

LIBERALISM IN LOWER CANADA

1774 - 1815

by

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ABSTRACT

The historians characterizing Lower Canada's thought in the period before 1815 have argued that it was principally nationalist. French Canadians, moreover, were assessed either as clinging to the values and precepts of a feudal past or as adopting advanced republican ideas. In neither case, however, was attention paid to the articulation by French Lower Canadians of a system of thought that reflected the complex reality of the society in which they lived. This thesis attempts to recreate the system of thought using the public writings of the most politically active members of the community. It analyses the various intellectual influences on the colony and the unique mixture arrived at by the commentators who were affected by them. Having, it argues, combined elements of thinking drawn from the old regime, the Enlightenment and British writers and statesmen, French Canadians devised an idea of community which reflected their society's bicultural and bilingual nature and articulated the nature of the participation of its members in their newly acquired parliamentary institutions. Far, then, from being disaffected with the existing structures or showing a desire for independence, they comprised an active and politically aware population which viewed its future as intimately tied to the Constitution and to the British Empire.

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I. INTRODUCTION

Historians of Lower Canada rooted the origins of French Canadian nationalism in the period from 1760 to 1815. This nationalism, they argued, was grounded in the clash between two cultural groups who differed in their political and economic outlooks and could not find a common ground of accommodation. These interpretations assume that the two cultural groups had widely different intellectual backgrounds which grew even further apart in a colonial setting where, left to their own devices, each became more firmly entrenched. The picture that emerged of French Canadians was that of a people living in fear of assimilation; who rejected their new masters, either by reaffirming the beliefs and values of the Old French Regime or by incorporating French and American revolutionary ideas. Neither option was acceptable to the British authorities and to English Canadians who were developing their own political and economic agenda. French and English historians concluded that liberalism, a system of thought heralding the economic and political primacy of the individual, was absent. Such a notion was judged impossible to develop in a people that had to define itself collectively in order to survive and whose values were considered too "English" for it to adopt.

These interpretations concentrated heavily on the psychological effects of the Conquest and on the conflicts between the colonial administration and the House of Assembly which occurred at the end of the first decade of the nineteenth century. None, however, offered an analysis of the values, beliefs and assumptions that were being formed and crystallized by a people emerging from

a feudal system and who were exposed to the ideas of the European Enlightenment, of British statesmen and of constitutional writers during the very troubled but intellectually stimulating times of the American War of Independence, the French Revolution, the *Directoire* and the Napoleonic wars. These interpretations neglected a body of thought developed by Lower Canadians which incorporated the ideas and customs of the Old and the New Regimes and which was profoundly affected by the newly acquired institutions of a constitutional monarchy. What emerged was a unique definition of community, perfectly adapted to the reality of Lower Canada, which adopted liberal and conservative tenets but which in the end went beyond familiar definitions of these terms. Perhaps because of the particular difficulty posed by this unusual mixture, commentators preferred to paint the entire period with the broad brush of nationalism.

An analysis of this system of thought, reflecting the reality of a bicultural community endowed with cultural as well as civil rights, offers a new view of the period. The assessment that French Canadians defined their society as a community of French and English citizens sharing liberal freedoms permits a different understanding of the relationship between the two cultural groups and sheds some new light on the political and economic choices made by Lower Canadians during this period. In addition, it offers a new evaluation of the Constitutional Act of 1791, which was central to the development of this system of thought, and of the conventions and the institutions of the colony remembering that such institutions were the first to undergo the transformations necessary to accommodate a bilingual and bicultural community.

II. SOURCES AND TRADITIONS

Enlightenment writers, concerned with man's place in society, redefined, among other things, the relationship between the governor and the governed. Man's rights in society were no longer thought of as a by-product of a God-created order and harmony but were seen as part of a secular world which gave rights to people as an inherent feature of membership in the community of man. Works dealing with the influence of Liberal Humanism during the later part of the eighteenth and early part of the nineteenth centuries have stressed its importance in societies along with that of *laissez-faire* ideas and classical liberalism generally. Bernard Bailyn, for example, has argued that early American society was mainly concerned with liberal concepts of natural rights and contractual arrangement between society and government and shied away from social and economic considerations,¹ while Stephen Holmes' study of Benjamin Constant suggests that the concerns of that thinker were mainly political, as societies were still trying to come to grips with appropriate and acceptable systems of popular representation. Constant's France, particularly following *Le Directoire*, was rethinking popular sovereignty in terms that were more liberal than republican, a process which occurred before the embedding of *laissez-faire* liberalism.² Lower Canadians similarly reflected on the nature of the ties that bound seigneurs, intellectuals, merchants and farmers together. Equally important to them was the task of understanding the bonds which existed between French and English inhabitants of the colony. And in working these things out, they

¹Bernard Bailyn, *The Ideological Origins of the American Revolution*, Cambridge Massachusetts, The Belknap University Press, 1967

²Stephen Holmes, *Benjamin Constant and the Making of Modern Liberalism*, New Haven and London, Yale University Press, 1984

drew not only on old and familiar ideas concerning society and politics but on new currents of thought that were flowing on the other side of the Atlantic. They thus managed to articulate a system of thought that allowed them to make sense of the governmental arrangements established in 1791. It also preceded any articulation of nationalist ideology in Lower Canada.

A. SOURCES

Commentators made their views public using the methods in vogue in Europe and in the United States. Newspapers began appearing around 1764, bilingual at first, followed by unilingual ones later on. First came the Quebec Gazette, the Montreal Gazette in 1778 followed by *La Gazette du Commerce et Littéraire* and others. Pamphlets were popular from the very beginning and were useful to publicize important questions and to provide an in-depth analysis of particular issues. Denis-Benjamin Viger's *Considérations sur les effets qu'ont produit en Canada, la conservation des établissements du pays...* and Ross Cuthbert's answer, *An Apology for Great-Britain*, both published in 1809, illustrate two different points of view on a similar subject. Petitions to the Colonial authorities gave a sanitized and polished version of the issues and concerns of the Lower-Canadian community such as the similar and yet different versions of a request for an assembly sent by English and French inhabitants in 1784. The popular nature of these documents - they were intended to inform, educate and convince a not always educated readership - sometimes obscured the genuine reflective effort that went into their writing. The simultaneous appearance in the colony of printing presses and a need to express real concerns and anxieties has sometimes been

overlooked. Lower Canadians felt very strongly the necessity to air their views on the change from French to British rule, something which inevitably involved reappraising social and political bonds.

The newspaper *Le Canadien* began publication in 1806 and was forced to shut its doors in 1810 following a constitutional conflict with Governor Craig. Founded by four members of the House of Assembly ³ in response to the invective of the *Quebec Mercury*, *Le Canadien* spent the four years of its life pondering, among other things, the nature of community in Lower Canada and the character of the colony's relationship with the colonial structures of government. While it represented the views of the *Parti Canadien* - the majority party in the assembly - it remained attentive to various attitudes found within the colony and covered virtually all the topics considered of importance during this time. In fact, pamphlets, the *Journals of the House of Assembly* and newspapers mirror each other during this period of evolving ideologies. Although most articles, in the manner of the day, were signed with pseudonyms, researchers have been able to identify many of the authors who came from a wide variety of social backgrounds. Seen variously as a beacon of Québécois patriotism, ⁴ a distorted source of racial nationalism, ⁵ or as the official newspaper of reform-minded Canadians preparing the way for nationalism, ⁶ *Le Canadien* offers an informative

³Pierre Bédard, Jean-Thomas Taschereau, Joseph-Levasseur Borgia and François Blanchet three lawyers and one doctor.

⁴The *Bulletin des Recherches Historiques*, a journal reflecting the views of the ultramontane movement during the second half of the nineteenth century, often referred to *Le Canadien* in such terms but never quoted excerpts from its very secular pages.

⁵Donald Creighton, *The Commercial Empire of the St Lawrence 1760-1850*, Toronto, The Ryerson Press, 1937 p.162

⁶Fernand Ouellet, *Lower Canada 1791-1840*, Toronto, McClelland and Stewart. 1980 p.82-83-84

illustration of a community in the process of defining the components of its identity.⁷ Its pages, moreover, make it clear that that process was carried out in quite full awareness of the works of Enlightenment writers.

B. ENLIGHTENMENT TRADITIONS

It has long been supposed that Lower Canadian thought was cast within the framework of "pre-liberal" assumptions derived from its character as a feudal and Catholic society. In Jean-Pierre Wallot's words, this view - developed most obviously in the work of Groulx, Creighton and Hartz - postulated the existence of either:

A devout, obedient, pastoral and god-fearing people entrenched behind parish life and family life, endowed with the noble mission of permeating materialistic Anglo-Saxon America with spiritual values; or a traditional, semi-feudal, ignorant, priest-ridden and backward people, impervious to change and sealed to the outside world for two centuries until a grudging acceptance of industrialization unleashed the Quiet Revolution.⁸

Neither interpretation paid much attention to what, in fact, Lower Canadians were reading, writing and saying, and so it is not surprising that they should have developed a picture of Lower Canada as a society blindly perpetuating old regime thinking and behavior, and continuing to operate in ignorance of new ideas.

⁷Lawrence Smith aptly pointed out that for the first four years of publication the motto of the newspaper was *Fiat Justitia Ruat Coelum* (Let Justice Be Done Although The Sky May Fall); while the second phase of the paper, starting in 1817, carried the motto *Notre langue, nos institutions et nos lois*. Lawrence A. Smith, "Le Canadien and the British Constitution", *Canadian Historical Review*, Vol XXXVIII, No2, (June 1957) p.95

⁸Jean-Pierre Wallot, "Religion and French-Canadian Mores in the early Nineteenth Century", *Canadian Historical Review*, Vol LII, No 1, (March 1971) p.53

A key characteristic of Enlightenment thinking was its cosmopolitan, supra-national nature. Not even the wars of the eighteenth century prevented intellectuals from concentrating on what they considered to be universal truths about man in society. This belief in certain universal characteristics gave Lower Canadians an important tool in their efforts to build a case in support of their rights, for it allowed them to do so without concentrating unduly on their attributes as French speakers while at the same time permitting them to get rights that would help maintain those very characteristics. Whether Lower Canadians understood the Enlightenment the way Europeans did is difficult to assess from their political writings, occupied as they were with the necessity of adapting a body of thought to a situation - the accommodation, within a single society, of two distinctive groups governed by a Constitution whose prescribed goals was to guarantee individual rights by the rule of law - which those European writers had not yet encountered. Best described as ideologues rather than thinkers, Lower Canadians marshalled their knowledge and reasoning to develop a system of thought that included a notion of community wide enough to accommodate all French Canadians, regardless of social background, and English Canadians as well, as participating members of a Lower-Canadian society now organized as a constitutional monarchy. Central to this process was the application of Enlightenment ideas and principles to an existing intellectual set of values, out of which emerged a particular understanding of community, individual and property rights.

The extensive research work which has been done on the inventories of private and public libraries along with studies on the educational customs of the day

confirms the presence of Enlightenment thinking in the colony of New France and Lower Canada. Although only 4,000 of a possible 140,000 inhabitants could read at the turn of the century,⁹ those who could had access to the most influential European works. Montesquieu and Voltaire's writings were present in New France as early as 1749 and 1752.¹⁰ Publisher, importer and distributor John Neilson dealt in the works of Malthus, Smith, Locke, Blackstone, Montesquieu, Bentham, Burke and *Les Lumières*.¹¹ And the works by Enlightenment writers found their way into private libraries.¹² The mere presence of these works did not, of course, ensure that they were read, understood or discussed. Clear evidence that they were consulted can, however, be found in a variety of sources. Certainly those who studied outside the colony were exposed to them,¹³ while the same can even be said of students at the

⁹Claude Galarneau, *La France devant l'opinion canadienne 1760-1815*, Les Cahiers de l'Institut d'Histoire, Québec, Paris, Les Presses de l'Université Laval, Librairie Armand Colin, 1970 p.125

¹⁰*Ibid* p.35

¹¹Jean-Pierre Wallot, "Frontière ou fragment du système atlantique: des idées étrangères dans l'identité bas-canadienne au début du XIX siècle", Canadian Historical Association, *Communications Historiques*, 1983 p.1-29

¹²The *Bulletin des Recherches Historiques*, Vol XLII, No1, (Jan 1936) records the inventories of three private libraries. The first belongs to Jacques-François Cugnet, a prominent lawyer but not a seigneur, who died in 1797. In the inventory are found the works of Rousseau, Voltaire, Montesquieu and Blackstone.(p.10-13) The second belongs to seigneur and Judge Pierre de Bonne, a Quebec Seminary student at the same time as Pierre Bédard and a foe of the *Parti Canadien*. The inventory lists, among all the Classics, Italian grammars and other eclectic gatherings, the complete works of Hume, Blackstone's *Commentaries*, Montesquieu's *Lettres Persanes*, *L'Esprit de lois*, 40 volumes of Voltaire and 11 volumes of Rousseau. (P.136-144) The third inventory is that of curé Dasque who died in 1774. It lists a wide range of religious works, volumes and sermons and, if not the works of Voltaire, at least a book entitled *Les Erreurs de Voltaire*. (p.312)

¹³One such exemple is François Blanchet, a member of the House of Assembly, who had studied medicine in both London and Boston from whence "he brought principles of purest democracy". Helen Taft Manning, *The Revolt of French-Canada 1800-1835*, Toronto, MacMillan, 1962 p.56 Others include Jacques Labrie, a future member of the Assembly, Joseph-René Kimber, who would become a *patriote* in 1837 and François-Joseph Perreault. All were trained as doctors in

most popular and best school in the colony, the Quebec Seminary, for its curriculum during the late eighteenth and early nineteenth centuries included the study of *la philosophie*. In addition to courses in the Classics, the Seminary taught Descartes, Locke, Newton, Condillac and Malebranche as well as Pierre Bayle and Rousseau. To be sure, as Marc Lebel points out, the Seminary favored monarchism over democracy and taught Locke's writings on the origins of ideas rather than his theories on natural law.¹⁴ But that hardly alters the fact that students there were exposed to a wide range of ideas. Pierre Bédard, for example, whose writings on the constitution in *Le Canadien* make clear his affinity with the more reformist and radical British thinkers on the subject, also reflected on the origins of natural rights and on scientific empiricism.¹⁵ Certainly Mgr. Joseph-Octave Plessis had no doubt that Enlightenment notions were present, as his denunciation of "...the monstrous principles of the Diderots, Voltaires, Merciers, Rousseaus, Volneys, Raynals, d'Alemberts, and other deists of this century"¹⁶ makes very clear.

The presence of these ideas created a certain ambivalence of thought among the

¹³(cont'd) Edinburgh. See respectively, Victor Morin, "Evaluation de la médecine au Canada-Français", *Les Cahiers des Dix*, Vol XXV, (1960) p.65-85 and John Finlay, "The State of a Reputation: Bédard as a Constitutionalist", *Journal of Canadian Studies*, Vol XX, No4, (Winter 1985-1986) p.60-77

¹⁴Marc Lebel wrote a very detailed analysis of the curriculum of the Seminary of Quebec in a series of three articles. Marc Lebel, "Enseignement de la philosophie au petit séminaire de Québec", *Revue d'histoire de l'Amérique française* Vol XVIII, No3 (Déc 1964) p.30 See p. 405-424, 463-473, 582-593

¹⁵See Pierre Bédard, *Notes de philosophie, mathématique, chimie, physique, grammaire, politique. 1798-1810*, Archives du Séminaire de Québec MSS-M241. It is also reported that Bédard left behind "...un traité du droit naturel démontré par des formules algébriques". See Isidore Lebrun, *Tableau statistique et politique des deux Canadas*, Paris, Treuttel et Wurtz, 1833, p.501

¹⁶Mgr. Joseph-Octave Plessis, *Sermon on Nelson's Victory at Aboukir*, 10 January 1799. Reproduced in H.D. Forbes ed. *Canadian Political Thought*, Toronto, Oxford University Press, 1985 p.3

educated public rather than a clear cut commitment to a particular ideology; its members were by no means ready - or able - to adopt liberal values in an unambiguous way. Preferring to construct a kind of synthesis, they worked through the various writings available to them, combining ideas drawn from those writings in a quite eclectic way. Seigneur Philippe Aubert de Gaspé thus recalled with humor how in the early part of the century his colleagues and himself had enjoyed the works of Rousseau, Voltaire and Diderot under the unapproving eye of their teacher; ¹⁷ Denis-Benjamin Viger, a small merchant's son and reforming member of the Assembly, exalted the Burkean virtues of elitism.¹⁸ Seigneur Jean-Thomas Taschereau's espousal of reforming ideas led to his imprisonment by Governor Craig on grounds of democratic sedition; finally, and in other circumstances, a Laprairie parish priest off-handedly quoted Voltaire in a letter to his publisher.¹⁹

The cosmopolitan character of Enlightenment thinking allowed it to influence not just the thought of different sorts of French-speaking Canadians; it also affected their view of the relationship between culture and society. The fact that that thinking was concerned with general principles and universal truths meant that they could draw on French and English writers equally and even in some circumstances give preference to the latter. This tended to reinforce the conviction that they were defending principles of concern to everyone, rather than simply

¹⁷ Philippe Aubert de Gaspé, *Mémoires*, 1966 reprint Ottawa, G.E. Desbarats, 1866 p.309

¹⁸ Denis-Benjamin Viger, *Considérations sur les effets qu'ont produit en Canada, la conservation des établissements du pays, les mœurs, l'éducation etc. de ses habitants; les conséquences qu'entraîneroient leur décadence par rapport aux intérêts de la Grande-Bretagne*, Montréal, 1809

¹⁹ Boucher to Neilson, 28 April 1801. Public Archives of Canada (hereafter PAC), Neilson Collection MG24, B1, Vol 34.

the claims of a particular cultural or linguistic group. It is therefore important to understand that the claim that French Canadians were exclusively influenced by French or English writers is widely exaggerated. For instance, Claude Galarneau in *La France devant l'Opinion Canadienne*, Marcel Trudel in *L'Influence de Voltaire au Canada*, Michel Brunet in *La Révolution Française* and Jean-Paul Bernard in *Les Idéologies Québécoises au 19e siècle* stressed the almost exclusive presence of French writers leading to the development of republicanism under Papineau. Others such as Lawrence Smith in *Le Canadien and the British Constitution 1806-1810* and John Finlay in *The State of a Reputation: Bédard as a constitutionalist* stressed that French Lower Canadians were exclusively influenced by English constitutional writers in their understanding of the constitution and the parliamentary institutions.

C. MAIN THEMES

Lower Canadians drew on Enlightenment ideas during this period mainly in the course of their efforts to shape a view of their society, its government and the place they occupied in relation to these things. Their discussions of the state of nature and natural rights suggest, in particular, the influence of Locke and Rousseau. Combining elements present in the work of these and other thinkers, they treated such issues as the rule of law, slavery, the right of dissent, freedom of expression, the equality of individuals and - of special importance in their case, given the bicultural nature of their society - the equality of member groups within a single society in ways that gave their synthesis of them a quite unique character.

In the manner of European writers, their texts were peppered with references to antiquity from which they drew lessons for the present and the future. In the words of Louis Plamondon, the Secretary of the Société Littéraire: "The study of the past, meshed with current events [*la politique*] helps us predict what the future of mankind will be".²⁰ (*My translation*) Familiar with the classics, Lower Canadians could hardly resist making references to Cicero, to Plato's *Republic* and the wisdom of the state that governs for the public good,²¹ and, particularly, to the Roman conquests of new territories. References to this had a special appeal and were made again and again to show a conqueror's magnanimity since Rome had let its conquered nations retain language, customs and *moeurs* and in some instances had even adopted some of their customs.²²

Even more common, however, were references to seventeenth and eighteenth century works. *La Gazette du Commerce et littéraire*, for example, reproduced texts from Voltaire and Helvétius, while *Le Canadien* quoted Rousseau on the use of flattery to obtain governmental favors and on the fact that money did not bring happiness. Lower Canadians also borrowed from him the idea of the general will and the concepts of selfishness and self esteem - *amour propre et amour de soi*. When referring to societal rights, Lower Canadians cited Montesquieu's writings on the differentiation between peoples and the effect of climate and geography on the make-up of populations. Charles James Fox was put in service as a defender of liberty and humanity, as a supporter of the abolition of slavery and, as

²⁰Text reprinted in *Répertoire National*, Vol I, 1893 p.93

²¹*Le Canadien*, 29 November 1806, 2 January 1808, 25 November 1808, 8 April 1809

²²*Ibid*, 29 November 1806, 3 January 1807. Also Denis-Benjamin Viger, *Considérations* p.34

Jacques Fox, was quoted as saying that "...in the event of an invasion by America, only French Canadians could keep Canada in the hands of the Empire."^{2 3} (My translation) Edmund Burke's observation that "...of all British colonies in North America, only the one where French was spoken had remained loyal to the Crown..." (my translation), was made much of. Hume's account of the Norman Conquest was used to demonstrate the eventual accommodation of conqueror and vanquished once the Conqueror had abandoned his unjust pretensions and accepted local language and customs.^{2 4} Burke again was used in support for retaining Catholicism and French in the colony though the conservative principles on which he built his argument for doing so were never explained.^{2 5} In political and constitutional matters, *Le Canadien* borrowed from Locke his contention that the executive power was somewhat subordinated to the legislative power and from Blackstone, the fact that the English Constitution allowed the right to dissent and to impeach bad ministers. He was also quoted in defense of the power of the assembly, and in support of the ideas that one branch of government could not stand in judgement of another and that judges could not be members of the House of Commons. The newspaper also cited DeLolme on freedom of the press and on the maintenance of the balance of

^{2 3} *Le Canadien*, 22 November 1806, 25 April 1807, 30 July 1808, 20 January 1810.

^{2 4} *Ibid*, 29 November 1806 and Viger, *Considérations* pages 13 and 30.

^{2 5} An anecdote places Burke's son or nephew in Quebec city on the eve of the constitutional dispute that pitted Governor Craig against liberal-minded members of the assembly. Philippe Aubert de Gaspé recalled that the young Burke's nickname was "Château Burke" since he resided with Governor Craig at the Château St-Louis and that on a particular night he had gotten into a fight with a tradesman. Quoting from Burke's works while his son or nephew was among them, a guest of the most powerful representative of colonial authority at the time, was no doubt good press. Philippe Aubert de Gaspé, *Mémoires*, (1966 Reprint) p. 556

power in order to protect the public good from certain groups.²⁶

Lower-Canadian commentators thus used a broad range of European work in their efforts to construct a picture of their own society and the place they, both as individuals and as members of a particular group, occupied in it. Combining the results of this exercise with elements taken from their own tradition, they managed to build a system of thought generous enough to accommodate not just them and the rights which they considered their due, but one into which all the members of their community, irrespective of language, religion and culture, could fit. In that sense, they showed themselves at once the heirs of a kind of conservative (but in the Burkean sense) concern with the preservation of communities and particularisms, of a sort of Lockean preoccupation with the rights of the governed and of a species of Rousseauian attention to the general will.

²⁶ *Le Canadien*, 3 June 1809, 2 July 1808, 23 July 1808. The *Bulletin des Recherches Historiques*, Vol VII, 1901 p.357-358 mentions the presence of Henry, son of William Blackstone, in Three-Rivers as a sheriff from 1799 to 1805 and then as joint coroner from 1811 until his death and burial in that city.

III. THE IDEA OF COMMUNITY

A. INTRODUCTION

For the most part, historians of this period have approached it by means of frameworks of nationalism or laissez-faire liberalism, pointing to what they see as the overwhelming presence of the former and the absence of the latter. These approaches involved looking for features such as a definition of community that was exclusively Catholic and French and a view of liberalism defined mostly in economic terms.²⁷ Both emphasized the cultural conflict between the French and English inhabitants of the colony and glossed over the intellectual and political nature of the issues debated. The impression created was one of a colony that was socially, economically and politically oblivious to world currents.

The period 1774-1815 was particularly vibrant; economically, it completed the passage from the adventurousness of the fur trade to the settlement into an agrarian exploitation of the land; socially, the community underwent significant changes as the traditional forms of authority associated with seigneurs and clergy were being assailed by new ideas of equality and challenged by a new

²⁷ Chanoine Groulx and Michel Brunet, along with several other "Montreal School" historians, argued that bicultural tensions existed since and because of the Conquest. Brunet's often quoted blanket assessment of Quebec from the Conquest to the Quiet Revolution (messianism, agriculturalism and anti-statism) pointed to the conservative nature of the colony grounded in the alliance of the clergy with the English Colonial authorities. Michel Brunet, *La Présence Anglaise et les Canadiens*, Montréal, Beauchemin, 1958. Donald Creighton, Louis Hartz and Kenneth MacRae reached a similar conclusion on the conservative and medieval nature of the colony since their research pointed to the absence of laissez-faire liberalism and of a market economy. Donald Creighton, *The Empire of the St-Lawrence*, Toronto, MacMillan Company of Canada, 1965, and Louis Hartz, *The Founding of New Societies*, New York, Harcourt, Brace & World Inc., 1964

intellectual and political elite. Culturally, two groups were learning to live together at a time when their respective mother countries were at war and their closest neighbour was threatening invasion. This period was also marked by a substantial demographic increase in both cultural groups, the French because of the birthrate and the English because of immigration resulting in added pressure on the availability of land. Politically, the introduction, in 1791, of a constitutional monarchy, based as it was on precepts of individual rights and freedoms, significantly altered the old political and social order of the colony and competed with the values and beliefs of the Old Regime.

The presence of the ideological framework of the old order was assured by the continuing influence of the seigneurs and particularly the clergy, but even they did not remain untouched by new ideas circulating in the colony. More readily associated with the rise of the middle-class, ideas regarding the social contract and the equality of man affected a new generation of young men, the sons of small merchants and farmers, who acquired degrees in law or medicine and became extremely active in the political life of the colony as they ran for election to the House of Assembly. For the most part, the commentators of this period became members of the *Parti Canadien* and were involved in one way or another with the newspaper *Le Canadien*. However, socially Lower Canada was an open community and many individuals acquired seigneurial titles through marriages or acquired land holdings which assured them of financial independence. Others, seigneurs as well as new professionals, remained poor and devoted their energies to public life and to the acquisition of government posts, *les places*.²⁸

²⁸ François Blanchet, a farmer's son, married into a seigneurial family in 1802. See Jean-Pierre Wallot, "François Blanchet", *Dictionnaire Biographique du Canada*,

During this time, Lower-Canadian commentators articulated a system of thought which incorporated ideas drawn from the Old Regime, British constitutional principles, and the Enlightenment and was specifically adapted to the social realities of the colony. It was suited to a bicultural community in a delicate colonial setting trying to come to grips with the instruments of liberal democracy. That community's adaptation of the available body of thought was unique and differed from European thinking which on the whole was preoccupied with different social and political concerns. Lower-Canadian commentators drew from the classics ideas concerning the importance of man's involvement in the polity from which he received his welfare and his self-fulfilment. From scholasticism they derived their belief in man's inherent spirituality and their respect for tradition and for authority, for even though the influence of the clergy was muted and religious practices waning during this period, Lower Canadians retained a deep attachment to religion and to its role in man's life.²⁹ From the Enlightenment, they gained their understanding of the primacy of the individual and a renewed definition of natural rights based on equality and on the preservation of one's own interests. From British constitutional writers they drew their capacity to think in terms of concrete political and institutional situations.

²⁸(cont'd) Les Presses de l'Université Laval, Vol. VI, p.74-76 So did Denis-Benjamin Viger who subsequently acquired substantial holdings. Pierre Tousignant et Jean-Pierre Wallot, *Op. cit.*, Vol. IX, p.890-901. For his part Pierre Bédard remained in penury his entire life. Fernand Ouellet, "Pierre Bédard", *Op. cit.*, Vol. VI, p.45-53

²⁹The clergy had been unable to bring new priests from France since the Conquest and their main plea to the authorities was to obtain the permission to do so as their numbers were decreasing steadily. Mgr. Plessis protested about the few and mediocre candidates that were available locally. He also feared the influence of *la philosophie* on his flock and bemoaned the laxity of mores in the colony. See Wallot, *Op. cit.*, p.67 and Abbé Albert Tessier, "La Vie urbaine vers 1800", *Le Cahier des Dix*, Vol VIII, (1943) p.155-181

Their thought meshed into a single system the characteristics of the pre-Enlightenment and Enlightenment "natural orders". From the "old" natural order, they took their notion of the importance of man's spirituality, his attachment to religion and to the laws and customs that regulated the underlying social order. From the "new" natural order, they absorbed ideas about the rule of law, the inviolability of civil rights, the principle of equality among the members of the community and the concept of majority will. Lower Canadians also articulated a place for language not out of respect for the traditional characteristics of peoples but out of recognition of what distinguished rational human beings: they saw it as an attribute belonging to the world of acquired knowledge and civil society. Constitutional law guaranteed both religious and civil freedoms and Lower Canadians perceived old and new rights alike as belonging to a similar civil order which extended protection to the individual in his fullest humanity. Perhaps because they fused into a single concept old and new rights, Lower Canadians never separated the concepts of morality and legitimacy.

Lower-Canadian commentators formulated the notion of a political community as something consisting of individuals bound together by their sharing of natural rights drawn from both "old and new" natural orders. The social contract was defined by their acceptance of an obligation to maintain the bond between them by ensuring that the strife brought about by their different characteristics was eliminated; it also involved giving their loyalty to the sovereign and to the constitution in return for respect and for protection of their "religious and civil rights". Any attempt by the authorities to circumvent the common good of the community was seen as a breaking of that contract which could lead to the

enslavement of its members and so justified dissent and revolt against what would have become an arbitrary government.

B. NATURAL ORDER AND NATURAL RIGHTS

The idea of natural law and natural rights was present in the western intellectual tradition throughout the classical, medieval and early modern periods. The concept acquired in the seventeenth and eighteenth centuries a new dimension. Shedding its subordination to divine law, it became a secular and rationalist belief.³⁰ The focus on the individual as a possessor of natural rights which guaranteed his protection from the state redefined the idea of societal man. Whereas he had always been linked to others by religious and blood ties, he now stood alone and his relationship to his fellow human beings was defined by the arrangements necessary to ensure his self interest. The relationship between governor and governed became more institutional and abstract.

Belief in both sorts of natural order existed in the colony of Lower Canada between 1774 and 1815. The seigneurs and the clergy were clearly identified with the pre-modern concept of the natural order. By 1784, segments of Lower Canadian society had introduced publicly a different articulation of the natural order using the ideas of the Enlightenment. Petitions and writings began to reflect a different view of the social order. Their writers and signatories were for the most part, but not exclusively middle-class, and did not form a monolithic

³⁰See Willson H. Coates, Hayden V. Whyte and J. Salwyn Schapiro, *The Emergence of Liberal Humanism, An Intellectual History of Western Europe*, New York, McGraw-Hill Book Company, 1966 p.177-221

group. Certain representatives, such as Denis-Benjamin Viger, adopted a conservative outlook while others such as Pierre Bédard, Louis Bourdages and Joseph-Levasseur Borgia were more readily identifiable with liberal values. Conservatism and liberalism became two facets of a single system of thought that was being developed by the members of the House of Assembly; this system blended "old and new" natural orders and married quite successfully conservative and liberal beliefs dealing with natural rights, equality and self-preservation.

The decade following the Conquest was dominated by the efforts of the clergy and the seigneurs to establish their sphere of authority with the new British colonial representatives. They all shared the belief in the inherency of man's spirituality, in his religious nature, in the sovereign power of the King and in the ancestral conventions regulating social behavior.³¹ And since, the relationship between civil and spiritual powers was never questioned by the colonial authorities, already sold on the principles of an established church, they sanctioned Roman Catholicism in their new colony. The Royal Proclamation of 1763 allowed Catholic religious practice and established some ties between the clergy's elites and the authorities. The natural "old order" alliance between the clergy and English authorities grew in strength as secular ideas permeated the colony threatening the existing social order and as the French Revolution cut the clergy off from its natural continental allies. As this order was essentially

³¹ A study of the rule of Intendant Jean Talon revealed the establishment of a Gallican model during the seventeenth century. Responding to the wishes of Louis the XIV, Talon set the primacy of the State's authority in all matters except those of a spiritual nature. See Jacques Cossette s.j., "Jean Talon champion du gallicanisme royal 1665-1672", *Revue d'Histoire de l'Amérique Française*, (hereafter called *RHAF*, Vol XI, No3, (Dec 1957) p.327-348

religious and supranational, the clergy's acceptance of an elite English structure to replace the French one was accomplished without much difficulty.

Equally the seigneurs were concerned with the maintenance of the laws and customs that perpetuated the old social order. Therefore they requested that French civil laws *La Coutume de Paris* be kept; this would enable the seigneurs to continue administering justice and entrench the French inheritance laws regulating property and the seigneurial tenure. Religious practice and *La Coutume de Paris* were, then, two dimensions of a single system of thought rooted in the pre-Enlightenment period. The Custom of Paris was, as l'Abbé Raynal put it in 1773, "Une loi dictée par la nature qui se présente au coeur de l'homme juste et bon".³² Inheritance laws, like religion, derived from the world of sentiment and tradition which gave mankind security and stability. These two elements of the "old" natural order ensured the continuation of the social order and were considered essential as well as primordial for the happiness of the people. Petitioning the King for the retention of French laws a group of seigneurs called them "...les loix premières du Canada que le peuple désire et demande avec tant d'ardeur, qui les regarderont comme sa sûreté unique."³³ The seigneurs argued that the maintenance of Roman Catholicism and of the Paris Custom in the English colony would ensure its stability and the continuation of the established and tested ways of doing things.³⁴ In another petition to the King which

³² Adam Shortt and Arthur Doughty, *Documents relating to the Constitutional History of Canada 1759-1791*, (hereafter called *Constitutional Documents*) Ottawa 1918, Vol I, p.478

³³ *Petition for the Restoration of French Law and Custom, 1770*, Shortt, *Op. cit.*, Vol 1, No.18, p.419

³⁴ Their reasoning read very much like Edmund Burke who reworked the pre-modern idea of natural order and spelled out the tenets of conservatism. However, seigneurs and clergy owed more to the medieval version of the natural

repeated their main objections to the introduction of English civil laws, they argued that these laws were admirable in themselves but that in Lower Canada they risked endangering the existing tranquility: they [elles] "... ne pourroient [sic] s'allier avec nos coutumes sans renverser nos fortunes et détruire entièrement nos possessions."³⁵ By calling on the values of the "old" natural order, the seigneurs and the clergy were able to match the concerns and the convictions of the English authorities and obtain with the Quebec Act of 1774 the continuation of religious and legal conventions in a way which mitigated the cultural divisiveness created by the Seven Years War. In addition, the request came during a period when the concerns for stability and order were made particularly acute by the growing dissent in the American colonies.³⁶ There thus existed between the two communities a powerfully enforced coincidence of thought as to the nature and the preservation of temporal and spiritual power. This coincidence resided in the acceptance of an established church, in a belief in the inherent spirituality of man, and in a strong reliance upon the morality and legitimacy of tradition and customs as instruments of stability.³⁷ Elites and

³⁴(cont'd) order than to the later rewording of the British statesman. His influence would be felt later on and particularly distinguishable in the writings of Denis-Benjamin Viger.

³⁵ *Petition of French Subjects 1773, Constitutional Documents*, Vol 1, p.505

³⁶ There is a historiographical debate regarding the granting of the 1774 Quebec Act. Some writers such as W.P.M. Kennedy have judged it to be a prime example of British leniency, justice and humanity while others such as François-Xavier Garneau saw it as a selfish expediency to secure the loyalty of Canadians. The truth seems to be somewhere in the middle. See Paul W. Bennett, Cornelius J. Jaenen and Jacques Monet s.j. eds, *Emerging Identities*, Scarborough, Prentice-Hall Canada Inc, 1986. p.107

³⁷ Whatever democratic progress was made on the home front in England, the colonial authorities remained concerned with ensuring the stability of the colony using traditional methods during this period. The American Revolution, the French Revolution and the Napoleonic Wars did not encourage experimentation in liberal democracy in what was perceived to be a vulnerable colony during the 1770s and later.

clergy, French and English, Anglican and Catholic, all shared in a similar system of belief.

This traditional system of thought contained the ideas of natural rights, self-preservation and, implicitly, equality of social and religious groups derived from a hierarchical concept of society. Imported into Lower Canada, this system of belief enabled the seigneurs to take their rightful place on the nominated Legislative Council since the right to participate in government was a function of property ownership. It also ensured their loyalty to the Crown, for it made that loyalty a necessary response to the Crown's guarantee of their rights and position.³⁸ The seigneurs recommended that the nominations to the Council be reserved for the largest property holders - English or French, Protestant or Catholic - for they believed that concern to support the social system was independent of language or religion. In the words of Seigneur Chartier de Lotbinière:

Pour ce qui est du pouvoir législatif à établir en Canada, j'ai déjà eu occasion d'exposer à l'honorable chambre combien il était essentiel de ne le confier qu'aux plus gros propriétaires de terres dans ce pays... sans faire attention à la religion qu'ils professent; leur différence d'opinion en fait de dogme n'influera en rien sur cet object;³⁹

³⁸Seigneur Pierre Amable de Bonne, who would be at the center of the constitutional conflict in 1809-1810, held a well articulated view of the divisions of society: "In all civilized realms, the people are and can only be validly represented by what is known as the Three Estates; which is to say, the clergy, the aristocracy and the bourgeoisie; and if you are wise, you will agree to nothing as may be proposed to you, except as you perceive unanimity in a least the majority of the several bodies." This type of belief repeated the tenets of the Old Regime and prepared De Bonne to take his place in the colonial political structures. Quoted in Ouellet, *Op. cit.* (Toronto 1983) p.12

³⁹*Choses Indispensables à considérer et à déterminer fixement, si le Bill présenté pour la province de Québec a lieu. 1774, Constitutional Documents, Vol I, p.563*

The "old" natural order was understood to sanction the power of birthrights and religious practice. Determined to safeguard their political position, the seigneurs reasoned that, while it was important to belong to Christianity, the particular credo they subscribed to would not influence their allegiance to the new King. Implicit in the seigneurs' system of belief, as they requested and received permission to sit as Catholics in the Legislative Council, ⁴⁰ was that the natural order was peaceful and harmonious and accommodated differences without eliminating them. Although never discussed as such, Lower Canadian seigneurs believed that *l'ordre naturel* contained the notion of the equality of different cultural and religious groups. Moreover, their system of belief firmly entrenched the notion of landed property as a factor of stability and of political empowerment. It was also understood that property meant only landed property and not commercial capital, for it was viewed as a source of instability. De Lotbinière was specific about this point: landed property was the

...seules propriétés reconnues pour solides dans quelques parties du monde que ce soit, toutes autres pouvant être anéanties par le premier coup de feu ou quelques banqueroutes.... il convient que Sa Majesté soit suppliée de n'employer pour membres de législation que ceux de cette classe de premiers et de plus gros propriétaires au fonds de terre... ⁴¹

The concept of political empowerment resting in landed property would greatly affect the Lower Canadian understanding of political life in the following decades.

The initial discourse on the natural order excluded language as a characteristic of man. The seigneurs and clergy did not view language as a crucial definer of the

⁴⁰ The Oath of Allegiance was amended in 1774 allowing Catholics to sit of the Legislative Council.

⁴¹ *Choses indispensables à considérer...*, *Constitutional Documents*, Vol 1, p.563

social order and their petitions and writings make few references to their linguistic peculiarity. When they did, and the examples were few, they did not mention the use of their language because it was part of their inherent nature but because of the practicality of communicating in the same language when administering justice and because French facilitated their participation in the political life of the country. Chartier de Lotbinière pointed out, as an afterthought in his lengthy petition on the morality of retaining Catholicism and civil laws, that denying the use of French would... "réduire presque la totalité des intéressés à n' être jamais au fait de ce qui serait agité ou serait arrêté dans le pays."^{4 2} Language was a practical necessity but it was not one of the elements thought to be part of the "old" natural order.

The "old" order sought the continuation of the traditional way of life but did not include the notion of popular participation in the political structures. The seigneurs therefore reacted strongly to the first requests in the seventies for an assembly made by the British merchants. They readily understood the threat such an institution posed to the social order. Their 1784 petition, sent to London to counteract the twin petitions of the French and English inhabitants, argued that an assembly went against "natural law".^{4 3} In addition they understood that the principles underlying the concept of assembly were based on a different understanding of man, one that placed the natural rights of individual men at the center of society and so displaced the sense of it as an organic community governed by traditional and moral law. As l'Abbé Gravé pointed out in his

^{4 2}*Ibid.*, Vol I, p.564

^{4 3}*Objections aux Demandes Faites A Notre Auguste Souverain, Constitutional Documents*, Vol II, p.754-56

comments on the Constitutional Act of 1791:

Ceux qui selon moi pensent un peu sont très fâchés puisque plusieurs de nos farrault Canadiens et beaucoup d'Anglois admirateurs de l'Assemblée Nationale qui parlent déjà d'établir les droits de l'homme comme principe des loix.⁴⁴

At the core of *la philosophie* lay a different understanding of the state of nature and of natural rights. Man's rights were protected by mechanical arrangement rather than because of ancestral belonging. Man needed to be individually guarded against arbitrary rule. His natural rights to resist such rule reflected new concepts of self-preservation and of equality of all the members of society. Freedom became the power of any man to participate in the structures of government and to dispose of his property as he saw fit. A social contract, specifying duties and responsibilities, guaranteed the protection of his rights under the rule of law in exchange for the respect and guardianship of the laws designed to uphold his freedom. The guardianship could be effected by direct participation or by representation. Each man was protected as an individual, rather than as a member of a group or class or estate. Indeed such entities began to be viewed negatively as potential carriers of dissent and exploitation. Man's rejection of his responsibilities or the denial of his rights by the state led to a negation of his freedom and to his enslavement.

This body of thought had filtered into the colony of Lower Canada through its school curriculum and through the availability of works which reflected the

⁴⁴ Abbé Gravé to Abbé Hody, 25 October 1791. Quoted in l'Abbé Honorius Provost, M.A., *Le Séminaire de Québec, Documents et biographies*, Québec, Revue de l'Université Laval, 1964 p.288.

cosmopolitan nature of their European sources. It represented a politically potent force as it was in evidence prior to and during the establishment of a constitutional monarchy based on the principles of the rule of law which in effect was sanctioning the legitimacy of the ideas that were circulating at the time. The 1791 Constitutional Act recognized once again the practice of Roman Catholicism, sanctioned the use of French civil laws and of English criminal laws and gave the colony new institutions: an Executive Council, a nominated Legislative Council and an elective House of Assembly. The single most important feature of the new apparatus was the franchise based on the British property and rental qualifications. Applied in Lower Canada, it entitled overnight ninety per cent of the population to vote, including women and native Indians.^{4 5} A real measure of political power was given to the majority of the community, thereby attenuating the distinctions of class, rank and wealth which had existed before. When Lower-Canadian commentators began to formulate their notions of community in terms of "new" natural rights, they therefore did so understanding that the common good included the interests of the lowest, the smallest and the poorest among them.

The establishment of a constitutional monarchy enabled the implementation of the Lower-Canadian system of thought to find expression in concrete terms but it also set parameters to it. That system of thought reflected the challenges and the limitations of the constitution as the members of the *Parti Canadien*

^{4 5}*La Coutume de Paris* made it possible for women to inherit land and the Seigneurial tenure permitted the almost automatic and inexpensive cession of land from the Seigneur to the Habitant. John Hare and Jean-Pierre Wallot, *Ideas in Conflict 1806-1810*, Trois-Rivières, Boréal Express, 1970 p.16 and Ouellet, *Op. cit.* p.24

understood them. One such challenge was the issue of the use and the legitimacy of language. The question surfaced during the opening days of the first Parliament when the elected members had to choose the Speaker. The issue was whether the Speaker should be chosen for his experience and knowledge of procedure or for his ability to communicate with the greatest number of elected representatives and constituents enabling them to participate in the proceedings and ensuring that the voice of the majority be heard.⁴⁶ Until then the signatories of petitions requesting an Assembly had not seen language as an important factor. Their 1784 petition, mirroring the English petition, and carrying upwards of two thousand names requested the institution in order to ensure that "...old and new subjects receive full benefit of their civil and religious rights as British subjects."⁴⁷

The civil rights awarded to the inhabitants of the colony in 1791 were part of the "new" order and redefined the social contract between governor and governed. Trial by jury, Habeas Corpus, freedom of speech, freedom of dissent and full participation in the institutions were designed to ensure the harmony of the relationship and to secure the coincidence of the interests of the people and its government. During the years of divine right absolutism, a natural alliance had formed between the King and his people to counterbalance the power of the nobility. In Lower Canada, this relationship was being replaced by a natural alliance between the constitution and the people to stem the power of the unelected Legislative Council and the advisors of the Governor.

⁴⁶ *Journals of the House of Assembly of Lower Canada, 1792*, pages 20-22

⁴⁷ Pamphlets of the Public Archives of Canada, (hereafter called PAC Pamphlet), *Humble adresse des anciens et nouveaux sujets*, Québec 1784 p.25

Those Lower Canadians who sympathized with the new ideas believed that man was inherently good⁴⁸ and that he shared natural rights with other men. In addition, they believed that the individuals who shared those rights also had a common understanding of the reasons why they had them. Sharing rights and understanding created among individuals a *similarité des principes*.⁴⁹ A bond was created between the members of the community based on the similarity of their principles which formed the basis of their humanity. They understood humanity not as a chain of indistinguishable beings but as a community of individual rights-sharers endowed with goodness and perfectibility. The bond between them was sacred and a bearer of the highest virtue. Membership in the community entailed an awareness of the bond's importance and a commitment to its defense against those wishing to break it. Breaking the bond was a crime against the entire community or, as *Le Canadien* put it "...un crime de lèse-société." ⁵⁰

This sense of things embraced old and new rights, or as Lower Canadians put it, their religious and civil rights. The conjunction of these types of rights necessitated a discussion of the proper balance between the rights of the individual and the rights of the collectivity. On the whole, the rights of the individual were to supercede those of the collectivity. As *Le Canadien* remarked "...while overlooking merit and friendship is dangerous, it remained that [the individual's] humanity was the highest virtue".⁵¹ (*my translation*). Ties based on the sharing of formal, mechanical rights were considered as important, if not

⁴⁸ This represented a departure from medieval thinking which subscribed to the idea of the evilness of man and his need for salvation.

⁴⁹ *Le Canadien*, 31 January 1807

⁵⁰ *Ibid.*, 3 January 1807

⁵¹ *Ibid.*, 25 June 1808

more, than those of kinship. Sometimes, to be sure, one seemed to be preferred over the other. *Le Canadien* once concluded that an individual "...ne doit pas être privé de sa liberté naturelle que de la partie qui est nécessaire pour la vraie liberté civile et la liberté publique..."⁵² Favoring his civil freedoms did not mean however rejecting his natural freedom; Lower-Canadian commentators never dissociated the two understandings of the natural order, choosing to formulate the notion of community as an embodiment of old and new freedoms. Their reason for doing so lay in their belief that while society's members were united by their sharing of individual rights they were also carriers of different characteristics.

The first of these characteristics, religion, was recognized by, and allowed for, in the laws of the old natural order and had been accepted and legitimized by the British authorities no less than three times.⁵³ Inherent in this attribute was the belief that although it differed from that of the Colonial authorities, it received equal recognition. Religious toleration was an accepted reality in the community of Lower Canada. French Canadians took for granted that English Canadians and their religious beliefs were there to stay. Their efforts were therefore directed at insisting on tolerance in order to make Catholicism an acceptable fact in the colony. When *Le Canadien* claimed that they lived in times when "...la liberté de conscience n'éprouve plus de contrainte",⁵⁴ it was emphasizing its commitment to a bi-religious definition of community. And when American missionaries visited Canada and advocated the repeal of Roman Catholicism, the newspaper warned

⁵² *Ibid.*, 9 December 1809

⁵³ The Royal Proclamation of 1763, the Quebec Act of 1774 and the Constitutional Act of 1791.

⁵⁴ *Le Canadien*, 6 June 1807

that religion should not be used to deceive people.⁵⁵ A bi-religious society welcoming on equal grounds Catholicism and Anglicanism did not however lead to a pluralistic definition of community as evidenced by the assembly's continuous insistence on the expulsion of Jewish member Ezechiel Hart because he could not take the oath of allegiance written for Christians. *Le Canadien* admitted to some religious prejudice in the matter but was also concerned because it thought that Jewish inhabitants, and particularly those who belonged to the Opposition Party, as Hart did, tended to place their own interests above those of the community.⁵⁶ Lower Canadians had difficulty accepting a multi-denominational community not only because of religious influence but also because they were concerned with the legal security of their own faith and its recognition by the colonial authorities.

In fact the clergy was notably weak during this period and its legal status was debated by the authorities.⁵⁷ The rapid increase in population had been accompanied by a severe deficiency in the number of priests available. Unable to attract new recruits, the clergy was also severely limited in the number of priests it could bring in from France. As Mgr Plessis bemoaned: "Je prie Dieu tous les jours de m'envoyer des ouvriers pour sa vigne. Malheureusement le nombre de ceux que j'ordonne est bien inférieur à celui de ceux qui périssent."

⁵⁸ In addition, piety and religious conviction were not apparent in the new

⁵⁵ *Le Canadien*, 12 November 1808

⁵⁶ *Ibid.*, 18 April 1807 and 12 November 1808

⁵⁷ See on this subject Jean-Pierre Wallot, "Sewell et son projet d'asservir le clergé Canadien", *Revue d'Histoire de l'Amérique Française*, Vol XVI, No4, (Mars 1963), p.549-567

⁵⁸ Plessis to Lejamtel, 27 September 1809. Reproduced in Jean-Pierre Wallot, *Religion and French-Canadian Mores*, p.67. Also M.G. Hutt could only account for the arrival of thirty-four new priests during the years 1792 to 1802. See M.G.

generation and here again the Bishop complained of the lack of religious obedience: "La haute classe des catholiques, conseillers, juges, avocats, marchands de quelques crédit [sic], n'est point en général amie du clergé."⁵⁹ The writings of the day supported Mgr. Plessis's assertions and exhibited an absence of spiritual concern. Their very secular approach dealt with religious belief as a characteristic worthy of legal protection. Outside this, however, the religious discourse of the commentators no longer reflected a subordination to divine law: concern was for the legitimacy of the links between a secular government and its secular citizens. As the influence of the clergy waned the attention of reform-minded Canadians turned to the matter of language. Members of the *Parti Canadien* had to articulate a concept that would make it a legitimate feature of the community.

Lower Canadians agreed with Enlightenment thinkers that language did not belong to the state of nature and as such could not be readily associated with natural rights.⁶⁰ It was a tool: an educated man they said, used language to communicate and to display the qualities of intellect in the same way he used intelligence, science and virtue to develop them:

[la bonne éducation] ne se borne pas à orner uniquement l'intérieur de l'âme, par l'intelligence, la science et la vertu, elle travaille encore à

⁵⁸(cont'd) Hutt, "Abbé P.J.L. Desjardins and the scheme for the settlement of French Priests in Canada, 1792-1802", *Canadian Historical Review*, Vol XXXIX, No2, (June 1958) p.93-125

⁵⁹Mgr Plessis, 1805. Reproduced in Albert Tessier, "La Vie urbaine vers 1800", *Les Cahiers des Dix*, Vol VIII, (1943), p.166

⁶⁰Neither Locke nor Rousseau admitted to individual characteristics in the state of nature. Rousseau particularly stressed the absence of language in natural man for it was made unnecessary by his complete independence. Only after stepping out into a pre-civil society was language made necessary to communicate with others.

la décorer au dehors par l' art de le manifester...^{6 1}

While language carried a societal and traditional burden, its main function was to permit communication with others: it was therefore associated with the acquired attributes - intelligence, science and virtue - of the rational man situated in a civil society. Linked to the intellect rather than the heart, language acquired the legitimacy of something associated with reason. Its potential divisiveness was a function of ignorance which could be remedied by information and education and it fell on good and reasonable men to see to it that prejudices be eliminated through awareness. This responsibility was a condition of membership in the community.

The constitution recognized religious rights and civil rights but made no mention of language rights. Belonging in the view of Enlightenment-influenced Lower Canadians, to the realm of reason, freedom of language was associated with freedom of speech or the constitutional right to express oneself in French or in English in the assembly, openly and without fear of repression. Freedom did not necessarily lie in the use of French but in the right to express oneself in a language acquired by virtue of one's participation in the life of the political community. Questioned as to their right to exercise their political privileges - the use of the assembly - in their language they simply replied: "...et dans quelle autre langue [pouvons-nous] les exercer?"^{6 2} It was political participation, rather than the language one used, that brought members of the community together: as Viger pointed out, "...ce n'est pas la similitude du langage qui inspire aux

^{6 1}*Le Canadien*, 31 January 1807

^{6 2}*Ibid.*, 6 December 1806

hommes les mêmes affections et les mêmes sentiments." ⁶³ *Le Canadien* reinforced this idea by saying that what defined French-Canadians as true "Englishmen" was their "love of freedom and their loyalty to the government". Sharing this freedom and this commitment with the English members of the community made them "brothers". It then added:

Les Anglais d'ici ne doivent pas plus avoir le titre d'Anglais que les Canadiens celui de Français. Ne serons-nous jamais connus comme *un peuple*, comme Américains Britanniques. ⁶⁴

These Lower Canadians had a bi-religious and bilingual definition of the community, reinforced, during this period, by their conviction that what gave membership in the community was the equal sharing of identical rights, and not one's possession of distinctive characteristics of faith and language. ⁶⁵ Here again, Lower-Canadian commentators had reconciled the old and the new natural orders in the articulation of their system of thought.

The meshing of principles taken from the "old" natural order with its emphasis on the organic, and ones derived from the "new", based on reason, also appeared in the discussions on the moral basis of the relationship between

⁶³ Viger, *Considérations*, p.5

⁶⁴ *Le Canadien*, 29 November 1806

⁶⁵ Other than political institutions also reflected the bilingual and bicultural nature of the community which was marked by a certain anglomania. In 1802 a comedy written by a local artist entitled "L'Anglomanie" was playing in Quebec city. It made fun of the new fashions such as drinking tea for other than medicinal purposes. See Abbé Tessier, "La Vie urbaine vers 1800", *Les Cahiers des Dix*, Vol VIII, 1943 p.155-181 The Quebec Benevolent Society, a society which offered financial assistance to the wives and children of members when they became incapacitated or died, showed that French Canadians were accepted as members by 1792. The rosters indicate a steady increase in the numbers of French-Canadians of diverse backgrounds by 1806. PAC Pamphlet, *Rules of the Quebec Benevolent Society*, Quebec 1812

members of the community, on the one hand, and that between those members and the governor and the state on the other. Man, being inherently good, was also inherently moral. He therefore had a responsibility to soothe differences between members of the community and ensure the harmony of the social contract. As Viger commented, justice, morality and authority were intrinsically linked: "...que la justice est l'arme la plus sûre de la saine politique, la morale la base la plus solide de l'autorité; deux sources dont découlent également le bonheur des peuples et le repos et la force des gouvernements".⁶⁶ A king or a state that respected the "civil and religious rights" of the people could be assured of their loyalty. A failure to show such respect would, however, lead to the enslavement of the subjects/citizens and foster dissension and possibly revolt. The right of dissent, granted by the constitution, was both a legitimate and a moral right awarded to ensure that the government ruled for the common good thereby preventing the return or the establishment of arbitrary power. Conversely, the people upheld their part of the contract by participating fully in the institutions granted and by respecting the laws and conventions devised with their consent.

Lower-Canadian commentators were quick to point out that dissent and disloyalty were two very different things as the former was a legitimate constitutional right while the latter represented a breach of the social contract.⁶⁷ Belonging in the same category as the first were also the freedoms of speech and of the

⁶⁶ Denis-Benjamin Viger gives two examples of a breach of the social contract. The American Revolution was the result of the people not holding their part of the bargain because they had grown "lawless and independent". Conversely, the French Revolution was the result of the King's arbitrary rule evidenced by the disrespect of his subjects' civil rights. *Considérations*, p.25 and p.35

⁶⁷ *Le Canadien*, 13 December 1806

press which enabled the free flow of information between the members of the community and between the community and the sovereign. Lower Canadians viewed resistance to arbitrariness as acting in the spirit of the constitution. One's failure to fight arbitrary government lead to the relinquishing of one's freedom and one's betrayal of the constitution and of the contract. But the use of one's rights to defend the spirit of the law confirmed and entrenched the loyalty of the citizens. Their use was both legitimate and moral and helped foster harmony within the state by preventing despotism and the automatic enslavement that would follow. *Le Canadien* believed that the principles of the Old Regime, in vogue during the French Regime and continued until the Quebec Act, were *impolitique* and unfair. The new Regime offered immense hope of harmony and the creation of, as it put it: "...ce tout si désiré et si rarement dans la formation des états."⁶⁸ Defending their religious and civil rights was not only acceptable: it was required since such action was a condition of the social contract and a key to full participation.

Enlightenment-influenced Lower-Canadians did not believe in innate ideas, *les idées innées*; all knowledge was acquired and what a person learned or did not learn established his mode of behavior. As Pierre Bédard said to his friend John Neilson: "...L'habitude de penser, les mœurs, la disposition d'esprit se forment

⁶⁸ *Le Canadien*, 22 November 1806 and Viger, *Considérations*, p. 9. Lower Canadians had limited options when it came to the possible overthrow of an arbitrary government. In reality, they could not rely on any military help from France nor did they want assistance from it following the bloody interval of Robespierre. Secession from the British Empire was seen as meaning the automatic integration and assimilation to the United States. Lower Canadians, during the first decade of the nineteenth century, were extremely preoccupied by the threat posed by the Americans. Not only did the "Yankees" stand ready to invade Canada, but their values and beliefs opposed the system of thought being articulated at the time.

nécessairement d'après la situation où l'on est."⁶⁹ A man was born ignorant and it was the duty of society to educate him. A man choosing to resist this process was likely to be immoral since he would have chosen to remain unaware of his responsibilities towards his fellow men and towards the state and uninvolved in his own freedom and independence. Education was the key to political participation because it enabled a citizen to enjoy the advantages of a free and wise government and fostered a spirit of alliance and concord among the members of the community. As early as 1778, a pamphleteer writing under the nickname of *un Canadien curieux* was pointing out that education enabled people to take care of their own interests; it enabled them to be: "...clairvoyant et zélés pour les intérêts de la Patrie."⁷⁰ Later on, echoing Viger, *Le Canadien* added that a lack of education and knowledge was dangerous since it fostered prejudices and misunderstanding; "...la fausse politique est fille de l'ignorance qui enfante elle-même les préjugés, nourrit les passions basses et provoque toutes fausses mesures."⁷¹

Prejudice existed due primarily to a difference in languages which impaired the free flow of information and true knowledge among society's membership. It was the duty of every reasonable man and responsible citizen to educate and inform his fellows in order to remove the ignorance which was at the base of all prejudices. These were not a sign of bad will but reflected a lack of information which could easily be remedied. "On se hait parce qu'on ne se connaît pas",⁷²

⁶⁹ Bédard to Neilson, 8 March 1814. PAC Neilson Collection, MG 24, B1, Vol. 32.

⁷⁰ *La Gazette du Commerce et Littéraire*, 16 December 1778

⁷¹ Viger, *Considérations*, p.5 and *Le Canadien*, 2 January 1808

⁷² *Le Canadien*, 22 November 1806

claimed *Le Canadien*, whose avowed goal was to inform the English population about the values and beliefs of the French population. Reflecting on a certain Englishmen's low assessment of French-Canadians, Pierre Bédard judged that the individual in question was in fact a good man who could and would benefit from being exposed to "notre manière de penser".⁷³ Even the conservative-leaning Viger urged the education of urban and rural citizens because the failure to so would make them "...croupir pendant des siècles dans la plus crapuleuse ignorance."⁷⁴ Full political participation was a duty and a right and hinged on the education of the citizenry; it was thus far too important to be restricted to a single segment of society. The commitment to public education and participation was not shared by everybody and caused some division within the community and within the clergy. In 1790, a report on the state of education commissioned by Chief Justice William Smith which recommended the establishment of a joint university for both faiths, run by "persons unprejudiced in their opinions," drew very different reactions from two prominent members of the Catholic Clergy. The Bishop of Quebec argued that farmers were far too busy to be educated and that "unprejudiced persons" would likely not instruct pupils in the virtue of their faith; rather they would oppose the principles of religion and conduct themselves according to *the laws of nature* and offer immoral teachings. The Bishop did not see what Catholic and Protestant subjects had in common and viewed *la philosophie* as an evil credo. The second response came from the *Co-adjuteur de Québec*, Charles-François de Capse. Obviously annoyed by Mgr's Hubert's

⁷³PAC Neilson Collection, MG 24, B1, Vol 32 Letter Bédard to Neilson 29 September 1814

⁷⁴Viger, *Op.cit* p.11. The Quebec Gazette had published in February of 1801 a petition from a number of free tenants from Three Rivers requesting the establishment of free schools in their districts. While there seemed to have been a general will for education, little was done in the early part of the century.

comments, he argued that bringing French and English students together under a civil administration showed the signs of an enlightened judgement. He went further and said that the old ways and laws had failed to protect the clergy in France. Indeed, since the French Revolution had been permitted by "divine providence", it would be ridiculous to continue using in the colony the laws and ways which had been swept aside by it.⁷⁵ Underlying De Capse's approach was the conviction that man was inherently good and the world was fundamentally harmonious and ruled by simple laws. By 1791, education was replacing wealth and birthright as the way of gaining the right to speak on behalf of the people. The liberality of the franchise and a representative system open to all practically annihilated the inherent right of the seigneurs to speak on behalf of the peasants. Anyone acquiring education could participate in the political life by learning what his interests were and, if he so wished, by running for office.

Lower Canadians redefined the notion of community by meshing principles that belonged to the old and the new articulations of the natural order. At the same time, their religious and civil rights were guaranteed by the constitution. The community was defined as an association of equals who, though they might differ in respect of language, religion, economic power and social status, were placed on the same footing by their acceptance of the idea that they shared the same rights and duties. The social contract with the sovereign or the state resided in the loyalty of the governed given in exchange for the respect of these rights. Society's members were charged with the guardianship of the "spirit of the Constitution" and with the maintenance of the harmony of the whole by

⁷⁵PAC Pamphlets, *Report of the Committee of the Council*, Quebec 1790 and Charles François de Capse, *Copy of the Letter to the President*, Quebec 1790

preventing arbitrariness and by minimizing the differences among them.

C. EQUALITY

Enlightenment thinkers focussed on individual rights and concentrated on the equality of each man before the law. This being said, however, they showed very little concern for the masses and even as they philosophized on the rights of man, they ignored the realities of peasant life and, to some extent, demonstrated contempt towards the uneducated and the lowly. The inattention to peasant life was nevertheless accompanied by a celebration of the value of the work of the peasant and by the belief that man was perfectible.

Lower Canada remained relatively free from the deeply entrenched feudal ties known in Europe. The necessity of tilling the soil and settling the land had in some measure prevented the development of the customary distance found between seigneurs and peasants.⁷⁶ As well, acquiring a seigneurial title did not entail ennobling and many *roturiers* acceded to such titles.⁷⁷ The ancestral ties of nobility were scarce in the colony and while the habitant still paid many *redevances* to his seigneur, he nevertheless owned his parcel of land and was free to cultivate it as he saw fit. In addition many seigneurs were poor, and, having lost the patronage of France and the administration of criminal justice, in

⁷⁶Galarneau, *Op. cit.*, p.133. The same idea is argued by Richard Colebrook Harris, *A Geography of the Seigneurial System in Canada During the French Regime*, microfilmed dissertation, University Microfilm Inc, Ann Arbor, 1964 and by Marcel Trudel in *The Seigneurial Regime*, Canadian Historical Review, Historical Booklet No 6, 1971

⁷⁷Victor Morin, "La Féodalité a vécu", *Le Cahier des Dix*, Vol VI (1941) p.225-289 Morin traced only seven cases of ennoblement from 1624 to 1781 p.265

extremely poor financial shape.⁷⁸ During this period, a new breed of young man was being educated and entering the lay professions. Sons of small merchants and of richer farmers, they represented the first or second generation off the land but their ties to the rural community were extensive. The rapid proliferation of family members marrying within a restricted geographical area created extended bonds and explained the crucial role played by certain families such as the Bédards and the Papineaus.⁷⁹ In addition, the close association with rural families prevented the Lower Canadians who sat in the House of Assembly from becoming completely disdainful of the habitants. The farmer was "family" and the relationship with him colored greatly a representative's understanding of "the interests of the people". This could not but deepen his conviction that when he spoke, he in fact spoke on behalf of the people and when he sought their vote he did so as a known quantity.

Such closeness facilitated the acceptance of farmers as equals. For instance, Louis Bourdages referred to the electorate of the province as "...ces citoyens mes égaux..." in his pamphlet denouncing the elitist attitude of a political adversary.⁸⁰ The main difference separating members of the *Parti Canadien* and their constituents was education. To remedy this, they published pamphlets and newspapers in the hope of informing the electorate of its rights and liberties and allowing its participation to the political life of the colony.⁸¹ It was thus, they

⁷⁸Ouellet, *Op. cit.* p.11-12

⁷⁹Fernand Ouellet, "Pierre Bédard", *Dictionnaire des Biographies*, VI p.45-53

⁸⁰Also educated at the Quebec seminary, Bourdages was elected to the Assembly from 1804 to 1814. See PAC Pamphlet, *Vie politique de Mxxx, ex-membre de la Chambre d'Assemblée du Bas-Canada*, Québec 1812, p.18

⁸¹The first issue of *Le Canadien* was addressed to the "free tenants" of the colony.

thought, only a matter of time before every virtuous man would fully understand his interests, vote accordingly, and if he so chose run for office. ^{8 2}

Lower Canadians understood very early the importance of popular support and sought public approval for their actions. Having signed a petition to London in 1784 requesting a House of assembly and the re-confirmation of their religious rights, they felt compelled shortly thereafter to publish a pamphlet explaining the significance of each clause. Article I elaborated the role of members of the Assembly:

Choisis par leurs concitoyens, honorés de leur confiance, sachant qu'ils doivent fréquemment rentrer dans la masse du peuple, sans autre distinction que leur vertu et l'amour patriotique qu'ils auront montrés, de tels hommes seront portés par tous les liens publics et privés à ne proposer et faire agréer que des loix et des reglements favorables à l'avancement de ce pays. Ils s'opposeront aussi à tout ce qui leur paraîtra contraire au bien général. Par la liberté qu'ils auraient de discuter publiquement les affaires, on découvrira le véritable intérêt de la société et leur attachement au bien commun du pays pourra se montrer ouvertement. ^{8 3}

The idea that such a close association with the collectivity should be maintained

^{8 2}In his translations of Parliamentary laws, rules and procedures, seigneur Jean-François Perreault expresses his desire to instruct the public so that it could appreciate the good fortune of living under the British Constitution. He also suggests that the reading of these materials might entice some persons to run for office. Jean-François Perreault, *Lex Parliamentaria*, Québec 1803 and *Dictionnaire Portatif et abrégé des loix et règles du Parlement Provincial du Bas-Canada* Québec, 1806

^{8 3}PAC Pamphlet, *Aux Citoyens des villes et des campagnes de la Province de Québec*, Québec 1785 p.8 In 1792, on the eve of the election of the first assembly, another pamphlet was circulating in the colony outlining why the farmer and the artisan were worthier of acting on behalf of the public than were seigneurs, merchants and lawyers. Their worthiness lay in the fact that they, more than anyone, contributed by their work to the general welfare of the people. Document reproduced as an Appendix in Pierre Tousignant, "La Première campagne électorale des Canadiens en 1792", *Histoire Sociale*, Vol VIII, (May 1975) p.120-148

helped Lower Canadians, who later sat in the assembly that was finally granted, translate Rousseau's general will theory into the notion that they had a right and a duty to protect the interests of the entire constituency even if at times it meant opposing the government.^{8 4} Certainly Joseph Papineau and Jean-Antoine Panet, the two most prominent members of the first assembly, were influenced by Rousseau. As Fernand Ouellet, using Papineau's manuscripts, has shown, he especially was attentive to the theory of the sovereignty of the people and had a strong conviction that the Executive had to be subordinated to the Legislature.^{8 5}

If the notion of equality was associated with ideas about the majority will, it was also connected to understanding the rule of law. This fundamental principle of the Enlightenment and of the British constitution stated that an individual could not be prejudiced in person or in property by the Government or by anyone. The law was fair, impartial and protected the religious and civil rights of each citizen. Conversely, each citizen's duty entailed the respect of the law. *Le Canadien*, repeating the words of a disgruntled Lower Canadian "...il dit aussi: ce sont les Anglois qui ont perdu les gens du pays en apportant cette égalité"^{8 6} endorsed the equality contained in the Constitutional Act of 1791 attributable to the British system of government. It did not hide the fact that the old French Regime was to be considered *impolitique*; it was English justice

^{8 4}This concept of representation contradicts Corry's later assessment that a member of Parliament belonging to the nation "...never caught hold in Britain and in North America where it is the general assumption that the members of Parliament represents the electors of his constituency." J.A. Corry, *Democratic Government and Politics*, Toronto, The University of Toronto Press, 1946 p.176

^{8 5}Fernand Ouellet, "Joseph Papineau et le régime parlementaire", *Bulletin des Recherches Historiques*, Vol. LXI, No1, (Hiver 1955) p.71-77

^{8 6}*Le Canadien*, 25 June 1808

which guaranteed the liberal freedoms in the constitution. The laws in effect in the colony would right the injustices of French rule and ensure the common good as they were meant to protect the smallest of the farmers against an arbitrary administration of government. Furthermore the constitution also helped redress the social imbalance of the old order which favored certain groups. When *Le Canadien* remarked, "[d]ans l'ordre social, une partie de ceux qui la composent, tend à soumettre l'autre; celle-ci veut se soustraire à l'autorité",⁸⁷ it was making the point that the Act had been given to ensure impartial justice regardless of social condition. The link between the humble habitant and the constitution was regarded as direct and immutable. Thanks to it "l'humble habitant ne [voit] rien au-dessus de lui que les loix de son pays, n'ayant pas à craindre la conduite impérieuse des gens en place."⁸⁸ Unquestionably, the 1791 Constitutional Act was viewed as the guarantor of the common good and of the interests of the majority. Since the bulk of the population was small and powerless, the constitution was primarily aimed at its protection. This appeared clearly in the defense of the Habeas Corpus put up by the newspaper:

La grosse mouche, dit-on, rompt le fil de l'araignée et la petite y reste prise. Le peuple qui est le plus faible n'est-il pas celui qui doit avoir plus de répugnance à voir suspendre l'Habeas Corpus, qui établit le droit sacré pour tout homme libre en vertu duquel il ne peut être emprisonné que pour cause légitime et connue.⁸⁹

The British rule of law combined with a commitment to the general will supported the development of an egalitarian understanding of community in Lower Canada. The liberty of the individual depended on the rule of law and on

⁸⁷*Ibid.*, 9 July 1808

⁸⁸PAC Pamphlet, *Aux Citoyens des villes...*, Québec 1785, p.7

⁸⁹*Le Canadien*, 7 May 1808

"l'exécution exacte des loix contenues dans la Constitution et le bon exercice de toutes les parties de la Constitution".⁹⁰

D. PROPERTY AND POLITICS

The idea that one should be secure in one's person was a feature of both the old and the new order. In the original concept it meant the preservation of an ancestral heritage which, in ensuring the place of certain institutions, also carried inherent rights of protection for the individual. In Lower Canada this had meant the Constitutional right to practice Roman Catholicism and the use of the Custom of Paris for civil matters and the laws of inheritance. It also had meant the continuation of the seigneurial tenure. The new concept tied security of the person to his property; it therefore became important to ensure that his possession of it was guaranteed. In Lower Canada, the notion of self-preservation was closely tied to property ownership.

Historians and other commentators have overwhelmingly seen the defense by Lower Canadians of the seigneurial system as proof of their conservatism and attachment to a feudal system. Donald Creighton and Louis Hartz argued that this medieval/feudal trait prevented the development of a market economy and concluded to the complete absence of liberal thought. Fernand Ouellet argued in the same vein, stating that the inherent conservatism of the colony blocked the development of a French merchant class. He chided the reform-minded French Canadians for their defense of antiquated civil laws. Pierre Tousignant argued

⁹⁰*Ibid.*, 22 November 1806

that French Canadians, cut off by the Conquest from their trade routes, turned to a religious glorification of their lands. Reacting to Ouellet, Trudel and Wallot, Allan Greer judged the seigneurial system oppressive and responsible for the non-emancipation of the peasants. Finally Denis Monière argued that the professional bourgeoisie, joining with the small and medium producers as carriers of the ideals of democracy, had successfully linked anti-capitalism and popular democracy.⁹¹ Mostly based on economic and social models, these works overlooked the fact that the property ownership regulated by the Custom of Paris and the Seigneurial tenure had allowed, following the Constitutional Act of 1791, the political empowerment of ninety percent of the population through the franchise. For Lower Canadians, property had come to mean participation in political life.

For members of the *Parti Canadien*, self-preservation, or the preservation of religious and civil rights, was intrinsically tied to property. Property gave the people the right to citizenship and since it was the seigneurial tenure which enabled the poorest of farmers to acquire land and become a citizen, seigneurial tenure had to be maintained. As *Le Canadien* put it, "...on ne pouvoit pas plus arracher aux peuples leurs droits, qu'aux particuliers leur propriété."⁹² Property

⁹¹Creighton, *Op.cit*; Louis Hartz, *The Founding of New Societies*, New York, Harcourt Brace and World Inc. 1964; Ouellet, *Op. cit*, p.1-29; and Fernand Ouellet, "Le Nationalisme Canadien-Français: De ses origines à l'insurrection de 1837", *Canadian Historical Review*, Vol. XLV, No4, (DEC 1964) p.286; Pierre Tousignant *La Genèse et l'avènement de la Constitution de 1791*, Unpublished PhD thesis, University of Montreal, 1971 p.34; Greer, *Op. cit*, p.202-203-204; Trudel, *Op. cit*; Jean-Pierre Wallot, "Le Bas-Canada au début du XIXe siècle une hypothèse", *RHAF* 25 (June 1971) p.41-44; Cole-Harris, *Op. cit*, p.324 and Denis Monière, *Le Développement des idéologies au Québec des origines à nos jours*, Montréal, Editions Québec/Amérique, 1977 p.111

⁹²*Le Canadien*, 18 June 1808

permitted Lower Canadians entry into the community of individuals who shared rights and thus to the social contract. Any attempt to modify the civil laws that regulated property had the potential to disrupt public order. Any attempt to convert the seigneurial tenure to free and common soccage was perceived as a frontal attack on the natural rights of the community and a danger to the social contract. Moreover it was perceived as a distortion of the rule of law and of the spirit of the Constitution. In Viger's words, should such a change be made it would: "... rendrait illusoires les droits communs à tous et particuliers aussi bien que nos titres de propriétés qu'elle plongerait dans un chaos impénétrable".⁹³ Introduction of free and common soccage would, in effect, prevent a small farmer from owning land since he would have to buy on the free market rather than acquire it within the confines of the seigneurie; this in turn would involve a change that would entail the disappearance of "toutes les vertus politiques".⁹⁴ During this period the right to citizenship based on property and the franchise was coming under scrutiny by the authorities. The nervousness created grew more intense as a continuous flow of English-speaking settlers from the United States immigrated into Canada and settled the lands reserved for them in the Eastern Townships and distributed under the English system of free and common soccage. As their numbers increased, Lower Canadians envisaged the day when "Americans" would overflow the Townships and begin to acquire parcels of land from the French-Canadian farmers thereby displacing them politically.⁹⁵ Lower Canadians envisaged retaining their customary laws to stem

⁹³ Viger, *Considérations* p.27-28

⁹⁴ *Le Canadien*, 12 December 1807

⁹⁵ This possibility had already been pointed out in 1790 in the Legislative Council's study on the conversion from tenurial lands to free and common soccage. It was reported by Chief Justice Smith that the only persons likely to suffer by this change would be the children of farmers who would be then

this process:

Il est politique de conserver nos anciennes tenures, nos anciennes loix et coutumes pour contraster avec celles des Habitans des Etats-Unis et empêcher qu'ils ne fussent engager à parcourir cette partie de la Province.^{9 6}

Inheritance laws were central to the political empowerment of the population and therefore to the fulfilment of the social contract. Even when, in consequence, Borgia and Bédard tried unsuccessfully to introduce English civil laws in the colony in 1815, they were careful not to include the laws regulating inheritance. Years later, Pierre Bédard still remained unwavering on this point. As late as 1820 in a letter to Neilson on the introduction of English civil laws he wrote:

Il me semble que nous n'avons pas d'autre but où nous devrions tendre quant à l'administration de la justice, comme quant à la politique qu'à avoir les loix civiles anglaises (i.e. toutes les loix tant de la forme que du fond) excepté purement celles de la tenure des héritages.^{9 7}

Nowhere was the marriage between the old and the new orders more evident than in the case of property. Lower Canadians were tied to the seigneurial tenure and to the Custom of Paris because these things guaranteed their participation in the new order.

^{9 5}(cont'd) unable to buy the subdivided paternal lots. PAC Pamphlet, *Extract of the Proceedings of a Committee of the Whole Council...*, Quebec 1790.

^{9 6}*Le Canadien*, 21 March 1807

^{9 7}PAC Neilson Collection, Bédard to Neilson, 1 July 1820, and reproduced in F.J. Audet, "Joseph Levasseur Borgia", *Proceedings and Transactions of the Royal Society of Canada*, third series, Vol XIX, (May 1925) p.65-79, p.72

E. CONCLUSION

Lower-Canadian commentators articulated in the new English colony of Canada, an understanding of community that accepted within its midst French and English Canadians, seigneurs and habitants by fusing into a single concept the principles of the old and the new natural order. This system of thought was the result of as well as the answer to the Constitutional Act of 1791 which entrenched the religious and civil rights of the inhabitants. Unique and original, the system of thought combined elements that defined the place of the individual in society in a pre-nationalistic era. The role of man in the community was defined in almost exclusively political terms thanks to a long association with European thought as well as to what the actual character of the franchise made necessary. Drawing from liberal as well as conservative-medieval thought, these commentators were able to combine elements of both and provide a communitarian approach to liberalism thereby shaping a system of thought which used liberal and civil freedoms to protect individuals with equal but different characteristics. Such a system of thought brought conservative and liberal elements together without being dominated by either one or the other. It borrowed from conservatism the notion of rights issuing from ancestral bonds and from liberalism the notion of rights issuing from individuality and equality. Liberal freedoms were used to protect the individual and collective characteristics of the community. And yet conservatism's principles of social and economic superiority were not adopted, nor was liberalism's principle of the individual's right to economic prosperity and self-interest. The emphasis was rather on political rights and obligations and, in particular, on how to ensure the full

political participation of as many members of the community as the franchise allowed. As well, the fact that the bond between community members was also seen as something other than linguistic and cultural meant that nationalism was not as prominent a feature of these peoples' thinking as has usually been assumed. The communitarian approach to political freedoms seems best described by a new appellation: communitarian liberalism. Understood as above this system of thought did not in fact bear any internal contradiction and seemed well suited to a bicultural colony ruled by parliamentary institutions. It also allowed Lower Canadians from all social backgrounds to feel included. Finally, and, communitarian liberals felt, very importantly, it would appear non-threatening to British authorities since its formulation had been made possible by the Constitution they themselves had granted.

IV. COMMUNITARIAN LIBERALISM AND THE CONSTITUTION

A. INTRODUCTION

The Constitutional Act of 1791 endowed the two Canadas which were simultaneously created with the institutions of a constitutional monarchy. Upper and Lower Canada were each given an elective assembly and nominated Legislative and Executive Councils. The Governor, as the King's representative, had the power to prorogue and dissolve the assemblies and fix the times and dates of elections and sittings. In Lower Canada, the Act, or the Constitution as it was referred to, reaffirmed the practice of Roman Catholicism, the use of French civil laws, and the place of English criminal laws with trial by jury and a provision for Habeas Corpus. It also copied the property and rental-based franchise requirements of Great Britain and set the electoral divisions and the numbers of representatives to be elected to the assembly.

Informed Lower Canadians viewed the grant of an assembly and a constitution in terms at least partly conditioned by their reading of British and European thinkers. Having read Montesquieu's *L'Esprit des loix* and Voltaire's *Letters on England*, they shared the widespread opinion that the British Constitution was the freest and the best system of government designed to ensure the freedom of the King's subjects and the harmony of the relationship between governor and governed. They perceived it, and the version of it they themselves now had, as monuments of wisdom based on the soundest principles of human justice and morality. They also saw themselves, and their system of ideas, as operating in

ways quite consistent with the most fundamental values and beliefs of British Constitutionalism.⁹⁸ Now finally in possession of "British" institutions, they found their thinking about community, politics, and the relations of groups and individuals acquiring a sharper focus.

The conventions underlying the British Constitution, Lower Canadians learned from their reading of such thinkers as Montesquieu, were grounded in centuries of English historical development that responded to particular social, economic and political realities. Key, they were told, to understanding parliamentary institutions, were the concepts of the separation of power and representation. Taking in the influential - though incorrect - view that Englishmen had sought to prevent the return of arbitrary government by vesting legislative, executive and judicial powers in different groups to ensure a proper balance between them, they had gone on to argue that the sovereignty rested with the King, the aristocracy took its place in the House of Lords and the Commons represented the democratic segment of society. Agreement, as Englishmen saw it, was reached through compromise between the two Houses. The franchise, though limited, permitted the election of representatives that would define the common good and work in the Commons at its realization. Property was the basis of power, landed property in the Lords, and, increasingly, commercial property in the Commons. Such conventions were generally considered to lie behind the Lower Canadian constitution as well. There, however, the practical effect of introducing the kind of property qualification for voting which existed in Britain was to bring a large

⁹⁸ Gordon Wood makes a similar point concerning the way in which Americans saw themselves in the period preceding the Revolution. See Gordon S. Wood, *The Creation of the American Republic 1776-1787*, U.S.A., The University of North Carolina Press, 1969, p.10-18

number of people into the political process. This was widely seen as the result of a deliberate British intention. As seen earlier, giving the right to vote to the majority of the population was interpreted by Lower Canadian commentators as meaning that England wished particularly to empower the small and weak. It also gave the impression that the interests of the greatest number had to be represented in both Legislative Houses since the Constitution did not favor birthright or wealth and recognized the religious and civil rights of each of the members of the community. In sum, the constitution and the already existing tendencies of Lower Canadians to think in "liberal" terms seemed tailor-made for each other.

As a result their system of thought showed two distinctive features: firstly, it adhered to a representative system to enact majority rule and secondly it contested the principles of the separation of power between the Executive and the Legislature. This being said however, French-Canadian politicians of this period did not envisage the future of the colony outside the British system since their system of thought was linked to English parliamentary democracy which guaranteed the survival and the growth of their bicultural egalitarian community.

B. THE CONSTITUTION

The Constitutional Act of 1791 has usually been considered in terms of its role in explaining the conflict of 1809-1810. In general, it has been assessed as "faulty" and saddled with the responsibility for the clash between colonial authorities and the members of the House of Assembly. Chanoine Groulx termed

it *un parlementarisme truqué*, since it could not meet the legitimate aspirations of the French Canadian race.⁹⁹ The early "Britannic School" interpreted the Constitutional Act of 1791 and the separation of the colony into two entities as the British solution to ethnic conflict.¹⁰⁰ Using a similar argument, Donald Creighton argued that the Constitution set the stage for the economic and cultural conflict between commercially-oriented British merchants and a French-speaking majority which remained attached to a feudal economic system. In addition, the division between Upper and Lower Canada interfered with the 'natural' development of a unified St Lawrence-based commercial system and oriented commercial interests towards a kind of economic interventionism that made it, from their point of view, imperative that they retain control of the State.¹⁰¹ Fernand Ouellet argued that the Constitution set the stage for the development of political parties and popular government. Its weaknesses, such as the reliance on the principles of the separation of powers, came to light because of the economic, social and ideological changes in the colony during this period.¹⁰² Murray Greenwood argued that the disagreement was neither economic nor ethnic but was the result of a problem of internal security and of the development among the British Colonial authorities of a "garrison mentality" produced by the presence of what were in its view potentially dangerous Americans and a French-speaking population likely, it thought, to sympathize with

⁹⁹Chanoine Lionel Groulx, *Histoire du Canada-Français* Tome 2, 4th edition, Ottawa, Fides, p.105

¹⁰⁰W. P. Kennedy, *The Constitution of Canada*, London, 1922 p.86

¹⁰¹Creighton, *Op. cit.*, p.126-127 Creighton's conflict between two types of economic vocation to explain the disputes has become the standard method of study for this period.

¹⁰²Ouellet, *Lower Canada*, *Op. cit.*, p.21-29

revolutionary and Napoleonic France.¹⁰³ In a more nationalistic vein, Pierre Tousignant observed that French Canadians were prepared as early as 1780 to use parliamentary institutions for nationalistic purposes,¹⁰⁴ and Henri Brun commented that 1791 was used by French Canadians and molded into an indigenous parliamentarianism oriented towards nationalism.¹⁰⁵

None of this deals very extensively with the impact the Act had on the life and thought of the colony, for it focusses instead on the intent of the Colonial Office and on the conflict that followed. As a result the Constitution itself has appeared devoid of a certain kind of significance. It is, in particular, not clear why communitarian liberals referred constantly to it as "ce trésor rare".¹⁰⁶ It could, however, hardly be otherwise since their system of thought had come to revolve around many of the principles, rights and conventions contained in the Act. From the time of the Quebec Act, many commentators had, in fact, taken the view that British rule and the introduction of British principles of government would bring a substantial and beneficial change in the life of the colony. Central in this would be the incorporation into its political life of a segment of society until then excluded.

The signatories of the 1784 petition to the King requesting a House of Assembly

¹⁰³ Frank Murray Greenwood, *The Development of a Garrison Mentality among the English in Lower-Canada 1793-1811*, Unpublished PhD thesis, University of British Columbia, June 1970

¹⁰⁴ Pierre Tousignant, *La Genèse et l'avènement de la Constitution de 1791*, Unpublished PhD thesis, University of Montreal, 1971

¹⁰⁵ Henri Brun, "La Constitution de 1791", *Recherches Sociographiques*, Vol. X, (1969) p.37-45

¹⁰⁶ *Le Canadien*, 22 November 1806

took the view that the granting of such an institution would confer far more benefits on them than they could have got from any administrative body under French rule. Their petition was an exact translation of the one signed by English Lower Canadians except for a few revealing points. Whereas the English petition referred to the "controuling [sic] power of the Parliament of Great Britain", the French petition referred to the *pouvoir réformateur du Parlement de la Grande Bretagne*,¹⁰⁷ That French and English Lower Canadians viewed London differently was hardly surprising since the "new" subjects had been brought up under a regime based on divine right and not inclined to ask for their participation. A constitution granting them such a participation was indeed a welcome reform: enabling both old and new subjects to "*jouir pleinement de leurs droits religieux et civils en leur accordant une Chambre d'Assemblée*,"¹⁰⁸ it integrated them into a single political society. As careful as they were to allow a place for the old as well as the new, the architects of all this did not, however, entirely succeed in reassuring the seigneurs. They saw such a shift as affecting their role in society and, in their own petition to the King, outlined their fears that a new arrangement would change the make-up of the political apparatus, lessening the role of the existing Legislative Council and assimilating them to the common people.¹⁰⁹ Much later, John Neilson recalled that the *noblesse* had been against the introduction of an assembly and had denounced it

¹⁰⁷PAC Pamphlets, *The Humble Petition of the Ancient and New Subjects of His Majesty, the Inhabitants of the Province of Quebec*, 1784 and *Humble Adresse des anciens et nouveaux Sujets habitant la Province de Quebec*, Quebec, 1784. Interestingly enough the *Constitutional Documents* which for years constituted the most reliable source for research, reproduced only the English petition.

¹⁰⁸PAC Pamphlet, *Aux Citoyens et Habitans des villes...* 1785, p.34 Also, Adhémar and Delisle to Haldimand, 18 August 1783 reproduced in the *Bulletin des Recherches Historiques*, Vol XII, (1906) p.332

¹⁰⁹PAC Pamphlet, *Observation on a pamphlet entitled a State of the Present Form of Government of the Province of Quebec*, London 1790

as being adverse to "...the absolute authority which they had, heretofore exercised and been accustomed under the French Government."¹¹⁰ Certainly it was true that early commentators judged the assembly a crucial element of political liberty. However, they also conceded that there should be an "upper house" for the nobility whose "*fortune, état et vertu*" afforded them the right to sit in an honorific position; they were not however able to spell out a specific role for the Council, viewing it as a dignified but unimportant Chamber.¹¹¹ The seigneurs, they thought, would eventually reassess their expectations and accept the new order as inevitable and based on justice and morality.

Early commentators had understood that the House of Assembly would protect the rights of the "*petits*" against the feudal power of *les gens à place* which could arbitrarily relieve them of their rights. They also understood that the assembly could reinforce the social contract through its power of taxation. Granted economic as well as political redress, the people could decide how taxes would be levied. Addressing the population of Lower Canada, saluted, significantly, as "*citoyens*", the signatories asserted that

Il dépendra donc de vous, ou de ceux à qui vous donnerez votre confiance que les taxes ne tombent que sur des objets de consommation et de luxe importés dans cette province et non sur les denrées du pays.¹¹²

Communitarian liberals were convinced that getting new institutions vindicated the principle of equality since, by virtue of the franchise, the great majority of rural

¹¹⁰PAC, Neilson Collection, MG 24, B1, Vol. 32, Spring 1829

¹¹¹PAC Pamphlet, *Aux Citoyens et Habitants des villes...* Quebec 1785

¹¹²*Ibid.*, p.12

heads of family could vote.¹¹³ James Garner indicated that Charles James Fox had supported the establishment of low franchise qualifications for the colonies when the Bill was debated. In the words of Garner, the Whigs argued that "...at a time when the principles of freedom were so much abroad in the world ...and he [Fox] felt [a high property qualification] would undermine and contradict the professed purpose of the bill which was the introduction of popular government..."¹¹⁴ Whatever the intentions of London with respect to political equality, it remained that Lower Canadians perceived a Constitutional sanction for the principle of equality before the law. "English law", as *Le Canadien* would put it "...more than any other body of law, provides for the protection of the individual, of his reputation and of his properties."¹¹⁵ (*My translation*). Communitarian liberals understood the generosity of the terms of the governor's side of the social contract. In return, the citizens of the community were to use the laws provided. *Le Canadien* insisted that their failure to use the laws was tantamount to "...[manquer] à leur devoir envers la société et [être] injustes envers eux-mêmes."¹¹⁶ Eager and duty-bound, communitarian liberals thought that maximum popular participation in the institutions was expected, even demanded, under the terms of the social contract.

In Lower Canada, anyone owning a parcel of land was entitled to enter civil

¹¹³ Ouellet, *Op. cit.*, p.25

¹¹⁴ John Garner, *The Franchise and Politics in British North America 1755-1867*, Toronto, University of Toronto Press, 1969 p.74. Garner also says that British authorities did not favor the equivalent of manhood suffrage but preferred to establish in the colonies as close a copy as possible of the British franchise. That the one lead virtually to the other occurred due to the abundance of land and the generosity of the Crown in its disposal.

¹¹⁵ *Le Canadien*, 24 October 1807

¹¹⁶ *Ibid.*

society; the cohesion found in English society was replicated in the colony by a coming together of free tenants, farmers, shopkeepers and small professionals. The seigneurs and the English inhabitants who accepted this were welcomed in the community it defined; those who remained attached to the privileges brought by class and wealth were not. The general will resided in this free association of like-minded members and since that association had been made possible by the constitution, members of the *Parti Canadien* never doubted that the assembly had to represent the interests of the majority. As their newspaper pointed out

Le but du Parlement de la Grande-Bretagne en nous donnant une Constitution était de mettre les Canadiens à même de conserver leurs loix et leur Jurisprudence, de soutenir leur état civil et religieux en leur donnant la majorité dans la magistrature. Il en a pris les moyens, c'était un acte de justice autant que de bienfaisance. ¹¹⁷

In addition, the will of the majority was above all "...obligatoire sur le tout."¹¹⁸ Opposing it was the same as denying one's humanity: "... se calomnier soi-même."¹¹⁹ If opposition to majority will by an individual was judged severely, it stood to reason that concerted opposition by a group amounted to treason, endangered the social contract and imperiled the very foundation of the British colony. Insofar as communitarian liberals were concerned, the constitution "...a été faite principalement pour nous."¹²⁰

However, *pour nous* was not restricted to the common good of French Canadians

¹¹⁷*Ibid.*, 28 May 1808. According to Fernand Ouellet farmers represented 19/20 of the French population and according to Mason Wade fourteen out of every fifteen person was French. See Mason Wade, *Les Canadiens-Français de 1760 à nos jours*, Tome 1, Ottawa, Le Cercle du Livre de France, 1963 p.112

¹¹⁸*Le Canadien*, 21 January 1808

¹¹⁹*Ibid.*, 22 November 1806

¹²⁰*Ibid.*, 10 January 1807

because the Constitutional Act of 1791 had done more than establish the equality of all citizens under the law: it had also "...effac[é] la distinction entre conquérants et conquis."¹²¹ The constitution, they thought, had made each group equal and accepted their various characteristics. Calls for anglicization, for the repeal of Roman Catholicism and for a less extensive franchise - all endangering the social contract - were therefore not seen as emanating from the institutions by which the colony was governed, but from particular groups. The influence of the immigrants from the South was thought to be especially important.¹²²

Communitarian liberals never saw Loyalists and late Loyalists as British subjects; rather they saw them as Americans, as *Yankés*. Since the American revolution, and increasingly as they were threatening to invade, Americans were perceived, in the words of Viger as "...des enfants ingrats et des sujets rebelles,"¹²³ unable and unwilling to conform to the British concept of the rule of law and accept membership in the community. Having broken the ties with England once, they would surely do so again and their presence in Lower Canada was a threat to the colony. Communitarian liberals doubted the loyalty of the "Americans" already in the colony and believed that in the event of an invasion,

¹²¹ *Ibid.*, 6 December 1806 and Viger's *Considérations*, p.27. Viger was particularly convinced that the constitution had accomplished the unity of two cultural groups. He went to great lengths in his pamphlet to explain that French and English were linked by similarities in principles over and above differences of language and ethnicity. He provided the example of the Americans who although were English-speaking, had not hesitated to betray the English King and the example of the Scots, who although of a different ethnic background were now at one with the English. He also added that the American threat provided an unifying force for French and English society whose shared common good issued from the "natural order".

¹²² For *Le Canadien* to anglicize was to "*Yankifier*". The particular point was repeatedly made in the newspaper. See 15 October 1808, and issues of November and December 1808.

¹²³ Viger, *Considérations*, p. 27-28.

the newcomers would side with the invaders:

...où serait donc l'injustice et la cruauté de renvoyer chez eux des gens qui, dans le cas de rupture entre l'Angleterre et les Etats-Unis, ne prendraient point notre parti pour abandonner celui d'un père ou d'un frère ou d'un ami dont les idées de licence n'ont pas de bornes?^{1 2 4}

Commentators of the day steadfastly refused, in their writings, to blame the English-born or British immigrants for the troubles during this decade, preferring to say that English-speaking Canadians with such tendencies were "...sous l'influence des Américains".^{1 2 5} And even as the tension between the assembly and the Governor in the spring of 1810 mounted, *Le Canadien* refused to describe what was happening in terms of cultural division: matters had been arranged on the basis of a kind of equality between English and French-speakers, French-speakers had certainly accepted those arrangements, and now, if the "true" English in the colony would show that they did the same all would be well:

Depuis 18 ans que nous avons la Constitution, nous avons mis de ces soi-disans Anglois dans la Chambre d'Assemblée un nombre triple de celui de leur population; mais si on nous pousse à bout, si l'état actuel dure encore longtemps, nous leur ferons bien voir que l'Angleterre n'a mis aucune distinction entre ses sujets de cette Province. Si quelques véritables Anglois qui ayent, par rapport à nous, les sentiments généreux que nous avons toujours éprouvés de la part du Roi, et de son Parlement en souffrent qu'ils s'en prennent à leurs soi-disans compatriotes.^{1 2 6}

Communitarian liberals, influenced by the political thinking of their age, became

^{1 2 4} *Le Canadien*, 9 April 1808

^{1 2 5} *Ibid.*, 31 December, 1808

^{1 2 6} *Ibid.*, March 1810. This special issue was the last to appear before the imprisonment of its publisher and main editors on sedition charges.

convinced that the constitution had been designed to ensure that the will of the majority, as articulated by that majority's representatives in the House of Assembly would be expressed in ways consistent with the defense of the terms of the social contract as they understood it. It was their natural ally since it ensured their full participation in the political system and so enabled them to prevent a return to despotism. For communitarian liberals, it stood above institutions, a quasi-sacred document embodying the principles in terms of which they saw their society organized. King and Constitution together were sovereign, and the system they defined allowed every citizen to express his thoughts on the government and the public administration. Freedom of the press was thus particularly important, for it permitted this to be done. The "*Riches et Grands s'ils sont vicieux*" could be denounced and the powerless protected by its workings¹²⁷

Freedom of the press brought the management of the colony under the scrutiny of the community. It enabled the people to become "...un conseiller privé au gouvernement"¹²⁸ and permitted to determine whether the government was acting properly. Seeing if it was so acting - "... cette chose si désirée et si rarement obtenue dans la formation des états" -¹²⁹ was, indeed, thought to be of such importance that *Le Canadien* reacted very strongly when in 1809 the Deputy Postmaster General prevented the Post Office from carrying it from Quebec to Montreal. Incensed, the newspaper stated that no unelected official had the right to "censure the press" since it negated the people's rights:

¹²⁷*Ibid.*, 25 July 1807

¹²⁸*Ibid.*, 22 November 1806

¹²⁹*Ibid.*, 22 November 1806

Car si on nous prive de la liberté de presse que devient notre Constitution? Comment le peuple pourra-t-il être instruit de la conduite de ses représentants et de la manière dont les loix, auxquelles il participe, sont exécutées?¹³⁰

Arbitrary action on the part of the Executive could also be addressed in other ways since the constitution provided the people, through their vote, with a means of resisting it. Their representatives could also act against the authorities through impeachment.¹³¹ Certainly those representatives they and their supporters thought, had the important duty to maintain the integrity of the social contract by upholding the principles on which it rested.

Government, argued communitarian liberals, could affect the behavior of the people, could affect *les mœurs de la nation*. When it upheld the constitution, it earned the respect and the loyalty of the community but when it failed in this duty, it ran the risk of corrupting the nation.¹³² This constituted a crime of *lèse-société* since it attacked the principles binding the community together. Unelected government officials were then guilty of trying to enslave the people.¹³³ While communitarian liberals recognized that London had given authority to all three Orders of the State (les trois ordres de l'Etat), they were nevertheless convinced that the mother country had specially endowed the assembly and the people with the guardianship of the constitution. The people, through its elected assembly, not only had the obligation to uphold the "common

¹³⁰*Ibid.*, 16 December 1809

¹³¹*Ibid.*, 9 July 1808. The newspaper reproduced texts from DeLolme to support the legitimacy of this assertion.

¹³²Viger argued that this had happened in the American colony where the administrators had corrupted the people and had taught them to be independent of the British Crown.

¹³³*Le Canadien*, 4 November 1809

good", it also had the right to act against those who harmed the Crown.

According to communitarian liberals, the constitution permitted the development of a bicultural egalitarian community. It had even provided a series of laws, institutions and conventions to protect that community from arbitrary government. As the tension grew, these commentators drew closer to London which they saw as a natural ally; important to this assessment was the fact that London agreed with them on certain key issues.

C. THE INSTITUTIONS

The principle of the separation of power ideally rested on the prevention of the domination of one group over another. What communitarian liberals, following Montesquieu and other thinkers, thought of the separation of the executive, the judiciary and the legislature was that it was intended to ensure that the instruments of government and order in the state could not come under the influence of one group or individual. Such an arrangement would make the state the servant rather than the master of the people. The existence of a bi-cameral legislative body made sense in their view, because it ensured that the interests of the Commons were finally going to be taken into account since the interests of the Lords had always been part and parcel of the administration of the government. Much of this was generally acceptable to the British colonial authorities responsible for the governance of Lower Canada. But unaccustomed to an extended franchise and its effects and fearful of the penetration of American ideas, they counted on the separation of powers - more pronounced in the

colonies than in Britain, particularly in terms of the relationship between the executive and legislature - and on bi-cameralism to stem "democracy". Lieutenant-Governor Robert S. Milnes commented that the constitution "...must rest upon a due proportion being maintained between the aristocracy and the lower Orders of the People without which it will become a dangerous weapon in the hands of the latter."¹³⁴

Communitarian liberals were not happy with what they saw as an interpretation of the system that put too many restrictions on the will of the majority which, in their view, had been given real authority by the Constitution of 1791. Claims that unelected officials could set that will aside were, therefore, rejected by them almost from the beginning. In their view, the Governor, as an unelected and salaried official, represented nothing more than the Executive authority of the Crown, while a bi-cameral legislature, in which the upper, appointed house, had real power, appeared to them as a distortion of the Constitution of 1791. Denied appointment to the various offices at the disposal of the government,¹³⁵ and to the Legislative Council, the members of the *Parti Canadien* increasingly viewed these institutions as corrupting the intent of the Act. In their system of thought, the common good consisted in responding to the interests of the community and they watched with annoyance and alarm the "irresponsible actions" of "les Gens à place", lumping together under this appellation seigneurs, British merchants and American immigrants. As the tension between themselves and the colonial authorities intensified, communitarian liberals and the assembly moved to establish

¹³⁴ Milnes to Portland, 1 November 1800. *Constitutional Documents*, Vol III, 1791-1818, p.249-51.

¹³⁵ Bédard, Panet, Taschereau, Borgia and Blanchet lost their commissions, according to *Le Canadien* when it was found that they owned it.

majority government, requesting that Legislative Councillors and "ministers" be elected and demanding for the assembly the power to vote the civil list. Occurring some twenty-five years prior to the passage of the Reform Bill in England, such "democratic" demands were very much before their time, and were unsurprisingly, rejected. The conflict this produced was, then, not essentially "racial", nor was it a clash between two types of economic vocation, although elements of these were present. It emerged rather from the fact that Lower Canadians, influenced by their own traditions, by the ideas circulating in the world around them, and by their reading of the British constitution itself, developed an understanding of politics and government at odds with that of the authorities. Communitarian liberals never intended to function outside the realm of what they viewed as British Constitutional principles. In their eyes it was the members of the Legislative Council and the advisors of the Governor who were moving in this direction: they therefore saw London as their natural ally in the protection of the constitution.

Many interpretations have been put forward to explain the crisis which occurred under the administration of Governor James Craig. For Séguin, Brunet and Monière, it represented a social, political and economic conflict pitting the French nation which aspired to independence against its British masters. Earlier, W.P.M. Kennedy and Eileen Dunham assessed the conflict as the result of ethnic tensions brought about by the inability of the French population to grasp the meaning of the institutions it had been given. Creighton and Ouellet described it as a conflict between two economic systems: one French, conservative, rural and anti-capitalist

and one English, capitalist, dynamic and modern.¹³⁶ Missing from these studies is an openness to the possibility of a distinctive and unique system of thought explaining the ideas and actions of Lower Canadians. In addition, there is a definite tendency to "drop in" on Lower Canada, circa 1806 or when *Le Canadien* started publication. Such an approach tends to focus very narrowly on the conflict.

1. THE EXECUTIVE

Communitarian liberals viewed the separation of power as essential to the proper application of the principles they believed inherent in the constitution of 1791. Executive, Legislature and Judiciary each had to be protected from the undue influence of the others. Consistent with their system of thought, however, they considered the Legislature, and particularly the assembly, as the most legitimate branch since its power derived from the people. Using arguments similar to those put forward by Blackstone and Locke, they wrote of the independence of each branch and of the superiority of the Legislature:

¹³⁶ A further debate regarding the accuracy of the interpretation that French Canadians demanded ministerial responsibility splits, according to John Finlay, according to the language of the writer: French historians such as Ouellet and Wallot (with the exception of Helen Taft Manning) argue that demands for ministerial responsibility were made during this period. Others, Finlay included, such as Robert Christie, Mason Wade and L.A. Smith keep silent on the subject or suggest that such an interpretation is too stressed. For above and this debate see Brunet, *Op. cit.*, p.150; Monière, *Op. cit.*, p.119; Kennedy, *Op. cit.*, p.98; Eileen Dunham, *Political Unrest in Upper Canada 1815-1836*, New York, Longmans Green & Company Ltd, 1927; Ouellet, *Op. cit.*; Creighton, *Op. cit.*; Christie, *Op. cit.*; Wade, *Op. cit.*; Lawrence Smith, *Op. cit.* and John Finlay, "The State of a Reputation: Bédard as a Constitutionalist", *Journal of Canadian Studies*, Vol XX, No4, (Winter 1985-6) p.60-77

Le pouvoir exécutif n'a pas le droit d'exercer aucune censure sur les branches de la législature; que le pouvoir exécutif comme tel, est inférieur au pouvoir législatif et que comme étant une des branches de la législature, quoique la première en rang et en dignité, les autres branches ne sont aucunement dans sa dépendance. ¹³⁷

This did not mean that the authority of the executive was to be rejected completely. They willingly conceded that the office of Governor commanded the obedience of the citizens of the community. Any citizen or group of citizens refusing to obey the Executive so long as it was upholding the constitution as a whole was considered to be endangering the bond of the community. However, if the Governor interfered with the functioning of the two other branches, he himself would be acting in ways inconsistent with the duties and responsibilities of the social contract.¹³⁸ Such an interference, in the words of *Le Canadien* "...tend à l'anéantissement de la Constitution".¹³⁹ Moreover, if his advisors or "ministers" tried to intervene, they stood to incur the wrath of the people: as advisors to the Executive, their responsibility was to help maintain the integrity of the constitution, which meant, practically speaking, seeing to it that the interests of the majority rather than those of a particular class or group were served. In other words, an advisor became "...serviteur du Peuple au jugement duquel sa conduite personnelle est soumise".¹⁴⁰

During the first decade of the nineteenth century, communitarian liberals took a dim view of the advisors of the Governor, convinced, as they were, that the office holders were acting in defense of their own interests rather than those of

¹³⁷ *Le Canadien*, 3 June 1809

¹³⁸ *Ibid.*, 26 April 1809

¹³⁹ *Ibid.*, 19 March 1808

¹⁴⁰ *Ibid.*, 11 November 1809

the community. These unelected officials had not received the sanction of the population: "...les officiers du gouvernement ne sont pas nommés par celui des intérêts de qui ils sont chargés".¹⁴¹ It therefore had, in the view of the communitarian liberals, every right to question their legitimacy. Particularly feared were these officials' ties to the French and English Legislative Councillors and their links with the elected Assemblymen supporting the Governor. Reaching into the Executive, present in the two branches of the Legislature, and even holding judicial office, they seemed to be functioning in ways that plainly negated the the principles of the separation of power. When *Le Canadien* asked "...que chacun demeure dans l'état qui lui est assigné",¹⁴² it was requesting that what it saw as a basic convention of the Constitution be respected.

Communitarian liberals understood how important the role of executive councillor was. Their responsibility was to apprise the Governor of the wishes, needs and interests of the community; conversely, they could be held accountable if a disagreement appeared between the *côté populaire* and the Executive. As intermediaries between the people and the Governor they were indispensable to the smooth running of the system and responsible if it failed to operate:

Ainsi, suivant la Constitution, chaque ministre ou "instrument indispensable" devient responsable de tout ce qu'il a fait et c'est le moyen par lequel la Constitution assure à Sa Majesté et à ses représentants la bonne et due exécution des devoirs de ses serviteurs.

¹⁴³

In an effort to ensure the proper management of the government communitarian

¹⁴¹ *Ibid.*, 19 December 1807

¹⁴² *Ibid.*, 22 November 1806

¹⁴³ *Ibid.*, 16 July 1808

liberals proposed that a few assemblymen become advisors,¹⁴⁴ thus extending the guardianship entrusted to the assembly to another institution and enabling the King of England to receive the benefit of the participation of the population in government, something that, as Viger put it, would permit him to see "...the immense usefulness they could be to the metropole."¹⁴⁵ (*My translation*) Communitarian liberals were also anxious to have more access to *les places* for they were convinced that as things stood these positions were going to "Americans", to "... des personnes d'un état voisin",¹⁴⁶ whose commercial interests and prejudices linked them to a country threatening to invade. The *Quebec Mercury's* calls for the abolition of Roman Catholicism, seigneurial tenure, and French civil laws, and for the anglicization of the province, to be carried out through the suppression of the assembly and the reunification of Upper and Lower Canada, appeared to *Le Canadien* as a concerted "alien" effort to assimilate French Canadians, destroy the values contained in the constitution, and hand the colony over to the Americans:

...ces émigrés sont capables de faire tout au monde, jusqu'à livrer le pays pour se débarrasser des Canadiens. Ils fondent actuellement toutes leurs espérances sur le plan d'introduction des habitants des Etats-Unis dans la Province par le moyen des concessions des terres de la couronne, et sur la réunion de cette Province avec celle du Haut-Canada où les habitants des Etats-Unis sont déjà introduits... Sans être Politique il est bien aisé de voir que si l'administration ne change pas de route elle va livrer le pays aux Etats-Unis d'Amérique. Si on avait un dessein formé de réunir le Canada aux Etats-Unis, on n'aurait pas pu imaginer un plan plus efficace que celui-là.¹⁴⁷

¹⁴⁴ *Ibid.*, 24 January 1807 and 31 January 1807

¹⁴⁵ Viger, *Considérations*, p.38

¹⁴⁶ *Le Canadien*, 6 August 1808.

¹⁴⁷ *Ibid.*, 6 January 1810 Ironically enough, Murray Greenwood demonstrated how the fears borne by the Colonial Authorities that French Canadians would side militarily and politically with the Americans contributed directly to the conflict of the first decade of the Nineteenth century culminating in the

Just before the dissolution of the assembly, *Le Canadien* issued a defiant call against the Governor, the Government and the "immigrants" and demanded an election which, it was sure, would demonstrate that the interests of Lower Canadians matched those of Britain and "...tendent à conserver le pays à l'empire."¹⁴⁸ Far from betraying the British Crown, the members of the assembly majority, communitarian liberals argued, were acting as the guardians of British conventions and of the British constitution: it was the appointed officials and councillors, and perhaps even the Governor himself, who were disloyal. In later and quieter times, Pierre Bédard reflected to his lifelong friend that ties between the Colonial Office and members of the Opposition party were inevitable. He further reflected that a more powerful Opposition could even end up "governing the Governor". This anomaly would continue until "...on voye en Angleterre la nécessité de faire aller les choses autrement".¹⁴⁹ Communitarian liberals were, then, ambivalent about the principle of separation of power. They thought the majority should have some control over the executive and they disliked the American system where the separation was so great that the institutions could not function properly: "Il y dans ce gouvernement une multiplication de rouages qui ne peuvent jamais se mouvoir en unisson et sans courrir le risque de se briser."¹⁵⁰ Their thinking was also affected by the fact that the authorities themselves were not respecting it. In the end, the fact that their system of thought was based on majority will led them to question the legitimacy and validity of the convention.

¹⁴⁷(cont'd) dissolution of the Assembly, in the imprisonment of three of its Members on charges of sedition and in the closure of *Le Canadien* in 1810.

¹⁴⁸*Le Canadien*, 6 January 1810

¹⁴⁹Bédard to Neilson, 29 September 1814. Neilson Collection, MG24, B1, Vol 32.

¹⁵⁰*Le Canadien*, 9 April 1808

2. THE LEGISLATIVE COUNCIL

Communitarian liberals had amalgamated values and beliefs drawn from the old as well as the new orders into their system of thought. Once, however, that system had taken shape, the old ways began to be forgotten. Fewer and fewer inhabitants remembered the French Regime and as more Lower Canadians were born after the Conquest, the privileges of birth and the traditions of absolutism were displaced by the ideas of the social contract.¹⁵¹ The attachment that some seigneurs, "...enchaînés par les préjugés que le gouvernement Français inspirait à ses sujets,"¹⁵² professed to the old order appeared increasingly outdated as they sat, unelected, in the Legislative Council and blocked certain bills passed by the assembly. Man, thought communitarian liberals, was inherently good, and it was only a question of time before even the seigneurs began to accept a system which called for the participation of all the members of the community. Certainly the career of Gabriel Elzéar Taschereau suggested that things were changing: a seigneur, he had nonetheless displayed independence and a tendency to resist influence tied to salaried offices.¹⁵³

Denis Monière argued that on the political level, the two cultural groups used different powers to oppose each other: "...les conseils exécutif et législatif pour les Canadiens-Anglais et l'Assemblée pour les Canadiens-Français."¹⁵⁴ However,

¹⁵¹ Greenwood estimates that by 1811 only one inhabitant in twenty remembered the Old Regime. Greenwood, *Op. cit.*, p.208

¹⁵² *Le Canadien*, 2 January 1808

¹⁵³ *Le Canadien* published his eulogy, summarizing his work as a member of the Legislative Council and congratulating him for his integrity and for always voting according to his own mind. *Ibid.*, 23 September 1809.

¹⁵⁴ Monière, *Op. cit.*, p.119

communitarian liberals saw the Legislative Council, not as a the tool of English-speakers, but as the instrument of the well-to-do: "Le Conseil Législatif représente les riches propriétaires comme les Seigneurs, les personnes les plus riches, les plus gros négociants."¹⁵⁵ Louis Bourdages supported this view in his virulent pamphlet against the establishment in which he omitted any references to cultural background as a peculiarity of the Legislative Council, describing it as an association of les "gens à place", militia colonels, Seigneurs and Justices of the Peace.¹⁵⁶ (*My translation*) Since, communitarian liberals believed, it was one's attitude to the principles by which society should be governed, rather than his language or religion, that determined his political alignments, they believed that eventually all persons could join in the community once they agreed to share its principles. However, the Legislative Council was a problem, not because it was dominated by English-speakers, but by people who had the "wrong" principles, which meant that it and the assembly were bound to be constantly at odds. As Bédard put it: "How can the Constitution work when one Party dominates one branch of the Legislature and another the other branch?"¹⁵⁷ (*My translation*) The assembly had to be supreme:

Notre Chambre d'Assemblée est, par l'Acte Constitutionnel constituée pour aviser et consentir aux loix et peut-elle le faire librement si les loix, coutumes et usages parlementaires qui ont rapport à la conservation de ce droit et de cette liberté ne lui sont point donnés soit en termes exprés, [sic] ou par implication?¹⁵⁸

A bi-cameral legislature thus not only appeared ill adapted to the reality of

¹⁵⁵ *Le Canadien*, 14 March 1810

¹⁵⁶ Bourdages, *Vie Politique de Mxxx ...*, 1814 (?) p.7

¹⁵⁷ Bédard to Neilson, 12 January 1815. PAC, Neilson Collection, MG24, B1, Vol 32.

¹⁵⁸ *Le Canadien*, 3 March 1810

Lower Canada; it seemed to contradict the principles of the Act itself. Having awarded the right to vote to the majority of the population the Act also confirmed that population's civil rights. The Council, therefore, had no right to restrict it and any step in this direction was to be criticized. Bourdages even presented the Council to the electors of his county as "...un corps dangeureux et l'ennemi de leur bien-être."¹⁵⁹ Considered to be dependent upon the Government and made up of persons whose allegiance could be bought, the Legislative Council never acquired any legitimacy in the eyes of the Members of the assembly. Even when they thought it might be made elective, they could not formulate a function for it as their southern neighbors had done with their second Chamber. It was never considered as a possible second house of representation for the community.

3. THE JUDICIARY

Whatever attachment communitarian liberals had to the separation of powers was highlighted in their view of the Judiciary. While the British Constitution prevented judges from holding elective office, the 1791 Act remained silent on the subject, referring only to the ineligibility of judges to be Legislative Councillors. The very first Parliament had tried unsuccessfully to remedy the situation. Sponsored by the Speaker Jean-Antoine Panet and by Joseph Papineau *père*, bills had been introduced to provide for a politically independent Judiciary.¹⁶⁰ However the controversy only developed fully in the first decade of the nineteenth century when it came to center on certain elected members of the

¹⁵⁹ Bourdages, *Vie Politique de Mxxx...*, PAC Pamphlet, 1814?, p.19

¹⁶⁰ *Journal of the House of Assembly of Lower Canada*, 4 April 1794

Opposition Party who were also judges. The best known was Seigneur Pierre Amable de Bonne, advisor to the Governor, lawyer, judge, elected member of the Assembly for the Opposition party, militia captain and "a political animal".¹⁶¹

The controversy raised several questions pertaining to two different understandings of the Lower Canadian constitution. Assisted by the writings of Locke, Blackstone and DeLolme, communitarian liberals argued that what de Bonne was being permitted to do violated basic constitutional principles. At stake, in their view, was the status of the House of Assembly in a colonial structure, the impartiality of the law, the role of the Legislative Council, and the control which one branch of government might have over another.¹⁶² A judge was the King's representative in the most important function of all, that of administering justice to his subjects. Consequently, a judge had to embody the impartiality of the law, be free of undue influence from all quarters and stand independently in matters of politics. Bédard argued that the administration of justice was incompatible with legislative power since "...it put a man in the position of making laws and also

¹⁶¹ Wallot observed that de Bonne was a consummate politician and a great foe of the *Parti Canadien*. Arrogant, well-read, anticlerical, patron of the Arts, he seemed to have used the institutions and the authorities to his greatest advantage. See Jean-Pierre Wallot, "Pierre Amable de Bonne", *Dictionnaire des Biographies*, Vol. VI, p.253-259. While there seemed to have been a great personality conflict between him and Pierre Bédard, the issues raised questions that went beyond their personal animosity.

¹⁶² Communitarian liberals believed that the British Parliament had intended British institutions to be mirrored in the truest possible manner. They supported the debate in the Assembly and then appealed to London for a ruling. London ruled in the Spring of 1810 that it would consider judges ineligible to run for the assembly if both legislative Houses agreed to it. The assembly voted the expulsion of de Bonne and declared his seat vacant. Simultaneously, it passed a bill to vote the civil list and requested from the administration a breakdown of its expenses. Governor Craig moved to dissolve the House convinced that sedition was at hand. For a full account see Jean-Pierre Wallot, "La Crise sous Craig 1807-1811", *Société Historique du Canada*, Historical Papers presented in Ottawa, (June 1967) p.59-74

passing judgment on them."¹⁶³ (*My translation*) In the case of De Bonne, his belonging to the opposition party, his known ties to the Legislative Council and his links to the Governor made a farce of the separation of power. Bourdages, moreover, argued that a citizen could be influenced to vote for a judge who ruled in his favor. Planté added that "... le caractère d'un juge doit être l'impartialité", while Mondelet argued that the dignity of the judiciary was threatened since if matters were allowed to continue this way a judge would be exposing himself to the censure of his peers and colleagues as well as to the censure of the people. Still on the House floor, John Mure added that de Bonne might corrupt the electors for it would be hard for him to avoid giving them the impression that if they voted for him as an assemblyman, they would win his favor as a judge. Finally, both the Speaker, Jean-Antoine Panet, and Pierre Bédard argued that the legitimate place for judges was in the Legislative Council, where, as nominated officials, they could not abuse either their judicial function or the voters.¹⁶⁴

The concerned judges, Faucher, Denechaud and de Bonne, argued that the Canadian assembly could in no way aspire to the same powers as the Commons since it had been meant to be only a "*petit diminutif*" of that institution.¹⁶⁵ It was natural in any case for the government to intervene in the assembly. Judges were particularly entitled to do this, since, in the elitist view of these men, they were by far the most educated citizens and as such could best define

¹⁶³ Bédard to Neilson, 8 March 1814. MG24, B1, Vol 32.

¹⁶⁴ *Le Canadien*, February 1808. On this occasion, the newspaper reproduced the debates in the Assembly.

¹⁶⁵ Speech from Faucher, *Ibid.*

the interests of the people.¹⁶⁶

The dispute over the Judiciary illustrated two different views on the separation of power. While de Bonne and other judges took a Burkean approach, finding it desirable and normal that members of the House and the Council share the same views and design and administer the laws for the benefit of the population, communitarian liberals, whose system of thought was based on the general will and the impartiality of the law, insisted that the administration of justice be free of outside interference.

4. THE RIGHT OF REPRESENTATION

Communitarian liberals had in general accepted the idea that the people's influence over government should be brought to bear through their representatives rather than through some Rousseauian device of direct participation. The elitist danger implicit in this was met by the claim that while it was not given to all to become a representative, the necessary qualities could be acquired through education rather than by a privilege of birth. Communitarian liberals also readily took to the party idea as it was beginning to emerge, accepting with particular enthusiasm the notion of a Majority and an Opposition, and understanding these groupings as Burke had: "...as a body of men united for promoting the national interest on some particular principle on which they all agreed."¹⁶⁷ As they saw it, the national interests was defined as the interests of the community to which

¹⁶⁶ *Ibid.*, 12 March 1808

¹⁶⁷ Cited in J. A. Corry, *Democratic Government and Politics*, Toronto, University of Toronto Press, 1946 p.134

they were linked.

Upon signing the 1784 petition requesting a House of Assembly, supporters of that demand had sought to have the persons chosen to take it to London receive some sort of status as popular representatives. In a fairly unorthodox procedure, they canvassed homes to gather signatures approving of the choice. In doing so, they saw themselves as respecting the conventions regulating the principles of representation set aside for British subjects. For as they told the population: "Vous êtes Anglais, sujets libres, et comme tels vous avez l'incontestable droit de représentation."¹⁶⁸ Getting a popular sanction for what they were doing would also legitimize their mission to London.¹⁶⁹ Even prior to the Constitutional Act, Lower Canadians thus thought in terms of their right as full subjects to be involved through representatives in decisions affecting them. After 1791, and despite the difficulties posed by their unfamiliarity with the procedures involved, they elected representatives from all walks of life.¹⁷⁰ The fact that they were now - as they thought - part of the process by which their community was governed cemented their loyalty to the Crown and strengthened their "...attachement inviolable au Gouvernement."¹⁷¹ Loyalty was no longer thought of as the privilege of "les Riches et les Grands"; it could now be professed by anyone who respected the social contract.

¹⁶⁸ *Letter to the Inhabitants of the Province of Quebec*, London, 1 April 1784 and reproduced in *BHR*, Vol XII, (1906), p.368

¹⁶⁹ Aldhémar and Delisle to Haldimand, 15 October 1783 and reproduced in *BHR*, Vol XII, (1906) p.337

¹⁷⁰ There were a certain number of farmers elected to every Assembly although the greatest numbers come from the ranks of the professionals. *Le Canadien* remarked that elected farmers always mirrored best, the interests of the people. *Le Canadien*, 19 December 1807.

¹⁷¹ *Ibid.*, 11 June 1808

Communitarian liberals saw themselves as a kind of party which represented the interests of their society at large. As *Le Canadien* put it, they embodied "...le sentiment du peuple manifesté par le choix des personnes dont il adopte le système..."¹⁷² This system was based on public consent: as Bourdages put it, the representatives of the party had "...[des] opinions basées sur le consentement public."¹⁷³ Following British conventions, they took the view that the party would act on behalf of the community rather than on behalf of particular constituencies. Communitarian liberals carried the conventions further when the conflict with the authorities heated up and Members were expected to follow the party line even if it entailed going against the government itself.¹⁷⁴

In the first decade of the nineteenth century, the beginnings of a "party" system and the right of representation helped harden the respective positions of the communitarian liberals and the colonial authorities. Notwithstanding their "Enlightenment" bias, communitarian liberals found it particularly difficult to avoid appeals based on culture. The necessity to get elected and to make points on the "hustings" increased the tendencies to do this as elections were often run on the theme of loyalty and each group found it easier to question the loyalty of the other on cultural grounds. Amidst cries of French disloyalty due to a kinship with Revolutionary France, (The Quebec Mercury alternatively called the French members of the Assembly ... democrats, sans-culottes, anti-ministerial, damned French and bad subjects)¹⁷⁵ members of the *Parti Canadien*, while professing

¹⁷² *Ibid.*, 24 January 1807

¹⁷³ Bourdages, *Op. cit.*, p.6

¹⁷⁴ *Ibid.*, 11 March 1810

¹⁷⁵ Not to be undone, *Le Canadien* called the Opposition party: Ministerial Party, Yankee Party, Parti de Chouayens(vendus), Parti Anti-Canadien, English Party and Government Party.

adherence to a bicultural community, often made nationalistic election speeches alleging, for instance, that English members would sacrifice the interests of the voters.¹⁷⁶ However, communitarian liberals deplored the cultural division initiated in the assembly. They feared that it would spread outside the Legislature and permeate the population. Such divisiveness was contrary to a constitution designed, in their view, to accomodate equally the rights of all:

Ces idées [division between French and English assemblymen] passent au dehors ... [la division] devient générale, elle s'échauffe en dedans, et voilà comment la plus nuisible de toutes les divisions qu'il puisse y avoir dans ce pays, est méthodiquement fomentée par la manière d'administrer une Constitution si propre à faire le bonheur de tous.¹⁷⁷

Reluctantly, however, they later advised their constituents that although all Lower Canadians were English as well as French British subjects, it could prove more advantageous to "vote for a compatriot" with whom one shared *des liaisons d'habitude et de moeurs*¹⁷⁸

5. THE ASSEMBLY

Even though its actual workings and procedures were at first unfamiliar to them, communitarian liberals viewed the assembly as the one branch of the state apparatus over which the community had some control and in which its interests and aspirations could be voiced openly. The use of the assembly was the community's way of meeting its part of the social contract. It permitted the

¹⁷⁶ Francis-Joseph Audet, "Joseph-Bernard Planté", *Proceedings and Transactions, Royal Society of Canada*, third series, Vol XXVII, (May 1933), p.133-159

¹⁷⁷ *Le Canadien*, 31 January 1807

¹⁷⁸ *Ibid.*, 19 July 1808 - 28 January 1809

small and the weak to be involved through representation in the making of the laws that ruled their lives. Its goal was to ensure that the will of the King and that of the majority of his subjects coincided. Therefore, its position and independence had to be maintained, for if they were not, other branches of the government - the executive, particularly would come to dominate, leading to a return to despotism. The House of Assembly was the living symbol of the political freedom acquired under British rule and given form by the Constitution of 1791. Enabling the Catholic and French citizens of Lower Canada to unite with the English and Anglican citizens to become a community of free British subjects, it seemed a particularly enlightened instrument of popular participation for it avoided the pitfalls of both the American and French systems. Communitarian liberals felt themselves bound together in a kind of alliance with the House of Commons itself from which they had received this "rare treasure".

The signatories of a pamphlet to the citizens advising them of their request for an assembly explained the crucial role the institution would play in freeing the colony. The community could not "...être vraiment libre sans l'institution d'un corps de cette espèce."¹⁷⁹ The assembly would free them from the ties of traditional authorities and from the ties binding seigneurs to peasants. The constitution liberated citizens from feudalism by offering civil rights to all and by offering the House to act as their guardian. And if the Legislative Council was reserved for the rich and powerful, the assembly represented "...la classe moyenne du peuple; les cultivateurs, les gens de métier, de profession", ¹⁸⁰ which had to be kept free from the enslaving traditions of the Old Regime, from

¹⁷⁹PAC Pamphlet, *Aux citoyens et Habitants des villes et...*, 1785 p.7-8.

¹⁸⁰*Le Canadien*, 14 March 1810

the advisors of the Governor, from the Councillors and from the members of the opposition party elected to the House.¹⁸¹ The latter were particularly dangerous since they used their power to influence the gubernatorial advisors. This prompted *Le Canadien* to wonder how the constitution could be respected when the Opposition party was in a position to control the Executive. This rendered meaningless their majority in the assembly and caused credibility problems:

...aussi ne sait-on plus ce que c'est que l'opposition; les uns regardent la majorité de la Chambre d'Assemblée comme le parti de l'opposition et les autres donnent cette fonction au ministère... Si cet arrangement n'avait pas d'autre inconvénient que celui du ridicule, on pourrait s'y faire; mais il en a qui sont d'une nature très sérieuse.¹⁸²

The communitarian liberals' identification of the House with the community became even closer as the assembly set precedents and conventions that were adapted to the Lower Canadian reality. Whereas some representatives had expected the proceedings to be conducted in English, the case, of course, in Westminster, Nova Scotia and Bermuda, the assembly of Lower Canada decided otherwise during its very first session. Having first chosen a speaker, Jean-Antoine Panet, whose English was halting,¹⁸³ the assembly then voted that all bills would be translated and presented in both languages. In addition, the

¹⁸¹ After the first dissolution of the Assembly in 1809, *Le Canadien* carried a heading drawn from the British Bill of Rights which read: "*Que l'élection des membres du Parlement doit être libre; que la liberté de parole et les débats ou les procédures du Parlement ne doit pas être sujette à aucune accusation, ni à être prise en question dans aucun cas, ou dans aucun lieu hors du Parlement. Le Canadien*, 3 June 1809

¹⁸² *Ibid.*, 31 January 1807

¹⁸³ His brother Pierre-Louis Panet argued against his nomination saying that a Speaker should be fluent in English as well as in French in order to replicate "the language of the sovereign and of the Legislature from whom we hold our Constitution". Christie, *Op. cit.*, p.127

Journals of the House of Assembly would be kept in both languages.¹⁸⁴ In doing this, the assembly established the legality and the equality of both languages in the legislature of Lower Canada as a distinctive feature of that institution. While the Quebec Act and the 1791 Act protected religious rights, it was the representatives of the people who established the equality of the two languages; language rights became, in consequence, associated not just with civil rights conferred by the constitution but with the participation by the people in the processes by which they were governed.¹⁸⁵

Communitarian liberals viewed the assembly as a replica of the House of Commons:

...Immediately after his election as Speaker of the House of Assembly had been approved by the Lieutenant Governor, M. Panet laid claim on behalf of the Assembly to "the freedoms of speech and generally all the like privileges and liberties as are enjoyed by the Commons of Great-Britain our Mother Country."¹⁸⁶

They were therefore convinced that it held similar powers, taking this to mean

¹⁸⁴ *Constitutional Documents*, Vol 3, p.162, Christie, *Op. cit.*, Vol 1, p.130-135 and Wallot, "Pierre Amable de Bonne", *Op. cit.*, p.256

¹⁸⁵ Raymond Breton maintains that changes in traditional arrangements alters the "symbolic order" or the status held by groups. While a group may become more endowed with status, another will feel displaced and experience resentment. Breton describes it as a phenomenon of the twentieth century tied to the resurgence of interest groups. However judging from the French Canadian reaction when confronted with the arrival of the "Americans" in Lower Canada and by the reaction of the Quebec Mercury to the use of the French language it would seem that the symbolic order was already well in place in the last decade of the eighteenth century. See Raymond Breton, "The Production and Allocation of Symbolic Resources: An Analysis of the Linguistic and Ethnocultural Fields in Canada", *Canadian Review of Sociology and Anthropology*, (May 1984) and for the reaction of the Quebec Mercury see Murray Greenwood, *Op. cit.*, p. 227

¹⁸⁶ *JHALC*, 1792 P.20-22 and reprinted with comments in the *Constitutional Documents*, Vol 2, p.162

that it could be used to enforce practical equality, something particularly evident in their insisting on taxing luxury goods rather than individual citizens and property.¹⁸⁷ The assembly opposed all property taxes which could have burdened the farmer and forced him to sell his land and lose his franchise. It preferred levies on consumer products, the burden of which generally fell on the well-to-do. A tax that favored the rich to the detriment of the poor was, in the words of Louis Bourdages "... injuste et contraire à la liberté publique."¹⁸⁸ In such a way, the poor and the less fortunate were protected from taxation which could have been not only heavy but destructive of their citizenship. Using the power of taxation of the assembly, communitarian liberals ensured the welfare of the community and prevented the extension of the market economy already established by the merchants whose allegiance to the Crown was, in their view, suspect.

In addition to orienting the economic destiny of the colony in a certain way, the assembly also intervened in the relationship between seigneurs and peasants by voting credits for roadworks, a duty traditionally done under the *corvée*.¹⁸⁹ Calling it "...une corvée onéreuse et préjudiciable aux habitants de la campagne...",¹⁹⁰ *Le Canadien* supported the assembly's actions in breaking some of the feudal ties between peasant and seigneur by taking over a traditional responsibility attached to the seigneurial tenure.

¹⁸⁷ *Le Canadien*, 7 May 1808

¹⁸⁸ *JHALC*, February 1807

¹⁸⁹ The "corvée" were days that a farmer worked for free. The seigneur chose the task to accomplish among which was the maintenance of the roads. See Abbé Albert Tessier, "Les Voyages vers 1800", *Les Cahiers des Dix*, Vol VI, (1941) p.83-109

¹⁹⁰ *Le Canadien*, 21 February 1807

D. CONCLUSION

Existing interpretations of the period under study tend to see French Canadians as too attached to their conservative structures to develop a liberal society. This view of the situation fails, however, to take full account of the constitution as an Act which stimulated and gave life to a new and unique system of thought assimilating Old Regime values and new European ideas. Preoccupied by the nationalist or economic dimensions of the conflict, those taking these approaches tend to overlook the fact that this system of thought was developed on Canadian soil and had to accomodate the reality of a bicultural community in which a kind of egalitarianism had emerged as an ideal. They therefore fail to see the extent to which what was taking place reflected the mixed reality of Lower Canada and set the stage for a bilingual House of Assembly in Canada as early as 1792. That the events with which these historians were concerned had a nationalist component is undeniable; equally, however they bore the seeds of bilingualism and biculturalism too.

V. COMMUNITARIAN LIBERALISM AND THE ECONOMY

Communitarian liberalism was a system of thought that was politically liberal and economically statist. State intervention was advocated in the economic sphere to foster and protect a planned agricultural development designed to fit into the mercantile system of Great Britain; it was also promoted as a means of retarding, as much as possible, the development of a North-South market economy based on principles of laissez-faire liberalism. While, under the conservative tenets of the time, state intervention was normally understood as a way of protecting the political interests of a privileged group, *les Riches et les Grands*, communitarian liberalism - anticipating a shift in the character of liberalism that was to come elsewhere only in the late nineteenth and twentieth centuries - used it to protect the political and economic interests of the free tenants of Lower Canada.

At the very core of the thinking of communitarian liberals lay the notion that there was a close relationship between property ownership and independence. They held a rather Lockean view of property, understanding its function, in Pocock's terms, as furnishing "the individual with independence; independence is the prerequisite of political engagement; and political engagement is the prerequisite of public virtue."¹⁹¹ The agricultural vocation, and even the seigneurial system itself, were, they thought, to be upheld, not because of an idea that a life on the soil had some special religious meaning but because they

¹⁹¹ J.G.A. Pocock, Richard Ashcraft, *John Locke*, Papers read at a Clark Library Seminar, 10 December 1977. William Andrews Clark Memorial Library, University of California, Los Angeles, 1980 p.15

were the indispensable conditions of freedom and political involvement. Far from wishing the continuation of a feudal economic system and the social order based on it for their own sakes, and far from glorifying the soil out of a religious mission, communitarian liberals thus preferred a land-based economy because it guaranteed their constitutional liberties. Individual competition and profit-making were, to be sure, acceptable, but only as long as they remained within the confines of such a system: an individual farmer was therefore free to develop his land as he wished,¹⁹² but trading and commercial interests tended to push beyond these boundaries and so risked the disintegration of the community. Since capitalism and free trade were seen as American values, American immigration in the Townships and American infiltration of institutions was held to pose a special danger to the land-based 'corporate individualism' which, communitarian liberalism argued, was at the foundation of Lower Canadian society.¹⁹³

The "Yankees", *ces sans-culottes du Nouveau-Monde*,¹⁹⁴ held British rule in total disregard and would actively work against it in the colony. Their attachment to individual freedom and independence impelled them to reject any formalized structures of government and thus prevented them from accepting the constitution of Lower Canada as communitarian liberals understood it. Since commercial interests tied British merchants in Lower Canada to American immigrants and to the American seaboard, and since the links thus created were

¹⁹² *Le Canadien*, 18 June 1808

¹⁹³ While this view of the Loyalists seems somewhat skewed and self-serving, it is supported by Donald Creighton who described the first British merchants arriving to Canada from the United States as men whose single objective was making money by trade. Not farmers but traders, they were "...merchants before being Britons, Protestants or political theorists". Creighton, *Op. cit.*, p.22

¹⁹⁴ *Le Canadien*, 24 Decembre 1808

reinforced by similarity of language and shared personal greed, they were powerful forces endangering the very foundations of Lower Canadian society, and, therefore, the elements upon which communitarian liberalism itself depended. This alliance, by virtue of its wealth and power, could buy out impoverished farmers and disenfranchise them; it could also influence the decisions of the Executive and the Legislative Council thereby rendering the assembly powerless.¹⁹⁵ In addition, a North-South combination of commercial interests would inevitably challenge the commercial strength of England herself and so force a repetition of the American adventure, the result of which would be to "...livrer le Canada aux Américains,"¹⁹⁶ and destabilize further the American empire of the mother country.¹⁹⁷

If this was to occur, Lower Canadians would soon fall prey to reprehensible American values such as greed and immorality; they would acquire the "...avidité et l'esprit d'accaparement des Américains, né dans le sein du commerce et avide de toutes sortes de jouissances, prêt à tout pour atteindre son but."¹⁹⁸ They would turn inward and act in defense of their individual self-interest. This would lead to an end to sharing "a similarity of principles" and therefore endanger the social contract because, in the words of the newspaper: "Quand l'intérêt individuel se mêle aux discussions politiques, on raisonne mal."¹⁹⁹ Lower Canadians also risked adopting the political orientation of the Americans who were thought to have the tendency of selling out to the highest bidder: they were "...une

¹⁹⁵ Assemblymen began discussions on sending their own agent to London in 1807 in order to ensure that their views were made known.

¹⁹⁶ *Le Canadien*, 19 November 1809, 6 January 1810

¹⁹⁷ *Ibid.*, 6 December 1806 and Viger, *Considérations*, p.27

¹⁹⁸ *Le Canadien*, 22 Novembre 1807

¹⁹⁹ *Ibid.*, 24 December 1808

multitude aveugle ... [dont les] chefs sont à la discrétion du plus haut enchérisseur."²⁰⁰ Communitarian liberals portrayed their southern neighbors as unruly citizens, controlled by greed and consumed by self-interest. Having moved to the colony, the merchants who held on to these values were unwilling to identify themselves with the community of Lower Canada and to share a common view of the world.²⁰¹

Communitarian liberals thus saw agriculture as a weapon to strengthen ties with England, to consolidate the social and economic order they preferred and to stabilize the colony:

...un peuple qui se livre entièrement au commerce, sans culture des autres branches de l'industrie ne peut jamais compter sur une existence bien durable.²⁰²

By de-emphasizing the fur trade, by encouraging the settlement of new farmers, by diversifying agricultural production, and by encouraging new economic developments, they tried to protect the rights, and the survival, of their community. Communitarian liberals did not envisage a subsistence level economy but rather thought in terms of trade with Great Britain. Reflecting on this question and asking its readers for comments, *Le Canadien* proposed five areas in need of improvement:

Quels sont les moyens d'encourager l'agriculture? Quels sont les

²⁰⁰*Ibid.*, 9 April 1808

²⁰¹Lower Canadians were ambivalent about profit-making. Catholicism took a dim view of making money for money's sake. Profits were acceptable provided they were the results of hard work, did not hurt other individuals and did not engender an immoral conduct. Clearly in this case commercial and trading interests were seen as harmful to the community.

²⁰²*Le Canadien*, 23 January 1808

moyens d'encourager le commerce? Quels sont les moyens de commerce dans le pays? S'il seroit avantageux d'avoir une banque dans le pays? Quels sont les moyens de conserver la Province à la Mère-Patrie?²⁰³

Members of the assembly were even prepared to have the province's economy regulated by the Mother Country. As Helen Taft Manning reported: "Both parties in the Lower Province professed their complete willingness to have their trade regulated by imperial statutes."²⁰⁴ The colony, they thought, was far too small to be able to compete with the great trading nations on its own; indeed, they believed, the trade balance would always favor imports over exports.²⁰⁵ Nevertheless, the interruption in Britain's American trade brought by the Napoleonic Wars meant that the mother country would shortly need the Canada's products and that provided some opportunities.²⁰⁶ Communitarian liberals therefore encouraged the free tenants to diversify their agricultural production in order to meet the new demands they felt were emerging. Wishing to be in a position to expand and support economic development, the assembly set up a committee to study the establishment of a bank.²⁰⁷

²⁰³*Ibid.*, 7 November 1807

²⁰⁴Helen Taft Manning, *The Revolt of French-Canada 1800-1835*, Toronto, MacMillan, 1962 p.59 Also, Donald Creighton talked about the changes in the structures of the economy during this period marked by the passage from the fur trade to agriculture and from free trade to mercantilism. Creighton, *Op. cit.*, p.116-123. On the other hand Allan Greer says that Lower Canada had a self-sufficient subsistence level economy in place as early as 1740 and that peasants never broke out of this mode because they stayed under the political and economic domination of the aristocracy and the mercantile classes. Greer, *Op. cit.*, p.88

²⁰⁵*Le Canadien*, 23 January 1808

²⁰⁶*Ibid.*, 3 October 1807.

²⁰⁷Wallot notes that both Bédard and Taschereau, as members of the committee, supported this measure. See Jean-Pierre Wallot, "Frontière", *Op. cit.*, p.24

Reprinting agricultural pamphlets from England and from the Colonial Office,²⁰⁸ *Le Canadien* urged the introduction of hemp to fill English naval orders. The newspaper also urged farmers to try new grains, better farming methods and the planting of apple trees in order to replace the importation of rum by local cider. Also recommended were the use of fertilizer, crop rotation and the settlement of new lands in order to reduce the danger of over-subdividing lots.²⁰⁹ While the state had a responsibility to convince the farmers to modernize their crops and techniques, it was left to individuals in the community to work out the implementation of all this. The most important of these, insisted *Le Canadien*, were the *personnes de caractère*, virtuous men in the countryside who were in a financial position to experiment with new crops and share the results with their neighbors. In addition to the seigneurs and richer farmers, this duty also fell to those city dwellers who were in receipt of a government pension.²¹⁰ Communitarian liberals thus limited the role of the state to deciding the type of economic system the community was to adopt; they did not advocate the governmental takeover of the implementation of the system, preferring to rely on the traditional economic structures which had a moral duty to help the community prosper.²¹¹

²⁰⁸PAC Pamphlet, *Société d'Agriculture en Canada. Papiers et lettres sur l'agriculture*, 1789 and PAC Pamphlet, *Charles Taylor, Secretary of the Society for the encouragement of Arts etc.*, London 1806

²⁰⁹*Le Canadien*, 3 January 1807, 10 January 1807, 9 May 1807, 5 August 1807, 29 August 1807, 12 December 1807

²¹⁰*Ibid.*, 25 April 1807. How city dwellers were supposed to assist in this was not discussed. However, the message was clear that communitarian liberals expected the more fortunate segments of society including those in receipt of governmental largesse to contribute to the life of the community.

²¹¹In fact the community was also responsible for taking care of its poor, its sick and its unemployed. Wallot comments that this attitude towards local and

The development of agriculture promised progress as well as stability. A solidly diversified economy would enable Lower Canada to participate in the life of the greatest commercial empire in the world and to mature into a junior partner in it. While France had neglected the commerce and the industry of its colony and had been indifferent to its economic welfare, Lower Canada could now aspire to become a commercial nation²¹² in a mercantile system.²¹³ Communitarian liberals did not, therefore, fear commerce and trade in themselves; they were, rather, worried that the particular structures of trade being established by the English-speaking merchants in their midst would sever their ties with Britain.

The years 1780 to 1810 coincided with the decline of the fur trade and the passage to an agricultural economy fervently embraced by communitarian liberals for political and economic reasons. As a result the fur trade was portrayed as a de-stabilizing force in the life of the colony. All able-bodied men were needed to settle the land, ensure the growth of an agricultural economy and secure the right to vote while so doing. The fur trade became associated with those commercial values that drew men physically and politically outside the community. *Le Canadien* claimed that: "The fur trade destroyed the social order", (my translation) because it worked against property ownership which was "*la base de la civilisation*".²¹⁴ In addition to drawing Lower Canadians to a life of

²¹¹ (cont'd) collective responsibility was inspired by the writings of Malthus. Wallot, "Frontière ou Fragment", *Op. cit.*, p.15

²¹² Viger, *Considérations*, p. 35 and 43

²¹³ Denis Monière argues that while English-Canadians strove for a pan-canadian commercial capitalism, French-Canadians strove for an agricultural system limited to Quebec. Fernand Ouellet, however, ascertained that during this period, Lower-Canada produced the overwhelming bulk of wheat exports. Monière, *Op. cit.*, p.119 and Ouellet, *Op. cit.*, p.33

²¹⁴ *Le Canadien*, 5 December 1807. In its October 24, 1807 issue, the newspaper reprinted a report written in 1793 by four ecclesiastic commissioners

adventure outside the geographic boundaries of their country, the fur trade increased the power of the merchants inside the colony. Dominating the Legislative Council and represented in the House through the Opposition Party, the merchants were in a position to influence the course of events. In 1807, they voted that a property tax be raised to pay for a new jail.

While the assembly could not vote the civil list, it could raise certain taxes locally. Its power of taxation had been feared by the seigneurs. As the largest landowners, they risked bearing the bulk of new taxes. So in addition to threatening their political power, the assembly also seemed to be endangering their economic position. Their 1784 petition to the King opposing it had argued that additional taxes would endanger the colony:

Cet exposé vrai tous ses points doit convaincre qu'une Chambre d'Assemblée, pour imposer des taxes est, non seulement inutile mais encore préjudiciable aux intérêts de cette colonie. ²¹⁵

From the opening of the first session of the assembly the members of the *Parti Canadien* were, in consequence, extremely careful to demonstrate to their constituents that the sort of political power they now had did not necessarily involve additional property taxes. During the debate on the Jail Bill in 1805, the government's supporters in the assembly and Legislative Council, favored such a tax. Commerce and agriculture, they argued, must aid each other "by sharing a

²¹⁴(cont'd) which called for the abolition of the fur trade because of the depletion of fur-bearing animals, the ravages produced on native populations by alcohol and because the adventurousness produced laxity and immorality among the young men involved.

²¹⁵*Constitutional Documents*, Vol 2, p.755

due proportion of advantages and burdens."²¹⁶ The *Parti Canadien*, however, took the view that a levy of this kind was politically dangerous - it was just the kind of tax the *Parti* had said it would never impose - and it also raised questions about the security of property. Increased taxation, *Le Canadien* told its readers, would harm them "...dans [leurs] personnes et propriétés et réduirait à l'esclavage".²¹⁷ The *Parti* therefore recommended a tax on luxury goods and explained its position in a petition to the King.²¹⁸ It pointed to the injustice of a property tax which would fall equally on large and small proprietors and stressed the difficulty a small farmer would have in obtaining justice should the value of properties be assessed by outside evaluators. It also pointed out that city dwellers would be exempt from such a tax since their possessions consisted of moveable goods. A tax on luxury goods would therefore be fairer since it spread the burden to a greater number of people:

...il arriveroit que la classe la plus laborieuse, et qui travaille pour nourrir les autres, supporteroit en outre ce fardeau des impôts, ce qui serait injuste. Le moyen le plus équitable est de livrer les impôts sur les articles de luxe parce que chacun paye en proportion de ce qu'il veut se procurer des plaisirs utiles.²¹⁹

The farmer's property had to be protected, his right to vote conserved, and the involvement of the colony's people in the political process safeguarded. More than showing an aversion to commercial interests or a religious glorification of the soil, communitarian liberals were acting consistently with a system of thought which stressed the importance of ownership if a community of independent and

²¹⁶ Christie, *Op.cit.*, Vol 1, p.239

²¹⁷ *Le Canadien*, 22 August 1807

²¹⁸ Christie, *Op. cit.*, p.246

²¹⁹ *Le Canadien*, 7 May 1808

equal citizens were to be maintained. Only in this way could the true "Spirit of the Constitution." be upheld.²²⁰

Communitarian liberals opted for an agricultural economy within a mercantile framework. In doing so, they expressed real sympathy for the laws, customs and traditions of the old order, bearer of stability and widely supported by the clergy and the seigneurs. They did this, however, because it suited their own system of thought. Freedom and independence, in their view, depended on property ownership. An economy based on agricultural production and related commercial activities provided the very foundation of man's existence as a free being. The state had a role in this, but it was confined to ensuring the existence of that foundation, this to be done mainly by defending the colony against its external enemies (the 'Americans' and their extensive ties with the colony's political and economic elites) and within the colony by guarding the principles of the constitution. The assembly thus acted to confirm the agricultural future of the colony not out of some commitment to an old, traditional, feudal order as an end in itself but because it saw this as the best way to ensure a progressive destiny for individual and community alike.

²²⁰ London agreed with the assembly and refused to disallow the Bill, reinforcing in the minds of Communitarian liberals that they were the true interpreters of the Act. See Jean-Pierre Wallot, "La Querelle des prisons", *Revue d'Histoire de l'Amérique Française*, Vol XIV, No1, (Juin 1960), p.61-87, p.259-276, p.559-582 p.276

CONCLUSION

Exposed as they were to European ideas about the liberty of man, the French Canadians of Lower Canada welcomed a British constitutional monarchy which offered protection of their traditional legal and religious rights as well as giving them civil rights. They viewed this arrangement as a liberation from the arbitrariness of French absolutism and as the fulfilment of a system of thought devised to ensure the survival and growth of their community. This system of thought reinterpreted the values, beliefs and laws of their feudal past and combined them with the liberal ideas of the Enlightenment and the political concepts of British constitutional writers. Such an unorthodox mixture permitted them to devise an idea of community which took into account the reality of their political, economic and social situation - a situation without parallel in Europe - which placed two different cultural groups under a single political structure in a colonial setting.

The system of thought devised by Lower Canadians reflected the bicultural and bilingual nature of their community as well as the egalitarianism contained in the extensive franchise characteristic of Lower and Upper Canada. While their system included conservative Burkean values and liberal Lockean and Rousseauian values, it did not recreate in Canada European conservatism and liberalism. Nor did it reflect the nationalistic ideology usually associated with the period. Rather it provided a unique brand of thought best described as communitarian liberalism which included the constitutional guarantee of the collective and individual rights of equal citizens under the terms of its social contract. The legitimate and moral

management of the links between the King, the Constitution and the people became the prime concern of the individuals carrying this system of thought who, for the most part, sat as the elected representatives of the people in the Assembly.

Communitarian liberalism offers a new model for the study of Lower Canada. Undeniably, nationalism was present in it. However it also provides a different way of looking at the events and the history of the period. Nationalism found an outlet in the Rebellions of 1837 and in later adaptations made by the *Rouges* and the clergy. But the notion contained in communitarian liberalism - that Lower Canada was a community of equal though differentiated citizens intimately tied to the Constitution and the British Empire for the protection of their rights - offers an alternative to the current interpretations of the first half of the nineteenth century. It may also offer a window for the study of what has been regarded by many historians as the black period of Lower Canada, that of Union government.

In fact, it may offer a starting point for the study of the links between the two Canadas, both beneficiaries of similar institutions and voting rights and of the motivations of men favoring an understanding between Canada West and Canada East during the 1840s and 1850s. Men such as Louis-Hippolyte Lafontaine and Etienne Parent, while championing the rights of French Canadians, did not envisage the future of the colony in terms of independence but saw it rather working itself out within the framework of a constitutional monarchy. Moreover, what Upper Canadians and the architects of the association

with Lower Canadians saw as a viable idea of Canadian community may also have involved a mixture of old and new values somewhat akin to communitarian liberalism. Historians and political scientists have interpreted the politics of the period leading to Confederation as depending upon a liberal-conservative compromise or, as in the case of Horowitz, displaying the characteristics of a liberal fragment with a tory touch. Both assessments use the common definitions of conservatism and liberalism and try to fit the Canadian experience into the confines of these frameworks. What may be missing is an openness to the presence of an indigenous system of thought.

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