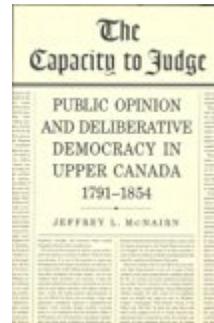


Jeffrey L. McNairn. *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854*. Toronto, Buffalo, and London: University of Toronto Press, 2000. xii + 460 pp. \$75.00 (cloth), ISBN 978-0-8020-4360-3.

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From Mixed Monarchy to Deliberative Democracy

From Mixed Monarchy to Deliberative Democracy

This book presents a fresh and intriguing approach to one of the grand topics of Canadian historical writing: the attainment of internal self-government by Britain's North American colonies in the mid-nineteenth century. The case for responsible government, as it was generally called, relied on the notion that the colonies should be governed according to the wishes of a rational and informed public opinion as represented in an elective legislature. Focusing on Upper Canada, Jeffrey McNairn traces the emergence of the concept of public opinion as a source of political authority and recounts the rise of the social institutions that gave force to the concept: in particular, newspapers, forums of polite discussion such as literary and debating societies, and institutions of public enlightenment and self-education such as mechanics' institutes, reading rooms and libraries. He analyzes the impact of the concept on constitutional thought, reviewing the arguments for and against "government by discussion," the controversies over the best way to implement it, and the efforts of conservatives, once the idea had triumphed in principle, to dream up ways of limiting its effects. He ends his substantive exposition by tracing the 30-year debate over the abolition of primogeniture, which persisted in Upper Canada until 1851. This he presents as a case study of public opinion in action, an example ingeniously chosen on the premise that the idea of equal partible inheritance, pertinaciously pressed for more than a generation, triumphed even though farmers and other landowners tended not to apply it in practice.

In the public mind, primogeniture stood for the idea of aristocracy, while its abolition stood for that of democracy.

While the book's scope amply justifies its subtitle, its centre of gravity rests in the years 1844-54, a period stretching from the last stand of Upper Canadian toryism, under Governor-General Metcalfe, against popular sovereignty to the rise to power of a transformed political conservatism, reconciled to the primacy of public opinion but bent on containing its effects. These pages comprise one of the most detailed discussions of a single topic in the entire historiography of Canadian political thought, and one chapter in particular stands out as a major enrichment of our knowledge of mid-nineteenth-century Canada: that on "Tory republicanism." Upper Canadian conservatism had stood by the old British constitutionalism of mixed monarchy, which relied on the power of the crown and a non-elective upper chamber to check the elective lower house, which represented public opinion. Once the ascendancy of public opinion was complete, and political power concentrated in the legislative assembly, certain conservatives turned to American-style republicanism, with its elected chief executive and upper chamber, as a more conservative mode of articulating public opinion. Some even advocated a federal union of British North America as a way of achieving the American model more completely. Once conservatives discovered, in 1854, that they could command a majority in the assembly, however, this brief flowering of Tory constitutional creativity withered away.

It is probably safe to say that no writing on Canadian political culture has been based on such a rich array of secondary sources. McNairn is widely read in the literature on British and American constitutionalism and on the rise of the “public sphere”—his exposition is founded on the historical and theoretical writings of Jürgen Habermas. With such a weight of secondary authority underpinning the author’s extensive primary research, his book may appear even more authoritative than it undoubtedly is, and it behooves the conscientious reviewer to note its limits.

For one thing, then, his grounding of the rise of public opinion in the early political controversies that were so crucial to it is very sketchy compared with Hartwell Bowsfield’s doctoral thesis, “Upper Canada in the 1820s: The Development of a Political Consciousness” (1976), which in some respects is a conceptual precursor of the present book. To some extent this is inevitable, given the book’s broader scope, but it also hints at less certain grasp of the period before 1844 than of the final decade.

This reservation extends to the author’s discussion of constitutional thought. He betrays no awareness that the Upper Canadian demand for responsible government was grounded in a resolute rejection of the claim of the British parliament to sovereignty in the colony’s internal affairs; indeed, he seems to take the contrary for granted. He doesn’t even mention the “Letter on Responsible Government” of 1829, the fullest early rejection of the imperial claim; he discusses the “resolutions on responsible government” of 1841 out of chronological order and without noticing the crucial difference between Robert Baldwin’s original resolutions and the government’s amend-

ment; and he treats Baldwin’s federal interpretation of the imperial constitution in 1844 as a novelty of no great significance, when in fact it had underpinned Baldwinite constitutionalism since the 1820s. By the same token, his discussion of the place of the idea of inherent right—the foundation of the claim to colonial sovereignty—in Upper Canadian political thought is slight and unconvincing. This matters because the failure of historians to recognize the roots and temper of the Reformers’ commitment to local self-determination has obscured the connection between the Upper Canadian campaign for responsible government and later movements for local autonomy within United Canada and then within Confederation, and this lacuna in historical understanding has subserved an unduly centralist interpretation of the federal constitution.[1]

One could argue with the author about other things, too, but in the main that possibility testifies to this book’s stature as a provocative and intellectually distinguished contribution to the several fields on which it touches. It originated as a doctoral thesis, and one looks forward to the even better work that will follow as time deepens the author’s knowledge of the historical terrain.

Note

[1]. In other words, McNairn cleaves to the dominant twentieth-century paradigm of Canadian constitutional history, which I have criticized in *Getting It Wrong: How Canadians Forgot Their Past and Imperilled Confederation* (Toronto, Buffalo, and London: University of Toronto Press, 1999). On the whole, though, the two books complement rather than contradict each other.

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