

“LE CONSEIL SPÉCIAL EST MORT,
VIVE LE CONSEIL SPÉCIAL!”

THE SPECIAL COUNCILS OF LOWER CANADA, 1838-1841

by

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ABSTRACT

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Although the 1837-38 Rebellions and the Union of the Canadas have received much attention from historians, the Special Council—a political body that bridged two constitutions—remains largely unexplored in comparison. This dissertation considers its time as the legislature of Lower Canada. More specifically, it examines its social, political and economic impact on the colony and its inhabitants.

Based on the works of previous historians and on various primary sources, this dissertation first demonstrates that the Special Council proved to be very important to Lower Canada, but more specifically, to British merchants and Tories. After years of frustration for this group, the era of the Special Council represented what could be called a “catching up” period regarding their social, commercial and economic interests in the colony. This first section ends with an evaluation of the legacy of the Special Council, and posits the theory that the period was revolutionary as it produced several ordinances that changed the colony’s social, economic and political culture

This first section will also set the stage for the most important matter considered in this dissertation as it emphasizes the Special Council’s authoritarianism. During this period, Lower Canadians lost all political rights and the decisions taken by the Special

Council were made by non-elected councilors. The second section therefore considers the various ordinances the council passed, its obvious favoritism and authoritarianism, and the opinions of Lower Canadians towards them. The following questions are considered: did the British and French-Canadians react differently to the dissolution of their legislature and the suspension of their constitution? Considering the fact that many people, *habitants* and British alike, did not support the rebellion, did they view the council as a necessity in restoring peace and stability to the colony, and therefore accepted its authoritarianism, and even supported it? More importantly, did French-Canadians submit to the Special Council and all of the new laws and institutions it imposed in the years following the failed rebellions? Evidence suggests that French-Canadians were very vocal in their opposition to the Special Council.

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INTRODUCTION

“LE CONSEIL SPÉCIAL EST MORT, VIVE LE CONSEIL SPÉCIAL!” THE SPECIAL COUNCILS OF LOWER CANADA, 1838-1841

In November 1837, Louis-Joseph Papineau, leader of the *Patriote* party, and his followers took up arms against the British. Although the Rebellion started with a great victory at Saint-Denis on 23 November, it was soon crushed following defeats at Saint-Charles and Saint-Eustache. In the weeks that followed, the British Government attempted to make sense of what was happening in its North American colony. The British cabinet simply did not know, at that time, why the people of Lower Canada revolted and therefore did not have the information necessary to make wise decisions about the colony's future. According to historian Steven Watt, the government established a Special Council that would restore order and govern the colony while it tried to figure out what to do.¹

The Special Council itself was “conceived as a tool for Lord Durham to use for the passage of necessary provincial legislation while he investigated and reported on the constitutional problems of British North America.”² While in Canada, Durham was not only expected to investigate the causes of the rebellion, but also to sit at the head of the council, restore peace, and prevent any further bloodshed. To facilitate this mission, Prime Minister Lord Russell created a Special Council, which, it was hoped, would enable Durham to pass any law or ordinance that would aid and assist him in his difficult

¹ Steven Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841.” Master's Thesis. McGill University, 1997, pp. 18-19.

² *Ibid.*, p. 19.

task.³ On 15 January 1838, Durham accepted his appointment as Governor General and High Commissioner to British North America and head of the Special Council.

On 10 February 1838, “An Act to Make Temporary Provision for the Government of Lower Canada” was passed, which made “temporary provision for the Government of Lower Canada, in order that Parliament may be enabled, after mature deliberation, to make permanent arrangements for the Constitution and Government of the said Province upon such a basis as may best secure the rights and liberties, and promote the interests of all classes of Her Majesty’s subjects in the said Province.”⁴ The act’s provisions regarding the replacement of the colonial legislature by the Special Council were initially to be in force until 1 November 1840. However, as will later be discussed, the act was altered a number of times by Parliament, explaining why the Special Council lasted until 10 February 1841. The Special Council thus remained in power for three years (1838-1841) and was headed by three successive governors general: Lord Durham, Sir. John Colborne and Charles Poulett Thomson (Lord Sydenham).

Once the colony’s constitution was suspended and the Legislative Assembly dissolved, the first order of business was to select Special Councilors. Although under the

³ Chester New, *Lord Durham’s Mission to Lower Canada: An Abridgement of Lord Durham: A Biography of John George Lambton, First Earl of Durham* (Toronto: McClelland and Stewart Limited, 1929), pp. 42-3. This thesis will not examine the details of Lord Durham’s activities’ while in British North America; it will specifically focus on the Special Council itself. For those interested, interesting studies include: Janet Ajzenstat, *The Political Thought of Lord Durham* (Kingston, Ont: McGill-Queen’s University Press, 1988); Janet Ajzenstat, “Durham and Robinson: Political Faction and Moderation,” *Canada’s Origins: Liberal, Tory or Republicanism*, eds. Janet Ajzenstat and Peter J. Smith (Ottawa : Carleton University Press, 1995); Ged Martin, “The Influence of the Durham Report,” *Reappraisals in British Imperial History*, ed. Ronald Hyam and Ged Martin (London : Macmillan, 1975), pp. 75-87; Ged Martin, “Attacking the Durham Myth: Seventeen year On,” *Journal of Canadian Studies* 25 (1) (1990): pp. 39-59.

⁴ “An Act to make Temporary Provision for the Government of Lower Canada 10th February, 1838,” 1. Vic. C. 9, reprinted in Special Council of Lower Canada. *Ordinances made and Passed by the Administrator of the Government, and the Special Council for the Affairs of the Province of Lower Canada, Vol. 1* (Quebec: John Charlton Fisher and William Kemble, 1838), pp. 6 & 8. CIHM No. 46527.

authority of the Governor General, the Special Council was still, ultimately, controlled by the British Government. Instructions were sent to each governor prior to taking over the council, and ordinances that were deemed unfit by the British Government were suspended; the Colonial Office in London always remained in control of the Special Council. In the case of selecting councilors, a quorum of five was set and the governor had to select “persons of approved loyalty, and good life, and as shall be of the full age of twenty-one years, and as shall be our subjects natural born, or duly naturalized.”⁵ The Governor General was also allowed to appoint a Presiding Member who would act on his behalf when he could not attend meetings.

The Special Council was to pass laws and ordinances that would promote the “peace, welfare, and good government of the said Province of *Lower Canada*, as the Legislature of *Lower Canada*, as now constituted, is empowered to make [...]”⁶ In other words, the Special Council combined the functions of the previous Legislative Assembly and Legislative Council. It was allowed to pass ordinances and approve day-to-day public accounts just as the Legislature of Lower Canada had done since 1791. The management of the colony’s daily affairs itself remained the work of civil and provincial secretaries and the Executive Council.⁷ When passing these ordinances, the council did not have to worry about the opinions, desires and concerns of the local population; it could, and did, pass any laws it saw fit. The Special Council therefore enjoyed what one could call authoritarian powers in Lower Canada. Steven Watt explains that “it was used to impose

⁵Library and Archives Canada. RG4, A1, Volume 531, Files 19 February 1838. Dispatch from Lord Glenelg to Sir. John Colborne, 19 February 1838.

⁶ “An Act to make Temporary Provision for the Government of Lower Canada 10th February, 1838,” p. 10.

⁷ The Executive Council was a body appointed by the Governor General that provided advice to the governor with regards to the administration of the colony and public affairs.

a single legislative will on Lower Canada. This stood in stark contrast to the situation before the Lower Canadian constitution was suspended.”⁸ In fact, other than the councilors, the Governor General did not have to worry about the approval of the local population to pass any law or ordinance since there were no elected representatives in the council.

The act did place some boundaries on the council’s actions. All laws and ordinances would expire on 1 November 1842, unless they were continued by a “competent authority.” The Special Council was also prohibited from imposing new taxes, duties, and rates on the people of the colony. It was allowed, nonetheless, to ask payment for taxes, rates and duties that were already being collected at the time of the passing of the act. More importantly, it specifically stated that

it shall not be lawful, by any such Law or Ordinance, to alter, in any respect, the Laws now existing in the said Province, respecting the Constitution or Composition of the Legislative Assembly thereof, or respecting the right of any person to vote as the election of any member of the said Assembly ,or respecting qualifications of such voters, or respecting the Divisions of the said province into Counties, Cities, and Towns, for the purpose of such elections.⁹

As a result, the Special Council was not allowed to modify the colony’s constitution, change the Legislative Assembly, or divide the colony into new counties, cities and towns. The Special Council also had to submit each ordinance it passed to the Imperial

⁸ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841, p. 18.

⁹ “An Act to make Temporary Provision for the Government of Lower Canada 10th February, 1838,” p. 12.

government in London, at which point the Crown had up to two years to approve or suspend it.¹⁰

0.1 HISTORIOGRAPHY

Despite the Special Council's unique position in Canadian history—it governed the colony between two constitutions—it and its role in Canada's development have been commonly ignored in general Quebec and Canadian histories. According to historian Steven Watt, the council's tenure has been especially ignored as a result of the belief that the councilors were simply “yes men” and following direct orders from London.¹¹

Studies that focus on the Special Council itself have been few and far between. The first dates back to 1943. Compiled by a lawyer by the name of Antonio Perrault, *Le Conseil Spécial, 1838-1841* provides a summary of some of the major laws and reforms that it passed. Although this book provides a good starting point for understanding some of the major ordinances that the Special Council imposed on the colony, it is nonetheless very limited. There is, among other things, no analysis of the creation of the Special Council, of its members, and of its relationship with the people of Lower Canada. In fact, Perrault was very clear about the limited scope of his study:

Les cadres de ce mémoire ne permettent pas d'analyser chacune de ces ordonnances traitant de divers sujets, depuis la rébellion 1837-38 [...] Il suffira pour remettre en lumière l'oeuvre législative de ce conseil spécial[,] d'en dégager certaines idées générales, de rappeler quelques-unes de ces ordonnances les plus importantes et qui influèrent sur l'évolution juridiques et sociale de la province de Québec.¹²

¹⁰ *Ibid.*, p. 14.

¹¹ Steven Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 265.

¹² Antonio Perrault, *Le Conseil Spécial, 1838-1841* (N.A: Revue du Barreau, 1943), p. 15.

Historians Philip Goldring, Michael McCulloch, Brian Young and Steven Watt, however, undertook the most extensive examinations of the Special Council. In his doctoral dissertation entitled “British Colonists and Imperial Interests in Lower Canada, 1820 to 1841,” Philip Goldring spent an entire chapter on the topic of the Special Council. Rejecting Antonio Perrault’s study as too “legalistic” and too simplistic to influence modern history, Goldring focused on the procedures behind the closed doors of the Special Council rather than the ordinances that it passed. Amongst other things, Goldring was the first to propose that the Governor General, more specifically Sir John Colborne, selected his councilors from a specific political group. In fact, he claims that Colborne specifically sought to surround himself with a group known as the Constitutionalists because they were the only Lower-Canadians he fully trusted. Constitutionalists were loyalists who not only sought to promote a greater link between Canada and Great Britain, but also sought the assimilation of French-Canadians through a Union of the Canadas. Goldring also explains that the members of the Special Council played a very active role in the decision-making process as Colborne was more than happy to let them advise and consent on legislations.¹³ One important element is missing from Goldring’s thesis: the opinion of Lower-Canadians towards it. He does, however, explain why he was unable to do so: “the secrecy [of the Special Council] before 1839 prevented public discussion” and therefore led to a lack of available resources for historians.¹⁴

¹³ Goldring, Philip. "British Colonists and Imperial Interests in Lower Canada, 1820 to 1841." Doctoral Thesis, Queen Mary College, University of London, 1978, p. 237-38.

¹⁴ *Ibid.*, p. 244.

In his doctoral dissertation entitled “English-Speaking Liberals in Canada East, 1840-54,” Michael McCulloch considers the rise to power of the Liberal Party in Canada East following the Union of the Canadas. Of particular interest is his second chapter, which examines English-Canada’s opposition, more specifically, John Nielson and his Quebec City associates, to the Union of the Canadas and some of the ordinances that were passed by the Special Council under Thompson. He especially focused on Nielson’s anti-union movement, including petitions, meetings and newspaper articles. Although Nielson worked very hard to promote anti-union sentiment amongst English-speaking Lower Canadians, McCulloch maintains that the majority, especially the commercial and political elite, supported it. Even in Quebec City where Neilson focused most of his attention, “the upper levels of the Anglophone community had declared favour of it.”¹⁵

In “Positive Law, Positive State: Class Realignment and the Transformation of Lower Canada, 1815-1866,” Brian Young adds to our understanding of the impact of the Special Council on Lower Canada and demonstrates how the council, which was dominated by the Montreal Anglophone elite, passed several laws and regulations that changed Lower Canada.¹⁶ Along with establishing new laws that sought to end the Rebellions and punish its participants, the Special Council also aimed to expand the role of the state in the colony and improve its infrastructure. Many schools, Catholic colleges, literary societies, and other social institutions (for the elderly, sick and orphans) were thus established during the period. Bridges, roads, and the Chambly Canal were also financed by the state.

¹⁵ Michael McCulloch, “English-Speaking Liberals in Canada East, 1840-54.” PhD Dissertation. University of Ottawa, 1985, p. 65.

¹⁶ Brian Young, “Positive Law, Positive State: Class Realignment and the Transformation of Lower Canada, 1815-1866,” in *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, ed. Allan Greer and Ian Radforth (Toronto: University of Toronto Press, 1992), pp. 50-58.

The most substantial study to date available is a 1997 Master's thesis by Steven Watt entitled "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841." Watt also published a short article based on his thesis entitled "State Trial by Legislature: The Special Council of Lower Canada, 1838-41."¹⁷ Both are particularly significant as they further demonstrate that several of the colony's residents, particularly the members of the *Constitutional Association of Montreal* (CAM), attempted to use their positions as councilors to further local and personal interests. These men had their own goals in mind and worked very hard to reach them. They even sent representatives before the British Parliament to gain support for their cause. These councilors did not believe that they were simple "yes-men" that were forced to abide to the Governor General's every desire, but actively sought to change Lower-Canadian society. Watt also considers the personal experiences of two members of Colborne's and Thompson's Special Council: Pierre de Rocheblave and John Neilson. Their experiences further our knowledge of what happened behind the tightly closed doors of the Special Council. Their firsthand accounts have shown, for example, that there was a significant amount of tension within the ranks of the Special Council to the point that Neilson resigned from his seat in 1840 and de Rocheblave seriously considered doing the same. Although a good starting point, Watt's thesis is nonetheless incomplete. Not only is Durham's council completely ignored because it was only "a few meetings of imperial officials where not a single vote was held [and as a result it] says little about domestic

¹⁷ Steven Watt, "State Trials by Legislature: The Special Council of Lower Canada, 1838-41," *Canadian State Trials, Vol. 2: Rebellion and Invasion in Canada, 1837-38*, Eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002), pp. 249-278.

Lower Canadian politics,”¹⁸ but Watt also failed to consider the opinion of the people towards this CAM-dominated body. Watt not only admits that research on this subject is seriously lacking, but he also has an explanation for it:

Undoubtedly, one reason the Special Council has generated relatively little interest among historians of Lower Canada and Quebec is that the institution left very few traces of itself. Its work tended to be eclipsed by more pressing concerns and more dramatic events in which it played at best a secondary role. Between early 1838 and early 1841, Lower Canada witnessed an armed rebellion and equally violent reprisals, Lord Durham's report was published, union was debated and then imposed, and Lower Canadians prepared for elections within this new political framework. These were the events that preoccupied contemporaries' attention, and that dominate the written record of the period, whether in the form of newspapers or correspondence.¹⁹

Along with the above, another historian has also considered the Special Council, albeit his contribution is quite minor. In *The Oxford Companion to Canadian History*, Louis-Georges Harvey wrote a short entry on the Special Council and its role in Canada. Interestingly, he supports Brian Young's theories that the council played a significant role in changing and modernizing the colony's infrastructure, and even stated that “the council facilitated the transition to a form of government more in keeping with the emergence of commercial capitalism in the St. Lawrence Valley.”²⁰

Some historians have also focused their studies on specific ordinances passed by the Special Council. For example, F. Murray Greenwood's article entitled “The General Court Martial at Montreal, 1838-39: Legal and Constitutional Reflections” considers the legality and constitutionality of the Court Martial Ordinance; an ordinance that authorized

¹⁸ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841”, p. 19.

¹⁹ *Ibid.*, p. 12.

²⁰ Louis-Georges Harvey, “Special Council,” in *Oxford Companion to Canadian History*, ed. Gerald Hallowell (Toronto: Oxford University Press, 2004), p. 594.

the trial of civilians in peacetime by courts martial. After considering the boundaries that were initially imposed on the authority of the Special Council and the opinions of several local judges and British law specialists, Greenwood believes that the ordinance went well beyond the powers and authority of the Special Council.²¹ Jean-Marie Fecteau's articles, "'This Ultimate Resource': Martial Law and State Repression in Lower Canada, 1837-38" and "Mesures d'exception et règle de droit: Les conditions d'application de la loi martiale au Québec lors des rébellions de 1837-38," examine the use of martial law after the 1837-38 Rebellions. According to Fecteau, the Special Council established martial law after the second insurrection, not to suppress the rebellion itself, but to further its, and its supporters', own political agenda, which aimed to suppress and assimilate French-Canadians.²² Finally, "'Cahots' and Catcalls: An Episode of Popular Resistance in Lower Canada at the Outset of the Union", an article by Stephen Kenny, examines the unexpected consequences of the Sleigh Ordinance.²³ Throughout its tenure, the Special Council attempted to force, on several occasions, the local population to change their winter sleighs as they were damaging the colony's most important arteries: the postal roads. However, every time such an ordinance passed, the local population resisted and as a result, it was soon abandoned. According to Kenny, this episode suggests that French-

²¹ F. Murray Greenwood, "The General Court Martial at Montreal, 1838-39: Legal and Constitutional Reflections," in *Canadian State Trials, Vol 2: Rebellion and Invasion in the Canadas, 1837-38*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002), pp. 325-352 and F. Murray Greenwood, "The General Court Martial of 1838-39 in Lower Canada: An Abuse of Justice," *Canadian Perspectives on Law and Society: Issues in Legal History*, eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), pp. 249-290.

²² Jean-Marie Fecteau, "Mesures d'exception et règle de droit: Les conditions d'application de la loi martiale au Québec lors des rébellions de 1837-38," *Revue de droit de McGill* 32:3 (1987), pp. 465-95; Jean-Marie Fecteau, "'This Ultimate Resource': Martial Law and State Repression in Lower Canada, 1837-38," *Canadian State Trials, Vol 2: Rebellion and Invasion in the Canadas, 1837-38*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002), pp. 207-247.

²³ Stephen Kenny, "'Cahots' and Catcalls: An Episode of Popular Resistance in Lower Canada at the Outset of the Union," in *Canadian Historical Review* 65, No. 2 (1984), pp. 184-208.

Canadians were not particularly content in the period that preceded the Union of the Canadas and were not afraid to show it: “[t]his episode of popular resistance demonstrates the true frame of mind of Lower Canadians. When it came to sleighs, the Canadiens refused to be subjugated by stupid and inappropriate laws.”²⁴

The Police and the Municipal Ordinances have also created a lively debate amongst historians.²⁵ These will be discussed in detail in a later chapter. There have also been a few studies on the Seminary Ordinance.²⁶ For example, according to Brian Young, in *In its Corporate Capacity: The Seminary of Montreal as a Business Institution*, the Seminary Ordinance was very important to Lower Canada as it was the colony’s first, albeit modest, step to getting rid of the seigneurial system. The fact that it was a modest step was confirmed by both Robert C.H. Sweeney and Grace Laing Hogg’s as well as Tom Johnson’s articles, which maintained that the great majority of Montrealers could not

²⁴ *Ibid.*, p. 207.

²⁵ On the topic of the Police Ordinance: Daniel Dicaire, “Police et société à Montréal au milieu du XIX^e siècle,” Master’s Thesis. UQAM, 1999; Martin Dufresne, “La justice pénale et la définition du crime à Québec, 1830-60,” PhD Dissertation. University of Ottawa, 1997; Donald Fyson, *Magistrates, Police and People* (Toronto: Published for the Osgoode Society for Canadian Legal History by University of Toronto Press, 2006); Allan Greer, “The Birth of the Police,” in *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, ed. Allan Greer and Ian Radforth (Toronto: University of Toronto Press, 1992); Michael McCulloch, “Most Assuredly Perpetual Motion: Police and Policing in Quebec City, 1838-1858,” *Urban History Review* 19 (2) (1990), pp. 100-112. On the topic of the Municipal Ordinance: Donald Fyson, “Les structures étatiques locales à Montréal au début du 19^{ème} siècle,” *Les cahiers d’histoire* 17 (1-2) (1997): 55-75; Donald Fyson, “La paroisse et l’administration étatique sous le régime britannique,” *Atlas historique du Québec : La paroisse*, ed. Serge Courville and Norman Séguin (Quebec City: Les presses de l’Université Laval, 2001), pp. 25-39; Donald Fyson, “The Canadiens and British Institutions of Local Governance in Quebec, from the Conquest to the Rebellions,” *Transatlantic Subjects: Ideas, Institutions, and Social Experience in Post-Revolution British North America*, ed. Nancy Christie (Montreal and Kingston: McGill-Queen’s University Press, 2008): 45-82; Donald Fyson, “L’administration municipale avant les municipalités: le Régime britannique, 1764-1840,” *Cap-aux-Diamants* 102 (2010): 9-11; Jacques l’Heureux, “Les premières institutions municipales au Québec ou ‘machine à taxer,’” *Cahier du Droit* 20 (1-2) (1979), p. 331-356.

²⁶ Georges E- Baillargeon, “L’abolition du régime seigneurial (1829-1854).” Doctoral Dissertation, Université de Montréal, 1963; Tom Johnson, “In a Manner of Speaking: Towards a Reconstitution of Property in mid-19th century Quebec,” *McGill Law Journal* 32 (3) (1987), 636-672; Robert C.H. Sweeney and Grace Laing Hogg, “Land and People: Property Investment in Late Industrial Montreal,” *Urban History Review* 24 (1) (1995), pp. 42-51; Brian Young, *In its Corporate Capacity: The Seminary of Montreal as a Business Institution* (Kingston and Montreal: McGill-Queen’s University Press, 1986);

afford to commute their lands into freeholds.²⁷ Finally, Georges E- Baillargeon's (aka Brother Marcel-Joseph) 1963 doctoral dissertation posits the interesting theory that by the time the 1840 Seminary Ordinance was adopted, not all French-Canadians supported the end of the seigneurial system. In fact, Baillargeon maintains that there was a clear divide between city residents and rural folk.²⁸ Finally, the Registry Ordinance has also been the subject of a few studies.²⁹ For example, while Evelyn Kolish considered the history of a land registration system in Lower Canada, Bettina Bradbury considered its impact on the women of Lower Canada. Similar to the Police and Municipal Ordinances, studies on the Seminary and Registry Ordinance will be further discussed in this dissertation.

Several biographies and studies have also considered Lord Durham's tenure in Lower Canada and at the head of the Special Council such as, for example, Roger Viau's *Lord Durham* and Chester New's *Lord Durham's Mission to Canada*.³⁰ These, however, solely focus on the Bermuda Ordinance, its features, the opinions of Lower-Canadians towards it, and Durham's problems with the British Parliament as a result. For example, historian Chester New especially focused on the controversy caused by Durham's Bermuda Ordinance, and argued that Durham was unjustly condemned by British politicians. In both cases, popular opinion is yet again incomplete as it remains limited to the opinions of a few key political figures and a few newspapers. Another interesting

²⁷ Robert C.H. Sweeney and Grace Laing Hogg, "Land and People," p. 42; Tom Johnson, "In a Manner of Speaking," p. 640.

²⁸ Georges E- Baillargeon, "L'abolition du régime seigneurial," pp. 1 & 353-56.

²⁹ Bettina Bradbury, "Property and Marriage: The Law and the Practice in early 19th Century Montreal," *Histoire Sociale* 26 (51) (1993), 9-39; Evelyn Kolish, *Nationalismes et conflits de droits: le débat du droit privé/ au Québec* (LaSalle, Québec: Hurtubise HMH, 1994); Sylvio Normand and Alain Hudon, "Le contrôle des hypothèques secrètes au XIX^e siècle: ou la difficile conciliation de deux cultures juridiques et de deux communautés ethniques," *Revue de droit immobilier* (1990), pp. 170-201.

³⁰ Chester New, *Lord Durham's Mission to Lower Canada: An Abridgement of Lord Durham: A Biography of John George Lambton, First Earl of Durham* (Toronto: McClelland and Stewart Limited, 1929) and Roger Viau, *Lord Durham* (Montréal: Editions HMH limitée, 1962).

study on Lord Durham is I.D.C. Newbould's "Lord Durham, the Whigs and Canada, 1838: The Background to Durham's Return." This article focuses on the poor response that his Bermuda Ordinance received in England, which led to his early resignation. More specifically, while some historians such as Chester New have argued that Durham was unjustly condemned by British politicians, Newbould believes that although Durham should have received more support, the arrogance he had practiced since the early 1830s created a general dislike towards him in England, which explains why he was so severely condemned.³¹ Lord Brougham's attacks, he explains, were the result of a deep personal hatred towards the Governor General.

Several more recent studies have also examined Lord Durham's political thought and aims while in Lower Canada. Janet Ajzenstat excellent study entitled *The Political Thought of Lord Durham* and "Durham and Robinson: Political Faction and Moderation," considers his general attitude towards French-Canadians and nuances a specific interpretation regarding his attitude towards the local population.³² According to Ajzenstat, Durham did not wish to assimilate French-Canadians simply because he felt they were culturally inferior or because he was "racist."³³ In fact, he wanted to ensure that French-Canadians would survive in a British-dominated North America. Ged Martin also considered Lord Durham's tenure at the head of the Special Council and the impact he

³¹ I.D.C. Newbould, "Lord Durham, the Whigs and Canada, 1838: The Background to Durham's Return." *Albion: A Quarterly Journal Concerned with British Studies*, Vol. 8, No. 4 (1976), pp. 351-52.

³² Janet Ajzenstat, *The Political Thought of Lord Durham* (Kingston, Ont: McGill-Queen's University Press, 1988); Janet Ajzenstat, "Durham and Robinson: Political Faction and Moderation," *Canada's Origins: Liberal, Tory or Republicanism*, eds. Janet Ajzenstat and Peter J. Smith (Ottawa : Carleton University Press, 1995), pp. 139-158.

³³ Ajzenstat, *The Political Thought of Lord Durham*, p. 5.

had on the colony.³⁴ Martin believes that Durham's mission was flawed from the very beginning and therefore doomed to fail. Durham's poor relationship with his minister's along with his negative attitude towards French-Canadians were, according to Martin, the likely culprits.³⁵

General histories have not been as generous with the Special Council, however. For example, historians Allan Greer and Jean-Paul Bernard only briefly examined the Special Council in their studies of the 1837-38 Rebellions.³⁶ In fact, both only provide a general overview of a few of the council's ordinances. For example, all that Bernard considered was the fact that the Special Council settled the Seminary of Montreal issue (without details) and benefitted the colony's elite. Unfortunately, the Special Council is not treated as a serious political body and its most important ordinances are completely ignored—so is the population's reaction and opinions towards it.³⁷ Although his section on the council was as brief, Greer was nonetheless very clear about his opinion of the Special Council, which he described as a nothing short of a dictatorship as he explains that “the authoritarian regime of the Special Council (1838-41) had a free hand to govern Lower Canada without regard to the views of the population.”³⁸ According to Greer, it was also very partisan as it solely favoured the interests of the urban business community; it was not a neutral care-taker. Gerard Filteau's treatment of the Special Council is also

³⁴ Ged Martin, “The Influence of the Durham Report,” *Reappraisals in British Imperial History*, ed. Ronald Hyam and Ged Martin (London : Macmillan, 1975), pp. 75-87; Ged Martin, “Attacking the Durham Myth: Seventeen year On,” *Journal of Canadian Studies* 25 (1) (1990): pp. 39-59.

³⁵ Martin, “The Influence of the Durham Report,” p. 77.

³⁶ Jean-Paul Bernard, *The Rebellions of 1837 and 1838 in Lower Canada*. Canadian Historical Association Historical Booklet, No. 55. (Ottawa: 1996); Greer, Allan. *The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada* (Toronto: University of Toronto Press, 1993)

³⁷ Bernard, *The Rebellions of 1837 and 1838 in Lower Canada*, pp. 25-28.

³⁸ Greer, Allan. *The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada* (Toronto: University of Toronto Press, 1993), pp. 356-57.

limited. In *Histoire des Patriotes*, he simply considers Durham's tenure at the helm of the Special Council, but more specifically, his most important ordinance: the Bermuda Ordinance. In only a few pages, Filteau describes the ordinance itself, Durham's quest to promote peace and stability in the colony by acting like a generous victor, and the positive response that his ordinance received from Lower Canadians. His examination of public opinion is limited, however, to a few editorials from *The Montreal Gazette* and *Le Fantasque*, and therefore does not give a detailed illustration of what the population, in general, was actually thinking.³⁹

Although incredibly rich, Jacques Monet's *The Last Canon Shot* and J.M.S. Careless' *The Union of the Canadas: The Growth of Canadian Institutions, 1841-1857* did not give much space to the Special Council. Monet's book examines French-Canadian nationalism between 1837 and 1850, a period that was marked by both Lord Durham's infamous report and the Union of the Canadas. Although Monet does mention the Special Council itself, he limits himself to discussing Thompson's role in promoting union to both Lower and Upper-Canadians. Despite the governor's best efforts, Monet explains that French-Canadians were opposed to the idea. Although the author claims to examine public opinion to illustrate this opposition, his study suffers from the same problems as the above; it is solely limited to an examination of a few newspapers (*Le Populaire*, *Le Canadien*, and *L'Ami du Peuple*), and a few major political and religious figures such as Louis-Hippolyte La Fontaine and Monseigneur Lartigue. Despite the significant role that the Special Council played in adopting the plan to unite the Canadas, as will be later discussed, Monet's treatment of the council itself is quite simply non-existent. No

³⁹ Filteau, *Histoire des Patriotes*, pp. 386-394.

member and no ordinance is considered.⁴⁰ This is a similar with Careless' study, which examines one of the most important periods in Canadian history: 1841-1857. This period was marked by the Union of the Canadas, a change to responsible government, and the end of the "feudal" system in Lower Canada with the abolition of the seigneurial tenures and clergy reserves. In his first chapter, which explores the period that preceded the Union of the Canadas, Careless briefly mentions the Special Council.⁴¹ Like many other studies, however, it is brief and incomplete as Careless solely focuses on summarizing Thompson's role in promoting union in both Lower and Upper Canada, its long-term goals, their consequences on French-Canadians, and the opinions of Lower-Canadians towards it. Similar to the above studies, his treatment of the opinion of Lower Canadians is, once again, limited to a few newspapers and politicians. All members of the Special Council and the other ordinances it passed are, once again, completely ignored as well.

The biographies found on the *Dictionary of Canadian Biography Online*—more specifically, those dealing with the three governors that headed it, and the men that sat as its councilors—also considered the Special Council.⁴² However, like all other studies, they also do so very vaguely. Other than offering some valuable information on the councilors and governors that sat in council, these do not provide much explanation on the importance of the Special Council.

⁴⁰ Jacques Monet, *The Last Canon Shot* (Toronto: Toronto University Press, 1970), pp. 11-77.

⁴¹ J.M.S. Careless, *The Union of the Canadas: The Growth of Institutions, 1841-1857* (Toronto: McClelland and Stewart Limited, 1967), pp. 1-7.

⁴² The following are examples of the biographies considered by this dissertation. Consult the bibliography for a list of all articles consulted. "Christie, William Plenderleath." Françoise Noël, VII. 184-86; "Faribault, Joseph-Edouard." Marthe Faribault-Beauregard. VIII. 287-89; "Gerrard, Samuel." Peter Deslauriers. VIII. 320-22; "Joliette, Barthélemy." Jean-Claude Robert. VII. 446-50; "Knowlton, Paul Holland." Marion L. Phelps. IX. 433-35; "Laterrière, Marc Pascal de Sales." Jean-Pierre Gagnon. X. 431-32; "McGill, Peter." Robert Sweeny. VIII. 540-44; "Molson, John." Alfred Dubuc & Robert Tremblay. VIII. 630-34; "Neilson, John." Sonia Chassé. VII. 644-49; "Pothier, Toussaint." Philippe Pothier. VII. 702-04; "Quesnel, Jules-Maurice." Paul Desrosiers. VII. 702-04; "Stuart. Sir James." Evelyn Kolish. VII. 842-45.

Even studies that focus on an important character that characterized the Special Council also ignored it. In “Sydenham and Utilitarian Reform,” for example, Ian Radforth considers Charles Poulett Thomson’s (Lord Sydenham) tenure at the head of the Special Council and the role of utilitarianism throughout.⁴³ Founded by the Jeremy Bentham, utilitarianism is the belief that actions and socio-political reforms must only be determined by their contribution to utility; Thompson was considered one of the movement’s most influential figures. On the topic of the Special Council itself, Radforth examines a selection of ordinances that were passed during Sydenham’s tenure. For example, he explores Thomson’s quest to unite the Canadas, his attempts to improve the financial situation of the colonies through the building of canals and the adoption of new emigration policies, and his efforts to reform the colony’s administration through the incorporation of several municipalities and the creation of district councils, which would not only more efficiently deal with local matters, but would also provide a training ground for Canada’s future politicians.⁴⁴ Despite the fact that Radforth considers Thompson’s entire tenure at the helm of the council, he inexplicably ignored the Special Council; there is no mention of the council, its councilors, and the other ordinances it passed. This is all the more surprising when one realizes that several of the ordinances that were examined by Radforth were inspired and even proposed, as will be explained, by the members of the Special Council.

All in all, when compared to the Union of 1841 or the 1837-38 Rebellions, studies

⁴³ Ian Radforth, “Sydenham and Utilitarian Reform,” in *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, edited by Allan Greer and Ian Radforth. Toronto: University of Toronto Press, 1992.

⁴⁴ *Ibid.*, pp. 72-81.

on the Special Council have indeed been extremely limited. In fact, as late as 2009-2010, historians still ignore it and its impact on Lower-Canada and its people. Eric Bédard's recent book, *Les Réformistes: Une génération canadienne-Française au milieu du XIXe siècle*, is another perfect example of this unfortunate reality. In general terms, this book examines a group of French-Canadian politicians (the reformists) who, in the wake of the Union of 1841, fought to defend French-Canadian rights and improve their positions.⁴⁵ Although this book does consider the post-Rebellions period, the Special Council is, once again, largely ignored. In fact, it failed to consider the council's importance and its relationship with the reformists. All that was considered were a few of the council's ordinances, and more specifically, its role in punishing the rebellion. This omission is all the more surprising when one considers the fact that these reformists were working in and fighting a political and social system that was created by the Special Council itself. Not only did they have to combat the changes brought upon by the Union of 1841, but they also had to tackle those produced by the Special Council.

0.2 THESIS TOPIC

This dissertation will therefore cover the period between 10 February 1838, and 10 February 1841.⁴⁶ More specifically, it will consider the Special Council's short history as the legislative body of Lower Canada, and examine its social, political, and economic impact on the colony and its inhabitants. This was an important period in the colony's history. The Special Council's administration coincided with and played an important role

⁴⁵ Éric Bédard, *Les Réformistes: Une génération canadienne-Française au milieu du XIXe siècle* (Montreal: Les Éditions du Boréal, 2009)

⁴⁶ The former date is when the Act that dissolved the Assembly in Lower Canada, suspended the constitution and appointed the Special Council passed in London. The latter date is when the Special Council was dissolved with the union of the two Canadas and the proclamation of a new constitution.

in some of the most important events in its political and constitutional history; it attempted to restore stability after the insurrection of 1837, and then took several decisions that had a tremendous impact on its future.

In the first place, this dissertation will provide some general background regarding the Special Council itself. It will describe the organization and procedures of the council itself and some of the many ordinances it passed. This dissertation will especially focus on ordinances that received the attention of the local population. Moreover, it will consider the debates that the council's ordinances have created amongst the historians that have considered its overall impact on the colony. After considering these debates, it will then assess the legacy of the Special Council. The era of the Special Council produced several ordinances that changed the colony's social, economic and political culture. This late 1830s, early 1840s revolution aimed to especially benefit the English-speaking, and more specifically, the Tory population of Lower Canada.⁴⁷ This dissertation will also emphasize the individuality and uniqueness of each council. Under each governor, the Special Council played and fulfilled a specific role in the colony. Whereas Colborne's second council, for example, was summoned to deal with the 1838 Rebellion, under Thompson, it was convened to approve the Union of the Canadas and prepare the colony for it. Particular attention will be given to Durham's relationship with his council and councilors since historians (as Steven Watt) have not considered the issue.

Finally, the above discussion will play a secondary role; it will set the stage for the second and most important matter considered in this dissertation by emphasizing the

⁴⁷ The term "Tory" has had several different definitions. For this dissertation, Tory is defined as the sources defined it. It describes the British, loyalist, and merchant population of Canada.

authoritarianism of the Special Council. By this I mean that, other than the members of the Special Council itself, the local population played a very little role in the passing of these ordinances. In fact, these were not passed by individuals that were the elected as the representatives of local population, but by an appointed council. The majority of Lower-Canadians had lost all political rights. This second and more important issue is the response, reaction and opinions of Lower Canadians (*Canadiens* and British inhabitants, the presses, and the educated and political elite) towards the authoritarianism displayed by the Special Council, its favoritism, and the various ordinances it passed. As was demonstrated above, this is a topic that has been the subject of very little studies, and even considered impossible by some. This dissertation will thus consider the following questions: did the British and *Canadiens* react differently to the authoritarianism of the Special Council? Considering the fact that many people, *Canadiens* and British alike, did not support the rebellion, did they view the council as a necessary evil to restore peace and stability to the colony, and thus accepted its authoritarianism, and even supported it? More importantly, did French-Canadians submit to the Special Council and all of the new laws and institutions it imposed in the years following the failed Rebellions?

The topic of French-Canadian political activity in the wake of two failed rebellions and a very negative report by Lord Durham has been the subject of several, completely contradictory studies, some arguing that French-Canadian political activity suffered, and others the exact opposite. Some claimed that the French-Canadian population was passive and apathetic after the 1837-38 Rebellions. For example, Gerard Filteau explains that after two failed insurrections, the subsequent executions, and more importantly, Durham's report, French-Canadians simply gave up. Filteau explains how,

soon after the publication of the infamous report, some members of the political elite, which included John Neilson and Etienne Parent, attempted to stir up some opposition towards it. However, it was all for nothing: “[c]e fut peine perdue. La stupeur et l’indignation firent bientôt place à un profond découragement. On avait tout tenté, la résistance passive, la résistance légale, on avait même eu recours aux armes. Et maintenant on ne voyait plus aucun moyen de poursuivre la lutte qui semblait devenir complètement inutile. Les uns succombaient à la lassitude, d’autres s’adonnaient au désespoir.”⁴⁸ In fact, some French-Canadians even maintained that there was nothing left to do but to become English and Protestant.⁴⁹ Lucia Ferreti and Louis Rousseau also talked about a general discouragement and even a “prostration nationale” amongst French-Canadians during this period, which benefitted the Church and the conservative elite.⁵⁰ Even the popular online encyclopedia, *Canadian.org*, maintains that although some French-Canadians did oppose Durham’s anti-French report, the majority were simply too beaten down and apathetic in the post-rebellion period to oppose it and simply accepted it: “[e]n général, toutefois, la population du Bas-Canada était devenue apathique après l’échec des rébellions.”⁵¹

However, other historians have, and rightfully so, nuanced this interpretation.

These studies have argued that some French-Canadians were not apathetic, did remain

⁴⁸ *Ibid.*, pp. 459-60.

⁴⁹ *Ibid.*

⁵⁰ Lucia Ferretti, *Brève histoire de l’Église catholique au Québec* (Montreal: Les Éditions du Boréal, 1999), pp. 59-60 & 79-80; René Hardy, “À propos du réveil religieux dans le Québec du XIXe siècle: le recours aux tribunaux dans les rapports entre le clergé et les fidèles (district de Trois-Rivières).” *Revue d’histoire de l’Amérique Française*, Vol. 48, No. 2 (1994), pp. 187-212; Louis Rousseau, “À propos du “réveil religieux” dans le Québec du XIXe siècle: où se loge le vrai débat.” *Revue d’histoire de l’Amérique Française*, Vol. 49, No. 2 (1995), pp. 223-245; and Ronald Rudin, *Making History in Twentieth Century Quebec* (Toronto: University of Toronto Press, 1997).

⁵¹ Quoted from the *Canadian.org* online encyclopedia, “1839 à 1849: Union et gouvernement responsable—La réaction au Bas-Canada.” http://www1.canadiana.org/citm/themes/constitution/constitution11_f.html

political active, and continued to fight for their rights. For example, in “Aux fondements de l’État canadien: La liberté au Canada de 1776 à 1841,” Michel Ducharme considers the ideological and political battle between the English-dominated Constitutionalists and the French-Canadian republicans (the *Patriotes*). Although the republican movement was defeated with the Rebellions, as most of its leaders were in exile or sent to prison, the reformist movement became the new popular party amongst the *French-Canadian political elite*.⁵² According to Ducharme, this party continued to fight for French-Canadian rights after the Rebellions. Ducharme published two other articles, which furthered this idea that French-Canadians, and more specifically Etienne Parent, continued to fight.⁵³ In both article, Etienne Parent is portrayed as the defender and the spokesperson of French Canada. Ducharme explains that although his message had changed between 1838 and 1840, his demands for French Canada were constant. On 8 February 1838, he asked “[q]ue le peuple Canadien soit maintenu dans ses droits naturels, civils et politiques, qu’on le laisse se développer librement sur son sol, qu’aucune prétention à la domination oligarchique ne soit favorisée [...]”⁵⁴ Jean-Paul Bernard’s *Les Rouges: Libéralisme, nationalisme, et anticléricalisme au milieu du XIXe siècle* and Éric Bédard’s *Les Réformistes: Une génération canadienne-Française au milieu du XIXe siècle* similarly suggests that the French-Canadian elite did not stop fighting for their rights in the wake of the rebellion. Although their treatment of the

⁵² Michel Ducharme, “Aux fondements de l’état canadien: La liberté au Canada de 1776 à 1841.” PhD Dissertation. McGill University, 2005, p. 363.

⁵³ Michel Ducharme, “Quand la plume voile plus qu’elle ne dévoile. Le discours d’Etienne,” in *Portrait des arts, des lettres et de l’éloquence au Québec* (Québec : Les presses de l’université Laval, 2002), pp. 385-95; and Michel Ducharme, “Penser le Canada : la mise en place des assises intellectuelles de l’état canadien modern,” *Revue d’Histoire de l’Amérique française* 56 (3) (2003) : 357-86.

⁵⁴ Ducharme, “Quand la plume voile plus qu’elle ne dévoile,” p. 395.

Special Council is vague, they do nonetheless illustrate that individuals as L.H. La Fontaine opposed Durham's report and the Union of the Canadas.⁵⁵

Although interesting, these studies suffer, however, from one particular problem: they focus entirely on the French-Canadian political elite. In fact, other than Stephen Kenny's article, which focuses on local opposition to the Sleigh Ordinance, we know very little about how the Lower Canadian population, in general, acted in the wake of the Rebellions and the subsequent loss of their political rights with the establishment of the Special Council.⁵⁶ This dissertation will demonstrate that the French-Canadian population did not accept the future that the British Government and the Special Council had for them. Although the French-Canadian population did not express its opposition every single time the Special Council passed an ordinance, it nonetheless, on several occasions, showed its discontent and refused to accept several of the council's ordinances; many were challenged and some even changed as a result. This supports and adds to Ducharme's, Kenny's and Bernard's contention that French-Canadians remained politically active after the two failed rebellions. Even when their right to elect representatives, their assembly and their constitution were taken away, French-Canadians did not admit defeat, but continued to fight for their rights.

0.3 SOURCES/METHODOLOGY

The first source to turn to when studying the Special Council is of course the material it produced and released. These include: *Journals of the Special Council of the*

⁵⁵ Jean-Paul Bernard, *Les Rouges: Libéralisme, nationalisme, et anticléricalisme au milieu du XIXe siècle* (Montréal : Presses de l'Université du Québec, 1971) & Bédard, *Les Réformistes*.

⁵⁶ Kenny, "Cahots' and Catcalls," pp. 184-208.

Province of Lower Canada and Ordinances Made and Passed by the Administrator of Government/ Governor General and Special Council for the Affairs of the Province of Lower Canada. These documents provide a large amount of information including all of the ordinances it passed, how they impacted the colony, and in the rarest of occasions, who voted for and against them. They also contain some of the amendments that the councilors suggested, and at times, the ordinances that were proposed by the councilors themselves. These documents also show how differently each governor treated their council and councilors. Despite the vast array of information that these sources provide, they do have their shortcomings. They provide no information on the relationship among council members, or between councilors and the governor. We do not know, based on these sources alone, whether there were tensions within the council, what the councilors thought of the council itself or even of the ordinances they passed as no debates were found within.

The correspondence of the Governors General and that of several councilors, including Charles Buller, Charles Grey, Edward Hale, Pierre de Rocheblave and John Neilson shed light on their opinions and motivations as well as offers a wide amount of information.⁵⁷ The Governors General's correspondence contains much information on their relationship with their councilors and the Imperial Parliament as well as with the people of Lower Canada. More importantly, it offers insight on the reasoning behind many of the ordinances they proposed and passed. The letters from the councilors are especially important as they offer glimpses of the functioning of the Special Council. One

⁵⁷ The Baby Collection at the Université de Montreal may have letters from men that sat on the Special Council. These letters may or may not be of importance. Moreover, the Neilson Collection (MG24, B1) at Library and Archives Canada was not used because his opinions on the Special Council are clearly expressed in the pages of his newspaper (and confirmed by secondary sources).

of main criticism of the Special Council at the time was that it was extremely secretive; existing newspaper editors and the local population, like modern historians, had very little idea as to what was going on inside. These offer insight into the pressures that some councilors felt in voting a certain way, the anger that some had over the adoption of the ordinances (due to the lack of proper debates), annoyance over the slowness of the entire process and the little work being done, and finally, the many times that some councilors thought of leaving the council itself.

Those sources are particularly useful for the first part of this thesis—that dealing with the Special Council itself. The second section of this thesis, which considers the opinions of Lower-Canadians in general, uses different sources. The most important are the newspapers published between 1838 and 1841. Although this was a very difficult period for newspapers—several editors were forced to stop printing as a result of censorship and arrests—a large number of newspapers, of all types, circulated in the colony. For this dissertation, *every* Lower Canadian newspaper that has *survived* and was *available* at Library and Archives Canada, the University of Ottawa, and La Grande Bibliothèque de Montréal was used. In other words, not one single available newspaper or newspaper article was ignored. In all, over 40 newspapers were examined. These included newspapers from Montreal, Quebec City and the Eastern Townships, for example, as well as French, English, Tory, Liberal, radical, religious and secular newspaper.

I looked at every newspaper and every article relating to the Special Council, the ordinances it passed, the 1837-38 Rebellions, Governors General, constitutional debates, and politics in general between the end of the 1837 Rebellion to the Union of the Canadas in February 1841. The nature of the material makes it possible to look at all of these

newspapers in great detail. Most newspapers circulated no more than twice a week and were often no more than five pages long. This is especially true for the French-Canadian press as many newspapers, such as *La Canadienne*, did not survive more than a few months. As a result of the fact that many newspaper only lasted a few months and that these were published once or twice a week and were no longer than five pages, it was possible to examine all 40, in significant detail, for a period of roughly three years. It is also worthwhile noting that the usual methodology of taking into account the place of the article on the page or the size of the headlines is irrelevant here as articles were jumbled together, and headlines were not designed to catch attention.

These newspapers proved to be a goldmine of information. Along with informative editorials, newspapers also provided several articles and letters from some of the leading members of the English and French-Canadian political and social elite. They also include numerous letters to the editor—more than 120 letters were found—as well as public addresses and petitions that were circulating in the colony. Newspapers also covered and commented on the various public meetings and popular demonstrations that took place in all areas of the colony. Another interesting element of newspapers is that fact that many were closely linked to members of the Special Council such as John Neilson, the editor of *The Quebec Gazette*. His newspaper offers much information on his opinions of the Special Council and the ordinances it passed.

The equation public opinion/newspapers has been the source of much discussion amongst scholars, many of which arguing that newspapers do represent public opinion rather well. For example, Marshall McLuhan, in *The Gutenberg Galaxy: The Making of the Typographic Man*, maintains that newspapers brought political discourse—a game

that was usually played by the elite—to the public forum. The advent of the printing press and the subsequent creation of many newspapers provided the literate population of the time with a way to communicate with one another. Political discourse thus changed from a private experience to “a group confessional form that provides communal participation.”⁵⁸ Equally important is Jürgen Habermas. In *The Structural Transformation of the Public Sphere*, Habermas argued that newspapers were an integral and significant part of the public sphere as they shaped and created public opinion. Quoting Karl Bücher, he maintained

From mere institutions for the publication of news, the papers became also carriers and leaders of public opinion, and instruments in the arsenal of party politics. For the internal organization of the newspaper enterprise this had the consequence that a new function was inserted between the gathering and the publication of news: the editorial function. For the newspaper’s publisher, however, this meant that he changed from being a merchant of news to being a dealer in public opinion.⁵⁹

By therefore enabling a wider audience to take part in political debates, newspapers played a vital role in expanding public opinion.

In a study on the accession of public opinion in Upper Canada from 1791 to 1854 entitled *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854*, Jeffrey McNairn maintains that newspapers played an important role in forging public opinion and echoed it quite well. Starting in the 1820s and 30s, newspapers began appealing to public opinion by providing anonymous forums for political debate. They did this by reprinting several of the Upper Canadian Assembly’s

⁵⁸ Marshall McLuhan, *The Gutenberg Galaxy: The Making of the Typographic Man* (Toronto: New American Library, 1962), p. 204.

⁵⁹ Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge, Mass: MIT Press, 1991), p. 182.

debates, which allowed readers to participate in the political theatre through letters to the newspapers. McNairn goes further, however, and argues that newspapers helped create public opinion, and did not only mirror it. He explains:

The circulation of substantial quantities of print also reinforced the notion that scattered, anonymous readers belonged to the same community of enquiry, were able to adjudicate competing claims, could hold the claimants—whether newspaper editors, elected representatives, or government official—accountable, and had the right to be informed and consulted by a government whose transparency was guaranteed by an expansive definition of freedom of the press. The regular publication of parliamentary intelligence demystified law-making by laying it open to the prying eyes of newspaper readers in ways that redefined the roles of reader, legislator, non-elective institution.⁶⁰

A similar opinion was also shared by Carol Wilton's *Popular Politics and Popular Culture in Upper Canada, 1800-50*, Fernand Roy and Jean de Bonville's "La recherche sur l'histoire de la presse québécoise: bilan et perspectives," Jean de Bonville's *L'analyse de contenu des médias: de la problématique au traitement statistique*. All argue that newspapers promoted the growth of the public sphere and the development of public opinion.⁶¹ Finally, with regards to the Special Council, Steven Kenny's article is also telling. Although Steven Kenny does not believe that newspapers represent *all* of the population's opinions, he nonetheless maintains that they are a very valuable source. He explains that as a result of the repressive measures taken by the Special Council, including censoring the press, newspaper editors often risked imprisonment and had their newspapers shut down when criticizing the government. Kenny explains that the

⁶⁰ Jeffrey McNairn, *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854* (Toronto: University of Toronto Press, 2000), p. 415.

⁶¹ Jean de Bonville, *L'analyse de contenu des médias: de la problématique au traitement statistique* (Paris ; Bruxelles : De Boeck université, 2000); Fernand Roy and Jean de Bonville, "La recherche sur l'histoire de la presse québécoise: bilan et perspectives," *recherches sociographiques* 41 (1) (2000), p. 15-51; Carol Wilton, *Popular Politics and Popular Culture in Upper Canada, 1800-50* (Montreal and Kingston: McGill-Queen's University Press, 2000)

use of the newspapers in an analysis of the sleigh laws is important for an even more fundamental reason. Given the truly dangerous circumstances in which editors operated in these years, their criticisms of sleigh laws and regulation sleighs become even more significant as an indicator of the depth of hostility toward the government of the day.⁶²

Although newspapers do provide much information, they are not the only source for the opinion of Lower Canadians. The documents and correspondence available in the files of the Civil Secretary of Lower-Canada, which contains the surviving remains of material accumulated by the Civil Secretaries of Quebec and Lower Canada, include several petitions.⁶³ One can also find petitions in RG1, E16, which contains several oversize petitions. RG1, B20 contains many petitions for or against the clemency of specific individual, but nothing of value. Because this dissertation's timeframe is very short, I was able to look at every document produced between 1838 and 1841. RG1, E16 and RG1, B20 were also both very small and thus quickly examined. The material from the Civil Secretaries (RG4) is a different story. Although Patricia Kennedy, archivist at Library and Archives Canada, advised that I focus most of my attention on files identified as letters, petitions and "replies to circular letters" since she believed that files identified as "Executive Council—Minutes" or "Crown Law Officers—Opinions" were least likely to have any relevant information, I still looked at every file between 1838 and 1841.

These collections, except RG1, B20, were a goldmine of information. In the first place, most of the petitions that circulated in Lower-Canada at the time were sent to the Civil Secretary and many have survived. A good number (but not a majority) of those

⁶² Kenny, "Cahots and Catcalls," p. 198.

⁶³ Library and Archives Canada. RG 4. Civil Secretary, Correspondence: Quebec, Lower Canada and Canada East, 1760-1863. Includes petitions, despatches, and correspondence.

petitions specifically refer to the Special Council or one of its ordinances. Moreover, those collections contained letters from key political figures concerning the Special Council as well as from the general public. Furthermore, several lawyers and judges heavily criticized some of the council's ordinances, which they considered illegal and subsequently challenged them before a court of law; these court proceedings were also found within the files of the Civil Secretary.

I also considered the material found in CO 42, which includes several documents that were sent to the Colonial Office in London from Lower Canada. A few petitions were included amongst these documents. My methodology was, once again, very simply: I first looked at the 1901-02, 1941 and 1942 Public Archives Reports, which contain very detailed descriptions of each item that is found in the collection. I focused on all entries that related to petitions and addresses on the subject of the Special Council or an ordinance it had passed. This led to the finding of a very small number of petitions, confirming Kennedy's advice that almost all of surviving petitions can be found in RG4, A1.⁶⁴

Here, I am not concerned with the *impact* of the petitions themselves or whether they indeed forced change in the colony. Instead, I am concerned with what they say about the Special Council. I am using them to create a general overview of what the general opinion was with regards to the Special Council, and am not concerned with the impact or importance of petitioning during the period. Petitions, just like newspapers,

⁶⁴ Since this dissertation especially focuses on the local population, and is not so much interested with the Special Council's (or the governor's) conversations with London, I relied on CO 42 instead of CO 43, which contains the dispatches sent from the Colonial Office to the governors. Although they provide important insights on the relationship between London and the Special Council, they fall outside the ambit of this dissertation.

provide an important source of information when considering public opinion. In his doctoral dissertation entitled “Duty Bound and Every Praying: Collective Petitioning to Governors and Legislators in Selected Regions of Maine and Lower-Canada, 1820-1838,” Steven Watt describes the value of petitions, which he describes as a “widespread manifestation of informal politics.”⁶⁵ Although Watt admits that petitions were ineffective in forcing and creating political change, they are an important tool in understanding public opinion at the time. Like newspapers, they provide information as to what was being discussed at the time. Watt explains:

[...] the democratic potential of petitioning primarily lies in its ability to give voice to a broader variety of political opinions and perspectives than would be possible within formal politics alone.⁶⁶

He adds:

It does so not merely by multiplying the pretexts and opportunities for political expression, but also by shifting the very foundations of political debates in such a way as to better reflect the local preoccupations of petitioners.⁶⁷

According to Watt, petitions also give an impressive image of the political expression at the time because they were extremely widespread and reflected the attitudes of many. Petitions were used and signed by all members of society: from judges, to convicts, women, men, natives, etc.⁶⁸ Moreover, the flexible nature of petitions helped raise

⁶⁵ By informal politics Watt means practices initiated by ordinary citizens; petitions and public demonstrations are good examples of informal politics. Formal politics refer to the contest of political power via elections, parliamentary deliberations, etc. Steven Watt, “Duty Bound and Every Praying: Collective Petitioning to Governors and Legislatures in Selected Regions of Maine and Lower-Canada, 1820-1838.” PhD Dissertation. UQAM, 2006, p. 8.

⁶⁶ *Ibid.*, p. 11.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, p. 245.

subjects and issues that would not have been addressed by politicians and electoral campaigns.⁶⁹ They illustrate what individuals away from formal politics thought.

Carol Wilton, in *Popular Politics and Political Culture in Upper Canada, 1800-1850*, also made extensive use of petitions. Although she agrees that petitions are important tools in understanding public opinion as they “channeled the energies of thousands of ordinary Upper Canadians into the political process,” she does not agree that they were ineffective in forcing political change.⁷⁰ By stirring up public opinion in their favour through public meetings and even parades, petitioners ensured that their cause “would attract the attention of the highest authorities in the province.”⁷¹ Such petitions were thus often subject to discussion in the Assembly and Legislative Council, and even between the Governors General and the Colonial Office.

Finally, I used an array of printed material from political parties as well as key political and social figures, which reveal their opinions on the state of the colony in the aftermath of the Rebellions, their hopes for the future of the colony and British North America and their opinions of the Special Council and its decisions. These will thus demonstrate whether the Special Council was satisfying their various demands and hopes and whether they supported the council’s decisions. These include documents from the Constitutional Association of Montreal, Association loyale canadienne, Adam Thom, Louis-Hippolyte La Fontaine and Louis-Joseph Papineau.⁷²

⁶⁹ *Ibid.*, p. 248.

⁷⁰ Wilton, *Popular Politics and Political Culture in Upper Canada, 1800-1850*, p. 6.

⁷¹ *Ibid.*, p. 7.

⁷² Association loyale canadienne. *Déclaration des vues et motifs de l'Association loyale canadienne du district de Montréal*. Montréal, S.N., 1838. CIHM no. 63292; Association loyale canadienne. *Il vient de se former, dans cette ville, une association de Canadiens sous la désignation d'Association loyale canadienne, à l'effet de prendre les moyens nécessaires pour maintenir les liens qui nous attachent à la Grande-*

0.4 OUTLINE:

This thesis's first section considers the organization and procedures of the council itself and the many ordinances it passed. This section more importantly sets the stage to the second section by drawing attention to the authoritarianism of the Special Council and the many pro-English and anti-French Canadian ordinances that were passed. The first chapter considers Sir John Colborne's first tenure at the head of the Special, the second deals with Lord Durham's tenure, the third Colborne's return, and finally, the fourth chapter examines Charles Poulett Thompson's council. Each first considers the members of the council and will describe who they were, where they came from, what their social, political and economic position in the province was, as well as the role they played and the influence they had in the Special Council. Each chapter then considers the ordinances that were passed by the Special Council. Whenever possible, the opinions of councilors towards the council, other councilors, the ordinances that were passed, and in Durham's case, the acts of the Imperial Parliament, are taken into account.

The second part of this thesis discusses Lower-Canadians' responses to the Special Council and its decisions under each successive governor. Not all ordinances

Bretagne... Montreal: S.N., 1838. CIHM no. 62896; Louis-Hippolyte Lafontaine, *Journal de voyage en Europe, 1837-38*, ed. Georges Aubin (Sillery, PQ: Les Éditions du Septentrion, 1999); Louis-Hippolyte La Fontaine, *Au Nom de la Loi, Lettres de Louis-Hippolyte La Fontaine à divers correspondants, 1829-1847*, ed. Georges Aubin and Renée Blanchet (Montreal: Les Éditions Varia, 2003); Montreal Constitutional Association. Constitutional Association of Montreal. Montreal: S.N., 1838. CIHM no. 62075; Montreal Constitutional Association. *Representation on the Legislative Union of the Provinces of Upper and Lower Canada*. Montreal: S.N., 1837. CIHM no. 21589; Papineau, Louis-Joseph, *Lettres à Julie*, ed. Georges Aubin and Renée Blanchet (Sillery, PQ: Les Éditions du Septentrion, 2000); Louis Perrault, *Lettres d'un Patriote réfugié au Vermont*, ed. Georges Aubin (Montreal: Éditions du Méridien, 1999; Thom, Adam. *Anti-Gallic Letters Addressed to His Excellency, the Earl of Gosford, Governor-in-Chief of the Canadas*. Montreal: Montreal Herald, 1836. CIHM no. 21522 and Thom, Adam. *Remarks on the Petition of the Convention, and on the Petition of the Constitutionals*. Montreal: Montreal Herald, 1835. CIHM no. 21479.

garnered the same amount of attention and generated the same level of debate and discussion. In fact, several ordinances, despite their apparent importance in the history of the province, simply did not create much discussion, even amongst newspapers and the socio-political elite. The bulk of the analysis therefore will concentrate on those that provoked reactions.

CHAPTER 1:
THE COLBORNE EXPERIMENT:
COLBORNE'S FIRST COUNCIL, APRIL TO JUNE 1838.

Although the Special Council was specifically created for Lord Durham, it was Sir John Colborne who headed it the longest. Colborne, however, would seem to have been the unlikeliest of candidates for such an honor. In 1836, after a very difficult tenure as the Governor of Upper Canada, Colborne was in New York City awaiting a ship to return to London. When news of the Lower Canadian Rebellion broke, however, he was asked by the Secretary of State for the Colonies, Lord Glenelg, to rush up there, take command of the military, and defend the colony from the rebels. After a successful defense, Colborne was again planning to go back to England, but his return was postponed when Lord Gosford resigned as Governor General of Lower Canada. Colborne, the once heavily criticized Governor General of Upper Canada, became, first, the administrator of Lower Canada, and after Durham's departure, the new Governor General.⁷³ He was also granted the authority to form and head the Special Council while he awaited Lord Durham's arrival. His tenure proved to be extremely significant. Steven Watt even went as far as describing Colborne's as playing "the largest role" as he defined "who would sit on the Special Council, and laid the ground work for how it would operate and what it would do."⁷⁴ Moreover, as will be discussed in this and the following chapters, whereas Durham did not allow his councilors to have a voice in the Special Council, Colborne's councilors

⁷³ All biographical information on Sir John Colborne was taken from the *Dictionary of Canadian Biography Online*. "Sir John Colborne." Allan Wilson. XII. Discussing Colborne's career prior to his time at the helm of the Special Council is not pertinent for our purpose. For more information on his military and political career, consider the above article.

⁷⁴ Watt, "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841," p. 26.

played a much more active role. Peter McGill and John Molson, for example, even proposed ordinances to the governor that he then asked the Special Council to pass.

1.1 COLBORNE'S COUNCILORS

In February 1838, Colborne began constituting the first of four successive Special Councils by appointing the councilors that would assist him. Although the choices were his, he received some instructions from the Colonial Office. For example, on 19 February 1838, Glenelg sent him the following:

We do hereby direct that such persons only shall be appointed by you Special Councilors in pursuance hereof and of the said Act, as shall be persons of approved loyalty, and good life, and as shall be of the full age of twenty-one years, and as shall be our subjects natural born, or duly naturalized.⁷⁵

Glenelg's dispatches also advised him on what the Special Council ought to do. First of all, Colborne was expected to renew or extend acts that were to expire on 1 May 1838. All political prisoners were to be held until Durham's arrival, "unless they can be tried by the ordinary tribunals of the country."⁷⁶ Glenelg also insisted that a law suspending *habeas corpus* also be passed in order to revoke martial law if it was still in force in Montreal. Glenelg finally reminded Colborne that his and his councilors' appointment was temporary; as soon as Lord Durham arrived, "he [was] entrusted wholly unfettered as to the choice of councilors."⁷⁷

⁷⁵ Library and Archives Canada. RG4, A1. Civil Secretary's Correspondence, Volume 531, file 19, pp. 185-86. Glenelg to Colborne, February 19, 1838.

⁷⁶ LAC, MG11, CO42, Series Q, vol. 244, p. 440. Dispatch from Lord Glenelg to John Colborne, 19 February 1838. Another version of the letter was also found in LAC, MG11, CO42, Series Q, vol.269A, p. 74.

⁷⁷ *Ibid.*

Colborne therefore began sending letters to individuals he sought to recruit as Special Councilors. Shortly after, return letters started to arrive, each expressing how honored they were of being appointed to such an important office and the trust that the governor had placed in them. Most also believed that suspending the constitution and dissolving the Legislative Assembly, although controversial, were necessary measures to deal with the colony's many problems.⁷⁸

A total of 22 individuals accepted their positions as Special Councilors. Most had significant political experience and were some of the colony's leading businessmen. They without a doubt represented the elite of Lower Canadian society (Table 1).⁷⁹

⁷⁸ LAC, RG4, A1. Civil Secretary's Correspondence, Volume 534, File: 4-6 April, 1838, p. 50. Letter from Amable Dionne, April 5, 1838.

⁷⁹ Shortly after attending the first session of the Special Council, Ichabod Smith also stepped down as a result of health issues. Thomas Austin replaced him on the Special Council. LAC, RG4, A1. Civil Secretary's Correspondence, Volume 534, File: 12-16 April 1838, p. 190. Letter from Ichabod Smith, April 16, 1838. According to Steven Watt, Thomas B. Anderson was also offered an appointment to the Special Council, however Brown's name never appeared in the *Journals*. Watt, "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841," p. 27.

Table 1: List of Special Councilors in Colborne's First Council⁸⁰

Councilor	Home Town	Economic Experience	Political Experience	Seigneur
Casgrain, Charles E.	Rivière-Ouelle	No	Yes	No
Christie, William P.	Montreal	Yes	Yes	Yes
Cuthbert, James	Berthier	Yes	Yes	Yes
De Léry, Charles E.C.	Quebec City	Yes	Yes	Yes
Dionne, Amable	Kamouraska	Yes	Yes	Yes
Dionne, Joseph	St-Pierre de Nicolet	Yes	No	No
Faribault, Joseph E.	Assomption	Yes	Yes	No
Gerrard, Samuel	Montreal	Yes	Yes	Yes
Joliette, Barthelemi	Assomption/ Joliette	Yes	Yes	Yes
Knowlton, Paul Holland	Knowlton	Yes	Yes	No
Laterrière, Marc De Sales	Les Éblouements	Yes	Yes	Yes
Mayrand, Etienne	Rivière-du-Loup	Yes	Yes	No
McGill, Peter	Montreal	Yes	Yes	No
Molson, John	Montreal	Yes	Yes	No
Neilson, John	Quebec City	Yes	Yes	No
Penn, Turton	Montreal	Yes	Yes	No
Pothier, Toussaint	Montreal	Yes	Yes	Yes
Quesnel, Jules	Montreal	Yes	Yes	No
Rocheblave, Pierre de	Montreal West	Yes	Yes	No
Smith, Ichabod	Stanstead	Yes	No	No
Stuart, Sir James	Montreal	No	Yes	No
Walker, William	Montreal	No	Yes	No
<i>Austin, Thomas</i>	<i>Eastern Townships</i>	<i>Yes</i>	<i>No</i>	<i>No</i>

⁸⁰ The following information was taken from the *Dictionary of Canadian Biography Online* and the *Dictionnaire des parlementaires du Québec de 1792 à nos jours* on the *Assemblée nationale du Québec* website.

According to Steven Watt, their selection was made with specific goals in mind.⁸¹ First of all, Colborne sought to create the appearance of ethnic and regional diversity; the councilors were selected from around the colony and from both of its linguistic groups. Most regions were represented. Peter McGill and John Molson were from Montreal, John Neilson and Charles de Léry were from Quebec City, Paul Holland and Thomas Austin were from the Eastern Townships, Joseph Dionne was from St-Pierre de Nicolet, Étienne Mayrand was from Rivière-du-Loup, and Amable Dionne was from Kamouraska. Colborne also made sure that his Special Council gave the impression that he did not favour English-Canadians. In fact, out of 22 members, 11 members were French-Canadian, which even led Philip Goldring to conclude that French-Canadians “dominated” the Special Council as half of the members were French, and the other half included francophiles such as John Neilson and James Cuthbert.⁸² However, and as will be further discussed, Steven Watt provides a completely different, and correct, interpretation of this “French-dominated” council.

Despite this diversity, however, these men shared much in common as they represented the colony’s social, political and economic elite. Most played a significant economic role. Toussaint Pothier and Peter McGill, for example, were partners in the

⁸¹ All biographical information in this chapter and in Watt’s thesis on the members of the Special Council was taken from the *Dictionary of Canadian Biography*, ed. Frances Halpenny (Toronto: University of Toronto Press, 1991): “Christie, William Plenderleath.” Françoise Noël, VII. 184-86; “Faribault, Joseph-Edouard.” Marthe Faribault-Beauregard. VIII. 287-89; “Gerrard, Samuel.” Peter Deslauriers. VIII. 320-22; “Joliette, Barthélémy.” Jean-Claude Robert. VII. 446-50; “Knowlton, Paul Holland.” Marion L. Phelps. IX. 433-35; “Laterrière, Marc Pascal de Sales.” Jean-Pierre Gagnon. X. 431-32; “McGill, Peter.” Robert Sweeny. VIII. 540-44; “Molson, John.” Alfred Dubuc & Robert Tremblay. VIII. 630-34; “Neilson, John.” Sonia Chassé. VII. 644-49; “Pothier, Toussaint.” Philippe Pothier. VII. 702-04; “Quesnel, Jules-Maurice.” Paul Desrosiers. VII. 702-04; “Stuart, Sir James.” Evelyn Kolish. VII. 842-45.

⁸² Whereas Neilson supported French-Canadian political rights, James Cuthbert, according to Goldring, was the seigneur of Berthier and also had a French-Canadian wife. Goldring, “British Colonists and Imperial Interests in Lower Canada, 1820 to 1841,” p. 238.

Company of Proprietors of the Champlain and St. Lawrence Railroad; Samuel Gerrard, William P. Christie, and John Molson, were major shareholders in the Bank of Montreal; and Jules-Maurice Quesnel managed steamboat and merchant operations at the Port of Montreal. William Walker was also a partner of the Forsyth, Richardson and Company of Montreal, a company that traded in furs, wholesale provisions, and acted as the East India's Company's Canadian Agent. Pothier, de Rocheblave, Quesnel and Mayrand also played important roles in the North-West Company and in its merger with the Hudson's Bay Company. There were also several seigneurs in the council, including Cuthbert, Christie, Pothier, de Léry, Laterrière, and Joliette. Those who declined their appointments were also part of this elite. One of them was William Price, founder of the William Price Company, which specialized in the export of timber and had Peter McGill as a partner.⁸³

Most councilors also had significant political experience. Many had served as elected members of the Legislative Assembly prior to its dissolution such as Joliette, Faribault, Laterrière, McGill, Neilson, and Quesnel. Unsurprisingly, all opposed the Rebellions. For example, Knowlton, McGill, and Christie had organized militia units, and volunteered to crush the armed insurrection. Opposition to the rebellion did not necessarily mean opposition to the *Patriotes*, however. In fact, Colborne's attempt to make his council appear diverse is astonishing as he even invited men whom had once been allies of Papineau. For example, both Amable Dionne and Laterrière voted in favour of the 92 Resolutions. John Neilson and Charles Casgrain were also members of the *Canadien* party. Both broke with the party in 1834, however, as a result of their opposition to the 92 Resolutions. Colborne even invited Gabriel Marchand to sit on the

⁸³ *Dictionary of Canadian Biography Online*. "William Price." Louise Dechêne. Vol. IX.

Special Council. Marchand was a former major who fought for Britain in the War of 1812. In the months that preceded the rebellion, he came out in favour of the *Patriote* cause and even participated in several of their meetings. However, when the *Patriotes* took up arms against the British, he declined to participate. Although he was opposed to the armed insurrection, he did not support the government's post-rebellion policies and as a result rejected Colborne's invitation.⁸⁴

1.2: THE RISE OF THE CONSTITUTIONALISTS

Although Colborne's council appears to champion diversity, Steven Watt has demonstrated that, in practice, it was the complete opposite. Economic dominance and political experience were not the only things that united many of its members. Many belonged to a group of English-Canadians with a well-defined political agenda called the Constitutionalists. Colborne was more than happy to collaborate with them in their endeavors.⁸⁵

⁸⁴ *Dictionary of Canadian Biography Online*. "Gabriel Marchand." Lionel Fortin. Vol. VIII.

⁸⁵ Existing studies on constitutionalism are very interesting. For example, in her Master's thesis titled "Les mouvements réformistes et constitutionnelles à Montréal, 1834-37," Johanne Muzzo considers the rise of both the reformist and constitutionalist movement in Montreal following the 92 resolutions. She explains that each movement had a different view of what the social and economic structure of Lower Canada should be. The Constitutionalists wanted the adoption of British principles and institution in the colony. They wanted an end to the seigneurial system and the creation of a land registration system. In *Loyalties in Conflict: A Canadian Borderland in War and Rebellion, 1812-1840*, Jack Little turns his attention to the Eastern Townships, where most politically-minded inhabitants shared a specific set of demands, despite their political differences. Like the Montreal Constitutionalists, they demanded "property ownership, economic development, and liberal political institutions." They also similarly distrusted French-Canadians. Finally, perhaps one of the most interesting studies on the topic is Janet Ajzenstat's "The Constitutionalism of Etienne Parent and Joseph Howe." In this short article, Ajzenstat argues that Parent, despite opposing the constitutionalist party, agreed with its political ideology. She maintains that, like his Anglo-constitutionalist counterparts, Parent also supported London's attempts to introduce the principles of the British constitution in Lower Canada. Moreover, Parent believed that the British form of government was essential to guarantee political freedom. He explained: "[t]he principles of our constitution ought to be those of the constitution of the Mother Country." Johanne Muzzo, "Les mouvements réformistes et constitutionnelles à Montréal, 1834-37." Master's Thesis, UQAM, 1990, pp. 158-9; Jack Little, *Loyalties in Conflict: A Canadian Borderland in War and Rebellion, 1812-1840* (Toronto: University of Toronto Press, 2008), p. 64; Janet

According to historian Ronald Rudin, constitutionalism was not only an important rallying point for English-Canadians in the late 1830s, but it was also “one of those rare moments when a certain political unanimity existed with the English-speaking population.”⁸⁶ The movement emerged in the mid-1830s with the rise of the *Patriote* party, increased British immigration, but more importantly, the passage of the 92 Resolutions and the subsequent defeat of English-speaking candidates in the 1834 elections.⁸⁷ In the wake of these two events, Anglo-Lower-Canadians began to organize and complained that even though they were the most important actors in the colony’s economy, they did not enjoy equal political authority.⁸⁸

Initially, the Constitutionalists were not a united group as there was plenty of diversity and divisions among them. Ronald Rudin explains:

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

Ajzenstat, “The Constitutionalism of Etienne Parent and Joseph Howe,” *Canada’s Origins: Liberal, Tory or Republican*, ed. Janet Ajzenstat and Peter Smith (Ottawa: Carleton University Press, 1995), pp. 209 & 212.

⁸⁶ Ronald Rudin, *The Forgotten Quebecers: A History of English-Speaking Quebec, 1759-1800* (Quebec: Institut québécois de recherche sur la culture, 1985), p. 134.

⁸⁷ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 58.

⁸⁸ *Ibid.*, pp. 58-59.

finish the work of the conquest, others such as Neilson hoped that the post-1837 era might see the creation of a political system in which English and French-speaking Quebecers might be able to work together.⁸⁹

Despite such diversity, the constitutionalism that dominated the Special Council was not Neilson's moderate branch, but the more radical, anti-French Constitutional Association of Montreal (CAM). Often labeled the "British" or "Tory" party, the CAM was actually a collection of loyal British, Irish, Scottish, French, Jewish and even German and Native inhabitants who sought to defend the colony from the *Patriote* threat. During the Rebellions, the group played an important role in arming and organizing volunteers and assisted Sir John Colborne in his fight against the rebels.⁹⁰

The CAM not only focused on fighting the *Patriotes*, but it also had a very specific political agenda. Above all, it wanted to rid the colony of French-Canadian political influence. Not only had the ignorant and backwards French-Canadians, as it described them, prevented British colonists from working for the colony's economic benefit, but French-Canadians were also directly responsible for the rebellion. According to *The Montreal Gazette*, which acted as the CAM mouthpiece:

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

The possession of the right of almost universal suffrage, and of a numerical popular majority of the Provincial constituency, gave the complete command of the Representative branch of Legislature to the French Canadians, who soon exhibited a perfect knowledge of their advantage, and of that exclusive spirit which has since invariable actuated

⁸⁹ Rudin, *The Forgotten Quebecers*, pp. 134-35.

⁹⁰ Elinor Kyte Senior, *Redcoats and Patriotes: The Rebellions in Lower Canada, 1837-38* (Ottawa: Canadian War Museum Historical Publication No. 20, 1985), p. 1.

all their proceedings, and grown into a firm determination to their final purpose of the destruction of the interests and rights of the Provincial inhabitants of British and Irish origin, and of the Provincial connexion subsisting with the Parent State.⁹¹

In one of their pamphlets entitled *Representation on the Legislative Union of the Provinces of Upper and Lower Canada*, they further argued that French-Canadian political power had to be eradicated as it “has been the fruitful source of much evil and injury inflicted upon the Province.”⁹² French-Canadians had not only attempted to “annihilate the political rights of the inhabitants of British origin,” but also sought to “abate [the] commercial spirits” of its loyal inhabitants, and “separate that connexion” with the Mother Country.⁹³ The CAM further protested the “inability of British candidates to win elections in predominantly French ridings; [...] the refusal [of the Legislative Assembly] to institute registry offices, to abolish feudal tenure, or promote British immigration; the inadequate representation of British Lower-Canadians in the assembly due to electoral boundaries [...]”⁹⁴

According to the CAM, the only sure way to eliminate French-Canadian political power was the union of both Lower and Upper Canada. In March 1837, George Moffatt, one of the moral leaders of the CAM, described it as “a measure, which under all the accumulated evils of the present political state of Lower Canada, is conceived to be the only remedy by which these evils can be overcome, the prosperity of the Provinces

⁹¹ *The Montreal Gazette*, “Extra,” 15 December 1837, quoted in Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” pp. 63-64.

⁹² Constitutional Association of Montreal, *Representation on the Legislative Union of the Provinces of Upper and Lower Canada* (S.I.: S.N., 1837), p. 19. CIHM no. 21589.

⁹³ *Ibid.*, p. 19.

⁹⁴ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 64.

recurred, and their ultimate connexion with the parent state preserved.”⁹⁵ It was hoped that union would drown French-Canadians in a sea of British subjects, laws and institutions. To prove such a belief was correct, many pointed at Upper Canada, which many viewed as the example of what their colony could become under full British control.

The enlarged views of the inhabitants of Upper Canada have boldly extended beyond their own time into distant years, and beyond their own frontiers into the rich and productive new settlements of the western portions of the American Union; but the great undertakings and increased facilities of communication, now in progress, as well as those in contemplation in Upper Canada, for the attraction of the trade of those fertile countries so rapidly growing into importance, will not only be rendered imperfect in their usefulness, but their anticipated advantages will become absolutely unavailing, from the want of a corresponding spirit in Lower Canada, to assist her advancement.⁹⁶

The Constitutionalists’ influence did not disappear with the end of the Special Council. According to Michael McCulloch, their influence continued until the late 1840s. McCulloch explains that this late decline was not the result of the internal evolution of Lower Canada, but of developments in Great Britain itself. The renewal of the Free Trade movement and the Repeal movement in Ireland were especially damaging for it and divided its ranks.⁹⁷ For example, Irish members split from the British members after the Repeal movement emerged to form their own activist groups, and members of Orange Lodges and Irish activists began to quarrel bitterly.⁹⁸

⁹⁵ Constitutional Association of Montreal, *Representation on the Legislative Union of the Provinces of Upper and Lower Canada*, p. 3.

⁹⁶ *Ibid.*, pp. 9-10.

⁹⁷ Michael McCulloch, “The Death of Whiggery: Lower Canadian Constitutionalism and the Tentation de l’Histoire Parallèle,” *Journal of the Canadian Historical Association* 2 (1991): 198.

⁹⁸ *Ibid.*, pp. 208-09.

How did such a radical group come to dominate the Special Council and impose its own agenda on the colony? But more specifically, why did the CAM end up dominating the council rather than Neilson's more moderate followers? First of all, the CAM had, in the years prior to the rebellion, become the most influential and dominant Constitutionalist Party. In fact, their agenda became that of all of the other parties. For example, in a report on the colony's Constitutionalists 1838 general meeting, the CAM stated that several of the more moderate branches began to support its own anti-French policies and were "entertaining similar views on the subject of the Union of the Canadas."⁹⁹ Such was the case with the Constitutional Association of Quebec (CAQ). Philip Goldring even noted that the CAM and the CAQ had actually begun working closely together in promoting the Union of the Canadas, and even created a "Constitutionalists' Parliament" in 1837-38.¹⁰⁰ The fact that the CAQ dropped its moderate stance and adopted the views of the CAM is quite revealing of its dominance. The CAQ, to whom John Neilson had once belonged, had been sympathetic to French-Canadians, had not wanted to assimilate them, and had respected their rights and institutions.¹⁰¹ In fact, it had even claimed:

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

⁹⁹ Watt, "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841," p. 76.

¹⁰⁰ Goldring, "British Colonists and Imperial Interests in Lower Canada, 1820 to 1841," pp. 218-19.

¹⁰¹ For more information on the Constitutional Association of Quebec (CAQ), consider CAQ, "Declaration of the Causes which led to the Formation of the Constitutional Association of Quebec, and of the Objects of which it has been formed," Quebec. December 1834. CIHM No. 21450

security and freedom for our persons, opinions, property and industry which are the common rights of British Subjects.¹⁰²

However, by the “Great Meeting of the British and Irish Inhabitants of Quebec” of 31 January 1840, all of these moderate views had disappeared. At this gathering, the members of the CAQ, not only turned against John Neilson, who had become the leader of the anti-union movement, calling him a turncoat that had allied himself with the enemy, French-Canadians, but more importantly, they passed resolutions that mirrored that of the CAM: all agreed that French political power had to be eradicated and they believed that only a union with Upper Canada could resolve this and the many other problems that plagued the colony.¹⁰³

How did the CAM come to dominate the Special Council? In the first place, Watt explains that several members of the Special Council were members of the CAM, including McGill, Molson, Gerrard, Penn, George Moffat and Charles Dewey Day. The latter two were members of Colborne’s second council and Thompson’s council. Moreover, several others, who although were not officially Constitutionalists, were nonetheless considered allies. For example, Charles Richard Ogden, who joined Thompson’s council, was a sympathizer of the CAM. Not only did he help the CAM organize volunteer regiments in Montreal, but his political outlook was also very similar. According to Watt, Ogden also blamed several of the colony’s problems on French-Canadians.¹⁰⁴ James Stuart, a member of the CAQ, was also a sympathizer as he often

¹⁰² *Ibid.*, p. 3.

¹⁰³ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 77.

¹⁰⁴ *Ibid.*, p. 83.

worked on behalf of the CAM on political matters.¹⁰⁵ Accordingly, Stuart, as the Presiding Member of the Special Council under Thompson, often “put the association’s legislative program down on paper and ensured its passage.”¹⁰⁶ In fact, Thompson even noted in a letter to Lord John Russell that Stuart played a valuable role in drafting many ordinances. In fact, legislations such as the Union Bill and the creation of a land registry, were not only drafted by Stuart, but they were also some of the most pressing demands made by the CAM. Quite a few French-Canadians were also considered allies. In fact, most French-speaking councilors did not represent the interests of the *habitants*, but were members of the colonial elite who, according to historian Phillip Buckner, “often saw themselves as Provincial Englishmen.”¹⁰⁷ Toussaint Pothier, for example, joined Peter McGill in several ventures, and even voted in favour of the union of the two Canadas. His contemporaries identified him as a “turncoat.”¹⁰⁸

Constitutionalists and their sympathizers were also amongst the very few councilors that attended the *majority* of meetings. In fact, an examination of the *Journals of the Special Council* illustrates that, throughout Colborne’s council, an average of only 15 councilors attended meetings, and eight of them—Stuart, McGill, Neilson, Gerrard, Molson, Penn, Pothier, Knowlton and Christie—were considered either Constitutionalists or, at the very least, strong allies. This is no surprise as meetings were held in Montreal. In fact, evidence suggests that councilors that lived outside Montreal were often unable or simply unwilling to attend meetings. According to an article in *The Quebec Gazette*, poor

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, p. 84.

¹⁰⁷ Phillip Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1850* (Westport: Greenwood Press, 1985), p. 99.

¹⁰⁸ “Pothier, Toussaint.” Philippe Pothier. VII. 702-04.

road conditions not only made it very difficult to attend meetings, but the high cost in time and money also became significant strains.

[T]hose who have attended the sessions regularly, from the district of Quebec, [for example,] have spent some hundreds of pounds of their own property, besides neglecting their affairs, for the purpose of attending sessions of the council. It is within our knowledge that several gentleman actually refused a nomination to the council. The task was, indeed, disagreeable and burthensome. Without the powers of a legislative body, the council had only to say YES or NO to the Drafts of Laws that were submitted to it by the Governor [...]¹⁰⁹

More importantly, Sir. John Colborne, the head of the Special Council, shared the views of the Constitutionals. This relationship predated the council's establishment. Elinor Kyte Senior noted that during the 1837 Rebellion "the steps towards mobilization of local volunteers came about through the combined efforts of *Colborne, Ogden, and Peter McGill*. [Author's italics]"¹¹⁰ Such an alliance proved extremely fruitful. First of all, the governor often considered their opinions and demands. Goldring noted, for example, that whereas James Stuart often offered his legal expertise, "banking ordinances either came directly from the bank of Montreal, Peter McGill, or were amended at *his* suggestion." [Author's italics]¹¹¹ More importantly, the ordinances that were passed by the Special Council specifically aimed to benefit the Constitutionals. For example, Governor Colborne stated his hope "that the ordinances which have been passed by the Special Council, may relieve [them] from some of the embarrassments which the continued opposition to *constitutional* legislation, for so many years passed, must have

¹⁰⁹ *Quebec Gazette*, 30 December, 1838.

¹¹⁰ Elinor Kyte Senior, *Redcoats and Patriotes*, p. 60.

¹¹¹ Goldring, *British Colonists and Imperial Interests in Lower Canada, 1820-1841*, p.248.

produced.”¹¹² Montreal’s commercial and economic development, a major concern of the CAM, especially benefited as “Colborne’s first council managed to pass [...] measures of great interest to the Montreal merchants.”¹¹³ It is therefore no surprise that when Durham took over the Special Council, he dissolved Colborne council because “it was too strongly identified with a single faction [...]”¹¹⁴

Although he initially promoted neutrality, explaining why he got rid of Colborne’s councilors, Lord Durham also eventually sided with the Constitutionalists (this will be further explored in the second chapter). For example, even prior to the rebellion, Durham believed that French-Canadians were the problem. Philip Buckner explains:

The Government knew that he would propose a measure designed to ensure that the English minority in Lower Canada would never again be placed under the authority of a legislative body dominated by French Canadians. No one in the Colonial Office or the Cabinet disagreed with this objective. The problem was how to do it: how to reduce the French-Canadians to comparative political impotence while re-establishing in Lower-Canada ‘anything like a popular government.’¹¹⁵

More importantly, Durham often worked with and surrounded himself with Constitutionalists. For example, he asked George Moffatt to produce a list of grievances that he and the Constitutionalists had. He even made Adam Thom, a staunch supporter of constitutionalism and, as will later be discussed, enemy of French-Canada, one of his assistants.¹¹⁶ A look at Durham’s report also shows his sympathies for the CAM. Not only did he condemn French-Canadians and promote the dominance of the English, but he also

¹¹² *Montreal Courier*, 18 June, 1838.

¹¹³ Goldring, *British Colonists and Imperial Interests in Lower Canada, 1820-1841*, pp. 250-51.

¹¹⁴ Buckner, *The Transition to Responsible Government*, p. 250.

¹¹⁵ *Ibid.*, p. 250.

¹¹⁶ *Canadian Biography Online*. “Thom, Adam.” Kathryn M. Bindon. Volume XI.
http://www.biographi.ca/009004-119.01-e.php?&id_nbr=5868&interval=25&&PHPSESSID=56fa7chs4s04mg7e01strlid6

stressed the need to rid the colony of feudal tenures and the creation of a modern land registry system, all things that the CAM dearly desired. It is thus no surprise that at the end of Durham's tenure, the CAM maintained that his era was "an epoch from which their steady and progressive improvement was to be dated [...]"¹¹⁷

Finally, and as will also be discussed in Chapter 4, the CAM had an important ally in Thompson as well. Thompson also surrounded himself and worked with Constitutionals; he added several such as Ogden, George Moffat and Charles Dewey Day to the Special Council, made James Stuart its Presiding Member, and allowed him to have a very active role in drafting ordinances. In early 1841, George Moffatt, who we have seen was also a prominent supporter of the CAM, was also made Presiding Member.¹¹⁸ Along with Union, Thompson also sought to impose ordinances and reforms that had been long desired by the CAM.

Although their numbers were important, Watt concluded that Constitutionals controlled the Special Council, more through influence. They had friends in high places and used them to their own advantage to the point that some councilors were not only concerned that the council was becoming a tool of the CAM, but it would soon become the most powerful political party in the colony itself. Pierre de Rocheblave was especially concerned. Although his vote in favour of union has made a few historians claim that he favoured the interests of the Anglophone elite, he was, in fact, quite opposed to the CAM and constitutionalism.¹¹⁹ De Rocheblave was the cofounder, in 1838, of a pro-*Canadien*

¹¹⁷ Quoted from Watt, "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841," p. 88.

¹¹⁸ *Ibid.*, pp. 91-93.

¹¹⁹ Robert Rumilly was one of the historians that claimed that de Rocheblave favoured the Anglophone elite. See Robert Rumilly, *Papineau et son temps, II* (Montreal: Fides, 1977), p. 174.

political group known as *Association Loyale Canadienne* (ALC), which opposed the CAM. In its first publication, they attacked the group claiming that

les prétentions injustes de cette faction de nos co-sujets d'origine britannique qui, dans le but avoué de ravir à la majorité des habitants [sic] de ce pays toute l'influence constitutionnelle, profite avec ardeur de la fausse position où nous ont placés les déplorables tentatives d'un petit nombre de nos compatriotes égarés, pour attaquer nos institutions avec acharnement et mauvaise foi.¹²⁰

Many French-Canadians, including de Rocheblave, were thus quite worried that the CAM would use the rebellion, the dissolution of the Legislative Assembly, and the creation of the Special Council to impose an extreme, pro-British agenda on the colony. According to Steven Watt, such fears were later confirmed when de Rocheblave was made aware of the council's membership. De Rocheblave stated that "le choix du personnel du conseil que l'on compose aujourd'hui me paraît un mauvais pronostic—les plus violents partisans d'un côté sont choisis pour le composer; de 15 qu'il doit être l'on assure que 8 au moins sont d'origine bretonne ce qui donne tout à coup une majorité à la petite Minorité."¹²¹ De Rocheblave's fears were further confirmed a few days later when Molson, and more specifically, Thurston Penn, were appointed to the Special Council. About the latter's appointment, he claimed that "il est positivement ainsi que Penn est plus dangereux, en ce que ses principes étaient dit-on très douteux ces années dernières, il était affiché sur des placards il y a deux ans on le disait alors un radical [...]"¹²² According to Watt, rather than worrying about the legitimacy of the Special Council itself, de Rocheblave "was filled with fears that the council would be an opportunity for English-speaking Lower

¹²⁰ Association Loyal Canadienne. *Déclaration des vues et motifs de l'Association loyale canadienne du district de Montréal* (Montréal, S.N., 1838.), p. 2. CIHM no. 63292.

¹²¹ McCord Museum Archives, Bouthillier Collection, File 420, April 9, 1838.

¹²² *Ibid.*, April 14, 1838.

Canadians, led by leading Montreal Constitutionalists, to gain power far beyond what their numbers in the province justified.”¹²³

1.3: DAY-TO-DAY OPERATIONS AND ORDINANCES PASSED

On 18 April 1838, Sir John Colborne held the first session of the Special Council at the Château Ramezay in Montreal.¹²⁴ This first session was different from the ones that would follow as several formalities had to be taken care of. First of all, the rules and regulations that all councilors had to abide to were read.¹²⁵ The procedures regarding the passing of ordinances were also explained: Colborne, or in his absence, the clerk or assistant clerk, was to enter the council chamber, and read the title of the ordinance and its marginal notes.¹²⁶ If the councilors wanted the entire ordinance to be read, they had to propose a motion asking for it and vote on it. If the motion passed, Colborne, or the individual reading the ordinance, would read it accordingly. After this first, and each subsequent reading, councilors were given the right to discuss the ordinance and propose amendments. If the council could not agree on the amendments being discussed, a vote would take place on each debated amendment. Every present member was obliged to vote; there was no abstaining. The ordinance was read a total of three times. During the

¹²³ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 115.

¹²⁴ The following information was taken from Special Council of Lower Canada. *Journals of the Special Council of the Province of Lower Canada from the 18th April to the 5th May, 1838. In the First Year of the Reign of Queen Victoria, Vol. 1* (Montreal: A.H. Armour and H. Ramsay, 1838-1841).

¹²⁵ *Rules and Orders for Maintaining Order and Method in the Despatch of Business, in Her Majesty's Special Council for the Affairs of Lower Canada. Constituted by Her Majesty under an by Virtue of the Ninth Chapter of the Statute of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the first year of Her Reign.* This document may be found in Volume 1 of the *Journals*, pp. 19-21.

¹²⁶ *Ibid.*, p. 30 & 32.

third reading, no more amendments could be suggested, and Colborne would then, if he saw fit, ask if the ordinance was adopted.¹²⁷ A vote could take place as long as Colborne, or in his absence the Presiding Member, and five councilors were present (quorum). If a majority of councilors voted in favor of the ordinance, it was passed and was legally enforceable. These ordinances had the same authority as laws passed by the dissolved assembly. “An Act to make Temporary Provision for the Government of Lower Canada 10th February, 1838,” stated that the ordinances passed by the council “shall have the like force and effect as Laws passed before the passing of this Act by the Legislative Council and Assembly of the said Province of Lower Canada.”¹²⁸ Finally, Colborne appointed James Cuthbert as the Presiding Member to chair the council when he was absent (Colborne and Thompson rarely attended council meetings).¹²⁹ Unfortunately, the *Journals* did not publish the debates that accompanied the passing of various ordinances. As a result, we know very little about what each councilor thought of the various ordinances passed while they were in attendance. Such information can only be obtained from the available correspondence of a few councilors and John Nielson’s editorial in his *Quebec Gazette*.

Other than these formalities, the majority of sessions followed the same routine: meetings always started with a roll call and a prayer, after which the assistant-clerk would read an ordinance proposed by the governor. Councilors then discussed it and proposed

¹²⁷ *Ibid.*, p. 32.

¹²⁸ “An Act to make Temporary Provision for the Government of Lower Canada 10th February, 1838,” 1. Vic. C. 9, reprinted in Special Council of Lower Canada. *Ordinances made and Passed by the Administrator of the Government, and the Special Council for the Affairs of the Province of Lower Canada, Vol. 1* (Quebec: John Charlton Fisher and William Kemble, 1838).

¹²⁹ An examination of the *Journals of the Special Council* has demonstrated that each governor rarely showed up to meetings.

amendments. Once it was fully discussed and amended, the governor asked for the vote.

Steven Watt argued that voting patterns are “largely irrelevant.”¹³⁰ He explains:

The system in which the councilors operated was designed to pass ordinances proposed by the governor, not debate them. Votes were relatively rare, although they increased in later sessions [...] Allegiances and alliances shifted constantly according to contexts and individual ordinances. Thus, nothing remotely resembling parties or voting blocks ever emerged. Votes, when they were not over minor adjustments to such things as fines, fees, or qualifications, tended to be over how or when the council would proceed, such as whether the rules should be suspended or whether consideration of a particular ordinance should be delayed. Whether a particular ordinance would be passed or not was rarely in question.¹³¹

Evidence further suggests that the councilors who attended the council’s meetings took their appointments seriously: they discussed the details of each ordinance. Some councilors, as will be further demonstrated, also proposed several ordinances to Colborne. Such devotion and enthusiasm was similarly noted by Antonio Perrault when he concluded the following:

L’assiduité des membres, la discussion des questions, dont quelques-unes très importantes, qui leur furent soumises, les modifications qu’ils apportèrent à certaines lois suggérées par le gouverneur, permettent d’affirmer que les membres de ce Conseil spécial apportèrent à leur délibérations un sérieux et un sens des responsabilités que ne manifestent pas toujours les assemblées délibérantes.¹³²

Colborne’s council was without a doubt created with a particular goal in mind: to deal with the rebellion. Table 2 provides a breakdown of all ordinances passed by his council. It distributes them in 9 categories: Rebellions, economy, municipal/political

¹³⁰ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 44.

¹³¹ *Ibid.*

¹³² Antonio Perrault, *Le Conseil spécial, 1838-1841*, pp. 141-42.

institutions (which includes reforms to the police system), immigration, the legal system (which includes reforms to the registration system), society (social) and the “others”. The first seven categories are self-explanatory. The last two require further explanation. First, ordinances dealing with society (social) include all those concerned with roads, railways, bridges, winter sleighs, property, the funding of schools, etc. The “other” category is the residual one, including ordinances that dealt with various issues such as fish, oil, flour and meat inspections, the incorporation of libraries, etc. (The same categories are used in the next three chapters.)

Table 2: Ordinances Passed during Colborne’s First Council

Type of Ordinances	Number
Rebellions	9
Economy	7
Social	4
Military	0
Religion	0
Immigration	0
Legal System	0
Municipal/Political	0
Other	5
Total	26

The 1837 Rebellion was *the* major concern of Colborne’s first council; nine out of 26 (35%) ordinances were directly related to it. For example, on 21 April 1838, Colborne asked his councilors to drop all other discussions and quickly pass “An Ordinance to authorize the apprehending and detention of persons charged with High Treason, Suspicion of High Treason, Misprison of High Treason and Treasonable Practices, and to suspend for a limited time, as to such persons, a certain Ordinance therein mentioned.” This ordinance was one of his most controversial ones as it suspended habeas corpus in the colony. Habeas corpus prevented the detention of any individual without trial. A

detainee could under habeas corpus require to be charged and tried, or released. Banning habeas corpus in times of trouble was nothing new in Lower Canada. In *Legacies of Fear: Law and Politics in Quebec in the Era of the French Revolution*, F. Murray Greenwood describes several instances when it was suspended.¹³³ However, this time, anti-French-Canadian sentiments may have influenced the decision. Although Upper Canada had also rebelled, neither its constitution, its assembly, nor its right to habeas corpus were suspended.

Colborne wanted the Special Council to pass this ordinance as a result of recent events, which could “greatly embarrass the [colony’s] Military Authorities.”¹³⁴ Two prisoners, Louis-Michel Viger and Toussaint Pelletier, were being detained by Lieutenant-Colonel Wetherall, the commander of the Garrison of Montreal, and each was asking for writs of habeas corpus. Both writs were written by A.M. Delisle, clerk of the crown, and requested that both prisoners be sent “under safe and secure” conduct to the Honorable James Reid, Chief Justice of Our Court of King's Bench at Montreal, or the Honorable Jean Roch Rolland, one of the Justices of the above court, “to do and undergo all and singular those things which our said Justices or either of them shall then and there consider of (both prisoners on their behalf).”¹³⁵ In other words, the prisoners were asking for a prompt trial. On 23 April 1838, the council passed an ordinance suspending, until 24 August 1839, Geo. III, 24, which had established habeas corpus in the colony.¹³⁶

¹³³ F. Murray Greenwood, *Legacies of Fear: Law and Politics in Quebec in the Era of the French Revolution* (Toronto: University of Toronto Press, 1993)

¹³⁴ Special Council, *Journals of the Special Council*, Vol. 1., pp. 27-28.

¹³⁵ *Ibid.*

¹³⁶ “An Ordinance to authorize the apprehending and detention of persons charged with High Treason, Suspicion of High Treason, Misprison of High Treason and Treasonable Practices, and to suspend for a limited time, as to such persons, a certain Ordinance therein mentioned,” 1 Vic., C.2 (1st Session), reprinted in Special Council of Lower Canada. *Ordinances made and Passed by the Administrator of the*

Since the *Journals* do not include the debates, it is hard to know what the councilors thought of this ordinance. The only known opinion is that of Pierre de Rocheblave. Although he agreed that the ordinance itself was “de grandes importances,” he was very concerned that the act suspending habeas corpus would remain in power for far too long.¹³⁷ Nevertheless, he was convinced that this law had a positive side as it would “donner le temps au nouveau Gouverneur de voir autour de lui [...] et peut-être servirat (sic) elle de protection à nos habitants, qui dans leur ignorance pourraient encore se laisser entraîner dans des mesures coupables; si quelques choses n’empêchaient pas beaucoup de nos Rénégats de rentrer dans la Province et d’y causer du trouble.”¹³⁸ De Rocheblave appeared to have reconciled himself with the ordinance by the time it was adopted. On 23 April 1838, he stated that it was “une mesure dont nous regrettons tous la nécessité (quant je dis tous je me trompe je devrais dire que nous devrions tous regretter) mais dans le moment présent je la regarde non pas comme un fardeau mais comme une sauvegarde pour nos habitants [...]”¹³⁹ De Rocheblave admitted that he would rather lose one of his rights now to prevent further disturbances, than do nothing, have another armed disturbance and lose all of his rights for an indefinite period.

Several other counter-rebellion ordinances were passed in the weeks that followed. On April 26, for example, the council passed an ordinance to investigate claims

Government, and the Special Council for the Affairs of the Province of Lower Canada, Vol. 1 (Quebec: John Charlton Fisher and William Kemble, 1838), pp. 8-10.

¹³⁷ McCord Museum Archives, Bouthillier Collection, file 420, Letter from de Rocheblave, April 19, 1838. Also consider Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” pp. 116-117.

¹³⁸ *Ibid.*

¹³⁹ McCord Museum Archives, Bouthillier Collection, file 420, Letter from de Rocheblave, April 23, 1838. Also consider Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 117.

for losses sustained during the late rebellion, which allowed Colborne to appoint commissioners for the purpose. The ordinance also provided that any person giving false information to a commissioner would be charged with perjury.¹⁴⁰ Two days later, on April 28, the Special Council passed another counter-rebellion ordinance. During the rebellion, many individuals took it upon themselves to apprehend, detain, and bring to justice individuals involved in the uprising. Such actions, according to the laws of the colony, were considered to be vigilantism and were therefore illegal. Colborne believed, however, that such vigilantism was a necessary evil in ending the rebellion and that, although they broke the law, loyal inhabitants that acted in such ways ought to be protected from the law. The act entitled “An Ordinance for indemnifying persons who, since the last day of October 1837, have acted in apprehending, imprisoning, or detaining in custody, persons suspected of High Treason, or Treasonable Practices, and in the suppression of unlawful Assemblies, and for other purposes therein mentioned,” was specifically passed to ensure any future charges against them would be void.¹⁴¹

On 4 May 1838, the Special Council passed an ordinance censoring the colony’s newspapers and seeking to prevent the publication of newspapers that promoted rebellious actions or armed insurrection. All newspapers and pamphlets had to receive the approval of the Clerks of the Peace in order to continue publishing. Publishers and editors had to send an affidavit with all the information relating to the newspaper (its publishers,

¹⁴⁰ “An Ordinance concerning the adoption of Commissioners to investigate claims of certain Loyal Inhabitants of this Province for losses sustained during the late rebellion”, 1 Vic., C. 7 (1st Session), reprinted in Special Council, *Ordinances made and Passed by the Administrator of the Government, and the Special Council*, Vol. 1, p. 22.

¹⁴¹ “An Ordinance for indemnifying persons who, since the last day of October 1837, have acted in apprehending, imprisoning, or detaining in custody, persons suspected of High Treason, or Treasonable Practices, and in the suppression of unlawful Assemblies, and for other purposes therein mentioned,” 1 Vic., C. 10 (1st Session), reprinted in *Ibid.*, p. 32.

printers, proprietors, etc.) as well as a series of articles and editorials as examples. Only once approved by the authorities could publishers and editors continue to issue their newspapers. Those who failed to comply with such demands or provide false information were to be fined up to 20 pounds.¹⁴²

The Special Council also attempted to better prevent an armed insurrection with an ordinance stipulating that every able bodied male inhabitant between the ages of 18 and 60, being a British subject, and having resided in the colony for over 6 months, was to serve as a militiaman for the colony's defense, and of public order and tranquility. Clergymen, religious teacher, members and officers of the Legislative Council, Assembly, Special Council and Executive Council, judges, advocates, sheriffs, coroners, constables, and officers of the Courts of Justice, were exempt from such requirements. Militiamen not present at the time ordered out would be fined for disobedience. If the fine could not be paid within eight days, the individual would be sent to the common gaol until the fine was paid.¹⁴³

Other than counter-rebellion ordinances, Colborne's council also passed several economic ordinances, including one that sought to alleviate some pressures that it was feared would harm Lower Canadian banks. This also provides a good example of the active roles that some councilors had in passing ordinances and influencing the council's agenda.¹⁴⁴ They sent petitions to Colborne suggesting several ordinances.

¹⁴² "An Ordinance for preventing mischiefs arising from the printing and publishing newspapers, pamphlets, and papers of like nature, by persons not known, and for other purposes," 1 Vic., C. 20 (1st Session), reprinted in *Ibid.*, pp. 104-116.

¹⁴³ "An Ordinance to provide for the better defense of this Province and to regulate the Militia thereof," 1 Vic., C. 22 (1st Session), reprinted in *Ibid.*, pp. 120-34.

¹⁴⁴ Another example was the passing of an Ordinance to grant a Charter to the Bank of Montreal. It was passed after Peter McGill and the directors of the bank sent a petition to Colborne asking for it. An

In 1837, North America was hit with a banking crisis known as the Panic of 1837. Many banks filed for bankruptcy in the United States as a consequence of President Jackson's refusal to renew the Charter of the Bank of the United States.¹⁴⁵ Starting in New York in May 1837, several banks, incapable of redeeming their bank notes began to suspend specie payments. Americans who held notes from Canadian banks therefore presented them for redemption (since specie was the only money that people trusted), which translated into a rush on the Canadian Banks. This put much pressure on Canadian banks. McCulloch explains that "so long as [Canadian banks] continued to redeem their notes in coin, [Canadian banks] would be called upon to supply at least part of the hard money which was no longer available from New York banks."¹⁴⁶ Under such pressure, McCulloch explains, Canadian banks "would have quickly depleted their supply of coins and left their bank notes unsecured."¹⁴⁷ As a result, Canadian banks, led by the Bank of Montreal, asked to suspend species payments. This was allowed by the local legislature. Lower Canadian banks did not resume specie payment until May 1838.

On 1 May 1838, however, Colborne received a number of petitions from some of Montreal's leading financiers, who included Peter McGill and John Molson, asking that banks, once again, be given the privilege of suspending specie payment, since the

Ordinance to incorporate certain persons therein named, under the name of the President, Directors, and Company of the bank of Montreal," 1 Vic., C. 14 (1st Session), reprinted in Special Council, *Ordinances made and Passed by the Administrator of the Government, and the Special Council*, Vol. 1, pp. 50-60. Although the Bank of Montreal was initially incorporated in 1817, the act that incorporated it expired on 1 June 1837, according to the ordinance. This ordinance thus reincorporated the bank.

¹⁴⁵ Consider the following two studies for more details: A.B. McCulloch, *Money and Exchange in Canada to 1900* (Toronto : Published by Dundurn Press in co-operation with Parks Canada and the Canadian Government Publishing Centre, Supply and Services Canada, 1984); and E.P. Neufeld, *Money and Banking in Canada: Historical Documents and Commentary* (Toronto : McClelland and Stewart, 1967).

¹⁴⁶ McCulloch, *Money and Exchange in Canada to 1900*, p. 99.

¹⁴⁷ *Ibid.*

privilege had continued in Upper Canada and in the United States.¹⁴⁸ In order to alleviate some potential pressure off Lower Canadian banks, Colborne agreed and asked the Special Council to pass an ordinance that would give banks the privilege to suspend specie payments until 1 June 1839.¹⁴⁹ The ordinance was passed on 5 May 1838. The Special Council explained why it passed such an ordinance with the following:

Whereas the Banks of the United States of America and of Upper Canada have generally suspended, and continued to suspend the redemption of their Notes in Specie, and by the laws of those Countries, British Gold and Silver Coins are current at a higher value than they are by law in this Province; --And, whereas it is necessary to protect the Banking Institutions in this Province from the danger to be apprehended from the withdrawal of the British Gold and Silver coins and other Specie therein, which would result if the said Banking Institutions should be bound to redeem their Notes with Specie, while the Notes of the said Banks of the United States and of Upper Canada are not redeemed in like manner.¹⁵⁰

Colborne's first council also saw the adoption of several ordinances that further sought to improve the situation of Montreal's economic class. One concerned the improvement of navigation on Lake St. Peter. The shallowness of the lake had always been a major handicap for Montreal merchants. In 1826, they first began considering digging a channel through Lake St. Peter. It was hoped that this would stimulate and improve the city's economic activities.¹⁵¹ However, the Legislative Assembly always refused to fund such a project. This concern once again resurfaced when Colborne and the Special Council received a petition from the "Montreal Committee of Trade" complaining

¹⁴⁸ Special Council, *Journals of the Special Council*, Vol. 1, pp. 68-72.

¹⁴⁹ "An Ordinance to authorize the Incorporated and Chartered, and other Banks in the Province to suspend the redemption of their Notes in Specie, under certain regulations for a limited time," 1 Vic., C. 24 (1st Session), reprinted in Special Council, *Ordinances made and Passed by the Administrator of the Government, and the Special Council*, Vol. 1, pp. 142-156.

¹⁵⁰ *Ibid.*, p. 142.

¹⁵¹ Fernand Ouellet, *Histoire économique et sociale du Québec, 1769-1850* (Ottawa: Éditions Fides, 1966), p. 366.

that during some parts of the summer, the lake was only 10 to 12 feet deep, which forced Montreal bound ships to lighten their loads to cross the lake.¹⁵² This was a very serious and costly impediment to trade in the city as well as immobilizing some ships.¹⁵³

Colborne agreed and asked the council to pass the appropriate ordinance. This is a good example of CAM councilors using their position to advance their own economic and business interests, by getting measures passed that the Assembly had always rejected. The Special Council also passed an ordinance, which allowed commissioners to borrow a sum, not exceeding 40,000 pounds, to enlarge the harbor of Montreal. This would obviously provide for greater trade in the city as more boats could arrive and more goods could be transported.¹⁵⁴

On the final day of the first council, 5 May 1838, Colborne expressed his gratitude towards his councilors. He was extremely pleased with the work that had been done, the attendance of his councilors and believed that the Special Council had become an indispensable tool to promote the long-term interests of Lower Canada. Afterwards, he and the presiding member prorogued the Special Council until 16 June 1838. Although the first council mostly focused on countering the rebellion and preventing any further armed insurrection, the members of the CAM and Colborne did nevertheless pass several ordinances that sought to benefit them, including the Lake St. Peter and Montreal Harbor Ordinances. In the case of the Lake St. Peter Ordinance, they finally got what they had

¹⁵² Special Council, *Journals of the Special Council*, Vol. 1, pp. 95-97.

¹⁵³ "An Ordinance to make provision for the survey of Lake St. Peter," 1 Vic., C. 26 (1st Session), reprinted in Special Council, *Ordinances made and Passed by the Administrator of the Government, and the Special Council*, Vol. 1, pp. 168-72.

¹⁵⁴ "An Ordinance to authorize the commissioners appointed under a certain Act of the Legislature of this province therein mentioned, to borrow a sum of money to be applied to the improvement and enlargement of the Harbor of Montreal, and for other purposes," 1 Vic., C. 23 (1st Session), reprinted in Special Council, *Ordinances made and Passed by the Administrator of the Government, and the Special Council*, Vol. 1, pp. 134-40.

been asking for years, but had always been consistently refused by the Legislative Assembly. Although modest, this was the beginning of the CAM's successful attempts at furthering its own agenda.

CHAPTER 2:

“MY ACTS HAVE BEEN DESPOTIC, BECAUSE MY DELEGATED AUTHORITY
WAS DESPOTIC.”¹⁵⁵ LORD DURHAM AND THE SPECIAL COUNCIL OF
LOWER CANADA, JUNE TO NOVEMBER 1838

Born in 1792, Lord Durham had a distinguished political career prior to his arrival in Canada.¹⁵⁶ Both a liberal and a renowned reformer, he played an active role in some of the period's most significant reforms, including the emancipation of Catholics and the establishment of free trade. As a result of his second marriage, he became the son-in-law of Lord Grey, the Prime Minister of Great Britain between 1830 and 1834, and was later appointed Lord of the Privy Seal. It was during this time in cabinet that he played his greatest role as a reformer. Unfortunately, poor health plagued his entire life. As a result, he was forced to leave his cabinet position in 1833; growing tensions with Lord Grey also influenced his departure. Once out, Durham turned his attention to foreign affairs, and played a pivotal role in the Greek and Belgian struggles for independence and in the accession of Prince Leopold of Saxe-Coburg-Gotha, George IV's former son-in-law, to the Belgian throne. In 1835, he was sent to Russia as the new ambassador. In July 1837, after he had just returned to England, Lord Melbourne, the new Prime Minister of England, asked him to go on an important mission to Lower Canada. Melbourne explained that the colony was sinking further and further into crisis, and that there was no end in sight. Durham was to find out exactly what was wrong and figure out how to resolve the issues that plagued it. Durham refused, at first, finally accepting when

¹⁵⁵ Durham, John George Lambton, *The Report and Dispatches of the Earl of Durham, Her Majesty's High Commissioner and Governor General of British North America*, CIHM 32415 (London: Ridgways, 1839), pp. 37-38.

¹⁵⁶ For more information on Durham political career consider *The Dictionary of Canadian Biography Online*, “Lambton, John George, 1st Earl of Durham,” Vol. VII, by Fernand Ouellet. http://www.biographi.ca/009004-119.01-e.php?id_nbr=3484&&PHPSESSID=vl88cm6jrcpi79q92mqrv5nm61

Melbourne asked him again in November 1837. Durham thus became the Governor General of the colony and the head of the Special Council, which, as noted, was created to facilitate his mission.

2.1 DURHAM'S COUNCIL AND COUNCILORS

Lord Durham had a reputation of being authoritarian. According to historian Gerard Filteau,

Durham était un dictateur par instinct, qui ne souffrait pas la contradiction, qui méprisait les théories conventionnelles et les préjugés pour édifier des concepts politiques larges et progressifs. Il avait le courage de ses idées et la résolution inébranlable de les transformer en actes dès qu'il les avait conçues. Pour faire contrepoids à ces qualités, il possédait de terribles défauts. Il était affligé d'un caractère irascible à l'extrême, passionné, vindicatif, il était possédé d'une ambition énorme qui n'était dépassé que par son orgueil.¹⁵⁷

On first glance, it appears that these instincts were put to use in Lower Canada. Whereas Colborne allowed his councilors to play a significant role in council and even passed ordinances that were proposed by Peter McGill and John Molson, Durham did not allow his councilors to take initiatives. Although this was true within the walls of the Special Council, as will later be discussed, this was not the case publicly where he sided with the CAM. Initially, and during his entire tenure *in* the council itself, however, Durham never considered anyone's opinion.

When Durham first arrived, his very first measure was to dismiss all existing councilors and replace them with British officials. He sought to reassure the local

¹⁵⁷ Filteau, *Histoire des Patriotes*, p. 387. Although Filteau may not be the most objective commentator, Durham's actions, as described in this chapter, do speak for themselves.

population that this decision was made with the best of intentions. In a proclamation to the population of Lower Canada in late May 1838, he explained that he did so because he wanted to remain neutral and did not want his council to be influenced by any party or race. He continued,

I invite you the most free, unreserved communications. I beg you to consider me as a friend and arbitrator—ready at all times to listen to your wishes, complaints, and grievances, and fully determined to act with the strictest impartiality. If you, on your side, will abjure all party and sectarian animosities, and unite with me in the blessed work of peace and harmony, I feel sure that I can lay the foundation of such a system of government as will protect the rights and interests of all classes, allay all dissensions, and permanently establish, under Divine Providence, the wealth, greatness, and prosperity, of such inexhaustible elements are to be found in these fertile countries.¹⁵⁸

Despite these initial promises, Durham may not have been as neutral as he claimed, and may have distrusted French-Canadians. Charles Buller, a friend of Durham's and member of his Special Council, expressed concerns regarding the new governor's attitude towards *les habitants* while on route to Canada. He first noted in his journal, "I used indeed then to think that Lord Durham had too strong a feeling against the French Canadians on account of their recent insurrections."¹⁵⁹ Buller also explained that although he, personally, sided with French-Canadians and blamed the Rebellion of poor colonial policies, Durham believed that only French-Canadians were only to blame. According to Buller,

[Durham] saw what narrow and mischievous spirit lurked at the bottom of all the acts of French Canadians: and while he was prepared to do the

¹⁵⁸ Quoted from New, *Lord Durham's Mission to Canada*, pp. 63-4.

¹⁵⁹ LAC, MG24, A26, Charles Buller Fond, Vol. 1, *Sketch of Lord Durham's Mission to Canada in 1838, Written by Mr. Charles Buller in 1840*, pp. 15-16. This journal is known to historians, but has not been studied in the context of the Special Council.

individuals full justice, and justice with mercy, he had made up his mind that no quarter should be shown to the absurd pretensions of race, and that he must throw himself on the support of the British feeling, and aim at making Canada thoroughly British.¹⁶⁰

Historian Chester New also believed that Durham hated French-Canadians and even argued that this should come as no surprise. He explains that Durham was influenced by the common view, among the English Upper Class, that the French-Canadians were “a disloyal and lamentably inferior people who could never fit to the providential scheme of things until in some mysterious manner they were made into Englishmen.”¹⁶¹ Such prejudice would have made Durham a friend of Anglo-Canadians, and predispose him to listen favourably to the CAM.

Ged Martin also believed that Durham’s distrust of French-Canadians was a problem and was even one of the reasons why his mission failed.¹⁶² He explains that this attitude—which resulted from his friendship with the enemy of French-Canadians, Edward Ellice—resulted in a “missed opportunity;” an opportunity to make great changes and gain the support of the French population. As will later be demonstrated, French-Canadians initially had great hopes in Durham’s mission. However, “by dashing French hopes, and adding the insult of Anglicization to the injury of repression, Durham made subsequent reconciliations of French and British more difficult.”¹⁶³ The second

¹⁶⁰ *Ibid.*, pp. 16-17.

¹⁶¹ New, *Lord Durham’s Mission to Canada*, p. 50.

¹⁶² Arguing that Ged Martin is not a supporter of Lord Durham is an understatement. Several of his articles have attempted to debunk the “Durham myth” and illustrate that he, his mission and his report had very little significance on British colonial policy and the future of Canada. According to Martin, Durham’s report was even ignored when British cabinet minister’s concluded that Union was the only viable option for Canada. Martin explains that when responsible government was finally achieved in Lower Canada, it was not done so by “the quasi-presidential rule of an anglicizing governor,” but it was done so “based on Anglo-French partnership.” See Martin, “The Influence of the Durham Report,” pp. 75-87; Ged Martin, “Attacking the Durham Myth: Seventeen year On,” pp. 39-59.

¹⁶³ *Ibid.*

reason why Durham failed was his poor relationship with the cabinet and Prime Minister Melbourne himself. His vanity was especially problematic. Martin explains that “while Canada was in crisis, the High Commissioner [Durham] made apparently leisurely arrangements for his journey, including the dispatch of his race horses [...] and an orchestra.”¹⁶⁴

Despite the above claims of hostility to the *habitants*, Janet Ajzenstat believes that this explanation is simplistic and does not consider Durham’s complex political thought. She claims that Durham did not wish to assimilate French-Canadians because he felt they were culturally inferior or because he was “racist.”¹⁶⁵ He wanted to ensure that French-Canadians would not be relegated to the bottom of the socio-political ladder. Ajzenstat explains:

He is arguing, on the contrary that the French Canadians must adopt the way of life prevailing on the North American continent so that they can enjoy liberal rights and freedoms on an equal footing with English-speaking Canadians.¹⁶⁶

In short, Durham did not want to assimilate French-Canadians because he disliked them; he wanted them to adopt British values and practices for fear that they would drown in an Anglo-dominated North America. According to Ajzenstat, Durham had problems with English-speaking Lower-Canadians as well. In fact, he distrusted *all* political parties and leaders in British North America.¹⁶⁷ He also blamed English-Canadians and maintained that they exploited their followers in the same way as the *Patriotes* “agitators” and

¹⁶⁴ Martin, “The Influence of the Durham Report,” p. 77.

¹⁶⁵ Janet Ajzenstat, *The Political Thought of Lord Durham*, p. 5.

¹⁶⁶ *Ibid.*

¹⁶⁷ Janet Ajzenstat, “Durham and Robinson: Political Faction and Moderation,” p. 142.

“demagogues” had.¹⁶⁸ He believed that both were at fault. It was their inability to compromise that created civil strife and led to the Rebellion. This may explain, as will be later discussed, why Durham surrounded himself with British officials and did not keep Colborne’s councilors. Whatever his attitude towards French-Canadians, Durham’s council passed ordinance that were not very popular amongst the *habitants*.

Like Colborne, Durham was also given some instructions by the Colonial Office. In a 21 April 1838 dispatch, Glenelg advised him that he must adopt “the most efficient precautions for the protection of the Canadian provinces from inroad or attack on the part of America citizens, and for the prompt repression of any such attempts should they hereafter be renewed.”¹⁶⁹ As will further be discussed, he was also given specific instructions on how to deal with the prisoners that were being held in the colony.

On 28 June 1838, Durham held his first session of the Special Council and appointed his first councilors.(Table 3). Rather than selecting prominent members of Lower Canadian society, as Colborne had, he selected British officials. Durham’s promise of neutrality therefore started off very well.

These men had very little political experience and most were military officers. Major General John Clitherow, for example, had served with the 3rd Foot Guards and the Scot Fusilier Guards in Egypt, Hanover (Germany), and the Netherlands.¹⁷⁰ Sir Charles Paget served in the British Navy and was the commander-in-chief of the North American

¹⁶⁸ *Ibid.*, p. 143.

¹⁶⁹ LAC, MG11, CO42, Series Q, Vol. 246-1, p. 27. Dispatch from Glenelg to Durham, 21 April 1838.

¹⁷⁰ *Dictionary of Canadian Biography*, “Clitherow, John.” Elinor Kyte Senior. VIII. 163-64.

and Antilles fleets.¹⁷¹ Charles Grey and Charles Buller had the most political experience. A regularly elected Member of Parliament from 1831 to 1848, Buller sympathized with French-Canadians and believed that the Rebellion was, as noted, caused by the “imbecility” of British colonial policy.¹⁷² Charles Grey’s career began in the military, which included service as lieutenant-colonel with the 23rd Welsh Fusiliers, the 43rd Light Infantry, the 60th Rifles and the 71st Light Infantry. In 1830, he made his first entry in politics, serving as his father’s (Lord Grey) secretary. In 1831, he became an elected member of the House of Commons. Charles Grey was a member of the Whig party and considered one of its most liberal and independent members. However, he did not find as much satisfaction in politics. When the accession of Queen Victoria forced a new election, he opted to retire from politics and focus on his military career with the 71st Regiment.¹⁷³

¹⁷¹ Filteau, *Histoire des Patriotes*, p. 486.

¹⁷² *Dictionary of Canadian Biography*, “Buller, Charles.” Heather Lysons-Balcon. VII. 117-119.

¹⁷³ The biographical information on Charles Grey was taken from Charles Grey, *Crisis in the Canadas: 1838-39. The Grey Journals and Letters*, ed. By William Ormsby (Toronto: MacMillan of Canada, 1964), pp. 1-3.

Table 3: Durham's Special Councilors¹⁷⁴

Councilors	Birth Place	Economic Experience	Political Experience	Military Experience
Buller, Arthur (Appointed 22 August 1838)	India	Yes	No	No
Buller, Charles	India	Yes	Yes	No
Clitherow, Major General John (Appointed 4 July 1838)	England	No	No	Yes
Couper, Col. George	Scotland	No	No	Yes
Grey, Lt.-Col. Charles	England	No	Yes	Yes
MacDonnell, Major General Sir. James	Scotland	No	No	Yes
Paget, Sir. Charles	England	No	No	Yes

In the end, this lack of political experience did not matter. Durham does not seem to have taken his councilors' opinions into account. For one, whereas the *Journals* of Colborne's council included amendments, discussions and, at times, votes concerning each proposed law, Durham's *Journals* included none of that. All that is included is the proposal of a bill, and then a notice of it being passed: there were no discussions, no questions, and no amendments whatsoever.¹⁷⁵ This could suggest that the council simply met with the sole purpose of passing ordinances and laws that were proposed by Lord Durham, an opinion that was shared by both contemporaries and historians alike.

Evidence from members of his council appears to confirm this hypothesis. Several alluded to, and at times criticized Durham's dictatorial practices. On 26 June 1838, Lt.-

¹⁷⁴ The following information was taken from the *Dictionary of Canadian Biography Online* and the *Dictionnaire des parlementaires du Québec de 1792 à nos jours* on the *Assemblée nationale du Québec* website.

¹⁷⁵ Special Council of Lower Canada, *Journals of the Special Council of the Province of Lower Canada*, Vol. II, pp. 3-5.

Col. Charles Grey noted in his private diary that Lord Durham wanted him to join the council, with the specific “purpose” of passing the prisoners ordinance.¹⁷⁶ After some deliberation, Grey accepted. Grey’s above entry suggests that he had not been appointed to discuss government policy, but to pass ordinances that Durham had already decided upon. In fact, the very next day, Grey mentioned how the Special Council met to give “the authority of law” to Lord Durham’s ordinance.¹⁷⁷ Grey mentioned nothing of discussions or amendments. Durham walked in, proposed the law, and told his councilors to approve it. This complete lack of participation angered Grey. In a letter to his father, dated 20 August 1838, he mentioned he did not intend to attend the Special Council again, citing the fact that he had done very little as a councilor and was simply called to rubber stamp the ordinances, without discussing them or fully examining them.¹⁷⁸ In another letter, dated 24 August 1838, he mentioned to his father that

[...] at the same time he [Durham] told me that there was no great likelihood of there being anything for it [the Special Council] to do for some time, I do not so much mind. I told Colonel Couper, however, that *I should certainly not be satisfied to be called upon as a Member of the Special Council to sanction an Act which I might only hear of for the first time when assembled to pass it [...]* (my italics)¹⁷⁹

Charles Buller’s memoirs also similarly suggest that the Special Council’s authority was solely in Lord Durham’s hands. Unlike Grey, however, Buller tolerated his lack of participation and even attempted to justify why Durham categorically refused to

¹⁷⁶ LAC, MG24, A10, Charles Grey Fonds, Volume 7, *Diaries of Lt. Col. Charles Grey, part 1*, p. 36.

¹⁷⁷ *Ibid.*, p. 37.

¹⁷⁸ Grey, *Crisis in the Canadas: 1838-39*, p. 108. Sources on Charles Grey are known to historians, however, and yet again, they have not been considered with regards to the Special Council.

¹⁷⁹ *Ibid.*, p. 112.

shift “responsibility off his own shoulders.”¹⁸⁰ He claims Durham sought to prevent what had happened to the Special Council under Colborne, which had “placed the power of Legislation in the hands of one party” that “absurdly” used it “for the promotion of its own interests, and the oppression of its opponents.”¹⁸¹ In other words, he believed Durham did not want his agenda to be influenced by his councilors.

On the surface, Durham appears to have been much more authoritarian than Colborne, reducing the council to a rubber-stamping body. By excluding local participation from his council and adopting laws without discussions with his councilors, he was criticized by contemporaries and later historians. Several historians, such as Allan Greer, have drawn attention to his authoritarianism, but none has been more critical than Gérard Filteau, who examined Durham’s tenure in Lower Canada and argued that he dismissed his predecessor’s council because “[e]n somme, c’était une dictature qu’il établissait.”¹⁸² Even Lord Durham concurred that his authority was that of a despot. In a letter to Lord Glenelg, the Secretary of State for War and the Colonies, he wrote, “[m]y acts have been despotic, because my delegated authority was despotic [...] I shall not blush to hear that I have exercised a despotism [...] Nor shall I regret that I have wielded despotic powers in a manner which [are...] utterly inconsistent with the British constitution [...]”¹⁸³ As explained by Ajzenstat, this may have been because he did not

¹⁸⁰ LAC, MG24, A26, Charles Buller Fond, Vol. 1, *Sketch of Lord Durham’s Mission to Canada in 1838, Written by Mr. Charles Buller in 1840*, p. 66. Although this source is well known to historians, his opinions on the Special Council have yet to have been considered in a study on the topic.

¹⁸¹ *Ibid.*, pp. 66-67.

¹⁸² Filteau, *Histoire des Patriotes*, p. 486.

¹⁸³ The letter is date September 28, 1838. Durham, John George Lambton, *The Report and Dispatches of the Earl of Durham, Her Majesty’s High Commissioner and Governor General of British North America*, CIHM 32415 (London: Ridgways, 1839), pp. 37-38.

trust local politicians and blamed both the *Canadiens* demagogues and the British for the problems that affected the colony.

Although Durham may have acted as a despot in council and may have been right when he argued that his acts were despotic, this was not the case outside the council itself. First, Durham was still at the mercy of the Colonial Office and therefore could not do as he pleased. As discussed, each governor was sent instructions on how to act and what to work on while in council. Moreover, London reviewed each ordinance, and cancelled the ones it disapproved. The Bermuda Ordinance Controversy is a perfect example of the control London kept on the Special Council and Lord Durham. Second, Durham was willing to listen to opinions outside the council: he developed a very close relationship with several members of the Anglo-Lower Canadian educated and political elite as we shall see below.

2.2 DAY-TO-DAY OPERATIONS

Although no one can deny the importance of Lord Durham's mission in Canada, his tenure at the head of the Special Council did not result in many ordinances, especially when compared to Colborne's and later Thompson's. It is true that at the time of his departure, Durham was working on ordinances to abolish seigneurial tenures, establish a colony-wide land registration system, and resolve the issues regarding the St. Sulpice Seminary in Montreal, but those had not yet been passed.¹⁸⁴ When he left the colony in November 1838, he and the Special Council had only passed six ordinances (Table 4).

¹⁸⁴ Grey, *Crisis in the Canadas: 1838-39*, p. 59.

Two of these ordinances were intended to resolve the colony's most pressing issue: overcrowded prisons.

Table 4: Ordinances passed during Durham's Council.

Ordinances Passed	Date
Police Ordinance	28 June 1838
Bermuda Ordinance	28 June 1838
"Loyal Behaviour" Ordinance	23 August 1838
"Civil Expenditure" Ordinance	31 October 1838
"Expenses of Civil Government Ordinance	31 October 1838
Pensions Ordinance	31 October 1838

The Special Council only met four times during Durham's five-month tenure. The first meeting, in which the most significant ordinances were passed, took place on 28 June 1838 in Quebec City. After appointing his councilors, Lord Durham had two ordinances passed.¹⁸⁵ The first ordinance allowed him to establish a police force in Quebec and Montreal, and gave him the authority to remove and appoint any inspector or superintendant at will.¹⁸⁶ The police force was specifically created to preserve peace, prevent robberies and felonies, and apprehend any individual that was acting in a "disorderly" manner. The ordinance defined disorderly conduct as exposing oneself indecently, loitering, using insulting language, tearing down and defacing signs as well as breaking windows, doors, gardens, yards, causing noise in the street, screaming, swearing or singing, or being drunk. All prostitutes, individuals that frequented brothels, and

¹⁸⁵ Special Council of Lower Canada, *Journals of the Special Council of the Province of Lower Canada*. 28th June; 9th July; 23rd August; and 31st October, 1838. In *the Second Year of the Reign of Queen Victoria*, Vol. 2 (Montreal: T. Cary and George Desbarats, 1838-1841.), pp. 3-4.

¹⁸⁶ "An Ordinance for establishing an efficient system of Police in the Cities of Quebec and Montreal," 1 Vic., C.2 (2nd Session), reprinted in Special Council of Lower Canada, *Ordinances made and Passed by the Administrator of the Government, and the Special Council for the Affairs of the Province of Lower Canada*, Vol. 2 (Quebec: John Charlton Fisher and William Kemble, 1838), pp. 12-28.

gamblers were also considered “disorderly.” Anyone caught and found guilty of such misdemeanors would either be fined or imprisoned in the common gaol.

Historians who have discussed the significance of this ordinance agree that it was important, but debate its impact on the colony. On the one hand, Allan Greer believes that the ordinance was nothing short of revolutionary. It played a “pioneering role” with regards to police forces, “not only within the British North American context, but in the continent as a whole.”¹⁸⁷ He explains that “even by the standards of later decades, the post-Rebellion forces of Lower Canada were unusually large and well-funded, and—as a result of the suspension of municipal institutions at the time—they were fully controlled by the central government of the province.”¹⁸⁸ Unlike other forces of night watchmen around North-America who were ill-equipped to fight crime, the Lower Canadian force was ahead of its time and proved a model to all subsequent police forces on the continent.

Other historians have nuanced and minimized the revolutionary aspects of the ordinance. Martin Dufresne’s argues that although the ordinance created a “professional” and a “salaried” police force in Quebec City, policing did not start in 1838 as Greer suggests.¹⁸⁹ Donald Fyson, on the other hand, maintains that large police forces already existed in the colony prior to the 1838 ordinance. To the theory that 1838 witnessed the creation of the colony’s first modern police force and that prior to it, police forces were quite simply inept, Fyson adds:

¹⁸⁷ Allan Greer, “The Birth of the Police,” in *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, ed. Allan Greer and Ian Radforth (Toronto: University of Toronto Press, 1992), pp. 21.

¹⁸⁸ *Ibid.*

¹⁸⁹ Dufresne, “La justice pénale et la définition du crime à Québec, 1830-60,” p. 201.

[...] this account of the colonial police fits into the broader interpretation of the ancient-régime colonial state: weak and ineffective, grafted onto an alien and unwilling society, and largely unchanging until profound transformations leading to the implantation of the modern liberal state in the years following the Rebellions, exemplified by the new professional police. And yet there was quite evidently some policing going on, at least from the perspective of the 10,000 people confined in the Montreal Gaol on criminal charges between 1811 and 1836, the 8,500 in the Quebec Gaol in about the same period.¹⁹⁰

Although the above have nuanced Greer's interpretation, all nonetheless agree that the 1838 ordinance was important. Fyson believes that it, amongst other things, increased the overall size of the colony's police force. Michael McCulloch argued that the ordinance was a significant step in the evolution of Quebec City's police force, and was also better equipped to defend the city from its "disorderlies."¹⁹¹ Daniel Dicaire also suggested that 1838 was significant as it was from then on that "la police s'établit dans la société comme un service municipal indispensable."¹⁹² Moreover, it was only after 1838 that the police force began to become a permanent and indispensable feature of Lower Canadian society as it began patrolling the streets in greater number and offering more services to citizens. The period between 1852 and 1857 was especially important. People no longer questioned its existence, but now wanted it to get better, to be more reliable, and to be better trained.¹⁹³

The second ordinance was, by far, the most controversial and the trigger for his early departure from Lower Canada. When he first arrived, Montreal's prison was overflowing with rebels. By the end of the Rebellion, over 500 prisoners had been taken

¹⁹⁰ Fyson, *Magistrates, Police and People*, pp. 137-38.

¹⁹¹ McCulloch, "Most Assuredly Perpetual Motion," p. 101.

¹⁹² Dicaire, "Police et société à Montréal au milieu du XIX siècle," p. 20.

¹⁹³ *Ibid.*, p. 105.

into custody.¹⁹⁴ Colborne had released the majority of them and only 125 remained, but that still exceeded the capacity of the jail. Rather than relying on the opinion of Attorney General Charles Ogden, perhaps due to his “anti-French-Canadian bias,” Durham relied instead on Charles Buller and Thomas Thurston for suggestions on how to deal with the prisoners.¹⁹⁵ According to Watt, “[t]hey quickly ruled out the possibility of holding a court martial or passing special legislation governing the selection of jurors for regular trials.”¹⁹⁶ Durham (as well as the Colonial Office) was reluctant to bring these prisoners before “special courts” and he did not trust local courts and juries. Buller and Thurston therefore offered a more lenient alternative: a general amnesty would be provided to the majority of the remaining prisoners; however, the *Patriote* leaders would be declared guilty, without a trial, and punished accordingly.

This was the framework for the so-called “Bermuda Ordinance.”¹⁹⁷ First, eight prisoners would be deported to “Her Majesty’s Island of Bermuda [...] and subjected to such restraints in the islands, as may be needful to prevent their return to this province.”¹⁹⁸ These individuals were

Desrivières, Rodolphe
 Gauvin, Henry Alphonse
 Goddu, Toussaint H.
 Marchessault, Simeon
 Masson, Luc Hyacinthe
 Nelson, Wolfred
 Shore-Milnes-Bouchette, Robert
 Viger, Bonaventure

¹⁹⁴ Watt, “State Trial by Legislature: The Special Council of Lower Canada, 1838-1841,” pp. 254-56.

¹⁹⁵ *Ibid.*, p. 255.

¹⁹⁶ *Ibid.*

¹⁹⁷ “An Ordinance to provide for the security of the Province of Lower Canada,” 1 Vic., C.1 (2nd Session), reprinted in Special Council, *Ordinances made and Passed*, Vol. 2, pp. 6-12.

¹⁹⁸ *Ibid.*, p. 8.

The ordinance also stated that warrants of high treason had been issued against 17 individuals, who had escaped from the colony and were now living in exile. If any of these individuals, unless under the permission of the Governor General, were to be “found at large within the province [...] they or he shall in such case be deemed and taken to be guilty of High Treason, and shall on conviction of being so found at large or coming within the Province without such permission as aforesaid, suffer death accordingly.”¹⁹⁹

These individuals included the eight above mentioned along with:

Brown, Thomas Storrow	Cartier, George-Étienne
Chartier, Étienne	Coté, Octave
Davignon, Joseph-François	Desmaray, Pierre-Paul
Duvernay, Ludger	Gagnon, Julien
Gauthier, Louis	Hector, Cyril
Nelson, Robert	O’Callaghan, Edmund Burke
Papineau, Louis-Joseph	Perrault, Louis
Rodier, Édouard-Étienne	Ryan, John Jr.
Ryan, John Sr.	

This list included some very important individuals such as Louis-Joseph Papineau, George-Étienne Cartier, and Ludger Duvernay, editor of *La Minerve*. Finally, the charges against *all* remaining *political* prisoners were dropped and each was permitted to return to his family. The governor informed them that “no further proceedings should be had or taken against any persons whomever on account of such High Treason or other offences of treasonable nature [...]”²⁰⁰ However, this did not include those who were involved in the murders of Lieut. George Weir and Joseph Chartrand. François Jalbert, Jean-Baptiste Lussier, Louis Lussier, François Mignault, François Talbot, Amable Daunais, François

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*, p. 6.

Nicolas, Etienne Langlois, Gid  on Pinsonault, and Joseph Pinsonault remained in the custody of the Sheriff of Montreal.

The subsequent sessions accomplished little. On 9 July 1838, the council only met to swear in a new member: Major General John Clitherow.²⁰¹ The following meeting, which took place on 23 August 1838, was a little more productive. Two issues were on the agenda: Arthur Buller was first sworn in as a new councilor and an ordinance that added an extra condition to the Bermuda Ordinance passed.²⁰² It was specifically aimed at the many prisoners that recently had all charges of High Treason dropped and were allowed to return home. The ordinance stipulated that before a prisoner was freed, he had to take an oath that he would be good and loyal citizens from now on. Any who refused to give security for their “future good and loyal behaviour” would remain in custody without bail or mainprize, and this, until they had given their word to the Governor General.²⁰³

The final meeting took place on 31 October 1838. The council passed three ordinances appropriating different sums of money for specific purposes.²⁰⁴ The first two ordinances allowed the Special Council to appropriate specific sums of money for the expenses of the Civil Government, such as salaries and council related expenses.²⁰⁵ The third ordinance allowed the council to grant 1000 pounds to Jonathan Sewell and 783

²⁰¹ Special Council of Lower Canada, *Journals of the Special Council*, Vol. II, p. 4.

²⁰² *Ibid.*, p. 5.

²⁰³ “An Ordinance to prevent the discharge of certain persons until they shall have given security,” 1 Vic., C. 3 (2nd Session), reprinted in Special Council, *Ordinances made and Passed*, Vol. 2, p. 28.

²⁰⁴ Special Council, *Journals of the Special Council*, Vol. II, p. 5.

²⁰⁵ “An ordinance to make provision for defraying the Civil Expenditure of the Provincial Government, from the first day of April, on thousand eight hundred and thirty-eight, to the tenth day of October the same year,” 1 Vic., C. 4 (2nd Session), and “An ordinance to make good two certain sums of money for payments of certain indispensable expenses of the Civil Government of Lower Canada [...],” 1 Vic., C. 5 (2nd Session), reprinted in Special Council, *Ordinances made and Passed*, Vol. 2, pp. 30-34.

pounds to James Reid, per year, for the payment of their pensions.²⁰⁶ A few days, later on 2 November 1838, Lord Durham left the colony and returned to England.

2.3 THE BERMUDA ORDINANCE CONTROVERSY

Lord Durham's tenure at the head of the Special Council has been controversial. While his authoritarianism has been a point of contention to some, others have criticized the ordinances that he passed. The Bermuda Ordinance was controversial in the colony as soon as it was passed. It also raised a political storm in England, which led to Durham's untimely departure from Lower Canada. The controversy also highlights the control that London exercised over the Special Council. Not only did the Colonial Office send detailed instructions to each governor explaining their course of action, but the Imperial Parliament also had the authority to annul any ordinance it saw fit, thus suggesting that Durham's argument that he had despotic powers was perhaps an overstatement. As the following episode demonstrates, Durham's mission and work in Lower Canada was at the mercy of London.

Work on the Bermuda Ordinance started well before the first meeting of Durham's Special Council. In fact, in March 1838, Lord Glenelg gave the future governor some guidelines on how to deal with the difficult task at hand. Although the Colonial Secretary wished that *all* prisoners be sent before a judge and jury, he nonetheless

²⁰⁶ "An ordinance to appropriate certain sums, annually, to enable Her Majesty to defray the expense Pensions conferred on the Honorable Jonathan Sewell Esquire and the Honorable James Reid Esquire," 1 Vic., C. 6 (2nd Session), reprinted in *Ibid.*, p. 36. Jonathan Sewell was a politician and a judge in Lower Canada, and James Reid was a chief justice of the Court of King's Bench.

understood that impartial trials for all would be nearly impossible.²⁰⁷ Durham's first order was to therefore reduce the number of prisoners to be tried. Glenelg explained:

Before the commencement of any Trials it will be necessary to reduce the number of Prisoners to those only whose offenders could not be overlooked without serious danger to the future tranquility of the Province. Even amongst these there will be distinctions to be made.²⁰⁸

Glenelg even suggested exiling some from North America as he believed this would not only reduce the number of prisoners, but it might also "afford some security against their plotting against the public peace while resident in the adjacent States."²⁰⁹ Glenelg finally told Durham that he could pardon any prisoner to further reduce their numbers. However, Durham was to follow specific instructions. For the remaining prisoners, Glenelg insisted that each had go to trial as the British Government did not want any "deviation from the established modes of Legal Procedures [...]"²¹⁰ Glenelg added: "You will, therefore, bring them to trial, in the usual manner, before the Courts of Justice as at present constituted for the Trial of Criminal Offences in the province. By the Verdicts of the ordinary juries, the fate of the Prisoners must be decided [...]"²¹¹ Durham was to also avoid capital punishment. He should, instead, banish them from the colony or imprison them. Although Glenelg expected Durham to follow those instructions, he also understood that these might not work in practice. Glenelg therefore gave Durham the

²⁰⁷ This section is based on Newbould's article "Lord Durham, the Whigs and Canada, 1838: The Background to Durham's Return," which considered the issue in great detail and examined several collections such as the *Grey Papers*, *Ellice Papers*, *Lambton Papers*, etc., as well as the information found at the LAC, including the Durham Paper's (MG24, A27) and some material from the Colonial Office (CO42). LAC, MG 24, A 27, Durham Papers, Vol. 7, pp. 393-94. Letter from Lord Glenelg to Lord Durham, March 19, 1838. A similar letter was also found in LAC, MG 11, CO42, Q 246-1, p. 27. Dispatch from Glenelg to Durham, 21 April 1838.

²⁰⁸ *Ibid.*, p. 397.

²⁰⁹ *Ibid.*, p. 398.

²¹⁰ Dispatch from Lord Glenelg to Lord Durham, April 21, 1838, from *Ibid.*, pp. 382-83.

²¹¹ *Ibid.*

authority to change his course of action if the first trials prove too difficult. Glenelg explained:

Should the course of events, or your experience in the Province, lead you to consider that, with regard to future cases of Treason or Insurrection, an alteration is required in the law regulating the Trial of such offences, it will be competent to your Lordship to propose such an alteration to the Special Council [...]²¹²

Glenelg was moreover quite aware that Durham may be forced to use some unconstitutional methods or “any form of trial unknown to the constitution.”²¹³

Durham took advantage of this loophole. On 29 June 1838, he sent a letter to Glenelg explaining the reasons behind the Bermuda Ordinance. He had found it extremely difficult to bring *any* prisoner to trial without causing a controversy.

If a trial took place, there existed the danger of an acquittal, which would have been considered as a triumph by the disaffected, & would have produced [...] [more] [...] consequences. On the other hand, even if a conviction was obtained, the excitement of the proceedings, the exposure of the acts of treason & disaffection, & the revival of the whole question, would have again [...] inflamed all [...] animosities.²¹⁴

Durham was also in a very difficult position. Not only did he have to keep French-Canadians quiet to prevent them rebelling again, but he also had to actually punish some of them to prevent any future insurrection. Moreover, he had to please the loyal inhabitants who had suffered at their hands, and they were expecting severe punishments. Durham thus had to appear both merciful and ruthless at the same time. In order to resolve this conundrum, he followed Buller’s advice and divided prisoners between

²¹² *Ibid.*, p. 384.

²¹³ *Ibid.*, pp. 377-78.

²¹⁴ Dispatch from Durham to Glenelg, 29 June 1838. LAC, MG 24, A 27, Vol. 12, p. 113.

leaders and followers, and limited punishments to the leaders of the Rebellion. This therefore displayed the mercy of the Crown while, at the same time, punished those who had disturbed the colony's peace. Punishing the leaders led to another problem. The punishment had to be severe enough to please the loyal inhabitants, but not so severe to turn the condemned into political martyrs, which he feared "might be applied to evil uses [...]"²¹⁵ He feared that executions or banishments to a convict colony would have such an effect. This is why he decided to send the leaders of the Rebellion to Bermuda, where they were to be placed under strict surveillance, and from where it would be impossible for them to escape.

Despite a few criticisms, Durham's ordinance was initially very well received in England. In fact, Lords Melbourne and Glenelg sent several despatches expressing their satisfactions. Lord Melbourne, for example, stated in a letter dated 20 July 1838, "I am very happy to hear that you have settled the very difficult affair of the Prisoners & settled it so well. We must deal with them as we can at Bermuda."²¹⁶ Lord Glenelg, for his part, told Durham not to worry about the few criticisms.

The course you have taken is in consonance with the wishes [unreadable word] in my communications with you [...] You will see by the paper that our old enemies attacked your Ordinance & Proclamation last night. These attacks are after all impotent in this country. I trust they may be equally harmless in the colony. All reasonable people here approve your conduct. My colleagues & I naturally approve--our opinion is that, altho' there may be some legal inaccuracies of form, the substance is naturally right & the result satisfactory. You have resolved a very difficult question most judiciously & ably--in a way at once merciful & just, and equally grateful to void parties & impartial judges. I congratulate you on this & on the confidence which, i hear on all sides, all classes in Canada repose in

²¹⁵ *Ibid.*, p. 117.

²¹⁶ Letter from Lord Melbourne to Lord Durham, July 28, 1838. LAC, MG 24, A 27, Vol. 9, p. 231.

you."²¹⁷

Unfortunately, Durham did not have many friends in the House of Lords and opposition to his ordinance soon began to grow. Led by Lord Brougham and Lord Ellenborough, opponents consistently attacked the ordinance's legality and constitutionality. Some historians, like New, who have examined why the ordinance failed, have argued that Durham was simply mistreated in England. Others such as Newbould blamed Durham's personality for its failure.²¹⁸ Whatever the answer, two weeks after sending a letter congratulating him on a job well done, Glenelg sent him a much more negative dispatch. The Colonial Secretary explained how the government's position had drastically changed in the last two weeks.

Certainly it was very desirable to clear the goals, & exclude the dangerous & disaffected from the Province; & the opinion, here, was, I thought, as general as in Canada, that you had answered the ends alike of Justice & of Mercy. Since I last wrote, however, a storm has bust forth in the Lords, the effects of which you must have seen in the papers. I referred your Ordinance to the Crown Lawyers, & enclose to you their opinion. Their decision that the part of the Ordinance relating to Bermuda was invalid, placed us in a very embarrassing situation. Of course, there was no conceding that opinion; & the Government having admitted that fact of illegality, found it very difficult to uphold the Ordinance. We were therefore compelled to agree to its disallowance; after a long & very annoying debate.²¹⁹

In a dispatch dated 18 August 1838, Glenelg further added that Lord Brougham introduced a motion to disallow the ordinance in the House of Lords. The motion also sought to restrict the powers of the Special Council in order to prevent the passage of any

²¹⁷ *Ibid.*, p. 232-33.

²¹⁸ For more detail consider New, *Lord Durham's Mission to Lower Canada* and Newbould, "Lord Durham, the Whigs and Canada, 1838."

²¹⁹ Dispatch from Glenelg to Durham, August 14, 1838. LAC, MG 24, A 27, Vol. 9, pp. 279-80. Sending the prisoners to Bermuda was considered invalid because Durham did not have jurisdiction there. This will be further explored later in this chapter.

other similar legislation, and prevent any more “departure from the ordinary course of criminal law under whatever circumstances of danger and emergency [...]”²²⁰ Glenelg was later disappointed to report that the bill had passed. However, the sections restricting the powers of the Special Council were omitted. Glenelg later reported that as a result of the outcry from the House of Lords, the government agreed that the ordinance rested on no legal foundation and should therefore be revoked.²²¹

Not surprisingly, Durham was not pleased and did not shy away from expressing his anger. In a dispatch dated 25 September 1838, he told Glenelg that this controversy had caused “very injurious effects upon the course of [his] government [...]”²²² Durham was not only referring to all the bad press his bill had received, but more specifically to a speech given by the Duke of Wellington in response to the controversy. In July 1838, Wellington stated that the act that sent Durham to Lower Canada gave “no power, further than that of making certain reports on an important subject respecting the Government of Canada, and of directing the formation of a commission of inquiry for that purpose; in any other respect, so far as any recollection serves me, I know of no other power given to the Earl of Durham, which are not ordinarily given to every Governor of a Colony.”²²³ According to Durham, such attacks significantly weakened his position and mission in Lower Canada.

The effects upon the public mind was instantaneous and most remarkable. The disaffected [...] were encouraged to believe, that as any authority was so questioned, the manner in which it had been, or might be exercised, would to a certainty be vigorously assailed by the Opposition, and feebly

²²⁰ Dispatch from Glenelg to Durham, August 18, 1838. LAC, MG 24, A 27, Vol. 9, pp. 371-72.

²²¹ *Ibid.*, p. 373.

²²² Dispatch from Durham to Glenelg, September 25, 1838. LAC, MG 24, A 27, Vol. 13, p. 68.

²²³ *Ibid.*, p. 71.

defended by the Government. And they inferred that the success of my mission, which as all parties at home had allowed when the danger was imminent, and all here still felt, depended upon the vigorous exercise of an extraordinary authority, was thus rendered next to impossible. In forty eight hours after the speech attributed to the Duke of Wellington had been published here, the tone of that part of the press, which represents the disaffected, exhibited a remarkable change, giving evidence, no longer of submission [...] but of discontent, irritation, and seditious hopes.²²⁴

Durham believed that the disallowance of the Bermuda Ordinance weakened his authority, and that, consequently, any further ordinance passed by the council under his authority would be challenged by the colony's population.

His authority thus seriously undermined, Durham resigned from his now "useless office," which has "become thoroughly inadequate to the ends for which it was created, and on quitting a post which has been rendered altogether untenable by those from whom I expected every possible assistance in maintaining it."²²⁵ Durham added that his position had been so morally and politically weakened that he did not believe that staying in Lower Canada would yield any benefits. He explained that his actions, while in Lower Canada, aimed to prevent any future act of insubordination from the local population, and solve the problems that had led to the Rebellion in the first place. He believed that the only way to achieve this was to first gain the support the French-Canadian population through leniency and second to align all the colony's institutions on the British model; the Bermuda Ordinance was an important part of this overall plan. Durham explained that these (British institutions, leniency, and the prevention of future acts of insubordination) were the pillars of his plan and that all three depended on another. The disallowing of the ordinance thus undermined the rest of his plan: "[...] not merely by giving a triumph to

²²⁴ *Ibid.*, pp. 74-76.

²²⁵ *Ibid.*, pp. 92-3.

the disaffected generally, and allowing the worst of them an opportunity, to play over again their part as leaders in a rebellion, but also [...] by showing that no reliance is to be placed upon the validity of any law or the performance of any engagement proceeding from the extraordinary authority, which has been created for the temporary government of this country.”²²⁶

Durham went as far as accusing his “selfish” enemies in England to have endangered the welfare of the colony.

A government and Legislature anxious for the tranquility of this wretched country, for the interests of humanity, for the honor of the British Crown, would not have lightly foregone the benefits, which, such a policy promised and had already in great measure secured. They would have taken good care that its great and beneficent purpose should not be frustrated by any error, which they could rectify, or by the want of any power, which they could supply. If they found the Ordinance inoperative, they would have given it effect; if illegal, they would have made it law.²²⁷

Moreover, Durham quite simply could not understand why his ordinance was so severely condemned when the one banning habeas corpus was not. To Durham, Colborne’s ordinance was significantly worse. He explained: “I cannot bring myself to rate the great guarantee of personal liberty, as so unimportant a part of the British Constitution, or of those securities, which should possessed by every civilized community. On the contrary, I am inclined to think it quite as important, and quite as sacred from heedless and unnecessary violation as any without exception of the provisions made for fair and open trial.”²²⁸

²²⁶ Dispatch from Durham to Glenelg, September 29, 1838. LAC, MG 24, A 27, Vol. 13, pp. 145-46.

²²⁷ *Ibid.*, pp. 154-55.

²²⁸ *Ibid.*, pp. 172-73.

Not only did he believe that his ordinance was not as bad as the one suspending habeas corpus, but he also believed that it was completely legal, albeit it did depend on the cooperation of the British Parliament and the Bermuda Legislature. Durham believed that he had the legal right to send any prisoner to Bermuda, and referred to the Imperial Statute Fifth, George IV, Cap. 69, Section 4, which “provides that His Majesty by an Order-in-Council may authorize the governor for the time being of any of the Colonies to appoint the place within His Majesty's dominions to which offenders convicted in any such colony and being under sentence or order of transportation shall be sent or transported, and provided that such convicts at the place to which they maybe transported shall be subject to the same laws as other convicts [...]”²²⁹ Durham also added that this Order-in-Council “was issued on the 11th November 1825 directing that all Governors of the Colonies for the time being should from time to time appoint the places to which convicted Offender should be transported.”²³⁰ Furthermore, Durham stated that he was not the first governor to act in such manner as Governor General Lord Gosford made use of this act when he sent convicts to New South Wales and Van Diemen’s Land. Durham thus claimed that the right and authority of the Colonial Governor to punish prisoners by transportation was “indisputable [...] and its frequent exercised is recognized [and] I as Governor General and Governor in Chief of Canada had a power to appoint the place to which any person should be transported who was convicted as a transportable offence [...]”²³¹ As a result, the act itself was “not illegal.”²³² Durham did admit, however, that he was aware that there would be some problems with the ordinance as the prisoners could

²²⁹ Dispatch from Durham to Glenelg, September 26, 1838. LAC, MG 24, A 27, Vol. 13, p. 112.

²³⁰ *Ibid.*

²³¹ *Ibid.*, pp. 116-17.

²³² *Ibid.*, p. 119.

not legally be forced to remain in Bermuda unless the Bermuda Legislature passed appropriate legislation to that effect.²³³ Although there was a chance that the Bermuda government would refuse to cooperate, Durham was hopeful that Her Majesty's Government would get involved and pass a law that would subject Bermuda to accept the prisoners and prevent their release. Durham thus concluded that "in no respect is the ordinance illegal, although in part it might have been inoperative without the cooperation of Her Majesty's Ministers and the British Legislature. Instead of waiting for the express directions of the Government, I determined for the sake of tranquilizing the Province to anticipate such cooperation and to remove the prisoners instantly."²³⁴

Several members of the Special Council sided with the governor in this controversy. Although studies on Lord Durham have thoroughly explored the political storm back in England, very little has been done with regards to the response of Lower Canada, or Durham's council itself towards it. Whereas the second section of this dissertation will examine that of Lower Canada as a whole, the following pages will examine that of the members of the Special Council. In a letter to Durham dated 15 October 1838, Charles Paget, for example, expressed deep regret for the "scandalous treatment" he had received.²³⁵ James MacDonnell also sent a letter to Durham expressing his satisfaction with the Bermuda Ordinance and his regret that it had been "recklessly" disallowed. He also added that this bill was not only quite legal, but it was a most "necessary [...] humane [and] high-minded" measure.²³⁶ Charles Grey also expressed such support. In a letter to his father dated 30 September 1838, he stated that although he

²³³ Dispatch from Glenelg to Durham, November 13, 1838. LAC, MG 24, A 27, Vol. 10, pp. 1062-63.

²³⁴ Dispatch from Durham to Glenelg, September 26, 1838. LAC, MG 24, A 27 Vol. 13, p. 124.

²³⁵ Letter from Charles Paget to Durham, October 15, 1838. LAC, MG 24, A 27, Vol. 21, p. 763.

²³⁶ Letter from James MacDonnell to Durham, October 14, 1838. LAC, MG 24, A 27, Vol. 27, p. 347.

had some concerns with the ordinance's legality, he nonetheless believed that it "was the only course to be adopted under the circumstances [,] that Lambton has been so infamously treated from the moment he left England, both by the opposition and the Government [...] and that the consequences to this country are likely to be so very disastrous that I have written much more than I intended."²³⁷ Grey mirrored Durham's comments and maintained that his enemies and critics in England did not consider the consequences that this would have on his authority in Lower Canada, and that it would be greatly weakened. It could also potentially open a very dangerous door as all of Colbone's ordinances would also, as a result, be reconsidered and questioned by all in the colony. According to Grey, Durham was also so greatly affected by the attacks from England that Couper and Charles Buller even were, at one time, afraid for his life.²³⁸

Charles Buller also offered his support. He believed that this bill was the best that any governor could have done considering the difficult position he was in and was sincerely shocked when he heard that it was condemned in England. Buller was confident that "the merciful and pacifying purpose of the act would have so pleased the great mass of our countrymen, that there would have been no dissent from their universal approbation."²³⁹ In addition, Buller believed that Durham's overall mission was a success. Although he did not implement as many reforms as he first promised, which Buller fully admitted was not his fault, but that of his enemies who cut short his mission. His stay proved very fruitful. It was, for example, "his policy in fact [...] that pacified Canada, and

²³⁷ Grey, *Crisis in the Canadas: 1838-39*, pp. 130.

²³⁸ *Ibid.*, p. 131.

²³⁹ LAC, MG24, A26, Charles Buller Fond, Vol. 1, *Sketch of Lord Durham's Mission to Canada in 1838, Written by Mr. Charles Buller in 1840*, p. 103.

secured its retention.”²⁴⁰ Buller continued: “[h]e found the jails of Lower Canada full of prisoners trembling for their lives, which had been forfeited to the law, and the frontiers crowded with hopeless and reckless exiles. These traces of insurrection he removed, freed every prisoner, and recalled the exiles without shedding any man’s blood.”²⁴¹ Although Buller admitted that it was impossible for Durham to reconcile all French-Canadians, he did the next best thing, “he deprived their discontent of every justification [...]”²⁴² Moreover, his preliminary work on establishing a land registry system and ending seigneurial tenures, although were not completed, would facilitate the work of future governors. Finally, although Buller did not want Durham to resign, he nonetheless understood why he had to as the “factitious conduct of the Tories, and the more fatale abandonment of Ministers” had seriously weakened his authority in Lower Canada and exposed him to numerous attacks and criticisms.²⁴³ Durham’s fragile health was also significantly affected by the controversy, and that it was thus “evidently impossible for him to bar up against the anxieties and labour of his government under existing circumstances and display that energy and promptitude of decision which had so eminently distinguished him when his health was better.”²⁴⁴ As a result of the actions from politicians in England, which caused Durham sudden resignation, the great changes that he was supposed to bring the country, the peace and stability that he promised, which he had for so long labored for, “ended in nothing but disappointment.”²⁴⁵

On 1 November 1838, Durham left the colony and returned to England. Sir John

²⁴⁰ *Ibid.*, p. 133.

²⁴¹ *Ibid.*

²⁴² *Ibid.*, p. 135.

²⁴³ *Ibid.*, pp. 106-07.

²⁴⁴ *Ibid.*, p. 108.

²⁴⁵ *Ibid.*, p. 128.

Colborne, who had headed the council prior to Durham's arrival, once again sat at the head of the Special Council. Although Durham had resigned in late September 1838, he remained in office for another month. He explained that he had promised to the loyal inhabitants that he would end their suffering and resolve their many grievances, and in order to honour such promises, he had to remain in Lower Canada until he had gathered enough information to fully understand what was wrong with the colony and thus make an informed decision on how to resolve these issues. In the past months, Durham made it his duty to inform himself on the inhabitants' greatest concerns, desires and issues, but had yet to fulfill his mission. According to Durham, this task was "so near completion that I cannot bear to think of leaving it unfinished."²⁴⁶ Durham believed that his task would be done in a matter of weeks. Although his mission was cut short as a result of the controversy, Lord Glenelg reassured him that his hard work would not go unnoticed. Shortly before his departure, on 26 October 1838, Lord Glenelg stated that the crown was very pleased with his work and conduct despite everything.

Her Majesty's Government are persuaded that the more closely the main acts of your administration are viewed in all their bearings, the more apparent will it be to impartial observers, and the men actuated by a sincere regard to National interests, that these acts have been conceived in a spirit, and executed with firmness, alike worthy of your reputation, and adapted to the exigency of the circumstances with which you were called to struggle.²⁴⁷

2.4 LINKS WITH THE CAM

Although his first act as governor—dissolving Colborne's CAM-dominated council—should have made Durham an enemy of the Constitutionalists, the CAM

²⁴⁶ Dispatch from Durham to Glenelg, September 29, 1838. LAC, MG 24, A 27, Vol. 13, pp. 178-180.

²⁴⁷ Dispatch from Glenelg to Durham, October 26, 1838. LAC, MG 24, A 27, Vol. 10, p. 1022.

nonetheless considered his tenure very profitable. Despite his initial appearance of neutrality, Durham, as correctly noted by Watt, continued his office's close relationship with the CAM. In fact, months before he even set foot in Canada, Durham had his first contacts with representatives of the CAM. On 5 April 1838, George Moffatt and William Badgley presented a list of grievances on behalf of the colony's loyal inhabitants listing the reforms they wished to see implemented. Those included the improvement of the navigation of the St. Lawrence River, the need for a permanent land registration system, the end of "feudal" tenures in the colony, the incorporation of the cities of Quebec and Montreal and the implementation of British laws and institutions.²⁴⁸ More specifically, they sought the end of French political dominance through the Union of the Canadas.²⁴⁹ As will be later noted, many of these very demands found their way in the pages his report.

Throughout his tenure, Lord Durham constantly worked to satisfy the demands of the CAM, a fact that has been overlooked by all historians. In fact, Charles Buller's memoirs illustrate the close relationship between the two. For example, during the preliminary discussions that led to the passing of the Bermuda Ordinance, Buller explained how he and Durham often considered the opinions of the Constitutionalists, which he referred to as the British Party. In fact, before proposing the idea to Durham of punishing solely the leaders of the Rebellion, Buller ascertained "that the proposed mode of dealing with them would not be condemned by the leading members of the British

²⁴⁸ Letter from G. Moffatt and W. Bradley to Lord Durham, April 5, 1838. LAC, Durham Papers, Roll C-1855, Vol. 25, pp. 415-16.

²⁴⁹ This dissertation will not again describe why the CAM seeks Union and the end of French political dominance. For more information, refer back to chapter one.

Party.”²⁵⁰ Buller and Durham often met with the leaders of the British Party. At one of these meetings, Buller explained that they discussed the problems that plagued the colony and the various ways of solving them. According to Buller, it was during these meetings that Durham “developed for the first time an outline of his views with respect to the permanent settlement of the Colonies.”²⁵¹ Buller’s memoirs do not specify what those views were, but bear witness to the fact that Durham was lending a sympathetic ear to the CAM. He sought to resolve what the CAM believed were the many “irritating events” that had plagued the British in the colony.²⁵² Durham soon understood that their biggest concern was the colony’s seigneurial system, and thus proposed “the commutation of these tenures in the City of Montreal, where their operation was most injurious [...],” accompanied by the introduction of a land registry system, which the British believed had been blocked by the perpetuation of the colony’s “feudal” land tenure system.²⁵³ However, as a result of Durham’s unexpected resignation, these measures had to wait another 18 months to be implemented.

Durham also gave important positions to members and supporters of the CAM. Adam Thom, who became a confidant and was made an assistant-commissioner in the municipal commission, headed by Charles Buller, was the most controversial. The commission itself investigated and reported on the state of municipal institutions in the colony. Though Thom was not an official member of the CAM, he was nonetheless a very important ally. At an October 1837 CAM rally, he gave an “electrifying speech,” which praised the Constitutionals, and urged them to organize for the defense of

²⁵⁰ LAC, MG24, A26, Charles Buller Fond, Vol. 1, *Sketch of Lord Durham’s Mission to Canada in 1838, Written by Mr. Charles Buller in 1840*, p. 63.

²⁵¹ *Ibid.*, p. 71.

²⁵² *Ibid.*, p. 73.

²⁵³ *Ibid.*, pp. 83-84.

Montreal against a potential uprising.²⁵⁴ Thom also published several pamphlets, such as the *Anti-Gallic Letters* and the *Remarks on the Petition of the Convention, and on the Petition of the Constitutionals*, in which he championed the Constitutionals, and openly acknowledged their influence, especially that of Peter McGill and George Moffat.²⁵⁵ Thom also shared their opinions as he promoted the establishment of British laws and institutions to improve the political and commercial interests of the colony's loyal citizens, and the assimilation of French-Canadians. According to Thom, all French-Canadians were traitors and yearned for the destruction of the British Empire. He was especially hostile to their political leaders: "[t]he French demagogues [...] have long professed the most rebellious repugnance to British authority and the most deadly hatred of the British name [...] The ungrateful traitors have substantially said to the imperial authorities, 'If you do not by law render us independent from Great Britain, we shall render ourselves by force.'"²⁵⁶ Needless to say, Adam Thom was not a very popular figure in Lower Canada. His appointment was so controversial that upon hearing about it, Charles Grey told his father, "I confess the whole business puzzles me."²⁵⁷ Charles Buller was however very pleased with this appointment stating that "the only really bad result of this was the loss of the assistance of a respectable and influential French-Canadian, who had consented to serve on the Commission, but declined when he found that he was to be associated with one, who was regarded as the enemy of his race."²⁵⁸

²⁵⁴ Senior, *Redcoats and Patriots*, p. 37.

²⁵⁵ Adam Thom, *Remarks on the Petition of the Convention, and on the Petition of the Constitutionals* (Montreal: Montreal Herald, 1835), p.2.

²⁵⁶ Adam Thom, *Anti-Gallic Letters Addressed to His Excellency, the Earl of Gosford, Governor-in-Chief of the Canadas* (Montreal: Montreal Herald, 1836), p. 106.

²⁵⁷ Grey, *Crisis in the Canadas*, p. 97.

²⁵⁸ LAC, MG24, A26, Charles Buller Fond, Vol. 1, *Sketch of Lord Durham's Mission to Canada in 1838, Written by Mr. Charles Buller in 1840*, p. 88.

Durham's report provides the strongest evidence of his sympathy for the CAM as it addressed all their concerns, and put forth an identical agenda. Steven Watt argued that Durham's report "is a powerful symbol of the CAM's power to influence imperial policy and provincial politics in the months following December 1837."²⁵⁹ It was indeed a "partisan document."²⁶⁰ The report similarly maintained that the only way to fully resolve the problems that had plagued the colony for years and led to the 1837 Rebellion was to eliminate French political dominance and replace it with British political dominance. In order to do so, the report also called for the Union of the Canadas. The report also condemned the backwardness of French-Canadians and its negative impact on the colony and its British inhabitants. More specifically, Durham focused on the seigneurial tenures and the lack of land registry offices. Although Allan Greer has argued that Durham might have come to these conclusions on his own because by the time he visited Canada, hatred between the French and English was very high, it is very difficult to ignore the fact that Durham chose to surround himself with members and supporters of the Constitutionalists, and was consistently meeting with them to ensure that he knew what they wanted. Durham's council, which first aimed, or at least he claimed, to be without prejudice and remain neutral, became a mere mirror of Colborne's; one that promoted and supported the aims of the Constitutionalists and subject the rest of the colony to them. Although Durham appeared to act like a dictator while in council, as suggested by Charles Grey, Charles Buller and even himself, it is obvious that outside the council this was not the case. He was not only at the mercy of the Imperial Parliament, but he also considered the opinions of an, albeit limited, local population.

²⁵⁹ Watt, "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841," p. 89.

²⁶⁰ *Ibid.*

CHAPTER 3: COLBORNE RETURNS, NOVEMBER 1838 TO APRIL 1839

After the failure of the 1837 Rebellion, several *Patriotes* fled to and found refuge in the United States.²⁶¹ Amongst these refugees was Robert Nelson, who soon played an important role in the 1838 insurrection. Although he continued the fight for various political reasons, he was driven by personal ones as well. His brother Wolfred was arrested and sent to Bermuda, and Robert sought to, amongst other things, avenge him. While in the United States, the *Patriote* cause gained much sympathy. In fact, both Nelson and Edmund O’Callaghan received thunderous applause when they gave speeches in several American cities such as New York City, Albany and Philadelphia. Despite the apparent support from the local population, however, the American president, Van Buren, did not share this enthusiasm, and refused to offer assistance. The United States was going through a tough economic crisis and simply could not afford another war with Britain.

Although this was a major setback, Nelson did not give up. On 28 February 1838, he, along with 600 supporters, crossed into Lower Canada from Vermont, established himself at Caldwell’s Manor (near Clarenceville), and produced his famous “Lower Canadian Declaration of Independence.” Lower Canada’s independence was short lived: after the first night, less than 200 men remained, a force that was no match against the British. Disappointed but not defeated, Nelson returned to the United States, and planned his next move. In the summer of 1838, he founded the *Association des Frères Chasseurs*,

²⁶¹ For more information on the Rebellion of 1838, consider Filteau, *Histoire des Patriotes*, pp. 401-448 and Senior, *Redcoats and Patriotes*, pp. 147-196.

which aimed to unite all who sought to gain, and more importantly, help gain, Lower Canadian independence. This secret society garnered much support amongst *Patriotes* in the United States and in Lower Canada, but more specifically, in and around Montreal.

In early November 1838, Nelson crossed into Lower Canada and attempted to gain Lower Canadian independence for the final time. Although his mission started off well, it ended in complete failure. On 4 November 1838, Nelson arrived at Napierville where he read his declaration of independence. In the next few days, several *Patriotes* camps were formed at Beauharnois, Sainte-Martine (Baker's Farm), and Châteauguay. Such early successes were limited, however, as uprisings in the rest of the colony were not as successful. For example, the La Prairie *Chasseurs* failed to break communications between Montreal and the South Shore; *Patriotes* in the Sorel area failed to seize the city and its munitions depot; and the *Patriotes* north of Montreal remained quiet. Robert Nelson also faced other significant problems. Desertion, ill-discipline, treachery and mutiny were constant problems that he faced as the leader of the *Patriote* and president of the new republic. His main concern, however, was a shortage of weapons; his force would thus be no match against a better-equipped British and loyalist force. For example, he sent over a hundred men from Napierville to Rouses's Point, where they were to get reinforcements, weapons and gain control of the route between Napierville and the American border. Unfortunately, this poorly armed group met and was defeated by group of local volunteers from Hemmingford and Sherrington. A few days later, a much larger force led by Nelson himself, sought to reestablish control of the same route. However, at Odelltown, they were again defeated by the same volunteers, which had, this time, received reinforcements from the Loyal Rangers of Clarenceville. This second defeat sent

a terrible message to the *Patriotes* in the region. In the next few days, *Patriote* camps dispersed at the mere sight of better-equipped British regulars, and on 10 November 1838, a week after Neilson arrived, British forces entered an empty Napierville. The last *Patriote* stronghold had been overrun without a single shot. The 1838 Rebellion thus ended. It was in this volatile environment that Colborne was once again appointed head of the Special Council.

3.1 COLBORNE'S FIRST SESSION

After Durham took over the Special Council, Colborne had not returned to England, but had remained as the Commander of the Forces in Canada. When Durham finally left, his appointment was a logical decision. He had the experience and was on site. In many ways, his second tenure was similar to his first. He was again appointed as an interim until the British Government sent a proper successor to Durham.²⁶² During his second tenure, however, the scope of the Special Council's ordinances significantly expanded. Although at first, it solely focused on the handling of the Rebellion, it later passed several ordinances that had a tremendous impact (economic, religious, and legal) on the future of the colony.

The Special Council met in two separate sessions during Colborne's second tenure between 5 November 1838 and 21 December 1838, and was once again the tool of the CAM. First of all, although the members of Colborne's first council were all reappointed, absenteeism remained a significant problem, which benefited, again, the members of the CAM. According to evidence provided by the *Journals of the Special Council*, the

²⁶² Glenelg to Colborne, 12 December, 1838, quoted from Watt, "Authoritarianism, constitutionalism and the Special Council of Lower Canada, 1838-1841, p. 25.

members of the CAM and their supporters were amongst those who attended the greatest number of meetings. The influence of the CAM on the Special Council was also increased with the addition of George Moffatt, who was also one of the rare councilors present most meetings (Table 5).

Table 5: New Members of Colborne's Second Council.

Name	Hometown	Economic Experience	Political Experience	Seigneur
Moffat, George	Montreal	Yes	Yes	No
Mondelet, Dominique	Montreal	Yes	Yes	Yes

Like other Constitutionlists in the council, Moffatt was a dominant member of Montreal's economic and business community.²⁶³ He was actively involved with the Bank of Montreal, which he directed from 1822 to 1835. In the 1830s, Moffatt also worked very hard to increase Montreal's economic power in North America and did so by promoting the improvement of the Harbor of Montreal. Moffatt was also a member of the Committee of Trade, which later became the Montreal Board of Trade and which he presided from 1844 to 1846. His influence on Montreal finances continued after his term on the Special Council. In 1847, for example, he was involved with Montreal Mining Company, acting as a director, the Marine Mutual Insurance Company of Montreal, and Molsons Bank. Although not a card-carrying member of any Constitutionlist Party, he was a supporter (as well as moral leader) of the CAM and a vicious opponent of the *Patriotes* and French-Canadians. He often worked and associated himself with Constitutionlists such as John Molson, Peter McGill and Adam Thom to condemn their

²⁶³ The following information was taken from *Dictionary of Canadian Biography Online*, "George Moffatt," Gerald Tulchinsky, Vol. 9. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=4602&&PHPSESSID=9lscsjhnmhorlceqd2nn1mpbhu6

political authority and negative impact on the colony. Moffatt, along with William Badgley, even went to England on numerous occasions to promote the Constitutionalists' agenda and the assimilation of French-Canadians.

Dominique Mondelet was the other new member of the Special Council.²⁶⁴ Although initially a *Patriote*, his association with the party ended in 1832 when he accepted a post as an honorary member of the Executive Council. Many of the radical members of the party turned against him as a result, arguing that he would be a spy for the Governor General. He was soon expelled from the party. Along with other French-speaking Special Councilors, Mondelet was also condemned as a turncoat by his peers. In fact, La Fontaine viciously attacked him, and his brother Charles-Elzéar Mondelet, in *Les deux girouettes, ou l'hypocrisie démasquée*. In the *Traité sur la politique coloniale du Bas-Canada*, Mondelet answered to his attacks and warned against the radical aims of the party, especially its anti-clericalism. After the Rebellion, Mondelet became a very disliked figure in Lower Canada. Not only did he administer the unpopular general oath of allegiance in December 1837, but he also, as a deputy judge, prosecuted several rebel leaders in May 1839. Although Colborne's council still gave the impression of diversity, and appointed a French-Canadian councilor, Colborne made sure that he appointed an opponent of the *Patriotes* and one that was considered a turncoat.

Each meeting followed the same routine as Colborne's first council. The governor or the presiding member, which was again James Cuthbert, entered the Special Council and proposed a few ordinances. These were then discussed, amended, and on a later date,

²⁶⁴ The following information was taken from *Dictionary of Canadian Biography Online*, "Dominique Mondelet," Elizabeth Gibbs, Vol. IX. http://www.biographi.ca/009004-119.01-e.php?id_nbr=4605&&PHPSESSID=9lscsjhnmhorlceqd2nn1mpbhu6

voted on. Once again, voting patterns are, as explained by Watt, “largely irrelevant.”²⁶⁵

Debates are also unavailable in the *Journals of the Special Council*, and any speech defying the governor or criticizing an ordinance was still considered an act of insubordination. The Special Council first focused its attention on the Rebellion; out of 15 ordinances that were passed in the first session, eleven dealt with the Rebellion itself (Table 6).

Table 6: Ordinances Passed in the First Session of Colborne’s Second Council

Type of Ordinances	Number
Rebellions	11
Economy	1
Social	0
Military	0
Religion	0
Immigration	0
Legal System	2
Municipal/Political	0
Other	1
Total	15

What is surprising, however, is that the Special Council’s first order of business was not to deal with the ongoing Rebellion, but to appease one of the CAM’s financial concerns. On 5 November 1838, following a petition he received from Peter McGill and his associates from the Bank of Montreal, Colborne proposed an ordinance that authorized certain Banks to suspend all specie (cash) payments. In the petition, McGill complained that as a result of the Rebellion, its affairs were in such a poor state that it could not meet all of its obligations to the public. In particular, it could not guarantee the

²⁶⁵ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 44.

exchange of all notes for specie.²⁶⁶ McGill claimed that one of the ways that the *Patriotes* and their supporters sought to overthrow the government was to “withdraw the specie from the coffers of the several chartered banks in this city, by demanding the redemption of their notes in current coins, thereby weakening the resources of the banks [...]”²⁶⁷ He even claimed that in the weeks that preceded the Rebellion, many had flocked to the banks to redeem their notes. Moreover, the shipment of specie it was expecting from New York was held back because of the Rebellion. As a result of all of this, McGill argued that banks did not have enough species in their coffers and thus asked that the council approve an ordinance that would grant all chartered banks the authority to suspend the redemption of notes without incurring a forfeiture of their charter. Colborne and the Special Council agreed. On the next day, 6 November 1838, resulting from “the present disturbed state of the Province,” an ordinance to that effect was passed, giving all chartered banks in Lower Canada the right to cease redeeming notes without forfeiting their charter.²⁶⁸

Dealing with the Rebellion was nonetheless the object of the council’s first session. On 7 November 1838, for example, Colborne proposed three ordinances; all three passed the very next day on 8 November 1838. The first allowed all of the colony’s Justices of the Peace to seize and detain all arms and ammunition unless in the possession of Her Majesty's Forces. This ordinance also gave them the authority to legally enter any house and search for weapons, which would be seized and disposed at the district’s

²⁶⁶ Special Council of Lower Canada, *Journals of the Special Council of the Province of Lower Canada. From the 5th November to the 21st December, 1838. In the Second Year of the Reign of Queen Victoria, Vol. 3* (Montreal: T. Cary and George Desbarats, 1838-1841), pp. 5-6.

²⁶⁷ *Ibid.*

²⁶⁸ “An Ordinance to authorize certain banks therein named to suspend specie payments in certain cases,” 2 Vic. C. 1 (3rd Session), reprinted in Special Council of Lower Canada, *Ordinances made and Passed by the Administrator of the Government, and the Special Council for the Affairs of the Province of Lower Canada, Vol. 3* (Quebec: John Charlton Fisher and William Kemble, 1838), pp. 10-22.

Military Post. All individuals failing to cooperate with the Justices of the Peace and resist the searches or seizures would be jailed for three months.²⁶⁹ The second ordinance gave Colborne and his officers the authority to take vigorous measures to suppress the Rebellion, including the use of courts-martial and death sentences against all that participated in the Rebellion.²⁷⁰ The third ordinance extended the suspension of habeas corpus—an act that was initially passed during Colborne’s first tenure—until 1 June 1839.²⁷¹ Although this ordinance’s legality was heavily debated in the colony, in Britain and later by historians, as will be further discussed, according to Glenelg, Colborne and the Special Council had the right to adopt such an ordinance. He stated in a 29 January 1839 dispatch that:

We adhere to the opinion we have repeatedly expressed that the Special Council Established in Lower Canada by 1 Vic. C. 9. is not restrained from passing Ordinances which may alter the Criminal Law in Canada and make it different from the Criminal Law of England as it existed at the passing of the Canada Act 14. Geo. 3.

We conceive that the power of the Special Council to Legislate respecting criminal law and the administration of it in Lower Canada is supreme-as was the power of the former Legislature of Lower Canada before it was suspended..-If this be so, it is impossible to make any distinction in point of Law between an Ordinance altering the mode of Trial of common Assaults and subjecting them to the summary jurisdiction of a Magistrate instead of being referred to a Jury and an Ordinance altering the mode of Trial in cases of treason and enacting that instead of a Jury they shall be tried by a Court Martial—In 1 Vic. C. 9.—there is no exception with

²⁶⁹ “An ordinance for authorizing the seizing and detaining, for a limited time, of Gun powder, Arms, Weapons, Lead and Munitions of War,” 2 Vic., C. 2 (3rd Session), reprinted in Special Council, *Ordinances made and Passed*, Vol. 3, pp. 22-26.

²⁷⁰ “An ordinance for the suppression of the Rebellion, which unhappily exists within this Province of Lower Canada, and for the Protection of the Person and Properties of Her Majesty’s Faithful Subjects within the same,” 2 Vic., C. 3 (3rd Session), reprinted in *Ibid.*, pp. 26-34.

²⁷¹ “An Ordinance to authorize the apprehension and detention of persons charged with High Treason, Suspicion of High treason, Misprison of High Treason and Treasonable Practices, and to suspend, for a limited time, as to such persons, a Certain Ordinance therein mentioned, and for other purposes,” 2 Vic., C. 4 (3rd Session), reprinted in *Ibid.*, pp. 34-38. For more information on the ordinance, refer back to the first chapter.

regard to Treason, and the mode of Trying it may be altered as much as any other offence.²⁷²

On 15 November 1838, Colborne proposed another counter-rebellion ordinance, which stated that the Rebellion would be over only *when* the governor declared it to be over. This gave the Colborne the authority to decide when the Special Council's, at times controversial, counter-rebellion measures may end, and also gave him the authority to pass any ordinances, no matter how controversial, such as that banning habeas corpus, as long as he wanted.²⁷³ The ordinance passed on 16 November 1838. On 20 November 1838, the Special Council met and passed two more counter-rebellion ordinances. The first targeted all individuals that took, gave, helped, assisted or even witnessed anyone take an oath to engage in any treasonable act, and set various punishments depending on the level of involvement. For example, if an individual directly took or gave the oath, he may be liable to 21 years in prison. The owner of the house, farm, dwelling, etc. where the oath took place was also liable for punishment. The first offence would result in a fifty-pound fine. Any future offence would be punished in a similar manner as those directly involved in the oath.²⁷⁴ An ordinance for the attainder of rebels sentenced to death for treason, which ensured they would lose all of their property and hereditary titles was also passed. This ordinance also ensured that they would also lose the right to pass them on to their heirs.²⁷⁵

²⁷² Dispatch from Glenelg to Colborne, 26 January 1839. LAC, MG11, CO42, Series G, Vol. 42, p. 116.

²⁷³ "An Ordinance to declare and define the period when the rebellion, now unhappily existing in this Province shall be taken and held to cease, and for other purposes," 2 Vic., C. 5 (3rd Session) reprinted in Special Council, *Ordinances made and Passed*, Vol. 3, pp. 38-42.

²⁷⁴ "An Ordinance for more effectually preventing the Administering or taking of unlawful oaths and for better preventing treasonable and seditious practices," 2 Vic., C. 8 (3rd Session), reprinted from *Ibid.*, p. 52-62.

²⁷⁵ "An ordinance for the Attainder of persons, against whom sentences or judgments of Court Martial, shall be given, under and by virtue of an Ordinance passed in the 2nd year of His Majesty's reign, intituled

On 12 December 1838, the Special Council passed one of the most controversial ordinances of the session. As will be discussed in the second section of this dissertation, one of the most debated ordinances was that banning habeas corpus. In fact, and as will later be examined, whereas most counter-rebellion ordinances were accepted as urgent necessities, the habeas corpus ordinance resulted in much criticism, especially from the colony's judges and legal specialists, who considered it both illegal and unconstitutional. When these criticisms became a significant source of embarrassment, however, Colborne and his councilors responded with very draconian measures: they got rid of the judges that were causing problems and maintained that habeas corpus had never been a right in Canada in the first place. A first ordinance gave Colborne the authority to appoint new judges in the districts of Montreal, Quebec and Trois-Rivières, whenever he deemed necessary.²⁷⁶ As will be further discussed, it was used to rid the colony of its problem-causing judges. The second draconian measure was "An Ordinance to declare that the second chapter of the Statute of Parliament of England, passed in the 31st year of the reign of King Charles the 2nd is not, nor has ever been in force in this Province, and for other purposes." In order to refute the claims that the Habeas Corpus Ordinance was unconstitutional, the council passed this one, which claimed that habeas corpus had never

[sic] 'An Ordinance for the suppression of the Rebellion which unhappily exists within this Province of Lower Canada, and for the protection of the persons and properties of His Majesty's faithful subjects within the same', and of an other Ordinance passed in the said 2nd year of His Majesty's reign, intituled [sic] 'An Ordinance to declare and define the period when the Rebellion, now unhappily existing in this Province, shall be taken and held to cease, and for other purposes,'" 2 Vic., C. 7 (3rd Session), reprinted in *Ibid.*, pp. 46-52.

²⁷⁶ "An Ordinance to authorize the Governor or person administering the Government of this Province, to appoint one or more Assistant Judges for the Courts of the King's Bench for the Districts of Quebec and Montreal, in this Province, and an Assistant Judge of the District of Three Rivers, in case of the sickness, necessary absence or suspension from Office of any of the Justices of the said several Courts of King's Bench, or the resident Judge for the District of Three Rivers, in the said Province," 2 Vic., C. 8 (3rd Session) reprinted in *Ibid.*, pp. 76-82.

been a right in the colony in the first place.²⁷⁷ As will be further explored, this decision led to a significant court case between three judges and the governor.

The Special Council passed its last counter-rebellion measure during the final meeting of the first session on 21 December 1838. In all, it again sought to protect all and compensate loyal inhabitants that had taken the law into their own hands and fought against the rebels. These inhabitants were protected from any future legal proceedings that could result from their actions.²⁷⁸

Although evidence regarding the opinion of councilors is unfortunately scarce, available material does nonetheless suggest that at least one councilor questioned some of the Special Council's ordinances, especially the one removing the judges who opposed the habeas corpus ordinance. In fact, according to historian Philip Goldring, Pierre de Rocheblave was so opposed to it that he "withdrew briefly [from the Special Council] in December, 1838, when ordinances were rushed through nullifying the factious judgments of two *Canadien* judges [...]"²⁷⁹ This controversial ordinance even forced de Rocheblave to briefly reconsider his position as a councilor; he even wrote and planned to send a letter of resignation to the Civil Secretary. In a letter dated 13 December 1838, he alluded to both his opposition to the ordinance and his imminent resignation.

Comment il n'est pas venu à l'idée [sic] du faiseur d'ordonnances que la

²⁷⁷ "An Ordinance to declare that the second chapter of the Statute of Parliament of England, passed in the 31st year of the reign of King Charles the 2nd is not, nor has ever been in force in this Province, and for other purposes," 2 Vic., C. 15 (3rd Session), reprinted in *Ibid.*, pp. 90-94.

²⁷⁸ For more information, refer to the first chapter where the ordinance is discussed in greater detail. "An Ordinance for indemnifying persons who, since the first day of November 1838 have acted in apprehending, imprisoning, or detaining in custody, persons suspected of High Treason, or Treasonable practices, and in the suppression of unlawful assemblies, and for other purposes therein mentioned," 2 Vic., C. 14 (3rd Session), reprinted in *Ibid.*, pp. 82-90.

²⁷⁹ Goldring, "British Colonists and Imperial Interests in Lower Canada, 1820 to 1841," pp. 245-46.

même maladie pouvait aussi bien saisir les Juges de St. François et Gaspé, est plus je ne puis dire, c'est un moyen de terreur qui planne sur la tête de nos Juges—et comment l'on croit que leurs Jugements en sera plus impartiaux je ne puis le dire non plus. [...] Après m'être opposé à cette Ordonnance en ce qui regarde les 3 Rivières et ici [Montréal] je n'ai pas voulu assister à la séance et me suis retiré. J'ai adressé ma résignation au Secrétaire Civil mais elle est dans ma poche depuis hier. Je sais qu'il y a beaucoup de pour et contre, et attends pour me décider à l'envoyer, quelques mesures qui me répugneraient à passer [...]²⁸⁰

As Steven Watt correctly states, this ordinance had another consequence for de Rocheblave. Not only had he questioned an ordinance passed by the council, but for the very first time, he “seemed to be questioning the very nature of the institution. The council no longer merely seemed to suffer from an over-representation of his political opponents; it now seemed to be essentially a tool of his political opponents.”²⁸¹ De Rocheblave never did send his letter to the Civil Secretary, and remained on the council until poor health forced him to retire. Unfortunately, his correspondence does not explain why he never sent the letter and did not resign. According to Watt, de Rocheblave's disillusionment was perhaps, quite simply, “not total.”²⁸² Although de Rocheblave was uncomfortable with some ordinances, he nonetheless felt that many were necessities. Perhaps he came to the realization that, in this case, it was indeed another necessity, a hard one to swallow nonetheless. A poor financial position may also explain the above change of heart; this will be explored in the next chapter.

²⁸⁰ McCord Museum Archives, Bouthillier Collection, File 421, From de Rocheblave to Tancred Bouthillier, 7 December 1838.

²⁸¹ Watt, “Authoritarianism, constitutionalism and the Special Council of Lower Canada, 1838-1841,” pp. 120-21.

²⁸² *Ibid.*, p. 121.

3.2 COLBORNE'S SECOND (AND FINAL) SESSION

On 14 February 1839, the Special Council reconvened for the final session headed by Colborne. Now that the 1838 Rebellion was crushed, Colborne focused his attention on reforming the colony and passing ordinances that the CAM greatly desired. During this session, which lasted until 13 April 1839, the council adopted a large number of ordinance, 67 over two months (compared to 50 over 8 months during Colborne's first tenure) (Table 7).

Table 7: Ordinances Passed in the Second Session of Colborne's Second Council

Type of Ordinances	Number
Rebellions	8
Economy	13
Social	8
Military	1
Religion	5
Immigration	3
Legal System	12
Municipal/Political	1
Other	16
Total	67

The majority of these 67 ordinances dealt with very minor issues that available evidence suggests did not affect the local population; at any rate, they did not lead to any debate or discussion. For example, the Special Council passed ordinances that prevented the importation and circulation of counterfeit coins, improved the inspection and packing of flour and meat, and made several improvements to the colony's warehousing system. It also passed ordinances concerning the regulation of taverns and tavern keeping, and the wages of ferrymen and seamen. Although these ordinances without a doubt had an impact on the lives of those they were aimed at, they remained very minor when compared to

those that aimed to reform the colony's social, economic and political systems. Some of the most important and controversial ordinances adopted by the Special Council—whether under Colborne, Thompson or Durham—were passed during Colborne's final session.

Some of them concerned the authority and the status of the Roman Catholic Church in Lower Canada as well as the seigneurial system. As discussed in the first chapter, the Catholic Church's dominance and seigneurial systems were two of the most pressing issues that the Constitutionlists wanted to eliminate. Most Constitutionlists considered the seigneurial system as a major cause of Lower Canada's economic inferiority and regarded its abolition as the only way for the colony to economically expand and compete with its Upper Canadian and American neighbors.²⁸³ The most significant ordinance the Special Council passed was that affecting the Sulpicians, and more specifically provided for the extinguishing of their seigneurial rights in the Island of Montreal. (The Sulpicians were the seigneurs of the Island).²⁸⁴ Although the Special Council passed this ordinance on 8 April 1839, it only became law at the end of Thompson's council. When the Special Council first passed this ordinance, it did not have the authority to do so. Although the Special Council had the power to pass ordinances as

²⁸³ The majority of English-speaking merchants believed that the seigneurial system was an obstacle to profit making since, for example, a transfer fee (1/12 of the purchase price) had to be paid to the seigneur by the buyer. To the British, land had always been an important source of profit. Since land, under the seigneurial system was also kept for communal benefits, however, profit could not be made. For more information, consider Ronald Rudin, *The Forgotten Quebecers*.

²⁸⁴ Several historians have commented on the ordinance itself. For example, whereas Antonio Perrault noted how this ordinance ended all problems between the Saint-Sulpice and the British Crown, Roderick MacLeod acknowledged its importance to the Redpath family. Finally, Brian Young, in *Its Corporate Capacity*, also commented on it and even maintained that the ordinance led to the beginning of the end of the seigneurial system in Lower Canada. Consider Roderick MacLeod, "The Road to Terrace Bank: Land Capitalization, Public Space, and the Redpath Family Home, 1837-1861," *Journal of Canadian Historical Association*, Vol. 14, No. 1 (2003), pp. 165-192; Perrault, *Le Conseil Spécial, 1838-1841*, p. 29; and Young, *In its Corporate Capacity*, p. 57.

the Lower Canadian Legislature had done, this excluded all laws relating to the “spiritual rights of the clergy [and] the tenure of land.”²⁸⁵ However, by the time Thompson became governor, the British Parliament expanded the council’s authority and an exception was made with regards to the Seminary of the Sulpicians of Montreal; it was now allowed to pass ordinance relating to its land and spiritual rights. Although it did not become a law during Colborne’s tenure, it was nevertheless one of the most important ordinances he passed and provided the foundations to Thompson’s later, similar ordinance.

The ordinance itself first incorporated the Seminary of the Saint-Sulpice and their successors into an Ecclesiastical Corporation; its rights and titles to their lands, fiefs and seigneuries on the Island of Montreal and Lake of Two Mountains were confirmed.²⁸⁶ This confirmation came with an important condition, however: if at any time, any *censitaire* or person living on the land owned by the seminary wished “a commutation, release, and extinguishment of and from the *droits de lods et ventes, cens et rentes*, and all feudal and seigneurial burthens whatsoever,” the Seminary had to release him.²⁸⁷ This ordinance is, without a doubt, the most important measure passed by Colborne’s council. Although it did not eliminate the seigneurial system in the colony, it did start the elimination process in the city of Montreal. It was an important first step.

²⁸⁵ “An Act to Amend and Act of the Last Session of Parliament for making temporary provision for the Government of Lower Canada,” 2 & 3, Vic., C. 53. http://www.canadiana.org/ECO/mtq?doc=9_01051 and Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 21.

²⁸⁶ “An Ordinance to incorporate the Ecclesiastics of the Seminary of Saint Sulpice of Montreal, to confirm their Title to the Fief and Seignior of the Island of Montreal, the Fief and Seignior of the Lake of the Two Mountains, and the Fief and Seignior of Saint Sulpice, in this Province; to provide for the gradual extinction of Seigniorial Rights and Dues, within the Seigniorial limits of the said Fiefs and Seignories, and for other purposes,” 2 Vic. C. 50 (4th Session), reprinted in Special Council, *Ordinances*, Vol. 4, pp. 522-24.

²⁸⁷ *Ibid.*, p. 526.

In order to be released from seigneurial burdens, the *censitaire* had to pay an indemnity to the seminary. First of all, they had to pay any *cens et rentes* in arrear, plus any interest accumulated over the years if applicable. The *censitaire* also had to pay for the lot (including buildings) in installments, like a mortgage. If the lot with buildings was worth more than 500 pounds, for example, each payment, for the first seven years, would be no more than one-twentieth its value, and in the following seven, would be no more than one eighteenth its value. If the value of the lot with buildings was between 100 and 500 pounds, the payments would decrease to one sixteenth the value of its value in the first seven years, and one-fourteenth afterwards. Finally, if it was worth less than 100 pounds, the first payment would be no more than one-tenth its value, and one-eighth in the final seven years. All in all, the *censitaires* had a total of 14 years to pay for both his land and building(s) on it, and rates changed after the first seven-year mark.²⁸⁸ Once the land with building(s) was paid for, the *censitaire* was the sole owner of his land. The Special Council also took steps to prevent feudalism from ever returning in the colony. According to the ordinance, once a censive had been commuted into a freehold, it could “never again be granted, surrendered or holden by any feudal tenure whatsoever.”²⁸⁹ Thus, once a parcel of land was commuted, it could never be held, again, under the seigneurial system (but the Sulpicians could buy it as a freehold). Finally, if the Ecclesiastic Corporation, for whatever reason, refused to commute a censive, he had the right to bring the corporation to the Court of the King's Bench for the District of Montreal, and make his case there. The judges were thus allowed to grant such commutation to the *censitaire* and rid him of his feudal dues and duties.

²⁸⁸ *Ibid.*, pp. 528-530.

²⁸⁹ *Ibid.*, p. 534.

A few historians have commented on the importance of this ordinance. None has been so sure of its revolutionary impact as Brian Young. In a study on the Seminary of Montreal in the 19th century, Young explains that the ordinance itself is one element in a generalized movement of modernization in Lower Canada. He explains:

The settlement with the seminary must be seen then as a part of the larger transition in Lower-Canadian property relations in the years 1837-41—a shift that included dispositions on clergy reserves and municipal institutions, establishment of a system of land registry, application of public and individualistic hypothecary forms, and forced political integration with the capitalist land market of Upper-Canada and non-seigniorial regions of Lower Canada.²⁹⁰

Thus, although the ordinance “confirmed [the seminary’s] titles under British jurisdiction and facilitated collection of seigniorial arrears and many of its traditional feudal levies,” this came at a price, and this price was the colony’s first, albeit modest, steps in liquidating the seigneurial system: it allowed *censitaires* to commute their lands into freehold provided that any arrears in due were paid, and that they purchased the property from the seigneur.²⁹¹

Robert C.H. Sweeney and Grace Laing Hogg agree that although the ordinance was an important “part of a general restructuring of property relations,” it was indeed a modest step.²⁹² In addition, because property values were so high in Montreal in the mid-19th century, very few families could actually afford to commute their lands. Only the wealthiest Montreal families could afford it. Tom Johnson agrees that although

²⁹⁰ Brian Young, *In its Corporate Capacity: The Seminary of Montreal as a Business Institution* (Kingston and Montreal: McGill-Queen’s University Press, 1986), p. 57.

²⁹¹ *Ibid.*, p. 59.

²⁹² Robert C.H. Sweeney and Grace Laing Hogg, “Land and People: Property Investment in Late Industrial Montreal,” *Urban History Review* 24 (1) (1995): p. 42.

commutation was possible, it was still not widely used. In fact, he maintains that although the colony had taken its first steps to abolish the seigneurial system in theory, this was not the case in practice, as the great majority of Montrealers were quite simply unable “to pay the lump sum necessary for commutation, annual rental payments continued in essentially the same form as before.”²⁹³

Commonly referred to as the Sleigh Ordinance, the “Ordinance to provide for the improvement, during the winter season, of the principle Post Roads from various parts of the Province to Montreal, and for other Purposes,” was much more controversial than the above, despite the fact that on the surface it had much less impact on the future of the colony. This ordinance was one of the most vigorously opposed as we shall see in the second section. Passed on 30 March 1839, this ordinance aimed to improve the condition of colony’s Post Roads during wintertime. It claimed these roads were constantly damaged by the traditional sleighs used by the Lower Canadian population and were extremely bumpy when compared to those in Upper Canada and the United States. The ordinance first stated that

after the first day of October next after the passing of this Ordinance, no winter carriages, or Vehicles without wheels, shall be used for the conveyance of any other load than passengers and their baggage, (to the amount of the amount of one hundred weight for each passenger,) on the principal Post Road from Hull, in the County of Ottawa, from *Pointe à Beaudet* and *Coteau du Lac*, from Dundee, in the County of Beauharnois, from Philipsburg, in the County of Missisquoi, and from Sherbrooke, to and from the city of Montreal [...]²⁹⁴

²⁹³ Tom Johnson, “In a Manner of Speaking: Towards a Reconstitution of Property in mid-19th century Quebec,” *McGill Law Journal* 32 (3) (1987): p. 640.

²⁹⁴ “Ordinance to provide for the improvement, during the winter season, of the principle Post Roads from various parts of the Province to Montreal, and for other Purposes,” 2 Vic., C. 34 (4th Session), reprinted in Special Council, *Ordinances*, Vol. 4, p. 402.

In addition, starting in winter 1840, the only sleighs that could be used for transport on the Post Roads were those that had runners at least six English feet in length, on the straight bottom part, and 8.5 feet including the curved part. The runners also had to be at least 12 English inches in height from the bottom of the runner to the bottom of the sleigh itself, and an open space of at least nine English inches between the upper side of the runners and the underside of the rails on which the body rests. There also had to be a clear distance of 2.5 feet between the runners. The central pole that the animals were hitched also had to be fixed at fourteen inches high. The sleigh had to be pulled by at least 2 horses or other such beasts, or one horse if it was harnessed in such a way that the sleigh could follow the tracks made by the 2 horse pulled sleighs.²⁹⁵ Any inhabitant who wanted to use the Post Roads, then had to retrofit his traditional carriage or vehicle to abide by these new standards. According to historian Stephen Penny, the aim of these regulations was to open the under frame of the carriages. He explains that this would prevent the “plow effect” by which snow from the horse’s hooves gathered on the bottom of the carriage and would then drop off, thus creating a bumpy and uncomfortable road.²⁹⁶

The ordinance did not prevent all non-conforming sleighs from using the Post Roads. Quite often, Lower Canadians did not use their sleighs for long distance transport; they had to transport material over very short sections or between farms. Sleighs that therefore did not abide to the new standards could still use the Post Roads, so long as they did not travel any distance longer than 6 *arpents*. Also, such sleighs were prevented from pulling any *cariole*, *traine*, or *berline*, for the transport of other passengers unless the

²⁹⁵ *Ibid.*, p. 404.

²⁹⁶ Stephen Kenny, “ ‘Cahots’ and Catcalls: An Episode of Popular Resistance in Lower Canada at the Outset of Union,” pp. 190-191.

proper changes were made. The fine for those who did not abide by the new rules was 10 schillings. If the penalty was not paid, the individual could be sent to the Common Gaol for a period of no more than eight days.²⁹⁷ Although this ordinance was passed with the sole purpose of improving the condition of winter roads, as shall be noted in the following section, French-Canadians did not see it that way. They considered it a direct attack on their traditional practices by the British and yet another attempt to force them to adopt British ones.

Along with this controversial and highly debated ordinance, the Special Council passed a series of measures that played an important role in improving the colony's social, political and economic infrastructure (although they did not generate the same amount of discussion). For example, the Special Council financed a large number of educational institutions with the hopes of encouraging and improving education in the colony. It allocated more than 3,500 pounds to education, and over 30 institutions around the colony, both English and French, received significant funding, including the College of Sainte Anne de la Pocatière, which received 200 pounds, the College of Chambly and St. Hyacinthe, which also received 200 pounds, as well as the Stanstead and Sherbrooke Seminaries, each receiving 100 pounds. The only condition that these educational institutions had to follow was to ensure that each filled up a detailed account of their expenditure, the sums they actually spent, and the amount of money that remained from previous grants. These accounts had to be sent to a Justice of the Court of the King's Bench, or a Justice of the Peace on April and October 10th of each year the institution

²⁹⁷ "Ordinance to provide for the improvement, during the winter season, of the principle Post Roads from various parts of the Province to Montreal, and for other Purposes," 2 Vic., C. 34 (4th Session), reprinted in Special Council, *Ordinances*, Vol. 4, p. 406.

received finding.²⁹⁸ The council also further invested in the colony's overall social security by extending the application of the police ordinance to the town of Trois-Rivières with "An Ordinance to extend the provisions of the Ordinance for establishing an efficient system of Police in the Cities of Quebec and Montreal."²⁹⁹

More importantly, the Special Council also further invested in the colony's economic infrastructure to make Lower Canada economically more competitive in North America, which, as noted, was a significant CAM concern. The Special Council appropriated over 26,000 pounds for the completion or construction of several canals, bridges, and roads (some of these canals, roads and bridges had been started during Colborne's first council). For example, the council appropriated a sum of 500 pounds to complete the survey of Lake St. Peter. Lake St. Peter's shallowness was considered an obstacle to maritime trade; deepening it would allow ocean-going vessels to reach Montreal, and thus boost its economy. The Special Council also appropriated 3,600 pounds to continue the building of the Chambly Canal, which it hoped would increase trade with the United States.³⁰⁰ The council also funded several other projects such as the completion of the new Montreal Customs House, bridges over the Ottawa and Saint Maurice rivers and improvements to the Post Roads around the colony.

Colborne's council was without a doubt quite significant and created changes that had, as will be discussed, revolutionary consequences. Although the majority of its

²⁹⁸ "An Ordinance to appropriate certain Sums therein mentioned to the encouragement of Education," 2 Vic., C. 43 (4th Session), reprinted in *Ibid.*, pp. 482-88.

²⁹⁹ "An Ordinance to extend the provisions of the Ordinance for establishing an efficient system of Police in the Cities of Quebec and Montreal," 2 Vic., C. 55 (4th Session), reprinted in *Ibid.*, p. 564.

³⁰⁰ "An Ordinance to provide for the Completion of certain Public Works, for the improvement of the Internal Communications, and for the Encouragement of Agriculture, and for other purposes," 2 Vic., C. 53 (4th Session), reprinted in *Ibid.*, p. 552.

ordinances dealt with the Rebellion, it did pass several ordinances that focused on improving and reforming the colony's social and economic infrastructure and had a tremendous impact on the colony and its people. He took significant first steps to rid the colony of its seigneurial system, and its infrastructure was improved with investments made to the improvement of Post Roads, the completion of the Chambly Canal and the surveying of Lake St. Peter. One important ordinance proposed by Colborne however was never voted upon: the one creating land registry offices, a measure long asked for by the Constitutionalists. On 25 March 1839, in order to deal with this complex issue, Colborne created a committee of Special Councilors, which included Peter McGill, to discuss it and suggest amendments to the draft ordinance. On 13 April 1839, however, on the last day of session, McGill stated that the details of the ordinance were too numerous and the ordinance too important to rush. The committee was consequently unable to bring a final resolution for adoption before Colborne stepped down.³⁰¹ But Colborne nonetheless laid the foundations for Charles Poulett Thompson to create the registry during the next session of the Special Council.

With all of this important work done, Colborne, on 13 April 1839, addressed and thanked his councilors for the last time and dissolved his Special Council. Britain wanted Colborne to stay in Lower Canada as the Commander-in-Chief, but he did not. In October 1839, he handed power over to Thompson, and on 19 October 1839, Colborne boarded the frigate *Pique*, and left Canada.³⁰²

³⁰¹ Special Council, *Journals of the Special Council*, Vol. 4, pp. 158-59.

³⁰² No reason was given why Colborne ended his council this early. Perhaps he knew that Thompson was arriving soon and felt that he had no authority to continue. Perhaps he also wanted to return home as he also refused to stay in Lower Canada after Thompson's arrival to act as his Commander-in-Chief.

CHAPTER 4:
THE “BUSY” ROAD TO UNION:
CHARLES POULETT THOMPSON AND THE SPECIAL COUNCIL,
OCTOBER 1839 TO FEBRUARY 1841

After several failed ventures as a businessman, Charles Poulett Thompson sought a career change and got involved in politics. A proponent of free trade and liberalism, he was elected in 1826 to the House of Commons as a member of the Whig Party. Although Thompson was not a commanding political figure—his voice was described as “thin and effeminate” and never spoke on the “exciting party questions of the day”—he nonetheless became one of Britain’s leading political figures, acting as the vice-president of the Board of Trade and as the Treasurer of the navy.³⁰³ In 1831, he also had a heavy hand in drafting the abortive free trade budget, making him an enemy of the empire’s protectionists. Despite having several enemies, including, as will be later discussed, many in Lower Canada, Thompson remained very popular with manufacturers in northern England, and as a result relocated to Manchester where he was reelected without campaigning in both the 1832 and 1834 elections. In 1835, he was promoted to the presidency of the Board of Trade where he again favored free trade by reducing custom tariffs and signing trade agreements with various European nations.

Although his position on imperial economic policies is well documented, his position on colonial matters is not. This is especially true with regards to the 1837-38 Rebellions. In fact, according to historian Philip Goldring, all that is known is that Thompson was “all for executions” and did not approve of Durham’s decision to leave

³⁰³ All biographical information on Charles Poulett Thompson was taken from the *Dictionary of Canadian Biography Online*. “Thompson, Charles Edward Poulett, 1st Baron Sydenham.” Phillip Buckner. VII.

North America after the failure of the Bermuda Ordinance.³⁰⁴ Thankfully, his opinion on the Union of the Canadas is well documented. In March 1839, Thompson served on the committee that discussed the Union of the Canadas, and fully approved it as the manner in which Britain was to deal with its disobedient colony. In a letter to Lord Russell, he even explained what would be the best course of action to ensure its successful adoption.

My opinion is that if you send out a proper person to Canada with your bill, he may easily reconcile differences of opinion there upon the details, get a pretty general assent to some such plan as we have proposed, and sent you back our amended bill which you may pass next year. But to do that, it is far better that he should not be hampered by all sorts of conflicting opinions delivered in Parlt. upon those details, which would certainly be the consequences of a discussion *now* upon the Bill.³⁰⁵

On 5 August 1839, a British newspaper, *The Morning Chronicle*, reported that this “proper person” was the president of the Board of Trade himself, Charles Poulett Thompson. Thompson was thus rumored to replace Colborne and Durham as the new Governor General and head of the Special Council, whose main goal was to persuade Canadians that the Union of the Canadas was the best course of action.³⁰⁶ A week later, and after a short disagreement over his salary, Thompson accepted, and quickly made his way to Canada.

4.1 THOMPSON’S FIRST SESSION

Although Thompson arrived in Lower Canada on 19 October 1839, his first session of the Special Council did not start until a month later on 11 November 1839. His

³⁰⁴ *Ibid.*

³⁰⁵ Letter from Charles Poulett Thompson to Lord Russell, June 28, 1838, quoted from *Letters from Lord Sydenham, Governor General of Canada, 1839-1841, to Lord Russell*, ed. Paul Knaplund (Clifton, NJ: Augustus M. Kelley Publishers, 1973), pp. 23-24.

³⁰⁶ *Dictionary of Canadian Biography Online*. “Thompson, Charles Edward Poulett, 1st Baron Sydenham.” Phillip Buckner. VII.

first order of business was to select his councilors. Thompson kept this simple: he invited all of Colborne's councilors and added a few new faces (Table 8).

Table 8: New Members of Thompson's Council

Name	Hometown	Economic Experience	Political Experience	Seigneur	Date Appointed
Hale, Edward	Portneuf	Yes	No	Yes	1 August 1839
Harwood, Robert U.	Montreal/Vaudreuil	Yes	Yes	Yes	1 August 1839
Hale, Edward	Sherbrooke	Yes	No	No	19 Sept. 1839
Wainwright, John	N/A	No	No	No	19 Sept. 1839
Taché, Jean-Baptiste	Kamouraska	No	Yes	No	30 Sept. 1839
Daly, Dominick	Quebec City	No	Yes	No	16 April 1840
Ogden, Charles R.	Trois-Rivières	No	Yes	No	16 April 1840
Heriot, Frederick G.	Drummondville	No	Yes	No	16 April 1840
Black, Henry	Quebec City	No	No	No	18 April 1840
Day, Charles Dewey	Ottawa Valley/Montreal	Yes	Yes	No	23 May 1840

Like Colborne's councilors, the men that were appointed during Thompson's first session—Harwood, Hale of Sherbrooke, Hale of Portneuf, Wainwright, and Taché—were dominant political and financial figures in the colony, and although it is not known whether they were members or supporters of the CAM, many did have close relations with its leaders. For example, Robert Harwood was as a member of the Legislative Assembly of Lower Canada from 1832 to 1837, and on several occasions, also served on the grand jury for criminal cases alongside John Molson, Peter McGill and George

Moffatt.³⁰⁷ Edward Hale was another important figure. After acting as his uncle's (Lord Amherst) secretary in India, he returned to Lower Canada and settled in the Eastern Townships. Prior to the Rebellions, he was a shareholder in the British American Land Company and had even, on several occasions, assisted Peter McGill in finding land in the region for new British immigrants.³⁰⁸

Although these men were economically linked with members of the CAM, available evidence does not indicate whether this subsequently translated into a political alliance. Nevertheless, Thompson's council still proved very favorable to the CAM. First of all, and as will shortly be discussed, some of the other new councilors were supporters and members of the CAM thus increasing its authority in the Special Council. Moreover, Thompson appointed two Constitutionlists as Presiding Members: James Stuart and George Moffatt. The former's tenure proved especially important. According to Steven Watt, as the Presiding Member of the Special Council, Stuart "put the association's [the CAM] legislative program down on paper and ensured its passage."³⁰⁹ In a letter to Lord Russell, Thompson confirmed Watt's conclusions by stating that Stuart played a valuable role in drafting many of the council's legislations, which included the Union Bill and the Registry Ordinance.³¹⁰ Finally, Thompson shared the CAM's agenda and passed several ordinances that Constitutionlists had been asking for years. Although Thompson did not oppose French-Canadian culture itself—he spoke fluent French himself and understood their fight to preserve their heritage and culture—he was nonetheless a firm believer in

³⁰⁷ *Dictionary of Canadian Biography Online*. "Harwood, Robert Unwin." John Beswarick Thompson. IX.

³⁰⁸ *Dictionary of Canadian Biography Online*. "Hale, Edward." Louis-Phillip Audet. X.

³⁰⁹ Watt, "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841," p. 84.

³¹⁰ *Ibid.*

the superiority of British institutions, and thus believed, like Durham, that they should be imposed on all, including French-Canadians.³¹¹

Thompson's Special Council had considerably more authority than Colborne's and Durham's. On 19 August 1839, an act of government had increased the council's powers. Along with a few membership modifications—quorum was raised to 11, for example—the council was finally allowed to pass permanent ordinances and was also given the authority to impose new taxes so long as they were used for local purposes. Although the Special Council could annul and amend laws that had been adopted by the British Parliament and the Lower Canadian Legislature, this excluded all laws relating to the “spiritual rights of the clergy [and] the tenure of land.”³¹² An exception was made, however, with regards to the land held by the Sulpicians.

Like his predecessors, Thompson also received some strict instructions from the Colonial Office. In a 7 September 1839 dispatch, he was told by Russell to gain local cooperation toward the Union Bill.³¹³ Thompson was allowed to alter the details of the bill in order to gain this cooperation, and if he found that the plan for Union “be found altogether impracticable,” he was expected to contact London on what do to next.³¹⁴ Russell did state however that Britain supported this bill and was very desirous to have the Canadian people accept it. Finally, Thompson was expected to discuss other important matters while on the Special Council like “[t]he establishment of Municipal Institutions

³¹¹ *Dictionary of Canadian Biography Online*. “Thompson, Charles Edward Poulett, 1st Baron Sydenham.” Phillip Buckner. VII.

³¹² “An Act to Amend and Act of the Last Session of Parliament for making temporary provision for the Government of Lower Canada,” 2 & 3, Vic., C. 53. http://www.canadiana.org/ECO/mtq?doc=9_01051 and Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 21.

³¹³ Dispatch Russell to Thompson, 7 September 1839, quoted from W.P.M. Kennedy, *Documents of the Canadian Constitution, 1759-1915* (Toronto: Oxford University Press, 1918)

³¹⁴ *Ibid.*, p. 517.

for the management of all local affairs [...]” and “[t]he promotion of education among all classes of the people [...]”³¹⁵ In both cases, Thompson was referred to Durham’s report.

Thus, when the council first convened on 11 November 1839, it did so for one specific purpose: approving the union with Upper Canada. According to Thompson, the British Crown, Parliament and people were all anxious that “a settlement of the question relating to the Canadas should be speedily arrived at, by which an end might be put to the present suspension of the Constitution in the Lower Provinces, the resources of both might receive their full development, and the peace and happiness of all Her Majesty’s Canadian subjects might be effectually secured.”³¹⁶ Only two other ordinances were passed in this very short session, which lasted three days.³¹⁷ On 13 November 1839, a few days after Thompson proposed his plan to unite both colonies, the resolutions relating to a union with Upper Canada were put to a vote. These resolutions were as followed:

1. Resolved, That under existing circumstances, in order to provide adequately for the peace and tranquility, and the good constitutional and efficient Government of the Provinces of *Upper* and *Lower Canada*, the Re-Union of these Provinces under one Legislature, in the opinion of this Council, has become of indispensable and urgent necessity.

2. Resolved, That the declared determination of Her Majesty, conveyed in Her Gracious Message to Parliament, to Re-unite the Provinces of *Upper* and *Lower Canada*, is in accordance with the opinion entertained by this Council, and receives their humble and ready acquiescence.

3. Resolved, That among the principal enactments, which in the opinion of this Council, ought to make part of the Imperial Act for Re-uniting the Provinces, it is expedient and desirable that a suitable Civil List should be provided for securing the independence of Judges, and maintaining the

³¹⁵ *Ibid*, p. 519.

³¹⁶ Special Council of Lower Canada, *Journals of the Special Council of the Province of Lower Canada. From the 1th to the 14th November, 1839. In the Third Year of the Reign of Queen Victoria, Vol. 5* (Montreal: T. Cary and Georges Desbarats, 1838-1841), pp. 1-2.

³¹⁷ It must be noted, however, that this dissertation will not consider the history of the Union of the Canadas in general, but only how it related to the Special Council.

Executive Government in the exercise of its necessary and indispensable functions.

4. Resolved, That regard being had to the nature of the public debt of Upper Canada, and the objects for which principally it was contracted, namely, the improvement of Internal Communications, alike useful and beneficial for both Provinces, it would be just and reasonable, in the opinion of this Council, that such part of said Debt, as has been contracted for this object, and not for defraying expenses of a local nature, should be chargeable on the Revenues of both Provinces."

5. Resolved, That the adjustment and settlement of the terms of the Re-union of the two Provinces, may, in the opinion of this Council, with all confidence be submitted to the wisdom and justice of the Imperial Parliament, under the full assurance that provisions of the nature of those already mentioned, as well s such others as the measure of Re-union may required, will receive due consideration.

6. Resolved, That in the opinion of this Council, it is most expedient, with a view to the security of Her Majesty's North American Provinces, and the speedy cessation of the enormous expenses now incurred by the Parent State for the defence of Upper and Lower Canada, that the present temporary Legislature of this Province should, as soon as practicable, be succeeded by a permanent Legislature, in which the People of these two Provinces may be adequately represented, and their constitutional rights exercised and maintained.³¹⁸

Not surprisingly, all resolutions passed; only Cuthbert, Neilson and Quesnel voted against some of them. As will be noted in the second section, the apparent heavy hand of the CAM was condemned by the colony's newspapers, as well as by a member of the Special Council itself.³¹⁹ These papers especially condemned the fact that this vote did not represent the will of the people, but that of a specific faction. In fact, only 14 councilors were present at the vote, which included several CAM members and supporters such as McGill, Pothier, Moffatt, Gerrard, Molson, and Walker. Cuthbert, Neilson and Quesnel

³¹⁸ *Ibid.*, pp. 7-8.

³¹⁹ Although newspapers believed that the Special Council played an integral role in adopting the Union Bill and union opponents put the blame on its shoulders, it is highly likely that Britain would have pushed for it, even if the Special Council, and the CAM, had been opposed to it.

stood no chance against this CAM-dominated council, which accounted for almost 50% of all present voters. Consider Table 9 for a complete breakdown of how each member voted.

Table 9: Union Vote in the Special Council

Present Members	Vote
Pothier	Yes to all resolutions
de Lery	Yes to all resolutions
Moffatt	Yes to all resolutions
McGill	Yes to all resolutions
De Rocheblave	Yes to all resolutions
Gerrard	Yes to all resolutions
Christie	Yes to all resolutions
Walker	Yes to all resolutions
Molson	Yes to all resolutions
Harwood	Yes to all resolutions
Hale (Sherbrooke)	Yes to all resolutions
Cuthbert	No to resolutions 1,2,4,5,6; Yes to 3
Quesnel	No to resolutions 1,2,4,5,6; Yes to 3
Neilson	No to all resolutions

On the next day, 14 November 1839, Georges Moffatt presented to his fellow councilors the “Draught of an Address to His Excellency the Governor General,” which further confirmed the Special Council’s approval of the above resolutions. The draught also thanked the governor for allowing them to discuss the issue and play an active role in the adoption of a plan that was “essential to their future peace and welfare, and for the good, constitutional and efficient Government of them, under the protecting care and authority of her Majesty; and the adoption of which We are intimately convinced has become of indispensable and urgent necessity.”³²⁰ After the Special Council voted in favor of the draught, which was only voted against by Neilson and Quesnel, it was officially presented to the governor.

³²⁰ *Ibid.*, pp. 11-12.

Although available evidence does not illustrate why every member of the Special Council voted in favor or against union—with the exception of CAM members and supporters, who as was previously explained, made it a central fixture of their political agenda—we do know why Pierre de Rocheblave and John Neilson did. This chapter will focus, however, on de Rocheblave. Knowledge of Neilson's opinions is derived from the pages of his newspaper, *The Quebec Gazette*, which will be considered in significant detail in the second section of this dissertation. De Rocheblave's vote in favor of union is particularly interesting. Why would an individual that was such an outspoken opponent of constitutionalism and their plan to rid the colony of all French influence, vote in favor of a measure that aimed do so? Steven Watt attempted to answer this question, but unfortunately concludes that "any attempt to evaluate his political outlook seems to stall at this point."³²¹ Moreover, Watt maintains that his actions, at this point in time, were very confusing. For example, although de Rocheblave still claimed to be disgusted with the manner in which Lower Canada was governed, he not only completely stopped threatening to leave the council, but more importantly, also sought to play a more active role in Thompson's government. He applied for a position on the Board of Works, and even regretted not applying for the post of Sheriff of Montreal. According to Watt, this change in perspectives was perhaps the result of personal financial difficulties.³²² It appears that the economic incertitude that followed the Rebellions was felt by the councilor. De Rocheblave owned several properties that he rented out; however, by 1839, collecting rent was next to impossible. He even attempted to sale his shares in the

³²¹ Watt, "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841," p. 121.

³²² *Ibid.*, pp. 121-22.

Champlain and St. Lawrence Railway, but to no avail. In May 1839, de Rocheblave hinted that he was suffering from economic difficulties when he noted in a letter that “les marchandises neuves nous arrivent de tous côtés, mais non pas l’argent pour les payer.”³²³ Watt believes that this explains why he voted for union. As a result of his precarious financial situation, he sought a well-paying job in Thompson’s government and may have been “wary of what effects voting against a measure like union might have had on his chances of being appointed.”³²⁴ Moreover, it also appears that as a result of the colony’s economic difficulties, de Rocheblave seemed to have finally been convinced that union might not be the worst measure. According to Watt, he viewed it as a trade-off “between the political rights of French-Canadians and the restoration of order.”³²⁵ He wrote in a letter,

Quelqu’il soit nous n’avons que peu à perdre au contraire à l’amour propre et nationalité près nous ne pouvons que gagner, en sortant de cet état d’incertitude et d’incitation où nous nous trouvons aujourd’hui. Je crois que pour quelques temps après, nous aurons une réaction qui donnera quelques signes de vie à nos affaires [...]³²⁶

Although the first session was convened to approve union, two other ordinances were passed, which simply continued two that had been previously adopted by Colborne’s council. The first continued until 1 June 1840 a measure that legally authorized Justices of the Peace to seize and detain all arms and ammunitions, unless in

³²³ McCord Museum Archives. Bouthillier Collection. Letter dated May 13, 1839. File 422. Also considered Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” pp. 122-23.

³²⁴ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 123.

³²⁵ *Ibid.*

³²⁶ McCord Museum Archives. Bouthillier Collection. Letter dated April 11, 1839. File 422. Also considered Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 123.

the possession of Her majesty's Forces.³²⁷ The second similarly continued until 1 June 1840 an ordinance that maintained that all individuals in custody on charges of high treason, suspicion of high treason, misprison of high treason and treasonable practices, could be detained in custody without bail or mainprize.³²⁸ After passing this last ordinance on 14 November 1839, Thompson prorogued his council until further notice. The Special Council did not reconvene until April 1840.

4.2 THOMPSON'S SECOND SESSION

Thompson was hard at work promoting union throughout Lower and Upper Canada in the five months between his first two sessions. In November 1839, he left for Toronto where he was well aware that the road to union would be much more complicated than it had been in Lower Canada. Thompson fully understood that convincing all members of the Upper Canadian Legislative Assembly to accept all of its terms would be impossible. He explained that “[t]he state of things seems to me far worse than I expected. The country is split into factions animated with the most deadly hatred to each other. The people have gone into the habit of talking so much of separation that they begin to believe it.”³²⁹ Despite the fact that when he first proposed union there was, not surprisingly, a lot of opposition, he was nevertheless able, within a month, to garner much support for it by promising that that union would significantly relieve the colony's

³²⁷ “An Ordinance to continue, for a limited time, a certain Ordinance, relative to the seizing and detaining for a limited time of Gunpowder, Arms, Weapons, Lead, and Munitions of War,” 3 Vic., C. 1 (5th Session), reprinted in Special Council of Lower Canada, *Ordinances made and Passed by the Administrator of the Government, and the Special Council for the Affairs of the Province of Lower Canada, Vol. 5* (Quebec: John Charlton Fisher and William Kemble, 1839), p. 10.

³²⁸ “An Ordinance further to continue, for a limited time, a certain Ordinance relative to persons charged with High Treason, Suspicion of High Treason, Misprison of High Treason and Treasonable Practices,” 3 Vic., C. 2 (5th Session), reprinted in *Ibid.*, p. 12.

³²⁹ Letter from Charles Poulett Thompson to Lord Russell, November 25, 1839, quoted from *Letters from Lord Sydenham*, p. 36-37.

financial difficulties. In fact, by mid-December 1839, most moderate and conservative representatives supported union.³³⁰ A vote was taken in the Upper Canadian Legislative Assembly on the matter on 13 December 1839, which was won by the pro-union side (14 to 8 voices). Thompson's struggles were not over, however. In the following days, legislators attempted to modify Thompson's resolutions, especially regarding the political power of French-Canadians. In order to limit their political authority in a United Canada, many wanted Upper Canada to have more seats in the United Legislature, as well as ban the use of French in courts and in the said legislature. Although Thompson would not allow such changes, union itself still passed on 19 December 1839.³³¹

After spending several months in Upper Canada, Thompson returned to Lower Canada, and, on 20 April 1840, held the first meeting of his second session of the Special Council. He summarized what he hoped to achieve in the next few months: "I shall have an excellent Judicature Bill remodeling the whole administration of justice (or injustice). I hope to get a good system of education. I shall get elementary municipal institutions thro' the Province to dovetail in with those of the Union Bill—and I have a good stipendiary magistracy and Police Force throughout."³³² His first order of business, however, was to once again add new members to his council. Several of his new appointees (see Table 8) reinforced his relationship with the Constitutionalists. For example, Charles Richard Ogden was considered a strong ally of the CAM. Not only did he help the CAM organize volunteer regiments in Montreal during the Rebellions, but his political views were also very similar. According to Watt, he also blamed several of the colony's problems on

³³⁰ *Dictionary of Canadian Biography Online*. "Thompson, Charles Edward Poulett, 1st Baron Sydenham." Phillip Buckner. VII.

³³¹ *Ibid.*

³³² Letter from Charles Poulett Thompson to Lord Russell, March 13, 1840, quoted from *Letters from Lord Sydenham*, p. 53.

French-Canadians.³³³ During the 1820s, he represented “the advanced guard of the Montreal Party.”³³⁴ On 29 May 1840, Thompson appointed another strong supporter of the CAM: Charles Dewy Day. Day’s political career started in 1834 when he publicly protested against the 92 Resolutions. In reaction to these resolutions, Day founded and became one of the most important spokespersons of the CAM. As a member of the CAM, he often gave speeches promoting the continuity of the connection with Great Britain, the union of the colonies, the abolition of feudalism, the equal sharing of the clergy reserve, and the establishment of land registry offices.³³⁵ Along with Moffatt and Stuart, he was another Constitutionalist that was given an important position in Thompson’s government when, in 1840, he was appointed the solicitor general of both the Special and Executive Councils.³³⁶

Thompson’s second session lasted from 20 April to 13 May 1840 and was rather uninspiring when compared to his others. In fact, the majority of the ordinances that passed simply extended or made permanent measures that had initially been adopted by the Legislative Assembly or previous sessions of the Special Council (Table 10).

³³³ Watt, “Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841,” p. 83.

³³⁴ *Dictionary of Canadian Biography Online*. “Ogden, Charles Richard.” Lorne St. Croix. IX.

³³⁵ *Dictionary of Canadian Biography Online*. “Day, Charles Dewy.” Carman Miller. XI.

³³⁶ The Executive Council was an appointment body that provided advice to the Governor with regards to the administration of the colony and public affairs. Executive Councilors were appointed by the Governor General.

Table 10: Ordinances Passed in the Second Session of Thompson Council

Type of Ordinances	Number
Rebellions	3
Economy	5
Social	8
Military	1
Religion	1
Immigration	0
Legal System	5
Municipal/Political	1
Other	4
Total	28

A large number of ordinances that were about to expire were made permanent. These range from ordinances dealing with the manufacture and circulation of fraudulent copper and brass coins, to the encouragement of agriculture and education, the regulation of ferry men as well as the renewing of the commissioners of the Chambly Canal and of the Harbour of Montreal's authority to borrow more money.³³⁷ Thompson also made permanent several ordinances dealing specifically with the Rebellions such as the ones condemning the administering of unlawful oaths and treasonous practices.

In fact, no ordinance passed during Thompson's second session could be considered "original." Even those that did not extend or make permanent measures that were about to expire still copied laws and ordinances that had been passed by the Legislative Assembly or former Special Councils. For example, on 12 May 1840, Thompson expanded to the District of St-Francis the Police Ordinance that was initially

³³⁷ The following was taken from Special Council of Lower Canada, *Ordinances made and Passed by the Administrator of the Government, and the Special Council for the Affairs of the Province of Lower Canada*, Vol. 5B (Quebec: John Charlton Fisher and William Kemble, 1840).

passed by Lord Durham.³³⁸ The infamous Sleigh Ordinance is another good example. After experiencing the colony's roads on a trip from Montreal to Toronto, Thompson replaced Colborne's ordinance with one of his own. His was permanent and applied to *all* roads in the colony—not just the post roads—and included those on frozen lakes and rivers.³³⁹ The regulations of the actual sleighs themselves, however, remained the same, except that the pole to which the animals were hitched could be only 10 inches from the ground, instead of fourteen.³⁴⁰ Finally, Thompson's ordinance also attempted to regulate the manner in which sleighs were to pass each other on the road. Stephen Kenny explained that this last amendment was ridiculously dangerous. The ordinance forced sleighs to drive to the right so that “only the left runner occupied the road bend while the outside one ran over the shoulder.”³⁴¹ Kenny explained that “it does not required too much imagination to understand the angle and danger of passing in this manner since the outside runner of the sleigh would have to run over the snow banks which collected on the edge of the road.”³⁴²

Thompson's second session at the helm of the Special Council was without a doubt uninspiring. Available evidence suggests that at least one councilor agreed with this assessment. Not only was Edward Hale unimpressed with the work being done, but he also complained about the incredible amount of time it took for the council to adopt ordinances. In a letter to his wife dated 30 April 1840, he explained that

³³⁸ “An Ordinance to extend the provisions of the Ordinance for establishing an efficient system of Police in the cities of Quebec and Montreal, to the district of Saint-Francis, in this Province,” 3 Vic., C. 17 (5th Session), reprinted in *Ibid.*, p. 70.

³³⁹ “An Ordinance to provide for the Improvement, during the Winter season, of the Queen's Highways in this Province, and for other purposes,” 3 Vic., C. 25 (5th Session), reprinted in *Ibid.*, pp. 112-20 or Kenny, “‘Cahots’ and Catcalls,” pp. 191-92.

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*

³⁴² *Ibid.*

We get on very slowly in Council, the [Presiding Member] is a wretched chairman—keeps no order, and get on with nothing at the same time that he is perpetually lecturing us—yesterday and today, he postponed all business on the pleas that he wished to study the cases—but Mr. Thompson was in council today to assent to the Ordinances which we had passed and which many of them would expire tomorrow.³⁴³

A week later, he again complained about the same problem. In another letter to his wife, he explained that the lawyers in the Special Council were constantly arguing about every little detail in each ordinance, and as a result, much time had been lost and many important measures had yet to be adopted.³⁴⁴ Although this may have irritated Hale, at the very least, it confirms Antonio Perrault's conclusions that Special Councilors took their appointments very seriously. On a sadder note, de Rocheblave's was forced out of the Special Council by ill-health; he died on 5 October 1840.

4.3 THOMPSON'S THIRD SESSION

Although his second session may have been uninspiring, his third, which lasted from 28 May to 26 June 1840, was not. Several ordinances that contributed to revolutionize the colony's infrastructure were passed (Table 11). The hand of the CAM was obvious; many of their grievances were considered and resolved during this session.

³⁴³ McCord Museum Archives. Edward Hale Fond. Hale Papers, Correspondence 1840-41. File, 1840, Jan. 6- May 30. Letter from Edward Hale to his wife, April 30, 1840.

³⁴⁴ *Ibid.*, p. Letter from Edward Hale to his wife, May 3, 1840.

Table 11: Ordinances Passed in the Third Session of Thompson's Council

Type of Ordinances	Number
Rebellions	0
Economy	1
Social	4
Military	2
Religion	1
Immigration	0
Legal System	2
Municipal/Political	2
Other	8
Total	20

Twenty ordinances were passed during this session. On 8 June 1840, an ordinance confirming the Sulpicians' titles to their seigneuries, but providing for the extinguishing of their seigneurial rights was passed. This ordinance was the same that had been adopted by Colborne's council, but could not be made a law as a result of the Special Council restricted authority. Ordinances relating to the Sulpicians had been allowed by Westminster in the intervening weeks. Like its predecessor, it stipulated that the Seminary of the Saint-Sulpice and their successors were erected into an Ecclesiastical Corporation, with all rights and titles to their lands, fiefs and seigneuries on the Island of Montreal and Lake of Two Mountains.³⁴⁵ If at any time, any *censitaire* or person living on the land owned by the Seminary wanted the tenure to be commuted into a freehold, the Seminary had to release him.

³⁴⁵ "An Ordinance to incorporate the Ecclesiastics of the Seminary of Saint Sulpice of Montreal, to confirm their Title to the Fief and Seignior of the Island of Montreal, the Fief and Seignior of the Lake of the Two Mountains, and the Fief and Seignior of Saint Sulpice, in this Province; to provide for the gradual extinction of Seigneurial Rights and Dues, within the Seigneurial limits of the said Fiefs and Seignories, and for other purposes," 3 Vic., C. 30 (5th Session), reprinted in Special Council, *Ordinances*, Vol. 5C (Quebec: John Charlton Fisher and William Kemble, 1840), pp. 150-76.

On 25 June 1840, the Special Council passed two significant ordinances to incorporate the city of Quebec and the city of Montreal. (Their wording was identical.) Montreal and Quebec City were now legally able to own, buy, sell real and personal property, enter into contracts, make and receive payments and sue and be sued.³⁴⁶ Each city was divided into six wards, and each was able to elect a mayor, aldermen and councilors. However, the Governor General himself appointed the first mayor, aldermen and councilors to the Council of the City of Montreal/Quebec. The appointed-mayor would remain in power until 1 December 1842, after which elections would be held to select the next mayor.³⁴⁷

Specific qualifications were required to become the mayor, an alderman or a councilor. Alderman had to be a “resident householder” within the city for at least one year prior to the election, and had to have “real or personal estate” of the value of at least 1,000 pounds. To become a councilor, one also had to be a resident householder, but only required an estate of 500 pounds. In addition, all persons in holy orders (ministers, teachers, priests), judges and clerks of any court of law, persons accountable for the city revenues, individuals receiving an allowance from the city for their services, and individuals presiding at an election of a councilor or councilors were prohibited from holding any municipal office.³⁴⁸ There were qualifications for voting as well as the colony still did not have universal suffrage. One had to be a male, and be a householder in the ward one was voting in. Voters had to have owned their dwellings for a period of at least

³⁴⁶ “An Ordinance to Incorporate the City and Town of Quebec,” 3 Vic., C. 35 (5th Session) & “An Ordinance to Incorporate the City and Town of Montreal,” 3 Vic., C. 36, reprinted in *Ibid.*, p. 230 & 272.

³⁴⁷ *Ibid.*, pp. 234-36.

³⁴⁸ *Ibid.*

one year at the time of the election. Not all house owners could vote, however.

Individuals “who shall not be a natural born or naturalized subject of Her majesty, [...] of the full age of twenty-one years [and those] who shall have been attained for Treason or Felony, in any Court of Law, within any of Her Majesty’s Dominions” were not allowed to vote.³⁴⁹ Boarders and lodger were also prohibited from voting.

The very first election was scheduled on 1 December 1842; each following election would take place every year on this specific date. Elections as well as the selection of aldermen and the mayor followed a specific routine. Each ward elected three councilors. At a convenient location chosen by the Council of the City, polls would open from 9am to 4pm. At 4pm, polls would close. Elections officers would then start counting votes and publicly declare each winner.³⁵⁰ Next, the elected councilors, forming the Council of the City of Montreal/Quebec, would elect six individuals to act as aldermen.³⁵¹ Once the aldermen were elected, the Council of the City selected, amongst its members, a mayor, whose tenure lasted one year. If the person refused, the council selected another individual.³⁵² Finally, the council also appointed treasurers, city clerks and other various officers to help govern the city.

Council meetings also followed a specific set of rules. All new by-laws were determined by a majority vote; a third of the councilors had to be present, however. In case of a tie, the mayor, and in his absence, the presiding member, cast the deciding vote.³⁵³ The city council had authority over all local municipal matters. It could pass by-

³⁴⁹ *Ibid.*, p. 238.

³⁵⁰ *Ibid.*, pp. 240-42.

³⁵¹ *Ibid.*, pp. 244-46

³⁵² *Ibid.*, p. 252.

³⁵³ *Ibid.*, p. 256.

laws “for the good rule, peace, welfare and good government of the said city, and for raising, assessing, and applying such monies as may be required for the execution of the powers with which the said Council is hereby invested [...]”³⁵⁴ The council was allowed to impose tolls and rates as well as property and liquor taxes for the purpose of enforcing the above by-laws. However, although the city council acted as an independent body, it was still subjected to the authority of the Governor General who could disallow any of its by-laws.

This ordinance modernized the way in which municipalities were governed in Lower Canada. For example, Jacques L’Heureux stated that it established the very first municipal institutions; they are “en effet, le point de départ du régime municipale du Québec [et] elles ont grandement influencé les institutions municipales qui ont suivi.”³⁵⁵ He explains that during the French Regime, there were no real municipal institutions. Although under the British regime, Quebec City and Montreal were briefly incorporated, the colony, in general, still had no real municipal institutions. He admits, however, that the changes brought by the ordinance were minimal as municipalities had very little powers and were still under the control of the Governor. It was nonetheless the start of something important. He explains:

Une collectivité municipale peut-être définie comme un corps politique formé par les habitants d’un territoire déterminé, auxquels l’État a reconnu le pouvoir de s’administrer eux-mêmes, conformément aux pouvoirs de nature locale qu’il leur a délégués. Les corporations créées par les ordonnances de 1840 correspondent à cette définition.³⁵⁶

³⁵⁴ *Ibid.*, p. 260.

³⁵⁵ L’Heureux, ““Les premières institutions municipales au Québec ou ‘machine à taxer,’” p. 334.

³⁵⁶ *Ibid.*, p. 353.

Both Kenneth Grant Crawford's *Canadian Municipal Government* and C.R. Tindal and S. Nobes Tindal's *Local Government in Canada* agree with the above characterizations. Both similarly explain that there was no local government in French Canada during the French Regime, and that the Conquest did not change this situation.³⁵⁷ Although some minor improvements were made—for example, in the late 1700s, the local population was granted the authority to elect six men yearly, as *baillis*, to inspect bridges and highways and act as constable—hardly anything changed. Grant noted,

the period from 1791 to the rebellion in 1837 local administration in Lower Canada continued to function much as it had done under the old French Regime. The people had no power to assess themselves for local improvements and when a road or a bridge was needed they had to appeal to the legislature. The legislature, as a result, was preoccupied with a vast number of minor matters of local concern.³⁵⁸

In 1832, the governor granted Quebec City and Montreal charters that allowed them to elect a mayor and two aldermen per ward, but rescinded the decision a few years later.³⁵⁹ In fact, in the years prior to the Rebellions and the Special Council, the lack of local or municipal government was a common concern. As early as 1828, a general meeting in Montreal, citizens expressed their desire “for an improved local administration [... that would] cope with police and financial problems of the prosperous town, the long neglected harbour, the insanitary conditions of surrounding swamps, and the lack of a general and effectually prosecuted plan of improvements.”³⁶⁰ In 1830, the Legislative

³⁵⁷ Kenneth Grant Crawford, *Canadian Municipal Government* (Toronto: University of Toronto Press, 1954), p. 20.

³⁵⁸ *Ibid.*, p. 32.

³⁵⁹ C.R. Tindal and S. Nobes Tindal, *Local Government in Canada: An Introduction* (Toronto: McGraw-Hill Ryerson Limited, 1979), p. 9.

³⁶⁰ *Ibid.*, p. 8. This was quoted from Adam Shortt and Arthur G. Doughty, eds., *Canada and its Province's, A History of the Canadian People and Their Institutions*, Vol. XV. (Toronto: Brook and Company, 1914), p. 304.

Assembly in Quebec also “called attention to the deplorable conditions resulting from the lack of municipal institutions.”³⁶¹ Municipal institutions thus remained unknown to the great majority of French-Canadians. According to Crawford and Tindal, the Special Council changed this. Although the council’s ordinance was altered a number of times (in 1855, for example, by the Lower Canada Municipal and Road Act), Crawford believed that the “basic framework of the system then established is still in effect.”³⁶² In other words, although municipal institutions were amended on several occasions since the Special Council, the latter laid the foundations of what would become the colony’s and the province’s modern municipal institutions.

Historian Donald Fyson has, however, nuanced this interpretation of the Special Council’s ordinance.³⁶³ Although Fyson does not dismiss the importance of the 1840 ordinance arguing that “corporations municipales avec représentants élus par les citoyens” did appear with the ordinance, he reminds us that we should not underestimate the role that parishes played in the administration of the state, and that they indeed played an important role.³⁶⁴ For example, parishes played an integral role in the organization and the administration of justice and public education prior to 1840.³⁶⁵ With regards to education, he explains that

Les écoles de la Royal Institution sont fondées sur une base paroissiale, sur demande des habitants de la paroisse; les syndics sont choisis parmi les notables locaux de la paroisse et le curé doit figurer parmi les inspecteurs

³⁶¹ Crawford, *Canadian Municipal Government*, p. 33.

³⁶² *Ibid.*, p. 36.

³⁶³ Fyson, “Les structures étatiques locales à Montréal au début du 19^{ème} siècle,” pp. 55-75; Fyson, “La paroisse et l’administration étatique sous le régime britannique,” pp. 25-39; Fyson, “The Canadian and British Institutions of Local Governance in Quebec, from the Conquest to the Rebellions,” pp. 45-82; Fyson, “L’administrations avant les municipalités: le Régime Britannique, 1764-1840,” pp. 9-11.

³⁶⁴ Fyson, “L’administrations avant les municipalités: le Régime Britannique, 1764-1840,” p. 9.

³⁶⁵ Fyson, “La paroisse et l’administration étatique sous le régime britannique,” pp. 34-35.

[...]; les écoles sont en partie soutenues par une cotisation paroissiale et les maitres sont choisis par une assemblée paroissiale.³⁶⁶

On 26 June 1840, the Special Council passed a third significant and extremely controversial ordinance. The controversy will be discussed in the second part of this dissertation. In all, the ordinance aimed to reform the colony's existing legal infrastructure and court system, which it was believed "by experience to be altogether insufficient and inadequate for the due administration of justice [...]"³⁶⁷ The colony was thus divided into new territorial divisions: Quebec, Montreal, Sherbrooke and Gaspé. The division of Sherbrooke was newly created to accommodate the growing British population in the Eastern Townships. However, in order to create it, the Special Council decided to eliminate the historic Territorial Division of Trois-Rivières. Of all of the ordinance's details, this one element was by far the most controversial. As a result of this, the people of Trois-Rivières were thus forced to travel all the way to Sherbrooke to go to court.³⁶⁸

The ordinance also created a Superior Court of Record, of Civil Jurisdiction, to be called the "Court of Common Pleas for the Province of Lower Canada. This court will have "original Civil Jurisdiction throughout this Province of Lower Canada, with full power and authority to take cognizance of, hear, try, and determine, in due course of law, all civil please, causes and matters whatsoever, as well as those in which the Queen may

³⁶⁶ *Ibid.*, pp. 35-36.

³⁶⁷ "An Ordinance to establish new Territorial Divisions of Lower Canada, and to alter and amend the Judicature, and provide for the better and more efficient administration of Justice throughout this province," 3 Vic. C. 45 (5th Session), reprinted in Special Council, *Ordinances*, Vol. 5C, p. 448.

³⁶⁸ Thompson gave no reason official reason why he eliminated the district itself. It is fair to assume that perhaps this was done to further limit the political authority of French-Canadians by eliminating a fully French district and replacing it with an English/French district.

be a party, as all others, except those purely of Admiralty Jurisdiction [...]"³⁶⁹ This court, made up of nine justices, took over the civil case jurisdiction formerly vested in the Court of the King's (Queen's) Bench.³⁷⁰ Finally, the ordinance established a Supreme Court of Record, called the "Court of the Queen's Bench for the Province of Lower Canada."³⁷¹ The court consisted of the Chief Justice of the Province, and two "Puisné Justices", named by the Queen. It had authority over all criminal jurisdiction in the colony "with full power and authority to take cognizance of, hear, try and determine, in due course of law, all pleas of the Crown, treasons, murders, felonies and misdemeanors, crimes and criminal offences whatsoever, heretofore had, done, or committed, or which shall hereafter be had, done or committed [...] within this Province of Lower Canada [...]"³⁷² It also had all authority and jurisdiction, for criminal cases previously vested in the Court of the King's (Queen's) Bench. It was "supreme appellate civil jurisdiction" and was the jurisdiction of the supreme court of error and court of appeals as well. Finally, this court also had authority over the courts magistrates and had the power to issue several writs such as that of *Certiorari*, *Mandamus*, and *Quo Warranto*.³⁷³ Although the ordinance was adopted in June 1840, it only became a law in December 1840, and was intended to be a permanent fixture. Moreover, although this ordinance was legally very complex and contained several changes to the colony's legal infrastructure, one element in particular, more than any other, created significant controversy: the elimination of the district of

³⁶⁹ *Ibid.*, p. 456.

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*, p. 476.

³⁷² *Ibid.*

³⁷³ A writ of *Certiorari* allowed individuals to bring into review a decision made by an inferior court before a superior court. A writ of *Mandamus* is issued by the superior court to force any lower court or officer of the state to perform his duties correctly. A writ of *Quo Warranto* forces an individual to offer proof as to the authority they say they hold. For more information on these writs, consider Bryan A. Garner, *Black Law Dictionary* (St Paul, MN: West, 2009). *Ibid.*, p. 478-80.

Trois-Rivières. As will be discussed later, however, this ordinance did not survive long.

On 26 June 1840, Thompson thanked his councilors and prorogued the Special Council until late 1840. Thompson was very happy with the work that had been done. He was especially pleased with his Presiding Member: CAM-supporter James Stuart. In a letter to Lord Russell, he noted: “I have closed my Special Council, and I send you home my ordinances. They have done their work extremely well, thanks to Stuart and my new Solicitor General [...]”³⁷⁴ Thompson believed that he and the council, assisted by Stuart especially, had passed very important ordinance that significantly improved the colony’s infrastructure. He explained,

I have passed some, tho' not all, the measures which are indispensable previous to the Union. The Registry Bill still remains, but that I shall get thru' in the autumn after it has been for two or three months before the Public, which was the course I adopted with the Judicature Bill and found most advantageous. Education also stands over, but it is impossible to do anything in that until we get the municipalities erected in the districts.³⁷⁵

Councilor Edward Hale shared Thompson’s opinions, especially with regards to the Judicature Ordinance. In a letter to his wife, he expressed his agreement with the bill maintaining that he was “satisfied” with it and that it was “of the greatest importance.”³⁷⁶ However, Hale was disappointed that Thompson opted to prorogue the Special Council before they had time to pass the long awaited Registry Ordinance. He explained that

Our business continues to drag its tardy length along. The Governor will positively leave Montreal on the 15th as he has to settle political differences in Halifax—Some say that we shall continue in Session after

³⁷⁴ Letter from Charles Poulett Thompson to Lord Russell, June 27, 1840, quoted from *Letters from Lord Sydenham*, p. 72.

³⁷⁵ *Ibid.*, p. 73.

³⁷⁶ McCord Museum Archives. Edward Hale Fond. Hale Papers, Correspondence 1840-41. File, 1840, June 2—Dec. 29. Letter from Edward Hale to his wife, June 9, 1840.

his departure, but this is not probable others begin to say now that we may manage the new Judicature Bill this session but that the Registry Bill will have to be put off—I think that we shall do no more than merely introduce these two measures this session.³⁷⁷

Although Hale was satisfied with some of the work being done by the Special Council, the letters he sent to his wife suggests that he was not completely satisfied with the manner in which the council did its business, more specifically, the manner in which Thompson allowed no one to oppose him or his ordinances. Unless one supported Thompson and his political agenda, one was not allowed to express one's opinions. Hale also noted that a few other councilors felt the same way. In a letter dated 14 June 1840, for example, he noted that he “was as were many others more than ever out of sorts with the Special Council.”³⁷⁸ First of all, he was openly against the elimination of the district of Three-Rivers. Explaining to his wife that the governor “blotted out” the district altogether, he added, “I think it is not quite fair to Three Rivers & that St. Francis might be made a very extensive district without sacrificing the other—I may move in the matter, but without any idea of succeeding [...]”³⁷⁹ He further added:

I am set down as one of the Opposition, by the Great People—I see plainly that there are great efforts made to put down all opposition & what with members who are easily talked over [...] However, I am satisfied that I am acting honestly. It is said that those who offer any opposition will be kept out of the new legislative council--no great punishment [...] ³⁸⁰

Hale also noted how he was not the only councilor to think this way. More specifically, he was referring to John Neilson and to his own uncle and name sake, Edward Hale.

³⁷⁷ *Ibid.* Letter from Edward Hale to his wife, June 11, 1840.

³⁷⁸ *Ibid.* Letter from Edward Hale to his Wife, June 14, 1840.

³⁷⁹ *Ibid.*

³⁸⁰ *Ibid.*

Concerning Neilson, he wrote: “I believe Neilson was more disgusted than he allowed us to think when he left, nor did he tell any one that he intended to resign [...]”³⁸¹ As will be illustrated in the second section of this dissertation, Neilson was indeed very disgusted with the Special Council and the way it was governed. Concerning his uncle, Hale noted that he resigned quite simply because “of his dissatisfaction” with the Special Council. Hale explained to his wife that, in Thompson’s council, councilors did not have much of a say, unless they supported him, and that was the reason why Neilson and “Uncle E” resigned.³⁸² Edward Hale did eventually present a motion to the governor and council opposing the elimination of Three Rivers. Not surprisingly, it was not accepted.

4.4 THOMPSON’S FOURTH SESSION AND THE END OF THE SPECIAL COUNCIL

In November 1840, Thompson, who had then become Lord Sydenham, summoned his Special Council for a fourth and final time. This final session lasted until the Union of the Canadas in February 1841 and passed ordinances that were equally important to the colony. Although the original act that created the Special Council stated that its mandate would end on 1 November 1840, it was allowed to continue under the authority of “An Act to reunite the Provinces of Upper and Lower Canada, and for the Government of Canada.” According to the above, the Special Council would remain in power until “the said Two Provinces shall constitute and be One Province as aforesaid, and shall be repealed on, from, and after such Day [...]”³⁸³ Moreover, although all members of his previous council were again invited, two did not return. John Neilson and

³⁸¹ *Ibid.* Letter from Edward Hale to his wife, June 16, 1840.

³⁸² *Ibid.*

³⁸³ Great Britain Colonial Office, *Upper and Lower Canada a bill for re-uniting the provinces of Upper Canada and Lower Canada, and for the government of the united province. Bill for re-uniting the provinces of Upper Canada and Lower Canada, and for the government of the united province* (London: HMSO, 1839). http://www.canadiana.org/cgi-bin/ECO/mtq?doc=9_01401

Edward Hale of Portneuf, as noted, resigned as a result of their general dissatisfaction with the way the council was run.³⁸⁴

During the next few months, the Special Council passed over 30 ordinances, many of which sought to prepare the colony for union and improve its existing institutions and infrastructure (Table 12).

Table 12: Ordinances Passed in the Fourth Session of Thompson's Council

Type of Ordinances	Number
Rebellions	0
Economy	2
Social	11
Military	1
Religion	3
Immigration	1
Legal System	7
Municipal/Political	8
Other	0
Total	33

For example, the Special Council passed an ordinance preparing the colony for its very first election under the new union to be held on the second Monday of January 1842. Only males of full age, free holders or house holders of a property value of 40 schillings, were eligible to vote. Individuals that had been accused of treason or felony could not vote.³⁸⁵ The Special Council also passed several ordinances improving the colony's road and transportation infrastructure. One provided for the repairing and improving of the

³⁸⁴ Unfortunately, unless we have correspondence or journals telling so, we do not know how many councilors stepped down out of disgust with the Special Council à la Neilson, for example. We simply do not know whether councilors stopped coming to meetings due to political, health or financial reasons.

³⁸⁵ "An Ordinance to prescribe and regulate the election and appointment of certain officers, in the several Parishes and Townships in this Province, and to make other provisions for the local interests of the Inhabitants of these Divisions of the Province." 4 Vic., C.3 (6th Session), reprinted in Special Council of Lower Canada. *Ordinances made and Passed by the Administrator of the Government, and the Special Council for the Affairs of the Province of Lower Canada, Vol. 6* (Quebec: John Charlton Fisher and William Kemble, 1841), pp. 24-50.

main road which led from Lower Canada to New Brunswick, commonly called the Temiscouata Portage route;³⁸⁶ another provided for the construction of a railroad from Sherbrooke to a point on the bank of the Richelieu River;³⁸⁷ a third, for the construction of a turnpike from the Richelieu River and the town of St. John's to the Village of Granby.³⁸⁸ The council also passed an ordinance that allowed the commissioners of the Harbor of Montreal to borrow an extra sum of 17,000 pounds for the improvement of the harbor.³⁸⁹ The Special Council created additional institutions that were to improve the colony's judicature and administration. For example, new courthouses and gaols were established in several judicial districts around the Province;³⁹⁰ the Special Council also allowed the erection of a public edifice to contain a city hall, a merchant exchange and a post office in the city of Montreal.³⁹¹

Those were not the most important measures passed by the Special Council, however. It finally dealt with the colony's inefficient and limited land registration system. On 5 November 1840, the governor and his Chief Justice (Presiding Member), James

³⁸⁶ "An Ordinance to provide means of keeping in repair that part of the Road from this Province to New Brunswick, commonly called the Temiscouata Portage Road," 4 Vic., C. 8 (6th Session), reprinted in *Ibid.*, pp. 124-32.

³⁸⁷ "An Ordinance for making a Rail-road from Sherbrooke, to a point upon either Banks of the River Richelieu," 4 Vic., C. 10 (6th Session), reprinted in *Ibid.*, pp. 146-208.

³⁸⁸ "An Ordinance to provide for the construction of a Turnpike-Road from the River Richelieu, opposite the Town of Dorchester, commonly called St. John's, to the Village of Granby," 4 Vic., C. 11 (6th Session), reprinted in *Ibid.*, pp. 208-42.

³⁸⁹ "An Ordinance to authorize certain further improvements in the Harbour of Montreal, to establish new rates of Wharfage therein, to authorize the Commissioners for the improvement of the same to borrow a further sum of money, and for other purposes relative to the said Harbour," 4 Vic., C. 12 (6th Session), reprinted in *Ibid.*, pp. 242-68.

³⁹⁰ "An Ordinance to provide for erection and establishment of Court Houses and Gaols, in certain Judicial Districts in this Province," 4 Vic., C. 20 (6th Session), reprinted in *Ibid.*, pp. 412-32.

³⁹¹ "An Ordinance to authorize and enable the Corporation of the City of Montreal, to erect a Public Edifice in the said City, for certain purposes," 4 Vic., C. 27 (6th Session), reprinted in *Ibid.*, pp. 494-510.

Stuart, proposed an ordinance to this effect.³⁹² Passed on 9 February 1841, this ordinance resolved one of the CAM's most pressing concerns. In fact, for a long time, many loyal British citizens had asked for an act providing for the registration of all land transactions and mortgages in the colony.³⁹³ As early as 5 January 1787, for example, merchants in Quebec and Montreal asked Governor Dorchester to provide for the registering of all land transactions to end frauds by mortgage-brokers who sold their land at a much higher price than it was worth. In 1806, the inhabitants of the Eastern Townships suggested that a registry office, relating to mortgages and land-ownership open in the region. In 1822 and 1824, residents of Montreal and the Eastern-Townships even went before the Legislative Assembly asking for such registry offices.³⁹⁴ The first steps to resolve this situation in Lower Canada were taken in the 1830s in the Eastern Townships (la 10/11 Geo. IV, c.8). The counties of Drummond, Sherbrooke, Stanstead, Shefford and Missisquoi were granted registration offices, which according to Kolish were "les premiers bureaux d'enregistrements dans la province."³⁹⁵ Along with such offices, individuals were also selected by the governor that would act as the official registrars of each office. It was thus their duty to register "tout les actes translatifs de propriété ou créant une charge réelle sur une propriété immobilière."³⁹⁶

³⁹² Special Council of Lower Canada, *Journals of the Special Council of the Province of Lower Canada. From the 5th November, 1840, to the 9th February, 1841. In the Fourth Year of the Reign of Queen Victoria*, Vol. 6 (Montreal: T. Cary and Georges Desbarats, 1838-1841), pp. 1-2.

³⁹³ According to Sylvio Normand and Alain Hudon, the system that was used prior to the Registry Ordinance, a system known as "hypothèques secrètes," was one of the main weaknesses of the "système québécois de droit privé." These types of mortgages get their name "secrètes" from the fact that they were adopted without publicity, and were adopted only before a notary. Sylvio Normand and Alain Hudon, "Le contrôle des hypothèques secrètes au XIXe siècle," p. 171.

³⁹⁴ Perrault, *Le Conseil Special, 1838-41*, p. 37.

³⁹⁵ Kolish, *Nationalismes et conflits de droits*, p. 286.

³⁹⁶ Sylvio Normand and Alain Hudon, "Le contrôle des hypothèques secrètes au XIXe siècle," p. 178.

The Special Council's Registry Ordinance was important since it established a registry system in the entire colony, and its significance was noted by many. According to Evelyn Kolish, for example, "les bureau d'enregistrements seront finalement établis après l'Union, par une ordonnance du Conseil spécial adoptés en 1840, et sans l'assentiment des Canadiens."³⁹⁷ Sylvio Normand and Alain Hudon also stated that the "ordonnance de 1841 avait jeté les bases d'un système qui est encore le notre aujourd'hui [...]"³⁹⁸ The ordinance first started by underlining the shortcomings of the previous, unregulated manner of dealing with land titles. It noted that "great losses and evils have been experienced, from secret and fraudulent conveyances of real estates [...] and from the uncertainty and insecurity of titles to lands in this Province, to the manifest injury, and occasional ruin of purchasers, creditors, and others [...]"³⁹⁹ The system was outdated and was not great at record-keeping; for example, there was no easy way for a buyer to know whether a property was already mortgaged. The Special Council believed that a proper system that recorded and registered all land grants, ownerships and titles would resolve such problems. It also believed that by removing such burdens on real estate, it might "greatly promote the agricultural and commercial interests of this Province."⁴⁰⁰ The ordinance thus ordained that

a memorial of all deeds, conveyances, notarial obligations, contracts, and instruments in writing, which from and after the day on which this Ordinance shall come into force and effect, shall be made and executed, and of all Wills which shall be made and published, by a devisor or

³⁹⁷ Evelyn Kolish, *Nationalismes et conflits de droits*, p. 285.

³⁹⁸ Normand and Hudon, "Le contrôle des hypothèques secrètes au XIXe siècle," p. 182.

³⁹⁹ "An Ordinance to prescribe and regulate the registering of titles to lands, tenements and Hereditaments, real or immoveable estates, and of charges and incumbrances on the same, and for the alteration and improvement of the Law, in certain particulars, in relation to the Alienation and hypothecation of Real estates, and the Rights and Interest acquired therein," 4 Vic., C. 30 (6th Session), reprinted in Special Council, *Ordinances made and Passed*, Vol. 6, p. 520.

⁴⁰⁰ *Ibid.*

testatrix [...], and of all judgments, judicial acts and proceedings, recognizances, appointments of tutors or guardians to minors, and of curators to interdicted persons, and of all privileges and hypothecary rights and claims, and incumbrances, from whatever cause they may result, and whether produced by a mere operation of law or otherwise, which shall be entered into, made, acquired, or obtained after the day last, of or concerning, or whereby any lands, tenements, or hereditaments, real or immoveable estates in this Province, shall or may be alienated, conveyed, devised, hypothecated, mortgaged, charged, or in any manner or way affected, may be registered [...]⁴⁰¹

Any document relating to land exchanges (purchases, wills, mortgages, deeds) had to be recorded in writing and registered. A public officer or registrar was thus appointed in each Judicial District.⁴⁰² These registrars were also allowed to appoint deputies to assist them in their work. Thompson and the members of the CAM were very happy with this ordinance. Regarding the CAM, not only did it finally resolve one of their most pressing concerns, but one of their own had a heavy hand in its drafting.⁴⁰³ Thompson confirmed the above in a letter to Lord Russell, which noted that the ordinance is “[James] Stuart's work, who certainly is the most competent person perhaps in the world from his thorough knowledge of both French and English Law to have prepared the Bill.”⁴⁰⁴

Thompson's council adopted another ordinance that altered the colony's municipal government system. In the first place, the Special Council amended its

⁴⁰¹ *Ibid.*, p. 522.

⁴⁰² *Ibid.*, pp. 526-28.

⁴⁰³ Although the Special Council was quite happy with this ordinance, it has nonetheless received some criticisms from historians, especially because it weakened the position of women in Lower Canada. Historian Bettina Bradbury is one of its most vocal critics. In an article entitled, “Property and Marriage: The Law and the Practice in early 19th Century Montreal,” she maintains that it had “eliminated the customary claim widows had to a dower from their husband's property.” John Dickinson and Brian Young added that by therefore “placing their dower rights to their husbands property on the same footing as normal mortgages, which were based on priority of registration,” a wife's property rights and claims could be endangered if her husband failed to properly register them. Bradbury, “Property and Marriage,” pp. 13-14; John Alexander Dickinson and Brian Young, *A Short History of Quebec* (Montreal-Kingston: McGill-Queen's University Press, 2003), p. 189

⁴⁰⁴ Letter from Charles Poulett Thompson to Lord Russell, Nov. 24, 1840, quoted from *Letters from Lord Sydenham*, p. 101.

ordinances incorporating the cities of Quebec and Montreal and significantly increased the authority of the municipal councils.⁴⁰⁵ Both city councils were allowed to regulate tariffs and rates for ferries coming to and from the city at any place within nine miles of either city. They could also make by-laws for various purposes such as: establishing a board of health; the measurement of all firewood, coals, and salt and grain; making or repairing any common sewers; the removal of door steps and porches; lighting the city; altering the level of footpaths; regulating certain vehicles; and for imposing fines and imprisonment. The councils also had all authority regarding market places, fire societies, and safety regulations. Although this ordinance was passed prior to the Union of the Canadas, these city councils had to wait until 1 May 1841 (after union) to exercise their new powers.⁴⁰⁶

More importantly, the Special Council passed an ordinance that expanded the municipal system it created for Montreal and Quebec City to the entire colony.⁴⁰⁷ It allowed the governor to divide the colony into several districts for the purpose of establishing municipal institutions around Lower Canada. Each district was incorporated and was granted certain powers, which included the power to purchase and hold lands and tenements. Each district council also had the authority to make by-laws for matters that were purely local and within their own district. They had authority, amongst other things, over the following: the maintenance and improvement of roads within the limits of the districts, the repair of old buildings or erection of new ones, the purchase and sale

⁴⁰⁵ “An Ordinance to amend the Ordinance to Incorporate the City and Town of Quebec,” 4 Vic., C. 31 (6th Session) & “An Ordinance to amend the Ordinance to Incorporate the City and Town of Montreal,” 4 Vic., C. 32 (6th Session), reprinted in Special Council, *Ordinances made and Passed*, Vol. 6, pp. 600-633 & 634-669.

⁴⁰⁶ *Ibid.*, pp. 620-24.

⁴⁰⁷ “An Ordinance to provide for the better internal Government of this Province, by the establishment of a local or municipal authorities therein,” 4 Vic., C. 4 (6th Session), reprinted in *Ibid.*, p. 50-87.

property and the establishment of allowances to support parish and township schools.⁴⁰⁸

The councils could also establish tolls and rates to finance public works in their districts as well as an efficient police system.⁴⁰⁹ Similar to that relating to Montreal and Quebec City, these district councils remained subjected to the governor as he could disallow any by-law that was passed and could dissolve any whenever he saw fit. Moreover, these district councils could not have any other powers unless they were conferred by the Provincial Legislative Assembly.⁴¹⁰

Each district council consisted of a warden and councilors. The governor appointed the warden, who sat at the head of the council, and the councilors were elected by the inhabitants (householders) who were qualified to vote. The governor also selected the number of councilors to be elected in each parish. As in Montreal and Quebec City, one needed specific qualifications to be a councilor. All councilors had to be householders and had to own lands and tenements valued at more than 300 pounds in the district in which they sought to run. Not everyone could be a councilor either. Individuals being in “Holy Orders” (Ministers and Teachers), any judge of any court, military officer or person accountable for the district revenues or receiving an allowance from the district for his services could not run for council. Moreover, all individuals that had been detained for treason or any other felony also could not run.⁴¹¹ As will later be discussed, although this system of municipal government changed on numerous occasions over the years, it nonetheless provided its foundation and proved revolutionary.

⁴⁰⁸ *Ibid.*, p. 74.

⁴⁰⁹ *Ibid.*, p. 76.

⁴¹⁰ *Ibid.*, p. 52.

⁴¹¹ *Ibid.*, p. 58.

On 9 February 1841, the governor thanked his Special Council and dissolved it for the final time. The very next day, the Act of Union was proclaimed, which abolished the Special Council, united both Lower and Upper Canada, and created a United Legislative Assembly. Although Thompson is especially remembered as the governor that gained the approval of union in the colonies, he also, equally importantly, as the head of the Special Council, passed significant ordinances that reformed and improved the colony's infrastructure. During his short governorship, and with ordinances such as that establishing a registry system and a modern system of municipal government, Thompson and his council left their revolutionary imprint on the colony and the history of our nation.

4.5 WAS THE ERA OF THE SPECIAL COUNCIL A REVOLUTION?

Despite the fact that the Special Council played an important part in our history and passed several significant ordinances, general Canadian histories have continuously ignored and minimized its role.⁴¹² In fact, even studies that have focus on the period itself, such as Eric Bédard's *Les réformistes* have minimized the importance of the Special Council and its contribution to Canadian history.

After considering several of the ordinances it passed, along with their impact, and the various interpretations of each, I believe that the era of the Special Council was a revolutionary period in Canadian history. A revolution is a period of great change; a period that sees significant transformations in an entire society, which may take years to

⁴¹² General histories of Canada, including those below, have consistently ignored the Special Council, and have instead focused on the Rebellions and the Union of 1841. Consider Jacques Lacoursière, *Histoire populaire du Québec, Tome 2* (Sillery, Qc: Les Éditions du Septentrion, 1995); Denis Monière, *Le développement des idéologies au Québec: des origines à nos jours* (Montreal: Éditions Québec-Amérique, 1977).

complete. This concept is known as the “slow revolution.” The Special Council, to me at least, fits this bill. This revolution was a revolution from above, which was spearheaded by a specific political party that sought to politically, socially and economically improve the lives and positions of a specific people. It was led by a conservative Anglophone elite—the Constitutionals—that sought greater political power for themselves and to eliminate the dominant position of French-Canadians. Moreover, the ordinances passed by the Special Council played a significant and a groundbreaking role in improving the colony’s institutions, and quietly improved the lives of the people they sought to benefit.

Although some historians have slightly exaggerated the groundbreaking aspects of some of the Special Council’s ordinances, more specifically Allan Greer’s interpretation of the Police Ordinance, many of the Special Council’s ordinances, as discussed throughout this dissertation, did change the colony and did revolutionize its institutions. For example, although its scope was limited to the island of Montreal and only a few could initially afford to commute their lands, the Special Council laid the seeds that soon spelled the end of the seigneurial regime in the colony. This process was completed in 1854 with *An Act for the Abolition of Feudal Rights and Duties in Lower Canada*. Although this first step was indeed limited to the island of Montreal, the Special Council, in Brian Young’s words, “set in motion the disassemblment of seigniorial tenure by establishing procedures for commutation on three seigneuries in the Montreal Region.”⁴¹³

Moreover, although a small section of the colony enjoyed a registration system, it was the Special Council that finally introduced a colony-wide modern land registration

⁴¹³ Brian Young. *The Politics of Codification: The Lower Canadian Civil Code of 1866* (Montreal: McGill-Queen's University Press, 1994), pp. 44-45.

system to Lower Canada. The council's ordinance established, as explained by Sylvio Normand and Alain Hudon, the foundations of the registry system that we still have today in Quebec. As stated, the lack of a land registration system had been one the biggest complaints amongst the British. Despite the fact that this process was started before the Special Council, it was expanded upon and completed with it. The lack of municipal institutions was also a common complaint amongst the British. Although one could argue that parishes played the role of municipal-like institutions, the Municipal Ordinances passed by the Special Council transformed local government and politics forever, and provided, as discussed, the foundations of our current municipal system. Lower Canadians could now elect individuals that would represent them at the municipal level.

Without the local population to consider or the authority French-Canadian politicians to stand before them, the Special Council was able to do what the British in the Legislative Assembly and outside of it had never been able to do.

CHAPTER 5

THE QUIET MASSES:
COLBORNE'S FIRST COUNCIL AND THE PEOPLE

Although the Special Council only remained in power for a few years, its impact on the colony and its people was tremendous. It passed revolutionary ordinances that forever changed Lower Canada, its institutions and its people. Despite some changes that could be considered “good” for the colony, the era of the Special Council created a “perfect storm” of controversy. The council not only passed ordinances that eliminated and changed some of the colony’s traditional French institutions and sought to assimilate the local population, but this was more importantly done by a non-elected body that was itself dominated by French Canada’s greatest enemies: the Constitutionals.

While the social, political and economic impact of the Special Council is relatively well known, the opinions of the Lower Canadian population towards it and the ordinances it passed are not. Other than the opinions of a few members of the political and intellectual elite (Étienne Parent and La Fontaine) and general reactions regarding the Sleigh Ordinance, we have very little information. Through the use of sources such as newspapers, petitions, letters to the editor, and public demonstrations, the following four chapters will consider the opinions of the Lower Canadian population towards the Special Council and its ordinances. Although French-Canadians did not take up arms and rebel against the Special Council, they did not quietly sit and accept the fate that the Council had reserved for them. In fact, they often showed their discontent and refused to accept the council’s ordinances; several were challenged and some even annulled as a result.

Although several scholars have tackled the topic of the Special Council, none has seriously considered the opinions of the population towards it. Many historians have even argued that such an examination would prove too difficult. For example, even Stephen Kenny, who considered Lower Canadian opinions towards the Sleigh Ordinance, believes that such an endeavour is too difficult and blames such difficulties on the repressiveness of the British government. He explains that

Leaders were obliged to be circumspect in their public expressions on important contemporary issues. While the story of the development of the Union, the achievement of responsible government, and the revision of the political system to French-Canadians interests is well know, what is far less clearly understood is the real nature of the reaction of Lower-Canadians. In the truly repressive climate at the outset of Union, when the British authorities dictated and disposed of policy, the sentiments and attitudes prevalent in Lower Canada, even among politicians and editors, are extremely difficult to determine. In fact, ambivalence and uncertainty are the words which best describe the reaction of the political elite.⁴¹⁴

Other historians have even stated that such an endeavor was impossible. Philip Goldring noted that the Special Council's secrecy prevented public discourse and therefore limits available resources for historians.⁴¹⁵ Steven Watt, for his part, maintained that contemporaries were too concerned with the Rebellions, Durham's Report and the impending union to discuss the decisions taken by the Special Council, which again limits resources.⁴¹⁶ As the following chapters will demonstrate, however, such assumptions are false. Not only was much evidence gathered, but Lower Canadians in general were very concerned with the decisions taken by the council and often commented about it. Their actions were also, at times, quite violent.

⁴¹⁴ Kenny, "Cahots and Catcalls," p. 187.

⁴¹⁵ Goldring, "British Colonists," p. 244

⁴¹⁶ Watt, "Authoritarianism, Constitutionalism, and the Special Council of Lower Canada, 1838-1841," p. 12.

A significant amount of available evidence was located including numerous newspaper articles, letters to the editor and to the civil secretary, petitions, popular protests and demonstrations. Newspapers proved an indispensable source, and all that were produced in this period were considered (Table 13).

Table 13: Canadian Newspapers that discussed the Special Council

Newspapers	Area Printed	Years Active
L'Ami du Peuple	Montreal	1832-1840
Aurores des Canadas	Montreal	1839
Canadian Colonist and Commercial Advertiser	Quebec City	1839-1841
Canadian Patriot	Stanstead	1837-1838
Le Canadien	Quebec City	1806-1909
La Canadienne	Montreal	1840
Commercial Messenger	Montreal	1840-1842
Courier Canadien	Montreal	1838
Le Fantasque	Quebec City	1837-1849
Farmers' & Mechanics' Journal and St. Francis Gazette	Sherbrooke	1839
Le Feuilleton ou Supplément du Fantasque	Quebec City	1838
Le Jean-Baptiste	Montreal	1840-1841
Missiskoui Standard	Frelighsburg	1835-1839
Montreal Gazette	Montreal	1785-present
Montreal Herald	Montreal	1811-1957
Montreal Transcript & General Advertiser	Montreal	1837-38
Morning Courier	Montreal	1835-184?
Le Populaire	Montreal	1837-1838
Quebec Gazette/La Gazette de Québec	Quebec City	1764-1874
Quebec Mercury	Quebec City	1804-1903
Quebec Transcript	Quebec City	1839-??
La Quotidienne	Montreal	1837-1838
Le Temps	Montreal	1837-1838
Le Vrai Canadien	Montreal	1840-1841

As previously discussed, the equation public opinion/newspapers has resulted in several studies with many arguing that newspapers reflect public opinion very well, and also played an important role in shaping it. There have also been quite a few studies on

newspapers in Canada. A quick look at William J. Buxton and Catherine McKercher's "Newspapers, Magazines and Journalism in Canada: Towards a Critical Historiography" illustrates the amount of work done on the subject in this country and the various approaches historians have used.⁴¹⁷ Several of these studies have even considered the era of the Special Council, albeit their treatment of the council itself and the ordinances it passed remains minimal. Jean-Pierre Kestemen, for example, examines newspapers in the district of St. Francis between 1823 and 1845.⁴¹⁸ Although he shows that newspapers were politically active prior to the Rebellions, his treatment of the Special Council is very brief. André Lefebvre examines *The Montreal Gazette's* attitude towards French-Canadian nationalism during the era of the Rebellions and the Special Council.⁴¹⁹ Treatment of the Special Council is inexistent. Étienne Parent's *Le Canadien* is the subject of Micheline Cambron's article. Unlike the above, she considers, albeit briefly, the newspaper's attitude towards a few of the council's ordinances, including the Sleigh Ordinance. In this case, the newspaper opposed it.⁴²⁰ The attitude of newspapers towards the proposed Union Bill is the subject of two studies by Jean-François Beaudet and Philippe Reid. Reid first argues that Étienne Parent opposed the Union Bill because it was a "mesure de spoliation et d'oppression pour le Bas Canada."⁴²¹ Beaudet, for his part, looks at the response that Union provoked in two Quebec City newspapers: *Le Canadien* and *The Quebec Mercury*. Both newspapers opposed one another and used their pages to

⁴¹⁷ William J. Buxton and Catherine Mckercher, "Newspapers, Magazines and Journalism in Canada: Towards a Critical Historiography," *Acadiensis* 28 (1) (1991), pp. 103-26.

⁴¹⁸ Jean-Pierre Kestemen, "Les premiers journaux du district de Saint-François (1823-1845)," *Revue d'histoire de l'Amérique française* 31 (2) (1977), pp. 239-53.

⁴¹⁹ André Lefebvre, *La Montreal Gazette et le nationalisme Canadien, 1835-42* (Montréal: Guérin, 1970)

⁴²⁰ Micheline Cambron, *Le journal le Canadien: Littérature, espace public et utopie, 1836-1845* (Québec: Éditions Fides, 1999)

⁴²¹ Jean-François Beaudet, "Les réactions suscitées par l'Union dans *le Canadien* et *le Quebec Mercury*, 1840-1841. M.A. Thesis. Université Laval, 1991.

garner support or opposition to Union. Whereas *The Mercury* promoted it and asked its readers to attend the many pro-Union meetings, *Le Canadien* did the opposite.⁴²²

There is no denying the value that newspapers bring to any historical analysis. As in today's society, we are all influenced by what we see and read. The newspapers we read, news channels we watch, and political commentators we relate to shape our opinions of various events. We are all shaped by our surroundings. Comparing the opinions of Lower-Canadians through letters, petitions, and demonstrations with the colony's newspapers and editorials, shows that more often than not they shared similar perspectives. The opinions of contemporaries were similarly shaped by what they read and heard.

With regards to letters to the editor, these were sent *en masse* to most newspapers, illustrating the local population's interest to all issues relating to the Special Council. In all, over 120 letters were retrieved, each dealing with a different subject (Table 14). Although these letters do not represent the opinions of all Lower Canadians, but only those who wrote them, these are simply a small part of the evidence that was used throughout this dissertation.

⁴²² Philippe Reid, "Représentations idéologiques et société globale: le journal le *Canadien*, 1806-1842. PhD Dissertation. Université Laval, 1979.

Table 14: Breakdown of Letters to the Editor

Subject of Letters	Number
Colborne's Special Council	8
Durham's Special Council	27
Thompson's Special Council	10
Lord Brougham's Actions	5
Union	23
Sleigh Ordinance/Roads	14
Judicature Ordinance	11
Police Force	2
Feudal Tenures and Seminary Ordinance	15
Habeas Corpus Controversy	3
Other ⁴²³	4
Total	122

5.1 OPINIONS ON THE SPECIAL COUNCIL IN GENERAL

To say that Sir John Colborne was not very popular is an understatement. As the man that violently put down the 1837 Rebellion and the first head of the authoritarian Special Council, he did not endear himself to the local population. This chapter will demonstrate how, especially amongst French-Canadians, Colborne's first tenure did not result in great applause and praise. It must be added, however, that when compared to later sessions of the Special Council, public opinion was very subdued throughout this period. Not only was the press's criticism rather tame, but the local population did not send as many letters to the editor, produce as many petitions or participate in as many popular protests. However, the quiet masses became much more vocal with the arrival of Lord Durham.

⁴²³ "Other" represents all letters that refer to Special Council but are not specific to the listed above. This includes letters regarding the Registry Ordinance, and relations between Canada and Britain, *Patriotes* and Britain, etc.

The period that followed the 1837 Rebellion was very difficult for the press, especially for newspapers that opposed the British Government. Several anti-British newspapers such as *La Minerve*, *Le Fantasque*, *The Canadian Patriot* and *The Vindicator* had been shut down and their editors either left the colony or were imprisoned. As a result, during this very first session of the Special Council, the pro-Colborne press clearly had the upper hand. In fact, of the eleven newspapers that continued to publish in the months that followed the Rebellion, only two were, from the very outset, opposed to Colborne and the Special Council, one eventually turned against Colborne, and eight supported the governor and his council throughout.⁴²⁴ However, one must keep in mind that pro-Colborne did not mean that they blindly supported anything he did. Several newspapers supported Colborne only because they hoped that he could restore peace and stability in the colony, and not because he sought to eliminate French political participation.

Despite the difficulties that the anti-government press suffered in the wake of the rebellion, the French-Canadian press remained Colborne's most vocal opponent. What is also interesting about the press is that it usually represented the opinions of the French and English-Canadian political elite. Although being an editor was the only day job for many, several others were politicians as well and even held seats in the Legislative Assembly and on the Special Council. Such was the case with Étienne Parent, editor of *Le*

⁴²⁴ Although 11 newspapers continued to publish after the Rebellions, only ten will be examined. *The Montreal Herald* unfortunately does not seem to have survived the period right after the rebellions. In fact, the only microfilm available at the National Archives, Concordia, McGill, University of Ottawa and La Grande Bibliothèque de Montréal starts in January 1840. However, it is very easy to assume that this newspaper supported the Special Council as a result of the hints that were found in other period newspapers. Back in the 19th century, newspaper often quoted entire articles from one another and such was the case with *The Montreal Herald*. A few articles were found in *Le Populaire* mentioning the fact that the *Herald* was working with Colborne and the Council to promote the Constitutionalist agenda. Unfortunately, there is not enough available information to make a full analysis.

Canadien. By the 1837 Rebellion, Étienne Parent already had a well-established political career and was one of the colony's most influential minds. Historian Jean-Charles Falardeau believes that he played an important role on Lower-Canadian politics and society, as important as that played by Louis-Joseph Papineau and Louis-Hippolyte La Fontaine. Falardeau states that

Étienne Parent's thought dominated the first half of the French-Canadian 19th century. This man incarnated as did no one else the ambitions of a new social type, that of the intellectual and political elite, which at the turn of the 19th century was replacing the gentleman class of landowning seigneurs, and, along with the ecclesiastical leaders, resolutely taking hold of the destiny of the French-Canadian people. He was called "Père Parent," so much did he appear to be a prototype and an example.⁴²⁵

Parent's opinion mattered. His career with *Le Canadien* began in 1819 when, as a student at the Seminary of Quebec, he contributed his first articles to the newspaper. Three years later, while working on his father's farm, he was visited by its owners, François-Xavier Blanchet and Flavien Vallérant, and was offered the editorial position. After some thought, he accepted, and at the young age of 20, he became the editor of *Le Canadien*. His first tenure did not last long, however. In 1825, as a result of a dwindling number of readers, the newspaper stopped printing. In the next few years, Étienne Parent kept busy as the editor of the French section of *The Quebec Gazette*. However, in 1830, struck by the wave of patriotism that spread in Lower Canada as a result of the 1830 French July revolution and the creation of the *Patriote* Party, Parent sought to start a newspaper that would promote this sentiment. With the help of René-Édouard Caron, Jean-Baptiste Fréchette and Elzéar Bédard, he resurrected *Le Canadien* and became "the guiding spirit"

⁴²⁵ This quote and the following information was taken from *Dictionary of Canadian Biography Online*. "Étienne Parent." Jean-Charles Falardeau. Vol. X. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=5204

of the newspaper. Parent thus had a forum in which he could fight for French-Canadians and promote the preservation of their institutions, laws and rights.

Parent's political activism was not limited to his newspaper. By the 1830s, he became a member of the *Patriote* Party, and an important one at that. According to Falardeau, whereas "Papineau was the political leader of the *Patriote* Party, Parent [was] its intellectual leader."⁴²⁶ Cracks soon began to appear between him and Papineau, however. By 1835, he opposed any type of armed insurrection and believed that the people of Lower Canada were not ready for independence. An armed conflict, he argued, would not end well for French Canada, and as a result, he was called a traitor by his former friends and allies.

Following the heavy defeat suffered by the rebels in 1837, he stopped writing and remained quiet for a few months. However, in early 1838, he picked up his pen and focused on the defense of French-Canadians and attacked the British response to the 1837 Rebellion. On 14 February 1838, days after the British Parliament suspended the 1791 Constitution, he published an article condemning this decision. Parent's position was very clear: he did not want the despotism of the Special Council, but wanted responsible government and more independence from Great Britain. He hoped that the British Parliament

nous donne donc le gouvernement constitutionnel en esprit et en vérité. Mais, ce serait là une quasi-indépendance, dit-on. Eh, oui; en serait une quasi- indépendance; l'état de choses à peu près qui régnait dans plusieurs des anciennes colonies; et cette quasi-indépendance est devenue une nécessité, un besoin pour les colonies encore existantes sure ce continent, et ce besoin ne fait que commencer à se manifester. Mais que perdrait donc

⁴²⁶ *Ibid.*

l'Angleterre à un pareil changement? Elle conserverait toujours le règlement du commerce dans tout l'empire, ses colonies seraient toujours ouvertes au surplus de sa population, et continueraient d'être une pépinière pour sa marine. Il n'y aurait que les Ministères qui perdraient un peu de patronage; mais cette considération peut-elle tenir devant celle de l'intérêt général de l'empire, pour la prospérité duquel la paix et la sécurité sont des conditions indispensables?⁴²⁷

Parent's demands were ignored, however, as the colony was placed under the dictatorship of the Special Council. This did not please the former *Patriote*. He especially condemned the fact that a majority of the members of the Special Council “est tombé sur plusieurs des partisans les [...] plus violents du parti constitutionnaliste.”⁴²⁸ Parent moreover condemned the council's secrecy and the fact that its meetings were not open to the public. More specifically, he criticized the council's refusal to make public which councilors voted for and against many of the ordinances it passed. On this very issue he claimed that

[I]e seul moyen qu'auraient les membres du conseil, dans ce cas, pour ne pas être transformés en Boues d'Israël, serait de s'absenter toutes les fois qu'une mesure qu'ils désapprouvent, sera mise aux voix et passée [...] Cette détermination, si elle a été prise, comme nous l'avons l'eu de le croire, rendra peu enviable la possession d'un siège dans le Conseil Spécial. Ce n'est pas une position bien agréable pour des hommes libres et maîtres de leurs pensées, que d'être ainsi fagotés.⁴²⁹

In general, Parent was not satisfied with Colborne's council to the point that, as will be discussed in the next chapter, he applauded Durham's takeover. He was especially frustrated with the blatant favoritism displayed by the governor. On 6 June 1838, he asserted, for the final time, that “l'esprit de partialité et d'exclusion qui éclatait dans la

⁴²⁷ *Le Canadien*, February 14, 1838.

⁴²⁸ *Ibid.*, April 16, 1838.

⁴²⁹ *Ibid.*, April 25, 1838.

composition du ci-devant Conseil Spécial, nous ont convaincu que ce Conseil était une affaire de parti, de même que quelques-unes des mesures législatives de ce corps.”⁴³⁰

The only other newspaper that opposed Colborne and the Special Council from the very beginning was the short-lived *La Quotidienne*, which was edited by François Lemaitre. Lemaitre was a supporter and member of the *Patriotes*, and unlike Parent, his support did not end in 1837. Lemaitre was an active member of the *Association des Frères-Chasseurs*, which worked alongside Robert Nelson in planning the 1838 insurrection. After *La Minerve* was shut down in November 1838—a newspaper to which he had contributed several articles—Lemaitre began producing *La Quotidienne*. He was constantly condemned by the governor and the English press for spreading discontent amongst the local population.⁴³¹ Unfortunately, between 9 January and 31 May 1838, the newspaper was suspended. On 9 January, at 7:30pm, Lemaitre was arrested by a group of armed volunteers. These volunteers were, according to the Lemaitre, armed to the teeth and physically assaulted him—he was hit in the face with the butt of a rifle and was bleeding profusely as a result. He was kept in jail for 24 hours, where he did not eat and was freezing. According to Lemaitre, he was treated like a political prisoner. When he was able to return home, he found all of his printing equipment and material gone.

When Lemaitre began printing once again in June 1838, he did not wait very long to share his opinion on Colborne’s council. He was against the fact that Colborne’s council benefitted one particular group, loyal British inhabitants, and thus condemned it

⁴³⁰ *Ibid.*, June 6, 1838.

⁴³¹ Unfortunately, there is not a lot of biographical information on Lemaitre himself. As a result of his close association with Denis-Benjamin Viger, however, information on Lemaitre was available in the former’s biography in *Dictionary of Canadian Biography Online*. “Denis-Benjamin Viger.” Fernand Ouellet and André Lefort. Vol. IX. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=4760&interval=25&&PHPSESSID=dnnqhu3ii0cjsttf4p54n6m7d4

for being “contre les neuf dixièmes de la population fixe du pays” and that it did “[t]out pour les nouveaux sujets, rien ou presque rien pour les régnicoles, telle est la devise invariable du pouvoir.”⁴³² Furthermore, Lemaitre did not appreciate the manner in which Britain dealt with Lower Canada after the 1837 Rebellion. Lemaitre simply did not understand why Lower Canada lost its political rights, constitution and assembly. On 12 June 1838, he asked:

Les ministres de sa majesté ont supprimé la constitution de Bas-Canada à cause de la rébellion qui s'y est déclarée. La révolte a éclaté et duré bien plus longtemps dans le Haut-Canada. Les ministres de sa majesté l'ont-ils aussi privé de sa constitution?—Non! Nous ne désirons pas pour tout cela que nos co-sujets de notre sœur province soient traités comme nous l'avons été; [...] mais nous trouvons extraordinaire que de deux provinces en juxtaposition, l'une seulement soit privé du droit de législater sur ses affaires. Pourquoi a-t-on aboli notre constitution?⁴³³

What is especially interesting about this passage is the fact that although Lemaitre was troubled by Lower Canada's brutal treatment, he did not wish it on his brothers and sisters in Upper Canada—he did not wish it on anyone in general. Finally, and as will further be explored, although he was worried about Durham's arrival, he was still hopeful that the new governor would get rid of Colborne's evil council.

Depuis quelques temp le mal s'est accru d'une manière effrayante. C'est contre un pareil ordre de choses que nous élevons la voix. Nous prions donc humblement, mais avec instance, son excellence de ne pas perdre ce sujet de vue et d'en faire le plus tôt qu'elle le pourra sans son initiative d'une délibération au Conseil Spécial, qui lui-même aurait bien besoin d'une réforme, et pour bien dire d'être refondu.⁴³⁴

⁴³² *La Quotidienne*, June 12, 1838. The term “régnicoles” is an old judicial term that meant the natural inhabitants of a land. In this case, it represented French-Canadians.

⁴³³ *Ibid.*, June 12, 1838.

⁴³⁴ *La Quotidienne*, June 2, 1838.

Although only two newspapers initially opposed the Special Council, by the end of Colborne's tenure, *Le Populaire* began to openly criticize it. The newspaper itself was published between 10 April 1837 and 31 October 1838, and was edited by H. Leblanc de Marconnay, who promoted it as the only moderate newspaper in Montreal, and opposed radical newspapers like *La Minerve* and the ultra-Constitutionalist *Montreal Herald*. Born in France, Leblanc de Marconnay arrived in Canada in 1834, and began supporting Papineau's party. He was even the editor of *La Minerve* for a brief period. Despite this initial support, Marconnay did not want an armed insurrection and believed that those who did were fools.⁴³⁵ As a result, Marconnay became one of Papineau's most vocal critics and often used the pages of his newspaper to condemn and ridicule his actions. Consider the following article entitled *Conduite infame de Papineau*:

Papineau a fini son temps; il s'est comporté et se comporte encore comme le plus poltron des mortels [...] Le jour où les jeunes fous, qu'ils avaient enflammés par ses discours, cherchaient à soutenir le nom canadien, dans une mauvaise cause, Papineau, comme tout le monde sait, n'est point sorti de chez lui [...] Si Papineau avait le moindre sentiment d'honneur, il se présenterait aux autorités, il leur dirait que lui seul est coupable, que lui seul a conçu, [et] exécuté des plans désorganiseurs, dont sont actuellement victimes ceux qui n'eurent d'autre tort que d'avoir eu trop de confiance dans son esprit, dans sa sagesse, dans ses vues soi-disant patriotiques [...]⁴³⁶

The article ended with, "Honte! A jamais honte! Au monstre qui a compromis aussi gravement l'existence de toute une population!"⁴³⁷

⁴³⁵ This information was taken from *Dictionary of Canadian Biography Online*. "Leblanc de Marconnay, Hyacinthe-Poirier." Claude Galarneau. Vol. IX.

⁴³⁶ *Le Populaire*, November 17, 1838.

⁴³⁷ *Ibid.*

When the Special Council took over in February 1838, Marconnay and *Le Populaire* expressed much joy and optimism. On 7 March 1838, he published the following:

Nous n'avons jamais désespéré des bonnes intentions ainsi que de la magnanimité de Sir John Colborne, alors qu'il n'était chargé que du commandement des troupes et qu'il fut créé le dispensateur des effets de la loi martiale, dans le district de Montréal; nous désespérerons encore moins de l'avenir du pays au moment où ce brave militaire assume l'importante fonction de tenir les rênes de l'administration dans cette belle province.⁴³⁸

The newspaper was confident that Colborne would remain an objective leader and ignore the colony's radical elements. Although he opposed the *Patriotes*, Marconnay was equally against the Constitutionals, especially the members of the CAM, and believed that they were the "champion exaltés du rigorisme et de la violence qui voudraient nous plonger dans un système de sang et de terreur, qui s'exténuent dans chacun de leurs écrits à demander des victimes et des châtements, qui faute d'autres sujets à arrêter, s'arrêteraient eux-mêmes et qui ne soufflent que vengeance."⁴³⁹ Marconnay thus claimed that he would support the Special Council only if its members were not from such radical groups.

Pourvu que le choix de Son excellence ne tombe point sur des partisans politiques trop prononcés, sur des hommes qui ont donné des preuves évidentes de répugnances envers la grande masse de nos habitants, nous l'adopterons sans murmure, car nous pensons que ce n'est qu'à l'œuvre qu'on peut reconnaître l'ouvrier, et il nous semble injuste de juger des hommes alors qu'ils n'ont fait aucun acte répréhensible.⁴⁴⁰

The newspaper had complete faith in the authoritarian powers held by the Special Council, and the limitations that the British Parliament had imposed as he maintained

⁴³⁸ *Ibid.*, March 7, 1838.

⁴³⁹ *Ibid.*, January 31, 1838.

⁴⁴⁰ *Ibid.*

they did not allow it to change the colony's existing laws and institutions.⁴⁴¹ A month later, in April 1838, the newspaper still supported the decision to dissolve the Legislative Assembly, suspend the constitution and grant legislative authority to the Governor General and the Special Council. In an article entitled, "De l'acte du Parlement Imperial," the newspaper explained:

Plus on examine l'acte adopté par le Parlement Imperial et sanctionné par sa gracieuse Majesté, en date du 10 février 1838, [...] plus on admire la sagesse, le justice, la bienveillance et la prévision qui présidèrent à sa rédaction. Certes, il était difficile de rencontrer des mesures qui puissent compenser la suspension d'une constitution, et cependant, l'acte en lui-même est peut-être encore supérieur à notre sage constitution [...]⁴⁴²

Marconnay fully understood why the British Government took such radical measures. He explained that the government was in a peculiar situation and did not know exactly what was going on in Lower Canada. The government believed that the majority of Lower-Canadians had revolted, and as a result concluded that "[...] il aurait impossibilité à réunir la législature, par conséquent à faire fonctionner la machine gouvernementale [...]"⁴⁴³ Marconnay even tried to reassure the population that the Special Council was rather harmless. Even if it were to fall in the hands of the enemies of the French-Canadian population, the Constitutionals, "le peu d'étendue de pouvoir qu'on a laissé au conseil spécial" would prevent them from causing any real harm.⁴⁴⁴

However, a few days later, on 23 April 1838, Marconnay expressed his first criticisms towards the Special Council, focusing on its members. He was not yet

⁴⁴¹ *Ibid.*, March 7, 1838.

⁴⁴² *Ibid.*, April 20, 1838.

⁴⁴³ *Ibid.*

⁴⁴⁴ *Ibid.*

concerned with the number of Constitutionnalists in the Special Council, however. Instead, he condemned the fact that there was an equal number of French and English councilors, which he believed was “peut-être la faute, la plus grave que nous trouvions dans la composition du conseil [...]”⁴⁴⁵ According to Marconnay, the Special Council was created to replace the Legislative Assembly, and although it was not an elected body, he believed that the Governor General should give the council the same proportion of members as there were in the Legislative Assembly, which translated in more French-speaking councilors than English-speaking ones. A few days later, Marconnay again criticized the council. In an article entitled, “Observation sur le Premier Acte du Conseil Spécial,” he questioned the manner in which ordinances were adopted. His problem was not how they were approved by the Special Council itself, but how they were enforced on the population. More specifically, he criticized the fact that after a new ordinance passed, the governor often took too much time before making it public, despite the fact that, as soon as it was adopted, it became a law. The problem, according to Marconnay, was that this might lead people to innocently break a law because they were not aware of the decisions taken by the council. Marconnay believed that this was not wise, and hoped that the governor would publish these new ordinances the minute the Special Council adopted them. These minor concerns aside, Marconnay was quite content with the Special Council and, as will later be noted, its ordinances.

However, on 16 May 1838, all of this changed when he began condemning Colborne’s association with the enemies of Lower Canada: the Constitutionnalists. Marconnay stated: “[i]l est à regretter, pour le passé, que notre trop confiant

⁴⁴⁵ *Ibid.*, April 23, 1838.

administrateur se soit laissé entourer par un parti qui injurait perpétuellement la masse de nos habitants, et qu'il n'ait point donné une preuve de désapprobation envers les journaux ultra-tories qui ont produit tant de mal dans la province [...]”⁴⁴⁶ Marconnay also criticized the composition of the Special Council, which he maintained was chosen from “une certaine teinte d'opinion, qui n'est point celle du pays [...]”⁴⁴⁷ What is especially interesting is that even after realizing the above, Marconnay still refused to blame Colborne, but instead blamed the constitutionalists for “avoir trompé un brave militaire [...]”⁴⁴⁸ By June 1838, however, Marconnay realized that Colborne had not been tricked, but had himself opted to work and ally himself with them. The last two articles on Colborne were thus extremely critical of his council and his blatant favouritism. Consider the following passage:

Tous les plus fougueux partisans politiques, tous les ennemis des institutions et de nos habitants semblaient y avoir été appelés, avec d'autres nullités complaisantes. L'hon. Peter McGill, Président de l'association constitutionnelle de Montréal devait être disposé à appuyer toutes les mesures qui entraient dans les vues de cette faction; J. Stuart, [...] Président de l'association constitutionnelle de Québec, avait toujours été l'adversaire des libertés publiques [...] Leur conduite politique fut toujours celle opposée à la grande masse des habitants de cette Province [...]”⁴⁴⁹

On 25 June 1838, the newspaper also added that “Colborne ne [...] sera jamais félicité par aucun *vrai* Canadien [...] en raison de la faiblesse qu'il montra pour les avis du parti ultra-tory, du pouvoir qu'il lui donna, des persécutions que cette faction exerça sous son

⁴⁴⁶ *Ibid.*, May 16, 1838.

⁴⁴⁷ *Ibid.*, May 28, 1838.

⁴⁴⁸ *Ibid.*, May 30, 1838.

⁴⁴⁹ *Le Populaire*, June 6, 1838.

administration, et de l'éloignement marqué qu'il montra pour tout ce qui était Canadien.”⁴⁵⁰

Despite the criticisms of three French-Canadian newspapers, the majority upheld, for better or for worse, Colborne's first council. This is simple to explain. Of the eleven newspapers that continued to print after the 1837 Rebellion, seven were English-speaking and one was a French-speaking, loyalist newspaper. However, as noted, one must keep in mind that pro-Colborne did not mean that they blindly supported anything he did. Several newspapers supported Colborne because they hoped that he could restore peace and stability in the colony, and not because he sought to eliminate French political participation. This was the case with *The Quebec Gazette* and *The Morning Courier for the Country*.

The Quebec Gazette was produced by John Neilson. Like Parent, he had a distinguished political career besides being the editor of an important newspaper. First, Neilson was considered a friend of French Canada, and this despite the fact that he played an important role in the founding of the Quebec Constitutional Association. But unlike the CAM, Neilson's association supported the preservation of French-Canadian culture, institutions and political rights. In fact, in 1818, Neilson first entered the Legislative Assembly as a member of Papineau's party.⁴⁵¹ In the early 1830s, however, a minor split began to appear between him and the party as a result of its growing anticlericalism and

⁴⁵⁰ *Ibid.*, June 25, 1838.

⁴⁵¹ This information was taken from *Dictionary of Canadian Biography Online*. "Neilson, John." Sonia Chassé, Rita Girard Wallot and Jean-Pierre Wallot. VII. http://www.biographi.ca/009004-119.01-e.php?id_nbr=3578&&PHPSESSID=rmu36114o2180te7igdm9hpq1

French-Canadian nationalism. This split turned into a divorce in 1834 when the assembly adopted the 92 Resolutions.

Although Neilson did applaud the suspension of the constitution and the creation of the Special Council, which he joined as one of its first councilors, he did not do so in the hopes of eliminating French-Canadian political rights and institutions. He only supported it because he believed that it would restore peace and order in the colony.⁴⁵² Unlike other English-speaking newspapers, he believed that the victors (the English) should not annihilate the losers (French-Canadians). This moderate, conciliatory attitude was perfectly summarized in an article dated 23 March 1838, in which he applauded the British Government's intervention and efforts to limit the council's authority. With the "umpirage" of Great Britain, French Canada will not be annihilated.

There is not the will to oppress. There is every disposition to let us manage our affairs in our own way, so soon as we seem disposed to do so, on principles of peace and justice to each other, and consistently with the obligation of the Crown to maintain its authority, and extend its protection, according to law, to every subject of the Empire.⁴⁵³

As a member of the Special Council, it is thus not surprising that Neilson was initially one of its most vocal supporters. When the Special Council was prorogued in May 1838, Neilson was one of those who expressed his admiration of Colborne's tenure at the head of the council.

Your Excellency having been called to the Administration of the Government of this Province, on the departure of the Earl of Gosford. We beg leave to express our entire satisfaction with the judicious and useful Legislation, which marked the late Session of Her Majesty's Special

⁴⁵² *Quebec Gazette*, March 23, 1838.

⁴⁵³ *Ibid.*

Council; and with the advantageous character of the several Ordinances, proposed by Your Excellency for the deliberations of that Body, and which have become the Law of the Province.⁴⁵⁴

The Morning Courier was another moderate and levelheaded newspaper.

Unfortunately, there is very little information on its editor. According to *The Dictionary of Canadian Biography*, Stewart Derbshire was the editor of the newspaper prior to Durham's arrival. Derbshire was considered a Whig and, as a result, was granted interviews with important rebel and *Patriotes* leaders such as William Lyon MacKenzie, Edmund Bailey O'Callaghan, and Denis-Benjamin Viger.⁴⁵⁵ It was perhaps this liberalism that enabled the newspaper to take a more moderate approach. Whatever the answer, like Neilson, Derbshire hoped that the Special Council would restore peace and order, and not destroy French Canada. First, he supported the Special Council because he believed that, in the current tense situation, restoring the former Legislative Assembly could never work: "[w]ith English arrayed against French, and French exasperated against English, it is impossibility for any form of government, no matter what or any changes of laws, no matter how sweeping, to restore quiet or prosperity to the country."⁴⁵⁶ On the topic of annihilating French Canada and its institutions, he explained:

No argument can make a Frenchman English, or an Englishman French. Ill feelings between two races [...] is fatal to the community. Both races must unite to put an end to it [...] It is in the interest of both populations to live at peace, each with the other. It is to the interest of both, for this object to have a government, that shall treat them both impartially. It is to the interest of the government to do so. The government pledges itself to do so.⁴⁵⁷

⁴⁵⁴ *Ibid.*, May 16, 1838.

⁴⁵⁵ *Dictionary of Canadian Biography Online*. "Derbshire, Stewart." Michael S. Cross. IX. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=4388&interval=25&&PHPSESSID=av39fq8rv60jp7m511ti51jor0

⁴⁵⁶ *The Morning Courier for the Country*, March 28, 1838.

⁴⁵⁷ *Ibid.*

In fact, the newspaper was very happy that the council's authority was limited by the British Government. Although it had faith that the council would never use its authority to eradicate French Canada, it was nonetheless happy that it “hardly has the power left it to do mischief, *if it would* [...]” (newspaper's italics)⁴⁵⁸

Not every English-speaking newspaper was as moderate, however. Most considered this as an opportunity to reform the colony and rid it of its undesirable French elements. For example, *The Montreal Gazette*—a supporter of the CAM—was very clear about why it supported the Special Council. Overall, it hoped that the council would fix the current constitution and prevent those that “made the worse use of” the 1791 Constitution and used it for “their own personal aggrandisement [sic]” from doing so, and have the power to so do, once again.⁴⁵⁹ The newspaper was talking about French-Canadians. The newspaper believed that French-Canadians were not only unfit, but also unworthy of the political rights that were given to them in 1791. They were simply too ignorant to enjoy the freedoms of a constitution. The newspaper thus believed that despite the fact that the Special Council was despotic, “no despotism could possibly be worse, than that to which the House of Assembly [and French-Canadians] had subjected the loyal portion of the inhabitants [British] of this Province, who were desirous that the Constitution should have fair-play, and who would have given it fair-play [...]”⁴⁶⁰

Similar sentiments were shared by the *Quebec Mercury*. Established in 1805, by Thomas Cary, Sr., this newspaper aimed to protect the interests of the British, Protestant

⁴⁵⁸ *Ibid.*, April 11, 1838.

⁴⁵⁹ *Montreal Gazette*, March 31, 1838.

⁴⁶⁰ *Ibid.*

and Tory population of Lower Canada and promote the assimilation of French-Canadians.⁴⁶¹ The newspaper was thus, not surprisingly, an enemy of French-Canadians and their institutions. For example, on 31 March 1838, the newspaper stated that the Special Council and the suspension of the constitution were necessities as “it [was] clear” that French-Canadians lacked “the intelligence requisite to enable to mass of the electors of Lower Canada discreetly to exercise their privileges” and vote. The newspaper also believed that significant changes to the constitution and voting system were urgently needed to prevent a similar situation or rebellion from happening again, which meant eliminating the political dominance of the French-Canadian population.⁴⁶²

Finally, only one French-Canadian newspaper upheld the government’s actions and Colborne’s first council: *L’Ami du Peuple*. Published by John Jones and Pierre-Edouard Leclerc, both were opponents of the *Patriote* Party and loyal to the British Government. Leclerc, for example, was appointed superintendant of the Montreal Police in 1832 and took it upon himself to attack and oppose the “immoral and disruptive effects of measures recommended by speakers at [*Patriotes*] popular meetings.”⁴⁶³ He was also the man that authorized the arrest of *La Quotidienne*’s editor François Lemaitre. Regarding the Special Council, *L’Ami du Peuple* also argued that its creation and the suspension of the 1791 Constitution were necessities.

La chambre d'assemblée a été la cause de tous les maux de la province;
dans ce moment ci, il eut été difficile d'en constituer une autre, et d'ailleurs,

⁴⁶¹ *Dictionary of Canadian Biography Online*. “Thomas Cary.” Marc La Terreur. IX. http://www.biographi.ca/009004-119.01-e.php?id_nbr=4342&&PHPSESSID=ku9av15pvk4av9l0du3nk7rq46

⁴⁶² *The Quebec Mercury*, March 31, 1838.

⁴⁶³ *Dictionary of Canadian Biography Online*. “Leclerc, Pierre-Edouard.” Jean-Louis Roy. Vol. IX. http://www.biographi.ca/009004-119.01-e.php?id_nbr=4543&&PHPSESSID=s8a24p7gi6fkummdjcg5b6ma6

dans l'état actuel de l'esprit public, dans les campagnes, une nouvelle élection ne pourrait avoir de bons résultats. Dans un moment comme celui où se trouve la province, il faut des mesures promptes et expéditives; les besoins sont pressans et les entraves qu'aurait mise aux opérations de l'administration, une chambre d'assemblée, composée nécessairement d'elemens opposés n'auraient pu manquer d'être fatales au pays. Le gouverneur en conseil, agira plus promptement et pourra le faire tout aussi sagement, car on conviendra que les lumières données par notre chambre d'assemblée étaient terriblement obscures et ne pouvaient guider personne.⁴⁶⁴

The newspaper believed that in comparison to the former assembly, the era of the Special Council would provide more benefits to the colony and its people. As a result, it often tried to gain the support of the French-Canadian population by focusing on its more “positive” elements. For example, after examining the list of councilors, the newspaper was quite happy to note that there was an equal number of French and English-speaking councilors; “cela prouve évidemment que le gouvernement n'a nulle intention d'écraser entièrement les Canadiens, de les anéantir et de les éloigner entièrement des affaires, comme certaines personnes s'étaient plu à l'annoncer d'avance [...]”⁴⁶⁵ Moreover, like *The Montreal Gazette*, the newspaper also maintained that the Special Council was a much better political body and administrator than the former Legislative Assembly.

le conseil tel qu'il est composé, est certainement un des meilleurs qu'il fut possible de choisir dans le pays, et nous en espérons beaucoup de bien, si surtout quelques uns de ses membres agissent hardiment d'après leurs propres conscience et ne se laissent pas entrainer à tout ce que pourraient demander quelques-uns de leurs collègues plus éloquens ou plus empresser à parler. Il est certain qu'il y a plus de libéralité dans cette liste qu'il n'y n eut jamais dans la chambre d'assemblée [...]”⁴⁶⁶

⁴⁶⁴ *L'Ami du peuple*, March 21, 1838.

⁴⁶⁵ *Ibid.*, April 11, 1838.

⁴⁶⁶ *Ibid.*

All in all, although opinions on what the Special Council should do once in power differed—restore peace and stability or eliminate French-Canadian political rights and institutions—the majority of newspapers agreed that the suspension of the constitution and establishment of the Special Council were necessities in such tense and unstable times. This heavy support in favor of the Special Council would not last, however. As the colony started to settle after the rebellion and many editors were released from prison and began printing once again, more and more French-Canadians newspapers were produced, thus turning the tide.

Some members of the Lower Canadian political elite also shared their opinions of the Special Council. In fact, the above examination already considered some of the non-*Patriotes* elite. Unfortunately, the opinion of the *Patriotes* elite is a little more difficult to come by. As a result of the rebellion, many were forced to flee the colony and lived in exile in the United States. Thankfully, several imported newspapers to keep up-to-date with what was going on back home, and continued to offer insight in letters to friends and family and in their diaries. However, as was the case with newspapers and the population in general, the *Patriotes* elite did not often comment on Colborne and his Special Council. They, obviously, had other things on their minds. In addition, they were also much more vocal about the council after Durham's arrival.

The leader of the *Patriote* Party, Louis-Joseph Papineau, commented on the suspension of the constitution, the dissolution of the Legislative Assembly and establishment of the Special Council in a letter to his wife. He was especially critical of the authority that was given to the head of the Special Council arguing that he was, quite

simply, “un dictateur.”⁴⁶⁷ Papineau also maintained that such a dictatorship would never produce any positive and durable results. In fact, he argued that the only way in which the ordinances it passed could endure was if a garrison of 12,000 to 15,000 men remained in Lower Canada to uphold them.⁴⁶⁸

Louis Perrault, who similarly sought refuge in the United States, further commented on the situation in Lower Canada, but more specifically, the dominance of the CAM on the Special Council. During his time in Lower Canada, he published several newspapers, including the pro-*Patriotes Vindicator*.⁴⁶⁹ Perrault did not hide his opposition towards the council and more importantly, the fact that it was under the control of the Constitutionals. On 8 May 1838, Perrault sent a letter to Louis-Joséph Papineau and discussed the rumour that the Special Council passed an ordinance confiscating lands from the *Patriotes* and banishing them from the colony. Although this was simply a rumour, he would not be surprised if it was indeed a fact, especially since John Molson, Ogden and “des autres canailles [...] entourent Colborne [...]”⁴⁷⁰

Louis-Hippolyte La Fontaine also commented on the post-Rebellion political situation. Like Papineau and Perrault, La Fontaine was not in the colony when the Special Council took over. In fact, he was in Europe during Colborne’s entire first council, and did not witness firsthand what it did. Like his compatriots in the French-Canadian press, La Fontaine did not hesitate to describe the suspension of the Legislative Assembly as an

⁴⁶⁷ Letter to his wife, May 12, 1838. Louis-Joséph Papineau, *Lettres à Julie*, ed. Georges Aubin and Renée Blanchet (Sillery, PQ: Les Éditions du Septentrion, 2000), p. 370.

⁴⁶⁸ *Ibid.*

⁴⁶⁹ All information taken from *Dictionary of Canadian Biography Online*. “Perrault, Louis.” Jean-Louis Roy. Vol. IX. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=4654&&PHPSESSID=t94ch053a29qe2gm73ps44sik2

⁴⁷⁰ Letter from Louis Perrault to Louis-Joséph Papineau, May 8, 1838. Louis Perrault, *Lettres d’un Patriote réfugié au Vermont*, ed. Georges Aubin (Montreal: Éditions du Méridien, 1999), p. 68.

act of tyranny and the authority of the governor and the Special Council as that of a dictator.⁴⁷¹ In fact, La Fontaine did not understand why the Legislative Assembly had to be suspended instead of simply trying to make it work. He stated that he “regarderai toujours [...] injuste et même tyrannique la suspension de notre Législature.”⁴⁷² Moreover, La Fontaine argued that if the Special Council was created to restore order and pacify the colony, it would be much easier to do so with the aid of the Legislative Assembly, which represented the people, than with a dictatorship.⁴⁷³ Granting all of the colony’s authority to one man was a horrible idea.

Cependant il en sera toujours ainsi de la part des hommes qui exercent un pouvoir arbitraire, quelque vertueux qu’ils puissent être sous tout autre rapport. Je ne fais abstraction ni de pays, ni de parti politique. Car il est dans la nature des passions de l’homme d’abuser, même sans le vouloir, de l’autorité qu’on lui confie, et de s’irriter du moindre obstacle qui s’oppose à ses volontés. Et dans ce cas si vous n’avez pas de lois positives pour le retenir dans des justes bornes, vous pouvez vous attendre qu’il commettra les excès que vous [Imperial Parliament] redoutez, et auxquels souvent il est entraîné par une pente irrésistible.⁴⁷⁴

On 29 May 1838, La Fontaine again commented on the Special Council, and further criticized it and its councilors.⁴⁷⁵ More specifically, he maintained that their selection had been the most significant problem with the council. In fact, many Lower Canadians opposed it because of it and the “[...] absence de toute sympathie qu’a montré le [Conseil Spécial] pour l’opinion publique et les besoins du Peuple qu’il faut aujourd’hui faire disparaître.”⁴⁷⁶

⁴⁷¹ Louis-Hippolyte La Fontaine, *Journal de voyage en Europe, 1837-38*, ed. Georges Aubin (Sillery, PQ: Les Éditions du Septentrion, 1999), p. 53.

⁴⁷² Letter from La Fontaine to E. Ellice, March 15, 1838. LAC, Durham Papers, Volume 25, Reel C-1855

⁴⁷³ *Ibid.*

⁴⁷⁴ *Ibid.*

⁴⁷⁵ *Ibid.*, p. 138.

⁴⁷⁶ *Ibid.*, p. 139.

When compared to the later sessions of the Special Council, the Lower Canadian masses were quiet during this first session and evidence is therefore very scarce. There were very few petitions, public demonstrations and letters to the editor. Some may argue that this was the result of the failed Rebellions: French-Canadians were perhaps a little apprehensive in expressing their opinions with regards to the Special Council. A more probable factor was the fact that the Special Council had yet to pass an ordinance that really affected the population. Compared to the infamous Sleigh Ordinance (1839) and that dissolving the district of Trois-Rivières (1840), for example, no ordinance passed during this first session affected their daily lives. Because most ordinances dealt with the Rebellion itself, in which only a minority of the population had participated, they did not affect the majority of the population. Moreover, the council had yet to pass an ordinance that suggested that it aimed to assimilate French-Canadians. Whatever the answer, the masses were very quiet throughout this first session.

Only a few letters were published in local newspapers and each simply reiterated the newspaper's position. For example, on 17 February 1838, a man from Nicolet, calling himself "D.C.", sent a letter to *L'Ami du peuple* expressing his general content with Colborne and the Special Council. Claiming to speak for the people of Nicolet, he wrote

Nous voulions seulement témoigner notre contentement de ce que les rônes de l'administration tombaient entre les mains d'un homme aussi habile et aussi bienfaisant que Sir John Colborne, et nous réjouir de l'heureux aspect que prennent les affaires de cette province.⁴⁷⁷

⁴⁷⁷ *L'Ami du peuple*, February, 17, 1838.

On 24 April 1838, an individual calling himself “un vrai réformiste” wrote to *La Gazette de Quebec* expressing his belief that the Special Council would restore peace and stability to the colony. However, he also added that the suspension of the constitution and establishment of the Special Council could have two opposite outcomes; it would either “avancer ou retarder notre bien-être [...]”⁴⁷⁸ The writer explained that the welfare of the population would improve only *if* the members of the Special Council were “des gens éclairés et qui veulent vraiment le bien-être de notre province.”⁴⁷⁹ The writer thus hoped that the councilors would work for the benefit of the population, and rid the colony of the issues that had been plaguing it for years such as the oppressive seigneurial system. On this topic, he even urged his fellow citizens to pressure the Special Council to apply such changes.

C’est maintenant que vous devriez faire des représentations énergétiques contre les *lods-et-ventes*, les *rentes seigneuriales*, le *retrait féodale*, anciens restes d’un ancien code que toutes les parties du monde ont rejeté comme contraire à l’avancement des peuples, au bien-être des habitants incompatibles avec la liberté dans le vrai sens qu’elle comporte [...]”⁴⁸⁰

While letters to the editor were very limited during the first session of the Special Council, public demonstrations and protests were even more so. The few public gatherings that took place were very small and all expressed their trust in Colborne and the Special Council. No public gathering during this period expressed dissent. For example, on 10 May 1838, a public meeting was held in Quebec City, which expressed

⁴⁷⁸ *La Gazette de Quebec*, April 24, 1838. This newspaper was the same the English *Quebec Gazette*. They were printed and edited by the same man, John Neilson, and shared similar opinions on the events in Lower-Canada.

⁴⁷⁹ *Ibid.*

⁴⁸⁰ *Ibid.*

the British population's happiness with the governor, his council and the ordinances it passed.

Your Excellency having been called to the Administration of the Government of this Province, on the departure of the Earl of Gosford. We beg leave to express our entire satisfaction with the judicious and useful Legislation, which marked the late Session of Her Majesty's Special Council; and with the advantageous character of the several Ordinances, proposed by Your Excellency for the deliberations of that Body, and which have become the Law of the Province.⁴⁸¹

A similar demonstration also took place in Montreal. Presided by Peter McGill and largely attended by Montreal's English-speaking community, the assembly expressed its satisfaction with Colborne and thanked him for his important work while in the colony and as the head of the Special Council.⁴⁸²

Petitions were equally scarce, and most of those that were sent to the governor, via the office of the Civil Secretary, did not discuss the Special Council or any of its ordinances. They quite simply made requests and asked the governor and council for help. In the first section of this dissertation, petitions sent from Peter McGill and the Bank of Montreal as well as those from other banks were already discussed. A few more were sent asking for help. For example, on 17 April 1838, James Moir Ferres sent a petition pleading the governor and his council to establish registry offices as he believed that this was the only way to protect landowners against fraud. He explained that

with the exception of authenticated copies of acts passed before Notaries, your petitioner has no means of knowing whether the instrument presented is really and truly the act of the person represented as the grants thereof. That your petitioner believes frauds may in consequence be committed,

⁴⁸¹ *The Quebec Gazette*, May 16, 1838.

⁴⁸² *L'Ami du peuple*, May 19 & 23, 1838.

and great injury costs and damage thereby sustained; and your petitioner further believes, that at least one such case has actually taken place.⁴⁸³

Several petitions were also sent with regards to the colony's educational system. More specifically, all begged the Special Council to grant their school or school board some much needed funding. For example, on 17 April 1838, the "Committee of Management of the Education Society of the District of Quebec" sent a petition to the council begging for some financial support. The society explained how it initially depended entirely on subscriptions and voluntary donations to run their society. However, these had become insufficient. As a result, the former Legislative Assembly had granted some financial aid, which had enabled it to expand, build new buildings and accept over 750 students yearly. In fact, as a result of such aid, the society was able to open two new schools—a French one and an English one—and formed a society for the education of poor girls, which provided education for more than 200 girls each year. However, since 1 January 1837, the society had received no funding. As a result, it had been forced to borrow large sums of money to pay for its expenses, and was now heavily indebted. The society claimed that it could not continue without assistance from the governor and Special Council. The petition was signed by 25 people.⁴⁸⁴ Similar petitions were sent from all corners of the colony. For example, on 24 April 1838, the President and Members of the "Quebec British and Canadian School District" asked for similar aid as did the Minister Trustees and Edlers of the St-Andrew's Church in Quebec City, and the Trustees of l'Assomption College.⁴⁸⁵

⁴⁸³ LAC. RG4, A1. Correspondence received by the Civil Secretary. Vol. 534. File 17-20 April, 1838.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ *Ibid.* Vol. 534. Files: 17-20 April, 1838, 21-24 April, 1838, and 25-30 April, 1838.

5.2 OPINIONS OF SPECIFIC ORDINANCES

The first session of the Special Council was not as controversial as later ones. Other than the ordinance suspending habeas corpus, which actually created more controversy during Colborne's second tenure, ordinances in general did not create much discussion or debate. One must remember that during this session, the Special Council especially focused on pacifying the colony and preventing any future uprising. As the majority of newspapers and the surviving political elite had already condemned the armed insurrection, most, it appears, did not have any significant concerns with the manner in which the council had dealt with it. Moreover, as most ordinances dealt with the Rebellions and did not have an impact on the daily lives of Lower Canadians, the local population probably did not feel the need to condemn or oppose any ordinance. The only available opinions are those provided by the colony's newspapers.

Not surprisingly, newspapers that defended the Special Council also defended its ordinances. For example, on 9 May 1838, *L'Ami du Peuple* expressed its happiness with many and even argued that the council had done more and much better work in the last few weeks than the Legislative Assembly had done for years.

Lorsque l'on considère que le conseil spécial a plus fait dans quelques jours et presque sans frais, que la chambre dans plusieurs sessions qui coûtaient énormément à la province, on ne peut s'empêcher de remercier le ciel d'être délivrés de ce corps inepte et obstiné, et que l'on serait presque tenté d'envisager avec terreur le moment où le pouvoir législatif sera remis aux mains de représentans choisis au hasard pas des hommes qui ne comprennent pas encore toute l'importance de leur vote et toute l'étendue des pouvoirs qu'ils confient à leur représentant; par des hommes auxquels l'éducation n'a pas encore ouvert les yeux sur leurs droits et leurs intérêts

politiques et qui font trop souvent d'une élection une affaire de cabale aveugle.⁴⁸⁶

The Montreal Gazette was also very happy with the work being done by the Special Council, and explained that “during the short time they have been in session, they have passed a number of useful, necessary and important laws.”⁴⁸⁷ The newspaper especially applauded the ordinances suspending habeas corpus and imposing Martial Law. It explained that

[t]he new measures, which received the sanction of the Administrator and the Special Council, will have found their ample justification in the emergency of the times, and will, we trust, prove to be of great importance in establishing a better order of things than has for some time prevailed in this Province.⁴⁸⁸

Finally, the newspaper was also happy that the council's ordinances would benefit trade, commerce and agriculture in the colony. For example, it commended ordinances improving the Harbor of Montreal and allowing a survey of lake St. Peter. Like *L'Ami du Peuple*, it also concluded that, when compared to the former Legislative Assembly, “the body of laws, which we have thus cursorily alluded to, have had no parallel, in respect to true practical utility, during any session of the Provincial Legislature under the late Constitution.”⁴⁸⁹

La Quotidienne and *Le Canadien* were the only two newspapers that condemned the ordinances passed by the first session of the Special Council. For example, Lemaitre was especially critical of “An Ordinance to authorize the appointment of Commissioners

⁴⁸⁶ *L'Ami du Peuple*, May 9, 1838.

⁴⁸⁷ *The Montreal Gazette*, Mai 1, 1838.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ *The Montreal Gazette*, May 15, 1838.

to investigate the Claims of certain loyal Inhabitants of this Province, for losses sustained during the late unnatural rebellion,” which stipulated that all losses caused by the Rebellion to the “loyal” population would be reimbursed in full. Although Lemaitre feared that fraud would undoubtedly result from such an ordinance, he especially condemned the selection of the officers that would investigate the claims and evaluate these losses: two English-speaking Montrealers in Edward Adams and Charles Tait and the editor of the loyalist newspaper *L’Ami du Peuple*, Pierre-Édouard Leclerc. According to the newspaper, this mirrored the constant exclusion of French-Canadians practiced by the Special Council.⁴⁹⁰

The greatest opponent to the council’s ordinances remained *Le Canadien*, which especially opposed the Habeas Corpus Ordinance. Although it condemned it with greater vigor during Colborne’s second council, he nonetheless, during this period, questioned its legality and quite simply did not understand why such a law was adopted and imposed on the *entire* colony.

Nous nous abstiendrons volontiers de nous prononcer contre la convenance d'une pareille ordonnance pour le district de Montréal, mais nous devons, au nom, pour l'honneur et dans l'intérêt de notre district, protester contre cette mesure, qui comporte une flétrissure gratuite contre cette section paisible et loyale. Nous ne pouvons concevoir qu'elle raison existe aujourd'hui d'étendre le domaine de l'arbitraire au delà des limites que lui avait tracées le pouvoir militaire dans un temps de commotion politique, qui a cessé.⁴⁹¹

The newspaper also criticized the ordinance that granted the governor the authority to conditionally pardon those that committed harm against the empire. All in all, Parent

⁴⁹⁰ *La Quotidienne*, June 12, 1838.

⁴⁹¹ *Le Canadien*, April 27, 1838.

feared that this ordinance would be used to humiliate French-Canadians and demonstrate the culpability of French-Canadians and the crimes they committed. He explained:

Pour la mériter cette prétendu clémence, il va falloir que les malheureux prévenus s'avouent coupables du crime que sans les livres et les notions qui nous restent de la féodalité, est réputé le plus odieux de tous les crimes; il faudra qu'ils demandent le pardon à genou, qu'ils [...] s'ablâment à leurs propres yeux et ceux du monde entier qui les regardent.⁴⁹²

More importantly, Parent maintained that this ordinance was simply illegal and unconstitutional, and argued that one could not be found guilty for a crime such as treason without the use of a court. He also opposed the fact that the council could, as a result of this ordinance, chose who to pardon and not pardon—in other words, it had the authority to decide who was a rebel and who as not.

Nous avons vu ce que c'était l'indulgence du Conseil Spécial envers ceux qu'il croit mériter la clémence du gouvernement, qu'on lise attentivement le préambule on considèrent de l'ordonnance, et l'on verra qu'il juge et condamne sans forme de procès tous ceux qui, selon lui, ne méritent aucune commisération. Qu'est-il besoin maintenant de tout l'attirail d'une cour, de toutes ces formalités judiciaires? La législature, le pouvoir suprême du pays n'a t-il pas prononcé sur le sort de cette dernière catégorie de prévenus? Que reste-t-il à faire à un Jury si ce n'est de faire écho à cette condamnation; aux Cours de Justice si ce n'est d'enregistrer ce verdict du Conseil Spécial?[...] C'est une maxime sacrée de notre jurisprudence pénale, qu'un prévenu doit être considéré innocent jusqu'à convaincu, et condamné par ses pairs; l'Ordonnance XV s'accorde-t-il bien avec cette humaine maxime? Ne comporte-t-il pas au contraire un jugement et une condamnation contre des hommes, contre lesquels on n'a pas seulement encore le verdict d'un Grand-Jury?⁴⁹³

⁴⁹² *Ibid.*, May 21, 1838.

⁴⁹³ *Ibid.*

No, he answered. This was not a legal ordinance, and was not an ordinance that English laws and the English constitution would allow. In the wrong hands, this could be a very dangerous ordinance.

Finally, and rather surprisingly, the only ordinance that Parent applauded was the one censoring the colony's press. He even argued that it could be very helpful. Parent explained that if the ordinance worked out as planned, it could prevent newspapers from printing immoral and violent articles; more specifically, those that may offend the colony's population such as the many anti-French-Canadian articles that were produced by the English-speaking press. Parent was nonetheless fearful that this ordinance would not have the above effect. Instead, he feared that the ordinance would be used by the governor and the Special Council to censor reputable editors, such as himself, who questioned and condemned some of their illegal and unconstitutional ordinances.⁴⁹⁴

Le Populaire once again provided a unique perspective. Despite the fact that Marconnay questioned and opposed the Special Council and its association with the members of the CAM by late April 1838, he nonetheless continued to uphold the ordinances it passed. For example, he was one of the loudest supporters of the ordinance suspending habeas corpus. On 27 April 1838, he maintained that it was necessary.

L'ordonnance qui suspend le bénéfice de l' Habeas Corpus, n'est pas une mesure de vexation, mais est une loi de précaution, nécessaire sans doute après une époque de troubles et lorsque les esprits de ressentent encore de l'effervescence des passions. Cette loi ne prive point de tout espoir de liberté celui qui en est atteint [...]⁴⁹⁵

⁴⁹⁴ *Ibid.*, June 6, 1838.

⁴⁹⁵ *Le Populaire*, April 27, 1838.

Like Parent, Marconnay also believed that censoring the presses had benefits as it would prevent the printing of the many violent anti-French articles produced by the English-press. He explained:

Il est certain que les maux de la presse sont incalculables, et nous avons souvent fait pressentir ceux qui découlent de la publication des journaux ultra-loyaux, qui dépassent toute mesure, en perpétuant la haine parmi les différentes origines, et en inspirant les craintes les plus fortes aux Canadiens sur leur sort futur. Si les nouvelles mesures prises peuvent affranchir la province de ces maux, nous en bénirons la providence.⁴⁹⁶

Unlike Parent, however, Marconnay believed that the ordinance that granted the governor the authority to conditionally pardon prisoners was positive. The newspaper explained that after the Rebellion, several inhabitants fled the colony and their families, out of fear of what would happen to them. The newspaper also stated that many of these individuals had been “tricked” into participating in the Rebellion by Papineau and the *Patriotes*, regretted what they had done, and simply wanted to return to their homes and families. Rather than humiliate French-Canadians, Marconnay believed that this ordinance would benefit the local population; it would allow the governor to pardon all that were “tricked” into rebelling and allow them to return home to their families.⁴⁹⁷

Finally, and as was already noted, when compared to later session of the Special Council, the opinions of the local population and elite were limited. In fact, no petitions, letters to the editor and civil secretary or public protest were sent or took place in response to an ordinance passed. Along with the above newspapers, La Fontaine provided some of the only opinions on the ordinances passed, more specifically, that suspending

⁴⁹⁶ *Ibid.*, May 7, 1838.

⁴⁹⁷ *Ibid.*

habeas corpus. He even maintained that this very ordinance was one of the main reasons why he considered staying in Europe, and delay his return to Lower-Canada. In a letter to Dominique Daly, he explained that

[I]a suspension de l'*habeas corpus* qui a été décrétée sous l'administration temporaire de sir John Colborne me justifierait de retarder mon départ pour le Canada jusqu'au moment des sessions des tribunaux. Cependant je n'hésite pas à y retourner immédiatement.⁴⁹⁸

He especially feared that as a result of this ordinance, he would be arrested and thrown into jail, without a trial, upon arrival. Explaining that he was a wanted man in Lower Canada, he feared that,

[...] je serais peut-être privé de l'exercice, contre ses auteurs, d'un recours légal appuyé sur la morale et la justice, tant qu'une ordonnance, qu'ici je dois m'abstenir de qualifier sous son vrai nom, n'aura pas été révoquée. En cela, je serai forcé de partager le sort de plusieurs de mes concitoyens.⁴⁹⁹

5.3 CONCLUSION

Opinions on Colborne's first council were very limited and tame during this first session of the Special Council. Even the press, which was usually quite vocal, was very quiet when compared to later sessions. It did not often debate the value and legality of the council and its ordinances, nor did it significantly attack the Special Council. After the 1837 Rebellion, several editors were either arrested, fled the colony and were forced to stop printing. As a result, the majority of the remaining newspapers were English-

⁴⁹⁸ Letter from La Fontaine to Dominick Daly, June 11, 1838. Louis-Hippolyte La Fontaine, *Au Nom de la Loi, Lettres de Louis-Hippolyte La Fontaine à divers correspondants, 1829-1847*, ed. Georges Aubin and Renée Blanchet (Montreal: Les Éditions Varia, 2003), pp. 48-49.

⁴⁹⁹ *Ibid.*, p. 49.

speaking and loyalist. In fact, only four French-speaking newspapers were publishing during Colborne's first council. As will be shortly demonstrated, however, as the number of French newspapers increased so did opposition to the Special Council and its ordinances. There is no doubt that, in light of the failed Rebellions and the arrest of several editors, several newspaper owners and editors may have felt that it was wiser to wait for the situation in Lower Canada to stabilize and settle down before publishing. Nonetheless, one thing is obvious when considering the opinion of the press throughout Colborne's first council, and this is a reality that continued throughout the history of the Special Council, French and English-speaking newspapers, in general, opposed one another. While the French press questioned and condemned the council and its ordinances, the English press, in general, supported it.

The masses were also very quiet during this period. Compared to the later sessions of the Special Council, there were few petitions, letters to the editor and to the civil secretary as well as popular protests and public demonstrations. Although many historians may argue that this was the result of the failed Rebellions and the fact that in the light of what happened, French-Canadians were perhaps fearful to express their opinions with regards to the Special Council; a more probable factor was the fact that the Special Council had yet to pass an ordinance that really affected the daily lives of the local population. The council also had yet to pass an ordinance that suggested that it aimed to assimilate French-Canadians.

CHAPTER 6:

LORD DURHAM'S COUNCIL AND THE PEOPLE

“Si l’on demande quel bien a fait Lord Durham? Ses plus grands admirateurs balbutient, murmurent et restent sans réponse. Si l’on dit, quel mal a-t-il fait? Chacune a sa plainte, son reproche, son grief et son accusation.”⁵⁰⁰

The reaction to Lord Durham's Special Council was very peculiar. Although most agreed that his authority was that of a dictator, there was initially great hope in his mission and council, even from some members of the *Patriote* party. As the above quotation suggests, however, his tenure did not end well. After passing two extremely unpopular ordinances and associating himself with the enemies of French-Canada, he lost all of this initial support. From a historian's perspective, this period also provided much more sources when compared to Colborne's first session. Many of the newspapers that had been shut down or had their editors imprisoned after the Rebellion began printing once again; the political elite commented much more frequently on the situation in Lower-Canada; and the French-Canadian population was also more vocal about its support or opposition as petitions, letters and public demonstrations were more numerous.

6.1 GENERAL OPINIONS TOWARDS DURHAM AND HIS COUNCIL

Durham's tenure coincided with the emergence and reemergence of several newspapers such as *Le Courier Canadien*, *Le Fantasque*, *Le Temps* and *The Mississquoi Standard*. The response to Lord Durham's council was very peculiar: *all* newspapers initially supported the envoy's mission. In fact, this was one of the only moments during

⁵⁰⁰ *Le Fantasque*, November 5, 1838.

the era of the Special Council that the British and French-Canadian press agreed with one another.

First of all, after the partiality practiced by Colborne, the French-Canadian press had great faith in Durham and trusted that his council would be radically different from his predecessor's. Promising impartiality, neutrality, and clemency, Lord Durham gained the support of all French-speaking newspapers, including *Le Canadien*, *La Quotidienne*, *Le Populaire*, and *l'Ami du peuple*. All applauded his first speech, and his promise to pardon and release the majority of prisoners, avoid executions, and treat each person, culture, and language equally.⁵⁰¹ The above newspapers were especially encouraged by Durham's decision to dissolve Colborne's council—and get rid of its CAM members—and appoint British councilors that had no ties, and thus presumably no bias, with Lower Canada. For example, *Le Canadien* noted that

Le nouveau conseil spécial a été formé [...] en dehors de tous les partis, et de manière à ne pas partager la responsabilité, et à la concentrer au contraire sur le chef de l'administration. Avec ce système, le peuple se trouvera à l'abri des influences qui ont donné dans l'ancien conseil, car le gouverneur n'aura pour conseillers que des hommes intéressés à le bien aviser, puisqu'ils ne sont ici qu'en passant et que le mérite du chef devra refléter sur eux qui l'auront aidé de leurs conseil.⁵⁰²

Such applause was echoed in *Le Populaire*. On 2 July 1838, for example, it explained that “[Durham] a nommé un Conseil Spécial qu’on ne peut accuser de préventions contre aucun parti dans la province. Ce sont tous des hommes étrangers aux intrigues qui ont eu lieu sous tous les gouvernements passés [...] et qu’on ne peut soupçonner d’être préjugés pour ou contre aucune des races, pour ou contre aucun des systèmes suivis jusqu’à ce

⁵⁰¹ *Le Canadien*, June 1, 1838.

⁵⁰² *Ibid.*, July 2, 1838.

jour.”⁵⁰³ Although *La Quotidienne* shared such hope, it was more apprehensive than *Le Canadien* and *Le Populaire*. On 15 June 1838, despite applauding Durham’s promises of impartiality and peace, Lemaitre criticized his first speech for being a little *too* friendly towards the members of the CAM. He explained,

Le ton de la réponse est poli, digne avec un, mais comme il est froid avec l'autre. 'Je vous remercie *très sincèrement*' [Lemaitre's italics], dit son excellence à l'association constitutionnelle, de cette *amicale et agréable adresse*. [Lemaitre's italics] [...] Et elle se contente de dire aux réformistes: 'Je vous remercie de ce témoignage de votre respect et de vos bons sentimens (sic) pour moi.' Quelle différence de langage! Dans (le premier cas), ne dirait-on pas d'un homme qui parle avec effusion a des amis chéris, protégés, et dans le dernier, avec une réserve préméditée à des étrangers suspects? Nous attachons peut-être trop d'importance à cette circonstance? Cela se peut. Cependant, nous devons dire qu'elle nous a blessé vivement, et qu'elle fera l'effet de désappointement sur tous ceux des bons sujets de sa Majesté en cette province qui espèrent aux mains du nouveau gouverneur justice, protection, et surtout IMPARTIALITÉ [Lemaitre's caps].⁵⁰⁴

Lemaitre did admit, however, that he may have read a little too much into his speech. He even maintained that Durham’s actions spoke larger than his words, and applauded his first act, which was to dissolve Colborne’s council.⁵⁰⁵

L’Ami du Peuple similarly applauded Durham’s arrival and his decision to dissolve Colborne’s Special Council. Although it had been a supporter of Colborne’s council and its members, the newspaper nevertheless understood that a change was needed. According to the newspaper, there were too many divisions within to have a workable council.

⁵⁰³ *Le Populaire*, July 2, 1838.

⁵⁰⁴ *La Quotidienne*, June 15, 1838.

⁵⁰⁵ *Ibid.*

Le mélange d'origine et de religions crée trop d'oppositions constantes et nécessaires entre les hommes publics [...] Si Lord Durham eut voulu prendre l'avis des divers conseils, il aurait eu à entrer dans tous les petits démêlés, dans toutes les jalousies, les rivalités de parti; il aurait eu à satisfaire tous les petits intérêts et c'était un tâche impossible.⁵⁰⁶

As a result,

En ne prenant avis que d'hommes étrangers à la province, Lord Durham conduira le pays d'après des principes généraux, d'après la politique large et libérale de la Grande-Bretagne; et il y a certainement plus de justice à espérer ainsi; jugés et gouvernés par des hommes de notre pays, nous eussions eu à subir toutes les influences de parti, nous eussions été traités et gouvernés comme deux partis. Gouvernés par des hommes absolument étrangers à la province, nous serons gouvernés en sujets britanniques, sans distinction; et c'est là ce qu'il nous faut, c'est le seul moyen de ramener la paix et l'union dans le pays.⁵⁰⁷

All French-Canadian newspapers that began reprinting during the period were also very optimistic. Edited by Napoleon Aubin, *Le Fantasque* had a very tumultuous history as it was suspended on numerous occasions. Born in Switzerland, Aubin immigrated to the United States in 1829, deeply attracted to the “land of freedom and success.”⁵⁰⁸ Disappointed with what he found in America, he moved to Quebec City in 1835 where he devoted his career to journalism and the *Patriote* cause. Like Étienne Parent, however, Aubin did not support the party’s radicalism and call for arms. On the eve of the 1837 Rebellion, he even called Papineau a tyrant and argued that he was bringing the colony down a very dangerous path. Napoleon Aubin’s newspaper was unique in Lower Canada as it drew heavily from satire and often poked fun at the colony’s politicians and extremists. Serge Gagnon wrote that “[i]n the disturbed atmosphere of the late 1830s,

⁵⁰⁶ *L’Ami du Peuple*, June 9, 1838.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ All of the above and below information was taken from *Dictionary of Canadian Biography Online*. “Aubin, Napoleon.” Serge Gagnon. Vol. XI. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=5349&interval=25&&PHPSESSID=kl82i18u4pq31kqtec5njin76n1

[Aubin] managed to bring a smile to faces that showed the strain of political conflict.”⁵⁰⁹

After a seven-month suspension following the 1837 Rebellion, Aubin started printing once again on 11 June 1838, and shared his colleagues’ optimism. Aubin was persuaded that Durham had the ability to restore peace and stability in the colony: “à peine a-t-il (Durham) touché nos rivages que la tranquillité revient, que les esprits s'apaisent, que les méchants se cachent, que les visages reprennent un peu de leurs sérénité; enfin, Lord Durham arrive et LE FANTASQUE reparaît!!!”⁵¹⁰

Another newspaper that had a tumultuous history was *Le Courier Canadien*. In fact, it was only published for a total of four months between January and September 1838; it was forced to stop printing between March and August 1838. Although not much is known about its editor, G. Gerard, he similarly supported Lord Durham and had much faith in his tenure. On 11 August 1838, the newspaper asked its readers:

Rallions-nous à l'homme qui nous gouverne aujourd'hui si généreusement. Persuadons-nous qu'il veut notre bonheur, puisque tous ces actes sont marqués du sceau de la justice et de l'impartialité; lui refuserions-nous un appui libéral, lorsqu'il montre lui-même à notre égard autant de libéralité? La reconnaissance fut toujours une vertu: sachons donc en ce jour la mettre en pratique.⁵¹¹

As noted, this initial support was a rare moment in which both the French-Canadian and British press shared a similar opinion. Although it may not have come to anyone’s surprise that the French-Canadian press supported the dissolution of Colborne’s Constitutionalist-heavy council, it may be a surprise that Durham, despite such actions, also received support from the loyalist and Constitutionalist press. *The Montreal Gazette*

⁵⁰⁹ *Ibid.*

⁵¹⁰ *Le Fantasque*, June 11, 1838.

⁵¹¹ *Le Courier Canadien*, August 11, 1838.

applauded his arrival. On 19 June 1838, the newspaper urged its readers to offer their aid and assistance to Durham in his quest to bring peace and stability to the colony. As loyal British subjects, it stated, “it is, therefore, our duty [...] to render to the government of Lord Durham that homage and support which [...] his high office so justly merits.”⁵¹² The newspaper’s only criticism was the fact that Durham’s council did not have enough power. Accordingly “the Governor and Council [...] have no authority whatever for making any laws that will have the effect of changing or ameliorating the pernicious system under which [they] have hitherto groaned.”⁵¹³ The newspaper was specifically referring to the act that established the Special Council, and complained that because of the limitations it place on its authority, Durham was unable to impose significant changes on the government and administration of the colony, and save the colony “from anarchy and confusion [...]”⁵¹⁴ The editors of the *Gazette* thus pleaded with the British government to bestow “full power and authority [...] to the Governor and Council [...]”⁵¹⁵

Similar applause emanated from all English-speaking newspapers in the weeks and months that followed Durham’s arrival. Most had faith in his promise to restore peace and stability, and more importantly, remain neutral and impartial. For example, *The Morning Courier* not only had confidence in the “character and talents of the Governor General and his advisers,” but it was also positive that Durham would succeed in

⁵¹² *The Montreal Gazette*, June 19, 1838.

⁵¹³ *Ibid.*, September 27, 1838.

⁵¹⁴ *Ibid.*

⁵¹⁵ *Ibid.*

remaining neutral in the face of adversity and pressures, which may come from the two opposing parties in the colony.⁵¹⁶ The newspaper explained that

[e]very act of his administration, so far as it has yet gone, has tended to add [...] confidence. He has avowed from the outset correct principles, and he has since in all that he has said and done among us, displayed all independence of mind, fairness, courtesy, and that enterprise, of character which so certainly wins public confidence [...]⁵¹⁷

The Montreal Transcript shared a similar perspective and hoped that Durham's talent and impartiality would finally pacify and stabilize the colony and "for the first time, [offer] reasonable ground for hope for the regeneration of the distracted elements of this colony [...]"⁵¹⁸

This common ground between the French-Canadian and British press did not last, however. Eventually, *all* French-Canadian newspapers, including the loyalist *L'Ami du Peuple*, condemned and criticized Lord Durham. One of the first editors to turn against the governor was François Lemaitre who, along with *La Quotidienne*, began publishing *Le Temps* in August 1838. As noted, Lemaitre had always been suspicious of Durham's "friendliness" with the Constitutionals, and on 9 August 1838, once again, questioned his impartiality.

Lord Durham, ainsi qu'on le voit par un bulletin officiel en date du 1 courant, approuve et ratifie la nomination faite par sir John Colborne, le 25 Mai dernier, de John Johnston, pour être messenger de la commission d'indemnité. [Lemaitre' Italics] Le system d'exclusion est toujours suivi, et l'impartialité est plus dans la bouche de certaines gens que dans leurs cœur.⁵¹⁹

⁵¹⁶ *The Morning Courier*, June 19 & 23, 1838.

⁵¹⁷ *Ibid.*, June 23, 1838.

⁵¹⁸ *The Montreal Transcript*, June 9, 1838.

⁵¹⁹ *La Quotidienne*, August 9, 1838.

Lemaitre's queries turned into full-blown attacks when he learned that Durham had associated himself with the greatest enemy of French-Canada: Adam Thom.⁵²⁰ In both *La Quotidienne* and *Le Temps*, he condemned this association and asked for Durham's removal from the office of the Governor General and head of the Special Council. Lemaitre was also very happy when he learnt that Lord Brougham had condemned Durham's Bermuda ordinance and had asked for his removal. On 9 October 1838, Lemaitre published an article entitled "Il part enfin," and described Durham's tenure with the following:

[Les] tories provinciaux [...] voient partir avec chagrin un homme qui leur paraissait dévoué, si disposé à faire tant de mal au pays pour leur plaire. Nous qui n'avons pas les mêmes raisons de le regretter, nous devons lui souhaiter un bon voyage. Qu'il aille rejoindre son prédécesseur de triste mémoire [Colborne] qui, aidé de ses conseillers perfides, les sieurs Debartzch, Quesnel, Heney, et cie., a fait couler le sang canadien.⁵²¹

A few weeks later, on the eve of Durham's departure, Lemaitre produced his final article on the topic, and explained that although Durham arrived in Lower Canada promising impartiality and neutrality,

[à] peine trois semaines s'étaient écoulées que déjà il écrivait au ministère du département colonial qu'il avait consulté les chefs du parti oligarchique [constitutionalists] et qu'il s'était conformé à leurs désirs [...] Lord Durham reçoit de l'oligarchie des adresses auxquelles il s'empresse de répondre de la manière la plus affectueuse et la plus obligeante, tandis qu'il reçoit avec hauteur et mépris celles des Canadiens, et qu'une adresse des citoyens réformistes de Québec demeure sans réponse dans la poussière des bureaux de M. le secrétaire principal, qui sans doute les trouve trop 'ignorans' (sic)

⁵²⁰ This association was explored in the second chapter of this dissertation.

⁵²¹ *Le Temps*, October 9, 1838.

pour y faire attention [...] Lord Durham comble de faveurs et de largesses un rédacteur du 'Courier' et M. Adam Thom qui a si souvent conseillé la mort politique du peuple canadien dans le 'Herald', auquel on peut attribuer une large part des malheurs de notre pays [...] Enfin Lord Durham n'a rien fait pour mériter la confiance du peuple, son administration est un tissu de duplicités, de ruses, d'intrigues, de spoliations, de folies et d'imbécilités [...] Nous défions qui que ce soit de nommer un acte de l'administration marquée de lord Durham qui ne soit pas né au coin du toryisme colonial [...] L'histoire dira que Lord Durham a préféré une petite faction, et l'exposera comme une des aberrations humaines de notre époque.⁵²²

Durham's association with Thom was the turning point for all French-Canadian newspapers. After this, French-Canadian editors realized that Durham's promise to remain impartial was nothing but a lie, and one by one, they began condemning the governor. *Le Courier Canadien* and *Le Fantasque* were the first to follow. For example, in late September 1838, *Le Courier Canadien* expressed its disappointment with the man that had brought so much hope to the colony.

La confiance que les Canadiens avaient placée chez lui se trouve de nouveau ruinée. Cet état des choses comble la mesure des antécédents injurieux qu'ont laissé les administrations passées. D'ailleurs quelle confiance peut-on mettre dans tous ces hommes qui viennent le miel sur les lèvres vous tendre une main amicale? Que n'a pas fait lord Durham lui-même ce personnage dont on vantait tant la libéralité, après avoir en Angleterre et ici exprimé et solennellement promis qu'il ne reconnaîtrait point de partis, n'a-t-il pas forfait à sa parole et à ses promesses? N'a-t-il pas dans une dépêche reconnue qu'il existait un parti *British Party* [newspaper italics] dont il cimentait l'existence, puisqu'il disait que ce *British Party* consentait de faire grâce aux meneurs en Canada pourvu qu'ils ne fussent plus exposés aux manœuvres de ces derniers. C'est montrer, comme l'on voit un consistence *immuable* [Newspaper italics]. C'était bien la peine de dire et de répéter plusieurs fois qu'il n'admettrait aucune différence de partis ni de races. Mais ce langage avait son but, c'était sans doute pour mieux s'immiscer dans l'esprit des Canadiens et mieux capter leur confiance. Mais le voile dont il s'était couvert, vient d'être déchiré et Lord Durham pas plus que les autres n'a répudié le parti

⁵²² *Ibid.*, October 30, 1838.

qui a toujours nourri et exercé une haine atroce contre la population canadienne.⁵²³

Along with Lemaitre, Napoleon Aubin was without a doubt Durham's fiercest and most vocal critic. Although he was not the first to condemn Durham's impartiality, from the very beginning, however, he used the pages of *Le Fantasque* to mock the very little work that Durham and the Special Council had actually done. For example, on 4 August 1838, Aubin mockingly described their work as follows:

l'administration [...] a déjà fait beaucoup depuis son arrivée et, outre les voyages, les bals, les levers, les diners, les revues, elle s'est occupée tout particulièrement des chevaux étiques dont elle prend un soin vraiment touchant. Espérons que le tour des hommes viendra bientôt, et que notre Excellent gouverneur fera ses efforts pour que le bon peuple de cette province ne soit plus, aussi bien que les pauvres chevaux, surchargé au-dessus de ses forces et de sa patience.⁵²⁴

On 11 August 1838, Aubin once again made fun of Durham's activities, and maintained that he had spent more time improving his living quarters than improving the colony.

Outre les entourages tout-à-fait aristocratiques dont il a orné sa résidence, il vient d'en décorer le dôme d'un majestueux pavillon britannique; c'est une idée que nos stupides gouverneurs n'avaient pas encore eue; je vous le dis: Lord Durham est l'homme qui sait faire marcher les améliorations à pas de géant, et en peu de tems (sic) il a bien su changer la face des affaires et surtout la façade du parlement!⁵²⁵

Aubin was equally disappointed that Durham had associated himself with the enemies of French-Canada. On 25 August 1838, for example, after learning that he associated himself with Adam Thom and James Stuart, he asked:

⁵²³ *Le Courier Canadien*, September 28, 1838.

⁵²⁴ *Le Fantasque*, August 4, 1838.

⁵²⁵ *Ibid.*, August 11, 1838.

Supposons une rupture, supposons que Lord Durham échoue dans son entreprise, pourrait-il répondre hautement à cette question que lui poserait le peuple: Avez-vous été impartial? Pourrait-il dire: j'ai rempli mes promesses, je n'ai rien fait pour heurter, aigrir les sentiments intimes du peuple. Vous avez, lui dira-t-on, appelé à une place de profit notre ennemi le plus éhonté, le plus inhumain, le plus sanguinaire, vous avez conféré les plus grands honneurs dont il vous soit possible de disposer sur un autre dont le peuple avait déjà demandé la destitution, demande sanctionnée par le ministre et par la nation, et vous dites: Ai-je rempli mes promesses d'impartialité!⁵²⁶

Aubin was thus very surprised when he read in a British newspaper that Durham had successfully brought peace and stability to the colony, and had resolved all issues between the French-Canadian and British population. He sarcastically commented:

C'est étonnant comme nous sommes unis dans ce pays-ci, c'en est tout-à-fait édifiant! Déjà on voit le Herald et la Quotidienne aller bras dessus bras dessous dans les rues de Montréal, les torys anglais ont donné le baiser de paix aux radicaux canadiens, la Gazette et le Canadien n'ont plus entre les deux que branche d'olivier [...] On dit que l'union va se raffermir encore d'avantage durant l'hiver qui approche et que les Américains, touchés de tant de magnanimité se mettront aussi de la partie [...]; les crocodiles du Mississippi (sic) vont venir fumer le calumet de paix avec nos castors et les boas enlaceront tendrement les ours blancs! Enfin, je vous le dis, il ne fallait que la présence du Lord Durham pour glisser dans l'Amérique Septentrionale la sève de l'union.⁵²⁷

There is no doubt that Aubin was extremely disappointed with Durham's tenure as governor and head of the Special Council. A few weeks prior to his departure, Aubin published an open letter to Durham. What is especially interesting about this letter is its tone. Rather than relying on his usual sense of humor, Aubin was very serious. He first considered the Special Council itself. Although he supported Durham's dissolution of Colborne's pro-CAM council, he did not agree with those he appointed instead. Rather

⁵²⁶ *Ibid.*, August 25, 1838.

⁵²⁷ *Ibid.*, September 12, 1838.

than appointing individuals that cared about the welfare of the colony and were independent from all local partialities and parties, he appointed men that were

[i]gnorant des affaires du pays puisqu'ils n'y étaient jamais venus, ne s'en étaient même jamais occupés; fort peu indépendants puisqu'ils portaient votre livrée, ils vinrent nous donner le premier avant-gout du despotisme absolu, despotisme qu'avait justement désiré voiler ou modérer la prévision de l'acte qui vous envoya parmi nous, qui voulait un Conseil Spécial indépendant et éclairé.⁵²⁸

Although Aubin described Paget, McDonell, and Couper as great soldiers, they were futile and useless legislators: “le livret de la théorie des casernes, des batteries ou de l'entrepont sont des études un peu arides pour ceux qui devront doter un pays déchiré, d'institutions justes et délicates: voila cependant la majorité du nouveau conseil.”⁵²⁹

Aubin then turned his attention to Lord Durham, and argued that although he may feel cheated as a result of the Bermuda controversy, Aubin believed that there was only one person to blame: Durham himself. Aubin explained that when he first arrived, he had the support of all of French-Canadians; “nos coeurs vous furent acquis d'avance.”⁵³⁰

However, as a result of his alliance with the Constitutionalists, and the fact that he aimed to give Lower-Canada “un caractère tout-à-fait Britannique,” he lost it all. French-Canadians could not support him after he had broken all of his promises. Aubin added, “Voilà, milord, ce que dit en un langage solennel le peuple de cette province, par le froid silence avec lequel il accueille votre départ.”⁵³¹ Finally, on 5 November 1838, Aubin published a few last words about Durham's tumultuous stay in Lower Canada, which described the colony's opinion towards him:

⁵²⁸ *Ibid*

⁵²⁹ *Ibid.*

⁵³⁰ *Ibid.*, October 13, 1838.

⁵³¹ *Ibid.*

Lord Durham est parti, voilà le fait, et pas un Canadien indépendant n'alla le reconduire [...] Si l'on demande quel bien a fait Lord Durham? Ces plus grands admirateurs balbutient, murmurent et restent sans réponse. Si l'ont dit, quel mal a-t-il fait? Chacun à sa plainte, son reproche, son grief et son accusation.⁵³²

The last French-Canadian newspapers to criticize Durham were *Le Populaire*, *Le Canadien* and *L'Ami du Peuple*. However, unlike *Le Fantasque*, *Le Temps* and *La Quotidienne*, these three newspapers initially defended Durham before Lord Brougham's and the Parliament's attacks. All feared that his departure would simply mean that the reforms, peace and stability he promised would never materialize. Like Lemaitre and Aubin, Thom's appointment was a significant event, and one that could not be ignored. In early October 1838, *Le Populaire's* support began to disintegrate. Although there had been rumors that Durham had allied himself with Constitutionalists circulating since August 1838, in early October, the newspaper finally got confirmation that Adam Thom had become an associate of the Governor General. Marconnay was shocked and begged Durham to return to his initial promise of impartiality: "il faut qu'il cesse de *consulter* exclusivement le *parti britannique* [et] il faut qu'il en revienne à sa première idée, qu'il ne reconnaisse aucun parti [...] [Author's italics]"⁵³³ These efforts were in vain, however, as Durham continued to surround himself with Constitutionalists. Along with Adam Thom, James Stuart and George Moffat also became advisors. As a result, the newspaper's tone changed from supporter to implacable opponent. After months of

⁵³² *Ibid.*, November 5, 1838.

⁵³³ *Le Populaire*, October 8, 1838.

defending Durham as a savior, the newspaper now labeled him a despot and a traitor. In its very last issue, the newspaper published the following:

Le Lord Durham, qui n'est pas avare des paroles louangeuses alors qu'il s'agit de vanter ses projets, ses plans, ses mentions de régénération du pays, n'a jamais daigné dire un seul mot qui fut en faveur de l'origine franco-canadienne. Il a toujours parlé *en despote* qui veut qu'on s'en fit à sa prudence, et il a continuellement agi en [...] instrument *dévoné* d'une réaction des citoyens du pays. Loin de rassurer nos habitants sur les idées de renversement de nos institutions que mettaient au jours les journaux opposés aux masses, il en a cajolés les rédacteurs, les a pris pour ses conseils, et leur a ouverts les coiffes de la province... Sous le prétexte de missions et de commissions, l'argent qui devait être destiné aux besoins du pays, a été prodigué avec un favoritisme désespérant [...] [Author's italics]⁵³⁴

Like *Le Populaire*, Étienne Parent's support began to fade in early October 1838.

On 8 October, he discussed Durham's controversial association with Adam Thom.

Le noble compte ne devait reconnaître aucun parti, il ne devait voir dans le pays que des créatures humaines ayant toutes les mêmes droits, égales aux yeux des hommes comme elles le sont aux yeux de Dieu, et de cette haute disposition, fermant l'oreille aux cris des partis, dédaignant tout intérêt sectionnaire, il devait prendre pour unique base de ses opérations que les principes purs du gouvernement représentatif, sans regarder si dans leurs conséquences il froisseraient de vaines susceptibilités, des intérêts passagers, ou des exigences factieuses. Hélas! que M. Thom nous le fait petit, cet homme qu'on s'était figuré si grand. Voyez, toute la solitude de Son Excellence s'est portée à satisfaire les désirs des partisans de l'Union des Canada, plans odieux dont l'exécution serait un parjure et l'acte de tyrannie la plus insigne.⁵³⁵

Along with this lack of impartiality, Durham's negative opinions of Lower Canadians and their institutions did not generate much support from the local population. According to Parent, almost every French-Canadian opposed Durham prior to his departure as a result.

⁵³⁴ *Ibid.*, October 31, 1838.

⁵³⁵ *Le Canadien*, October 8, 1838.

D'un autre coté les déclarations du Gouverneur General contre les 'anciennes lois et habitudes' des Canadiens, ont fait de ses derniers une masse compacte d'opposants à tout l'ensemble de ses mesures politiques. Et cette opposition doit paraître d'autant plus vive, que le peuple ne fera, en toute apparence, aucune démarche pour la manifester aux autorités métropolitaines. Ce silence du peuple sera compris sans doute en Angleterre.⁵³⁶

Even *L'Ami du Peuple* criticized the governor, albeit not quite as heavily. After months of defending Durham from attacks from the local press and the British Parliament, and after months of maintaining that Durham would remain impartial, Thom's appointment, it agreed, seriously damaged his image. Although the newspaper did not view this appointment as a major source of criticism, arguing that it was "qu'un événement, bien petit en lui-même, bien mince auprès des grands intérêts de la province, et peut-être fort insignifiant sous plusieurs rapports [...]," it nonetheless criticized Durham for not realizing that such an appointment would have a negative impact and provoke everyone to question his impartiality and sincerity.⁵³⁷ Even *l'Ami du Peuple* itself questioned Durham's sincerity, and *hoped* that it was only a mistake, "une de ces bizarreries naturelles à l'esprit humain [...]"⁵³⁸ The newspaper's most significant criticisms, however, focused on the amount of work that Durham had done in council. Although it claimed that it was "encore persuadé des bonnes intentions de Lord Durham [...] [et] [...] attendons beaucoup de son administration," it was nonetheless losing much patience as his reforms were coming very slowly.⁵³⁹ Since arriving, the newspaper explained that he had spent too much time and money travelling, having dinners, and

⁵³⁶ *Ibid.*, November 2, 1838.

⁵³⁷ *Ami du peuple*, August 15, 1838.

⁵³⁸ *Ibid.*

⁵³⁹ *Ibid.*, August 27, 1838.

entertaining guests. The newspaper thus asked: “que fait le gouverneur général? que fait son conseil spécial?”⁵⁴⁰ The newspaper also complained that all the council had done was pass the police and Bermuda ordinances. Although it did acknowledge that Durham had established *commissaires* to look into the colony’s educational, seigneurial, and land registration systems, nothing had yet resulted from these. The newspaper thus asked Durham to stop travelling and living the high life, and start doing the work that he was sent here to do. More importantly, this lack of productivity had significant consequences: “Lord Durham a perdu le pays, lord Durham a détruit tous les effets salutaires qu'avaient eut la leçon données aux rebelles par Sir John Colborne.”⁵⁴¹ In other words, the newspaper maintained that Durham's inactivity has given the rebels the opportunity to regroup and regain their strength.

Nous tenons de la source la plus respectables que, dans tous les comtés du Sud de la Rivière Chambly, des assemblées nocturnes ont lieu fréquemment, et les habitants sont soumis à un serment terrible dont nous connaissons pas positivement le teneur, mais dont le but est de lier des habitants à se battre contre le gouvernement britannique et à massacrer tout ce qui s'opposera à leur indépendance. Nous savons par des renseignements certains, que des armes en grande quantité doivent être prochainement données aux habitants, et que le premier usage qu'ils doivent en faire, doit être de massacrer tous les loyaux sujets qui se trouvent dans les campagnes à leur portée.⁵⁴²

Durham took this news very lightly, however, which enraged the newspaper. It explained that while Durham was safe in his palace surrounded by his personal guards, loyalists around the colony were frightened and in grave danger. They had no weapons and were at

⁵⁴⁰ *Ibid.*

⁵⁴¹ *Ibid.*, September 19, 1838.

⁵⁴² *Ibid.*, September 19, 1838.

the mercy of the rebels. If Durham failed to take this situation seriously and the colony was once again the theatre of another rebellion, the governor, alone, would be to blame.

Lord Durham a dans les mains un pouvoir presque illimité, il peut, en peu de temps, faire plus pour la tranquillité du pays que les autres gouverneurs ne pouvaient faire en plusieurs années, s'il néglige le salut des Canadas, si sa négligence amène une nouvelle secousse, il sera plus coupable en proportion des pouvoirs plus étendus qu'il possède, d'autant plus coupable s'il échoue dans sa mission.⁵⁴³

Whereas the French-Canadian press was by the end of his tenure united in its opposition, the English-Canadian press was united in its support throughout. *All* were convinced that Durham would have brought peace and stability to the colony, that the British Parliament had betrayed him, and wanted him to remain in Lower Canada. For example, *The Quebec Mercury* stated:

Lord Brougham, Ellenborough & Co. have resumed their vocation of impeding, to the best of their ability, the satisfactory adjustment of Canadian affairs. True it is that the noble twain have failed in awakening the sympathies of the British public--equally true it is that they are, here, regarded by all sober-minded people as meddling mischief-makers [...]⁵⁴⁴

The newspaper thus asked all loyal inhabitants, and

every individual among us who has anything at stake must unite in protesting against the unpatriotic and selfish endeavours that have been made, and are making, by persons, impotent save for evil, to frustrate the plans of His Lordship's Government, with no higher motives than the paltry purpose of depreciating his reputation as a statesman, or inflicting a blow upon the ministry at home.⁵⁴⁵

⁵⁴³ *Ibid.*

⁵⁴⁴ *Quebec Mercury*, September 13, 1838.

⁵⁴⁵ *Ibid.*

Neilson's *The Quebec Gazette* also shared similar opinions. Along with condemning Durham's opponents in Britain, Neilson did not understand why, all of a sudden, Durham's authority was considered a problem. He explained that

They [members of Parliament] agree to the suspension of the Constitution of Lower Canada, hail the appointment of Lord Durham, tell us that he has "dictatorial powers", that we poor colonists must give him a fair trial, trust to him for the restoration and preservation of the peace, the settlement of the affairs of the Province, and securing its future welfare, which the inhabitants of the North American Provinces, so far, have shown that there were well disposed to do; and all at once, these gentlemen raise a huge cry about his appointments, which they know must reach the Province, and tend to weaken public confidence in his Lordship's administration, and frustrate the object of his mission. It appears that these gentlemen were willing to give us a *Dictator*, charged with all the responsibility of his mission; but that they want to dictate to the dictator, on the persons he is to employ, and virtually relieve him from the responsibility which ought to rest solely with him.⁵⁴⁶

Neilson also maintained that the Special Council itself could be a good form of government if it were tweaked a little. He believed that "[i]f this Council were fairly selected throughout the whole Province, the law they would make would be suitable to the circumstances and wants of the country, and would doubtless be made permanent, if found to work well."⁵⁴⁷

The Morning Courier and *The Montreal Gazette* provided some of the most violent comments regarding Durham's treatment at the hands of the British Parliament. For example, *The Morning Courier* lost patience with the manner in which Britain was governing its North American colony, calling its actions "scandalous interference." It even called the Parliament's involvement "evil" and "ill-judged" and maintained that

⁵⁴⁶ *The Quebec Gazette*, August 1, 1838.

⁵⁴⁷ *Ibid.*, September 24, 1838.

such actions had “opened the eyes” of several local politicians about the manner they were being governed as each was even starting to question his loyalties.⁵⁴⁸ The newspaper was, quite simply, tired of the “evil consequence of unnecessary interference by British authorities in our affairs,” and wanted to be “let alone.”⁵⁴⁹ *The Montreal Gazette* similarly criticized the mother country’s meddling in Canadian affairs, arguing that “[if] the administration of His Excellency the Earl of Durham in these Provinces [is] a short one [it is the result of] the imbecile and incoherent conduct of the Ministry.”⁵⁵⁰ The newspaper even added:

A ministry so utterly weak and incapable, as a Government—so grossly ignorant of the duties of their station—of their obligations to their sovereign—and their other responsibility to their country, are totally unworthy of being favoured with the services of any man of honour, who values his own reputation. It is, therefore, no wonder [...] the Earl of Durham has resolved upon abandoning the future administration of the affairs of these provinces.⁵⁵¹

When compared to Colborne’s first council, the political elite and the masses were also more vocal and more frequently shared their opinions of the Special Council and its ordinances. There are more letters, journals, petitions and public protests. Such evidence suggests that Durham’s tenure divided the local population and created a significant gap between the two solitudes. Like the French-Canadian press, however, the masses and the political elite shared a common theme: there was great hope and enthusiasm at the beginning, and disappointment and disgust at the end.

⁵⁴⁸ *The Morning Courier*, October 18, 1838.

⁵⁴⁹ *Ibid.*, October 19, 1838.

⁵⁵⁰ *Montreal Gazette*, September 25, 1838.

⁵⁵¹ *Ibid.*

First of all, and perhaps most surprisingly, Durham's arrival divided the opinions of the surviving members of the *Patriote* party itself. Although many were weary about his arrival and still claimed that the Lower-Canadian population had to continue the good fight, there was some hope in the new governor. Initially, however, it appears that most were critical of his arrival. In a letter to Dr. E.-B. O'Callaghan, for example, Louis Perrault dismissed the rumor that he supported Durham's mission.

Je ne vois pas pourquoi vous croyez que j'ai de grandes espérances pour le pays, par l'arrivée de Durham. Je n'en n'ai point, je n'en puis avoir. Il faut que le pays demeure ferme, il faut persister dans nos demandes, il faut harasser le gouvernement; si nous avons la liberté de la parole, il faut parler plus fort qu'avant, mais il faut le faire avec prudence.⁵⁵²

Not surprisingly, some criticism came from Wolfred Nelson, one of the men who was banished to Bermuda by Durham. Nelson especially feared that Durham's council would be like his predecessor's and only favour one specific group. In a letter to L.-H. La Fontaine, he stated:

Je crains que le lord Durham soit déjà jusqu'à un certain point imbu des mêmes idées qui ont si funestement influencé ses *devanciers*. Il paraît que "*the mercantile interests must be looked to, that they are of paramount importance.*" Si c'est le cas, pour le coup sa mission serait infructueuse. Il y a d'autres intérêts qui devraient prendre la préséance, ici come partout ailleurs: ceux de la majorité. (Editor's italics)⁵⁵³

Nelson did not have much hope in the governor, and explained that if "[s]on Excellence commence déjà à regarder les Canadiens comme étant hostiles aux Anglais," his mission

⁵⁵² Letter to O'Callaghan, April 9, 1838. Perrault, *Lettres d'un patriote réfugié au Vermont*, p. 55.

⁵⁵³ Letter to La Fontaine, dated July 16, 1838, from Wolfred Nelson, *Ecrits d'un Patriotes, 1812-1842*, ed. Georges Aubin (Montreal: Comeau & Nadeau, 1998), pp. 71-72.

will undoubtedly fail.⁵⁵⁴ Unfortunately, such hostility was already quite obvious. Nelson explained that one simply had to look across the border in Upper Canada. Although Upper Canadians had also rebelled against the British Government, Nelson complained that they were punished less severely than Lower Canadians; they still had a constitution and a Legislative Assembly. French-Canadians were, according to him, treated like enemies of the state.⁵⁵⁵

Despite such early criticisms, other *Patriotes* did surprisingly have much hope in his mission. Moreover, some that initially criticized the governor even changed their tone. In a letter to Papineau, for example, Perrault stated that “nos amis de Montréal pensent que le lord fera changer le ton de nos tories.”⁵⁵⁶ It also appears that many believed that Durham would not be influenced by the Constitutionals as Colborne had been. Even Perrault, who had initially criticized Durham, approved of his initial work. In a letter to Dr. O’Callaghan, Perrault was happy to note that

Durham était très en faveur de l’éducation du peuple et qu’il disait qu’il fallait que des sommes immenses devraient être employées pour instruire les Canadiens. Durham est opposé à l’union des provinces [...] Durham et toute sa suite parlent bien le français. Le secrétaire militaire [and member of the Special Council] Couper fait souvent des visites au clergé catholique et surtout aux deux évêques.⁵⁵⁷

The very next day, Perrault sent another letter explaining that most rebel prisoners supported Durham’s mission. Not only did they applaud his promise of leniency, but they

⁵⁵⁴ *Ibid.*, p. 72.

⁵⁵⁵ Neilson’s opinions on the topic were both right and wrong. Although the political repression of Lower Canada (suspension of the constitution and Legislative Assembly) was greater, there is no denying the fact that the physical repression was more severe in Upper Canada. Far more Upper Canadians were executed than Lower Canadians.

⁵⁵⁶ Letter to Papineau, May 8, 1838. *Ibid.*, p. 72.

⁵⁵⁷ Letter to O’Callaghan, June 21, 1838, *Ibid.*, pp. 104-105.

more importantly applauded the fact that he was opposed to Colborne's council and "a désapprouvé ses [Colborne's] ordonnances."⁵⁵⁸

Even the leader of the party, Louis-Joseph Papineau, initially shared such hopes. In a 12 May 1838 letter to his wife, Papineau mentioned how Durham could do a lot of good for this colony, so long as he acted in a liberal and impartial manner. He explained that "[s]i, en arrivant, il publiait de suite un acte d'oubli, il prouverait qu'il s'est tracé une ligne de conduite libérale et il écarterait les intrigants provinciaux qui prétendent le diriger."⁵⁵⁹ He moreover believed that he could do "un bien infini" for the colony.⁵⁶⁰ According to Papineau, Durham had the authority to resolve several of the issues that affected the colony and could, among other things, reduce public spending, remove judiciary power from all political influence and meddling, reform the current legal system and make it closer to the Napoleonic code, prepare the end of the seigneurial system, and abolish the death sentence. These were all issues that Papineau wished to see resolved and hoped would result from Durham's tenure.

Despite such initial optimism, however, Papineau was soon disappointed, especially with the fact that Durham did not remain neutral and, as will later be discussed, with the infamous Bermuda Ordinance. Papineau was against the fact that Durham associated himself with the Constitutionals. He explained in a letter to John A. Roebuck,

⁵⁵⁸ Letter to O'Callaghan, June 22-23, 1838, *Ibid.*, p. 114.

⁵⁵⁹ Letter from Papineau to his wife, May 12, 1838, from Papineau, *Lettres à Julie*, p. 371.

⁵⁶⁰ Letter from Papineau to John A. Roebuck, May 17, 1838. Louis-Joseph Papineau, *Lettres à divers correspondants, Tome 1: 1810-1845*, ed. Georges Aubin and Renée Blanchet (Montreal: Les Éditions Varia, 2006), p. 395.

Lord Durham, le pair (sic) favori du peuple, avec Wakefield et Turton pour conseillers intimes, renforcés par le choix, digne de lui et d'eux, d'Adam Thom, me rappelle les turpitudes de la cour de Claude et le sang de celle de Néron [...] Ce choix [Thom] est une insulte voulue, calculée, réfléchie contre les Canadiens, qui révèlent pleinement dans quel but Durham a accepté une autorité absolue sur eux.⁵⁶¹

According to Papineau, Durham wanted what most members of the Imperial Parliament hoped for Lower Canada: the supremacy of the "Anglo-Saxon race" and the assimilation of French-Canada. As noted, this was Durham's goal all along, and his association with the Constitutionals simply made it more evident.⁵⁶² Papineau was so opposed to Durham that he applauded Lord Brougham's attacks against the governor. He explained that Brougham and his allies

avez porté du génie, de la vie, de la sensibilité de la sincérité dans la défense du Canada. Un infiniment petit nombre d'autres vous ont honnêtement secondés; le reste jouait leur partie contre lord Durham et ses ambitieuses aspirations à guider le ministère à son retour en Angleterre. J'espère qu'il est flétri pour toujours.⁵⁶³

Finally, like the French-Canadian press, Papineau painted a very negative portrait of Lord Durham: the portrait of a man that was hated by all Lower Canadians.

Chacun des actes et des propos de Lord Durham, au lieu de respirer la libéralité, est marqué au coin d'une violence brutale, d'une morgue insolente et d'une rare ineptie; néanmoins, il a été un homme estimé et admiré chez vous, immédiatement haïs et méprisé chez nous.⁵⁶⁴

Like Papineau, La Fontaine was also initially very optimistic. He had been a supporter of Durham since the Imperial Parliament passed the proclamation suspending

⁵⁶¹ *Ibid.*, p. 403.

⁵⁶² *Ibid.*

⁵⁶³ *Ibid.*, p. 404.

⁵⁶⁴ Letter from Papineau to Roebuck, November 10, 1838, *Ibid.*, p. 417.

the constitution, dissolving the Legislative Assembly, and creating the Special Council. While in Europe, he had a discussion with Edward Ellice, Lord Durham's uncle, which gave him reasons to be optimistic. La Fontaine explained that during their two hour conversation, "il m'a assuré que celui-ci agirait libéralement envers les Canadiens, et ne proposerait aucun plan de constitution qui donnerait le pouvoir à la minorité."⁵⁶⁵

Unlike Papineau, La Fontaine's optimism did not abate. On the eve of Durham's arrival, he expressed the following in his journal: "L'avenir de mon pays m'occupe sans cesse, surtout quand je réfléchis que ses libertés politiques sont pour ainsi dit livrées aux mains d'un seul homme. Il est vrai que personnellement je nourris beaucoup de confiance dans la Mission de Lord Durham."⁵⁶⁶ Although La Fontaine admittedly feared that all factions of Lower-Canadian society—whether loyalists, Constitutionalists, or *Patriotes*—would try to influence the governor, he was convinced that Durham's mission and council would not fall in the same trap as Colborne's. As previously explained, La Fontaine had not been impressed with Colborne's council, and believed that his partiality had done nothing to pacify the colony.⁵⁶⁷ Rather than establishing peace, or even "produire une législation utile," Colborne's council had simply generated anger and mistrust.⁵⁶⁸ La Fontaine believed that if the new governor and the Special Council could listen to the people, both would gain the confidence of Lower Canadians. La Fontaine asked:

Lord Durham comprendra-t-il que la situation politique du Canada, ce doit être là le principal objet de sa mission? Et s'il comprend, fera-t-il ce que les circonstances commandent impérieusement pour assurer l'accomplissement de cet objet?⁵⁶⁹

⁵⁶⁵ La Fontaine, *Journal de voyage en Europe, 1837-1838*, p. 55.

⁵⁶⁶ *Ibid.*, p. 138.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ *Ibid.*, p. 139.

⁵⁶⁹ *Ibid.*, pp. 139-40.

La Fontaine was convinced that Durham could.

Lord Durham pourra réussir, s'il ne se laisse pas circonvenir par ceux qui sont intéressés à maintenir les abus, à perpétuer les dissensions, à exercer des vengeances, et qui jusqu'à présent n'ont que trop souvent réussi dans leurs projets sinistres auprès de ses prédécesseurs.⁵⁷⁰

Along with La Fontaine and some *Patriotes*, it appears that several other politicians were at least willing to give Durham a chance and shared some optimism towards his mission. A good example is Pierre Dominick Debartzch. Debartzch entered politics in 1807 when he was elected to the Legislative Assembly where he sided with Papineau's *Parti Canadien*. Debartzch remained a longtime supporter of Papineau's cause. In 1832, for example, he chaired a meeting of the counties of Richelieu, Verchères, Saint-Hyacinthe, Rouvillle and Chambly that adopted 21 resolutions. These resolutions were considered to be the seeds of the famous 92 Resolutions. However, in 1837, his political outlook changed as he accepted an appointment on Lord Gosford's Executive Council. As a result, he was scolded by the *Patriotes* and *La Minerve*.⁵⁷¹ On the topic of Durham's tenure, Debartzch supported the new governor and was ready to offer his assistance in his attempts to restore peace and stability to the colony.⁵⁷²

On the English-speaking side, Adam Thom was also ready to assist Durham's mission. In a letter to Durham, dated 8 July 1838, he claimed that he had much faith in

⁵⁷⁰ *Ibid.*, p. 140.

⁵⁷¹ This information was taken from *The Dictionary of Canadian Biography Online*. "Debartzch, Pierre-Dominique." Ludwik Kos Rabcewicz Zukowski. Vol. VII. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=3346&interval=25&&PHPSESSID=vg24c8b6k9jnhfs55v6e1e0dk1

⁵⁷² Letter from P-D Debartzch to Charles Buller, June 2, 1838. LAC, Durham Papers, Vol. 26, Reel-C1856.

him, and was happy that the governor shared his belief that Lower Canada must be rendered a “truly British Province.”⁵⁷³ Most Constitutionalists approved Durham’s appointment and his ordinances. In a letter to Durham, Charles Buller referred to the support that the governor’s mission had received from several of them. After talking to Gerrard, McGill and Moffatt, Buller maintained that they had “general confidence in your [Durham's] government & approval of its measures,” which included the infamous Bermuda Ordinance.⁵⁷⁴

Similar to the press and the political elite, the masses were also much more vocal and active during Durham’s council than his predecessor’s. Several letters to the editor, petitions, and popular protests were found. What is especially interesting, however, is that like the local press and the political elite, the local population, *Canadiens* and British, initially supported Durham. However, as it became evident that Durham allied himself with the enemies of French-Canada, the French-Canadian population soon began opposing him.

In the first place, after the partiality practiced by Colborne’s council, it appears that French-Canadians were initially very satisfied with Durham’s council. For example, on 5 July 1838, *La Gazette de Quebec* published a letter from an individual calling himself “Hermite,” which expressed his satisfaction with the current form of government (the Special Council) as he believed that the 1791 Constitution had done very little good for Lower-Canada. Hermite also hoped that his letter would engage “mes compatriotes [...] à se soumettre volontiers à notre nouveau system de gouvernement, et à les consoler

⁵⁷³ Letter from Adam Thom to Lord Durham, July 8, 1838, from *Ibid.*

⁵⁷⁴ Letter from Buller to Durham, June 21, 1838, from *Ibid.*

de la perte momentanée de notre constitution.”⁵⁷⁵ First of all, Hermite did not believe that French-Canadians benefitted from the 1791 Constitution. What had the constitution given French-Canadians? According to Hermite:

Ce qui est bien assuré, c’est que depuis que nous avons le privilège de choisir nos législateurs, on a vu naître nécessairement des partis plus ou moins animés, qui ont amené avec eux la querelles, les rixes, les divisions et les haines invétérées dans les paroisses et les familles, l’ivrognerie avec toute ses scènes scandaleuses, les blasphèmes, l’intrigue avec la corruption, les parjures, le mépris des lois et de l’autorité, un débordement de passions que personne ne pouvait plus maîtriser, des mêlées et des batailles sanglantes, terminés quelquefois par des meurtres [...]⁵⁷⁶

Hermite also approved the fact that the Special Council was an authoritarian body. He was not a supporter of popular political participation, and believed that any time the masses were granted political authority, it was “toujours disposé à en faire une très mauvaise application.”⁵⁷⁷ A similar opinion was shared by “un ami de son pays,” who also believed that the 1791 Constitution had led to nothing but violence and trouble in the colony, and therefore applauded the Legislative Assembly’s abolition. The writer also had much hope in Durham’s council and tenure in Lower Canada, and hoped that the Lower Canadian population would show its support. He explained:

[...] nous avons dans le chef actuel du gouvernement, un homme doué de talents et rempli de cette énergie qui n’ont pas toujours été l’apanage de ses prédécesseurs. Ferme et décidé, il veut et peut gouverner par lui-même [...] montrons-lui cette confiance qui ne peut manquer de diminuer le fardeau dont il a bien voulu se charger pour notre intérêt.⁵⁷⁸

⁵⁷⁵ *La Gazette de Quebec*, July 5, 1838.

⁵⁷⁶ *Ibid.*

⁵⁷⁷ *Ibid.*

⁵⁷⁸ *Ibid.*, August 9, 1838.

Letters supporting Durham were even sent to and published in newspapers that criticized the governor. For example, on 21 July 1838, Napoleon Aubin published a letter from a man called “un retardataire” that disapproved the newspaper’s criticisms that Durham had kept all authority and refused to share it with deserving members of Lower Canadian society. The individual argued that Durham was “une homme profond et réfléchi” and was simply taking his time and educating himself on who these “deserving” men were before sharing his authority. He believed that Durham did not want to rush anything and maintained that he was

un homme qui ne précipite aucune mesure; vous savez aussi que le mérite des gens dont vous avez parlé se trouve caché par tant de modestie et de mystère qu’il ne s’aperçoit qu’à la longue et après des années, voir même des siècles de fréquentation, or Lord Durham désirait connaître plus amplement les hommes qui lui avait été présentés comme des phénomènes de sagacité, d’honnêteté, de fermeté, de bonté, d’amabilité, de stabilité, d’habileté, de fidélité et de loyauté [...] ⁵⁷⁹

The readers of *Le Populaire* were also initially some of Durham’s most loyal supporters, sending letters expressing their hope and faith. In fact, even when the French-Canadian press, including *Le Populaire*, began criticizing the governor, some readers still continued to send letters supporting him. For example, on 19 September 1838, the newspaper published a letter from “Un Milicien” that defended Lord Durham from the attacks of several newspapers. He explained that after initially supporting Lord Durham, several newspapers had begun showing much impatience towards him and his lack of reforms. To “Un Milicien,” however, this was ridiculous. Durham was simply taking his time and was reflecting on the state of the colony, which would help him make much wiser decisions.

⁵⁷⁹ *Le Fantasque*, July 21, 1838.

Le Lord Durham n'est pas arrivé avec des ordonnances en poche, et c'est ce qui porte à croire que les lois qu'ils donner à la société seront adaptées à ses besoin comme ses intérêts. Il a dû, avant de penser à traiter un sujet, en approfondir toutes les circonstances, en peser tous les résultats.⁵⁸⁰

A few weeks later, on 28 September 1838, a letter was sent by "Canadien de Montréal" that again defended Lord Durham and condemned his fellow French-Canadian citizens for not showing their support by attending a public assembly honoring him. Accordingly, a public assembly at St. Anne's market was scheduled for 1 October 1838, in support of Lord Durham against the actions taken by the Imperial Parliament towards the Bermuda Ordinance. However, according to this letter, it appeared that no French-Canadian was going to participate. The writer believed that if French-Canadians wanted peace and order restored in the colony, they had a heavy interest in keeping Durham in Lower Canada because the measures he had taken to restore order were not complete, and if he were to leave now, would be lost forever.

Supposons un instant que les mesures prises par le lord Durham aient mécontenté quelques personnes qui s'imaginaient que l'impunité devait être l'ordre du jour, il n'en est pas moins vrai que la marche suivie par cet homme d'État fut la plus favorable aux Canadiens, et qu'elle le paie du plus grand embarras [...]⁵⁸¹

He believed that if we had another governor and council dealing with this situation, we could have had a situation similar to Upper Canada were justice was quite harsh and many prisoners were executed. Thus,

Si le Lord Durham quitte la province, nous ignorons qui doit lui succéder, et il n'y a que trop de probabilités même, de voir son successeur tomber

⁵⁸⁰ *Le Populaire*, September 19, 1838.

⁵⁸¹ *Ibid.*, September 28, 1838.

dans l'excès contraire; s'il est choisi par les tories de la métropole, il ne sera pas favorable aux Canadiens, parce qu'aucune libéralité ne conduira sa politique, et le système de prosélytisme, dont nous avons tant à nous plaindre, reprendra, une vigueur, désespérante.⁵⁸²

The writer thus pleaded with all French-Canadians and begged them to go to the assembly and express their support to Lord Durham to prevent him from leaving.

Some readers supported Durham until the very end, and this even despite the fact that the newspaper in which their letter was published condemned and vilified him. On 29 October 1838, days before Durham's departure, *Le Populaire* printed a letter from "Fatidique," which described Durham's tenure as "[e]xtravagante, présomptueuse, indéfinissable, visionnaire."⁵⁸³ The fact that the newspaper published such a letter is quite interesting; it demonstrates that it truly sought to communicate public opinion and did not censor letters that did not share its own opinions.

Unfortunately for Durham, this support amongst French-Canadians did not last and was not very widespread. The French-Canadian population appears to have lost faith in Durham when they found out about his association with the enemy of French-Canada, and sent letters condemning him. Some of these were published in *Le Populaire*. On 15 August 1838, for example, an individual, perhaps ironically, calling himself "Un Tory" sent a letter criticizing Durham's rumored association with Adam Thom. The writer was not happy with this appointment as he considered Thom an enemy of French-Canada and the British Empire. Accordingly, Thom was "[c]elui qui s'est toujours montré le fougueux

⁵⁸² *Ibid.*

⁵⁸³ *Ibid.*, October 28, 1838.

adversaire du ministère Whig, celui qui a prétendu que la Grande Bretagne était perdu sans ressource du moment où elle mettait à la demie solde les ultra tories [...]"⁵⁸⁴

On 14 September 1838, the newspaper published one of the most critical letters it received from the public. Signed by "E.F., un laïque qui c'est déjà signé 'un abbé,'" the letter criticized Durham's attacks on French-Canadians and his mission to rid the colony of their institutions. First of all, the writer had no faith in Durham's council and associates. He expressed that "rien de parfait ne sort de la cervelle de l'homme et nous devons remercier le ciel si la nouvelle législation n'attaque aucun de nos intérêts les plus cher."⁵⁸⁵ The writer also answered the many newspapers, mostly English-Canadian, that still claimed that Durham remained impartial. To that, he explained: "Si le gouvernement a les vues qu'on lui suppose, il faut au moins qu'il connaisse qu'elles seront les suites, et ce n'est pas Adam Thom qui le lui apprendra."⁵⁸⁶ The author thus concluded that French-Canadians would suffer with Durham's tenure. For example, on the topic of Durham's proposed educational bill, he believed that it was inevitable that the government would give itself the right to select all educators in the colony. This would have grave consequences. The writer believed that as a result, the government would favour Protestant educators over Catholic ones. Although the author did admit that he was not absolutely certain that the government would act this way, he was still convinced that Durham's proposed bill would most likely lead to the death of Catholicism in the colony, and result in much greater problems. The author explained that Lord Durham had not been in this colony long enough to understand the attachment that French-Canadians had

⁵⁸⁴ *Le Populaire*, August 15, 1838.

⁵⁸⁵ *Ibid.*, September 14, 1838.

⁵⁸⁶ *Ibid.*

towards Catholicism and that it was a major part of their life, more so than in any other British colony, including Ireland. He explained that Catholic institutions had always been there to assist French-Canadians and that the population could always count on their support. He feared that such reforms would change this. He feared that by replacing priests and other Catholic educators with state-chosen and protestant ones, French-Canadians would quite simply no longer go to school.

le gouvernement aura beau envoyer des maîtres, il aura beau même taxer les habitants pour les payer, il verra les écoles désertes, s'il les établit sans l'assentiment et la participation du clergé. Pour une seule chose, nos Canadiens sont capables de sacrifier leur bourse, leur tranquillité et même leur vie, s'il fallait, et cette chose, c'est la religion.⁵⁸⁷

Similar letters criticizing Lord Durham were also sent to Lemaître's newspapers. On 3 November 1838, for example, a writer called "Un bureaucrate patente" sent a letter to *La Quotidienne* that criticized the governor, championed Lord Brougham, and asked for Durham's resignation. He explained: "Lord Durham s'en va pour se venger des griefs qu'il peut bien avoir contre Lord Brougham, [qui] a fait très bien [...] Je bénis la providence de ce qu'il quitte ce pays [...]"⁵⁸⁸ On 4 September 1838, a man called "un ami de la vérité" wrote to *Le Temps* frustrated with what Durham had done so far.

[L]ui Lord Durham, lui le champion, dit-il, des libertés des peuples et du sujet anglais, attacher une nouvelle palme à sa réputation politique, celle d'avoir eu le mérite de suspendre la loi de l'habeas corpus, ce palladium des libertés de ces concitoyens! Telle est en effet le spectacle que vient nous offrir le premier réformiste de l'Angleterre.⁵⁸⁹

⁵⁸⁷ *Ibid.*

⁵⁸⁸ *La Quotidienne*, November 3, 1838.

⁵⁸⁹ *Le Temps*, September 4, 1838.

During this period, French-Canadians did not protest or hold public demonstrations as much as the British population. As will be further be demonstrated, the English-Canadian population held several pro-Durham rallies in the final months of his tenure expressing their support and begging him to stay. French-Canadians did not participate in or hold such rallies; silence is a powerful tool of opposition, and this silence, as was suggested by several newspapers, clearly hints at their opposition to the governor. It can be easily argued that compared to French-Canadians, the British population had much more to gain with Durham's mission and a lot more to lose with his departure. They were losing an important ally in their goal of making Lower Canada British and assimilating French-Canadians. Consequently, French-Canadians did not have much vested interest in Durham's stay, especially since he had allied himself with the Constitutionists and promised the end of French-Canadian political influence and institutions. Though some newspapers claimed that silence is a clear expression of their opposition, it is worth noting that on one occasion, French-Canadians did take to the streets and vocally expressed their opposition. On 7 October 1838, more than 3,000 people, according to *Le Canadien*, gathered at the doors of the church in Saint-Roch in support of Lord Brougham, who had been burnt in effigy a week earlier by the English-speaking population of Quebec City.⁵⁹⁰ *Le Canadien* noted:

[...] il paraît qu'on s'est borné à protester contre l'insulte faite à Lord Brougham, et à déclarer que la population canadienne n'y a nullement participé, et aussi à passer un vote de remerciement en faveur de Lord Brougham et autres membres de la Législature Impériale qui ont suivi sa marche à l'égard de ces colonies.⁵⁹¹

⁵⁹⁰ *Le Canadien*, October 10, 1838.

⁵⁹¹ *Ibid.*, October 8, 1838.

It is also worth noting that there was a heavy military and police presence at the gathering, making it much riskier for French-Canadians to express their anger.⁵⁹²

Headed by C. Drolet, ex-representative at the Legislative Assembly, the demonstration aimed to show Lord Brougham that French-Canadians, unlike the colony's English-speaking inhabitants, did not hate him and wanted to thank him for fighting on their behalf. The French-Canadian press, not surprisingly, supported such a demonstration. *La Quotidienne*, for example, covered it with the title, "Houra pour les Quebecquois!! Vive Brougham!"⁵⁹³ The inhabitants present at the public assembly unanimously adopted and signed four resolutions. Including amongst these were:

1. Que loin de partager le sentiment émis par un certain parti politique en cette cité, en brûlant le très-honorable lord Brougham, en effigie, dans la nuit du 25 Septembre dernier, la masse des habitants de cette province repousse cet acte comme un outrage offert à cet illustre personnage digne de son respect et sa reconnaissance.
2. Que les remerciements sincères des habitants de cette colonie sont dus au très-honorable Brougham pour le zèle et la persévérance qu'il a toujours montrés dans la défense de leurs droits constitutionnels.⁵⁹⁴

The assembly also resolved to honor all representatives in the Imperial Parliament that defended the rights of French-Canadians, and resolved to send these resolutions to Lord Brougham. To *Le Canadien* and *La Quotidienne*, this assembly did not only represent the opinions of the people of Quebec City, but it represented that of all French-Canada. On 18 October 1838, *La Quotidienne* maintained that the goal of this assembly was simple: it was "le pays [...] blâmer lord Durham et [...] approuver lord Brougham, ce grand citoyen

⁵⁹² *Le Temps*, 16 November, 1838.

⁵⁹³ *La Quotidienne*, October 11, 1838.

⁵⁹⁴ *Le Canadien*, October 10, 1838.

de l'empire.”⁵⁹⁵ Soon after, letters were sent to the newspaper *Le Temps* supporting the assembly and its goals. On 16 October 1838, for example, a man referring to himself as “un spectateur,” maintained that the assembly had succeeded in its goal:

et qu'elle a parfaitement rempli le but pour lequel elle était convoquée, celui de se prononcer sur les nobles efforts d'un grand homme [Lord Brougham] pour faire désavouer l'ordonnance monstre de lord Durham, et de faire voir que les autodafés en effigie n'était que l'œuvre d'une petite faction.⁵⁹⁶

This letter moreover hinted to one reality that will later be explored: French-Canadians did not support Durham's Bermuda ordinances.

Not surprisingly, Durham's most loyal support came from the readers of the English-speaking press. For example, on 27 September 1838, *The Montreal Gazette* published a letter by “An Englishman” condemning Lord Brougham's actions, and described them as “personal vindictiveness.” The individual continued by arguing that

Lord Brougham has gratified a paltry and unmanly revenge against an absent and defenseless political opponent. By the arguments of a partisan and the quibbles of a pettifogger, he has paralyzed the measures, and thwarted the designs, of the Earl of Durham, and at the very moment when comparative tranquility had gleamed upon the Province and our re-animation hopes brightened with the expectation of its continuance, we have been contemptuously re-plunged into confusion.⁵⁹⁷

The readers of *The Morning Courier* also sent letters. On 25 September 1838, for example, the newspaper published a letter sent by “A,” which invited Montreal's population to hold an assembly in support of the governor, and fight to keep him in

⁵⁹⁵ *La Quotidienne*, October 18, 1838.

⁵⁹⁶ *Le Temps*, October 16, 1838.

⁵⁹⁷ *The Montreal Gazette*, September 27, 1838.

Lower Canada. If Durham remained in the colony, he will pass very important ordinances that would benefit the loyal British population and the colony in general. According to someone he claimed to be of “good authority,” the writer maintained that Durham will (or would have) complete(d), for example, a registry act, a jury bill, a feudal tenure bill, an education bill, and he would have promoted Home Government for both Upper and Lower Canada, if he were allowed to stay.

This is the Governor whom some of our wise-acres here have been reproaching for inactivity! and this is the Governor whom we are shortly to lose, and with him our chief hopes of permanent peace and tranquility in Canada. Can nothing be done to retain him here ...?⁵⁹⁸

Another letter was sent by “One who hoped for Canada,” in which he argued that if Durham was forced to leave the colony, the loyal population would not be pleased.

Let a universal cry of indignation be raised from one end of the country to the other; let the press—let public resolutions—let the unrestrained voiced of private correspondence with friends in the old country all proclaim our sense of the wrong done us: and, if Lord Durham *must* go home, with such a shoal of evidence in his favor, without one dissenting voice [...] he will be able, in his place in Parliament, to hold up the conduct of those men [Brougham and co.] to public ridicule and execration—to inflict upon them a moral crucifixion!⁵⁹⁹

Finally, the readers of *The Quebec Gazette* also championed Durham’s tenure. In an unsigned letter dated 3 October 1838, a reader stated that Lord Durham was an “injured” man and that he had the “warmest sympathies” for him. The writer wanted to tell Durham’s enemies in England just how people here “detest their motives and their conduct, more especially when it is seen that the commiseration entertain by Lord

⁵⁹⁸ *The Morning Courier*, September 25, 1838.

⁵⁹⁹ *Ibid.*

Brougham for the banished and outlawed, is not so much for them, as to gratify revenge and hatred against superior worth, even at the risk of the empire [...]" The writer continued, "Lord Brougham, to cast Lord Durham's administration to the ground, would cause England to lose from her diadem, the star of her western glory, the North American Colonies,—take away these, and where is she?"⁶⁰⁰

Although the English-speaking population sent several letters supporting Durham, its support was especially evident with the many pro-Durham assemblies they held in the weeks prior to his departure. As noted above, the French-Canadian population did not attend these assemblies as most were held in English-speaking quarters and were presided by English-Canadians. For example, on 6 October 1838, a meeting attended by all "inhabitants of Quebec favorable to British interests and connection [...]" was held.⁶⁰¹ The meeting was headed by men such as Andrew Stuart, William Walker, William Chapman, and Henry Pemberton and was attended by 3,000 people, which *The Quebec Gazette* defined as all the British and Irish elements of the colony. The newspaper made no reference to French-Canadians or French-Canadian participants. In fact, *Le Temps* only made reference to one *Canadiens* participant at the meeting: loyalist Colonel Voyer.⁶⁰² Along with expressing their continued love for the British Empire, several resolutions were agreed upon. For example, the first resolution resolved that

this meeting, entertaining the highest confidence in the firmness, justice and integrity of His Excellency the Earl of Durham, and assured that the powers vested in him would be directed to the true interests of the people, [and considered] his appointment to the Government of these Provinces as

⁶⁰⁰ *The Quebec Gazette*, October 3, 1838.

⁶⁰¹ *Ibid.*, October 6, 1838.

⁶⁰² *Le Temps*, 16 November 1838

an additional proof of the lively interests of their most gracious sovereign in the welfare of her North American possessions.⁶⁰³

They also agreed to support the steps that Durham took to restore peace and stability in the colony, which included the ordinance establishing a police force and the infamous Bermuda ordinance. All in all, this meeting was a massive show of support for Lord Durham, and although they were saddened by his sudden departure, they respected his decision and understood that his authority had been weakened by events in London. The meeting ended with “three cheers for the Queen, three cheers for British interests in North America, and three groans for Lord Brougham [...]”⁶⁰⁴ These same loyal subjects also sent an address to Durham on 9 October 1838. Although they were sad to see him cut his work short and leave the colony, they did not blame him. They believed the British government was at fault since it “weaken[ed] the moral influence of [his] government [...]”⁶⁰⁵

A similar assembly took place in Montreal, which according to the *The Montreal Gazette*, was also only attended by “the loyal and patriotic citizens of Montreal, of British and Irish origin [...]”⁶⁰⁶ The meeting took place at *St. Ann’s Market*, and was attended by several Constitutionlists, which included Peter McGill, Samuel Gerard, and Turton Penn. Like the Quebec City meeting, the assembly not only sought to express its faith in Great Britain and support for the continued connection with the Mother Country, but it also wanted to express its trust in Lord Durham. Many resolutions were also adopted, each

⁶⁰³ *Ibid.*

⁶⁰⁴ *Ibid.*

⁶⁰⁵ LAC, MG11, CO42, Series Q, File 248-2, p. 354. Address to Lord Durham from loyal subjects of Quebec City, 9 October 1838.

⁶⁰⁶ *Le Temps*, 16 November 1838 & *The Montreal Gazette*, October 2, 1838.

similarly condemning the opposition Durham received from the Imperial Parliament. The first resolution maintained that

this meeting is desirous respectfully to convey to His Excellency the Earl of Durham, its firm persuasion, that in the performance of the arduous duties of his high and responsible office, he has been actuated by an earnest desire to accomplish the object of his important mission; and to express a deep regret that the proceedings in the Imperial Parliament, affecting His Excellency, and the feeble and inefficient support received by him from Her Majesty's Ministers, by impairing the moral force of his Government, have discouraged the hope of its successful issues, and endangered the village of British North America.⁶⁰⁷

According to *Le Populaire*, no French-Canadian signed the address and resolutions in favor of Lord Durham.⁶⁰⁸

Similar smaller meetings were held in English-speaking regions all over the colony. For example, the citizens of Missisquoi, Farnham, Huntingdon and Beauharnois held several meetings in late October 1838, each expressing their regret that the governor had opted to return to England. At the Beauharnois assembly, for example, a letter signed by 1,000 people was sent to Durham expressing their solidarity.⁶⁰⁹ There was also a pro-Durham assembly in the village of Stanstead in the Eastern Townships, which was headed by some of the region's most important loyalists such as Selah Pomroy, Wm. Ritchie, Col. Wright Chamberlain, James C. Peasley, and Alexander Kilborn—there were no French-speakers. Those present also regretted Durham's decision to leave, and were also convinced that he did not abuse his extraordinary powers for his own benefits or that of his allies. Instead, they argued that he used them “for the benefit of the subject, colony,

⁶⁰⁷ *Ibid.*

⁶⁰⁸ *Le Populaire*, October 3, 1838.

⁶⁰⁹ *L'Ami du peuple*, October 26, 1838 & *Quebec Mercury*, October 13, 1838.

and Empire.”⁶¹⁰ More importantly, they disapproved of the manner in which Britain handled the Bermuda controversy, arguing that Durham’s enemies had opposed the bill for personal and vindictive reason, and had therefore “jeopardized the interest, peace and permanent welfare of Her Majesty’s loyal subjects in Canada [...]”⁶¹¹ To the loyalists of Stanstead, “the Ordinance banishing the eight self confessed traitors, which while it is denounced as illegal, must be justified by necessity as being the best alternative to prevent the exhibition of the mockery of a trial [...]”⁶¹²

6.2 OPINIONS TOWARDS DURHAM’S ORDINANCES

A. POLICE ORDINANCE

Although the Police Ordinance was meant to restore peace in the colony, it became the source of great criticism and condemnation, and caused much concern amongst the local population. While many criticized its authority and anti-French-Canadian partiality, many others shared stories about the abuse they suffered at the hands of the police. Moreover, even though the ordinance itself was passed during Durham’s council, it remained a source of conflict throughout the entire era of the Special Council.

Not surprisingly, the only support the ordinance received was from the loyalist elements of the population, albeit such support was very limited. For example, on 18 July 1838, *L’Ami du Peuple* claimed that “[l]a nouvelle police a déjà produit de très bon effets; plusieurs individus de caractère suspect ou plus que suspect ont été arrêtés [...]”⁶¹³ *The Quebec Mercury* was also very pleased with the ordinance, arguing that it was “long-

⁶¹⁰ *Quebec Mercury*, October 13, 1838.

⁶¹¹ *Ibid.*

⁶¹² *Ibid.*

⁶¹³ *L’Ami du Peuple*, July 18, 1838.

awaited” and would go a long way to eliminate the vices and disorder in both Montreal and Quebec City.⁶¹⁴ Along with these newspaper, a few residents of Trois-Rivières also supported the ordinance and sent a petition to the civil secretary expressing it. Dated 2 July 1838, the petitioners hoped “all future Ordinances made for the benefit of the said cities, may extend to the said town of Three Rivers.”⁶¹⁵ In other words, they hoped that a similar ordinance passed for their town. The petition was only signed by 50 people.

A few other newspapers came to the ordinance’s defense when a few years later it was attacked by other newspapers and the general population. On 22 February 1840, for example, *The Montreal Transcript* commented on the bad press it was receiving and claimed that it could not “help expressing our regret that these *tirades* should have been published against so useful and indispensable body [...]”⁶¹⁶ According to the newspaper, the ordinance was indispensable because it did so much more than preventing rebellions and fighting crime.

Who are the road surveyors? The police. Who attend at and preserve order in your markets? The Police--who so fit to attend to these, as well as a hundred other matters of infinite importance to the citizens, which we could enumerate?⁶¹⁷

Such support was insignificant when compared to the numerous condemnations and criticisms it received, however. One of the very first newspapers to question the ordinance was *Le Fantasque*. A month after its adoption, Aubin produced an article questioning the force’s authority and the abuse that would undoubtedly result from it.

⁶¹⁴ *The Quebec Mercury*, June 30, 1838.

⁶¹⁵ LAC, RG4, A1, Vol. 541, File 1-3, July 1838.

⁶¹⁶ *The Montreal Transcript*, February 22, 1840.

⁶¹⁷ *Ibid.*

Il aurait à remplir vingt numéros du *Fantasque* des détails de tous les abus du pouvoir confié à des mains ignorantes et brutalement zélées, mais il suffit à ceux qui désirent en connaître d'avantage, de s'arrêter un instant dans quelque'une de nos rues pour se réjouir ou s'affliger du spectacle ordinaire qu'y présente la police. Tantôt ils verront quelques enfants conduits en prison comme des malfaiteurs pour avoir irrévérencieusement ricané des gentilshommes de fraîche aristocratie; tantôt ils verront quelque bon habitant entraîné au bureau pour n'avoir point appris sur le bout du doigt l'ordonnance du Conseil Spécial [...]⁶¹⁸

It appears that Napoleon Aubin was right and that the police did abuse its authority. In early December 1838, a General Order was sent by police headquarters, attempting to prevent abuse from its force.⁶¹⁹ The order attempted to resolve one of the most pressing concerns with the police force: unauthorized and illegal arrests: “[m]any unauthorized arrests having lately been made [...] it has become necessary to promulgate the following order, for guidance of all Magistrates and Officers in command [...]”⁶²⁰ These guidelines included:

No arrest whatever shall take place, except under the authority of a Magistrate, upon sufficient evidence or deposition, nor shall final committal take place, until after the personal examination of the accused.

A Magistrate authorizing such Arrests, upon finally committing such Offenders in all places where jails and other proper places of confinement are provided, will immediately transmit to the Attorney general the depositions upon which such Offenders have been committed, with a full statement of the result of his personal examination.⁶²¹

Such abuse was not made up. Local inhabitants sent letters to newspapers and to the civil secretary expressing, illustrating and condemning the abuse they suffered at the

⁶¹⁸ *Le Fantasque*, August 4, 1838.

⁶¹⁹ LAC, RG4 A1, Vol. 556, file: Return of Circular of 29 November 1838.

⁶²⁰ *Ibid.*

⁶²¹ *Ibid.*

hands of the police force. For example, on 15 October 1840, Israël Hudon, a hotel owner in the village of St. Athanasee, sent a petition to William Coffins, Police Commissioner, complaining about how the local police had mistreated several members of his family. He explained that on 10 October 1840, a police officer entered his house and seized a man that was peacefully sleeping. The police officer, according to Hudon, “[a] renversé sur les planchers” the sleeping individual, and then forcefully dragged him to the police headquarters.⁶²² The same officer also mistreated Hudon’s wife, Caroline Hudon. Accordingly, Caroline Hudon politely approached the officer and told him that the individual did not deserve to be “ainsi maltraité” as he was quietly sleeping. The police officer was not happy to have his authority questioned and followed by committing “[des] assauts et batteries sur plusieurs personnes paisibles et respectables qui se trouvaient alors dans la maison pour leurs propres affaires,” including Caroline.⁶²³ The police officer brutally grabbed Caroline Hudon, who pleaded him to stop, and dragged her to the Police Headquarters. Athanasee Frechette, Hudon’s brother-in-law, was also viciously beaten by the same police officer during another separate altercation. Apparently, he was also beaten without any provocation. Hudon sent this petition in the hope that the commissioner would take the proper steps to punish the said officer and take measures that would prevent another similar episode from happening ever again.

Comparable stories were sent from all corners of the colony, and were not limited to French-Canadians. For example, on 17 September 1838, W. Clay mentioned that at 11pm on a Saturday, after a night at the local theatre, he stopped at a bar for a dram of

⁶²² LAC, RG4, B18, Volume 1: Miscellaneous Records relating the Administration of Justice: Correspondence, 1838-1852, File 3.

⁶²³ *Ibid.*

whiskey and a glass of water where W. Young, a police officer, forcefully dragged him out of the establishment. Although Clay was not resisting, Young, along with other officers, violently hit him and dragged him to the police station. Clay was never told why he was arrested and was released soon after.⁶²⁴ Napoleon Aubin also published one woman's unfortunate experience at the hands of the abusive Montreal police force.⁶²⁵ The woman told Aubin that she was arrested by a police officer as she was descending from her carriage. Although no reason was given for her arrest, she nonetheless agreed to come with him to the police station. Once at the police station, the woman was told she had been arrested because she was carrying sensitive documents that were valuable to the future and safety of the colony. The woman was searched and documents were indeed found, however, these were papers that related to her soon-to-be wedding. Aubin continued, "[o]r, comme le Conseil Spécial n'a pas encore rangé la cérémonie matrimoniale parmi les délits punissables de mort comme exposant la sûreté de l'Etat [...] le chef-de-police [...] permit à la suspecte demoiselle de jouir de la liberté [...]"⁶²⁶ Why was this woman arrested exactly? According to Aubin, it was simply because her family name was Girouard; the same as, but not related to, the infamous rebel.

Finally, on 7 September 1840, a man calling himself "Un ami de l'ordre" sent a letter to *La Canadienne* complaining about the police. The author believed that rather than restoring order in the colony, they have created disorder with their frequent abuse of authority. He explained that on the south shore of Montreal, where he lived,

⁶²⁴ LAC, RG4, A1, Volume 549, File: 16-19 September 1838.

⁶²⁵ *Le Fanstasque*, December 17, 1838.

⁶²⁶ *Ibid.*

[i]ls ont commencé par faire prisonniers tous les animaux qu'ils rencontrent dans le chemin et font payer l'amende aux propriétaires de ces animaux. Ils suivent en ceci les principes de la loi; aussi j'en suis content. Mais ce qui peut irriter je ne sais qui, c'est de voir que cet argent, au lieu de tourner au profit du gouvernement ou pour faire quelques améliorations, tourne au profit des aubergistes!!!⁶²⁷

In other words, rather than returning the money to the colonial government as they were supposed to, the police officers wasted it at the local pub.

With such tales of abuse and illegal arrests, it is not surprising that many condemned the police force, including the colony's French-speaking newspapers, which often maintained that the population wanted it to be dissolved. For example, on 14 August 1838, *La Quotidienne* stated that *all* French-Canadians hated the police force and explained that “[d]e toute part on n'entend que ces mots; “maudite police, infernale police, exécration police, insupportable police, s....c.... police, &c. &c.””⁶²⁸ Many other newspapers maintained that the ordinance itself was the most horrible piece of legislation passed by the Special Council. According to *La Canadienne*, for example, it deserved “à juste titre le nom d'ordonnance monstre.”⁶²⁹ Along with the above, the local population also actively expressed its hatred and circulated several petitions. For example, on 23 March 1840, Napoleon Aubin printed two of the most significant anti-police petitions. Addressed to Governor Thompson, this petition, organized by Colin Bonnichon, asked to be delivered from this “corps d'hommes barbares et tartaires,” also known as the police force. The petition explained:

⁶²⁷ *La Canadienne*, September 7, 1840.

⁶²⁸ *La Quotidienne*, August 14, 1838.

⁶²⁹ *La Canadienne*, October 6, 1840.

Nous ne saurions exprimer tout le dégoût et tout le malaise que nous ont causés les actes méchants, malhonnêtes, illégaux, déplorables, et trop longs à énumérer auxquels se sont livrés les noirs sbires habillés de bleu, depuis que les lois municipales et spéciales se trouvent administrées par eux.⁶³⁰

The petition was signed by 23,000 people. Aubin also printed a petition organized by Jose Trotedru, which was signed by 43,277 people. Trotedru first started by describing his own personal experience with the local police in Quebec City. He explained that one day as he was riding his horse into town, he was arrested by several police officers, beaten and sent to prison. His horse was also taken into custody. The next day, he went to court where he was told he could leave freely and would get his horse back. However, when he went to get it, it was not there. It had been stolen by the same police officers that had arrested him the day before. According to Trotedru, this was simply one example of the many injustices that the people of the city have had to endure.

Les voisins du voisinage, victimes comme moi des avanies de notre police, m'accotent de leurs témoignage pour vous prier de ne plus laisser courir dans les rues de Québec cette race enragées qui massacre, enchaîne, tourmente, et rend la vie amère à vos bons sujets, prend leurs chevaux, fait payer pour ne pas les ravoir et fait mal penser de votre sage gouvernement.⁶³¹

Such petitions were not only limited to the French-Canadian population, but to the British one as well. For example, on 23 May 1839, Thomas Hamilton, James Gillespie, Colin Bruce and John Gordon sent a petition to John Colborne condemning the actions of the Quebec City police force. They complained that on 18 May 1839, all four were peacefully walking with a few friends when they were confronted by a group of police officers on Mountain Street. The petitioners maintained that although they were not

⁶³⁰ *Le Fantasque*, March 23, 1840.

⁶³¹ *Ibid.*

making a single sound, they were still asked to stop. One of the police officers, a man called Thomas Ainslie Young, began questioning and interrogating the petitioners. The petitioners answered that they were “exercising in their boats [...] and were proceeding home.”⁶³² Ainslie, however, asked his fellow officers to surround the group and escort them into custody. Once in custody, several were allowed to return home, but only with a police escort. When Colin Bruce was allowed to return home, he explained that he would rather go to a friend’s house, but was not allowed to, and was thus kept in custody. Ainslie then ordered the remaining prisoners, including Bruce, to be escorted to the Station House where they were kept for three more hours, until Lieut. Russell released them. Although they were released, they were told to return in few days to defend themselves against their charges. At their trial, they were finally told why they were arrested. According to Ainslie, they were arrested quite simply because they were in a large group of people. Ainslie explained that some group of young men had been robbing homes in the city and that he suspected the petitioners. However, after their lawyer, John Davidson, demonstrated how these men were arrested without evidence, all charges were dropped. The petitioners hoped that Colborne would establish an enquiry against the conduct Ainslie and the police force for their unjust arrest.⁶³³

Mary Anne Poutanen’s doctoral dissertation offered several more examples of police abuse; these focused on Montreal’s prostitute population, however. For example, in June 1838, three constables (Thomas Grant, James Dunwoody, and William Bruce) were accused of breaking into Francis Mullin’s house (a brothel keeper). Once inside, they

⁶³² LAC, RG4, A1, Volume 585: File: 27-29 May, 1839.

⁶³³ *Ibid.*

disturbed the peace and even threatened to take Margaret Mitchell's life.⁶³⁴ Poutanen also describes an event that occurred in 1839 when Adelaide Dufresne accused Constable Thomas Webb of hitting her.⁶³⁵ Poutanen explains that prostitutes and other vagrants had ways to protect themselves from such abusive police officers. For example, many reported abuse to the local head of the police force. Although Poutanen admits that most of their reports were often ignored, some were not and as a result, some officers were even dismissed from the police force. In another article, she also explains how prostitutes had become efficient at avoiding arrest. For example, many prostitutes, street walkers and other vagrants formed small groups and travelled together to more remote areas on the island, and found refuge in farms, away from the watchful eyes of the police.⁶³⁶

B. BERMUDA ORDINANCE

Perhaps the most controversial ordinance passed by any session of the Special Council, the infamous Bermuda Ordinance divided the local population. This division was not only between French and English-Canadians, but also between the French-Canadian press and the French-Canadian population. Although the majority of the French-Canadian press commended the ordinance and the governor's clemency, evidence suggests that the population did not applaud it, and were, more importantly, not very pleased with the fact that Durham's ordinance tore several families apart. Thus, for one of the only times during the era of the Special Council, it appears that the French-Canadian press and population were on opposing sides. Once again, although historians have

⁶³⁴ Mary Ann Poutanen, "'To Indulge their Carnal Appetites': Prostitution in Early Nineteenth-Century Montreal, 1810-1842," PhD Dissertation. Université de Montréal, 1997, p. 247.

⁶³⁵ *Ibid.*

⁶³⁶ Mary Ann Poutanen, "Regulating Public Space in Early 19th Century Montreal: Vagrancy Laws and gender in a Colonial Context," *Histoire Sociale* 35 (69) (2002): p. 56.

considered the features of the Bermuda Ordinance itself, none have fully examined its reception in Lower Canada.⁶³⁷

When the ordinance initially passed, the Lower Canadian press applauded it and the governor's clemency. Only a few newspapers criticized the ordinance, and this opposition came from the loyalist and English-speaking press. First of all, however, the French-Canadian press believed that the ordinance was wise and would benefit the colony. For example, on 4 July 1838, *L'Ami du Peuple* argued that the ordinance was a great example of the governor's promise of clemency, and applauded the fact that prisoners were treated a lot more leniently than they would have under ordinary British law. The newspaper explained: "d'abord il leur évite les longueurs et les désagréments d'un procès, et les sauve de la possibilité d'une condamnation à mort ou d'un détention perpétuelle et plus sévère."⁶³⁸ The newspaper even added that the deportation of the eight prisoners was not that bad since they were being sent to a "pays fort agréable."⁶³⁹

Even newspapers that later opposed Durham supported the ordinance. On 2 July 1838, for example, *La Quotidienne* maintained that the Bermuda Ordinance was proof that Durham came to do good and would benefit the French-Canadian population.

Nous étions bien sûr que son excellence aurait assez soin de sa réputation pour ne pas la risquer dans nos affaires. Nous avons dit, dès son arrivée parmi nous, que nous attendrions sans crainte le résultat de ses investigations par rapport à nos infortunés concitoyens, et c'est avec plaisir que nous voyons que nous ne nous sommes pas tout-à-fait trompé.⁶⁴⁰

⁶³⁷ As mentioned in the introduction, although Mornet claimed to consider public opinion, his idea of public is limited to a few newspapers and political figures and therefore not good enough.

⁶³⁸ *L'Ami du Peuple*, July 4, 1838.

⁶³⁹ *Ibid.*

⁶⁴⁰ *La Quotidienne*, July 2, 1838.

Although Lemaitre admitted that he would have preferred a general amnesty for *all* prisoners, he accepted the council's decision and believed it was a wise one. *Le Canadien* was also very pleased with the amnesty shown to the majority of prisoners. Although the newspaper was quite aware that some people would undoubtedly be disappointed with the fact that a few were sent to Bermuda, the newspaper asked them to compare the situation in Lower Canada with that in Upper Canada.

Si parmi les amis des Prévenus Politiques, il pouvait s'en trouver qui auraient pensé que Lord Durham pouvait donner encore plus de latitude à l'exercice de la prérogative royale, nous les prions de comparer le sort des Prévenus du Haut-Canada avec celui des nôtres: là le glaive de la justice a fait tomber deux têtes, des condamnations infamantes ont été lancées contre un nombre d'autres, et les biens des condamnés ont été confisqués; ici rien de tel ne frappe nos Insurgés, leur vie et leur honneur sont saufs, et leurs familles ne sont pas privées de leur patrimoine.⁶⁴¹

Le Populaire also believed that the ordinance was a great example of the spirit of impartiality and compromise promised by the new governor. By limiting punishments to the leaders of the Rebellion, Durham was showing great kindness and moderation. According to the newspaper, "[l]'indulgence du gouvernement est plus grande sans doute qu'on ne pouvait s'y attendre; il faut espérer qu'il ne se sera pas montré en vain."⁶⁴² The newspaper thus hoped that the prisoners who were allowed to return home would give up the rebellious ideals and philosophies that got them in trouble in the first place and live their lives as peaceful and loyal citizens. The newspaper hoped that Durham would not come to regret his generosity. Finally, Napoleon Aubin similarly approved the Bermuda Ordinance. Although Aubin did admit that he would have liked to see fewer individuals

⁶⁴¹ *Le Canadien*, July 2, 1838.

⁶⁴² *Le Populaire*, July 2, 1838.

banished to Bermuda, he nonetheless admitted that the governor had already done enough.

[O]n ne peut s'empêcher, en considérant combien est petite dans ces décisions ainsi que dans les actes recens (sic) de l'administration, la part qu'ont eue les vœux féroces d'une partie de la population qui s'attendait au réjouissant spectacle de procédures et d'échafauds en considérant, dis-je, combien est grande la clémence en comparaison de ce qu'eut pu être la sévérité, on ne peut s'empêcher de rendre grâce tout haut au chef puissant et déterminé qui gouverne le pays [...]⁶⁴³

In fact, when Lord Brougham first criticized Durham's ordinance, Aubin actually came to its defense, and this despite the fact that he, as was explained, later celebrated Durham's departure. Not only did he applaud the fact that Durham had acted in a merciful manner, but he moreover mocked the criticism that it and he were receiving from the Imperial Parliament. Although Aubin admitted that some of Durham's decisions and actions reflected poor judgment on his part, "elles n'approchent nullement de celles de la chambre des lords et du ministère." He explained,

Nous en sommes donc aujourd'hui à décider qui est le plus ridicule et le plus ignorant, de la Chambre des Lords, du ministère ou de notre gouvernement en Canada. Je serai porté à leur faire partager également l'accusation, mais du moins la partie du ridicule doit être déversée plus particulièrement sur les ministres qui, au lieu de faire des remontrances secrètes s'il en fallait, viennent d'un seul coup détruire toute la confiance que pouvait avoir inspiré Lord Durham et sacrifier à leur propre popularité l'homme de leur création.⁶⁴⁴

Most criticism towards the bill did not come from the French-Canadian press, but came from the British one; the same press that later begged Durham to stay in Canada and violently condemned the British Parliament's actions. For example, *The Montreal*

⁶⁴³ *Le Fantasque*, July 7, 1838.

⁶⁴⁴ *Ibid.*, September 22, 1838.

Gazette, was especially concerned with the legality of the bill itself. More specifically, it was concerned with the fact that Durham had banished prisoners to Bermuda without proper trials. It explained: “[...] although it must be admitted that various objections, of both legal and constitutional nature, present themselves to the Ordinance before us. We are not strangers to the embarrassed situation in which the Executive Government discovered itself on every point with the State prisoners [...]”⁶⁴⁵ The newspaper was moreover annoyed that examples (hangings) were not made of the rebels.

We cannot, however, deeply regret that some signal example was not made of those who dared [...] to raise an insurrectionary arm against the sovereignty and supremacy of the mother country, and especially the leaders of the late unnatural rebellion. But, as we have said before, the situation of the country was such to deprive history of such an example [...]”⁶⁴⁶

The newspaper also feared that the ordinance would not fully eradicate the rebellious spirit of the French-Canadian people, and feared that the colony was doomed to go through yet another rebellion. More importantly, it feared that the rebels would take this clemency as a sign of weakness.

We are fearful that it may be construed to be a sign of timidity and weakness, and the beginning of a new reign of conciliation, a policy which has never yet, and never can produce a salutary effect upon the mind of a FRENCH-CANADIAN. Should this prove to be the case, we fear that our troubles are far from being on the wane [...]”⁶⁴⁷

The Montreal Transcript similarly believed that the bill did not go far enough, and maintained that mercy and forgiveness, in this volatile environment, would not work. The

⁶⁴⁵ *The Montreal Gazette*, July 3, 1838.

⁶⁴⁶ *Ibid.*

⁶⁴⁷ *Ibid.*

newspaper admitted that under some specific circumstances clemency could be the right path to follow, but not in this case. The newspaper explained that if the “revolutionary spirit” of Lower Canada were extinct, it was possible that all would rally around the government, “which has dispensed mercy with so bountiful a hand.”⁶⁴⁸ However, this revolutionary spirit was not dead, and unfortunately, this meant that French-Canadians were not capable of feeling any “gratitude” towards the government. The newspaper was referring specifically to the assembly in St. Roch opposing the ordinance. According to the newspaper, the people of Lower Canada

find the fate of their countrymen, whose lives have so recently been spared, a hard one. They presume to insinuate, even in the face of such unexampled clemency, the possibility of an unfair trial of such as might yet remain in prison. They lament the absence—they pray for the return of those firebrands who set the Colony in flames and whose forfeited estate [...] they sigh to have restored, that they may again be available, for want of larger funds to propagate rebellion.⁶⁴⁹

Other than *The Montreal Gazette* and *The Montreal Transcript*, the majority of the British press applauded Durham’s ordinance. For example, *The Quebec Gazette* criticized the Montreal English-speaking newspapers for their constant attacks towards the governor’s clemency and asked them to stop. Neilson believed that such criticisms would do more harm than good. He argued that they “embarrass and retard the settlement of the affairs of the Province,—add to our present sufferings and prolong them [...]”⁶⁵⁰ Neilson also believed that this generosity would benefit the colony in the long run. Revenge will not help maintain peace and harmony, but leniency will; it will create more loyalty within the population: “[n]othing but a steady and undeviating loyalty to the Sovereign,

⁶⁴⁸ *The Montreal Transcript*, July 14, 1838.

⁶⁴⁹ *Ibid.*

⁶⁵⁰ *The Quebec Gazette*, July 4, 1838.

founded on principle, without subserviency or hostility to any administration, can promote the welfare of Lower Canada.”⁶⁵¹ Along with applauding the bill’s moderation, *The Quebec Gazette*, along with several other newspapers such as *The Missisquoi Standard*, *The Morning Courier*, and *The Quebec Mercury*, also believed that the bill was completely legal. For example, *The Missisquoi Standard* did not believe that Durham acted illegally by banishing the rebels to Bermuda without a proper trial. It explained:

[a]ccording to the genius of a despotism, as traced by Montesquieu, the will of the despot is the only law. Now since the government of Lower Canada is, in a free sense of the word, a despotism, the will of the governor ought to be the law as soon as it is promulgated. [...] We will even go further; we shall suppose that the Governor General had ordered them to hand without Judge or Jury, and then we would maintain that the act was perfectly legal according to the spirit of a despotism and the letter of that now existing.⁶⁵²

The Quebec Gazette agreed with such an assessment. On 28 September 1838, it argued that it was absurd that a governor that was given unlimited authority by the Crown would have to depend on Parliament and the criminal law of England to punish the rebels. In times of rebellions, rebels must be dealt with as they acted: outside the confines of the law. Durham's ordinance, under these exceptional circumstances, was thus the right thing to do.⁶⁵³ Concerning the Bermuda controversy, Neilson defended the governor as followed:

With respect to the sending the prisoners to Bermuda, it may be an error. They are not, however, the first prisoners that have been sent there, and to England and elsewhere, from Canada. The legislative power of the Governor and Council of Lower Canada does not indeed extend to Bermuda, although we have little doubt but it is included in his

⁶⁵¹ *Ibid.*

⁶⁵² *The Missisquoi Standard*, September 25, 1838.

⁶⁵³ *The Quebec Gazette*, September 28, 1838.

commission as Governor General, Vice Admiral and Captain General of all Her Majesty's Dominions within and adjacent to the Continent of North America.⁶⁵⁴

Although the French-Canadian press clearly favored Durham's ordinance, evidence suggests that the same cannot be said about the French-Canadian population. French-Canadians could not come to terms with the fact that fellow citizens were torn from their homes and families for what they first thought was forever. As a result, several pro-ordinance newspapers not only pleaded with the population to support it, but often showed their disappointment when they opposed it. For example, on 7 July 1838, *L'Ami du Peuple* published an article stating the discontent that the Bermuda Ordinance had caused amongst French-Canadians. The newspaper was also very disappointed that as a result of this ordinance, many French-Canadians began opposing Durham. The newspaper thus pleaded with the population to leave the Bermuda bill alone.⁶⁵⁵

This plea came as a result of an anti-Bermuda Ordinance assembly that took place in Quebec City. On 4 July 1838, the citizens of St-Roch held a protest in support of the prisoners that were about to be sent to Bermuda and those exiled in the United States. The citizens of St-Roch wanted all the exiled prisoners to remain in Lower Canada and like all others be allowed to return to their homes and families. The assembly passed five resolutions. They first wanted to clarify that this was not a political protest in opposition to Lord Durham, but that they simply wished to demonstrate their sympathy to the prisoners and those in exile. Second, they wanted all prisoners to remain in Lower Canada and pay for their crimes in Lower Canada. After their crimes had been paid for, they

⁶⁵⁴ *Ibid.*

⁶⁵⁵ *L'Ami du Peuple*, July 7, 1838.

could return to society as noble and honorable individuals. They also hoped that all who sought refuge in the United States could return to the colony, their homes and their families. The assembly's leaders believed that this would help "cimenter l'union et la confiance, et à rendre facile l'état de paix, de justice, de protection, et de conciliation que nous désirons tous."⁶⁵⁶ Moreover, the assembly also demanded that the prisoners that were awaiting their trials be treated with clemency and guaranteed an impartial trial. Finally, they hoped that these resolutions be read to Charles Buller, Durham's secretary, as well as the prisoners that were about to be sent to Bermuda.⁶⁵⁷ Needless to say, the British press was infuriated with such an assembly. Whereas they had maintained that the ordinance did not go far enough, they were amazed, and quite exasperated that French-Canadians believed it went too far. On 12 July 1838, for example, *The Montreal Gazette* called the assembly "truly impertinent and ridiculous", and added "[b]ut it is worse. It is criminal, it is seditious."⁶⁵⁸

Evidence suggests that others similarly believed that the bill simply went too far. For one, a few letters were sent to the colony's newspapers. Along with the letter from a man calling himself "un spectateur" that was examined above,⁶⁵⁹ on 11 October 1838, François Lemaitre also published a letter from "Jean-Baptiste" that strongly criticized the colony's many pro-Durham assemblies. Along with condemning his anti-French-Canadian agenda and partiality, "Jean Baptiste" also explained why French-Canadians in general refused to take part in such assemblies. He explained:

⁶⁵⁶ *La Quotidienne*, July 10, 1838.

⁶⁵⁷ *Ibid.* & *The Montreal Gazette*, July 12, 1838.

⁶⁵⁸ *The Montreal Gazette*, July 12, 1838.

⁶⁵⁹ See p. 220 of this dissertation.

Le but de cette assemblée de témoigner la reconnaissance à lord Durham pour la manière *juste et libérale* avec laquelle il a administré les affaires de notre pays [...] De la reconnaissance pour le lord Durham! pourquoi? Est-ce parce qu'il a fait transporter huit de nos compatriotes et proscrit seize autres?⁶⁶⁰

Finally, the editor of *Le Fantasque*, Napoleon Aubin vowed that his newspaper would reflect the opinions and concerns of the people of the colony. In fact, rather than promoting one opinion, Aubin promised that he would “consignerai dans mes colonnes les diverses opinions telles qu'elles se trouvent exprimées par chacune des masses, des divisions, et des subdivisions de parti.”⁶⁶¹ Thus, despite the fact that he, as well as the majority of the press, applauded the bill itself, Aubin still wanted to know what the general population thought of Durham's bill. Along with publishing a few letters to the editor, Aubin also walked the streets of Quebec City and even knocked on people's doors, invited himself in, and discussed current events with regular folk. In the wake of the adoption of the Bermuda Bill, he took to the streets and tried to figure out what was being said about the ordinance itself. What he reported was the underlying anger amongst the population resulting from the fact that Durham had sent eight individuals in exile and tore eight families apart.

On the topic of Durham himself, most were, according to Aubin, initially willing to give him a chance and were willing to believe that, without a Legislative Assembly bickering and fighting amongst itself to contend with, he could restore peace and stability to the colony. On the topic of the Bermuda Ordinance, they were not as patient and understanding, however. Most people he spoke to simply could not understand why the

⁶⁶⁰ *La Quotidienne*, October 11, 1838.

⁶⁶¹ *Le Fantasque*, July 14, 1838.

governor opted to ban eight people to Bermuda rather than returning them to their families. One neighbor explained.

quant à moi je n'vois pas queu mal qu'y aurait eu pour le gouvernement de les laisser z'aller dans leu famille, ben tranquillement, ça nous aurait montré et à eux aussi que n'y avait rien à gagner à vouloir faire des révolutions dans ces tems-ci et ils auraient dit à tout l'monde qu'était comme eux dans la trompe que ça valait mieux d'mander la justice poliment que d'attendre des américains qui n'en ont pas trop pour leur part. J'sais ben qu'si le gouvernement d'actuellement avait été aussi mauvais qu'l'autre y'aurait eu ben du monde de jugé [...] ⁶⁶²

It appears that the local population also had the support of the *Patriotes* elite.

When the Bermuda Ordinance was adopted and banished several *Patriotes* leaders and friends thousands of miles away, the optimism that some first expressed towards Durham's soon turned to anger and opposition. In a letter to Dr. O'Callaghan, Perrault stated that no one was happy in Lower Canada with this decision: "[a]ussitôt la triste nouvelle de répandit partout à Montréal et fut le sujet de toutes les conversations. Aucun des parties n'en fut content."⁶⁶³ Perrault was especially saddened by the deportation.

Jugez de cette triste scène. Wolfred Nelson était entouré de ses quatre petits enfants; on dit que l'on ne pouvait rien voir de plus déchirant: imaginez-vous de voir un père plein de courage consolant ses tendres enfants; eux, d'exprimer leur douleur, lui dire: "Quoi, papa, nous ne te reverrons jamais?" Le père, avec toute sa fermeté héroïque, de les encourager et de les entretenir sur des sujets étrangers. ⁶⁶⁴

Louis-Joseph Papineau was similarly disappointed in the Bermuda Ordinance. In a letter to Dr. Joseph-Guérard Nancrède, he stated that the banishments were "un excès

⁶⁶² *Ibid.*

⁶⁶³ Letter from Perrault to O'Callaghan, July 4, 1838, in Perrault, *Lettres d'un patriote réfugié au Vermont*, p. 126.

⁶⁶⁴ *Ibid.*, pp. 126-27.

d'autorité, une détermination adoptée par lui seule. S'il en est ainsi, sa mission est terminée, il perd tout crédit, toute influence auprès de la majorité du pays.”⁶⁶⁵ According to Papineau, Durham's reputation in Lower Canada will forever be negatively affected as a result. In late September 1838, Papineau also wrote a letter to politician John Arthur Roebuck, and explained why he believed it was the worst act that Durham had passed in Lower Canada.

Mais ce qui est bien pire, c'est sa criminelle étourderie ou sa brutal malice d'avoir envoyé à la Bermude, pour les y retenir sous surveillance, nos infortunés compatriotes, sans avoir pourvu à ce qu'ils fussent nourris. [...] Les proscrits en Sibérie reçoivent des rations: l'ambassadeur anglais à Saint-Pétersbourg [Durham] veut-il enchérir la barbarie du system qu'il a étudié?⁶⁶⁶

6.3 CONCLUSION

When compared to Colborne's first session, the press, political elite and local population were fortunately more vocal about the Special Council, its leader, and the very few ordinances it passed. Newspapers and the political elite especially took more liberties when discussing Durham's tenure and ordinances. Although the local population was much more vocal in exhibiting its support or discontent, there is still a very modest amount of evidence when compared to the final two sessions of the Special Council. It is true that the Bermuda ordinance and Durham's association with the Constitutionals did result in many letters to the editor and a few public protests, however, these were rather tame when compared to those that resulted from the Three-Rivers Ordinances, the Union debates, and the infamous Sleigh Ordinance.

⁶⁶⁵ Letter from Papineau to Dr. Joseph-Guérard Nancrède, August 9, 1838. Papineau, *Lettres à divers correspondants, Tome 1: 1810-1845*, p. 401.

⁶⁶⁶ Letter from Papineau to Roebuck, September 28-30, 1838, *Ibid.*, p. 407.

The overall reaction to Lord Durham's tenure at the head of the Special Council was very interesting. Although it appears that the colony was initially willing to support Durham and had faith in his mission and council, this soon ended when it became evident that he had allied himself with the enemies of French-Canadians. Evidence provided suggests that Durham initially gained much support because he promised to govern the colony and his Special Council with the spirit of impartiality and clemency. After the blatant favouritism that was exhibited by Colborne, there was much hope when the new governor dissolved his predecessor's council and vowed to ignore local prejudices. To many, Durham arrived as a savior.

However, when Durham began to favor the Constitutionals, the press, the political elite and the French-Canadian population turned against him, referring to him as a dictator and a despot, and asked for his departure from the colony. The final weeks of Durham's mission in Lower Canada were especially telling. He was not only the source of much criticism from the local French-Canadian press and *Patriotes* elites, but the local population also got involved and showed the governor what they really thought of him. Not only did the citizens of St-Roch hold a rally in favor of Brougham and asked for his departure, but the French-Canadian population remained silent and refused to participate in the colony's many pro-Durham rallies. When Durham resigned following the Bermuda controversy, the only support he received was from the English-speaking population, which held numerous rallies begging him to reconsider his decision and stay in the colony. The French-Canadian population remained silent and counted the days until this man, that had betrayed the colony by associating himself with the Constitutionals and adopted two of the most detested ordinance, left for good.

CHAPTER 7:

COLBORNE'S SECOND COUNCIL AND THE PEOPLE

“[...] Sir John Colborne a repoussé le peuple, l'a dégouté, l'a froisé dans ses sentiments les plus délicats, l'a jeté dans le désespoir, a détruit sa confiance dans la justice des autorités [...]”⁶⁶⁷

After the partiality practiced by Colborne's first council, the French-Canadian population did not applaud his return in early November 1838; it was in fact much more vocal in its opposition, especially because two of the Special Council's most controversial ordinances were adopted during this period.⁶⁶⁸ One of them was even boycotted by the local population and eventually altered as a result. Newspapers, unfortunately, were not more vocal. This was also a very difficult time for French-Canadian newspaper as several, including *Le Populaire*, *La Quotidienne*, *Le Temps*, and *Le Courier Canadien*, stopped printing. The only French-Canadian newspapers that remained were *Le Canadien*, *Le Fantasque*, and *L'Ami du Peuple*. Luckily, in the second half of Colborne's council, new French-Canadian newspapers, including *La Canadienne* and *L'Aurores des Canadas*, began to appear.⁶⁶⁹

Opinions on Colborne's general practices and on his councilors have already been discussed in chapter 5; the following will therefore focus on the local response to the two highly debated ordinances that passed during this session. It is worth noting, however, that the following excerpts provide a good example of the general attitude towards Colborne's second tenure, both referring to him as a strict, unjust and unpopular tyrant.

⁶⁶⁷ *Le Canadien*, October 2, 1839.

⁶⁶⁸ Although historians have considered, in greater length, the road ordinance, the same cannot be said about the Habeas Corpus Ordinance.

⁶⁶⁹ Although some of these newspapers were such as *Le Populaire* and *Le Canadien* were briefly considered by historians such as Jacques Mornet, the majority have yet to have been fully examined, especially in this context.

For example, on 17 November 1838, Napoleon Aubin provided the following answer when asked whether he would mock and criticize Colborne as he had done with Durham:

Non parbleu; il vous enverrait de suite quatre mille hommes de troupes, la fleur de l'armée anglaise, cavalerie, infanterie, génie, artillerie, bombes, boulet, obus, mitraille, fusée à la congrève et tout le tremblement et vous mettrait *subito* à feu et à sang, tirerait sur vous à boulets rouges, [...] on passerait vos apprentis au fil de l'épée, réduirait votre imprimerie en cendres et en poudre, enverrait la police pour vous arrêter et les volontaires pour soigner vos effets.⁶⁷⁰

Aubin did continue to mock the governor and his Special Council, however, which got him in a significant amount of trouble. On 31 December 1838, his newspaper was forced to shut down and remained closed until 8 May 1839.⁶⁷¹ Étienne Parent, on the other hand, summed up Colborne's second tenure with the following:

De toute la population Canadienne Française, qui forment les quatre cinquièmes du total de la population, il n'est presque pas une famille qui n'ait été frappé plus ou moins injustement et trop cruellement dans quelqu'un de ses membres; bien plus nous dirons que cette population entière a reçu le contrecoup des rigueurs qu'on a exercées, car d'après la manière dont les choses ont été conduites chacun a senti que les coup étaient dirigés contre la masse entière de la population Canadienne Française [...] Sir John a repoussé le peuple, l'a dégouté, l'a froissé dans ses sentiments les plus délicats, l'a jeté dans le désespoir, a détruit sa confiance dans la justice des autorités, et a laissé une tache d'Hercule au prochain administrateur. S'il réussît, son nom sera placé à coté du nom vénéré de Sir George Prévost, comme la place du nom de Sir John Colborne est déjà fixée à coté du nom de Sir James Craig.⁶⁷²

The French-Canadian population did suffer at the hands of Colborne's controversial ordinances. While some were illegally imprisoned as a result, others were illegally fined. However, the local population did not accept these without a fight.

⁶⁷⁰ *Le Fantasque*, November 17, 1838.

⁶⁷¹ Unfortunately, Napoleon Aubin did not give a reason why he returned on this date.

⁶⁷² *Le Canadien*, October 2, 1839.

7.1 OPINIONS ON ORDINANCES PASSED

Throughout Colborne's second tenure, opinions and discussions focused on two ordinances: the Habeas Corpus and the *Cahots* Ordinances. The French-Canadian press, elite and masses all had something to say about either ordinance, and needless to say, opinions were not favorable. Although there were some minor discussions regarding the Union of the Canadas, and changes made to the local judicature and seigneurial systems, these will be discussed in the next chapter as each was adopted and passed by Thompson's council

A. THE HABEAS CORPUS CONTROVERSY

As was explained in chapter 5, only a few French-Canadian newspapers quietly showed their discontent with the ordinance suspending habeas corpus when it first passed. However, this quiet opposition reached a whole other decibel when in late 1838 two judges of the King's Bench, Philippe Panet and Elzéar Bédard, maintained that the ordinance went beyond the powers of the council and was unconstitutional (despite the fact that Glenelg allowed the council to pass such an ordinance as discussed in chapter 3), and issued a writ of habeas corpus on behalf of John Teed. In doing so, both judges went above the governor's authority and refused to obey his orders. This was of course embarrassing for Colborne and his council. In December 1838, Panet and Bédard were consequently called to explain their actions. The following events divided the colony. Not

surprisingly, the English-speaking population sided with Colborne and the French one with the two judges.⁶⁷³

First of all, who were these two judges? Born in 1791, Philippe Panet began studying law in 1811. His studies were put on hold, however, when he joined the 1st Militia Battalion during the War of 1812. After the conflict, he completed his degree and was called to the bar in April 1817. He was also very politically active. He represented Northumberland in the Legislative Assembly from 1816 to 1824 as well as Montmorency from 1830 to 1832.⁶⁷⁴ In June 1832, Panet left politics when he was made judge of the King's Court for the district of Quebec by Lord Aylmer. Panet also served as a Justice of the Peace in 1833, 1836 and 1838, and was also a member of Durham's Executive Council.⁶⁷⁵ Born in 1799, Elzéar Bédard was called to the bar in August 1824, and like Panet, was also very politically active. His first foray in politics was unsuccessful, however; he was defeated in the 1830 elections in Kamouraska. That same year, he, along with four other individuals including Étienne Parent, resuscitated the newspaper *Le Canadien*. Two years later, he finally gained his seat in the Legislative Assembly when he

⁶⁷³ Fecteau and Greenwood have briefly considered the Panet/Bedard episode in their articles. In this section, I will consider the episode in greater detail and show that they received a significant amount of support from the local population. Jean-Marie Fecteau, "'This Ultimate Resource': Martial Law and State Repression in Lower Canada, 1837-38," *Canadian State Trials, Vol 2: Rebellion and Invasion in the Canadas, 1837-38*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002), pp. 207-247; F. Murray Greenwood, "The General Court Martial at Montreal, 1838-39: Legal and Constitutional Reflections," in *Canadian State Trials, Vol 2: Rebellion and Invasion in the Canadas, 1837-38*, eds. F. Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002): 325-352 and F. Murray Greenwood, "The General Court Martial of 1838-39 in Lower Canada: An Abuse of Justice," *Canadian Perspectives on Law and Society: Issues in Legal History*, eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), pp. 249-290.

⁶⁷⁴ Unfortunately, Panet's biographies from the *Dictionary of Canadian Biography Online* or the National Assembly of Quebec website do not list what party he represented. It is probable that he represented Papineau's party, however, as his replacement in the Legislative Assembly, Elzéar Bédard, sides with the *Patriotes* and Papineau.

⁶⁷⁵ This information was taken from *Dictionary of Canadian Biography Online*. "Panet, Philippe." Claude Vachon. Vol. VIII. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=4118&&PHPSESSID=cpeghsd17dof14ufuactumvn6

replaced Phillipe Panet as the representative for Montmorency. Although Bédard sided with and joined the *Patriote* Party, historians have minimized his role and support arguing that he was, amongst other things, not enthusiastic about the 92 Resolutions. According to Michel Bibaud, during discussions on the resolutions themselves, Bédard barely had anything positive to say about them. He was considered the leader of the more moderate wing of the party called the Quebec Party. In February 1836, Bédard also left politics when he was appointed judge of the King's Court.⁶⁷⁶

The controversy itself began in late 1838 when a Quebec City tailor, John Teed, was imprisoned under suspicion of High Treason. Convinced that Teed was imprisoned without proper evidence, and thus illegally, the two judges asked that a writ of habeas corpus be issued, and this despite the fact that the Special Council had recently suspended this procedure. According to the two judges, the prisoner was allowed to know why he was imprisoned, and what evidence the governor had against him. On 21 November 1838, Panet and Bédard were called before the Solicitor General to explain their actions. Panet was the first to take the stand. As was previously noted, in order to further justify the ordinance suspending habeas corpus, Colborne and the Special Council passed a resolution claiming that habeas corpus had never been a right in Canada. The first question that Panet therefore had to answer was whether he believed this was incorrect. His answer was yes. He explained,

Et pour cela il suffira d'examiner si cette loi faisait ou non partie du droit criminel anglais, lorsqu'il a été introduit ici par l'acte de la 14e Geo. III, ch. 83. Or, en vérité il est difficile d'en douter. En fait de procédure en matière

⁶⁷⁶ This information was taken from the *Dictionary of Canadian Biography Online*. "Bédard, Elzéar." Claude Vachon. Vol. VII. http://www.biographi.ca/009004-119.01-e.php?id_nbr=3283&&PHPSESSID=cpeghsd17dof14ufuancumvn6

criminelles, la première démarche est d'arrêter la personne incriminée, et sur ce, l'individu arrêté a droit à l'appel de l'ordre de son arrestation à un tribunal supérieur, pour faire examiner et décider dans la forme d'un writ d'erreur, la légalité ou l'illégalité de son emprisonnement. L'on a tellement regardé en Angleterre que le writ d'Habeas Corpus faisait partie du droit criminel, que l'on a été d'opinion que les cours de plaidoyers communs et de l'échiquier n'avaient pas le pouvoir de l'émaner, parce que leur juridiction ne s'étendait qu'à des matières civiles.⁶⁷⁷

In other words, Panet argued that as a result of the 1774 Quebec Act—after which British criminal laws were introduced in the colony—habeas corpus, an integral part of British criminal law, consequently became a right in Lower Canada, and one that had been used frequently ever since.

Panet then gave his opinion on the Habeas Corpus Ordinance itself. He maintained that the ordinance itself was void because the Special Council did not have the authority to change the colony's laws and constitution "[...] car il lui est défendu [, par son acte constitutif,] de rappeler, suspendre ou changer aucune disposition d'aucune acte du Parlement de la Grande Bretagne ou du Parlement du Royaume Uni etc."⁶⁷⁸ According to Panet, the Special Council eliminated one of the colony's most significant rights. Although some argued, as will shortly be explored, that the Special Council was granted *all* of the powers and authority of the Legislative Assembly and as a result had the right to change and alter the colony's laws and constitution, thus making the ordinance legal, Panet believed that this was not the case. He referred to an important directive from the act that established the Special Council itself:

⁶⁷⁷ LAC, RG4, A1. Vol. 557. File: Executive Council Reports, part 1, December 1838. *Quebec*, 21 Novembre 1838. *Motifs de l'honorable Juge Panet. Sur la requête de J. Teed demandant un writ de l'habeas Corpus en vertu de la 31 ch. 2, ch. 2.*

⁶⁷⁸ *Ibid.*

qu'il ne sera non plus loisible par une telle loi ou ordonnance, de rappeler, suspendre ou changer aucune disposition d'aucune acte du Parlement de la Grande Bretagne ou du Parlement du Royaume Uni ou d'aucune acte de la Législature du Bas Canada, telle que maintenant constituée, qui rappelle ou change aucune actes des dits parlements.⁶⁷⁹

Thus, since the colony's criminal laws had been established by the Parliament of Great Britain and the Legislative Assembly of Lower Canada, which he stated the Special Council did not have the authority to alter, Panet maintained that the ordinance went far beyond its authority and was therefore null. Panet therefore concluded that he had the "intime conviction que nous ne pouvons, sans une injustice palpable, refuser au Pétitionnaire [John Teed] le writ d'habeas corpus qu'il demande."⁶⁸⁰

Bédard then took the stand and first began by admitting that he was not opposed to the law itself. As a loyal and peaceful citizen, he claimed that he if could relinquish certain rights to ensure peace and stability in the colony, he would gladly have done it. However, as a judge, he explained that he had to first and foremost protect the laws of the state, and this was the reason why he opposed the ordinance and issued the writ of habeas corpus to the prisoner. As a judge, he could not idly stand by when the rights of a prisoner were being abused. Bédard even added that if he had any doubts regarding the ordinance's legality, he would have sided with the Special Council for the greater good of the colony. Unfortunately, this was not the case; the ordinance, he concluded, was clearly illegal.

First of all, Bédard questioned the actual impact of the ordinance itself and asked whether an act suspending habeas corpus would allow the government to arrest an

⁶⁷⁹ *Ibid.*

⁶⁸⁰ *Ibid.*

individual without explanation or evidence.⁶⁸¹ In short, his answer was no. Bédard argued that the rules of law were a little more complex than what the council and governor seemed to imply. According to Bédard, quoting British legal specialist William Blackstone, “the effect of a suspension of the habeas corpus is not in itself to enable any one to imprison suspected persons without giving any reasons for doing so [Bédard's underlining], but it prevents persons who are committed upon certain charges from being bailed, tried, or discharged for the time of the suspension, except under the provisions of the suspending act.”⁶⁸² Bédard thus explained that

En faisant usage de cette autorité, plein de sens, comment, dans la circonstance actuelle pouvons nous juger “des raison” qu'a eu l'accusateur de former ses soupçons sans accorder le Bref demandé et sans nous aider des dispositions prises par le Magistrat? Ce dernier même en admettant la suspension de toute loi d'habeas corpus, ne peut emprisonner “une personne suspecte sans donner des raisons.” Or le seul mode d'avoir des raisons serait suffisante pour me convaincre de la nécessité d'accorder le Bref demandé.⁶⁸³

In other words, Bédard maintained that even without habeas corpus, no man could be imprisoned without a proper explanation or evidence. The ordinance was thus, by and large, useless. Bédard moreover added that the only way to know whether Teed was truly guilty of treason was to issue the writ of habeas corpus and bring him to trial. Only then could Teed be found guilty and punished, legally, to the fullest extent of the law.

Like Panet, Bédard also maintained that the Special Council did not have the legal authority to ban habeas corpus. He explained that if the ordinance itself were legal, it would undermine all of the rights that British subjects were granted by the Imperial Act

⁶⁸¹ *Ibid.*

⁶⁸² *Ibid.*

⁶⁸³ *Ibid.*

of 1774 (the Quebec Act). The Special Council simply did not have the authority to alter laws that were established by an Imperial Act. If Panet and Bédard obeyed the will of the Special Council, they would be disobeying the laws of the empire itself. Bédard concluded that “une pareille doctrine serait monstrueuse.”⁶⁸⁴ Bédard argued that if things were so bad in the colony, and that so many people were planning on betraying the British Empire, why did the Special Council not ask the Imperial Parliament itself to ban habeas corpus rather than doing it itself? He claimed that only the Imperial Parliament was allowed to revoke habeas corpus. The Imperial Act was of “autorité souveraine” and had to be followed to the letter, not only by the colony’s judges, but all councils and assemblies, which included the Special Council.⁶⁸⁵ Like Panet, Bédard reminded the council that the act that created it specifically maintained that it did not have the right to change, alter and abolish the colony’s existing laws and constitution: “[s]i des mots peuvent être plus clairs et distincts, ce sont ceux-là.”⁶⁸⁶

Unfortunately for the two judges, Colborne did not agree with their reasoning and removed them from their positions on 10 December 1838. The judges he removed remained without a job until August 1840 when Thompson finally reinstated them. Thompson did not do so because he believed that the two were right, however. He did so for purely political reasons. According to historians James H. Lambert and Jacques Morner, French-Canadian nationalists were trying to turn the judges into political martyrs,

⁶⁸⁴ *Ibid.*

⁶⁸⁵ *Ibid.*

⁶⁸⁶ *Ibid.*

and use them against the Union of the Canadas. Thus, because Thompson “did not want political martyrs threatening the fragile union [of the Canadas]” he reinstated them.⁶⁸⁷

Despite their apparent failures in convincing Colborne, Panet and Bédard did convince French-Canadians that the ordinance went beyond the powers of the council and even inspired a few to fight it as well. For example, shortly after the Panet-Bédard controversy, and a few weeks after they issued their own, judge Joseph-Remi Vallières also issued a writ of habeas corpus. Similar to Panet and Bédard, Vallières had a distinguished legal and political career. After being called to the bar in 1812, he was elected to the Legislative Assembly for Saint-Maurice in 1814, and was defeated and reelected on several occasions over the following two decades. In the assembly, he sided with the *Patriotes*, but was also considered one of its more moderate elements. In 1829, he was appointed provincial judge for the district of Trois-Rivières and a year later was made resident judge of the Court of the King’s Bench in the same district. He was considered by Lord Durham as one of Canada’s premier legal minds and was appointed to the Lord’s Executive Council in 1838.⁶⁸⁸

On 6 December 1838, Vallières issued a writ of habeas corpus in favor of Celestin Houde who was imprisoned on the suspicions of treason and for seditious words.⁶⁸⁹ Shortly after, he asked that a writ of habeas corpus be issued. At Houde’s hearing, his lawyer argued that the Special Council did not have the authority to pass a law suspending habeas corpus. The crown’s lawyer, on the other hand, maintained that as a

⁶⁸⁷ *Dictionary of Canadian Biography Online*. “Vallières de Saint-Real, Joseph-Remi.” James H. Lambert & Jacques Monet. Vol. VII. http://www.biographi.ca/009004-119.01-e.php?&id_nbr=3706

⁶⁸⁸ *Ibid.*

⁶⁸⁹ LAC, RG4, A1. Vol. 557. File: Executive Council Reports, part III, December 1838. *Juges Vallières reasons for having bailed Celesting Houde, December 6, 1838.*

result of the special circumstances created by both Rebellions, the Special Council had the authority to do anything it could to ensure peace and order in the colony. Vallières was the judge at the hearing and was charged with making the fateful decision. After careful deliberations, he allowed it because, like Panet and Bédard, he believed that habeas corpus was still “un recours légal [in the colony] [...] C'est un recours confirmé, facilité, et rendu plus efficace par plusieurs Statuts d'Angleterre.”⁶⁹⁰ Despite the Special Council's ordinance, habeas corpus was a natural right of all British subjects as it was granted by the British Crown, and no ordinance passed by the council could get rid of it.

According to Vallières, he was not breaking any law, but was quite simply allowing a prisoner's natural right to know why he was imprisoned. All he was therefore doing was abiding by the laws that had been passed by the Imperial Parliament and the British Crown; “[o]r si la législature [Imperial Parliament] a précisément reconnu dans une loi publique que l'Habeas Corpus Act d'Angleterre peut servir de base à un bref d'Habeas Corpus dans cette province, quel juge, quelle cour, quelle autorité provinciale pourra dire le contraire?”⁶⁹¹ Although Panet and Bédard maintained that the habeas corpus became an official law in Canada with the Quebec Act of 1774, Vallières believed that it became a law before that. The Habeas Corpus Act, passed in Great Britain in 1679, had since been an integral part the British Criminal law, and the latter was introduced in Canada with the Royal Proclamation of 7 October 1763. After this date, Canada, he explained, became a British colony and a part of the British Empire, thus adopting all of its laws. Like the other two, Vallières believed that the Special Council had overstepped its authority when passing the ordinance, which was therefore null and void. He explained

⁶⁹⁰ *Ibid.*

⁶⁹¹ *Ibid.*

that the provincial authority [the Special Council] went over the head of the supreme authority of the empire [the Imperial Parliament].⁶⁹² To prove his point, Vallières similarly referred to the section of the act that created the Special Council stating that it was prohibited from changing, voiding and altering any of the colony's laws and rights.

Vallières also stated that if his decision was wrong, he was confident that it would be fixed by a proper authority. This proper authority did not include the Special Council. Vallières concluded by stating that the most important aspect in maintaining public good was the necessity to respect the laws of the empire; no society or government could exist without the rule of law. As a result, he concluded that

je me dois comme juge des Trois-Rivières [...] à accorder le bref d'Habeas Corpus en matière criminelle [...] Ainsi je suis d'avis qu'il existe en cette province des lois d'Habeas Corpus en matière criminelle, inaccessibles aux pouvoirs de la Législature actuelle de la Province [...]⁶⁹³

Colborne did not accept this reasoning, and similar to Panet and Bédard, removed Vallières from his position on 27 December 1838.

As a result of these acts of defiance from high-ranking judges, and their subsequent dismissal, the habeas corpus ordinance received much more attention than it had garnered when it first passed. Everyone had an opinion on the matter, and not surprisingly, French and English-Canadians did not share similar views. English-speaking judges quickly came to the aid of the Special Council and claimed that the ordinance was legal. Chief Justice Stuart and Justice Bowden clearly sided with the Special Council and countered every argument made by Panet and Bédard. According to Justice Bowden, the

⁶⁹² *Ibid.*

⁶⁹³ *Ibid.*

legality of the ordinance itself was a non-issue because habeas corpus was never introduced in Canada.⁶⁹⁴ He explained that the 1763 Proclamation did not establish British criminal laws in the colony. On the contrary, “the principle object of that Statute was to *restore* and to secure to the inhabitants of the newly acquired country, not only the free exercise of their religion, but also their ancient laws, usages and customs with respect to real property and civil rights, and to exclude all criminal modes of proceeding which might have obtained in the Province prior to the year 1764.”⁶⁹⁵ He stated that the 11th section of the proclamation explained this:

And whereas the certainty and lenity of the criminal law of England, and the benefits and advantages resulting from the use of it, have been sensibly felt by the inhabitants from an experience of *more than nine years, during which it has been uniformly* administered, be it therefore enacted, &c. that the same shall *continue* to be administered and shall be as Law in the Province of Quebec, as well in the description and quality of offence, and the punishment and forfeitures thereby inflicted, to the exclusion of every other rule of criminal law or mode of proceeding therein, which did or might prevail in the said province before the year of our Lord 1764, anything in this Act to the contrary thereof in any respect notwithstanding;—subject nevertheless, to such *alterations* and amendments as the Governor, Lieutenant Governor or Commander in Chief for the time being, by and with the advice and consent of the Legislative Council of the said province hereafter to be appointed, shall from time to time cause to be made therein in manner herein described.⁶⁹⁶

Chief Justice Stuart also believed that habeas corpus had never been a right in Canada. Moreover, he believed that even if it was a right, the Special Council had the authority to suspend it because it had been given *all* of the authority of the former Legislative Assembly. Stuart first explained that the act that created the Special Council

⁶⁹⁴ *Report of the Case of John Teed on an Application for a Writ of Habeas Corpus, decided by the Court of King's Bench at Quebec, also: the opinions of Justices Panet and Bédard, delivered in vacation, upon the same case* (Quebec: Printed by Thos. Cary & Co., 1839), p. 5.

⁶⁹⁵ *Ibid.*

⁶⁹⁶ *Ibid.*

conferred “on the newly constituted legislature, subject to certain restrictions to be presently mentioned, the same legislative power which was vested in the suspended legislature [...]”⁶⁹⁷ One of the rights that the Legislative Assembly had was the authority to repeal, suspend and alter any part of the colony’s criminal and civil law. According to Act 31, Geo III, 33d Section,

all laws, statutes and Ordinances, which should be in force on the day to be fixed, in the manner therein after directed, for the commencement of that act, should remain and continue to be of the same force, authority, and effect, in each of the said provinces, respectively, as if that act had not been made, &c., except in so far as the same are expressively repealed or varied, by that act, or in so far as the same should or might, thereafter, by virtue and under authority of that act, be repealed and varied, by His Majesty, his heirs or successors, by and with the advice and consent of the Legislative Councils and Assemblies of the said provinces respectively.⁶⁹⁸

Stuart even explained that several alterations were made to the colony’s laws by the former Legislative Assembly “by repealing and modifying statutes of the Parliament of England and of Great Britain [...]”⁶⁹⁹ Stuart thus believed that because the Special Council was granted the same authority as the Legislative Assembly, it had the authority to alter and change the colony’s laws.

Stuart did, however, consider the limitations that were imposed on the Special Council; that which did not grant it “1st. The power of imposing taxes. 2d. The power of making any alteration in the existing law, respecting the constitution and composition of the Legislative Assembly. 3d. The power of repealing, altering, suspending any provision of any act of Parliament, or any at of the suspended Legislature, repealing or altering such

⁶⁹⁷ *Ibid.*, p. 1.

⁶⁹⁸ *Ibid.*

⁶⁹⁹ *Ibid.*

act of Parliament.”⁷⁰⁰ According to Stuart, the third limitation was the one that most used when arguing that the ordinance itself was null and went beyond the Special Council’s authority. He explained that this restriction was a little more complicated than opponents of the Special Council implied. It did not specifically mean that the Special Council could not alter the colony’s laws and constitution. He explained,

By the use of the words any “Act of Parliament” without limitations, has given occasion to a misconstruction of the import these words [...] The words any “Act of Parliament” are construed, on the part of the applicant [Bédard and Panet], as importing *every* act of Parliament whatever which makes part of the law of this Province; whereas according to a sound interpretation of these words, and the sense in which, in our opinion, they were understood by the Legislature, they import, not *every* act of Parliament, but such acts only, as have been made for the colonies in general, or for Canada in particular.

Stuart continued,

If the former construction were adopted, the Provision, instead of being consistent with the purview and body of the Statute, would be destructive of it, in principle and policy: it would be so also, without the attainment of any reasonable object or purpose, and in direct contradiction to the general policy, that has governed the parent state, in relation to its dependent colonial Legislatures, which have been permitted to repeal, suspend and alter any portion of their laws, whether civil or criminal, not enacted for them, but the Supreme Legislature of the Empire. If the construction now held to be erroneous were adopted, the newly constituted Legislature would be absolutely powerless.⁷⁰¹

Stuart thus concluded that if Bédard and Panet’s interpretation of the act that created the Special Council were right, it would have become a completely useless body, which he believed was not the goal of the Imperial Parliament, especially when one considers the recent disturbances and the reason for creating the council itself (to promoted peace and

⁷⁰⁰ *Ibid.*, p. 2.

⁷⁰¹ *Ibid.*

ensure stability). Stuart believed that the power to alter laws was even more important in a period of civil strife and rebellion, and was convinced that this was an opinion shared by the Imperial Parliament. He even believed that the powers of the council needed enlargement, and not suffer abridgement, if public safety were to be restored.⁷⁰²

Judge Vallières actions were also heavily criticized. For example, both the Attorney General (Charles Richard Ogden) and Solicitor General (Andrew Stuart) condemned his actions. Whereas Ogden simply countered Vallières' arguments by claiming that habeas corpus was never a right in the colony, Stuart went much further. First of all, like Chief Justice Stuart, he believed that the ordinance itself was legal because the act that created the council gave it the

power and authority to make ordinances for the peace, welfare and good government of the said province, as the Legislature of Lower Canada as now constituted is empowered to make, and that all laws or ordinances so made subject to the provisions thereafter contained for disallowance thereof by Her Majesty shall have the like force and effect as laws passed before the passing of this Act by the Legislative Council and assembly of the said Province of Lower Canada and assembled to by Her Majesty or in Her Majesty's name, by the Governor of the said Province.⁷⁰³

The Solicitor General also attempted to undermine and minimize the limitations imposed on the Special Council. He explained that discussing these limitations and their meaning was useless because the Special Council had been granted the same authority as the Legislative Assembly, and could therefore alter the colony's laws and constitution. This had been done a number of times by the suspended assembly. The 1791 Constitutional Act granted the local legislature the authority and power to amend or alter the colony's

⁷⁰² *Ibid.*, p. 3.

⁷⁰³ LAC, RG4, A1. Vol. 557. File: Executive Council Reports (part III), December 1838. *Letter from Solicitor General, dated December 23, 1838.*

criminal laws, even though they had been established by royal statutes. According to the Solicitor General, “[t]his power has from time to time been exercised without being questioned [...]”⁷⁰⁴ Thus, because the assembly had the power to change, and on several occasions, did change the colony’s laws, the Special Council was allowed to do the same.

Like the English-speaking judges, the British press and its readers also supported the habeas corpus ordinance and repeated several of the above arguments. For example, *The Montreal Gazette* and its readers often maintained that habeas corpus was never a right in the colony, and that the Special Council had the authority to adopt any law it deemed fit. For example, on 15 December 1838, the newspaper published a letter signed “S.D,” which perfectly summarized its own position on the matter. Although the author admitted that he was not a lawyer, he believed that both Panet and Bédard were “incorrect.” The author explained that he could not

believe or suppose it possible, that the Supreme Legislature intended to restrain the Council from doing so; for that would render its powers inadequate to meet the emergency, and would totally defeat the object for which it was constituted namely, “to make such Laws or Ordinances, for the peace, welfare, and good government of the said Province of Lower Canada [...]”⁷⁰⁵

Like the above judges, “S.D.” argued that because the Special Council was granted the Legislative Assembly’s authority—which had suspended habeas corpus between 1797 and 1812—it had the right to ban it once again. He moreover added that the three French-Canadian judges exceeded their authority when they ignored the council’s ordinance. He explained that “[t]he whole local *Legislative* power of this Province is at present vested in

⁷⁰⁴ *Ibid.*

⁷⁰⁵ *The Montreal Gazette*, December 15, 1838.

the Governor and his Special Council; in consequence, the Ordinance in question must be considered part of “of the law of the land [...]”⁷⁰⁶

The Quebec Gazette also supported the Special Council’s controversial ordinance, and explained that during troubled times, it has often been common practice to suspend habeas corpus. On 28 November 1838, the newspaper stated,

the temporary suspension of the granting of writs of *Habeas Corpus* in certain cases and of admitting to bail in the usual course of law, has been resorted to in times of trouble in the United Kingdom, and more than half a dozen times by the Provincial Legislature, under the act of 1791 [...] without any one having anyone imagined that they exceeded their powers.⁷⁰⁷

The only difference between now and then, according to the newspaper, was the fact that when the Legislative Assembly suspended it, it was always with regards to a specific case. This time, however, the ordinance concerned all trials and imprisonments. Other than that, the Special Council was simply doing what the Legislative Assembly had done for years. The newspaper even gave the three judges a little piece of advice: “[a]t all event it is the business of the Judges, to judge according to the law, and not to question its authority.”⁷⁰⁸ The newspaper thus believed that it was the judges, not the council that went above its authority. What is ironic, however, is that despite such staunch opposition, it was actually the English-Canadian population that had asked for the right of habeas corpus in the late 18th century, and it was mostly because of them that it did become a law in the early 19th century.

⁷⁰⁶ *Ibid.*

⁷⁰⁷ *The Quebec Gazette*, 28 November, 1838.

⁷⁰⁸ *Ibid.*

Evidence suggests that French-Canadians, on the contrary, sided with the three judges. They had very powerful allies in Charles Mondelet and La Fontaine. Born in 1801, Charles Mondelet had a very distinguished political and legal career, which first began in journalism as the editor of Ludger Duvernay's Trois-Rivieres-based newspaper *Le Constitutionnel*. In 1829/30, Mondelet moved to Montreal and began practicing law with his brother. His association with Duvernay and the *Patriotes* continued as he contributed several articles to the newspaper *La Minerve*. However, by 1832, Mondelet's association with the party came to an end when he favored the moderate candidate, Stanley Bagg, over his radical opponent Daniel Tracey. He also opposed the 92 Resolutions. Mondelet was condemned by the *Patriote* Party and was even called a turncoat by several party members, including La Fontaine. Despite their apparent rift, Mondelet remained a close supporter and ally of the *Patriotes*, often defending their causes and their members. In September 1838, he defended four of them when they were arrested for executing loyalist Joseph Armand. After the Union of the Canadas and the end of the Special Council, he was appointed to the Trois-Rivières Court of the Queen's Bench, and became a Circuit Judge in Montreal. In 1849, he was also appointed judge of the Superior Court and in 1859.⁷⁰⁹

On 4 November 1838, Mondelet was arrested in front of the Palais-de-Justice on Notre-Dame Street in Montreal. A police officer, carrying no warrant for his arrest, asked Mondelet to follow him. Charles Mondelet followed and was later thrown in prison. Although he repeatedly asked, he was given no reason for his arrest. According to

⁷⁰⁹ This information was taken from *Dictionary of Canadian Biography Online*. "Mondelet, Charles-Elzéar." Elizabeth Nish. Vol. X. http://www.biographi.ca/009004-119.01-e.php?id_nbr=5167&interval=25&&PHPSESSID=74ffrnpt3bko8cqonptj0ar0p2

biographer Elizabeth Nish, this was an arbitrary arrest, which was made possible by the ordinance suspending habeas corpus.⁷¹⁰ Mondelet thus wrote a letter expressing his outrage over his arrest and the draconian measures adopted by the governor and his council. Needless to say, he condemned the Habeas Corpus Ordinance and its tyrannical abuse. His imprisonment was “[un] acte de tyrannie que vous [Colborne and the Special Council] employé [...]”⁷¹¹ Although Mondelet still had faith that the aim of the Special Council was to restore peace and stability in the colony, he did not believe that a limited rebellion justified its attack on one of the colony’s most basic rights. Referring to the rights to a fair trial and habeas corpus, he explained that there were no reasons that could allow the government to violate “ce qu’il y a de plus sacré, comme de plus important dans la société, la sécurité & la liberté individuelle.”⁷¹² Over the next few weeks, Mondelet continued to ask why he was imprisoned, but again never received an answer. He was desperate to return to his family, they needed him as he was the only wage earner. His letter concluded by begging the governor to have his case brought before a competent tribunal so he could be released from prison as he had done nothing to deserve this.

During his unjust imprisonment, Mondelet renewed his friendship with La Fontaine who was imprisoned for similar reasons. La Fontaine also opposed the ordinance and supported Bédard and Panet’s position. In a letter to Lord Brougham, dated 13 December 1838, La Fontaine stated that the two judges “étaient obligés d’accorder un writ d’habeas corpus.”⁷¹³ As representatives of the law, he explained that it was their obligation to ensure that the laws of the empire were being upheld. By issuing a writ of

⁷¹⁰ *Ibid.*

⁷¹¹ LAC, RG4, A1. Vol. 557. File: 1-4 December, 1838. *Letter from Charles Mondelet.*

⁷¹² *Ibid.*

⁷¹³ Letter from La Fontaine to Lord Brougham, dated 13 December, 1838, quoted from La Fontaine, *Au Nom de la Loi*, p. 70.

habeas corpus, they were simply following the letter of the law. A few months later, and while still in prison, the duo wrote a petition condemning the ordinance and the practice of imprisoning individuals without proper evidence. The petition was sent to the House of Representatives in England. The petition first condemned the tyrannical acts and decisions taken by the governor and his council in recent months.

In consequence of the flagrant abuse of power which we now denounce, we, together with several of our fellow citizens, were forcibly torn from our families on the fourth day of November last, in this city, by persons calling themselves agents of the government, and dragged into prison by Her Majesty's troops without a warrant, without any accusations against us, and with the knowledge and by the orders, or with the approbation, of His Excellency, Sir John Colborne, now administrator of the Government of this Province.⁷¹⁴

The petition also maintained that as a result of such abuse, and more specifically the habeas corpus ordinance, local prisons were overcrowded with plenty of respectable and peaceful citizens, who did not participate in and even condemned the Rebellions. These men were held against their wills without proper cause or evidence. Referring to their own personal experiences, the petitioners explained that they, on numerous occasions, had asked to have their crimes explained and whether they would be given a proper trial. They have yet to receive an answer. Thus, as a result of the habeas corpus ordinance, many, including themselves, had been “tyrannically” deprived “of that recourse which not only morality and justice, but the honor of the British Government, should have ensured” them.⁷¹⁵ They therefore concluded that

⁷¹⁴ LAC, RG4, A1. Vol. 570. File: 13-15 February 1839. *Petition of Louis H. La Fontaine and Charles Mondelet.*

⁷¹⁵ *Ibid.*

[t]he passing of that Ordinance leaves us no alternative other than an appeal to the Supreme Tribunal of the Nation, the Imperial Parliament, persuaded as we are that the voice of individuals, however humble they may be, cannot fail to find an echo amongst the Representatives of the People of England, when that voice is raised to denounce such atrocious acts of tyranny, transformed into a system, the more shameful, as the object of those who have advised and adopted it, as well last year as this, is ulteriorly to attain political ends as immoral as they are unjust, by causing to appear as guilty, men whom they know to be innocent [...]⁷¹⁶

Along with the controversial ordinance, the petition also condemned the removal of the three judges, and the censoring of the press. In fact, by early 1839, the only opposition newspaper that continued to print on a regular basis was *Le Canadien*. The petition thus ended with a plea asking the Imperial Parliament to address the situation in a speedy manner and end the injustices that have plagued Lower Canada for the past few months.

Mondelet and La Fontaine were not the only citizens that loudly and actively condemned the ordinance. On 11 December 1838, two Sisters from the Chateauguay region sent a letter to Governor Colborne begging him to release the region's prisoners and heavily criticized the fact that, as a result of the ordinance, most had been arrested without the proper evidence.⁷¹⁷ They explained that as a result of the ordinance and the many arrests that followed, several innocent men were rotting in jail while their families suffered. They explained that they had been working in the region for the past few weeks and had witnessed the misery, hunger and suffering that several families had been forced to endure as a result.

[Plusieurs] ont été privés de leurs chefs [fathers] dont beaucoup ont été emprisonnés et d'autres ont fui par la terreur qu'ont inspiré les

⁷¹⁶ *Ibid.*

⁷¹⁷ LAC, RG4, A1. Vol. 558. File: 10-11 December 1838. *Two Nuns—In Favour of Political Prisoners from Chateauguay*.

emprisonnements de plusieurs innocents qui ont été pris comme des coupables dans la confusion et le trouble. Et les tristes effets de ces événements malheureux durent encore.⁷¹⁸

Several families were therefore unable to feed themselves as their husbands/fathers were, quite often, the sole income earner. Moreover, after discussing with the prisoners, the Sisters were convinced that these were innocent men and that they had been unjustly imprisoned simply because authorities suspected them of traitorous activities. The Sisters thus asked to have all the men that were unjustly imprisoned released so they could return to their families and end the suffering that was so prevalent in the region. They explained that as a result of

l'emprisonnement d'un grand nombres de personnes innocentes, qui sont la seule ressource de leurs familles dont plusieurs sont réduites à un horrible état de pauvreté [...] nous supplions Votre Excellence de vouloir bien élargir le plutôt qu'il vous sera possible les prisonniers de Chateauguay.⁷¹⁹

French-speaking newspapers were also amongst those that defended the three judges and condemned the ordinance. Out of the three French-Canadian newspapers that remained after Colborne's return, two condemned his actions. For example, on 13 December 1838, Aubin produced a very satirical article on the entire matter. According to Aubin, who was obviously being very sarcastic, Panet and Bédard were wrong to oppose the council's will because they should have know that "le gouvernement ne s'amusait point à les tenir en place pour administrer le droit, mais la loi; or la *loi du plus fort étant toujours la meilleure*, il est donc évident que la loi des honorables juges ne valait pas

⁷¹⁸ *Ibid.*

⁷¹⁹ *Ibid.*

quatre sous [...]”⁷²⁰ Aubin sarcastically added that the judges were also wrong because they quite simply should have understood that

un gouvernement attend toujours de ses juges un petit brin de complaisance. Il existe ordinairement entre gens d'intelligence un engagement tacite par lequel on s'entredit *passe moi la rhubarbe, je te passerai le séné*, chose que les deux coupables juges n'ont point su comprendre; il ont osé s'aviser d'avoir l'intégrité, de la justice, de l'indépendance et du courage, qualités surannées qui menaient peut-être à quelque chose dans les siècles d'innocence primitive, mais qui de nos jours conduisent droit à la suspension ou à l'hôpital [...]⁷²¹

Le Canadien also sided with the judges, and stated that

[c]ette affaire [habeas corpus controversy] a mis Québec tout en émoi, et, il faut l'avouer, elle est fort sérieuse dans ses conséquences, car si la décision des Juges est correcte, comme nous n'en doutons pas, la plupart des Ordonnances passées par le Conseil Spécial sont nulles et sans force de loi. L'Avocat de M. Teed a même présenté des raisons et arguments, auxquels on n'a pas répondu, allant à établir que le Conseil Spécial actuel lui-même n'existe pas légalement, ce qui frapperait de nullité tout ce qu'il fait.⁷²²

Parent not only maintained that the ordinance itself went beyond the council's authority, but also argued that the judges, by issuing the writs, were simply following the laws that were established by the Imperial Parliament.

Dans l'affaire récente de Teed, les Juges ayant été d'avis que l'Ordonnance pour suspendre l'habeas corpus était en dehors des attributions du Conseil Spécial, ce n'était plus une loi pour eux, c'était du papier blanc, et ils ont dû prendre la loi telle qu'elle existait avant cette Ordonnance. Qu'on remarque bien que les juges en passant leurs jugements n'ont pas fait actes de révision, ni de nullification, comme on se plaint à le dire, ils se sont bornés à dire que ce qu'on présentait comme une loi n'était pas une loi [...] ils n'ont

⁷²⁰ *Le Fantasque*, 13 December 1838.

⁷²¹ *Ibid.*

⁷²² *Le Canadien*, November 23, 1838.

fait que respecter le pouvoir de ce Parlement dont le Conseil Spécial avait outrepassé le mandat, et partant commis une nullité.⁷²³

The use of such arbitrary ordinances, whether legal or not, has also been heavily debated by historians. Jean-Marie Fecteau, for example, argued that the Special Council was well within its rights. He believes that the ordinance “fits perfectly with the pattern of emergency measures taken in British colonies at the time.”⁷²⁴ Fecteau explains that such arbitrary measures were also adopted in Barbados in 1805 and 1816, in Jamaica in 1831-32, and in Cape Colony in 1835, to name a few. When Colborne’s council thus passed the habeas corpus ordinance, it did not have to worry about its legality since it was given “carte blanche” by the British government.

You may rely on the unequivocal sanction and firm support of the ministers of the Crown, in any further proceedings which, in the exercise of your powers as administrator of the Government, you may take for defeating intrigues against the public peace, and the royal authority, even though these intrigues should be conducted in such a manner as to not render the authors of them, amenable to the legal tribunals in the ordinary course of law.⁷²⁵

Fecteau maintains that throughout its tenure, the Special Council received much support from the British Government. He adds that this even “included legal representatives who would systematically rely on a broad interpretation of the Special Council’s powers in order to justify the measures taken.”⁷²⁶

⁷²³ *Ibid.*, November 28, 1838.

⁷²⁴ Fecteau, ““This Ultimate Ressource,”” p. 220.

⁷²⁵ Glenelg to Colborne, 19 Nov. 1838, quoted from *Ibid.*, p. 229.

⁷²⁶ *Ibid.*

On the other hand, F. Murray Greenwood believes that the ordinance itself “breached basic norms of the Common Law.”⁷²⁷ It was *ultra vires*, which meant that it went “beyond the powers” of the Special Council. Greenwood even went as far as arguing that such arbitrary ordinances along with “authorizing trials of civilians by military tribunals in peacetime” were “the worst abuse of the rule of law in Canadian history.”⁷²⁸ This is especially the case when one remembers that the Special Council was not an elected body. He explains that “it would have been natural for the British authorities to deny nominated legislatures the degree of legislative power accorded to elected ones.”⁷²⁹ In fact, colonial elected legislatures did not even have the power to alter colonial laws and courts until the Colonial Laws Validity Act of 1865. He explains:

Until the Colonial Laws Validity Act of 1865, colonial legislatures (except for the United Canadas after 1840), like other subordinate lawmaking bodies, were not vested with the power to contravene fundamental principles of the Common Law, as well as British Statutes applying to the colony in question.⁷³⁰

Greenwood also points to the fact that parliamentary debates leading to the disallowance of the Bermuda Ordinance demonstrates that the Special Council did not have the authority to pass such a law.

Several statements were made in the two houses to the effect that neither the Lower Canadian legislature nor its successor, the Special Council, had

⁷²⁷ Greenwood, “The General Court Martial at Montreal, 1838-39: Legal and Constitutional Reflections,” p. 344.

⁷²⁸ Greenwood, “The General Court Martial at Montreal, 1838-9: Operation and the Irish Comparison,” *Canadian State Trials*, vol. II. *Rebellion and Invasion in the Canadas, 1837-1839*, ed., by Murray Greenwood and Barry Wright (Toronto: University of Toronto Press, 2002), p. 312; Greenwood, “The General Court Martial at Montreal, 1838-39: Legal and Constitutional Reflections,” p. 344.

⁷²⁹ *Ibid.*

⁷³⁰ *Ibid.* p. 329.

power to alter *basic* rules of the criminal law, such as denying the right to jury trial in cases of high treason.⁷³¹

What about the argument that *Habeas Corpus* was not a right in Lower Canada? According to D.A. Cameron Harvey and Marion Allaire, it would appear that it was. Both studied the origins of habeas corpus in Canada, and both concluded that it was indeed a right that all enjoyed at the start of the Rebellions and the creation of the Special Council. In her Master's thesis entitled "La procédure d'Habeas Corpus en matière Civile dans la province de Québec", Allaire argues that although most agree that by 1838 every Lower-Canadian enjoyed the right of habeas corpus, its origins, however, has been heavily debated. For example, Ludovic Brunet, author of *De l'Habeas Corpus en matiere criminelle et civile*, maintained that it was established in 1763. Accordingly, as soon as England took possession of the colony and introduced the English Common Law System, it became a part of Canada's legal system.⁷³² Allaire also noted that others have argued that habeas corpus became a law with the 1774 Quebec Act, which restored French civil laws, while maintaining English criminal laws. Allaire, on the other hand, does not believe that the Quebec Act nor the 1763 Proclamation introduced habeas corpus to the colony. She explained that "[I]ors des discussions du Parlement Anglais sur l'acte de Québec, à Londres, on aurait songé à introduire l'habeas corpus au pays, mais le vote de la Chambre des Lords fut négatif."⁷³³ Thus, if the representatives in the Imperial Parliament were considering granting habeas corpus, but did not, in 1774, this meant that it was not introduced in 1763 or 1774. Allaire even quotes house member M. Dunning

⁷³¹ *Ibid.*

⁷³² Marion Allaire, "La procédure d'Habeas Corpus en matière Civile dans la province de Québec." Master's Thesis: University of Montreal, 1972, p. 21.

⁷³³ *Ibid.*, p. 23.

who stated that “[t]he criminal laws you have thought proper to give them; but you have not given them all. To my certain knowledge, they wish to have the habeas corpus.”⁷³⁴

The Imperial Parliament’s refusal to introduce habeas corpus to Canada led to a significant backlash from the local population. Montreal merchants were especially upset and begged the mother country to allow it. They even sent several petitions asking for its introduction and maintained that refusing would be an attack on their fundamental rights as British subjects. Allaire found several such petitions in Adam Shortt and E. Arthur Doughty’s *Documents relatifs à l’histoire constitutionnelle du Canada*. For example, she found a “Pétition pour obtenir l’abrogation de l’Acte de Québec, Jan. 22, 1775, p. 571,” a “Pétitions aux Communes, Nov. 12, 1774, p. 575”, and a “Pétition demandant une chambre d’assemblée ‘que l’acte d’habeas corpus, 31, chap. II, devienne partie intégrante de la Constitution du pays,’ p. 733.” All in all, these petitions worked and in 1784, an ordinance was passed officially granting habeas corpus to Canadians. This was the moment that Allaire and Cameron believe that the right was officially established in the colony.⁷³⁵ According to the “Ordonnance pour la sureté de la liberté du sujet dans la province de Québec et pour empêcher les emprisonnements hors de cette province:”

L’établissement d’une loi à faire pour la sureté de la liberté personnelle de ses sujets [...] et de recommander que la législature ne peut à cet égard suivre un meilleur exemple que celui que la loi commune d’Angleterre à adopté en établissant l’ordre d’habeas corpus.⁷³⁶

In 1812, habeas corpus was expanded to all civil matters by an “Acte pour assurer la

⁷³⁴ *Ibid.*, p. 24.

⁷³⁵ *Ibid.*, p. 26 & D.A. Cameron Harvey, *The Law of Habeas Corpus in Canada* (Toronto: Butterworth & Co., 1974), p. 2.

⁷³⁶ *Ibid.*

liberté du sujet, en étendant les pouvoirs des cours de loi de Sa Majesté dans cette province, quand aux writs ou Ordonnances d'Habeas Corpus *ad subjiciendum* et quant aux moyens de forcer d'obéir à tels writs ou Ordres.”⁷³⁷

B. “L’ORDONNANCE MONSTRE DES CAHOTS”

Along with the ordinance banning habeas corpus, that which forced the local population to change the configurations of their winter sleighs also created much controversy. As noted, both Colborne and Thompson adopted similar ordinances, and on both occasions, both were heavily criticized in newspaper editorials, letters to the editor and to the civil secretary and in public meetings and demonstrations. This opposition even led to its failure as it was eventually amended to calm the local population. This determined opposition towards a seemingly beneficial law especially confused the local English-Canadian population who could not understand why French-Canadians did not want to improve the overall condition of their own roads. To most French-Canadians, however, this ordinance was much more controversial than the habeas corpus one. Whereas the above ordinance only concerned individuals who were suspected of treasonous acts and subsequently imprisoned, the sleigh ordinance affected all that used the postal roads during the winter months. This is why the local population was up in arms over the ordinance when it had been quiet over the previous one. Étienne Parent even claimed that this ordinance was one of the worst that the Special Council had passed.⁷³⁸

⁷³⁷ *Ibid.*, p. 28.

⁷³⁸ *Le Canadien*, 18 May, 1840.

The French-Canadian press clearly opposed the ordinance despite the fact that historian Stephen Kenny maintained that it was muzzled during this period. Newspapers were on the contrary quite vocal. Several, along with their readers, did not shy away from criticising, mocking and condemning both versions of the ordinance. For example, *Le Canadien* condemned the fact that it was not practical for Canadian winters. On 18 May 1840, Parent stated,

Le conseil n'avait pourtant pas besoin de cette ordonnance pour se dépopulariser. Il ne va y avoir qu'un avis contre elle d'un bout de la province à l'autre, surtout dans le district de Québec où l'on a cinq à six pieds de neige dans les chemins. Nous aimerions voir nos conseillers spéciaux, après une forte bordée de neige, obligés de battre les chemins avec les voitures à l'américaine. Nous voudrions voir aussi un conseiller spécial dans chaque voiture chargée dans les rencontre, là où la neige est molle et à sa hauteur moyenne dans ce district. Ces voitures pourraient aller dans le district de Montréal, où il y a peu de neige; mais dans le district de Québec, c'est une cruauté, une tyrannie de forcer les habitants à s'en servir.⁷³⁹

Even the English-speaking *Quebec Gazette* opposed the ordinance, despite the fact that its English-speaking readers clearly favored it. In late September 1840, the newspaper covered the arrival of the model sleighs in Quebec City. This event created much discontent amongst the local population. According to the newspaper, “[t]he ordinance and the model are [...] ascribed to [the Governor], and it will render his name more unpopular throughout the Province, than anything he has hitherto done.”⁷⁴⁰ The newspaper further added that

[t]o enforce [such] change [...], under pain of fine and imprisonment, is the legislation of barbarous times, and the surest way to make the change odious and retard real improvements. The Special Council however, we

⁷³⁹ *Le Canadien*, 18 May, 1840.

⁷⁴⁰ *Quebec Gazette*, 28 September, 1840.

suppose, will not be disposed, in this instance, to show as much wisdom as the old Legislative Council, when it repealed a similar ordinance, after it had been a few months in operation [...]⁷⁴¹

As was stated, Colborne's second council coincided with the dissolution of several French-Canadian newspapers. However, by late 1839, a number of new ones began to appear. Many were quite radical and, at times, even pushed the population to resist. Most also condemned the Sleigh Ordinance. For example, *La Canadienne* criticized it because it would lead to much abuse. More specifically, it feared that the fines that agents would collect would go into their own pockets rather than be reinvested in the local infrastructure. On 7 September 1840, it stated that "[d]ans quelques temps, on verra dans tous ces chemins, des flâneurs cherchant à vivre d'amende. Houra! bravo!! pour l'ordonnance monstre des cahots."⁷⁴² *L'Aurores des Canadas*, published by François Cinq-Mars, opposed the law for similar reasons. On 8 November 1839, Cinq-Mars maintained that passing this ordinance was just another way to fine French-Canadians and make money off their backs as the Special Council was fully aware that most would not have the time or money to purchase these new sleighs or retrofit their old ones. Although the newspaper itself was not against the new sleighs themselves—it understood that it was for the greater good of the colony—it did argue, however, that the public needed more time to adapt to the modifications required by the ordinance.

Il aurait fallu donner un temps plus long au public, plusieurs années même, pour se procurer les nouvelles voitures. On aurait par là ménagé sa bourse et les vieilles voitures auraient insensiblement fait place aux nouvelles [...]
Il aurait fallu surtout que l'ordonnance regardât, non seulement un ou deux chemins, mais tous les chemins publics de la province, afin d'éviter une

⁷⁴¹ *Ibid.*

⁷⁴² *La Canadienne*, 7 September, 1840.

foule d'embarras et empêcher peut-être des milliers de poursuites oppressives.⁷⁴³

This was an opinion that the newspaper upheld well until the end of the Special Council. A few months prior to the Union of the Canadas, it again complained that the ordinance was simply an attempt to illegally tax the people of Lower Canada. According to the newspaper, the inhabitants of Lower Canada were consequently “[t]axés sans representations.”⁷⁴⁴

It appears that such abuse did in fact take place. On 5 January 1841, *L'Aurores des Canadas* stated that the people of Quebec City had grown extremely tired of the ordinance, but more importantly the agents enforcing it. According to the law, an individual could be fined only *if* he rode more than six *arpents* on a public road without the proper sleigh. However, these agents had been fining inhabitants without ensuring that they travelled more than six *arpents*. The newspaper explained that when asked whether any agent could prove whether one had travelled more than six *arpents*, they had no answer. According to a reader from Rivière Chambly, he was illegally fined after he had only travelled 1.5 *arpents*. As a result, he contested the fine and brought his case to the superior tribunal. To the newspaper, these were steps that all should take when illegally fined by government agents: “[c]e n'est qu'en traquant ainsi l'injustice et l'arbitraire, qu'on peu enfin espérer d'y mettre un terme.”⁷⁴⁵

The local population also expressed its frustration by writing letters to local newspapers. Although most letters were sent to French-Canadians ones, some were also

⁷⁴³ *L'Aurores des Canadas*, 8 November, 1839.

⁷⁴⁴ *Ibid.*, 27 November, 1840.

⁷⁴⁵ *Ibid.*, 5 January, 1841.

sent to British newspapers even if they supported the ordinance. On 27 October 1840, the *Morning Courier* printed a letter from “A Canadian not a Franco” that heavily criticised the newspaper’s pro-ordinance stance. According to the reader, this ordinance had caused more frustration than any other. He explained that although Thompson’s law was supposed to start at the first snowfall of 1840, it was only made public in August 1840, which did not give Lower-Canadians enough time to either save the money to purchase new sleighs, build new sleighs or retrofit their old ones. Moreover, the local population did not have the material to retrofit their old sleighs or build the new ones. Although most had wood for fuel, their barns and houses, they quite simply did not have enough wood to spare on a new sleigh. It was a well-known fact, according to the reader, that most farms along the St-Lawrence did not have any more wood on their land. Moreover, those that did have access to wood most commonly obtained it from land 10 miles from their own farms. The reader thus explained that anyone that knew anything about transporting wood knew that this was not done in the summer and in any summertime vehicle. This was done at the end of October with the first snowfall—the wood was then pulled in winter-trains. The reader thus believed that the first snowfall was too early to impose such a law. Why? He explained that “[...] it is too soon to enforce it in November, or the first snow falls,—simply because to procure the necessary materials to obey that law, must subject the people to fine and consequent punishment [...]”⁷⁴⁶ Finally, according to the reader, it was not only him and the French-Canadian farmers that believed that the ordinance was poor. The Irish of Kildare, and English settlers of Brandon were similarly disgruntled.

⁷⁴⁶ *The Morning Courier*, 27 October, 1840.

Most complaints were sent to French-speaking newspapers, however. On 22 December 1840, a man calling himself “Petit Jean” wrote to the *Aurores des Canadas* complaining about the manner in which the ordinance was being enforced. He explained that most agents hired to enforce the law simply roamed the countryside in search of people who did not have the right sleighs to fine them. The money they made from such fines was not reinvested in the local infrastructure, but remained in their pockets. Such behavior had negative effects on the local population. “Petit Jean” stated, “Ah! Mr. l'éditeur, l'ordonnance des *sleighs* a plus démoralisé les habitants de la campagne que les exemples les plus scandaleux du Poulet.”⁷⁴⁷

On 16 January 1841, a man called “Un qui a vu” sent a letter to *La Gazette de Quebec* also criticizing the law. In this very long and well-written letter, he first explained how he had recently travelled from Montreal to Quebec City, and had made several observations about the sections of the road where inhabitants followed the ordinance (Montreal-Trois-Rivières) and those where they did not (Trois-Rivières-Quebec).⁷⁴⁸ His trip led him to conclude that the ordinance was not the colony’s best option. He first noted the pros and cons of each section. First of all, he admitted that the roads from Quebec to Trois-Rivières—where local inhabitants did not adopt the new sleighs—were not very smooth: they were bumpy and his horses, as a result, tired much faster and more frequently. However, the road from Trois-Rivières to Montreal—where the new sleighs were more frequently used—was surprisingly not better. Although the roads were, in general, much smoother, they were still too narrow and in several places still had many of

⁷⁴⁷ *Aurores des Canadas*, December 22, 1840. “Poulet” (chicken) was the nickname that Napoleon Aubin gave Thompson. It caught on.

⁷⁴⁸ The following information was taken from *La Gazette de Quebec*, 16 January 1841.

the infamous *cahots*. These were two problems that the new sleighs were supposed to have resolved.

Moreover, the reader noticed that the road from Montreal to Trois-Rivières had very little snow compared to that in and around Quebec City, and therefore argued that the road itself was not smoother because of the new sleighs, but because there was *less* snow. The new sleighs were rendered completely useless during heavy snowstorms, which were much more common north of Trois-Rivières. Such snowstorms had already fallen around Quebec City, which explained why there were more illegal sleighs and bumpier roads. Interestingly, while he was in Trois-Rivières, there had been a significant snowstorm. A day later, he spoke to two government officials who admitted that under such snowy conditions, the new sleighs were completely useless. In fact, Justice of the Peace John Stewart's return to Montreal risked being postponed as a result. M. Marcotte, the individual in charge of driving him there, told "Un qui a vu" that unless they used the older sleighs, returning to Montreal would be impossible. M. Marcotte even met the governor himself "pour lui exposer combien il était impossible, malgré leur bonne volonté, de suivre l'ordonnance [...]"⁷⁴⁹ Marcotte explained that unless he was allowed to use his old sleigh, he would have to put all of his trips to Montreal on hold until the snow cleared up. According to "Un qui a vu", the governor agreed. It appears that the new sleighs were simply not effective in a Lower Canadian winter.

Although some may question the claims made by the above letter, there is no doubt that the local population despised the new ordinance. Along with letters to the editor, the local population demonstrated their opposition in a number of other verbal and

⁷⁴⁹ *Ibid.*

physical manifestations. For example, several public protests were held against it, which made the task of the local magistrates and agents—who were sent to enforce the ordinance and promote the new sleighs—very difficult. Kenny’s article demonstrates that the population was so opposed to the ordinance that it went as far as sawing model sleighs into several pieces and threatening local agents. The British inhabitants of St. Thérèse de Blainville were so frightened by such actions that they requested police reinforcement in the region.⁷⁵⁰ In January 1841, the residents of Gentilly also physically expressed their opposition. After vocally communicating their displeasure and criticizing the model sleigh, the local population began to riot. Three local inhabitants were arrested for assault. The local population did not stop there and soon took their anger out on the magistrate that was sent to promote the new sleighs. According to Kenny, the magistrate woke up one day and found his horse’s mane and tail cut off and his own sleigh was destroyed.⁷⁵¹ One observer snidely remarked,

Si notre population n’était point remplie de respect pour les lois, quelque’inéxecutables et injustes qu’ils soient, le traitement de M. Anson [the above magistrates] ne serait rien en comparaison de ce qu’on pense que méritent les employés de la police rurale.⁷⁵²

Several other agents also reported that they received poor treatment at the hands of the local population and had their demands completely ignored. One agent reported that two colleagues had been attacked near Trois-Rivières.⁷⁵³ The magistrate at Ste. Elizabeth also noted that as the man responsible for keeping peace in the region, this new sleigh

⁷⁵⁰ Kenny, “*Cahots and Catcalls*,” p. 202.

⁷⁵¹ *Ibid.*, p. 203.

⁷⁵² *The Gazette de Quebec*, 2 March, 1840, quoted from *Ibid.*

⁷⁵³ Kenny got this information from a series of letters he found at the LAC. The collection, at the time of his writing this article was in RG7, G18, Vol. 18. This event itself was reported in a letter from E.A Clark to William T. Coffin, 13 Jan 1841, paraphrased from *Ibid.*

ordinance was not making his life easier. He explained that some inhabitants had even threatened to fire some shots through his window as a result.⁷⁵⁴ Finally, annoyed by the fact that the people of St. Pierre les Basquets refused to follow the ordinance, the local magistrate waited for them in front of the local church where they were attending Sunday mass. Upon their exit, he told them that if the law was not followed by the end of the week, the entire village would face the full wrath of the law.⁷⁵⁵ The local population ignored his demands.

It appears that many were not willing to follow the ordinance, or at least give it a chance. According to *L'Ami du Peuple*, the people of Quebec City even took it upon themselves to build roads that were parallel to the postal roads, for all those who did not have the proper sleighs.⁷⁵⁶ *The Quebec Gazette*, quoting the *Aurore de Montreal*, even stated that after a heavy snowfall in Montreal, the streets were filled with carriages of all sorts, and not one was a legal sleigh.⁷⁵⁷ Even some law officers did not follow the ordinance. *The Quebec Gazette* stated that it saw several local agents and young officers with what appeared to be illegal sleighs.⁷⁵⁸

This opposition continued well after the Special Council was disbanded. In 1842, public meetings opposing the ordinance were held all over the colony. There were meetings in Quebec City, Saguenay, Lotbinière, Portneuf, Maskinongé, St. Anne de la Pocatière, Rimouski, and Trois-Pistoles.⁷⁵⁹ The ordinance was amended as a result of such opposition. When the newly elected United Legislature first met, it focused much of

⁷⁵⁴ LAC, RG7, G18, A. Drolet to William T. Coffin, 9 Dec, 1840, paraphrased from *Ibid.*

⁷⁵⁵ *La Gazette de Quebec*, 2 March 1841; Kenny, "Cahots and Catcalls," p. 203.

⁷⁵⁶ *L'Ami du peuple*, 3 June, 1840.

⁷⁵⁷ *The Quebec Gazette*, 1 December 1840; Kenny, "Cahots and Catcalls," p. 204.

⁷⁵⁸ *Ibid.*

⁷⁵⁹ Kenny, "Cahots and Catcalls," pp. 205-6.

its attention to the sleigh controversy. It was considered a colossal failure by all. The representative from Champlain, for example, called both attempts to impose the law “a species of tyranny that gave universal dissatisfaction.” The representative from Berthier called it “a complete failure.” Étienne Parent, who became the representative for the Saguenay also called it “an abominable tyranny.”⁷⁶⁰ Thus, in 1842, the sleigh ordinance was amended. The new and final version was much more flexible and many regions were exempt from it.⁷⁶¹ The people of Lower Canada had defeated a law that the Special Council had passed and that they considered tyrannical.

Despite such overwhelming opposition, there was still *some* support for the law, which mostly came from the English-speaking population. Many were quite shocked at the population’s refusal to follow the law. Some believed that it would be very cheap for the local population to change their sleighs. An individual calling himself “An Ansentee” sent a letter to the *Quebec Gazette* criticizing the common complaint that purchasing a new sleigh or altering an old one was too expensive. He argued that progress was never free and that the financial cost would benefit the colony. More importantly, the writer maintained that changing one’s sleigh would be very cheap, costing 7\$ at the most. Although he agreed that some may not have 7\$ to spend on a new sleigh, he argued that if one did not have that kind of money, he must be really poor, and therefore should not own a horse or a sleigh. “Horses amongst the poor,” he explained, “are the principle cause of poverty.”⁷⁶² Instead of a horse, poor families should invest in a cow.

⁷⁶⁰ Kenny quoted all of the above from *Debates of the Legislative Assembly*, 21 September 1841. *Ibid.*, p. 206.

⁷⁶¹ *Ibid.*, p. 207.

⁷⁶² *The Quebec Gazette*, December 21, 1840.

Several more individuals could not understand why French-Canadians refused to have better roads. Montreal-based newspapers believed that the new sleighs had done much good. On 30 November 1840, *The Montreal Herald* explained that the benefits of the new sleighs on the island of Montreal had been tremendous: “[t]he good effects resulting from the Sleigh Ordinance are already very perceptible both in this city and in its neighborhoods.”⁷⁶³ The newspaper explained that in areas where *cahots* had been especially problematic—at the Miles End and Lower Lachine road, for example—the new carriages have significantly improved the road conditions. Others wanted to extend the application of the ordinance to other roads. On 14 January 1840, an individual calling himself “Viator” wrote to *The Montreal Gazette* and argued that the ordinance should have been made universal: it should not only apply to postal roads but to all roads in the colony. He explained that on country and parish roads, “the roads are too narrow, and are, moreover, filled with the most vile and abominable *pentes* and *cahots*. The law should have been made universal.”⁷⁶⁴

7.2 CONCLUSION

Colborne’s second council was as controversial as the first. But this time, the colony’s population verbally and physically expressed its opposition rather than remaining quiet. Moreover, whereas his first council was universally condemned as a result of his obvious partiality towards the Constitutionlists, his second was especially criticized as a result of two ordinances: the Habeas Corpus Ordinance and the Sleigh Ordinance. The population did not accept either ordinance without a fight, however.

⁷⁶³ *The Montreal Herald*, November 30, 1840.

⁷⁶⁴ *The Montreal Gazette*, 14 January, 1840.

Although the first was especially criticized by the elite, the second was criticized by all. When compared to the Sleigh Ordinance, ordinary people were not as concerned with the habeas corpus controversy. This is likely because most inhabitants were not directly affected by the ordinance and perhaps did not feel the need to oppose it. However, when an ordinance hit close to home, as the Sleigh Ordinance did, and affected their daily routines and lifestyle, they reacted.

CHAPTER 8:

THOMPSON'S COUNCIL AND THE PEOPLE

“Le Conseil Spécial est mort,
Vive le Conseil Spécial!”⁷⁶⁵

Charles Poulett Thompson's tenure on the Special Council was more memorable than either of his predecessors. In a little more than a year, he not only passed more ordinances than either Colborne or Durham, but he also adopted some of the most controversial ones, including the Union Bill, the seminary ordinance and one dissolving Trois-Rivières as a legal district. Like his predecessors', his tenure was universally condemned. Not surprisingly, the French-speaking population led the charge. It was especially active during this period and much more frequently, vocally and physically, expressed its feelings towards the governor, his council, and the ordinances passed. What is perhaps surprising, however, is that Thompson's tenure did not receive the universal support of the English-speaking population. There was some dissension. On more than one occasion, some of them did express concerns over his decisions and the ordinances he passed.

8.1 OPINIONS ON THOMPSON'S COUNCIL IN GENERAL

Thompson's actual appointment did not result in universal applause. Unlike Durham, who was treated like a savior when he replaced the much-hated Colborne, Thompson, who was also replacing the same governor, was not greeted with much hope and enthusiasm. Instead, he received much criticism. It must also be added that the period that followed his arrival was one of rebirth for the French-Canadian press, and more

⁷⁶⁵ *Le Fantasque*, 10 February, 1841.

specifically the anti-British/Special Council one.⁷⁶⁶ Although most newspapers lasted less than a few months, most had one thing in common: they were opposed to the current form of government, the governor and the ordinances that were passed. Although several simply stated their opposition, some asked the general population to boycott the upcoming union and election.

Some of the French-language papers even criticized Thompson before he landed in Lower Canada. Napoleon Aubin was once again on the forefront. On 1 October 1839, weeks prior to the governor's arrival, he stated that "[n]otre nouveau gouverneur-général le très-honorable Poulet [Chicken] Thompson est maintenant attendu journellement à Québec. Je fais matin et soir des vœux pour que ce poulet-là fasse de meilleur ouvrage que les coqs-d'inde qui l'ont précédé."⁷⁶⁷ It appears that such insults got Aubin in some hot water; between October 1839 and March 1840, his newspaper was suspended. When he returned, Aubin picked up where he left off and once again criticized the governor. Along with the many ordinances that passed, as will later be discussed, Aubin especially condemned the governor's use of the Special Council. On 16 March 1840, he published another one of his famous mock letters. Pretending to be Thompson, he wrote to Lord Melbourne:

Je partis donc bien vite pour Montréal où j'assemblai le Conseil Spécial que tout le monde déteste, afin de savoir de lui l'opinion du pays sur l'union dont personne ne veut dans le Bas-Canada. Comme vous le pensez bien, mon cher vieux Melbourne, le Conseil en a passé par où j'ai voulu car je

⁷⁶⁶ Unfortunately, there is no absolute answer explaining why newspapers began to reappear after Colborne left. It is fair to assume, however, that his departure played an important role. As the man that passed the ordinance censoring the press during the first session of the Special Council, it is possible that he was quite simply not as patient with newspapers that criticized him and used his authority to shut them down. Perhaps Thompson and Durham, who did not pass the ordinance and were renowned "liberals," allowed more freedom of the presses.

⁷⁶⁷ *Le Fantasque*, 1 October, 1839.

me suis servi des grands, c'est-à-dire des petits moyens. J'ai pris ce petit air canard que vous me connaissez, j'ai donné la main aux uns, j'ai fait le bravache avec d'autres; bref, ils ont décidé que le Bas-Canada serait beaucoup mieux avec le Haut que tout seul [...] Le Conseil Spécial a compris tout cela fort bien, or je n'avais plus à m'occuper du Haut-Canada.⁷⁶⁸

A few months later, Aubin wrote the following about Thompson's council and the manner it passed ordinances.

Le Conseil Spécial continue aussi bravement sa petite carrière législative que s'il était bon à quelque chose. Les ordonnances marchent la canne à la main, tambour battant, c'est-à-dire sur notre dos; c'est vraiment un charme. Le conseil ne suit point la sotte coutume de cette folle chambre d'assemblée qui lisait les lois une fois, deux fois, les pesait, les prenait en considération, etc., etc., cela en finissait point. Les choses vont aujourd'hui plus vite en Canada. On sanctionne les lois à première vue; souventes fois même on ne les lit point du tout, ce qui est beaucoup plus sage et infiniment plus commode.⁷⁶⁹

Aubin was thus ecstatic when the Special Council was dissolved for good, in February 1841, and celebrated this momentous event with an article entitled "Le Conseil Spécial est mort, Vive le Conseil Spécial!" Within, he stated that "la mort du conseil spécial est la meilleure action que ce corps ait faite durant sa vie [...]"⁷⁷⁰

Étienne Parent also criticized Thompson's arrival, albeit he was much less insulting than Napoleon Aubin. Nevertheless, he similarly wanted the end of the much hated council. On 21 December 1840, he stated

En effet nous espérons qu'il n'entra dans l'idée de personne de réviser ce fatras législatif: c'est la hache et non la serpe qu'il faut appliquer à un arbre pourri dans le cœur et jusque dans les branches. C'est une opinion reçue

⁷⁶⁸ *Ibid.*, 16 March, 1840.

⁷⁶⁹ *Ibid.*, 11 May, 1840.

⁷⁷⁰ *Ibid.*, 10 February, 1841.

parmi les gens de loi, qu'il se trouve à peine une ordonnance du Conseil Spécial qui ne soit attaquable sur quelque point. Le mieux sera de retrancher d'un seul coup du corps de notre législation une masse d'ordonnances, qui ne sont propres qu'à en faire la honte et à y jeter de l'embarras et la confusion, à moins qu'on ne veuille les conserver comme une leçon écrite pour nos descendants, pour leurs apprendre le danger et les inconvénients d'une législation sans contrôle populaire, livrée aux caprices d'hommes sans expérience locale, aux inspirations intéressées, ambitieuses et haineuses, de l'intérêts personnel et l'esprit de parti.⁷⁷¹

Along with Aubin and Parent, *all* of the colony's French-speaking newspapers condemned Thompson and the Special Council. For example, the *Aurores des Canadas* often complained about the secrecy practiced by the governor and his council. On 22 November 1839, the newspaper asked: "les séances de ce corps ne devraient-elles pas être publiques? Peut-on indiquer un seul pays du monde où les assemblés législatives ne soient pas publiques? Si cependant le Conseil Spécial ne peut ou ne veut pas délibérer autrement qu'à huis clos, que du moins ses procédés et les discours de ses membres soient livrés à la publicité."⁷⁷² The newspaper was also very critical of Thompson and condemned the fact that, like his predecessors, he had fallen under the control of the Constitutionalists.

Lord Gosford était bon et faible, Lord Durham vain jusqu'au ridicule, Sir John Colborne stupide et sanguinaire, M. Thompson, homme bien supérieur à ceux-ci, sous le rapport des talents [sic], paraît livré lui aussi aux aviseurs qui ont égaré ceux qui l'ont précédé dans le gouvernement [...]. Voici la différence qui existe entre les aviseurs de Sir John Colborne et ceux de Mr. Thompson. Les premiers ont fait parcourir au 'Vieux Brulot' toute une carrière de *sanglantes* extravagances [newspaper's italics]; les seconds semblent vouloir trainer Mr. Thompson dans une carrière de *lécales* [newspaper's italics] extravagances. Sir John a tyrannisé en faisant [sic] piler et bruler les propriétés, emprisonner et massacrer les citoyens. Son Successeur serait-il appelé à tyranniser par les lois? C'est la plus

⁷⁷¹ *Le Canadien*, 21 December, 1840.

⁷⁷² *Aurores des Canadas*, 22 November, 1839.

odieuse des tyrannies vue elle qui s'exerce sous le manteau (sic) de la justice et à l'ombre de la loi.⁷⁷³

La Canadienne, on the other hand, condemned the council's agenda and its councilors. On 6 August 1840, it stated:

Depuis notre existence nous n'avons eu aucun acte du gouvernement à louer. Pourtant le Conseil Spécial a passé un grand nombre d'ordonnances, dont quelques unes ont acquis à juste titre le nom d'ordonnances monstres, mais aucune n'a pris celui d'ordonnance équitable pourquoi cela? Parce que nous sommes régis par des hommes ou qui ne connaissent pas nos besoins, ou qui ne veulent pas faire notre bonheur, s'ils ne connaissent pas nos besoins, pourquoi n'en choisit-on pas qui représentent réellement le pays?⁷⁷⁴

The newspaper was also very critical of Thompson himself and even argued that his first months in Lower Canada had been a complete failure. When it heard that Thompson was planning to return home for a short period, the newspaper hoped that a different man would return to Lower Canada. It stated: “Nous souhaitons qu'il en revienne un autre avec un peu plus de tête, qu'il soit vraiment libéral et qu'il puisse apprécier les Canadiens à leur juste valeur, qu'il fasse revivre la paix et l'harmonie dans tous les cœurs. Depuis trop longtemps ce pauvre peuple vit de misère, il est temps qu'il ait justice et qu'il soit gouverné par des hommes qui le connaissent.”⁷⁷⁵

Finally, even *L'Ami du peuple*, the newspaper that supported Colborne's partial and controversial tenure, criticized Thompson. For example, on 24 June 1840, it printed an article entitled “Départ du Gouverneur.” Before the population began to prematurely celebrate his departure, however, the newspaper sadly warned “[q]ue nos lecteurs ne se

⁷⁷³ *Ibid.*, 23 June, 1840.

⁷⁷⁴ *La Canadienne*, 6 August, 1840.

⁷⁷⁵ *Ibid.*

méprennent point à ce titre et n'allaient pas se faire fausse joie, nous n'avons à parler d'une absence momentanée de celui qui se laisse si déplorablement influencer dans son administration.”⁷⁷⁶ The governor was only scheduled to go on a short trip to Nova Scotia.

Under previous governors, the disagreements between the French-Canadian and British press were quite obvious. Whereas the British press supported, without exception, Colborne and Durham, the French-Canadian one, minus *L'Ami du peuple*, heavily criticized both. However, with Thompson, this somewhat changed. The French and English-speaking press criticized the governor, albeit not for the same reasons. For example, although the *Farmers & Mechanics Journal and St. Francis Gazette* explained that it would refrain from judging Thompson until he passed his first ordinances, the newspaper nonetheless criticized his arrival because he was replacing its beloved Sir John Colborne.

We think it is the disposition of the mass of the Loyalists to wait and judge of him by his acts; they cannot display much satisfaction at his arrival, satisfied as they all are with the administration of Sir John Colborne, and disposed to look upon the appointment of a new Governor as an experiment of doubtful propriety, and accompanied with no small danger.⁷⁷⁷

A proponent of free trade, Thompson did not initially receive the support of the local merchant population. As a result, several newspapers, including *The Morning Courier*, opposed his appointment, and more specifically, his position on the timber trade. According to the newspaper, all merchants feared that his attempts to reduce British duties on the Baltic timber trade meant that Canadian timber would lose its favorable

⁷⁷⁶ *L'Ami du Peuple*, June 24, 1840.

⁷⁷⁷ *Farmers & Mechanics Journal and St. Francis Gazette*, October 19, 1840.

position, resulting in their loosing much money: “[t]here was quite a hubbub in town yesterday. Poulett Thompson is the new Governor General. The announcement has given general dissatisfaction.”⁷⁷⁸ *The Canadian Colonist*, on the other hand, focused on Thompson’s council. On 16 November 1840, the newspaper condemned the fact that his council did not represent the will of the people, but of the members of the council, and as a result it, and the ordinances it passed would have “no hold whatsoever upon the heart of the people, and [enjoy] no more respect than [they] are entitled to, that is to say, none at all.”⁷⁷⁹

No English-speaking newspaper was more critical than *The Quebec Gazette*, however. As was noted, by late 1840, Neilson stepped down from his position on the Special Council as he grew increasingly disgusted with it. Not only did he oppose several of the ordinances that were passed, but he was especially critical of the fact that the Special Council still had absolute authority, two years after the last failed rebellion. Although he admitted that in the wake of the 1837-38 Rebellions, the adoption of the Special Council and the suspension of the colony’s political rights were necessary evils, by 1840, they were not, and Neilson grew very critical of the council’s actions. For example, he explained that “since the restoration of peace in every part of the country, they have rendered their power more odious than ever, and to nearly all classes of the subject.”⁷⁸⁰ More importantly, although the council claimed to be working for “the wishes and interests” of all in the colony, Neilson believed that this was not the case. The council’s ordinances, he maintained, did not represent the will of the people and were

⁷⁷⁸ *The Morning Courier*, 25 September, 1839.

⁷⁷⁹ *The Canadian Colonist*, 16 November 1840.

⁷⁸⁰ *The Quebec Gazette*, 1 July, 1840.

heavily condemned as a result. Neilson also condemned the Special Council because of what it had become. He initially supported it as a temporary fix that only had the authority to pass temporary ordinances. By 1840, however, the council could pass, he explained, permanent ordinances and could even change the colony's existing laws and constitution. Neilson vigorously criticized this because he maintained that such changes should only be introduced by a Legislative Assembly representing the will and the opinions of the people. On 10 February 1840, the newspaper produced a final critical farewell of the Special Council. Although Neilson admitted that he first supported and applauded the council, he believed that in the last 16 months, its conduct and authority had been unacceptable.

Under colour of an Act of the Imperial Parliament constituting a temporary legislature, obviously intended solely for temporary purposes, numerous permanent Ordinances have been enacted by a Governor and a Council; taking the property of the subject without consent, subjecting him to heavy burthens (sic), abridging his liberty in a multitude of instances, creating new crimes, offences, penalties and punishments, interfering with long established usages, and known laws by which he was guided and secured in the enjoyment of his property and industry [...] [Such ordinances have created] injury [to] the great body of the quiet and industrious subjects; and this evil has been endeavored to be perpetuated and established under the forms of Constitutional Government, upon which we are now permitted to enter.⁷⁸¹

The local population was also very critical of Thompson's tenure. Although it was much more vocal than before, it did not focus on the Special Council itself, but focused on the ordinances that affected their daily lives instead. For one, letters were sent to local newspapers. For example, on 10 August 1840, *Le Fantasque* published a letter from "Democrite," in which he described how he believed the council worked.

⁷⁸¹ *Ibid.*, 10 February, 1840.

le gouverneur pond, le conseil cuve, et comme ce ne sont pas des œufs d'or qui sont l'objet de la ponte et de la couvée, on s'imagine bien que tous les gens de cœur éprouvent des nausées à mesure que les choses éclosent. Il y a si longtemps qu'on se plaint de la ménagerie du conseil spécial qu'il serait tems (sic) que le gouverneur substituait la gente volatile à la race des carnivores qui désolent et dévastent la patrie; il serait plus naturel aussi que le conseil, présidé par un oiseau, fut composé de poules dont le gloussement pourrait tempérer un peu les coups de bec qu'on reçoit depuis longtemps (sic), car de la manière dont les choses sont arrangées, il ne peut y avoir d'harmonie parfaite; car quand le Poulet chante, le conseil braie, et cette sauvage symphonie tourne la tête au pauvre peuple.⁷⁸²

On 24 July 1840, the *Aurores des Canadas* also printed a letter from “Perse,” who placed the Special Council on par with some of history’s most horrible tyrannies.

Ce corps [Special Council] tout puissant en fait d'absurdités est bien fait pour rappeler cette page de l'histoire Romaine où l'on voit que Caligula, devenu fou, voulut créer son cheval consul; il est vrai que par le tems (sic) qui court ce n'est plus de chevaux qu'il s'agit; Mr. Thompson, désirant s'enrichir encore sur l'insensé Caligula, a cru mieux faire en appelant au Conseil Spécial des animaux d'une autre espèce. Quand on lit froidement le tissu d'absurdités qui se font *spécialement* [newspaper’s italics] depuis une couple d'années, on ne peut s'empêcher de frémir sur l'état de notre société, et les bons citoyens sont presque portés à désespérer du sort du pays [...] à peines quelques voix obscures osent-elles s'élever encore en faveur du misérable corps qui est appelé à régir nos destinées.⁷⁸³

On 14 April 1840, the *Gazette de Quebec* also published a letter from an unnamed individual from Trois-Rivières. Although he admitted that he was initially very enthusiastic that a reputed liberal such as Thompson was replacing the much hated Colborne, he unfortunately lost all hope with the Union Bill. He stated:

Mais, sir, ces espérances les avez vous remplies? Comment pouvons-nous croire que depuis votre arrivée vous ayez travaillé à la prospérité et au bonheur général de ce pays? Vous avez ouvert nos plaies et vous les faites

⁷⁸² *Le Fantasque*, 10 August 1840.

⁷⁸³ *Aurores des Canadas*, 24 July, 1840.

saigner avec plus d'aigreur. Pilote imprudent, vous conduisez la barque sur les écueils, et vous ne mettez à la voile qu'au milieu des ouragans et des noirs tempêtes: mille cris s'élèvent contre vous, chacun tremble devant l'abîme où vous le conduisez pour y être englouti à jamais.⁷⁸⁴

Despite such letters and editorials, however, Thompson could count on some support from the local population, more specifically, the English-speaking one. Several petitions and public addresses were sent to the governor expressing their loyal support. For example, as soon as Thompson landed, the people of Chatham, a loyalist stronghold West of Montreal, sent a petition congratulating him on his appointment. They also expressed their faith in his mission and believed that he would do much good for the colony. They especially had confidence that Thompson would impose British institutions, cement the union between the colony and the mother country, and enforce the privileges of British subjects.⁷⁸⁵ The petition was signed by 150 English-speakers. In October 1839, magistrates from the city of Montreal sent a similar address. They were very confident that the new governor would restore peace and tranquility to the colony, which had been in a state of hostility since the first rebellion. They also mentioned that Thompson could “always be found ready to find [their ...] support [...] in the administration of the Government [...]”⁷⁸⁶ The petition was signed by over 40 individuals. Finally, in November 1839, the loyal inhabitants of Beauharnois sent a petition, which once again congratulated Thompson on his appointment and again expressed confidence in his ability to restore “tranquility, promote the agricultural and commercial interests of the country.”⁷⁸⁷

⁷⁸⁴ *La Gazette de Quebec*, 14 April, 1840.

⁷⁸⁵ LAC, RG4, A1. Volume 564. File: N.D. 1839.

⁷⁸⁶ LAC, RG4, A1. Volume 596. File: 20-25 October 1839.

⁷⁸⁷ LAC, RG4, A1. Volume 599. File: 21-30 November, 1839.

These were a few examples of the petitions and addresses that Thompson received when he arrived in Lower Canada. He received several others from English-speaking strongholds such as Standstead and Shefford. Not a single one came from a French-speaking community and there were very few French-Canadian names on the above petitions. Once again, their silence speaks loudly. The above evidence therefore suggests that, at the very least, opinions on Thompson were divided when he first arrived in Canada. As the following section will further demonstrate, the ordinances he passed and decisions he made in council did not improve his reputation. While Thompson passed some of the most significant ordinances in Canadian history, the majority were poorly received. His reputation in Lower Canada was so poor by the end of his tenure that several newspapers had reported that he avoided cities and villages that opposed him. For example, after the population of Quebec City refused to celebrate his arrival in the summer of 1840, he refused to enter the city and visited some of surrounding villages instead.⁷⁸⁸

8.2 OPINIONS ON ORDINANCES PASSED

A. THE JUDICATURE ORDINANCE AND THE TROIS-RIVIÈRES CONTROVERSY

One of the most controversial ordinances passed by Thompson's council was the Judicature Ordinance. Although this ordinance completely revamped the colony's legal system, it was the eradication of the Trois-Rivières court district that created the most controversy. Not only were the people of Trois-Rivières upset by this ordinance, but so

⁷⁸⁸ *L'Ami du peuple*, 24 June, 1840.

was the rest of the colony, including several English-speakers. Despite the fact that this ordinance was briefly examined in Perrault's study, none as yet considered the frustration it created amongst the local population.

Although minimal compared to the eradication of the Trois-Rivières court district, the ordinance's features did nonetheless receive some attention. On 22 April 1840, "les avocats pratiquants du Barreau de Québec" produced a petition signed by 21 lawyers, examining the many changes that the ordinance proposed to the colony's legal system.⁷⁸⁹ The petitioners had a few concerns with the ordinance and wanted to share them with the governor before the ordinance passed.⁷⁹⁰ Before starting their critique, all agreed that the current state of the colony's judicature was broken and had to be improved. That said, their biggest problem with the ordinance was the abnormal and exorbitant authority that was granted to the "Juge en Chef de la Province comme Président de la Cour du Banc de la Reine en matière Civil et Criminel et aux présidents des divisions des Cours des Plaidoyers communs en matière civil." According to the ordinance, in cases where the court's vote was even, the head judge's vote would equal two, which meant, according to the lawyers, that he, alone, had the power to make the important decisions. The group argued that this was simply too much power to be given to one man. The lawyers even came up with an alternative that would prevent such authority. They argued that the Court of the Queen's Bench should be composed of 4 judges and the quorum be placed at three

⁷⁸⁹ LAC, RG1, E16. Vol. 1, part 2, No. 12. *Petitions and Addresses to the Governors and the Executive Council of Lower Canada.*

⁷⁹⁰ It must also be noted that at the time that this petition was sent, the ordinance had yet passed. The group somehow got their hands on a copy of the draft.

judges. This, they maintained, would be much better, and safer, than giving the head judge that much authority.⁷⁹¹

Along with the above, the petitioners also argued that giving the Governor General the authority to “select from time to time, at its pleasure, the Judges who are to compose both the Local and Circuit Courts [...] Criminal Civil” was a very bad idea as it would lead the public to question the “impartiality and independence of the Judiciary” from the political.⁷⁹² Finally, the petition also stated that the destruction of Trois-Rivières as a Judicial District “pourrait être considéré comme créant d’injustes inconvénients pour la population.”⁷⁹³

Despite the fact that the above lawyers were concerned with several aspects of the ordinance, it was the last complaint that garnered the attention of the local population and politicians. None of the criticisms and debates had anything to do with the changes to the legal system, but solely focused on the fact that the Trois-Rivières judicial district was dissolved.

On 17 April 1840, after hearing that the Special Council was planning on dissolving the district, around 600 inhabitants, mostly farmers and proprietors from the region, sent a petition to Poulett Thompson opposing the ordinance.⁷⁹⁴

⁷⁹¹ LAC, RG1, E16. Vol. 1, part 2, No. 12. *Petitions and Addresses to the Governors and the Executive Council of Lower Canada.*

⁷⁹² *Ibid.* The reason why the above quotes are in English rather than French is simply because the petition was produced in both languages. While some of the French, at time, was unreadable, the English version was.

⁷⁹³ *Ibid.*

⁷⁹⁴ LAC, RG1, E16. Vol. 3, part 3, No. 46. *Petitions and Addresses to the Governors and the Executive Council of Lower Canada.*

[A]n Ordinance about to be submitted to the Special Council for regulating the Judicature of the province having been published, and it being generally [decided] that the division of this province intended by this Ordinance would have the effect of abolishing or dismembering the District of Three Rivers. Your petitioners alarmed at that prospect of a change so unexpected, and subversive of their dearest and most valuable rights and privileges, do respectfully and earnestly implore your Excellency in the event of such being in contemplation to avert from them such an unmerited calamity.⁷⁹⁵

The petitioners added that

the District of Three Rivers has existed as a separate District, having its own Courts of Justice ever since the year 1793. That Tribunals were established there, at the time of the Conquest, that it formed a District Government and Jurisdiction and the French Government, that it has a spacious [...] Court House, and a Safe Prison, that it contains a population of Sixty thousand souls, who have even enjoyed the important privilege of obtaining justice near their own houses and that it would therefore be a most vexatious alteration which would compel them to sue for their rights at a great increase of travelling expense, and lots of time, whether at the distant cities of Montreal or Quebec [...]⁷⁹⁶

The petitioners pleaded with the Governor General to spare Trois-Rivières and prevent the elimination of this historical district.

Unfortunately, Thompson ignored their pleas and dissolved the district of Trois-Rivières. As a result, all inhabitants were forced to travel all the way to Sherbrooke for legal services. The local population did not accept this without a fight, however, and on 4 July 1840, protested against Thompson, the Special Council and the ordinance. *Le Canadien* described the events of the day.⁷⁹⁷ At first, the population took to the streets and verbally expressed their anger. However, as the day progressed and tensions grew,

⁷⁹⁵ *Ibid.*

⁷⁹⁶ *Ibid.*

⁷⁹⁷ *Le Canadien*, 4 July, 1840.

the verbal and peaceful protest took a violent turn. The protestors pulled out an effigy of Poulett Thompson, as well as one of James Stuart, and burnt them to a crisp. Although the newspaper admitted that it did not support such acts of violence, it nonetheless believed that in this case, the population was right to act in such a manner. What Thompson had done to them was unjust and they deserved to show how they really felt.

Evidence suggests that the Lower-Canadian press and population sided with their brothers and sisters in Trois-Rivières and one after another condemned the actions taken by Thompson's council. For example, on 25 July 1840, a petition from Quebec City, which included the names of men such as John Neilson and E. Glackmeyer, condemned several of the ordinance passed by the Special Council, including the Trois-Rivières Ordinance. The petition criticized the Special Council for abolishing the district, which had been a seat of justice and administration since the first settlement of the colony. According to the petition, the council did not have the authority to pass such an ordinance. This ordinance was moreover "in violation of the [...] rights and liberties of your Majesty's subjects in your provinces of North America, and being rendered permanent, the said [ordinance] cannot fail to give rise to new dissensions between the Branches of the Provincial Legislature, whenever a free representative assembly shall be restored to your majesty's subjects in this part of your dominion."⁷⁹⁸

Newspapers also sided with the population of Trois-Rivières. For example, on 17 June 1840, *L'Ami du peuple*, which had consistently supported the Special Council's decisions, condemned the ordinance arguing that it would "bouleverser presque tout le

⁷⁹⁸ LAC, MG11, CO42, Series, Q, File 273-1, p. 147. Petitions of the undersigned inhabitants of the city and vicinity of Quebec. July 25, 1840.

système judiciaire actuel [...] La ville de Trois-Rivières, qui tirait quelque'importance du siège tribunal, sera totalement ruinée et les avocats, qui pratiquaient à ce barreau, se verront obligés de déménager pour aller solliciter pratique dans les autres districts, perdant ainsi une situation et une existence toute faite.”⁷⁹⁹ On the very same day, *Le Canadien* produced a similar article, which stated:

Au milieu de cette masse d'injustices, de bévues et de dispositions tyranniques connues sous le noms d'ordonnances du Conseil Spécial, il n'y aura rien, à notre avis, d'aussi odieusement inique, que l'Ordonnance de Judicature qui vient d'être introduite dans le Conseil Spécial, en ce qu'elle abolit le District de Trois-Rivières pour le réunir au District de St. François [Eastern Townships]. On peut trouver une excuse à la plupart des iniquités dont fourmille la législation du Conseil Spécial. Par exemple, on peut attribuer à la peur de nos Législateurs Spéciaux, plusieurs de leurs ordonnances oppressives; pour d'autres, on peut plaider l'ignorance [...] Mais que peut-on amener en exténuation de l'injustice criante que l'on va faire à la population du District des Trois-Rivières.⁸⁰⁰

According to Étienne Parent, Thompson and his councilors knew very well that by abolishing the district of Trois-Rivières and uniting it with that of St-Francis, the French-speaking population would lose much political power. In the new district, the French-Canadian and British population would be equal in size. Parent therefore believed that this ordinance was nothing but another of the Special Council's attempts to reduce the influence of French-Canadians and improve that of English-Canadians. (This assumption was neither confirmed nor disproved in Thompson's journals and letters). Parent ended his article with the following condemnation:

C'est encore là de la 'justice égale' à la façon Thompson, et nous ne fessons [sic] pas au Gouverneur Général de reproche de manquer de consistance, car ce nouvel acte s'accorde parfaitement avec l'interprétation

⁷⁹⁹ *L'Ami du peuple*, 17 June, 1840.

⁸⁰⁰ *Le Canadien*, 17 June, 1840.

pratique qu'il a donné en plusieurs occasions sa devise de 'justice égale': il cadre parfaitement bien avec l'article de la dette du Haut-Canada, avec la répartition de la représentation sous le régime de l'Union, et avec l'exercice du patronage de la couronne sous l'administration actuelle [...] Il semblerait véritablement que nos gouvernants actuels s'étudient à faire tout ce qu'ils peuvent pour faire regretter au peuple du pays de n'avoir pas couru en masse sous les drapeaux de l'insurrection [...] Comment en effet expliquer autrement cette fureur de législateur à la course, à tort et à travers, et en dépit de l'opinion publique, à la veille du rétablissement du régime représentatif?⁸⁰¹

French-speaking newspapers were not the only ones that condemned the ordinance. Quite a few British newspapers and their readers condemned it as well. On 12 October 1840, for example, *The Quebec Gazette* newspaper published a letter from an individual calling himself "X.Y.Z." His opinions reflect the newspaper's.

This obnoxious Ordinance, which will probably go into force in the month of December, has created more real and lasting discontent than all the legislation of the Special Council. It originated in the Council, with the view of advancing the interest of one class of people, to the detriment and injury of another. It gave the inhabitants of the Eastern Townships of Lower Canada, who form a minor part of the population of the Province, more solid and substantial advantages, than they have ever enjoyed before. But at whose expense? At the expense of the inhabitants of the District of Three River, who have ever been characterized for their loyalty and attachment to the British Constitution. This Ordinance will operate most powerfully to the detriment of every landowner in this District; it is a manifest spoliation of vested rights; it is an injury, and a gross and palpable injury to every man, women and child, whose dearest interests may depend on the prosperity and advancement of the place.⁸⁰²

According to the writer, there would be significant consequences.

Apart from the consideration of the inconvenience to which the inhabitants will be subjected, by being obliged to travel upwards of a hundred miles to obtain the administration of justice, which they have hitherto seen administered near their homes and fire-sides; what will be their feelings,

⁸⁰¹ *Ibid.*

⁸⁰² *The Quebec Gazette*, 12 October 1840.

when they find the ancient records of their families, which have been deposited for upwards of a century, in the public archives of the District, removed from the place of their birth and their residence, to a distant city [...]⁸⁰³

Even the anti-French-Canadian newspaper, *The Montreal Herald*, condemned the ordinance. It argued that although the governor maintained that it would facilitate things for the local population, this was not the case.

We do not hesitate to say that the territorial divisions made by the Ordinance will not do what they profess to do. The administration of justice, instead of being facilitated and rendered less expensive, will be made more clumsy and vastly more expensive than before. The province has been looked at on the map merely, and as the map affords no clue whatever to the course of business, nor to the state of roads, nor the knowledge of the people for what is for their convenience, no reference to these points can be detected in the Ordinance. Thus, the District of Three Rivers is abrogated entirely, the people of Maskinonge are sent to Quebec and the people of Missiskoui to Sherbrooke. We do not know what possible reason have been assigned for slotting out Three Rivers [...]⁸⁰⁴

The case of the Missiskoui people (in the Eastern Townships) especially baffled the newspaper. The *Herald* maintained that for years the inhabitants of Missiskoui used the services of Montreal courts. After so many years, their dependence to the city was firmly established to the point that most of the inhabitants did not do any business anywhere else. Montreal, along with its markets, had become their only source of goods and supplies as well as their seat of justice. Moreover, as a result of the railroad that was built linking them to Montreal, the inhabitants could reach the city in a few hours, thus increasing their dependency. The newspaper complained that

⁸⁰³ *Ibid.*

⁸⁰⁴ *The Montreal Herald*, 17 July, 1840.

[n]ow, however, all this convenience and all these settled relations are broken in upon by the Judicature Ordinance. The natural rule of commerce compel them to resort to Montreal to dispose of their produce and purchase necessities, and the artificial regulations of the Ordinance compel them to do, from sixty to ninety miles, in a direction in which other business never leads them, and by roads of excessive difficulty in order to obtain justice.⁸⁰⁵

Thus, rather than taking a few hours to travel to Montreal (by train) to receive legal services, as a result of the new ordinance, it now took four days of travel to Sherbrooke to receive similar services. This did not make their lives any easier. Not only did the inhabitants of Missiskoui have to continue travelling to Montreal if they wanted access to its profitable markets, but they now had to travel in the opposite direction to Sherbrooke to receive legal services. The newspaper explained: “[b]efore, the inhabitant could sell his products, acquire funds for his travel and see a lawyer if needed on the spot, in Montreal. Now, he must first travel to Montreal to dispose of his produce, then go back to Missiskoui where he is to leave for Sherbrooke, thus incurring a double journey.”⁸⁰⁶

Like the people of Trois-Rivières, the inhabitants of Missiskoui also verbally and publicly protested the ordinance, albeit on a much smaller and peaceful scale. On 18 July 1840, for example, local inhabitants held a public meeting in Frelighsburg to express their dissatisfaction with the ordinance.⁸⁰⁷ Their complaints echoed those mentioned above in the *Herald*. They were angry that their region was no longer part of the district of Montreal, and also complained that in order to receive legal services, they had to travel to a city that was much further and one that they had little-to-no reason to visit.

⁸⁰⁵ *Ibid.*

⁸⁰⁶ *Ibid.*, 20 July, 1840.

⁸⁰⁷ *Ibid.*, 31 July, 1840.

Along with this public meeting, the people of Missiskoui also produced petitions and sent letters to their local newspaper. On 12 August 1840, hundreds signed a petition that similarly focused on the fact that the ordinance severed the region's important ties with Montreal; ties it had enjoyed since 1784.⁸⁰⁸ More specifically, they complained that the agricultural and commercial pursuits of several inhabitants would suffer as a result as they would no longer have "easy" access to Montreal's markets. Instead, they would have to go to a place that had smaller markets and would take much longer to reach. During the summer months, travelling to Montreal could take as little as a few hours, whereas traveling to Sherbrooke (back and forth) could take up to four days and at a much greater expense. During the winter months, while they could take the train to Montreal and therefore save much time, there was no such railroad linking the region to Sherbrooke. Add the unpredictable Canadian winters and poor road conditions, and travelling to Sherbrooke thus became impossible. In order to continue to enjoy both legal and economic services, many would therefore be forced to travel to both Montreal and Sherbrooke. This was quite simply inefficient and would cost them much time and money. The petitioners hoped that the governor would consider their pleas and reinstate them in the district of Montreal.

The people of Missiskoui also sent letters to local newspapers. On 6 August 1840, *The Montreal Herald* printed a letter from a man called "A.E.," who complained that this new ordinance would cost them much time and money. Sherbrooke, he argued, was still very barren and unsettled, and the people could not even yet count on it or its markets to sell their goods. Continued travel to both cities could potentially even financially ruin

⁸⁰⁸ LAC, RG4, A1. Volume 609, File: 12 August 1840.

many local inhabitants as a result of the frequent and heavy travel costs.⁸⁰⁹ The writer thus hoped that Thompson would realize his mistake and “not send [them] to Sherbrooke.”⁸¹⁰

It appears that these pressures by the local population had the desired effect. According to Luc Huppé, Donald Fyson, Evelyn Kolish and Virginia Schweitzer, the ordinance eliminating the district of Trois-Rivières had a short life.⁸¹¹ Huppé explains:

La réforme opérée par le Conseil Spécial aura une durée éphémère. Élaborée sans la participation des représentants élus de la population, cette nouvelle structure judiciaire sera anéantie dès le rétablissement d’une assemblée législative dans le Bas Canada.⁸¹²

B. SEMINARY ORDINANCE AND THE END OF THE SEIGNEURIAL SYSTEM IN THE ISLAND OF MONTREAL

The Seminary Ordinance was without a doubt one of the most groundbreaking and revolutionary acts passed by the Special Council, and not surprisingly, as a result, it became an important topic of conversation. Although most of the ordinance’s features received *some* attention from the local population, none has received *more* attention than its attack on the seigneurial system and the first steps it took to rid the colony of it. More importantly, this element united, for a very rare time, the majority of the colony’s French-Canadian and British inhabitants. It appears that the majority of Lower Canadians had perhaps grown tired of the seigneurial system thus explaining their support for the ordinance.

⁸⁰⁹ *The Montreal Herald*, 18 August, 1840.

⁸¹⁰ *Ibid.*, 6 August, 1840.

⁸¹¹ Donald Fyson, Evelyn Kolish, and Virginia Schweitzer, *The Court Structure of Quebec and Lower Canada, 1764 to 1860* (Montreal: Montreal History Group, 1994), p. 115; Luc Huppé, *Histoire des institutions judiciaires du Canada* (Montreal: Wilson & Lafleur, 2007), p. 308.

⁸¹² Huppé, *Histoire des institutions judiciaires du Canada*, p. 308.

Obviously, there were some supporters of the seigneurial system. Georges E-Baillargeon's (aka Brother Marcel-Joseph) 1963 doctoral dissertation, for example, posits the interesting theory that by the time the 1840 Ordinance was adopted, not all French-Canadians wanted the end of the seigneurial system. Baillargeon maintains that there was a clear divide between city residents and rural folk.⁸¹³ For example, whereas those who lived in cities and suffered from high *lods et ventes* openly opposed the system, many in rural areas—with plenty of land still available—supported it since it provided an easy way to secure land for future generations.⁸¹⁴ As evidence, Baillargeon considers the “commission d'enquête” between 1841 and 1843, which recorded the population's opinions towards the potential commutation of the seigneurial system. It was then that several *censitaires* expressed their support for the seigneurial system. For example, the *censitaires* of Ste. Anne wrote to their pastors that they were happy with the way things were. They maintained that seigneurial tenures were the only way to guarantee lands for the *Canadien* youth.⁸¹⁵ It also provided access to inexpensive land to an impoverished population. Others believed that the government should not end the system, but limit the seigneur's powers.⁸¹⁶

However, with regards to the Special Council's ordinance, supporters of the seigneurial system were not as vocal as its opponents. The only evidence relating to the ordinance and the seigneurial system itself supported its dissolution, no evidence (public protests, petitions, letters, etc.) supporting its survival was found. Baillargeon noted that

⁸¹³ Georges E- Baillargeon, “L'abolition du régime seigneurial (1829-1854).” Doctoral Dissertation, Université de Montréal, 1963, p. 1.

⁸¹⁴ *Ibid.*, p. 717.

⁸¹⁵ *Ibid.*, p. 353.

⁸¹⁶ *Ibid.*, p. 356.

the only anti-ordinance petition in Montreal was presented to the governor in March 1840. Quoting the *Aurores des Canadas*, he noted: “[c]ette requête, était revêtue, dit-on de 2,000 ou 1,500 signatures. Après les démarche du parti [anti-ordonnance], si c’est là tout ce qu’ils ont pu recueillir sur la population de toute l’île de Montréal, on ne peut certes pas augurer favorablement de ses forces [...]”⁸¹⁷ Moreover, the majority of evidence opposing the ordinance itself came from some members of the English-speaking community who were disappointed with its scope as they felt it did not go far enough.

Petitions had been sent to the governors to end this system of land tenure for years. For example, in January 1838, the merchants and traders of Lower Canada, which included men such as Peter McGill, John Molson, and John Redpath, sent a petition complaining against the seigneurial system. Stating that the Legislative Assembly had neglected their interests, and that of the British population in general, they maintained:

[...] they [British Citizens] have been compelled to submit to an antiquated system of French jurisprudence, detrimental to their interests and foreign to their habits; to the withering influence of feudal law, which has been driven by the spirit of enlightened legislation from civilized Europe to find a last and solitary home in Lower Canada; to the denial of legislative remedies for relieving the conveyance of land from a grievous tax upon improvement, and for affording security for the investment of capital, and the privation of their dearest rights as British subjects [...]⁸¹⁸

They therefore asked the government to relieve them from such shackles and injustices; injustices that no British citizens should be forced to endure. They also wanted the British Government to establish a system that promoted economic growth in Canada; this

⁸¹⁷ *Ibid.*, p. 302. *Aurores des Canadas*, quoted in *Le Canadian*, March 9, 1840.

⁸¹⁸ LAC, MG 11, CO 42, Series Q, File 246-1, p. 23. Petition from the owners of estate in the province of Lower Canada, January 1838.

included the end of the seigneurial system and the creation of a land registration system.⁸¹⁹

In July 1838, the inhabitants of Nouvelle Longueuil, Soulanges and Vaudreuil sent a similar address to Lord Durham complaining about the colony's seigneurial system. After expressing their trust in the new governor, they criticized the current state of the colony, more specifically the seigneurial system. They claimed that the connexion with the mother country "can only be endangered by the continuance of those feudal burthens [...]"⁸²⁰ They also argued that many rebels were "actuated by a desire to emancipate their suffering countrymen from exactions and oppressions unknown in any other part of the free and glorious empire of Great Britain."⁸²¹ They believe that such a system had prevented French-Canadians from becoming an enterprising people: "We believe that feudal thralldom is incompatible with British institutions, commercial enterprise, or agricultural improvements [...]"⁸²²

Moreover, after the ordinance, which was limited to Montreal, passed, Lower-Canadians (both French and English-speaking) sent petitions asking the governor and his council to expand it to the rest of the colony. On 20 October 1840, for example, the people of Beauharnois produced a petition, which condemned the seigneurial system and begged Thompson to remove it altogether from the colony.⁸²³ Sent by the *censitaires* of the region, they complained that "the oppressive and vexatious operation of the feudal tenure is deeply felt by your petitioners [...]" and hoped that the governor and his council

⁸¹⁹ *Ibid.*

⁸²⁰ LAC, MG 11, CO 42, Series Q, File 246-2, p. 303. The Address of the Inhabitants of the Seigniories of Nouvelle Longueuil, Soulanges, in the country of Vaudreuil, 19 July 1838.

⁸²¹ *Ibid.*

⁸²² *Ibid.*

⁸²³ LAC, RG1, E16, Volume 3, part, File #46.

would soon pass “a measure which shall provide for the commutation and extinction of the said Tenure.”⁸²⁴ According to the petitioners, they were suffering under this repressive system; they were

subjected by the Feudal Tenure and its incidents to a state of vassalage of the most galling description; that the burthens imposed upon them are not only oppressive in their effects, but are also odious in character, and that your petitioners in comparing their condition with the rights and privileges enjoyed by the citizens of the neighbouring Republic are reluctantly compelled to admit that, apart from all political considerations, their civil state, their state as men and proprietors, is most humiliating and degrading [...]⁸²⁵

The petition was signed by roughly 1000 French and English-speaking inhabitants.

Similar petitions were sent from many parts of the colony, including one from La Prairie, a French-speaking area.⁸²⁶

Not all regions took the time to produce petitions, however. Other regions opted to hold public meetings instead. For example, on 11 April 1840, the French and English-speaking inhabitants of Lacolle held a public meeting condemning the “oppressive and burthensome” seigneurial system.⁸²⁷ They pleaded with the governor to dissolve the seigneurial system and prevent the colony’s ruthless *seigneurs* from taking all of their money. Overall, they hoped that Thompson would allow the “entire extinction of the Feudal Tenure [...]⁸²⁸

Although support to dissolve the seigneurial system came from several parts of the colony, the greatest support came from the colony’s economic center: Montreal.

⁸²⁴ *Ibid.*

⁸²⁵ *Ibid.*

⁸²⁶ *L’Ami du Peuple*, 4 April, 1840.

⁸²⁷ *The Morning Courier*, May 1, 1840.

⁸²⁸ *Ibid.*

Throughout, the local population sent several letters to local newspapers, sent petitions to the governor, and took part in various public demonstrations. On 30 March 1839, for example, the “proprietors of real property” sent a letter to the governor discussing the commutation of Seigniorial Tenures on the island.⁸²⁹ The group first explained how it obtained an interview with members of the Seminary of Montreal at which they discussed the commutation of their lands. Although they believed the interview went fairly well, they nonetheless admitted that the two solitudes were still far apart. Their opinions differed, for example, regarding

the proposed high rate of commutation for improved farm land on this island especially upon which the buildings may not be valued at five hundred pounds thought the farm from superior and expensive cultivation alone may be valued at [...] one to two thousand pounds, [...] their refusal to accept to commutation for an entire purchase whether the whole may be sold or not, [and] their refusal to establish a general rate of five percent for payment of areas of *lods et ventes*, notwithstanding that has been their usual customs in this particular [...]⁸³⁰

Although the group was aware that any ordinance concerning the church’s lands remained a very sensitive issue, they nonetheless believed that their commutation was of great importance and needed to be quickly resolved. The petitioners thus hoped that, with the help of the governor and his council, the people of Montreal and the Sulpicians of the seminary could come up with a compromise that would allow their commutation and begin the process of ending the seigneurial system. The petitioners felt, however, that the titles of the seminary and the “impopular and oppressive nature of the seigniorial dues,”

⁸²⁹ LAC, RG4, A1. Volume 576, File: 27-31 March, 1839.

⁸³⁰ *Ibid.*

had to be eliminated once and for all for the good of the local inhabitants and the city's commercial interests.⁸³¹

The "Proprietors and Legal Representatives of many landed proprietors in the city of Montreal" sent a similar petition to the governor in late March 1839, which similarly maintained that seigneurial burdens had to be eliminated as they have been "injurious to the value of property and the prosperity of the community."⁸³² They made the following demands:

That the *Droit de Lods et Ventes* in arrears, ought to be made payable within ten years by yearly installments from the passing of the act, or to remain upon the property a *rente constitué et rachetable* if so required [...] That the price or rate at which property should be made be commuted, and for which all dues shall be for ever discharged, shall not be more than five per cent or the value of the lots or parcel of ground, at the time of commutation and not upon the value of the buildings or improvements.⁸³³

The petition was signed by 35 individuals, mostly English-speakers.

Along with such petitions, Montreal-based newspapers published several articles and letters asking for the abolition of the seigneurial system and supported the first steps taken by the Special Council. For example, on 11 February 1840, *L'Aurores des Canadas* applauded the ordinance and hoped that all Lower-Canadians that considered themselves liberals and reformers would support it as well. The newspaper did not need to hope, however, it was convinced that all would support it.

Il s'élève dans certains lieux un cri qui semble faire écho à ceux jetés par quelques papiers publics, organes complaisans de quelques individus, pour

⁸³¹ *Ibid.*

⁸³² *Ibid.*

⁸³³ *Ibid.*

demander l'abolition de la 'tenure féodale.' Eh bien! ce cri trouvera aussi l'écho dans tout le pays. Il est à peu près convenue, tant de la part des seigneurs que de celle des censitaires, que le temps est arrivé où il faut un système de propriété réformé.⁸³⁴

Usually the fiercest of enemies, the *Aurores* could count on the support of *The Montreal Gazette*. The newspaper had always promoted the end of the seigneurial system, even before it became a topic of discussion in the Special Council. On 6 October 1838, for example, it stated that so long as the seigneurial system was present, Lower Canada would remain a backwards state, which would limit the colony's potential and economic growth.

We believe that his Lordship [Lord Durham] has long ago come to the conclusion, that it is by such means alone, the title and the blessing of a British Colony can be entailed upon Lower Canada, and that its interests can be perpetually connected with those of the Parent State. Every vestige of the feudal barbarism of antiquity—every vestige of a foreign tongue—every vestige of antiquated, anti-commercial, oppressive, and demoralizing laws—and every vestige of seditious and factious opposition to the supreme, authority of the State, must be rooted up without delay, and swept by the besom of British authority and Parliamentary legislation.⁸³⁵

The Morning Courier and its readers also applauded the ordinance. For example, on 14 August 1839, the newspaper printed a letter from “A Canadian, Not Franco,” that clearly championed the abolition of this system. According to the writer, “the Seignorial Laws, as practiced in Lower Canada, have been the chief cause of disaffection [...]” amongst the local population.⁸³⁶ He continued: “[d]on't stare, Sir when I boldly say that the Seigneur unites in his person, all the powers of the Imperial Parliament,—he only, has the right [...] to tax land in Lower Canada!—Yes, Sir, one man has the right of taxing me

⁸³⁴ *L'Aurores des Canadas*, 11 February, 1840.

⁸³⁵ *The Montreal Gazette*, 6 October, 1840.

⁸³⁶ *The Morning Courier*, 14 August, 1839.

and my posterity [...]”⁸³⁷ A month later, he sent another letter condemning the practice, and described the daily sufferings endured by many Lower Canadians.

How many heartburns has the poor *censitaire* to endure; for years, he has been treasuring up “in his mind's eye,” the prospect of raising, where his cottage now stands, a stately house; he has counted, over and over, the number of trees that would be required—at last, he has enough,—he, at all events, thinks so,—he is perhaps engaged in the plan of his house,—or, perhaps, thinking of eating a good dinner in his projected “*salle à manger*,” when a stamp appears, bearing a license from the Seigneur, to fall the choicest of his timber. The heart sickens at the idea of the curses which the inhabitant of this country suffer from Seigneurs, and the system [...]”⁸³⁸

The writer believed that it was finally time to end this nonsense. The newspaper agreed.

On 21 February 1840, it produced the following article.

We have lying before us, a Seignorial Deed,—a real, genuine, Concession Deed,—from lord to a vassal,—or,—in French,—*d'un Seigneur à un Censitaire*. Perdition seize the thing!—We hate the sight of it,—and would throw it into the fire,—where the Feudal Tenure ought to be, 'mid sulphurous flame,—were it not, that we intend to show this *abortion* of law,—this deformed—transformed,—monstrosity,—upon which, glares the eye of the 19th century,—as upon a resuscitated Egyptian mummy, with parchment cheek and shriveled skin,—armed with right and power, as in the good old days of Sesostrius and Pharaoh,—were it not—we intend to exhibit this choice example of paternal government,—to the admiring public.⁸³⁹

The Morning Courier was one of the seignorial system's most persistent enemies. In the months prior to the adoption of the Seminary Ordinance, it published several letters, each expressing their hatred of the system. For example, on 2 March 1840, it printed a letter from “enemy of feudalism”, and a few days later, on 4 March 1840, from a man called “common sense.” Each letter attacked the practice and maintained that

⁸³⁷ *Ibid.*

⁸³⁸ *Ibid.*, 9 September, 1839.

⁸³⁹ *Ibid.*, 21 February, 1840.

it had been oppressing the local population for far too long. Similar to what Napoleon Aubin had done with regards to the Bermuda Ordinance, *The Morning Courier* also wanted to know what people thought of the seigneurial system. Along with publishing numerous letters, it interviewed members of the local population. The most interesting interview was with a man from St-Philippe on the south shore of Montreal. The man in question, named Cartier, was a respectable habitant of the region and the father-in-law of Col. Gagnon, a *Patriote*. He said the following about the seigneurial system, which the newspaper translated and printed:

My opinion!—do you ask that!—can you ask that from any man of common sense?—Sir,—that odious tenure has been the cause of all the miseries of this country; it has made the great body of the people poor,—and will keep them poor, so long as it is suffered to exist. There would have been no insurrection in 1838, in this neighbourhood, but for that tenure. The Seigneur of the country around Napierville, caused four or five hundred summonses to issue,—to grind out of the poor what they could not pay, owing to bad seasons and unproductive crops,—and the consequence was, they welcomed the *Patriotes* as deliverers;—I say, again, but for this odious tenure,—the people in this neighbourhood, never would have risen.⁸⁴⁰

Although the newspaper believed that Cartier was wrong to think that another rebellion would deliver the population from this oppressive practice, his interview was nevertheless important as it showed that “French people, themselves, trace to it [Feudal tenures] the degraded condition of the land [...]”⁸⁴¹

As stated, there is very little evidence opposing the Special Council’s ordinance. There were no petitions and protests, and as has been demonstrated throughout this dissertation, when an ordinance was unpopular, the local population did not shy away

⁸⁴⁰ *Ibid.*, 9 March, 1840.

⁸⁴¹ *Ibid.*

from expressing its displeasure. This may suggest that the local population both silently and vocally supported the ordinance and the end of the seigneurial system. Although the fact that commutations were rare in the years following the ordinance may suggest that many did not mind the system, since they had to be initiated by the *censitaires*, Robert C.H. Sweeney, Grace Laing Hogg, and Tom Johnson offer a more probable conclusion for this by explaining that because property values were so high in Montreal in the mid-19th century, very few families could actually afford to commute their lands.⁸⁴² The only criticisms came from the English-speaking populace who complained that the ordinance did not go far enough. While they applauded its overall aim, they criticized the fact that the Special Council had been too conservative by limiting its effects to Montreal.

For example, although *The Montreal Transcript* acknowledged that important first steps were taken in ridding the colony of its seigneurial vestiges, it was nonetheless disappointed that it did not go further and only allowed commutations in Montreal. The ordinance should have applied to the entire colony.⁸⁴³ *The Montreal Herald* and *The Montreal Gazette* similarly criticized its scope.⁸⁴⁴ On 8 February 1840, *The Montreal Gazette* not only criticized the fact that the Special Council established the seminary as an Ecclesiastic Corporation thus confirming all rights and titles over its present holdings rather than abolishing them outright, but also criticized the fact that it only gradually dismantled the seigneurial system rather than permitting its prompt and immediate extinction.⁸⁴⁵

⁸⁴² Refer to Sweeney and Hogg, "Land and People" and Johnson, "In a Manner of Speaking."

⁸⁴³ *Montreal Transcript*, 7 January, 1840.

⁸⁴⁴ *The Montreal Herald*, 25 January, 1840.

⁸⁴⁵ *The Montreal Gazette*, 8 February, 1840.

In February 1840, the “proprietors of real estate, merchants and inhabitants of Montreal” condemned the ordinance for similar reasons. Hoping that Thompson would reconsider its scope, the petition began by arguing that the seigneurial system had been one of the colony’s greatest “evils” and “inconveniences” as it had stunted the colony’s commercial development, had imposed a heavy burden on the population, and had prevented the use of land for investments.⁸⁴⁶ The petitioners also maintained that the seigneurial system had especially been costly for the city of Montreal as it had slowed its progress and prosperity. Without it holding it back, the petitioners argued, that the city “possesses every capability of being one of the greatest marts of trade and most extensive seats of population in your Majesty’s North American dominions.”⁸⁴⁷ The petitioners were thus very disappointed that the Special Council took a conservative approach. They especially condemned the ordinance for not banning the seigneurial system outright and allow the colony’s inhabitants to become the freeholders of their land. The petitioners were moreover annoyed that the colony’s Protestant inhabitants, who had no relations with the Church of Rome, were forced to “support and maintain the Ecclesiastics and Institutions of that Church, by the payment to the proposed Ecclesiastical Corporation, of a large amount for the commutation of Seigniorial tenure [...]”⁸⁴⁸ The petitioners thus concluded that and proposed the following:

For these reasons, as well as from motives of public policy, from a due appreciation of the rights secured to them by the Royal assurance and the enactments of the Imperial Parliament, and from a sincere wish to promote the Prosperity of the Province, the extension of their commerce and their general peace and tranquility, your petitioners most humbly beseech your

⁸⁴⁶ *The Petition of the undersigned Proprietors of Real Estate, Merchants, and others, Inhabitants of the City and Island of Montreal, in the Province of Lower Canada.* CIHM No. 13090. A copy of this petition was also found at LAC, MG 11, CO 42, Series Q, File 271-1, p. 52A.

⁸⁴⁷ *Ibid.*

⁸⁴⁸ *Ibid.*

Majesty to refuse your gracious sanction to any Law or Ordinance, providing for the Incorporation of the Ecclesiastics of the Seminary at Montreal, for a confirmation of their pretension to the Seigniorship of the Island of Montreal, or for a continuance of feudal tenure, and thereby relieve your Petitioners and the inhabitants of the Island from the degrading vassalage to which they have been heretofore and still continue to be subjected [...]⁸⁴⁹

The petition was signed by 2,119 individuals; nonetheless, the governor and its council ignored the request.⁸⁵⁰

C. THE UNION OF THE CANADAS AND THE ANTI-UNION MOVEMENT

Although all ordinances mentioned in this dissertation generated a significant amount of discussion, none compare to the Union Act, which was voted for by the Special Council. Numerous petitions, newspaper editorials, letters to the editor, public meetings and popular protests were held and produced from all corners of the colony. More importantly, although the majority of English-speakers supported union, many had reservations about it, and therefore French-Canadians were not isolated in their fight. John Neilson, for example, was one of the most important leaders of the anti-union movement and spear headed several of its petitions and protests. As was previously discussed, a few historians have considered the opinions of some Lower Canadians towards the Union of the Canadas. McCulloch's dissertation considers Nielson's role in the anti-union movement, the meetings he held and the petitions he organized. These petitions will again be used in this dissertation.⁸⁵¹ Michel Ducharme's articles and dissertation also very briefly considered the topic, but focus instead on the French-

⁸⁴⁹ *Ibid.*

⁸⁵⁰ LAC, MG 11, CO 42, Series Q, File 271-1, p. 52A.

⁸⁵¹ McCulloch, "English-Speaking Liberals in Canada East, 1840-54."

Canadian political elite, and more specifically, Étienne Parent.⁸⁵² This dissertation will include some of his findings and also add to them by considering the opinions of others towards the Union of the Canadas.

In January 1840, the anti-union movement produced a massive petition, the largest to date. Whereas all petitions discussed so far were signed by hundreds or thousands of people, this one included tens of thousands of signatures and speaks volumes about the local population's level of opposition towards union. Headed by John Neilson, this petition not only criticized union itself, but it also condemned the manner in which Thompson and the Special Council adopted it. First of all, the petitioners criticized a statement made by Thompson, who maintained that "so far as the feelings of the inhabitants of Lower Canada can be there ascertained, the measure of the re-union meets with approbation."⁸⁵³ The petitioners did not agree with such a statement. They argued that no "steps have been taken to ascertain the feelings of the Inhabitants of Lower Canada, on the measure of the said re-union [...]"⁸⁵⁴ Although the Special Council, the colony's representatives, voted for union, the petitioners maintained that the will of the Special Council did not represent that of the people. They even argued that the vote itself did not even represent the will of the Special Council. They explained that on 5 November 1839, the governor asked the Special Council to vote on the matter a mere six days later. Needless to say, this was not enough time as many councilors had to travel long distances, some more than 300 miles, to reach Montreal. Moreover, the vote also

⁸⁵² Ducharme, "Quand la plume voile plus qu'elle ne dévoile, pp. 385-95; Ducharme, "Penser le Canada : la mise en place des assises intellectuelles de l'état canadien modern," pp. 357-86; Ducharme, "Aux fondements de l'état canadien: La liberté au Canada de 1776 à 1841."

⁸⁵³ *Re-Union—Lower Canada: to the Queen's Most Excellent Majesty. The Humble Petition of the Undersigned Inhabitants of the Province of Lower Canada*. CIHM No. 21781.

⁸⁵⁴ *Ibid.*

took place in late fall/early winter, which meant that travelling was even more difficult. As a result, the meeting was only attended by half of its members and therefore did not represent the majority of the council. More importantly, however,

the said Special Council has no representative character, in so far as the Inhabitants of Lower Canada are concerned, but that the members are appointed by the Crown, during pleasure, and have only existence for a special purpose till the 1st November, 1840 [...] and cannot in any way be considered expressing the feelings or wishes of the Inhabitants of this Province on the measure in question.⁸⁵⁵

Along with arguing that the will of the Special Council did not represent the will of the people, the petition also criticized the union's overall aims. Although the petitioners understood that changes needed to be made as a result of the Rebellions, they nonetheless maintained that a union with Upper Canada would only cause "dissention" and "confusion" as both populations had evolved under different codes of laws, which regulate "property, oppression and violence, the utter insecurity of person and property, and the total interruption of public prosperity."⁸⁵⁶ The petitioners furthermore believed that union was a horrible idea as a

section of the country [Upper Canada] of only about a half the population and wealth of the Province to which it is to be United [Lower Canada], is to have one half of the representation, and thereby possess the power of taxing the great majority of the inhabitants without their consent, and applying the proceeds to a sectional portion of the Province, while a large debt contracted and spent for the improvement of Upper Canada, is to be imposed on the inhabitants of Lower Canada, afford sufficient evidence of the erroneous information and unconstitutional designs, which have presided at the formation of the said plan, and are an indication of the evils which must inevitably result from the sanction thereof by the Imperial Parliament.⁸⁵⁷

⁸⁵⁵ *Ibid.*

⁸⁵⁶ *Ibid.*

⁸⁵⁷ *Ibid.*

The petitioners thus pleaded with Her Majesty that the former 1791 Constitution had to be maintained and “no alteration thereof be effected without the Inhabitants of this Province having had an opportunity of being heard on any Bill to be introduced into Parliament for that purpose.”⁸⁵⁸

The petition was accompanied by a statement as to the number of signatures per parish (this included both signatures and certified marks), the number of British signatures per parish and the total per district. The number of signatures is distributed in the tables below between the different districts: District of Quebec (Table 15) and District of Trois-Rivières (Table 16). For the sake of simplicity, however, rather than compiling all signatures per parish (there are hundreds), the following tables compile them by county.

Table 15: Number of signatures in the District of Quebec⁸⁵⁹

County	Total Signatures	British Names
Quebec	4,454	738
Rimouski	3,374	29
Kamouraska	4,288	21
L’Illet	3,609	16
Bellechasse	3,548	52
Dorchester	2,770	50
Beauce	2,643	508
Lotbinière	1,886	205
Port-Neuf	2,002	212
Montmorency	1,284	4
Orléans	944	2
Saguenay	1,889 (total: 32,691)	8 (total: 1,845)

⁸⁵⁸ *Ibid.*

⁸⁵⁹ *Ibid.*

Table 16: Number of signatures in the District of Trois-Rivières⁸⁶⁰

County	Total Signatures	British Names
St. Maurice	2,455	19
Champlain	1,725	14
Yamaska	400	6
Nicolet	1,757 (total: 6,337)	23 (total: 62)

There was a significant amount of support for the anti-union movement in Lower-Canada. Close to 40,000 individuals signed the petitions, including over 2,000 English-speakers, making it, by far, the largest petition the colony produced in the era.

Besides this petition, the local population expressed its opposition to the union by participating in several public meetings and demonstrations. The above petition resulted from such meetings. John Neilson was once again a major participant in several of them. On 18 and 24 January 1840, John William Woolsey and Edward Glackemeyer held two citizens meeting in Quebec City where they discussed union and produced the template to the above petition.⁸⁶¹ Along with discussing the petition's content, the first meeting focused on the manner in which the petitioners would gather signatures and what to do with it once complete. It was eventually decided that it would be sent to Her Majesty and to the two Houses of Parliament in Great Britain. Before adjourning the meeting, a committee of 40 individuals, which included John Neilson, was appointed to manage the petitions, get signatures and transmit it to England. The January 28 meeting focused especially on the content of the petition itself, which was described above.⁸⁶²

⁸⁶⁰ *Ibid.*

⁸⁶¹ *Re-Union—Lower Canada. At a Numerous Meeting of Citizens of Quebec, held this day, (24th Jany., 1840), at the School House in Glacis Street.* CIHM No. 21780 and LAC, RG4, A1, Vol. 602, file: 18-30 January, 1840. *Resolution of the Quebec Meeting against the Union. Dated: 18th January 1840.*

⁸⁶² LAC, RG4, A1, Vol. 602, file: 18-30 January, 1840. *Resolution of the Quebec Meeting against the Union. Dated: 18th January 1840.*

A follow-up meeting was held on 14 April 1840 at the house of the Honorable R.E. Caron in Quebec City. The meeting was chaired by J. Neilson and was attended by important men of the city such as R.E. Caron, J.W. Woolsey, L. Fiset, Wm. Marsden, C. Deguise, P. Huot, F.X. Methot, P. Pelletier, Ed. Glackemeyer, F.X. Paradis, V. Tetu, J. Chouinard, Jos. Legaré, Pere, M.Borie, T. Baillairge, H.S. Huot, O.Lepine, and Jos. G. Tourangeau. As in the previous meetings, the petition was discussed, and once again, they resolved to send it to Her Majesty and to both the House of Lords and the House of Commons in England. They also resolved that the chairman of the committee, Neilson, be entrusted to accompany the petition and present it to Her Majesty and both houses. The meeting also agreed that a similar petition be authorized for the city of Montreal, however, a Montreal Committee had to be established to take charge of it before it could be produced.⁸⁶³ Unfortunately, as the above petition and tables suggest, this petition was never produced.⁸⁶⁴ The reasons why are not clear, however. McCulloch's theory that the political environment in the city simply made it impossible as "the legacy of the event of 1837 and 1838 was much stronger there [...]" makes sense.⁸⁶⁵ He explains that although Montreal had been relatively quiet during the Rebellions, the adoption of martial law had made it a politically volatile environment. Moreover, the local English-speaking population was largely in favor of union. McCulloch explains that, after all, the terms of union "expressed in legislative terms the programme of development to which the city's mercantile leaders had been committed since the Conquest."⁸⁶⁶

⁸⁶³ *Ibid.*

⁸⁶⁴ After searching through various archives and newspapers, we found no mention of such a petition ever being created for Montreal or documents explaining its failure.

⁸⁶⁵ McCulloch, "English-Speaking Liberals in Canada East, 1840-54," p. 79.

⁸⁶⁶ *Ibid.*

Finally, John Neilson held another meeting on 19 October 1840 at his own residence.⁸⁶⁷ Rather than discussing the petition itself and the various problems with union, those present focused on how they could fight union from within. Their plan was simple: they would elect men that were opposed to union and send them to the Legislative Assembly. However, it was very important that French-Canadians did not boycott the coming legislative election and instead elect individuals that would uphold the French-Canadian cause. As will shortly be discussed, some newspapers asked that all French-Canadians boycott the upcoming election as a show of anger towards union. Once in the Legislative Assembly, these men would fight for two things. First, they would fight inequality (“point d’inégalité”), which meant that no law could be adopted that had a negative effect on one segment of the population as a result of their language or culture. Second, they would fight taxation (“point de taxes”), which meant that no taxes could be imposed on the people of the colony without their consent or that of their representatives in the Legislative Assembly.⁸⁶⁸

Quebec City was not the only place where the anti-union movement was active. Eight months earlier, on 21 February 1840, a similar meeting took place in Montreal at the “Chambre d’encan” of Alexis Laframboise. The meeting was presided by X. Malhiot, and Joseph Bourret acted as its secretary. La Fontaine was also present and gave an address on union, the Special Council and the present state of the colony, to the applause of all that were present. La Fontaine first expressed his regret that Great Britain suspended the constitution and dissolved the assembly after the first rebellion. More

⁸⁶⁷ *Ibid.*, 20 October, 1840. LAC, RG4, A1. Vol. 611, File: 13-23 October, 1840. *Lettres des électeurs de Québec qui désapprouvent l’acte pour réunir les deux provinces.*

⁸⁶⁸ *Ibid.*

specifically, he opposed the fact that the Special Council did not represent the will of the people and that it had done nothing to address “les vœux et les besoins des habitants de cette province.”⁸⁶⁹ La Fontaine then turned his attention towards the Union of the Canadas, and argued that it was the duty of all that were present at the meeting to expose its injustices. After his speech, the assembly approved the following recommendations, which would be sent to the Governor General. First, it was agreed that the Union of the Canadas could only achieve peace and prosperity if it was based on the principles of justice and equality for all classes and races. The rights of *all* of the colony’s inhabitants had to be respected, protected and ensured by Her Majesty. It was further agreed that representation in the United Assembly had to be proportional to the population of each colony; Lower Canada should therefore have more members than Upper Canada. To grant Upper Canada an equal amount of representative was simply unfair and “impolitique.”⁸⁷⁰ Third, the assembly resolved that it was unfair to force the people of Lower Canada pay Upper Canada’s enormous debt. They also resolved to protest the Union of the Canadas, which they argued obviously aimed to destroy French-Canadian culture and laws and end the use of their maternal language. Finally, they maintained that the capital of the Union Provinces should not be in Toronto or Kingston, but should be in Lower Canada instead as it was more central.

These were among the many anti-union assemblies held in the months prior to the Union of the Canadas. It appears that the anti-union movement, led by Neilson, was gaining quite a lot of steam. Along with the 40,000-signature petition and the public meetings and demonstrations, the colony’s papers and its readers also condemned it.

⁸⁶⁹ *Aurores des Canadas*, 25 February, 1840

⁸⁷⁰ *Ibid.*

First, the French-Canadian papers remained the union's greatest opponent. Even *L'Ami du peuple*, which usually supported anything the Special Council and governor did, opposed union and its terms. On 18 December 1839, it condemned the fact that Upper-Canadians were given equal representation despite having a third less population. More importantly, it condemned the fact that Lower Canada had to pay half of Upper Canada's debt, and thus stated: "[a]insi donc, le Bas Canada se trouve sacrifié entièrement et sans distinctions d'origines, aux intérêts du Haut Canada."⁸⁷¹ The newspaper also believed that union would not restore peace and, as a result of its many anti-*habitants* features, it would only lead many more to oppose the British Government instead. It even claimed that the *Patriotes* were looking forward to union with a smile on their faces as it would provide them with yet another reason to rebel and rid the colony of British domination. As a result, rather than bringing peace, the union would instead "jeter de l'huile sur le feu."⁸⁷² A month later, in January 1840, the newspaper further condemned the demands made by Upper Canadians. After describing union as "notre malheureuse union projetées," it criticized the fact that Upper Canadians had asked that English be the only language in the United Legislature and that Britain start an immigration program to drown French-Canadians in the United Province.⁸⁷³ If these demands were met, which *L'Ami du peuple* believed was inevitable, it feared that this would simply lead to another greater and more violent revolt.

⁸⁷¹ *L'Ami du peuple*, 18 December, 1840.

⁸⁷² *Ibid.*

⁸⁷³ *Ibid.*, 11 January, 1840.

The *Aurores des Canadas* also condemned union and even described it as “une injustice odieuse [et un] projet de spoliation et de pillage.”⁸⁷⁴ It was essentially against the fact the Upper Canadians would enjoy equal representation, the aim of which was to drown French-Canadians. On 3 January 1840, the newspaper stated

Donner au Haut Canada, qui n'a qu'une population de 300,000 âmes, un égal nombre de Représentants qu'au Bas qu'en a une de 700,000, est une monstruosité dont rien de peut pallier l'injustice, pas même le prétexte d'émigration croissante allégué dans le message d'ouverture. Si nous voulions exposer tout ce qu'il y a d'injuste dans l'union comme dans d'autres mesures, on n'en finirait plus.⁸⁷⁵

La Canadienne was also opposed to the proposed union, and when it learned that it had been accepted, it produced the following paragraph:

Compatriotes, l'espérance du bonheur en Canada est fini! Il n'est plus nécessaire de rien espérer du gouvernement, nous sommes liés par alliance injuste à notre sœur aînée [...] Nous devons, si nous voulons le bonheur, dire adieu à notre chère Patrie, faire notre paquet et émigrer dans un pays hospitalier, ou nous pourrions pleurer sur le sort du Canada, sans craindre d'être puni. L'Union est acceptée! et en passant ce beau bill, les ministres espéraient-ils faire notre bonheur? Non [...] Au lieu de cicatriser des plaies encore saignantes, on vient les rouvrir et les alimenter par des actes monstres, qui, dans tous les pays où ils ont été adoptés, ont amené la chute du pouvoir qui les avait mis en force [...] Il n'y a donc plus rien à espérer [...], nous devons vivre et mourir dans la misère. Voilà, Canadiens, la belle justice dont nous fait présent la vieille Angleterre [...] Les Canadiens seront réduits dans quelques années à aller chercher refuge dans un autre pays, comme le font maintenant les Irlandais. Et tous ces maux prennent leurs sources dans l'insuccès des Canadiens dans leurs efforts pour empêcher de tels actes; car s'ils eussent réussi, tout en irait bien mieux et tout le monde serait bien plus content; au lieu qu'aujourd'hui [...] ⁸⁷⁶

⁸⁷⁴ *Aurores des Canadas*, 11 October, 1839.

⁸⁷⁵ *Ibid.*, 3 January, 1840.

⁸⁷⁶ *La Canadienne*, 17 August, 1840.

On the eve of union, the newspaper even asked that French-Canadians protest by abstaining from voting.⁸⁷⁷

Le Courier Canadien, *Le Fantasque* and *Le Jean-Baptiste* shared similar opinions: all agreed that union would not guarantee the happiness of French-Canadians. For example, the *Courier* claimed that if union “était réalisé [il] produirait la ruine entière du peuple Canadien. Je veux parler de l'Union des provinces du Haut et du Bas Canada. On avait cherché il y a quelques années à détruire la langue, les lois, et jusqu'à la religion des Canadiens.”⁸⁷⁸ *Le Jean-Baptiste* also stated, “[n]'oublions jamais, Canadiens, que notre patrie sera opprimée et ne peut pas être libre, aussi longtemps que le parlement anglais s'arrogera le droit de législateur pour elle, de lui imposer une union contre sa volonté.”⁸⁷⁹ When he found out that union had passed in the Special Council, Napoleon Aubin stated “[à] propo (sic) nous annonçons qu'il se tiendra, l'un de ces quatres matins, à notre bureau, une grandissime assemblée dans le but de dire bonjour et bonsoir à notre langue, nos usage, et nos lois.”⁸⁸⁰ As he had also done plenty of times before, Aubin published a sarcastic letter that he wrote as Thompson to Melbourne. On the topic of union, he, as Thompson, stated:

Vraiment quant je récapitule en moi-même tout ce que j'ai fait pour ce bill d'Union je me trouve un bien grand génie! D'abord promettre au Haut-Canada le paiement de sa dette et le siège du gouvernement—Coup de maître! Prendre le conseil spécial, le convoquer, lui ordonner de déclarer l'Union un excellent remède contre le despotisme du Conseil Spécial—Coup de maître! [...] Faire supposer à votre parlement anglais que le Haut-Canada ne demande pas mieux que de rester anglais—Coup de maître! Lui persuader que les pétitions de citoyens contre l'Union, signées par une

⁸⁷⁷ *Ibid.*, 1 October, 1840.

⁸⁷⁸ *Le Courier Canadien*, 2 February, 1838.

⁸⁷⁹ *Le Jean-Baptiste*, 28 December, 1840.

⁸⁸⁰ *Le Fantasque*, 17 August, 1840.

cinquante de mille noms, ne sont que des déclarations rebelles—Coup de maître! Jurer que deux ou trois mille signatures en faveur de l'union représentent tout ce qu'il y a dans le pays de loyau (sic) sujets—Coup de maître.⁸⁸¹

Surprisingly, not all French-speaking newspapers initially condemned union.

Étienne Parent and *Le Canadien* first supported the Union of the Canadas and applauded it, especially when compared to the tyranny of the Special Council. Parent explained:

Avec l'union au moins, nous aurons le régime Représentatif, avec l'énergie salubre qu'il imprime toujours au corps politique. Avec l'union aussi, débarrassée du régime de plomb qui nous écrase et comprime l'opinion, nous pouvons faire valoir nos droits dans l'Assemblée des Provinces Unies, et nous pouvons en obtenir le redressement de l'injustice que nous aura faite le Parlement Impérial. Rappelons-nous que dans la Législature Unie, il ne pourra plus être question de distinctions nationales, les motifs de divisions seront purement politiques, et nous y trouverons un parti nombreux intéressé à augmenter la force de la cause libérale, et nous espérons que le Bas Canada sera toujours comme par le passé, en faveur des doctrines libérales.⁸⁸²

A few months later, however, after using much ink trying to convince Lower-Canadians that it represented the best option, Parent began condemning the union because of the heavy demands made by Upper Canadians. First of all, he explained that the conservatives (“the family compact”) in Upper Canada would *only* accept it if English was made the only official language and the only language used in the United Assembly. As a result of such unjust demands, he no longer believed that a harmonious union was possible, and wondered how French-Canadians could cooperate with a people that wanted to destroy their culture: “[nous] disons à la Mère Patrie qu'elle fera un fort mauvais mariage en unissant le Haut et le Bas-Canada, et dont les suites lui seraient aussi funestes

⁸⁸¹ *Ibid.*, 24 August, 1840.

⁸⁸² *Le Canadien*, 23 December, 1839.

qu'à nous-mêmes.”⁸⁸³ On 3 February 1840, Parent explained how, at first, he hoped to find in Upper Canada a brother that supported similar ideals of justice, tolerance, and fraternity, but it was not to be. He explained that together, Upper and Lower Canadians could have made union work for both French and English-Canadians. He was hoping that Upper Canadians would be tolerant of French-Canadians. However, Upper Canadians were just as intolerant and arrogant as the English-speaking Lower Canadians and similarly believed in their own superiority and the inferiority of French-Canadians. As a result, the advantages that union could have potentially provided to French-Canadians had disappeared and the future of French-Canada was in danger as a result. Parent explained his change of mind with the following: “il y a quelques mois, l'Union était ce que nos compatriotes avaient de moins désavantageux à craindre, nous l'acceptâmes alors; aujourd'hui, l'Union ne leur offre que des désavantages sans aucune compensation,—nous nous opposons à l'Union. Au reste nous avons toujours préféré à toute autre mesure, le rétablissement de l'Ordre Constitutionnel même l'ancien [...]”⁸⁸⁴

Although *every* French-speaking newspaper condemned union, the anti-union movement was not limited to them. Some English-Canadians signed the petition and participated in several public meetings, and a few English-speaking newspapers also condemned the proposed Union of the Canadas, albeit for different reasons and on a much smaller scale. For example, the *Farmers and Mechanics* feared that union would potentially break all ties with Great Britain and harm British institutions, laws and privileges because radicals in both Upper and Lower Canada would undoubtedly take it over. The newspaper was not against the concept of union itself, but feared that at the

⁸⁸³ *Ibid.*, 27 January, 1840.

⁸⁸⁴ *Ibid.*, 3 February, 1840.

present, it was not the proper answer. It believed that it was safer to “let excitement and faction, in both Provinces, have time to subside; let parliament give us the full benefit of English Law; let Registry offices be established, and education be promoted on a wise and extended scale; and then, if a union of the Provinces be still thought the best means of promoting our advancement, unite us.”⁸⁸⁵ *The Montreal Transcript* also opposed union because it was simply too complicated to work. On 6 August 1839, it stated:

The more we see of the proposed principles and details of the reunion of the Upper and Lower Provinces, the more convinced we become that it is not a panacea, but an experiment, and that a most dangerous one. The complicated nature of the measure, as at present placed before the public, makes it one of very difficult accomplishment; while a Legislative Union, where two *opposite* codes are to be maintained, amended and enforced, appears an anomaly beyond all precedent. The thing is impracticable! [...] The almost immediate effect, of such a Union as is at present proposed, will be confusion worse confounded.⁸⁸⁶

Although the newspaper was ready to blindly trust the British Parliament on the eve of union, it still had some concerns and stated that “little good could be expected to arise from the measure of the Union about to be proclaimed, unless, besides the mere union of territory [...]”⁸⁸⁷ *The Morning Courier* condemned the union for a similar reason. Despite its worries regarding Upper Canada’s massive debt, it was especially concerned about granting French-Canadians political rights. In an article, which described union as a “suicidal union,” the newspaper believed that granting French-Canadians the rights to elect 50-60 representatives was horrible news for the British citizens of Lower Canada.⁸⁸⁸

⁸⁸⁵ *Farmers and Mechanics Journal and St-Francis Gazette*, 21 December, 1839.

⁸⁸⁶ *The Montreal Transcript*, 6 August, 1839.

⁸⁸⁷ *Ibid.*, 23 January, 1841.

⁸⁸⁸ *The Morning Courier*, 15 November, 1839.

It feared that such political power was much too dangerous and would once again threaten the colony's links with Great Britain.

John Neilson's *The Quebec Gazette* was without a doubt the union's most vocal English-Canadian opponent. Contrary to other English-speaking newspapers, his criticized the fact that the union would have a negative impact on French-Canadians, their laws, and culture. On 9 August 1839, he stated that unlike the union of Scotland and England, where both cultures shared a similar language, similar practices and institutions, this was not the case between Upper and Lower Canada. It explained,

In Lower Canada, the great majority of the proprietors of real estate speak the French language, and a large proportion of them understand no other. Their consent to place their Civil Laws in a position to be changed, is not asked by the proposed bill. It is intended to place them in a minority in the Legislature, with those of a different language, and possessing a different system of laws, and at a time when the passions and prejudices of both, have been strongly excited against each other.⁸⁸⁹

This would lead to serious problems and as a result, “[u]nder such circumstances, no result can be expected but collision in the United Legislature, unreasonable attempts to subject one party to the other, a probable neglect of the public interests, and a continued disturbance of the public peace.”⁸⁹⁰

Finally, along with petitions, public meetings and newspaper articles, Lower Canadians expressed their opposition by sending letters to local newspapers. For example, on 1 September 1840, *l'Aurores des Canadas* printed two letters from a man

⁸⁸⁹ *The Quebec Gazette*, 9 August, 1839.

⁸⁹⁰ *Ibid.*

called “un Canadien,” which opposed union because it had been adopted with the sole purpose of eliminating French-Canadians from North America. He explained:

‘Qu’il soit crucifié!’ voila le cri universel qu’on a entendu dans les chambres du Parlement Britannique contre le peuple canadien d’origine française. Un esprit de haine et de vengeance mal caché inspirait le plupart des membres qui ont parlé sur le bill d’union. Au seul nom de français je ne sais quels ressentiments agitent un anglais; il semblerait que la terrible épée de Guillaume et de nos ancêtres Normands soit suspendu sur sa tête, plus menaçante encore qu’à Hastings [...]

Il n’y a qu’un vif sentiment de haine qui puisse avoir guidé l’Angleterre dans les mesures qu’elle a adoptées contre les pauvres canadiens; elle a pris un plaisir à s’acharner à la destruction d’un petit peuple de 5 à 600,000 âmes, comme s’il avait pu mettre même l’empire en danger.⁸⁹¹

In his second letter, he pleaded with French-Canadians to put their differences aside, unite and make very careful choices when selecting the men that would represent them in the United Legislative Assembly. He explained that French-Canadians had to vote as a block to defend their interests. It was imperative that they elect individuals that cared for and supported their cause, and choose men whose energy and character would benefit their people. In other words, French-Canadians had to make important choices in order to prevent their destruction.⁸⁹² On 29 September 1840, the newspaper published a similar letter from an individual called “Amable.” His opinions on union were similar to the above: “[l]’Acte monstre [Union Act] qui vient de passer le parlement du Royaume-Uni doit montrer à tout homme exempt de préjugés que le but de la *mère patrie* est d’asservir *ses chers enfants*, sans doute en récompense du sacrifice qu’ils firent en 1775 et de leur aveuglement en 1812-13 [...]”⁸⁹³ (newspapers italics)

⁸⁹¹ *Aurores des Canadas*, 1 September, 1840.

⁸⁹² *Ibid.*

⁸⁹³ *Ibid.*, 29 September, 1840.

From 31 August 1840 on, *La Canadienne* printed a series of letter from a man calling himself “D ... B-V.”⁸⁹⁴ In the first letter, the writer explained that union would not benefit French-Canadians as it was simply a Constitutionalist plan, which sought to eliminate French-Canadian influence from British North America. As a result of union, French-Canadians would drown in a sea of English-speakers who would form the majority; a “majorité inconstitutionnel, tyrannique, qui a des vues, des intérêts diamétralement opposé à la liberté, au bonheur du peuple [...]”⁸⁹⁵ According to the writer, it was imperative that French-Canadians show their displeasure towards it and boycott the upcoming election. On 19 October 1840, however, he no longer believed that the population should boycott it, but instead argued that they should not only take part in the elections, but also vote for specific candidates.

Aucun candidat réformiste ne devra d'avance offrir publiquement ses services, mais les principaux électeurs des différents comtés s'assembleront et feront choix d'une personne qualifiée sous tous les rapports pour les représenter, pour exprimer leurs vues et leurs sentiments politiques. Le candidat ainsi choisi s'engagera avant d'être élu, sous parole d'honneur et même par écrits [à] exécuter les conditions suivantes: c'est à dire 'qu'il prendra son siège à l'ouverture du parlement, et qu'il s'entendra de suite avec les autres membres réformistes, pour PROTESTER solennellement et énergiquement contre l'union des deux Provinces, etc. cette besogne faite, il refusera de prendre part à toute autre délibération, et il retournera rendre compte de sa conduite à ses constituants, tel que doit le faire un fidèle mandataire [...]”⁸⁹⁶

⁸⁹⁴ *La Canadienne*, 31 August, 1840. “D ... B-V” was very likely Ludger Duvernay. On October 19, 1840, the writer claimed that he was not writing from Montreal, but B.-V. Perhaps B.-V. referred to Burlington, Vermont, where Duvernay spent most of the post-rebellion period. In fact, the newspaper admitted that it had had contacts with him. Although it cannot be fully proven, it is likely that Duvernay was the correspondent.

⁸⁹⁵ *Ibid.*

⁸⁹⁶ *Ibid.*, 19 October, 1840.

Once elected, “D ...B.-V” wanted all elected French-Canadian representatives to leave the assembly in protest rather than staying to defend the rights of French-Canadians. He argued this because he did not believe that their stay would change anything or ensure the survival of French-Canadians as they would always be a minority. Thus the reason why he believed that all elected French-Canadian had to give up their seats as a form of protest against union; he believed this would have a much greater impact.⁸⁹⁷

The readers of *La Gazette de Quebec* also sent letters condemning the Union of the Canadas. On 21 April 1840, the newspaper printed a letter from an unnamed individual from Trois-Rivières. Like the above, he also argued that union was nothing but a plan to eliminate French-Canadians from North America. However, he also pointed out that union would have negative consequences on English-Canadians as well.

L’union proclame au peuple français-canadien son anéantissement politique, son esclavage futur et la misère la plus abjecte [...] Pour l’Anglo-Canadien l’union est l’arrêt fatal qui doit le réduire à la pauvreté en l’accablant de taxes; il faudra ruiner tout le pays, pour payer le milliardaire Baring, il faudra arracher le pain à 100,000 familles, pour mettre sur des tas d’or ce banquier, qui ne leur a pas prêté un farthing.⁸⁹⁸

English-speaking citizens also sent similar letters. For example, on 2 November 1840, the *Canadian Colonist* printed a letter from a man called Sydney Bellingham, who believed that suspending the constitution and Legislative Assembly was the prudent and necessary thing to do.⁸⁹⁹ However, although he admitted that he could one day support union, he currently opposed it because the Anglophone Upper Canadian minority had

⁸⁹⁷ *Ibid.*

⁸⁹⁸ *La Gazette de Quebec*, 21 April, 1840.

⁸⁹⁹ Although this letter was initially published in the *Canadian Colonist*, 2 November, 1840, this dissertation found it in *The Quebec Gazette*, 6 November, 1840.

equal representation. To this he explained: "I deem it an unjust and arbitrary act, and one of unfair interference with powers of the United Parliament, to dictate to the French-Canadian inhabitants who comprise of one half the combined population, that the records of the House shall appear in a language they do not understand."⁹⁰⁰ Bellingham believed that the only way that Canadians could finally embrace peace and harmony was by forgetting what the French-Canadians had done and work together for the future and well being of the colony.

On 31 July 1840, *the Quebec Gazette* published a letter from an individual calling himself "L.V.C." This letter not only condemned union, but also congratulated Neilson for his work as one of the leaders of the anti-union movement. Like most English-Canadians that opposed union, the writer believed that it was unjust to force Lower-Canadians to pay Upper-Canada's massive debt.

Where is the justice of obliging us to pay the debts of the Upper Province, and where is our liberty, or our freedom, if depending on an Upper Canadian majority? The people of Lower Canada, Mr. Editor [John Neilson], are much indebted to you for your honest opposition to this most iniquitous measure; nor are the world ignorant of the means employed to induce some Editors, and persuade some Councilors, to assent to this wretched and disgraceful attempt at legislation.⁹⁰¹

Finally, this focus on the anti-union movement does not mean that there was no pro-union movement in Lower-Canada. Of course, there was support for union. However, when compared to the anti-union movement, it was significantly smaller. For example, although a few petitions supporting union were produced, the number of signatures they

⁹⁰⁰ *Ibid.*

⁹⁰¹ *The Quebec Gazette*, 31 July, 1840.

gathered did not come close to the 40,000-signature anti-union petition.⁹⁰² Moreover, pro-union public meetings were not held as frequently. Finally, press support was limited to very few newspapers such as *The Montreal Herald* and *The Montreal Gazette*. As evidence regarding union was considered, it became increasingly obvious that the vast majority of the Lower Canadian population did not favor a union with Upper Canada, albeit the reasoning of French and English-speakers did differ.

8.3 CONCLUSION

In conclusion, Thompson's council was criticized and condemned from the very start. Even before he arrived in Lower Canada and passed his first ordinances, he was not liked. The new governor's reputation did not improve with the ordinances he passed and the decisions he took. They created more tension than ever before and even increased local opposition towards the Special Council. For example, whereas the Union Act resulted in the largest petition condemning a decision made by the Special Council, the Trois-Rivières Ordinance resulted in numerous public protests, and even resulted in the burning of Thompson in effigy. The only measure that garnered the support of the population was the ordinance that took the first steps to rid the colony of the seigneurial system. A revolutionary ordinance, it was still not enough to save the governor's reputation. On 10 February 1841, most applauded the end of the Special Council and its tyranny in Lower Canada.

⁹⁰² The inhabitants of Quebec City sent one such petition in late February 1840. This petition stood in direct opposition to the one sent by John Nielson and his anti-Union supporters as it argued that Union would be great for Lower Canada and that the loyal population was sure to benefit. Unfortunately, this document did not include the signatures. LAC, MG11, CO42, Series Q, File 270-3, p. 660 Petitions from the inhabitants of Quebec in favor of the Union of the provinces of Upper and Lower Canada, 21 February 1840.

CONCLUSION

Although the 1837-38 Rebellions and the Union of the Canadas have received much attention from historians, the era of the Special Council—an era that resulted in significant change and controversy and figuratively bridged two constitutions—remains, in comparison, a minor part of our historiography. In fact, it and its role in Canada's development have been commonly ignored in general Quebec and Canadian histories. This dissertation therefore considered the Special Council itself, and attempted to answer two questions with regards to it and the local population: What was the impact of the Special Council, and the ordinances it passed, and can the era of the Special Council be considered a revolutionary moment? What was the opinion of the local population towards this authoritarian body and the ordinances it passed?

The first question was considered in the first four chapters as the history of the Special Council in general and the ordinances it passed were examined. This was specifically done to provide a better understanding of its impact on Lower Canada and its people. There is no doubt that the Special Council played an important role in our history. In the words of Louis-Georges Harvey, “the council facilitated the transition to a form of government more in keeping with the emergence of commercial capitalism in the St. Lawrence Valley.”⁹⁰³ The ordinances passed by the council thus proved especially important to the colony's merchant population and to a group of British loyalists known as the Constitutionals. Throughout their tenures, Colborne and Thompson often appointed Constitutionals as councilors, while Durham often met with them and

⁹⁰³ Louis-Georges Harvey, “Special Council,” in *Oxford Companion to Canadian History*, ed. Gerald Hallowell (Toronto: Oxford University Press, 2004), p. 594.

considered their opinions. All shared the Constitutionlists' agenda and allowed them to influence the ordinances that the council passed; each governor allowed them to pass reforms they had long desired.

As argued by Brian Young and Harvey, after years of frustration, the era of the Special Council was a “catching up” period regarding the CAM’s social and economic interests. Several of the ordinances passed resolved one of their many concerns. For one, Constitutionlists used government funds to improve Montreal’s economic position with ordinances improving the harbor of Montreal, deepening Lake St. Peter, and ensuring the construction of several canals and railways around the colony. With the Montreal Seminary, Municipal and Land Registry Ordinances, Constitutionlists also sought to change the colony’s institutions to their liking. These, along with the other ordinances considered throughout this dissertation, are why I believe that the Special Council was a revolution, a revolution that especially benefitted the British population.⁹⁰⁴ Not only did the end of the seigneurial system start with an ordinance passed by the Special Council, but many of our modern institutions were either started or expanded during this period, including a modern municipal system and a land registration system. It is too early to conclude whether this revolution benefitted the French-Canadian population. Although one could argue that it did as French-Canadians, especially after 1960, accepted and benefitted from modern, commercial society, the long-term impact of these ordinances must be considered before coming up with such conclusions. In other words, how did these ordinances evolve beyond 1841? These are questions that I will soon tackle.

⁹⁰⁴ The British population was, of course, not the only one to benefit from these reforms. Some French-Canadians (the Special Councilors, for example) were loyalists and merchants and similarly benefitted from and supported the council’s ordinances. According to available sources, however, support from the French-Canadian population in general remained extremely limited.

It is also evident that, in Lower Canada, the Special Council was authoritarian. The Legislative Assembly was dissolved and the constitution was suspended, taking all political power and participation away from the local population. For roughly four years, the majority of Lower Canadians had no say in any of the decisions regarding the future of the colony. Several of the ordinances it passed were quite controversial and went against the local population's traditions, laws, and wishes. This obviously created much debate and opposition. Although the Special Council may have acted like an authoritarian body *in* Lower Canada, it was not sovereign. The Colonial Office in London kept strict control over its actions and decisions, offering instructions and annulling ordinances it did not approve of. This appears to support Zoë Laidlaw's conclusions. In a study entitled *Colonial Connections: Patronage, the Information Revolution, and Colonial Government*, Laidlaw argued that between 1815 and 1850, the Colonial Office imposed its central control over the governance of the colonies and considered New South Wales and Cape Colony as examples.⁹⁰⁵ The Colonial Office's strict control of the Special Council suggests that this was also the case in Lower Canada. The history of the Special Council within the imperial context offers other interesting avenues that have yet been considered by historians. For example, how did the Special Council compare to other post-rebellion regimes within the British Empire? By comparing the council with other post-rebellion regimes, one could determine whether Lower Canada was treated like a *distinct* colony or a *normal* one. These are questions that I will also soon consider.

⁹⁰⁵Zoë Laidlaw, *Colonial Connections: Patronage, the Information Revolution, and Colonial Government* (Manchester and New York: Manchester University Press, 2005)

The second question considered in this dissertation was: how did the local population respond and react to the authoritarianism practiced by the Special Council in Lower Canada, its obvious favoritism towards the CAM, and the various ordinances it passed? In order to gauge Lower Canadian opinion, a wide variety of sources including *every* surviving newspaper published during the period, journals and letters from some of the leading members of the political elite, letters to the editor, petitions, public meetings and addresses, and popular demonstrations and protests. Did the British and French-Canadian inhabitants react differently to the authoritarianism of the Special Council? Considering the fact that many people, French and English-speaking alike, did not support the rebellion, did they view the council as a necessity in bringing peace and stability to the colony, and thus accepted its authoritarianism, and even supported it? More importantly, did French-Canadians submit to the Special Council and all of its demands and new laws in the years following the failed Rebellions?

Evidence suggests that generally, English and French-speaking inhabitants reacted differently to the Special Council itself. Whereas the British commonly supported the council and its ordinances, French-Canadians did not. Although some French-Canadians were initially optimistic about the Special Council and hoped that it could restore peace and stability, and some even, at times, supported its ordinances, it is obvious that as time went by, and the council adopted several controversial ordinances such as the Habeas-Corpus Ordinance, the Trois-Rivières Ordinance and the Sleigh Ordinance, the majority of French-Canadians opposed and condemned it. For example, despite the fact that Colborne and Durham could initially count on the support of newspapers such as *L'Ami du peuple* and *Le Populaire*, and their readers, as well as members of the French-

Canadian political elite as La Fontaine and even Papineau, both not only lost this limited support, but by the time Thompson took over, French-Canadians were strongly opposed to the Special Council. English-Canadians in general, for their part, supported the council throughout. Other than John Neilson, his *Quebec Gazette*, and his political associates, most, with a few rare exceptions, produced positive articles, sent letters to the editor, signed petitions and held several public meetings applauding the Special Council and the governor leading it. Other than the Trois-Rivières Ordinance and the Seminary Ordinance, the majority received the support of the English-speaking population.

Finally, although I agree with studies that have nuanced what Filteau and others have argued with regards to French-Canadian passivity, these studies suffer, however, from one particular problem: they focus entirely on the French-Canadian political elite. Other than Stephen Kenny's article, which focuses on one specific episode, we know very little about how the Lower Canadian population, in general, acted in the wake of the Rebellions and the subsequent loss of their political rights with the establishment of the Special Council. This dissertation considered the opinions of the Lower Canadian population in general. My findings support Ducharme's, Kenny's and Bernard's interpretation that French-Canadians remained politically active after the two failed Rebellions. Even when their right to elect representatives and their assembly and their constitution were taken away, French-Canadians did not admit defeat, but continued to fight for their rights and their way of life. French-Canadians did not sit quietly and accept the future that the British Government and the Special Council had reserved for them. Although the French-Canadian population did not express its opposition every single time the Special Council adopted an ordinance, it nonetheless, on several occasions, showed its

discontent and refused to accept several of the council's ordinances; many were challenged and some even annulled as a result.

For example, along with the numerous newspaper editorials, French-Canadians sent several letters to their local newspapers and the civil secretary, signed petitions and held public protests complaining against the new police force and its frequent abuse of authority. When learning that Lord Durham was not as neutral as he had claimed and began favouring the enemies of French-Canadians, the Constitutionists, several took to the streets of St-Roch and held a demonstration in favour of Lord Brougham and in opposition of Lord Durham. The people of Trois-Rivières also held a violent protest and even burned Thompson in effigy when he and the Special Council dissolved Trois-Rivières as a judicial district. Although the use of silence as a tool of opposition was not at the forefront of this dissertation—which itself favoured vocal forms of opposition—it was nonetheless noted on occasion. Perhaps the greatest example was on the eve of Lord Durham's departure from Lower Canada in October 1838. Whereas the English-speaking population held demonstration after demonstration offering their support to the governor and asking him to reconsider his departure, French-Canadians remained silent. Silence that one newspaper editor argued represented their opposition to the governor.

The two most significant examples of French-Canadian discontent were in response to the infamous Sleigh Ordinances and the Union Act. In the first place, opposition to the sleigh ordinance was so serious that it was eventually changed to appease the population. French-Canadians not only refused to follow the ordinance, but they sent letters to their local newspapers expressing their discontent, built roads alongside the postal roads so they could use their old sleighs, and even attacked

government officials that were sent to enforce the ordinance and promote the new sleighs. Second, when the Special Council accepted Thompson's plan to unite Lower and Upper Canada, French-Canadians produced a 40,000-signature petition, held several public meetings and demonstrations, and sent several letters to the governor and local newspapers. All in all, although opposition to the decisions taken by the Special Council did not result in another rebellion, armed violence was not the only way individuals could express their anger.

Finally, after considering the history of the Special Council, we should also start calling it the Special *Councils* rather than the Special *Council* as each council was headed by a different governor, and each played a different role in the colony. Colborne's council, which favored the Constitutionalists, was twice summoned to deal with an armed insurrection. Although both passed some important ordinances that had a significant impact on the colony, the majority of their ordinances focused on ending the Rebellions, punishing the rebels and preventing another conflict from developing. Lord Durham's council, on the other hand, did not initially favour the Constitutionalists and was not called to deal with an armed insurrection. Instead, its aim was to restore peace and stability by resolving the controversial prisoners issue and by investigating the colony's constitutional troubles. Moreover, whereas Colborne and Thompson considered the opinions of their councilors, it appears that Durham did not. Finally, under Charles Poulett Thompson, the Special Council once again fell in the hands of the Constitutionalists. It was specifically convened to approve and facilitate the passing of the act uniting Upper and Lower Canada. Although history remembers the Special Council as

a single political entity, it should instead be remembered as the period of the Special Councils as each played a distinct role in the colony.

A few last words on the council itself: the Special Councils of Lower Canada have played an important role on the evolution of the colony, and it is time that they retrieved their place in the general history of Canada.⁹⁰⁶ Since its dissolution in 1841, the Special Council has evolved from a much hated political entity to a completely forgotten one—it remains, to most Canadians, unfortunately, a “forgotten moment” of Canadian history.

⁹⁰⁶ General histories of Canada, including those below, have consistently ignored the Special Council, and have instead focused on the Rebellions and the Union of 1841. Consider Jacques Couturier, *L'expérience canadienne, des origines à nos jours* (Laval, Québec: Beauchemin, 2002); Jean-François Cardin, Gratien Allaire and Claude Couture, *Histoire du Canada: espace et différences* (Québec: Presses de l'Université Laval, 1996); John L. Finlay and D.N. Sprague, *The Structure of Canadian History* (Scarborough, Ont: Prentice Hall Allyn and Bacon Canada, 1997); R.D. Francis, Richard Jones, and Donald Smith (*Origins: Canadian history to Confederation* (Scarborough, Ont: Thomas Nelson, 2002) ; Jacques Lacoursière, *Histoire populaire du Québec, Tome 2* (Sillery, Qc: Les Éditions du Septentrion, 1995); Kenneth McRoberts, *Quebec: Social Change and Political Crisis* (Oxford: Oxford University Press, 1993) and Denis Monière, *Le développement des idéologies au Québec: des origines à nos jours* (Montreal: Éditions Québec-Amérique, 1977).

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