

knowledge what it was. The Council should be responsible for giving good advice, while your Excellency would retain enough of responsibility by deciding upon it. We should not the better esteem a Judge who refused to listen to an argument before he gave a judgment, or a jury who sealed their ears against the charge of a Judge, in order to manifest their self-sufficiency in giving a verdict. The Judge condescends to hear the argument of a counsel, the jury listens to the Judge's charge, and your Excellency should, as seems to our "plain and homely" minds, listen on all subjects to the conscientious advice of the sworn advisers, selected by yourself for their "talents and integrity."

We have carefully read, as your Excellency recommended, the Constitutional Act, and although your Excellency assures us that by it "a House of Assembly and Legislative Council and Lieutenant-Governor are appointed, but that it creates no Executive Council," yet we read so clearly, in three several places, almost the very same comprehensive words, viz. "with the consent of such Executive Council as shall be appointed by His Majesty. His heirs and successors, within such province, for the affairs thereof," that we must believe some evil and irresponsible advisers have put into your Excellency's hand a mutilated copy of our constitution. We cannot reconcile your present declaration with the reply to your late Executive Council, in which your Excellency distinctly admits that the most liberal construction which can possibly be put upon that Act amounts to this, "that as an Executive Council was evidently intended to exist, the remnant of the old ought not to be deemed totally extinct, until its successor was appointed. However, this latest intention of His Majesty to create a Council for each of the provinces of his Canadian dominions was soon clearly divulged in a most important document, commonly called *"The King's Instructions,"* in which the Executive Council was regularly constituted and declared as follows: "Whereas We have thought fit that there should be an Executive Council for assisting you, or the Lieutenant-Governor, or person administering the government of the said province of Upper Canada," \* \* \* \* \* "and to the end that our said Executive Council may be assisting to you in all *affairs relating to your service*, you are to communicate to them such and so many of our instructions, *wherein their advice is mentioned to be requisite*, and likewise all such others from time to time as you shall find convenient for our service to be imparted to them."

It is therefore as plain as law can be written, that the constitutional Act provided for the appointment, by His Majesty, of an Executive Council, and that the King has accordingly created such a Council, "to the end that they might be assisting to your Excellency in all affairs relating to His Majesty's service." This Council, so organised, is now as much a part of our constitution as the great Council of Parliament. The law allows the people to elect the House of Assembly, and gives the King the power of summoning whom he pleases to the Legislative and Executive Councils: all are alike created or provided for by this Act, though it does not specify by name the particular individuals to constitute either of them.

We welcome the concession of your Excellency to the merit of the able and enlightened *Simcoe*, to whose memory we would cheerfully erect a monument. We never said that that justly revered representative of the King either did or could alter the law. But we still think that an able and enlightened man, who assisted in passing the law, amidst all the debates upon it, and who was first commissioned to put it into operation amongst us, was of all men best qualified to explain that law, and its intended scope and application. *Simcoe*, with all his personal knowledge about the law and lawgivers, declared that it was intended to give us, not a mutilated constitution, but one "the very image and transcript of that of Great Britain." Your Excellency, on the contrary, after the lapse of nearly half a century, asserts, that neither the law nor the lawgivers (of whom *Simcoe* was one) ever gave, or intended to give what *Simcoe*, in the name of the King, solemnly announced from the throne.

In England, our fellow subjects have a King, with his Executive Council (commonly called his Privy Council), a House of Lords and a House of Commons. In this country we have corresponding institutions, viz., a representative of the King, with an Executive Council, a Legislative Council and a House of Assembly. We only ask that these institutions should be put into operation in a manner corresponding to what is practised in England; and, consequently, that the Executive Council, under oath, should as fully and freely advise your Excellency on affairs here, as the Privy Council, under oath, advise His most gracious Majesty. This is what the Constitutional Act implies; it is what *Simcoe* announced; it is what our liberties require; and what nothing, without our own consent, can lawfully abridge or take away.

If your Excellency will not govern us upon these principles, you will exercise arbitrary sway, you will violate our charter, virtually abrogate our law, and justly forfeit our submission to your authority.

We have the honour to be, Sir,

Your Excellency's obedient humble Servants,  
(signed)

<i>Jesse Ketchum,</i>	<i>Timothy Parsons,</i>
<i>James H. Price,</i>	<i>Wm. Lesslie,</i>
<i>James Lesslie,</i>	<i>John Mills,</i>
<i>Andrew MacGlashen,</i>	<i>E. T. Henderson,</i>
<i>James Shannon,</i>	<i>John Doel,</i>
<i>Robert MacKay,</i>	<i>John E. Tims,</i>
<i>M. MacLellan,</i>	<i>Wm. J. O'Grady.</i>

Appendix.

Rejoinder from  
Citizens of Toronto  
to Reply of Lieut.-  
Governor.