52 at the School House on Friday the 18th day of June Ano. 1878").
[201] See, for example, the speeches of William Douse, George Beer, and J.C. Pope. See: ibid., 20 March 1862, 62-63.
[202] Prince Edward Island's Legislative Council franchise read as follows: "Every male person of the age of twenty-one years or upwards, who shall own a freehold or leasehold property, of the value of one hundred pounds currency,

$325 with the transition to decimal currency. The legislation had also eliminated all monetary requirements for potential candidates.[203] Newcastle had got his way in this regard as well. In 1851, responsible government had unbalanced Prince Edward Island's constitution. The whims of the people, according to Island conservatives, had held too much weight. The province's statute labour franchise, moreover, had only pushed colonial governance further toward (male) participatory democracy. An elective Legislative Council, elected solely by wealthier property holders, promised to undo this constitutional harm and give Island proprietors a fuller political voice. In the words of Charlottetown conservative George Beer: "the Conservatives residing in that part of the country, and who, for some years past, had felt themselves, as it were, disfranchised, were now in different circumstances as regarded the representation in the Legislative Council...under the Elective Legislative Council Bill."[204] Through the elective principle, the Island's landed elite had wrestled its house back. Legislative Councillors returned to their traditional role as propertied mediators between the people and the sovereign. The question now became: how would they choose to play out that role?

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or who shall own land partly freehold and partly leasehold, amount together in value to one hundred pounds currency, and who shall have been in possession of the same for a period of at least twelve calendar months previous to the teste of the Writ of Election, shall be entitled to vote for a member to serve in the Legislative Council of this Island, and shall vote at the place or places at which he ordinarily votes at the elections of a member or members of the House of Assembly, under and by virtue of the laws now in force relating to the election of member to serve in the General Assembly." See: ibid., "An Act to change the Constitution of the Legislative Council, by rendering the same Elective" (25 Vic., c. 18), section 7.

[203] See: ibid., section 11.

[204] "Political Meeting in the Second Elective Legislative Council District," Charlottetown *Islander*, 2 January 1863, 2.

Elective Legislative Councils in Principle and in Practice

On 11 April 1857, Prince Edward Island's Robert Mooney had called the elective principle conservatism's "forlorn hope."[205] It was not a compliment. By the 1840s, conservatives in British North America had lost the battle for responsible government. Champions of reform, reinforced by changes in imperial policy, had fortified their positions through executive dominance within the provincial legislatures.[206] As they did so, they overran and crippled the colonies' appointed Legislative Councils. These former bastions of elite privilege and anti-liberal sentiment now feebly served their political masters and passed party legislation. The people's will – writ large – now reigned supreme. While liberal reformers viewed this as *the* great strength of responsible government, conservatives saw it as a profound weakness. Without a constitutional balance between Crown, Lords, and Commons, chaos had ample room to grow. The Rebellion Losses controversy in 1849, and the violence that followed, had smashed through this weakness in the responsible system. Forward-looking conservatives charged headlong into the breach, waving the banner of elective Legislative Councils over their heads.

The strategy was a good one. At first glance, the elective principle looked like a step toward further popular sovereignty. Radicals, in particular, liked it for this reason. High property qualifications for electors and candidates, however, made for significantly more conservative (if not aristocratic) bodies. If Legislative Councils had traditionally represented class, status, and wealth in the British North American context, then such qualifications sought to

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[205] Prince Edward Island, *Parliamentary Reporter* (1857), 11 April 1857, 130.

[206] C.F.J. Whebell makes the fascinating argument that responsible government had resulted primarily from a paradigm shift in British trade policy. In his words: "Free trade after 1846 not only obviated the need for close control but, by causing economic dislocations in the colonies, disturbed the fiscal balance of their governments. Only then might substantial devolution, as in the granting of full responsible government, become expedient so as to shift the burden of coping with such dislocations from the British treasury." See: C.F.J. Whebell, "The Upper Canada District Councils Act of 1841 and British Colonial Policy," *Journal of Imperial and Commonwealth History* 17.2 (1989): 204-205.

recapture that traditional standing. In this way, conservatives who pursued elective Legislative Councils appeared very much like the pre-Rebellion constitutionalists about whom Michel Ducharme has written. One could even argue that many were the same people (from Henry Boulton to J.W. Johnston to Heath Haviland Jr.). Constitutionalists, like liberals, viewed the possession of real property as central to modern liberty. Unlike liberals, however, constitutionalists had tended to secure and defend property ownership within the bounds of economic and social privilege.[207] With British North America's ancien political régime now wholly defunct (responsible government having seen to that) the elective principle offered a way to recreate former emphases on economic privilege especially. High property qualifications on electors and candidates for the Legislative Councils – ones that climbed beyond ideas of stability, independence, or stakes in the nation – provided the potential means of doing so.

In New Brunswick and Nova Scotia, the conservative forlorn hope had reached the walls of responsible government and secured a foothold. A combination of Reform tenacity and Councillor intransigence eventually pushed the attackers back. Neither would enact an elective upper house. In the Province of Canada and Prince Edward Island, the forlorn hope had proven more successful. Although Canadian conservatives needed Reform help, they had enacted their elective upper house by 1856. A £2,000 candidacy qualification meant that only Canada's leading landowners could sit as Legislative Councillors. Six years later, in 1862, Prince Edward Island conservatives had managed to implement their elective upper house as well. A £100 freehold and leasehold franchise for electors meant that only wealthier proprietors might vote for Legislative Councillors. Even 50-acre freeholders had difficulty satisfying such a high franchise restriction. The Island's Legislative Council qualification had, in essence, counterbalanced its much more inclusive statute labour franchise with one that benefited Island landlords. Class,

[207] Ducharme, *Le concept de liberté au Canada*, 8; 236-237.

status, and property had seemingly reclaimed the electoral voice it had lost in the early years of responsible government.

Yet, as a forlorn hope, the elective principle remained just that: an initial charge at the wall. The full-fledged attack against responsible government still had to follow, if it was to follow at all. Colonial conservatives had perhaps underestimated how well liberal reformers had entrenched the responsible system. As British North America's two elective Legislative Councils established themselves into the 1860s, they still had to find ways to assert greater authority in the face of dominant Houses of Assembly. That proved easier said than done. In the Province of Canada, the £2,000 candidacy qualification had drastically limited the pool of potential Councillors. While some constituencies held spirited elections, by 1864, a full two-thirds of Council seats went uncontested.[208] The most talented candidates wanted to sit in the Legislative Assembly anyway.[209] The green benches, and the green benches alone, allowed rising stars to prove their talents to party leaders. Canada's elective Legislative Council soon became a halfway house for those who lost their seats in the Assembly. Only "[o]ld men, dead politically or nearly dead physically," sat there by choice (in Shirley Carkner Hart's colourful words).[210] In 1859, the Legislative Council showed a glimmer of independence when it, as a "co-ordinate and co-equal branch," refused to pass supply.[211] Such defiance proved fleeting.

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[208] See: George Emery, *Elections in Oxford County, 1837-1875: A Case Study of Democracy in Canada West and Early Ontario* (Toronto: University of Toronto Press, 2012), 102-104; 117-119. Also see: Hart, 199-201.
[209] Janet Ajzenstat, "Bicameralism and Canada's Founders: The Origins of the Canadian Senate," in *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal (Montreal and Kingston: McGill-Queen's University Press, 2003), 12-13.
[210] Hart, 207.
[211] The Legislative Council's full motion (passed 23 to 20) read as follows: "That the Legislative Council feels itself called upon to declare and resolve in defence of its undoubted and unquestionable rights, as a co-ordinate and co-equal branch of the Legislature, and as the only means of preserving its independence, that it will not take the question of Supply into consideration, until satisfied that the Executive Government will not incur any expense whatever for the removal of the Seat of Government to *Quebec*, without first submitting the estimates for the same for the consideration of the Legislative Council." See: Province of Canada, *Journals of the Legislative Council of the Province of Canada*, volume XVII (1859), 29 April 1859, 421 (emphasis in text). For a reiteration of the same motion, see: ibid., 3 May 1859, 438.

Supply passed mere days later after some absentees returned.[212] The Council would never try anything like it again.[213] Its members, collectively, had neither the ambition nor the acumen nor the perseverance to truly stand up to the people's house.

The elective principle similarly failed to rejuvenate the Legislative Council on Prince Edward Island. Some premiers had attempted to lead from the elective upper house, but they quickly found themselves overshadowed. Their counterparts within the House of Assembly, although hamstrung by their deputy status, continued to dictate the course of government.[214] Supply remained firmly entrenched within the lower house. Soon enough, Islanders of all political stripes began to demand the upper chamber's total abolition. Some saw it as a "useless institution" filled with "rich noodles."[215] Others viewed it as "effete and expensive," wasting nearly $7,000 per year in salaries and upkeep.[216] Perhaps most important of all, those who had supported the elective principle in the first place now derided it as neglectful of its duties. "These Councillors were put in by the property-holders to look specially after their rights of property, and guard against hasty, oppressive or unjust legislation," one particularly conservative editor argued in 1878. "Every one of them who is now coming back with such pleasing polite bows to the people, grossly violated the sacred trust reposed in them by carelessly and hastily

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[212] Ibid., 4 May 1859, 468.

[213] At the Confederation Debates, Legislative Councillor George W. Allan "remind[ed] honorable members that the only instance of anything like a dead-lock between the two Houses, which had occurred…since the introduction of the elective principle, [was] when the Council in 1859 refused to pass the Supply Bill on account of certain items contained in it, providing for the expense of the removal of the Government to Quebec. The Government on that occasion were left in a minority in this House, although they had a majority in the Assembly, and it was only after an adjournment of some days and upon a reconsideration of the question, after bringing up some life members from Lower Canada, that the Government carried the vote by a majority of two or three." See: Province of Canada, *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces, 3rd Session, 8th Provincial Parliament of Canada* (Quebec: Hunter, Rose & Co., 1865), 9 February 1865, 117. See also: Hart, 217-218.

[214] MacKinnon, 104.

[215] "Abolition of the Legislative Council," Charlottetown *Examiner*, 19 April 1878, 1.

[216] "Legislative Council Elections," ibid., 11 October 1878, 3. Also see: "The Abolition of the Legislative Council," Charlottetown *Presbyterian and Evangelical Protestant Union*, 10 October 1878, 4; "The Abolition of the Legislative Council," ibid., 12 June 1879, 4

'pileing [sic] on the agony' upon the wronged country."[217] The supposedly conservative body had proven less conservative (and more partisan) than hoped. It did not help that judges had interpreted the Legislative Council franchise incredibly broadly. Besides freeholders and leaseholders, squatters also voted at Legislative Council elections so long as they squatted on £100 worth of land.[218] Such electors certainly did not represent the Island's landholding elite.

Prince Edward Island's elective Legislative Council would limp on through to 1893. Islanders ultimately recognized that they had too much government for such a small province. On that basis, they amalgamated their two houses into one (and thereby eliminated 11 legislative seats).[219] By then, Canada's elective Legislative Council was long dead. The new provinces of Quebec and Ontario had rejected the elective principle at Confederation. Quebec returned to an appointed Legislative Council; Ontario had abolished its Legislative Council altogether. The new Dominion of Canada would also resort to an appointed upper house. The elective principle had disappointed its previous adherents.[220] It had not rebalanced the constitution, as promised; it had not waged war for elite interests; and, it had not undercut responsible government. Legislative Councillor James C. Aikens had taken it as a point of pride that the upper house had not "attempted in any one respect to usurp the exclusive privileges of the Legislative Assembly."[221] To fully restore Canada's mixed monarchy, however, the elective Legislative Council had to have done just that: it needed to have embraced the usurper's role. By the time legislators debated Confederation in 1864 and 1865, Canada's leading Conservative, John A.

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[217] "The Legislative Council Elections," Charlottetown *Presbyterian and Evangelical Protestant Union*, 7 November 1878, 8

[218] In 1878, for instance, Donald Stewart of King's County got his name added to the Legislative Council voters' list as a "Freehold Squatter thirty years possession value over Three Hundred & twenty five Dollars Farmer Lot 52." See: PARO PEI, RG2, series 2, subseries 2, volume 2 "Revision of List of Electors for Second Electoral District for the Legislative Council for King's County," 24-25.

[219] See: Harvey, "The Passing of the Second Chamber," 30-31; Earle Kennedy, "Tabling the Legislature: One Hundred Years of General Elections, 1893-1993," *Island Magazine* 42 (September 1997): 13-15.

[220] Ajzenstat, "Bicameralism and Canada's Founders," 12.

[221] Province of Canada, *Confederation Debates*, 20 February 1865, 317.

Macdonald, showed little enthusiasm for the elective principle. Although it "has not been a failure in Canada," he also believed that it "did not so fully succeed in Canada as we had expected."[222] Conservatives like Macdonald had come to realize in the years following 1856 that it was easier to work within the responsible system – and to manipulate it – than to fight at its walls.[223] A weakened upper house, reliant upon government appointments, served shifting conservative needs in this regard.[224] The siege against liberal governance had thus lifted. New battle plans had been drawn. A conservative strategy of subversion, played out through patronage, now ruled the day.[225]

[222] Ibid., 6 February 1865, 35.
[223] As Michel Ducharme argues: "If Macdonald entered politics too late to participate fully in the debate about Responsible Government in the 1840s, he accepted this system of government very quickly." Ducharme's evidence for this acceptance comes from the Confederation Debates. See: Michel Ducharme, "Macdonald and the Concept of Liberty," in *John A. Macdonald at 200: New Reflections and Legacies*, eds. Patrice Dutil and Roger Hall (Toronto: Dundurn Press, 2014), 160.
[224] Christopher Moore touches upon this point in a couple of places. See: Christopher Moore, *Three Weeks in Quebec City: The Meeting that Made Canada* (Toronto: Allen Lane, 2015), 106-107. Also see: ibid., *1867: How the Fathers Made a Deal* (Toronto: McClelland & Stewart, 1997), 104-113.
[225] For the evolution of clientelist politics in Canada, see: S.J.R. Noel, *Patrons, Clients, Brokers*: *Ontario Society and Politics, 1791-1896* (Toronto: University of Toronto Press, 1990).

Conclusion

The Elective Privilege in Mid-Nineteenth-Century British North America

Candidacy notices tended to look the same across mid-nineteenth-century British North America. Candidates wanted to advertise themselves, but they needed to look humble while doing so. Bluster reflected weakness; only demagogues boasted. Etiquette dictated that candidates allow their qualities and their viewpoints to speak for themselves. Through unembellished description, independent voters would not only arrive at informed decisions, but at correct ones. Many notices emphasized this latter point specifically. Candidates (and their handlers) made it very clear to electors that they carried a heavy responsibility, and not just to themselves. Those who held votes also had duties to their wives, their dependents, their employees, and their neighbours. The voting minority had to speak for the non-voting majority as well. Electors, having proven their worth, had to select the most capable representatives for everyone around them. Electoral enfranchisement in British North America was not a right: it was a privilege. Those who earned this "elective privilege" accepted the obligations that came attached.[1]

This dissertation has explored how British North Americans from the provinces of Canada, New Brunswick, Nova Scotia, and Prince Edward Island earned their electoral enfranchisement during the mid-nineteenth century. It has revealed the ways in which colonial

[1] This paragraph has specifically drawn upon William Douse's letter "To the Electors of the Southern Division of Queen's County," Prince Edward Island, dated 21 May 1850. See: "To the Electors of the Southern Division of Queen's County," Charlottetown *Islander*, 7 June 1850, 4. A quick glance at any British North American newspaper at election time will contain similarly worded candidacy letters. Candidates (or, more specifically, their election committees) printed separate versions of these letters in boldfaced type and pasted them in public places.

citizenship turned upon cultural categories such as gender, class, status, race, ethnicity, age, and religion. It has also demonstrated how British North Americans contested these cultural ideals through rapidly changing franchise laws. By 1840, a 40-shilling freehold franchise proved more or less standard across British North America. Over the next quarter-century, franchise laws varied enormously not only across the provinces but within the provinces as well. As Great Britain confirmed responsible government for its British North American colonies, colonists experimented extensively with their franchise legislation. Competing political and cultural ideals, borne out of local circumstances, shaped the directions these experiments took. Some outcomes proved more surprising than others.

In Canada and New Brunswick, where colonists acquired good land more readily than elsewhere, property-based franchises remained in full force at the provincial level throughout the mid-nineteenth century. Men who inhabited these two provinces continued to prove their respectability through the accumulation of propertied wealth. As available lands became scarcer, and partisan politics more heated, Canadians and New Brunswickers made subtle but important changes to their property qualifications. By the late 1850s, both provinces had enfranchised all male leaseholders who met the minimum property values for provincial enfranchisement. Landed title, rather than freehold tenure, had become the basis for colonial citizenship across the Canadas and New Brunswick. Although a radical minority disagreed in principle, and viewed property qualifications as archaic, it never found a way to convince land-hungry Canadians and New Brunswickers to value landed property a little less.

In Nova Scotia and on Prince Edward Island, limitations on land had eroded the same cultural ideals attached to real estate. Labour theories of value (and their emphases on industry and improvement) had proved increasingly popular in both places. Nova Scotians, on the one

hand, converted these theories first into a ratepayers' franchise, and then into what they called manhood suffrage (which still failed to enfranchise all men). Although Nova Scotia eventually reverted to propertied enfranchisement in 1863, those who stood to lose their votes had their revenge when they ejected their disenfranchisers from office. Prince Edward Islanders, on the other hand, had translated their labour theory of value into British North America's first and only statute labour franchise. Imperial policies had choked land distribution on the colony. Electoral participation based upon state-mandated roadwork, as opposed to real estate, better suited the gendered ideals of most colonists. Save for a brief interlude during the 1870s, Islanders maintained their statute labour franchise into the twentieth century. No one could find a more appropriate alternative.

Legislative Assembly franchises governed only a fraction of colonial politics. Through the 1840s and 1850s, British North Americans elected representatives to municipal councils and Legislative Councils as well. These newer elective spheres had their own reasons for existence and their own rules for enfranchisement. Municipal franchise legislation, from the beginning, had as much to do with political schooling as anything else. Relaxed restrictions on civic enfranchisement – as originally designed by imperial authorities – granted wide participation at annual municipal elections. Inclusive municipal franchises, in turn, allowed British North Americans to perform and practice colonial citizenship on a smaller and more localized stage. Montrealers, living within British North America's empire city, experienced this project firsthand.[2] Although a modified household suffrage governed the city's earliest municipal contests, property-based franchises arrived soon after. Ethnic, religious, and linguistic tensions had fueled electoral violence within the city; wealthy Montrealers blamed their poorer

[2] See: David M. Scobey, *Empire City: The Making and Meaning of the New York City Landscape* (Philadelphia: Temple University Press, 2002).

neighbours for the social unrest. Through municipal franchise restrictions, Montreal's financial leaders hoped to contain this violence and reinforce class privileges. By 1860, the city's elections operated under the same property qualifications as employed by the Province of Canada. They would continue to do so into the 1870s and beyond.

Proposed Legislative Council franchises had emerged from a political project of a different kind. Through the elective principle, opponents to responsible government had sought to break the responsible system and rebalance their colonial constitutions. If Legislative Assemblies represented the people more than ever before, then Legislative Councils needed to speak once more for class, status, and wealth. Restrictive property qualifications for both electors and candidates looked to secure the upper houses for the colonies' landed elites. Although conservatives in each of the four provinces pursued elective Legislative Councils, only those in Canada and Prince Edward Island had managed to implement them successfully. Even then, their success was short-lived. Despite substantial property qualifications, elective upper houses never turned into the constitutionalist bulwarks that conservatives had hoped. Responsible government had become too deeply embedded to topple so easily.

Each of these preceding chapters has employed Ian McKay's "Liberal Order Framework" as something of a touchstone. For over a decade now, McKay has called upon Canadian historians to join him in a reconnaissance of Canadian history. Reconnaissance, in this context, has had several meanings. The original article emphasized reconnaissance as both acknowledgement and re-knowing. Through the lens of a propertied liberalism, McKay has pushed historians to both recognize *and* understand Canada as a historically-specific liberal project of rule.[3] Canadian historians have since pushed back (and continue to do so).[4] McKay's

[3] Again, see: Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," *Canadian Historical Review* 81.4 (December 2000): 620-621.

more recent work has stressed reconnaissance's other meaning: that of advanced exploration.[5] Scouts reconnoitre the terrain; they report their findings back to the group. A liberal reconnaissance of Canadian history thus implies something of a challenge. McKay has, in a way, prodded Canadian historians to discover how well a propertied liberal order fits – or does not fit – Canada's nineteenth-century past. This dissertation has attempted to answer McKay's challenge from the perspective of British North American electoral franchise law.

The results prove complex. Without a doubt, a propertied-oriented liberalism had its adherents in every British North American province throughout the mid-nineteenth century. In some places – such as the Province of Canada and New Brunswick – this form of liberalism appears to have dominated at the provincial level. General elections in both provinces revolved around propertied ideals of citizenship throughout the period in question. Together, they set the groundwork for what McKay might call a Canadian liberal order. Even so, not all property proved equal. McKay has emphasized property *ownership* through freehold tenure as the basis for full individuality within this liberal world.[6] Yet, as early as the mid 1850s, both the United Canadas and New Brunswick had moved away from such narrow definitions of property possession within their franchise laws. Leaseholders voted alongside freeholders on similar tracts of land in both provinces. While property ownership may have still represented the ultimate goal for Canadian and New Brunswick men, landed title more generally granted them

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[4] For two of the most recent, see: Robert C.H. Sweeny, *Why Did We Choose to Industrialize? Montreal, 1819-1849* (Montreal and Kingston: McGill-Queen's University Press, 2015), 320-326; J.I. Little, "Charities, Manufactures, and Taxes: The Montreal Sisters of Providence Spruce Gum Syrup Case, 1876-78," *Canadian Historical Review* 95.1 (March 2014): 54-77.

[5] See: Ian McKay, "Canada as a Long Liberal Revolution: On Writing the History of Actually Existing Canadian Liberalisms, 1840s-1940s," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, eds. Jean-François Constant and Michel Ducharme (Toronto: University of Toronto Press, 2009), 403-404. Also see: ibid., *Rebels, Reds, Radicals: Rethinking Canada's Left History* (Toronto: Between the Lines, 2005), 82;94. Historians have since pushed back against this meaning as well, but not quite in the way employed here. See: Joan Sangster, *Through Feminist Eyes: Essays on Canadian Women's History* (Edmonton: AU Press, 2011), 87-88.

[6] McKay, "Canada as a Long Liberal Revolution," 376-386.

access to full provincial citizenship. The wealth that land represents, rather than the land itself, had apparently become the new mark of liberal independence across British North America's largest provinces.

In other colonies – namely Nova Scotia and Prince Edward Island – much more egalitarian emphases had taken hold. These two provinces opened citizenship to men who may have never possessed a scrap of land in their lives, whether through local taxation, statute labour, or a modified manhood suffrage. While Prince Edward Island resisted propertied enfranchisement in its lower house for the rest of the century, Nova Scotia eventually reneged on that commitment and aligned itself with the colonies westward. No matter the outcome, equality between rich and poor never truly extended beyond the margins of Whiteness and patriarchy. Alongside all women, Black men and Indigenous men continued to suffer political emasculation even under British North America's most inclusive franchise laws.

Although provincial franchises may have taken centre stage, other franchise laws operated in the same political and cultural space. These additional franchises further complicated the relationship between liberalism and citizenship in mid-nineteenth-century British North America. Montreal's early municipal franchise, for instance, proved broader than any monetary freehold or leasehold franchise allowed. By means of widespread political participation, Governors Durham and Thomson had sought to transform a-liberal subjects into rational, competent citizens. Montreal's financial elite never agreed with their lordships' more radical design. They believed that such a scheme undercut not only their own interests, but the purpose of municipal incorporation more generally. Once these wealthy Montrealers gained control over the city's franchise, they eventually aligned it with that of the Canadas. In this way, municipal enfranchisement fell in line with the province's broader propertied liberal ideal.

Proposed franchises for elective Legislative Councils also revolved around property ownership. Their design, however, sought to undermine liberal governance rather than bolster it. Constitutionally-minded conservatives had condemned responsible government as a recipe for political instability. Through the elective principle and restrictive qualifications, they looked to restore the older constitutionalist form of mixed monarchy they had so recently lost. That way, they believed, the collective privileges of class, status, and wealth might have formal representation once more within a property-based regime. Elective upper houses in the Province of Canada and Prince Edward Island ultimately proved less conservative than hoped. Lower houses retained the lion's share of political power. Only on Prince Edward Island did its elective Legislative Council have something of a structural impact. The £100 property qualification for Legislative Council voters counterbalanced the statute labour franchise employed by the House of Assembly. Provincial citizenship on Prince Edward Island received a property qualification after all: legislators had simply stuck it in a less obvious and (in the end) less influential place.

Did a propertied liberal order blanket mid-nineteenth-century British North America? Based upon the preceding evidence, the answer has to be no. Colonial politics were far too experimental at this time for such neat categorizations. Constitutional manipulation was still far too prevalent. Colonial lives were far too messy. Ruth Sandwell, amongst others, has already made similar points.[7] Even so, this dissertation has revealed a growing adherence to propertied liberal citizenship over the course of the mid-nineteenth century.[8] British North Americans may have experimented with their franchise legislation, and they may have experimented widely.

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[7] See: R.W. Sandwell, *Contesting Rural Space: Land Policy and the Practices of Resettlement on Saltspring Island, 1859-1891* (Montreal and Kingston: McGill-Queen's University Press, 2005). Also see: ibid., "Missing Canadians: Reclaiming the A-Liberal Past," in *Liberalism and Hegemony: Debating the Canadian Liberal Revolution*, eds. Jean-François Constant and Michel Ducharme (Toronto: University of Toronto Press, 2009), 246-273.

[8] Also see: E.A. Heaman, *A Short History of the State in Canada* (Toronto: University of Toronto Press, 2015), 86-88; 219-220.

Yet, those experiments tended to lead to the same places, whether in the lower houses or the upper.

With this in mind, it is perhaps now less surprising than ever that colonial representatives at Quebec, when framing the British North America Act, used their provincial franchises as the new Dominion franchise. A certain amount of pragmatism undoubtedly played a role in the decision. After all, no one wanted to break the confederation over something so potentially contentious.[9] It must have reassured delegates, however, that provincial citizenship across the provinces moved ever closer toward the same ideological foundation. Although the franchises of Canada, New Brunswick, and Nova Scotia did not rely upon identical qualifications per se, they did share, at their core, the same propertied liberal values. Most representatives at Quebec – according to John A. Macdonald at any rate – adhered to these political and cultural ideals as well.[10] If anyone disagreed, it might have been the delegates from Prince Edward Island. Only Prince Edward Island did not have a property-based provincial franchise as of the mid-1860s, and only Prince Edward Island had spokesmen who had actively fought propertied enfranchisement during the 1850s (namely, Edward Whelan and George Coles). It soon became clear, however, that Islanders had no immediate plans to join the new confederation anyway.

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[9] See: Christopher Moore, *Three Weeks in Quebec City: The Meeting that Made Canada* (Toronto: Allan Lane, 2015), 126. During the Confederation Debates, John A. Macdonald himself cited that "[i]nsuperable difficulties would have presented themselves if we had attempted to settle now the qualification of electors for their own local legislatures; and we therefore adopted a similar clause to that which is contained in the Canada Union Act of 1841, viz., that all the laws which affected the qualification of members and of voters, which affected the appointment and conduct of returning officers and the proceedings of elections, as well as the trial of controverted elections in the separate provinces, should obtain in the first election to the Confederate Parliament, so that every man who has now a vote in his own province should continue to have a vote in choosing a representative to the first Federal Parliament." See: Province of Canada, *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces, 3rd Session, 8th Provincial Parliament of Canada* (Quebec: Hunter, Rose & Co., 1865), 6 February 1865, 39.

[10] Aside from pragmatic considerations, Macdonald also declared during the Confederation Debates that "[w]hile the principle of representation by population is adopted with respect to the popular branch of the legislature, not a single member of the Conference, as I stated before, not a single one of the representatives of the government or of the opposition of any one of the Lower Provinces was in favour of universal suffrage. Every one felt that in this respect the principle of the British Constitution should be carried out, and that classes and property should be represented as well as numbers." See: Province of Canada, *Confederation Debates*, 6 February 1865, 39.

This dissertation has focused on enfranchisement in four eastern British North American provinces. The other colonies that eventually joined the Dominion of Canada still need work done in this regard. The franchise in colonial Newfoundland, for instance, deserves its own dedicated study. Throughout their early history, Newfoundlanders had unique relationships with both the imperial state and their local soils. British law had essentially built Newfoundland around its fisheries. Farming was not only frowned upon; it was made illegal. Most migrants to Newfoundland did not come to take up agriculture anyway. Thin soils, a rocky interior, and a short growing season meant that farming proved difficult even at the best of times.[11] Newfoundland would not receive a legislature of its own until 1832, nearly three-quarters of a century after Nova Scotia. When the British government granted this legislature, however, it enfranchised all male settlers who had lived in the colony for just one year. They did not have to own property; they did not even need incomes. Gertrude Gunn has offered a general overview of enfranchisement on colonial Newfoundland from the perspective of imperial policy.[12] More cultural work still needs to be done on the subject.

Much like Newfoundland, Western Canada requires its own study as well. Despite the Colonial Office's machinations, the territory from Manitoba westward hardly resembled the White settler colonies to the continental east. Western Canada, even toward the end of the nineteenth century, was still very much a colonial frontier: an unstable site of cultural contact, contestation, and transformation on the periphery of older political influences.[13] First Nations

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[11] Sean T. Cadigan, *Hope and Deception in Conception Bay: Merchant-Settler Relations in Newfoundland, 1785-1855* (Toronto: University of Toronto Press, 1995), 14. Also see: Cole Harris, *The Reluctant Land: Society, Space, and Environment in Canada before Confederation* (Vancouver: UBC Press, 2008), 137-159.
[12] Gertrude E. Gunn, *The Political History of Newfoundland 1832-1864* (Toronto: University of Toronto Press, 1966), 11-13; 82-88.
[13] Doug Owram, *Promise of Eden: The Canadian Expansionist Movement and the Idea of the West 1856-1900* (Toronto: University of Toronto Press, 1980), 129-130; Elizabeth Furniss, *The Burden of History: Colonialism and the Frontier Myth in a Rural Canadian Community* (Vancouver: UBC Press, 1999), 16-19; Robert Hogg, *Men and*

peoples still greatly outnumbered those of European descent. Men predominated demographically.[14] Vast stretches of land were seen as essentially for the taking (despite their use by the First Nations majority). Easy access to this land – and its natural resources – led to higher levels of social mobility and looser class divisions.[15] Large numbers of Americans crossed the border both regularly and freely. The radically democratic philosophies they brought with them took direct aim at British liberal influences. East Asian immigrants established themselves with growing regularity along the Pacific Coast.[16] Under these conditions, Western Canadians increasingly questioned who represented an appropriate ideal for both enfranchisement and citizenship. Their answers – which merit further exploration – looked significantly different from the propertied liberalism found out east.

In the end, British North America's mid-nineteenth-century franchise laws did more than simply indicate who could vote at a given election. They denoted who belonged as citizens, who did not belong, and the cultural reasons for those inclusions and exclusions. In other words, franchise legislation served as direct expressions of shifting colonial cultural ideals. As of 1873, the Province of Canada, New Brunswick, Nova Scotia, and Prince Edward Island had finally joined together within the same nation-state. By doing so, they had complicated the lives of their inhabitants even further through yet another sphere of political belonging. Provincial governments soon struggled with Ottawa for the hearts and minds of Canadians.[17] In this battle,

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Manliness on the Frontier: Queensland and British Columbia in the Mid-Nineteenth Century (New York: Palgrave Macmillan, 2012), 7-8.

[14] Adele Perry, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849-1871* (Toronto: University of Toronto Press, 2001), 10-14.

[15] Robert A.J. McDonald, *Making Vancouver: Class, Status, and Social Boundaries 1863-1913* (Vancouver: UBC Press, 1996), xii; Lyle Dick, *Farmers "Making Good": The Development of Abernethy District, Saskatchewan, 1880-1920,* second edition (Calgary: University of Calgary Press, 2008), 134.

[16] John Douglas Belshaw, *Becoming British Columbia: A Population History* (Vancouver: UBC Press, 2009). 126.

[17] See: Robert C. Vipond, *Liberty and Community: Canadian Federalism and the Failure of the Constitution* (Albany: State University of New York Press, 1991); Garth Stevenson, *Ex Uno Plures: Federal-Provincial Relations in Canada, 1867-1896* (Montreal and Kingston: McGill-Queen's University Press, 1993).

franchise laws quickly became weapons of choice. Provincial franchises doubled as the federal franchise far longer than originally predicted, until 1885. Provincial governments did not mind whatsoever: it allowed them to manipulate federal representation at the local level. As the federal government consolidated Dominion elections under a unified property-based franchise, the provinces countered with either reduced qualifications or what they called manhood suffrage.[18] These same provincial governments increasingly disenfranchised federal employees (or, in other words, federal patronage appointments) at the provincial level as well.[19] Through franchise reform, provincial governments attempted to further stake out their independence from the federal sphere. Much like provincial franchises of the mid-nineteenth century, those of the later-nineteenth century still expressed local political and cultural values. Such expressions tended to arrive, however, through the ever more aggressive language of Canadian provincial rights.

[18] New Brunswick and Ontario had soon after passed these so-called manhood suffrage laws. See: New Brunswick, "An Act to consolidate and amend the Law relating to Elections to the General Assembly" (52 Vic., c. 3), section 21d. Also see: Ontario, "An Act to amend and consolidate the Acts respecting Elections of Members of the Legislative Assembly" (55 Vic., c. 3), section 7. Nova Scotia added an income qualification to its election law of 1863. Quebec would do the same, but much later. See: Nova Scotia, "An Act respecting the Electoral Franchise" (52 Vic., c. 1), section 9. Also see: Quebec, "An Act to amend the Quebec Election Act, 1895" (62 Vic., c. 16), section 2.

[19] See: Malcolm Montgomery, "The Six Nations Indians and the Macdonald Franchise," *Ontario History* 57.1 (March 1965): 13-14. Also see: Chief Electoral Officer of Canada, *A History of the Vote in Canada* (Ottawa: Public Works and Government Services Canada, 1997), 47.

Appendix

Legislation and Ordinances

Upper Canada

1834	An Act to extend the Limits of the Town of York; to erect the said Town into a City; and to Incorporate it under the name of the City of Toronto	4 Will. IV, c. 23
1837	An Act to alter and amend an Act passed in the fourth year of His Majesty's reign, entitled, 'An Act to extend the limits of the Town of York, to erect the said Town into a City, and to Incorporate it under the name of the City of Toronto'	7 Will. IV, c. 39

Lower Canada

1796	An Act for making, repairing and altering the Highways and Bridges within this Province and for other purposes	36 Geo. III, c. 9
1799	An Act to amend An Act passed in the thirty sixth Year of His present Majesty's Reign, intituled 'An Act for making, repairing and altering the Highways and Bridges, within this Province, and for other purposes'	39 Geo. III, c. 5
1831	An Act to incorporate the City of Montreal	1 Will. IV, c. 54
1840	An Ordinance to Incorporate the City and Town of Montreal	3 & 4 Vic., c. 36
1841	An Ordinance to amend the Ordinance to Incorporate the City and Town of Montreal	4 Vic., c. 32

Province of Canada

1845	An Act to amend and consolidate the Provisions of the Ordinance to Incorporate the City and Town of Montreal, and of a certain Ordinance amending the Ordinance, and to vest certain other powers in the Corporation created by the said first mentioned Ordinance	8 Vic., c. 59
1849	An Act to repeal certain Acts therein mentioned, and to amend, consolidate, and reduce into one Act, the several Statutory provisions now in force for the regulation of Elections of Members to represent the People of this Province in the Legislative Assembly thereof	12 Vic., c. 27
1849	An Act to provide for the indemnification of parties in Lower-Canada whose property was destroyed during the Rebellion in years one thousand eight hundred and thirty-seven, and one thousand eight hundred and thirty-eight	12 Vic., c. 58
1849	An Act to provide, by one general law, for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships, and Villages in Upper Canada	12 Vic., c. 81
1851	An Act to amend and consolidate the provisions of the Ordinance to incorporate the City and Town of Montreal, and of a certain Ordinance and certain Acts amending the same, and to vest certain other powers in the Corporation of the said City of Montreal	14 & 15 Vic., c. 128
1853	An Act to extend the Elective Franchise, and better to define the qualifications of Voters in certain Electoral Divisions, by providing a system for the Registration of Voters	16 Vic., c. 153
1853	An Act to regulate the Currency	16 Vic., c. 158
1853	An Act to amend and consolidate the Assessment Laws of Upper Canada	16 Vic., c. 182
1854	An Act for the abolition of feudal rights and duties in Lower Canada	18 Vic., c. 3
1854	An Act to amend an Act intituled, *An Act to extend the Elective Franchise, and better to define the qualifications of Voters in certain Electoral Divisions, by providing a system for the Registration of Voters*	18 Vic., c. 7

1855	An Act to repeal two certain Acts therein mentioned, and to extend the Elective Franchise of this Province	18 Vic., c. 87
1856	An Act to change the Constitution of the Legislative Council by rendering the same Elective	19 & 20 Vic., c. 140
1857	An Act to require accounts rendered to the Provincial Government to be so rendered in dollars and cents	20 Vic., c. 18
1857	An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians	20 Vic., c. 26
1858	An Act to define the Elective Franchise, to provide for the Registration of Voters, and for other purposes therein mentioned	22 Vic., c. 82
1858	An Act respecting the Municipal Institutions of Upper Canada	22 Vic., c. 99
1859	An Act to amend and explain *An Act to define the Elective Franchise, to provide for the Registration of Voters, and for other purposes therein mentioned*	22 Vic., c. 10
1860	An Act to amend the provisions of the several Acts for the Incorporation of the City of Montreal	23 Vic., c. 72
1866	An Act to amend the provisions of several Acts to the City of Montreal, and for other purposes	29 & 30 Vic., c. 56

Ontario

1892	An Act to amend and consolidate the Acts respecting Elections of Members of the Legislative Assembly	55 Vic., c. 3

Quebec

1899	An Act to amend the Quebec Election Act, 1895	62 Vic., c. 16

New Brunswick

1791	An Act for Regulating Elections, of Representatives in General Assembly, and, for limiting the duration of Assemblies, in this Province	31 Geo. III, c. 17
1828	An Act to regulate the trials of controverted Elections or returns of Members to serve in General Assembly	9 Geo. IV, c. 37
1843	An Act to improve the law relating to the Election of Representatives to serve in the General Assembly	6 Vic., c. 44
1845	An Act relating to the Election of Representatives to serve in the General Assembly	8 Vic., c. 108
1848	An Act relating to the Election of Representatives to serve in the General Assembly	11 Vic., c. 65
1851	An Act to provide for the establishment of Municipal Authorities in this Province	14 Vic., c. 38
1852	An Act to prevent the traffic in Intoxicating Liquors	15 Vic., c. 51
1855	An Act to regulate the Election of Members to serve in the General Assembly	18 Vic., c. 37
1889	An Act to consolidate and amend the Law relating to Elections to the General Assembly	52 Vic., c. 3

Nova Scotia

1851	An Act to extend the Elective Franchise	14 Vic., c. 2
1854	An Act concerning the Elective Franchise	17 Vic., c. 6
1863	An Act to regulate the Election of Members to serve in the General Assembly	26 Vic., c. 28
1889	An Act respecting the Electoral Franchise	52 Vic., c. 1

Prince Edward Island

1830	An Act to alter, amend and suspend certain parts of an Act made and passed in the Forty-seventh Year of His late Majesty's Reign, intituled *An Act to repeal an Act made and passed in the Forty-first Year of His present Majesty's Reign, intituled 'An Act for the better Regulation of Elections,' and to regulate Elections for Members to serve in General Assembly in future*	11 Geo. IV, c. 8
1843	An Act to consolidate and amend the Laws relating to Statute Labour, and the Expenditure of Public Moneys on the Highways	6 Vic., c. 1
1851	An Act to consolidate and amend the Laws relating to Statute Labour and the expenditure of Public Moneys on the Highways	14 Vic., c. 12
1852	An Act for the Encouragement of Education, and to raise Funds for that purpose, by imposing an additional Assessment on Land in this Island, and on Real Estate in *Charlottetown* and *Common*, and *Georgetown* and *Common*	15 Vic., c. 13
1853	An Act to Extend the Elective Franchise	16 Vic., c. 9
1860	An Act to make certain alterations to the Laws for the performance of Statute Labor on, and the improvement of, the Highways	23 Vic., c. 43
1862	An Act to change the Constitution of the Legislative Council, by rendering the same Elective	25 Vic., c. 18
1875	Land Purchase Act, 1875	38 Vic., c. 32
1877	The Assessment Act, 1877	40 Vic., c. 2
1877	An Act relating to Roads and Bridges	40 Vic., c. 6
1877	The Registration of Electors and Ballot Act of Prince Edward Island, 1877	40 Vic., c. 20
1879	The Public Roads Act, 1879	42 Vic., c. 1
1879	An Act to repeal 'The Registration of Electors and Ballot Act of Prince Edward Island,' with its Amending Acts, to revive certain Acts and parts of Acts, and make other provision respecting Elections	42 Vic., c. 2
1901	The Public Roads Act, 1901	1 Ed. VII, c. 1

1901	An Act to amend "An Act respecting the Legislature"	1 Ed. VII, c. 4

England and Great Britain

1660	An Act takeing away the Court of Wards and Liveries and Tenures in Capite and by Knights Service and Purveyance, and for settling a Revenue upon His Majesty in Lieu thereof (Tenures Abolition Act)	12 Car. II, c. 12
1791	An Act to repeal certain parts of an Act, passed in the fourteenth year of His Majesty's reign, intituled, *An Act for making more effectual provision for the Government of the Province of Quebec, in North America*; and to make further provision for the government of the said province (Constitutional Act)	31 Geo. III, c. 31
1832	Representation of the People Act, 1832 (Great Reform Act)	2 & 3 Will. IV, c. 45
1835	An Act to provide for the Regulation of Municipal Corporations in England and Wales (Municipal Corporations Act)	5 & 6 Will. IV, c. 76
1840	An Act to re-unite the Provinces of *Upper* and *Lower Canada* and for the Government of *Canada* (Act of Union)	3 & 4 Vic., c. 35
1867	An Act of the Imperial Parliament for the Union of Canada, Nova Scotia and New Brunswick, and the government thereof; and for purposes connected therewith (British North America Act)	30 Vic., c. 3
1867	Representation of the People Act, 1867 (Second Reform Act)	30 & 31 Vic., c. 102
1869	The Municipal Franchise Act, 1869	32 & 33 Vic., c. 59

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