

Lord Durham's report abridged to highlight the constitutional defects and his recommendations of constitutional reform*

Editor's Note of Introduction

In his report, Lord Durham explains the source of the defect in the colonial Constitution which had caused the denial of the constitutional freedom of the inhabitants of the country, the corruption of their moral and material values, the inability of the Government to promote necessary and obvious reforms and the total disruption of the country's administration.

He writes: "I rely on the efficacy of reform in the constitutional system by which these Colonies are governed, for the removal of every abuse in their administration which defective institutions have engendered."

In fact, once these defects were repaired and a Responsible Government was established, the "war of races" ended, the corruption of the moral and material values of the people disappeared, as did the abuses of the administration of the government.

We therefore have abridged his report to those observations of constitutional defect and recommendations to repair them.

It is impossible to observe the great similarity of the constitutions established in all our North American Provinces, and the striking tendency of all to terminate in pretty nearly the same result, without entertaining a belief that some defect in the form of government, and some erroneous principle of administration, have been common to all; p.72

It may fairly be said, that the natural state of government in all these Colonies is that of collision between the executive and the representative body. p.73

When we examine into the system of government in these colonies, it would almost seem as if the object of those by whom it was established had been the combining of apparently popular institutions with an utter absence of all efficient control of the people over their rulers. p.74

The Assembly, after it had obtained entire control over the public revenues, still found itself deprived of all voice in the choice or even designation of the persons in whose administration of affairs it could feel confidence. p.75

It is difficult to conceive what could have been their theory of government who imagined that in any colony of England a body invested with the name and character of a representative Assembly, could be deprived of any of those powers which, in the opinion of Englishmen, are inherent in a popular legislature. p.76

It was a vain delusion to imagine that a body, strong in the consciousness of wielding the public opinion of the majority, could look on as passive or indifferent spectator, while the whole business of the country was conducted by men, in whose intentions or capacity it had not the slightest confidence. p.76

However decidedly the Assembly might condemn the policy of the Government, the persons who had advised that policy, retained their offices and their power of giving bad advice. p.77

A body of holders of office thus constituted, without reference to the people or their representatives, must in fact, from the very nature of colonial government, acquire the entire direction of the affairs of the Province. p.77

A Governor, arriving in a colony, is compelled to throw himself almost entirely upon those whom he finds placed in the position of his official advisers. p.77

Thus, every successive year consolidated and enlarged the strength of the ruling party. Fortified by family connexion, and the common interest felt by all who held, and all who desired, subordinate offices, that party was thus erected into a solid and permanent power, controlled by no responsibility, subject to no serious change, exercising over the whole government of the Province an authority utterly independent of the people and its representatives, and possessing the only means of influencing either the Government at home, or the colonial representative of the Crown. p.78

It is difficult to understand how any English statesmen could have imagined that representative and irresponsible government could be successfully combined. p.79

The opposition of the Assembly to the Government was the unavoidable result of attempts on the part of that body to acquire control over the administration of the Province. p.81

The collision with the executive government necessarily brought on one with the Legislative Council, the majority of which, was always composed of members of the party which conducted the executive government. p.82

The Legislative Council was practically hardly any thing but a veto in the hands of public functionaries. p.82

I look on the conduct of the Assembly as a constant warfare with the executive, for the purpose of obtaining the powers inherent in a representative body by the very nature of representative government. p.84

It made the business of legislation, and the practical improvement of the country, subordinate to its struggle for power; and, being denied its legitimate privileges, it endeavoured to extend its authority in modes totally incompatible with the principles of constitutional liberty. p.84

It is melancholy to think of the opportunities of good legislation which were sacrificed in this mere contest for power. p.98

It will be a ground, I trust, of permanent congratulation, that the contest terminated in the destruction of the impracticable constitution, which caused the strife. p.100

The inevitable result of the animosities of race, and of the constant collision of the different powers of the State, which I have described, was a thorough disorganization of the institutions and administrative system of the country. p.100

The blame rests not on individuals, but on the vicious system, which has generated the manifold and deep-rooted abuses that pervade every department of the public service and constitute the real grievances of the Colony. p.101

The defective system of administration commences at the very source of power; and the efficiency of the public service is impaired throughout, by the entire want in the Colony of any vigorous administration of the prerogative of the Crown. p.101

The fact is there is no real representative of the Crown in the Province; there is in it, literally, no power which originates and conducts the executive government. The Governor is, in fact, a mere subordinate officer, receiving his orders from the Secretary of State, responsible to him for his conduct, and guided by his instructions. p.101

Almost every question on which it was possible to avoid, even with great inconvenience, an immediate decision, has been habitually the subject of reference. The Governor has been enabled by this system to shift responsibility on the Colonial Office regarding questions of a strictly local nature, on which it was next to impossible for the Colonial Office to have any sufficient information. p.102

One of the greatest of all the evils arising from this system of irresponsible government, was the mystery in which the motives and actual purposes of their rulers were hid from the colonists themselves. The most important business of Government was carried on, not in open discussions or public acts, but in a secret correspondence between the Governor and the Secretary of State. p.107

The Governor, on his arrival in the Colony, found himself under the necessity of being, in many respects, guided by the persons whom he found in office. In no country, therefore, could there be a greater necessity for a proper demarcation of the business of each public officer, and of a greater responsibility resting on each. p.108

The administration of justice, police, education, public works and internal communications, of finance and, of trade, would require the superintendence of persons competent to advise the

Governor, on their own responsibility. Yet, of no one of these departments is there any responsible head, by whose advice the Governor may safely be guided. p.108

The real advisers of the Governor have, in fact, been the Executive Council; and an institution more singularly calculated for preventing the responsibility of the acts of Government resting on any body, can hardly be imagined. p.110

Upper Canada has long been entirely governed by a party commonly designated throughout the Province as the "family compact". This body of men possessed almost all the highest public offices, by means of which, and of this influence in the Executive Council, it wielded all the powers of government; it maintained influence in the legislature by means of its predominance in the Legislative Council. Successive Governors are said to have either submitted quietly to its influence, or, after a short and unavailing struggle, to have yielded to this well-organized party the real conduct of affairs. They shared among themselves almost exclusively all offices of trust and profit. p.148

Editor's note: The system of Government established in Lower Canada had the same effect except that the governing class was the "British Party" and the conflict of powers degenerated into a "War of races", in principle: a civil war.

The [Upper Canadian] reformers, however, at last discovered that success in the elections insured them very little practical benefit. For the official party not being removed when it failed to command a majority in the Assembly, still continued to wield all the powers of the executive Government, to strengthen itself by its patronage, and to influence the policy of the Colonial Governor and of the Colonial Department at home. By its secure majority in the Legislative Council, it could effectually control the legislative powers of the Assembly. p.149

Thus, the reformers rightly judged that, if the higher offices and the Executive Council were always held by those who could command a majority of the Assembly, the constitution of the Legislative Council was a matter of very little moment, inasmuch as the advisers of the Governor could always take care that its composition should be modified so as to suit their own purposes. They concentrated their powers, therefore, for the purpose of obtaining the responsibility of the Executive Council; p.150

I cannot help contrasting the practical good sense of the English reformers of Upper Canada with the less prudent course of the French majority in the Assembly of Lower Canada. Both, in fact desired the same object, namely, an extension of popular influence in the Government. p.150

It was upon this question of the responsibility of the Executive Council that the great struggle has for a long time been carried on between the official party and the reformers; for the official party, like all parties long in power, was naturally unwilling to submit itself to any such responsibility as would abridge its tenure or cramp its exercise of authority. p.151

The views of the great body of the reformers appear to have been limited, according to their favourite expression, to the making the Colonial Constitution an “exact transcript” of that of Great Britain; and they only desired that the Crown should in Upper Canada, as at home, entrust the administration of affairs to men possessing the confidence of the Assembly. p.151

THE EASTERN PROVINCES AND NEWFOUNDLAND

In all these Provinces we find representative government coupled with an irresponsible executive; we find the same constant collision between the branches of Government; the same abuse of the powers of the representative bodies and the same constant interference of the Imperial administration in matters which should be left wholly to the Provincial Governments. p.194

In these Provinces there is less formidable discontent because there has been recently a nearer approach to sound constitutional practice. p.195

New Brunswick was still a short time ago one of the most constantly harassed by collisions between the executive and legislative powers; the collision has now been in part terminated by the concession of all the revenues of the Province to the Assembly. p.195

But a more important advance has been made towards the practice of the British Constitution. The administrative power of the Province had been taken out of the hands of those who could not obtain the assent of the majority of the Assembly. The result is, that the Government of New Brunswick is now the most harmonious and easy. p.196

General review and recommendations

If a system can be devised which shall lay in these countries the foundation of an efficient and popular government, ensure harmony, in place of collision, between the various powers of the State, and bring the influence of a vigorous public opinion to bear on every detail of public affairs, we may rely on sufficient remedies being found for the present vices of the administrative system. p. 276

It is not by weakening but strengthening the influence of the people on its Government, by confining within much narrower bounds that those hitherto allotted to it, and not by extending the interference of the imperial authorities in the details of colonial affairs, that I believe that harmony is to be restored. p. 277

It needs no change in the principles of government, no invention of a new constitutional theory, to supply the remedy which would, in my opinion, completely remove the existing political disorders. It needs but to follow out consistently the principles of the British Constitution and introduce into the Government of these great Colonies those wise provisions, by which alone the

working of the representative system can in any country be rendered harmonious and efficient.
p.278

The Crown must submit to the necessary consequences of representative institutions; and if it has to carry on the Government in unison with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence. p.278

In England, this principle has been so long considered an indisputable and essential part of our constitution, that it has hardly ever been found necessary to inquire into the means by which its observance is enforced. p.278

Every purpose of popular control might be combined with every advantage of vesting the immediate choice of advisers in the Crown, were the Colonial Governor to be instructed to secure the co-operation of the Assembly in his policy, by entrusting its administration to such men as could command a majority; and if he were given to understand that he need count on no aid from home in any difference with the Assembly, that should not directly involve the relations between the mother country and the Colony. This change might be effected by a single dispatch.
p.279

This would induce responsibility for every act of the Government. p.280

The matters, which so concern us, are very few. The constitution of the form of government, - the regulation of foreign relations, and of trade with the mother country, the other British Colonies, and foreign nations, - and the disposal of the public lands, are the only points of which the mother country requires a control. p.282

A perfect subordination, on the part of the Colony, on these points, is secured by the advantages which it finds in the continuance of its connexion with the Empire. p.282

Nor can I conceive that any people, or any considerable portion of a people, will view with dissatisfaction a change which would amount simply to this, that the Crown would henceforth consult the wishes of the people in the choice of its servants. p.285

If the rule of the Imperial Parliament, that no money vote should be proposed without the previous consent of the Crown, were introduced in these Colonies, it might be wisely employed in protecting the public interests, now frequently sacrificed in that scramble for local appropriations, which chiefly serves to give an undue influence to particular individuals or parties. p.287

Two kinds of union have been proposed, - federal and legislative. By the first, the separate legislature of each Province would be preserved in its present form and retain almost all its present attributes of internal legislation; the federal legislature exercising no power, save in those matters of general concern which may have been expressly ceded to it by the constituent

Provinces. A legislative union would imply a complete incorporation of the Provinces included in it under one legislature, exercising universal and sole legislative authority over all of them, in exactly the same manner as the Parliament legislates alone for the whole of the British Isles. p.304

The main inducement to federation is the necessity of conciliating the pretensions of independent states to the maintenance of their own sovereignty. p.304

I thought that it would be the tendency of a federation sanctioned and consolidated by a monarchical Government gradually to become a complete legislative union; and that thus, while conciliating the French of Lower Canada, by leaving them the government of their own Province and their own internal legislation, I might provide for the protection of British interests by the general government, and for the gradual transition of the Provinces into a united and homogeneous community. p.305

But the period of gradual transition is past in Lower Canada. Time, and the honest co-operation of the various parties, would be required to aid the action of a federal constitution; and time is not allowed, in the present state of Lower Canada, nor co-operation to be expected from a legislature, of which the majority shall represent its French inhabitants. I believe that tranquillity can only be restored by subjecting the Province to the vigorous rule of an English majority; and that the only efficacious government would be that formed by a legislative union. p.306

If the population of Upper Canada is rightly estimated at 400 000, the English inhabitants of Lower Canada at 150 000, and the French at 450 000, the union of the two Provinces would not only give a clear English majority, but one which would be increased every year by the influence of English emigration; and I have little doubt that the French, when once placed, by the legitimate course of events and the working of natural causes, in a minority, would abandon their vain hopes of nationality. p.307

The union of the two Provinces would secure to Upper Canada the present great objects of its desire. All disputes as to the division or amount of the revenue would cease. It would be by no means unjust to place this burthen on Lower Canada, inasmuch as the great public works for which the debt was contracted, are as much the concern of one Province as of the other. p.308

I am inclined to go further and inquire whether all these objects would not more surely be attained, by extending this legislative union over all the British Provinces in North America. It would enable all the Provinces to co-operate for all common purposes. p.310

The various Colonies have no more means of concerting such common works with each other, than with the neighbouring States of the Union. There is no means by which the various details may speedily and satisfactorily be settled with the concurrence of the different parties. The Colonies, indeed, have no common centre in which the arrangement could be made and the

details of such a plan would have to be discussed just where the interests of all parties would have the least means of being fairly and fully represented. p.318

But the state of the two Canadas is such, that will not admit of a single Session being allowed to pass without a definite decision by the Imperial legislature as to the basis on which it purposes to found the future Government of those Colonies. p.323

In existing circumstances, the conclusion to which the foregoing considerations lead me, is that no time should be lost in proposing to Parliament a Bill for repealing the 31 Geo. 3, restoring the union of the Canadas under one legislature; and re-constituting them as one Province. p.323

I am averse to every plan that has been proposed for giving an equal number of members to the two Provinces, in order to attain the temporary end of out-numbering the French. It appears to me that any such electoral arrangement, founded on the present provincial divisions, would tend to defeat the purposes of union, and perpetuate the idea of disunion. p.324

The constitution of a second legislative body for the united legislature, involves questions of very great difficulty. p.325

The analogy which some persons have attempted to draw between the House of Lords and the Legislative Councils seems to me erroneous. p.325

Indeed, the very fact of union will complicate the difficulties which have hitherto existed; because a satisfactory choice of councillors would have to be made with reference to the varied interests of a much more numerous and extended community. p.326

It will be necessary, therefore, for the completion of any stable scheme of government, that Parliament should revise the constitution of the Legislative Council, and, by adopting every practicable means to give that institution such a character as would enable it, by its tranquil and safe, but effective working, to act as a useful check on the popular branch of the legislature. The responsibility to the United Legislature of all officers of the Government, except the Governor and his Secretary, should be secured by every means known to the British Constitution. The Governor, as the representative of the Crown, should be instructed that he must carry on his government by heads of departments, in whom the United Legislature shall repose confidence; and that he must look for no support from home in any contest with the legislature, except on points involving strictly Imperial interests. p.326

* Lord Durham's report on the affairs of British North America / edited with an introduction by Sir C.P. Lucas, Oxford: Clarendon Press, 1912