THE EVOLUTION OF MUNICIPAL GOVERNMENT IN NEW BRUNSWICK

The people of New Brunswick have concerned themselves in the past more with the substance than with the form of government. The following comment written with reference to New Brunswick's part in the struggle for responsible government is revealing:—

> "One cannot but be struck with the difference in the aims which the people of New Brunswick set before themselves, as compared with those sought in the other provinces. While they were struggling to widen the sphere of self-government, New Brunswick confined itself to strictly practical objectives. The people accepted instinctively Pope's dictum, 'for forms of government let fools contest', and were quite satisfied with a government which administered their affairs as they wished, let its form be what it might." (1).

While this opinion relates primarily to responsible government on the provincial level, it must be taken to reflect the popular view of local self-government as well. The young lawyer in his early practice may expect to encounter a wide and undiscriminating diversity of laws regulating local self-government in this province.

Inevitably, demands will be made on his time, early in practice, requiring some participation in local public affairs. The young practitioner with his recently acquired knowledge of The Counties' Act, (2) The Towns Act, (3) The Villages' Act, (4) and the Local Improvement Districts Act (5) is expected as a matter of course to devote some time and energy to municipal government. He may secure recognition and reward by appointment as a solicitor to a municipality. He may contribute his knowledge and services as a representative. Undoubtedly he will be called upon from time to time to concern himself with litigation arising out of complaints of breaches of by-laws. In any event, he will be required to devote some of his time to the practice of municipal law.

As experience ripens into further knowledge, the full panorama of municipal statute law begins to unfold. All municipal institutions are the creation, and are under the jurisdiction of the Provincial Legislature, in accordance with Section 92 of the British North America Act, 1867. A community may derive its authority from one of the four public acts referred to above or it may function under a special charter. In any event, its powers will be expanded by such public acts as the Early Closing Act (6) and many others of a like nature representing the government's views of the requirements of the municipalities. Again the community will undoubtedly have secured legislation on its own initiative representing its views of local requirements. The particular assistance of other acts may have been invoked by such passages as these:—

> "The provisions in this Act contained shall be held to apply to the Police Magistrate of the City of Fredericton, and to the Mayor, Aldermen and Commonalty of the said City, and any bye-law and ordinance of the said City, in the same manner and to the same extent in all respects as the same is made to apply to the City of Saint John." (7).

(1) William Smith; **Evolution of Government in Canada**, Confederation Memorial Volume, P. 244.
(2) C. 147, 14 Geo. VI, (1950)
(3) C. 169, 14 Geo. VI, (1950)
(4) C. 170, 14 Geo. VI, (1950)
(5) C. 48, 9 Geo. VI, (1945)
(6) C. 55, 3 Geo. VI, (1939)
(7) C. 22, 43 Victoria, (1880)

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Occasionally statutes are incorporated by reference and sometimes by double reference. In early practice it is considered good mental exercise to follow the procedural pattern set by The City of Fredericton Civil Court Act, (8) which adopted the procedure in Justices Civil Courts, which in turn was modified by the provisions of The Inferior Courts Act. (9) Sometimes this is baffling. It bears a strong resemblance to Joseph's coat. One municipality may be governed by reference to over 100 separate pieces of legislation. This can be explained in part by reference to the many draftsmen who have fashioned the law over a period of time, by lack of close supervision on the part of the Municipalities' Committees of the Legislative Assembly, and by the strong individualistic opinions of the governing bodies of the municipalities themselves.

When knowledge of municipal law is complete in the young lawyer, he will begin to compare the legislative labyrinth of New Brunswick municipal law with the statutes of other provinces. The opinion is ventured that the municipal statute law of New Brunswick exceeds that of the larger province of Ontario by several feet of library shelf. One might ask with fairness the reason for this legislative harvest. The answer may be stated in its shortest form: that New Brunswick municipal law is the product of its own history. The purpose of this article will be to trace that history.

While an historical review of legislation of this nature must deal with structure and form, rather than with the functions of local government, the fundamental purposes of municipal institutions should be kept firmly in mind. local self-government is the essence of democracy. There is a maxim that "the best school of democracy, and the best guarantee for its success, is the practice of local self-government." (10)

Community problems are first in the attention of the electors. The dog by-law may transcend in the local consciousness changes in the fiscal system of the central government. Many parliamentary representatives receive their first training in municipal councils. Electors and elected alike first learn the principles of democracy in their own communities. The wisdom of earlier times is still modern. De Tocqueville in his *Democracy in America* has written:—

> "Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science; they bring it within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions, it cannot have the spirit of liberty."

The scope of this article must extend from the formation of the province in 1784 to its most recent legislative pronouncements in 1950. (11) As particular forms of government are related by experience, adoption and problems of draftsmanship, some light can be shed upon the various forms of local government which exist in this province by reference to and comparison with systems in use in other jurisdictions.

We are told (12) that the beginnings of popular government were in small areas, rural communities and tiny cities, each with a relatively small number of free inhabitants. These free inhabitants, or freemen, became accustomed to meet in the form of assemblies to discuss communal affairs, and while the heads of families exercised great influence, there is no doubt that the wishes of the freemen were voiced and considered. Such assemblies met without benefit of charter, constitution or by-laws as we know them today and developed in embryonic form the pattern of parliamentary institutions which were to follow. Well known examples are the Agora of Greece, the Comitia of Rome, the Folk Moot of the

(8) C. 55, 43 Cons. Stat., (1877)
(9) C. 124, R.S.N.B., (1927)
(10) Viscount Bryce: **Modern Democracies**, Vol. I, P. 133.
(11) The Counties Act and The Village Act supra.
(12) Cf. Viscount Bryce: **Modern Democracies**, Vol. I, P. 129.

Anglo-Saxons in England, and the Thing of the Norsemen. Full proof of the utility of such assemblies may be observed in the survival of town meetings, such as ratepayers meetings to elect school trustees, or citizens indignation meetings called for the purpose of opposing pending action of local governmental bodies.

The early assemblies were concerned with all problems affecting themselves without restriction by higher authority, and more particularly with problems of joint defence against attack, settlement of internal disputes and the management of land. In the course of time, such communities became absorbed into larger political divisions and they lost most of their power of self-government to the central authority thus created. The central authority, however, as the complexity of government developed, learned to delegate local powers back to the communities. At this point may be seen the origin of local delegated self-government as we see it today. With few exceptions all municipal forms of government derive their authority today by delegation from central authority. This is the first important characteristic in local self-government.

The development of all local governments did not precede the organization of a central government. Canada furnishes an excellent example of the exception. In his excellent study of the development of local government in Ontario, Mr. Romaine K. Ross points out:—

> "While in England the central government was, for the most part, superimposed upon a local organization already in existence, in the provinces of Canada local administration grew out of a highly centralized system of government. The ultimate result, however, has in both cases been the same. The growth of a central government in England did not wholly extinguish local authorities, nor did the inroads of local administration in the Canadian provinces completely disintegrate the central government. Rather have the organs of government in these political territories where democratic principles of government prevail, found expression in a happy mdium wherein they can function, one with the other, in a manner calculated to do the greatest good to the greatest number." (13).

Prior to 1784, that part of Acadia under French rule, or Nova Scotia under British rule, which is now New Brunswick, was governed directly from Paris and later from London without representation. No representative form of local government existed. At the time of the separation of the province from Nova Scotia, the population was estimated at about 16,000. Of these, 12,000 were Loyalists who were recently arrived, 2,500 were pre-Loyalist, and 1,500 were French Acadians. The new province was divided by Letters Patent into territorial units consisting of counties, towns and parishes and a government consisting of a Governor, Council and Assembly was established. The province did not enjoy responsible government and the assembly was too much concerned in a contest with the council to attempt the reform of the municipal system which then existed.

All local government was non-representative. It could hardly be called a system. The county magistrates, appointed by the Governor-in-Council, holding a commission renewable yearly, assembled in quarter sessions, exercised a certain jurisdiction over taxation, roads, the poor, prisons, and other essential community matters. Their functions of local government were in addition to their duties as justices of the Inferior Courts, when they exercised both criminal and civil jurisdiction. Being men of prominence, it was not unusual to find a number of them in command of the local militia.

The first legislature met at Saint John in 1786, when important portions of substantive law were enacted. It is apparent, however, that the legislature was content with the programme of local government by magistrates, for by "An Act for the Appointment of Town and Parish Officers in the Several Counties of this

(13) Local Government in Ontario, P.P. 95-6.

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Province." (14) the Justices of the General Sessions of the Peace were empowered to appoint a wide variety of parish officials. By "An Act for Assisting Collecting and Levying County Rates." (15) they were granted the important power to tax. Subsequent acts expanded the powers of the magistrates until they were clothed with all useful powers of local government. The power to assess and levy taxes, to expend money, and to appoint subordinate officials, gave them full control of the counties. We have it on good authority that "the system of county government was as bad as possible, because the magistrates were not responsible to any person. The condition of the county accounts was never made public and it was not until a comparatively late period—that the grand jury obtained legislative authority to inspect the county accounts." (16).

Such were the conditions which obtained generally in the counties until 1854. There was one important exception. On May 18, 1785, a few months prior to the first meeting of the Assembly at Saint John, a comprehensive charter was granted to the inhabitants of that city allowing them a full measure of local self-government. The preamble pointedly hints at the existence of evils and promises a prudent use of the liberties granted. Its text is as follows:—

> "Whereas our loving subjects the inhabitants of the Town or District of Parr, lying on the east side of the River Saint John, and of Carleton on the west side thereof, at the entrance of the River Saint John aforesaid, both which Districts are in our Province of New Brunswick, in America, have by their petition to our trusty and well beloved Thomas Carleton Esquire, our Governor and Commander in Chief in and over our said Province, represented that they have, by their exertions, conquered many of the difficulties attending the settlement of a new country; and that they are anxious to remove the remaining evils they at present labour under, part of which flow from the want of a regular Magistracy for the able and orderly government of the Districts they inhabit: And whereas they have also represented, that they humbly conceive one important step towards this desirable end, would be granting them a charter of Incorporation, under the sanction of which they might be enabled to ordain such bye-laws and regulations as their peculiar wants and rapid growth urgently call for: That the advantages to be derived from a charter empowering them to establish such ordinances as are requisite for the good government of a populous place are so obvious, they think it necessary only to hint at them; but that the speedy administration of justice both civil and criminal, will be so greatly aided by the erecting a Mayor's Court and Quarter Sessions, they humbly hope this consideration alone will be sufficient to induce a compliance with their request; and have confidently promised that their prudent use of the liberties so to be granted them will justify the favour. And whereas our said loving subjects, impelled by the foregoing reasons, have humbly petitioned the said Thomas Carleton, Esquire, our Governor aforesaid, for a charter comprehending the said districts on both sides of the river Saint John, erecting the whole into one City, to be called the City of Saint John, and conferring on the Corporation the several powers and privileges usually granted to mercantile towns for the encouragement of commerce, and found by experience conducive to the protection and support of the upright part of the community; as by the said petition, recourse being thereunto had, may more fully and at large appear."

This charter was well in advance of the times and its grant can be contrasted with conditions which prevailed in Upper Canada. No provision for municipal government had been made under the Quebec Act of 1774. The Imperial Parliament overcame this difficulty in 1791 by the passage of the Constitutional Act. The first session of the Upper Canada Legislature assembled under this act, introduced a bill authorizing town meetings and the election of certain municipal officers by the ratepayers.

(14) C. 28, 26 Geo. III. (1786)
(15) C. 42, 26 Geo. III. (1786)
(16) James Hannay: **History of New Brunswick**, Vol. II, P 136.

The bill failed to pass, but was reintroduced and enacted in 1793, thereby vesting in the ratepayers the right to elect their own officials and closing the door forever to the further ascendency of the magistrates over the people. The process of subtracting power from the magistrates continued for over a period of 50 years, hastened by the Durham Report of 1839 and the union of Upper and Lower Canada in 1840. A general municipal system was established in Upper Canada by the Baldwin Act of 1849. One is tempted to speculate by what expedient the ratepayers of Saint John managed to obtain local autonomy far in advance of say, Toronto, which obtained a full governing act in 1834, and influential Upper Canada which attained full autonomy in 1849. Perhaps the story is well known in Saint John. In any event, the presence in Saint John of so many "Loyalists" accustomed to the town meetings of Boston, presided over by the distinguished Samuel Adams, must be considered as a factor which could obtain for Saint John the distinction of being the first city in British North America to receive a self-governing charter. The air of suspician which appears to gather when Saint John appears before the Municipalities Committee of the Legislature in modern times indicates that its citizens are still alive to the great importance of local institutions. Recent litigation supports this opinion.

While Upper Canada was winning ground slowly in the municipal area, and the City of Saint John was developing its own local institutions, the Assembly of New Brunswick continued to ignore the demands for local autonomy. Its concern was in the larger field of responsible government for the province. The days of the magistrates' autocratic rule, however, were numbered. The struggle for responsible government which was at its height in all provinces, did focus attention on problems of community government, and the spirit of reform then abroad did assist the cause of local government. In 1848, the City of Fredericton received its first legislative charter and with it local home rule. The first revision of New Brunswick statutes followed and was enacted in 1854. These statutes contained a whole part devoted to principles of local autonomy. The adoption of local self-government in the counties was optional. Upon petition of 100 residents, either ratepayers or freeholders, the sheriff of the county was directed to hold a poll. If a majority of the electors favoured incorporation under the Act of 1854, the Governor-in-Council was so advised and a charter of incorporation issued. The legislation contained some limitations, the most notable of which required the submission of all by-laws to the Provincial Secretary-Treasurer, and allowing the Governor 60 days to disallow. Such by-laws also were to be in force for 3 years only, when they were required to be re-enacted and re-submitted. These matters indicate the remnant of suspicion of the abilities of the citizens to manage thei rown affairs. This suspicion was soon to disappear when the statutes were consolidated in 1877. Six counties took advantage of the Act of 1854 and embarked on their mission of educating people to govern themselves.

Again it is desirable at the end of a period to consider the sources of development. In England up to 1835 local government was in the hands of the magistrates, assembled in Quarter Sessions. They exercised jurisdiction over roads and prisons: the poor were cared for, if at all, by the Guardians; in the boroughs such necessary matters as paving and lighting or the supply of pure water, were all attended to by special commissioners. Local government lacked representation. In that year by the Municipal Corporations Act local government was granted and remained in the form of the original gift for over 100 years. This indicated the traditional English desire not to experiment with forms of government. This moderate development may have exerted some influence on the colonies, but such influnce would be distant. The more likely source of influence appears to come from the American nation newly established. The reports of the commissioners as a preface to the Acts of 1854 indicate that the source of material for such acts came from Massachusetts and New England. Here was the chief experimental ground of the municipal law of that day.

The development of local self-government in New Brunswick passed into its final stage in 1877 when the Public Statutes of the Province were consolidated. By Chapter 99 of the Consolidated Statutes 1877, it was provided that the counties not then incorporated be bodies corporate under the Chapter and the optional method provided under the Acts of 1854 was repealed. The feeling surrounding the granting of Confederation is credited with much of this advance in the development of municipal institutions. The advent of responsible government had a similar influence. The new Municipal Act delegated to the municipalities most of the local problems which were properly in the municipalities field.

From 1856 until the present, the form and structure of local self-government has been steadily improved. Between 1856 and 1896, seven towns were incorporated by special charter as follows:–

Woodstock	C. 32, 19 Victoria, 1856
St. Stephen	C. 20, 34 Victoria, 1871
Milltown	C.103, 36 Victoria, 1873
Marysville	C. 25, 49 Victoria, 1886
Campbellton	C. 81, 51 Victoria, 1888
Grand Falls	C. 73, 53 Victoria, 1890
Chatham	C. 46, 59 Victoria, 1896

Following the succession of private acts incorporating towns, the Towns Incorporation Act of 1896 was enacted providing a general act under which a community could seek incorporation as a town by application to the Lieutenant-Governor-in-Council. Twelve communities availed themselves of these privileges between 1899 and 1920, namely:

Newcastle	1899	Edmundston	1905
Sackville	1903	Dalhousie	1905
Shediac	1903	Bathurst	1912
St. Andrews	1903	Sunny Brae	1915
Sussex	1904	Hartland	1918
St. George	1904	St. Leonard	1920

The process was further continued by the Villages Incorporation Act of 1920 and four communities have since then been incorporated as villages:

Rothesay	1921	Dieppe	1946
Port Elgin	1922	Shippegan	1947

The City of Moncton was incorporated by Special Act in 1890.

A further general act of importance is the Local Improvement District Act, Chapter 48, 9 George VI, 1945. Under this Act, districts are permitted to incorporate for the purpose of providing services, the governing body of the district being the commission. Since that date, 37 districts have incorporated as local improvement districts.

The province has further improved the position of municipalities through general legislation dealing with particular aspects of municipal government such as the Early Closing Act and others which further increase the powers of the municipalities. The County Magistrates Act is an outstanding example. Most of these acts, like the early acts, are optional.

Up to 1934, the trend appeared to be toward a steady increase in the powers of municipalities. In that year, the Control of Municipalities Act provided for the establishment of a Department of Municipal Affairs headed by a Commissioner. This Department is clothed with considerable authority particularly in connection with financial affairs of municipalities. Thus far, the use of this power has been largely in the form of recommendation.

It has a counter-part in the Province of Ontario since 1935. The Ontario department has achieved a high degree of centralized supervision over local affairs

in that province through the Ontario Municipality Board which is vested with a large general jurisdiction. The Board's powers are made effective by order rather than by by-law and it actually supervises many municipal undertakings. The Ontario Act has delegated to the Board many judicial powers of extreme nature but proponents of the Board allege that it is functioning well and producing uniformity in municipal control.

New Brunswick has departed very largely from the traditional English system of government both in terminology and method. In England, the local authorities, as they are called, consist of the Counties and County Boroughs; next the Municipal Boroughs; then the Urban Districts and Rural Districts; and finally the oldest form of municipal government in England, the Parish Council or Parish Meeting. The duties and powers of these bodies are assigned to them direct by parliament, sometimes in general acts and sometimes by special legislation promoted by the authority itself. English municipal bodies of this nature work largely through Committees; such American institutions as Boards of Control, Town Managers and so forth are not used. There has been little experimentation in local government in England.

The United States, on the other hand, has been the testing ground of municipal institutions for over half-a-century It has been the chief experimental ground for local self-government in the world. It has produced such forms as government by Boards of Control, government by Commissioners, the strong-Mayor weak-Council form of government, the City Manager or Town Manager form of government. Such experimentation in the local field seems to one essential of local self-government. In a community, be it large or small, the personal equation is most important. A careful and logical development of a municipal structure can be defeated by an adverse personal element and all municipalities must in the final analysis depend on the good sense of their elected representatives. In the United States, there has been a considerable decline in the Council form of government with a corresponding increase in executive power. This has not been the case in New Brunswick. Two communities in New Brunswick, however, have adopted the equivalent of a Town Manager, namely Saint John and Woodstock, where a greater degree of executive authority is placed in the Manager, than under the traditional weak-Mayor strong-Council system.

One thing may be observed. New Brunswick municipal institutions have not reacted sharply to any particular form of government in use in other jurisdictions. In nomenclature we are independent. Our territorial units of local self-government are "counties", "towns" and "parishes"; in England they are "boroughs", "districts" and "parishes"; in the United States terminology is not uniform. In the common law prrovinces of Canada, we find 'districts" and "townships" but no "parishes." The designation of the parish as our smallest territorial unit, and as including a "city, town or incorporated village" (17) comes from Virginia and Maryland, the homes of some of our earliest settlers. In all British colonies the township system has been in frequent use and the word "parish" referred to an ecclesiastical division. In Virginia, the parish attained considerable importance as a political unit. Parishes were originally coterminous with the plantations and larger areas. It is only in New Brunswick that the term has become a permanent part of the civil organization of government.

In addition to our independence in names, we have shown no particular inclination to "centralize". The legislature has "delegated" local powers. It has not, however, "abdicated" these powers. It is only in financial matters that a tendency may be observed to withdraw local powers. (18) This is not so in other jurisdictions, when larger communities have suffered somewhat from local attention, thus creating the excuse for uniformity and centralization. The "pinch-penny" arguments of county councils have kept alive the spirit of interest in local public problems.

(17) C. 149, Geo. VI, (1952) S. 37 (34)
(18) Cf. County Unit Tax Systems for Schools.

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Finally, in our counties at least, we are too small for the intricate machinery of larger American units and local business is still done largely by committee.

This article began with the intimation that the citizens of New Brunswick have shown more interest in the substance, rather than the form of local institutions. The gradual development of these institutions shows a tendency to follow the American pattern in preference to the English form. This development, however, has not been experimental. It has proceeded slowly and along individualistic lines, following no set theory and responsible to few rules of uniformity. While a Department of Municipal Affairs watches municipal progress, there is no indication of pressure on municipalities requiring them to conform to prevailing theories other than keeping standard accounts. This development contrasts strongly with other jurisdictions where greater uniformity is required, or more emphasis is placed on form.

Perhaps no formula for municipal structure can be presented that will guarantee good municipal government. The good character, honesty and reputation of the elected representative working within the framework of a simplified municipal machinery designed at home to reflect local opinions, produces good government on the part of those who govern and a lively interest on the part of those who elect. The personal equation is greater than the method.

Criticism of the narrowness and parsimoniousness of aldermen and councillors, and of those who elect them, is often heard. These defects are not serious. The narrow parsimonious spirit sometimes shown on the local level is often a manifestation of personal integrity and a deep interest in the whole of the community as opposed to its several parts. It is the true spirit of a trustee who is sworn to preserve the assets of an estate, not to prey upon them. Under these circumstances, civic speculation and personal gain are infrequent.

It is to be hoped that the independent spirit of New Brunswick municipalities will suffer few impairments and that regulation and centralization will not replace the spirit of improvisation and adaptation which is the natural genius of our people.

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