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Constitutional Statesmanship: Lord Durham and the Creation of a New Colonial Paradigm, 1839–1841

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Abstract

No one is fully prescient, Durham included. His *Report* did not anticipate the degree to which the French Canadians would be unwilling to submerge themselves into a British whole and the role which religion would play in maintaining the distinctive society. But nor did he anticipate the willingness and ability of the two communities to work together to achieve tangible results for the new country, while the underlying racial resentment remained largely intact. Despite eruptions, occasionally violent, fuelled by that resentment, the growth of the country which he envisioned has taken place and the outcome has been beyond what he could have imagined. The full assimilation which he anticipated has not occurred, although French Canada has gradually moved in the direction of urbanization and adoption of commerce at the expense of the traditional farming orientation. The diminution of the Church influence and the increasing adoption of English as the new *lingua franca* of the world may yet have an impact which cannot be fully estimated. The existence of Quebec within Canada has provided much greater ability and political leverage to maintain the French language than would ever have been possible were Quebec to have existed separately, completely surrounded by the predominantly English-speaking United States and English Canada.

Keywords: Lord Durham, Canadian rebellions, responsible government, Act of Union

Evaluating the Durham Report

Lord Durham's *Report on the Affairs of British North America* has been the subject of much criticism, as well as considerable praise. This difference of opinion dates from its first appearance in 1839 and the debate has been renewed by every generation of Canadians since then. Janet Ajzenstat, professor emeritus in political science at McMaster University, in her excellent introduction to the updated edition of Gerald Craig's book on the Durham Report, has provided a very thorough account of some of the main criticisms of the Report, most of which have centred upon Durham's negative comments about French-Canadian culture at the time, and his view that the French Canadians should assimilate to an English-Canadian way of life. Despite these comments, Ajzenstat, while certainly not uncritical of Durham, sees him as an important liberal thinker and his Report as a significant liberal document.[1]

An equally excellent afterword in Craig's book, by Guy Laforest, a professor in political science at Laval University, examines the place of the Durham Report in Quebec nationalism and points out that, 'Lord Durham, preceded by his reputation as a Liberal reformer, was greeted with sympathetic anticipation when he disembarked in Quebec City in late May 1938'. But, even before his Report was published, Laforest argues, Durham's choice of advisers in Canada suggested that he was not likely to be fair-minded towards the French Canadians in Lower Canada. Nevertheless, Laforest writes that 'Lord Durham and his Report continue to be significant not only for Canada and Quebec but for humankind in general'.[2]

In the opinion of the current writer, Craig's introduction to his 1963 edition of the Durham Report still has much to commend it. As Craig pointed out, 'the Report has come to have a significance and a relevance that far transcend the circumstances of its immediate origins'. He also made it clear that, in order to understand 'the strong and weak features of the document', it is necessary to locate it in the immediate circumstances in which it was produced – the rebellions of 1837 and the political and constitutional problems facing both Lower Canada and Upper Canada. Also of great significance, both in the decision to send Durham to Canada and in how his Report was received in the mother country, was the domestic political situation in Britain in the late 1830s. Bearing this context in mind and weighing against each other the strengths and weaknesses of the Report, Craig's verdict was as follows:

> Despite all its shortcomings and defects, it remains one of the most vigorous and perceptive expositions of the principles and practice of free government in the history of the English-speaking peoples.[3]

The Canadian Conundrum

By the mid-1830s, the problems inherent in colonial governance of Canada were weighing heavily on the imperial government. Canadian discontent with the status quo was obvious and increasingly strident. The governors, sent by Britain, had been unable to govern effectively. Desire for political reform was growing in Europe and elsewhere. Britain itself, with the pivotal involvement of Durham, had adopted the Reform Bill in 1832. Politically, Britain had experienced a progression of weak governments, marked with inconsistent colonial policies, which exacerbated the predictable tensions of attempting to govern from thousands of miles away with, at best, imperfect knowledge of local conditions.

By 1837, there was an acknowledged need to have someone of real substance in place to determine what was to be done with the colonies. Seen from a Canadian perspective, the 1837 rebellions, principally in Lower Canada, which preceded Durham's arrival, may have appeared as epochal on the local scale, but compared with similar rebellions in Britain, they barely qualified as skirmishes and were swatted down with almost contemptuous ease by British troops commanded by the seasoned military veteran, Sir John Colborne.[4]

Britain's response to the local crisis was to appoint one of its ablest public figures, Lord Durham, as governor general with plenipotential authority to govern, to inquire into the situation and to make whatever recommendations he considered appropriate in the circumstances. Durham had already enjoyed a remarkable career in politics and had rendered valuable services to Britain in a series of diplomatic assignments, especially in Russia, where he had become well known to the emperor and the foreign minister.[5]

He was far-sighted and very liberal in his political views, which made him quite popular, with the general exception of the members of his own class. The choice of Durham for the Canadian assignment was based on a combination of his recognized superiority of intellect and ability, plus a desire on the part of the then current British political leadership to protect, or prolong, itself by having Durham abroad instead of close at hand, where he might well become a future prime minister,

certainly sooner than the incumbent, Lord Melbourne, would have wished. Melbourne had previously offered Durham the post in 1836, but Durham had declined:

> So he invited him to go with plenary powers to Canada where the political situation was deteriorating and rebellions were taking place. Something must urgently be done to pacify the Canadian colonists, though neither Lord Melbourne nor the majority of his colleagues were much interested in colonists or in Canada. Melbourne did, however, promise Lord Durham 'the fullest and most unflinching support', words which soon rang hollow.[6]

With a mixture of emotions, Durham accepted the appointment. The unlimited nature of his powers was certainly a factor, and his later report made it clear that a good deal of the problems that existed could be traced to the limitations of powers conferred on his predecessor governors general, who were thereby effectively prevented from governing. The prospect of being able to study the situation in the colonies at close hand and to find a solution to the problems undoubtedly appealed to his active and inquiring mind, and the opportunity to make recommendations leading to responsible and popular government only added to the incentive to accept the appointment.

Arriving in Canada in the spring of 1838, he found the jails, permanent and temporary, filled with more than 500 of the 1837 rebels, many of whom were under sentence of death, but he got off to a promising beginning by freeing the prisoners, transporting a few to Bermuda and improving the strained relationship with the United States. He understood the value of theatre and made sure that his entry into Quebec was ceremonial, riding on a white horse, in full uniform with decorations. The effect was as he had expected:

> He dismissed all but one of the members of the Lieutenant-Governor's Executive Council in Lower Canada; but he did so with such charm and tact that none of them took umbrage. He declared an amnesty for those rebels still in the gaols with the sole exception of eight of the more notorious ring-leaders. The enthusiasm in Quebec and Montreal was immediate and vociferous, even among the British businessmen who had previously dominated the Government. Those in control of Upper Canada, which is now Ontario, were less sure, for they were a 'Family Compact' which had been enjoying a monopoly of power comparable with the rotten borough system in Britain.[7]

Despite congratulatory messages from Britain relating to Durham's early successes in Canada, he still had British enemies who sought ways of discrediting him. One was Lord Brougham, who discovered that the clauses in Durham's ordinance, deporting certain rebels to Bermuda and threatening execution should they return, were illegal. Debates ensued in both British Houses. Melbourne and Glenelg (the Colonial Secretary), after an initial defence of the actions, to which they had given their approval, capitulated to Brougham and his Bill, on which Parliament voted to disallow the ordinance and to indemnify those who had acted on Durham's instructions. It was a public humiliation for Durham, practised thousands of miles from the scene of the action and one which enraged the Canadians, who sent messages of support and demonstrated in favour of Durham. Durham felt that he had little alternative but to resign, doing so with severe criticism of the interference which he had encountered since his arrival, which only exacerbated the enmity toward him on the part of Melbourne and other members of the British government.

Durham sailed for home on 1 November 1838. Only days later, a new rebellion broke out in the Canadas and new incursions occurred from the United States. These came to naught. Durham had provided Sir John Colborne with full civil and military powers and Colborne easily suppressed the rebellions, which lasted but a matter of days. Less clemency was shown on this second occasion and several of the leaders were hanged. On his return to Britain, Durham found that the crowds did not share the views of Melbourne and his colleagues and many hoped that he would oust Melbourne and become prime minister himself. He had no such interest, however, and set himself to finishing the work he had been sent to accomplish in Canada.

Durham's *Report on the Affairs of British North America*

Barely two months after his return, Durham produced his complete Report, partly due to his decisiveness and impatience and partly because he was dying of the consumption that had carried away most of his family. His Report was issued on 31 January 1839. It was a remarkable piece of work, accomplished in much less time than might normally have been expected for a government commission. The language he adopted was straightforward and blunt, nothing like the normal 'vanilla' of government reports. He was fully aware of the fact that the imperial Parliament would have to do something about the situation affecting the remaining British colonies in North America. His analysis of the situation, its

background, the depth of the animosity between the French and English in Canada and the identification of the only possible peaceful solution for the colonial power, were remarkable and incisive.

The legislation he recommended was given royal assent on 23 July 1840. Durham died five days later on 28 July 1840, at the age of 48. The legislation, known in Canada as the Act of Union (which replaced the earlier 1791 constitution, abrogated as a result of the rebellions), was proclaimed in force in Canada in 1841. The new legislation created a single province, consisting of Canada East (the former Lower Canada, Quebec) and Canada West (the former Upper Canada, Ontario), which had a single legislature in which each of the former provinces had an equal number of votes.[8]

However, the legislation had been only part of what Durham envisioned, since his recommendations had gone farther, to include the notion of responsible government, in the sense that the governor general should give assent to legislation proposed and adopted by that party which commanded a majority of the votes in the elected assembly, not subject to the approval of an appointed council, nor possible disapproval by the British Parliament. Such an outcome was considered too revolutionary at the time by the British authorities. That part of his Report required extra time to ripen, which it did in 1848, when his son-in-law, Lord Elgin, had become governor general and assented to the Rebellion Losses Act adopted by the Assembly, notwithstanding massive disapproval by the appointed legislative council and the English-speaking merchant community. Responsible government had arrived in Canada.

Responsible government had, in constitutional outcome, and notwithstanding the civil protests and violence that followed at the hands of the largely English opposition, precisely the benefits Lord Durham had anticipated. In the same way that British parliamentary traditions had developed, pursuant to which the Crown assented to legislation adopted by the party commanding a majority in the House of Commons, in his view, the colonials knew best the needs of the colony and should be given the authority to adopt legislation addressing those needs. The colonists had no interest in imperial matters and would be content to leave them to the Mother Country. Once granted the right to govern their 'own' affairs, Durham was convinced that the colonies would remain closer to the Mother Country.

The question, of course, was how to achieve the desired outcome. It was here that Durham had invoked the art of the possible. His Report was carefully crafted to show that what he proposed was not revolutionary at all and had, indeed, been just the way British government itself had

evolved. What, then, could be done immediately that would set matters on the road, despite the lack of interest by the government of the day?:

> Lord Durham recognized the difficulty and met it in his simple direct manner. He drew a line between Canadian and Imperial questions. In matters of purely Canadian concern, Responsible Government was to operate fully and the British Government was to give no support to a Governor who found himself in conflict with the Canadian Parliament. In such matters the Canadian people were to govern themselves without any restriction. They would have the assistance of their Governor so long as he avoided such a conflict. But the ultimate seat of authority would be the Canadian Parliament, which to all intents and purposes would be, so far as Canadian questions were concerned, a sovereign legislature controlling executive action. In Canadian matters Canada would enjoy full executive self-government as well as legislative self-government. Downing Street and Westminster were to keep their hands off. He was too wise to put it that way, but that was what he meant. He took what was originally a Canadian idea and transformed it into a measure of self-government such as no Canadian had dreamed of. On the other hand, in matters of Imperial concern the British supremacy was to be maintained.[9]

Almost unnoticed, even within a generally hostile government, that had no particular interest in the colonies and no interest at all in democracy as now understood, Durham achieved the objective and cleared the way for the broader outcome that he had sought:

> The recommendation of the legislative union of the two Canadas cleared Melbourne's difficulties, and also left the way open for Responsible Government and for an ultimate union of all the provinces into that nation of which Durham dreamed. The Great Reform Bill and Lord Durham's Report opened the gates to developments whose possibilities astound each succeeding generation. They did so safely and effectively, they produced neither tumult nor reaction because the principal author of both was not only one of the greatest of political visionaries but was wise enough to so frame his recommendations for immediate action that he secured the largest realization of his visions that was possible in the existing situation. The Melbourne Government sympathized with Lord Durham's ultimate aims as little as had the Reform Bill administration, but

> the one as surely as the other – and as unconsciously – took irrevocable steps towards their fulfilment. By playing his game adroitly in the existing political situation, Lord Durham succeeded in placing first the people of Britain and then the people of Canada in a position from which they could control their own political futures. They justified his faith and completed the fulfilment of his hopes – and much more besides which even he could not foresee.[10]

French Canadians can be (and were) offended by the description of them as uneducated and uninterested in the development of the country, but the indisputable fact of the matter is that they were, at that time, and for the overwhelming part, completely uneducated. The Legislative Assembly, dominated by elected French Canadian members, had repeatedly blocked any efforts to provide a system of general education for the public, since it was not in the interests of the political leaders to have an educated public, nor for the government to be seen as successful.

Despite a bias which, to the surprise of no one, came down in favour of the English side of the conflict, Durham was no less sparing or uncritical of the imperial government than he was of the colonials who wanted to bring down and overthrow the government imposed on them. The constitutional model adopted in 1791 by the imperial government, Durham concluded, was doomed to failure from the very outset and Durham was surprisingly sympathetic with respect to the colonials, both English and French, forced to live with it. The binary system of Legislative Assembly and Legislative Council as administered could never have worked and did not.

The checks and balances inherent in representative democracies were completely lacking in the Canadas. Where there was no constitutional possibility that members of the Assembly or Council could ever be held accountable for their statements, there was nothing to restrain the most egregious excesses in them, however inflammatory and seditious they might be. In a properly representative and responsible government, the possibility that a member in opposition might one day be a minister provided a built-in inhibitor which prevented excesses.

In the absence of such restraints, the limits of sensible statements did not exist and the escalation grew, deliberately and unchecked, leading, in the case of Lower Canada, to an armed rebellion that was ill-conceived and, faced with disciplined and experienced British troops, utterly without a chance of success. There could have been no doubt whatsoever that it had been the policy of the Legislative Assembly to paralyse the government, and those controlling it had succeeded to the point that the government

could no longer function. Armed rebellion became the unhappy, perhaps inevitable, result. How the political leadership could possibly have thought there was the slightest chance of military success eludes the imagination. The complete failure of the rebellions and the gradual dawning, on the part of the French Canadians that they had been duped by those purporting to lead them, led them to transfer their confidence in community leadership from politicians to the Roman Catholic clergy.

Durham had other observations regarding the conditions he encountered in Canada. One in particular was the organization of local matters under the French regime:

> The institutions of France, during the period of the colonization of Canada, were, perhaps, more than those of any other European nation, calculated to repress the intelligence and freedom of the great mass of the people. These institutions followed the Canadian colonist across the Atlantic. The same central, ill-organized, unimproving and repressive despotism extended over him. Not merely was he allowed no voice in the government of his Province, or the choice of his rulers, but he was not even permitted to associate with his neighbours for the regulation of those municipal affairs, which the central authority neglected under the pretext of managing.[11]

For an observant and experienced person in public service, assisted by an organized and intelligent staff, all of whom, leader and assistants, had carefully studied the full collection of colonial papers and dispatches before arriving in Canada, it was not particularly difficult to direct their inquiries and bolster the facts contained in the reports. Quite apart from complete confidence in his own judgment, having had no previous connection with Canada, Durham was not constrained in any way from reaching and expressing his conclusions on both the state of affairs which he encountered and the solutions he proposed. It would be difficult to imagine a clearer expression of the racial tensions and hatred he found in Lower Canada and he did not hesitate, early in his Report, to spell it out and to separate it from the surface issues which tended to mask the underlying reality:

> I expected to find a contest between a government and a people; I found two nations warring in the bosom of a single state: I found a struggle, not of principles, but of races; and I perceived that it would be idle to attempt any amelioration of laws or institutions until we could first succeed in terminating the deadly animosity

> that now separates the inhabitants of Lower Canada into the hostile divisions of French and English.[12]

This became central to Durham's theme, since without understanding the existence of the hatred, it was not possible to unravel almost any problem affecting the province:

> That national feud forces itself on the very senses, irresistibly and palpably, as the origin or essence of every dispute which divides the community; we discover that dissensions, which appear to have another origin, are but forms of this constant and all-pervading quarrel; and that every contest is one of French and English in the outset, or becomes so ere it has run its course.[13]

Durham's Solution

In his understanding of increasing the connection with the Mother Country, Durham proved to have been particularly prescient and set a model that has subsequently been used on many occasions, notably throughout what is generally referred to as the Commonwealth. At its extreme, in Canada, that constitutional relationship lasted for more than 140 years, until 1982, when Canada finally ceased to have an English statute as its constitutional foundation. Until the 1920s, if Britain was at war, so was Canada. Only in 1920 was that view discreetly challenged, when Canada referred a British request for military assistance to the Canadian Parliament, when it adopted its first treaty without British consent (1923), when it opened its first embassy in the United States (1927, with Vincent Massey as ambassador). Even after the Statute of Westminster in 1931, Canada continued to accept the Privy Council as its final court of appeal (except in criminal matters, which were essentially local) until 1949. When Britain declared war in 1939, it was constitutionally uncertain, notwithstanding the Statute of Westminster, whether Canada was thereby also at war, a question resolved in a practical sense by Canada's declaration of war a few days later.

Assessing Durham's objectives on the point led to this conclusion by one historian:

> He could not, of course, see that future in detail, but to suppose, as some writers have done, that he intended his definition of colonial and imperial powers to be a permanent one is to misunderstand his

> type of mind and to fail to recognize in him the pioneer of a new type of statesmanship. He had been the only one of the makers of the Reform Bill to argue against its 'finality'. He habitually thought in terms of a constantly changing world, and to him any true reform must be plastic and dynamic in character – conceptions which are commonplace to us but were still strange to his world of Whigs and Tories. For him two things only must be permanent, Canadian satisfaction and British connexion, and he succeeded in establishing both.[14]

The Report itself is reflective of the characteristics of the man:

> The Report reflects the defects of Lord Durham's temperament, particularly a tendency to exaggeration and to severe criticism of those who disagreed with him. It reflects also his courage, outspokenness, independence, analytical power, farsightedness, ability to see things in the large, his passion for reform, the combination of a liberalism which appeared rash to others with an instinct for safety which was adequate to the situation, and that gift which enabled him in more than one crisis to gather up a number of suggestions from various quarters into just that combination that brought order out of chaos, destroyed an old system, ushered in a new one, and provided a basis for a healthy and continuous development.[15]

However:

> It was very different from the ordinary dry-as-dust state paper. It was free from the clap-trap of political speeches; it was lucid, spirited, forceful. Its facts and arguments were marshalled with a clarity and power which the common man could appreciate and admire. It maintained throughout a grandeur of style, thought and spirit, and was as remarkable for an easy and natural eloquence as it was for an absence of forced sentiment and purple patches. Its faith and patriotism were as sane as they were inspiring. The common people received it the more enthusiastically because it was the work of one of their heroes. Britishers overseas adopted it as the corner-stone of Empire.[16]

For Durham, however, writing in late 1838 and early 1839, whatever had happened in the past, the only possible solution for the future was clear. There must be two elements. First, responsible government, in which, but

for certain affairs such as foreign policy, the local population would have control over their affairs. It was ridiculous for Britain to purport or to attempt to deal with such matters at a distance and illusory to think that the locals would accept such governance. Second, some way had to be found to prevent the French-speaking *bloc*, which was, to all intents and purposes, unitary and completely controlled by its leaders, from forming a majority.

The obvious short-term answer was to join Upper and Lower Canada into a single province, with a single legislature, in which each of the former provinces would have an equal number of representatives, thus assuring an overall English-speaking majority. This prospect was, of course, as completely enraging to the French Canadians as it was only mildly reassuring to the English Canadians. Whatever the shortcomings of any solution, however, it was important for Britain to do something to reduce the attractiveness of a more formal association with the former British colonies that now constituted the ambitious United States, which had espoused the general approach to life, development and business favoured by the English.

Lower Canadian political leaders had also occasionally held out this prospect to the masses as an alternative to British rule, but the treatment of Roman Catholics in the former colonies, now the United States, was far less generous than that granted by Britain to Lower Canada, and the future of the French language, laws, religion and culture would have been very much at risk.[17] Although Durham clearly hoped that there would be an assimilation of the French Canadians over time should his proposed union occur, and that such assimilation would have been into the British approach and values, there could have been little doubt that assimilation would have been the undoubted result of association with the Americans. There was, therefore, only minimal risk that the French Canadians would look elsewhere. Indeed, their best leaders, even those closely associated with Louis-Joseph Papineau prior to the rebellions, soon realized that maximizing the chances for retention of their distinctive culture lay in working with the new system:

> Lord Durham's bolder aspirations were fulfilled in slow stages, partly because the Canadians feared that too great an independence from the United Kingdom might be an inducement to annexation by the United States. Thus a close association with Britain, then militarily and economically stronger than the young American republic, was an invaluable safeguard, especially as the gradual replacement of sail by steam meant that transport of troops from

> Britain to Canada would be greatly accelerated. By the time Lord Durham went home the *Great Western* was already crossing the Atlantic in the miraculously short time of thirteen days. Delay was also due to the Tories in Upper Canada kicking hard against the project of responsible government based on the subordination of the executive to the legislature.
>
> It was decreed in London that all matters relating to constitutional changes, foreign relations, trade and the disposal of public lands should be reserved for decision by the British Parliament. Nevertheless, bit by bit the Report was implemented and it would have been pleasing to Durham to know that a strong element of responsible government was introduced in 1846 when his daughter Mary's husband, Lord Elgin, was Governor General and his brother-in-law, Lord Howick, Secretary of State for the Colonies. Finally, Confederation was established in 1867 by Disraeli who many years before had sought Lord Durham's help in finding a seat in Parliament. Thus, a generation after Lord Durham sailed away from Quebec, Canada, 'the Great Dominion', became the first British colony to be given what was effectively independence under the Crown.[18]

No one is fully prescient, Durham included. He did not anticipate the degree to which the French Canadians would be unwilling to submerge themselves into a British whole and the role that religion would play in maintaining the distinctive society.[19] The Roman Catholic clergy stepped in where the political leaders had failed and were able to ensure that the religion, wrapped in language, preserved the culture and identity of the French Canadians. Nor did Durham anticipate the willingness and ability of the two communities to work together to achieve tangible results for the new country, while the underlying racial resentment remained largely intact. From time to time there would be eruptions, occasionally violent, fuelled by that resentment.[20]

These episodes notwithstanding, the growth of the country that he envisioned has taken place and the outcome has been beyond what he could have imagined. The full assimilation that he anticipated has not occurred, although French Canada has gradually moved in the direction of urbanization and adoption of commerce at the expense of the traditional farming orientation. The diminution of the Church influence and the increasing adoption of English as the new *lingua franca* of the world may yet have an impact which cannot be fully estimated. The existence

of Quebec within Canada has provided much greater ability and political leverage to maintain the French language than would ever have been possible were Quebec to have existed separately, completely surrounded by the predominantly English-speaking United States and English Canada.

Relationships with America

From a Canadian perspective, those living in the colonies from day to day had no idea how close Britain and the United States came to war during the time that Durham was in Canada and until his Report was released and acted upon by the British Parliament. These were not matters to be dealt with by the local colonists: they were imperial responsibilities in respect of which colonial consultation was neither necessary nor required. The colonists were spared the ravages of war that would most certainly have affected them had Durham's initiatives not proved fruitful, but they were generally blissfully ignorant of how close they had come to such an outcome. Those decisions were a real-time demonstration of the responsible government Durham envisioned: local government effectively in the hands of the colonials and imperial issues dealt with by the British Parliament.

There had been considerable incursions into parts of Canada by American filibusters, not acting under the authority of the United States government but encouraged by Canadian rebels who had taken refuge in the United States. These incursions were exacerbated by the deteriorating economic conditions both in the United States and Canada during the same period, including crop and bank failures and generally desperate hardships suffered by the populace. Such confluences, combined with political instability, have often led to sharp increases in the risk of war.

Durham turned his attention to regulating the potential problem. First, he sent his brother-in-law with a message to US President Van Buren, one which was apparently both understood and well received. Shortly thereafter, visiting Niagara, he hosted a sumptuous dinner party, at which he proposed a toast to the health of the president and expressed the hope that there would never be a cause for collision between their two countries. For someone in Durham's position, the public expression of such a hope was a means of making it clear that the possibility most certainly existed.

He then, against the advice of Colborne and others, crossed over to Buffalo and was welcomed in America, where he received positive press

coverage and the additional political benefit of a letter from the government ordering the frontier general to prevent adventures into Canada and to arrest anyone who persisted in such activities.

During his brief tenure in Canada, Durham also made a very favourable general impression with the Americans, who soon came to understand that the rhetoric of Papineau and Mackenzie was out of all proportion to the evils of the system about which they complained.[21] While there may well have been (and certainly was) an administration in each of the Canadian provinces which was less than perfect, there was, equally clearly, none of the oppression of which they complained so loudly.[22] The Americans, both for that reason and having no desire to get into yet another military struggle with Britain, adopted official policies which supported non-interference in Canadian affairs and, despite a few incidents which might have got out of control and led to precisely such a conflict, took steps to control some of the filibusters who were willing to try their luck with incursions into Canada.[23]

Durham had, in a very statesmanlike manner, made it clear to the United States president that continued incursions from the United States might very well lead to war and that, notwithstanding some constitutional complexity regarding the role of the military in the United States, the incursions simply had to stop. Fortunately, the military commanders on both sides, General Winfield Scott and Sir John Colborne, understood the situation and were able to restrain, or repulse, the troublemakers and provide the time for statesmen to act. That work culminated with the adoption of the Webster–Ashburton Treaty on 9 August 1842:

> In spite of bitter opposition by irreconcilables in Great Britain and the United States, the consequences of the treaty were little short of amazing. As for relations between the United States and Great Britain the removal of certain major sources of irritation made possible that freedom of intercourse in which expression of opinion is not regarded as carping criticism or unwonted 'truckling'. For British North America, and in particular, for Canada, it meant the cessation of border difficulties, the removal of the danger of war, and an immediate withdrawal of a considerable proportion of the British military forces, who were needed for service elsewhere.[24]

The impetus for this breakthrough had come from the steps initiated by Durham, who represented the most powerful empire in the world at that

time. There was no appetite in the United States for war with Britain (nor a similar appetite in Britain for an expensive war with the United States), but each side had to ensure that no provocations would lead to that state.

American scholarly opinion on Durham has been surprisingly generous:

> Of the statesmen of the period, the three who stand out above all the rest are Lord Durham, Daniel Webster and Lord Ashburton. The other American whose name should be added in this connection is that of a soldier, General Winfield Scott. Of these, the one whose place is assured in Canadian-American history beyond all chance of international differences of opinion is Lord Durham. In the record as presented here, taken for the most part from original sources, we see the man who first drew the blueprints for the structure of the British Commonwealth of Nations pointing the way to fundamental principles of peace between Canada and the United States. It was no sentimentalist who set about undoing the irritation caused among Americans by the irresponsible jingoism of the English-Canadian press, for while consciously cultivating good will by presenting the 'sight of two flags united in one common effort to put an end to this unnatural excitement on the frontiers', he was firm in his assertion of Canadian rights, and backed them by a show of force. It is a strange fact that the appreciation by Americans of Durham's statesmanship should have been almost completely lost sight of in the years that followed. One wonders what might have happened if a Durham had been sent to the American colonies in 1775![25]

Through the Looking Glass

The power to grant responsible government in Canada always rested, of course, in Whitehall. It was there, not Canada, where the decisions to grant, or not to grant, such status would be taken. On the other hand, seen in a Canadian context, there is nevertheless a fascinating perspective on Durham's character and impact on the whole matter:

> Lord Durham was the most potent envoy that Canada ever sent to England. About to die, he was to render her the service that stands

> peerless in Imperial history. His Report was more than a work of genius; his whole conduct in the coming months more than that of a man of state. He wrought his miracles for the ages to come, not only through his superior intellectual gifts, but because he set behind him all personal ambitions and all personal feelings, conquered temper and pride – dogging him through life, but subdued in that last great task. It was more than a vision of Empire. There was no solemn service, no sacred vows, but it was none the less a dedication. He was more a Britisher than ever; through storm and pain he had served Britain all his life, but he served her best by becoming now – a Canadian.[26]

And so has Canada benefitted, grown and prospered.

Notes

1 Ajzenstat, 'Introduction to the 2006 edition', in Craig, *Lord Durham's Report*. See also Ajzenstat, *The Political Thought of Lord Durham*. For an outspoken view of the Durham Report see Martin, *The Durham Report and British Policy*.
2 Laforest, 'Afterword', in Craig, *Lord Durham's Report*, 186 and 188. See also Stéphane Dion, 'Durham et Tocqueville sur le colonialisme libéral', 75.
3 Craig, *Lord Durham's Report*, 1.
4 In addition to distinguished service in the Peninsula Wars, Colborne had led the decisive flank attack on Napoleon's Imperial Guard at the Battle of Waterloo. See Colville, *Those Lambtons!*, 53–4.
5 See Trevelyan, *History of England*, 660–4. Also, Trevelyan, *British History in the Nineteenth Century*, 259–64 and Cooper, *Radical Jack*, chapter 11.
6 Colville, *Those Lambtons!*, 50.
7 Colville, *Those Lambtons!*, 36.
8 See Careless, *The Union of the Canadas*, chapter 1.
9 New, *Lord Durham*, 507–8.
10 New, *Lord Durham*, 490–1.
11 Lucas, *Lord Durham's Report*. The work consists of three volumes; the text of the *Report* is contained in Volume 2 (Page references here and below are to Volume 2.) Report, 27–8.
12 Lucas, *Lord Durham's Report*, 16.
13 Lucas, *Lord Durham's Report*, 17.
14 New, *Lord Durham*, 509.
15 New, *Lord Durham*, 514.
16 New, *Lord Durham*, 494.
17 See Coupland, *The Quebec Act*, for a description of the special rights granted by the British to the French Canadians. This legislation was one of the principal causes of the American invasion of Canada in 1775–6: see Stanley, *Canada Invaded*.
18 Colville, *Those Lambtons!,* 66–7.
19 See Copeland, *The Durham Report*. Also, Morrison, *The Eighth Earl of Elgin*, 25–9.
20 Examples include: conscription, the October Crisis of 1970, Quebec referenda in 1980 and 1995, language legislation and constitutional repatriation in 1982. See Jenish, *The Making of the October Crisis*.
21 Corey, *The Crisis of 1830–1842*. Introduction by James T. Shotwell, ix–xi, at x.
22 Corey, *The Crisis of 1830–1842*, 118–19, 125.
23 Corey, *The Crisis of 1830–1842*, 32, 41, 44, 49, 61–3.
24 Corey, *The Crisis of 1830–1842*, 181–2.
25 Corey, *The Crisis of 1830*–1842, x.
26 New, *Lord Durham: A Biography*, 473–4.

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Conflict of Interests

The author declares that there are no conflicts of interests with this work.