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HEAD AND RESPONSIBLE GOVERNMENT IN NEW BRUNSWICK

By D. G. G. KERR

When Sir Edmund Head landed in New Brunswick in 1848, he brought with him a mandate from the Colonial Office to introduce responsible government.¹ Judging by what happened in Canada, it might appear at first sight that this marked the end of the struggle for self-government in New Brunswick. It did not. It marked the beginning—for in New Brunswick the task of the Reformers was not to secure recognition for the principle of responsible government. That was obtained by Baldwin and Howe for the whole of British North America. New Brunswick Reformers were confronted in 1848 with the more prosaic, but equally necessary task of reorganizing the governmental machinery of the province, and adapting it to the new principle of responsible government. After a brief glance at Head, and at the province of New Brunswick as it was when he became its lieutenant-governor, we shall examine, in the first part of this paper, the administrative reforms needed to make the principle of responsible government function in practice, and in the second part, the manner in which Head's régime paved the way for the eventual adoption of such reforms.

When he took office as lieutenant-governor of New Brunswick, Head² was in his early forties, and had just finished eleven years of Poor Law administration—a most exacting and thankless task. Prior to that, he had studied at Oxford, had travelled widely on the continent, and then had returned to academic life, spending several years back at Oxford as a Fellow of Merton College. In 1835, he had decided to seek a government appointment. He had hesitated for some time between the Poor Law Commission and the colonial service. There may even be some truth in the persistent rumour that when Lord Glenelg was trying to find a new lieutenant-governor for Upper Canada in 1835, he intended to confer the appointment on Edmund Head, but confused the two names, as so many historians have since done, and offered it to the amazed Francis Bond Head instead.³ However that may be, Edmund Head joined the Poor Law administration in 1836 largely owing to the persuasion of his close friend, George Cornwall Lewis, then a Poor Law commissioner himself, and later chancellor of the exchequer and editor of the *Edinburgh Review*. Lewis congratulated him on his choice. "The more I see of colonial life", he wrote to Head from Malta the following year, "the more I am satisfied that you did rightly in preferring your present employment, with all its drawbacks, to the colonial service. The scum of England is poured into the colonies. . . . I confess it seems to me that no man who is not in debt, or has not a large family, is justified in going out to a colony."⁴

¹Cf. Public Record Office, *C.O. 188*, vol. 104: Colebrooke to Grey, Feb. 8, 1848, minutes.

²For family history and early life see: G.E.C., *Complete Baronetage*; *D.N.B.*; J. C. Dent, *The Canadian Portrait Gallery* (Toronto, 1880-1); H. J. Morgan, *Sketches of Celebrated Canadians* (Quebec, 1862); G. F. Lewis (ed.), *Letters of Sir G. C. Lewis* (London, 1870).

³Cf. F. Hincks, *Reminiscences* (Montreal, 1884), 14-5.

⁴Lewis, *Letters of Sir G. C. Lewis*, 90-1.

By 1848, however, the situation had completely altered. Head's position as one of the three chief Poor Law commissioners, trying to carry out a new experiment in poor relief during the so-called "Hungry 'Forties" had been far from pleasant. It had certainly not predisposed him in favour of again accepting such employment at home. On the other hand, the reputation of the colonial service now stood much higher than it had in the previous decade. Lord Grey, in particular, since becoming colonial secretary, had done a great deal to raise the standard of colonial appointments. It seems probable, therefore, that Head welcomed the opportunity now offered him in New Brunswick, of taking part in the great task of re-organizing the Empire on a self-governing basis.

What impressed him most on his arrival in the colony must have been the smallness of his new field of endeavour. And when he became more familiar with conditions in New Brunswick, he learned that this smallness was not only a physical characteristic, but pervaded its whole political, social, and economic outlook as well.

Geographical conditions, and the circumstances in which the colony was settled combined to make this the case. The fundamental fact to be kept in mind when considering this period of New Brunswick's history is that it was then simply an aggregation of separate communities. In no other part of British North America, not even in the united province of Canada, was the problem of sectionalism so all-important. In Canada, there were two, or at most three main sections, and these were linked together, in commerce at least, by the St. Lawrence-Great Lakes waterway. In New Brunswick, there were four or five sections, each isolated from most of the others by geographic barriers almost insuperable at that time. In many cases they differed, as well, in race, religion, and manner of settlement. The province, containing some 200,000 people, was itself a sufficiently small unit—but there was not even a provincial consciousness. Engaged in a constant struggle with nature, as were most of the settlers, their loyalty extended little beyond their immediate locality. Their chief interest in the provincial government lay in the subsidies which might be obtained from it to encourage trade or to build roads and bridges. "The members . . . talk to their constituents about the good services they render them in obtaining grants for their Counties . . .", complained the leader of the government during a debate in the Assembly in 1842, "but they never stop to enquire whether if they obtain a few thousands, the members for other Counties are not likely to be obtaining the same for their constituents? This is never dreamt of; so long as everything appears right in one corner, the other corners of the Province may grab as much as they please."⁵ True, "log-rolling" of this sort, is not altogether an unknown vice among politicians to the present day, but in the New Brunswick of the 'forties, it was carried on with a thoroughness, and a simple directness not often found in more closely knit and sophisticated societies.

A further defect resulting from this narrow outlook of most of the settlers was that the government of the province was left almost entirely in the hands of a small lawyer-merchant class. Possibly even more than in Canada, family compacts tended to develop. The Odells, father and son, held the office of provincial-secretary for sixty years, and a grandson was deputy provincial-secretary for a time, before becoming successively

⁵G. E. Fenety, *Political Notes and Observations* (Fredericton, 1867), 38.

registrar and clerk of the Executive Council, judge of the Court of Common Pleas, member of the Legislative and Executive Councils, and finally postmaster-general. Other old families, such as the Peters', the Blissés, the Streets, the Chipmans, and the Botsfords, always had representatives in the offices of the government and on the Bench. Chief Justice Chipman, for example, was said to have no less than eight nephews (most of them Botsfords), two cousins, and a brother-in-law, holding amongst themselves at least seventeen offices, ranging all the way from advocate-general and executive councillor to surrogate of Restigouche.⁶

In Canada, such conditions aroused rebellion. New Brunswick was more placid. The capital was located not at Saint John, the thriving metropolis on the coast, but at Fredericton, in the interior, along the quiet stretches of the St. John River. A story told by Head of the speedy disillusionment of a rough country member from Madawaska, coming to Fredericton for the first time to take his seat in the Assembly, shows why in a backwoods colony the government was usually left in the hands of professional politicians and merchants. "After he had been here a fortnight or 3 weeks", Head relates, "he opened his heart to my informant & said, 'Well—I don't know—sitting there in that hot room from 10 till 5 listening to those speeches—after all it a'ant the kind o' thing it was cracked up to me to be!'"⁷

Keeping this background in mind, let us try to discover what were the real issues with which responsible government was concerned in New Brunswick. First we must dismiss at once any idea that New Brunswick politicians appreciated fully the *theory* of responsible government. They did not. In fact, theories or principles of any sort had very little place in New Brunswick politics at that time. The two things that were important were, first, what effect would the proposed changes have on the "family compact" office-holding class that we have already referred to, and second, what effect would they have on the province's financial system? We shall consider each of these questions in turn.

So far as the office-holders were concerned, responsible government would affect them in that it would mean the beginning of a Cabinet system. The executive branch of the government had hitherto consisted of two sections, the Executive Council itself, on the one hand, and the various heads of departments on the other. Since the time of Russell's famous despatch to Poulett Thomson in 1839,⁸ it had generally been recognized, in theory at least, that councillors should resign when they lost the confidence of the Assembly, or, in other words, that they should hold office on a political tenure. The same was not true of the heads of departments. They continued to occupy their positions on what amounted to a life tenure. They constituted, therefore, a sort of bureaucracy almost independent of both the Executive Council and the Assembly. To establish real responsible government, to make the executive responsible to the legislature, it was not sufficient to make the Executive Council alone responsible to the Assembly. It was necessary, as well, to bring into the Council the

⁶C.O. 221, vol 8; Halifax Sun, Dec. 19, 1849.

⁷Harpton Court, Herefordshire, *Lewis Papers*: Head to G. C. Lewis, March 31, 1851.

⁸W. P. M. Kennedy, *Statutes, Treaties, and Documents of the Canadian Constitution*, ed. 2 (Oxford, 1930), 423-4: Russell to Thomson, Oct. 16, 1839.

heads of three or four of the more important departments, and to make their offices, like those of the rest of the Council, political.⁹

The question of financial reform is somewhat more complicated. It involved two distinct measures, one providing that all money votes be initiated in the Assembly only by a member of the Executive Council, the other that municipal institutions be established to levy and spend all money required for local purposes.

Executive control over money votes is now a well-understood feature of British constitutional practice. It enables the executive to balance expenditure against revenue, and to make certain that there will be neither too great a deficit nor too great a surplus. Lack of such a system in New Brunswick had already resulted in financial chaos, and a large public debt. Reformers kept demanding that something be done about it, but were opposed to the one certain remedy, executive control, so long as the executive itself was not controlled by the Assembly.¹⁰

In that they were perfectly justified. But why then was the situation not remedied as soon as responsible government was assured in 1848? The answer lies in the general state of New Brunswick politics. As we have already pointed out, "log-rollers" were more numerous than "reformers" in the House of Assembly. Executive or any other control of money votes would seriously interfere with what many politicians and their constituents regarded as one of the most attractive features of provincial politics. It was an up-hill fight, therefore, on the part of those interested in the welfare of the province as a whole, to secure the much needed change. Again and again Head had to bring it to the attention of his Council. "All responsibility", he explained to them on one occasion in a most persuasive memorandum, "implies a trust of power, but how is this under the present system with regard to the Executive Council? Can the Government originate improvements? Can they carry out measures for the benefit of the Province? How do they know that there will be a farthing in the Treasury to pay for such improvements, or to meet the charge of such measures? They cannot say 'No' when a money vote is introduced. . . . What is the sense of 'responsibility' when no one is responsible for the main condition of all progress—the correspondence of expenditure and income?"¹¹

A similar backwardness existed with regard to the question of municipal institutions. The habit of elective local government so strongly rooted in New England had not crossed the border into New Brunswick. The reason is interesting. The first British settlers in New Brunswick came largely from Maine and Massachusetts, and found homes for themselves around the mouth of the St. John River and along the Bay of Fundy. They brought with them strong traditions of local government, and began immediately to organize townships on the New England model. When the Loyalist migrations began, however, these "Old Inhabitants", as they came to be known, were speedily outnumbered. Most of the new arrivals were from New York or further south, districts where municipal institutions had not flourished as they had in New England. Moreover, the British government, not yet reading correctly the lesson of the Revolution,

⁹*Ibid.*, 496-500: Grey to Harvey, March 31, 1847.

¹⁰Fenety, *Political Notes*, 50.

¹¹*C.O. 188*, vol. 114: Head to Grey, Feb. 10, 1851, enclosure.

set about systematically to stamp out popular institutions wherever possible. The townships were abolished, and counties were formed which would enable authority to be more easily concentrated in the hands of the governor at Fredericton.¹² The evils of a similar centralization in the province of Canada, had been at last obviated in 1841, when Sydenham introduced a system of municipal institutions. But in 1848, New Brunswick was still governed by justices of the peace and other local officials appointed by the central government. Even Saint John, which had been incorporated as a city in 1785, half a century before either Toronto or Halifax, still had its mayor chosen by the lieutenant-governor-in-council, not by its citizens.

The imperial government had long since recognized that over-centralization was a mistake. Head's predecessor, Sir William Colebrooke, had repeatedly urged that taxation for local purposes be levied, collected, and spent, within the district.¹³ An elective local body, he argued, would have a sense of direct responsibility only too obviously lacking in the central government. Head reiterated this argument, and pointed out as well, that municipal institutions would foster "habits of self-reliance and self-government", and would afford a training ground not only for the provincial politician, but also for the provincial electorate.¹⁴

A mistake once made, however, is not easily corrected. An official class, consisting of the justices of the peace and others, had become entrenched in power creating a vested interest. Again, as in the case of the money votes question, a long period of education was necessary before the province as a whole could be made to understand that if responsible government was to be a success, personal and local gain would have to be subordinated to the provincial good.

Thus far we have been trying to find out exactly what responsible government did and did not mean in New Brunswick. We have learned that it did not have as clear a theoretical basis as that worked out by Canadian Reformers. It was concerned merely with certain practical reforms. It meant, in the first place, that the heads of three or four government departments should become members of the Executive Council and so be made responsible to the Assembly. It meant, secondly, that a "responsible" system of public finance should be introduced, based on the initiation of money votes by the Executive Council, and the establishment of municipal institutions to control local expenditure. We shall now go on to examine, in the last half of this paper, Head's policy as a lieutenant-governor trying to inaugurate such a system in a province not yet fully prepared to accept it.

The lieutenant-governor himself occupied a key position with regard to responsible government. Although nominal head of the provincial government, he was not the ultimate source of the power which he exercised. Both before and after the introduction of the new system, he derived his authority from the people of the colony, on the one hand, and the Colonial Office, on the other. But before, the balance had been heavily weighed on the side of the Colonial Office. The lieutenant-governor was bound to accept its decision as final whenever a conflict of opinion arose. With the coming of responsible government, matters of domestic concern

¹²J. Hannay, *History of New Brunswick* (St. John, 1909), II, 153.

¹³Cf. Fenety, *Political Notes*, 48; *C.O. 188*, vol. 110: Head to Grey, separate, July 7, 1849.

¹⁴*C.O. 188*, vol. 109: Head to Grey, June 27, 1849.

in the colony were placed under the sole jurisdiction of the colonial government. In such matters, a "responsible" governor would henceforth be obliged to act on the advice of ministers "responsible" to the House of Assembly. What was Head's position in this regard?

To answer this question, we must undertake a brief survey of his régime. Immediately on his arrival, he was confronted with the necessity of forming a new government—one based on the theory of responsibility. He could not turn to the leader of the majority party in the Assembly, for there were no organized political parties in New Brunswick. What he had to do was to choose a number of prominent men of either a moderate conservative or a reforming outlook. These he persuaded to enter a sort of coalition government. His difficulty was not to secure a compromise on questions of principle—political principles were rather vague in New Brunswick in those days. His chief difficulty was in satisfying the personal ambitions of those concerned.¹⁵

This finally accomplished, he was content for a time to act more or less as a constitutional figurehead. By 1850, however, he was forced to recognize that unless he abandoned this passive role, the reforms needed to complete responsible government could never be carried out. It was then that he entered the arena himself, and began to play what he later confessed was a "hazardous game".¹⁶

On February 7, 1850, in his speech opening the last session of the fourteenth General Assembly of the province, he expressed his personal views on the initiation of the money votes question, and on that of municipal institutions. With regard to both of these highly controversial topics he took his stand definitely on the side of reform. His immediate aim was to provoke favourable discussion during the session, and during the election which would have to take place in the course of the summer. He thus hoped to "pave the way" for ultimate legislation.¹⁷

The opposition was not slow to develop what was to become its invariable policy whenever the subject of financial reform was mentioned. It raised a cry of economy, and demanded the reduction of all salaries, in particular that of the lieutenant-governor.¹⁸

It was just when the election results were coming in, and were showing that neither Head nor the opposition had won a decisive victory, that the most serious political crisis of Head's whole administration occurred. The cause was the resignation of the chief justice.¹⁹ Seemingly insignificant, this was exactly the sort of event likely to have the most upsetting effect on New Brunswick politics.

The chief justiceship was the finest plum within the patronage of the province. Politics were, after all, rather petty. The highest political office hardly conferred upon its holder sufficient power or prestige to compensate for the uncertainty of tenure resulting from the introduction of responsible government. The chief justice, on the other hand, occupied a place of great honour in the community, and he was secure in it until his death. In 1848, when he had formed his first coalition, Head's chief diffi-

¹⁵*C.O. 188*, vol. 105: Head to Grey, April 22, 1848; May 20, 1848; Public Archives of Canada, *Head Papers*: Head to Saunders, April 29, 1848; Head to E. B. Chandler, private, May 16, 1848; Head to R. L. Hazen, private, May 16, 1848.

¹⁶*Lewis Papers*: Head to Lewis, March 31, 1851.

¹⁷*C.O. 188*, vol. 112: Head to Grey, Feb. 15, 1850.

¹⁸*Journals*, New Brunswick House of Assembly, 1850.

¹⁹*C.O. 188*, vol. 113: Head to Grey, Aug. 26, 1850, private.

culty had been to satisfy the lawyers concerned, since each was jockeying for a favourable position in the race to succeed the venerable chief justice. Now, when the winner was about to be decided, a crisis of the first magnitude was bound to arise.

The situation was further complicated by the fact that the recent election had left the government weak, but by no means hopeless.²⁰ Final victory or defeat would depend, in a non-party Assembly, on the way in which the large number of new members could be persuaded to vote after the session opened. Any split in the ranks of the ministry would necessarily have a most unfavourable effect.

Finally, after two days' debate, the Council hit upon an ingenious scheme by which they could both have their cake and eat it. They placed in Head's hands on the third day, a memorandum signed by six out of their nine members stating that, in their opinion, it was "not advisable to appoint any person to the vacant office, and that such a revision of the Judiciary should be made by the Legislature as will secure the efficient discharge of the Judicial duties by three Judges of the Supreme Court together with the Master of the Rolls".²¹ The advantage of this scheme lay in the fact that it avoided breaking up the government. And, of course, if it were found that the work was too much for the remaining judges, the vacancy could always be filled later on—say, after the coming session had decided the fate of the ministry one way or the other.

Its work finished, the Council adjourned, and those who lived at a distance departed.

At this point occurred the most puzzling event of the whole crisis. On that very evening, L. A. Wilmot, the attorney-general, wrote a letter to Head and to his absent colleagues, saying that he had changed his mind, that he no longer agreed with the majority, but that he thought the vacancy should be filled immediately.²² Why he did this is a matter for conjecture. The important thing is the dilemma in which it placed Head. To call another meeting of the Council was practically impossible. Should he consider that the other five signators of the memorandum would adhere to their former opinion in spite of Wilmot's defection? Or should he consider that Wilmot, by his letter, had created an entirely new situation to which the Council's previous advice was not applicable?

On his own responsibility, Head chose the latter alternative. This meant that he was without advice, or the possibility of obtaining it, and would have to make up his own mind what course to pursue. Personally, he was strongly opposed to tampering with the judiciary for political purposes. He knew that similar views were held by the three dissenters from the original memorandum, and that among them were the solicitor-general, and Charles Fisher, who with Wilmot represented the reform element in the Council, and who, besides being a man of absolute integrity, possessed the highest legal qualifications. Now Wilmot, the other law officer of the Crown, had also signified his agreement, leaving a bare majority opposed, and those unaware of the most recent developments. In such circumstances, Head decided to neglect the Council's former advice, and make an immediate appointment.²³ As a result, when the Council met a few months later, on the eve of the session, they were

²⁰*Ibid.*

²²*Ibid.*

²¹*C.O. 188*, vol. 113: Head to Grey, Nov. 5, 1850.

²³*Ibid.*

confronted with a *fait accompli*. One of the judges had been made chief justice, and Wilmot, himself, had accepted the seat thus vacated on the Bench of the Supreme Court.

Needless to say, the Council were indignant. Their pride as "responsible" ministers had been outraged. Their rights had been set aside in a most high-handed manner. It was their duty to protest. And protest they did—but carefully, in order to avoid any hint that they wanted to quit office. With regard to Head's action, they declared in dignified, if somewhat colourless tones, that "the Council cannot but consider it at variance with those principles of responsible Government understood to be now in force in this Province".²⁴ Fisher alone followed up his protest by resigning.

The upshot of it all was that in spite of a hasty patching, the government was in a much weakened condition when the House met a few weeks later. In fact, it would probably have succumbed immediately, had not Head himself taken charge, and supplied it with a detailed programme of reform, including once again, measures to secure executive initiation of money votes, and the establishment of municipal institutions.²⁵ As in the previous session, the opposition raised the cry of economy, and urged the reduction of salaries.²⁶ This time it had the able leadership of J. A. Ritchie, and his five colleagues in the representation of the city and county of Saint John.²⁷ When the session ended, Head was still unable to record any great progress, but at least he had the satisfaction of knowing that his moderate coalition had weathered the worst of the storm, and that the most violent and unconstitutional of the opposition's proposals had been rejected.²⁸

It was in the course of the following summer, that of 1851, that Head won his final victory. By judicious use of his patronage, he persuaded two of the dangerous Saint John members to enter the government.²⁹ One, who accepted the office of surveyor-general, had, therefore, to seek re-election. Ritchie and his remaining colleagues threw themselves into the campaign against him, and even went so far as to declare in a public letter that it was impossible for both themselves and the "traitors" to possess the confidence of the same electorate. Their manifesto missed fire completely, the surveyor-general was re-elected by a huge majority, and they were left with no alternative but to resign. "The result as far as I am concerned", remarked Head complacently, "is that I have not only reconstructed the Executive Council but the House of Assembly, without a general Election. The leaders of the opposition have done the work themselves."³⁰

Clearly, Head had by now adapted himself most successfully to political conditions in the province, and had learned to beat the provincial politicians at their own game. Until he left New Brunswick in 1854, his new coalition remained in power. It did not accomplish much in the way of actual reform, but it prepared the ground so that within a year or so municipal institutions were introduced, the initiation of money votes was

²⁴*C.O. 188*, vol. 114: Head to Grey, Jan. 10, 1851, enclosure.

²⁵*C.O. 188*, vol. 114: Head to Grey, Feb. 10, 1851, enclosure.

²⁶*Journals*, New Brunswick House of Assembly, 1851.

²⁷J. H. Gray, R. D. Wilmot, L. Tilley, W. H. Needham, C. Simonds.

²⁸*C.O. 188*, vol. 114: Head to Grey, separate and confidential, May 10, 1848.

²⁹The appointment of R. D. Wilmot as surveyor-general. Wilmot and Gray entered the Council.

³⁰*Lewis Papers*: Head to Lewis, Nov. 4, 1851.

surrendered to the executive, and responsible government began to function normally.

To leave the story at this point, however, would be to give a wrong impression of Head's place in the introduction of responsible government in New Brunswick. He was not primarily a politician, out-manoeuvring his opponents. His academic background, and his whole intellectual outlook, predisposed him to adopt a wider point of view in politics. This he combined, it is true, with a certain opportunism when expediency so dictated, but, in general, if we are to seek his real contribution to the progress of self-government in New Brunswick, we must do so in the realm of organic changes.

Head's theory of responsible government was based on the premise that the system he was pursuing in New Brunswick did not differ essentially from that being followed by Elgin in Canada.³¹ For the moment, he was obliged to retain a greater share of the government perhaps. But the object was the same—to govern through a ministry controlling the various executive departments, and being itself controlled by the Assembly. To reach this objective, he believed certain administrative reforms were necessary. He believed that heads of departments should become members of the Council, and hold office on a political tenure. He believed that money votes should be initiated by the executive, and municipal institutions should be introduced. These ideas, simple and obvious as they seem to us, were not so at the time. Their clear formulation, and their frequent reiteration with all the force and persuasiveness at his command, constitute Head's part in the education of New Brunswick so as to fit it for the practice of responsible government. And in the meantime, while this process was going on, he gave the province a strong, moderate coalition government to guide it calmly through the transition period.

Discussion. Mr. Adair suggested that the effect of the patronage system might have been to allow for the appearance of responsible government without the reality of parliamentary government. The failure of attempts to imitate the English system elsewhere has been caused by bribery of the electors. Patronage, he thought, had no necessary relation to the absence of parties, but was due more to a lack of political interest amongst the people. In the United States it required the spoils system to draw people into politics.

Mr. Lower asked Mr. Kerr if it was his impression that principles did not apply to the politics of New Brunswick.

Mr. Kerr said that the theory of responsible government was understood by almost no one in New Brunswick. Principles influenced individuals, but on the whole had little effect.

Mr. Lower asked if New Brunswick was bought into Confederation.

Mr. Kerr said in reply that her principles were submerged.

Mr. Harvey asked if the consent of the province was due to the willingness of the Loyalists to submit to the governors.

Mr. Kerr replied that many of the prominent merchants, for example in Saint John, were not Loyalists, but that the Loyalists were found more in the backwoods. The lawyers, however, were often Loyalists, and were active in politics.

³¹C.O. 188, vol. 116: Head to Grey, Feb. 28, 1852, separate.