1841

The Year of Responsible Government?

JAMES W.J. BOWDEN

wonders why 1848 gets all the attention

THE DORCHESTER REVIEW has taken John Ralston Saul to task more than once for portraying Responsible Government in 1848 as part of a struggle for independence. "In practice," C.P. Champion wrote in 2011, "the Province of Canada already had responsible government by 1841" under its Governor, Lord Sydenham.* In Saul's defence, most constitutional historians of recent memory, including Janet Ajzenstat, Eugene Forsey, Thomas Hockin, Peter Hogg, Louis Massicotte, and Barbara Messamore state that Responsible Government was granted to Canada in 1848.

But locating Responsible Government in 1848 divorces it from the Rebellions of 1837, the Durham Report of 1839, and the beginning of Lord Elgin's term as Governor in 1847. And it ignores contemporary 19th century authorities who said that the grant of Responsible Government occurred not in 1848 but in 1841. Was 1841, in fact, the year of Responsible Government, rather than 1848?

Sir John A. Macdonald observed that Canada had enjoyed Responsible Government "since 1841" in his Confederation speeches in 1865. The full quote can even be found in the debate collection edited by Ajzenstat et al.:

> In the constitution we propose to continue the system of responsible government, which has existed in this province since 1841 and which has long obtained in the mother country. This is a feature of our constitution as we have it now, and as we shall have it in the federation ...†

The most eminent political historians of the 19th century, Alpheus Todd (a contemporary of the events) and John George Bourinot, took as a given historical fact that the grant of Responsible Government occurred in 1841. Specifically, they regarded February 10, 1841 — the date on which the Act of Union, 1840 entered into force and amalgamated Upper Canada and Lower Canada into the United Province of Canada — as the turning point.

Alpheus Todd defined Responsible Government as one in which "the personal will of the Sovereign can only find public expression through official channels, or in the performance of acts of state, which have been advised or approved by responsible ministers."‡ However, Todd's understanding hinges upon the role of the Governor in the 19th century as an Imperial officer appointed by and answerable to the British Cabinet. In 1841, Colonial Secretary Lord John Russell instructed Governor General Poulett Thompson, later Lord Sydenham, that the principle of responsible government would apply only to local matters. In Imperial matters, the Governor would act not according to the advice of colonial ministers but instead "in obedience to his royal instructions." (Todd, p. 8-9) Moreover, Todd argued that the reason why the Governor General retained the discretion to refuse ministerial advice under exceptional circumstances is because he exercised the prerogative authority of the one and indivisible Imperial Crown in the name of the Queen, and that the author-

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* "Pushing at an Open Door," Spring-Summer 2011, pp. 46-50.

† *Canada's Founding Debates*, p. 282). I thank *DR* editor C.P. Champion for pointing this out.

‡ *On The Position of a Constitutional Governor Under Responsible Government* (Ottawa: Library of Parliament, 1878), p. 5.

ity therefore existed outside of colonial institutions *per se.* Todd says, "The Governor is personally responsible to the Imperial Government for his exercise of the prerogative right of dissolving parliament ..." (p. 24.)

In 1891, Joseph Adolphe Chapleau, the Secretary of State for Canada in Macdonald's cabinet, said "Responsible Government was conceded to Canada" in 1841, though he also acknowledged that "the principle was not definitively established until 1847." (*Report to the Imperial Privy Council on the Constitution of Canada*). British constitutional scholar Arthur B. Keith states that the Act of Union, which entered into force in 1841, marked the "adoption of the principle of responsible government." A well-known reference, *Mc-Cord's Hand-Book of Canadian Dates* (1888) by Fred A. McCord, assistant law clerk in the House of Commons, on page 11 gives the date of "Responsible Government" as February 10, 1841.

So which is it? Why would recent scholars so eagerly contradict authorities like Todd, who actually witnessed these events?

The short answer is: semantics. The longer answer is that these early and later scholars had in mind different definitions of Responsible Government — particularly with respect to collective ministerial responsibility. It's partly a question of how successive Colonial governors like Baron Sydenham, Sir Charles Bagot, Lord Metcalfe, and Earl Cathcart interpreted their commissions and instructions, and how their patrons in the UK, Lord John Russell and Earl Grey, interpreted the scope of "internal affairs" of the Province versus the interests of the British Empire as a whole.

R. MacGregor Dawson, the historian and Mackenzie King biographer, has provided the missing link. Dawson described the system of government in the United Province of Canada between 1841 and 1847 as a "transitory period" and "a half-way policy." Sharing this half-way

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position, historians Audrey O'Brien and Marc Bosc state that the *Act of Union*, 1840 "signalled the acceptance of the principle of responsible government by the colonial administration."

While the principle was adopted in 1841, full practice took a few years to catch up. Sydenham implemented only one of the necessary prerequisites for Responsible Government: individual ministerial responsibility. While Sydenham turned the Executive Council into a coherent governing body by creating ministries placing them each under the responsibility of one minister, he also acted like a prime minister by actively leading the Executive Council and using his authority and patronage to ensure that his ministers continued to maintain the support of the assembly.

Between 1841 and 1847, Sydenham and his immediate successors did not effectively implement the other necessary condition for Responsible Government: collective ministerial responsibility. As O'Brien and Bosc conclude, Sydenham's system of individual ministerial responsibility in the hands of an active governor who dispensed patronage liberally "pave[d] the way for the introduction of responsible or cabinet government of the type which still exists." They describe collective ministerial responsibility as having emerged later than individual ministerial responsibility and argue that it came about when "Ministers [were] expected to take responsibility for, and defend, all Cabinet decisions." They also contend that collective ministerial responsibility promotes "stability [...] by uniting the responsibilities of the individual Ministers under the collective responsibility of the Crown." In other words, since all Ministers in Cabinet receive their commission of authority to govern from the Crown, and since the Crown of Canada in right of Canada is indivisible, the Crown can only enact one decision on any given matter.

In the 1840s, the United Province of Canada was a Crown colony of the British Empire; the personal union of several Crowns would not

emerge until the 1930s, after the passage of the *Statute of Westminster*. The Governor General of British North America, like all Governors stationed throughout the Empire, received his commission from the Queen and his instructions from the Colonial Secretary and was therefore an agent of the Imperial Crown and reported to the Colonial Secretary.

Governors were therefore bound to act in accordance with their letters and instructions.

S o was it 1841 or 1848? The answer depends on whether historians regard collective ministerial responsibility and cabinet solidarity as one of the necessary conditions of this system of government.

Strictly speaking, Bourinot's definition ("Ministers of the Crown are responsible for all acts of the Crown") could be interpreted as referring only to individual ministerial responsibility — not collective ministerial responsibility and solidarity — because individual ministers who disagree with one another could still take responsibility, separately and without solidarity with one another, for all acts of the Crown.
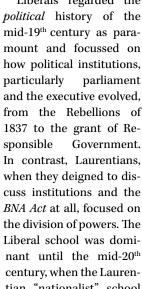
In practice, however, what MacGregor Dawson calls the "transition" or "half-way policy" when Governors acted like First Ministers, implicated themselves directly in politics, and tried to persuade the assembly to accept his ministers rather than replacing his ministers in accordance with the assembly's wishes, proved unworkable and contradictory — a situation that was resolved by Lord Elgin in 1848-49. Responsible Government cannot exist if the assembly holds no confidence in the ministry and if ministers cannot act collectively and in solidarity with each other, as Baldwin and LaFontaine's ministry was able to do, with Elgin's support.

BARON SYDENHAM IN 1840: CANADA'S 1ST PRIME MINISTER?

A word on scholars: Ajzenstat identifies as two schools of thought. First, there are the "Liberals" who regard "the overthrow of colonial oligarchies" (the Château Clique and the Family Compact) in "the struggle for responsible government" as central. Secondly, there are the "Laurentians," who in the mid-20th century established the "approach to Canadian history now associated with Canadian-identity scholars."

Liberals regarded the *political* history of the mid-19th century as paramount and focussed on how political institutions, particularly parliament and the executive evolved, from the Rebellions of 1837 to the grant of Responsible Government. In contrast, Laurentians, when they deigned to discuss institutions and the *BNA Act* at all, focused on the division of powers. The Liberal school was dominant until the mid-20th century, when the Laurentian "nationalist" school saturated academia and the scholarship. The shift in the debate about Responsible Government occurred at about the same time. After Dawson, most scholars came to regard 1848 as the operative date.

The British accepted Responsible Government in principle in 1841 — and the governors began to practise it. But the Canadians did not implement it in practice properly until 1848, when Elgin, acting on Colonial Secretary Lord Grey's instructions, recognized that the majority in the assembly alone — and no longer in conjunction with the Governor's patronage — determines who governs.

Thus Elgin appointed a new ministry accordingly in January 1848 — and, importantly, backed it up in the Annexation Manifesto crisis of 1849 — and Responsible Government has remained intact, both in principle and in practice, ever since. ⚘