

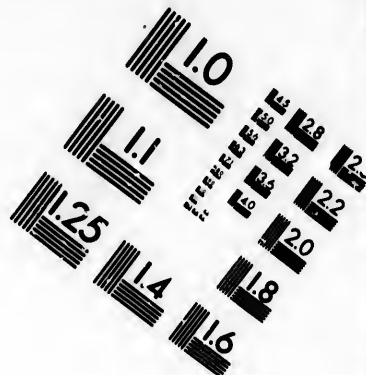
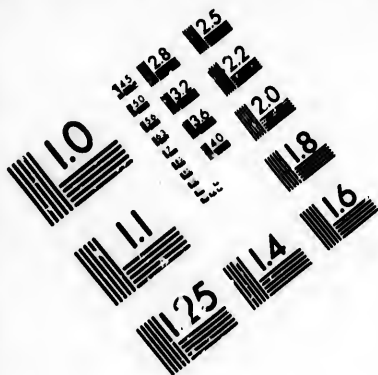
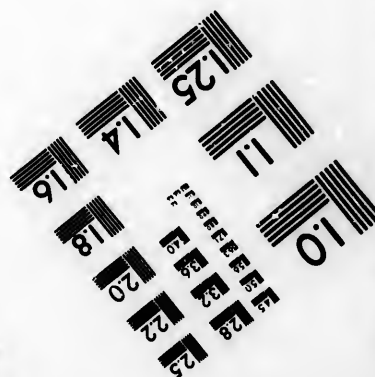
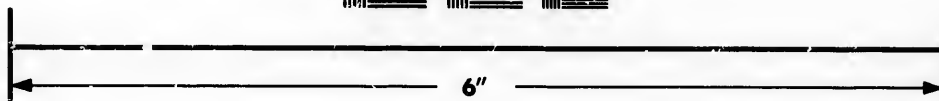
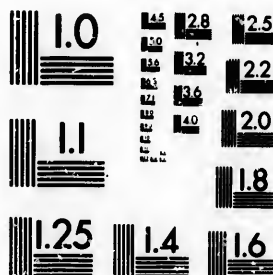


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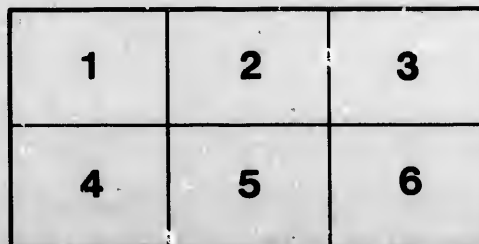
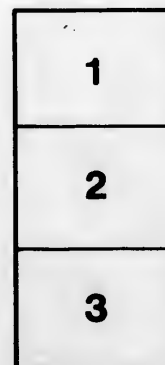
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BRIEF SUGGESTIONS
IN REGARD TO THE FORMATION OF
LOCAL GOVERNMENTS
FOR
UPPER AND LOWER CANADA,
IN CONNECTION WITH A FEDERAL UNION OF THE
BRITISH NORTH AMERICAN PROVINCES.

By ALPHEUS TODD,
LIBRARIAN OF THE LEGISLATIVE ASSEMBLY OF CANADA.

PRINTED BY ORDER.

— ♦ —
OTTAWA:
PRINTED BY G. E. DESBARATS,
—
1866.

BRIEF SUGGESTIONS, &c.

In the framing of new Constitutions, whether for the Government of the proposed British American Confederation, or for that of the separate Provinces which it is intended shall form part of the same, it is desirable that the principles which for so long a period have been in successful operation in the Mother Country, should be steadily kept in view, and, so far as they may be applicable to our own political condition, applied to the formation of our Colonial Institutions.

When the scheme for the Federation of the British North American Provinces was under consideration last year, it occurred to the writer to put together the following suggestions, as a slight contribution towards the settlement of the important questions involved in the composition of Legislative bodies for the several Confederate Provinces, and the due subordination of such

legislatures to the Executive Authority therein.

He had intended to preface his remarks on this head with a brief essay upon the origin and development of the present political institutions of England, especially in regard to the peculiar characteristics of Parliamentary Government, as it is now administered. The postponement for a season of the Confederation question, consequent upon the differences of opinion thereupon in the Maritime provinces, led him to defer the publication of his reflections until the public mind should be again directed to the subject. Since then, he has forwarded, to an eminent publisher in England, the manuscript of his Essay on the origin and characteristics of Parliamentary Government, as it is meant to form an introductory chapter to a practical treatise on the English political system, which will be issued from the press, in London, in the course of the ensuing winter.

A scheme for the construction of Local Government for the Two Canadas being about (somewhat unexpectedly) to be submitted for the consideration of the Canadian Legislature, during the present Session, the writer feels it to be his duty to offer the following suggestions to the notice of members of the Legislative Council and Assembly, in hopes that they may be deemed of some use in the settlement of a

matter so deeply affecting the welfare of this country. In presenting his remarks upon the composition of the local legislatures, unaccompanied by the preliminary observations upon the theory of Parliamentary Government with which he had intended to preface them, the writer is conscious that they must unavoidably appear to be meagre and imperfect ; but as time will not admit of his entering into the general subject at the present moment, he prefers to run this risk rather than to withhold altogether the observations that have occurred to him as suitable and appropriate at the present juncture.

It may be remarked, in the first place, that inasmuch as the separate Legislative bodies for Upper and Lower Canada are intended to deal exclusively with local affairs, and are to be subordinate in jurisdiction and authority to the Federal Parliament, it would seem to be desirable that they should each consist of a Single Chamber, as being more efficient and economical for the purposes designed, than a Legislature which should comprise Two distinct Houses. The existing legislative institutions of the Colony of New Zealand are framed upon this plan, and consist of nine " Provincial Councils " for separate localities, which are subordinated to a General Assembly, consisting of a Legislative Council and a House of Representatives. And as a

general rule in all local Municipal institutions, whether in England or America, there is but One Chamber.

If it be intended that "Responsible Government" shall prevail in connection with these local parliaments, it is absolutely indispensable that provision should be made to secure for the Ministers of the Crown an adequate degree of authority in the Legislative Chamber, in order to enable them to supervise and regulate the conduct of public business therein.

It is accordingly suggested that these chambers should be framed after the model of the Municipal Corporations of England, and should include a certain proportion of members chosen by the House itself, at its first meeting, either from amongst the elected members, or from amongst those who are eligible for election ; and that such members should hold their seats for a period equal to two terms of ordinary membership.

It may be here explained that Municipal Corporations in England are now regulated by the Act of 1835, under which old abuses in the existing corporations were corrected, and efficient local institutions were provided for the whole kingdom. By this Act it is declared that the members of the Councils for cities or boroughs in England and Wales shall be elected by the

rate-payers, for a term of three years; one third of the "Councillors" going out of office annually. That the Council itself shall be empowered to elect "from the Councillors, or persons qualified to be Councillors," a proportionate number of persons to be "Aldermen," who shall be associated with them in the control and direction of local affairs. These Aldermen are chosen for six years, one half going out of office every third year. If Councillors are elected Aldermen, they retain their seats in the Council until the term of six years is expired; notwithstanding that, as Councillors, they were elected for three years only. This regulation—which combines the advantage of an annual infusion of members, recently approved of by the local constituency and thus truly indicating its sentiments, with that of securing the presence of experienced members, who are conversant with the routine of business,—has, in every instance where it has been fairly tried, proved most salutary in its operation (a). In addition to its more obvious advantages, this plan has the further merit of tending to secure "to whatever party may be the strongest for the moment in one of these Councils, a sufficient majority for the transaction of business" (b). It may therefore be

(a) Knight's Political Cyclop. v. 3. p. 390.

(b) Grey, Parl Govt. p. 229.

reasonably recommended as a suitable model for imitation in the formation of local institutions for the government of the provinces of Upper and Lower Canada.

And here it may be appropriate to advert to the provision which has been made in the draft Constitution for British North America, as prepared by the Quebec Conference, with respect to the Head of the Government. The fourth Resolution declares that "the Executive Authority or Government shall be vested in the Sovereign of the United Kingdom of Great Britain and Ireland, and be administered according to the well understood principles of the British Constitution, by the Sovereign personally or by the Representative of the Sovereign duly authorized." Professor Goldwin Smith, commenting upon this clause in a recent article in *Macmillan's Magazine*, remarks, that, "the authors of this solemn declaration know perfectly well that they would never permit the representative of the British Sovereign, much less the Sovereign personally, to perform a single act of government;" and that their language means "in plain and honest terms, that an executive power, of limits undefined by the Constitution, together with the power of nominating the Upper House of the Legislature, shall be vested in the leader of the party having the

majority for the time being, *whose acts shall be called those of the Crown*" (a). This flippant and exaggerated statement wholly ignores the powerful influence which is rightfully exercised by the Sovereign of Great Britain in the government of the country; nevertheless, it may serve to remind the framers of our new Constitution, that unless the Vice-Roy, or Governor General of British North America, and the Lieutenant Governors of the several confederated provinces, are invested with something more than mere ceremonial functions, they will very inadequately discharge the duties that appertain to the office of Queen's Representative. Forbearing from any further discussion of this delicate point on the present occasion, the writer would nevertheless refer to his forthcoming work upon Parliamentary Government, wherein he has carefully investigated the character of the kingly office, with a view to define the precise position and functions of the Sovereign in a Parliamentary Constitution.

The next suggestion he would venture to submit is, that in the event of Responsible Government (b) being established in the several Pro-

(a) Macmillan's Magazine, March 1865, p. 416.

(b) The writer refrains from offering any opinion as to whether or not it would be expedient to apply the system of Ministerial Responsibility to the local Canadian Government. The question is one of much difficulty, and must be determined upon general grounds of public policy. Assuming it to be decided affirmatively, it has been his object to point out the manner in which, as he conceives, it would be desirable to carry it out, so as to strengthen the hands of the Executive Government.

vinces of the Confederation, the Lieutenant Governor in each Province should have the right to chose a certain number of Ministers to conduct the business of the country in the Legislative Chamber. That these Ministers should be selected, by preference, from amongst the actual Members of the Chamber, or at any rate from persons eligible to be members of the same. That their tenure of office should depend upon their being able to retain the general confidence of the Assembly. That for so long as they continue to be Ministers, they shall retain their seats, and exercise all the privileges of membership. That if actual Members of the Assembly are appointed to be Ministers of the Crown, their seats shall not be vacated by their acceptance of office; ministerial responsibility being constitutionally enforced by the necessity for their being able to command the confidence and support of the local parliament. That upon the retirement from office of non-elected Ministers they shall cease to be Members of the Assembly. But if they represent a constituency. or have been elected by the Chamber itself, they will of course retain their seats until their term of service may expire.

The proposal that members of the local legislatures should be relieved from the necessity of being re-elected upon their appointment to seats

in the provincial Executive Council, may require some explanation; the more so as the expediency of applying the same usage to the case of Executive Councillors in the Federal Government may be urged upon grounds of equal force and propriety. Wherever the British Constitution prevails, the ancient rule,—first imposed by the statute of Queen Anne—continues to be enforced, and Members of Parliament who accept of any office from the Crown are required to vacate their seats; being eligible for re-election, however, if the office be one that is specially exempted from the penalty of disqualification. But this rule was originally established when the relations between the Crown and Parliament were widely different to those which now exist. The continuance of the practice, when it is attended by such a large amount of practical inconvenience, without any corresponding advantages, is a curious and unaccountable anomaly. The responsibility of Ministers, it is well understood, is to Parliament itself, and not to a mere local constituency, that may have chanced to return a particular member. For his own constituency, moreover, the member chosen is not a delegate but a representative, a distinction of vital importance, and involving widely different results. Practically it is a serious evil that the plans of a Ministry. that may possess the entire

confidence of Parliament, should be liable to derangement because one constituency, it may be for mere local or temporary considerations, should refuse to re-elect their member, upon his acceptance of office under the Crown. Besides, as the law now stands, it "is singularly inconsistent and capricious in its operation. While the junior Lords of the Treasury and Admiralty vacate their seats by accepting these offices, the rule does not apply to the more important and better paid offices of the Secretaries to these Boards, and of the Under-Secretaries of State, merely because the latter are not technically appointed by the Crown" (a). The limitation of the choice of the Crown, in the first instance—of men who are eligible to be Cabinet Ministers, and heads of the principal public departments—to those who have or can obtain seats in parliament, and who (if they sit in the House of Commons) are sure of re-election, subjects the public service to much inconvenience, and is one of the drawbacks incident to Parliamentary Government: but the evil is seriously aggravated by the existence of the law which compels the immediate vacation of his seat by a member who may accept a ministerial office. Ever since the first introduction of the Reform Bill, in 1831, leading statesmen, for example, Earl

(a) Grey, Parl. Govt. p. 239.

Grey (the then Prime Minister,) the Duke of Wellington, Lord John Russell, and Mr. Disraeli, have strenuously advocated the repeal of this law—and have submitted Bills to Parliament to carry out their views upon the subject—but hitherto the Legislature has persisted in retaining the ancient restriction, although the necessity for its continuance has long since passed away (*a*). Among the valuable suggestions for the improvement of the English political system, in connexion with any further instalment of parliamentary reform, which have been urged by Lord Grey, in the new edition of his *Essay on Parliamentary Government*, is one for the abolition of this antiquated practice.

The ideas embodied in the foregoing remarks are commended to the consideration of the statesmen to whom the task of framing Constitutions for the future government of the British North American provinces may be entrusted. It will be seen that the point to which the writer has mainly directed his attention is that of strengthening the Executive Authority, and affording due facility to the Government for the exercise of a legitimate control over the Legislative Chambers. An Executive that does not possess sufficient independence to shape its

(*a*) See *Ibid.*, pp. 120-125. *May Const. Hist.* v. 1, p. 308. *Hans. Deb.* v. 147, p. 905.

policy in accordance with its own lights, or sufficient influence over Parliament to direct the course of public legislation, is a fertile source of political corruption, and a hindrance to the true development of national life. How far the suggestions herewith submitted are calculated to prevent the occurrence of this evil, and to check the encroachments of an uncontrollable democracy, others must determine. One thing should be remembered, however, that while at first sight some of the recommendations included in this scheme may appear to be novel and peculiar, they are nevertheless in strict accordance with the general principles of the British Constitution, and have been framed with the view of adapting those principles to our own political condition. They have the further advantage of being in direct conformity with the recommendations of the highest constitutional authorities in Great Britain, in their endeavours to redress the balance between the several co-ordinate powers of which the Imperial Legislature is composed, and secure to the Ministers of the Crown, and to the possessors of property in the United Kingdom, their rightful share of influence in the House of Commons. We are therefore warranted in the hope that in a political system, based upon this foundation, it would be possible to preserve the

elements of authority, of stability, and of progress, in due proportion, in the popular Chambers, without any encroachment upon the fundamental principles of Responsible Government.

These remarks cannot be more appropriately concluded than by quoting the timely words of Earl Russell, wherein he warns us that "by deliberately adopting, or unconsciously gliding into a more democratic form of government, we should take care not to be misled by the notion that we should thereby be placing ourselves under the sway of pure reason." "It is because man is a creature of passion and of imagination, as well as of reason, that in the constitution of a government by which he is to be ruled and directed, it is the concern of wisdom and of foresight to avail ourselves of all the influences which may give moderation, force and sanctity, to the supreme authority."

* * * * "Let no one imagine that without such influences, or some of them at least, a political constitution can reach its highest perfection." (a)

(a) Earl Russell, Eng. Const. New Edition, pp. xvcı—xvcııı.

