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Article abstract

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# A Conservative Reformer in Upper Canada: Charles Fothergill, Responsible Government and the "British Party," 1824-1840*

PAUL ROMNEY

***Résumé***

*Whig treatments of the politics of early 19th century Upper Canada have tended to treat the reformers as a group unified behind the concept of "responsible government". As Graeme Patterson has pointed out, though, the concept of responsible government, which lay at the heart of much debate during the 1830s and 1840s, had a variety of meanings, ranging from the traditional Baldwinite view of ministerial responsibility for policy to an elected chamber of a sovereign legislature to the much simpler concept of effective accountability of the colonial administration to imperial authorities. The author explores a distinctive variant upon the theme of "responsible government" — that posited by the English-born reformer, Charles Fothergill. After a short, and not particularly distinguished, career as a placeman, Fothergill was dismissed in 1826 for his activities in the House of Assembly. After three years in the mainstream of reform politics, he broke with W.W. Baldwin, John Rolph and their adherents over the meaning of responsible government, and proclaimed himself a "conservative reformer." After the Rebellion, he became a tribune of the so-called "British Party" – a group of loyal, conservative, middle-class British immigrants who resented the dominance of the Family Compact. Though Fothergill shared the social conservatism which underlay the Baldwinite view of responsible government, he posited a less radical, more legalistic — and, to the author, more logical — alternative to ministerial responsibility.*

*Dans leur analyse des idées politiques du Haut Canada du début du 19ième siècle, les auteurs étudiant le mouvement Whig ont eu tendance à considérer les réformistes comme un groupe uni par le concept du "gouvernement responsable". Cependant, comme le soulignait Graeme Patterson, ce concept du gouvernement responsable qui fut au coeur de nombreux débats au cours des années 1830 et 1840, pouvait avoir plusieurs significations, variant entre la vision Baldwiniste traditionnelle d'une responsabilité ministérielle en matière de politiques, responsabilité vis-à-vis d'une chambre élue à l'intérieur d'une législature souveraine, jusqu'au concept beaucoup plus simple d'une imputabilité réelle de l'administration coloniale envers les autorités impériales. L'auteur étudie une variante distincte du thème de "gouvernement responsable", celle avancée par Charles Fothergill, réformiste d'origine britannique. Après une carrière de fonctionnaire assez courte et sans grand éclat, Fothergill fut remercier de ses services en 1826 en raison de ses activités à la* House of Assembly. *Après trois années au centre des politiques reformistes, il se détachait de W.W. Baldwin, John Rolph et leurs partisans sur le sujet du gouvernement responsable, et se déclarait un "reformeur conservateur".*

* The author is grateful to Professors Graeme Patterson and Hartwell Bowsfield, and Dr. Robert Fraser, for their valuable comments on an earlier draft, and to the Social Sciences and Humanities Research Council of Canada for support in the form of a postdoctoral fellowship.

# A CONSERVATIVE REFORMER IN UPPER CANADA

*Après la Rébellion, il devenait un leader du "British Party" soi-disant – une groupe des immigrants loyals, conservateurs et bourgeois qui était indigné du dominance du "Family Compact". Quoique Fothergill partageat le conservatisme social qui soustendait la conception Baldwiniste du gouvernement responsable, il défendait un autre type de responsabilité ministérielle qui était moins radicale, plus près du droit et, de l'avis de l'auteur, plus logique.*

The principles that divided the Upper Canadian reformers have received little attention from historians. Religious zealotry does not favour study of early, inevitably inchoate or heterodox, versions of the beloved creed. Canada's "whig" historians, imbued with the myth of predestined progress towards liberal parliamentary institutions throughout the British Empire, reduced the colony's history to a clash between a black or benighted oligarchy and the white knights of "Responsible Government." Blind to the nuances of reform thought, they tended to define "responsible government" solely in terms of the institutions that eventually succeeded authoritarian rule, neglecting variant ideas that were equally entitled to the label. This oversimplification has seeped into our historical tradition.[1]

Recently, Graeme Patterson has shown that things were less simple. The words "responsible government" meant different things to different people who adopted them as a slogan. To some, preeminently William and Robert Baldwin and their friend John Rolph, they meant ministerial responsibility for policy to the lower chamber of a sovereign legislature. To others they meant something else: other forms of executive accountability to the people, or even nothing more than the effective accountability of the colonial administration to the imperial authorities in London. They meant, in fact, almost anything which was not the arbitrary, irresponsible rule of a selfish oligarchy. Linking these differences to Upper Canada's ethnic diversity, Patterson presents the triumphant Baldwinite version of responsible government as the outgrowth of a distinctively Irish form of Whiggism, shaped by the Irish struggle against English imperialism in the late eighteenth century.[2]

The purpose of this paper is to elaborate Patterson's idea by presenting another version of the creed in comparison with that of Rolph and the Baldwins. This "English Whig" version is to be found in the speeches and writings of a leading reform spokesman of the 1820s, Charles Fothergill. Fothergill has left no neat summary of his political philosophy, and its shape must be deduced from scattered clues by a method analogous to that which palaeontologists use to deduce the form of extinct species from a few bones. Palaeontologists know that the shape and size of bones is not random but functionally determined by life-style and environment. This paper proceeds from the premise that Fothergill's surviving opinions were not random or freakish, but that they reflect the application of a generally consistent political outlook to the events and issues of Upper Canadian politics and are therefore clues to the general pattern of his thinking.

1. Carl Berger, *The Writing of Canadian History: Aspects of English-Canadian Historical Writing, 1900-1970* (Toronto, 1976), pp. 32-53, 167 and 219-20.
2. "Whiggery, Nationality, and the Upper Canadian Reform Tradition," *Canadian Historical Review [CHR]*, Vol. 56 (1975); "An Enduring Myth: Responsible Government and the Family Compact," *Journal of Canadian Studies*, Vol. 12 (1977).

Ideas are less rigid than bones, of course, but it is permissible to think of an individual's world-view as composed of mutually consistent ideas, much as a skeleton is made up of bones, and to try to infer its shape from the surviving fragments. To do so requires knowledge of the individual's background, personality and circumstances, and hence the analysis begins with a brief sketch of Fothergill the man. It also depends on knowledge of the social milieu and political culture in which he was functioning; but both topics are germane to this paper in any case: the first because the paper is an exercise in history, the second because of its comparative approach. After reconstructing Fothergill's political views, therefore, with special reference to the problems of ministerial responsibility and colonial internal sovereignty, the paper ends with a discussion of their social import.

## ii

Fothergill was born in York, England, in 1782, the son of a Quaker manufacturer of yeoman and professional antecedents.[3] He aspired to fame and fortune as a naturalist and historian, but pursued his ambition in a neurotically self-defeating way and got nowhere. After bankrupting himself by gambling and other foolish investments, he arrived in Upper Canada in 1817 and presented himself to the authorities as a respectable Englishman of ancient family (the Fothergills claimed descent from one of William the Conqueror's military companions). He settled at Smith's Creek (Port Hope), where he opened a store and took a leading part in developing the village and its back country, probably with funds provided by his father-in-law, a Leeds woollen manufacturer. By 1820 he was on the rocks again. In 1822 he received one last chance to make good when he was appointed King's Printer of Upper Canada, but he conducted his office so incompetently that by 1825 he had reached the verge of bankruptcy yet again, thoroughly alienating his official superiors en route.

Like most politically intelligent Quakers of the time, Fothergill was a Whig.[4] Social elitism and patriotism alike made him scorn the predominant "Yankee" element of the population from the start, and he displayed his loyalty in 1818 by successfully confronting Robert Gourlay at a public meeting at Cobourg, where he insinuated that Gourlay was a U.S. agent. As King's Printer he propagandized on the government's behalf in his newspaper, the *Upper Canada Gazette and Weekly Register.* However, his failure first as a land speculator and then as King's Printer imbued him with a sense of grievance against the provincial government and the dominant oligarchy. He began publishing subtly subversive material in his newspaper and in pamphlets. In 1824 he stood for election as MPP for Durham against a scion of the oligarchy, George Strange Boulton, on a populist platform designed to appeal to the "Yankees" he so despised. Boulton's return was invalidated by the House of Assembly, and Fothergill easily won the ensuing by-election in March 1825.

3. The following summary of Fothergill's career is based on Paul Romney, "A Man Out of Place: the Life of Charles Fothergill, Naturalist, Businessman, Journalist, Politician, 1782-1840", Ph.D. diss., University of Toronto, 1981.
4. University of Toronto, Thomas Fisher Rare Book Library [TFL], Fothergill Papers, Vol. 15, p. 24.

Although Fothergill's hostility to the Family Compact had long ceased to be a secret, he had not yet attacked the government, and in a hostile assembly Lieutenant-Governor Sir Peregrine Maitland might have looked for support from a member who was, after all, a government official. If he had such hopes, they were quickly dashed. The session of 1825-26 began just after Fothergill's troubles as King's Printer had reached a climax, and the embittered placeholder at once took the lead in opposing the administration. He moved for and conducted a committee of the whole on the state of the province — a "Committee on grievances" as Maitland termed it in citing it as his reason for dismissing Fothergill in January of 1826.[5]

Fothergill's "martyrdom" caused a sensation. It was the first such blow struck by the provincial establishment against an enemy since the Gourlay fuss several years earlier. Along with Fothergill's education and a gift for oratory, it lifted him at once to a leading position in the nascent parliamentary opposition. A New York newspaper spoke of him and Marshall Bidwell as the leaders of Upper Canada's "fierce democracy,"[6] William Lyon Mackenzie published several of his parliamentary speeches as special features in the *Colonial Advocate*. In 1827 the former anti-American loyalist was chosen, along with John Rolph, to undertake the famous mission to Britain on behalf of the post-Loyalist American settlers that in the end was executed by Robert Randal.[7]

Yet despite his association with the likes of Bidwell, Rolph and Mackenzie, Fothergill remained the loyal English Whig in his oratory. This basically conservative stance was in fact a major source of his importance to the reform movement. In the politically backward colony, with its unfriendly neighbour to the south, the concept of concerted "party" opposition still bore some of the treasonous overtones it had carried in Britain until the mideighteenth century. Fothergill's social stature as an educated Englishman, and his ability to justify opposition to the provincial government on impeccably "constitutional" grounds, gave the emergent reform movement a much-needed respectability.

The reformers enjoyed these benefits for only three sessions. After the general election of 1828, Fothergill was one of three leading reformers, about forming a "cabinet" on caucus of leading politicians who corresponded with William Warren Baldwin, the dean of the advanced opposition MPPs to concert their tactics for the coming session.[8] Even before the session began, though, an astute conservative journalist predicted that Fothergill would break with the more advanced reformers.[9] This forecast was soon borne out, for the radicalization of the reform movement, as manifest in the pursuit of British-style ministerial responsibility, turned Fothergill against his old

5. Great Britain. Public Record Office (London), CO42, Colonial Office, Canada: Original Correspondence 1700-1922, Vol. 377, pp. 98-9.
6. Quoted in *Colonial Advocate* (Toronto), 23 February 1826.
7. Romney, "Man Out of Place," pp. 419-24.
8. Metropolitan Toronto Central Library [MTCL], William Warren Baldwin Papers, Fothergill to Baldwin, 26 August 1828; Marshall Bidwell to Baldwin, 8 September 1828; John Rolph to Baldwin, 9 October 1828.
9. *Gore Gazette* (Ancaster), 13 December 1828; ibid., 16 March 1829.

colleagues. The breach was made public by his blistering attack on the reformers in general, and Mackenzie in particular, in an ultra-patriotic speech which the same journalist hailed rather hyperbolically as the best specimen of parliamentary oratory ever heard in the colony.[10] Fothergill was soon corresponding with the new lieutenant-governor, Sir John Colborne, and the attorney-general, John Beverley Robinson, in a vain effort to procure government funds for a "constitutional" (that is, proadministration) newspaper he proposed to found.

## iii

The Whiggism of Fothergill the self-appointed government propagandist was quite different in tone from that of Fothergill the tribune of an aggrieved people. The former extolled the virtues of "harmony" between Crown and Commons, and between the two houses of the legislature, in terms evocative of Sir William Blackstone's famous paean to the British constitution.[11] In likening relations between a prince and his people to those between father and son, and in generalizing that "nearly all the disorders of free Governments result from a want of sympathy and direct communication between the people and their rulers,"[12] he premised a basic separation between "ruler" and "people" quite antithetical to any notion of popular sovereignty. While this paternalistic philosophy of government offered scope for loyal remonstration against particular acts of the executive, it left no room for consistent "party" opposition.

The tribune, on the other hand, tended to invoke other authorities than Blackstone. He hailed William Pitt, first earl of Chatham ("the greatest Statesman England ever produced") and Charles James Fox ("the greatest champion of *Whiggism* that England ever had") as symbols of resistance to corrupt oligarchy and executive arrogance respectively.[13] In a rhetorical pinch he would even invoke the rebel pantheon of Hampden, Sydney and Russell, recalling that the British constitution of the Whig ascendancy had been established by revolution.[14]

Yet even when justifying his own rebellion in the days just before his dismissal, Fothergill used language strongly reminiscent of Blackstone. Defending himself in the Assembly against the charge of disloyalty, he argued that, since the British constitution was composed equally of "the monarchical, aristocratical and democratical principles, held in due and just equilibrio, no man *could* be said to be *loyal* who gave an *undue*

10. Ibid., 21 February and 16 March 1829.
11. *Upper Canada Gazette and Weekly Register* (Toronto) [*UCGWR*], Vol. II, pp. 85-7 and 120; ibid., Vol. III, p. 29. Note Fothergill's use of the exclamatory "Esto Perpetua!" in imitation of Blackstone at the close of book 1, cap. 1 of the *Commentaries on the Laws of England* (4 vols., Oxford, 1765-9). See also *The Sovereignty of the Law: Selections from Blackstone's Commentaries on the Laws of England*, ed. Gareth Jones (Toronto, 1973), pp. xxxiii and xxxviii.
12. *UCGWR*, Vol. II, pp. 85-7 (this number is not on the Canadian Library Association microfilm, but there is a copy at MTCL).
13. Ibid., Vol. I, pp. 196 and 206; ibid., Vol. V, pp. 17-8 (copy at MTCL).
14. *Colonial Advocate*, 8 February 1827. See also Fothergill's prospectus of the *Palladium of British America* (Toronto, 1837-9), reprinted in the early numbers.

preference and support to any one of its constituent parts;" but he added that "he was there as a representative of the people, and it was *his* duty to be loyal to them."[15] These remarks may seem to be inconsistent, in that the second appears to proclaim just that "undue preference" which the first condemns. Together, though, they imply the sort of mechanical analogy Blackstone used when he said

> every branch of our civil polity supports and is supported, regulates and is regulated, by the rest.... Like three distinct powers in mechanics, they jointly impel the machine of government in a direction different from what either, acting by themselves [*sic*], would have done; but at the same time in a direction partaking of each, and formed out of all.[16]

If Fothergill was inconsistent, then, his inconsistency was inherent in Whiggism itself as expounded by the chief exponent of eighteenth-century English Whig constitutional theory.

Of course, had Fothergill invoked the Whig doctrine of the "mixed" constitution merely to justify a populist opposition to the government, it would provide no grounds for calling him a conservative. But the same doctrine formed the ideological basis of his undeniably conservative resistance to the introduction in Upper Canada of modern, British-style ministerial responsibility. Fothergill had declared his hostility to this innovation at least as early as February 1828, in a parliamentary debate on the prerogative revenues.[17] No report survives of that debate, however, and the earliest detailed record of his views dates from January of 1830 when, for the second year running, the parliamentary opposition answered the speech from the throne by moving a resolution of no confidence in the Crown's local advisers. Fothergill had not attended the previous year's debate, but in 1830 he was one of the few MPPs who rose to contest the motion.

The no-confidence motions of 1829 and 1830 were expressions of a policy to which the advanced Whigs of Upper Canada had formally committed themselves after the general election of 1828. The furor surrounding the dismissal of Puisne Justice John Walpole Willis had stimulated the judge's supporters to launch a petition to the imperial government. It asked, among other things,

> that a legislative act be made in the Provincial Parliament to facilitate the mode in which the present constitutional responsibility of the advisers of the local government may be carried practically into effect; not only by the removal of those advisers from office, when they lose the confidence of the people, but also by impeachment for the heavier offences chargeable against them.[18]

Dr. Baldwin, the dean of the advanced Whigs, elaborated this request in a letter to the

15. *Colonial Advocate*, 15 December 1825.
16. Blackstone, *Commentaries*, Book I, p. 151.
17. Romney, "Man Out of Place," pp. 422-7; see also Archives of Ontario [AO], Macaulay Papers, R. Stanton to J. Macaulay, 16 August 1828.
18. *Canadian Freeman* (Toronto), 11 July 1828.

British prime minister, Wellington. Instead of being ruled by bureaucrats under the direction of a governor who was accountable only to the British government, Upper Canada should be governed by "a Provincial Ministry ... responsible to the Provincial Parliament, and removable from office by His Majesty's Representative at his pleasure and especially when they lose the confidence of the people as expressed by the voice of their Representatives in the Assembly."[19] This was a demand for the introduction of the most modern British constitutional practice, whereby the King had normally to choose all his ministers from one or the other of two major party-political clusters. The modern practice was well known to Upper Canadian politicians, and especially to Baldwin and his circle. When John Rolph wrote to Baldwin about the proposed caucus to concert policy before the parliamentary session of 1829, he stated his intention of coming to York to do his duty "as one of his Majesty's faithful opposition." The phrase was one which had been coined in Britain only two years earlier to express the new political practice there, but it had quickly become current.[20]

The demand to introduce this system into Upper Canada had three major constitutional implications. First, it meant that the provincial legislature must possess the attribute of sovereignty. Ministers are delegate wielders of sovereign power, and cannot logically be accountable to a legislature which is not sovereign. Second, such sovereignty must pertain above all to the lower chamber, since it was that chamber which was to decide on the acceptability of the ministry. Finally, the lower chamber was to be predominant, not merely within the legislature, but within the government as a whole. This followed from the demand that ministers were to be dismissible, not merely for constitutional malfeasance or moral turpitude, but also when they "lost the confidence of the people." This put the lower house, which was to express the will of the people, in charge of government policy.

There were several reasons why this constitutional innovation might have appealed to Fothergill. For one thing, it was one which his hero, Charles James Fox, had led the struggle to introduce in the years 1782-84.[21] Secondly, as John Rolph stressed in moving the no-confidence resolution of 1830, several recent administrative and political appointments had clearly exposed as futile the hopes of the more conservative reformers that the advent of Lieutenant-Governor Sir John Colborne in 1828 signalled a new course in provincial politics.[22] Furthermore, Fothergill's discontent with the colony's lack of

19. Quoted in Aileen Dunham, *Political Unrest in Upper Canada, 1815-1836* (1927, reprinted Toronto, 1963), p. 157.

20. Rolph to Baldwin, 9 October 1828, *supra*, n. 8; Archibald S. Foord, *His Majesty's Opposition, 1714-1830* (Oxford, 1964), p. 1.

21. Ibid., ch. 8.

22. John Beverley Robinson had become chief justice and joined both the Executive and the Legislative Council; his brother, Peter, already a member of the Executive Council, had also joined the Legislative Council. Henry John Boulton had become Attorney General, Christopher Hagerman Solicitor General, and James B. Macaulay a puisne judge of the Court of King's Bench; F.H. Armstrong, *Handbook of Upper Canadian Chronology and Territorial Legislation* (London, Ont., 1967), pp. 13-14, 17, 24, 34-5, and 109-10.

sovereignty in internal affairs and the constitutional irresponsibility of its administration was no secret.

Fothergill's resentment of Upper Canada's lack of internal sovereignty had been clearly shown in 1826, when the imperial government had tried to dictate the terms of the provincial enactment it would accept on the Alien Question. Fothergill believed that this issue, involving as it did the definition of British nationality, was one that should be settled at Westminster, but once Parliament had empowered the local legislature to deal with it, he saw the imperial government's attempt to impose its views on that body as a gross abuse of their privileges — one which exposed provincial political institutions as a mere travesty of the British constitution, rather than the transcript promised at the colony's creation by Lieutenant-Governor Simcoe. "Would an English parliament," Fothergill asked, "submit to the dictation of a minister, in the form of written *instructions*, as to the nature and form of the enactments they should make? If such a time should arrive, English independence would cease to be the boast of millions, and the admiration of the world."[23]

A second speech, made a few weeks later, exposed Fothergill's discontent at the irresponsibility of the provincial administration. "In England," he complained,

> it is a maxim that the king *can do no wrong*, because his ministers are responsible. I ask, can the governor do no wrong? We all know that he can — that *he is* responsible — or made so — for the bad advice and bad management of others; and that those who are really guilty, lurk in a sort of mystical darkness behind the scenes — guessed at, and severely *felt*, but not seen, by our public.[24]

Though he did not refer to it specifically, it is obvious that Fothergill was thinking of the British government's rejection in 1814 of an attempt by the Lower Canadian House of Assembly to impeach the chief justice of the province for advising the governor to act in abuse of the royal prerogative. The imperial authorities had decided that the governor himself was solely responsible for his actions, and responsible solely to the British government. His advisers could not be responsible for those actions, either to the British public or to their own.[25] This decision denied the colony what was in Fothergill's view one of the basic liberties of British subjects. In this respect too, Upper Canada's constitution was but a "miserable epitome" of the British.[26]

The ministerial responsibility advocated by Rolph and the Baldwins would have remedied both of these defects in the provincial constitution. It would by definition have met Fothergill's objection to the unaccountability of the lieutenant-governor's advisers, and it would also have barred the imperial authorities from the sort of interference in local politics that had incensed him with respect to the Naturalization Bill of 1827. Yet despite all the reasons — constitutional, ideological and political — that might have

23. *Colonial Advocate*, 8 February 1827.
24. Ibid., 27 March 1827.
25. Helen Taft Manning, *The Revolt of French Canada, 1800-1835* (Toronto, 1962), p. 107.
26. *Colonial Advocate*, 27 March 1827.

influenced him to support the proposed system, Fothergill opposed it. Replying to Rolph's no-confidence motion in January 1830, he advocated another mode of attacking the Crown's advisers which, though much in use in the seventeenth century, and still current as a means of pursuing them for serious crimes and misdemeanours, had become obsolete as a means of attempting to control policy within a few decades of the Glorious Revolution of 1688: impeachment. He denounced the motion for its vagueness in

> bringing in the whole of the Executive Council, some of whom he believed to be honest and well disposed towards this country. He would use no vague language in an address of this kind.... If there were cause of complaint against any member of the Executive Council — any serious charges, they should be made manifest, and measures should be taken to impeach them. It had been said that the constitution of this Province was an exact image and transcript of the British constitution. If so, he did think instead of passing a resolution of this kind, the question of impeachment ought first to be tried....[27]

Rolph stated four main arguments in reply. First, the procedure of impeachment entailed a defendant's prosecution by the lower chamber before a tribunal which consisted of the upper, but to contemplate such proceedings in Upper Canada was absurd. While the British House of Lords was relatively independent of executive influence, the Legislative Council of Upper Canada was dominated by the same clique that ran the government. To show how hopeless it was to expect the council to act independently in an impeachment, Rolph cited two recent cases where executive pressure had induced councillors to alter their intention of voting against the government.[28]

He next raised the prospect that the right of the House of Assembly to impeach an official might be challenged before the Court of King's Bench, just as Allan MacNab had recently contested the claim of privilege whereby he had been imprisoned during the previous session for contempt.[29] This danger was no chimera. It was officially held that colonial legislatures did not enjoy all the privileges that pertained by immemorial usage to the British Parliament, but only those which were essential to the performance of their constitutional functions. The Legislative Council, therefore, lacked the judicial powers that invested the House of Lords with jurisdiction in cases of impeachment.[30]

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27. Ibid., 2 January 1830.
28. John Charles Dent, *The Story of the Upper Canadian Rebellion* (2 vols., Toronto, 1885), Vol. I, pp. 215-9. Both councillors, William Dummer Powell and James Baby, also belonged at the time to the Executive Council, a fact which underlines the difficulty entailed in assigning responsibility for government policy to anyone but the lieutenant governor.
29. Upper Canada, House of Assembly, *Journals of the House of Assembly* [JHA], 1830, p. 1; Marion MacRae, *MacNab of Dundurn* (Toronto, 1971), pp. 31-3; Peter A. Baskerville, "MacNab, Sir Allan Napier," in *Dictionary of Canadian Biography* [*DCB*], Vol. IX (Toronto, 1976), p. 520.
30. *Documents Relating to the Constitutional History of Canada, 1791-1818*, ed. Arthur G. Doughty and Duncan A. McArthur (Ottawa, 1914), pp. 480-4 and 504-36 *passim*.

Rolph then pointed out that it was his own proposal, not impeachment, which formed the current practice in England. "Sufficient respect is there paid to public opinion," he remarked, "to make those changes which are loudly called for by the people. Honorable men there do not desire to remain in power longer than they enjoy the confidence of the governed." This procedure was better than impeachment, because it was more flexible. Impeachment could be used only in cases of moral turpitude or constitutional malfeasance; but, asked Rolph,

> does the honble. member suppose that ministers can be removed only for causes within the range of an impeachment? It may be as necessary to get rid of *weak* or *inefficient* ministers, as of corrupt ones. But how could we impeach them for want of brains? or want of judgment? or for erroneous opinions, sincerely entertained? We could not — dismissal is the only remedy.[31]

Finally, Rolph dismissed Fothergill's objection to lumping honourable executive councillors with dishonourable ones. He argued simply that it was impossible to distinguish between them. "What particular persons might possibly be exempted from the general censure, no man out of Cabinet can tell; they have all clung together — and they must fall together."[32]

Fothergill's reply to these arguments may smack of an antiquated attachment to the mixed constitution of eighteenth-century Britain as the last word in political wisdom. As recorded in the press, it was confined to that part of Rolph's remarks which derided the idea of impeaching members of the executive before an upper chamber which they dominated. His answer was to make impeachment effective by altering the nature of that chamber: "If measures were adopted to increase the numbers of the Legislative Council, by putting men in there, who would carry with them the feelings of the great body of the people, men who should have independence enough to assert our rights, he believed it would make that house independent."[33] The same concern is evident in a curious scheme he drew up about this time, which was aimed at solving both this and another of his preoccupations, the colony's lack of a seaport. It envisaged the British government building a ship canal to link the Ottawa River with tide-water and selling shares in it to "afford a secure investment for Capital, which is now so totally wanting, and thereby secure to the Provinces an Aristocracy independent of Trade or Agriculture."[34]

Since the British constitution was the institutional expression of a unique and long-maturing social formation, to talk as though the aristocracy incorporated in the House of Lords could be duplicated under Upper Canada's very different social conditions may look like clear proof of devotion to old and irrelevant doctrines. But to dismiss Fothergill as a political fossil would be unhistorical. For one thing, the responsible government petition of 1828 had demanded impeachment in the same breath as popular control of policy, and the very first prayer of the petition sought a reform of the Legislative Council

31. *Colonial Advocate*, 21 January 1830.
32. Ibid.
33. Ibid.
34. Fothergill Papers, Vol.24, pp. 37-55 (quotation, p. 52).

in terms quite compatible with Fothergill's views on the constitution of that body. Fothergill's advocacy of impeachment as such, then, is not enough to brand him as old-fashioned in the political context of 1830.[35]

Of course, the use of impeachment by the lower house as a way of attempting to control policy was undoubtedly obsolete, but this is not what Fothergill had in mind. At the time of this debate, Upper Canada had passed through four years of unprecedented turmoil. The Alien Question, which affected the civil rights of a very large part of the colony's inhabitants, was one of the most important legislative issues to have confronted the provincial Parliament in nearly two centuries. The bill which the government first brought in to deal with it had been couched in terms which seemed to conceal a design to deceive the legislature as to the extent of the remedy offered. The resultant furor had provoked a series of aggressive acts against critics of the government, some of which amounted to serious abuses of their civil rights. To the colony's reformers, these events were merely highlights in a pattern of oppressive and inequitable government stretching back more than twenty years. The dismissal of Judge Willis, who had seemed bent on righting these wrongs where he could, had only crowned the edifice of infamy. The criticism aimed at the administration in the no-confidence debates of 1829 and 1830 was not, therefore, confined to the merits of government policy; the House of Assembly resounded with complaints, not only of follies, but of crimes. It was no less reasonable for Fothergill to maintain that the opposition should pursue their enemies individually for the crimes alleged against each, than it was for Rolph to propose that they should try to dispose of them en bloc by gaining control over public appointments. The success of either means must depend on the consent of the imperial authorities. Was that consent more likely to be extended to a more or a less radical constitutional reform?

Fothergill did not differ with the advanced Whigs, then, either over the merit of impeachment proceedings as such or over the limits of their application. Their quarrel was over the merit of popular control of policy. But Fothergill's reluctance to apply in Upper Canada the new conception of ministerial responsibility that Fox had urged in Britain during the 1780s did not flow from a doctrinaire attachment to obsolete political forms; it flowed, rather, from his social conservatism and imperialism. In Britain, ministerial responsibility for policy in the House of Commons subordinated the executive to a body chosen according to a highly restricted franchise, the exercise of which was subject to strong ruling-class and executive influence. To allow the much less exclusive House of Assembly to dictate policy in Upper Canada would mean introducing a system little short of democracy, with all the dangers that system seemed to pose to the imperial tie. Despite his discontent at the irresponsibility of the Upper Canadian executive to the people, therefore, Fothergill could not grant the assembly the power to compel ministers to resign for what Rolph called "erroneous opinions sincerely entertained," or even for "want of brains." The most he could accept was a system that permitted their removal for moral turpitude or constitutional malfeasance. In the realm of

35. *Canadian Freeman*, 11 July 1828, and quotation *supra*, p. 10. In 1845, Robert Baldwin still saw impeachment as an essential adjunct to ministerial responsibility: *Debates of the Legislative Assembly of Upper Canada*, ed. Elizabeth Nish (Montreal, 1970-), Vol. IV, pp. 1002-3.

policy, "responsibility" must give way to what one might call "responsiveness": a heightened degree of sensitivity to the wishes of the people. Fothergill maintained that this would result from reforming the Legislative Council "by putting men in there, who would carry with them the feelings of the great body of the people."

Fothergill was far from thinking that such men could form a replica of that English aristocracy which, he said, "always preserved an equal balance between the King and the People, and took care that the latter were not trespassed on by the crown."[36] Even without consulting his own experience in the colony, he was well aware that no such aristocracy could be created there by fiat. He was familiar with his hero Fox's discussion of the question during the debates in Parliament on the Constitutional Act and had printed excerpts from it in his newspaper. Fox had propounded the doctrine that "Property was the true foundation of aristocracy," and had recommended that the Legislative Council be elected for life according to a suitably high property qualification for both candidates and electors.[37] Fothergill advocated Fox's proposal as the best way to eradicate executive influence over the Legislative Council in the Assembly in March of 1830,[38] and the ship canal scheme which he jotted down at that time also shows the influence of Fox's doctrine.

Even Fothergill's support for the abolition of primogeniture in 1825 can be fitted into this pattern of thinking. In the Assembly, he harped on one reservation which prevented him from supporting abolition wholeheartedly: his uncertainty "whether or not this law coming into operation, would not immediately strike at the root of aristocracy, that he anxiously wished to exist, with a view to the establishment of a House of Peers in this Province."[39] After weighing the pros and cons, he voiced his hope

> to see another kind of aristocracy rising up in this country founded upon an increase of wealth and the progress of intelligence. Tacitus, in his annals, lays it down as the most perfect system of government, where the aristocratical and democratical parts are equal; and this system seems to be brought to great perfection in England; and the consequence is, that it is, perhaps, the most happy country of the world. He wished, therefore, first to consider how he could give assent to the bill, which must influence that great system, and he determined in favour of the bill, placing his dependence on the march and progress of the human mind in general intelligence, and in increased education, in order to make up for this innovation.[40]

To support the abolition of primogeniture was incompatible with devotion to aristocracy, and Fothergill was evidently aware of the problem. His inconsistency did not

36. *Upper Canada Herald* (Kingston), 29 November 1825.
37. *UCGWR*, Vol. I, pp. 206-7; *The Speeches of the Right Honourable Charles James Fox in the House of Commons* (6 vols., London, 1815), Vol. IV, p. 226.
38. *Speech of John Willson ... on Mr. Fothergill's Motion for sending Three Commissioners to England to procure a 'Redress of Grievances.' — [From the Courier, March 13, 1830]* (broadside, TFL).
39. *Upper Canada Herald*, 29 November 1825.
40. *Canadian Freeman*, 1 December 1825.

stem from intellectual muddle but from his grasp of the colony's social realities. Its political realities may have influenced him too: although his social views were conservative, he owed his seat to the support of egalitarian, "Yankee" farmers.[41] Luckily for him, Upper Canadian society was about to change in a way which would make this particular political conundrum less burdensome. The cause would not be "the march and progress of the human mind" within the colony, but the influx of intelligent and educated minds from the mother country.

## iv

We noted above that a necessary concomitant of any form of ministerial responsibility in Upper Canada was colonial legislative authority in internal affairs. Eventually this was achieved by the imperial government's decision to abstain from interfering in those affairs, but a solution of such ingenious simplicity was not easily reached. Upper Canadians of the 1820s had to deal with an imperial suzerain which claimed the right to intervene in colonial affairs and had frequently sought to exercise that right, throughout centuries of imperial history, both in Ireland and America. Proponents of ministerial responsibility in the colonies had, therefore, to give serious thought to the arrangements whereby imperial abstention from such interference could be guaranteed.

This problem of internal legislative sovereignty posed a theoretical difficulty to Fothergill, an English Whig, which did not trouble the Baldwinites, as proponents of Irish Whig views. The latter held that colonial legislatures were internally sovereign by virtue of common law and that the Constitutional Act of 1791, by which Upper Canada had been created, was in essence a treaty between the mother country and the colonists which could be altered only by common consent. This opinion contradicted Blackstone, who held that common law did not operate in the colonies and that Parliament could legislate for them without reserve, even in constitutional matters.[42] Unlike the Baldwinites, Fothergill felt the force of Blackstone's teaching, and to him the introduction of ministerial responsibility required a change in the legal relationship of the colony to the parent state.

Fothergill's distress over the legislature's lack of sovereignty is evident from his resentment of imperial interference over the Naturalization Bill of 1826-27. It emerges, too, in an observation of 1830 that "when there is a higher Legislature over a lesser one, the liberty of the latter is seeming, not real."[43] But how could Upper Canada acquire

41. The poll book for the Durham election of 1824, which ended in a tie, shows that Fothergill polled most strongly in the predominantly "Yankee" townships of Hope and Darlington: AO, RG21, Municipal Records, Newcastle District. See also Romney, 'Man Out of Place,' pp. 299-300 and 325 n. 51.

42. This was the doctrinal basis of the 1814 decision on ministerial responsibility mentioned *supra*. It has been argued that Baldwin himself adhered to the Blackstonian position on local sovereignty; but this is questionable. See Patterson, "Whiggery," p. 41, and Romney, "Man Out of Place," pp. 460-6.

43. *Supra*, n. 38.

legislative sovereignty? No discussion of this topic survives, but it is possible to reconstruct Fothergill's views from a single phrase in a parliamentary resolution, one of a series Fothergill moved in 1827 in favour of the annexation of Montreal to Upper Canada. This resolution recommended, as an acceptable alternative, a legislative union, either of all the British North American colonies or of the two Canadas alone, as "a vice royalty, with a fac simile of ... the English constitution."[44]

The reference to viceroyalty reminds one of that much discussed document, the "Letter on Responsible Government," which was published in the *Upper Canada Herald* in October of 1829. The "Letter" consisted of a summary and discussion of views alleged to have been advanced in a political tract over the pen-name "Canadiensis," a tract which the *Herald*'s anonymous correspondent ascribed to the circle of Judge Robert Thorpe (that is, to the group that had criticized the provincial constitution on Irish Whig grounds more than twenty years earlier). Canadiensis made much of the distinction between a viceroyalty, such as Ireland before the Union of 1801, and a vicegerency, such as Upper Canada. A viceroy represented the person of an absent monarch; a vicegerent, such as a colonial governor, represented "not the *person* of the King, but the Imperial Government of the Empire, in the Colony."[45]

The *Herald*'s summary of the tract does not state the consequences of this distinction, but the fact that Canadiensis chose to contrast Upper Canada's status with that of Ireland before the Act of Union is revealing. Writing before the Irish constitutional reform of 1782, Blackstone had asserted that Ireland was subordinate to the imperial Parliament, just like any other colony. He argued from the right of conquest, backed up by the Declaratory Act of 1719 whereby Parliament had explicitly claimed such supremacy.[46] Irish patriots resented this claim, and it is this Irish perspective that explains the distinction made by Canadiensis between viceroyalty and vicegerency. Canadiensis argued that

> self government being the first principle of every free Constitution, nothing short of *absolute necessity* can be a sufficient cause for a violation of it. As therefore the people of U.C. are represented in the Provincial, not in the Imperial Parliament, it follows that in the former must be vested *the powers of Government generally*, and in the latter only those *special powers of Government* which for the *preservation* of the *safety* and *integrity* of the Empire *at large*, it is absolutely necessary to have lodged in *one body only* for the whole Empire.[47]

He seems to have thought that it was only by virtue of their status as vicegerencies that the colonies were subject to imperial legislative supremacy even in the restricted sphere that

44. *JHA*, 1826-7, p. 93 (reprinted in *Colonial Advocate*, 1 March 1827).

45. K.D. McRae, "An Upper Canada Letter of 1829 on Responsible Government," *CHR*, Vol. 31 (1950), pp. 292 and 294-5; Patterson, "Whiggery," pp. 26-32.

46. Blackstone, *Commentaries*, Book I, pp. 100-2; *The Commentaries on the Laws of England of Sir William Blackstone, Knt.*, ed. Robert Malcolm Kerr, 4th edn. (4 vols., London, 1876), Vol. I, pp. 75-7.

47. McRae, "Upper Canada Letter," p. 293.

he exempted from his basic principle of colonial legislative supremacy. The corollary of this view is that a viceroyalty, being subject not to the imperial government but to the monarch alone, would not suffer even this partial loss of sovereignty.

In 1782 the British Parliament renounced its claim to legislate for Ireland. Thereafter the two countries were formally linked only by their common monarch and the power of veto the British government retained over Irish legislation. This veto was not a convenient sanction, because of the political risk entailed in applying it to legislation strongly supported by Irish public opinion, and the British ministers had intended to balance the concession of legislative sovereignty by a treaty, ratified by both legislatures, which bound the Irish to contribute to imperial defence and maintain the old colonial system. From a Blackstonian perspective, such a treaty would have given Britain the sort of limited imperial suzerainty over the viceroyalty of Ireland that Canadiensis thought was all she possessed even over vicegerencies. The British government found too late that Irish public opinion would not tolerate such a treaty, and Ireland therefore achieved a formal status much like that which, in the mind of Canadiensis, distinguished a viceroyalty from a vicegerency.[48]

It is unlikely that Fothergill, an ardent imperialist, wished Upper Canada to have the formal independence that Ireland had enjoyed before the Union of 1801. Yet he probably did want it to possess the sort of internal autonomy that Canadiensis and the Baldwins, as Irish Whigs, thought it already enjoyed as a vicegerency. Such a degree of sovereignty was implicit in his demand for "a fac simile of the English constitution," an essential ingredient of which was ministerial responsibility. Fothergill's desire for Canada to be a viceroyalty with such a constitution probably expresses the reform he thought necessary to ensure the colony's local autonomy.

Of course, to a strict Blackstonian even viceroyalty did not entail sovereignty unless formal steps had been taken to transfer sovereignty to the colony, but it is likely that Fothergill intended to do this by a treaty between parent state and colony like that which the British government had sought with Ireland in 1782. The Irish patriots had been puzzled how to secure their country's sovereignty, fearing that, because of the doctrine that no parliament could bind its successors, simple repeal of the Declaratory Act of 1719 was no safeguard. Not wishing to conclude a treaty with Britain, they opted in the end for a formal Act of Renunciation by the Imperial Parliament (which, logically speaking, was no solution at all).[49] A treaty, however, would secure the rights of both the colony and the imperial suzerain beyond cavil.

This concept of sovereignty divided between metropolis and colony flowed naturally from the political tradition that claimed Fothergill's allegiance. It had developed out of efforts to conciliate the rebellious American colonies in 1774 and 1778. Its chief advocates then had been Chatham and his political disciple Shelburne, and it was

48. Vincent Todd Harlow, *The Founding of the Second British Empire, 1763-1793* (2 vols., London, 1952-64), Vol. I, pp. 527-57.

49. Ibid., p. 542; R.B. McDowell, *Irish Public Opinion, 1750-1800* (London, 1944), p. 75.

Shelburne who, with Charles James Fox, tried to apply it to Ireland in 1782.[50] The authority imparted to the concept by the names of Chatham and Fox, Fothergill's special heroes, was reinforced by a personal tie. Late in 1774, Benjamin Franklin had been in close touch with Chatham, Shelburne (a personal friend) and other British statesmen in an effort to achieve reconciliation between Britain and the colonies, several of which he represented in London. One of Franklin's closest associates at that time was his old friend and fellow-Quaker, Charles Fothergill's revered great-uncle Dr. John Fothergill, a celebrated physician, naturalist and philanthropist. Dr. Fothergill was physician to the colonial secretary, Lord Dartmouth. He joined Franklin as Dartmouth's personal representative to hammer out a scheme of reconciliation based on the very principles of colonial local sovereignty and limited imperial suzerainty that were later applied to Ireland, but the scheme was unacceptable to the British government.[51] This family link, added to the ideological tie with Chatham, Shelburne and Fox, strengthens the likelihood that, half a century later, Charles Fothergill wished to regulate relations between Britain and Canada in a similar fashion.

Canadiensis and the Baldwins held that the Constitutional Act of 1791 was in effect a treaty between the people of Upper Canada and the imperial government and could be altered only with the colonists' consent.[52] This conclusion followed from their belief that colonial legislatures were sovereign. The constitutional views of Fothergill, an English Whig, reflected the Blackstonian doctrine that colonial legislatures were not sovereign and that the Constitutional Act was a statute like any other, subject to unlimited revision by Parliament. Yet even while dissenting from the theories of the Irish Whigs, he seems to have thought that Upper Canada's legislature should be sovereign to precisely the degree that the Baldwinites maintained it already was so. This was both a corollary and an analogy of his position on ministerial responsibility: a corollary because ministerial responsibility presupposed legislative sovereignty, and an analogy because Fothergill thought that Upper Canada should possess ministerial responsibility even while he denied that she enjoyed it by constitutional right.

It was not these theoretical differences that stopped Fothergill from working with the Baldwinites to achieve local autonomy and liberal political institutions; after all, he would have accepted the basic premise of Canadiensis, that self-government was "the first principle of every free Constitution."[53] They parted company because the Baldwinites insisted on a mode of ministerial responsibility which Fothergill found obnoxious. It was no less compatible with his theory of colonial government than the one he favoured, but he disliked its egalitarian tendency, which he feared would lead to independence.

50. Harlow, *Founding of the Second British Empire*, Vol. I, pp. 493-501.
51. Ibid., pp. 187n, 191 and ch. 6 *passim*; Carl Van Doren, *Benjamin Franklin* (New York, 1938), pp. 162, 384 and ch. 18 *passim*; J. Hingston Fox, *Dr. John Fothergill and His Friends* (London, 1917), ch. 26 *passim*.
52. Romney, "Man Out of Place," pp. 461-6; McRae, "Upper Canada Letter," p. 294.
53. McRae, "Upper Canada Letter," p. 293.

V

After losing his seat in 1830,[54] Fothergill continued to stick to his conservative principles; yet he always claimed to be a reformer. "All human institutions, however great and noble ... are liable to abuse and decay," he declared in a vain campaign for re-election in 1834. "Hence it is that every good man, and honest politician must, to a certain degree, be a REFORMER."[55] Three years later, on the eve of the rebellions, he made a similar pitch for conservative reform in the prospectus of a newspaper he was about to launch. The opinions he professed were "strictly *Conservative*," he declared, but they were far from incompatible with "*wholesome* reform," since all human institutions were perishable and must periodically be restored. In this prospectus he repeated his belief that loyalty was owed to the constitution as a whole, not to any one part of it to the exclusion of the rest, and again proclaimed his allegiance to the principles of the Glorious Revolution and the Tacitean ideal of mixed government.[56]

Fothergill had puffed his journal as a foe to sedition, but the rebellions changed the terms of Upper Canadian politics, and the *Palladium of British America* became instead the standard-bearer of loyal opposition. Letters and editorials denouncing the oligarchy appeared in every number, and in August 1838 Fothergill announced the impending publication of "a large, Lithographic, Genealogical MAP, *of the* FAMILY COMPACT, *of Upper Canada*," showing the province as a girdled tree, from the trunk of which issued "the different branches of this ancient and numerous family, exhibited according to their various degrees of consanguinity, together with their various official appointments, salaries, &c. with their ramifications...."[57] This document, which was to be dedicated to Lord Durham, probably never appeared, but its conception is strikingly like Mackenzie's famous "mapping" of the Family Compact in prose five years earlier.[58]

The tenor of the *Palladium* provoked some commentators to identify Fothergill as the leader of what they called "the British party."[59] More a social tendency than a political party (and definitely not a party led by Fothergill), it consisted of British immigrants who had loyally resisted both Mackenzieite republicanism and Baldwinite ministerial responsibility in 1836 and 1837 but still disliked what they saw as the Family Compact's monopoly of office. They included British-trained lawyers who resented the law that barred them from practising in the colony until they had been articled there. These patriotic malcontents had been increasing in number ever since the end of the American war. Their sudden, though muffled, eruption into the political arena in the mid-1830s reflected their recent influx in numbers large enough to make them a political

54. Romney, "Man Out of Place," pp. 517-21 and 568-9.
55. *Patriot* (Toronto), 12 September 1834.
56. It was reprinted in the early numbers of the *Palladium* but came out before the rebellions: see the original in Public Archives of Canada [PAC], RG5 C1, Canada West, Provincial Secretary's Correspondence, Vol. 8, p. 4672.
57. *Palladium*, 3 August 1838 (extra).
58. *Colonial Advocate*, 26 September 1833.
59. *Palladium*, 31 January 1838. See also *Examiner* (Toronto), 18 July and 8 August 1838, and 20 February 1839.

force.[60] Fothergill was addressing such people when he hailed Lord Durham as "an Englishman of ancient family [who] will, we trust, endeavour to *Anglify* the country as it ought to be *Anglified*."[61] The group he saw as the target of this "Anglification" was probably not the disaffected Yankees, who had been politically swamped in the general election of 1836, but the mainly native-born personnel of the Family Compact.

The concept of "the British party" had first emerged in November of 1836, a year before the rebellions, when the ban on British lawyers was debated in the Assembly. Its chief organ then was James Cull's *Royal Standard*.[62] Since Cull's paper was thought to be the personal organ of Lieutenant Governor Sir Francis Head,[63] this might be thought surprising; but the "British party" received sympathetic notice in an even more remarkable place. This was the Family Compact's own organ, the *Courier of Upper Canada*, where George Gurnett depicted what he called "the metropolitan oligarchy ... 'a few Metropolitan families,' and their provincial connexions, sweating beneath the weight of accumulated offices."[64]

Cull identified the "British party's" leading spokesmen in the Assembly as Ogle Gowan, Robert Dunlop and John Prince.[65] Like Cull and Gurnett, all three were British immigrants possessed in varying degrees by a sense of grievance at their exclusion from the provincial establishment and intent on making a place for themselves by means of political entrepreneurship. If it is remarkable to find Gurnett among them, it is only because he had been relatively successful. Once a correspondent of William Lyon Mackenzie, he had set up the *Gore Gazette* at Ancaster in 1827 and tied his fortune to the Tory star, but in 1829 he had moved to York and started the *Courier*. Lieutenant-Governor Colborne, anxious to distance the government from political strife, had made Robert Stanton (Fothergill's successor as King's Printer and publisher of the *Upper Canada Gazette*) shut down his vitriolic news and propaganda supplement, the *United Empire Loyalist*. The oligarchy felt the loss, and they were anxious to bring in a reliable

60. Gerald M. Craig, ed., *Lord Durham's Report: an Abridgment* (Toronto, 1963), pp. 92-3; T.R. Preston, *Three Years' Residence in Canada from 1837 to 1839* (2 vols., London, 1840), Vol. II, pp. 49-50. Two such lawyers were W.C. Keele and William Hepburn: PAC, RG5, A1, Upper Canada, Civil Secretary's Office, 1791-1840, Upper Canada Sundries, Vol. 131, pp. 72046-59; Vol. 144, pp. 48496-9; Vol. 157, pp. 86110-11; Vol. 158/9, pp. 87004-5.
61. *Palladium*, 4 April 1838.
62. *Royal Standard* (Toronto), 21-28 November 1836, *passim*; ibid., 10, 13 and 21 December 1836.
63. Edith G. Firth, ed., *Early Toronto Newspapers, 1793-1867* (Toronto, 1961), p. 13.
64. *Courier of Upper Canada* (Toronto), 14 December 1836; ibid., 7, 21 and 24 December 1836.
65. R. Alan Douglas, ed., *John Prince, 1796-1870: a Collection of Documents* (Toronto, 1980); Hereward Senior, "Gowan, Ogle Robert," in *DCB*, Vol. X (Toronto, 1972), pp. 309-14; *idem*, "Ogle Gowan, Orangeism and the Immigrant Question, 1830-1833," *Ontario History*, Vol. 66 (1974); I. Anette Stewart, "Robert Graham Dunlop: a Huron County Anti-Compact Constitutionalist," M.A. diss., University of Toronto, 1947. Prince was identified as a victimized immigrant, along with William Hepburn, in *British Colonist* (Toronto), 15 May 1839. Between 1838 and 1840 Prince, W.C. Keele and three other English lawyers were admitted to the bar of Upper Canada by specific enactments, the latter three in connection with the erection of a provincial Court of Chancery in 1837.

substitute before some interloper (such as Fothergill, who had just been corresponding with Colborne and John Beverley Robinson on the subject) leaped into the breach.[66] Gurnett certainly came at their invitation, perhaps even at Colborne's,[67] and he flourished as the provincial establishment's favourite publicist; yet seven years later we find him supporting the "British party's" strictures on his patrons.

Gurnett's conduct was probably based on a shrewd reading of the new lieutenant-governor, Sir Francis Head. Upon the failure of his experiment in appointing three prominent reformers (John Rolph, Robert Baldwin and another) to the Executive Council, Head had seized the chance to rid himself of the other three councillors, who all belonged to the official clique, and replace them with conservative men who did not.[68] He had then dissolved the legislature and fought a brilliant election campaign, which appealed to the growing portion of the electorate that was loyal to the Empire but hostile to the oligarchy. Gurnett's gibe at the Family Compact did not cost him Head's sympathy. In November of 1837, by now mayor of Toronto, he was to sell the *Courier* when he received a brace of offices of his own to sweat under, one being the coveted and lucrative position of clerk of the peace for the Home District.

It was no accident that the *Palladium* became the organ of the "British party" in its turn. Fothergill was a political entrepreneur like the others associated with it, and more particularly a journalist like Gurnett and Cull. With Cull and Dr. William Dunlop, Robert Dunlop's more prominent brother,[69] he shared another sort of enterprise: all three sought to advance themselves as cultural "mandarins." In 1831 Fothergill had joined Dr. Dunlop and another immigrant physician, William Rees,[70] to form the Literary and Philosophical Society of Upper Canada at York. It had disbanded after failing to win the patronage of John Strachan, who apparently saw it as a rival to his beloved King's College. A year later it was revived with Strachan's backing by Cull, who had an advantage over the others (where Strachan was concerned) in being an Anglican. Even under Strachan's aegis it lasted barely a year, and Cull (an engineer by profession) moved on to found the short-lived *Albion of Upper Canada* and the ephemeral daily, the *Royal Standard*.[71] Despite Head's rumoured patronage of Cull, both papers ceased to appear early in 1837. Fothergill moved in later that year to buy from Gurnett the "British

66. Macaulay Papers, R. Stanton to J. Macaulay, 26 April 1829; Hilary Bates Neary, "Stanton, Robert," in *DCB*, Vol. X, p. 741; F.H. Armstrong, "Gurnett, George," in ibid., pp. 345-7; Romney, "Man Out of Place," pp. 483-8; and see *supra*.
67. PAC, RG5 A1, Vol. 93, pp. 51997-2000; ibid., Vol. 94, pp. 52171-3.
68. Gerald M. Craig, *Upper Canada: the Formative Years, 1784-1841* (Toronto, 1963), p. 234; S.F. Wise, "Head, Sir Francis Bond," in *DCB*, Vol. X, p. 343; J.M.S. Careless, "Robert Baldwin," in *The Pre-Confederation Premiers: Ontario Government Leaders, 1841-1867*, ed. J.M.S. Careless (Toronto, 1980), p. 108. Head appointed William Allan, Augustus Baldwin, John Elmsley and Robert Baldwin Sullivan: Armstrong, *Handbook of Upper Canadian Chronology*, pp. 14-15. Of these, only Allan was identified with the official clique.
69. W.H. Graham, *The Tiger of Canada West* (Toronto, 1962).
70. William Ormsby, "Rees, William," in *DCB*, Vol. X, pp. 610-11.
71. Romney, "Man Out of Place," pp. 549-53; PAC, RG5 C1, Vol. 1, pp. 468-9; Vol. 3, pp. 1642-4; Firth, ed., *Early Toronto Newspapers*, pp. 8 and 13.

party's" sole remaining voice in the capital and turn it into the *Palladium* (which he announced in his prospectus as "a new series of the *Courier of Upper Canada*").[72]

No doubt Fothergill acquired a number of Gurnett's "British party" readers along with his press. To such men, as to the reformers of the mid-1820s, Fothergill's philosophy of conservative reform was valuable for its respectability if not for its substance, but in their dreams of upward mobility some of them may even have seen themselves forming the aristocracy that Fothergill prescribed to cure the colony's ills. They in turn had obvious relevance to Fothergill's political views. While the "British party" was not an aristocracy, it did promise to perform the essential function of an aristocracy in the minds of Whig theorists, that of holding the balance between monarchy and democracy. It would be interesting to know if its advent made Fothergill more favourable to Baldwinite ministerial responsibility, at least after Durham had recommended it. In the primogeniture debate of 1825 he had expressed views which were not incompatible with "meritocracy" but his remarks then had reflected the dilemma of a man trapped between an obnoxious oligarchy and a "Yankee" democracy that he courted but secretly despised. In the late 1830s he preferred to address the new political force in the province, one for which he could feel real sympathy. If Upper Canada seemed to him at last to possess the social materials for meritocracy, he might have embraced that as the closest Canada could ever come to his aristocratic ideal. Unfortunately, Fothergill died penniless in 1840, and next to no numbers of the *Palladium* survive from later than April 1838.

## vi

In his biography of Joseph Howe, J. Murray Beck remarks on the lack of sophisticated political thinking in Nova Scotia in the late 1830s.[73] This was certainly not true of Upper Canada in the pre-Rebellion period. From 1824 on, discontented politicians were engaged in a sustained effort to obtain relief from what they regarded as an inequitable and arbitrary system of government. Their diversity of cultural background and social values engendered a good deal of mutual dissension and sophisticated political debate. For a long time, this impressive political culture had been largely buried, owing to the patronizing preconceptions of historians who have tended to dismiss colonial politicians as muddled thinkers, rather than recognizing them as educated (and in some cases, even intellectual) men grappling intelligently with the problems of their country's political condition. This paper has been an attempt to widen our knowledge of that creative period by unearthing and reconstructing a neglected ideology of ministerial responsibility which shared, with the eventually triumphant Baldwinite version, the middle ground between oligarchic authoritarianism and "Yankee" republicanism.

The comparison perhaps reveals the victorious version in a new light. Charles Fothergill shared the Baldwins' conservative social views and their rejection of

72. PAC, RG5 C1, Vol. 8, p. 4672; Romney, "Man Out of Place," pp. 570-4.

73. J. Murray Beck, *Joseph Howe*, Vol. I: *Conservative Reformer, 1804-1848* (Kingston and Montreal, 1982), p. 199.

authoritarian rule as inconsistent with the liberties of British subjects, but he favoured a less radical approach to the task of grafting the liberal political institutions of the parent state onto an egalitarian colonial society. It is hard not to conclude that Fothergill's "English Whig" approach to the task was more logical than the Baldwins', which was derived from the Irish colonial experience. At any rate, Fothergill seems to have grasped, as they did not, that to surrender control over policy to a popularly elected lower chamber was incompatible with the fostering of aristocracy in Upper Canada — probably more so than the abolition of primogeniture. He was also probably right, in the period before substantial English and Protestant Irish immigration decisively altered the ethnic balance of the population, to fear that popular control of policy would endanger the imperial tie. The triumph of Baldwinite ministerial responsibility was probably inevitable, but had the Baldwins foreseen the social order their creed sustained, they might never have been its advocates.