SHORT TITLE:

ATTEMPTS TO ABOLISH OR REFORM THE LEGISLATIVE COUNCIL OF QUEBEC

THE LEGISLATIVE COUNCIL OF QUEBEC:

ATTEMPTS TO ABOLISH OR REFORM, 1867-1965

by

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PREFACE

During this period of "quiet revolution", in Quebec, with its widespread questioning of traditional attitudes and institutions, it is not surprising that the Legislative Council should become the focus of a considerable amount of criticism. It must be remembered, however, that the most recent attack upon the Upper House is merely the latest in a series of attempts to abolish or drastically alter Quebec's venerable second chamber.

I wish to express my gratitude to all those who assisted me during the course of my research: The Honorable George O'Reilly, M.L.C.; Mr. Raymond Johnston, M.P.P.; Professor F.A. Kunz, of McGill University; Mr. Thomas Sloan, of the Montreal Star. I am particularly grateful to Miss Ann Cahill for her help and encouragement.

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"Agus dom' chlann féin, céad mile buidheachais."

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CHAPTER I

THE CONSTITUTIONAL SETTING

During the early months of 1965, the prolonged and contentious debate concerning constitutional amendment in Canada seemed to be drawing toward a satisfactory and definitive conclusion. Federal authorities had succeeded in preparing an amending formula acceptable to all the provincial governments, and with this formidable hurdle finally surmounted, the drive to "re-patriate" the constitution seemed to be assured of success.

By the month of April, however, it had become apparent that the "Fulton-Favreau Formula" was destined to be received with something less than ardent enthusiasm in the province of Quebec, despite Premier Lesage's definite endorsement of its provisions. The provincial government's decision to introduce a bill curbing the powers of the Legislative Council, and its insistence upon this measure as a necessary preliminary to any consideration of the amendment resolution by the Legislature, engendered new and even more vociferous debate. Events proceeding from this new altercation raised additional questions with regard to amendment procedure, this time at the provincial rather than at the federal level.

Sir Ivor Jennings' study of the various constitutions of the Commonwealth led him to remark:

> The Commonwealth contains as many constitutions as it contains political units . . . In Canada there are eleven. For though the provinces were given new constitutions by the British North America Act, 1867, which also contained the Dominion constitution, the Act empowered each Provincial Legislature to amend the constitution of the Province and this power has been exercised, so that one can no longer consider the provincial constitution to be contained in the Act.[1]

Be that as it may, any consideration of contemporary provincial constitutions involves a more than superficial examination of the provisions of the British North America Act, since, despite the admitted alterations since 1867, most changes in provincial constitutions have been made in conformity with the procedure outlined in the 1867 statute.[2] At the same time, since this statute had as its purpose the joining of already existing colonies in a federal union, the institutions proper to these several colonies at the time of Confederation also deserve adequate consideration, for, in certain cases,

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[1]Sir Ivor Jennings, Constitutional Laws of the Commonwealth, (3rd. ed., London, 1962), I, 40.

[2]Section 80 of the B.N.A. Act has been amended on various occasions (Legislature Act, R.S.Q. 1941, c.4, as amended by S.Q. 1959-60, c.28; Territorial Division Act, R.S.Q. 1941, c.3, as amended by S.Q. 1959-60, c.28). I am indebted to Professor J.R. Mallory for pointing out that few, if any, of the changes in constituency boundaries which affected the safeguarded seats have taken place with their formal concurrence.

the colonial constitution was preserved under the B.N.A. Act.

As Keith points out, the earliest colonial constitutions were manifestations of two different legal doctrines. The inhabitants of "settled" territories, "were deemed to carry with them, as far as was compatible with the change of conditions, the legal system of England."[3] Since English law could not, however, be applied without certain modifications necessitated by the character of the new locality, systems of local government developed. These were empowered to make binding regulations within a given sphere, in such a manner, however, as to avoid any incompatibility with the laws of England. It was only natural that colonists in such territories should claim for themselves the "rights of Englishmen", and include among such rights representative institutions. The colonial Assembly, once granted, was considered supreme within the colony itself, though still subordinate, obviously, to the British Parliament.[4]

The question of the status of colonies gained by conquest or cession gave rise to a detailed judicial examination of the extent of the Crown's legislative au-

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[3]A.B. Keith, Responsible Government in the Dominions, (2nd. ed., London, 1928), I, 3.

[4]J.E. Read, "The Early Provincial Constitutions", Canadian Bar Review, XXVI (1948), p. 622.

thority over such colonies. The outcome of such cases as Smith v Brown (2 Salk. 666), and Beamont v Barrett (I Moo. PC 59, 75), established that, in the case of conquered or ceded territory, "The Crown had an unfettered right of legislation, at any rate if no specific stipulations were included in the instrument of cession".[5]

It is to be noted that the system of law prevailing in a conquered or ceded territory is not immediately superseded at the time of conquest or cession, though it is true that, in so far as it becomes a colony, "English constitutional law as to colonies becomes part of its law. Its previous constitution is destroyed and its citizens become British subjects. . . ."[6] Contrary to the situation in a settled colony, where the Crown could exercise legislative power only in so far as this was necessary for the establishment of courts and of a representative body, in a conquered territory, the Crown's power to legislate was limited only by the terms of the capitulation.[7] Then too, the case of Campbell v Hall established that once a constitution has been given, and a representative Assembly promised (even though not yet called together), the King, in view of such a promise, must refrain from any attempt

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[5]Keith, op. cit., p.4.

[6]Jennings, op. cit., p.46.

[7]Ibid., p.47.

to exercise legislative control over the territory under consideration. Under such circumstances, the Sovereign was considered to have "immediately and irrevocably granted . . . that the subordinate legislation . . . should be exercised by an assembly with the consent of the Governor and Council, . . ."[8] Although it is true that the Monarch might expressly reserve to himself the power to legislate under certain conditions (a reservation which would, among other things, render any desired constitutional amendment much less difficult), in the case of the older colonies, this was not done.

In the case of prerogative constitutions, however, despite Campbell v Hall, the Crown could annex one colony to another, thereby nullifying the original constitution, while it was also possible to "amend the constitution by revising the royal instruments in which it was embodied".[9] (With regard to statutory constitutions, Parliament was always free, obviously, to amend or repeal a statute of its own creation.)

Jennings observes that in 1867 Canada was formed from "three settled colonies with representative legislatures . . . and one conquered colony (Lower Canada, or Quebec) whose constitution had been regulated by statute."[10]

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[8] Ibid., p.62.

[9] Read, op. cit., p.623.

[10] Jennings, op. cit., p.41.

Quebec's first constitution was contained in the Proclamation of October 7, 1763, together with Murray's Commission, (November 28, 1763), and his Instructions, (December 7, 1763).[11] In 1774 the provisions outlined in these documents were replaced by those of the Quebec Act, which provided Canada with a statutory constitution. The constitution embodied in the Act of 1791 was also statutory, and it is to be noted that, at this point, ordinances were enacted in the name of the King, with the advice and consent of the Council, and of the Assembly, rather than in the name of the King's servant, the Governor (acting with Council and Assembly), as was customary in the older prerogative constitutions.[12] At the same time, as Wight points out:

> Under the old representative system the power of altering its own constitution was regarded as inherent in each colonial legislature, by virtue of a right analogous to that of Parliament. But when Parliament began to erect representative legislatures, the power of constituent amendment remained with Parliament, unless expressly conferred. One of the reasons for the breakdown of the 1791 constitution in the Canadas was that their legislatures lacked the power of amendment and the imperial government failed to respond to their petitions for change.[13]

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[11] W.P.M. Kennedy, Statutes, Treaties and Documents of the Canadian Constitution, 1713-1929, (London, 1930), p.43.

[12] Read, op. cit., p.633.

[13] Martin Wight, The Development of the Legislative Council 1606-1945, (London, 1945), p.112.

Under the terms of the Act of Union 1840, (3-4 Victoria, c. 35) the alteration of the colonial constitution within the colony itself was severely restricted. An Imperial Act was necessary to make the Legislative Council elective, for example. The British North America Act, 1867, however, conferred upon the provinces wide amending powers with regard to their proper constitutions, though this same statute made no provision for amendment by the federal authorities. It might also be noted that section 5 of the Colonial Laws Validity Act, which states:

> . . . every representative Legislature shall in respect to the colony under its jurisdiction, have, and be deemed at all times to have had full powers to make laws respecting the constitution, powers and procedure of such Legislature . . . [14]

was not considered to be applicable in the case of the federal Parliament. Any demand for constitutional alteration at the federal level had to be referred to the British Parliament.

Despite this restriction upon the federal authorities, section 92 (I) of the B.N.A. Act states quite unequivocally that the Legislature of each province "may exclusively make laws in relation to . . . the amendment from time to time of the Constitution of the Province, except as regards the Office of the Lieutenant Governor." The constitutional situation differed, however, in each of the four original provinces. The colonial constitu-

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[14] 28-29 Victoria, (1865) c.63.

tions of New Brunswick and Nova Scotia were, to all intents and purposes, preserved by the B.N.A. Act (section 88), but the constitutions of Ontario and Quebec were new creations of the Imperial Parliament.

The fact that in both Nova Scotia and New Brunswick the constitution was based on prerogative rather than statutory instruments became extremely significant when Nova Scotia undertook to abolish the Legislative Council in that province. When the government took the first tentative steps toward this objective in 1879, the Council refused to approve a bill which would have permitted the Lieutenant-Governor to appoint additional members to that body. Recourse was ultimately had to the Queen, who, however, refused to intervene in the affair.[15] After experiencing failure again in 1890 and in 1926, the government sent a reference to the Supreme Court of the province, requesting an opinion withregard to the Lieutenant-Governor's right to appoint more Legislative Councillors than were in office at the time of Confederation.

The question was ultimately taken to the Judicial Committee of the Privy Council, where it was held that the Lieutenant-Governor-in-Council had the right to make an unlimited number of appointments to the Legislative Council, and that those members appointed before May 7,

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[15] F. Chevrette, "Le Conseil Législatif de Québec, son fondement constitutionnel et ses caractères," Themis, XLVI, (1963) p.103.

1925 (at which time a ten-year term was established), could, at any time, be dismissed by the Lieutenant-Governor-in-Council, since they held office during the pleasure of the executive authority. In delivering the judgment, Viscount Cave reviewed the historical background of the situation and emphasized the importance of Monck's Commission, which formed an integral part of the constitution of Nova Scotia prior to 1867, which was in turn continued under the terms of the British North America Act.[16]

This document set no limit upon the number which could be appointed by the Sovereign, although it did declare that provisional appointments made by the Lieutenant-Governor should not raise the total membership above twenty-one. The appointments were to be made at pleasure, (although by 1867 it had become customary to consider such appointments as being immune to later executive interference.) It had been argued that since the constitution as it existed prior to 1867 was simply continued by the British North America Act, the division of prerogative powers between the Sovereign (with unlimited power of appointment and dismissal), and the Sovereign's representative, (with restricted powers of provisional appointment), was likewise perpetuated. The Judicial Committee, however, rejected this claim, not on the basis of any specific in-

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[16] A.G. for N.S. v. Legislative Council of N.S. (1928) AC 107.

terpretation of the British North America Act, but rather in view of a statute passed in 1872 which vested full appointive powers in the Lieutenant-Governor, and another in 1923 which bestowed these same powers upon the Lieutenant-Governor-in-Council. One critic of such an approach insists that Lord Monck's Instructions, which also form part of the Nova Scotia constitution, make it clear that the Lieutenant-Governor during the colonial period, had a "limited power of suspension" only, not a power of dismissal, such dismissal requiring an act of the Crown-in-Council (U.K.).[17]

(Viscount Cave had argued that the power to appoint involved necessarily the power to augment and to dismiss. The power to appoint had been vested in the Lieutenant-Governor-in-Council by the statutes of 1872 and 1923, the validity of neither of which was in any way called into question at this time.) The same writer points out that an argument based upon the distribution of provincial and federal powers contained in the British North America Act would probably be more conclusive. Prerogative authority over legislative questions concerning the Nova Scotia Legislature would, then, be vested in the Lieutenant-Governor of the province, since the provincial Legislature has the power to alter its own constitution.[18]

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[17] "Case and Comment", Canadian Bar Review, VI, (1928), p.61.

[18] Ibid., p.64.

The question of the significance of pre-Confederation instruments in the interpretation of the contemporary constitution cannot arise in Quebec in precisely the same form as in Nova Scotia, since Quebec's constitution (like Ontario's) was, in fact, created by the British North America Act, as has already been mentioned. Thus, when this Act declares that the Legislative Council is to be composed of twenty-four members, this provision can only be changed by the Legislature, not by the executive. It has been argued, however, that the debates at the time of Confederation suggest that the Fathers, in proposing a Constitution similar to that of the United Kingdom, thereby implied that, as in the United Kingdom, the executive would retain the right to make as many new appointments as might be desirable. There would seem, however, to be little to support such a contention.[19] Any amendment to the constitution of Quebec as contained in the British North America Act must follow the ordinary procedure applicable to laws in general. The bill must gain the approval of both houses of the Legislature and then receive Royal Assent. In view of the South Africa case, Harris v Minister of the Interior (1952, (2) SA 418), Chevrette maintains "La souveraineté d'un parlement ne justifie absolument pas ce dernier de rejeter

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[19]Chevrette, op. cit., p.106.

la procédure déjà établie pour la passation des lois."[20]

The Harris case involved an attempt to determine whether or not the Separate Registration of Voters Act, 1951, was, in fact inconsistent with section 35 of the South Africa Act, 1909, and in any case invalid in so far as it had not been passed in the manner prescribed in section 152 of this same Act. Section 152 reads, in part:

> Parliament may by law repeal or alter any of the provisions of this Act: Provided that no provision thereof for the operation of which a definite period of time is prescribed, shall, during such period be repealed or altered: And provided further that no repeal or alteration of the provisions contained in this section . . . or in section 35 . . . shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses . . .[21]

The Separate Representation of Voters Act, 1951, however, was passed by the two Houses sitting separately, and its provisions did indeed conflict with those of Section 35 (I), of the South Africa Act, 1909.

Nevertheless, it was argued by the respondents that the Statute of Westminster had repealed, or in any case modified both sections 35 and 152. Those who supported this view insisted that Section 2 of the Statute of Westminster, "which says, in effect, that no law made after December 11, 1931, by the Parliament of the Union shall be

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[20] Ibid., p.98.

[21] South Africa Act, 1909 (Jennings, op. cit., p.459)

void or inoperative on the ground that it is repugnant to the provisions of any existing Act of Parliament of the United Kingdom, had the effect of conferring on the Union Parliament the power to amend any section of the South Africa Act . . . in accordance with any procedure it might choose to adopt."[22] This particular argument was not, however, accepted by the court, nor did it subscribe to the view that "the procedure, express or implied, in the South Africa Act, is, so far as Courts of Law are concerned at the mercy of Parliament, like everything else."[23] (The Judge also refused to accept that line of reasoning which held that prior to the Statute of Westminster the Union Parliament could not alter the South Africa Act (an Imperial statute) in any way, in view of the provisions of the Colonial Laws Validity Act. The Court pointed out that an Imperial Act (South Africa Act, section 152) in this case specifically allowed such an alteration, and thus the Colonial Laws Validity Act could not be invoked in this specific area.)

If, then, a change in procedure is desirable, it would seem to be necessary to follow the prescribed procedure in providing for such an alteration. This, in fact, was the opinion of the Judicial Committee of the Privy Council in the Trethowan Case, (Atterney-General

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[22]Jennings, op. cit., p.364.

[23]Ibid., p.371.

for new South Wales and others v Trethowan and others, 1932 AC 526.) An Act of the New South Wales Legislature, (Constitution (Legislative Council) Amendment Act, 1929), provided that there was to be no abolition of the Legislative Council, nor alteration of its powers and constitution without the prior consent of the majority of electors voting - in addition to the approval of both Houses of the Legislature. In 1930 an attempt was made to nullify this requirement, and the bill passed both Houses, as did a second bill proposing the abolition of the Legislative Council. Neither bill, however, was presented to the electors. Lord Sankey, in delivering the judgment, declared:

> Their Lordships are of the opinion that section 7A of the Constitution Act, 1902, was valid and was in force when the two bills under consideration were passed through the Legislative Council and the Legislative Assembly. Therefore, these bills could not be presented to the governor for His Majesty's assent unless and until a majority of the electors voting had approved them.[24]

One is led to conclude then, in view of this and similar cases elsewhere, that any alteration of the constitution of the Province of Quebec must needs be effected by the Legislature of that province, in accordance with the requirements of the British North America Act, section 71 - and this means, ultimately, that the Legislative Council must agree to its own demise. This par-

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[24] Ibid., p.82.

ticular method has indeed been attempted — with a notable lack of success. As Professor Bonenfant wryly points out, "On peut le maudire et le menacer, mais il vaudrait mieux le convaincre, car, s'il s'entête, il n'y a rien à faire contre lui."[25] Nevertheless, a growing number of the Council's critics refuse to accept such a situation as inevitable.

At this juncture, the Statute of Westminster and its effect upon the British North America Act could prove to be extremely significant. Jennings inclines toward the view that the law of a Canadian province is not contained in the "law of the Dominion." Thus, "it seems that Parliament (U.K.) may continue to amend the respective legal systems of the provinces . . . without receiving the request or the consent of the . . . [Dominion]." He concedes, however, that in "Canada the question is not so important, because under section 7(2), the provinces have power to repeal Imperial legislation on matters within their legislative authority."[26] At the same time, he also points out that the Statute of Westminster does not, in fact, forbid the Imperial Parliament to legislate for the Dominions. It merely says that "a law shall

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[25]J.C. Bonenfant, "Le bicaméralisme dans le Québec," Canadian Journal of Economics and Political Science, XXIX, (1963), p.501.

[26]Jennings, op. cit., p.136.

not extend or be deemed to extend to a Dominion as part of the law of that Dominion unless it is expressly declared in that Act that the Dominion has requested and consented to the enactment thereof."[27]

When alteration of the constitution can normally be effected by the Legislature of a given political unit, and when that Legislature is bi-cameral, it is only to be expected that any attempt by one House to interfere with the constitutional prerogatives of the other will be stoutly resisted. In Quebec the most significant attempts to alter those constitutional provisions defining the status and powers of the Legislative Council have been provoked, not unexpectedly, by the Council's refusal to approve some measure considered necessary by the Assembly. During the debates concerning the local constitutions in 1866, when Cartier and Le Canada supported a bicameral legislature for Canada East, ("Plus on simplifiera la législature locale, plus on amoindrira son impertance, et plus on courra risque de la voir absorber par la législature fédérale,")[28] little thought was given to the question of possible deadlock between the two Houses. As Waite points out, the entire matter of governmental organization at the local level was

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[27] Ibid. p.135.

[28] P.B. Waite, The Life and Times of Confederation 1864-1867, (Toronto, 1962), p.285.

seen to be of secondary importance. That "local constitutions were a bore" seems, indeed, to have been a rather widely held opinion.[29] This was certainly not the case, however, with regard to the proposed Upper House of the federation. Here was a matter discussed at great length - one which was considered to be of vital importance by the delegates to the Quebec Conference in 1864, yet the problem of deadlocks between the two chambers was not seen to be of equal significance.

The Senate was ultimately given legal equality with the Lower House, except in the case of the initiation of public bills which appropriated the public revenue or imposed a tax. It has been quite consistently argued, however, that the Fathers of Confederation did not see the Senate as having equal political authority with the Commons. If such a situation was not defined with any degree of precision, the reason lies, in Professor MacKay's opinion, in the Senate's status as the "political heir of the nominated legislative councils of the various provinces under responsible government. Not one of these had been a co-equal partner with the elected assembly . . . not one but was essentially a secondary legislative chamber."[30] This might, indeed, be of considerable importance

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[29] Ibid., p.288.

[30] R.A. MacKay, The Unreformed Senate of Canada, (Toronto, 1963), p.51.

in attempting to explain the lack, in the earliest plans, of any machinery to break a deadlock between the two chambers, though other factors must be considered as well.

The Maritimes, together with Quebec, were adamant in their opposition to any possibility of "swamping" the second chamber of the federation. Local interests were seen to be at stake here, and though the opposition criticized the rigidity as "a cleverly devised piece of deadlock machinery",[31] the government loftily dismissed any fear that the Senate might oppose the "people's will" (expressed through the Commons), as groundless. Such reasoning was based, in large part, on the conviction that the turnover in the membership of the second chamber would be quite rapid,[32] a conviction which was to be drastically undermined within the first few years of Confederation.

The lack of provision for deadlocks provoked further discussion at the London Conference. One proposed draft of the federation bill contained the provision that after the Upper House had rejected money bills once, or ordinary bills three times, new members (drawn equally from the three sections of the country) might be added to the second chamber.[33] This procedure was ultimately replaced by that contained in sections 26 and 27 of the

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[31] Ibid., p.40.

[32] Ibid., p.40.

[33] Ibid., p.41.

British North America Act.

As has already been mentioned, in the case of Legislative Councils in the Maritime provinces, the Sovereign always had the power to appoint additional members in the interest of gaining harmony, despite the fact that, as time went on, the Crown became less and less inclined to interfere. The probability of an impasse is obviously greatly decreased where an unlimited number of appointments to the second chamber is possible. A Newfoundland government, in 1917, after a serious dispute between the two Houses, secured a majority in the Council by appointing government supporters, then introduced a bill which placed the Upper House in the same relation to the Assembly as the House of Lords bore to the Commons after 1911.[34] In Queensland, the Council was abolished in 1922, by the addition of new members who supported the abolition bill, although in 1908 an act providing for a referendum in the case of a dispute between the two chambers had been passed. The referendum procedure had, in fact, been used in 1917, at which time a majority of the electors voted against abolition. This situation led Keith to declare the 1922 measure unconstitutional despite the fact that, as he drily comments "the members of the Council [were] rewarded for committing suicide by

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[34]Keith, op. cit., p.473.

free railway passes and library privileges for life."[35]

While "swamping" has often been an effective weapon against an intransigent nominee Council, other measures are usually called for when the second chamber is elective. In 1903 the Legislature of Victoria (Australia) modified the requirements for Council membership, and for Council electors, while at the same time providing a

> deadlock clause . . . giving the possibility of a penal dissolution of the Council, when the Assembly had already been dissolved because of any disagreement over a bill, and on the meeting of the new Parliament the bill had again passed the Assembly.[36]

By means of measures taken in 1881 and 1901 South Australia also provided for penal dissolution of the Council in the case of deadlock, but conflicts between the two Houses were not thereby eliminated. During a particularly stormy encounter in 1911, the government appealed for Imperial intervention, an appeal which the Imperial authorities thought best to ignore.

Despite the fact that on many such occasions Westminster has adopted a rigid policy of non-intervention, a situation of prolonged deadlock has, in more than one instance, prompted an appeal to the Crown - especially in the case of provinces or states possessed of what was

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[35] Ibid., p.462 (note).

[36] Ibid., p.481.

originally a prerogative constitution. Then too, during the discussions accompanying the preparation of the Manitoba Act, it was stated in a memorandum that the provinces held their constitutions "subject only to alteration by the Imperial Legislature."[37] Statements of this nature have been employed, generally speaking, not to justify Imperial intervention however, but rather to indicate the status of the province vis-à-vis federal authority. Thus, Gérin-Lajoie argues that, in view of section 92 of the British North America Act:

> The provincial legislatures are "supreme" and admit of no possible interference by the federal Parliament, just as the federal Parliament is supreme and admits of no possible interference by the provincial legislature in its own sphere. In view of the Balfour declaration of 1926, it would hardly seem proper for Westminster to interfere with the powers rights or privileges of any of the "supreme" legislative bodies governing the "autonomous Canadian community" without the consent of any such legislative bodies.[38]

(As the author points out, the term "supreme", in this context simply implies full power within its own sphere - though disallowance by the federal executive is still possible. Should the federal authority avail itself of this right, however, it cannot substitute legislation of its own in place of the rejected provincial legislation.)

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[37] P. Gérin-Lajoie, Constitutional Amendment in Canada, (Toronto, 1950), p.39.

[38] Ibid., p.158.

Where a state or province does, in fact, desire Imperial intervention, other problems arise. The possibility of disallowance, together with the fact that the Lieutenant-Governor is subordinate to the Governor-General, places Canadian provinces in a position rather different from that claimed by Australian states.[39] In 1902, a conflict developed in South Australia concerning the question of legitimate channels of communication with London. The Commonwealth, in view of its responsibility for external affairs, insisted that the Governor-General was the only legitimate channel of communication, while South Australia claimed that since the federal authorities had not legislated concerning the area under discussion, the States could deal directly with London if they so desired. The British government ultimately rejected the argument that the Commonwealth was an "agent of the states," since it too, like the states, derived its authority "legally from the Imperial Parliament, [and] politically, from the will of the people."[40] Nevertheless, one could not, in fact, "forbid the governor of a State forwarding direct to the Secretary of State the views of ministers on any issue of a federal kind."[41]

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[39]Keith, op. cit., p.605.

[40]Ibid., p.616.

[41]Ibid., p.617.

In discussing the Canadian situation, Gérin-Lajoie denies to the provinces any "exclusive competence" to demand of Westminster alterations in their own constitutions.[42] Despite this and other arguments emphasizing the futility of provincial petitions which attempt to by-pass the federal government, such petitions have not been wanting. In 1868, Howe set out for London to defend an appeal of this type, but the Colonial Secretary, Buckingham, suggested that it would be more profitable to attempt to work out a compromise solution with Ottawa.[43]

A federal Act (32-33 Victoria, c.2) instituting special financial arrangements with Nova Scotia prompted an Ontario petition in 1869, which condemned "such interference with the Union Act and pray[ed] the interposition of Her Majesty's Government to prevent its recurrence."[44] The Assembly address, forwarded to the Lieutenant-Governor, and thence to the Governor-General, was duly sent to the Secretary of State for the Colonies (Granville), who ultimately replied that the provinces had no grounds for complaint since the Act was within the competence of the Dominion, under section 31 of the British North America Act.[45]

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[42] Gérin-Lajoie, op. cit., p.169.

[43] J.A. Maxwell, "Petitions to London by Provincial Governments," Canadian Bar Review, XIV, (1936) p.739.

[44] 33 Vict. Sessional Papers (Can.) no.25 (1870) p.1

[45] Ibid., p.6.

In 1874 British Columbia prepared a petition as a result of Premier Walkem's dissatisfaction with the central government's implementation of the terms of union. When a compromise measure introduced by the federal government failed to gain acceptance in the Senate, Walkem appealed to London a second time. Although Carnarvon seemed eager to accept the role of arbiter, the objections of the Dominion government ultimately forced him to abandon this project, and, in effect, to adopt the federal point of view in the affair.[46]

In 1877 a dispute developed between federal authorities and Prince Edward Island concerning the fisheries award which followed the Treaty of Washington. The government of Prince Edward Island claimed a share of this award, since the province had ratified the relevant clauses of the Treaty before joining the federation. Provincial authorities rejected the Dominion argument that, since the clauses in question came into effect after Prince Edward Island became a Canadian province, its demands in this instance were unwarranted. Despite a provincial address to the Queen in 1880, the Dominion point of view found favor with Colonial Secretary Kimberley, and Prince Edward Island had to accept defeat. Nevertheless, the province felt bound to submit another address in 1886, this time with reference to the interpretation of the terms of

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[46]Maxwell, op. cit., pp.741, 742.

union. Concerning this matter Granville wrote:

> The Queen had no power either by statute or otherwise under the Constitution of Canada to give any direction to the matter, and therefore I shall not be able to advise her Majesty (who had been pleased to receive the address very graciously), to take any action upon it .....[47]

The first inter-provincial conference, in 1887, (attended by representatives of five of the seven provinces,) passed twenty-four resolutions, eighteen of which would have involved constitutional amendment. The Legislative Assemblies of Quebec, Ontario, Manitoba, Nova Scotia and New Brunswick subsequently endorsed a resolution calling for "the enactment, by the Imperial Parliament, of amendments to the British North America Act in accordance with the foregoing resolutions."[48] The Upper Houses in Nova Scotia and New Brunswick disapproved of the measure, and the Legislative Council of New Brunswick supported the Dominion protest. The Secretary of State for the Colonies duly acknowledged receipt of the resolutions - and then ignored them.[49]

British Columbia again sought to influence Westminster in a dispute with the federal government in 1906-1907, but Livingston is correct in maintaining that

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[47] Ibid., p.745.

[48] Proceedings and Evidence and Report - 1935 Special Committee on the B.N.A. Act, (quoted in W.S. Livingston, Federalism and Constitutional Change, (London, 1956), p.71.)

[49] Gérin-Lajoie, op. cit., pp.142, 143.

by 1902 the petition to the Imperial authorities had been replaced, generally speaking, by a submission of provincial resolutions to the federal government - a far more realistic approach, since by this time it was obvious that London would ignore provincial requests which lacked Dominion concurrence.[50]

This, indeed, was the position adopted by the Select Committee of Lords and Commons set up to study the Western Australia petition of 1934, whereby this state sought an Imperial Act returning it to its former status - that of a self-governing colony within the Empire. The Secretary of State for Dominion Affairs maintained that the problem should be settled locally (though it was obvious that, should both sides in the dispute agree to the secession, since the Constitution was contained in an Imperial Act, the Commonwealth could not, of itself, permit Western Australia to secede.)[51]

In view of the various considerations outlined above, more than one observer has, in the past, echoed Chevrette's contention that the abolition - or even the basic alteration - of the Legislative Council in Quebec presents "des difficultés constitutionnelles insurmontables."[52] This is not, it would seem, a view shared by

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[50]Livingston, op. cit., p.73.

[51]Maxwell, op. cit., p.738.

[52]Chevrette, op. cit., p.100.

the present premier of Quebec, who has recently launched one of the most formidable attacks ever suffered by the Council - an offensive which might well herald the proximate demise of what has, on occasion, been called the oldest political institution in Canada.[53]

This latest attack upon the Council serves to emphasize the development of new social and political values in Quebec - values in many ways at variance with those cherished by Cartier and other leaders of his era. When Cartier insisted upon a bicameral provincial legislature in 1866, in view of the "monarchical" sentiments of Canada East, he was supported by many "Bleus" who saw in such an institutional framework a protection for provincial rights.[54] Indeed, the agitation for "representation by population" was still identified in many minds with those elements of the Reform Party in Canada West which were most antagonistic to all things French-Canadian. The "Rouges", in attempting to propagate "rep. by pop." in addition to unicameral legislatures, extended suffrage and the like, labored under the immense handicap of ecclesiastical disapproval - the result of their identification with the anti-clerical liberals of Europe. Writing in 1946, F.H. Underhill remarked that "In Catho-

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[53]G. Turcotte, Le Conseil Législatif de Québec 1774-1933, (Beauceville, 1933), vii.

[54]Waite, op. cit., p.285.

lic French Canada the doctrines of the rights of man and of Liberty, Equality, Fraternity were rejected from the start, and to this day they have never penetrated save surreptitiously or spasmodically."[55]

Some would doubtless consider this judgment extreme, yet more than one observer has pointed out that "the arrival of French priests and religious congregations, for the most part imbued with the idea that liberal democracy was incompatible with Catholicism",[56] did little to strengthen the liberal ideal, especially in view of a widespread "fusion of religious and political ideas, Catholic symbols giving way to nationalistic [ones]."[57]

Even in English speaking Canada, the conservative note predominated, due, in large part, to the fact that all things democratic seemed to be permeated with the American influence. Thus J.H. Cameron, in proposing a bicameral legislature for Canada West, insisted that "a single Chamber was inconsistent with parliamentary institutions," and that "there was no ballast in such a system. It would outdo the United States in democracy

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[55] F.H. Underhill, In Search of Canadian Liberalism, (Toronto, 1960) p.12.

[56] J.C. Falardeau, "The Role and Importance of the Church in French Canada," in M. Rioux and Yves Martin (eds.), French-Canadian Society, (Toronto,1964) I, 349.

[57] Ibid.

and would produce the rankest and worst kind of Republic."[58] The English Protestants of Canada East, intent as they were upon solidifying the position of the central government, (and the unicameral provincial legislature seems to have been one of the accepted means of achieving this end), nevertheless saw in the second chamber a bulwark against the untoward effects of majority rule within the province.

This distrust of democracy, (identified, in many quarters, with republicanism), was characteristic of the majority of those most influential in the establishment of the new federation. Macdonald has been described as a nationalist, whose "conception of the new Canadian state was Hamiltonian in its origin. It embodied support for all those forces and agencies which could contribute power to the central authority: a conservative upper class, a strong executive, a nominated upper house. . . ."[59] If Cartier could not endorse the centralizing tendency, he did see in the federation project a means of ending political instability and settling the question of representation. His conservative horror of revolutionary upheaval, and his faith in gradual reform inevitably led him to distrust institutions which were identified with

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[58] Waite, op. cit., p.287.

[59] D.M.L. Farr, The Colonial Office and Canada 1867-1887, (Toronto, 1955) p.17.

radicalism in any way. In 1865 he was moved to exclaim, in the course of debate: "Au fond de la démocratie est l'abîme."[60]

The fear of the United States, which on so many occasions seems to dominate Cartier's thought, was not in any sense unfounded, since, by the end of the Civil War, the Americans, (possessed of the strongest army on earth) were on less than friendly terms with Britain and her North American dependencies. "The acquisition of Canada," proclaimed McGee in 1865, "was the first ambition of the American Confederacy, and never ceased to be so." He did not hesitate to derive from this "desire for the acquisition of new territory," an "inexorable law of democratic existence."[61]

Thus the second chamber - a nominated second chamber - was seen to be indispensable, not only to satisfy the demands of the powerful English-speaking minority in Quebec, but also to serve as a "restraining" body. The Legislative Council, like the Senate, was to "exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House." It too, was to be "an independant House, having free action

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[60] J.C. Bonenfant "Les Canadiens français et la naissance de la confédération," Canadian Historical Association Report 1952-1954, p.43.

[61] T.D. McGee, D'Arcy McGee - A Collection of Speeches and Addresses, C. Murphy (ed.), (Toronto, 1937), p.232.

of its own . . . a regulating body, calmly considering the legislation initiated by the popular branch and preventing any hasty or ill-considered legislation . . ."[62] The Legislative Council, however, like the Senate, has not always paid sufficient attention to one of Macdonald's subsequent remarks on this occasion: "It will never set itself in opposition against the deliberate and understood wishes of the people." The history of these confrontations with the "wishes of the people," (as interpreted by the Lower House,) is, in many ways, a history of the most significant attempts at abolition or reform.

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[62]Province of Canada, Parliamentary Debates on the Subject of The Confederation of the British North American Provinces 1865, (Quebec, 1865) p.36.

CHAPTER II

1867 - 1897

Liberal distrust of the Council and all its works was in no way diminished with the achievement of Confederation. It was, if anything, intensified, as it became increasingly evident that appointments were to be made on the basis of political philosophy and service. Since between 1867 and 1873 Cartier's spirit dominated the provincial scene, even when Conservative prospects were dimmed in the Assembly as a result of the various scandals of the mid 1870's, his party remained securely in control of the Legislative Council. Thus began the cycle of abolition projects, followed by periods of truce, as the government succeeded in adding more and more of its own supporters to the Councillors' ranks.[1]

By 1877, financial difficulties, precipitated by railway building in the province, had placed the De Boucherville government in an extremely precarious position. According to Rumilly's estimate, at least two-thirds of the members of the Legislature had invested in railway companies operating - or hoping to operate - in their

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[1]Chevrette, op. cit., p.94.

various constituencies. Thus, "Les entrepreneurs, à l'exemple de McGreevy et Sénécal, avaient, chacun, des parlementaires dans leur manche."[2] When Chapleau decided to use his influence to have the route of the North Shore railroad (Quebec, Montreal, Ottawa and Occidental,) altered so as to render greater benefit to his constituents in Terrebonne - even though this would materially diminish the railway's contribution to the well-being of Montreal - the inhabitants of this latter center were understandably incensed.

In January, 1878, there was added to the rancorous railway issue the problem of the ever-increasing provincial debt. It now seemed distinctly possible that Montreal, together with other municipalities that considered themselves similarly ill-treated, would refuse to contribute further to the building of the disputed railroad, despite the agreements which had been made before the change in route. The government did modify its plans slightly in an attempt to placate the Montrealers, but to no avail. Thus Angers proceeded to introduce a bill designed to compel recalcitrant municipalities to pay the amounts promised, through the imposition of a government-appointed syndic, whose signature would replace that of the mayor when this latter official refused to cooperate. At the

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[2]R. Rumilly, Histoire de la Province de Québec, (Montréal, 1941) 11, 114.

same time, further taxes were to be imposed in an all-out attempt to deal with the financial crisis.[3]

It was against such a background, (while the attorney general was being burned in effigy in various parts of the province,) that Raymond Préfontaine introduced his motion on February 6, 1878. The motion, seconded by Cameron, declared:

> That, in order to effect the retrenchment necessary to the prosperity of this province, and to obviate the imposition of further taxes, it is necessary to do away with all public expenditure not absolutely indispensable. [Since] under section 92 of the British North America Act, the Legislature of this Province has power to amend from time to time the constitution of this province . . . [and since] experience has shown that public affairs of a province . . . can be conducted by means of a Legislature composed of a Lieutenant-Governor and one House only . . . it is advisable that the composition of the Legislature . . . be modified by the abolition of the Legislative Council.[4]

Préfontaine added that the Legislative Council, while rendering no service of any significance, cost the province $50,000 annually - an expense which Ontario had had the foresight to avoid.

Angers rose to remind the Assembly that the provincial constitution had been prepared with great care by a body of distinguished and, indeed, outstanding, statesmen; thus, any tampering with basic institutions was

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[3] Ibid., pp. 121, 122.

[4] Journals (Quebec) Legislative Assembly 1877-78, XI, 113.

completely unwarranted. In addition, "La minorité protestante ne veut pas l'abolition du conseil législatif, qui lui accorde une protection contre les revirements d'opinion, les égarements des électeurs qui sont toujours si prêts à écouter les factieux et les mécontents."[5] In response to the chorus of indignant comments from the opposition benches at this point, he insisted that, if the majority in the province, "dans un moment d'égarement," turned against the English Protestants, this minority group would be assured of equitable treatment by the Legislative Council - a body not swayed by the need to flatter a misguided electorate.[6]

The next speaker, Bachand, expressed his deep regret that the atterney general should have indulged in such remarks - and went on to point out that many Protestants - those whom the Council was ostensibly meant to protect - had voted against the Council in 1867. At this point, Church rose, in the name of the minority upon which the debate now seemed to be focusing. He did not, however, indicate any specific instance where the Council had upheld the rights of the minority. Instead, he argued that since the provincial institutions had functioned adequately for a decade, it would be most imprudent to tamper with the

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[5]Report of debate - Nouveau Monde, February 7, 1878.

[6]Ibid.

constitutional mechanism at that time. In answer to further arguments concerning the inefficacy of the Council, government supporters again predicted darkly that such a moderating body was indeed necessary, since under certain circumstances "le peuple pouvait se laisser entraîner et devenir communard."[7]

When the vote was ultimately taken the motion was defeated, but when Church, on February twentieth, introduced proposals for the imposition of a "stamp duty on certain documents," in order to "provide for the exigencies of the public service of this province,"[8] Joly and Marchand returned to the attack. Their motion, which suggested that in the interest of economy it was not advisable to fill any vacancies which might occur in the Council, was ruled out of order on the grounds that the matter had already been discussed.[9]

During the next week the dispute entered a new phase with Lieutenant-Governor Letellier's decision to refuse assent to the government's "railroad bill," which tended, in Letellier's opinion, to supplant the power of the judiciary by that of the executive.[10] Letellier wrote

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[7] Ibid.

[8] Journals (Quebec) Legislative Assembly 1877-78, XI, 159-160.

[9] Ibid., p.164.

[10] Rumilly, op.cit., p.126.

to De Boucherville on February twenty-fifth, and again on March first - this time informing him, in effect, that it would be advisable for him to resign as premier of Quebec. Despite the fact that De Boucherville had a definite majority in the House, the Lieutenant-Governor, "a stiff and uncompromising anticlerical Rouge,"[11] appointed by Mackenzie, chose a Liberal ministry - at which point the indignant Assembly refused to vote supply. Joly managed to win a bare majority of seats in the May election, but this merely intensified the already widespread resentment against the perpetrators of the "coup d'état."

The so-called "coup", vexing as it was to Conservatives, was also disturbing to many Liberals, both within Quebec and elsewhere. (Goldwin Smith, after studying the situation, came to the conclusion that it was legal, but certainly not in keeping with strict liberal theory.)[12] The matter was debated in the federal Parliament, while in Quebec, on June 14, 1878, the Legislative Council adopted a resolution condemning Letellier's action. The Ultramontane Nouveau Monde applauded this latter development and declared:

> Le conseil législatif prouve par là qu'il reste le gardien fidèle de la constitution. Si le ministère illégitime de M. Joly persiste à rester quand même au pouvoir, il sera encore du devoir du conseil

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[11] W.L. Morton, The Kingdom of Canada, (Toronto, 1963) p.358.

[12] Rumilly, op. cit., p.172.

> législatif de lui refuser tout subside au cas où il en serait voté dans la chambre d'assemblée.[13]

The government answered this particular challenge by preparing a bill to abolish the Upper House; it was introduced by Marchand on June nineteenth.[14]

In proposing second reading one month later, Marchand drily complimented the Councillors on their devotion to duty - then charged that this illustrious body in no way served the interests of provincial autonomy, nor did it protect the English minority. Not only was the Council no safeguard against ill-considered legislation, but it could not even serve the purpose of the English House of Lords, which represented the aristocracy, and it was just as completely unlike the United States Senate.[15] Ross added that, had Quebec followed Ontario's example at the time of Confederation, the province would have been saved at least $400,000.[16]

Chapleau challenged his Liberal opponents' assertion that the Council could not be compared with the House of Lords. He went so far as to state, (obviously forgetting Bentham,) that even the most radical Englishmen had

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[13] Nouveau Monde, June 15, 1878.

[14] Nouveau Monde, June 22, 1878.

[15] Le National, July 18, 1878.

[16] Le National, July 19, 1878.

not demanded the abolition of the Lords, and this he attributed to the fact that the people of England were fundamentally conservative. The citizens of Quebec, too, were conservative, and would never permit the destruction of a chamber which Cartier himself had deemed indispensable.[17]

Bill 9 ultimately received third reading in the Assembly and was sent to the Upper House, where it was given first reading on July eighteenth.[18] The following day, the motion for second reading was decisively defeated. Contemplating this not entirely unexpected development, Le National lamented the existence of the Council, bent as it was on depriving the province of "des résultats avantageux d'une législation sage . . ." and expressed a fervent wish that Quebec would soon be rid of "un rouage aussi embarrassant dans son mécanisme administratif."[19]

When the second session which was to open August 27, 1878, finally did so, on June 19, 1879, the Conservatives had returned to power in Ottawa, and De Boucherville, already a member of the Legislative Council, had been made a Senator as well.[20] Although the Throne Speech

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[17]Nouveau Monde, July 18, 1878.

[18]Journals of the Legislative Council 1878, XII, 56.

[19]Le National, July 22, 1878.

[20]Turcotte, op. cit., p.250.

had promised a new abolition bill, diverse other problems occupied the Joly administration during the first few months of the session. The "Letellier affair" had by this time been taken to the Colonial office, and both Joly and Langevin felt it necessary to go to England. Their arguments seemed to convince the Imperial authorities that it was best not to take sides in the dispute; it was decided that the Governor General could take whatever action was called for, on the advice of the federal ministry. This latter body was not long in deciding that Letellier de St-Just should be replaced, as Lieutenant-Governor, by Théodore Robitaille.[21]

In the face of this reversal, and in view of the generally precarious political situation, Joly stated, on August twenty-first, that, although his sentiments concerning the Council remained unchanged, he did not think it advisable to introduce an abolition bill at that time. Instead, he hoped that

> à une autre année les honorables membres de l'autre chambre seront, peut-être, convaincus de la nécessité de l'abolition . . . En attendant, nous désirons qu'il soit bien compris que nous n'abandonnons pas cet article de notre programme, et que nous sommes toujours en faveur de cette abolition.[22]

If the government was inclined to postpone its attack upon the Council, the Council was not thereby per-

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[21]Rumilly, op. cit., pp. 185-197.

[22]Débats de la Législature provinciale de la province de Québec, Part II, (Québec, 1879), p.336.

suaded to refrain from attacking the government. The Upper House launched its offensive with the rejection of a supply bill already passed by the Assembly. Legislative Councillor Ross defended such a course of action as the only one consistent with the Council's duty to protect provincial property, and to restrain the ill-considered action of the executive-controlled Lower House. In addition, the members of the Council could be included, he was convinced, among the constitutional advisers of the Crown. Thus, they were responsible for the supervision of the public administration of the province, in the interest of safeguarding the constitution. When a government "betrays" its mandate - and here he referred to the Australian situation in 1867 - the Legislative Council has the right to refuse it subsidies. In this case, the government had betrayed its mandate by failing to introduce measures promised in the Speech from the Throne.[23] Despite Starnes admonition to the effect that the government was responsible to the Assembly only, the majority of his colleagues felt that the time had come to prove that the Council was "bon à quelque chose." The Councillors would remain firm, despite the taunts of opponents, upheld by the conviction that "Bientôt le peuple nous bénira pour l'acte courageux que nous allons faire."[24]

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[23] Ibid., (Part 1) pp. 59-61.

[24] Ibid., p.66.

Joly still had the support of L'Eclaireur and La Patrie, but most of the other papers had joined the opposition. Gélinas, writing in L'Opinion Publique, accepted the Council's right to reject the supply bill, and reminded the government that if the confidence of the elected chamber was indispensable, it was just as necessary to have the "tolerance" of the Upper House.[25] One week later he was moved to reprimand the ministry even more sternly, for in this most serious crisis since the granting of responsible government, "sans avoir pris seulement vingt-quatre heures pour y réfléchir [le gouvernement] repoussa avec dédain la suggestion du Conseil et fit voter par sa majorité l'ajournement à deux mois."[26] The premier had, indeed, managed to gain an adjournment on September second, though the Council continued to sit.

During the months of September and October, 1879, Joly and his followers took every possible opportunity to enlist the support of the electorate in the battle against the second chamber. Moderates pointed out that since the crisis was actually based on party rivalry and prejudice, a coalition government might be the most reasonable solution.[27]

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[25]A. Gélinas, "Le Conseil Législatif," L'Opinion Publique, (Sept. 4, 1879) p.422.

[26]A. Gélinas, "La Situation," L'Opinion Publique, (Sept. 11, 1879) p.433.

[27]L.O. David, in L'Opinion Publique, (Sept. 18, 1879) p.445.

Neither side, however, seemed likely to appreciate the value of such a proposal, and attention was soon focused on the probable outcome of the next encounter in the Legislature, at the end of the adjournment.

When the session re-opened on October twenty-eighth, Joly had lost the support of Chauveau, Flynn, Paquet, Racicot and Shehyn.[28] In response to the premier's request for authorization to spend the disputed subsidies without the approval of the Upper House, Lynch, seconded by Flynn, moved an amendment calling for a coalition government. Mercier's sub-amendment, proposing an address to the Queen in favor of council abolition, was rejected, but Lynch's amendment was adopted by the House. At this point Joly felt justified in requesting a dissolution. The Lieutenant-Governor, however, pointed out that while the cabinet might cnncentrate on the future well-being of the party, it was his duty to see to "the welfare of the community as a whole,"[29] and in his opinion there was no need for an election at that time. In response to Joly's attempt to make the Council's action an issue, Robitaille referred to the fact that the two Houses of the Legislature were now in agreement, and declared that there was no need for recourse to "extraordinary means to terminate a conflict which is in a fair way to be terminated by

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[28] Rumilly, op. cit., p.210.

[29] J.T. Saywell, The Office of Lieutenant-Governor, (Toronto, 1957), p.149.

ordinary means."[30] When Joly resigned as a result of the refusal of a dissolution, Robitaille asked the Conservative leader, Chapleau, to form a government.

The Legislative Council, having successfully resisted the pretentions of Quebec's first Liberal government reiterated its previous contention that Quebec's second chamber was in every significant way the equivalent of the House of Lords. Thus the censure of the Council must at no time be lightly ignored.[31]

In February, 1880, while demands for a coalition government were becoming more insistent in the face of the province's ever-present financial difficulties, Mercier set as a basic pre-condition to any such union acceptance of the Liberal stance concerning the Upper House. Chapleau himself inclined toward the Liberal view in this matter, but the more dogmatic members of his party refused to countenance any such attack upon traditional institutions. Though his radical followers remained adamantly opposed to any dilution of pure liberal doctrine, Mercier saw in the proposed coalition great possibilities for the future. He supported this measure "afin de sauver la province qui s'en va à la ruine, et aussi, dans l'espérance de sauver les débris du parti libéral, sur les ruines du Conseil

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[30] Journals of the Legislative Council, 1879, pp. 358-9, quoted in Saywell, ibid.

[31] Rumilly, op. cit., p.92.

législatif . . ."[32]

Mercier, originally a Bleu, had never become a convinced Rouge, but was, rather, a firm supporter of the aims of the "parti national." In 1871 he had been one of the founders of this movement, together with Jetté (who defeated Cartier in the federal election of 1872.) By the early 1880's, the division between Ultramontanes and Gallicans within the Conservative party convinced many moderates that a new party, devoted to "national" interests, was imperative. Since the program of the "parti national" was modeled rather closely upon that of the Liberals, however, it tended to appeal more strongly to discontented Rouges than to disillusioned Bleus.

June 2, 1880 saw the beginning of a new assault on the Council, when Mercier attacked the Chapleau ministry for neglecting the abolition project, and appealed for an address to the Queen. He spoke eloquently of the need to raise the discussion above the level of mere party debate, so as to avoid the acrimony which marked the sterile struggles of the past. Indeed, he had chosen to submit the question to the House by proposing an address to the Queen, in order to prove that his resolution was not meant

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[32]Rumilly, III, p.15.

to be an attack on the government.[33]

Despite these noble protestations, however, he managed to present a less than complimentary picture of the "hybrid" administration, before turning to the basic point at issue. Once again, he listed the traditional arguments against the continued existence of the Upper House - it was useless, overly-expensive, and completely lacking in public support. He then proceeded to develop each of these points at some length.

The argument concerning the Council's status as defender of minority rights he dismissed as a mere rationalization, and he was less than sympathetic to any suggestion that the democratically-elected Assembly might benefit from the moderating influence of the Upper House. If the Council was unnecessary as a revising chamber, it had proved itself equally ineffective with regard to the initiation of significant legislation. At this point Mercier pointed out that since $586,845 had been devoted to the upkeep of the Council since 1867, each of those sixty bills introduced first in the Upper House had cost the province over nine thousand dollars.[34] (Later in the

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[33]At the end of his speech he outlined a more significant reason: an appeal to London was necessary in view of the Council's ability to interfere with abolition legislation. Then too, a sympathetic government was in power in England at this time. (Debates 1880, p.323.)

[34]Débats, 1880, pp. 313-319.

same debate, Mathieu countered this argument by pointing out that if the Councillors had initiated only sixty noteworthy bills during this period, they had also rejected forty - and had thus rendered great service to the common good.)[35]

Mathieu also condemned the proposed address to the Queen as a method of constitutional amendment, insisting that it would create an unhappy precedent - "Il est toujours dangereux de s'adresser à l'Angleterre pour régler nos difficultés."[36] Loranger, for his part, felt that the constitution should not be altered in such a fundamental way without consulting the electorate, and he refused to accept the Liberal contention that the election of 1878 had served this purpose.

Mercier's motion was ultimately defeated, but the seemingly perpetual financial crisis supplied the Liberals with an excuse for one final assault before prorogation on the twenty-fourth of July. In view of the $15,000,000 provincial debt, Ernest Gagnon proposed that the payment of an indemnity to Legislative Councillors be discontinued. His motion was defeated by a vote of twenty-three to fourteen.[37]

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[35] Ibid., p.329.

[36] Ibid., p.333.

[37] Rumilly, III, 30.

Between 1881 and 1883 the continued possibility of a Chapleau-Mercier agreement, (or of a Mousseau-Mercier agreement after July, 1882,) presented a certain threat to the security of the Upper House, though never a very serious one. By 1885, the Riel issue had made Mercier one of the most influential leaders in French-Canada, since Langevin, Caron and Chapleau had refused to break with the Macdonald government during the crisis. At this point Mercier was even supported by the Ultramontane Trudel, and he had little difficulty "in imposing his doctrine of a racial party founded on the newly made grave of Riel."[38] Laurier's repeated warnings concerning the dangers of such a policy were completely ineffective, and by 1887 Mercier, as leader of the National party, was firmly in control in Quebec.

Soon after the opening of the 1887 session, Taillon, leader of the opposition, expressed surprise that the Throne Speech contained no abolition proposal. In answer, Mercier pointed out that he no longer led a Liberal government, and his National ministry had more pressing problems to deal with.[39] This concession to the Trudel-led section of his followers was in no way designed to reassure those members of his party who had originally been zealous

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[38] M. Wade, The French Canadians, (Toronto, 1956) p.417.

[39] Rumilly, V, 235.

Rouges. Despite his desire to maintain a semblance of harmony within his own group, Mercier ultimately found it impossible to ignore the Legislative Council, which strongly disapproved of certain of the premier's financial undertakings, and once again he threatened abolition.[40] The implementation of the project, however, was dependent upon the success of the first inter-provincial conference since 1867, summoned by Mercier, and held in October 1887, at Quebec.

The resolutions ultimately adopted by the conference affirmed the essential autonomy of the various provinces, and called for such amendments to the British North America Act as would clarify this situation. The first resolution attacked the federal power of disallowance; the fourth demanded that the provinces be permitted a partial control over appointments to the Senate; the fourteenth asked that the provinces be given jurisdiction in bankruptcy cases, in the absence of federal law. The twelfth resolution was of particular concern to Quebec, since it stated that:

> The experience which has been had since Confederation shows that under Responsible Government, and with the safeguards provided by the British North America Act, a second Provincial Chamber is unnecessary . . .[41]

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[40] Ibid., p.246.

[41] Journals (Quebec) Legislative Assembly 1888, XXII, 68.

In view of this fact, and considering the failure of all previous attempts to implement abolition measures by means of the prescribed procedure for the amendment of a provincial constitution, the conference asked for an amendment to the British North America Act which would provide that

> upon an Address of the House of Assembly . . . Her Majesty the Queen may, by Proclamation, abolish the Legislative Council, or change the Constitution thereof, provided that the Address is concurred in by at least two-thirds of the members of such House of Assembly.[42]

In the course of the assembly debate on the resolutions, which opened May 17, 1888, Taillon argued that there was no urgent need to modify the British North America Act in any way, while Flynn saw certain of these proposals as "fraught with great danger" in that "they attack the fundamental principles of our constitution."[43] The Assembly adopted the resolutions, but as Pelletier pointed out in 1890, the Legislative Council seemed to be in no hurry to follow suit - nor did the federal government indicate its willingness to press the matter in London.[44]

By 1890, the more radical Rouges, like Lebeuf, were convinced that "Mercier, chef d'un parti hybride, était perdu pour le libéralisme."[45] La Patrie grew more and more

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[42] Ibid.

[43] Ibid., p.83.

[44] Débats, 1890, p.351.

[45] Rumilly, VI, 103.

critical of the regime, as it became increasingly evident that the premier felt no strong committment to such basic liberal tenets as universal suffrage, obligatory education, and unicameralism. Perhaps Mercier's tolerant attitude toward the Council during this period was due to the changed composition of this body. Rumilly remarks that "à son arrivée au pouvoir Mercier n'avait au Conseil qu'un seul partisan avoué: Remillard. A la veille de la session, 1888, il en comptait une dizaine."[46]

On December 11, 1890, Rochon proposed second reading of Bill 118. The abolition question was once more placed before the House, and the arguments concerning the superfluous nature of the Council, the financial burden it imposed, its undemocratic character, and the obvious social progress of unicameral Ontario, were duly repeated - and answered in the traditional way by the Council's defenders. There was also, of course, the question of representation: "Que représente le Conseil législatif? Est-ce la propriété? . . . La Chambre des lords en Angleterre représente un principe, mais notre Conseil n'est qu'un simulacre d'Assemblée, basée sur un préjugé historique."[47]

Turgeon explained that he was in favor of abolishing the Council, not through malice toward the honorable

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[46] Ibid., p.19.

[47] Débats, 1890, p.341.

Councillors, but rather in view of the important principle involved. In his opinion all second chambers whose members were appointed by the executive should be eliminated. Indeed, "une Chambre haute, pour remplir son rôle pondérateur doit être indépendante du pouvoir exécutif, et l'influence de cette Chambre ne sera effective qu'en autant que les intérêts qu'elle représente sont eux-mêmes respectables et puissants."[48]

The question of the Council's role as defender of minority rights was raised, as usual - and, as usual, dismissed with little serious debate. Turgeon declared that the federal power of disallowance was an adequate safeguard. (He did not, however, discuss the possible ramifications of Mercier's plan to end federal disallowance.)

The Council's obvious lack of representativeness was discussed at some length, with Turgeon declaring that over $50,000 was spent annually for the maintenance of an institution which had no representative value whatever. It spoke neither for the nobility (the "aristocratie territoriale,") as in England, nor for the very wealthy, (the financial requirements were often ignored.) It did not express the views of such fundamental institutions as universities and chambers of commerce,[49] and a body not subject to periodic election could scarcely represent the

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[48] Ibid., p.342.

[49] Ibid., p.343.

opinion of "the common man."

Mercier opened his speech on this occasion with a re-affirmation of his unwavering belief in the need to abolish the Legislative Council. His sentiments concerning this important matter had not changed - even though his party now happened to be in the majority in the Upper House. He recalled the disreputable behavior of the second chamber in the past - refusal of supply, and the like - and demonstrated that the Council,while being, at best, useless, could, on occasion, prove quite dangerous. Nevertheless, in view of his position as leader of a "patriotic alliance" composed of both Liberals and Conservatives, he refused to endanger this accord by any imprudent haste in dealing with the matter under discussion.

He then recalled the interprovincial conference of 1887, where there had been unanimous acceptance of the resolution concerning the abolition of second chambers. The premier now insisted that, in view of the measures agreed upon by the delegates to this conference, he was committed to work for constitutional amendment. Any other approach to the problem would violate his agreement with the representatives of the other provinces. "Je ne désespère pas," he added, "de voir arriver le jour où la constitution sera amendée de manière à nous permettre de réaliser nos espérances."[50]

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[50] Ibid., p.348.

Lest anyone question his 1887 decision, the premier explained that under the circumstances he actually had no alternative. When he came to power, his opponents completely dominated the Upper House (though he admitted that at the present time his supporters were definitely in the majority.) Despite the changed political complexion of the second chamber, however, he insisted that he could do nothing without consulting further the other premiers with whom he had entered into agreement in 1887 - unless, of course, the Council itself, in a moment of patriotism, should vote its own abolition.

Against a background of derisive laughter from the opposition benches, Mercier asked the member for Ottawa to refrain from pressing the issue - and warned that should he choose to ignore this request, the government would be forced to take positive steps toward blocking the measure.

Pelletier charged that, since it was obvious from the beginning that Rochon's assault would fail, the entire debate was quite useless (despite "des fleurs de rhétorique,") - except in so far as it served to discourage "les tentatives de démolition et de socialisme qui paraissent vouloir se faire en certains quartiers."[51] Before the Assembly turned to other matters, Boyer presented an additional reason for abolition - a rather novel one.

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[51] Ibid., p.351.

With the elimination of the Council, the Council chamber could be used to alleviate the growing shortage of space in Quebec's Parliament Buildings.

The Mercier era in Quebec politics was drawing to a close. Mercier's party had an impressive majority in the elections of June 1890, but by mid-December, 1891, Mercier had been dismissed as a result of the Baie des Chaleurs Railway scandals, and De Boucherville was once again premier of Quebec - called to this office by Lieutenant-Governor Angers, who had been a member of the De Boucherville ministry in 1878.[52]

On May 18, 1892, Morris, seconded by Hackett, demanded that the Legislative Council be abolished. Since both these gentlemen were Conservatives, Rumilly suggests that they were more interested in annoying the premier (a Legislative Councillor,) that in eliminating the Upper House.[53] Taillon, leader of the government forces in the Assembly argued that, although the citizens of Ontario might be satisfied with only one House, "notre tempérament n'est pas le même; nous avons besoin de la sagesse du Conseil législatif."[54]

Mercier's downfall precipitated a re-alignment

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[52] O.D. Skelton, Life and Letters of Sir Wilfrid Laurier (Toronto, 1921) 1, 433.

[53] Rumilly, VII, 17.

[54] Ibid.

of political forces in Quebec, as some of his followers revived the doctrinaire Liberal concepts of an earlier era, while others, more moderate in their approach to such questions as that of public education, joined the ranks of the Conservatives. This latter development served to heighten the tension already evident in the Bleu camp, between De Boucherville's faction and that which sympathized with Chapleau's less dogmatic political philosophy. When Angers entered the federal cabinet, and Thompson named Chapleau to replace him, the exasperated De Boucherville resigned, and Taillon became premier of Quebec.[55]

Shortly after the opening of the 1893 session, the question of abolition was once again placed before the House. Rumilly describes the debate as a "ritual" performance,[56] and it is true that the Council was at no time seriously threatened. The fact that Peter Cooke, an English Conservative, was one of the Council's principal detractors infuriated Le Courrier Du Canada, (owned by Chapais, a Legislative Councillor since 1892,) which declared:

> Le rôle, la mission du parti conservateur en cette province ne sont pas de détruire l'oeuvre constitutionnelle que les chefs illustres de ce parti ont édifiée.[57]

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[55] Ibid., p.61.

[56] Ibid., p.69.

[57] Le Courrier du Canada, January 20, 1893.

In the course of debate, Chycoine, while admitting that reforms might be necessary, nevertheless rejected all abolition proposals on the ground that the entire social order would be adversely affected. Indeed, "tous les économistes qui ont écrit sur ce sujet s'accordent à dire que l'existence d'une chambre haute est nécessaire à l'équilibre, à la pondération des pouvoirs."[58] Cooke's proposal was ultimately defeated in an extremely close vote in the Assembly. It met the same fate in the next session though it was supported not only by the Liberals and Mercier, but by a member of the government as well.[59]

Despite Cooke's persistence in re-introducing his motion at each successive session during the next few years, the Legislative Council remained secure, and completely unintimidated. With the advent of a Liberal government led by Marchand, however, in 1897, a new period of friction between the two Houses of the Legislature was about to open. If the survival of Mercier's National government had been based on compromise concerning the problem of the Upper House, the "true" Liberals now in power were committed to a reform of public instruction, and the abolition of the Legislative Council. With the Conservatives holding a majority of seats in the second chamber

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[58] Le Courrier du Canada, January 27, 1893.

[59] Rumilly, VII, 149.

during the early days of this new era, "les escarmouches"[60] between the two Houses were, indeed, inevitable.

[60]Bonenfant, op. cit., p.498.

CHAPTER III

1897 - 1960

The Ultramontanes saw in the program of the "true" Liberals of 1897 - with its insistence upon educational reform and the suppression of the Upper House - a direct challenge to some of the most basic tenets of their political philosophy. Any tampering with the educational system must, in their opinion, result in the introduction of a new - and, almost by definition, subversive - philosophy of education. Despite the fact that the proposed reforms were extremely moderate, Mgr. Bruchési hurried to Rome, where he obtained support for his campaign against the Liberals' new school bill. The government, however, secretly sustained by Chapleau, the Lieutenant-Governor, resisted this hierarchical pressure and refused to withdraw the bill, which was ultimately accepted by the Assembly in late December, 1897.[1]

In the Upper House, however, the bill faced the adamant opposition of Chapais, Tardivel and De Boucherville[2] (who had abolished the Ministry of Public Instruction

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[1]Rumilly IX, 36.

[2]Ibid., p.41.

in 1875,) and the rejection of the measure (on January 10, 1898, by a vote of thirteen to nine,) was more or less inevitable. Chapais declared, on this occasion, that the pressure of radicals upon a weak and inexperienced government, rather than the wishes of the electorate, had been responsible for this project. "Dans la province, actuellement," he continued, "il y a des hommes qui veulent nous conduire au socialisme d'Etat, en matière d'éducation, et d'autres hommes qui n'ont pas le courage de résister à ce courant."[3]

Soon after the opening of the 1899 session by Jetté, the recently appointed Lieutenant-Governor, a new, and much subdued, education bill was presented to the Legislative Council - and approved by it, although Chapais refused to give it his unreserved support.[4] Marchand seemed to be coming to terms with the Upper House, during the first few months of the session. By March, however, Tarte's campaign against the Senate revived the debate concerning second chambers in general, and the Liberal premier, in the process of establishing a "modus vivendi" with the Council, found himself attacked by the opposition for inconsistency.[5]

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[3]T. Chapais, Discours et Conférences, (Quebec, 1943), pp. 22,23.

[4]Rumilly IX, 91.

[5]Ibid., p.95.

Pressure from his "true" Liberal supporters ultimately led Marchand to undertake a new campaign against the Upper House when the third session of the Ninth Legislature met in January, 1900. When the abolition measure was presented to the Assembly, Tardivel's paper, La Vérité, reported that "un débat interminable s'est engagé là-dessus. De part et d'autre on a répété la même chose mille fois."[6] A certain amount of editorial support was given Chicoyne's proposal, that the Council be elected by various occupational groups - the judiciary, the universities, the clergy, and so on - but the Assembly majority accepted the original abolition bill, though three members of the governmental party (Garneau, Bickerdike, Bissonette,) voted against it.[7]

On March 19, Bill 10 (An Act to Modify the Constitution of the Legislature of the Province of Quebec in so far as the Legislative Council Is Concerned,) was given first reading in the Upper House.[8] This particular attack upon the Council, though it would ultimately suffer the same fate as all previous offensives of this nature, did present a definite threat to the second chamber, and at the same time, permitted Chapais to voice an extremely

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[6]La Vérité, (March 17, 1900), p.2.

[7]Ibid.

[8]Journals of the Legislative Council 1900, XXXIV, 193.

eloquent plea in its defense.

In introducing what has been described as "la meilleure synthèse des arguments des partisans du Conseil,"[9] Chapais attacked the government's contention that the will of the representatives of the people in the Lower House must, at all costs, prevail.

> Comment! Nous qui avons été appelés ici par la confiance de la Couronne - avisée par des hommes qui avaient la confiance du pays - nous qui avons à exercer une responsabilité, peut-être plus haute que celle qui est restreinte à un fragment de territoire et à un groupe d'électeurs . . . Je m'insurge contre cette prétention.[10]

He went on to insist that the mere fact that a House was elected, rather than appointed, did not mean that each decision made during its term of office was a direct and complete expression of the popular will. A doctrine of this nature must, in his opinion, render opposition of any type inadmissible.

In any case, he did not believe that in the previous electoral campaign abolition of the Council had been treated as a fundamental issue by the majority of those ultimately elected. Thus, it was misleading to say that the electorate chose abolition in 1897. This choice was made, not by the people, but by a party - and a divided party at that. At this point he warned: "Il ne faut pas

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[9]Bonenfant, op. cit., p.500.

[10]Chapais, op. cit., p.106.

tenter le peuple . . . Il ne faut pas pousser le peuple dans la voie des démolitions et des destructions."[11] Nevertheless, when the electorate's wishes did become known in a clear and definite manner, there would be no question but that the Legislative Council would quickly disappear. "Jamais cette chambre ne donnera le spectacle d'une résistance téméraire à la volonté du pays. Mais il faudra que ce soit le pays qui parle, et non pas une faction."[12]

He went on to review the debates of August, 1866, when the proposed constitutions for Ontario and Quebec were being considered, and he quoted approvingly Cartier's comment concerning the elective second chamber of the late Union era:

> Le Conseil élu a réussi non pas par l'effet du principe électif, mais parce qu'il y a toujours eu dans ce corps un certain nombre de membres nommés à vie, ce qui contribue de mieux surveiller les opérations de l'autre branche de la législature.[13]

He also reminded his audience that Cartier and McGee had, on several occasions, described the unicameral system chosen by Ontario as a more-or-less dangerous experiment, which would certainly fail were its population any less homogeneous.

Chapais then examined the constitutions of other

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[11] Ibid., p.107.

[12] Ibid., p.108.

[13] Ibid., p.110.

countries, in an attempt to demonstrate the intrinsic superiority of a bicameral legislative system. From England, ("c'est là qu'a pris naissance ce régime de pondération et d'équilibre politique,")[14] the system was transported to France, Belgium, Holland, Denmark, Sweden, Norway, Germany, Austria and a host of other states in Europe and the Americas, in addition to the "Hanseatic" cities - Lubeck and Hamburg. The universality of the system was, in his view, extremely impressive, and he pointed out that Bryce, in discussing the American political environment, had judged it to be an axiom of political science in the United States that democratically elected assemblies, must, of their very nature, tend to become impetuous, tyrannical, and corrupt.

Chapais now turned to the works of statesmen and constitutional theorists in an attempt to

> faire surgir devant vous, d'appeler de tous les points de l'horizon politique, les plus éminents esprits, afin de vous montrer . . . [qu'] ils se rencontrent tous pour affirmer cette vérité . . . que le dualisme législatif est une garantie de modération, d'ordre, et de progrès.[15]

John Adams, for example, in calling for the separation of powers, argued, at the same time, "qu'il n'exista jamais

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[14] Ibid., p.110.

[15] Ibid., p.114.

et qu'il ne peut exister un gouvernement 'simplement' démocratique . . . ."[16]

The universal acceptance of bicameralism obviously did not, of itself, prove this system best for Quebec. Thus, Chapais proceeded to discuss at some length the intrinsic merits of a bicameral legislature which could delay the implementation of legislative measures in the interests of the common good. Imprudent, dangerous legislation, and that which served selfish personal interest alone, would continue to menace the well-being of society, but he believed, with Story, that

> il est beaucoup plus difficile de tromper, de corrompre, ou de persuader deux corps, pour les induire à commettre un acte contraire au bien public que d'en tromper, d'en corrompre, ou d'en persuader un seul, spécialement si les éléments qui les composent sont essentiellement différents.[17]

Then, too, a bicameral legislature was the best defense against "mouvements soudains, . . . ces excès de pouvoir et . . . ces explosions de préjugés qui se produisent parfois au sein des sociétés politiques."[18] At this point Chapais reminded his audience that Washington and Kent, Odilon Barron, de Tocqueville, Montalembert and later Thiers, had all warned against "legislative intemperance."

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[16] Ibid., p.119.

[17] Ibid., p.126.

[18] Ibid., p.127.

He admitted that, thus far, the Quebec Council had not been called upon to save the nation from the excesses of a democratic uprising; nevertheless, who could foresee what role it might be called upon to play in the future? He did not hesitate to repeat the arguments of earlier defenders of the Upper House concerning the minority's need for some institutionalized defense against the majority. In his opinion, the Manitoba crisis was proof enough that a minority in a province could expect less-than-adequate protection by appealing to the federal authorities alone.

In the realm of ordinary legislation, the work of the Upper House had been extremely valuable - and here Chapais cited the seven hundred and ninety-nine bills, which, between 1867 and 1900, had been amended by the Council, in addition to the two hundred and thirty-three measures which had been completely rejected, (one of which, in Chapais' opinion, would have violated "Le principe de l'inviolabilité du domicile du citoyen britannique.")[19]

Finally, Chapais launched a vigorous attack upon those who called for abolition on the grounds of economy - those who would sacrifice the constitution for a "sordide économie annuelle de $33,000." Such an ignoble attitude was certainly to be deplored:

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[19] Ibid., p.137.

> D'un côté, l'équilibre législatif, la stabilité, la pondération des pouvoirs, l'expérience, l'histoire, l'exemple de tous les peuples, la raison politique, le maintien des garanties et des sauvegardes établies par les pères de notre constitution; de l'autre, cette misère, cette rognure budgétaire, ce plat de lentilles, $33,000 par année.[20]

He called for a vote which would settle decisively the question of bicameralism in Quebec - and his fellow Councillors rose to the challenge. On March 23, the abolition bill was rejected by a vote of seventeen to six.[21] Of the Liberal Councillors who voted with the opposition on this occasion, Bryson, Cornier, Garneau and Ward had been appointed in December, 1897, by Marchand himself.[22]

Marchand did not have time to prepare a new offensive against the Upper House before his death on September 16, 1900. S.N. Parent replaced him as premier, and the December elections once again gave the Liberals a comfortable majority. The most controversial issues of the day were being debated in Ottawa, rather than in Quebec, and for some time to come attention would be focused upon Laurier, Bourassa, and the question of British Imperialism. As Bonenfant remarks, after 1900, "le Conseil a souvent été l'objet d'attaques d'hommes politiques qui

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[20] Ibid., pp. 142,143.

[21] Journals of the Legislative Council 1900, XXXIV, 225.

[22] M. Thivierge, in Le Devoir, (September 15,1962), p. 1.

s'en sont moqués plus qu'ils l'ont menacé."[23]

During the first decade of the twentieth century, relations between the two Houses were, indeed, quite amicable. By 1914, the Gouin government, irritated by certain decisions concerning fisheries and succession duties, might have been prepared to campaign vigorously for the abolition of appeals to the Judicial Committee of the Privy Council,[24] but the abolition of Quebec's Upper House seemed quite unnecessary.

The Legislative Council could not, however, be completely ignored - as Premier Gouin was to discover in January, 1914, with the disclosure that two Legislative Councillors as well as a member of the Assembly, were implicated in certain questionable "political" activities. When all three (Bédard, M.L.C., Bergevin, M.L.C., and Mousseau, M.P.P.,) resigned their seats in the Legislature, this was taken to be an admission of guilt. The Committees of Inquiry set up in both Houses to investigate the bribery charges, while condemning the behavior of the three accused, carefully refrained from carrying the investigation any further - much to the disappointment of both Bourassa and Jean Prévost. This latter, (a former member of the Gouin cabinet, who declared: "On a jeté trois

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[23]Bonenfant, op. cit., p.500.

[24]Rumilly XVIII, 141.

cadavres à la mer . . . on ne m'aurait pas écrasé ainsi . . . Les colonnes du temple seraient tombées avec moi,")[25] revived the question of abolishing the Upper House. At this point, however, Prévost was more or less rejected by all parties, and his motion, although supported by Sauvé, among others, presented no real threat to the continued existence of the second chamber.[26]

In January, 1919, Médéric Martin's appointment to the Council provoked a spirited debate in the Assembly. Opposition members were not alone in protesting the nomination of this controversial figure, who, five years earlier, had put an end to the traditional alternation of French-and-English-speaking mayoralty candidates in Montreal, while declaring: "As long as I live, as long as I have an eye to see, I shall never allow an Englishman to be mayor of Montreal."[27] Opposition leader Sauvé insisted that the appointment should be the subject of an inquiry, and in the electoral campaign later in the year, the Conservatives called for a full investigation of Montreal's relations with the provincial government and Legislature during the previous decade, together with

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[25] Ibid., p.153.

[26] Journals (Quebec) Legislative Assembly 1914, XLVIII, 462.

[27] Canadian Annual Review, 1914, p.500.

"reform or abolition of the Legislative Council."[28] The Upper House was spared the indignity of having to do battle with the party which had traditionally defended it, however, since, when the results of the election were announced, the Conservatives were left with a total of five seats.[29]

During the 1920's, under the leadership of Arthur Sauvé, who has been described as a "nationalist with radical ideas,"[30] the Conservative party in Quebec took a "turn to the left." Despite this new economic and social orientation, however, the Liberal hold upon the electorate remained unshaken. The government of the day found little cause to criticize the Legislative Council, and the debate concerning the value of second chambers tended, at this time, to focus upon the Senate. In Quebec, Bourassa and Le Devoir worked untiringly for Senate reform, as did "left-wing and agrarian movements"[31] elsewhere in the country, during this same period.

In November, 1927, while discussing the forthcoming dominion-provincial conference, Le Devoir declared

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[28]Canadian Annual Review, 1919, p.690.

[29]Ibid., p.693.

[30]H.F. Quinn, The Union Nationale - A Study in Quebec Nationalism, (Toronto, 1963), pp. 50, 51.

[31]MacKay, op. cit., p.175.

that Senate reform and an acceptable procedure for amending the constitution were among the most significant matters to which the delegates might devote their attention.[32] During the course of the conference, however, when Lapointe suggested that Canada might profitably consider reforms similar to those already instituted in England with regard to the House of Lords, Premier Taschereau of Quebec, together with the representatives of Ontario, Nova Scotia and New Brunswick, opposed all measures of this nature, insisting that basic changes in the British North America Act were quite unnecessary. Mr. Hoey (the Minister of Education for Manitoba,) also suggested reforms, including a term of office limited to ten years and compulsory retirement at the age of seventy-five[33] - but the federal government was not prepared to press the matter in the face of the decided opposition of Taschereau, Ferguson, Rhodes and Baxter. When the Conservatives in the Assembly later reminded Taschereau that the traditional Liberal policy had been one of opposition to second chambers, he calmly replied that he was quite prepared to consider abolishing Quebec's second chamber - when the British government undertook the abolition of the House of Lords.[34]

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[32] Le Devoir, (November 2, 1927) p. 1.

[33] Le Devoir, (November 4, 1927) p. 2.

[34] Rumilly, XXX, 9.

When, in the spring of 1928, the Council amended Bill 163, which dealt with the licensing of brokers, the government indicated that it would withdraw the bill and introduce another which would incorporate the amendment passed by the Upper House. Sauvé heatedly protested against the "empiétements du Conseil législatif,"[35] and its contempt for the traditional prerogatives of the Assembly with regard to the imposition of a tax in any form. The government's reaction was prompted, in his opinion, by a desire to distract the attention of the Lower House from an obvious affront to its dignity. The only other possible explanation would be that the government itself had suggested the amendment, in which case the theoretically independent Legislative Council was acting "sous la dictée du gouvernement."[36] Although Blain and Duplessis agreed with Sauvé that the situation was quite deplorable, the Assembly as a whole seemed less than eager to launch a serious attack upon the Council on the basis of this incident.

During the following decade, however, the rise of the Union Nationale led many observers to believe that the period of "bonne entente" between the two Houses of the Legislature was fast drawing to a close. By 1935,

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[35] Le Devoir, (March 22, 1928), p.1.

[36] Ibid.

Paul Gouin, Oscar Drouin and other members of L'Action Liberale Nationale who had become disillusioned with the Taschereau regime, had broken completely with the regular Liberal party in Quebec. The members of the A.L.N. strongly criticized the government's indulgent attitude toward the exploitation of Quebec's natural resources by foreign capital, but the group's popular appeal could be traced, in many cases, to its exaltation of the traditional national aims and values.

The supporters of the A.L.N. were, in general, politically inexperienced. Thus, despite the attractiveness of their program, and the zeal with which they propagated it, they found themselves quite powerless in the face of Taschereau's well-entrenched political machine. The Conservative party, (which had been out of office since 1897,) under leaders such as Sauvé and Houde, also attacked the government for its attitude toward the "trusts", and at the same time preached the nationalism of Abbé Groulx. Duplessis, who became party leader in 1933 was, like Sauvé, a nationalist - but he was definitely not a radical. Nevertheless, as Quinn points out:

> There were obvious advantages, with little to lose, in making an alliance with another group such as l'Action Liberale Nationale . . . . If the Conservative party could supply the practical knowledge of the techniques of politics, and some of the financial backing, the A.L.N.

> could provide new men, new ideas, and considerable popular support.[37]

The program of the Union Nationale, announced by the Gouin-Duplessis coalition in the late summer of 1934, had as "one of [its] most important features . . . the suggestion that Quebec's upper house, the Legislative Council, be abolished, and replaced by an economic council which would act as an advisory body to the Legislative Assembly on all economic matters."[38] In May, 1935, Drouin, (one of Gouin's supporters,) moved

> that the Legislative Council should not, in the future, be appointed for life and by the government, but for a certain period only, and on a corporative representative basis, so as to allow all classes of the population to select their representatives, according to their moral, economic and social interests . . . ."[39]

He reminded the House that during the last decade of the nineteenth century the Liberals had been quite insistent concerning the need for suppression of the Upper House. The Council had, he admitted, done valuable work during the session, but the province needed experts - and, in his opinion, these should be found in the second chamber, as representatives of the different economic and professional groups in society.[40]

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[37]Quinn, op. cit., p.53.

[38]Ibid., p.60.

[39]Journals (Que.) Legislative Assembly 1935, LXIX, 508.

[40]Le Devoir, (May 17, 1935) p.8.

(Drouin and the other members of his group were not alone in their admiration for corporative structures during this period. Under the influence of European social and economic thought, a considerable number of French-Canadian intellectuals had become proponents of some type of corporative system as the most effective method of dealing with Quebec's political and economic problems.)[41]

Taschereau, while admitting that the proposal was "interesting" maintained that it had been discussed on several occasions in the past. He then repeated the traditional arguments concerning the importance of a moderating influence in a legislative system, especially where the legislature had to serve the interests of two different national groups. Mr. Duplessis, while applauding Drouin's stand, nevertheless, pointed out that there were practical objections to the scheme, (the main one being the need to obtain the Council's approval before any basic changes in its constitution could be implemented.) Drouin finally rose to protest that he was asking for reform - not abolition. His motion was defeated, nevertheless, by a vote of forty-two to four - with Duplessis and Sauvé

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[41]M. Oliver, "The Social and Political Ideas of French-Canadian Nationalists, 1920-1945" (unpublished Ph.D. dissertation, Dept. of Economics and Political Science, McGill University, 1956), pp. 247-277.

both abstaining.[42] Joseph Filion, who had earlier been a vigorous opponent of the Upper House, on this occasion voted with the government. "Les conseillers législatifs ont rencontré ensuite M. Filion", note Le Devoir drily, "et l'ont entouré d'une filiale tendresse. Ils fêtaient le retour de l'enfant prodigue."[43]

In the elections held in the fall of 1935, the Conservatives and A.L.N. won forty-two seats in the Assembly, the Liberals, forty-eight. Thus, for the first time in many years the government was faced with a far from docile House. Duplessis succeeded in reviving the Public Accounts Committee, which "quickly brought to light a picture of patronage, nepotism, and the squandering of public funds which involved most government departments."[44] Shortly thereafter, Taschereau resigned, to be replaced by Godbout. In 1936, however, Duplessis' party won seventy-six of the ninety seats, even though Gouin had earlier withdrawn from the coalition.[45]

In May, 1937, as the more-or-less uneventful session drew to a close, suddenly, "du ciel éternellement serein du Conseil législatif, monta un léger nuage; les

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[42] Ibid.

[43] Le Devoir, (May 17, 1935), p.1.

[44] Quinn, op. cit., p.66.

[45] Ibid., p.71.

souffles balayèrent les corridors: 'Le Conseil ne marche pas. Il refuse de voter la loi des tribunaux'."[46] The heavily Liberal Upper House had, indeed, decided to demand adequate time to study the bill in question - which, despite its rather complicated provisions, had been passed quite hurriedly by the Assembly. Fearing the complete rejection of the bill, Chapais, now government leader in the Council, proposed the adjournment of debate until the following Wednesday. The members of the Assembly, faced with the postponement of prorogation for another week, found it difficult to think kindly of their conscientious colleagues in the Upper House. (Alexis Gagnon suggests that had an abolition bill been introduced at this point, it would have been adopted "séance tenante, unanimement, avec une foudroyante majorité, si chacun eût cédé à son premier mouvement.")[47]

The following day, however, La Presse insisted that despite the ill-feeling being generated at the moment, the session had, generally speaking, been one of "sincere" and "fruitful" co-operation between the two Houses of the Legislature. Indeed, the Assembly had found in the Upper House a body more than willing to be

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[46] Le Devoir, (May 21, 1937) p.1. Certain provisions of Bill 63 involved basic changes in the "Courts of Justice Act" (R.S. 1925, c.145).

[47] Ibid.

of service in the preparation and implementation of sound legislative measures. The Legislative Council never lacked enemies - thus, "la ritournelle revient périodiquement qu'il vaut mieux l'abolir,"[48] - but the stand it had taken in the current dispute was, for La Presse, proof enough of its value. The Council, close enough to the people to appreciate their needs, while at the same time insulated against the vagaries of popular emotion, deserved the respect - indeed, the praise and gratitude - of society.

The Council ultimately passed the controversial bill on May twenty-seventh - though with amendments.[49] It had been rumored that any alteration of the original provisions would lead to a new crisis, but this did not, in fact, occur. The members of the Assembly hastily gave their consent to the amendments, and the following day the session was finally prorogued.[50]

Although the Union Nationale remained in power until 1939, there were no further disputes of any consequence. When the party returned to power in 1944 it seemed at first that the amicable relations between the two Houses would continue. In the spring of 1945, however,

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[48] La Presse (May 22, 1937) p.22.

[49] 1 Geo. VI, c.75.

[50] La Presse (May 28, 1937) p.1.

the Duplessis government introduced Bill 44 ("An Act to Afford Aid to Education and Public Health")[51] which proposed the imposition of a "luxury" tax on a rather lengthy list of articles including telegrams, thermometers and typewriters, as well as radios, jewelry, and cosmetics. During a spirited debate in the Assembly, the Liberals termed the bill "inique et dangereux . . . inapplicable et inefficace."[52] When the measure reached the Upper House, Brais, the Liberal leader, made it quite clear that the members of his party in the Council shared the views expressed by their colleagues in the Assembly. It seemed inevitable that the bill would be rejected, and on May 19, 1945, Le Devoir pondered the possible effects of this development: "Le rejet de 'la taxe de luxe' par le Conseil législatif, à l'encontre des intentions gouvernementales, remettrait-il sur le tapis la très vieille question de l'abolition du Conseil législatif?"[53]

Five days later the Legislative Council rejected "la taxe de luxe" by a vote of twelve to four. Of the five government supporters, two were absent, but Médéric Martin voted against the Liberals on this occasion. Six Councillors were absent from the Liberal benches, but

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[51] Journals (Quebec) Legislative Assembly 1945, LXXX, 301.

[52] Le Devoir, (May 1, 1945), p.6.

[53] Le Devoir, (May 19, 1945), p.1.

this had little effect on the final outcome of the vote.[54]

When Bellemare rose in the Assembly on May twenty-eighth to protest the Council's action, his remarks were ruled out of order.[55] Less than a week later, however, as the session drew to a close, Mr. Duplessis expressed his opinion of the second chamber in rather forceful terms. "Cet élément pondérateur et modérateur doit être autre chose que l'écho des gros intérêts financiers." Though he had not favored abolition in the past, he indicated that he was beginning to appreciate the merits of such a project. While Godbout defended the Council, insisting upon the need for such a body in the face of "passions politiques" and the ambitions of "petits dictateurs,"[56] the premier declared that, though a moderating influence might be valuable, there was certainly no place for a chamber which claimed privileges to which it had no right.

The matter, however, was carried no further, and as Quinn points out, "Duplessis continued to fill vacancies in the Upper House as they occurred . . . . The proposed Economic Council which would act as an advisory body to the government, and which was supposed to replace

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[54] Le Devoir, (May 25, 1945), p.1.

[55] Journals (Quebec) Legislative Assembly 1945, LXXX, 447.

[56] Le Devoir, (June 2, 1945), p.1.

Quebec's upper house . . . never materialized."[57]

During the remaining years of the Duplessis era, the premier was able to implement his policies with little or no opposition from the Council, even though, throughout much of this period, there was a Liberal majority in that body.[58] When Jean Lesage became premier in 1960, "il se trouva en face d'un Conseil législatif dont la majorité des membres appartenaient à l'Union Nationale ou étaient regardés comme des libéraux assez conservateurs."[59] Given the type of program to which Mr. Lesage and his followers in the Assembly were committed, it seemed quite probable that a new period of tension between Upper House and Lower was about to begin.

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[57]Quinn, op. cit., p.78.

[58]Canadian Parliamentary Guide, 1945-1960.

[59]Bonenfant, op. cit., p.498.

CHAPTER IV

1960 - 1965

In its first serious confrontation with the Upper House, the new government was made painfully aware of the need to come to terms with the Legislative Council before attempting to implement any of the more controversial elements of its program. This controversy, in April, 1961, concerning Bill 34, ("An Act Respecting the Quebec Liquor Board")[1] did not lead, however, to any widespread attack upon the Council's status and prerogatives as such.

The position of the Upper House was more seriously threatened in 1962, with the calling of an election on the issue of the nationalization of electricity within the province. The Quebec Liberal Party Manifesto, 1962 declared that, "The size and complexity of the task, coupled with the domination of the Legislative Council by the National Union, the party opposed to complete nationalization of the eleven companies, led the Government to its decision to bring the whole population into this great and productive enterprise."[2] During the course of the campaign,

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[1] Journals (Quebec) Legislative Assembly, 1960, XCVI, 600.

[2] Quebec Liberal Party Manifesto, 1962, p.2.

while speaking to a group of students at Laval, Premier Lesage was even more explicit:

> Si la réponse de la province est celle que nous attendons, la force de l'opinion populaire fera disparaître le Conseil législatif, si ce dernier s'oppose à la nationalisation de l'électricité.[3]

The nationalization project did not, in fact, lead to another crisis in the relations of the two Houses. Nevertheless, in February, 1963, the Fédération Libérale du Québec passed a resolution calling for the abolition of the second chamber. Although the government did not attempt anything quite so drastic, it did provide that all Legislative Councillors appointed after July 1, 1963, would retire at seventy-five years of age.[4]

The Speech from the Throne delivered at the opening of the 1965 Session, after mentioning that a formula for constitutional amendment would be presented to the Assembly for its approval, went on to declare that the members of the Legislature would be asked to restrict the powers of the second chamber "so that the repatriation of the constitution shall not have the effect of entrenching the powers of the Legislative Council over bills passed by the Legislative Assembly."[5] The following week saw the introduction of Bill 3, ("Quebec Parliament Act")

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[3] Le Devoir, (November 1, 1962) p.1.

[4] 11-12 Elizabeth II, c. 12 (1).

[5] Débats de l'Assemblée Législative du Québec, 1965, II, 2.

which provided that:

> . . . un projet de loi d'ordre financier pourra être sanctionné et devenir loi, même s'il est rejeté par le Conseil Législatif, dès qu'un mois se sera écoulé après son adoption par l'Assemblée législative.[6]

Ordinary bills could be sanctionned, and become law, after being passed by the Assembly in two different sessions, with a lapse of at least one year between second reading in the first session, and third reading in the second. This provision would not apply, however, to bills which proposed the prolongation of the life of a legislature for more than five years.

Press reaction to the measure was generally favorable, and it was hinted that this was the first step toward ultimate abolition of Quebec's "anachronistic" Upper House. The possibility of vigorous opposition to the project on the part of the Union Nationale was dismissed as improbable, since this might "force" the government to appeal to London ("the only appeal for the Lower House against the Council's power . . . .")[7] a course of action little in keeping with the nationalistic aspirations of Quebec.

While Premier Lesage was generally acclaimed for attempting to "democratize" the legislative system of the

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[6] Ibid., p.26.

[7] Montreal Star, (January 27, 1965) p.1.

province, in defending and explaining his project, he employed certain arguments which provoked more than a little criticism. His insistence upon the need to limit the Council's powers before the adoption of the "Fulton-Favreau Formula" was based upon the proposition that, while the Assembly now had recourse to the Queen in the event of Upper House intransigence, once the British North America Act was "repatriated", and Canada gained full control of amendment procedure, this particular weapon would be rendered useless, and the Assembly would find it impossible to implement future reforms with respect to the second chamber. In a letter to the Editor of the Ottawa Journal, Eugene Forsey scoffed at such "high-falutin' rubbish", and insisted that:

> . . . in Quebec, an abolition bill could not pass now or after the enactment of the Favreau formula without the consent of the Legislative Council itself . . . . The Favreau formula changes nothing. It is possible to abolish the Quebec Upper House now; it will be possible to abolish it after the Constitution is brought from Westminster, and by an identical process. The Legislative Council could block the abolition bill now; it could block it then. The situation will not be altered by so much as one comma.[8]

The question of abolition continued to arise, although Bill 3 did not, in fact, propose any such drastic measure. Nevertheless, when the bill came up for second

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[8]Ottawa Journal, (January 27, 1965).

reading in the Assembly, Lesage opened his speech with a rather detailed review of the procedures adopted by the other provinces once they had decided to eliminate their various second chambers. When Mr. Bellemare asked if the Premier was considering a similar course of action, however, Lesage denied that he had any such end in view.[9]

The premier went on to insist that Quebec's constitution could be amended in either of two ways: by means of a law passed by the provincial Legislature, or "par l'autorité dont la Législature tire son pouvoir, c'est-à-dire, le Parlement du Royaume-Uni, parce que la constitution du Québec telle qu'elle apparaît dans l'Acte de l'Amérique du Nord Britannique est du Droit britannique qui peut être amendé par un Parlement britannique."[10] With the "repatriation" of the Canadian constitution, however, the British Parliament would have no further role to play in the realm of constitutional amendment, and the Legislative Council would retain its traditional rights and prerogatives. (Here, as on various other occasions, it seems to have been taken for granted that the Council would refuse to surrender these rights and privileges voluntarily.)

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[9] Débats de l'Assemblée Législative du Québec, 1965, II, 336.

[10] Ibid., p.341.

Premier Lesage next explained that, should such a course of action become necessary, the common law gave the Assembly the right to petition the Queen-in-Council to restrict the powers of the Upper House - and even to abolish it. If such provincial petitions had failed in the past, it was due to the fact that they lacked the support of the federal government - a situation which would not arise in the case of any petition concerning the Council which might be prepared by Quebec. Thus, he was convinced that:

> Si cette chambre accepte par une majorité l'adoption du bill 3, et s'il est bloqué par le Conseil, il sera loisible à la Chambre de s'adresser à sa Majesté en son Conseil pour demander que la Constitution du Québec soit amendée dans le sens des dispositions du bill 3 par le Parlement de Westminster, avant que la Chambre ne consente au repatriement de la Constitution.[11]

The debate continued, with the leader of the opposition, Daniel Johnson, insisting that the provincial constitution could not be amended without the consent of the Upper House, since this latter body formed an integral part of the Legislature, and that, in any case, no measure of this type should be implemented without first obtaining the approval of "the people." Though he would later insist upon a referendum as the only adequate procedure, at this point he implied that the submission of the project to

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[11] Ibid.

"representatives of French-Canadian intermediate bodies . . . such . . . as labor unions, professional associations, businessmen's organizations . . . the St. Jean Baptiste Society," might prove to be an acceptable alternative.[12] Opposition antipathy toward Bill 3 was re-inforced by the suspicion that the implementation of its provisions would ultimately permit the government to force Quebec into a "constitutional straight-jacket" through the acceptance of the Fulton-Favreau formula. It became evident quite early in the debate that, in many respects, this was to be:

> a struggle between two quite unrelated principles. On the one hand the Liberal government waged its battle on the issue of democracy, on the other, the National Union Opposition took to the field with the weapons of nationalism. . . . even more than most political debates . . . this was a dialogue of the deaf.[13]

Prior to the third reading of the bill, the opposition introduced two significant amendments - both of which were ultimately rejected by the Lower House. The first proposed that the bill be submitted to the Committee on the Constitution, "with instructions to consider the possibility of abolishing the Legislative Council and, if expedient, of creating a new organism to represent intermediate bodies, minorities, agents of the economy and

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[12] Montreal Star (February 5, 1965).

[13] T. Sloan, "Quebec Squabble Really a Warm-up", Montreal Star, (May 31, 1965).

the professions . . . ."[14] The threat posed by the Fulton-Favreau amendment formula certainly influenced the preparation of the second amendment. Section B suggested that the Council retain its power with respect to any project

> which tends either directly or indirectly to amend the Constitution of the province of Quebec, or the Constitution of Canada . . . until such time as another form is established so that constitutional amendments shall not be enacted by a simple majority of the Legislative Assembly alone.[15]

An unamended Bill 3 received the approval of the Assembly on February sixteenth,[16] and the following day was given first reading in the Upper House.[17] At least one observer was convinced at this time that the Council would be "forced" to accept the measure, since it had "in fact, no practical alternative . . . . By rejecting the bill, in view of its lack of popular support, it would only be signing its own death warrant."[18] That the

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[14] Legislative Assembly, Votes and Proceedings, 1965, no.II, p.110. The Committee on the Constitution, a select committee first set up May 22, 1963, has as its aim "la détermination des objectifs à poursuivre pour le Canada français dans la revision du régime constitutionnel canadien et des meilleurs moyens d'atteindre ces objectifs." (Débats de l'Assemblée législative, 1965, II, p.3573).

[15] Ibid., no. 15, p.136.

[16] Ibid., p.137.

[17] Legislative Council, Minutes of Proceedings 1965, no. 3, p.13.

[18] T. Sloan, "Legislative Council in Delicate position," Montreal Star (Feb. 18, 1965) p.7.

Council, at least, did not share this pessimistic appraisal of its own situation became increasingly evident in the weeks to come. By March twenty-fifth a drastically amended Bill 3 had been returned to the Lower House. The most significant of the five amendments, (the second,) provided that the Council would retain its powers with respect to:

> a . . . a bill having the object or effect, or of which any provision has the object or effect of amending or affecting in any manner whatsoever, the constitutional rights of minorities;
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> b . . . a bill having the object or effect or of which any provision has the object or effect of amending or affecting in any manner whatsoever the constitutional status of the Province, or the constitutional or jurisdictional status of the Legislative Council, including the rights, indemnities, allowances pensions and other prerogatives of its members.[19]

On May 11, 1965, as the Assembly was preparing to consider the amendments proposed by the Council, Johnson questioned Lesage concerning Prime Minister Pearson's attitude with respect to a possible address to the Queen. Lesage replied that the Canadian Prime Minister had assured him that if the Assembly passed an address of this nature, it would be transmitted to London with the favorable advice of the federal government.[20] The premier next declared that he could accept none of the Upper House

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[19]Legislative Assembly, Votes and Proceedings, 1965, no. 35, pp. 304, 305.

[20]Débats de l'Assemblée Législative, 1965, II, 2441-2442.

amendments to Bill 3. The second amendment, implicitly rejected the fundamental principle of the bill, while the section whereby the Council set itself up as the protector of minorities was not only ambiguous, but clearly anachronistic as well.[21]

Before the vote was taken on the premier's motion to reject the amendments in their entirety, Johnson summarized the various arguments which had been enunciated by the members of the opposition in the course of earlier debates. "Nous ne voulons pas, nous non plus, que les pouvoirs du Conseil législatif soient intangibles. Nous ne voulons pas . . . placer cette législature dans une position telle que la volonté clairement explicitée . . . du peuple soit contrecarrée . . . ." Nevertheless, under the present circumstances it was imperative that the measure under consideration be submitted to the Committee on the Constitution for intensive study.[22] Then too, the government had no right to attempt to implement basic constitutional alterations without first consulting the will of the people - preferably by means of a referendum. No constitutional question should be decided on the whim of a single legislative body; thus, constitutional matters must be explicitly provided for, and this before the

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[21] Ibid., p.2445.

[22] Ibid., p.2453.

Council was asked to surrender its jurisdiction in this sphere.

Opposition arguments failed, however, to convince the House that the Council amendments might provide the basis for further discussion. Lesage's motion rejecting the amendments completely was ultimately adopted, and Bill 3 "[est mort] entre les deux chambres".[23] The following day the Montreal Star chided the Council for having "forced" the Premier "into a position where he feels he has no other recourse but an appeal to . . . Westminster." The editorial went on to point out that such a course of action was "fraught with emotional and constitutional dangers" and would probably provoke "an outcry against . . . such 'colonial' procedures."[24]

The "outcry" had, in fact, been aroused earlier in the month, when Mr. Johnson, in a speech to the Société St. Jean Baptiste of St. Hyacinthe denounced all vestiges of colonialism - including addresses to the Queen, the role of the Lieutenant-Governor, and his power of reservation, the federal "veto" power, and so on.[25] In later speeches his insistence upon the "colonial" aspect of the

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[23] Ibid., p.2487.

[24] Montreal Star, (May 12, 1965).

[25] D. Johnson, "Discours Prononcé au Banquet de Clôture du 20è Congrès Annuel." - Service d'Information, (May 2, 1965), p.14.

address procedure became even more pronounced. The effect was heightened by his equally emphatic assertion that the entire project was quite unnecessary. Had the government agreed to a referendum, the Legislative Council "se serait soumis à la volonté du peuple souverain."[26]

Be that as it may, the Assembly Agenda Paper for May twelfth gave notice that the government would shortly call upon the Lower House to approve "a humble Address" to the Queen requesting that Her Majesty "cause a measure to be laid before the Parliament of the United Kingdom." The "measure" would involve the amendment of the British North America Act, through the insertion, after section 79, of the provisions originally contained in the hapless Bill 3.[27]

During the following week the Council prepared its counter-offensive, and on May nineteenth, the leader of the opposition in the Upper House, Mr. Asselin, indicated that he, too, would move the adoption of an address to the Queen - one which would outline fairly and adequately the Council's position with respect to the controversy. The proposed address would explain that matters relating to the alteration of the constitution, with respect to the Legislative Council, "pertain to the exclusive

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[26]Le Soleil, (May 17, 1965) p.1.

[27]Legislative Assembly, Agenda Paper No. 53 (May 12, 1965), p.9.

jurisdiction of the province," and that Her Majesty should refuse to comply with the Assembly's request, since "no petition or address asking for such an amendment has ever been authorized or approved by the constitutional authority of the province, that is, the Legislature, composed of the Legislative Council and the Legislative Assembly."[28]

As the month of May drew to a close, the Opposition seemed to be gaining support for its argument that the controversy must, at all costs, be "kept in Quebec" - where there might still be gained, through compromise, "what clearly cannot be accomplished by bullheaded intransigence in both Houses."[29] Mr. Gérin-Lajoie, while agreeing that it would certainly be preferable to settle the dispute "chez nous," argued, nevertheless, that in the case of deadlock, one must have recourse to any procedure which happens to be available.

> Aujourd'hui nous sommes précisément appelés à considérer le recours à une technique constitutionnelle pour nous permettre de sortir d'une impasse, et permettre au peuple du Québec d'avoir pour le régir des mécanismes législatifs qui assurent la réalisation des volontés populaires.[30]

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[28]Legislative Council, Minutes of Proceedings 1965, No. 11, p.2.

[29]Montreal Star, (May 27, 1965).

[30]Débats de l'Assemblée législative 1965, II, 2900-2901.

After re-affirming the government's position with respect to the opposition's referendum proposal, Gérin-Lajoie proceeded to deal with certain points (based on the Minister's own study of constitutional amendment in Canada,) which had been raised by the opposition in a previous debate. He deplored the fact that various passages had been cited out of context; in several instances, for example, he had been discussing "le rôle d'une collectivité provinciale" without attempting to specify which particular component of the political system was best fitted to express the will of that collectivity in the realm of constitutional change. It was true that, in dealing with this latter question in the book, he did suggest that the legislative power should be called into play, even though, until 1950, such matters had been decided by the Executive alone. It was obvious however that in the past, provincial consent to a constitutional amendment had been expressed in various ways: by the premier, by the government, by the Legislative Assembly alone[31] - as had been the case with respect to the "Supplementary Benefits to Old Age Pensions" amendment of 1964.

His book had indeed maintained that:

> Provision could be made for provincial concurrence through acts of the legislatures . . . in most

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[31] Ibid., p.2902.

> provinces this procedure would mean a majority vote in the Legislative Assembly . . . . The procedure in a bicameral legislature as in Quebec would be determined by the laws of the province governing both chambers and their relationships in the process of legislation.[32]

In his opinion, this text established that the measures he was advocating at that time could not be employed in the present context - where the very purpose of the amendment was the alteration of "the rules governing the powers of both Chambers and their relationships in the process of legislation." His book, then, did not, in fact, deal with the type of problem involved in "la modification de la constitution du Québec."[33]

As the Assembly prepared to approve the address to the Queen, together with a second address to the Governor-General, Mr. Loubier suggested that the project might yet fail, since it was not at all certain that Ottawa would send the petition to London with favorable advice. In dealing with this issue the previous day, Lesage had insisted once again that Ottawa's co-operation was assured.[34]

At this point interest shifted temporarily to the federal scene, where the Prime Minister was attempting to cope with Mr. Diefenbaker's demands for a clarification of the federal government's stance with respect to the

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[32]Gérin-Lajoie, op. cit., p.275.

[33]Débats de l'Assemblée législative du Québec 1965, II, 2903.

[34]Ibid., p.2845.

Quebec controversy. While his answers on May twenty-fifth and May twenty-sixth were models of circumspection, by June first Pearson was forced to admit that he had advised the premier of Quebec, informally, that:

> If and when the address was received from the Government of Quebec, it would be tendered to the Governor General for transmission to the Queen in the normal way, and that advice, if the addresses were received in the normal fashion from the Government of Quebec, would be favorable.[35]

The Assembly petitions had, in fact, been delivered to the Secretary of State that morning, to be conveyed to the Governor General in accordance with "normal procedure."

This insistence upon "normal procedure", the "normal way" and "normal channels" was to prove significant in days to come. Government representatives in Ottawa made it increasingly clear that any "communication to the Government of Canada would have to come through the proper channel, which, in this instance, must be the Government of the Province of Quebec."[36] Strict enforcement of such a policy would obviously place the Legislative Council at a decided disadvantage. This latter body remained undaunted, however, and on June second approved its own address to the Queen, one to the Governor General, and another to the

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[35]Canada, House of Commons Debates, (June 1, 1965), p.1818.

[36]Ibid., (June 15, 1965), p.2412.

Government and Parliament of Canada.[37]

The Council's address to the Queen outlined the development of the Quebec controversy, from the approval of Bill 3 by the Assembly, ("on division, and in spite of the objections of your Majesty's official Opposition in that Chamber,") to the complete rejection of the Council's amendments and those suggested by the "official Opposition", on May eleventh.[38] The document went on to insist that "all the means to reach . . . an agreement have not been exhausted . . . the members of the Legislative Council . . . would have given most serious consideration to the means proposed . . . in the Legislative Assembly on the 11th day of May, 1965, had they been submitted to them." The amendments which sought to implement these proposals were, however, "rejected, purely and simply, without the Legislative Council being advised of it by message, according to the usual procedure."[39]

The Assembly had then prepared an address to Her Majesty - one which violated "the spirit and letter of . . . article 92, paragraph 1 of the British North America Act", and, at the same time, proved to be completely incompatible "with the constitutional evolution which Canada

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[37]Legislative Council, Minutes of Proceedings 1965, No. 12, pp. 5-15.

[38]Ibid.

[39]Ibid., p.8.

and the Canadian provinces have known since 1867." Since, in addition, the petition in question did not emanate from the true legislative authority in the province, the members of the Council were convinced that, should Her Majesty comply with the Assembly's request, the consequent "intervention by the Parliament of the United Kingdom in the constitutional affairs of the province . . . would cause a state of deep uneasiness among the population of Quebec."[40] The address to the government and Parliament of Canada made it quite clear that a "deep uneasiness among the population" would also result from any federal support for the project initiated by the Legislative Assembly. The Legislative Council did not desire "favorable advice" for its own petition; nevertheless, it did want its address to be transmitted to London through the proper channels. Should the federal government attempt to thwart the Council's project, it would, in Mr. Asselin's opinion, be interfering with "a diplomatic function of the Governor General," while at the same time "violating the right of a citizen or group of citizens to petition the 'Queen of Canada'."[41]

When it became obvious that the federal government did not intend to seek Parliamentary approval for whatever course of action it might ultimately adopt, certain

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[40] Ibid., p.11.

[41] Montreal Star, (June 3, 1965), p.1.

observers declared that, by this decision, Mr. Pearson was "creating a new constitutional process"[42] - or, at the very least, reviving a procedure which had not been employed for the better part of a century. Arguments based upon the "unique" character of the situation in question ("none of the amendments sought in the past have affected provincial constitutions,")[43] silenced some critics, but left Mr. Diefenbaker completely unimpressed. On Friday, June eleventh, the Prime Minister assured the House of Commons that there would certainly be an "opportunity for discussion. A supply motion would provide one opportunity."[44]

In answer to a question posed by the leader of the opposition the following Monday, Pearson stated that, while he had no information concerning the whereabouts of the Council's petition, he had received, from the Governor General, the "address from the Government of Quebec with regard to the resolution passed by the Legislative Assembly."[45] Since Premier Lesage had hinted on more than one occasion that he would advise the Lieutenant-Governor not to forward the Council's petition to the Governor

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[42] Ibid., p.8.

[43] Ibid.

[44] Canada, House of Commons Debates (June 11, 1965), p. 2258.

[45] Ibid., (June 14, 1965), p. 2332.

General, Mr. Asselin hastened to send telegrams to both Prime Minister Wilson and Prime Minister Pearson, requesting the former to make no decision until the Council's address reached London, and warning the latter that his attitude should be one of strict neutrality.[46]

It soon became evident, however, that the federal government did not feel bound to accept this admonition, (which had not, in any event, reached Ottawa through the "proper channels,") and, on May sixteenth, Mr. Martin, as Acting Prime Minister, indicated that the Canadian government intended to have the Assembly's petition transmitted to Westminster with "favorable advice". The position of the federal authorities was discussed at some length in a statement which outlined the basic reasons for the advice which would ultimately be given the Governor General. (It was stressed that "no advice [would] be formally tendered to the Governor General or to the Queen until . . . [an] opportunity for expression of opinion in this House [had] been provided." Should anyone consider question "the propriety of revealing advice to the Crown before it is actually given," the Acting Prime Minister wished to assure his audience that "for ample caution the permission of both the Governor General and the Queen [had] been secured to inform

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[46]Montreal Star, (June 15, 1965), p.1.

Parliament of the course that [was] intended.")[47]

In affirming the constitutionality of the procedure employed by the government of Quebec, Mr. Martin explained that the powers granted a provincial Legislature by Section 92 (1) of the B.N.A. Act did not, in any way, diminish the British Parliament's jurisdiction with respect to the Act as a whole. The next significant question was that of proper federal procedure. The White Paper on constitutional amendment tabled earlier in the year had, indeed, seen Parliament as playing an essential role where any alteration of the constitution was contemplated; yet the situation under discussion was quite unprecedented, in that the proposed amendment was of concern to the province of Quebec alone. It would not be fitting then to adopt any procedure which might "suggest that Parliament could sit in judgment on the action of a province within its own constitutional sphere." In fulfilling its responsibility to advise the Queen and the Governor General, the federal government would recommend that both act "in accordance with the advice of the responsible provincial ministers, with whom alone the Government of Canada can properly communicate on matters

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[47]Canada, House of Commons Debates, (June 16, 1965), p. 2481.

relating to the provinces as such."[48]

Although Mr. Diefenbaker denounced the government's attitude and strategy as being inspired by the new spirit of "co-operative federalism" - which, in his opinion, was becoming synonymous with "under-the-table . . . [arrangements]," [49] the leaders of the opposition parties in general concentrated their attack upon the government's decision to have the issue discussed on a supply motion. Despite the fact that the amendment in question would affect Quebec alone, it remained, nevertheless, an amendment to the Canadian constitution - and thus required that an address be approved by the Canadian Parliament. In the opinion of both the Conservative leader and the leader of the New Democratic Party, the government was bound to introduce such an address without delay.[50] At the end of the session, it could be written that "the opposition did not take up the opportunities for debate"[51] though the problem of defining the essential characteristics of a proper "opportunity for debate" under the given circumstances won a certain amount of attention.

By mid-July the Assembly's address, accompanied by

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[48] Ibid., pp. 2478-2480.

[49] Ibid., p.2481.

[50] Ibid., pp. 2482-2485.

[51] Montreal Star, (July 3, 1965), p.1.

the federal government's formal instrument of advice, had reached London.[52] The Council's petition, however, (referred, by the Lieutenant-Governor, to his provincial ministers,) was still being studied by the Quebec government's legal advisors. "Under these conditions," declared Mr. Asselin, earlier in the month, "it is difficult to avoid the suspicion that an attempt is being made, with or without Ottawa's agreement, to block or to indefinitely delay, the transmission of this address to the Queen."[53] Later events served merely to confirm these suspicions, and by the end of July the leader of the opposition in the Upper House had decided to launch a new offensive.

July 28, 1965, saw the opening of debate on Mr. Asselin's proposal that the Legislative Council send its petition directly to the Queen. By a vote of nine to five the Upper House decided that the Queen should receive without delay: official copies of various addresses approved by the Council on June second (to the Queen, to the Governor General, to the Lieutenant-Governor); a memorandum explaining the Council's recourse to procedures which might be considered unorthodox; newspaper excerpts dealing with the current dispute.[54] When asked his

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[52] Montreal Star, (July 14, 1965), p.15.

[53] Gazette, (July 1, 1965), p.1.

[54] Legislative Council, Minutes of Proceedings, 1965, No. 18, pp. 12-19.

opinion concerning the Council's latest move, Premier Lesage serenely declared: "It is obvious that the British Government is going to ask for the advice of the Federal Government on the Council petition, through the Governor General;" and it was, of course, just as obvious that "the Federal Government can do nothing else but ask the advice of the Quebec Government."[55]

During the final days of the session, the Council evidently decided that one final act of defiance was called for. By choosing to amend Bill 63 (considered, by the government, to be a "money bill,") it seemed destined to provoke a new crisis. When confronted with the Council's amendments to the "City of Laval" bill, Premier Lesage indicated privately that he was prepared to "petition the Queen to abolish the Red Chamber,"[56] should the Councillors continue in their intransigence. Had the second chamber ultimately refused to accept government demands, it is probable that Lesage would have called an election on the issue.[57] The setback suffered by the Council on this occasion, was, in the opinion of at least one observer, indicative of "the inherent instability of the present position of the Legislative Council;" there seemed to be

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[55]Montreal Star, (July 31, 1965), p.5.

[56]Montreal Star, (August 7, 1965), pp. 1,2.

[57]Ibid.

evidence here of a "serious imbalance between the theoretically wide powers enjoyed by the Council, and its own assessment of their practical limits."[58]

Less than a week after the closing of the session, the premier announced that the Lieutenant-Governor had been advised not to send the Legislative Council's petition to the Queen. In outlining the most significant reasons for this decision, L.P. Pigeon, legal advisor to the provincial government, stressed that the Crown's responsible ministers must always offer "unanimous" advice. The Federal Cabinet, constitutionally empowered to advise the Queen concerning Canadian affairs, had chosen to act on the advice of the Quebec Cabinet. In Mr. Pigeon's opinion then,

> Since the government of Quebec has decided to send the address voted by the Legislative Assembly to the Federal Government, it cannot but refuse to send the contradictory address of the Legislative Council.[59]

By mid-September the Council learned that its attempt to petition the Queen directly had also proved unsuccessful. On September seventeenth Premier Lesage announced that Buckingham Palace had returned the document to Ottawa. The Secretary of State had then forwarded

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[58] T. Sloan, "Weakness of Council Exposed," Montreal Star, (August 12, 1965), p.7.

[59] Montreal Star, (August 12, 1965), p.2.

the petition to the Lieutenant-Governor, who, once again, sought the advice of his responsible ministers. "You can be sure," declared Mr. Lesage, concerning the advice which would be given, "that we won't contradict our former opinions."[60] The provincial government had obviously won the battle - and, in all probability, the war.

"Tout changement dans la nature, la composition, ou les pouvoirs du Conseil," declared J.C. Bonenfant, in 1963, "exigerait qu'il y consente, et . . . on ne pourrait juridiquement l'y forcer d'aucune façon."[61] The events of 1965, however, would seem to indicate that what is legally (and constitutionally,) possible, must, on occasion be defined in terms of what is politically expedient. The Quebec government's action was, indeed, criticized on purely constitutional grounds, but this aspect of the question seldom engaged the attention of the most vociferous critics, who rejected the entire project as an affront to the nationalistic aspirations of French Canada. In this particular confrontation between Upper House and Lower, the real source of conflict was a measure which, technically speaking, had not yet been discussed in the

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[60] Montreal Star, (September 18, 1965), pp. 1,2.

[61] Bonenfant, "Le Bicaméralisme dans le Québec", p.504.

Assembly: the so-called Fulton-Favreau formula for constitutional amendment. This was certainly not the first time that the Council had set itself in opposition to a measure proposed by the Assembly on the grounds that this latter body did not, in a given instance, represent the true will of the people. On this occasion, however, the Council's argument could not be lightly dismissed, since it was obvious that the proposed amendment formula was unacceptable even to certain of Lesage's most faithful supporters. It was equally obvious that, in opposing any diminution of its powers at a time when these powers could be used to frustrate the implementation of the "repatriation" project, the Council could not easily be accused of opposing the popular will.

The Council, with its Union Nationale majority, supported the contention of the opposition in the Assembly, that constitutional alterations should be made the subject of a referendum, and thus seemed to prove itself fully committed to democratic ideals. By rejecting the referendum proposal Mr. Lesage might have proved himself more appreciative of the exigencies of representative government than his opponents, but he did not, thereby, show himself to be a greater democrat - or a more ardent nationalist.

Just as all parties to the dispute rejected Cartier's contention that "there must be a power of resistance

to oppose the democratic element,"[62] many of those involved in the controversy (even within the Upper House itself,) proclaimed themselves in favor of the eventual abolition of the Council; others looked forward to the implementation of various fundamental reforms. Very few were disposed to attempt a defense of the second chamber as such, in the manner of Chapais. The Council's role was justified, rather, in terms of one specific issue. Nevertheless, when the Honorable Edouard Asselin, in a letter to the Montreal Star, insisted that the Upper House was, in the present instance, simply fulfilling its duty to insure that the constitution would never be left to the "mercy of a simple majority, which could be of a single voice, of a partisan group . . . [or to] the mercy of all electoral hazards, demagogic pressures . . .,"[63] he gave expressions to sentiments which might easily have been attributed to Cartier - or to Chapais. The Council's attitude was "traditional" in yet another way; as in ages past, it saw itself as the guardian of provincial autonomy, the defender of "nos libertés . . . nationales."[64] These venerable arguments failed, in 1965, to prevent the humiliation of the Council. Yet, even in 1965, the humili-

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[62] G.E. Cartier, Confederation Debates, p.571 (quoted in MacKay, op. cit., p.47).

[63] Montreal Star, (September 14, 1965), p.6.

[64] Chapais, op. cit., p.142.

ation of the second chamber was far from complete. As it became increasingly evident that Premier Lesage was seriously reconsidering his earlier stand concerning the amendment formula, the Council had good reason to believe that the Government might yet be persuaded that "cette formule, présentée comme le rameau d'olivier susceptible d'assurer l'unité canadienne pour un siècle, n'est qu'un panier de crabes."[65]

It is true, however, that when Lesage ultimately did announce Quebec's decision to postpone indefinitely further consideration of the project, few attributed this alteration in policy to the activity of the Upper House. The premier, in his letter to Pearson, (January 20, 1966), did, indeed, mention the close relationship which existed (in Quebec's opinion), between the petition to diminish the Council's powers, and the amendment formula. Since the British Parliament had not yet considered the Assembly's request, this latter body "n'a pas été appelée à se prononcer sur la formule proposée pour amender notre constitution."[66] Other factors were far more significant, however, in accounting for the government's new position. The formula had obviously "provoqué au Québec une certaine

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[65]G. Picard, "Un Texte Obscur et Inquiétant . . ." Le Devoir (Oct. 11, 1965), p.4.

[66]Le Devoir, January 28, 1966, p.5.

inquiétude"[67] which could not be safely ignored.

This "inquiétude" was not restricted to any one political party; neither could it be dismissed as a reactionary attitude out of keeping with the basic aspirations of the society as a whole. As was indicated in the final pages of the first chapter, the social and political values of French Canada have been altered in many significant respects during the past century. Such changes however, were always effected against a background of a more-or-less vigorous nationalism. In 1962, André Laurendeau remarked that, while "le nationalisme québecois est devenu plus intelligent, plus dynamique, plus moderne . . . il n'a pas cessé d'être nationaliste; au contraire, les sentiments sont plus vifs, les ambitions plus vigoureuses."[68]

Had the threat to nationalist aspirations not complicated the issue, the Council would doubtless have been forced, quite early in the dispute, to adopt a much less intransigent position with respect to the demands of the Lower House. As one observer remarked: "In Quebec . . . in many ways we are going through a revolution . . . in the fullest sociological, political, economic . . .

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[67] Ibid.

[68] Le Devoir, September 11, 1962, p.4.

sense of the word. There is no place for a body such as the Council in such a situation."[69]

The government tends to describe this "revolution" in terms of the awakening of a spirit of democracy in Quebec - "the people" have finally gained control of their own destiny. Such a contention can, of course, be challenged, especially since "democracy" is a far from univocal concept. Instead of contrasting the contemporary ethos with that of an earlier era in terms of the triumph of democratic values, it might be more realistic to concentrate on other more obvious features of present-day social and political attitudes in Quebec. The political elite has finally accepted, formally and unequivocally, Quebec's destiny as an industrial society. The industrialization and the urbanization of the province have, of course, been in progress for quite some time (with a marked increase in urbanization during the 1950's)[70] but politicians felt obliged, nevertheless, in framing electoral appeals and legislative policies, to act within the framework imposed by an image of French Canada as a traditional and rural society.

Since 1960 the government has appealed to an urban

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[69] T. Sloan, (letter of January 20, 1966).

[70] P. Regenstreif, The Diefenbaker Interlude: Parties and Voting in Canada (Toronto, 1965), pp.113,114.

electorate[71] quite openly and unreservedly. This type of voter is far too interested in "efficiency" in government to see any value in the traditional arguments in favor of Quebec's Upper House. A government attempting to cope with contemporary social and economic problems is almost inevitably forced to initiate measures which to the "traditional-minded" seem unnecessarily radical. Thus, "If the Upper House leaves such measures strictly alone, it is in fact denying its own 'raison d'être'. On the other hand, if it interferes, it is denying democratic processes."[72] Under such circumstances it is not surprising that few outside the Council itself feel deeply committed to its defense.

It remains true, of course, that "traditional" attitudes have not been eradicated. Much of the tension in present-day Quebec can be traced to this fact. As one observer points out:

> Beaucoup de conflits actuels relèvent d'un affrontement de deux visions très différentes de notre société; la première emprunte ses postulats et ses schémas d'analyse à un univers social pré-industriel, concentrique, hiérarchique; la seconde se rattache à une

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[71] J. Citrin, "The Quebec General Election of 1962" (unpublished Master's thesis, Department of Economics and Political Science, McGill University, 1963), p.127.

[72] T. Sloan, (letter of January 20, 1966.)

> conception de la société urbanisée, démocratisée, pluraliste et organisée autour du pôle étatique.[73]

Nevertheless, the political party which might normally be expected to support "traditional" values has declared itself in favor of the ultimate abolition of the Upper House:

> Nous, nous disons: nous sommes disposés, même en ce moment, à étudier l'opportunité de l'abolir . . . j'aimerais le remplacer par un nouvel organisme . . . qui contiendrait des représentants des corps intermédiaires, des groupes de pression peut-être . . . des professions et des agents de l'économie et peut-être aussi un certain groupe de technocrates . . . qui pourraient . . . équiper cette chambre de façon à ce qu'elle puisse faire de très nombreuses enquêtes que nous confions à des commissions ad hoc . . .[74]

Thus, it would seem that the Legislative Council, as it now exists, can claim the support of no significant segment of the body politic, and, as constitutional writers are fond of pointing out, there can be "no argument whatever in support of a non-representative (not necessarily non-elective,) legislative chamber of any kind."[75] In 1965, as in 1867, there was an obvious need for some agency capable of performing the duties traditionally

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[73]J. Grand'Maison, "Un conflit fondamental de notre Société," Relations, (February, 1966), p.60.

[74]Débats de l'Assemblée législative, 1965, II, 553.

[75]W.E. Wismer, Pan-Britannic Imperialism (Edinburgh, 1917), I, 117.

assigned to second chambers - especially those of legislative revision and protection of minority rights. It was far from obvious, however, that Quebec's Legislative Council was the body best suited to the task.

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