THE NEW LABORATORY FOR EMPIRE: QUEBEC AND THE REFORMULATION OF BRITISH IMPERIAL PRACTICE, 1760-1775

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Abstract

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At the conclusion of the Seven Years War Britain found itself in control of a vast
new territory in North America containing 70,000 formerly French subjects. In the case
of Quebec, the local crises which erupted within the colony and those in London over
plans to govern the new colony helped to shape emerging attitudes to heterogeneity in an
expanding empire. The final bill, which sought to settle the governance of the colony
after almost a decade and a half of instability and uncertainty, was in many ways
revolutionary. Controversially, in the context of contemporary debates and attitudes, the
bill granted broad toleration to the Catholic Church. The bill maintained French civil
law, while instituting English criminal law. As will be explored in the course of this
dissertation, the principles underlying the final bill challenged and upended the
predominant British understanding and practice of empire. Over the course of more than
ten years British officials considered a multitude of reports, addresses, communications,
and other streams of information in order to come to terms with their new imperial
In the face of a number of difficult questions posed by the new peoples and territories ceded to Britain in the Treaty of Paris (1763), British imperial administrators relied on evidence to formulate a policy to reform the governance of Quebec. Quebec, then, was a laboratory for new practices of empire that drastically differed from that which came before. The process of incorporating Quebec into the British Empire explains future practice both in its particulars and in the nature of its making. Quebec fostered a change in attitude towards pluralism in the forms of civil governance, and cultural values; opening new possibilities for imperial governance. In responding to the attacks of those wedded to older notions of empire and the constitution British officials developed a historical, intellectual, and legal case for policies of cultural continuity. In their three pronged approach advocates for the strategies developed in Quebec laid the foundation for a new set of practices that would define British rule over India, Africa, and beyond.
For my parents
CONTENTS

List of Figures.................................................................................................................iv

Acknowledgements......................................................................................................v

Chapter 1: Introduction.................................................................................................1

Chapter 2: The Triumph of Ideology............................................................................26

Chapter 3: Quebec and Halifax’s Folly.................................................................74

Chapter 4: London and the Crisis in Quebec.......................................................134

Chapter 5: Carleton’s New Approach.................................................................201

Chapter 6: The Triumph of Empiricism..............................................................268

Chapter 7: Epilogue: The Return of the Acadians............................................329

Works Cited.............................................................................................................344
LIST OF FIGURES

Figure 6.1: “The Mitred Minuet” ......................................................... 321
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When I first moved to Notre Dame I was unsure of my own abilities as a historian and a writer. As I leave South Bend, I am sure that I have grown for the better, personally and professionally, in ways I never could have predicted before I arrived. This is largely due to Jim Smyth. Jim was a friend and mentor far beyond what a student should expect from an advisor. He was always generous and insightful, whether on the racquetball court, in keeping a roof over my head, or when offering much needed lessons in writing and historical analysis. I did not know what to expect when I arrived in South Bend, but I cannot imagine having as enriching or enjoyable an experience working with anyone other than Jim.

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CHAPTER 1:

INTRODUCTION

“When I speak against theory, I mean always a weak, erroneous, fallacious, unfounded or imperfect theory; and one of the ways of discovering that it is a false theory is by comparing it with practice” – Edmund Burke, *Speech in the House of Commons on Representation in Parliament, 7 May 1782*

“The science of constructing a commonwealth, or renovating it, or reforming it, is, like every other experimental science, not to be taught *a priori*. Nor is it a short experience that can instruct us in that practical science, because the real effects of moral causes are not always immediate.” – Edmund Burke, *Reflections on the Revolution in France, 1790*

“I must, in a manner, touch with my own hands, not only the fixed but the momentary circumstances before I could venture to suggest any political project whatsoever. I must know the power and disposition to accept, to execute and to persevere. I must see all the aids, and all the obstacles. I must see the means of correcting the plan, where correctives would be wanted. I must see the things; I must see the men.” – Edmund Burke, *A Letter to a Member of the National Assembly, 1791*

Though written after the passage of the Quebec Act, and not directly addressing it, Edmund Burke’s sentiments succinctly state the attitudes that shaped the drafting of the bill. Burke’s statements delineate fundamental principles of the ‘official mind’ during the period of debate leading up to the passing of the final bill in Parliament in June
1774.¹ The core of my argument is developed with men like Burke in mind. Burke’s opposition to the bill stemmed partly from his idealization of the benefits of English liberty and partly from his not ‘see[ing] the men’ on the ground in Quebec. Over the course of more than ten years British officials considered a multitude of reports, addresses, communications, and other streams of information in order to come to terms with their new imperial dominion. In the face of a number of difficult questions posed by the new peoples and territories ceded to Britain in the Treaty of Paris (1763), British imperial administrators relied on evidence to formulate a policy to reform the governance of Quebec.²

The Treaty of Paris brought an end to the hostilities between the French and British crowns. Considered by some to be the first global war, as theatres of conflict opened in Asia, Europe, and North America, the Seven Years War erupted over the battle for imperial supremacy in the Ohio River Valley. Victorious after the signing of the Treaty, Britain found itself in control of a vast new territory in North America containing 70,000 formerly French subjects and an unknown number of native peoples.³ Far from simplifying British rule and cementing imperial legitimacy, the victory thrust

¹ P.J. Marshall, The Making and Unmaking of Empires (New York: Oxford University Press, 2007), 9-10. As Marshall points out when speaking of Britain, in the context of a study of the official mind, it is often represented by “ministers, officials, and their advisors at home,” and by, “generals, admirals, and governors overseas.” This also clearly included MPs as Parliament increasingly took a role in regulating imperial affairs.


Britain into a period of instability and crisis which would fundamentally alter its imperial project and the nature of its relationship to the settler colonies.  

In the case of Quebec, the local crises which erupted within the colony and those in London over plans to govern the new colony helped to shape emerging attitudes to heterogeneity in an expanding empire. The final bill, which sought to settle the governance of the colony after almost a decade and a half of instability and uncertainty, was in many ways revolutionary. The “Anglo-Gallican Protestant-Popish Bill” held several key clauses that cement its lasting, but too-often overlooked, importance within British imperial history. Controversially, in the context of contemporary debates and attitudes, the bill granted broad toleration to the Catholic Church and guaranteed the continuation of tithes for the clergy. Critically for Catholics, the Test Act was removed and the Oath of Allegiance required for public office made no specific mention of religion, only requiring allegiance to George III and “renouncing all Pardons and Dispensations from any Power or Persons.” The bill maintained French civil law for all matters related to property and other private cases, while instituting English criminal law for the maintenance of public order. The civil government would be made up of a legislative council headed by the Governor and appointed by the crown. Though all taxes


6 Shortt and Doughty, 573. In the context of the Catholic Question in Ireland and Britain this was a revolutionary change. On the importance of oaths in the period, two works are particularly important in relation to Quebec: Patrick Fagan, Divided Loyalties: The Question of the Oath for Irish Catholics in the Eighteenth Century, (Dublin: Four Courts Press, 1997) and Vincent Morely, ‘Catholic Disaffection and the Oath of Allegiance of 1774,’ in People, Politics and Power: Essays on Irish history 1660-1850 eds. James Kelly, John McCafferty, and Charles Ivar McGrath (Dublin: University College Dublin Press, 2009).
levied in the colony would continue to originate in London, the council had broad powers to create new law subject to royal approval. These various clauses, existing in the draft sent to Parliament and only slightly refined during its passage through the Commons, would generate controversy from the moment of its introduction until well after its passage. As will be explored in the course of this dissertation, the principles underlying the final bill and the bill itself challenged and upended the predominant British understanding and practice of empire in the decades, one might argue centuries, prior to 1774.

While looking forward towards the future of British imperial rule in India, Africa, and beyond, this project is not ahistorical, nor anachronistic. I am not writing of a whiggish line of increasingly open attitudes to cultural, religious, and legal heterogeneity. One should not confuse toleration of difference with notions of equality or acceptance. Nor does the process of incorporating Quebec mean that the British Empire shied away from the use of force to quell dissent and disloyalty among subject populations. What this study pinpoints is the ways in which experience fostered new strategies for imperial expansion and incorporation. What emerges is that British

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8 On the ways in which toleration can deepen and further the act of ‘othering’ or heighten notions of difference I am drawing on, Ranier Forst, “The Limits of Toleration,” *Constellations* 11(2004): 312–325.
officials were empiricists at their core; one might say they were, in a label I am loath to use, pragmatists.\footnote{Pragmatism is often used to dismiss policies like the Quebec Act as localized solutions to local issues. Yet positions often taken as highly ideological, like opposition to Catholic participation in civic government, were often understood as pragmatic solutions to real threats by those that held them. So I use pragmatic not as a pejorative term, but as a means to show that administrators were not universally constricted by previous practices or ideologies.}

Figures like Guy Carleton, the colony’s governor in 1774 and a strong proponent of the principles behind cultural continuity, had first-hand experience in the colony and fully understood the context of the new imperial dominion. Through reports and testimony given in London, much of the on-the-ground experience filtered back to the metropole. Like Burke, many officials never doubted the supremacy of English traditions and values, but they increasingly understood the benefits of pluralism in securing stability and loyalty at a great distance over newly subject peoples. Those involved with governing Quebec looked to past precedents to help them determine the best means to act on the information they received about the colony. These models, however, were not blindly followed nor given unquestioned preference over alternatives. They were tested, reexamined, and often, in light of failures on the ground in Quebec or negative appraisals, jettisoned in favor of new approaches. As the Solicitor General Alexander Wedderburn explained in his testimony before the House of Commons, “I consider the assembly sitting to make experiments, to endeavor to bring the country into the mode of living in those sentiments of government, as the nature, and the habit of this country and their sentiments will admit of it.”\footnote{Simmons and Thomas, Vol. 4, 468.}

Quebec, then, was a laboratory for new practices of empire that drastically differed from that which came before. The process of incorporating Quebec into the
British Empire explains future practice both in its particulars and in the nature of its making. Quebec fostered a change in attitude towards pluralism in the forms of civil governance, and cultural values, opening new possibilities for governance in places like India and beyond. The Quebec Act, as a policy, was not a model simply applied to other contexts. It does, however, signal a critical shift in practice. The bill and its underlying policies opened space for legal, cultural, and political pluralism while recognizing local non-British traditions. The bill put an end to the rhetorical power of arguments for an empire that was ‘protestant, maritime, and free’. While such a conception of the British Empire might have shaped British identity, it was an ideology that could not overcome the practical realities of the imperial project. While the rhetoric that emerged from this tradition could slow the process and create political reticence on the solutions adopted in the final bill, it was never a viable alternative.

The chapters that follow explore how experience shaped debate and how this discourse led to new strategies for dealing with an empire that increasingly ruled over non-Britons and quickly expanded into diverse territories. The British would maintain their naval supremacy, but their empire was not to be an empire only of oceanic trade routes. In the 1760s, and especially in Quebec, the processes that would lead to the largest territorial empire the world has ever known took shape.

The rhetorical exchanges contained in the competing reports, letters, addresses, declarations, and other documents examined in the following chapters are fundamental to understanding the importance of Quebec in the larger imperial context. Through the language used in the documents, a picture emerges of the justifications, precedents, and

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sources of a momentous change in imperial practice. Rather than an ad hoc solution, the Quebec Act was a thoroughly debated and well-considered solution to the problems posed by the new colony. Subministers, figures often overlooked in the formulation of imperial policy, heightened the cumulative effect of this debate. Men like Guy Carleton, James Murray, Alexander Wedderburn and Charles Yorke are at the forefront of these documents, but institutional continuity emerged because of men like John Pownall.

Pownall served as a subminister for the Board of Trade and other imperial offices during the duration of the Quebec debate. Pownall had twenty-five years of experience working within ministerial offices and was a powerful figure of influence.\textsuperscript{12} The same key documents for consideration of the problems facing Quebec appeared continuously in ministerial papers and were placed before relevant figures, in and out of office, from the early 1760s until the final bill received royal assent.\textsuperscript{13} Subministers were not silent participants in the process of policy formation. They suggested colonial bills, clarified and tweaked ministerial ideas, administered and wrote legislation, and held meaningful interpretive leeway.\textsuperscript{14} Despite ministerial upheaval and political instability during this period, Pownall and others maintained a continuous stream of information and a cumulative development of a final policy for the colony. This continuity is valuable in allowing historians to understand the terms and factors that shaped imperial attitudes at the end of the eighteenth century. The varied contexts which shaped Quebec appear in


\textsuperscript{13} For work on subministers and their importance, especially Pownall and, later, William Knox, the two critical works are: Jack Sosin, \textit{Whitehall and the Wilderness} (Lincoln, NE.: University of Nebraska Press, 1961), 239-255; and Wickwire, \textit{Subministers and Colonial America}, 139-153. See especially 57-63, on the ways in which control over information proved critical in the formulation of policy.

\textsuperscript{14} Wickwire, \textit{Subministers and Colonial America}, 11.
these documents, but so too does Quebec’s unique place in creating its own waves of
influence out of the St. Lawrence river basin and across the Atlantic and beyond.

Like the bill, this project is built in line with Burke’s musings over practice versus
theory. What follows is based in the minutiae of a policy debate grounded in experience
and practice; only at the end does it broaden to encompass the larger theories which
emerged from, and supported, the principles enshrined in the final act. In paying
attention to the content of the reports, letters, and accounts funnelling into London this
project aims to show how experience shaped practice to form new ways of engaging with
the imperial project. As this internal dialogue built upon itself over the course of almost
15 years, shifts began to take place which overturned older practices and notions of
empire. Throughout the process the principles of those in London clashed with the
realities on the ground. The essence of this story is in the grey area between practice and
ideology, where they fit uneasily together to forge a functioning system.

The historiography of Quebec Act is itself fairly limited. The last major study
of the bill and its formulation was published in 1989. Philip Lawson’s The Imperial
Challenge remains the standard text for assessing and contextualizing the act. On
several occasions Lawson points to the possible wider implications of the act, but largely
confines his study to the political climate and the politics of Quebec itself. Like many
who wrote on Quebec, the limits of the bill’s contextual arena is highlighted in his
subtitle: “Quebec and Britain in the Age of the American Revolution”; whether chosen

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15 The work of Hilda Neatby on Quebec should not be overlooked, but as her work is primarily a
narrative history and one which extends beyond the period of this study, I will not engage with it in this
context. See her, Quebec: The Revolutionary Age: 1760-1791 (Toronto: McClelland and Stewart, 1966).
Her collection of documents and commentary is also informative, The Quebec Act: Protest and Policy,

by Lawson or an editor, the blinding light of the coming American Revolution is oppressive. While he denied being a Namierite, despite his intellectual lineage, it would not be unfair to place his study within that historiographical tradition. In its attention to the specifics of the politics surrounding the act’s development this study owes a great deal to Lawson’s work. Where Lawson only hinted at the broader implications, this project seeks to understand how the Quebec Act was not simply the result of political dealings, but rather was part of a much larger intellectual debate which held implications far beyond the immediate political crises. The language of the debate over the colony and the nature of the deliberations are pushed to the forefront in the following chapters.

Like Lawson, many historians who write about Quebec focus on the colony and the bill as part of a context not of its own making. In his study Sir Reginald Coupland focused on the role played by Carleton and Murray, both governors of the colony, in keeping Quebec from joining the southern colonies in revolt against Britain. Carleton’s statesmanship is placed in the context of the coming American Revolution and he is roundly praised for his Burkean foresight of the nature of the coming revolution. Coupland’s work is perhaps the most responsible for historiographically limiting the place of Quebec in the wider empire. In light of his work the bill appears as a policy primarily concerned with events yet to happen, rather than in its wider and more integrated imperial context. While Coupland is concerned with the efforts to engender loyalty and stability in the colony, as in large part this project is, his focus is narrowed to

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17 Lawson’s contentious relationship with the label is explored by Stephen Taylor in the introduction to the collection he edited, Hanoverian Britain and Empire (Rochester, NY: Boydell Press, 1998).

the point of obscuring broader concerns, motivations, and implications. The bill and the policies behind it are relegated to nothing more than a response to larger events happening elsewhere.

The other study of Quebec which, despite its age, still shapes conceptions of Quebec and the Quebec Act is Charles Metzger’s *The Quebec Act: A Primary Cause of the American Revolution*.19 Metzger’s study attempts to do just what his title claims, set out how the concessions to the French subjects in Quebec acted as a primary cause of the American Revolution. His primary focus is on the Protestant reaction in the American colonies to the concessions made to Catholicism and how it further alienated the colonists from the crown at a critical point of tension.20 Metzger’s important insights in this area should not be dismissed, but again his narrow focus on American history created a boundary around the act which seemingly placed its significance within a specific historical event. Rather than broadening its place in imperial history much of the early work by historians like Metzger and Coupland ensured that Quebec would remain largely within the purview of scholars of the American Revolutionary period.21

The Quebec Act is often viewed as an ad hoc, pragmatic solution to an immediate crisis, the coming American Revolution, and therefore its larger meaning is often

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19 Charles Henry Metzger, *The Quebec Act: A Primary Cause of the American Revolution* (New York: Catholic Historical Society, 1936). It should be noted that Metzger was a Jesuit priest, which perhaps explains his focus on anti-Catholicism.

20 This point is well developed in modern studies, especially, Brendan McConville, *The Kings Three Faces* (Chapel Hill: University of North Carolina Press, 2006).

21 Other early works which place Quebec firmly in an American context include, Clarence Alvord, *The Mississippi Valley in British Politics*, (Cleveland: The Arthur H. Clark company 1917) and Victor Coffin, *The Province of Quebec and the Early American Revolution*, (Madison, Wis.: University of Wisconsin, 1896). Jack Sosin’s *Whitehall and the Wilderness* is also concerned with Quebec and the Quebec Act in this American imperial context. In building off, and often challenging, Alvord’s work, Sosin examines the Quebec Act’s place primarily as a tool of regulating the interior in relations with Native Americans and the incursions of American settlers.
misinterpreted; a fact that has led to a relative dearth of serious scholarship dedicated to the Quebec Act in British and American historiography. The legislation appears in a number of studies, yet it only receives a passing mention as a side show to the larger historical developments happening elsewhere. In hindsight, the act, considered by many contemporary colonists as one with the Intolerable Acts, falls neatly into this narrative of imperial crisis. The outlines of the final form of the act, however, took shape as early as 1766. As the following chapters make clear, the bill was not a quick fix in the face of rebellion, but rather a thoroughly considered policy for a complex new imperial project. Unfortunately, the work of those who have dedicated whole monographs to the bill has done little to change its broader importance to the study of Britain and its empire in the late-eighteenth and early-nineteenth century. Quebec’s role in furthering the divide between the colonists and London, especially the crown, is an important aspect of its legacy. It is not, however, the most important legacy of the bill. Freed from the long shadow of the American Revolution, the wider significance of Quebec within a global and imperial context can be fully expressed.

The formulation of policies for incorporating Quebec into the British Empire rest uneasily within the context of the North American colonies to its south. For many reasons we should look to the British islands in the Caribbean, who depended on the British Empire for trade, protection, and stability, to better understand the relationship between province and metropole. The new subjects in Canada saw little reason to identify with their southern neighbors whose anti-Catholic and anti-French sentiments were well known. Quebec is undoubtedly part of this context and played a major role in

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the history of the North American empire, but it stands more as a reminder of the changing attitudes in London towards imperial management than it does as a richly engaged province in the cultural, economic, and political era of the ‘American crisis’. Efforts were made to draw Quebec into the rebellion, but despite the pleas of the Continental Congress and the invasion of 1775, the new subjects were not, and should not be, fully integrated into the story of the American Revolutionary period.23

As contemporaries recognized, a vocal population of the merchants immigrated to Quebec to profit from trading in the new colony came from places like New York and other colonial territories. It should be no surprise then that a segment of the British population in the colony utilized many of the principles and cries of the Patriots in southern colonies. In their various petitions to the governor in Montreal, officials in London, and to the king himself, they deployed a language drawn from attacks on British imperial policies in the other American colonies.24 The Stamp Act proved highly controversial for the merchants in Quebec who often cited their rights as Britons, the values of English law, the principle of no taxation without representation, and related ideas familiar to historians of the American cause.25 Yet this population represented no more than a few hundred individuals amongst a population, according to some estimates in 1774, of almost 150,000 in French Canada. Their story, however valid, presents a limited picture of the history of Quebec.


Beyond the civic aspects of American colonial crisis, Quebec also played an important role in the debate over religion within the British Atlantic and especially in the power of the Church of England beyond the home islands. The question of the Church’s intentions with regard to the American colonies was as important for many colonists, and wrapped in the same bundle of concerns, as the political intentions of Parliament. Quebec, then, also held dangerous implications for the place of dissenting faith. Rather than potentially showing an openness to diversity, many in the colonies understood Anglican bishops’ support of the Quebec Act as proof of their desire for greater authority and a Papal model of religious control. The Quebec Act then fit within a narrative of the menacing intentions of the Church of England towards the American colonies.26

Just as events in the colonies shaped rhetoric in Quebec, reactions to the Quebec Act in the southern British colonies shaped the course of colonial attitudes to the crown and Parliament. When combined with the Intolerable Acts and the efforts to install an Anglican bishop in the colonies, the Quebec Act, with its concessions to Catholicism, lack of a representative body, and legitimation of French law, served to undermine loyalty to the crown at a time when colonists still saw the crown as a possible ally in their battle with Parliament. While we may question Metzger’s assertion that the Quebec Act was a primary cause of the American Revolution, it certainly played a role in breaking bonds to the crown and convincing many Patriot Christians that they no longer owed their

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loyalty to the crown or Parliament. Quebec arrived as a part of the British North American empire just as it began to destabilize, and it undoubtedly contributed to that destabilization. Quebec’s role in the American rebellion is worthy of study, but it is not its most important legacy. It must be released from the refractions of hindsight, locating the province on the margins of the American Revolution.

P.J. Marshall is perhaps the most vocal proponent of the broader importance of the integration of former French subjects into the British Empire. As he argues, incorporating the Catholics in Quebec and the other ceded territories “helped to breakdown inhibitions about bringing within an imperial framework Indians, people who were thought to be completely alien to all previous traditions of British rule.” Yet for all of Marshall’s nods to the importance of the act neither he nor other historians have yet sought to trace how exactly the internal debates made such developments possible. The inherent importance of the practices developed in Quebec has heretofore been based on the end result, rather than the process, and therefore only focuses on the accommodations made to an ‘alien’ population in broad strokes. This study aims to put the act into its proper context and illuminate the motives and ideals behind its principles.

The debate over Quebec engaged a number of domestic political issues important at the time. Central in this sense were the debates over Parliamentary supremacy, the rise of popular politics, and political radicalism’s fear of arbitrary government. In the case

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of Quebec the decision to grant toleration to Catholics struck a nerve for many, but it was the decision to delay the use of a local assembly which really spoke to all three of these issues. In 1766, just as Parliament issued the Declaratory Act, stating its right to regulate imperial affairs and its supremacy over local assemblies, ministerial officials determined that in all matters relating to Quebec it was Parliament, not the crown or local bodies, that held sovereignty in determining policy for the colony. Parliament’s denial of a local assembly brought condemnation from America and revived fears of the growth of arbitrary government under George III.

These issues were important not just at the imperial level, but also spoke to domestic battles between factions supporting varied interpretations of the Glorious Revolution and the place of the Parliamentary supremacy over, or in relation to, royal prerogative. The debate over Quebec did not exist outside of these controversies. As press coverage and pamphlets of the time show, many of the same fears, discourses, and ideas that applied to other political controversies arose around Quebec. This is not an insignificant point. Rather than a policy shaped only by crises at the last minute, during the almost 15 years between the fall of Montreal and the passage of the Quebec Act, the internal debate over the colony engaged with questions central to the wider political discussions. The Quebec Act was not a by-product of the American crisis, but a solution to the form these debates took within a Canadian context. While the study will show how Quebec did not pass unnoticed and stood on its own within these debates, it aims to move beyond Quebec’s place as one of many controversies to show why its unique status placed it on the leading edge of the imperial imagination.

Quebec was more than a sideshow to, or a cause of, of the conflict with the American colonies. The questions posed by the new territory and the new population forced a major shift in imperial practice. One of the thorniest areas of contention centered on the constitutional implications of the changes needed to successfully integrate the new territory. As a bill that remained at the heart of a number of constitutional questions relating to the rights of colonial subjects and the place of Catholicism within the British state, the practices deployed in Quebec interlocked with a number of contemporary debates. The constitutional questions raised in the debate over Quebec held implications for the growth of a constitutional framework for the whole of the British Empire. Debates over the rights of various institutions and bodies in London to set policy around taxation, governance, law, and many other key issues were apparent in Quebec, just as they were, in this period, in other North American colonies and in the expanding empire in Asia. As much as it is a history of imperial practice, the history of Quebec and the Quebec Act also holds powerful implications for legal historians. The nature of legal pluralism within the international colonial system and the growth of an ‘imperial constitution’ is an important aspect of imperial histories and Quebec holds a place firmly within that debate.

31 John Philip Reid has written extensively in this area for the Atlantic world, but again is largely limited by the American Revolution. Of relevance, among numerous others, are: In a Defiant Stance: The Conditions of Law in Massachusetts Bay, the Irish Comparison, and the Coming of the American Revolution (University Park: Pennsylvania State University Press, 1977); and his four volume, Constitutional History of the American Revolution (Madison, Wis.: University of Wisconsin Press, 1986-1993). The Quebec Act also makes brief appearances in Jack Greene, The Constitutional Origins of the American Revolution (New York: Cambridge University Press, 2011).

The work of Jack P. Greene illuminates the ways in which authority and legal regimes were often negotiated and variable within British colonial settings.\textsuperscript{33} It is therefore unsurprising to see such a broad range of solutions and a willingness to adopt a legal pluralism in Quebec. The controversy over the instructions, however, focused primarily on the nature of the subjects in Quebec. The danger and controversy emanated not from ‘indifferent’ laws, but rather in the Catholic ‘other’ who would be sitting in positions of power to shape and apply those laws.\textsuperscript{34} Such intellectual leaps underscore why Quebec offers a multitude of meanings and legacies in disparate contexts. It is not solely an example of legal pluralism or negotiated authority, but serves as a critical example of religious and cultural pluralism within British imperial civil society. It is much easier to create space for negotiated authority and legal structures when the terms of those structures are culturally, religiously, and legally based largely in the traditions of the metropole. The transformation occurs when those same practices are extended to ‘alien’ traditions and cultures in a populous and geographically expansive territory, a practice far removed from the examples of Ireland and the early settler colonies.\textsuperscript{35}

Attitudes towards the new subjects were shaped by a number of factors, but the two most commonly cited were their Catholicism and their French heritage. In popular circles the specter of the French Catholic Other proved powerful enough to help define

\textsuperscript{33} Jack Greene, \textit{Negotiated Authorities} (University of Virginia Press, 1994).

\textsuperscript{34} In a report to the Board of Trade on the civil government of Quebec Charles Yorke deemed local customs, especially regarding property and law, ‘in their own nature indifferent’. See Shortt and Doughty, 255.

\textsuperscript{35} The formulation of legal regimes and structures of legal pluralism is skillfully treated in: Lauren Benton, \textit{Law and Colonial Cultures} (New York: Cambridge University Press, 2002).
one version of Britishness and in the drive to solve the problems of governing Quebec
many of these biases and assumptions colored the thinking of various participants. 36
While seemingly inconsequential to most modern readers, and despite claims that religion
was losing importance in a new secularizing and enlightened age, the new subjects’
Catholicism raised real questions relating to governance and constitutionality. 37 These
concerns appear throughout the following chapters and the solutions needed to broaden
the idea of subjection were critical for the expanding empire. When looking to make
subjects out of Indians and other ‘alien’ peoples, Quebec opened new possibilities. 38

As more recent work has identified, Protestantism proved too varied to provide a
firm foundation as an identity or as a fundamental motivation in shaping practices. 39 In
their attitudes towards the Catholics in Quebec administrators and politicians held a range
of opinions about the nature and place of Catholicism and French tradition. In the end
however it proved a barrier worth removing in the name of imperial stability and security.
It was undoubtedly an issue of great importance for key politicians, and public reaction

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37 For a counter to the secularizing narrative see, J.C.D. Clark English Society, 1660-1832 (New

38 Hannah Weiss Muller, ‘Subjection and the British Empire,’ Journal of British Studies 53.1

39 Here I am referring to: Tony Claydon and Ian McBride, eds. Protestantism and National
Identity (New York: Cambridge University Press, 1998). Other important work that engages and
challenges Colley’s thesis are: Steven Pincus, 1688: The First Modern Revolution (New Haven: Yale
University Press, 2009); Carla Gardina Pestana, Protestant Empire: Religion and the Making of the British
Atlantic World (Philadelphia: University of Pennsylvania Press, 2009); Francis D. Cogliano, No King. No
Popery: Anti-Catholicism in Revolutionary New England (Westport: Greenwood Press, 1995); Jack P.
Greene, “Empire and Identity from the Glorious Revolution to the American Revolution,” in P. J. Marshall,
British Identities Before Nationalism (New York: Cambridge University Press, 1999); and S. J. Connolly,
“Varieties of Britishness: Ireland, Scotland and Wales in the Hanoverian State,” in Uniting the Kingdom?:
The Making of British History, eds. Alexander Grant and Keith J. Stringer (New York: Routledge Press,
1995), 193-207.
against conciliation and pluralism was fierce.\textsuperscript{40} A key factor in this apparent disconnect between the Quebec Act and such sentiments is the emergence in the late eighteenth century of a clear divide between elite and popular opinion.\textsuperscript{41} For many who experienced the reality of governing Quebec and for key figures in London, the new subjects’ Catholicism and cultural heritage was simply a matter that needed to be addressed, not a potential threat to civic stability or the nature of the British state and constitution.

Officials did not encounter a totally alien situation when they approached their new colonial conquest. At the front of many officials’ minds in the formulation of a policy for Quebec stood the Irish example. Rather than passively apply strategies used in this previous exemplar, figures in Quebec and in London looked critically at this experience for guidance in Canada. Reappraisal of Irish precedent nurtured the emergence of a consensus around alternatives to prevailing practices of incorporation. The Penal Laws, the imposition of English norms, and other means of coerced integration failed, upon closer inspection, to effectively incorporate non-Britons.\textsuperscript{42} In rethinking the most effective means of assimilating new subjects, imperial administrators developed a more pluralist model of empire that moved away from conceptions of an empire that was ‘Protestant, maritime, and free’.\textsuperscript{43} In the service of imperial stability, more flexible


\textsuperscript{43} Armitage, \textit{The Ideological Origins of the British Empire}. 
attitudes towards non-Britons and their traditions replaced strategies of assimilation based on state formation within Britain and Ireland.

The ‘Glorious Revolution’ of 1688 and the legal and ideological developments of the following decades embedded a Protestantism which served as a bulwark against despotism and (from 1707) defined British identities. Legally and culturally Protestantism defined the island and the values of the reformed faiths stood as the foundation of British identity. The two established churches in Britain, despite their marked differences, were both Protestant. In opposition to the stability and liberty offered by the principles of the Churches of England and Scotland, the Church of Rome offered only arbitrary power. In contrast to the relative uniformity in Britain, Ireland presented a more complicated picture. Since the Reformation, despite their demographic disadvantage, English administrators worked to refashion Ireland into a Protestant kingdom. Irish Protestants’ understanding of their own history only served to deepen their distrust. They looked back and saw a past littered with violent Catholic plots, rebellions and massacres. Through the Penal Laws they attempted to force the Catholic elites and middle class to adopt English religious, cultural and political

44 For two treatments of 1688 see, Tony Claydon, William III and the Godly Revolution (New York: Cambridge University Press, 1996); and Pincus, 1688.

45 For instance, Clark, English Society and Colley, Britons.

46 For attachments to the Protestant constitution and the various forms of anti-Catholicism, see, Bradley, Religion, Revolution and English Radicalism; and Haydon, Anti-Catholicism in Eighteenth-Century England.

47 On contemporary Ireland, see, Ian McBride, Eighteenth-Century Ireland (Dublin: Gill and MacMillan, 2009).

standards. As a result, assimilationist and exclusionist policies towards Catholics were the rule throughout Britain and Ireland. The solution to the Catholic question in the years prior to 1763 was either coerced integration, exclusion, or, where possible, removal.

Faced with new Catholic subjects in Quebec and the Ceded Islands, however, policymakers within the British state reconsidered the previous strategies for incorporation. According to the claims of politicians and administrators (many of them Irish born) involved in formulating and defending the Quebec Act, assimilationist policy in Ireland represented an instructive failure. The Penal Laws resulted in few meaningful conversions, pushed the majority of Catholics to hold their religion closer rather than rejecting it, and fueled sullen disaffection among the subjected community. If the penal laws were a failure, the Quebec Act and its underlying principles pointed to a new way forward. Efforts at Catholic relief began in Ireland in 1774 and continued in piecemeal fashion through the early nineteenth century. In a language laced with references to justice and humanity, defenders of the bill used many of the same cases for conciliation towards French Catholics that would be deployed in Ireland during what seemed, for a brief moment at the end of the eighteenth century, a comparatively rapid push towards Catholic emancipation.

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50 The Acadians, the previous French Canadian population to find themselves under British rule, present a stark example of forced migration. The key works on the Acadians are: John Mack Faragher, *A Great and Noble Scheme* (New York: W.W. Norton and Company, 2005) and Christopher Hodson, *The Acadian Diaspora* (New York: Oxford University Press, 2012).

51 Philip Lawson similarly pointed to a number of points of rhetorical and intellectual convergence between Ireland and Quebec in *The Imperial Challenge*.

52 Bartlett, *Fall and Rise of the Irish Nation*.  

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Quebec then, despite its Atlantic context and the connotations it holds in American historiography, might be situated most prominently as an important part of British imperial history writ large. Not simply of import for understanding the British Atlantic, Quebec held implications in a global context as a pivot point for a British Empire that increasingly looked beyond the Atlantic basin for new trade and territorial opportunities. In South Asia British officials faced many of the same questions raised as they sought to integrate the French Catholics into the empire. A large population of non-Britons needed to be integrated in a way that would ensure loyalty and stability amongst a people that would forever remain the demographic majority.

As the East India Company expanded its reach over South Asia and British officials became more concerned and involved with events there, they relied on many of the same ideas, rhetorical devices, and ideological constructions to frame British intervention and governance. They relied heavily on Montesquieuian ideas of laws fitted for the genus of the people and the benefits of protecting native traditions as it related to property, especially land. Under the governorship of Lord Cornwallis, the first governor to exercise civil and military control under the authority of the British government, reforms were introduced in 1793 to stabilize the chaotic situation in Bengal. The most important of these was a policy based on the ‘customs’ and ‘usages’ of Bengal in protecting rights of landed property. The terminology of custom and usage and the desire

to establish stability and legitimacy through a local landed class replicated the practices of imperial reform developed in Quebec during the 1760s.54

C.A. Bayly has written on the authoritarian turn in the British imperial system in the period beginning around 1780, especially as it related to India. According to Bayly, “these colonial despotisms were characterized by a form of aristocratic military government supporting a viceregal autocracy, by a well-developed imperial style which emphasized hierarchy and racial subordination, and by the patronage of indigenous landed elites.”55 Bayly recognized that Quebec, especially as it related to the patronage of landed elites, fit well within his definition of this system. So just as toleration in Quebec did not mean a widening of notions of equality for Irish Catholics, the bill’s focus on landed elites and local traditions did not mean equality between Briton and non-Briton on the ground or in the eyes officials in London.

Yet the repressive nature of empire and its ultimate dependence on inequalities of power does not mean that Quebec did not profoundly alter British ideals of empire and open spaces for pluralism. Bayly writes of the empire after 1780 that, “constitution-making for the dependencies remained evolutionary and pragmatic; it rarely aspired to uniformity.”56 In fundamental ways it would be impossible for him to write such a statement about the British Empire dealing with an ‘alien’ population prior to Quebec, when it wished to, and believed it would, remain largely British, “Protestant, maritime, and free”. Local traditions were not simply wiped away and assimilation did not prove

54 On the “Permanent Settlement” and the reforms under Cornwallis see, Robert Travers, Ideology and Empire in Eighteenth-Century India: The British in Bengal, (New York: Cambridge University Press, 2007), 207-249. Travers briefly touches on the place of Quebec in his narrative, see especially, 48-52.

55 C.A. Bayly, Imperial Meridian (New York: Longman 1989), 9, and on Quebec, 94.

56 Bayly, Imperial Meridian, 9.
the rule. Instead officials created hybrid systems of law and governance as they had in Quebec. This openness to ‘evolutionary and pragmatic’ constitution-making emerged from the empiricist bent of the British official mind. Quebec sits not on the outside of British imperial history as a limited ad hoc solution, but at the center of British imperial history as an empirically formulated policy. It is an essential episode in defining the British Empire and the strategies that would shape imperial practice well into the nineteenth century.

Just as Bayly and Marshall seek to unite British imperial history into a continuum rather than the conception of a ‘first’ and ‘second’ British Empire, this study also seeks to show how there were continuities and links between the Atlantic world and the empire that emerged in the nineteenth century. These were not two separate imperial projects, but rather the same imperial system that shifted over time as a response to new challenges and circumstances. The structures and ideas of the ‘second empire’ developed and emerged not from the rubble of the American Revolution, but out of practices and ideologies which existed as part of imperial debates taking place over Quebec and the Ceded Islands in the 1760s. Imperial history then is, like much of British history, the study of precedents and a sedimentary process of development and change.

Quebec, the debate over forming a solution to govern it, and the final bill, existed within a number of historical contexts. For this reason alone, it invites study and provides illuminating markers to traverse across a range of historiographic terrain. The

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57 Here I am especially referring to their work in *Imperial Meridian* and the *Making and Unmaking of Empires*.

true importance of the colony, however, rests with its role in the reformulation of
strategies of assimilation and rule within the British Empire. Quebec did not create a
model that could be applied to new territories and populations as needed. The practice of
domination in British hands meant that diversity in structure and approaches would be the
rule, not an exception. Quebec’s role was more nuanced and wider than simply creating
a neat set of practices fit for any situation.

The debate over Quebec broke the hegemony of a narrow definition of empire
based upon Britishness, Protestantism, trade, and ‘liberty’. In its place was an attitude
towards empire that abandoned the need to assimilate populations or to mirror the
metropole in its political culture. After Quebec, the British Empire found more flexible
forms of imperial practice that allowed it to spread rapidly over the globe. Unlike other
empires they would be spared overarching concerns about the identities of the colonial
populations and the psychic trauma of decolonization.59 There would be no Russification
project, nor dominant ideologies that mirrored the French imperial ideals of a Unified
France and the ‘civilizing mission’.60 No one model could address all the territories
where the British would seize control, but the new general ethos of imperial rule could
allow them to adjust to these varied situations without the constitutional and intellectual
handwringing which took place over Quebec. Concessions to local realities became
practically and ideologically preferable in light of Quebec.

59 See, D. George Boyce, Decolonisation and the British Empire (New York: St. Martin's Press,
1999).

60 My knowledge of these ideals is drawn from: Darius Staliūnas, Making Russians (New York:
Rodopi 2007), and Jacques Frémeaux, “French Unity: The Dream of A Unified France,” and Françoise
Vergès, “Colonizing, Educating, Guiding: A Republican Duty,” in Colonial Culture in France Since the
Revolution, trans., Alexis Pernsteiner, eds., Dominic Richard David Thomas, Nicolas Bancel, Sandrine
CHAPTER 2:

THE TRIUMPH OF IDEOLOGY

Introduction

The conquest of Canada forced British officials to rethink core practices of the British Empire. This shift in imperial practices, however, was a gradual move from the older practices and ideals to new ways of approaching empire and assimilation. The Catholic subjects in Quebec posed familiar problems in a new context and as such the result was a new strategy for how non-Britons could be integrated into British imperium. The tone and terms of the conflict over these subjects emerged early in the process. Between the capitulation of Quebec and Montreal and the issuing of the Proclamation of 1763, colonial administrators veered between competing strategies of imperial incorporation. Single phrases in the two foundational documents negotiated in 1763 defined the debate over Quebec for the next decade.

The Treaty of Paris signed on 10 February ceded French Canada to the British and secured religious protection for Britain’s new Catholic subjects. However, the extent of the toleration due to the Canadians remained highly contested even after the passage of the Quebec Act. The Royal Proclamation of 1763 issued on 7 October called for the establishment of colonial assemblies and promised the full extension of English common
law to the newly ceded territories. These two texts held seemingly irreconcilable conclusions for the debate over the form of civil administration in Quebec. The former came out of the practice of diplomacy, war and empire, and sought to secure tangible rewards and strategic benefits. In the wake of this document, administrators focused on the demographic realities of Quebec and approached the colony with a more flexible attitude towards the colony’s future. The latter remained firmly rooted in the prevalent ideology of empire. Its outlines were based less on the demographic realities of Quebec and more on ideals of the supremacy of the English religious, legal, and political tradition. By 1774 the desire to create loyal and productive subjects out of a heterogeneous population overcame the prevailing practices of empire enshrined in the Proclamation of 1763.

In the aftermath of the Treaty of Paris, however, the ministry ultimately focused on the expectations and rights of Protestant Britons. Not all of those opposed to toleration and concessions to the new Catholic subjects were simply narrow-minded dogmatists. They believed that protecting the state and the constitution from the threat of Popery and French tradition was essential to ensuring the stability of the empire. For many administrators, the Protestant Constitution secured by the ‘Glorious Revolution’ and the Act of Settlement brought Britain to its ascendant position in the Atlantic world. To ignore these revolutionary principles and make concessions to the new subjects threatened to invite arbitrary power, rebellious Catholics, and Papal influence into the


62 According to Philip Lawson the Proclamation was largely the result of the Old Whig ideals of the Earl of Halifax. See Lawson, Imperial Challenge (Montreal: McGill-Queen’s University Press, 1990), 36-38.
British state. Overturning those prevailing ideals required destabilizing the dominant historical and ideological narrative of the British Empire and state.

The process of legitimating the policies enshrined in the Quebec Act, whatever the practical and pragmatic motivations, required a strong legal, political, and historical case to legitimize the incorporation of French Catholics and French law. The increasingly novel decisions taken in the course of administering the newly expanded and increasingly pluralistic empire required justification. Over the course of a decade, a strong empirical case emerged to validate a radical shift away from prevailing practices. From the outset this tension between a more rigid approach to state formation and imperial practice and a desire to create flexibility in dealing with conquered and non-British populations defined the debate over a policy for Quebec. The two founding documents of British Canada provided ammunition for both sides.

I: The Articles of Capitulation and the Initial Reports

When, during the course of the Seven Years War, Quebec and Montreal fell to British forces, each city negotiated articles of capitulation that signaled their central concerns. In both cities the protection of Roman Catholicism stood at the forefront. The victorious British forces agreed to allow the Catholic Church to function without significant restrictions on religious houses, the practice of the faith, the power of the bishop, or the collection of tithes. The Articles of Quebec stated that

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63 13 September 1759 and 8 September 1760 respectively.

64 See copies of the articles in Shortt and Doughty, especially clause VI in relation to Quebec and XXVII to XXXV with regard to Montreal, Adam Shortt and Arthur Doughty, Documents Relating to the
the exercise of the Catholic, Apostolic and Roman religion shall be maintained; and that safeguards shall be granted to the houses of the clergy, and to the monasteries, particularly to his Lordship the Bishop of Quebec, who, animated with zeal for religion, and charity for the people of his diocese, desires to reside in it constantly, to exercise, freely and with that decency which his character and the sacred offices of the Roman religion require, his episcopal authority in the town of Quebec.

The British agreed that “the Catholic, Apostolic, and Roman Religion, shall subsist entire, in such manner that all the states and the people of the Towns and countries, places and distant posts, shall continue to assemble in the churches, and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly.”

Not only would the practice of the faith not be impeded, but the Church was allowed to continue collecting tithes and any taxes owed to it by the people. However the generosity of the British commanders had limits.

They were not willing to concede to every demand. They refused the French request that “if by the treaty of peace, Canada should remain in the power of his Britannic Majesty, his most Christian Majesty shall continue to name the Bishop of the colony, who shall always be of the Roman communion, and Under whose authority the people shall exercise the Roman Religion.” The threat of continued connections with France overrode desires to keep the conquered Canadians content. British suspicions of continued French loyalties to the French crown previously resulted in the forced removal

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Constitutional History of Canada, 1759-1791 (Ottawa: Historical Documents Publication Board, 1918), 1-36.

65 Shortt and Doughty, 30.

66 Shortt and Doughty, 31.
of the Acadians at the outbreak of the Seven Years War; they were not going to allow such threats to persist in the event of a British victory.67

Property held another fundamental place in Canadian considerations and they sought to ensure protection of their possessions, especially land, from British claims in the aftermath of the conquest.68 Both parties agreed “that the inhabitants shall be preserved in the possession of their houses, goods, effects, and privileges.”69 The seigneurs and noblesse maintained their feudal privileges, a critical source of their power and the value of their estates. In the future such guarantees would create problems, as the full protection of both property and privilege necessitated the continuation of the French civil law. For the time being, the Coutume de Paris and the particular laws established in the province prior to conquest remained in effect.70 Whatever the future ramifications of the capitulations’ terms, the Canadians were unsurprisingly clear from the outset that protection of their property, religion and legal system would be a constant concern.

The nature of conquest and the relationship between conquered and conquerors hovered around the formulation of a policy for Quebec for the next decade. For those who supported concessions to the local populations, the articles of capitulation offered a guide to the concerns of the Canadians. Others believed conquerors held the right to impose their own norms on the conquered and therefore the articles of capitulation held no long-term significance. This tension proved fertile ground for cultivating historical


68 Shortt and Doughty, 5 and 32. See Quebec articles II and V, and Montreal Article XXXVII

69 Shortt and Doughty, 5.

70 Shortt and Doughty, 34. See Montreal Article XLII.
and philosophical discussions of conquest regarding Quebec. Yet such debates would have to wait for a cessation of hostilities and the determination of Canada’s fate.

On 12 December 1761 a letter to General Jeffery Amherst, commander-in-chief of the British forces in North America, from Lord Egremont, the Secretary of State for the Southern Department, highlighted the propriety of protecting the Canadians and their cultural sensitivities. Egremont emphasized the necessity of living in harmony with the Canadians to minimize emigration at the cessation of the war. Avoiding the creation of second-class subjects underpinned this hope. Egremont explained that,

it is the King’s pleasure that you should earnestly enforce, to the several Governors above mentioned the conciliatory part of the instructions, which you have given, and that you recommend it strongly to them to employ the most vigilant attention, and take the most effectual care that the French inhabitants (who as you very properly observe being now equally his Majesty’s subjects are consequently equally entitled to his protection) be humanely and kindly treated and that they do enjoy the full benefit of that indulgent and benign government, which already characterizes his Majesty’s auspicious reign and constitute his peculiar happiness of all, who are his subjects to the British Empire.

In addition, he directed Amherst to forbid and punish any discrimination and abuse directed towards the king’s Catholic subjects. Instructing him,

give the strictest orders to prevent all soldiers, Marines, and others His Majesty’s subjects, from insulting or reviling any of the French inhabitants, now their Fellow subjects, either by ungenerous insinuation of that inferiority, which the fate of war has decided, or by harsh and provoking observations on their language, dress, manners, customs or country, or by uncharitable reflections on the errors of that mistaken religion, which they unhappily profess.

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72 Those being: James Murray, military governor of Quebec, Ralph Burton, military governor of Trois Rivières, and Thomas Gage, military governor of Montreal.
No excuse justified such actions and as such, “the King’s British subjects may not, thro’ ignorance, disobey his orders, and that his French Subjects may feel and relish the full extent of his Majesty’s Royal Protection.” The crown worried that a flood of emigrants from Canada would render the colony useless.

Egremont and his fellow officials understood that under ideal circumstances the process of Protestant settlement would still be slow and difficult. Even if they professed ‘that mistaken religion,’ the French settlers potentially offered the empire an immediate influx of productive and valuable subjects. From the beginning, the desire to create a bond of loyalty and admiration towards the British crown offered a practical motivation for greater toleration and flexibility. In the context of a newly conquered colony, British officials saw no clear advantage in preferring Protestant settlers over French Catholic colonists. The early reports from the military governors of French Canada would only reinforce this tendency towards conciliation.

In October 1760 the crown appointed General James Murray, the future civil governor, to the post of military governor for Quebec City. Murray and his fellow governors found themselves in charge of colony of around 76,000 French Catholics living in largely rural parishes along strips of farmland receding back from a frontage along the St. Lawrence River. A Canadian clergy of around 160 individuals, including

73 BL Add. Mss. 21697.

74 Reports in the years to follow would reinforce the lack of preference. In some cases the Canadian stock proved more desirable than the British settlers that eventually made their way into the colony.

70 parish priests, served the religious needs of the colony. The priesthood was equally divided between Canadian-born and French-born members, with the French clergy holding the positions of highest authority and controlling most of the church property and land. The recently defeated French military force comprised 10,000 soldiers of primarily French origin, many of whom would return to France once the final treaty was signed in 1763. This population, which began “as a by-product of the fur trade”, would create innumerable problems for Murray and others as they sought to integrate them into the British Empire.

As part of his duties, along with the governors of Trois Rivières and Montreal, Murray produced a report on the province for the Board of Trade. His report, finalized in June 1762, dealt with all aspects of the province, from the fortifications, revenues and state of the military to the history of the civil and ecclesiastic structures. Each section concluded with his recommendations of the best way forward. His first recommendation on religious matters highlighted the fundamental dilemma of the Catholic question. Since the Canadians remained “very ignorant and extremely tenacious of their religion, nothing can contribute so much to make them staunch subjects to his majesty as the new government giving them every reason to imagine no alteration is to be attempted in that

76 The size of the women’s religious communities at the time is unclear, but thirty years later they numbered somewhere around 200 female religious. Neatby, Quebec: The Revolutionary Age, 237.

77 Neatby, Quebec: The Revolutionary Age, 25.

78 Neatby, Quebec: The Revolutionary Age, 6.

79 This characterization of their origins in the fur trade comes from Neatby, Quebec: The Revolutionary Age, 2.

80 The report of Burton on Montreal offers little commentary and is a short straightforward report. Gage’s report on Trois Rivières offers a little more insight into the status of what would become part of the Province of Quebec under Murray.
point.” The prospect of toleration for Catholicism would not sit well with many Britons. The tension between the views of anti-Catholic factions within British society and the concessions necessary to create loyal subjects out of the Catholic populations animated much of the conflict over Quebec. The need to integrate increasingly diverse populations emerged as a major concern within the British Empire in the late eighteenth century, making Quebec a crucial part of the expansion of imperial practices.82

Murray responded to the Catholic question by recommending a number of possible actions. Critically he endorsed the appointment of a bishop to ordain priests of local origin, the continuation of the seminary as a center of education, especially in order to develop this locally produced Canadian priesthood, and the protection of the ‘communities of women’ as they were well-liked. Since the Jesuits seemed to have little support, Murray suggested they could be expelled and their property used to create a financial basis for the bishopric of Quebec Murray envisioned. For all his desire to protect the institutional structures of the Church, however, Murray never suggested that toleration required an acceptance of Catholic equality in points of religious truth and the eventual conversion of Catholic subjects remained a long-term goal. The new approach to assimilation would simply be more carrot and less stick.

Underlining this approach to confessional assimilation, Murray recommended relocating Huguenot ministers from Britain to preach to the few French Protestants in the colony. This method offered the possibility of enticing persecuted French Protestants to migrate into the colony amongst a culture, language, and people they knew. This French

81 Shortt and Doughty, p. 71.
Protestant population could provide a buffer and a bridge between the new Catholic subjects and the British state. More importantly for Murray, these French-speaking ministers could sway the French Catholic population. They might “be conducive to bringing about a Reformation, by slow degrees and must at least prove to the Canadians there is nothing in our Holy Religion repugnant to Virtue or Morality.” Murray’s initial recommendations offered a tolerant and gradual approach towards the Catholic question as the ideal means to create a loyal and stable colonial population. For all its seeming logic, such an approach clashed with more rigid understandings of the Protestant nature of the British state and empire. Showing why such an approach offered a more effective and preferable strategy to the prevailing model, applied in places like Ireland, would be a major point in developing the case for toleration.

Murray based his recommendations for governing Quebec on his understanding of the colony’s existing population. His report divided Canadian society into four core constituent groups. All four groups, those who remained after the conquest, and after the coming Treaty of Paris, likely welcomed a new regime, whatever it might bring. In the years preceding the conquest, the colony was in an economic free fall as the Grand Société, the trading company granted a monopoly by the French crown, sucked resources out of the colony and fueled rampant inflation. Those who became wealthy off the system generally left the colony in the years after the conquest. This economic realignment of the colony gave the British a better chance at engendering loyalty than they realized.

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83 Though figures like Frances Maseres, the future attorney general of Quebec and a Dublin-born Huguenot, would later prove that such a plan underestimated France’s own history of confessional conflict.

84 Shortt and Doughty, 72.
For Murray, the nature of each group’s interests and character shaped his view of the best means for governing and instilling loyalty.

Murray believed that the gentry, the seigneurs, would find it hard going under British rule unless the new government protected their traditional privileges. Their status in society was based on their control of land and the rights and privileges emanating from that property. Murray argued that minimizing their place in Canadian society or removing the rights that formed the foundation of their economic viability would create a serious source of discontent, resulting in emigration or lingering resistance.86 In reality any seigneurs with the financial ability to return to France did so soon after the final treaty was signed in 1763.87 Accommodating the seigneurs would be increasingly important because those who remained would not, and could not, emigrate. Instead they remained a potential threat as a disaffected elite living in precarious financial and social situations. Under the leadership of the colony’s governors no such situation would arise. Murray and his successor, Guy Carleton, viewed Canadian society in traditional and authoritarian ways, leading them to privilege the aristocratic local elites. This focus by Murray and Carleton on the Canadian ‘aristocracy’ led to tension with a group that Murray regarded as largely irrelevant to the colonies long-term stability.88

85 Fernand Ouellet, Economic and Social History of Quebec (Toronto: Gage Publishing, 1981), 78.

86 The value of property rights in keeping Canadians vested in, and loyal to the state, would be a common theme.

87 Neatby, Quebec: The Revolutionary Age, 23.

88 This point is developed by Ouellet in relation to the economic history of the colony and the tensions it created within the colony. Ouellet, Economic and Social History of Quebec, 98-102.
Murray dismissed the merchant population as likely to emigrate, since they held no fixed property, and therefore spent no more than a few lines to describe their place in Canadian society.\textsuperscript{89} Such an outlook emerged from negative attitudes among the British elites towards merchants, deriving from the connection between the landed classes and social order.\textsuperscript{90} As a result, many of the wealthier merchants, twenty of whom became millionaires during the war, returned to France. Murray was wrong to dismiss the significant number of smaller merchants who likely had strong ties to the land. Within the small and intertwined Canadian economy and population, many merchants were connected to the seigniorial class through marriage or family, and in some cases held seigniorial rights themselves.\textsuperscript{91} The merchants who remained hoped to replace those who left as the economic conduit for the colony. Many were positive that they could adjust to the new regime and benefit from trading opportunities within the British Empire. The merchants coming in from New York, Boston, and London offered no great threat, as they generally held similar resources and wealth to the Canadians.\textsuperscript{92} In fact, the merchant class was often the most likely to cross religious and national boundaries in seeking policies which benefited both trading communities. The merchants in both populations often found common ground in their shared concerns over taxation and policies which gave Albany the upper hand in access to the fur trade and other resources coming out of the backcountry.\textsuperscript{93} This bond, however, did not go beyond economic

\textsuperscript{89} Shortt and Doughty, 73.

\textsuperscript{90} Ouellet, \emph{Economic and Social History of Quebec}, 98.

\textsuperscript{91} Neatby, \emph{Quebec: The Revolutionary Age}, 23.

\textsuperscript{92} Neatby, \emph{Quebec: The Revolutionary Age}, 24.
concerns; when it came to the imposition of British norms, and the exclusion of French Catholics, the Canadian merchants sided with their co-religionists.  

The clergy, Murray’s third group, was divided between the French and native-born. While the French clergy appeared unlikely to adjust to British rule, the native priests offered better prospects. For once “the Ecclesiastical state was composed entirely of natives, [they] would soon become easy and satisfied.” Although the imposition of British rule seemed to open a divide over the level of tithes demanded by the clergy, “their influence over the people was and is still great.”

For Murray, successfully governing the Catholic population depended on maintaining good relations with the Church. His protections of the clergy and support for the installation of a bishop would lead to problems in the future, but his recognition of the importance of the Catholic Church in the lives of Canadians would remain a cornerstone of British policy in the coming decade. As with the seigneurs, Murray and others saw the Church as a tool of social control within a society based on deference to secular and religious authority.

For all the importance of the gentry and the clergy, most of Murray’s attention focused on the ‘peasants’ or Habitants of Quebec. Murray found them “a strong healthy race, plain in their dress, virtuous in their morals and temperate in their living.” In short, they appeared just the sort of subjects the crown would need in making Quebec a profitable colony. Under French rule, however, they were denied a printing press and

93 Ouellet, Economic and Social History of Quebec, 78-83.
94 Ouellet, Economic and Social History of Quebec, 95.
95 Shortt and Doughty, 79.
96 Shortt and Doughty, 79.
97 Shortt and Doughty, 79.
therefore were illiterate and prone to believe anything their social superiors told them. Administrators, in all probability, recognized this as both a benefit and a threat; they could be easily managed, but also led astray by disaffected Canadian elites.

In reality, though records are generally lacking, the habitants were not as docile as many assumed. They generally had greater freedom and were wealthier than those who worked the land in France. The war, however, destabilized their circumstances and they were increasingly called upon to give up their agricultural surplus at below market price. In addition, during the last years of the French rule they saw long dormant expectations of labor and military service, the corvées, brought back into use. The habitants had strategies for resisting these burdens and often expressed their independence in ways not clear to their social superiors. The fact that they did not fit the expectations placed on them would not become clear until their neutrality, and at times outright hostility, during the American invasion of 1775.

Perhaps misreading the situation, Murray argued that the actions of the habitants during the British attempt to take Quebec City provided a strong example of their tendency towards deference. Murray argued that while initially fiercely resistant to British rule, the habitants’ opposition melted away after they experienced British toleration. According to Murray, prior to the capitulation the elites in Canada convinced the peasants that, “the English were worse than brutes, and if they prevailed, the Canadians would be ruled with a rod of iron,” and “this most certainly did not a little

98 Shortt and Doughty, 79-80.

99 Neatby, Quebec: The Revolutionary Age, 24-25.

100 Neatby, Quebec: The Revolutionary Age, 144-147 and Ouellet, Economic and Social History of Quebec, 126-127.
contribute to make them so obstinate in their defense.” However, the actions of the British after the capitulation persuaded the resident population that the conquest posed no threat to their rights or safety. Therefore, “convinced that this is not to be their case and that the free exercise of their religion will be continued to them once Canada is irrevocably ceded by a Peace the people will soon become faithful and good subjects to His Majesty, and the country they inhabit within a short time prove a rich and most useful Colony to Great Britain.” In Murray’s view, many of the habitants wanted to stay and only feared removal, like the Acadians, to another French colony.

Murray suggested that the native population, his ‘strong healthy race’, were desirable subjects and a possible boon to the colony’s stability and productivity. If treated as full subjects, French Catholics posed no threat to the empire. Proper management, however, clearly depended upon concessions and flexibility, not rigid imposition of alien laws or practices. For it was not a love of British law or religion that motivated them to stay. Murray’s report argued in favor of a policy of minimal change to existing conditions and the creation of loyalty through respect for local customs and practices. Therefore, only gradual change in harmony with the nature of the people offered hope for success. Murray was not alone in this strategy. His fellow military governors reinforced these ideas.

Although soon to move on, General Gage’s report on Trois Rivières offered further insight for policymakers in London. Gage assured the officials in London that he

101 Shortt and Doughty, 80.
102 Shortt and Doughty, 80.
did everything in his power to protect the property and religion of the new subjects.\textsuperscript{103}

No transgression of their tranquility or verbal abuse went unpunished. For “all reproaches on their subjection by the fate of arms, revilings of their customs or country, and all reflections on their religion have been discountenanced and forbid.”\textsuperscript{104} Under his rule “no distinction has been made between Briton and Canadian but equally regarded as subjects of the same Prince.”\textsuperscript{105} Clearly Gage received the orders Egremont communicated to Amherst.

Gage’s understanding on the role of religion in the successful pacification of the colony mirrored that of Murray. The two tensions he recognized as the most pressing were the status of French currency held in the colonies and the practice of their religion. Toleration seemed the preferred way forward, but it presented its own problems.

The people having enjoyed a free and undisturbed exercise of their religion, ever since the capitulation of their country; their fears in that particular are much abated, but there still remains a jealousy. It is to be hoped, that in time this jealousy will wear off: and certainly in this, much will depend on the clergy, perhaps methods may be found hereafter, to supply the cures of this country with priests well affected. But whilst Canada is stocked as she now is with Corps of Priests detached from seminaries in France, on whom they depend, and to whom they pay obedience it is natural to conceive, that neither the priests or those they can influence will ever bear that love and affection to a British government, which His Majesty’s Auspicious reign would otherwise engage from the Canadians, as well as from his other subjects.\textsuperscript{106}

\textsuperscript{103} In both this chapter and in the contemporary documents, the French colonists are the King’s ‘new subjects’ and British subjects are his ‘old subjects’.

\textsuperscript{104} Shortt and Doughty, 92.

\textsuperscript{105} Shortt and Doughty, 92.

\textsuperscript{106} Shortt and Doughty, 95.
A number of those involved in formulating a policy for Quebec held similar fears. For those supportive of toleration, the means of creating and maintaining a Canadian clergy remained a critical part of the discussion. For both Gage and Murray, reducing the influence of both France and Rome required a Canadian clergy ordained by a Canadian bishop and made up of Canadian-born priests. Neither report suggested, even in the long term, the suppression or removal of the Catholic Church or its hierarchy from the colony. For opponents of such an approach, installing a bishop and supporting the ecclesiastical hierarchy raised questions over the difference between the toleration and the establishment of Catholicism in the colony. These official discussions reveal that prior to the negotiations of a peace, the concerns of both conquered and conqueror focused on questions of religion, law and property. These disputes remained the major stumbling blocks to formulating a civil administration for the colony.

The negotiations of the Treaty of Paris saw relatively little discussion of the protection of French religion.\(^{107}\) Clearly the importance of the territory to be retained or returned and the desires of Bedford and his ministers in seeking a quick end to the hostilities dominated views of the settlement.\(^{108}\) The question of the people living there proved less important than the wider security concerns which underpinned the bulk of British thinking in the period between the fall of Canada and the signing of the Treaty. These reports, however, left little doubt that religion and property could only be handled with concessions to the inhabitants’ traditional practices. To do otherwise invited


\(^{108}\) Most scholarship now supports the argument that despite a voluminous public debate in Britain over whether or not Canada should be retained there was no real argument in official circles. To give back the territory at the heart of the Seven Years Wars and the security issues created by a French presence seemed highly illogical. See, Lawson, *Imperial Challenge*, 8-16 and Jack Sosin, *Whitehall and the Wilderness*. (Lincoln, NE: University of Nebraska Press, 1961), 6-10.
instability and continued resistance, if not from France, then clearly from the residents of
the colony. Both Murray and Gage highlighted the critical role religion played in the
attitudes of the Canadians to British rule. The initial experience of practices of
conciliation settled fears and resistance. To reawaken those fears would prove disastrous.

Though much of the treaty dealt with the exchange of territory and the rights of
the various crowns, relatively little concerned itself with the fate of the peoples settled in
those territories. The text focused on a general concern for the right to maintain property
and sell or remove it as one saw fit. French settlers within the ceded territories were
granted eighteen months to decide on their future and the freedom to remain or emigrate
back to France or to other French colonies. The fourth article addressed the question of
religion. The article stated that, “His Brittanick Majesty, on his side, agrees to grant the
liberty of the Catholick religion to the inhabitants of Canada: he will in consequence give
the most precise and most effectual orders, that his new Roman Catholic subjects may
profess the worship of their religion according to the rights of the Romish church, as far
as the laws of Great Britain permit.” In the ninth and twentieth articles the other ceded
territories, the Grenadines and Florida, were granted the same protections. The phrasing
of these articles proved enduring in debates over Quebec and the other ceded territories
and created a Rorschach test of political thought.

Philip Lawson has convincingly argued that the confusion within legal circles
arose through the initial assumption that article IV was an enacting clause that authorized
the imposition of the full range of anti-Catholic laws used in Britain. Support of
Lawson’s characterization can be found in a letter from Egremont to Murray insisting

109 Shortt and Doughty, 115.
that during negotiations British negotiators were resolute that the phrase limited the crown’s ability to grant rights beyond what was allowed in Britain. On further reflection, British jurists found not a clear enacting clause but an article that raised the question of the relationship between the rights of the conquered and the laws of the conquerors. This ‘constitutional error’ opened the door for each side to make a sustained case about the place of Catholics in society. For many, the articles made clear that the new subjects held the right to practice some form of Catholicism free from repercussions. Within this group, the proposed extent of that right varied greatly. For others the text clearly negated any form of toleration. The phrase, ‘as far as the laws of Great Britain permit’ meant that the penalties applied to Catholics in Britain and Ireland applied to Catholics in the newly ceded territories. The laws of Great Britain largely handicapped Catholics or outlawed religious practices and therefore these same penal laws must apply to Quebec. The articles’ vagueness meant that the case for toleration could not rest solely on a claim that it fulfilled the terms of the treaty. The policy had to stand on its own merits.

II: Seeking a Direction

In the aftermath of the Treaty of Paris the crown and its ministers began to devise a plan for establishing local administration. The initial discussions focused principally on the boundaries of the new territories with the demographic factors receiving little consideration. In laying out the crown’s vision for the new territories and subjects, the

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110 See Shortt and Doughty, 169.
111 Lawson, *Imperial Challenge*, 45.
initial royal proclamation ignored the potential clash of French and British expectations illuminated by Murray and Gage. Instead, the final plan exemplified the prevailing practices of empire. For the ideals enshrined in the Quebec Act to take root opponents of the status quo had to prepare the ground by offering an equally compelling case for new practices of empire.

On 10 March an anonymous author produced a document entitled, “Some Thoughts on the Settlement and Government of our Colonies in North America, Addressed to the Lords Commissioners of Trade and Plantations”.\textsuperscript{112} The author praised the expansion of the empire as an opportunity to increase both the commerce and power of Britain. The success of the colony depended on several factors and such prosperity could only occur “if we give attention to establish such regulations there as may tend to secure the fidelity of our new subjects.”\textsuperscript{113} The tenor of the recommendations on this account supported policies of conciliation. The fidelity of the new subjects would not be secured by punishments and disabilities, but rather through the incorporation of them into public life and granting them various forms of religious toleration. While there was clear dissonance between the British constitution and the Catholic religion, “if a civil government be established there upon the same principles as in the other colonies, the Popish inhabitants I think might safely be admitted to offices and be members of the Assembly with both a deliberative and authoritative voice.”\textsuperscript{114} That such an idea surfaced so early in the process is somewhat surprising, however it proved to have a steady place

\textsuperscript{112} The document can be found in CNA MG23 A4, vol. 10, p 231-346.

\textsuperscript{113} CNA MG23 A4, vol. 10, 231.

\textsuperscript{114} CNA MG23 A4, vol. 10, 231.
within the debate over the course of the next decade. In Grenada, the newly ceded French island, such a concession became official policy by 1768.\textsuperscript{115} Such a departure from prevailing practice, however, remained buried under layers of intellectual and historical precedents to the contrary.

Like many of the commentators suggesting policies of toleration and inclusion, the author still preferred conversion to Protestantism and attacked the arbitrary nature of the ‘Popish’ religion. The threat, however, came not from Catholics or Catholicism directly, but rather from the tenents of Popery which allowed for power to accumulate at the top and the blind obedience it required of those further down both in the laity and among the religious. Accordingly, priests should face election in each parish in order to remove from the clergy “all their influence and authority except what arises from their character”. Such a policy could remove outside influence and in a short time reduce the clergy to “be as unassuming in that colony as the Popish Chaplains are in the houses of the Nobility and Gentry of that persuasion in England.”\textsuperscript{116} The author had a much broader transformative plan to increase the power of the Protestant settlers and to reduce the influence of the Catholic Church in civil affairs.

The core policy recommendation of the document, one that signaled the thinking underlying prevailing practices, suggested the relocation of the seat of government to a new town, or a settlement that lacked a significant building of importance to the Catholic Church. The desire to limit the public presence of the Catholic Church proved a constant

\textsuperscript{115} These concessions and the controversy that arose around them will be treated in greater detail in chapter 4. See also, Aaron Willis, “The Standing of New Subjects: Grenada and the Protestant Constitution After the Treaty of Paris,” \textit{Journal Of Imperial and Commonwealth History} (42.1) 2014, 1-21.

\textsuperscript{116} CNA MG23 A4, vol. 10, p. 232.
concern in London in the coming years.\textsuperscript{117} The new capital would not allow any significant structure for the Catholic Church besides a small chapel for public worship. The author believed that “while Quebec remains the seat of government it will for a long time continue to be a nest of monks and nuns who will never be hearty friends to the British nation, and are besides a great load and drawback upon the industrious.” He offered support for the impact of such a move by claiming that, “when the Popes took up their residence at Avignon the monasteries at Rome a few years after were turned into stables.”\textsuperscript{118} As with many British commentators, the author failed to realize that French Canadians might have an attachment to their religion just as Britons felt attracted to their own faith and culture. For these observers, when placed in close proximity, and with Catholicism removed of its pervasive visual power, no rational person would chose the arbitrary and superstitious Catholic faith over liberty and truth of the word found through Protestantism. While this prejudicial assumption remained, its influence waned over the course of the next decade.

As the author clearly lacked imagination, the new capital would be named ‘British Town’ and placed closer to New York, where it would be removed from the possibility of naval invasion during the inevitable French attempts at retaking the colony. A number of stipulations ensured that the town would set the tone for the assimilation of the wider colony, English would be the primary language, the bulk of the population needed to be British (by this he specified he meant resettlement from the existing colonies, barring or at least discouraging immigration from Britain and Ireland), but with freedom of religion

\textsuperscript{117} See especially Chapter 1 of Tony Claydon, \textit{Europe and the Making of England} (New York: Cambridge University Press, 2007), on the symbolism associated with Catholic architecture and space.

\textsuperscript{118} CNA MG23 A4, vol. 10, p. 232.
granted to Catholics. To draw settlers from the main French settlements, the town might be built halfway between Montreal and Quebec. This movement of Catholics into the protestant capital “would be no detriment to the Colony but on the contrary an advantage, as Papists would be more likely to become good subjects and to forsake their superstitions in a Protestant town than in a Popish city.”

While the transfer of authority to the new town would be gradual to not upset the Canadians, and might never have to take place if the situation proved right, its intent was clearly one aimed at rewarding assimilation in language and culture. For by planting a large British population amongst of the French Catholic population, “a town peopled with native British subjects in the heart of that colony, would be a check upon those who were inclined to be disaffected, would be a means of introducing the English language, English manners, and a spirit of Industry among the French Canadians, and would in a few years render a military force altogether unnecessary in that province.”

The history of English plantations and projects of cultural and economic ‘improvement’ drew a great deal on the Irish model. Transforming the conquered ‘alien’ culture to mesh with British norms offered the natural path forward in the minds of many involved in the early policy debates over Quebec.

In May 1763 Lord Shelburne, the President of the Board of Trade, drew up a paper “On the Subject of Religion with Respect to Canada”. The short opinion paper

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echoed other plans for the ecclesiastical settlement that would emerge several years down the road. Shelburne himself would be involved with Quebec for much of the next decade, both in and out of office. This initial reflection offered far less in terms of toleration and flexibility than these later plans would. This stemmed from several warnings issued by the Shelburne in the opening paragraphs. First, to the idea that the influence of religion is confined to certain latitudes and that therefore there was nothing to fear from Catholics in the Americas he asserted that the sentiments were, “both to be disproved from so many facts, that the very number of facts makes the alleging of them superfluous.”  

The following two paragraphs lay out the fears stoked by Catholics and deserve to be quoted in full,

With respect to religion in Canada, it must be remembered, that many thousand People are now become the Subjects of Great Britain, who were neither born nor bred such, and whose religion, when operating in its Enthusiastic Vigour, naturally tends to the Destruction of Governors, and the worst Species of Anarchy, witness the Massacre of Paris, the actual assassination of two French kings, and the recent attempt upon a third. The Regulations therefore with respect to Religion in Canada must not be deduced from our own crude and unregarded feelings of it here, nor from the plausible and candid professions of an Enemy just conquered, but from the possibility of what may happen, should the Times change, should their strength increase, and ours diminish.  

Like Catholics in Ireland, the French Catholics were prone to violence and thought little of revolting against their rightful ruler. As a result the only prudent approach was one of caution and careful management.

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123 CNA MG23 A4, vol. 16, p. 171.
To keep tight control on the Catholic population and especially the Church, the only clergy allowed into the colony would be secular priests, appointed at the will of the Governor, registered with him and barred from preaching to any Protestant on pain of exile. Those proven to have converted a Protestant would face capital punishment. To Shelburne, granting a bishop for the colony seemed proper, but the bishop’s nomination would come from the British crown and his revenues would be controlled by the same. Financial support for the church would come from the laity and no tithes could be required of any Protestant, nor any Catholic converting to Protestantism. Shelburne presents a picture of a highly regulated, closely watched Catholic Church. The British could allow for the basic practice of the faith, but should offer little more than that. Publically, Catholicism in Quebec would appeal not to Rome or Paris for guidance and legitimacy but to London, thus ensuring that the Church would be a local and native institution, not one integrated into the wider religious and political channels of the Roman Church.

Such harsh controls, however, were tempered with a few concessions towards the practice of the faith. The Catholics should not have to suffer abuse from their fellow subjects on account of their religion and the Governor must protect the Bishop and the clergy in order to allow them to carry out their religious functions. The Governor had to likewise protect the Protestant population. Most importantly the governor had to avoid modern sentiments toward all religion, “he should, by a proper external Decency in Himself and his dependents, avoid that absurd, tho fashionable Indifference which in

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125 For the state of the Catholic Church in Ireland, the other dominions with a majority Catholic population, see chapters 6 and 7 of Ian McBride, *Eighteenth-Century Ireland* (Dublin: Gill and MacMillan, 2009).
such a motely society, as that of Canada, must be most contrary to Sound Politics, as it will necessarily tend to lessen his Character and in that his Authority.”

For Shelburne and many others, the future of Quebec rested firmly on the solution to the Catholic Question. Showing the Catholic Church too much leniency threatened to instill anarchy into the colony. Only through proper management could the Canadians be allowed the full benefits of the Treaty of Paris’ concessions to practice the Catholic faith. As Lawson argued, while restrictive, the concessions in Shelburne’s piece treat Catholicism not as a dangerous faith in need of extirpation, but rather an institution in need of strong political oversight and management.

Within the climate of position statements and reports from Quebec, the Board of Trade took up the task of developing a policy to rule and order the crown’s new territory. On 5 May, Lord Egremont wrote to the Board of Trade to request a report suggesting a path forward in addressing the new territories. Questions over the governance of Canada focused on the military establishment, the boundaries and capitals of possible colonies, and, critically, the rights reserved to the new subjects. The letter placed a focus on the rights secured by the Treaty of Paris but, interestingly, Egremont also presented to the Board the articles of capitulation for Quebec and Montreal as an additional source material for their consideration. The reports from the military governors provided the Board with further guidance in the creation of the new government or governments in Canada. The terms of the capitulation and the governors’ recommendations suggested a


128 Shortt and Doughty, 127-130.
final policy responsive to French political, legal and religious traditions. The governors’ reports proposed as little alteration to the French system as possible, and the terms of capitulation were extremely generous towards the practice and institutions of the Catholic Church and French legal tradition. This initial foray into developing a long-term policy for the governance of Canada suggested a broad, flexible approach to assimilating the new subjects. Far from seeking to impose British norms, Egremont appeared open to creating space for non-Britons and their own religious and legal customs.

On 8 June the Board returned its verdict to Egremont. The report recognized a key concern in setting the form of civil administration. The policy adopted for the new territories had to create stability “in order to invite new Settlers to risque their persons and Property in taking up new Lands, as well as to secure the old Inhabitants in the Enjoyment of those Rights and Privileges reserved to them by the Treaty, such regular Government appears, both from Reason and Experience, of absolute Necessity.” This stability, until the colony had a large enough population to found a local militia, would depend on the presence of a significant military force.

The reliance on a standing army did not sit well with most Britons, but as in other colonial territories it served an important purpose. A large army would be useful, “to secure the Obedience and Fidelity of the ancient French Inhabitants as to give full Protection & Security to the new British Settlers.” As a newly conquered population, the new subjects were still not fully trustworthy and any new settlers would expect a degree of certainty that they would not fall prey to a rebellion. The noticeable distinction

129 Shortt and Doughty, 139.

130 Shortt and Doughty, 143.
between new and old subject marks an important divide for many of the figures who would engage with the debate over Canadian policy. The tension between which population to prioritize, the king’s new or old subjects, in the creation of a civil administration for Canada persisted even after the passage of the Quebec Act. While some would try to create a unified ideal of the king’s subject, the basic terms of the debate recognized the increasingly heterogeneous nature of the imperial population.

In drawing the borders of the new colonies, care was taken to ensure that they restrained both the Native American population and the existing French population. Native American lands in the backcountry were to be reserved as hunting grounds and opened as a free trade zone for British subjects, but not for settlement. This would encourage trade with native groups, but reduce tensions and protect native territory from encroachment. No government would be established and order would be maintained through the use of forts and a strong military presence. The Native Americans, though deserving of the king’s protection and justice, were not true subjects. From the outset, Quebec’s role in regulating the territory reserved for native populations, especially the Ohio River Valley, created a source of tension within official circles, but especially between London and the British subjects in the seaboard colonies who saw the land as theirs for settlement.

The Board of Trade recommended annexing large parts of any unsettled territory east of the bulk of French settlement to existing British colonies. This would act as a means to entice British settlers and quickly extend existing structures of colonial government. Strategically, it also lessened the territorial extent of any rights and

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131 Shortt and Doughty, 139.
privileges retained by the French Canadians. Shrinking the boundaries where French law might continue created a disincentive for the French to expand beyond their current settlements and centers of British authority.\textsuperscript{132} However, the report also recognized that this ensured that territory in the diminished colony would,

\begin{quote}
contain within it a very great number of French Inhabitants and Settlements, and that the Number of such Inhabitants must greatly exceed, for a very long period of time, that of Your Majesty's British and other Subjects who may attempt Settlements.\textsuperscript{133}
\end{quote}

The new government must “secure the ancient Inhabitants in all the Titles, Rights and Privileges granted to them by Treaty, and to increase as much as possible the Number of British and other new Protestant Settlers, which Objects We apprehend will be best obtain'd by the Appointment of a Governor and Council under Your Majesty's immediate Commission & Instructions.”\textsuperscript{134} The exact form of this government and guidelines for the governor and council, according to the Board of Trade, lay outside the scope of their initial considerations. The report suggested a desire to entice Protestant settlers, but also to ensure that the new French subjects remained secure and content under British rule. The value of keeping those already settled in the colony seemingly equaled that of drawing Britons into the newly acquired territories.

In line with this motivation, the Board recommended retaining the French divisions of government. Quebec would continue as the colonial capital and residence of the governor, while the districts of Montreal and Trois Rivières remained provinces within the larger colony. While somewhat reduced in size, the colony would still look

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\textsuperscript{132} For this discussion see, Shortt and Doughty, 140-142.  \\
\textsuperscript{133} Shortt and Doughty, 142.  \\
\textsuperscript{134} Shortt and Doughty, 142.
\end{flushleft}
much as it had prior to conquest. Maintaining the French colonial structure held two main benefits, “not only as by this means the Administration of Justice and of Commerce will be less embarrass’d, but that a less proportion of military Force will be requisite to be maintained and be more easily applicable against all external or internal Disturbances.”

Three colonial capitals required protecting all of them equally and three separate governmental structures. Keeping the French organization would not only make for a smoother transition, but also mean less exertion and manpower.

The Board of Trade’s concern for all new territories focused on stability in the transition to British rule. The value placed on stability and effective transition drove policy recommendations. Initially the Board’s suggestions of the best means to achieve these goals centered on a governor responsive to the crown and a standing army to secure tranquility. The report continued to focus on the need for a regular military force until Britons settled in large numbers and a reliance on a governor-in-council. The possibility of an elected assembly did not merit a mention. In repeating the mantra of governor and troops when discussing the Grenadines, the West Indian islands ceded to Britain in the Treaty of Paris, the Board argued, “it is equally obvious, that this Security cannot be obtained for some time at least but by the means of regular Troops—and We are clearly of opinion that this is so necessary, that We do not believe any Persons of sufficient Stock will be found willing to hazard the Capital necessary for a Sugar Plantation in any

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135 Shortt and Doughty, 143.

136 See CNA MG23 A4, vol. 10, p. 254-256, for references to Georgia and Nova Scotia as models for Quebec in terms of protecting the constitution in a situation where it was not prepared for full execution, i.e. an assembly.
of these Islands without it.’”\textsuperscript{137} While clearly desirous to settle Protestant Britons, the Board demonstrated little distrust of the new subjects beyond their status as a recently conquered people.

The report closed by advocating that all appointed officials from the Governor down should reside in the colony, lest their authority be questioned and their ability to carry out the crown’s commands weakened.\textsuperscript{138} Perhaps unsurprisingly the first report on the new territory focused primarily on setting basic boundaries and securing post-conquest stability. Yet for a powerful faction, settling Britons remained the primary goal; whatever the costs to the rights and privileges of the conquered subjects. The Proclamation of 1763 would seek to attract ‘settlers of sufficient stock’ through the imposition of English norms.

In a meeting on 8 July, the relevant ministers within the ministry met at the Duke of Cumberland’s home to privately consider the report. The majority rejected attaching any relevance to the articles of capitulation in relation to either the Treaty of Paris or to the rights and privileges owed to the conquered ‘ancient inhabitants’.\textsuperscript{139} For those involved, including Lord Halifax, the next Secretary of State for the Southern Department, the only rights secured to the French were the practice of their religion in accordance with British law and the ability to maintain or sell their property and emigrate.

\textsuperscript{137} Shortt and Doughty, 145.

\textsuperscript{138} Shortt and Doughty, 146-147.

\textsuperscript{139} BL Add. Mss. 57834, 17. The members present were: the Lord Chancellor Robert Henley, the Prime Minister George Grenville, Secretary of State for the Northern Department Lord Halifax, Lord Chief Justice Lord Mansfield, Secretary of State for the Southern Department Lord Egremont, and the President of the Board of Trade the Earl of Shelburne.
within eighteen months.\textsuperscript{140} Beyond that, any language assuming rights connected to the articles of capitulation for either Quebec or Montreal had no bearing on Quebec. In fact, according to notes from the meeting, those in opposition claimed that British negotiators of the Treaty of Paris refused to incorporate any of the terms of the capitulations or granted any rights to the Canadians:

The question whether the words rights titles, etc. \textit{granted by treaty} in that report should be confirmed was agitated and objected to because no rights titles etc. are granted by the treaty which only stipulated the toleration of religion as far as is allowed by the laws of Great Britain and the right of selling their lands and migrating within 18 months and if it refers to the capitulation that the articles of capitulation are not confirmed by the treaty on the contrary it was expressly refused when the treaty was considered.\textsuperscript{141}

Though present at the meeting, Egremont’s impulse to utilize the articles of capitulation in policy formation found little support among those in attendance, possibly it even lacked his own support.

Egremont dutifully reported back to the Board of Trade the rejection of the principle that extensive rights were granted in the Treaty. In his remarks on the report the following appears first identifying the offending clauses with page and line numbers, which included the granting of protection of ancient rights and privileges. Egremont wrote,

There are no rights or privileges whatever, reserved to the French by the treaty, but the exercise of their religion as far as is consistent with the laws of England. This point was often debated with Mor. De Nivernois. I always insisted that the cession was complete and entire, unclogged with any condition, but that regarding the above mentioned toleration, and the court of France understands it so. I apprehend the words underlined

\textsuperscript{140} Halifax held experience with dealing with majority Catholic populations as a former Lord Lieutenant of Ireland.

\textsuperscript{141} BL Add. Mss. 57834, 17.
would be very improper to be seen by the French in an office paper of this government.\textsuperscript{142}

The inclusive approach supported by those within and outside the ministry had its detractors and they would soon gain the upper hand.

On 14 July, Egremont sent the crown’s reply to the Board of Trade. He spoke favorably of the boundaries planned for each new colony, the idea of a governor-in-council and requested that the drafts of the instructions for the governors of the new colonies be drawn up based on the report. The letter also named the new governors, including Murray as the Governor for Quebec.\textsuperscript{143} The one point of contention centered on the crown’s desire to put all Indian country under the government in Quebec. The question of relations with Native Americans was increasingly pressing as hostilities with natives unhappy with British policies broke out in early 1763.\textsuperscript{144} Although supportive of the policy to reserve the backcountry of the Ohio Valley and the Great Lakes region to the native population and the creation of a free trade zone for all British colonists, the crown preferred to have a single government in charge. This allowed one government to arbitrate disputes surrounding property and criminal activity.

For, beyond the trouble of bringing fugitive criminals to justice and possible disputes over future property, concerns arose that “other Powers, who might hereafter find Means of Access to those Countries, might take Possession thereof, as derelict

\textsuperscript{142} PRO 30/47/22/2, p. 67.

\textsuperscript{143} The response can be found in, Shortt and Doughty, 147-150.

Lands.” The justification of *res nullius* and other theories that required lands to be actively utilized were a major part of British claims to much of their territory in North America. If the British failed to establish legitimate control over the territory, France or Spain could easily argue that the lands, though ceded in the Treaty, remained unsettled and therefore open to new claims. The Seven Years War would have done little to secure British claims to the backcountry of its expanding colonies, the central purpose of that expensive engagement.  

On 13 August Egremont sent a letter informing Murray of his impending appointment. He made clear that until the crown settled the form and nature of the government he would have no new orders, but he did send him important guidance on the treatment of Catholic subjects. The bulk of the letter detailed the extent of the religious rights retained by the Catholics in the Treaty of Paris. According to Egremont, the king believed the French planned to use the church as a conduit into their former colony. This fueled a belief that claims for the continuation of church structures and their connections to the French Church sought to preserve a potentially subversive relationship. For the crown and the ministry the French officials were “disposed to avail Themselves of the Liberty of the Catholick Religion granted to the Inhabitants of Canada, in order to keep up their Connection with France, and, by means, of the Priests, to preserve such an Influence over the Canadians, as may induce them to join, whenever opportunity should offer, in any attempts to recover that Country.” To guard against this possibility priests

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145 Shortt and Doughty, 148.


147 Shortt and Doughty, 168-169.
were to be carefully monitored and those attempting to engage in civil affairs immediately removed. The threat led Egremont to delineate the crown’s thinking on the meaning of the fourth article of the Treaty of Paris.

Egremont conceded that the article granted the Canadians the liberty of their religion, “and tho’ His Majesty is far from entertaining the most distant thought of restraining His new Roman Catholick Subjects from professing the Worship of their Religion according to the Rites of the Romish Church: Yet the Condition, expressed in the same Article, must always be remembered.” The phrase ‘as far as the laws of Great Britain permit’ held a definite meaning. For the laws of Great Britain, “prohibit absolutely all Popish Hierarchy in any of the Dominions belonging to the Crown of Great Britain, and can only admit of a Toleration of the Exercise of that Religion.” According to Egremont the French failed to insert the phrase, “comme ci-devant”\(^{148}\) into the treaty. Throughout the negotiations the French remained steadfastly committed to guaranteeing protections so that those who remained could practice the Catholic faith as they had prior to the conquest. They did not relent “till they were plainly told that it would be deceiving them to admit those Words, for The King had not the Power to tolerate that Religion in any other Manner, than as far as the Laws of Great Britain permit.” Just as the laws of Great Britain bound the king during treaty negotiations, the same laws now bound Murray in dealing with any religious disputes.

With no mention of specific laws to serve as his model, Murray received little concrete guidance. The letter only provided that, “these Laws must be your guide in any Disputes that may arise on this Subject.” The letter left Murray to brood over the

\(^{148}\) Or, ‘as before’
meaning of ‘these laws’. To further confuse the issue, and probably Murray, his orders cautioned against a strict enforcement of whatever laws might be applicable. For,

at the same Time, that I point out to you the necessity of adhering to Them, and of attending with the utmost Vigilance to the Behaviour of the Priests, The King relies on your acting with all proper Caution & Prudence in regard to a matter of so delicate a Nature as this of Religion; And that you will, as far as you can, consistently with your Duty in the Execution of the Laws, & with the Safety of the Country, avoid every Thing that can give the least unnecessary Alarm, or Disgust, to His Majesty's new Subjects.\textsuperscript{149}

Quite a mixed message; however, the existence of the laws in theory did not mean Murray need apply them fully to the new subjects.\textsuperscript{150} Yet Murray was opposed even to the symbolic erection of anti-popery laws. As he and Gage made clear in their reports, any alteration to Canadian religious freedom would raise alarm and disgust with the new subjects. The difficulty of negotiating between the vague outlines of ‘these laws’ and the strong attachment of the French colonists to their religion proved to be a central factor in Murray’s later downfall.

Still, much of the planning moved forward with little official mention of the Catholic question. On 5 August the Board of Trade responded to the question of putting control of the Indian country under the government of Quebec. While they agreed with the reasoning for putting the territory under a single government, they raised several issues with the plan, especially connecting the territory to Quebec. The first expressed a fear that connecting all the lands to the newly formed government in Quebec might give

\textsuperscript{149} Shortt and Doughty, 169.

\textsuperscript{150} The disconnect between the existence of anti-popery laws and their application has been explored by a number of historians of Ireland during this period. See especially, Thomas Bartlett, \textit{The Fall and Rise of the Irish Nation} (Dublin: Gill and MacMillian, 1992); McBride, \textit{Eighteenth-Century Ireland}; and Maureen Wall, \textit{The Penal Laws, 1691-1760} (Dundalk, Ire.: Dublin Historical Association, 1967).
the impression that Britain only acquired the territory by the conquest of French lands, rather than, as claimed prior to the war, the territory having always properly belonged to Britain. Conflicting claims over the Ohio Valley and the Great Lakes region motivated the expensive engagement and they sought to avoid renewing doubt around those claims. In their second concern, the Board worried that giving control to one colony provided the power to regulate trade in favor of its residents. The final point centered on the potential military power granted to the governor in Quebec. Either he would gain too much authority through control of the bulk of regular troops in North America, or disharmony would reign when the governor found himself constantly at odds with those given control of the Regulars.\(^{151}\)

The Board suggested placing the power over native territory into the hands of a military commander, answerable only to the crown, and under the imperative to maintain order and protect the fur trade. Since creating the proper orders and commissions for such a position required a lengthy process, the Board proposed that the crown should issue a proclamation banning settlement and declaring the territory a free trade zone. To deflect expansion from the Indian country, it would be useful, “at the same time to declare Your Majesty's Intentions to encourage all such Persons who shall be inclined to commence new Settlements from Your old Colonies, together with all foreign Protestants, coming by themselves or with such Undertakers, in Your new Colonies of East and West Florida or your old Colony of Nova Scotia.”\(^ {152}\) Thereby encouraging settlement in territory lacking significant population and where it avoided tension with

\(^{151}\) Shortt and Doughty, 151-152.

\(^{152}\) Shortt and Doughty, 152-153.
native populations. Using undertakers to plant Protestant settlers recalled settlement strategies used to settle Ireland and the Americas. Such a plan sought to encourage demographic expansion of Protestant Britons and to hasten the homogenization and assimilation of the settlements. This ideal applied beyond the supposedly unsettled wilds of Florida and Nova Scotia. Certain officials believed settling Protestants held the same demographic benefits in Quebec. However, Egremont’s recommendations remained focused on creating a means of organizing and administering the new territories while taking both populations into account.

His papers in the British National Archives contain, alongside the report of the Board of Trade on Quebec, a set of notes titled, “Hints for the Division and Government of the Newly Conquered Territories”. The document offers several recommendations on the best means of dividing the new territories, and, more importantly for their governance. The first proposed that the colonial governments begin under the recommended governors-in-council, but move to local assemblies as soon as the situation allowed, presumably once the number of Protestant Britons reached acceptable levels. The second dealt with the question of the crown’s new Catholic subjects and highlighted Ireland’s prominent place in the minds of many officials in London. Once the clergy diminished in number and influence, the crown should “then grant to such of the Canadians as may still adhere to popery, the same toleration and indulgence, as is allowed to his majesty’s Roman Catholic subjects of Ireland, who by the capitulation of Limerick were in like circumstances.”

\[footnote{153}{PRO 30/47/22/2, f. 71} \]
example of the treatment the Habitants could expect from British conquest they had not misled their tenants.

From the outset many saw in Ireland a template suitable for application in Quebec. For the author, and others, the terms of capitulation in Quebec and Montreal mirrored that of the treaty of Limerick. However, just as the terms promised in the Treaty of Limerick were effectively nullified by the penal laws, various factions concerned with Quebec did not expect to continue the terms of capitulation beyond the immediate future. Catholics in Quebec were expected to face the same penal laws as those in Britain and Ireland.\textsuperscript{154} Countering such approaches required a separate narrative that questioned the effectiveness of the Irish model. These ‘hints’ were clearly read and taken seriously, the next document in Egremont’s papers, apparently in his hand, reflected on where these recommendations differed from those of the Board of Trade. Because the Board of Trade report lacked coverage of the ecclesiastical questions we are denied insight into Egremont’s response to the Irish comparison.\textsuperscript{155} Whatever Egremont thought, he would not have a role in formulating the final policy. His death on 21 August ensured that he played no further part in the discussions. Halifax, already opposed to the terms of the initial Board of Trade report, stepped into his role on 9 September and would lead the discussions over the plans for the new territories.

\textsuperscript{154} Stephen Conway has recently argued that Ireland remained the preferred model for the majority of officials throughout the buildup to the passage of the Quebec Act. Only reluctantly did they move towards concessions to the Canadians and a model based on Minorca. See, Stephen Conway, “The Consequences of Conquest: Quebec and British Politics,” in Revisiting 1759, eds. Phillip Buckner and John Reid (Toronto: University of Toronto Press, 2012).

\textsuperscript{155} PRO 30/47/22/2, f. 82.
III: The Proclamation of 1763 and the Old Ideals

The crown’s response to the Board of Trade’s recommendations for Indian country came on 19 September. The crown agreed with the plan to keep lands detached from any government, a free trade zone for all colonists, and also confirmed the proposed boundaries of Quebec. The letter requested that regulations and a proclamation be drawn up confirming the new boundaries and outlining the terms of trading in Indian country. The form of government in the new colonies did not warrant a mention. At this point official documents indicate that the preferred model for Quebec and the other ceded territories remained a governor-in-council with protections for the rights and privileges of the French. Despite the fact that official documents made no mention of alternatives, both the meeting of concerned parties on 8 July and the “Hints” document show that various factions agitated for the calling of assemblies in the new colonies and significant restrictions on the rights of the new subjects. In Halifax they gained a sympathetic minister. Unsurprisingly, by 4 October the prevailing approach to empire, assimilation and state formation took hold.

On that day the Board returned to Halifax its draft proclamation and it contained a major revision to the previous report and instructions. In the letter prefacing its draft the Board explained,

we beg leave further to add, That as it appears to us, upon a Revision of the Report of this Board of the 8th of June last, That, it will be expedient for His Majesty's service, and give Confidence and Encouragement to such Persons as are inclined to become settlers in the new Colonies, That an immediate and public Declaration should be made of the intended

156 Shortt and Doughty, 153-155.

157 As cited earlier Phillip Lawson attributes this drastic shift to the politics and personality of Halifax.
permanent Constitution and that the power of calling Assemblies should be inserted in the first Commissions. We have therefore drawn the Proclamation agreeable to this Opinion, and have prepared the Commissions accordingly.

The source of ‘revision’ is not clear, but the commissions and the Proclamation would now assert that an assembly was the ideal institution of governance for the new colonies and any regulations or ordinances drawn up by the current governors and councils would be temporary.\textsuperscript{158} Where previously a strong military presence and a governor-in-council provided the greatest appeal for new and old subjects, the new plan argued that representative institutions offered the greatest enticement for highly valued Protestant settlers. The shifting rhetoric suggests that Halifax and old Whig politics overrode the more realistic, but ideologically objectionable, policies based on concessions to Catholicism and French traditions.

The change of language highlights the mistake in presenting the debates over Quebec as an easy binary opposition of pragmatism versus ideology. Both sides claimed that their approach offered pragmatic benefits in settling and maintaining stability in the new territory. We should not assume that contemporaries would have recognized the debate as one of pragmatism versus principles. Rather each side offered a different vision of how empire and conquest functioned. The initial burst of support for a pluralistic empire initially ran aground on the ideals developed in a very different context.

On 5 October the Privy Council took up and approved the draft proclamation. The next day Halifax and the Earl of Sandwich, the new Secretary of State for the Northern Department, met with the Earl of Hillsborough, President of the Board of Trade, and the other members of the Board to address the draft orders to the new governors. In

\textsuperscript{158} Shortt and Doughty, 156-157.
these drafts, officials reiterated the new focus on the calling of assemblies. To meet with royal approval the Board prepared commissions “by which the Governors are impower’d and directed so soon as the Circumstances of the Colonies will admit thereof, to summon and call General Assemblies of the Freeholders in their respective Governments in such Manner as is practiced in Your Majesty's other Colonies.” They agreed with the new argument for encouraging the focus on settling Protestant Britons. Therefore, they “were of Opinion that an immediate and publick Declaration of the intended permanent Constitution, and an Insertion in the first Commissions of the Power of calling Assemblies so soon as the Circumstances will admit, is expedient for Your Majesty's Service, and will give Confidence and Encouragement to such of Your Majesty's Subjects, as shall incline to settle in your said new Colonies.”

While repetitive, it made clear that the pragmatic case for settling and establishing order in the new territories now lay with older models of conquest and settlement supported by the principles of 1688 and the Act of Settlement. It was Protestantism and representative institutions that were to protect the Constitution and guarantee stable and loyal colonies. In addition, the new rhetoric largely lacked any concern for the rights and values of the Canadians. The needs and rights of the French settlers became a secondary concern. On 7 October the king approved the draft and ordered it to be printed. Its wording, like that of Article IV of the Treaty of Paris, held long-term implications for the future of Quebec.

The Proclamation of 1763 opened with assurances that the following orders sought to support the king’s old subjects and encourage them to settle his new territories.

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159 Shortt and Doughty, 159-160.
The crown was “desirous that all Our loving Subjects, as well of our Kingdom as of our Colonies in America, may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation.”\textsuperscript{160} The new colonies formed four distinct governments out of the territory ceded in the Treaty of Paris: Quebec, East Florida, West Florida, and Grenada. The proclamation laid out the boundaries, including the territory annexed to existing colonies. The text reiterated the common refrain from previous discussions. The crown called for the establishment of assemblies as they would “greatly contribute to the speedy settling our said new Governments, that our loving subjects should be informed of our Paternal care, for the security of the Liberties and Properties of those who are and shall become Inhabitants thereof.”

The Proclamation ordered governors to set up courts in line with British norms and call an assembly as soon as it became feasible, one based on the laws of Britain and the forms used in other American colonies. This section gave, like the fourth article in the Treaty of Paris, the Proclamation its own endlessly quotable passage. It declared that, “all Persons Inhabiting in or resorting to our Said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England.”\textsuperscript{161}

According to one line of argument, the Proclamation instantly established the laws of England in the colonies. How else could one interpret the fact that all subjects had ‘the enjoyment of the benefits of the laws’ of England? For supporters of this interpretation, this effectively prohibited the creation of institutions, laws or religious rights barred by

\textsuperscript{160} Shortt and Doughty, 163-164.

\textsuperscript{161} Shortt and Doughty, 165.
law in Britain. It also meant that Protestant settlers expected a local assembly modeled on Parliament and colonial representative bodies. Whatever the rights of the Canadians, they were now secondary to those of the king’s old subjects. The Proclamation closed by defining the boundary of the protected Indian country and granted rights to colonies to pursue criminals who fled beyond it.\(^\text{162}\) Yet for Quebec, the generally better-known clause setting the line of settlement remained of relatively little political importance. The real substance of the proclamation lay in what many took to be the complete and unquestioned imposition of English norms onto the new territories.

On the same day that the king ratified the Proclamation, he approved the assignments suggested in July and confirmed Murray as the civil governor of Quebec. The wording of the official commissions was not finalized for another two months and it would not be until December that the crown approved and signed the official instructions to the governors. The Proclamation was a broad set of policies, many of which went against Murray’s inclinations of how to best manage the colony. For Murray and his successors the difficulty of communicating with Quebec and the relative weakness of royal authority at such a distance gave him the freedom to make policy decisions and selectively interpret or ignore instructions from London almost at will. Murray would never call an assembly; he largely construed his instructions in a way that benefited the Canadians, and his close relationship with the Catholic Church meant the continued influence and existence of a Catholic ecclesiastical hierarchy.\(^\text{163}\) The ability to make

policy on the ground and have it, reluctantly or otherwise, confirmed by London served both Murray and his successor well. The next chapter will explore Murray’s instructions and the initial period of his governorship, but one further event cast light onto ministerial thinking at this early stage.

Responding to a request for a land grant in Quebec, the Board of Trade made planting Protestant settlers a key provision. In granting a pair of merchants 20,000 acres, the Board of Trade set several conditions, the first three directly addressed the religious makeup of the settler population. The stipulations required,

First, that the grantees be obliged to settle the said township with Protestant Inhabitants within ten years from the date of the grant, in the proportion of one person to every hundred acres. Secondly, That if one third of the township be not settled with protestant inhabitants in the abovementioned proposition within three years from the date of the grant, the whole will be void. Thirdly, That all such parts of the land, as shall not be settled with Protestant inhabitants in the said proportion at the expiration of ten years from the date of the grant, do revert to the crown.

This case and related schemes in the early years after the conquest echo the plantations of Ireland and were directed towards similar ends. In Quebec such strategies were meant to build a political class capable of running the colony. The few Protestant settlers in Canada were deemed unsuitable for such responsibilities. To have a fully functioning legal and political system mirroring English norms, the colony needed men who could be

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163 On the difficulty of communicating with Quebec, especially when it was only accessible by water for five months a year, see Banks, 69-76. For the ways that authority is negotiated, even at a time when London is attempting to be more assertive, see, Jack P. Green, Negotiated Authorities (Charlottesville: University of Virginia Press, 1994), 10-24; Elizabeth Mancke, “Negotiating an Empire: Britain and Its Overseas Peripheries, c. 1550-1780” in Negotiated Empires, eds. Christine Daniels and Michael V. Kennedy (New York: Routledge Press, 2002), 235-266; and Ian K. Steele, The English Atlantic (New York: Oxford University Press, 1986), 229-250.

164 PRO CO 43/1, f. 143, response dated 20 Dec. 1763.

165 PRO CO 43/1, f. 145.
trusted to hold public office, sit on juries and keep order in the colony. Much like earlier eras of conquest and settlement, lands were granted with the expectation that these men would undertake the burden and expense of settling and administering the new territories. The conquered Catholic subjects, until they converted to Protestantism and adopted English norms, could not be trusted with authority. In the aftermath of the Treaty of Paris policymakers’ bonds to older models of conquest persisted. Focused on settling Protestants in the new territories rather than addressing the needs of the Catholic subjects, the Proclamation of 1763 and initial attempts to settle Quebec remained wedded to a more homogenous vision of empire. While such plans quickly proved woefully inadequate, the hold of assimilationist practices on the public and officials alike necessitated a powerful counter-narrative.

Conclusion

Between the conquest of Canada and the Proclamation of 1763 the debate over the form and nature of a policy for Quebec narrowed. The initial reflections on a means to settle the questions posed by Quebec focused on practices of conciliation that recognized the new imperial realities. Within this set of principles the rights and happiness of the new French subjects stood alongside the desire to attract new Protestant settlers. The demographic realities of the colony convinced figures like Murray, Gage and Egremont that the colony’s success rested largely on the current inhabitants. The means to guarantee both an influx of new settlers and the maintenance of the old depended upon a smooth transition to British rule where stability and security benefited both populations. Officials sought to minimize any difference in the value or treatment
of new and old subjects. However, initial forays into pluralism clashed with older models and ideals held by a still sizable and powerful number of British elites.

For individuals like Lord Halifax, the goal was to settle Protestants in the new territories and the best draw for the old subjects would be the imposition of the laws and institutions they experienced throughout the rest of the British state. Through the lens of older practices of imperial expansion and assimilation, the new Catholic subjects held little relative value and were encouraged to either quickly assimilate or move out of the colony. Those looking to previous experiences of British state formation believed heterogeneity, especially where it concerned Catholics, invited instability. As a result, older practices of conquest exemplified by places like Ireland provided a ready menu of assimilationist policies and strategies. The empire’s success rested upon Protestantism and English norms. The power of this faction, dominant in the process of formulating the Proclamation of 1763, continued to shape the debate over Quebec beyond the passage of the Quebec Act. Yet that the policies ultimately adopted in Quebec clashed with this vision of empire does not mean that Quebec was a pragmatic anomaly.

Quebec is critically important to the understanding of larger questions relating to the incorporation of non-Britons into the empire and religious toleration in Britain and Ireland. This initial debate over the meaning of the treaty and the formulation of the Proclamation offers insight into the ways Quebec asked questions of imperial administrators that forced them to reevaluate the prevailing model of empire. In crude and unstated forms the initial debates laid out the two approaches to assimilation and imperial expansion that would exist in tension for the next decade and beyond. Both offered their cases as pragmatic solutions to the questions facing Quebec. This debate
was not simply one of naked pragmatism and in the decade to come it would develop into a legal, religious, and philosophical dispute. How should confessional difference be treated? What were the legal rights and privileges of the new subjects? What rights and duties did conquest bestow upon conquered and conqueror? What form of governance was best suited to a population made up largely of non-Britons? The tension generated within Britain in answering these questions cracked the old foundations of empire and it was from these fissures that new imperial principles, practices and possibilities emerged.
CHAPTER 3:

QUEBEC AND HALIFAX’S FOLLY

Introduction

In the aftermath of the Proclamation of 1763 it would fall to James Murray as the governor of Quebec to reach solutions for the many unsettled questions still facing the colony. His groping attempts at satisfying two disparate parties, the resident French Canadians and the increasing number of British merchants, failed in almost every way. His conciliatory gestures and policies in favor of the Canadians angered the British merchants. The merchants who proved so resistant to Murray’s authority comprised around 200 householders ranging from the large wholesale importers to discharged soldiers now employed as innkeepers.\(^{166}\) The king’s old subjects, following from the clauses in the Proclamation, expected the imposition of English law and the confirmation of their place at the top of political and economic hierarchy in the colony; whereas Murray’s inability to effectively communicate his policies and the legal structures he attempted to establish, meant that his actions alienated even those groups whose loyalty they were meant to engender. Yet his attempts to make the case for his unpopular polices, and the resulting debates in London, meant that new ideas of empire and the incorporation of the different legal and religious traditions of non-Britons moved forward.

\(^{166}\) Hilda Neatby, *Quebec: The Revolutionary Age* (Toronto: McClelland and Stewart, 1966), 36.
at a fairly rapid pace. His refusal to simply impose British norms in Quebec opened the
door for alternative practices of imperial incorporation.

Before these seeds could full take root, however, Murray would suffer greatly at
the hands of factional interests. A tenure that was rocky from the start never made
meaningful headway in effectively establishing a working governing structure. With
both the Canadians and the British settlers holding vastly different visions of the colony’s
future Murray faced disruption and dissention at every turn. His own failings in style and
temperament did not help his cause, but he was also faced with two factions who could
not operate within the same civic structure. Murray sided with the Canadians and their
desire for inclusion and participation. This course of action meant that the British
merchants erupted in resistance to the legitimacy of his authority. Factional divisions and
the need to establish a stable system meant that Murray was constrained by the realities
on the ground. The ideology or principles of officials in London meant little to his
immediate needs as a governor.

Divided authority in the colony, between civic and military power, created
another crisis of power for Murray. His inability to effectively assert his authority was an
outgrowth of the lag in communication with London. In the absence of clear direction
from the metropole it was easy for the military governor, Ralph Burton, to act as a
separate locus of power for those disaffected by Murray. The merchants and Burton
worked together to resist and protest almost every decision Murray made. London would
evendually rectify this divide, but in this initial period of British rule factionalism and the
lack of colonial oversight proved debilitating to meaningful progress on any question of
importance. Despite a lack of concrete policy decisions the outlines of the debate took shape and each side began to develop their case for their preferred practices.

Distance, though, also allowed Murray the freedom to avoid taking actions he thought counterproductive to his goals of conciliation and assimilation. Murray did not call a local assembly, attempted to set up a legal system that included French jurists, and generally supported the continuation of Catholic ecclesiastical structures. All of these decisions proved controversial, but because London had limited power and communication in the colony the precedents they set led to more concrete practices of continuity in the future. London’s assertion of power did not always meet with acquiescence from colonial officials or subjects. In this sense Quebec was not significantly different from the negotiated authority in other colonial dominions. The innovations developed on the ground in Quebec would have substantial implications for practices of imperial incorporation in places well beyond the American continent.

Critical to these new practices were the debates over the place of Catholics within colonial society. As a community long suspect within British political thought, Catholics held a place of concern for significant number of Britons. Murray’s nods to conciliation would bring serious alarm from the merchant community and from some in London.

Tied into questions of legal pluralism and political structures were notions of the questionable loyalty of the new subjects. Yet Murray and his supporters would argue that the allegiance of the Catholic population rested not on their religion, but on the willingness of the British crown to allow them active participation in all aspects of public life. Only through continuity and conciliation would the new subjects become loyal and productive members of the Hanoverian state. In laying the foundation for practices of
cultural continuity, Murray would play an important role in significantly altering British imperial practice and the incorporation of non-Britons into the British Empire.

I: Murray and a Conciliatory Foundation

Appointed in London on 7 December 1763, though he would not be sworn in as Governor until August 1764, Murray’s initial instructions as Quebec’s civil governor made clear the goals and intentions of the current ministry in ruling its new dominion. The clauses ranged widely over his duties and responsibilities framed by London’s expectations for the colony. The Privy Council entrusted him with the tasks of constructing the colony’s court system, appointing the majority of local officials, determining the bulk of the land grants, and numerous other items relating to the territory's short- and long-term settlement. In a move that would create a number of points of disorder and conflict, the ministry separated civil and military control, leaving Murray with a rival for power and authority within the colony. A few instructions stand out both for their lasting importance for Quebec and the ways in which they illuminate official thinking in London at the time. As with the Proclamation of 1763 many of the instructions highlight the metropole’s ignorance of the realities on the ground. One would not expect officials in London to be experts after such a short period, and their willingness to allow Murray fairly wide latitude in his decisions suggests they recognized this lacuna in their knowledge.

Born in 1721 in Ballencrieff, East Lothian, the 5th son of Alexander Murray, the 4th Baron Elibank, James Murray entered active military service by his 19th birthday and served on the Continent and in Central and South America during the course of his
career. The outbreak of the Seven Years War saw him serve in North America where he led the left flank of the British troops in the Battle of the Plains of Abraham. He remained in Quebec after the battle to maintain British control over the territory. From this posting he was eventually named the military governor of the district of Quebec and in 1764 the civil governor of the newly formed province of Quebec. In a letter from Edinburgh in 1765 Murray’s sister reproached him for his continued requests that she find him a Scottish cook to run his kitchen in Quebec. “I think it has been a passion for your own country that has made you think of a cook from this country for surely the French excel us so much in the article of dressing meat that a scotts cook should only bring a reproach on your mother country.”¹⁶⁷ Clearly Murray had not left Scotland behind. Although he was recalled to London to defend his policies in 1766, he would remain governor until 1768.

Murray’s actions in Quebec centered on a desire to protect Catholics from harassment and marginalization under British rule. Seeking policies of conciliation and room for Catholic participation in public life, Murray advocated an approach meant to foster a bond to the British state. He faced resistance from what he saw as overzealous Protestant merchants out to use religion as a means to improve their station and economic power. Yet historians have concluded that while he was neither corrupt, nor guilty of many of the claims against him, he could rule arbitrarily and lacked the formal trappings of a civil governor. Murray’s general demeanor and his attitudes towards the Canadians

¹⁶⁷ SNA, GD32/17, letter from Anne Ferguson dated 7 February 1765.
did little to develop a bond of trust between him and the merchants. His own background may have fed suspicions of his motives and the aspersions cast against him by his enemies.

Two of Murray’s brothers, Alexander and Patrick, were known Jacobites. The Elibank Plot of 1750, a planned invasion backed by support from Fredrick II of Prussia, received its name from his brother Alexander, who played an active role in the plan’s development. After its collapse Alexander fled into exile with the Jacobite court, where he was named secretary of state, until he was allowed to return to Britain in 1771. His oldest brother Patrick never took up arms, but voiced support for the Stuarts and provided funds to the court in exile. Murray clearly had first-hand knowledge of the root causes of alienation from the state and the chilling effect persecution had on the Scottish Episcopalian community in the years after the ‘45. Perhaps these experiences and notions of the effects of Hanoverian state formation in Scotland led him to interpret his instructions and the Proclamation of 1763 in ways that made room for those outside of the established church. Whatever his motives for making a case for conciliation towards the new subjects, it precipitated a debate which went to the heart of British imperial thought and practice in the late eighteenth century.

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168 See, Neatby, *Quebec: The Revolutionary Age*, 17 and 36; and Burt, *The Old Province of Quebec*, 90-114.

169 See their biographies in the *Oxford Dictionary of National Biography*.

One of the opening instructions dealt with the oaths required of those appointed to be Lt. Governors and members of the Council. Alongside the pledges to do their utmost to fulfill their duties, and the general oaths required of all colonial officials, London mandated that those appointed also take the Oath of Allegiance and fulfill the requirements of the Test Act. The specific titles applied to both play up the sectarian and anti-Jacobite nature of these requirements. Unlike the other oaths which only warranted oblique allusions, these generated well-delineated references that ensured little doubt as to their purpose. In the text of the instructions they appeared as: “An Act for the further security of his Majesty’s person and Government and the Succession of the Crown in the heirs of the Late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors,” and “An Act for preventing Dangers which may happen from Popish Recusants.” Surely the Oath of Allegiance and the Test would be better known, especially to a military officer from an elite family like Murray, than oaths relating to colonial officeholders and the proper execution of civil duties. The attention paid to these two both highlighted their centrality in the larger sense, but also in the specific context of a colony made up primarily of French Catholics under the leadership of a man from a well-known Jacobite family suspected of sharing his brothers’ loyalties.

Murray was also instructed to call an assembly, but only “so soon as the Situation and Circumstances of Our said Province will admit thereof.”

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171 The Council in this initial period primarily consisted of military officers, see Neatby, Quebec: The Revolutionary Age, 33.

172 Shortt and Doughty, p. 182 and 183.
an assembly at any point in his tenure, and his resistance to the body being called anytime in the foreseeable future, rankled many within Quebec and London throughout the next decade. The situation in the colony, however, supported Murray’s reluctance and his position would ultimately be vindicated in the final bill. The Privy Council recognized that immediate circumstances did not allow for an assembly. In its place it designated the Council to act as the legislative body for the colony, but without the power to levy taxes or pass laws that in any way affected “the life, limb, or liberty of the subjects”\(^\text{174}\). The power of taxation and the means to raise revenue to run the colony would remain in limbo until the ruling in *Campbell vs. Hall* almost a decade later.\(^\text{175}\) In the meantime, merchants challenged the right of the governor and the crown to collect any taxes. By 1764 the merchants of Quebec were loudly stating their case that they could not be taxed without representation. These tensions drew Quebec into larger imperial protests and controversies over duties like the Stamp Act imposed on the colonies by Parliament. Even administrators’ efforts to impose levies used under the French regime faced successful challenge. Ultimately Quebec depended on infusions of cash and stores from London for the period prior to the Quebec Act.

The Privy Council deferred to Murray’s choices on the ground in constructing and staffing the colonial courts. His only directives pointed him to court structures and

\(^{173}\) Shortt and Doughty, 185.

\(^{174}\) Shortt and Doughty, 185.

\(^{175}\) This case turned on a lawsuit brought by a landowner in Grenada who refused to pay the 4 and a half percent duty as it was not passed by Parliament or the local representative body. Decided in his favor, the case brought into question the actions of the crown in Quebec prior to 1774. This decision was one of the major impetuses for the Quebec Act. It will be treated in greater detail later in this text.

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practices as they stood in Nova Scotia at the time. The decisions made with this leeway and scant advice, consisting of no more than two short instructional paragraphs, would lead to a longer struggle over the nature of law and the courts in the new colony, especially as it related to Catholic subjects and their legal traditions. Determining how to bring together two fundamentally different legal traditions proved too great a task for the officials in Quebec. While the Privy Council instructed Murray to make the first attempt, the question of the best means to handle legal disputes remained for the next decade. By 1766 Murray’s botched attempt to create a court system would help to destabilize the Rockingham ministry and raise fundamental questions about the power of the crown and its ministers relative to that of Parliament. Far from being an isolated outlier, such contentious debates over constitutional power brought Quebec into dialogue with the wider British political culture of the 1760s and early 1770s.

Murray received a variety of instructions relating to the new subjects’ religious freedoms, removing those of suspect loyalty and providing for the growth of a Protestant church in the colony. The crown recognized that the Treaty of Paris granted Catholics the right to worship. Difficulty and disagreement remained, however, in determining how to interpret and enact the clause granting toleration ‘as far as the Laws of Great Britain permit.’ Accordingly, the crown ordered Murray to “in all things regarding the said Inhabitants, conform with great Exactness to the Stipulations of the Said Treaty in this respect.” The question of exactly how to balance the meaning of the treaty with the

176 Shortt and Doughty, 187-188.

reality of the current legal position of Catholics in Britain and Ireland proved impossible for one man, much less the whole of the political class, to settle in the space of a few months. The approach initially focused on doing as little as possible to restrict Catholic rights; in fact, to his political detriment, Murray proved proactive in preserving and extending Catholic rights within the colony. Several strategies seemed appropriate to administer base tests of loyalty and to ensure that the Catholic population and their clergy remained under the watchful eye of British administrators.

The Privy Council expected Murray to immediately administer the Oath of Allegiance and require the new subjects to subscribe to the Declaration of Abjuration. Anyone unwilling to agree to either requirement faced removal either to France or to another French territory. It requested a survey and record of the current form of the Catholic Church in the colony and “an exact and particular Account of the Nature and Constitution of several Religious Communities of the Romish Church, their Rights, Claims, Privileges, and Property, and also the Number, Situation and Revenue of the several Churches heretofore established in Our said Province, together with the Number of Priests or Curates officiating in such Churches.” Reflecting fears of papist rebellions and echoing several key provisions of the penal laws, the Privy Council expected French Catholics to register any firearms and ammunition in their possession with these rolls updated at regular intervals. Finally, Murray was not to “admit any Ecclesiastical Jurisdiction of the See of Rome, or any other foreign Ecclesiastical Jurisdiction

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178 Shortt and Doughty, 191.
179 Shortt and Doughty, 191.
whatsoever in the Province under [his] government.”¹⁸⁰ This initial set of instructions sought to cut off any outside influence on the Catholic Church in Quebec and signaled that the new subjects could expect nothing more than the right to bare-bones Catholic masses. The crown looked to take a strong hand in the administration of the church and to remove its symbolic resonance and power in the public sphere. With full proscription a seeming impossibility, the Church would not retain the ability act of its own accord. Catholics could not help being acutely aware of their liminal legal and political status within society.

The instructions presented the new subjects with an alternative, like the Catholics in Ireland, offering greater benefits and fuller rights. Following the exclusion of any outside ecclesiastical influence the Privy Council ordered that, “the Church of England may be established both in Principle and Practice, and that the said Inhabitants may by Degrees be induced to embrace the Protestant Religion, and their Children be brought up in the Principles of it.”¹⁸¹ To further their aims a number of provisions attempted to support the Church of England and conversions in the colony. All Protestant ministers and schoolmasters in all towns and districts required certification by the Bishop of London. The instructions foresaw a thoroughly Protestant future for Quebec and one that did not include a Catholic hierarchy or education. Despite this thrust towards conversion and assimilation, by the time of his recall, Murray had supported and firmly planted a Catholic hierarchy. His decisions, made without direction from officials in London and against the intent or the letter of his instructions, ultimately garnered support in the

¹⁸⁰ Shortt and Doughty, 191.
¹⁸¹ Shortt and Doughty, 191.
capitol. His choice for the Catholic superintendent oversaw the entrenchment of a Catholic ecclesiastical system in Quebec.  

Like many of the issues facing administrators in this period, the realities on the ground and the larger imperial context meant that new practices of incorporation of non-Britons would have to be forged. No room remained for narrow impositions of older ideals and models regarding religion, law, and imperial practice. The instructions, like previous attempted orders in the years after the conquest, were rooted in general understandings of state formation based upon the imposition of British norms. The failure to grasp the plain message from initial reports emanating from the colony, namely that the new subjects would not quickly and willingly abandon their traditions for British ones, created a clash of expectations between conqueror and conquered that would play out over the coming decade.

Murray worried that emigration of a disaffected population would undermine the colony’s short- and long-term stability. Such concerns led him to pursue policies of conciliation. His letters to friends and colleagues show a man quick to anger, untrusting of many around him, but seeking to create a bond between the new subjects and the British crown. In March 1764 he wrote to Frederick Haldimand, a Swiss-born colonel in the British military and a future governor of the colony, to offer support for efforts in raising a militia company in Trois Rivières. Murray recognized that a willingness to

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182 A fuller account of the place of the Church in Quebec during this period will appear in the next chapter. For a history of the Church during this period see chapter eight in Neatby, *Quebec: The Revolutionary Age* or part one of, Terence Fay, *A History of Canadian Catholics* (Montreal: McGill-Queen’s University Press, 2002).

183 Halifax expressed similar worries in a letter to Murray over the supposed efforts by the French to draw settlers out of the colony. Even those in favor of aggressive assimilation policies understood the value of the Canadians to the imperial order. See, BL Add. Mss. 21697, f. 19.
serve the crown said a great deal about the potential loyalties of the king’s new subjects.

To him the fact that Haldimand could not raise enough troops for a single militia company signaled “a bad will I do not like”, but this did not mean that French subjects should not be trusted or sought out.

He offered Haldimand a potential captain in the company if he could not find a suitable officer in his district. Murray laid out a straightforward argument to assuage any concerns over the candidate, who previously served as an officer in the French Troupes De Collonie:

Brown tells me you have scruples whether or not those gentlemen having only leave of absence from the court of France can serve on this occasion with propriety. If they take the oath I had the honor to inclose to you in a former letter those scruples must be removed, as they then become British subjects; and with regard to the courts of France, on that head, the Treaty of Paris must silence any objection made from that quarter; for it is by that treaty stipulated that every Canadian without exception, may chuse wither or not he is to become a subject of Britain. Consequently if to become a British subject is his choice, he is ipso facto dismissed, or if you will, liberated from his engagements to the Crown of France.

Murray took men who freely chose to become British subjects, ascribed to the oath of allegiance, and wanted to serve at their word. Oaths of loyalty were a matter of serious concern, especially where it related to Catholic populations under British dominion. For Murray, however, questions of religion or loyalty to a foreign power were moot in the face of an active desire to serve the crown. In what would be a common refrain, those

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184 CNA, MG23, GII 1. Murray Letters, f. 101-102

185 CNA MG23, GII 1, f. 101-102, Dated March 11, 1764.

186 This debate about the nature of oaths and the nature of when a subject is released mirrors that taking place in Ireland over oaths for Catholics in this period. See Patrick Fagan, *Divided Loyalties* (Dublin: Four Courts Press, 1997) and Vincent Morely, 'Catholic Disaffection and the Oath of Allegiance of 1774,' in *People, Politics and Power*, eds. James Kelly, John McCafferty, Charles Ivar McGrath (Dublin: University College Dublin Press, 2009).
who sought to be British subjects and displayed loyalty should not be alienated through
distrust and the denial of their ability to participate in public and military life. Murray’s
willingness to allow such participation and his conciliatory actions towards the Canadians
hastened his downfall, but he set the tone for the core strategies that were deployed on the
ground, and recognized or validated in London, over the coming decade.

Murray’s most divisive decision centered on his ordinance establishing the civil
courts on 17 September 1764. In a rare uncontroversial decision, all criminal cases were
to be tried under English law, a principle that remained through the Quebec Act and drew
little resistance from any quarter.\footnote{PRO 44/1. The imposition of British criminal law, however, has not been viewed as a neutral
modernization within Canadian historiography. See, Donald Fyson, \textit{Magistrates, Police and People}
(Toronto: University of Toronto Press, 2006) and Douglas Hay, 'The Meanings of the Criminal Law in
Quebec, 1764-1774', in \textit{Crime and criminal justice in Europe and Canada}, ed. Louis A. Knafla (Waterloo,
Ontario: Wilfrid Laurier University Press, 1981), 77-100.}

In his ordinance, Murray established three courts in
the colony, as in many of the other colonies.\footnote{The lowest legal system was that of the Justices of the Peace. In calling the men to help serve
the Justices and the system bailiffs rather than their traditional constable Murray noted in the margins that,
“We called them bailiffs because the word is better understood by the new subjects than that of constable.”
See, PRO 44/1, 26 or S and D, 208.}

Rights of appeal to the Privy Council
only emanated from cases that concerned values greater than five hundred pounds and
were initially lodged, or eventually heard, by the highest court, the Court of the King’s
Bench. Here only the laws of England would apply and all cases overseen by the Chief
Justice. However, juries in this court could include any of the king’s subjects, Protestant
or Catholic.\footnote{Shortt and Doughty, 206.}
In his notes written in the margin of the copy sent back to London, Murray made a number of annotations explaining the reasoning behind his and the council’s decisions.

With regards to the open juries policy Murray argued,

As there are but two hundred protestant subjects in the province, the greatest part of which are disbanded soldiers of little property and mean capacity. It is thought unjust to exclude the new Roman Catholick subjects to sit upon juries, as such exclusion would constitute the said two hundred protestants perpetual judges of the lives and property of not only eight thousand of the new subjects but likewise of all the military in the province. Besides if the Canadians are not to be admitted on juries many will emigrate.  

Murray deferred to London’s judgment on the issue, but he made clear that his position offered a just and pragmatic solution to the demographic realities of the colony. Sound policy dictated that those most affected by the courts, that is the largest property holders, should not depend on the deliberations of a limited number of ill-qualified jurors. More than religion or national origin, the subject’s suitability for public roles should be determined using the same criteria for all subjects. Contemporary values understood large landholders as the most valued and proper subjects to fill this role. In Quebec the majority of such men were French Catholics, a problem confounding administrators in Quebec and London.

The next rung down in the legal system, the Court of Common Pleas, handled civil cases involving between £10 and £300. Murray attempted to make this a court that met the needs of both Protestant and Catholic subjects. The lack of legal sophistication among officials and council members in the colony meant that the statutes establishing the courts were ill-defined. Quebec’s Chief Justice, William Gregory, and Attorney General, George Suckling, the first two men to hold these offices, were quickly removed.

190 PRO 44/1, 17.
based on their lack of experience, French, and general unsuitability for their positions. Murray intended to create a court that applied both French and English legal codes, but the ordinance’s wording barred French law and legal practices in cases originating after September 1764. In reading it, one can see from the wording why many of the French subjects believed that the British swept away their legal tradition in one fell swoop, in essence putting them at the mercy of an indecipherable legal code ill-suited to French land tenure and financial contracts.

Yet in his explanatory note to London, Murray showed his focus was on Canadian security and protection, not legal alienation. He argued that failing to grant a court meant to serve Canadians exclusively “until they can be supposed to know something of our laws and methods of procuring justice in our courts would be like sending a ship to sea without a compass.” They would then be at the mercy of unscrupulous English lawyers whose actions would ensure that the Canadians would be “alienated, and disgusted with our government and laws.” In addition, Canadians needed to be able to serve as barristers as “we have not yet got one English Barrister or attorney who understands the French language.” So while it proved ill-defined, Murray identified the core issues surrounding administering justice within a newly conquered territory. He recognized that questions of language, legal tradition, and the nature of property meant that some means of providing a bridge between two disparate traditions proved necessary. A sudden

191 Besides not knowing French or French law, the two men fought with each other in public. Neatby, *Quebec: The Revolutionary Age*, 35.

192 Shortt and Doughty, 207.

193 PRO 44/1, 18.

194 PRO 44/1, 19.
imposition of a new system would only lead to chaos. Unfortunately, Murray and those sent to assist him were neither capable of grasping the enormity nor the nuances of such a task.

From the outset Murray noted the displeasure of British Merchants at his Ordinance. In one of his marginal comments he stated that “the few British traders living here, of which not above ten or twelve have any fixed property in the province, are much dissatisfied because we have admitted the Canadians on juries.” The tension between the expectation of the full extension of English law and Murray’s desire to tilt administration towards the landed classes for the benefit of the colony’s health and stability underpins much of the debate around Quebec. The Proclamation of 1763 represented an idealized extension of British dominion over an alien population. Murray and his supporters both in Quebec and London, on the other hand, understood local realities and the practical needs of the state. Reconciling British ideals of colonial governance with the realities of an increasingly heterogeneous empire found its first major test in the states’ attempts at exerting direct control over Quebec. The failures of prevailing practices and the new approaches to imperial expansion and incorporation that arose in their wake played a large part in shaping and determining practices utilized in India and other imperial jurisdictions.

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\[196\] PRO 44/1, 18.

II: The Threat of Factions and Divided Authority

There were, however, a number of potential barriers both to Catholic participation and to the merging of new and old subjects. In a letter to Ralph Burton, the new Brigadier of the Northern Department and the highest ranking military officer in the colony, Murray responded to the news of a marriage between a British officer and a local Catholic girl: “Thank God the matrimonial distemper has not yet reached us at Quebec, if it ever shall, I know of no remedy; for I cannot suppose the laws of Ireland can be any force out of that Kingdom, where you know an officer who marries a Roman Catholic is ipso-facto dismissed from service.” Besides betraying a proclivity for using the phrase ipso-facto, Murray underscores what will remain a critical debate over the next decade.

Officials struggled with the question of to what extent the penal laws of Ireland and Britain against Catholics were applicable in Quebec. Murray staunchly opposed their application and he often fought against the tide, both in the colonies and at home, during his tenure. This concern over Catholicism and intermarriage highlights a clear sense of difference between the king’s new and old subjects. The resulting factionalism led to many of the problems that plagued the colony over the next decade. Often holding opposing ideas about the future of Quebec, the institutions proper for its governance, and the place of Catholics within the colony, there was rarely common ground between the two sides. Managing each side of this dispute was as critical as any policy decisions made by a governor and Murray often lacked the personality to mediate. As a lifelong soldier, he often ran the civil government as if it operated like a military unit. This would only exacerbate problems.

197 Canadian National Archives, MG23, GII 1, f. 104
The exchange highlights the divide in Murray’s personality that undermined his interactions with the Canadians. He sought to avoid offending the new subjects, but he also viewed intermarriage as a potentially problematic development. Murray remained understandably torn between his desire for clemency and his contextually understandable vision of the colony and its Protestant future. He never doubted the end goal of any policy should be the Anglicization of the colony and its French population. Murray’s ability to offer conciliation with one hand while offending with the other meant that despite his best efforts he did a great deal to alienate even the populations that largely benefited from his policies. Murray’s stubbornness and autocratic nature have led to poor opinions of his time in office even among modern historians of Quebec. By doing little more than continuing many of Murray’s policies, Carleton is often held out as a hero of Quebec’s modern nationalist project.\textsuperscript{198} He was “vain, ambitious, hasty, rash, overconfident, with a quick and violent temper; kind, generous compassionate, affectionate, with a scrupulous sense of justice, he was a man who made both friends and enemies easily.”\textsuperscript{199} In the end, his personality, as described by Hilda Neatby, made him a man ill suited to rule over a colony riven by factional interests.

For Murray, the problem of establishing the acceptability of British rule lay less with his own actions and more with those of his opponents. He and Burton often sparred over the governance of the colony and military. Each man developed his own faction within the colony and each side battled for control. This divide developed further after

\textsuperscript{198} Again see Kerr, ‘Creation of Empire: James Murray in Quebec’ or Paul R. Reynolds biography of Guy Carleton, \textit{Guy Carleton: A Biography}, (New York: Morrow, 1980), which almost completely writes Murray out of the formulation of the Quebec Act. In Reynolds mind the policies of conciliation and the final bill were the work of Carleton alone.

\textsuperscript{199} Neatby, 17.
London split military and civil power in the colony in 1764, with Murray sitting as the colonial governor and Burton granted control of the military.\textsuperscript{200} Murray complained of the lack of his commission and instructions, as it had led to Burton’s ‘people’ making remonstrances against him to the Board of Trade.\textsuperscript{201} As a result, he in turn rebuked Burton for undermining the future credibility of his rule and decisions by public displays of dissatisfaction and disobedience by his supporters.\textsuperscript{202} Murray falsely believed that his commission would solidify his position and power in the colony, but London’s decision to split civil and military control would do just the opposite.

The mounting tension between the two men resulted not just from Murray’s severe doubts over the wisdom of separating military and civil authority in a recently conquered colony like Quebec, but also his personal distrust of Burton. Having been saved from court martial by Murray’s personal intervention after several costly blunders during the conquest of Canada, Murray believed Burton now maneuvered to take the military command out of jealousy.\textsuperscript{203} The rift between Murray and Burton only intensified as time passed, further destabilizing British governance in this initial period. While the lag in communication could serve Murray well when he chose to use the lack

\textsuperscript{200} Murray believed that this animosity stemmed from personal jealously, rather than from genuine concerns about differences over colonial practices, CNA MG23, GII 1, f.112. For a detailed account of the impact of this split, see S. M. Scott, “Civil and Military Authority in Canada,” Canadian Historical Review 9 (1928): 117-136.

\textsuperscript{201} CNA MG23, GII 1, f.112. See, Kenneth Banks, Chasing Empire Across the Sea (Montreal: McGill-Queen’s University Press, 2002), 69-76, to understand the difficulty in communication with Quebec and its capital. The delay in Murray’s commission and instructions would not have been surprising to those tasked with governing the colony under the French.

\textsuperscript{202} In a letter to Lord Hillsborough in June 1764, Murray recognized the increasing clamor against him and sought Hillsborough’s continued support in the face of the growing campaign. See letter dated 26 June 1764, CNA MG23, GII 1, f. 138-139.

\textsuperscript{203} Neatby, Quebec: The Revolutionary Age, 32-33.
of imperial oversight to enact policies independent of London, it also made his task more
difficult. Challenges to his authority could spread and grow in the vacuum of authority
created by London’s silence.

For Murray, the process of fashioning loyal subjects out of the French
necessitated that they not be led into disorder and disaffection by narrow factional
interests. “I really pity the poor French people and think they should not from ignorance,
be drawn into scrapes, by such restless spirits.”204 In another letter he offered further
complaints to Burton against the machinations of the British merchants, arguing that “I
have only to observe that the French, in my opinion, will be good subjects, if properly
managed, but if they are allowed to be led by Ignorant, factious, licentious men, I forsee
every bad consequence, to the Kings service and to themselves.”205 Fears of factionalism
and the machinations of self-interested parties infected other newly ceded territories
under British rule. Decisions of the Privy Council and local officials led to similar crises
of legitimacy and factional infighting.206

In both Quebec and Grenada the question before those charged with developing
policy revolved around the most effective means of engendering loyalty and stability in
newly conquered populations and territories. For Murray and others, one critical part of
the answer rested on showing the new subjects the benefits of British liberty through a
conciliatory approach to their religion, culture and customs. While not always perfect,
the efforts motivated by these strategies increasingly gained a foothold in the aftermath of

204 CNA MG23, GII 1, 118.

205 CNA MG23, GII 1, f. 117. Letter dated, 11 April 1764.

206 See Aaron Willis, “The Standing of New Subjects: Grenada and the Protestant Constitution
the rigid assimilationist policies exemplified by the Proclamation of 1763. They dismissed the constitutional and legal arguments of the merchants and others as self-interested maneuvering aimed at alienating the bulk of the new subjects for short-term gains. While it would be easy to adopt a similar position, modern historians should not be so quick to reject arguments that often fit firmly within contemporary norms and likely represented legitimate concerns over the threat from popery or changes to previous practices. At this stage, even those in favor of conciliation held no desire to preserve contemporary Canadians’ cultural norms.

In a letter to Halifax in June 1764 Murray laid out his basic approach for Catholic conversion to the Church of England. For most actors in this imperial drama, conversion was a stated, though never ardently pursued, goal. He introduced an envoy, Père Raubaud, a Jesuit priest from the College of Quebec, to provide Halifax any information he desired about the state of the Catholic clergy in the colony. However, in praising Raubaud as among other things ‘as eloquent as Cicero’, Murray submitted that his willingness to renounce the Catholic faith and serve as a protestant minister in Quebec might prove counterproductive to the goal of conversion. Murray suggested that acting on such an offer would appear overtly aggressive to local Catholics and thus frustrate the plan for encouraging conversion. It is likely that Murray also doubted the amount of trust he could place in a man so willing to renounce his faith in order to improve his standing in the new regime. Mercenary clergymen would do little to ensure stability, so Murray thought it best to remove him to London.

In the push for conversion Murray indicated that, ‘nothing but mild and persuasive measures, the very reverse of persecution, shall be used.” He felt his
conciliatory attitude was having its desired effect for, “as I flatter myself every indulgence that can be given will be granted these people, great progress is already made, the national antipathy is entirely got the better of on the side of the Canadians.” The only barrier to his success remained the actions and attitudes of the British settlers, “several from New England now established here are most inveterate fanatics.” He hoped to employ reason to convince them of the benefits of good relations. “A proper correction of their insults will gain and strengthen the confidence of the Canadians to government which confidence being the main spring must be perpetually kept in order.”

If the Canadians lacked confidence in his position as governor and in the guarantees of their humane and proper treatment they would fail to develop into dutiful and valuable subjects. Loyalty was earned through trust, not imposed through coercive measures.

While the delay in his instructions meant he could not fully articulate and enact his plans for the incorporation of the king’s new subjects, once he received his instructions and his commission he faced bitter disappointment in the loss of all military authority.

For Murray, based on the situation he faced in ruling over the French Catholic population, military control was critical. In a number of his letters his exasperation at his status relative to the military command leapt from his pen. To his brother he argued, “I should have command of the troops, towns, and forts all over the province. It will be too hard a task for me to govern in the civil way, a great populous country of a different religion, different language, different manners and customs, without the aid of the troops, or the assistance of the law, for such two ignorant needy

207 CNA MG23, GII 1, 139-141. Dated 26 June 1764.

208 In the aftermath Murray began a series of letters to various contacts making plain his anger at the situation. Beyond the letters themselves, see Neatby, Quebec: The Revolutionary Age, 31-33.
lawyers as are sent here from England to distribute justice to the people were never before sent from any country.\textsuperscript{209}

A month later he wrote to the Earl of Halifax to argue much the same point. According to Murray,

it must be allowed that without a Military Force this lately Conquered Province cannot be Govern’d, there doeth not exist in it above One hundred protestant Subjects exclusive of the Troops, And by my instructions of these hundred Protestants must be composed the Magistracy, But what Force, what weight, can such a Magistracy have, unless the Supreme Magistrate has the Disposition of the Military Force.

He maintained that, “the Canadians are to a man Soldiers, and will naturally conceive that he who Commands the Troops, should govern them. I am convinced at least it will be easyer for a Soldier to introduce and make palatable to them Our Laws, and Customs, than it can be for a Man degraded from the Profession of Arms.”\textsuperscript{210} Stability and legitimacy rested in large part on respect for the governor’s authority, if power remained divided between two groups, the military and the civil authorities, then there was little hope for consistent and just rule. This proved especially true in Quebec where the two figures vested with ultimate power, Murray and Burton, were personal and professional enemies. Yet for all his problems in dealing with the military establishment and his loss of power, a controversy of his own making proved the most disruptive.

\textsuperscript{209} Canadian National Archives, MG23, GII 1, 157, letter to his brother, Lord Elibank, dated, 16 September 1764. The two lawyers were Attorney General George Suckling and Chief Justice William Gregory, both of whom were removed by the end of 1765.

\textsuperscript{210} Letter to Lord Halifax from Murray, Dated Oct. 15, 1764, Shortt and Doughty, p. 210-211.
III: Who Represents the Colony’s Future?

As a result of Murray’s actions and the factional divisions among the population and the government, the internal battle over control in the colony intensified. In a full frontal assault on his authority, the Grand Jury of Quebec claimed to represent the colony’s legislative body. According to the bibliographer Marie Tremaine, the Grand Jury produced the first piece of political propaganda printed in Canada. It aimed at the powers of the French Catholics, Murray, and the military. Printed in 1765 the pamphlet records the controversial presentment of the Grand Jury from October 1764 and the ensuing exchanges with the Governor and his supporters. The text highlights the fraught nature of the colony as the two populations sought to ensure their power, or in the case of the Catholics, at least a seat or two at the table.

The Presentments of the Grand Jury from their meeting on 16 October 1764 contained a number of bold claims and expectations regarding their power and influence in the colony and especially relating to the right to levy taxes. The opening paragraphs addressed, among other things, the overabundance of unqualified Justices of the Peace, problems with the conversion of common docks into private ones, the need for a Protestant minister in the colony, the lack of a Protestant school and poorhouse, and the dissatisfaction with Murray’s initial actions as Governor, especially the ordinance of July

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211 The Grand Jury was not a judicial body, but rather a body tasked with various administrative duties within the colony.


213 The imprint itself can be found in the National Library of Canada, FC412 Q84 1765a, Cf. Tremaine 66. I am using the imprint here, recognizing that fact that it wasn’t printed until 1765, because it unifies the relevant documents from October 1764. The presentment can also be found in Shortt and Doughty, 153-156 and in CNA MG23 A1 vol. 4, 4510-4518, with related material on pages 4519-4530.
establishing the Courts of Judicature. The penultimate paragraph offered the key claim of the text.

As the Grand-Jury must be considered at present as the only Body representative of the Colony, they, as British Subjects, have a Right to be consulted before any Ordinance affecting the Body they represent be passed into a Law: And as it must happen that Taxes be levied for the necessary Expenses and Improvement of the Colony, in Order to prevent all Abuses and Embezzlements, or wrong Application of the public Money, we propose that the public Accounts be laid before the Grand-Jury twice a Year.\(^2\)

The Grand Jury effectively staked their claim as the representative body in the colony with the rights connected to such a position, until a full assembly, as promised in the Proclamation of 1763, could be called. This was a major threat to Murray’s power and would have limited his ability to enact any law in Council. If recognized, the Grand Jury’s claim would have effectively removed Murray’s capacity to administer the colony or control government finances. Add to this a lack of military control and the Governor became nothing more than a figurehead within the colony. It is not surprising then that he offered a firm reply to their claims to representative authority.

The inflammatory nature of the text coupled with the support of leading Canadians proved to Murray that the Canadians were being led against their best interests into an oppositional position to his rule; a sentiment bolstered by the fact that many of the signatories later denied to Murray personally, in addition to their later public memorial, that they understood the meaning of the Presentments when they signed them.\(^1\) A second statement from the same session, but only signed by the king’s old subjects, suggested that the French Canadians were being led down a path while unable to see its

\(^{2}\) Tremaine 66, 4.

\(^{1}\) See Neatby, *Quebec: The Revolutionary Age*, 38.
natural end. The second Presentment identified the greatest grievance requiring redress as the role of Catholic subjects in the courts.

Catholics that acknowledged “the Supremacy and Jurisdiction of the Pope, and admit Bulls, Briefs, Absolutions, etc. from that See, as acts binding on their consciences, have been impaneled on Grand and Petty-juries, even where two Protestants were Parties.” The signatories believed that duty required them to identify any abuse of the laws of the king’s realm or actions that endangered the security of his dominions. The Protestant signatories pointed out that “by the definitive Treaty the Roman Religion was only tolerated in the Province of Quebec so far as the Laws of Great-Britain admit.” They then cited the statute of James I, chap. V, sec. 8 which barred Catholics from legal, military and public positions of power. These two facts led them to believe that “admitting Persons of the Roman Religion who own the Authority, Supremacy and Jurisdiction of the Church of Rome as Jurors, is an open violation of our most sacred Laws and Liberty, and tending to the utter Subversion of the Protestant Religion, and His Majesty’s Power, Authority, Right and Possession of the Province to which we belong.” This argument represents the type of language portrayed by Murray and the new subjects as divisive and self-interested; modern readers might tend towards sentiments of sectarian bigotry. Their position, however, did not prove radical within a contemporary context. While it may have been divisive and self-serving, it rested firmly on British legal and intellectual foundations.

The response from Murray proved swift and sharp. Rather than providing the public with the services they should expect from a Grand Jury, he and his supporters

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216 The following quotes are taken from pages 4 and 5 of printed text.
argued that instead the public were led astray by a group disappointed with their station and task. The Grand Jury “amused with imaginary Grievances which it never felt, and with the reveries of the heated Imaginations of Men who are preposterously [sic] transplanting the Ideas of Milinarions [sic] into the Minds of Canadians, and tearing up the roots of all Principle of Obedience and Submission to publick Authority from the Hearts of our new Fellow-subjects.” The members had also lost track of their proper place in society, “if these gentlemen, led away by mistaken Zeal, assume a character above their sphere, and propose themselves to the Publick as its legislature” then the public could not blame Murray, who outlined their duties with precision. In the place of their self-aggrandizement the authors reminded them of, “the charge in that Part of the Church Catechism which reminds us of Duty towards our Neighbors, particularly of the very essential part of it, ‘Respect and Submission to our Superiors.’” In responding to the demands for more Protestant ministers the text claimed that Murray “would be glad to encourage more than one such Gospel Minister as they describe, for the Gospel is a Gospel of Peace, and teaches Good-will towards Men.” This proved a lesson sorely in need of proclaiming at this point of the colony’s history.

In rejecting the pretensions of the Grand Jury to be the representative body of the colony the response brought up the reality that they served as the Grand Jury for Quebec, not for Montreal or Trois Riveres. While wishing that the Grand Jury never be consulted beyond the selection of Church Wardens, Murray and the Council, could not “conceive

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217 CNA, Tremaine 66, p.6. It is perhaps not surprising that a man with strong family ties to, and who battled charges of, Jacobitism would refer several times in the text of his response to obedience and submission.

218 CNA, Tremaine 66, 8.
how a few inhabitants, some newly arrived, can have either Influence, Interest in, or Knowledge of the Province, sufficient to consider themselves, or to be considered as its Representative.\footnote{219} The response underlined the fact that the Presentment represented the causes and concerns primarily of new British Protestant arrivals, rather than the French Catholic population. These men did not represent the bulk of the population or its interests. As Murray pointed out on several occasions few, if any, of these men owned fixed property in the colony, proof that their concerns lay with their trading interests, not that of the colony’s health. Such men could not be trusted or valued, especially when compared with the landed subjects whose wealth and security intertwined with that of the colony.

In attacking the use of penal laws under James, the authors of the response chided the Protestant members of the Grand Jury that they,

\begin{quote}
need not have gone so far back as the Times of James the First for a Popery Act: Had they been seeking a law against Witchcraft, Incantations, Conjurations and Charms, it would have been proper to have turned over the Statutes of that Reign: We are surprised they did not recommend the famous Test Act, this has been deemed by many good Men now wholly proper in \textit{England}, and would be attended by great Inconveniencies in other Parts of the British Empire, and particularly in this \textit{province} in its present Circumstances, as by it would be lost the Service of many good Subjects of different Persuations, and the Weight of more burthensonme Offices thrown on the Jurors themselves, than they seem either able or willing to bear.\footnote{220}
\end{quote}

The statement worked against the supposed benefits of anti-Popery laws on several levels. It first linked the fears that led to the Popery Act to James I’s, and an earlier

\footnote{219}{CNA, Tremaine 66, 8.}

\footnote{220}{CNA, Tremaine 66, 9.}
age’s, seemingly irrational fears of witches and other occult practices.\textsuperscript{221} Suggesting that, in an age of reason, Catholics should not to be feared by British society.\textsuperscript{222} On the other hand, even if a law rested on some rational desire to assure loyalty to the church and state exemplified by the Test Act, the reasoning behind its value in England faltered in Quebec, for the consequences of disqualifying Catholics struck at the stability of the new territory. Valuable men would be disallowed from serving the crown and ensuring the productivity of the colony. In addition, all the tasks necessary to keep the courts functioning would fall on the few unqualified men eligible for service. There seemed no benefit to the state for extending acts that disqualified the bulk of the population, especially when they made up the greatest landholders and subjects of quality in the colony.

The rebuke did not represent a position in favor of equality between cultural and religious traditions, but rather one of conciliation towards new subjects until they were converted to British ways. The ‘earnest wish’ of the authors’ remained

that his Majesty’s Old Subjects would, by their Example, recommend the wholesome Laws and Holy Religion of their Country, the most Christian like Means of propagating it: We hope the new Ones, sensible of the advantages of living under those Laws, will continue to deserve the blessings they enjoy, and which we are sure the Government intend to maintain them in. We hope no Party Distinctions, of Old and New Subjects, Civil or Military, will be heard; and that the only Contentions amongst all will be who shall best deserve the Protection of the Laws of England.\textsuperscript{223}

\textsuperscript{221} See, for instance, James’ book on witches and witch hunting, \textit{Daemonologie} (1597).


\textsuperscript{223} CNA, Tremaine 66, 10.
Division within the colony only led to instability and reduced its value to the rest of the empire. The laws of England represented a blessing on the people and were desirable for all subjects. The actions of the Grand Jury, however, showed a less generous side of British rule and fed the very distinctions that threatened to make the system unworkable and the colony unproductive.

The Grand Jury’s rejoinder accused Murray and the council of contempt aimed to minimize the body’s status within the colony, while inculcating “the ancient Doctrine of Passive-obedience and Non-resistance”. The response accused Murray of being petty and perhaps played on rumors of his Jacobite leanings. It focused most of its energies though on painting the controversy as a misunderstanding rooted in the arrogance of the Governor and his associates. In place of the unproductive response issued by Murray and his council, they wished instead “that their Worships had likewise made such Allowances [for their inexperience as officials and authors of official texts], and espoused the redress of any Grievances presented, which they found really hurtful to the Public, without displaying their Wit and Raillery, in such a wanton and unmeaning Manner.”

In defending their claims of representative status they called on the British Constitution and the principle of no taxation without representation. They believed that as men of good character they could listen to and represent the people’s interests effectively. The only question, however, was if the public was to be represented at all: “but it may be urged, whether or not is the Public to be regarded in the making of Laws; whether is its

224 Not all Tories, or supporters of passive obedience, can be labelled Jacobites, but this must be the implication of the barb aimed at Murray.

225 CNA, Tremaine 66, 11.
situation of Disposition to be at all Consulted?”226 Representation formed a key part of the constitutional understanding of a number of the old subjects. Quebec could not be immune to the effect of the crises in the other North American colonies. The British merchants were a mix from Britain and, as Murray pointed out in his letters, New England and New York.227 Their interests and networks linked with those in the rest of the American colonies. Such connections meant that the merchants in Quebec adopted similar rhetorical positions; in an interconnected empire one cannot understand Quebec as outside the wider debates and controversies of the period.228

From such a position on the question of consultation the twinned notions of taxation and representation flowed. While the Grand Jury conceded that in relation to making laws for the regulation of the colony a legislature’s constitutional necessity remained unclear, in one case of colonial importance the constitution did prove clear. For, “it is most of all requisite in Cases of Taxation, and in general we believe that British Subjects are consulted on this Head, themselves, or by their Representatives: Which though a standing Maxim in the British Constitution, and almost the only one that can give it preference to any other in the World, for its tender Regard to the Subject, seems not to have been duly attended to in this province.”229 Control of the purse signaled a

226 CNA, Tremaine 66, 13.

227 See Neatby, Quebec: The Revolutionary Age, 56-86 and Ouellet, Economic and Social History of Quebec (Toronto: Gage Publishing, 1981), 73-102, on the economic structures and populations in the colony.

great deal about the balance of power in a state. The ability to pass revenue measures, and do so with widespread legitimacy, offered a powerful leverage point for the Grand Jury and those hoping for a legislative body in the colony. Adopting the strategies and rhetoric of other British colonies, however, would not prove feasible.\textsuperscript{230} Quebec depended far too heavily on British shipping, military and financial support to form a strong bond with the rebellious colonies.\textsuperscript{231} Beyond practical concerns, the French Canadians would have been hard pressed to find strong connections to a British America with a notoriously anti-Catholic bent.\textsuperscript{232}

The Grand Jury defended itself against the charge of bias against the new Catholic subjects of the crown by arguing that Murray, and not they, used religion to create a division between old and new subjects. Murray, in too informally declaring in his ordinance that “in all Tryals in this Court [the Court of Common Pleas] all his Majesty’s Subjects in this Colony to be admitted on Juries without any Distinction”, created constitutional and practical complications. Ostensibly the Grand Jury objected not because Catholics could hold positions in the courts or on juries (although this does appear exactly what they were opposed to originally), but rather because they could do so in cases between two Protestants. They claimed that the insinuation that they “meant to

\textsuperscript{229} CNA, Tremaine 66, 13.


\textsuperscript{231} For how similar factors shaped resistance and cooperation in the West Indies see, Andrew J. O’Shaughnessy, \textit{An Empire Divided} (Philadelphia: University of Pennsylvania Press, 2000).

remove every Roman Catholick from holding any Office, or filling any publick Employment, is to all Intents and Purposes a most vile, groundless Insinuation, and utterly inconsistent: Sentiments and Intentions such as these we abhor.” They argued that they wished that their principles allowed Catholics in cases between Protestants, but they simply could not accept such a situation.  

Ultimately the signatories of the Grand Jury’s response, and it should be noted they were all Protestant, argued that both old and new subjects were and should be united in the same cause. If the Catholics might be spared, Murray did not prove so lucky. They continued their assault, observing “that in Religion, and we believe it is the same in Politicks, an Abuse of the best Systems in both renders them the very worst. Happy should we be if everyone in his Sphere endeavored to present the Equilibrium of Prerogative and Liberty which seems to be the Quintessence of the British Constitution.”

The effect of a more balanced approach offered the possibility of a stable and productive colony by encouraging industry. While “the foolish Distinction of Old and New Subjects would totally subside, we should then act agreeable to the good Intentions of our most gracious Sovereign, who has united our Interests, and freely tendered to us all his Protection.”

Yet it was clear, for instance in their desire to define cases and juries on religious criteria, that religion divided these subjects and would continue to do so. While not wanting to alienate the bulk of the powerful local landholders, they were not backing

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233 They also claimed that their position was no different from that of Catholics when it came to disputes between Catholics being settled by Protestant juries.

234 There is attached a short letter to the Grand Jurors supporting their response and cause which is signed by both Protestant and Catholic subjects, principally those who are merchants. CNA, Tremaine 66, 16.

235 CNA, Tremaine 66, 16.
away from their cause. In London their language offered a more strident and vocal defense of a Protestant constitution. The cause of a neutral definition of subjects still had a long way to go. The current crisis only sharpened those distinctions and widened the divide.

In the aftermath of the Presentments, the French Canadians professed their innocence in any attack on Murray. On 26 October, they produced a response to the Presentments of the Grand Jury arguing that they had been misled by the Protestant merchants. The French signatories maintained that they were provided only a preliminary English version for their signature, with assurances on the removal of any offending clauses. This story of deception convinced Murray that the political turmoil in the colony emanated from disruptive British merchants rather than his own conduct. For an outsider it is clear this proved only partially true. Whether he wanted to admit it or not, Murray presented a difficult figure whose actions did much to alienate those around him. Many of the Canadian signatories likely supported the initial claims in the hope of economic benefits and the reduction of the governors’ power over trade and business. However, once they recognized that the aims of the British merchants held significant social and cultural implications, most of which were in opposition to their interests, they opted to pull back their support for the remonstrance.236 They recognized the intended benefits of the Murray’s actions and court, even if the wording left much to be desired.237

While they signaled a lack of support and understanding for parts of the Grand Jury’s presentments, they hinted at support for the idea that no new taxes could be levied

236 See Ouellet, Economic and Social History of Quebec, 75-83 and especially 95, for a treatment of the economic motivations of the French Canadian merchants.

237 Shortt and Doughty, 220.
on the colony. In response to articles 9 and 10 of the Presentments, those relating to the right of the Grand Jury to act as the legislative and taxing body in the colony, they stated somewhat disingenuously that, “these two articles have not been explained to us, and we are not sufficiently far-seeing to pay attention to Measures which at present appear to us very remote, owing to the hope which we entertain that no question of Taxation for the Colony will arise.” While claiming to not understand the full implications of the articles, they made sure to voice general support for the underlying principle of no taxation without representation. The Jesuits had clearly taught them well, and another sign that they supported the thrust of some of the Grand Jury’s case as it related to economic questions.

The signatories closed by lamenting the fact that the presentments and the subsequent actions of the Protestant subjects were made, “with the intention of excluding us from the privilege of serving ourselves and Our associates, our Country and our King, pretending that they conscientiously believe us to be incapable of holding any office or even of repulsing and fighting the Enemies of H. Majesty.” In response they argued that after taking the ‘Oath of Loyalty’,

it would be shameful to believe that the Canadians, New Subjects, cannot serve their King either as Sergeant, or Officers, it would be a most humiliating thought, and very discouraging to free Subjects who have been admitted to the Privileges of the Nation, and their Rights, as explained by H.M. For more than Six Months we have had Catholic Canadian Officers in the Upper Country, and a Number of Volunteers aiding to repulse the Enemies of the Nation; and cannot a man who exposes himself freely to shed his blood in the Service of his King and of

238 Shortt and Doughty, 220.

239 Shortt and Doughty, 222.

240 This is their wording. I think it is clear they meant the Oath of Allegiance.
the Nation be admitted to positions where he can serve the nation and the Public as a Juror, since he is a subject?  

Founded on the same reasoning Murray and others deployed, the signatories drew attention to their value for the colony and the empire as a whole. In many ways this argument remained at the core of the new strategies for running the empire. Why exclude a large body of qualified, often landholders of sizeable property, over exclusive ideas of the constitution? A more inclusive understanding of subjects without regard to religious or cultural differences, of course still extremely limited relative to our modern understanding of multiculturalism, meant access to a large body of soldiers, administrators, and more importantly subjects secure in their place within the empire and less likely to create crises of authority that threatened imperial stability.

The new subjects continued to doubt that the king, or the statues from the reign of James I, intended them to suffer legal disabilities, for it would be inconceivable in admitting “so numerous a colony of Catholics” that “the Law would seek to make them slaves.” The prospect of remaining outsiders in their own land would lead industrious subjects to flee. Such a situation would require the king to “grant all the Numerous people of this colony sufficient respite to depart, though at the sacrifice of all their possessions, and in desperation cultivate the Ground, in some place, where being considered as Subjects, they and their Children might lead their Lives sheltered from Injustice.”

— Murray, and especially those opposed to toleration for Catholics,

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241 Shortt and Doughty, 222.

242 Shortt and Doughty, 222.

243 Shortt and Doughty, 222.
found a not so veiled threat that mistreatment could lead to a mass exodus and detachment from their current position as eager, loyal subjects.

Such an evacuation would endanger the viability of the colony and have very real consequences for the British Empire. British administrators understood the critical role the current population played in developing military and economic benefits from the colony. In the end the signatories suggested that Murray’s policies of conciliation were having their desired effect. “The Leniency of the existing Government has made us forget our losses, and has attached us to H.M. and to the Government. Our fellow citizens make us feel our Condition to be that of Slaves. Can the faithful and loyal Subjects of the King be reduced to this?” The path to loyalty for administrators was clear: conciliation and active participation ensured the military and economic loyalty of the new subjects. In a colony where British administrators expected little in-migration, the alienation of the resident population posed a serious threat. Since Quebec and its population provided a much-needed check on the colonies to the south, it was critical to concerns related to the older territories in British North America.

This lengthy back and forth serves an important purpose in understanding the wider context of the questions engulfing the colony. In staking out their positions, each side underscores the fundamental problems faced by a conquering power over an ‘alien’ culture. As in future conquests across the globe British imperial officials would have to decide how to effectively integrate British rule and local customs. For the Grand Jury, older practices focused on installing British norms and privileging British settlers offered the best strategy for order and stability. We should not be mistaken; order and stability

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244 Shortt and Doughty, 222-223.
were the primary concerns of administrators in utilizing practices of imperial control.

The Canadians and Murray, on the other hand, argued for the value of cultural continuity, at least in the short and medium term, and the importance of protecting local populations, especially local elites. Eventually these practices would win out, but they faced strong resistance from a number of quarters. The tensions that emerged in the formulation of the Proclamation of 1763 only grew in its aftermath. Equally clear to all was the fact that unchecked factionalism undermined whatever policy choices London or its representatives on the ground made. Murray could only hope that London would help to rein in the merchants and their cause.

In addition to his earlier Jesuit envoy, Murray sent his secretary Hector Theophilus Cramahe to act as his agent in London. Murray hoped Cramahe would bolster his case with officials in London.\footnote{Neatby dismisses Cramahé’s effectiveness in this role and argues that in fact the only person he served during this time was himself. \textit{Quebec: The Revolutionary Age}, 35. Lawson, however, argues, rightly I believe, that Cramahé was a vigorous and effective counter to Fowler Walker, the merchants’ agent in London. Lawson, \textit{The Imperial Challenge}, 63-66.} In letters to his brother, Lord Elibank, and to his friend the Scot Lord Eglington, Murray introduced Cramahe and sought support for his plans in Quebec. In writing of his new agent in London, Murray asked his correspondents to “do all in your power to assist him and a miserable people, who after having undergone the worst calamities war can inflict, if not supported, must now either abandon their all, or submit to the persecution of the most cruel, ignorant, rapacious fanatics who ever existed.” Murray then laid out his position on the status of the new Catholic subjects and his thoughts on his current predicament:

\footnote{CNA MG23, GII 1, 170.}
For my part, my dear Lord, I will with joy undertake anything to distress and reduce to reason my Royal Master’s enemies, but I cannot be the instrument of destroying, perhaps, the best and bravest race on the globe, a race that have already got the better of every national antipathy to their conquerors, and could they be indulged with a very few privileges, which the laws of England do not allow to Catholics at home, must in a very short time become the most faithful and useful set of men in this American empire.

If the popular clamors in England will not allow the humane heart of the King to follow its own dictates, and the popish laws must be exerted with rigour in Canada, for God’s sake procure my retreat, and reconcile it to Lord Bute, as I cannot be witness to the misery of a people I love and admire.247

Murray expressed in these two paragraphs the underlying principles of his case. The new subjects should not be rejected out of hand on religious grounds, their value to the empire could equal that of any other group of subjects, but the British elites, if not the ‘popular’ masses, had to move beyond anti-Catholic sentiments. Little did he know that he would not be the most aggressive in protecting the French Canadians against “the intrigues of brigadiers, judges, lawyers and fanatics.”248 With the various attacks on his decisions, Murray understood the tenuous nature of his position, one that would worsen with the coming change of ministry.

As the conflict between Murray and the growing factions against him increased in 1764 he lamented the detrimental effect of his opponents’ activities on the Canadian population. Burton and his supporters were leading them astray and against Murray, not in their best interests, but rather to their detriment.249 At the end of a letter to Cramahe

247 Almost identical letters sent to Elginton and his brother, CNA MG23, GII 1, p.170-174, dated 27 October, 1764.

248 CNA MG23, GII 1, 174.

249 In a letter to Halifax at the end of the October Murray continued to attack his enemies, arguing that jealousy of his position led Gage and Burton to stir up causes against him. He highlighted the destabilizing effect of their petty jealousy. See, CNA MG23, GII 1, 180-181, dated 30 October 1764.
detailing increasing problems, particularly in Montreal, he explained his position, “you know Cramahe I love the Canadians but you cannot conceive the uneasiness I feel on their account. To see them made the prey of the most abandoned of men while I am at their head is too much for me to endure much longer. Take courage therefore, my man, speak boldly the Truth and let you and I at least have the consolation of having done our duty to God, to our Country and our consciences.” Murray continued to hold his opposition to this rising tide because he believed in his cause and the principles underlying it. He, surely like a significant number of his opponents, held his ground as a matter of principle. He would not cede to the ‘mercantile devils’ causing him so much trouble.

Murray still hoped to find common ground with his enemies, if for nothing else than the benefit of the crown’s new subjects. To his friend, a retired army officer living in Montreal, and fellow Scot, John Fraser, Murray wrote of his desire to restore level relations amongst the British factions in order to stabilize the colony. In explaining his decision to make Fraser Chief Judge of the Court of Common Pleas he explained that, “this court is modeled to my heart’s content it is calculated to please the Canadians and to prevent their being made a prey to our upright lawyers.” Perhaps Murray believed that Fraser’s marriage to a French Canadian would offer him greater insight into actions in line with Canadian desires.

Murray continually professed his desire to protect and incorporate the new subjects on terms that would make them loyal and productive.

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250 CNA MG23, GII 1, 190, dated 17 November 1764
251 CNA MG23, GII 1, 203, dated 11 September 1764
252 Neatby, *Quebec: The Revolutionary Age*, 34.
subjects. Despite all his problems, and perhaps to encourage Fraser to take up the post, Murray concluded that “everything here goes on very well and I doubt not of your being able to give proofs that Scotchmen can act from principles of Honor and honesty, let the Yorkshire Jesuits say what they please.”

IV: Structured Assimilation

With the situation still unsettled, 1765 witnessed several attempts in Quebec to propose policies to bring stability to the colony. An anonymous document, containing little detail of its origins other than a date of production sometime in 1765, offered 33 suggestions for polices beneficial to the colony. This document, “Statements of Regulations that might be useful in the province of Quebec”, made continuity with the old system of French laws, land holding and taxation a key part of the colony’s future success. The first five suggestions dealt with land tenure and clarifying and codifying the old French system as a means to ease sales and transfers. In addition one of the statements proposed, “to revive in great measure, if not entirely, the French System of laws that prevailed in this country, the Present system being very inconvenient to the inhabitants.” Others focused on trade, land grants and two of the 33 dealt with the critical issue of direct trade with France, but only in order to secure the superior and highly desirable French wine and brandy.

The ecclesiastical settlement, the integration of the Catholic population, and the education of Catholic youths drew a number of suggestions. Two mirrored plans for the

253 CNA MG23, GII 1, 203, letter 11 September 1764

254 CNA MG 23, GI 1: “Statements of Regulations that might be useful in the province of Quebec (1765)”. The following quotations are all taken from this document.
ecclesiastical settlement taking shape in London, proposing an immediate seizure of the lands in the hands of the religious orders. Parliament, under these schemes, would vest the lands in the crown while still “allowing reasonable life annuities out of the same to the present members of these several houses, with liberty either to continue in the monastic life in their several monasteries or to quit them and live elsewhere, and likewise with liberty either to marry or to live unmarried, as they should think fit, without losing their respective life annuities by doing so.” This both created space for those orders to exist in the short term, but foresaw their demise in the long term. With relation to the individual religious, the plan offered another middle path, encouraging marriage and the rejection of their vows while still continuing their annuities, but not removing them from those who chose to remain Catholic.

The emptied religious houses could be used as “habitation for the officers of the civil government, particularly for the chief justice, attorney general, clerk of the council, secretary of the province, clerk of the enrollments and receiver general of the province.”255 Allowing that “the chapel of recollects might be fitted as a protestant church for the reception of the protestants in Quebec, wither by the title of the governor’s chapel, of the protestants church of Quebec, and all the images, pictures, candles and burning lamp and other superstitious ornaments in it might be removed, in order to make it fit for the reception of a protestant congregation.” British commentators and administrators understood that religious architecture and public spectacle acted to instill

255 The suggestions offered that this would best done by an act of Parliament to avoid future claims and “every other Jesuitical objection.”
the power and centrality of the Church in Catholic communities. They took aim at this power in the removal of both the physical spaces and of the symbolic expressions of the practices of Catholicism, especially related to the visual power of the bishop, processions and other key parts of the public aspects of the faith. The repurposing of religious houses not only signaled a new authority in place of the old, but also removed any special attachment to the religious symbolism of those buildings.

The place of the Catholic Church in Quebec’s future remained a crucial unanswered question. A number of suggestions centered on how to cement British control over the ecclesiastical structures of the Church. The British sought to ensure their control of the Church as a means to control the Catholic population, just as they imagined the priests and bishops controlled them prior to conquest. With the governor holding the power of the purse in the Church and taking on a number of the powers previously reserved to the bishop the possibility of assimilation blossomed. For:

when the priests were fixed in their benefices in the manner here mentioned, to give public notice by order of council that they were at liberty to marry, if they thought fit, without losing their benefices, unless upon a petition of a majority of their parishioners. And at the same time to exhort them to use the liturgy of the Church of England in the French language. This way of proceeding would quickly introduce the protestant religion. The priests would be delighted with the liberty of marrying and the people with having their service in the vulgar tongue; and these two changes would make way for a further reformation and a rejection of all the errors of popery.

Ultimately control over the Church meant not only the ability to remove it from public view, but also the power to use it as a tool of conversion. Rather than forcing it underground and increasing attachments to the Church, the British aimed to coopt it in

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order to use it for their own purposes. As many commentators would point out in later debates, the exclusion of Catholics and the persecution of the Church in Ireland only led to a stronger attachment to the faith, not a lessening. Conciliation and policies meant to slowly wean Catholics from their faith possessed greater possibilities than trying to stamp out a faith many recognized the Canadians held close, as much as part of their identity as for matters of faith.

Other submissions envisioned the education of both Protestant and Catholic elites. The Ursuline convent, one proposition suggested, could be turned into a school modeled on Eton. The ninth and tenth suggested a means of educating the Catholic children in the three districts of the colony. Through schools for the elites, “the next generation of Canadian gentlemen, or signiors, and merchants and tradesman of substance and notaries and other lawyers would all understand English, which would remove the difficulties arising from the carrying on all law proceedings in the supreme court of judicature, and in the courts of chancery, and before the governor and council in the English language, and would in general greatly facilitate the intercourse of the two nations.” These were attempts to remedy in the long-term problems destabilizing the colony. Yet Catholics were not to be forced to adopt the established Church or even be forced to participate in religious lessons. “In this school prayers should be performed according to the church of England twice a day, and the boarders and such of the day scholars as their parents thought fit to bring up protestants should be instructed in the principles of the protestant religion. The other day-scholars should hear nothing said upon that subject one way or

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the other.” Like previous suggestions, this conciliatory approach encouraged conversion and assimilation, but not through exclusionist policies. Education was a means to develop an assimilated upper class of Canadians over time.

Properly structured education and a well-controlled local ecclesiastical system provided a gradual and less overtly aggressive means to replace one linguistic, legal, and cultural tradition with another. Even if on the question of religion they could not make immediate inroads, through learning English, British laws, traditions and other norms, many hoped an eventual drive to fully assimilate would entrench itself in the minds of Canadians. As a whole, the contributions suggest a broad notion that change in the short-term would be minor and incremental, but that proper structures would create long-term moves towards conversion and assimilation. We should not lose sight of the fact that for all the talk of conciliation, even those in favor of toleration at least spoke in a rhetorical manner which saw the abandonment of French law, culture, and religion in favor of English norms as a long-term goal.

Ideas like those above suggest that conciliation, even with the long-term end of full assimilation, had benefits and supporters in a broad range of areas. While those opposed to conciliation readied their case for trial in London, Murray received support from the visit of fellow Scot Lord Adam Gordon, a Member of Parliament and army officer, in May 1765. In a letter to Gordon in October that year Murray thanked Gordon for his visit and his friendship, but more importantly his support for the truth of Murray’s position, “I know your vigour will be exerted for an old brother soldier and I rest satisfied of obtaining in the long run the victory and that the poor Canadians will yet be happy. Was it not for them, I certainly would desist the conflict and leave to Mr. Burton and his
associate Mr. Christie the field.” Despite his desire to remain in the field, Murray wondered about the effects the change of ministry would have on his tenure and relayed suspicions that Halifax encouraged opposition to his tenure.258 Such a charge does not seem out of line in light of Murray’s reluctance to implement the key provisions of Halifax’s creation, the Proclamation of 1763.

On returning to London, Gordon produced an account of his travels throughout the Atlantic empire. Whether he was predisposed to his position or not Gordon’s account of Canada and his recommendations in his journal match closely the sentiments of Murray.259 Gordon’s trip took him throughout the American colonies from the West Indies through the seaboard settlements before leaving from New York in October 1765. His account provides insight into the state of the colony two years after the treaty and also the thrust of opinions held by those on the ground, if at least only within Murray’s camp.

In his initial reactions Gordon damned the Canadians with praise. They were “a robust, hardy, clean made set of people, accustomed from their tenderest years to cold and fatigue, they resemble greatly their indian neighbors, as well as in looks and complexion, as in their manners and laziness.”260 While he doubted the industriousness of the Canadians, the potential of Quebec was clear to Gordon. The abundance of the

258 CNA MG23, GII 1, 247-251, dated 3 October 1765.

259 Gordon’s account of his travels can be found in BL King’s MS. 213, and printed in, Mereness, Newton, ed., Travels in the American Colonies (New York: MacMillan and Company, 1916), 367-456. Although the journal held in the British Library is anonymous there is strong evidence that the item entitled, “Journal of an officer who travelled over a part of the West Indies and of North America in the Course of 1764 and 1765” is Gordon’s. Mereness presents the evidence for attribution to Gordon in his introduction to the journal. All quotations are based on my transcriptions taken from the original copy in the British Library.

260 BL, King’s MS 213, 52.
land offered a prime cause for the Canadian sloth. He enumerated a number of products which could be drawn from the colony, many of which could prove valuable as provisions and raw materials for the West Indies, North America, Ireland, and Britain. In his final impressions of the two main cities, Montreal and Quebec, Gordon concluded that Montreal would remain the hub of the colony, if not its capital, for “all of the nobles of Canada have residences here, and although Quebec has been, and must always be the key of Canada, and the seat of government, yet from its situation and communication by water, with the back country and lakes, Montreal must always be a place of consequence.”

For Gordon, Canadians maintained class distinctions and those of the upper class sought to distinguish themselves by dressing in the latest Paris fashions. The noblesse sought to ensure a clear distinction from the rest of society through avoiding contact with the people they called, “des Bourgeois”. Many, like Murray, saw the landed class as the group best suited to bring about Canadian loyalty and assimilation. This conception rested upon the assumption that, entrenched in an arbitrary culture and religion, the lower classes blindly followed those situated above them in society. Basing their policies on stereotypes of French and Catholic culture proved problematic in the years following the Quebec Act. Despite the possibilities offered by the noblesse, questions remained about their suitability to nurture assimilation to British norms and ideas.

Gordon viewed the women as particularly attached to French style and manners. They were “in general rather pretty than handsome, very clever and entertaining, but not

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261 BL, King’s MS 213, 53.

mindful of their family matters, to which they have not been accustomed, and therefore as well as on account of their religion, to which they are exceedingly begotted, they never can make good wives for English officers, altho’ the experiment has been lately tried and they seem to have no objection to such connections.” While possibly a problem, experience showed intermarriage might prove a productive avenue for assimilation. Beyond hopes of using marriage as a means to turn Catholic priests and monks into Protestants, British commentators had only to look to their own history and the Norman use of intermarriage with Anglo-Saxon elites for a model. Gordon’s sense of reluctance to swiftly abandon older practices and values went beyond questions of intermarriage.

Gordon recognized that the Canadians were not particularly driven to change their mode of governance or law. For “the people in general, and even the most sensible of them, are prodigiously fond of their ancient manner of government, and have not yet found out, the advantage attending a free inquest by juries. Time only can open their eyes in this matter, and many others, where the scale will always appear to a cool and sensible man, to be of our side.” He, like Murray and his successor Guy Carleton, saw great promise in the ability of the seigniorial class to control and integrate the rest of their French subjects. According to Gordon,

of the French inhabitants and officers, several of whom had gone home on the conquest of Canada by the English, are returned to it, others have sold their properties to British subjects and all have taken the oaths of

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263 BL King’s MS 213, 54. Gordon must have learned of intermarriage through Murray, see his earlier letter.

264 While not specifically mentioned by Gordon, other commentators in the later public debates would reference the Norman conquest of Britain for a number of comparative purposes.

265 BL King’s MS 213, 54.
allegiance and will I think in the succeeding generation become useful subjects, both in peace and war, if properly molded by those, who by their superior station and good example may take the lead in a point of so much essential consequence to Great Britain and America.266

There was hope for the colony in time, but it rested on the continuation of hierarchy and the power of those who were clearly concerned with their status in society. Perhaps Gordon, Murray, and Carleton should have recognized that the seigneurs’ out-of-proportion displays of status and fashion spoke to their relative lack of power and influence.

In concluding his review of the colony Gordon noted his preference for the French mode of settlement, with each parcel having some amount of river access to that of the British colonies to the south. In line with previous commentators, he viewed the lands and buildings of the Catholic orders as useful stock for housing officials, officers and regular troops, as well as providing revenue for the crown. Yet the nuns, as Murray himself observed, deserved special protection for their care of British soldiers and the sick in the colony.267 On the whole Canada, seemed “a natural part of our American empire, and ever should have been thought so, nor should we upon any account ever part with it.”268 For Gordon, Quebec proved one of the most agreeable quarters in America, declaring he “would prefer Canada for society and conversation to any province I have yet seen.” In the end “when one thinks of a hundred thousand souls in Canada, all of whom must now be supplied from Great Britain, a large extent of country, the

266 BL King’s MS 213, 57.
267 BL King’s MS 213, 57.
268 BL King’s MS 213, 58.
best of which is still to people and cultivate, and these a hardy race, born to arms
and to fatigue, I, for one, must always esteem Canada, a most essential acquisition
to America, and not less so to Britain, provided she is sensible enough to see and
improve the advantage which this colony may be to both.”

Gordon added to his review of Quebec a series of recommendations titled “Some
Thoughts Relative to Canada, as it appear affected in 1765”. Like Murray, Gordon’s
impressions of the people and social order in Quebec led him to a gradual, conciliatory
approach towards assimilation. “The people of this province in general (100,000
souls) seem not at all dissatisfied with their new masters, but having ever since their
existence been governed by a military power, are extremely averse to our forms of civil
government, and very desirous (one and all) to be continued on their old footing.”

He offered a number of reasons for this. Primary in Gordon’s mind was the stereotypical
hierarchy and deference of an arbitrary civil and religious regime. The first of these
observations centered on the ‘noblesse’ of the colony who were “descended from officers
sent out at different periods from France. They have always had commands, and in all
times of danger or alarm, were accustomed to turn out at the head of their people.”

With regard to the clergy, the other node of influence over the common people,
Gordon concluded that,

the Priests, most of whom are from France, have a great ascendancy over
all the Canadians, particularly the lower sort, and to do them justice they

269 BL King’s MS 213, 59.

270 The division of society and their role in it echoes that of Murray in his first report on the
colony, see Chapter 1.

271 BL King’s MS 213, 59.

272 BL King’s MS 213, 59.
do not seem to have made bad use of their authority, for before our arrival in Canada there scarce ever was heard of a murder, a theft or a bankruptcy. The ideas of the Roman Catholick Religion are much more connected with, and calculated for the French plan of government than ours, and they would certainly preserve more respect to themselves by continuing on the old plan.\footnote{BL King’s MS 213, 59.}

A peasant-minded awe for these two groups supposedly defined the bulk of the Canadian populace. According to Gordon, “the Canadians have always been taught a great degree of deference and respect for their superiors, which is not yet worn out, and we see that where custom has made that the case and the people are protected, they feel just as gay and well pleased as in a country, where everyone is on a footing of equality.”\footnote{BL King’s MS 213, 59.} Moving the new subjects into line with British norms required considerable work. Stability alone would not ensure their preference for British norms, it would however, safeguard their loyalty if well managed from above. This top-down approach motivated many of the concessions made to the seigniors and the Catholic hierarchy.

The British state faced two fundamental problems in its desire to exert change and control over the colony. First, in the aftermath of conquest the imposition of British norms was undertaken too quickly and with little explanation to the local population.\footnote{BL King’s MS 213, 59.} In addition to rapid and undesired change, the newly arrived Britons posed their own set of problems. From Gordon’s perspective, “the British inhabitants as yet settled in Canada are the scum of the earth, they give themselves airs of importance as justices of peace and magistrates, whilst they instill nothing but licentiousness and faction into the minds of the inhabitants, who are innocently made to believe things that are false and
groundless,” the result of the maneuverings of the merchants meant that “from want of knowing what our constitution is, and judging only from the bad behavior of such fellows as are set over them, they are with great reason apt to think ill of such people and to condemn the whole system.”

This constitutes clear support for Murray and his claims linking the unruly nature of the British settlers and the problems facing the colony.

In addition, the military structure of the colony required careful attention. According to Gordon, the colony required a militia of no fewer than three thousand troops under the direct command of the governor, a point made constantly by Murray after the division of civil and military control. Like Murray, Gordon also understood the benefit and possibility of tapping French military experience in forming the militia. Both in the short and long term, the military proved a valuable site for assimilation. The following quotation from his journal illuminates the varied possibilities and benefits the plan might offer. In the militia Gordon would commission officers indiscriminately French and English according to their property and birth, each taking the oath of allegiance only. I would give them rank equal with our provincial troops, and some retainer like half pay. This would infallibly gain the affections of the better sort and would be a useful nursery in a future war, either against Spain, or any of our provinces that might wish to shake off their dependence on Britain. Any young Canadian officer, who should turn protestant and distinguish himself, I would take into the regular service, chiefly into regiments going home.

Assimilation could take place in all areas of society as long as Catholics were allowed participation. Practices of forced incorporation offered fewer benefits than empowering conquered populations through access to public life. Assimilation would fade from view

276 BL King’s MS 213, 59-60

277 BL King’s MS 213, 60-61.
in the late 1760s, but early commentators saw no conflict between conciliation and successful cultural integration.

Finally, and not a minor point, Gordon would “have open and free toleration of all Christian religions, throughout Canada and the two Floridas, and all the backcountry.”²⁷⁸ This meant that not only would Catholics receive the rights promised by the Treaty of Paris, but so too would the large populations of religious dissenters that made up a large segment of British colonists in the Americas. Such a concession could have opened up the potential for an influx of settlers from the other British colonies. As it comes so quickly on the heels of the discussion of the use of Catholics within military ranks, Gordon’s plan also links to the growing movement to use toleration as a means to access Irish Catholics to garrison the empire.²⁷⁹ The place of Quebec within a wider imperial context cannot be forgotten, and just as ideas from other contexts feed into Quebec, it will itself shape imperial contexts throughout British dominions.

The plans laid out by Gordon are in many ways in line with Murray’s thinking and plans for the colony. The journal’s initial anonymity hid its composition by a friend and countryman of the governor and presented it as an unbiased review of the colony. While potentially, even likely, a piece of propaganda for the pro-conciliation side, the journal provides an important part of the build up to the final Quebec bill. Many of Gordon’s suggestions anticipate provisions in the final bill. It should be viewed not as an unbiased account, but as another thrust in the back and forth between those espousing

²⁷⁸ BL King’s MS 213, 61.

other, older models of assimilationist and exclusionist policies and those seeking a more conciliatory, flexible approach to imperial policy in the expanding empire. Gordon’s support came at a critical time for Murray as his feud with the merchants and Burton intensified and his recall neared.

V: A Short and Flawed Tenure

At the same time that Gordon set sail for London, Murray’s opponents increased their assaults on his decisions and style of governance. In October 1765, Murray, while questioning Burton on his continued attacks, implored him to leave the Canadians to their harvest and avoid burdens related to the impressment of men and ships. Murray declined to carry out Burton’s impressment orders until the summer, a less critical time for the yearly harvest, warning of a coming famine. Besides being ‘a matter of conscience’, Murray argued that that contracting the Canadians to transport goods and men better served the interests of the crown. Such an approach ensured that it would not fall on individuals, but rather the whole community through the use of the crown’s revenue, i.e. local taxes. He argued that in the present situation the burden fell “upon a wretched colony which should be encouraged to conciliate the affections of the new subjects to our government.” Making British rule burdensome through unnecessary demands did little to serve the interests of the crown. For all his attempts to inspire

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280 This ‘crisis’ and Murray’s attempts to keep the Canadians in the fields is a sign of military and civil tension, but also a concern for the health of the local population and a desire to diminish any disaffection from British rule. A number of letters from Murray over this period touch on this subject.

281 CNA MG23, GII 1, 258-263, dated 9 October 1765.
Burton and others to treat the new subjects with greater care, he often found wavering support or outright refusal. 282

Later that month Murray again wrote to Burton to question the continued impressment effort and the attacks on him in light of their effect on the local population. His patience worn thin, Murray made his feelings on the current status between the two men more explicit:

I wish Sir! For the good of the king’s service and the happiness of the community, that you would endeavor to moderate Mr. Christie’s 283 conversation, can you expect that the poor Canadians are not to be influenced by the disrespectful manner in which he talks of civil government daily! They will hardly, at the request of a governor who is to be recalled immediately, march into the jaws of famine, Mr. Christie not only tells them so, but he lays considerable wages in public that it shall be so, nothing can be more despicable to men of sense, nay even to the meanest British subject, but the poor Canadians, for many obvious reasons, must be bewildered by such discourse they have long dreaded Mr. Christie, how must they tremble for him now, when he can dismiss the governor, whose only crime is that of protecting them from his oppression, and that of others. 284

Such an exchange illuminates the unworkable relationship between the two men who needed to work closely together for the success of the colony. In the future London vindicated many of Murray’s positions, none more important in his eyes than the eventual reunification of ultimate civil and military authority in the position of Governor.

Canadian policy remained an ad hoc process in these early stages and through the failures under Murray, precipitated largely by older practices, a new model of imperial practice

282 In a letter from the same day Murray expressed a similar sentiment to the Justices of the Peace in Montreal. Saying, “justice will require great patience, and humanity will plead for infinite tenderness with regard to them.” CNA MG23, GII 1, 264.

283 Gabriel Christie served as the Quartermaster General and was part of Burton’s faction. He along with Burton led the charge in seeking to impress men for transportation work in the colony. See Neatby, Quebec: The Revolutionary Age, 40-42.

284 CNA MG23, GII 1, 266-267.
coalesced in Quebec. The empiricists in London learned from their mistakes and returned to the process of incorporating non-Britons with new ideas.

What the unrest over issues like impressment and other dissatisfaction with interactions with representatives of the British state exemplifies is the need for the state to mold its practices to the local culture, rather than expecting it to accept practices and requirements that, while normal at home, only serve to create a divide between new and old. Rough treatment for failure to submit to alien practices provided no benefit to generating loyalty to the state. London could not avoid imposing control and political structures on the new subjects, but it would have to be done with an eye to the effect on the local population and their traditional processes. Through continued complaints to London the French Canadians would make this lesson increasingly clear for imperial administrators. The delay in communications, however, and the paucity of experience with the colony meant that in this early period London proved slow to react to crises and initially unable to apply any lessons learned.

Conclusion

In November 1765 Murray sent a letter to Henry Seymour Conway, the newly installed Secretary of State for the Southern Department under the Rockingham ministry, congratulating him on his new position and hoping that some resolution for the colony could be reached in short order. “It is above twelve months since I sent home my secretary Mr. Cramahé to lay many things before Lord Halifax and the Board of Trade, which require immediate redress, but from the multiplicity of other business, nothing has yet been done in our affairs.” Until something was done, “we can hope for nothing but
confusion here.” Murray faced several problems in legitimating his decisions and securing his authority. Beyond the difficulty of communicating with a colonial capital which remained ice-bound for five months a year, Quebec represented only one of a number of questions facing administrators in the aftermath of the Seven Years War, and paled in comparison to the problems posed by Native American resistance. While Murray worried about the effect of the newly installed Rockingham ministry on his position, their time in office proved a crucial period in the development of policy for Quebec. As a result of the crises generated by Murray’s policies the Rockinghamites spent a significant amount of time examining Quebec and attempting to sort out the mess that fell into their laps. These deliberations laid many of the foundations for the principles enshrined in the Quebec Act.

Upon learning of his recall to London, Murray wrote to his fellow Scot and friend George Ross to defend his actions and begin to rally further support. Yet he feared Scotophobia would work against him. He feared upon his return that he would “unheard, be made a sacrifice of, to convince the mob, that the present administration, have no connection with Lord Bute.” Beyond anti-Scot sentiment, Murray argued that all the aspersions on his character and actions, “proceeds from the protection I have given [the Canadians] and the inflexible aversion I have upon all occasions to shewn [sic] to oppression and the national English prejudice.” Religion, or the lack thereof, was another charge he strictly objected to:

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285 CNA MG23, GII 1, 279.

286 For a general overview of the varied concerns occupying London see, Jeremy Black, *Crisis of Empire* (New York: Continuum, 2008), 89-123.
Lord Dartmouth (a noble man I hear of a very religious turn) is publicly
told at the Board of Trade, by one Walker, that I am a blasphemer, that in
refusing some books to the French clergy I should have said, their master
the Lord Jesus Christ should not have them, and they might go to Hell, and
tell him so; all which is absolutely false, groundless and impossible. The
sincere belief I have in the Godhead of our blessed savior must have
prevented such a thought, and decency would have hindered me from
speaking so of Mahomet to a Turk even in a Christian country.\(^\text{287}\)

Murray opposed the contemptible nature of the attacks on him and argued that the
disorder in the colony was a result of the factions opposed to conciliatory measures
undercutting him and the harmony in the colony for their own ends.

At the end of 1765 Murray and Quebec faced an uncertain future. The one
attempt to devise a court system for the colony had erupted into protests and
recriminations. With little concrete action towards a settlement for the colony, the vital
discussions over the future of the colony moved back to the metropole. In London
confusion reigned as well, and Murray’s lamentations on the lack of directions spoke
directly to the problems of decision making at the heart of the empire. Over the course of
the next two years a new direction would take shape only to be thwarted by those still
opposed to major shifts away from older practices. Yet the course set by Murray on the
ground in Quebec would largely hold sway and, though it was a slow process, the
evolution of British imperial practice began to take shape around the crises in the crown’s
newest territories. The underlying question for almost every crisis remained the place of
Catholics, or more broadly speaking non-Britons, within the British imperial system. As
Hilda Neatby rightly pointed out, “only gradually did it dawn on authorities at home that

\(^{287}\) CNA MG23, GII 1 289-294., letter dated, 4 December 1765. After reading his letter to his
brother Alexander upon learning of his conversion to Catholicism, while exiled with the Jacobite court, this
sentiment does not come across as purely defensive. Murray informed his brother that he would not reject
him even were he to convert to Islam to seek their ‘heaven’. See SNA GD32/24/76.
Quebec offered problems for the constitutional lawyer rather than for the administrator or statesman.”

288 Neatby, *Quebec: The Revolutionary Age*, 45.
CHAPTER 4:

LONDON AND THE CRISIS IN QUEBEC

Introduction

The tensions within Quebec required serious attention from London. Throughout 1763 information trickled back to administrators in Whitehall on the crisis and the realities shaping policy in the colony. Over the course of several years two different ministries attempted to increase their understanding of the colony and the issues facing it. They attempted to do this while the colony roiled with dissatisfaction on all sides. Eventually they realized that recalling Murray to give a detailed account of his administration and the problems facing British rule provided the best solution to an increasingly untenable situation. Political strife in London, however, would halt concrete policy action over Quebec dead in its tracks and lead to a change in ministry.

London’s first attempt at addressing the administration of the colony created more problems than it solved. In the aftermath of the Proclamation of 1763, administrators approached the colony with a stronger sense of the realities of ruling over non-Britons, engaged with new policy solutions, and adopted a more flexible attitude to non-English law and Catholic participation. For many opposed to conciliatory policies, the Catholic Question defined much of their resistance. Their anti-Catholicism held political and
historical justifications, and it required serious debate over the nature of the constitution, the place of Catholics in it, and the true threat posed by those supposedly ruled by a papist political ideology. The years leading up to 1766 offered hope of a solution to the legal quagmire Murray had created and, in the process, several conclusions of broader imperial importance emerged.

The Jesuits and the Catholic Church assumed a central role in the debates during these years. The Jesuits, under attack from all quarters across the globe and especially in Catholic Europe, found a safe haven in Quebec under British rule. Their importance to the social stability of the colony meant that British officials in London and on the ground would look the other way as the order continued to hold its lands and educate the children of Quebec. The institution which supposedly represented the worst of Catholic disloyalty and duplicity continued largely unmolested in the colony. The wider Church found the same open toleration. A bishop, in all but name in the early years, received royal sanction and the ability to nominate a co-adjudicator. This ensured the continuation of the Church in the colony for the long term. These actions, which went against older practices in dealing with Catholic populations, emerged from concerns over stability and loyalty within the new colonial population. Imperial officials, in seeking to ensure the stability of the imperial system, opted for practices meant to address problems of management rather than bind themselves to ideas and practices formed in other contexts.

This was especially true when actions, like the Proclamation of 1763, based on older practices led to the type of disorder undermining the colony’s stability. In the years after 1763 officials in London were dealing with a variety of imperial and political
problems tied to questions of sovereignty and order in the Atlantic world.289 Imperial crises like that provoked by the Stamp Act revealed that Quebec was not like the American colonies to the south. The Stamp Act met some resistance in the colony, but evidence shows that opposition was a minority position and that the bulk of the subjects in Quebec supported Parliament’s right to tax the colony.290 The British-born and Canadian-born subjects did not hold the same views as their colonial-born neighbors who tried to import the rhetorical and constitutional case of their colonies of origin to the south. So while the Declaratory Act might prove controversial in other colonies, it did not warrant a mention in the official memorials and protests emerging from Quebec.291 This puts Quebec, at least during the period of this study, largely outside of these more intense debates over sovereignty.292

Quebec did, however, fit into questions of royal prerogative and Parliamentary supremacy.293 With royal prerogative suffering a blow after the failures of the...
Proclamation of 1763, the necessary alterations to the policy were debated and figures in Quebec and London supported Parliament as the legitimate source of answers to questions of such constitutional importance. Quebec was a prime case for those warring over these issues and, as a result, movement on a final policy for Quebec was largely stalled once it was clear Parliament was the only legitimate body to rule on these issues. The questions posed by the Catholic subjects made Parliamentary action a tough sell. Any party that brought forward the proposals necessary to establish order and loyalty would find strong popular and political resistance. It would take almost a decade before a ministry was willing to take that chance.

The attempts to bring order to the colony, through the continuation of legal, social, and, critically, religious traditions, are an important commentary on the final bill. While much of what follows would not make it into legislation or law in the short term, it belies the claim made by many that the Quebec Act was an ad hoc policy meant to address an immediate crisis. The timing of the bill under the North ministry was undoubtedly part of a desire to stabilize the imperial system at a time of growing American resistance, but it was neither a direct shot at the colonies meant to be part of the wider group of bills known as the Intolerable Acts nor a bill filled with quickly cobbled together ideas and policies. The new practices found in the Quebec Act have their roots in the critical years between 1764 and 1766. The shift of theatre from Quebec to London would only intensify the realities of the necessary concessions and open the door to new imperial practices.

I: The Crisis Moves to London

1765 saw the Catholic subjects, British merchants, and Murray shift the venue for their case to London. The internal contestation over legal and political questions in the colony required adjudication in the metropole. On 7 January those who identified themselves as “the principal inhabitants of Canada,” a group of nearly one hundred French Catholics, offered an address to the king on the new legal system established by Murray and the presentments offered by the Grand Jury.\(^{294}\) They opened with what appeared to them a universal maxim: “The true Glory of a Victorious King consists in assuring to the vanquished the same happiness and the same tranquility in their Religion and in the possession of their property that they enjoyed before their defeat.” A maxim that until recent events they believed the British crown understood. Despite the trials they faced at the hands of the British merchants they argued that they remained steadfast in their loyalty because they believed the crown promised no significant barriers to their religious freedom. Somewhat ominously, however, they asserted that their perfect loyalty proved conditional on the principle that, like the oaths they freely took, the crown’s promise of religious toleration was a binding pledge.\(^{295}\) Based on their opening it is clear that loyalty between subject and monarch rested upon reciprocal responsibilities; each had a duty to the other, the British crown could not assume loyalty simply by right of conquest. Having established both their loyalty and their rights in the

\(^{294}\) Both the French and English versions of the address can be found in, Shortt and Doughty, 223-229.

\(^{295}\) Shortt and Doughty, 227.
continuation of their religion and property, the signatories went on to express their sentiments in regard to the Grand Jury and Governor Murray.\textsuperscript{296}

While praising Murray during his tenure as the military governor of the colony, the Catholic signatories lamented the recent changes to the legal system. Based on their experience during the first four years of British rule they believed that, “it was His Majesty’s intention that the Customs of our Fathers should be adhered to, so that what was done before the Conquest of Canada should be adhered to in the future in so far as it was not opposed to the Laws of England, and to the public good.”\textsuperscript{297} The reoccurring phrase, ‘not opposed to the Laws of England’ remained a constant in the debates over religious, legal and political institutions in a new colony with older, well-established institutions and practices. Working out what was and wasn’t opposed to the laws of England, however, remained a point of serious contention even after the passage of the Quebec Act. English constitutional principles and the legal codes varied throughout that crown’s dominions, and the underlying principles of the constitution remained so contested that each side seemed to offer a compelling case for their position.\textsuperscript{298} The signatories’ added wrinkle of the public good suggests the power held by considerations beyond legal precedent and older imperial practices.\textsuperscript{299} New strategies for incorporating peoples outside of British legal and civic culture and tradition were needed.

\textsuperscript{296} For those who claimed seigniorial rights, this included the legal system which protected and underpinned those rights and the systems of land tenure based in French legal codes.

\textsuperscript{297} Shortt and Doughty, 227.

The French subjects sought to ensure a widespread continuation of pre-conquest norms. The stability and health of the colony rested on these new subjects, and British administrators increasingly recognized that the bluster of the Proclamation of 1763 and the English merchants had to be ignored in favor of more flexible methods - ones that moved away from older practices of British state formation. The French subjects closed their address with a reminder to the crown about the demographic realities in the colony. While they felt ‘joy’ at the protection of their property and law enacted by Murray in the Court of Common Pleas, they felt that joy subside in the aftermath of the actions of the Grand Jury. In protesting the Presentments of the Grand Jury the signatories made their dissatisfaction clear. They argued that fifteen English Jurors misled a few French jurors into signing a document that harmed the interests of the whole of the French population.

The English jurors and lawyers “have proscribed us as unfit, from differences of Religion, for any office in our country; even Surgeons and Apothecaries (whose professions are free in all countries) being among their number.” The dangerous implications of allowing all the power to reside in the Protestant population could not be ignored. If the merchants’ complaints were addressed, the crown would garner the support of thirty merchants (and, according to the French, only fifteen of them actually resided in the colony) while alienating, “ten thousand Heads of Families who feel nothing but submission to the orders of Your Majesty.” It was equally clear that this small

299 Two places where the public good were ignored according to the Canadians were related to access to the courts. Both language and the cost of the English system meant that they were largely alienated from the legal system and ultimately British rule. See, Shortt and Doughty, 227. For further treatment of Canadian unease at the new system see Neatby, Quebec: The Revolutionary Age, 49-55. In lieu of a salary many office holders depended on the fees they were allowed to collect as a means to secure an income. A practice not used in the French system. Neatby outlines a number of especially egregious cases where individuals would be held in jail only for the fees they owed their jailer, even when their case was dismissed and they were not found to be guilty of any offense. Neatby, Quebec: The Revolutionary Age, 97
faction only had their own interests at heart when asking for the proscription of Catholics from office. Their statements about principles masked their blind self-interest. They asked what would become of the prosperity of the colony if “those who form the principal section thereof, become incapable members of it through difference of Religion?” If the merchants proved victorious, the French faced exclusion from the economic and legal realms. “Instead of the favoured Subjects of Your Majesty, we should become veritable Slaves; a score of persons whom we do not know would become the Masters of our Property and of our Interests.”

Beyond questioning the economic soundness of such an approach, the signatories hoped to undermine the Grand Jury’s claim to speak for the people of the colony. Based on demographics alone, much less their position vis-à-vis the Catholics, the British merchants held little legitimate claim to representative status.

The Merchants and their supporters in London did not let such an attack go unanswered and duly offered their own address. They chose to attack not the French subjects, but rather Murray and his actions. For the remainder of his tenure they sought to portray Murray as ill-suited to run the colony and claimed that his actions, not theirs, lead to instability and dissatisfaction. They opened with statements of their strenuous endeavors to make Quebec a commercial entity beneficial to the mother country. Far from threatening the economic health of the colony, they suggested that only through their efforts could the crown expect benefits from its new territory. Yet under the military government their actions only brought them ill treatment at Murray’s hands, a

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300 Shortt and Doughty, 228. For how the language of slavery operated within Irish constitutional debates in the same period see, Ian McBride, *Eighteenth-Century Ireland* (Dublin: Gill and Macmillan, 2009), especially, 274-275.
burden to which they “submitted without murmur, hoping Time with a Civil Establishment would remedy this Evil.”

Now that Murray proved he would not change his ways under a civil administration they felt it necessary to bring their grievances to the king.

Murray’s numerous offenses included: “enacting ordinances Vexatious, Oppressive, unconstitutional, injurious to civil Liberty and the Protestant Cause,” treating them “with a Rage and Rudeness of Language and Demeanour,” “fomenting Parties and taking measures to keep your Majesty’s old and new Subjects divided from one another, by encouraging the latter to apply for Judges of their own National Language,” and finally “discountenancing the Protestant Religion by almost a Total Neglect of Attendance upon the Service of the Church, leaving the Protestants to this Day destitute of a place of Worship appropriated to themselves.”

All of these misdeeds stunted the possibility for growth and harmed the already poor economic health of the colony. They closed by asking for Murray’s removal as they could “enumerate many more sufferings which render the lives of your Majesty’s Subjects, especially your Majesty’s loyal British Subjects, in the Province so very unhappy that we must be under the necessity of removing from it.”

Echoing the French subjects, a failure to address the merchants concerns endangered the economic health of the colony and threatened to force them to retire from the colony. Whether the crown valued the potential offered by the British merchants and the Protestants who might immigrate to the colony or the bulk of the

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301 Shortt and Doughty, 233.

302 Shortt and Doughty, 233-234.

303 Shortt and Doughty, 234.
(mostly French Catholic) population already residing there would be a question left officially unanswered for almost a decade.

The two petitions to the crown suggest the basis for much of the debate over which population’s wishes should receive preferential treatment. Ultimately London had to consider which population represented the best interests for economic health and prospect for political stability. To say that pragmatic concerns dominated imperial policy decisions seems axiomatic. Pragmatism also appears a means to reject any meaningful implications from the process which resulted in the Quebec Act. The means of achieving the practical economic and political ends of the state, however, remained a critical part of the debate and held lasting implications for imperial policy moving forward. The intellectual, legal, and historical cases in favor of the imposition of English norms onto a conquered population as the best means to achieve a stable economic and political structure held considerable sway within British public debate. To say that concessions to Catholics and French law offered the logical pragmatic solution to the policy choices facing imperial administrators and British politicians is surely the result of modern attitudes to religious, legal and political heterogeneity. For many contemporaries Catholics posed a real threat to the British state that could not be easily ignored.

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304 For instance, see Brendan Simms, *Three Victories and a Defeat* (New York: Basic Books, 2008), 521-524.
II: Britain: Guardian of the Jesuits

The unsettled situation of the colony meant that numerous and varied opinions on the state of affairs in Quebec entered the official record. One such plan, found in the Earl of Gower’s papers at the PRO, addressed the state of the Jesuit lands. The land holdings of the Catholic Church and the various Catholic religious bodies had important implications for the religious, economic and legal future of Quebec. According to the anonymous author, administrators needed to focus on the system of land grants as a key part of their strategy for integrating and developing the colony. The means through which the state granted, or in this case possibly re-granted, land and its subsequent development constituted the foundation of the colony’s economic and demographic health. Since most of the land in the territory ceded to Britain remained in the hands of the Church or the crown, it fell to the king and his ministers to ensure its effective distribution. The final pages of the document addressed the more contentious situation surrounding the lands held by the Church, especially the Jesuits. These lands tied into the more complex debate over the Catholic Church’s place in the colony and the rights and resources granted for its continuation.

After briefly outlining the means by which the Jesuits acquired their lands, the author pointed out their important role in the colony:

It is represented by the bishop of Quebec, and other petitioners of Canada, that the Jesuits are by the customs and rules of their order, peculiarly fit for the purposes of educating children, and their possessions were given for that purpose, that their college is built, and accommodated to the purpose only, and that in fact, they were a great seminary of arts and

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305 The document and the following quotations can be found in PRO 30/29/3/1/12, f. 34-41.

306 PRO 30/29/3/1/12, f. 38-41. The section dealing with Church lands begins on f. 38b and continues until the end of the document. The following quotations are taken from these pages.
sciences, the loss of which is lamentably felt by all order of people, and impossible to be supplied by any means now in their power, or within their hopes.

The Catholics in Quebec therefore hoped that either the Jesuits would be continued in their current roles or the lands be put to similar use under new stewardship. Between 1750 and 1773 their reputation for political and economic intrigue led to a widespread movement among Catholic states to suppress the order. However, their importance as educators made them critical to the local community.  

While there were only twenty-five Jesuits in the colony, their lands and place in society made them more important than their numbers might suggest. Not only did they provide for the religious needs of natives and Canadians, but they were the only source of education for the French colonial elite and their children.  

Being entrusted with a task of such widespread influence, the education of the children of the political and social elites, only enhanced the importance, and the threat, of their limited number. The British, in their evolving desire to cater to the ‘natural’ leaders of the Canadian population, could not afford to ignore the attachment of the seigneurs to the order. It seems incongruous that an order suppressed for its supposedly seditious doctrines throughout Catholic Europe would be continued in British dominions primarily for its role in educating the colony’s children. While they were to be strictly monitored and controlled, London did

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308 The importance of the Jesuits’ role of educators led Frederick II of Prussia to protect them from suppression as well, see, Francis Hanus, Church and State in Silesia Under Frederick II (Washington: Catholic University of America Press, 1944), 325-344.
not follow in the footsteps of Catholic Europe in suppressing the order.\textsuperscript{309} Just as the suppression of the Jesuits emanated from political concerns in France, Spain, and Portugal, their continuation in Quebec emerged from their particular role within the colonial setting.\textsuperscript{310} Their reputation and suppression throughout Christendom would be part of the debate over their status under British rule, but the Jesuits’ importance for broader practical concerns at a local level meant that these wider contexts held minimal sway.

The author followed with a detailed account of the various protections provided to Catholics and their religious practice from the Capitulations of Quebec and Montreal to the recent instructions to Governor Murray. From this recent history and the actions of the Catholic religious, the author concluded that “the exercise of the romish religion seems to be a part of the establishment of the province.” While a variety of male and female orders remained in legitimate, and ‘unforfeited’, control of their land, the Jesuits, now condemned in much of Catholic Europe including France, faced real questions about a continued right to their claims. Yet for the author, their condemnation in France should not count against them under British rule. For, “the principles on which they have been condemned in France, are far from satisfactory. They are hitherto uncondemned in Canada, and by their general institution, as well as by their particular tenures, they are trustees for many beneficial purposes.” While it may seem odd for a Protestant kingdom to contemplate a greater degree of toleration to the Jesuits, a frequently used boogey man


of Catholic plots, the recommendations rested on a desire for productivity, stability, and loyalty. The case of the Jesuits and their continued role in Quebec is a fundamental reminder that the practices underlying the Quebec Act were based on practical and empirical concerns. If alterations to Canadian society had created disorder, then developing strategies and practices that solidified both British authority and local continuity were better suited to new imperial questions.

According to the author, granting Jesuit lands to British subjects could prove disastrous both in undermining the important role played by the Jesuits in society and displacing the people currently working the land. Such an action would damage a range of the crown’s new subjects for the benefit of a few well-placed British grantees. Those seeking the Jesuit lands in effect asked the crown “to give away the support of many individuals, and the comfort of innumerable families, without shewing the least attention to either.” To make such a request even more dangerous to stability, the author pointed out that those requesting the grants could not even describe their extents or locations. Such a fact “imports neither certainty nor authenticity” to the grant, and in effect British rule. As land was the foundation of colonial stability, the line between poorly managed land use and imperial collapse proved razor thin. Foreshadowing the critical place of local knowledge in the justification of the final bill a decade later, the text asserted that uncertainty and ignorance in the formulation of policy worked against the goals of imperial stability and productivity. The author made clear that while the empire could pose a threat to the stability of the state through the unchecked luxury it might bring, a
poorly run empire could just as easily leave the home islands broke and drained of manpower.  

The questions surrounding Jesuit lands failed to fade away quickly or easily; beyond the crown and British speculators, the Jesuits’, now condemned and outlawed in France, also faced claims from French creditors.  

In May 1765 James Marriott, the prominent British jurist, politician, and master of Trinity Hall, Cambridge; prepared a report on the status of the Jesuit lands for Charles Yorke and William de Grey, the Attorney and Solicitor Generals respectively.  Marriott’s report explored the Canadian Jesuits’ legal rights to the lands and whether they were distinct from the order as a whole. In other words, could the remaining Jesuits in Canada claim that the lands were vested in them as individuals, and therefore protected under the fourth article of the Treaty of Paris, rather than being property of the French crown or the Jesuits in Rome?  Ultimately Marriott concluded that the Jesuits did not meet the criteria for protection of their property for a variety of reasons.

His initial point focused on the nature of the order and its refusal to submit to the Gallican Church.  Their adversarial relationship with the French crown meant that, even under French rule, their claims on the land remained tenuous and were only occupied by the members through a “probationary toleration” granted by the French crown.  Since the French king claimed ultimate control over the Jesuits’ fixed property, any property or structures under their control should be treated as property of the king and therefore


312 See CNA MG 23 A4, vol. 4, p. 163-164, for early discussions over the rights of French debtors and the Jesuit lands.
ceded to the British crown. In making his case, Marriott resisted the temptation to simply attack the legality of Catholicism within the British king’s dominions, and instead built a case specifically against the Jesuits within any civil society. As discussed above, the Jesuits were suppressed throughout Europe by Catholic powers and eventually by the Papacy as well. Their intensive engagement with political theory and matters of state made them suspect and controversial. The fact that Jesuits seemingly supported tyrannicide, among numerous other sins associated with their casuistry and political plotting, unnerved both Protestant and Catholic monarchs.

While the report underscores the particular political and legal case against the Jesuits as a danger to civil society, Marriott in a larger sense also delineated the wider threat Catholics, and their divided loyalties, posed to British rule in the eyes of many contemporary Britons. The organizational structure of the Jesuits proved fundamental to the case against them. As an indivisible order under the auspices of their ‘Father General’ in Rome, the Jesuits held lands in common and, however it entered Jesuit ownership, vested in the order’s head in Rome. Therefore, even if the French recognized Jesuit claims on the land, as a foreign subject the Father General held no rights under the Treaty of Paris, and neither did members of the order in Canada who could make no claim to personal ownership. The international nature of the order made it dangerous to allow them to retain the lands. For “having but one common stock with all other communities of their Order in every part of the Globe hold immovable possessions to be


applied for the joint benefit of those communities which are resident in foreign states, and which may become hereafter the Enemies of his Majesty and his Government.”\footnote{CNA MG23 A4, vol. 4, 174.} The crown could not be expected to give support, through beneficial toleration, to an institution whose international structure made it a potential Trojan horse for enemies of the British crown.

In his opening description of the order’s structure, Marriott laid out the nature of sovereignty for the Jesuits in relation to civil powers. According to his understanding, Jesuits, through the structures of their order, were “independent of every civil government under which they reside, to which they cannot be united in a civil essence by the nature of their Institute, without ceasing to be what their Institute makes them - a distinct nation in the midst of nations, and an Empire in the midst of Empires.”\footnote{CNA MG23 A4, vol. 4, 172.} The Jesuits posed a problem that no civil or imperial authority could accept, a rival claim to sovereignty and loyalty operating within its dominions.

Protestant understandings of the Papal authority and the nature of the Catholic Church as a whole meant that questions over political loyalty dogged Catholics within British society. The belief, supported by some Jesuit intellectuals, that the Pope could, in specific cases, absolve his followers from oaths to sovereign powers, rendered the loyalty of Catholic subjects within British dominions suspect.\footnote{For work on this problem in another majority Catholic jurisdiction of the British crown see, Patrick Fagan, \textit{Divided Loyalties} (Dublin: Four Courts Press, 1997) and Vincent Morley, ‘Catholic Disaffection and the Oath of Allegiance of 1774,’ in \textit{People, Politics and Power}, eds. James Kelly, John McCafferty, Charles Ivar McGrath (Dublin: University College Dublin Press, 2009).} The Jesuits proved an extreme example of the Catholic threat to secular power in any dominion outside of Rome. The
question then became how to reconcile a body with divided loyalties within the British state; and for Marriott, especially in the case of the Jesuits, where there was absolute loyalty to their Father General in Rome, you could not. The Jesuits inability to even swear loyalty to the Gallican Church clinched the matter. Elite readers like Yorke and de Grey would be aware that the French church’s claims to limited autonomy did not sit well in Rome. Marriott concluded his paper with a remark which made clear why Jesuits found resistance wherever they attempted to expand their order, “it is no wonder that an Institution which seems contrived with a subtlety more than human, to subvert the laws of every country ecclesiastical and civil should find in the laws of every country an obstacle to its establishment.” Objections to the Jesuits highlight why the question of loyalty proved the greatest barrier to the new subjects’ participation in public life while still maintaining their Catholic faith.

The contrast between the intellectual case against continuing the Jesuits in Canada, exemplified by Marriott, and the practical case in their favor, outlined in the anonymous text, exemplifies the tensions facing administrators seeking policy solutions for Quebec. Legal and political theory, the experience of state formation in Britain and Ireland, and the legacy of 1688, among other influences, led many to approach Catholics

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319 CNA MG23 A4, vol. 4, p. 189.

320 For the debate over these issues in Grenada, see Aaron Willis, “The Standing of New Subjects: Grenada and the Protestant Constitution after the Treaty of Paris,” *Journal of Imperial and Commonwealth History* 42.1 (2014): 1-21.
and non-Britons with preconceived notions about the best means for ensuring stability and loyalty within the state. It was only through the practice of incorporating these new subjects, and the crises brought about by misguided policies like the Proclamation of 1763, that new ideas and practices gained support. It was not simply a process of making a pragmatic decision and ignoring older principles.

Attempts were made to enact policy based on older models, but in the wake of the disorder witnessed in the previous chapter, administrators approached the colony anew and with a greater desire to understand the realities on the ground. This process of reformulation did not wipe away all that came before, but simply broadened the willingness of administrators to reassess previous precedents or look for new ones. The preservation of the Society of Jesus and their control over their lands is perhaps the starkest example of the power of concerns of stability and order within the imperial system. If the British ever had a case for the dispossession and suppression of a Catholic order it was the Jesuits, suppressed by Catholic powers and the Holy See; yet based on larger concerns in ruling over a population of non-Britons they were willing to protect and continue a religious body viewed as completely antithetical to British traditions and political order.

III: Britain: Guardian of Catholic Social Order

Several key events in 1765 and 1766 meant that those opposed to Catholic toleration and participation fell increasingly out of step with official legal opinion. In June 1765 a succinct report given to the Board of Trade by the Attorney and Solicitor Generals of the time, F. Norton and William De Grey, declared “that His Majesty’s
Roman Catholic Subjects residing in the Countries ceded to His Majesty in America, by the Definitive Treaty of Paris, are not subject, in those Colonies, to the Incapacities, disabilities, and Penalties, to which Roman Catholicks in this Kingdom are subject by the Laws thereof. On the surface such a verdict should have been seminal to the settlement of Quebec and, more generally, for the principles of imperial legal regimes going forward. Yet this seemingly critical decision did little to grant more leeway for actions taken in London. In fact, it seems to have been almost completely ignored by those who disagreed with its principles, and so while their decision provided cover for those seeking a conciliatory policy it did not lead to significant progress in the short term. Those who wished to apply the penal laws in Quebec still proceeded as though it remained the only proper constitutional position to take.

In the midst of this debate over the place of Catholics and the Catholic Church in Quebec, the Archbishop of York, Robert Drummond, submitted his thoughts on the ecclesiastical establishment and the best actions to ensure ‘justice and sound policy’. Drummond devised a plan that primarily drew inspiration from two earlier British encounters with Catholics, Ireland and Minorca. He proposed to find a middle way between its outlawed status in England and its open practice in France. Drawing on the restrictions enacted in the second year of Queen Anne’s reign for Ireland and the orders to the governor of Minorca after the Treaty of Utrecht, the Archbishop developed his ‘via media’ with Murray’s initial report on the colony acting as the basis for his understanding of the situation in Quebec. For Drummond, as in Ireland under Anne, the Catholic priests

321 Reported dated, 10 June 1765, Shortt and Doughty, 236.
322 The full document can be found, CNA MG23 A4, vol. 14, p. 30-36.
should all be regulars registered by the governor, fixed in number by the needs of the parishes, and required to take the Oath of Allegiance. Drawing on the experiences in Minorca he suggested that all nominations to the benefices should pass through the governor of the colony and a Catholic ‘superior of the church’ to tend to ecclesiastical matters could be installed, but ultimately the British crown would act as the head of the Catholic church in the colony. Drummond recognized that a bishop would be necessary for the ordination of priests and a variety of other matters, but he demurred to the crown on the question of granting the title of ‘Bishop’ to any superintendent of the church. Whatever the title granted, however, he cautioned against allowing the superior to have any outward sign of pomp or circumstance in public. This initial treatment of the place of Catholics in the colony underscores how policy decisions were not simply ad hoc attempts at addressing the issues, but rather emerged from internal debates and a reliance on previous attempts at addressing similar questions. Quebec posed a problem that was not wholly new, but also could not be simply addressed using a single model or precedent from a previous experience.

York’s plan fit within a wider European trend towards religious toleration within a tightly regimented system of state oversight. In the aftermath of his conquest of Silesia in 1742, Frederick II of Prussia faced a similar task to the one now testing the British in Quebec. Ruler of a Protestant state, Frederick had to incorporate a territory with a

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324 CNA MG23 A4, vol. 14, p.31-32.

325 Stephen Conway argues that the debate over Quebec revolved around two models: Ireland and Minorca. For his discussion of the gradual and reluctant move away from the Irish model to the Minorcan, see, Stephen Conway, “The Consequences of Conquest: Quebec and British Politics,” in Revisiting 1759, eds. Phillip Buckner and John Reid (Toronto: University of Toronto Press, 2012).
population made up almost entirely of Roman Catholics. Frederick, a British ally during the Seven Years War, acted in much the same manner as York recommended. He continued the Church in Prussia, but sought to impose his own nominees for ecclesiastical positions within the Church and sought substantial state intervention through Prussian officials. He protected the Church as a means of keeping the new territory loyal and stable. Rather than attempt destabilizing efforts at widespread conversion or instituting religious disabilities for the majority of the population, for practical reasons of state he chose to toleration the Catholic faith and its structures within an otherwise Protestant kingdom.\(^{326}\) With the wars of religion that so disrupted Europe for much of the seventeenth century seemingly in the past, rulers like Frederick and George III could use toleration as a means of state formation with ever decreasing fears political destabilization. Ministers were not unaware of the wider European context. The first comment Shelburne made in his notes while reading the plan for the Catholic Church that emerged from York’s recommendations was “How tolerated in Holland?”\(^{327}\) The concessions made to Catholicism may seem strikingly innovative within a British milieu; however, they fit within a pattern of more open toleration for minority faiths within European statecraft. This wider context would have been well known to figures like York, Shelburne, and undoubtedly other interested parties.

On 13 June 1765 the Board of Trade submitted a draft of an ecclesiastical plan to the Attorney and Solicitor Generals for legal review. The plan, largely based on the

\(^{326}\) On Frederick and the Catholic Church in Silesia, see, Hubert Johnson, *Frederick the Great and His Officials* (New Haven: Yale University Press, 1975) and Francis Hanus, *Church and State in Silesia Under Frederick II* (Washington: Catholic University of America Press, 1944).

\(^{327}\) CNA MG23 A4, Vol. 14, 11.
recommendations made by the Archbishop of York, sought to offer guidance, but no definite recommendation to the Privy Council.\textsuperscript{328} The suggestions of the report “confined in its general purport to the propositions of having a Roman Catholick bishop appointed in Quebec, does yet refer to and conclude, either immediately or consequentially, every question that can arise in respect to the exercise of the religion of the romanish church in its full extent, and under every establishment now existing there.”\textsuperscript{329} Addressing contemporary concerns, they duly considered the threat posed by Catholics to the state and believed that all suggestions in favor of toleration proved “consistent with the general safety and welfare of the colony.”\textsuperscript{330} Such a statement should not be taken lightly. As the case of the Jesuits proved, Catholics were not necessarily worthy of such trust in the minds of many Britons.

Their reasoning for refusing to draw up a fully-fledged plan on the question of a Catholic bishop centered on the contentious nature of its constitutional legitimacy and the difficult means of enacting such a plan. For the final plan would be of “too great importance and extent for us to give an opinion upon” and after full consideration of the facts on the ground and the constitutional implications only the most qualified legal minds “ought to decide in question of so great a national importance.”\textsuperscript{331} While it may

\textsuperscript{328} The text below is taken from BL Add. Mss. 35914, f. 8-14, but copies can also be found in PRO CO 43/1 starting on f. 186 and CNA MG23 A4 vol. 14, p. 13-23, and a second copy on f. 37-42. The first copy in the Canadian Archives includes comments from Lord Shelburne. The second, from 1767, can be found attached to a letter to Shelburne from the Archbishop of York with details of slight alterations made by the Archbishop. This high number of extant copies signals that, if nothing else, the plan was widely circulated both in Church and Civil circles.

\textsuperscript{329} BL Add. Mss. 35914, 8.

\textsuperscript{330} BL Add. Mss. 35914, 9.

\textsuperscript{331} BL Add. Mss. 35914, 9.
seem odd to call the question of installing a Catholic bishop in Quebec a ‘question of so great a national importance’, for contemporaries such a decision held fundamental consequences for the nature of the Protestant constitution and of the British state. The reluctance of the Board of Trade to accept full responsibility for coming to a final decision further exemplifies the sensitive and contentious nature of such a recommendation.

For all the claims that similar precedents had already been set in Minorca, the fundamentally different status of Quebec in the colonial structure meant that decisions here held far greater consequences. Peter Marshall pointed out that Minorca was essentially a strategic naval base with a small Catholic population living on the island. On the other hand, Quebec was a massive territorial colony with 70,000 residents and the potential for large-scale settlement. This made decisions in Quebec more important in the larger imperial system and also within the British state. Subjects moving to Quebec would be living under whatever system London devised for the colony.\textsuperscript{332} Concessions made to Catholics in Quebec, in other words, had broad implications for the empire as a whole.

The first provision of the report made sure to emphasize that the Church of England would and should be the established religion of the colony.\textsuperscript{333} However as the new subjects received the right to worship in their faith in the Treaty of Paris it proved necessary to name “a proper person so licensed by his majesty, during pleasure, to

\footnotesize{\textsuperscript{332} Peter Marshall, “The Incorporation of Quebec in the British Empire,” in Of Mother Country and Plantations, eds. V.B. Platt and D.C. Skaggs (Bowling Green, Oh.: Bowling Green State University Press, 1971).}

\footnotesize{\textsuperscript{333} The report itself is labelled, “Heads of a Plan for the Establishment of Ecclesiastical Affairs in the Province of Quebec” and begins on BL Add. Mss. 35914, 10.}
superintend the affairs of the Romish Church.” Yet this superintendent – note the avoidance of the title ‘bishop’ – was not to take on “any outward pomp or parade incident to the dignity of episcopacy in Roman Catholic countries; nor take himself or appoint others to take cognizance of any matters of a civil or criminal nature; nor use any other powers than such as are absolutely necessary to the exercise of the Roman Catholic religion by his majesty’s new subjects.” The consequence of this and related recommendations aimed at stripping the superintendent of the powers most important to the traditional roles played by bishops. They intended to limit any power normally associated with his position within the ecclesiastical hierarchy, especially when it came to the ability to determine appointments and consecrate other bishops. All appointments were dependent upon “the consent and licence of the governor or commander in chief.” In limiting the power of the superintendent and stripping the position of the symbolic power of the office, the Board of Trade sought to reduce the role to nothing more than a clerk meant to smooth the operation of a now domesticated Catholic Church.

The Bishop was not alone in the removal of display for “no publick processions or other ceremonies of pomp or parade be allowed of; but that the rites of the church of Rome be observed with such moderation and simplicity as to avoid all occasion of offence and dispute between his majesty’s protestant and Roman Catholic subjects.”334 In what would be a final blow to the symbolic power of the Church, one of the final provisions suggested, “that the churches in the said province of Quebec, be used for the publick worship of Almighty God, as well by those who profess the religion of the church of England as by the Roman Catholics; and the times of service in the said churches

according to the rights of each religion respectively to be settled as to prevent any interfering or dispute.” Catholic houses of worship would also not be consecrated only for the worship of the Catholic faith, but would be continually divided in their uses and symbolic status.

While envisioning a minimal Catholic hierarchy, the plan also denied Jesuit claims to their property. The Board of Trade suggested the order should be abolished and all their lands seized and granted to the Society for the Propagation of the Gospel in Foreign Parts, in order to support the development of a Protestant ministry and schools in the colony. In addition they were to be removed from the native communities where they worked as missionaries and their posts taken over by Protestant ministers.\(^{335}\) In this initial instance Marriott’s case won out over any appeals to the strategic and practical value of the order. For pragmatism only justified so much. Yet it was not just Jesuit lands that were slated for Protestant control. While not facing immediate dissolution, the other religious orders, both male and female, confronted a slow steady decline as their members died off and they were starved of new novices. Once the orders ceased to exist their lands and buildings would likewise pass to the SPGFP.

The Board understood the Church to be a local one with the Crown at its head, for in the future “not but secular priests (excepting the remaining recollects as aforesaid) and those natives of the province of Quebec be appointed to any roman catholic benefice in the said province; and that their names be registered in a proper office record.”\(^{336}\)


\(^{336}\) BL Add. Mss. 35914, 12.
According to the Board of Trade, the Catholics in the colony were to be served by regular clergy made up of native sons trained in Quebec. Admittance to the seminary and the total number of priests allowed to preach in the colony would be limited by the number of priests judged necessary to serve the Catholic population. They were also to take an oath of allegiance to the crown. Beyond taking an oath proving their loyalty, the Board expected “that in all places of publick worship, whether parochial or belonging to the religious communities of the romish church, his majesty and the rest of the royal family be prayed for according to the forms of that church.”

Despite the various steps to ensure that the Church was both privately and publicly loyal to the British crown, no “ecclesiastical or spiritual jurisdiction whatever, to be exercised or allowed of in the province of Quebec, other than such as shall be directed and carried on by his majesty’s authority; nor are appeals to any foreign court, jurisdiction, or tribunal whatsoever to be allowed in any case civil or ecclesiastical.” If the most significant threat posed by Catholics to the state rested upon the political implications of popery, then the Board of Trade made sure that the influence of Rome on the Catholic population remained minimal. While doctrinal differences might be points of contention between theologians and objectionable to the beliefs of Protestant worshippers, these, in and of themselves, were not deemed a threat to the state. The threat from popery remained the possibility of divided loyalties and the ability of the

337 BL Add. Mss. 35914, 11-12.
338 BL Add. Mss. 35914, 12.
Pope to absolve Catholics of their oaths to secular rulers. The threats highlighted by Marriott were a key example of how one institution within the Catholic Church, the Jesuit order, exemplified these tendencies in their extreme. If the Catholic faith could not be proscribed, it could be stripped of its public display and the political interference of an international church headed by its leader in Rome.

In commenting on the plan in 1766, Secretary of State for the Southern Department William Petty, the Earl of Shelburne, asked a number of questions relating to the specific suggestions. Despite earlier claims that the terms of the Capitulations could have no power after the Treaty of Paris by ministers like Halifax, Shelburne questioned the ability of the British state to remove Jesuits from their missionary positions and the right of the state to limit the number and types of priests ordained and recruited in the colony. Referencing the 33rd and 40th articles of the Capitulation of Montreal, which granted the Jesuits the continued right to nominate priests and other pastoral positions where they currently placed their members, and granted the Native Americans the right to religious freedom and the maintenance of Catholic missionaries respectively, Shelburne doubted, or at least questioned, the right of the British to make such changes. In part based on Shelburne’s line of reasoning, the Jesuits would never be suppressed in the

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341 CNA MG23 A4, Vol. 14, p 14-17. In another nod to conciliation and toleration of the Catholic Church, Shelburne suggested an alternative to plans to requiring Catholics to pray for the English crown, as he suspected Catholics lacked a prayer for the purpose and therefore it would have to be imposed upon them by the British. Instead “it would be politic to enforce another prayer; for the mutual charity and forbearance among all denominations of Christians.” See, CNA MG23 A4, Vol. 14, p. 18.
colony, nor would their lands be removed from their control during the Eighteenth Century. ³⁴²

In 1773, upon receiving the Papal bull ordering the dissolution of the Jesuits, the Bishop of Quebec Jean-Olivier Briand refused to publically publish the orders. Guy Carleton’s Lt. Governor Hector Theophilus de Cramahé and Briand agreed that suppressing the Jesuits would require publishing the Papal document ordering their suppression, therefore it would not be enforced or recognized by the Church or the state. Two years later, after the Quebec Act, Briand, Carleton, and Cramahé would again concur that all orders of suppression would be ignored. He instead privately communicated their dissolution to the Jesuits and then instantly reconstituted them as an order allowing them to live, dress, and worship just as they had before. The Jesuits would remain for the benefit of the colony’s stability. All three men decided that dispossessing the Jesuits of their lands would invite questions of property rights for all Canadians and could undermine social order at a time of increasing threats of invasion from the rebellious southern colonies. ³⁴³ Just like London, Rome could not enforce policies that its representatives on the ground refused to carry out.

Discussions about the Catholic Church in Canada found their way into official debates even outside of Quebec and London. In Paris, the British ambassador Francis Seymour-Conway, Marquess of Hertford, met a native Canadian priest by the name of

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³⁴² The Jesuits would retain legal claim to their land until the Jesuits’ Estate Act of 1888 when the order was remunerated in exchange for their relinquishing all claims to their lands. On the unwillingness of the British state to dispossess the Jesuits even in the face of legal challenges see, Neatby, Quebec: The Revolutionary Age, 244-248.

Joncaire. Through a ‘secret introduction’ Joncaire and Hertford discussed the situation in Canada and the priest offered his help in bringing stability to the colony in exchange for his appointment as the Bishop of Quebec. According to Joncaire, his family held great sway over the native population, evidenced by the fact that they either lived in native lands or accepted adoption into native tribes. He went so far as to claim that it was his brother who sparked the native resistance to British rule, (most likely referring to the events surrounding Pontiac’s Rebellion,) by telling the natives to resist British rule and remain loyal to France until the French returned to resume the war. Accordingly, Joncaire claimed the ability “without loss of time, effusion of blood, or expence of money, to accommodate all differences, and to maintain thenceforth a general tranquility on all those frontiers.” Despite his request that his brothers and nephews be given military rank and pay equal to that of British officers, Hertford concluded that “the essential article as I take it, is the concession of the Bishopric of Quebec, to the Abbé.”

Making clear his reluctance to fully accept the validity of Joncaire without further investigation, Hertford mentioned other Canadian clergy in France seeking the bishopric and suggested possible sources to confirm Joncaire’s character and the place of his family. The assuredness of Hertford, Joncaire, and those also seeking appointment that Quebec would continue forward with a Catholic bishop is striking, especially in contrast to the simultaneous questions being asked in both London and Quebec on this count.

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344 Hertford’s account of his meeting with Joncaire is found in CNA MG23 A4, vol. 5, p. 107-112.


347 CNA Mg23 A4, vol. 5, p. 110.
Despite objections to a full Bishop in several reports and exchanges by various interested parties, the only questions Hertford voiced over the plan pertained to the legal ability of Joncaire’s brothers to receive pay and military rank equal to that of British-born subjects. On the religious question he offered no doubts or objections. Without reading too much into a single letter, it does suggest that support for, or at least acceptance of, a Catholic hierarchy remaining in Quebec did not appear to all as a legal, cultural, or political impossibility; it simply depended on finding the right man for the job.348

It is somewhat unsurprising then, despite all the plans generated to the contrary, that the Church faced few of the limitations envisioned by many British officials in Quebec and London.349 In the wake of the conquest the Catholic Church in Canada faced a precarious future. The bishop, Pontbriand, died in June 1760, leaving the colony with no bishop to ordain new priests. This, coupled with the limited vision of the faith’s future both in the treaty and in London, meant that the ability to maintain a religious community able to serve the needs of worshipers seemed doubtful. The consecration of a new bishop required approval from Rome and the British crown refused to allow or recognize the influence or authority of a foreign prelate or power. Two ways around the dilemma were discussed, but ultimately rejected by the Canadians: the British would bring in French-speaking priests from Catholic Europe, but not directly from France, or priests could continue to be trained in the Montreal seminary and then sent to Europe for ordination. It is clear why both options were less than satisfactory: the first group would have little

348 Lawson makes a similar point, see Imperial Challenge, 47.

349 The following account is based on “Freedom as Far as the Laws Permit”, the eighth chapter in Neatby, Quebec: The Revolutionary Age. For a more recent treatment see, Fay, A History of Canadian Catholics.
connection to the local community and the second could never be guaranteed to choose to, or be allowed to, return to Quebec.

By mid-1763 a plan formulated by a Canadian priest now in Paris, La Corne, gained support in London through the efforts of the French ambassador. La Corne’s proposal, which echoed a strategy being developed by Briand, who at the time was the Grand Vicar of Quebec, sought to have a bishop elected by the local chapter and then sent to Rome for consecration. By mid-September La Corne informed Briand that London had offered unofficial consent for the plan. As a result of this communication, the chapter elected Etienne Montgolfier, the head of the Sulpicians and the powerful Montreal seminary, just two days later on 15 September. Montgolfier seemed a smart choice; his positions made him a powerful figure in the colony, he excelled at public speaking, and was generally judged highly qualified for the role. Assuming his place was secured, he set off for London to finalize his appointment. As Hilda Neatby points out, despite his qualifications for the bishopric, Montgolfier lacked the only vote that mattered in his election. Murray refused to support the choice, as he found him untrustworthy, and London would not impose a Catholic superintendent on a governor in the contemporary religious climate.

In the end the election proved a false start. Not only did London refuse to recognize the election, but so too did Rome. The pontiff was not going to legitimate the right of local election over his own power of investiture. Montgolfier returned within the year to resign his election and return to his previous roles in the church hierarchy in Montreal. Briand, the one man who clearly did not want the job, was elected with the
support of Murray in 1764 and set off to London soon after.\textsuperscript{350} His arrival in London came at a somewhat inopportune time. The election strategy was developed and approved by the outgoing Grenville ministry and had to face the scrutiny of the new Rockingham government. After 13 months lobbying in London, Briand was informed that British officials would turn the other way as he left and received consecration in Paris. Briand traveled to Paris under the cover of a visit to his mother in Brittany.\textsuperscript{351} Once in France he gained more than the British expected; perhaps as a way to supplant the question of his election as the superintendent of Quebec, the Pope granted him the title, and full-ecclesiastical rights, of the Bishop of Quebec. Briand briefly returned to London and took the Oath of Allegiance, before sailing for Quebec. On 28 June 1766 he returned to expressions of universal joy by the Catholic population.

All the best laid plans of the officials in London, and even Murray’s own desires, for a limited role for Briand to foster gradual conversion to Protestantism floundered as Briand took up all the trappings and powers of a bishop. On his return, Briand began rebuilding churches destroyed during the war and ordained ninety new priests, including two Jesuit brothers.\textsuperscript{352} His relationship with Murray’s successor Carleton, and the newly appointed Lt. Governor Cramahé, provided him with broad freedoms to act in his place as

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\textsuperscript{351} See, Vachon, “BRIAND, JEAN-OLIVIER.”

bishop. Carleton and Briand entered into a symbiotic relationship, with Carleton allowing Briand to act with extremely limited oversight and Briand judiciously maintaining the Church’s position as one of support and loyalty for British rule. Briand for his part supported Carleton and the British rule at every turn and was quick to address any grumblings about the actions of overzealous priests in matters of conversion. The relationship did not always prove perfect but each side quickly forgave insults or missteps to ensure a continued bond.

The story of the Church’s resilience in Quebec highlights a number of factors that would prove important in altering British strategies for imperial expansion and incorporation. Much of the leeway granted by Carleton arose from his insistence that a process of Anglicization would prove impossible and foolhardy. The path forward would increasingly be one of allowing local culture and tradition to remain as a means to generate stability and loyalty from the conquered population. London’s role also shows its generally practical spirit and willingness to privately allow what they could never publically espouse. Within ministerial circles of the 1760s, conciliation and toleration proved an increasingly attractive strategy in opposition to the forced assimilation and cultural impositions of older imperial models. What proved initially a quiet and reluctant strategy would soon garner outspoken and energetic support.

IV: An Attempt to Bring Order

In the aftermath of the crises precipitated by Murray’s ill-formed ordinance establishing the courts and the debates raging over the status of the Church, the Rockingham ministry came to power in July 1765. While Murray lamented the change
of ministry in Quebec, it might have been the political development that ultimately proved the most beneficial for the future of his conciliatory approach, if not his political longevity in Quebec. As Philip Lawson noted, despite the Rockinghamites reputation for political ineptitude and the lack of patronage granted to William Legge, Earl of Dartmouth, as head of the Board of Trade, that made him essentially powerless to affect real change in Quebec, the period of the Rockingham ministry proved a critical period in the evolution of a policy for the colony. While Dartmouth sat as the First Lord of Trade, a number of critical reports were generated, policies sketched out, and attempts at addressing the status of Quebec moved forward.

The religious question made up just one part of the conundrum faced by the Rockingham administration with regard to the settlement in Quebec. In order to make sense of the crisis and try to develop a remedy to the conflict created by Murray’s handling of the situation, the Board of Trade requested a report on the condition of the colony and suggestions as to the best means to rectify the state of affairs. In reviewing both the history from the conquest to the issuing of the Ordinance, the authors, led by Lord Dartmouth, explained why such a critical decision had been placed in Murray’s hands in the first place. According to the report not only was this power normally granted to Governors and Councils upon the setting up of a colony but, it “was more particularly necessary & proper in the Case of the colony of Quebec as the Governor and Council, by being upon the spot, might obtain such Information as would enable them to judge what Methods of proceeding in such Courts of Justice would be best suited to the

353 See Lawson, *Imperial Challenge*, 60-62. Lawson’s backhanded compliments and surprise relating to such a conclusion is tied into his own position as a Namierite, though he rejected the label.
Canadian laws and customs.”354 The importance of knowledge developed from firsthand experience in the colony would be increasingly taken into account in London. Unlike the Proclamation of 1763, issued with little regard for the reports emanating from the colony, imperial administrators would begin to rely more and more on knowledge from men like Murray and Carleton and envoys sent to gather information for policymakers in London.

Like the Canadians themselves, the authors of the report felt it was best to continue laws respecting property as long as they did not in principal clash with the laws of England. According to the report, “the principle error…is that the native Canadians are under such personal Incapacity, and their Laws and Customs so entirely done away, as that they cannot be admitted either as Suitors or Advocates to participate in common with the rest of His Majesty’s Subjects.”355 While they noted that there were some concessions in the lower courts, they felt that Murray erred in denying Canadians the right to act as attorneys and advocates in the highest court.356 The report proved fairly broad in its interpretation of permissible participation by Catholics and protection for the legal codes regulating lands held under French tenure. In addition, the Board found no basis “for the Doctrine, that a Roman Catholick, provided he be not a Recusant convict is incapable of being admitted to practice in those Courts as a Proctor, Advocate or Attorney even independent of Ye opinion of His Majesty’s Attorney and Solicitor

354 Shortt and Doughty, 238.

355 Shortt and Doughty, 241.

356 Murray further blundered in his poor framing of the Ordinance which acted as the major source of confusion around the legal rights of various parties. According to the authors, the ordinance so lacked even basic legal language and structure that its wording alone suggested grounds for full repeal. Shortt and Doughty, 242.
Catholics were to be allowed full legal participation and not excluded from rights that secured their property and the stability of the colony. The question of property and maintenance of the law would be similarly important in India where many of the same justifications were used to protect or co-opt older legal traditions.\footnote{Shortt and Doughty, 241-242.}

The report concluded with ideas that would eventually be developed into a doomed set of instructions to a doomed governor, yet would inspire a policy that underpinned the Quebec Act. The principle recommendations that were to prove a bridge too far for one key minister were as follows: “That in all Courts thus proposed to be established the Canadian Subjects shall be admitted to practice, as Barristers, Advocates, Attorneys, and Proctors;” “that in all cases where any Rights or Claims founded upon any Transactions and Events prior to the Conquest of Canada shall come into question, the several Courts shall admit and be Governed in their proceedings by the French Usages and Customs.” In addition, all judges and the Chief Justice should speak the French language, and that at least one judge should be familiar with French customs and usages.\footnote{Travers, \textit{Ideology and Empire in Eighteenth-Century India}, 126-132.} Whether Dartmouth and the other authors introduced this language or borrowed it from another source is not clear, but it begins to pepper reports and discussions in the formulation of a final policy. The importance of customs and usages underpinned the reforms meant to embed a landed class in the aftermath of the imposition of direct British rule in Bengal.\footnote{Shortt and Doughty, 246.}
Later recourse to both the language of custom and the value of the landed classes in formulating a policy for India suggests a strong influence from the practices and ideas developed in Quebec. As Robert Travers argues, though not making a connection to Quebec, landed property provided the British government a means to define their empire in Bengal as distinct from both the rule of the East India Company and the Mughals. In addition, the permanent settlement, as the reforms were known, “was a kind of quid pro quo, in which the British recognized the entrenched authority of rural land-controllers, but at the same time created a web of institutions to strengthen the security of the central state.”

The permanent settlement became the model for the creation of a political system, built on the landed classes, which spread across India along with British rule after the 1790s. This exchange of privileging the landed elites in exchange for the recognition of British authority suggests a program of reform based on Quebec.

They hoped their recommendations would calm the fears of all parties involved, but especially the “anxiety and unease” experienced by the Canadians. This unease they laid firmly at the feet of the Grand Jury, “whose conduct in publicly arraigning in an irregular Presentment, the Justice and Policy of Acts of Government passed under His Majesty’s Authority, and submitted to His Decision, and the Assuming of Powers belonging only to Legislature, does appear to us to have been indecent, unprecedented and unconstitutional.”

This, the final line of the report, was surely meant to be a firm rejection of the Grand Jury’s aspirations. The thrust of the report signaled the willingness

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360 This change upended the East India Company’s fascination with establishing sovereignty through claims to the ancient Mughal constitution. Travers, *Ideology and Empire in Eighteenth-Century India*, 239-242.


362 Shortt and Doughty, 246.
of imperial officials to accept that continuity would remain as a means to protect the colony’s stability and maintain the legitimacy of British rule. To disenfranchise the largest part of the landowners and the population of the colony seemed especially foolhardy.

On the same day the report was delivered to them, 2 September 1765, the Board of Trade made a representation to the king. In their statement the Board said they now had reports on the two most important issues facing the colony, the constitution and form of government of both the civil and ecclesiastical bodies. They felt two important issues were still outstanding: the question of an assembly and the complaints against Murray.\(^{363}\)

The Board of Trade allowed that an assembly might be possible if the colony were properly divided into electoral districts and if Catholics were allowed to act as electors “seeing that we know of no Law by which Roman Catholicks, as such, are disqualified from being electors”.\(^{364}\) This would solve the constitutional question arising from the need to raise revenue for the colony by creating a body recognized to execute such a power and hopefully making concessions to both British and French Canadians. In the end these two issues and the still looming questions about the civil and religious situation meant that it made the most sense for Murray to be recalled to answer the charges against him and to weigh in on the crises facing the colony.\(^{365}\) Whether they were aware of their

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\(^{363}\) Shortt and Doughty, 247.

\(^{364}\) Shortt and Doughty, 248. About the same time the same decision was made for Grenada, which already had an assembly.

\(^{365}\) Murray would not be officially be recalled until April 1766 and would not depart for London until 28 June, but in October 1765 H.S. Conway wrote him a letter informing him that he should prepare for a recall to answer to the various charges. See, Shortt and Doughty, 248.
increasingly precarious influence over the final policy or not, the British merchants continued a vigorous campaign to have their demands satisfied.

In London the merchants used the new ministry as a fresh opportunity to undercut Murray and establish an assembly. In a letter on 16 October 1765 Fowler Walker made a sustained case to Dartmouth. The pragmatic rhetoric of order and proper governance remained at the center of the debate. The question of legislative authority, according to Walker, proved an issue “a due consideration of which is very essential for the introduction of order and good government in that very disordered province.”366 For Walker, the nature of the governor and the council’s power rested on questions of the extent of royal prerogative. He doubted the legality of the status quo, “but if on the contrary his majesty’s ministers should be of opinion that a full legislative power is already vested duly in the governor and council I am afraid my lord, that a conclusion of a very disagreeable nature will necessarily follow.”367 Walker recognized “that his majesty immediately upon the conquest of Canada had by his royal prerogative an undoubted right to place the legislative power in that country in the governor and council solely without giving the people any share therein.”368

According to Walker, however, the king signaled that the people would have a voice in the government, and therefore, “abridged himself of the power of exercising his prerogative” in this realm in the aftermath of the conquest. This concession found final confirmation in the Proclamation of 1763. Walker provided his personal summary of the

366 BL Add. Mss. 35914, 39.
367 BL Add. Mss. 35914, 39.
368 BL Add. Mss. 35914, 39.
crown’s intent in the Proclamation of 1763; the passage on the question of an assembly and the colonies was clear, for there was,

not anything of greater importance to a society than the laws by which it is governed, my subjects need not be apprehensive of losing their valuable privileges by removing into the distant countries which have lately been added to my dominions. My paternal care for the security of their liberties and properties shall be extended to the remotest part of my dominions they shall there enjoy their inestimable privilege of being governed by laws to which they have given their consent.\(^\text{369}\)

Walker outlined the claims of those opposed to the Quebec Act and other concessions to the French Catholic population throughout this period; the Proclamation of 1763 established the full extent of the Common Law and the statutes in effect in all the crown’s other dominions in Canada. In a deferential manner Walker made clear that his interpretation made no room for legislative power being vested in the governor and council. They only held a temporary role in governing the colony until a legislative body was formed. If the crown or others proposed a different reading, one “of opinion that the governor and council of Quebec are at present invested with legislative power,” then British subjects “could not ‘safely confide in his royal protection for the enjoyment of the benefit of the laws of his realm of England’ notwithstanding his royal word and gracious assurances given them to the contrary.”\(^\text{370}\)

As a result of the strength of Walker and the merchant’s case, it could only follow “that until a general assembly consisting of the representatives of the people be called the law of England is the only proper authoritative law in the province of Quebec.” Yet paradoxically a second conclusion, one that all sides seemed to agree upon, arose.

\(^{369}\) BL Add. Mss. 35914, 40.

\(^{370}\) BL Add. Mss. 35914, 40.
Namely, “that innumerable inconveniences might arise from so sudden and entire a change as would be occasioned by the imposition (by a single act of government) of the body of English laws upon a people whose genus and education, whose religion and manners are so widely different from those of the people for whom those laws were compiled.”

Like his adversaries, it seems that Walker understood ‘the people’ of Canada to primarily be those of the political class, both the seigneurs with their fixed property and the French Canadian merchants who allied with the British merchants on economic issues.

When highlighting the demographic imbalance proved rhetorically useful, the habitants were included in the formulation of ‘the people’. As in Britain, the discussion of access to public office remained limited to those of certain levels of property and education. The largely illiterate habitants were always assumed to support and adhere to the desires and needs expressed by the elite representatives of their community, a belief that underpinned many of the policies within the Quebec Act. While a lack of extant textual records of their sentiments has left them largely silent in the debates of the period, their actions during times of crisis reveal a more complicated picture.

Based on these assumptions, the primary concern for all those involved remained focused largely on the economic implications of the civil law and the methods of adjudicating contractual and property disputes.

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371 BL Add. Mss. 35914, 41.

372 See chapter ten of A.L. Burt, The Old Province of Quebec (Toronto: McClelland and Stewart Limited, 1968), for examples of how elite assumptions were challenged in the period surrounding the American invasion of 1775.
The implications of these seemingly opposed conclusions on the assembly and the law found harmony in his concluding paragraph. While its final form and the means of election were for the ministers to decide, Walker believed an objective view of situation meant an assembly remained a necessity. If English law could not be imposed at once from above, then it would take the local body to decide the specifics of how to reconcile the realities of the situation in Canada and the constitutional and legal standards of England. He suggested that “if it shall appear that these inconveniences cannot be prevented consistently with the honour of the crown and the rights of the people without the sanction of a general assembly,” then he fully trusted the ministers to make the appropriate decisions on how to implement a legislature. Yet, it was clear that making serious changes to the constitutional rights and structures due to the colonists fell to them alone through a local body. Walker and the merchants continued steadily to build a case in favor of a legislative body.

For all sides in Quebec, questions of taxation, law, and the governance of British subjects could only be dealt with through a legislative body; the extent of royal prerogative faced serious challenges in this period and the situation in Quebec proved no different. While the legitimacy of royal prerogative crumbled in the aftermath of the disorder brought by the Proclamation of 1763, both Canadian- and British-born colonists generally accepted Parliamentary sovereignty. During the crisis in the colonies over the Stamp Act, both populations in Quebec dutifully paid the taxes under the act. While a small and vocal group of colonial-born merchants might have protested the imposition of

373 BL Add. Mss. 35914, 41.

the Stamp Act in 1765 and called for a local assembly – for instance, the Quebec Gazette, a paper which supported the cause of the American merchants and colonies, ceased publication from the day the Stamp Act was to come into force and returned on the day it was lifted – the majority of Canadians in both communities recognized Parliament as the sovereign power. In the face of protests by British colonials, however, the dutiful subjects “talked most violently of cramming this same Stamp Act down the throats (of the malcontents).”

Parliament held an important place as a regulator of the wider imperial system for those born in Britain and the Canadians who sought stability and order in the aftermath of conquest.

V: Establishing Parliamentary Supremacy

Appointed in March 1766 as the new Attorney General of Quebec, Frances Maseres played an important role in both the public and internal debates over Quebec and its legal and political settlement. Born to Huguenot parents in London, Maseres developed a reputation as a skilled lawyer and mathematician. Historians have located his own religious principles along a continuum ranging from hardline anti-Catholicism to undogmatic pragmatism within the context of his background and the contemporary climate. His tenure as Attorney General, however, would end with Maseres on poor terms with Governor Carleton, condemned as too harsh in his attitudes towards Catholics.

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375 W.B. Kerr, “The Stamp Act in Quebec,” The English Historical Review 47.188 (1932), 650. In some sense the source of threats of violence was the reverse of that found in the southern colonies and the boycott movements around the Stamp Act and later duties. See, T.H. Breen, The Marketplace of Revolution (New York: Oxford University Press, 2004).

and their place in society. In writing to Edmund Burke during the formulation of the Quebec Act, the solicitor general Alexander Wedderburn, one of the bill’s chief architects, offered to forward Maseres’ writings on Quebec but warned that “both in religion and politics he has a good deal of the Huguenot spirit in him.”

Prior to leaving for Quebec in 1766 Maseres wrote *Considerations on the Expediency of Procuring an Act of Parliament for the Settlement of the Province of Quebec*. Published in London and read by key figures like Northington, the pamphlet laid out the case for Parliamentary, rather than ministerial, action over Quebec.

The tensions that Maseres detailed within the colony showed a binary understanding of the situation on the ground. He classified the situation in Quebec as one where “two nations are to be kept in peace and harmony, and molded, as it were, into one, that are at present of opposite religions, ignorant of each other’s language, and inclined in their affections to different systems of law.”

In pointing out the demographic disparity in the colony, Maseres argued that the ‘six hundred souls’ of British settlers, as opposed to the 90,000 French Catholics, could quickly match and exceed the Catholic population if “the province is governed in such a manner as to give satisfaction to the inhabitants.”

Maseres was concerned with the Protestant inhabitants above all others, making him a member of an increasingly small minority. As a result, he latched onto the theoretical justifications and reasoning behind the Proclamation of 1763 in much of his early thought regarding the colony. The belief that an English

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377 NAC MG23 A7.
378 Shortt and Doughty, 257.
379 Shortt and Doughty, 258.
constitutional dispensation would draw settlers who would engage in ‘trade and planting’ remained central for Maseres. This Protestant settlement was especially necessary in the face of an overwhelming Catholic population who were “violently bigoted to the Popish religion, and look upon all Protestants with an eye of detestation.”\textsuperscript{380} In addition to Wedderburn’s opinion on Maseres, Carleton, when gratefully acceding to Maseres’ desire to leave the colony, highlighted the attorney general’s tendency towards strong anti-Catholic sentiments.\textsuperscript{381}

According to Maseres, problems arose from the fact that Catholics wanted not only toleration to practice their faith, but also a place in the legal and political bodies of the colony. He supported the Protestant case that unless they converted to Protestantism and took the proper oaths, especially the Test, Catholics could not legally hold public office. Their confusion in claiming such rights went back to the Treaty of Paris, and its clause granting toleration ‘as far as the Laws of Great Britain permit’. For Maseres, and many others, the case was clear. For that phrase “render[s] the whole stipulation in favor of this toleration very doubtful; for it may reasonably be contended, that the laws of England do not at all permit the exercise of the Catholic religion.”\textsuperscript{382} So while the phrase may suggest a degree of toleration, modeled on some concessions within English law, in

\textsuperscript{380} Shortt and Doughty, 258.

\textsuperscript{381} See letter in W. Stewart Wallace, ed., \textit{The Maseres Letters} (Toronto: University of Toronto, 1919), 24-25. His distance from Quebec did not lessen his vocal stance, in 1812 he wrote an introduction to, and published, a new edition of William Temple’s \textit{Irish Rebellion}, to which he added selections from Richard Musgrave’s account of 1798 as further proof of Catholic violence and disloyalty, in order to decry the various Catholic relief measures, already passed and under deliberation, in both Ireland and Britain. See, John Temple, \textit{The Irish Rebellion} (London: R. Wilks, 1812).

\textsuperscript{382} Shortt and Doughty, 258-259.
actuality it conveyed no rights whatsoever since none existed “in any part of the British dominions.”

As to the tricky question of whether or not the laws against toleration extended to the colonies, Maseres offers what would be a common response of those supporting the extensions of all the penal laws into Quebec. For “in the first place, the stat. of 1 Eliz. Cap. i. for restoring the supremacy in ecclesiastical matters to the Crown, expressly extends to all the Queen’s future dominions.” Since the king acted as the head of the Church in Quebec there could be no concessions to Papal authority, all appointments and ecclesiastical power connected to Rome and the Pope were now “illegal and void.”\(^{383}\) No legal space existed to allow Catholic participation or even the continuation of fundamental ecclesiastical structures.

Even were laws to allow Catholic participation after taking all the required oaths, the nature of the Catholic faith and the various oaths proved incompatible. The requirements of Oath of Supremacy necessarily excluded all Catholic subjects, whether moderates or hardline papists, from public office in Canada. According to Maseres, the difference between moderate Catholics and the more furious and zealous Papists, who are mostly guided by the Jesuits, consists principally in this circumstance, that the latter ascribe to the Pope an unlimited power in temporal as well as spiritual matters, and affirm that he may depose kings, and absolve subjects from their allegiance, and do other the like extravagant mischiefs; whereas the former deny his temporal, and acknowledge only his spiritual supremacy.\(^{384}\)

So while divided over the Pope’s temporal power, no Catholic would deny his spiritual supremacy over their Church. As a result, no Catholic could ascribe to the Oath of

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\(^{383}\) Shortt and Doughty, 259.

\(^{384}\) Shortt and Doughty, 260.
Supremacy and thus hold office. Maseres went on to provide other legal barriers to the exercise of Catholicism in Quebec, yet he concluded “that it should be tolerated is surely very reasonable and to be wished by all lovers of peace and justice and liberty of conscience.”\(^{385}\) In these opening paragraphs Maseres set up a constitutional tension between law and justice that required a legal and political resolution. The law proved clear in its strictures against Catholic participation, yet justice required toleration of the Catholic faith.

He thus posed the question, “by what authority then shall it be tolerated?”\(^{386}\) Allowing the crown to make such a momentous change seemed unsatisfactory, for it would be easily challenged. Parliament, however, offered “a much safer foundation to establish this measure upon, in a manner which neither the new English inhabitants of the province can Contest, nor the French Catholics suspect to be inadequate.”\(^{387}\) The imposition of new laws on a conquered people proceeded at the will of the conquering nation. By Maseres’ formulation, the British nation’s will “in all matters relating to legislation is Expressed by the King and Parliament.” As a result only Parliament, as the true voice of the nation, could make and impose new laws in Quebec, not the crown alone.\(^{388}\)

To grant the king the power of legislation in Quebec would make both British and Canadian subjects “slaves, or subjects to an absolute and arbitrary government, the

\(^{385}\) Shortt and Doughty, 261.

\(^{386}\) Shortt and Doughty, 261.

\(^{387}\) Shortt and Doughty, 261.

\(^{388}\) Shortt and Doughty, 261.
moment they set their foot there.” If allowed unfettered powers in Quebec the king might, “keep a standing army there” and “with such an army, a prince of James II’s disposition, might oppress the liberties of the other adjoining colonies, or even Great Britain itself.” Consequently, “to be governed according to the rules of the limited monarchy of Great Britain, by which the executive power is vested solely in the King, but the power of making laws and raising taxes in the King and Parliament, is a much safer and more reasonable opinion.” Maseres, like many others of his day, was suspicious of royal power. The threat and rumor of George III seeking arbitrary power was not limited to Quebec; it found proponents throughout Britain, Ireland and the other Atlantic colonies. A running controversy during this period, within which Quebec fits, centered on the designs of men, like Lord Bute, in the shadows. In Britain, Ireland and the American colonies the threat of arbitrary rule seemed always to lurk right around the corner, or was glimpsed from time to time in the actions of the crown, and only vigilance and the power of Parliament stood between Britain and a French-style absolutist monarchy.

For Maseres, Parliamentary action offered security in the constitutional validity of any action taken, whereas royal declarations would lead to challenges and the

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389 Shortt and Doughty, 262.
390 Shortt and Doughty, 262.
391 In the aftermath of the Quebec Act, this threat became a constant part of the rhetoric of those opposed to the bill.
393 At the outset of the imperial crisis the crown was seen as the protector of liberty against a tyrannical Parliament. See, Brendan McConville, *The Kings Three Faces* (Chapel Hill: University of North Carolina Press, 2006).
questionable legitimacy of any solution for Quebec. For “laws and ordinances founded on such a parliamentary authority will easily find obedience from the people, which it is to be feared no others will; and the judges of the province will carry them into execution with ten times as much spirit and confidence as if they were doubtful of their legal validity.” Maseres argued that, despite the claims to the contrary by some, it was a commonly held and proper belief that no English laws were immediately imposed on the colony by right of conquest. The extension of the law required some “positive introduction there by a sufficient authority” in order to make clear the laws which operated in the new colony, whether they were English or French or some combination of the two. For Maseres, Parliament represented the only ‘sufficient authority’.

The financial stability of the colony depended on parliamentary action and legitimacy. Quebec needed new taxes in order to collect the revenue required to properly administer the colony. Maseres rejected the notion, exemplified by the arguments of the Grand Jury and the colonial-born merchants, that the same principles of colonial rights that led to the repeal of the Stamp Act held true in Quebec. These “malicious and desperate enemies of an upright and popular administration” were confusing the legitimate and long held rights of the well-established legislatures with a newly acquired colony lacking any such institution. Maseres drew a clear distinction between the older British colonies and Quebec. Therefore subjects in Quebec must be liable to taxation.

394 Shortt and Doughty, 263.
395 Shortt and Doughty, 264.
and it was only to be decided by what authority such taxation would be enacted. Since the actions of a king-in-parliament avoided the dangers of arbitrary government, those who supported such an idea, “would act like the truest friends to civil liberty, and with the same spirit of mildness and moderation that conducted them in the repeal of the stamp-act.”

The composite structure of the British Empire meant that no single principle could apply to all situations. Legal, intellectual, and institutional flexibility proved a prerequisite for understanding and regulating a conglomerate of territories accumulated at different times and under different circumstances.

Maseres supported the idea of an assembly in Quebec, but until the time of its creation, parliament remained a fully legitimate body for administering the necessary taxes to run the colony. He reiterated that a local assembly, based on Catholic refusals to take the necessary oaths to vote for or sit in the assembly, remained a long-term project. Based on contemporary realities, an assembly made up of and elected by Protestants “might pretend to be a representative of the people there, but in truth it would be a representative of only 600 new English settlers, and an instrument in their hands of domineering over the 90,000 French.” Maseres failed, however, to explain how London proved better situated to represent the will of the people. He resisted any immediate concessions to Catholics in relation to participation in an elected body.

Maseres believed that creating an assembly which allowed French participation would make assimilation and Anglicization impossible. The Canadians bigoted as they are, to the Popish religion, unacquainted with, and hitherto prejudiced against the laws and customs of England, they would be very

397 Shortt and Doughty, 266.

398 Shortt and Doughty, 266-267.
unlikely for some years to come, to promote such measures, as should gradually introduce the Protestant religion, the use of the England language, of the spirit of British laws.\textsuperscript{599}

In addition, Maseres argued Canadians didn’t even want an assembly and were happy to be administered under the authority of the governor and council. To further drive home his point of Parliamentary supremacy in these matters, he made clear that only Parliament could call an assembly, especially as it would necessitate the participation of Catholics if it were to be a just and fair representation of the people there.

Maseres concluded his pamphlet with a statement of the clear implications of his argument, “it seems necessary to have recourse to the authority of Parliament for settling the government of the province and removing the difficulties that obstruct the settlement in the three great articles of Religion, Law, and Revenue.”\textsuperscript{400} It was up to the ministers of state to seek out the proper future for the colony, but only through the power of Parliament. This statement was one that found support in a variety of circles and in the immediate circumstances it would have political ramifications for the whole of the British imperial system. While he may have been in the minority on the nature of the final bill in Quebec, after his pamphlet and the actions of Northington, it appears no one questioned the necessity of a final policy receiving Parliamentary approval. Royal prerogative had lost out in the face of a sustained defense of Parliamentary sovereignty.

\textsuperscript{399} Shortt and Doughty, 267.

\textsuperscript{400} Shortt and Doughty, 268.
VI: A Step Too Far

By 1766, debates over the Quebec question precipitated events that played into the hands of those looking to remove support from the faltering Rockingham ministry. The dissatisfaction over the ordinance for the courts of judicature set by Murray in 1764 continued to consume policy discussions in London. What emerged from the work of Charles Yorke amounted to the legal structures and practices of incorporation that underpinned the Quebec Act. Yorke’s work was lost to the internal battle between political figures like Pitt and Rockingham, but also to a larger debate over royal prerogative and parliamentary supremacy. While the majority of subjects in Quebec accepted Parliamentary supremacy, the political contests over questions of supremacy in Britain left Quebec without a civil or legal plan for another eight years. 401

Despite this fact, Yorke’s reasoning and his innovative work in fostering legal hybridity should not be overlooked. In the aftermath of the report from September 1765, officials attempted to draw up a plan to rectify the problems with the courts. 402 Though signed by both Yorke and De Grey, the initial plan for reforming the courts was the work of Yorke alone. The plan went much further than many expected and his recommendation to allow French Canadians to serve as magistrates was unprecedented. 403 The radical approach he offered gained support from most of the

401 On this debate see especially, John Brewer, *Party Ideology and Popular Politics at the Accession of George III*.


403 Humphreys and Morely-Scott, 44.
ministers, but it proved too much for those tied to the principles of 1688 and stricter notions of a Protestant constitution.

Yorke opened his report with the standard first paragraph detailing the question posed and the material consulted in the formulation of the report. Importantly he noted that he was ordered to consult, and did, with both Cramahé and Walker. The report identified two key points of unhappiness. The first, language, was well documented as a concern for the Canadians as it affected the way the law was being administered, resulted in critical legal procedures and arguments carried out in a language they could not understand, and could be used to mislead them. Yorke identified the dual nature of the negative effects it held. “This must cause Real Mischiefs of Ignorance, oppression and Corruption, or else what is almost equal in Government to the mischiefs themselves, the suspicion and Imputation of them.”

Even if perfectly administered, the inability of the Canadians to understand the process and outcome even on the most basic level meant that the legal system would remain suspect and without legitimacy. Language, then, held a place almost as important as questions of participation, legal structures, and access.

The second major source of disharmony emanated from the troubling and unsettled legacy of the 1763 Proclamation. The report did not blame the Proclamation’s intent and purpose for the negative ramifications, but rather “the Construction put upon it.” The actions of judges and officers in Quebec led many to assume that it was the king’s will to “at once abolish all the usages and Customs of Canada, with the rough hand of a Conqueror rather than with the true Spirit of a Lawful Sovereign.” As a result, rather than seeing the benefits of English law, the Canadians were faced with a system which

\[^{404}\text{Shortt and Doughty, 252.}\]
seemed “unnecessary and arbitrary” in ways “which tend to confound and subvert rights, instead of supporting them.” Though how contemporaries could have drawn any other conclusion from the wording of the Proclamation is difficult to see.

The report cited the previous Board of Trade report on the controversy and the orders to the governor to admit Canadians to practice in the courts, and concessions to French speakers as sound solutions to the first of the problems. Yorke then attempted to “enlarge a little” the scope and specificity of the reforms offered in the Board of Trade report. In moving beyond previous ideas his bold conciliatory measures have led many modern historians to offer his plan as the model for the final bill passed in 1774. In the opening passage he laid out what he considered a key guiding principle:

There is not a *Maxim of the Common Law* more certain than that a Conquered people retain their ancient Customs till the Conqueror shall declare New Laws. To change at once the Laws and manners of a settled Country must be attended with hardship and Violence; and therefore wise Conquers having provided for the security of their Dominion, proceed gently and indulge their Conquered subjects in all local Customs which are in their own nature indifferent, and which have been received as rules of property or have obtained the force of laws. It is the more material that this policy be pursued in *Canada*, because it is a great and ancient colony long settled and much Cultivated, by French subjects.

This language made its way into the draft instructions to Murray ordering him to change even further his Ordinance of October 1764. The final line highlights French Canadian attachment to their traditional practices, but also hints at the historical antipathy between

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405 Shortt and Doughty, 252.

406 In addition to the reports and orders discussed above in London, on 1 July 1766 an ordinance instituting the recommendations was passed and declared by the Council in Quebec. See Shortt and Doughty, p. 249 for the text of the ordinance.

407 See for example, Lawson, *Imperial Challenge*, 80-84.

408 Shortt and Doughty, 255.
the two nations. As Britain expanded to other long established cultures in places like India, an approach similar to that used in Quebec would make sense for the same reasons. The distinction of the ‘indifferent’ nature of local legal customs, suggests ways of understanding difference which allowed for hybridity and incorporation. While the Papist threat might still animate many, civil law, according to Yorke, posed no threat to the values or nature of British liberty.

As a result of such a principle, critical legal structures and practices naturally followed. Since debts, contracts and other mercantile agreements generally followed the same principles, if not the same ‘modes of proceeding,’ judges were to treat cases involving such transactions in ways that violated neither English nor French tradition. In cases affecting real property, however, Yorke offered a critical change in policy. The report argued that “it would be oppressive to disturb without much and wise deliberation and the Aide of Laws hereafter to be enacted in the province the local Customs and usages now prevailing there.” In fact, “to introduce at one Stroke the English Law of Real Estates, with English modes of Conveyancing Rules of Descent and Construction of Deeds, must occasion infinite confusion and Injustice.”

All British subjects who bought land in the colony were to follow French tradition with regards to their property and the laws regulating it. This important shift meant that French law did not just apply to cases prior to conquest, but now served as the recognized law of the colony in all cases with regard to property. Building, as it does, on broader discussions of conquest and approached in somewhat general terms, it is important to recognize how the process of

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Shortt and Doughty, 255.
incorporating French Catholics into the empire acted as an important precedent and experience in the expansion of an empire of increasing cultural and legal heterogeneity. The debate over the rights of the conquered and conquerors drew on a long history within British and European thought. Building off intellectuals like Grotius, Montesquieu, and Pufendorf, contemporary commentators held broad and powerful rights of cultural imposition and absorption as the right of the conqueror over a conquered population. In addition, the opinions of British legal figures, like Sir Edward Coke, provided still further support for the idea that, as in Ireland, the laws of Quebec were rightfully determined in London. In British circles the debate over Ireland exemplified by works like Sir John Davies’ *Discovery of the True Causes Why Ireland was Never Entirely Subdued* (1612) and William Molyneux’s *The Case of Ireland being Bound by Acts of Parliament in England, Stated* (1698), among others, served a critical source material in determining the right path forward. Yet Ireland’s legacy did not prove a simple model and its contested and complicated legacies provided only muddied notions of identity and legitimacy. Even for figures like Grotius, however, acquiring the right to impose new laws and traditions did not mean it was the best policy to do so.

Discussions of conquest for those, like Yorke, in favor of the maintenance of local legal

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410 For a comparative history of the ideologies of conquest and empire in Europe, especially relating to Spain, Britain and France, see Anthony Pagden, *Lords of All the World* (New Haven: Yale University Press, 1995).


codes, moved towards more contemporary thinkers, like the Physiocrats in France or Adam Smith in Scotland, who suggested that economic cooperation offered better prospects for future wealth and stability than cultural imposition in the aftermath of conquest. The nature of conquest and the best means of securing the gains of military expansion remained contested throughout the debate over Quebec, and even after the bill’s final passage. Yet for those who succeeded in having their vision enacted, the lessons from history and theory instilled a belief that the continuation of local traditions proved the best means for fostering stability, prosperity, and loyalty.

This perhaps provides the practical reasons why jurists like Yorke created the space for Catholic and French participation. Without their involvement there could be little hope that the legal system would have any greater level of legitimacy or efficiency. In this initial report Yorke suggested that judges consult often with French Canadian lawyers well-schooled in the customs and laws of the colony and also that at least one of the puisne judges not only speak French but have knowledge of French customs. These advisors and judges would be a means to introduce and apply the French customs through a largely British-born judiciary. The legal structures and practices in Canada would no longer constitute an exclusively English system. Such a change would be too much for some, but proved surprisingly acceptable to the bulk of the ministers within the Rockingham ministry. Were it not for the resistance of Robert Henley, the Earl of

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414 The question of conquest and Quebec will receive a fuller treatment as the rhetoric in Parliament, and the press, more vividly deploy these varied legacies and influences.

415 Shortt and doughty, 253.
Northington, it is very likely that the legal settlement enacted in by Parliament in 1774 would have been decreed by royal prerogative in 1766.

The Privy Council considered the report on the 14 April and asked the Board of Trade to develop a set of instructions in line with Yorke’s suggestions.\(^\text{416}\) John Pownall, the long serving sub-minister in the Board of Trade, drew up the initial plan, but the Privy Council rejected the instructions as too simple.\(^\text{417}\) This first draft explicitly exempted Catholics in Quebec from the Test Act and commanded Murray to revoke his previous actions, especially any changes to local customs under the impetus of the Proclamation of 1763. In the ensuing weeks Pownall and Yorke worked to produce a more thorough set of instructions. Finished on the 24\(^{th}\) the draft rested on Yorke’s previous report and sought to enact his key alterations to the current legal system.\(^\text{418}\)

While he, along with everyone else, misunderstood Murray’s intent and expectations in setting up the Courts of Common Pleas, Yorke attempted to address the problems as they appeared to officials in London. His brother, the Earl of Hardwicke, felt he struck the perfect balance of toleration towards the Canadians.\(^\text{419}\) The opening of the instructions offered a strong rebuke of the state of the colony and the resulting negative influence on the Canadian subjects. Murray was the first to come under fire, for the legal system he established was ‘inadequate and imperfect’, forcing Canadians to face a legal administration conducted in a foreign language, and in a manner completely

\(^{416}\) Humphreys and Morley-Scott, 44.

\(^{417}\) See CO 43/1, 303-309.

\(^{418}\) The text of the instructions used here is from Humphreys and Morley-Scott, 54-61. The draft is found in a number of archival locations. See notes in Humphreys and Morley-Scott for a full account.

\(^{419}\) As quoted in Lawson, *The Imperial Challenge*, 81.
unaligned ‘with their ancient usages and customs’. As a result Murray’s plan “created great uneasiness and discontent in the minds of our Canadian subjects there.” The report also made clear what many understood even before its passage, that the Proclamation of 1763 proved unworkable and should be effectively withdrawn as a means for organizing the administration of the colony. Yorke deployed the rhetorical trick offered in his report, rather than outright official admission, and blamed misinterpretation for the Proclamation’s disruptive influence.

With the true intent clarified, the crown could now move forward as if the Proclamation didn’t exist. In order to “not govern them with the rough hand of a conqueror, but in the true spirit of a lawful sovereign” the Canadians were allowed to keep the benefit of their own laws and customs with regard to property and also to participate in the system of justice. The instructions also extended “to all our subjects in general the protection and benefit of the British laws and constitution.” The reforms offered a number of actions meant to incorporate French Catholics and ensure recognition of the different communities in the colony. Following from his recommendations, a central strategy focused on ensuring that judges were able to speak French and understand the legal practices and customs of the French subjects, or at least have access to counselors who did. Increasing access to active roles in the courts proved a crucial aspect of the reforms. The focus on integration into the system signaled a shift away from policies which held out participation only for those who converted and assimilated to English

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420 Humphreys and Morley-Scott, 55.
421 Humphreys and Morley-Scott, 56.
norms. This new strategy focused on building loyalty and legitimacy among those still attached to their own cultural and legal traditions. For instance, the instructions called for new subjects to be empanelled on juries in all criminal cases involving Canadians. In civil cases where both parties were Canadian, Canadians would make up the entirety of the jury, while in civil cases between a new and an old subject, Canadians would make up half of the jury. These enactments offered little in the realm of controversy; while British merchants expressed resistance to Canadians having the power to pass judgment on cases involving only British merchants, few objected to the rights of Canadians to sit on juries dealing with cases between new subjects or in cases with mixed litigants.

Yorke and Pownall, however, did not stop there in their desire to open the colony’s legal system to French Canadian participation. The clause that would raise the loudest objections stood as a major innovation not just in Canadian law, but in the wider political and legal history of Britain and its empire. The seventh instruction allowed French Catholics to act not just as advocates, attorneys, and proctors, but also

our said Canadian subjects, having first taken an oath of allegiance and fidelity in such form as shall be consistent with their religious persuasions, be in like manner admitted, indiscriminately with the rest of our subjects, not only in the commissions of the peace, but also to the execution of all such offices, functions and duties, (those of judges in the superior and circuit courts only excepted) as are incident to the several courts and constitution herein directed and appointed.422

In essence without taking the oath of supremacy or being administered the Test, Catholics in Quebec were now able to serve in every legal capacity except as a judge in the highest court in the colony. In resisting the plan, Robert Henley, the 1st Earl of Northington, the sitting Lord High Chancellor of England, “doubted whether the crown could give that

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422 Humphreys and Morley-Scott, 59.
power to Roman Catholics, and whether the penal laws did not extend to Canada.”

Northington’s resistance to the nature of the instructions and especially to royal prerogative on such an issue would prove fatal for a settled legal system in the short term. The plan, however, did not feature only objectionable ideas, and its hybridity appealed to both communities in Quebec.

The instructions confirmed the uncontroversial decision to make English law and practice the basis for criminal cases. In civil cases, however, the instructions formulated a pluralist legal system. In cases of debts and contracts, the judges were to expect some procedural differences, but they were not to violate the general principles of either legal system: “the judges, cannot, in adhering to those maxims, materially err, either against the laws of England, or against the ancient customs of Canada.” The customs of Canada were not to be disturbed “and our Canadian subjects secured in the enjoyment of the benefit of all those local customs, which are in their own nature indifferent and which have been received as rules of property, or have obtained the force of law in this ancient long-settled colony.” There is no need to rehash the symbolic importance of the use of the notion of civil law’s ‘indifferent’ nature, but it should be noted that the wording made it beyond an internal report and into official instructions to the governor. It can be reasonably assumed that such an idea met little opposition in its

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423 Humphreys and Morley-Scott, 59.

424 Again, the imposition of British criminal law has not been viewed as a neutral modernization within Canadian historiography. See, Donald Fyson, Magistrates, Police and People (Toronto: University of Toronto Press, 2006) and Douglas Hay, 'The Meanings of the Criminal Law in Quebec, 1764-1774,' in Crime and Criminal Justice in Europe and Canada, ed. Louis A. Knafla (Waterloo, Ontario: Wilfrid Laurier University Press, 1981), 77-100.

425 Humphreys and Morley-Scott, 60.

426 Humphreys and Morley-Scott, 60.
previous iteration and thus proceeded smoothly into the wider context of imperial administration; in effect planting the seed of the concept within the minds of officials on the ground and making it more than just a point of debate within the metropole.

A striking feature of the instructions, and the ensuing debate over them, is the range of precedents and models suggested for various aspects of the new legal system. In the course of a few short paragraphs, the courts of grand session in Wales, the civil act in Ireland passed under George I, the circuit courts established in Scotland under George II, the continuation of the customs and usages of Normandy in the island of Jersey, the courts established in Virginia and North Carolina, the summary bench statutes in Barbados, and of course the courts and practices in England itself, were all offered as models for particular courts or practices which might be used in Quebec. Building on suggestions made in Yorke’s report from 13 May, this list shows the range of source material in the minds of administrators, and their flexibility in working to formulate imperial policy. It also draws into sharp relief the fact that it is nearly impossible to draw clear distinctions between such historical frameworks as kingdom-and-colony or composite monarchy. These were not mutually exclusive concepts and places like Quebec, and one could say Ireland, existed both as colonies of the British metropole and composite parts of the English realm.

The work of Jack P. Greene has also illuminated the ways in which legal regimes were often negotiated and variable within British colonial settings. So we should not

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427 See text and commentary in Humphrey and Morley-Scott, p. 57-60.

428 This point is well developed throughout Ian McBride, *Eighteenth-Century Ireland* (Dublin: Gill and McMillian, 2009), but see especially 161-169.
be surprised to see such a wide range of solutions and a willingness to adopt a legal pluralism in Quebec. However, the controversy over the instructions focused primarily on the nature of the subjects in Quebec. That is, the danger and controversy emanated not from ‘indifferent’ laws, but rather in the Catholics who would be sitting in positions of power, deciding how those laws would be applied. Quebec is important then, not simply because it furnishes example of legal pluralism, but because it provides an example of religious and cultural pluralism. It is much easier to create space for negotiated authority and legal structures when the terms of those structures are culturally, religiously, and legally based largely in the traditions of the metropole. However, the leap occurs when those same practices are extended to ‘alien’ traditions and cultures, a practice less likely based on the experiences of Ireland. With such momentous decisions facing London in administering its empire, it should be no surprise that the contemporary controversies over the prerogative of the crown and Parliament saturated debates over Quebec.

In the aftermath of both the draft instructions and Maseres’ pamphlet, the Privy Council met to consider the path forward in Quebec. The meeting took place on 26 March at Northington’s home, on account of his gout, to consider the latest draft of the instructions to Murray. According to Newcastle’s account it did not go well:

We had, last night, a meeting at my Lord Chancellor’s, upon the instructions to be given to the new Governor of Canada, and altho’ they had passed the Council, and the opinion of the Attorney- and Solicitor-general was had upon them, and the draught was made in consequence by the Board of Trade, my Lord Chancellor said so much against the original

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principle of authorizing the Governor to constitute Courts of Justice &c., which power was given them by the original commission in the late Ministry’s time; and whether, without the consent of Parliament, His Majesty has it in his power, in any of his dominions, to appoint a Roman Catholick to be Justice of the Peace &c., that nothing was determined, when I left them, last night.\footnote{Mary Bateson, ed., “A Narrative of the Changes in the Ministry” (London, 1898), 76-77.}

Northington’s motivations for his actions are unclear. Humphrey and Morley-Scott suggest that his rivalry and dislike of Yorke proved one source of discontent.\footnote{Neatby explains the rivalry as a result of the minister’s belief that Yorke sought to take his position, with his work on Quebec one part of his push for promotion. See Neatby, \textit{Quebec: The Revolutionary Age}, 54-55.} In addition, he had a broader dislike of the current ministerial set-up and found success in securing the promise of a desirable role in any new ministry under Pitt.

They also allow that genuine objections, informed by Maseres’ treatise and the input of British merchants in Quebec to the plan, offer another potential motivation. From Northington’s prospective, the plan, while technically and logically sound, required parliamentary approval of its broad and powerful implications in allowing Catholics into public service and the retention of French law with regard to real property.\footnote{Humphreys and Morley-Scott, 46-47.} Whatever his motives, he ensured nothing further would be done on the issue under the current ministry. He refused to attend any future Privy Council meetings under the Rockingham administration. Resolution of the Quebec conundrum stalled in large part as a result of Parliamentary politics between Pitt and the current ministry and as part of the wider debate over the relative power of the royal prerogative and Parliamentary supremacy. Yorke and the Privy Council continued to work on the instructions in the intervening period, removing the clause requiring the complete repeal of the ordinance of 1764 and
making note of the objections raised at the meeting in the margins of the draft. Yet this work never resulted in any concrete policy action.

Conclusion

The result of the preceding two years of debate over a policy solution for the legal institutions in Quebec failed to reach any definite conclusion. In the process of formulating instructions for Murray, however, Yorke delivered what would serve as the foundation for a final policy. While delayed, the outcome of an intense period of controversy and debate led administrators to begin to move away from the strict principles of the Proclamation of 1763 and towards a more flexible and heterogeneous vision of imperial structures. The realities on the ground forced this reappraisal, but its final conclusions should not be portrayed as simply ad hoc solutions developed in the heat of the moment in 1773. Instead the process was one of serious deliberation meant to find the best way forward in a rapidly shifting imperial context that posed new questions to officials on the ground and in London. Working through these questions would continue for another eight years, but even in its muddied beginnings, the implications for the rest of the empire appear with substantial clarity.

The clearest outcome from this period was the movement away from royal prerogative towards the necessity of Parliamentary action on the question of Quebec. The constitutional implications of any final policy for the colony and the complicated nature of instilling rule meant that legitimacy rested not with the crown, but in Parliament. In shifting the venue, the debate on the colony moved into a realm where the

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434 Humphreys and Morley-Scott, 48-49.
barriers of ideology and political principles grew exponentially. The final policy now had to generate a stronger case in order to surmount the obstacles presented by Parliamentary opposition and the shifting political environment. While action would be delayed for almost eight years because of this shift, it meant a greater involvement with the empirical realities of the colony. The principles of the individuals involved led to further debate amongst those setting imperial policy, resulting in a stronger case in favor of continuity, and a widespread acceptance of the practical solutions to the imperial crisis in Quebec. This often meant that principles were laid to one side and those involved accepted the incompatibility between ideals and necessity. While the American colonists’ disenchantment grew within the context of a flexible and pragmatic imperial order, figures on the ground and in London recognized the necessity of new and adaptable practices within a pluralist empire.\footnote{On the American reaction to the Quebec Act in the context of a crisis of sovereignty see, Griffin, \textit{America’s Revolution}, 113-114.}
CHAPTER 5:

CARLETON’S NEW APPROACH

Introduction

Following the fall of the Rockingham Ministry and Murray’s return to London, the man who would fundamentally alter British policy in Quebec took over civil administration. The arrival of Guy Carleton as the Lieutenant-Governor meant the continuation of much of Murray’s platform. The period between 1766 and 1771 served to confirm and expand the policies developed by Murray. While Murray’s demeanor hastened his downfall, his strategies in reaching out to the French population laid the foundations on which his successor built policies that redefined British imperial practice. Carleton tweaked Murray’s approach in a way that, despite its radical implications, offered the colony a way out of its current disorders.

Despite his recall to London, Murray’s position and general approach to the Canadians would garner support from most quarters in the years after his removal. Ultimately cleared of all charges, Murray’s decision not to return had more to do with the desire for a new opportunity than with any rebukes from London on his larger strategy of conciliation. In 1774 he was appointed the Lieutenant-Governor of Minorca and was eventually made Governor in 1778, a position he held until 1782. Had the crown held
any lingering dissatisfaction with his management of Catholic populations under British rule, it is unlikely that they would have placed him in such a position. In fact, his legacy in Quebec likely made him a purposeful choice.

Prior to Carleton’s arrival the assumed logic behind policies of conciliation centered on easing the Canadians into a gradual assimilation to British norms. Carleton abandoned the goal of assimilation and aimed at fostering loyalty within a colony that he assumed would remain, at its core, French in cultural and legal terms. Carleton challenged the theory that colonial dominions needed to assimilate in order to benefit and unite the imperial system. Since, as he had requested, Carleton’s wife destroyed his personal papers after his death historians have limited evidence as to why, or how, he came to this conclusion. His intentions are only visible within the context of official reports and correspondence. Reading his case with this in mind, however, does not mean that his motivations are obscured by political and administrative language. His insistence on the value of his preferred policies leaves little doubt as to the assumptions and expectations behind his strategy.

As a result in the shift not only in policy, but also imperial outlook, the years between 1766 and 1771 produced important, but often overlooked, documents and discussions in the process of reimagining the British imperial project. Despite labeling this period, “the lost years”, Philip Lawson similarly challenged the idea that a lack of concrete action during this period signaled an absence of engagement with the colony. The belief that the late 1760s represents a period of inaction emanates from the political

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436 For Neatby’s take on Carleton’s influence and attitudes regarding Canadian cultural continuity see, Quebec: The Revolutionary Age (Scarborough, Ont.: Prentice-Hall of Canada, 1972), Chapters 7 and 8. See also, Lawson, The Imperial Challenge, 109-111.
decision of the Rockinghamites in the House of Lords, and especially Richmond and Newcastle, to attack the ministry on its supposed lack of engagement with Quebec. This political tactic amounted to little more than political grandstanding to inflict revenge on their ministerial enemies. Richmond knew that the barriers to action under Chatham were the same ones which caused so many problems for the Rockinghamites. The only solution that appeared logical and sound required concessions to Catholics and some form of legal pluralism. Political and practical problems meant that the momentum begun under the Rockingham ministry paused for a period of reflection and reconsideration. While calm on the surface, the ministerial waters continued to churn in the depths of Whitehall.

The new government under Lord Chatham returned Hillsborough to the head of the Board of Trade, the position he held under the Grenville Administration. Hillsborough would remain for the rest of his time in and out of office committed to the ideals of the old Whig tradition instilled in the Proclamation of 1763. The merchants’ and Hillsborough’s desire for an assembly remained during this period and plans for an assembly advanced in specificity during these five years. Lord Shelburne also briefly returned to office under Chatham as the Secretary of State for the Southern Colonies. Unlike Hillsborough, Shelburne generally favored a more conciliatory and flexible approach, one he demonstrated during his similarly brief tenure in 1763. Continued ministerial turnover in 1768, the growing problems in America, and general instability all led to delays and inaction. This lack of a final policy does not mean that ministers only

437 A critical number of the letters and documents related to this political theatre can be found in Newcastle’s papers, see specifically, BL Add. Mss. 32982.

sprung to life in 1773 and threw together an ad hoc policy in the face of a growing American resistance and rebellion. The principles enshrined in the Quebec Act developed over the course of a decade and these seemingly ‘lost years’ proved the most important in the redefinition of British imperial practice.

I: Stability through Conciliation

In the gap between Murray’s departure and Carleton’s arrival, Murray entrusted Paulus Aemilius Irving, the president of the council and an ally, with the role of acting Governor. Irving would be dismissed as president by Carleton and soon after removed from the council altogether. During his short time in office he managed to send important communications supporting conciliation back to the Board of Trade. One such item, a report dated 20 August, suggested that London’s uncertainty and the upending of traditional social order in Canada posed a threat to British rule. The alterations to Murray’s ordinance, “contributed very much to quiet their minds, not a little alarmed by the long delay which the matters that Captain Cramahe was charged with, met with in London.” Building on a theme found in numerous other communiques from Quebec, Irving emphasized that the uncertainty and delays in London fostered doubt and thus dissatisfaction with British rule. Perhaps just as much as the confusing content of London’s instructions, the slow and uncertain pace of action undercut the legitimacy of British rule.

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439 See Lawson, The Imperial Challenge, 85-86, where he makes a similar argument against the ad hoc nature of the bill.

440 Shortt and Doughty, 269.
Irving highlighted the need for a greater use of the French legal code, though not so far as to allow “that the judges should have the same arbitrary power of proceeding as the French judges had; a power which is always dangerous.”\textsuperscript{441} Juries provided a check on the power of judges to single-handedly decide the winners and losers in various cases. The question of the use and role of juries would shape discussions over Quebec up to and after the passage of the Quebec Act. Yet for those with pretentions of acting as Canadian aristocracy, having the lowly habitants making decisions over their property seemed unthinkable. They had far greater trust in ‘arbitrary’ judges than humble farmers. Irving suggested that “some more certain authority to the judges of the inferior court to adhere to the Coutume de Paris in their decisions would render the present system of administering justice easy to the people.”\textsuperscript{442} Through such an action and the ability to secure their property in the French manner, Irving argued the new subjects would be brought into a stronger bond with British rule.

Murray’s supporters wrote him a number of letters during the summer of 1766. One of his staunchest allies on the colony’s council, Dr. Adam Mabane, wrote to inform him of events in Quebec.\textsuperscript{443} Despite resistance to juries in civil cases by the seigneurs, the ability to sit on juries still remained a critical point of interest for the Canadians, and Mabane signaled that they recognized Murray’s role in allowing them a place in the courts. This access opened their eyes to the benefits of English traditions; where in the

\textsuperscript{441} Shortt and Doughty, 270.

\textsuperscript{442} Shortt and Doughty, 269-270.

\textsuperscript{443} Mabane would be removed by Carleton from the council for his attempts to undermine Carleton in an effort to further Murray’s cause. See Lawson, \textit{Imperial Challenge}, 89-90. Mabane also wrote a letter to Murray in October detailing the council’s split and Carleton’s effort at removing those opposed to his control. See CNA MG23 A4, vol. 16, p. 114-121.
past exclusion had hidden its advantages. According to Mabane, “It is remarkable that in Ireland, when the English law was first introduced there, Trials by Juries were looked upon by the natives, as one of their greatest grievances. Perhaps the first English adventurers in that country resembled those we have at Quebec, full of national as well and religious prejudice.” Prejudice undermined the validity of the English system for, “in a narrow country, where jurors are few and connected by passion and interest, the abuses are obvious, and no wonder strike forcibly the minds of the Canadians.” The Canadians, like the Irish, rejected British actions when they were directed by those opposed to their rights or stability, but felt bonded to the men and policies which sought to integrate them into public life. Despite being recalled based on his conciliatory polices, much of the information arriving in London suggested that his approach offered the most productive way forward.

In August 1766 Murray himself wrote to Shelburne to offer his impressions of, and role in, the present state of the colony. Murray repeated sentiments from previous exchanges with London and his associates. The British settling there were ill-suited either to rule or to act in ways that would bind the Canadians to British sovereignty. The French Canadians were a naturally submissive people and “as they have been taught to respect their superiors, and not yet intoxicated with the abuse of liberty, they are shocked at the insults which their noblesse and the King’s officers have received from the English Traders and Lawyers since the civil government took place.” Through using

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445 CNA MG23 A4, vol. 16, 101-105
446 CNA MG23 A4, vol. 16, 102.
conciliation Murray believed he “had greatly got the better of the natural antipathy they had to their conquerors.”\textsuperscript{447} In the end, however, matters on the ground were primarily about actions taken, or not, in London. Like Irving, Murray believed London fueled the chaos rocking the colony.

Disorder emerged from the string of decisions made in London which failed to take local politics and realities into account. Murray lamented that successive ministries undermined the legitimacy of his position, sent men ill-prepared to take up important roles, divided civil and military authority, and generally left the colony in a state of uncertainty. These various actions allowed the merchants to sow the seeds of disorder. Their actions against the Canadians were not based on principles of law or justice, but instead “the Canadian noblesse were hated because their birth and behavior entitled them to respect, and the Peasants were abhorred because they were saved from the oppression they were threatened with.”\textsuperscript{448} In a condensed form, Murray’s letter represents his primary defense upon his return to London. He acted in a manner best suited to retain the stability of the colony and battled self-interested merchants and ill-suited instructions. In the end Murray would be offered the opportunity to return to Quebec, but he chose to cede the role to Carleton.

Irving, Mabane, and Murray’s letters offer an important insight into motives that drove both Murray and Carleton in their efforts at securing the colony under British rule. The Canadians, especially the seigneurs, sought both participation within the system and protections from those aspects of British tradition they found objectionable. Balancing

\textsuperscript{447} CNA MG23 A4, vol. 16, 102.

\textsuperscript{448} CNA MG23 A4, vol. 16, 104.
this would be a difficult task and neither did it to perfection. Murray assumed that the
superiority of British culture and law would ultimate triumph over French traditions,
while Carleton placed too much weight on the power of the seigneurs to control Canadian
society. Each made assumptions based on ingrained attitudes towards French society that
proved misguided and problematic. While seemingly less prejudiced against the French
population than other imperial figures, like Maseres, they arrived in Canada with
conditioned expectations of how French society operated.\textsuperscript{449} While events in the years
after 1774 would show Carleton to have misjudged the nature of the habitants and the
power of the seigneurs, the same desire to negotiate with elites in order to secure imperial
stability would drive British politics in India and Africa.\textsuperscript{450}

Born in 1724 in Strabane, County Tyrone to a well-connected Anglo-Irish family,
Guy Carleton’s career advanced thanks to his family’s contacts with Anglo-Irish figures
in London.\textsuperscript{451} He saw some action during the War of Austrian Succession, but most of
his experience came after the outbreak of the Seven Years War, where he saw service
both on the continent and in the Caribbean, before serving in Canada. After being
wounded in the Battle of the Plains of Abraham, Carleton returned to England before
taking part in military engagements in France and Cuba. In 1766 he was made
Lieutenant-Governor of Quebec and acted as Governor during Murray’s absence. In

\textsuperscript{449} Nicholas Canny has written on conditioned expectations about Irish barbarity shaped English
imperial actions in Ireland. In a comparable way preconceived notions of French absolutism and Catholic
passivity affected how the British interacted with French Catholics in Quebec. See, Nicholas Canny, "The
Ideology of English Colonization: From Ireland to America" \textit{The William and Mary Quarterly} 30.4 (1973):
575-598.


\textsuperscript{451} For biographies of Carleton see, Paul David Nelson, \textit{General Sir Guy Carleton} (Madison, N.J.:
Fairleigh Dickinson University Press, 2000), and Paul Revere Reynolds, \textit{Guy Carleton} (New York:
Morrow, 1980).
1768 when Murray opted not to return to Canada, Carleton took his place. Two years later Carleton too would return to London to defend his decisions and to lobby for a settlement of the colony’s political and legal limbo. While meant to be a short trip, he remained in London until after the passage of the Quebec Act in 1774.

A unifying factor in the push for continuity and conciliation is the backgrounds of the men most responsible for advocating for such a policy: Carleton and Murray. Both, in manner and attitude, were life-long military officers who transitioned into civil authority over a colony they helped to bring under British rule. As military leaders and governors of a newly conquered colony their primary concerns were the practical matters of governance and stability. Not enjoying the luxury of distance that allowed for more principled considerations of imperial rule and not under pressure to unite the empire within a single imperial framework, Carleton and Murray, perhaps unsurprisingly, chose policies directed at the immediate needs of the colony and its population. Their backgrounds shaped their attitudes to rule and their vision of the policies necessary for exercising power in the midst of uncertainty.

A second critical commonality united these men and likely influenced their attitudes towards cultural difference and state formation. Born on the British ‘periphery’, Carleton in Ireland and Murray in Scotland, both men were uniquely aware of the tensions and realities of state formation. Rather than accepting the value of the imposition of English norms, both would understand the messy reality of political

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452 Carleton and Murray both served under James Wolfe at the Battle of the Plains of Abraham which precipitated the fall of Quebec City in 1759.
incorporation and cultural assimilation. This direct experience would have made them open to cultural hybridity and aware of the distinct gap between London’s ideals and the realities of power in places of contested authority. They understood the ability of individuals to move between seemingly competing identities and loyalties within the British state. This made them willing to create room for those traditionally seen as beyond the pale of Britishness and focus on the requirements of fostering a functioning political and legal system based on local custom. Out of the tension that erupted after the Proclamation of 1763 between imperial principles and imperial realities, it was the practical concerns of governance that emerged as the motivating factors behind policy decisions.

Despite the fact that the new Chief Justice, William Hey, and Attorney General, Frances Maseres, would take issue with his vision for the colony, Carleton benefitted from their presence. Their opposition to his plans did not hinder their ability to add stability and skill into the legal system at a time of disarray. While Hey proved to be outwardly loyal, he did make his dissenting opinions known through internal reports. Maseres, on the other hand, developed into a public opponent of Carleton and policies of conciliation towards Catholicism. By 1769 Carleton proved only too willing to allow Maseres to return to London in order to remove a major thorn from his side.

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454 For a detailed treatment on the internal disagreements over the plans for the legal codes and practices between the three figures see, W.P.C. Kennedy and Gustave Lancot, eds. *Reports on the Laws of Quebec 1767-1770* (Ottawa: F.A. Acland, 1931).
Soon after his arrival, Maseres wrote to Charles Yorke, the former attorney general. He lamented both Yorke’s decision to step down rather than serve in the Chatham ministry and the growing rumors that Murray would be returned with increased powers. Not only did many of the French inhabitants, likely of the merchant class, dread his return, but “many of the best of the British inhabitants would probably abandon the province if that should happen. His caprice and insolence are universally allowed to have been beyond all bearing.” In contrast to Murray, Carleton adopted a different approach to colonial administration. The Lieutenant-Governor

instead of being alternately brutal in affronting people and meantly flattering same persons perhaps at other times to attach them to his party to carry some favourite point by intrigue, this gentleman is always civil and affable to everybody and shews his whole deportment in uniform disposition to serve and oblige them, but none at all to court them. Instead of sowing divisions among the people, and setting one part of the people against another, as the Catholicks against the Protestants, the French against the English, the military part of his majesty’s subjects against the civil, he endeavors to bring them together, to remove their prejudices and grounds of distinction, and unite them into one people.

This new method epitomized the skills of the new appointees and the calming effect their presences could have, as long as Murray remained in London.

Maseres suggested the proficiency of the new appointees, Hay, Carleton and himself, offered a number of solutions to the problems facing the colony. They quickly identified a number of changes to the way the courts functioned that offered greater satisfaction to the new subjects. Local division, however, still posed a problem, for “as there is a part of the council that is bent upon opposing everything Mr. Carleton does, in order to excite complaints and confusion in the province and thereby pave the way for the

455 The letter dated 15 November 1766 starts on folio 43 of BL Add. Mss. 35638. The following quotations are taken from the manuscript.
return of General Murray, it is possible, (though I think it barely possible,) that they may be opposed.” Uncertainty from London over where ultimate authority rested and the nature of future policies continued to feed the flames of factionalism. Without clear directions and lines of authority the colony could not move forward.

In closing, Maseres both suggested the possibility for a successful future and denigrated the colony and the status of its officials. His local sources informed him that, “if governor Murray is entirely removed from this government, and General Carleton confirmed, and consequently the factions that arise from the prospects of Murray’s return should cease, it may be in my power to contribute considerably, in conjunction with Carleton and Mr. Hey, to the happy settlement of this colony.” Yet the pay in the colony and the ability to gain work through fees proved insufficient to keep him in the colony for the long term. Having barely arrived he was already asking Yorke to find him “a Welch judgeship, of the place of counsel to the Board of Trade, or some such employment.” He simply wasn’t being paid enough to make up for the “total sacrifice of my time attended with the circumstance of banishment to a distant and inclement country, without the hopes above mentioned, which I flatter myself you will not think unreasonable.” Maseres did not appear motivated to serve as a diligent and faithful servant to Carleton or the crown in Quebec.

In the flurry of communications across the Atlantic in the latter half of 1766 both the outgoing and incoming officials in Quebec suggested that the underlying cause for the disorder was a lack of certainty from London and the resulting efforts of various factions to secure a settlement that best served their narrow interests. Instead of seeing the following years as a period of disinterest and inaction, it might be more appropriate to
understand it as a well-informed decision to halt the instability through a period of introspection. Continuing to issue new instructions and piecemeal policies would only continue or further increase tensions and confusion. A moment of stasis seemed appropriate and in the end it resulted in a productive period of inquiry and debate.

II: A Non-Sectarian Assembly

For those attached to the ideals of local representative bodies, even the move away from English law did not push them to abandon a key pillar of their notions of English liberty. Carleton faced a strong and varied opposition in his desire to avoid the imposition of a Canadian assembly. For many though, the value of an assembly, even one where Catholics were given seats, was too great to ignore. The ability to levy taxes, the power to create new laws, and the need for general internal regulation were all seen as only holding legitimacy when assented to by a local representative body. As conciliation gained strength as a core of British policy in Quebec, those advocating for an assembly had to shift their own case to incorporate French Catholics into the body. The merchants, Maseres, and officials in London all made increasingly larger concessions to the number and power of Catholics who would hold key places in public office.

Fowler Walker took the opportunity of Murray’s recall to present the current state of the colony from the merchant’s perspective.\(^{456}\) He opened his report with complaints that trade and merchants were affected because no settled and well-ordered system of government and administration existed for the colony. The unsettled nature resulted from poor administration, a flawed system relative to the needs of the colony, and the

\(^{456}\) The full report, “Considerations on the Present State of the Province of Quebec”, written sometime in 1766 can be found in the papers of the Privy Council, see BL Add. Mss. 35915, f. 20-45.
inconsistent process of introducing a new set of laws into the province. Only immediate attention could right this imbalance and proper policy could create tranquility, stability, and benefits for Great Britain. Beyond echoing sentiments explored in the previous section, Walker’s letter is important in that it offered support for the growing trend towards French incorporation and the realization across the political and ideological spectrum that a system responsive only to the British needs would not resolve the colony’s problems.

Walker set out once again the various populations in the colony and their needs. Much of the first section detailed Murray’s interactions with these groups and the negative impact on the dynamics within the colony. His favoritism, seeming crypto-Catholic leanings, and arbitrary actions all served to divide and alienate those around him. The merchants, both French and British, were united in their opposition as Murray failed to act in their favor. According to Walker, he served only the needs of the clergy and the seigneurs. In the end the peasants supported his cause through the influence of the clergy and it was “a happy circumstance that the Canadians are naturally obedient to government.” Despite his anti-French tone, Walker’s position illustrates the same assumptions made by Carleton in his plan for managing the colony. Carleton’s strategies rested upon the notion of the submissive and hierarchical nature of French culture. Led not by real engagement with their fellow colonists, but by stereotypes, many British administrators missed numerous signals that a top-down approach only offered limited amounts of political and social control.457

457 Lawson points out that Carleton simply assumed Canadian society would function like any other ancien régime state. See Lawson, Imperial Challenge, 109.
Walker sought to defend the merchants, and especially those in the Grand Jury, from charges that they were the main instigators of the disorder. Accordingly he admitted that

the presentment of the Grand jury on the 16 October 1764 was a very improper and injudicious act from which it has been concluded that the old subjects in Quebec are turbulent and factious opposers of the lawful authority of government inclined to take the government of the country into their own hands and desirous of introducing the penal laws against popery into that province.

While the presentments were improper in their tone and actions, the merchants were driven to action by the unsettled and arbitrary nature of the government. They were wrong but acted “perhaps exactly the same as any other set of men under the same circumstances would have done.” Since the merchants were well acquainted with the colony and the underlying problems, whatever its faults the presentment should not be totally dismissed.

In the end, the legitimacy of British rule rested on its ability it to answer the calls of those identifying its failures and the need for civil order. For,

it is of great importance that the authority and acts of government should be holden in high esteem by the public many advantages spring from this opinion or esteem which perhaps cannot be derived without much difficulty from any other source. This can only be infused and supported by a proper administration of government and if government would be respected it should (if the expression may be allowed) be careful to respect itself.

Right and proper government offered the only way to keep people attached to the state. When it appeared arbitrary or failed to reward merit, it was only logical that people rejected it. The actions of Murray and his favorites meant that there was no respect for the ‘supreme power’. Only through proper administration could respect and loyalty be
found. Yet Walker failed to see that he was making his opponents case for them. They too argued that legitimacy rested upon just policies and the incorporation of those qualified to rule, unfortunately for the merchants many took this to mean the French Canadian elite.

He explained that he outlined these problems not to attack the ministers, but rather as a means to set up the proper path forward to instill stability and legitimacy. He hoped to remove the “evils arising from a maladministration.” The merchants were happy to hear of Carleton, Maseres, and Hay’s appointments, but the situation called for a new form of administration. The old system focused on the council and governor could no longer operate in a fashion that the merchants would recognize as legitimate. The merchants continued to press for an assembly, but they had moved further along in their willingness to grant Catholics a role in the governance of the colony. While in the early 1760s their pleas offered Catholics a voice through the ability to vote for Protestant candidates, by 1766 they realized they had to go further.

Before he was willing to make concessions, however, Walker had to restate much of the case supporting the merchant’s cause. He detailed the nature of a conquered country and its legal continuity until the conquerors declared a new order, the king’s actions in declaring that new order through the Proclamation of 1763, and the now undeniable fact that the laws of England were now the laws of Quebec. Walker, despite spending a great deal of time to detail this case, offered a few generous concessions. His lengthy restatement of the merchant position aimed to prove that merchant claims remained well founded and any concessions now granted resulted from their generous and practical nature, not any deficiency in the merchant case. He admitted that “it would
be impertinent to attempt to enumerate the very obvious hardships and inconveniences which would arise from the entire abrogation of the Canadian laws and from the establishment of the laws of England in their stead, which however excellent they may be when considered as laws in England yet are by no means adapted to the circumstances of the province of Quebec.” The merchants, however, still proved unwilling to compromise on the Proclamation’s promise of an assembly.

Walker posed a simple question: after the crown issued the proclamation, did it have the right to revoke its own issue? While he recognized that in the colonies the prerogative of the crown meant a great deal, when it came to any dominion operating under the laws of England, royal power diminished precipitously. For in England, the royal prerogative was extremely limited. So if English constitutional principles now reigned in Canada, the crown could not back out of its promise for an assembly. Under English constitutional principles, the only real solution remained a local assembly called to pass internal taxes and form internal laws. Even Parliament did not have the authority to pass internal taxes; a principle raised and established by other American colonies.458 From the principles he laid out, Walker believed it was obvious that a local assembly was the only effective and legitimate body to address the disorder in the colony.

Walker then offered a number of ideas and concession in favor of allowing Catholics into the local assembly. As an assembly was immediately necessary to restore order, a number of figures had to move beyond objections to both communities’

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suitability for office. While attacks on the suitability of the British merchants to sit in an assembly were misguided, Walker conceded that it was by no means necessary that the house of assembly should be entirely composed of old subjects arguments might be drawn from the principles of good policy as well as other topics to prove the expediency of having some Canadians blended with them and it is this which seems to be the greatest obstacle.

It would take too long to address the varied concerns regarding both the British and the French communities. For “if the calling of a house of assembly in Canada be deferred until all objections be removed it must be postponed ‘till the next generation at least.”

Based on the example of Grenada, where an assembly had already been called and Catholics allowed to vote in elections, and evidence from Quebec there remained “great reason to believe that the Canadians are very tractable well-disposed people and a plan may possibly be found for giving them seats in the house of assembly but in such manner that the influence of the old subjects may be very great therein.” To ensure that Catholics in the assembly did not gain too much power, the council would remain wholly Protestant and all laws would originate in the Protestant council. This meant that Catholics would have little more than a constricted power of oversight. They would not be able to draft legislation of their own and, as a minority in the assembly, would have limited power to block laws they opposed. Ultimately economic reasons made even these minimal concessions necessary.

A functioning assembly would create the optimal conditions for trade and economic development. As proof, Walker cited the growth of Nova Scotia and Georgia after they called assemblies. He argued that merchants would not settle and trade in a colony “under any form of government in which the people are not represented by
persons chosen by the people.” For the merchants and their supporters the goal remained
the encouragement of Protestant British-born settlers and they should therefore give them
“a very advantageous situation and respectable light in that province.” Walker and the
merchants remained wedded to a gradual demographic and cultural shift in favor of
British norms. Their position on allowing Catholics into the assembly merged with other
plans developing within ministerial circles in London. While nodding towards
conciliation, Walker’s plan did not go nearly as far as plans emerging from ministerial
circles.

A report prepared for Shelburne detailing the history of the colony, including
London’s actions, offered a strong defense of a policy that sought to ensure no division or
distinction based on religion as it related to the ability for subjects to stand for election to
an assembly.459 Likely written around the same time as Walker’s account, the report
suggested that an assembly containing both religious communities might be a means to
foster greater stability and unity. According to the anonymous author,

A colony possessed of rights and privileges and power of their own will
soon forget their old servile attachments, and feel pride and spirit enough
to resist subjection from whatever quarter it comes, or however concealed
under the appearances of friendship and affection. These are the only
securities which can be relied upon against the future attempts of France in
that country, and upon this likewise a dependence may be placed that no
assembly possessed of real power in itself will become, internally, the
slaves of a priesthood. And it should appear if the laws of Great Britain or
an ill administration do not create a real distinction in that country
between a Roman Catholic and Protestant that all formal distinction will
soon be forgotten of no ill consequence.460

459 The report entitled, “An Account of the State of Canada From its Conquest to the Present
Time” can be found in CNA MG23 A4, vol. 16, 151-170. Dated May 1766.

460 CNA MG23 A4, vol. 16, 169.
The decision to recall Murray showed recognition that something had gone wrong, but
the bulk of the evidence suggested to officials in London that their lack of clarity drove
the conflict between the various factions. Stability depended not just on the actions of the
colonists, but perhaps more on the clarity of vision offered by the metropole. Ideally,
given a well-ordered system that allowed participation to the crown’s subjects without
distinction, factional disputes would fade into the past and the colony would benefit the
imperial system in a multitude of ways.

In May 1767 Shelburne sent a report to the Board of Trade on the question of an
assembly for the colony and other outstanding issues. The report was not Shelburne’s
work, but rather that of his secretary Lauchlin MacCleane.\footnote{461} The report proved broadly
supportive of an assembly for the colony and allowing Catholics into places of public
office, one of the few documents mentioned in the preamble is Walker’s \textit{Present
Considerations}. Using Minorca and Montserrat as precedents MacCleane suggested that
royal prerogative alone was enough to grant Catholics rights not afforded to them in
England. Critically, he suggested the actions of the Irish parliament proved that anti-
Catholic barriers were local matters and not extended by the act of British conquest or
dominion. “On this principle Ireland passed particular acts of their own Parliament for
the same purpose. If this then was the case in respect of Ireland, these statutes cannot be
thought to extend to such countries as might fall to Great Britain by future conquest.”\footnote{462}
MacCleane used this constitutional interpretation to set up a model for an assembly of
both Catholics and Protestants.

\footnote{461}See Lawson, \textit{Imperial Challenge}, 96-97. The full report can be found, CNA MG23 A4, vol. 16, p 137-142.

\footnote{462}CNA MG23 A4, vol. 16, 140.
According to MacCleane, the Test need not apply to the Catholics in Quebec, only the oaths of Allegiance, Supremacy, and Abjuration which he believed, “none of them will refuse to take, nor indeed should any person hold a place of trust under government who would refuse them.”\textsuperscript{463} A quarter of the assembly would be assigned to places for Catholics and he saw no ill effects from such a high number. He suggested that these principles applied to the other newly conquered territories in the West Indies, where French Catholics in Grenada would be allowed access to public office less than a year later. Though he did not see this as a permanent settlement for the assembly, Catholic participation would only last “till such time at least as a sufficient number of new inhabitants to fill properly the several offices of government, shall reside in these provinces or till the French themselves shall educate their children in the protestant faith.”\textsuperscript{464} Catholics might have a place at the table, but it was still one based on a future of assimilation into the established church.

The reasoning behind making such a large concession seemed obvious to MacCleane, “for it would seem not only equitable, but much for the public utility, to allow the new acquired subjects some share in the administration. Without this privilege they will dwindle in number every day, and we shall lose by emigration the richest and most valuable settlers of that persuasion.”\textsuperscript{465} While the assimilationist thrust of many of the policy recommendations would subside in the coming years, the rising dependence on French Canadians in running the colony would only continue to grow. This shifting of

\textsuperscript{463} CNA MG23 A4, vol. 16, 141. MacCleane also appended a note to the report clarifying his position on why the French Canadians were free from the Test and other limiting oaths. See CNA MG23 A4, vol. 16, 145.

\textsuperscript{464} CNA MG23 A4, vol. 16, 141.

\textsuperscript{465} CNA MG23 A4, vol. 16, 141-142.
approach as it related to Catholics and public life proved critical in finding a solution for Quebec, but also for the British imperial practice. Incorporating local populations into the running of the empire, often with some recourse to their older legal traditions would be a critical imperial strategy moving forward.

In Grenada, where debates over Catholic participation in the local assembly raged in the late 1760s, supporters of toleration and legal flexibility similarly placed the exclusions of Catholic from public life in a negative light. The pamphlet *Audi Alteram Partem* published in London in 1770 attacked the supposed benefits of the penal laws. In making their point, the authors proposed a question with only one sensible answer; “So say, my Lordship, had we submitted to the public consideration, whether the new subjects are most likely to be faithful and true to their allegiance, if treated by the old subjects as brethren embarked in the same cause; or as slaves to be kept only in subjection by the scourge of Penal Laws.” The author continued to mock the notion that harmony could be restored by removing the political and legal privileges of Catholic subjects. For “the French Roman Catholick subjects, are about two thirds of the inhabitants of the island; take away their right of voting at elections, render them incapable of holding the least share of legislation or executive offices, and you will secure perfect harmony to the island!” As a policy, alienating the largest share of the landowners and largest number of inhabitants clearly appeared illogical.

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466 *Audi Alteram Partem*, 40.

467 *Audi Alteram Partem*, 44.

This rhetoric was not unique to Grenada or Quebec in the 1760s and 1770s. The discourse surrounding the negative influence of confessional divisions, the resulting instability, and the alienation of Catholics mirrors the case for the removal of penal laws in Ireland. John Curry, a prominent member of the Irish Catholic community active in founding the Catholic Committee, wrote a number of pamphlets in favor of Catholic rights throughout the latter half of the eighteenth century. In the aftermath of the pamphlets dealing with the crisis in Grenada Curry’s *Observations on the Popery Laws*, published in Dublin in 1771 and later in London, provides a strong discursive link between the Catholic question in Ireland and the ceded territories in Canada and the Caribbean. This connection is not merely coincidental, rather it signals the ways in which the questions asked about Catholics in the Americas merged with discussions about Catholics in Ireland.

Like the anonymous authors of the Grenadian pamphlets, Curry argued that the real benefits of the British constitution would only be fully realized when shared by all subjects, for “our real strength must arise from the soundness of our constitution, and from the circulation of its benefits. Should the principle of those benefits be forbid to the greater part of our laboring people, to the landholder, to the citizen, and to the yeoman; the hand of industry is actually and effectively cramped.”\(^{469}\) This restriction of industry threatened not only the productivity of the island itself, but also the stability of the civic government. Those excluded from participation and the rights of the constitution,

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\(^{469}\) *Observations on the Popery Laws*, 8.
become lazy and disengaged. The depressed situation of Ireland and “the great weakness incurred by the indiscriminate operation of our penal laws, call aloud for alternatives.”

For Curry, Ireland was an island perfectly suited to economic and civic health because of its natural bounty. Yet, Ireland was an island crippled by fallow fields. Were a traveler to compare the natural bounty of the island to the poverty and lack of cultivated lands, “he would have no hesitation in pronouncing, that in a country so highly favoured by nature, the inhabitants could not be miserable, without some defect in our laws.”

The two major drains on Ireland were absentee landlords, who turned land into pasturage at the expense of the people and the productivity of Ireland, and the “wasting and wasted papists” who were not allowed to participate or add to the economic and civic health of the island. The first defect was not quickly remedied and would remain major challenge to the island. However for Curry, the penal laws could be quickly and easily removed, allowing the nation to tap all levels of Catholic society currently dissuaded from adding to the productivity of the island. At present, the Catholic subjects, were “cut off from the principal benefits of its free constitution, and they necessarily become a disease within its bowels, acting against it, from an incapacity to act for it.”

MacCleane, consciously or not, was drawing on a critical and growing rhetorical and pragmatic case against the exclusion of non-Britons from imperial governance.

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471 Observations on the Popery Laws, 12.

Lawson commented upon the change in MacCleane’s work as a momentous step in the place of Catholics within public life in Hanoverian Britain. Yet, these debates and policy statements had wider implications beyond the Catholic question in Britain and Ireland. While it clearly held repercussions for the place of Catholics in Britain and Ireland going forward, in a broader imperial view it created space for cultural heterogeneity within the Empire. By accepting that Catholics, long a threat to political order and liberty, could responsibly and even in preference to British Protestants, exercise power in public office, figures like Shelburne, MacCleane, and Carleton raised the possibility that other non-Britons could be entrusted with civil power in other settings. P.J. Marshall argues that incorporating the Catholics in Quebec and the other ceded territories “helped to breakdown inhibitions about bringing within an imperial framework Indians, people who were thought to be completely alien to all previous traditions of British rule.” Through fuller engagement with this process the reasoning used by these officials illuminates why such inhibitions fell to the wayside and lost their rhetorical power. This proved, however, to be far from the beginnings of a whiggish march towards greater toleration; the policies developed in Quebec faced strong resistance well into the coming century.

III: The Case Against Catholic Toleration and Cultural Continuity

While toleration and inclusion gained momentum, Maseres found the religious aspects of the push for toleration counterproductive and even possibly dangerous. The

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473 See Lawson, *Imperial Challenge*, 97-98.

new Attorney General maintained frequent correspondence with figures in London during and after his tenure in the colony. Two letters written to Fowler Walker during 1767 conveyed his horror at the continued place of the Catholic Church within French Canadian society.\textsuperscript{475} Having been in the colony for almost a year, he concluded that Briand’s appointment and subsequent actions to take on the title and power of a bishop undercut any possibility of conversion within the Catholic population. Briand failed to abide by the promise to take only the title of superintendent, and instead “does in fact wear his purple robes and Golden cross in public, and is called Monseigneur L’Eveque by all the Canadians both priests and Laymen, and walked under a canopy supported by four of the principal inhabitants of this town with the host in a grand procession on Corpus Christi day, one of the greatest holydays. I saw him.”\textsuperscript{476} In tattling to Walker, Maseres suggested that Briand proved blameless in his actions. Fault fell on Cramahé, and one could read between the lines Carleton, for allowing the bishop to act in such away without any rebuke from the British administration. At a deeper level though, his frustration emanated from the policy of conciliation and toleration towards Catholicism in any form.

Two statements from his first letter illustrate his thinking on the proper policy with regard to Catholicism. The first reflects on intelligence gathered from a well-placed Catholic within French Canadian society. According to Maseres’ source, the decision to allow a bishop seemed odd to even the Canadians. If London had sent Quebec several protestant French ministers instead of a Catholic bishop, many of the new subjects would

\textsuperscript{475} The first letter was dated 17 July 1767 and the second, 19 November 1767, see, W. Stewart Wallace, ed., \textit{The Maseres Letters} (Toronto: University of Toronto, 1919), 47-64.

\textsuperscript{476} \textit{Maseres Letters}, 54.
now be Protestants. The continuation of Catholicism maintained “an important difference in the sentiments, and consequently in the affections of the old and new subjects of the province.” Maseres believed “that if, during the seven years that we have possessed this country, vigorous measures had been taken to patronize and introduce the protestant religion, though without the least persecution of the Popish, half the country would have already turned protestants.” Assimilation depended on policies being enacted and enforced by the British authorities. It was not enough to hope or expect Catholics to become Protestant through osmosis.

Instead the British undermined their own aims through poor policies and enforcement. The British ultimately pursued a course of action the reverse of what we should have done with respect to the Canadians in taking away their laws, which did us no harm and the continuance of which was necessary to their happiness, and we have left their religion in all its splendor, though the principles of it have a natural tendency to keep up a perpetual disaffection to our government. ‘Tis difficult to be well-affected to a set of governours who they look upon as enemies of God, deserving of, and destined to, eternal damnation.

Eternally optimistic about the desire of the French Canadians to shed themselves of their Catholic traditions, Maseres did not seek to fully remove Canadian hierarchies or laws. At this stage he generally supported keeping power in the hands of the seigneurs and allowing for French law to be the law for the whole colony. As he communicated in his second letter, the laws themselves were

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477 Maseres Letters, 54.
478 Maseres Letters, 54.
479 Maseres Letters, 54.
“innocent, useful, compendious laws, which were well understood by the people and suited to their wants and situation.” Religion again featured as the only barrier to harmony between conciliation and imperial stability, for currently they remained “in full possession of this dangerous, [illegible], and treacherous religion.”

As the laws disqualifying Catholics from public office were not based on sectarian bigotry or shortsighted factional interests, Maseres supported the actions of the Grand Jury in the much-maligned presentments from 1764. In defending the actions of the Grand Jury and the contents of the presentments against Catholic participation Maseres explained to Walker that the relevant articles,

only tended to an execution of the disqualifying laws against Papists (which are looked upon in general to be laws of self-defence, necessary to the safety of the government even in England itself where the number of papists is but small, and therefore must be much more so in this new conquered province, where their number is very great).

Maseres’ anti-Catholic sentiment was far from unique in contemporary Britain. His defense of barriers to Catholic participation mirrored those used by opponents of the Quebec Act in the pamphlet debate that erupted in late 1774 and 1775. The wider

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480 Maseres went so far as to suggest even keeping the criminal code, as long as torture and certain forms of capital punishment were removed. See letter to Charles Yorke from 28 May 1768, Maseres Letters, 95-96.

481 Maseres Letters, 58.

482 Maseres Letters, 58.

483 He denied that the French Canadians were kept in the dark about the meaning and content of the document’s various articles. Maseres asserted that great pains were taken to translate and explain each of the presentments to the French Jurors, Maseres Letters, 81.

reaction to the Quebec Act and later events like the Gordon Riots offer strong evidence of the still volatile strains of anti-Catholicism alive and well within British-Atlantic society.\textsuperscript{485} For all the talk within official circles supporting Catholic toleration in Quebec, the glacial pace of action and ministerial silence on these policies signals their continued controversial nature and doubtful prospects in Parliament, public, and the court.

Two letters in 1768 to Charles Yorke and Richard Sutton, the under-secretary of state to Shelburne, illustrate Maseres’ broader plans for the colony. He wrote to Yorke in May 1768 to express his sentiments. He expressed his respect for the former Attorney General, proclaiming, “I have been apt to entertain a Jacobite idea and consider you as Attorney general \textit{de jure}.”\textsuperscript{486} Far from partisan support of the merchant cause, Maseres explained to Yorke the inflated rhetoric over the continuation of the French duties on wine and Brandy. While admitting that he supported the merchant’s case, their arguments were based on hollow rhetoric rather than legal principle. For “they made speeches, and wretched ones, about the liberty of the subject and the prerogative of the crown, the petition of rights, the bill of rights, and magna charta.”\textsuperscript{487} For Maseres, the case came down to the question of royal prerogative and parliamentary supremacy. As detailed in his earlier pamphlet, he supported Parliament’s supremacy in Quebec. As someone largely sympathetic to their cause, Maseres and his rejection of the merchant position illustrates the wider failure of the rhetoric of the southern colonies to translate


\textsuperscript{486} \textit{Maseres Letters}, 88, letter dated 27 May 1768.

\textsuperscript{487} \textit{Maseres Letters}, 90.
effectively to the Canadian context. Not only did French Canada lack the history of rights and privileges at the core of the constitutional contest between London and its American colonies, but its population, outside of a few Britons, found little connection with the growing colonial unity.\footnote{On the constitutional question and the American Revolution see, Jack Greene, \textit{The Constitutional Origins of the American Revolution} (New York: Cambridge University Press, 2011); on the growing unity within the colonies during the crisis see, T.H. Breen, \textit{The Marketplace of Revolution} (New York: Oxford University Press, 2004).}

Taxation, though, proved only a minor point within the larger debate over Quebec. The importance of a local assembly related to concerns of a more pressing nature in a colony with a sizeable population of non-Britons. Good governance and a stable legal and political system appeared to Maseres, just as it did to his opponents, as a critical means of building loyalty to the British state. In writing to Yorke he made clear that, like Carleton, he considered maintaining the seigneurs’ place at the head of the social order the foundation of any solution going forward.\footnote{Maseres Letters, 92. He sent a letter to Fowler Walker laying out the same plan. \textit{See Maseres Letters}, 99-101. Letter dated 11 August 1768.} In addition to maintaining the social order of society, French law should continue to be applied within the colony. In speaking to the legal chaos resulting from Murray’s ordinance and the Proclamation of 1763 Maseres told Yorke that “the shortest and easiest way [to solve the question of courts and laws] (I will not presume to say the best, thought I incline to think it so) would be to declare that the French laws never had been legally abolished, and therefore still subsist.”\footnote{Maseres Letters, 95-95.} For Maseres this included maintaining the criminal law with a few minor

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changes relative to torture and capital punishment. Even those opposed to toleration of the Catholic faith recognized the need for social and legal continuity.491

Supporting the same principles, Carleton commissioned a legal code specific to the colony based on the law in Quebec as it stood prior to conquest. The resulting text, published in London in 1772 as An Abstract of the Several Royal Edicts and Declarations, and Provincial Regulations and Ordinances, was the work of Francois Joseph Cugnet. Cugnet, a local Canadian jurist married to woman from a powerful seigneurial family, served as the secretary to the Governor and the Council for the French language. While Maseres found the work “very ably performed” it did not solve the problem of the vast gulf between British and French legal traditions and especially the particular legal terminology. As he relayed to Sutton, “I remember we were above four hours understanding the five first pages of it, though we had Mr. Cugnet at our elbow all the time to explain it to us.”492 The code suffered from the same problems plaguing the implementation of the British law; the two traditions were largely unintelligible even to the best legal minds in the colony.

The wider reaction among the French community foreshadowed the divides among Canadian elites that emerged in the years immediately following the Quebec Act. In conveying the differing reactions among the various parties who read the code, including the development of a rival version granting the

491 In writing to Richard Sutton, however, Maseres made clear the difficulty of devising a legal code for the colony, even assuming that French law would remain in place. The first and most obvious barrier was finding jurists who were familiar with both French legal codes and the particular practices and laws enacted specifically within the colony under French rule. Even working off of the legal commentaries of Claude de Ferrière, a French Coke or Blackstone, meant being familiar with three large volumes of legal commentary, in addition to all the local edicts and practices developed over the colony’s existence. Maseres Letters, 102. Letter dated 14 August 1768.

492 Maseres Letters, 103
Catholic Church and the priests greater legal privilege, Maseres concluded by saying “in short disputes arose pretty high between them about the merit of these two Codes; and a third set of gentlemen said that neither of them, nor any other code whatsoever, could be of any use.”

Their reaction perhaps should have been a signal to Carleton and others that the Canadians were not a unified block and policies meant to appease one group, even among the seigneurs, did not mean that it would satisfy everyone.

Maseres recognized that the use of a limited code book to replace the Coutume de Paris would mean leaving out a great deal of both traditional French law and local practices developed over the course of the colony’s history. As he argued, “there is a strong mutual connection between the different parts of this system of laws that makes it very difficult to change or abrogate one part of it, under a notion of it’s being useless, without weakening and rendering ineffectual other parts of it which the compilers may esteem useful.” Despite this critical flaw Maseres argued that such a code provided far more benefits than drawbacks.

Foremost in his mind, the code would create a clear set of laws for the colony. The code had to exist independent of any outside French or British legal texts, and as a self-contained set of statutes there could be no doubt as to the principles that ruled contracts, rights attached to property and the duties owed by each level of society to the other. Judges in the colony, especially of British extraction, “would have a short and plain rule to go by which they would easily be

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493 *Maseres Letters*, 104-105

494 *Maseres Letters*, 105-106.
able to make themselves masters of”.495 A properly formulated legal code would ensure that British jurists could not be fooled by French lawyers seeking to confuse them with French legal terms or practices. The strategy focused on removing the confusion that had crippled the colony for the past five years.

In addition, a new code book, even based on French law, would remove “from the minds of the people all idea of the excellency of the French laws and government.”496 By removing the legal code’s reliance on the French crown, legal institutions, and traditions, the code would ensure another clean break with France. As with the religious question, the more authority rested on localized institutions under the auspices of the British crown the greater the development of loyalty. If the French code remained in its entirety, just as in the religious case, the Canadians would continually look to French legal institutions for adjudication on issues of law, for they stood at the head of the legal system under the old regime. Rather than continued reverence for the French crown during legal disputes, French Canadians would now “think of nothing upon these occasions but the King of England and his Code, and his laws and customs and giving them the express sanction of his royal authority.”497 The law code proved to be more than simply the rules by which civil actions would be regulated; it was also a critical part of the project of integration and allegiance. The law and the structures supporting it acted as a means to bind the people to the state. While he

497 Maseres Letters, 110.
enumerated the reasons such a code provided the best path forward, Maseres also offered other possible methods of solving the legal settlement in the colony.

Maseres presented four possible solutions, including the new self-contained code, to the legal crisis in the colony, but suggested that he would vigorously support whatever option the ministers chose. While I will not treat the others in detail, Maseres clearly favored use of a self-contained code; by considering other possible solutions Maseres offered important insights into the broader legal debate. In discussing the full restoration of all French law to the colony he suggested that, “this might be done by declaring that the French law never has been yet legally abolished in this province, but is in truth still in force, which for more than one reason I take really to be the case.” Like Carleton, Maseres conceded that despite British claims and attempts to impose new legal structures, pre-conquest practices largely remained. With such a large demographic imbalance the British could not force changes in behavior through a still embryonic legal system under British rule. Bending the form of law and governance to mesh with the facts on the ground was not just recognition of reality. Administrators sought legitimacy for their authority with the local population and integrating local practices went a long way towards achieving this aim.

In Grenada a policy allowing Catholics into the council and assembly by royal prerogative took effect in 1768. Its enactment opened a minor imperial crisis, bringing

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498 See Maseres Letters, 111-118, for his full treatment of these alternatives.

499 Maseres Letters, 111.
the island’s political institutions to a standstill for years and generating an exchange of pamphlets in London during 1769 and 1770. The reaction to this decision likely meant the end of plans for Quebec’s assembly, especially when added to the seigneurs’ resistance. It also provides a glimpse into the still significant resistance to concessions to Catholics within the British public. One of the first sustained public attacks on the growing policy of conciliation in Quebec and Grenada appeared in *The Political Register* in May 1769. The article “Strictures on the Conduct of two successive Administrations with Respect to the civil and religious Establishments in Canada and the Grenadines” linked the two new colonies, Ireland, and Britain into a constitutionally interdependent whole.

The policies that gained particular notice, namely Briand’s appointment and activity as bishop, Catholics in public office in Grenada, and the continuation of the seminary at Quebec set ominous precedents and offered dangerous glimpses of the nature of the crown and its ministers. According to the author

very little, or no attention, has been paid to the greatest national objects; and the secret enemies of our happy constitution in church and state, have taken the advantage of the disposition of the times, to undermine and subvert the grand principles of the Revolution, on which is founded all the civil and religious freedom of this country. A fairer opportunity could not have presented itself, for the friends of popery to support that cause, and to promote it by degrees in the distant regions of the British Empire.

The author aimed to correct this oversight and make plain the danger lurking in far reaches of the empire.

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500 For a detailed treatment see, Willis, “The Standing of New Subjects”.


502 *Political Register*, 257.
The text made many of the same points against conciliatory actions as those who supported the full imposition of the penal laws in the new territories. Accordingly, the only way to effectively assimilate the new subjects was through removing their Catholic faith and making adherence to British cultural and religious norms a precondition for participation in public life. The author based much of his case on examples drawn from state formation in Britain and Ireland. Like Catholics in Britain and Ireland, “should any unhappy occasion arise similar to that of the 1745, I think it cannot be doubted that such Roman Catholic settlements would be the abettors of any popish pretender to the throne of these realms.”

Shockingly for the author, the house of Hannover that came to the throne thanks to the events of 1688 and the Act of Settlement seemed to undermine the very purpose of its existence; protecting the nation from Catholic plots and disorder.

Beyond supporting potential Catholic or Jacobite plots, the actions in Quebec and Grenada undermined the policies towards Catholics in Ireland;

what will the people of Ireland of the Romish persuasion say, when they shall find that his majesty’s new adopted subjects in Canada and the West Indies enjoy every right and privilege of free-born Protestant subjects; while they, as a reward for many years loyalty and dutiful obedience to government, are not allowed so much as to carry arms for their defence or recreation, and are totally incapacitated for all employments civil or military? What must they think of the subordination in which their priests are held, and of the limited toleration they enjoy for the exercise of their religion, when they shall hear, that in a province lately added to the British dominions a full enjoyment of their religion with all its rites and ceremonies and religious establishments is allowed!

503 Political Register, 259.
504 Political Register, 259.
505 Political Register, 259-260.
The author made clear that he was not suggesting that justice required extending those rights to Ireland; quite simply no Catholic should enjoy them. He did, however, intend to show that “having made such grants in any part of his majesty’s dominions, is a violation of our happy constitution, and manifestly tends to its subversion. Consequently that they out to be instantly repealed, or the people will have a just and well-founded complaint of the highest nature against the ministry.” In a refrain that would become a critical part of the public attack on the final bill in 1774, and acted as the heart of the campaign against the ministry’s actions in Grenada, the author suggested that changes to policy set a precedent which held implications for the whole of the empire, including the home islands. What happened in Quebec did not operate in a vacuum separate from the rest of the empire or the constitutional principles underpinning the British state.

In the case of Quebec, the *Strictures* focused its attack on the decision to allow Briand to practice all the rights of a bishop and for the Catholic faith to enjoy open and full practice in the colony. The bulk of the article, however, focused on the case of Grenada and allowing Catholics into public office. In discussing the opposition to the decision, the author outlined many of the reasons why the plan to call an assembly in Quebec with Catholic members never gained traction. The author argued that the crown or its ministers did not have the right to make such a significant alteration of the constitution as allowing Catholics to sit in office and not take the Test. Getting Parliament to pass a bill allowing Catholics in the legislature would appear to be nearly impossible.

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506 Political Register, 260.

507 This was a major point of contention in the larger reaction against the situation in Grenada, see Willis, “The Standing of New Subjects”, 5-8.
Like Maseres, the author understood these barriers as principles of self-defense and therefore necessary for the stability of the whole of the Hanoverian state. The author pointed out that “the principles of popery never vary, and that whenever there is an opportunity either in a civil or religious capacity, to exercise the spirit of persecution, it will break forth into action. A very strong motive this, that the professors of the Romish superstition, should never be entrusted with any authority under a Protestant government.”

The inability of Catholics to act in harmony with their fellow subjects meant that they would never be a force for stable and beneficial governance. This theme of the persecutorial and dangerous nature of Catholics would continue to fuel public opposition to any plan which gave concessions to Catholics in the public sphere.

The author examined a different aspect of conquest theory, one previously unaddressed in the source material. He did not reject the idea of limited toleration based on the Treaty of Paris nor of the right to continue some laws; instead he questioned the argument that the law of nations barred the exclusion of a newly conquered people from public office based on religion. The author answered “that the law of nations which he refers to, ever did make a political distinction between conquerors and conquered, and that the history of all nations proves, that the conquered never were admitted to legislative offices, or otherwise put upon an equal footing with the conquerors.” For the author such a principle did not even take account of the various restrictions put upon Catholics within the British constitution. The nature of conquest and rights did not

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508 Political Register, 262.

509 The pamphlet referenced is, The Grenada Planter (London, 1770).

510 Political Register, 264.
pertain only to questions of law, but also to the power and participation allowed to the conquered population. As Maseres showed, whatever one thought of the right to impose new laws, the right to hold public office offered a completely different case. This held serious implications for the idea of the power of seigneurs or any other Catholic within Quebec. For Carleton’s plan to work, a great deal of civic power needed to pass through French Canadian hands.

The relatively generous treatment of the Catholics in relation to the current contests between London and the older American colonies caught the author’s attention. The Catholics in Grenada used public protest and other means to secure seats in the council and assembly. Accordingly, their actions and London’s response appeared strangely different from that of the Americans,

what must the people of England think of a ministry, who countenance the seditious behavior of conquered Roman Catholic subjects, in one part of his majesty’s dominions, who reward them by granting all they desire, instead of punishing them for publishing libels against the governor and council, and giving his majesty’s immediate representatives the infamous title of junto – while, in other parts of his Majesty’s dominions, his natural-born, loyal, Protestant subjects have been treated with the utmost rigour by the same ministry, for asserting and maintaining those very inherent rights, belonging to every British subject. 511

This action brought criticism not just of the ministers, but of the King himself. George III, it was suggested, managed to grant rights not even James II would have dared to offer. Only one reading proved possible: the crown and the ministry sought to undermine the constitutional settlement of 1688 and impose their arbitrary will.

The new acquisitions proved not a benefit to the empire, but the possible source of its demise. The ‘Protestant interest’ lost out in the new territories and “nor shall we

511 Political Register, 270.
hesitate to pronounce, that if this be one of the blessed fruits of the peace, we had much better have been without it. An acquisition made and preserved, on terms which violate the laws and constitution of Great Britain, may induce us justly to observe, ‘that a few more such conquests would be the ruin of this nation’.

The author ended his piece with a long call to arms for those who might not have been aware of the actions of the last two ministries in regards to the new colonies.

After recalling the Glorious Revolution and the removal of a popish king, the author explained what was at stake:

This [the Glorious Revolution] was done to avoid popery and arbitrary power its constant attendant, and that liberty and selicity might run in their proper channel, being maintained and supported by the principles of the protestant religion. If this barrier is once broken down, by the admission of popery in to the legislative assemblies of the people in the most distant regions of the British empire, the principles of the revolution are opposed, the protestant interest will be daily lessened, freedom will lose its force, and the next generation may fall back into that state of civil and religious slavery, which our ancestors endeavoured to preserve them from, at the expense of their live and fortunes. The first encroachments therefore of popery on our constitution, merit the timely attention of the whole nation.

For all the progress made over the course of Carleton and Murray’s tenures, there remained a number of obstacles to the passage of a comprehensive policy founded upon conciliation and continuity. If the Strictures tell us anything it is that the case for such an approach did not easily, if ever, find widespread approval. The American Patriot cause,

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512 Political Register, 272.

513 The Rockingham ministry came under fire for its role in allowing Catholics in Quebec to openly practice and for installing a bishop, see Political Register, 260. Lawson points out the relative lack of opposition from Rockinghamites in the passage of the final bill suggesting that their own actions gave them little rhetorical room. He suggested they wanted to keep their actions from public attention. The author’s attack shows that they well understood their vulnerability on the issue. See Lawson, Imperial Challenge, 128-130.

514 Political Register, 272-273.
the Protestant interest, and anti-Papist sentiment still proved powerful rhetorical foes in
the public realm.

IV: Carleton and Cultural Continuity

In early 1767 Carleton’s position on conciliation within Quebec still remained
unclear to both the British and French populations. Perhaps prematurely, merchants
representing both the new and old subjects sought to have Carleton installed as the
governor soon after his arrival. While Carleton’s management style differed significantly
from Murray’s, the bulk of his policies were a continuation of those put in place under
Murray. He was not going to support any single faction, but instead sought to establish
policies based on his own ideals and priorities.515 For their part, the seigneurs of the
colony wrote a petition to the king supporting Murray’s return, praising the conciliatory
gestures offered under his leadership, and suggesting further reforms to more fully bind
them in their loyalty to the British state.516 For the seigneurs it clearly appeared better to
deal with a known quantity than a new governor whose attitude was still a mystery.
Additionally, should Murray return to his post they would likely find him conducive to
their input as loyal supporters of his authority. The seigneurs claimed to speak for
themselves and their tenants, a social authority that they likely never truly held. This
posturing as the aristocracy of the colony proved beneficial as the seigneurial class soon

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515 See for example letter from Hey to Walker dated 16 February 1767, BL Add. Mss. 53915, f. 121. Carleton refused to allow any group to petition for his instillation as governor as the letter makes clear. See Lawson, *The Imperial Challenge*, 93-94.

516 Shortt and Doughty, 272-273. Following quotations taken from there.
became the focus of Carleton’s approach for structuring Canadian society under British rule.\textsuperscript{517}

The seigneurs opened by thanking the crown for two conciliatory actions that fostered stronger sentiments of loyalty. The protections offered to their faith figured prominently. The signatories offered that “the signal favour of possessing a bishop have roused in the hearts of all the new subjects the liveliest sentiments of gratitude, of love, and of fidelity toward Your Majesty.” While the crown and many of the ministers in London accepted the creation of a bishop for the colony out of an inability to control Briand’s conduct, the seigneurs reinforced the importance that religion, and a fully functioning Catholic Church, held in the colony. A limited Catholic Church, exemplified in the early reports on the ecclesiastical settlement, would not garner support for British rule. Further conciliatory acts gained similar praise. The seigneurs expressed gratitude for a decision also popular with the British merchants, the repeal of the Stamp Act. These two actions offered promising signs for the future of the relationship between the crown and its new subjects.

The seigneurs, like the British merchants, must have assumed that Carleton’s appointment and Murray’s removal represented a shift in official policy away from conciliation and towards actions more in line with the Proclamation of 1763. After ingratiating themselves with praise and thanks, they began to outline the real purpose of their petition. The first item focused on their desire to see Murray returned to his position as governor. The signatories praised Murray for his “clear-sightedness, equity and wisdom continually afford him efficacious means for maintaining the people in

\textsuperscript{517} See Neatby, \textit{Quebec: The Revolutionary Age}, 102-106.
tranquility and obedience.” Murray’s return would not happen, but this was perhaps a case of the devil you know is better than the one you don’t. In this the seigneurs were mistaken, for in short order they would realize that Carleton sought to elevate their importance in Canadian society and also protect French culture from assimilationist policies.

They asked the crown to extend the good will it had already shown by requesting access to public office.\(^{518}\) They requested that all the subjects in the province without any distinction of religion may be admitted to any office, the only basis of selection being that of capacity and personal merit. To be excluded by the state from participating in it, is not to be a member of the state. If they feel equally marked, for which they can only offer their hearts full of love and gratitude. Their zeal, their affection and their devotion shall be the signal proofs of it for all time to come.

They then offered their ability to control the rest of society as “their precepts and their examples shall perpetually tend to maintain their tenants in the sentiments of fidelity and submission which they owe you, they will offer without ceasing their vows and their prayers for the glory and preservation of your majesty and your august family.” No need to fear Catholic Jacobites here. Were it not for their stated claim to have Murray returned to the colony, the reader might be tempted to suggest Carleton wrote the petition himself. The claims of their influence over the habitants and the reasoning supporting their case for further integration into public life mirror the case Carleton would make in favor of his policy of cultural continuity.

\(^{518}\) Their first major request centered on putting an end to the process of mapping and registering all the seigniorial claims. They argued that the project would be cost prohibitive and a drain on the colony’s resources, but it likely threatened to lessen their influence and the amount of land under their control. The registration and delineation of the seigneurial rights produced by George Allsop, one of the earliest British merchants to arrive in the colony and the deputy clerk of the council, can be found in Kew, see PRO CO 47/109.
Cleared of all charges against him in April 1767 it was clear Murray had no desire to return to the colony. While Murray officially remained the governor until April the following year, Carleton became the presumptive governor-to-be and the focus firmly shifted towards his vision for the colony. Not only did he now have the support of the bulk of the interested parties, but his leadership seemed to have calmed the situation enough to give London breathing room to study and reset colonial policy. Murray’s acquittal also signaled that the merchant’s case held limited influence in London and, despite Protestant bluster and the rhetoric of English liberty, officials tended to side with their counterparts in the empire. In the context of the American crisis it is perhaps unsurprising that London would be unmoved by the cause of the merchants, especially as they often resorted to the language of the Patriot cause unleashing turmoil to the south.

Now the presumptive replacement for Murray, Carleton pressed his cause and built steady support for his approach to cultural continuity and imperial governance.

In November 1767 Carleton wrote to Shelburne to make the case for a strong reliance on the seigneurs to maintain stability and the loyalty of the French population in Quebec. The letter came in response to a communication from Shelburne informing Carleton that Quebec and a final settlement for the colony stood “under the most serious and deliberate consideration of his majesty’s servants and principally of his Majesty’s Privy Council.” Carleton wanted to present Shelburne the true standing of the colony in order to make deliberations as productive as possible, especially since the colony presented “objects at so great a distance, and in themselves so different from what is to be

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found in any of His [Majesty’s] other dominions.”  The population of Canada presented the Privy Council, the crown, and, ultimately, Parliament with unprecedented legal, religious, and political challenges. They could draw on a number of previous models to deal with each of these in part, but there was no single precedent for Canada. The discussion in the next few years presents a critical batch of evidence that, in Quebec, the British state first realized new strategies for an imperial possession where Britons would always be the minority within a dominant non-British culture.

For Carleton, defense of the colony, especially from a French invasion, proved a central concern. Having realized the folly of dividing military and civil authority in the colony, London placed power over both in Carleton’s hands. With a huge territory, few British soldiers, and a lack of basic defenses surrounding the key cities, the British would have to depend on the manpower provided by the new subjects, or at least their loyalty, in repulsing any French invasion. In this Carleton echoed many of his contemporaries who sought Catholic relief as a means to better garrison the British Empire at a time of increasing need for soldiers on the continent, in North American, and further afield.  As Carleton pointed out, there were only 1600 British soldiers in the colony, while there were “about eighteen thousand men, well able to carry arms; of which number, above one half have already served, with as much valor, with more zeal, and more military knowledge for America, than the regular troops of France, that were joined with them.”

520 Shortt and Doughty, 282.


522 Shortt and Doughty, 282.
The new subjects provided a skilled and ready body of men for the defense of the colony. This undoubtedly played into Carleton’s desire to ensure Canadian happiness and loyalty.

The martial qualities of the Canadians, however, did not prove to be his only concern. Carleton sought to engender a stable society even in peacetime. The military and civic stability of the colony depended on the same population within Canadian society. According to the governor, “the common people are greatly to be influenced by their seigneurs.” He therefore sent to London a detail of the number of these heads of households and their lands and rights. While it seemed that one-hundred seigneurs returned to France after the conquest, there still remained seventy of this native elite.

Yet,

not one of them in the King’s service, nor one who, from any motive whatever, is induced to support His government and dominion; Gentlemen, who have lost their employments, at least, by becoming His Subjects, and as they are not bound by any offices of trust or profit, we should only deceive ourselves by supposing, they would be active in the Defense of a people, that has deprived them of their Honors, Privileges, Profits and Laws, and in their stead, have introduced much expense, chicanery, and confusion, with a deluge of new laws unknown and unpublished.\textsuperscript{523}

In the current situation, Canadian neutrality in the face of an invasion, out of principles of passive obedience, offered the best possible outcome for the crown. This hollow bond of loyalty did not bode well for Britain’s ability to maintain its hold on the colony. Carleton formally outlined an essential strategy in his plan for binding the Canadians to the British state. The seigneurs’ status justified an active role in society and laws which would protect their interests. Yet the new governor’s acts of conciliation were not aimed at

\textsuperscript{523} Shortt and Doughty, 283.
assimilation; they sought loyalty and stability from a colonial population that would remain French in its cultural and social institutions.

Carleton believed it foolish to assume that the colony would slowly become culturally or demographically British. He insisted to Shelburne that such a development would prove impossible. In looking at a demographic balance strongly favoring the Canadians, “it may not be amiss to observe, that there is not the least probability, this present superiority should ever diminish, on the contrary ‘tis more than probable it will increase and strengthen daily.” Carleton expected little immigration from Britain or its colonies to seemingly unremitting winters to work relatively unproductive land, especially when compared to what was available further south in the other American colonies. He also predicted that the British merchants would move on in favor of better opportunities elsewhere, a trend he told Shelburne was already in motion. However, while this severe climate, and the poverty of the country discourages all but the [French] natives, its healthfulness is such, that these multiply daily, so that, barring catastrophe shocking to think of, this country must, to the end of time, be people by the Canadian race, who already have taken such firm root, and got to so great a height, that any new stock transplanted will be totally hid, and imperceptible amongst them, except in the towns of Quebec and Montreal.

The question was no longer how to bring the new subjects into line with British norms within a colony that would soon become primarily British, but how to rule over a colony that would remain culturally and legally distinct. Administrators had to develop new

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524 Shortt and Doughty, 284.

525 Neatby pointed out that Carleton’s own receipts for trade and tax show that no such decline took place and in fact it might have actually been on the increase. See Neatby, Quebec: The Revolutionary Age, 103.

526 Shortt and Doughty, 284.
imperial practices and ideas to come to terms with the reality of the expanding British Empire.

Carleton continued to build the case for his plan of a traditional French social structure in the colony as a means to ensure loyalty and stability. A month later he wrote Shelburne again to reinforce the case of the seigneurs as critical to the state of the colony.\footnote{527} While his first letter focused on the military situation, his second letter turned to the question of legal structures and codes. He reminded Shelburne that “they are not a migration of Britons, who brought with them the Laws of England, but a populous and long established colony, reduced by the king’s arms, to submit to his dominion, on \textit{certain conditions}.”\footnote{528} [emphasis in the original] These conditions were that the powers of the king, especially his ability to raise revenue, depended on the maintenance of the laws which preserved Seigneurial status.

According to Carleton, in a phrase used by Neatby to sum up his approach, “this system of laws established subordination, from the first to the lowest, which preserved the internal harmony, they enjoyed until our arrival, and secured obedience to the supreme seat of government from a very distant province.”\footnote{529} The British, however, imposed new laws, upset the social order, and brought instability to the colony. For

\footnote{527} As the navigation of the St. Lawrence proved impossible in winter and his first letter would hardly have had time to reach Shelburne the purpose of this letter surely was to underline his point through repetition in the packet of letters that would eventually make their way to Shelburne’s desk. In a letter in 1767 from Fowler Walker to Charles Yorke, Walker outlined the general travel patterns for the mail to explain a delay in transmitting a letter to Maseres. According to Walker, ships left for Quebec every fortnight with the mail between mid-March and late July. For the remainder of the year it traveled to New York and then overland to Quebec. See, BL Add Mss. 35638, f.176. On the difficulty of winter and communication with French Canada also see, Kenneth Banks, \textit{Chasing Empire Across the Sea} (Montreal: McGill-Queen’s University Press, 2002).

\footnote{528} Shortt and Doughty, 288. Letter dated 24 December 1767

\footnote{529} Shortt and Doughty, 289.
Carleton, this level of disregard had, “never before [been] practiced by any conqueror, even where the people, without capitulation, submitted to his will and discretion.”

Carleton hinted that British actions to this point violated the Treaty of Paris, the capitulation agreements, and the principles of the natural rights of man. He argued a change in policy and a return to the pre-conquest norms proved the only proper solution.

To this end, he ordered men in the colony to create the abridgement of the old laws in order to devise a law code for the colony. The English legal system lacked any legitimacy in its current state; Carleton noted that the Canadians continued “to regulate their transactions by their ancient laws, tho’ unknown and unauthorized in the supreme court, where most of these transactions would be declared invalid.” Therefore a ‘return’ to the old system of laws provided the only solution to the problems plaguing the colony. The Canadians parallel legal system raises doubts over whether or not historians can even talk about a return to French law. It likely never went away outside of cases involving Britons. Carleton argued that while current disaffection rested upon the expense and time required when Canadians decided, or were forced, to use the British system, if they ever actually felt the effect of the new laws with regard to their property, their anger and disaffection could only grow exponentially. If Canadians refused to recognize the courts and operate within their walls, British rule proved a chimera and the stability of the state questionable. As Carleton told Shelburne, the body of laws must be

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530 Shortt and Doughty, 289.
531 Shortt and Doughty, 290.
“the Foundation of all, without which, other Schemes can be little better than meer Castles in the Air.”\textsuperscript{532}

Carleton did not recommend fully ceding the law to the old system, but in the face of the citizens already operating using the old laws, there remained a possible compromise going forward. “The most advisable method, in my opinion, for removing the present, as well as for preventing further evils, is to repeal that ordinance [Murray’s], as null and void in its own nature, and for the present leave the Canadian laws almost entire.” Amendments could be made after reestablishment and “such alterations might be made in the old and those new laws judged necessary to be immediately introduced, and publish the whole as a Canadian code, as was practiced by Edward the First after the conquest of Wales.”\textsuperscript{533} While there might prove to be a precedent for such an action, it did not make the case any easier for British administrators. There still remained a strong opposition to Carleton’s plan, as it would include much more than simply reestablishing the old legal code. Maintaining the seigneurs place in society also required alterations to standard practices regarding Catholic’s place in public life.

Carleton pressed his argument in a third letter, written a month after the previous, in the dead of Canadian winter, to fully delineate his reasoning. The letters worked together to make a linked and sustained case for his policies and are clearly meant to be read as a whole. In the final letter of the triumvirate, Carleton contrasted the value of instilling Canadians with the rights to hold public office against the case made by the

\textsuperscript{532} As quoted in Neatby, \textit{Quebec: The Revolutionary Age}.

\textsuperscript{533} Shortt and Doughty, 290.
British merchants for an assembly. Carleton suggested that people remained attached to the system of government and laws under which they grew up. So while the Canadians sought a continuation of their old order, the British continually petitioned for an assembly. The fundamental objection to an assembly voiced by Carleton remained that it proved unworkable.

Asked to provide “their scheme for an assembly, and to inform me, who they thought should be the electors, and who the representatives” the British subjects offered no workable solution. He then provided a portrait of the type of Briton still agitating for an assembly, warning Shelburne of the types of subjects who would be empowered by the assembly. The latest leader of the cause, John McCord, “formerly kept a small ale house in the poor suburbs of a little country town in the north of Ireland, appearing zealous for the Presbyterian faith” now resided in the colony and sold alcohol to the troops in a ramshackle shed next to the barracks. When turfed out by the magistrates to prevent constant drunkenness amongst the troops he “commenced Patriot, and with the assistance of the late Attorney General [Maseres], and three or four more, egged on by letters from home, are at work again for an Assembly.” This clearly did not present a flattering picture of the true motivations for those seeking an assembly, nor of the types of men who would be sitting for election.

Carleton reiterated his contention that the legal codes should remain intact as a means to bind the Canadians to the crown. He argued that even if the colony could be defended from an invasion, “I shall think the interests of Great Britain but half

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535 Shortt and Doughty, 295.
advanced.”

He felt it doubtful that the oaths the Canadians were willing to take fostered any guarantee of their loyalty. This doubt arose not because of their religion, but because once the crown’s claim to dominion fell due to invasion they owed the king no further loyalty based upon their oath. Thus if the crown hoped to find in the Canadians subjects who would fight to remain under its dominion, something stronger must bind them to its rule. Carleton took the opportunity to further the case in favor of roles in public life for the seigneurs.

Beyond the legal remedies, “as long as the Canadians are deprived of all places of trust and profit, they never can forget they no longer are under the dominion of their natural sovereign.” Carleton did not envision opening public life to all Canadians, only those of the seigneurial class. So while this deprivation only affected the seventy or so heads of households he had estimated earlier, “it affects the minds of all, from a national spirit, which ever interests itself at the general exclusion of their countrymen.”

Similar arguments were, and are, made against the Penal Laws in Ireland. The damage to loyalty and notions of identity emanated not from the actual widespread effects of the laws, but on the symbolic power towards the targeted community. As part of the Anglo-

536 Shortt and Doughty, 294.


538 Shortt and Doughty, 294.

539 Shortt and Doughty, 294. A similar case was, and can be, made against the penal laws in Ireland.

Irish community, Carleton likely had first-hand experience with the legacies of the Penal Laws on Catholics in Ireland. Without his personal papers there is little evidence to point to his internal motivations or touchstones, but it is unlikely he was unaware of the questions plaguing Ireland.

He recommended a few gestures which would ameliorate the problem without opening every office to Catholics. “Three or four of their principal gentlemen, with the rank of councilors, was it little more than honorary, tho’ on many occasions they might prove useful, a few companies of Canadian Foot judiciously officered, with three or four trifling employments in the civil department, would make very considerable alterations on the minds of the people.”

If continued, this policy would increase the bond between the Canadians, as the younger generation would only know loyalty to the king and the bonds of service to his rule. While he tried to minimize the value and importance of these concessions, the decision to allow Catholics to sit in the council and to serve as officers in the military proved a momentous decision for London. Discussions of allowing Catholics into the assembly in London were still only part of reports and discussions; no draft of a policy yet existed. Even on a limited scale, as in Grenada, such decisions proved highly controversial. If allowing Catholics to act as lawyers and judges in legal cases involving Canadians could add fuel to the fire which engulfed the Rockingham ministry, allowing them political and military power would only further stoke the flames. For Carleton, the alternative policy choice, an assembly, offered none

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541 Shortt and Doughty, 294-295.

542 See Willis, “The Standing of New Subjects”. 253
of the benefits and, in fact, the restless spirit of the Protestant colonists, in Canada and the other American colonies, posed the greatest threat to the king’s rule.

Making an observation he attributed to the seigneurs, Carleton noted that the colonies with an assembly were lately resistant to British control and showed little respect for London’s power. Carleton made a general case against the value of assemblies within British imperial dominions. He emphasized that “the better sort of Canadians fear nothing more than popular assemblies, which, they conceive, tend only to render the people refractory and insolent.” Many in Quebec and London expected an assembly; to deny it was a concession to those ultimately entrusted with power in the colony. The seigneurs were not in favor of allowing their social inferiors to hold offices of power, especially in a body which could tax or otherwise control their property and rights.

While modern historians have viewed the lack of an assembly and use of local hierarchies as part of London’s turn towards a more authoritarian stance in the face of the American crisis, such a practice emanated from a long imperial tradition of maintaining hierarchies in the aftermath of conquest reaching back to Rome. That the British avoided widespread use of this practice prior to Quebec resulted from a lack of large-scale conquests over established ‘alien’ populations. Quebec then offered imperial administrators a critical test case for reaching out for new precedents of imperial practice.\textsuperscript{544}

\textsuperscript{543} Shortt and Doughty, 295-296.

\textsuperscript{544} See specifically, C.A. Bayly, \textit{Imperial Meridian}. J.H. Elliott argues that the English and Spanish largely shared visions of empire, but that their practice was shaped by the nature of native populations more than their divergent ideologies and strategies. See J.H. Elliott, \textit{Empires of the Atlantic}
Carleton concluded the letter by reiterating that in a place with little social
difference among British settlers, a “strong republican bias” naturally arose and overcame
any loyalty or subordination to the monarchy. He suggested an assembly proved
especially foolhardy in Quebec, a colony only recently conquered and in a state of tumult.
Adding to this sentiment, he argued “that the British form of government, transplanted
into this continent, never will produce the same fruits as at home, chiefly, because it is
impossible for the dignity of the Throne, or peerage to be represented in the American
forests.” He demurred that it proved a question for the wisdom of the king’s council in
London, but “for my own part, I shall think myself fortunate, if I have succeeded in
rendering clear objects, not always distinctly discernable at so great a distance.” The
value of knowledge on the ground trumped that of those residing in London. Carleton
hoped to ensure that officials in the metropole realized the value of his council in the face
of merchants or other lobbies in London hoping to influence policy for Quebec. In a
situation with a broad chorus of voices claiming to best understand the policy fit for
implementation in the new colony, administrators were rightly overwhelmed with
information. They did not suffer from a lack of opinions.

\textit{World} (New Haven: Yale University Press, 2006), 57-66. In comparing the models of empire applied to
varied settings like Australia and India, Krishan Kumar similarly shows that the populations within a
colonial setting had more influence on the models and practices of empire than perhaps any other factor.
See Krishan Kumar, “Greece and Rome in the British Empire: Contrasting Role Models,” \textit{Journal of
British Studies} 51.1: 76-101.

545 Shortt and Doughty, 295.

546 Shortt and Doughty, 296.
V: A Moment for Reflection and Further Consideration

In a letter to Carleton written in March 1768, Hillsborough, now fully in control of colonial policy as the newly created Secretary of State for the Colonies and the head of the Board of Trade in the North ministry, clarified the crown’s position on the Proclamation of 1763. In addition, he indicated that the officials in London were going to put off any concrete action on policy in order to make sense of the deluge of opinions and information generated over the preceding four years. Hillsborough suggested that it would be foolish to impose laws onto Canada meant for the specific context of landholding, inheritance, and other traditions relating to real property in England. He rejected the assertion that those formulating the Proclamation of 1763 held any desire to remove the legal code of Quebec. Arguing that, “I certainly know what was the intention of those who drew the Proclamation, having myself been concerned therein.” The intent was to change the way the law was administered, not the laws themselves, “as is the case in the county of Kent, and many other parts of England, where gavel-kind borough-English and several other particular customs prevail, although justice is administered therein according to the laws of England.”

Again, it is hard to tell if statements regarding the true intent of the Proclamation were legitimate representations or simply meant to create room to maneuver and avoid overturning the Proclamation. In seeking to maintain the place of the Proclamation, refinements of its intent provided an avenue to both save face and allow for the continuation of Canadian law. In any case, Hillsborough aimed to create more time and maintain as much of the status quo as possible. He declared the imposition of English

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547 Shortt and Doughty, 297.
law “oppressive and cruel to the last degree” and promised it would be fixed in short order. London hoped to soon transmit orders giving the Canadians “entire satisfaction for the future, by securing to them their property upon a stable foundation, and rendering the colony more flourishing and happy than it has ever been.” For the time being, patience was a necessity.

Hillsborough offered support for a draft ordinance from Carleton returning to laws of French land tenure, but asked for a pause in policy decisions and alterations. The Privy Council now had to consider the full status of the colony and develop a policy to take into account the sum total of the colony’s governance. Clearly they hoped to develop something like the Quebec Act, a final solution for all the questions hanging over the colony as opposed to band-aid ordinances and ad hoc policies. Hillsborough tasked Carleton with encouraging patience among the new subjects, “continue to make use of every lenient and proper argument, to convince His Majesty’s new subjects of his tender concern for their welfare and security; and by representing to them the natural difficulties that must occur, in regulations of so important a nature, to be directed from so great a distance, for the permanent settlement of a province, under circumstances so uncommon and peculiar, prevail upon them to suffer patiently those delays which are unavoidable.” Officials in London needed more time and room to consider the situation and the best path forward. Inaction proved the result not of disinterest or poor planning, but as a matter of the weight of the task before them.

548 Shortt and Doughty, 298.

549 For a copy of the ordinance see, Shortt and Doughty, 292-293.

550 Shortt and Doughty, 298.
At the end of 1768 Hillsborough continued to press patience and argued that deliberations were still ongoing, especially regarding the ecclesiastical settlement for the colony. Stumbling from one failed policy to the next had only made the situation more confusing and the web of dissatisfaction harder to untangle. The empire entered unprecedented waters during these years in governing Quebec and no quick and easy solution which would both satisfy the needs of the colonial population and fit within the prevailing ideologies and practices. These ‘lost years’ were less about disinterest and more about the need to find a workable solution.

Despite what seemed to be growing consensus that the Canadians were loyal subjects worthy of concessions and the continuation of their legal, cultural, and religious traditions, fears of rebellion and seditious plots did not disappear. While the original letter from Hillsborough asking about a rumored plot does not seem to be extant, Carleton used the inquiry to his advantage. He assured Hillsborough that no evidence or even rumor of a plot had reached his ear and he doubted if the Canadians were so foolish to even consider such an action. They were perfectly loyal and obedient subjects since his arrival, yet, “I have not the least doubt of their secret attachments to France, and think this will continue as long as they are excluded from all employments under the British government, and are uncertain of being reinstated, at least in their former commissions under that of France, by which they chiefly supported themselves and their

551 Shortt and Doughty, 325. Letter dated 12 October 1768.


553 There is a document from September 1766 in the Shelburne’s papers which provides an account of the French Priests organizing the Indians of the backcountry and their intention to push out the British with the help of French forces. See CNA MG23 A4, vol. 13, p. 13-16.
families.” The British provided them every reason to remain loyal to the old monarch; exclusion from public life and laws which worked against their property and interests served to push them away from loyalty. During his time as governor Carleton did not let an opportunity pass to make this argument to anyone who would listen. For the British state to rule over a large body of non-Britons effectively, the new subjects had to be bound to the state as a protector of their property and interests.

According to Carleton, the French Catholics were not naturally opposed to British rule, but rather were pushed into their opposition by the actions of the crown. On hearing of a possible French invasion and the support offered by native tribes, the seigneurs did not rush to prepare to support the French cause but instead, “begged to be admitted into the King’s service, assuring me they would take every opportunity to testify their zeal, and gratitude for so great a mark of favour and tenderness, extended not only to them, but to their posterity.” Despite all evidence pointing towards a restive but loyal population, Carleton pointed out that such stability remained balanced on a knife’s edge as long as the British failed to bring the seigneurs fully into the British fold.

If his ideas were ignored Carleton saw dire implications not only for Quebec, but also for the other North American colonies. In a prescient observation he predicted that France would see future military engagements in North America as a means to cleave off the increasingly rebellious colonies to Quebec’s south;

Should France begin a war in hopes the British-colonies will push matters to extremities, and she adopts the project of supporting them in their independent notions, Canada, probably, will then become the Principal scene, where the fate of American will be determined. Affairs in this

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554 Shortt and Doughty, 325.
555 Shortt and Doughty, 326.
situation, Canada in the hands of France would no longer present itself as an enemy to the British colonies, but as an ally, a friend, and a protector of their independency.\textsuperscript{556}

While not coming to fruition, this vision provided strong support for the plan to secure the loyalty of the Canadians. Fears of a French Catholic plot, while unfounded, provided Carleton with an opportunity to drive home his point and further draw out the importance of Quebec within the Atlantic and imperial system. Unless London expected to secure all of its empire with large numbers of troops, it needed to develop policies which allowed a small British contingent of officials and soldiers to rule over a largely alien population.

While Hillsborough might have offered support for the principle that the Proclamation of 1763 did not aim to alter the civil laws in Quebec, he remained committed to the ideal of an assembly for the colony. Hillsborough’s approach to policy in Quebec can be viewed as still in thrall to the vision of Halifax. However, in drawing up a plan for the colony, the Board of Trade proposed something that many Whigs in the Halifax mold would argue undermined the core principles of 1688.\textsuperscript{557} In a report from July 1769, the Board of Trade recommended, as it had done in Grenada, that the Privy Council allow Catholics into public life through places on both the council and seats in the assembly. The Board of Trade’s report did not lead to concrete policy, thought its continued obsession with an assembly did motivate Carleton to return to London. The document, despite its failed recommendations, offers a number of interesting insights into the reasoning behind the drive to allow Catholics a greater role in society.\textsuperscript{558}

\\textsuperscript{556} Shortt and Doughty, 326.

\textsuperscript{557} Lawson, \textit{Imperial Challenge}, 104-107.
The plan was transmitted to Carleton for his feedback. Hillsborough recognized that the plan would draw sharp criticism and likely alienate a number of his allies. In sending the report to Carleton he made clear that it was to remain guarded and the contents not discussed with anyone. In opening their report, the Board explained the reasons for what must have been an abnormally long delay in the final recommendations, in doing so they underlined the very nature of the problem facing Quebec. The merchants in Quebec, using the Proclamation of 1763, continually petitioned for an assembly and they now agreed to allow a few Catholic seats. The Board acknowledged the value of an assembly in order to better administer and tax the colony, but were confronted with a constitutional dilemma. While such a plan seemed proper to the Board, especially as they acknowledged the necessity of incorporating the Catholics or risk alienating them, they puzzled over how to “give full satisfaction to the new subjects, without violating those principles, upon which the British government is fundamentally established.” While they reconciled this tension, referencing the decision allowing Catholics into public office in Grenada and Norton and de Grey’s ruling that the Penal Laws did not apply to Quebec, their primary concern remained focused on the loyalty and happiness of the crown’s new subjects.

558 The quotations below are taken from the abridged version in Shortt and Doughty based on a copy in the Canadian National Archives, but a copy can also be found at Kew, see PRO CO43/2, f. 67-158. Shortt and Doughty removed the material relating to revenue and estimations of expenses related to running the colony.

559 Quotations from Hillsborough’s letter can be found in Shortt and Doughty, 377.

560 See Shortt and Doughty, 377, who claim that the petition has as of yet not been located. I would argue that rather than a formal petition this likely refers to the statement on the state of Quebec written by Fowler Walker, see BL Add. Mss. 35915 f. 20-45.

561 Shortt and Doughty, 378.
The Board cited the negative effects of several recent events in the colony: the misapplication of the Proclamation of 1763, Murray’s ordinance establishing the court system, and the various outbursts of the Protestant subjects. The Grand Jury and its presentment came in for particular attention for the new subjects, “found their religion presented, as illegal; themselves not only proscribed, as incapable of the common offices of society, but also subjected to all the pains and penalties inflicted upon popish recusants in this kingdom.”

It is not hard to see the narrowing rhetorical gap between the negative influence of such exclusion in Quebec and similar arguments in places like Britain and Ireland. Carleton’s three letters making his case for the need to offer greater participation to Catholics had their desired effects and they were referenced directly as evidence in support of Catholic rights and appended to the report. The Board recognized that the colony remained in a state of disorder and that Catholic loyalty proved questionable after the botched government actions and efforts to limit their role in society. So while Carleton still had to convince the Board that an assembly would not solve the colony’s problems, events, and his letters, convinced those within the upper reaches of the state that Catholic participation proved essential for any future stability.

The most important sign of this shift towards Catholic participation came in the recommendation that “it would be advisable for the present to adopt not only the measure recommended by the merchants of admitting, under proper regulations and restrictions, a number of His Majesty’s new subjects into the Council and House of Representatives, but

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562 Shortt and Doughty, 382.


564 Shortt and Doughty, 382 and 393-394.
also into the Courts of Judicature, and other offices of government, by exempting them from the obligation to subscribing the Declaration against Transubstantiation.\footnote{Shortt and Doughty, 383.} The removal of the Test, a critical protector of the Protestant constitution and British state, struck at the very heart of the principles of the Glorious Revolution and much of what contemporary Britons felt safeguarded them from arbitrary and repressive rule. The proper regulations and restrictions proved equally striking.

While a few token seats in positions of power were recommended by both Carleton and the merchants, the Board of Trade proposed positions for a significant number of Catholics within the political realm. While they would not be allowed to hold a majority of the seats in the council or in the assembly, the Board did allow them fairly substantial representation in both. They would make up a third of the council and would be granted 13 of the 27 seats in the assembly. The Board recognized the alarm this relative balance might cause and explained their reasoning: “We trust, that, when your Lordships consider the state of this colony, in respect to the very great superiority in number and property of the new subjects, you will not think the rule of proportion between one description and the other to be more favorable to the new subjects than justice and equity require.”\footnote{Shortt and Doughty, 385.}

The language of subjecthood that treated difference as a mere distinction ‘between one description and the other’ presages in important ways Henry Dundas’ attitude towards Ireland in December 1791. In a letter to Lord Lieutenant Westmorland, the Catholic population did face limitations though. They could only fill the 13 seats which corresponded to rural districts, all urban assembly members had to be Protestant, and any Catholic elected had to hold a Seigneurie in the colony. This last limit corresponded with Carleton’s plan to empower the seigneurs as the political leaders of the Catholic population, at the expense of the merchant or landless classes.
discussing the Catholic Relief Act of 1792, Dundas made clear that “if it is a mere question if one description of Irishmen or another are to enjoy a monopoly of pre-eminence, I am afraid that it is not a question on which they would feel either their passions or their interests so naturally concerned, as to justify the application of the resources and force of Great Britain in the decision of it.” The idea that the crown would not distinguish between different groups of its subjects opened the door to all kinds of actions that addressed the realities of the heterogeneous population in the wider empire.

According to the Board, the calling of an assembly solved many of the problems facing British rule in the colony. The administration of justice, the religious establishments and the crisis of revenue would all be cleared up once they were in the hands of the local assembly. Rather than make broad recommendations, the Board of Trade suggested that the assembly be directed to address these problems along the lines of previously produced reports. The courts should be altered broadly in line with Yorke’s report from 1766 and the religious orders and their lands handled in line with the “Heads of a plan for the establishment of ecclesiastical affairs”. Of course a local assembly removed any objections to taxation and so the Board hoped that Quebec would now be able to generate the revenue needed to maintain the colony without having the draw on accounts in London. In the case of the regulation of matters of the church dependent

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569 Shortt and Doughty, 385-390.
on the crown, that is everything besides that dealing with the property of the orders, the

crown would have supremacy, and again should follow the recommendations from the
‘Heads of a plan’. The recommendations proved both mundane and innovative.

In many ways the report did not prove revolutionary; it broadly recommended that
the plans drawn up under previous ministries be enacted and it continued the power of the
governor to delay any action he found premature. Despite repeated claims of the need for
swift action, the Board offered Carleton and the Privy Council ways out of implementing
any policy. Yet it failed to recognize that much of that recommended in the plan for the
ecclesiastical settlement proved out of date. The colony now had a bishop and a co-

adjudicator, the idea of a superintendent and a limited church seemed unlikely or
impossible at this point. The report, however, still revealed a critical shift in policy.

Though Hillsborough may have sought to hold onto Whig ideals through the necessity of
an assembly, the place of Catholics in society underwent a major revision in the newest
attempt to address the colony’s administration. The danger from the Catholic population
now sprang not from their inclusion in public life, but the increasingly foolhardy
insistence to keep them outside of it. After this domino fell it would not be long before
others did as well. Carleton’s pleas had clearly taken hold, though he was still
vehemently opposed to the idea of an assembly. In the wake of receiving the report he
set sail for London in early 1770 in order to further make his case against an assembly in
person.572

570 Shortt and Doughty, 391.

571 Shortt and Doughty, 390-391
Conclusion

With Carleton’s decision to return to London, the stage was set for a final push towards a solution to the colony’s problems. It is unlikely that Carleton or those in London expected his visit to last for four years, but that is what it took. The question of the assembly and the will necessary to make significant space for Catholics in public life all required a long and reflective pause. Upon Carleton’s return to London, both the merchants and the seigneurs sent petitions to the king restating their desires and their case.

The merchants requested the long promised assembly and made the case that both new and old subjects suffered economic decline for want of a representative body. The seigneurs offered no comment on their preferred form of government, but did request a return to French laws and traditions, or their ‘customs and usages’, in order to fully bind them to the crown in loyalty. They promised that once their “state of humiliation, which so to speak, makes life unbearable to us, and seems to have made of us a reprobate nation” no longer persisted they could fully serve the crown as productive and loyal subjects. In addition, they promised a loyalty that would be passed down to their children. “Overwhelmed, sire, with your gifts and your favours, penetrated with love and gratitude, we will make known to our children the benefits for which we are indebted to your Majesty.” The rhetoric of posterity, deployed by Carleton in an earlier letter,

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572 While probably not planning to, Carleton would remain in London for four years and returned only after the passage of the Quebec Act.

573 See Shortt and Doughty, 417-418.
and the ability to ensure the loyalty of generations by fixing the modes of property and inheritance offered another argument in favor of Carleton’s policy. If the traditions of the seigneurs could be passed on to a new generation then the loyalty engendered by the return to the old system promised long-term benefits. This plan did not buy the short term loyalty of merchants with no fixed property, but rather the affections of a permanent ruling class whose power and stability rested on the goodwill of the king.

The preceding four years might have seen little concrete action but the pause and reflection on the problems facing Quebec saw the expression of a policy solution with radical implications. The years after Murray’s recall were not lost, but instead a fundamental period in the reformulation of British imperial practice.

574 Shortt and Doughty, 422. The petition in its entirety can be found on 421-422.

575 See letter to Shelburne from 25 November 1767, Shortt and Doughty, 281-284.
CHAPTER 6:

THE TRIUMPH OF EMPIRICISM

Introduction

While the final text of the Quebec bill would not begin to take shape until August 1773, by 1771 officials in London began to come into line with Carleton’s plans for the colony. The ideals and motivations behind the Proclamation of 1763 finally crumbled before the realities of experiences on the ground. The principle legal and political figures within the British state began to formulate a framework of new practices of imperial expansion and incorporation and a rhetoric to justify it against political and ideological attacks. What emerges in the public and internal rhetoric of this period is a unified and sustained case in favor of the protection of law, property, and culture as a means to ensure loyalty and stability. For this growing number of elites the policies developed in Quebec offered a new way forward. Stability depended not on British laws, liberty, and religion, but rather on devising a system of governance which fed the nature of the people and protected the rights, customs and property of the bulk of elites, especially landowners. The case presented by the merchants, figures like Halifax, Hillsborough and Maseres since the early 1760s no longer held sway. A focus on Protestantism, representative institutions, and British legal codes appeared to violate not only the natural
rights of conquered peoples, but also seemed a counterproductive enterprise when faced with a large body of well-established non-Britons. Ireland, the initial laboratory for an English Empire, no longer looked like a model for empire, but in the end presented a precedent that stood against the policies deployed there. Changes were on the horizon.  

The final reports from the legal minds of the British state coupled with a constant call for action both in London and in Quebec, finally pushed the North ministry to move forward with a final plan for Quebec. Armed with a strong legal and intellectual case in favor of their policies, the government finalized the bill and pushed it through Parliament. Building off the ideals of continuity presented by Carleton, the solicitor general Alexander Wedderburn and key figures in the American office formulated a final bill which offered broad concessions to Catholicism and the French legal codes in civil matters. The new approach would find many detractors in Parliament, but ultimately their concerns were wedded to prejudices discredited amongst the more ‘enlightened’ thinkers in the ministry and Parliament. For defenders of the bill, empirical data and philosophical principles united in supporting the case for continuity and conciliation. After more than a decade of consideration, the British Empire embarked on an experiment of new imperial practices.

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577 Philip Lawson, argues that it was the desire to get something done as promised that drove the timing, not the American crisis or any other outside factor. He also takes issue with assumptions of some larger motive for the timing of the bill’s introduction into Parliament. See, Philip Lawson, Imperial Challenge, 128-130.

I: London Comes Around

In April 1771 Hillsborough and the Board of Trade prepared orders for Carleton to return the colony to the French system of granting lands.\textsuperscript{579} For “it would be far more advantageous, if the ancient mode of granting lands, which prevailed under the French government before the conquest, was to be now adopted.” According to the Board of Trade, “upon the best information we are able to obtain of the ancient usage and practice of granting lands in that colony, that it was well calculated to promote settlement upon terms of publick advantage; and as it is also apparent, that the introducing different tenures of land in the same colony leads to inconvenience and confusion.” Seigneurial rights pertaining to land tenure would remain in force and even lands granted by the crown would be held under French modes of tenure. In July the crown confirmed this course of action and issued royal instructions to Carleton to put a return to the French mode of land tenure into action.\textsuperscript{580} The crown’s actions moved some way towards the continuity Carleton sought.

They continued along this path as they year progressed. At the end of 1771 the Privy Council realized it was time to abandon the idea of a legislature and began to devise a plan for a legislative body consisting of the Governor and Council.\textsuperscript{581} By 1774 the limitations on the powers of this body would be delineated, but it was apparent that the merchants’ case no longer held sway in London. There were a number of motivations for this change, but it primarily centered on a desire to levy taxes to defray the expense of

\textsuperscript{579} PRO CO 43/2, f.162-164. Dated April 24 1771.

\textsuperscript{580} See Adam Shortt and Arthur Doughty, eds. \textit{Documents Relating to the Constitutional History of Canada, 1759-1791} (Ottawa: Historical Documents Publication Board, 1918), 422-423.

\textsuperscript{581} PRO 30/29/3/2/24
administering the colony and on restoring order through locally developed solutions. At this stage of the plan, any law or rule affecting life, liberty, or property required royal approval, but the power to levy taxes would rest in this royally appointed body. According to the plan, the arrangement was to last a maximum of fourteen years and could be altered during that period by Parliament or the crown. This represented a significant retreat from the principles espoused in the Proclamation of 1763. Quebec would not look like the British ideal sought by the merchants and their supporters. With the crisis in Grenada and the reports of Canadian resistance, an assembly seemed like a recipe for disaster. In addition, the British merchants and disbanded soldiers, already creating tension and instability, would be almost impossible to manage once emboldened by the power of an assembly. No doubt the crisis of sovereignty roiling the other colonies only strengthened this sentiment.

Within official circles in London there appeared little resistance to this change of course outside of the Old Whig Lord Hillsborough. When the Privy Council met on 7 June 1771 the body considered the reports of the Board of Trade, Carleton, and Hey relating to the colony and its legal and political structures. Building off the measures detailed above, they concluded that the Board of Trade, Edward Thurlow, the attorney general for England and Wales, and James Wedderburn, the solicitor general, should meet with the “assistance governor Carleton and such others as they shall think fit to consider of and draw up a general code of civil and criminal law for the said province. All the lords agreed except lord Hillsborough, who is entirely of opinion to agree with the report of the Board of Trade for immediately convening a full legislature in the said
province for the settling the laws, revenue, etc.”

Hillsborough would continue to push against the flow towards continuity and pluralism, but he increasingly stood against a tide he could not turn back. Now in London, Carleton acted as a direct advocate for the policies he suggested in his letters to Shelburne. In helping to formulate the policies in and surrounding the Quebec Act he provided the ministry with critical empirical evidence of the colony and the opinions of the stakeholders living there.

The Privy Council’s papers contain a relevant and contemporaneous document entitled, “A memorandum of things necessary for establishing laws and government in the province of Quebec either by act of parliament, order of the king in council, or by the proposed council at Quebec.” As the title suggests, while the exact mechanism for the needed reforms had not been finalized, the core issues in need of repair had crystallized in the minds of officials in London. The document listed ten items in need of immediate attention. The first signaled the now dominant trend in official thought. It advocated, “to get rid of the proclamation of 1763 with the commissions and ordinance depending thereon and to restore the old laws and constitution.” The remaining items supported the policies developed in the previous documents. The second called for reinstating the duties and taxes paid prior to conquest. The third called for the creation of the above legislative governor and council. Fourth, officials needed to finalize a new courts of judicature and “the nearer such courts are to the old ones in form the more agreeable they will be to the inhabitants and more likely to have their effect.” The overall trend of these

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582 PRO 30/29/3/2/25
583 PRO 30/29/3/2/26
actions was to return Quebec to its pre-conquest norms. Yet the systems still depended on British management and authority.

The final two items of consideration centered on religion. The penultimate item sought to place all civil ecclesiastical powers, “in regard to marriages, the probates of wills, granting letters of administration and other civil rights except only in the case of tythes to the courts of law; and all questions concerning tythes to be determined by the governor and council.”584 Finally Protestants would still be required by law to tithe, but their contributions would be used to support the Protestant clergy and kept out of the Catholic coffers. British control would be centralized in the governor and council and its footprint on local practices would be kept to a minimum. The question of assimilation in the short term was off the table. As documents like this show, the new subjects were not a threat to the stability of the state; rather it was the failures of London to devise the proper policy for the colony and its people that deserved the blame. This was not true of all British colonies.

For all its problems, by 1771 Quebec appeared as a relatively stable and desirable posting for officials. The correspondence of Josiah Martin, the ill-fated Governor of North Carolina, provides evidence for this fact.585 Josiah wrote to his father on 16 May 1771 and sought support in changing his appointment from the governorship of North Carolina to that of Quebec. The passage is lengthy but places Quebec well in the midst of an increasingly volatile colonial setting:

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The easy situation of a governor there, with respect to the administration of the public business, his handsome appointments, labor all, the admirable healthfulness of the climate, give it infinite advantages over most of the governments of this continent. Governor Tryon’s present situation in N. Carolina, promises me no such tranquility as is there to be enjoyed. Near one thousand of the inhabitants of that province we are abused are now in arms in open defiance of all law and government, and the governor is actually marching a body of militia against them.\footnote{In a rebellion from 1766 – 1771 backcountry farmers rebelled against the aggressive tactics of land speculators and elites on both sides of the Atlantic to lay claim to the newly settled and improved lands in North Carolina. On the Regulator movement and rebellion see, Marjoleine Kars, \textit{Breaking Loose Together} (Chapel Hill: University of North Carolina Press, 2002).}

After explaining the sources of the chaos enveloping North Carolina, Martin outlined the various benefits of residing and governing in Quebec, concluding that “the opportunity too of educating my children in Canada, is to me a consideration of great weight.”\footnote{BL Add. Mss. 41361, specific folio page missing in notes.}

With no established Protestant educational system, it appears striking to find Martin citing the educational opportunities of the colony as a draw.\footnote{Martin’s father was less impressed with the effects of French education. On the news that a family friend was sending his son to be educated in France his farther wrote, “For I see plainly he aims at making Tom, a french fop, with a tincture of popery, somewhat like himself.” BL Ad. Ms. 41348, letter dated 14 Dec. 1775.} Concerns over the nature of the population of Quebec paled in comparison to those posed by the rebellious colonists in places like North Carolina. Viewed from the perspective of governance, the colony, despite its unsettled administrative condition, proved a stable and desirable place to reside. The French ‘other’ was far less fearsome than the rebellious Americans and seemingly provided a more civilized location to raise one’s family. The dire warnings of those opposed to concessions appear geared towards the masses, rather than elites.\footnote{On the split between elite and popular opinion in English attitudes towards Catholics see, Colin Haydon, \textit{Anti-Catholicism in Eighteenth-Century England} (New York: Manchester University Press, 1993).}
The attractiveness of the subjects under one’s rule became a question of stability and productivity, not one of religion or culture.

II: The Legal Case for Continuity

In June 1771 and again in July 1772 the Privy Council ordered Thurlow and Wedderburn to review the existing reports and documents relating to Quebec and its current civil structures, especially legal, and produce their own reports on the best means to proceed in crafting a viable plan for the colony.\textsuperscript{590} Wedderburn’s response appeared first, finally reaching the court in December 1772.\textsuperscript{591} In Wedderburn Britain finally found a legal mind ready and capable of taking on the challenge posed by Quebec.\textsuperscript{592} For all of the groundbreaking ideas put forth by Yorke, his plan never reached the specificity, nor the fully imagined structures, that Wedderburn put forth in 1772 and fully defined by 1774. The political situation and Yorke’s later suicide played a role, but he also fundamentally lacked the breadth of information available in 1772. By the time Wedderburn faced similar questions, almost five years of continued engagement and reports allowed him a far richer understanding of the colony.

Wedderburn placed Quebec not just in British legal contexts, but more broadly in contemporary intellectual frameworks. He argued his point for a position fully engaged with contemporary European thought on questions of laws and conquest. He argued that, “Canada is a conquered country. The capitulation secured the temporary

\textsuperscript{590} Shortt and Doughty, 424, n1.

\textsuperscript{591} The quotes below are taken from Shortt and Doughty, but the full report can also be found in CNA MG23 A7.

\textsuperscript{592} Lawson, The Imperial Challenge, 120-121.
enjoyment of certain rights, and the treaty of peace contained no reservation in favor of the inhabitants, except a very vague one as to the exercise of religion. Can it therefore be said that, by right of conquest, the conquerer may impose such laws as he pleases?”

Wedderburn considered the question and offered that “this proposition has been maintained by some lawyers who have not distinguished between force and right.” In distinguishing between the two ideas, and here he is almost undoubtedly building off Montesquieu, he argued that it is certainly in the power of a conqueror to dispose of those he has subdued, at discretion, and when the captivity of the vanquished was the consequence of victory the proposition might be true; but in more civilized times, when the object of war is dominion, when subjects and not slaves are the fruits of victory, no other right can be founded on conquest, but that of regulating the political and civil government of the country, leaving to the individuals the enjoyment of their property, and of all privileges not inconsistent with the security of the conquest.  

Ultimately the question was not one of assimilation, but rather of sovereignty. Once the stability of the post-conquest settlement was secure, the rights of the conquered stood out as of greater importance than legal uniformity across dominions. In Quebec, empirical evidence, in the form of the disorder wrought by the imposition of English norms, and principles found common ground assisting British officials build a policy backed by a strong rhetorical case.

Wedderburn proceeded to establish the type of political and civil government best suited the colony. While Parliament undoubtedly could have provided the necessary

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594 The same themes arose around the notion of the ancient Mughal constitution under both the East India Company and direct British rule, Robert Travers, Ideology and Empire in Eighteenth-Century India (New York: Cambridge University Press, 2007), 19-27.
regulations for the colony, “there must be many local interests of police, of commerce, and of political economy, which require the interposition of a legislative power, acquainted with the affairs, and immediately interested in the prosperity of a colony.”

Local control and knowledge trumped the claims to authority of Parliament. It was not the case that London lacked the right or ability to directly rule the colony, like Wedderburn even the new subjects did not question that right, but rather sound policy dictated that local control proved the most prudent course of action. Negotiated authority was not a new experience for the British, but how one structured local control would prove contentious in an increasingly heterogeneous empire.

In a colony like Quebec, where British Protestants were overwhelmingly in the minority, the question of which local population would have a say in civil power remained complicated. “To admit the Canadian to a place in that Assembly (a right, which from the nature of a conquest he has no absolute title to expect,) would be a dangerous experiment with new subjects, who should be taught to obey as well as to love this country, and if possible, to cherish their dependence upon it.” Yet, “to exclude the Canadian subject would be impossible, for an Assembly chosen only by the British inhabitants, could no more be called a representative body of that colony than a council of state is.”

The only solution, according to Wedderburn, which critically avoided the pitfalls of elevating those who lacked the noble station of the Canadian seigneurs, was a

595 Shortt and Doughty, 425.
596 Shortt and Doughty, 426.
legislative council with a degree of independence from the Governor.\textsuperscript{597} An assembly was ill suited to the situation in Canada, which belied its status as a universally superior form of governance. Instead a system that allowed for local control with Canadian elite participation, and structured to fit their expectations and desires, proved far preferable for instilling loyalty and stability.

Wedderburn recognized that “the religion of Canada is a very important part of its political constitution” and concluded that the fourth article of the Treaty of Paris “from the severity with which (though seldom exerted) the laws of England are armed against the exercise of the Romish religion, that the Canadian must depend more upon the benignity and the wisdom of your Majesty’s government for the protection of his religious rights, than upon the provisions of the treaty.”\textsuperscript{598} Like many he recognized the provision to be so contradictory as to be meaningless. It seemed to offer protection, but also signaled debilitating restrictions as faced by Catholics in Britain and Ireland. The crown therefore had to consider the merits of toleration and exclusion anew. Wedderburn declared that,

The safety of the state can be the only just motive for imposing any restraint upon men on account of their religious tenants. The principle is just, but it has seldom been justly applied; for experience demonstrates that the public safety has been often endangered by those restraints, and there is no instance of any state that has been overturned by toleration. True policy dictates then that any inhabitants of Canada should be permitted to freely profess the worship of their religion.\textsuperscript{599}

\textsuperscript{597} Wedderburn laid out a plan for the powers and restrictions on the council in order to keep it from claiming too much power and concentrating it in the hands of only a few men. Shortt and Doughty, \textit{426-427}.

\textsuperscript{598} Shortt and Doughty, \textit{427}.

\textsuperscript{599} Shortt and Doughty, \textit{427}. Beyond a general historical precedent, Wedderburn might also be referring to the recent example of toleration within the Prussian state, see, Hubert Johnson, \textit{Frederick the}}
Disaffection came not from inclusion, but rather from exclusion and persecution. For Wedderburn and supporters of the bill, Ireland would later prove a critical example of this maxim. Wedderburn saw the question of Catholicism as a problem of management, not as a fundamental challenge to the integrity of the British state. Once the threat of divided sovereignty was removed, the nature of a subject’s faith posed little to concern officials.

On the question of law, Wedderburn agreed with those who regarded the continuation of local traditions as more important than imposing British norms. Canada had “been long inhabited by men attached to their own customs, which are become a part of their nature.” After the British conquest there now existed two legal traditions and each population proved understandably attached to their legal usages. “The prejudices of neither of these classes of men can be entirely disregarded. In policy, however, more attention is due to the native Canadian than the British emigrant, not only because that class is the most numerous, but because it is not the interest of Britain that many of her natives should settle there.” Ultimately the property rights of the native population won out. For, “as his property is secured to him, the laws which define, create, and modify it, must also be retained, otherwise his property is reduced to the mere possession of what he can personally enjoy.” Continuity and local norms continued to rule the day.

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600 For examples from the report which support this assertion see, Shortt and Doughty, 428-429.
601 Shortt and Doughty, 430.
602 Shortt and Doughty, 430.
Wedderburn presented a strong legal case in favor of broad concessions to the continuity of local traditions and rights. In moving to wider European sources of law and rights, in the figure of Montesquieu, Wedderburn was able to find a resolution between the tension of much of British legal and political thought and the realities on the ground. The strictures of the penal laws and other intellectual traditions that sought to exclude non-Britons and their customs fell in the face of Montesquieuian principles and evidence for the negative repercussions from exclusionary policies. In the coming debates in Parliament, Wedderburn and others would point to Ireland to as proof of the consequences of such strategies. Yorke began the legal push towards a conciliation between what those on the ground knew was necessary and the principles of the politicians in London. Just as Carleton had advanced and deepened the policies suggested by Murray, Wedderburn now did the same with the principles laid out by Yorke in 1765. With a legal case that could ease the minds of London officials taking shape, a resolution to Quebec’s problems started to dawn on the horizon.

Attorney General Thurlow’s report appeared a month and a half later and his lack of meaningful engagement with the colony beyond the prepared reports is clear. The majority of his submission reads like a primary school book report, long on synopsis and lacking any real original insight. In explaining his lack of concrete suggestions, Thurlow

603 British criminal law proved preferable to French law and so Wedderburn advocated it be brought into the new colony with alterations as to make it compatible with local traditions and situations. Likewise while the legal codes would be Canadian, the structure of the judicature should remain in English style as the British legal system proved a better structure to hear cases, both civil and criminal. Attached to his report Wedderburn provided abstracts of the specific regulations to be enacted by Parliament and the local council to carry out his suggestions. See Shortt and Doughty, 431-437.

pointed out that, “being totally uniformed of your Majesty’s royal pleasure touching these important articles, I feel it extremely difficult to state any certain scheme of civil and criminal laws.”

Clearly Thurlow doubted his own qualifications for making any significant contribution. While his report lacked in specifics, it offers an important intellectual case for legal and political pluralism.

The final pages suggest in their summation the concerns and assumptions of legal and political figures of the time. Thurlow highlighted the influence of Montesquieu on the British legal mind. He allowed that due to their different character and development, the Canadians viewed even the much vaunted trial by jury, “whereby the natural equality among men is so admirably preserved” as a possible attack on liberty. For, “I have actually been informed that a Canadian gentleman would think himself degraded, and more hardly used by being submitted for life or limb to the judgement of his tradesmen, than if he were put to the question and tortured by the king’s authority.”

Legal customs were based on the nature of the people who created them. Not all principles were universally accepted and applicable; therefore, forcing British conceptions of legal perfection on the Canadians would prove a counterproductive task. The systems best fit to the local conquered population offered the best means for maintaining stability.

Like Wedderburn, Thurlow explained why the right to control one’s property for the local population remained central to the thoughts of administrators and lawyers. “It seems a necessary consequence that all those laws by which that property was created, defined, and secured must be continued to them. To induce any other, as Mr. Yorke and

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605 Shortt and Doughty, 443.

606 Shortt and Doughty, 442.
Mr. De Grey emphatically expressed it, tend to confound and subvert rights instead of supporting them.” 607 The importance of property rights of local populations would continue to shape British imperial projects well into the nineteenth century. Far from being a limited and practical concern in Quebec, securing local property rights grew to hold a central place in British imperial practice in future colonial contexts. This theme, which peeked above the parapets from time to time, played a major part in the formulation of ideas of law and continuity in Quebec. Similar concerns and reasoning shaped the actions of British politicians, officials, and agents of the East India Company in South Asia. 608 Thurlow’s point would gain further delineation in the course of the debates over the bill in Parliament.

Conquest theory continued to shape the minds of lawyers, politicians, and officials alike. From this observation on the importance of law as it related to property, Thurlow argued that by right and sound wisdom

It must, I think, be the interest of the conqueror to leave his new subjects in the utmost degree of their private tranquility and personal security. And, in the fullest persuasion of their reality, without introducing needless occasion of complaint and displeasure, and disrespect for their own sovereign. He seems, also, to provide better for the public peace and order, by leaving them in the habit of obedience to their accustomed laws than by undertaking the harsher task of compelling a new obedience to laws unheard of before. 609

In favor of the laws of Canada, Thurlow explained that

It should be remembered that the scheme of government and laws for Canada, was conceived by a wise court in a cool moment, untainted with

607 Shortt and Doughty, 443.

608 For example, in the years immediately following the Quebec Act, Philip Francis, the politician and pamphleteer, adopted similar attitudes towards property rights and the continuation of local customs in Bengal. See, Travers, Ideology and Empire in Eighteenth-Century India, 174-177.

609 Shortt and Doughty, 444.
private passion or public prejudice. The principles of humanity and the views of state combined to suggest that plan which might serve to build a flourishing colony upon. The plan was improved, from time to time, by the wisdom and experience of succeeding times, and not left to become obsolete and unfit for the progressive state of the province.\textsuperscript{610}

Why throw out a plan based in sound reasoning and previous experience? Weren’t these the same principles that animated the much-vaunted Common Law? In a legal and political context where precedent held sway, it would be very un-English to remove a compendium of laws and customs developed over time to fit local conditions.\textsuperscript{611}

For Thurlow there were legitimate cases to be made in favor of legal, structural, or religious changes deemed ‘essentially necessary’ to establish sovereignty and obedience over the conquered subjects. However, such a change should not be made without some such actual and cogent necessity, which real wisdom could not overlook or neglect; -- not that ideal necessity which ingenious speculation may always create by possible supposition, remote inference and forced argument – not the necessity of assimilating a conquered country in the article of laws and government to the metropolitan state, or to the older provinces which other accidents attached to the empire, for the sake of creating a harmony and uniformity in the several parts of the empire; unattainable, and, as I think, useless if it could be attained: -- not the necessity of stripping from a lawyer’s argument all resort to the learned decisions of the Parliament of Paris, for fear of keeping up the historical idea of the origin of their laws:-- not the necessity of gratifying the unprincipled and impracticable expectations of those few among your Majesty’s subjects who may accidentally resort thither, and expect to find all the different laws of all the different places from which they come, nor according to my simple judgment, any species of necessity, which I have heard urged for abolishing the laws and government of Canada.\textsuperscript{612}

\textsuperscript{610} Shortt and Doughty, 444.


\textsuperscript{612} Shortt and Doughty, 444-445.
So while Thurlow could offer little in the way of specifics, he presented sound principles in favor of continuity. The uniformity of structures and the assimilation of the new subjects within the legal system were no longer ‘actual or cogent’ necessities. Based on general principles continuity proved not only just, but also practical.

The quoted passages from Thurlow are lengthy, but they illustrate a core tenant of the argument in favor of continuing local traditions. Stability, loyalty, and productivity, the goals of imperial policy, were best served by maintaining local structures. Establishing sovereignty over these new populations was a critical concern, but sovereignty would only be recognized under the right conditions. For the British state to maintain legitimacy with enough of the population to maintain order local traditions seemed imperative. Uniformity was no longer valued in a system which depended on the cooperation of non-Britons.

Before we chalk this change up to the simple declaration of pragmatism, it should be noted again that each side in the debate was arguing for a solution they found rational. The imposition of English traditions and laws against Catholic participation were both strategies of good order and the defense of the British state built on previous experience. More than mere pragmatism, the position of Thurlow and Wedderburn, among many others, represented a new justification of imperial practices that established order without forced assimilation and the imposition of English norms. The coming debates in Parliament, especially regarding Ireland, would spell this out. Beyond the intellectual, decisions of procedure and law played an important role in laying the groundwork for the final bill.
A critical event in the final stages of a policy for Quebec came in the form of Lord Mansfield’s decision in the case of *Campbell vs. Hall*. The case centered on the ability of the crown to collect taxes on goods exported from the island. James Campbell sued William Hall, the tax collector, to recover the duties collected on the sugar exported from his plantation. Campbell claimed that the duty, imposed by letters patent after the Proclamation of 1763, was imposed illegally as they did not originate in the local assembly. Mansfield ruled in favor of Campbell, supporting his claim that the crown lacked the authority to issue and collect the tax. This decision opened a critical avenue necessary to raise revenue in the colony without the need for a local assembly. Mansfield ruled against the crown’s power to tax, but he recognized Parliament as a legitimate source of taxes in lieu of a local assembly. A path was cleared for the passage of a bill which could also take into account a means of funding the new government. While important in opening the way for a mechanism to fund the colonial government, Mansfield, like Wedderburn and Thurlow, also expressed ideas which spoke to the broader ideas of imperial authority and practice.

In seeking to rule on the ability of the king to levy taxes in the wake of the Proclamation of 1763, Mansfield set out principles which he argued both sides in the case agreed to in full. The first was that land conquered by British forces became part of the king’s dominion and also subject to the legislative power of the Parliament. The second point of consensus was that “the conquered inhabitants once received into the conqueror’s protection become subjects; and are universally to be considered in that light,

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613 The decision can be found in a number of places but see especially, GD164/1432/16 and Shortt and Doughty, 522-531.
not as enemies or aliens.”\textsuperscript{614} The rhetoric around subjects and their rights would be an important one.\textsuperscript{615} Rather than being treated like Native Americans or other similar groups who were not, at least for the time being, granted rights associated with being subjects of the crown, those incorporated as subjects would require greater consideration.\textsuperscript{616}

This would lead to a conclusion that made concessions to local traditions far more controversial. For Mansfield declared that “the law and legislative government of every dominion, equally affects all persons and all property within the limits thereof; and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privilege distinct from the natives.”\textsuperscript{617} Edmund Burke and others would make much of this fact in opposing the bill. The Quebec Act meant that any Briton moving to Quebec would be living under French law. According to opponents, such an action removed from Britons the laws and liberties they assumed as their birthright. The supposed uniformity of opinion on this principle also meant that legal pluralism and the ambiguity of authority would shape imperial relations in unforeseen ways.\textsuperscript{618} Broadly speaking Mansfield set up extensive protections for a

\textsuperscript{614} Shortt and Doughty, 526.


\textsuperscript{616} See Patrick Griffin, \textit{American Leviathan} (New York: Hill and Wang, 2008), 34-45, on the discussion over civility and subjecthood regarding Native Americans.

\textsuperscript{617} Shortt and Doughty, 526.

\textsuperscript{618} For the effects on American political thought see, Daniel J. Hulsebosch, \textit{Constituting Empire} (Chapel Hill: University of North Carolina Press, 2005), and Craig Yirush, \textit{Settlers, Liberty, and Empire} (New York: Cambridge University Press, 2011).
conquered population. Continuity seemed the default in the wake of conquest. Yet the ultimate power to decide the path in the wake of conquest remained with the sovereign.

Mansfield used examples from the history of conquest under the English crown to defend the sovereign’s right to retain lands on terms of his choosing. He argued that Ireland, Wales, Scotland, Gascony, Guyenne, and Calais all proved that changes to law and practice were made under the authority of the crown. Two recent examples in the colonies further proved his point: in Minorca the old law remained by the choice of the crown and in Grenada prior to the Proclamation of 1763 the king simply replaced the French crown as the sovereign with its old laws intact. In the American context, as in Grenada, the crown opted for change, according to Mansfield, “after the conquest of New York, in which most of the old Dutch inhabitants remained, King Charles 2d changed the form of their constitution and political Government.” The king could alter or maintain laws as he saw fit, but once he acted even the crown could not ignore its own actions.

In the end, the Proclamation of 1763 acted as a change in constitutional structure.

The Crown

by the two proclamations and the commission to Governor Melville, the King had immediately and irrecoverably granted to all who were or should become inhabitants, or who had, or should acquire property in the island of Grenada, or more generally to all whom it might concern, that the subordinate legislation over the island should be exercised by an assembly with the consent of the governor and council, in like manner as the other islands belonging to the King.

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619 Shortt and Doughty, 528.
620 Shortt and Doughty, 528.
621 Shortt and Doughty, 531.
The crown abrogated its power and, as a result, Grenada stood under the authority of the Crown-in-Parliament, thus “to use the words of Sir Philip Yorke and Sir Clement Wearge, ‘It can only now be done, by the assembly of the island, or by an Act of the Parliament of Great Britain’.”\textsuperscript{622} In that precedent setting case, Yorke and Wearge ruled on a similar dispute over taxation in Jamaica in 1722. While seemingly a blow to London’s ability to tax the colonies, the final phrase meant that Parliament could now legitimately tax the colony: a right that colonial-born merchants in both Grenada and Quebec argued, and would continue to argue, could only be held by a local assembly.

By 1772 continuity and the protection of local norms did not just exist as a strategy of Carleton and his allies in Quebec. Imperial officials, British politicians, and key jurists in London believed that good policy dictated that Canadian laws, religion, and property would remain as they stood prior to British conquest. With the reports by figures like Wedderburn and Thurlow a strong intellectual foundation developed in favor of continuity. Montesquieu and Hugo Grotius served as critical philosophical inspirations for the new ideological approach to imperial incorporation.\textsuperscript{623} The ideals of the past no longer held sway in an increasingly diverse imperial system where new territories were unlikely to be Protestant, much less Christian, and which was increasingly based in the acquisition of large swaths of territory.\textsuperscript{624} A new intellectual

\textsuperscript{622} Shortt and Doughty, 531.


\textsuperscript{624} On British imperial ideology prior to this period see, David Armitage, \textit{The Ideological Origins of the British Empire} (New York: Cambridge University Press, 2000).
framework, in a typically British fashion one could argue, relied on empirical support for its cause.

In the concrete realm, experience and evidence from local knowledge provided support for the strategy. Continuity not only merged with recent deliberations in the colony, it also found support in conversations over previous English imperial projects. The reappraisals of imperial precedents like Ireland, which cropped up in bits and pieces previously, took center stage in supporting an imperial approach that moved away from forced assimilation and the implantation of British populations. This empirical evidence provided a rhetoric against critics who could be portrayed as out of touch with the realities of empire and holding onto outdated notions both in the realm of proper governance and in their attitudes to religion and a host of other critical issues. These themes would be further developed in public and in Parliamentary debates as the North ministry pushed the final bill through the Lords and the Commons.

III: The Final Policy

By December 1773 officials in London decided that the time was right to move forward with a solution to the problems facing Quebec. In a letter to Cramahe, now the acting governor of Quebec in Carleton’s absence, Dartmouth assured him that the colony and its civil government were “now actually under the immediate consideration of His Majesty’s Servants, and will probably be settled in a very short time.” Dartmouth also

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hinted that concessions to Catholics in religious and civil terms would animate policy moving forward. The new subjects would have the full exercise of their religion and, in order to meet Canadian expectations, the colony would return to its previous boundaries. Dartmouth explicitly mentioned the plans floated prior to the Proclamation of 1763 that supported control of the interior from Quebec and that reflection in London led to a “doubt both of the justice and propriety of restraining the colony to the narrow limits prescribed in that Proclamation.” Yet while London and figures like Cramahe and Carleton felt secure in their plans towards conciliation they still faced firm resistance on both sides of the Atlantic.

On 4 January 1774 Frances Maseres returned to the fray, penning a letter to Dartmouth and passing along an application for an assembly from British merchants in Quebec. Carleton’s old foe, the tavern keeper John McCord, led the meeting which voted 38 to 3 in favor of petitioning for an assembly. The relative minuscule number who took part in the vote underscores the relative lack of support for the more Patriot-minded merchants in a colony of near one hundred thousand Canadians. The merchants continued to reference the Proclamation of 1763 to justify their right to an assembly and

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626 Shortt and Doughty, 485. Letter dated 1 December 1773.

627 Fernand Ouellet argued that the Proclamation of 1763 and the reduction of the territory under Montreal’s control undermined the colony’s economy and that territorial and economic integrity was finally restored under the Quebec Act. See his, Economic and Social History of Quebec (Toronto: Gage Publishing, 1981), 70-90.

628 Shortt and Doughty, 485. See Chapter One for the motivations and specifics of Canadian control of the backcountry.

629 The proceedings of the committee and the draft petition, along with the letter to Maseres requesting that he communicate their petition to the ministry in London, just as they would submit it to the governor and council in Quebec can be found in Shortt and Doughty, 487-491. The official petitions to officials in both Quebec and London can be found in Shortt and Doughty, 493-502.
the protection of English law. Despite the drastic and well-developed shift away from the principles of Halifax by most officials and politicians, the merchants’ rhetoric and arguments had changed little over the previous decade. They were not going to simply abandon their cause even though, from all angles, it seemed to be lost. Even Maseres was not a firm and unquestioning ally.

While Maseres indicated that it was his duty to present their petition, he stressed his disagreement with the immediate need for an assembly and instead preferred a council, “for seven or eight years to come, and until the protestant religion and English manners, laws and affections shall have made a little more progress there, and especially than an assembly into which any Catholicks should be admitted.” While the merchants in Quebec sought to allow Catholics a place in the body, Maseres still maintained that, beyond legal concessions on property, no room could be allowed for Catholic practice or participation in public life. As discussed in treating his previous interventions, for Maseres and many others this was not bigotry, rather it was a solid defense of the revolutionary settlement and the integrity of the British state.

The petitions also arrived through official channels. In passing along the petitions from the merchants, Cramahe indicated that McCord continued to agitate for an assembly and continued to “use every argument he could think of” to gain the support of the Canadians. Though, likely from their experiences with the Grand Jury, the Canadians

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630 Likely written by Maseres the merchants in London submitted to various members of Parliament a defense of their case, “Case of the British Merchants Trading to Quebec” in May 1774 in response to the bill being submitted in the Lords. Again, little new in terms of argument was offered here. Though New Amsterdam and Ireland were offered as examples of the benefits of the full imposition of English law. See Shortt and Doughty, 512-522.

631 Shortt and Doughty, 487.
largely refused to participate and assumed that their involvement would be used to pass a policy which ultimately worked against their interests and ability to partake in civil life. Cramahe concluded his letter by highlighting the need to move quickly to settle the situation in the colony:

the whole of this transaction sufficiently evinces how necessary it is to give power and activity to the government of this province; the Canadians are tractable and submissive, but if matters were to remain here much longer in the loose way they are in at present, there is too much reason to apprehend, that it might be attended with bad effects; A confirmation of their laws of property, and rights of inheritance, after which they most ardently sigh, would be most satisfactory to them all, and prove a very great means of attaching the Canadians effectually to His Majesty’s Royal Person and Government.  

Time was running out in the effort to ensure stability and loyalty in the colony. A decade of uncertainty was all that the new subjects could handle.

The Canadians offered their own petition and memorial as a means to counter the case presented by the merchants. Much of their rhetoric also remained unchanged from past communications with London. Conciliation bred loyalty and stability. Their laws and religion promised to them and their countrymen now allowed to sit as judges, the Canadians proclaimed that “these generous proofs of the clemency of our benign conqueror will be carefully preserved in the annals of our history; and we shall transmit them from generation to generation to our remotest posterity.”

While short-term concerns might have motivate some figures in the debates over Quebec, the Canadians insisted that their loyalty was not just a matter for the present. The benefits of working to

\[632\] Shortt and Doughty, 491. The letter is dated 13 December 1774.
\[633\] Shortt and Doughty, 492.
\[634\] Shortt and Doughty, 507.
ameliorate their concerns held long-term benefits. They ended the petition with a rhetorical flourish that made clear that their loyalty, in the short and long term, was still not fully secured.

They still held fears that the promises made were still just that, especially in a colony with no fixed government, they thus called to George III: “Vouchsafe, most illustrious and generous sovereign, to dissipate these fears and this uneasiness, by restoring to us our ancient laws, privileges, and customs, and to extend our province to its former boundaries. Vouchsafe to bestow your favours equally upon all your subjects in the province, without any distinction!”635 If the case presented by supporters in Quebec and London needed additional proof the Canadians were only too happy to provide it. Eternal glory and loyalty were the rewards of a policy granting continuity with the past. Yet the key hope remained not just continuity, but participation.

The Canadians were persistent in the need to have a say in any government which held authority over their property. As they argued, “preserve the glorious title of sovereign of a free people: a title whichsurely would suffer some diminution, if more than a hundred thousand new subjects of your majesty in this province, who had submitted to your government, were to be excluded from your service, and deprived of the inestimable advantages which are enjoyed by your majesty’s ancient subjects.”636 In the attached memorial they reinforced their case, “we ardently desire to be admitted to a share of the civil and military employments under his majesty’s government. The

635 Shortt and Doughty, 508.
636 Shortt and Doughty, 508.
thought of being excluded from them is frightful to us.” They closed the memorial by pointing out that their participation offered to further strengthen their loyalty, but it was also a matter of sound management to entrust authority to those with the greatest interest in the stability of the state. They brought to the attention of the crown that the represented “more than ten out of twelve of all the seigniories in the province, and almost all the lands of the other tenure, or which are holden by rent-service.” It would prove risky to disenfranchise those with the majority of the land and fixed property in favor of an itinerant merchant population.

On May 4 1774, Dartmouth replied to a letter from Cramahé stating that, “I am fully convinced from your account of the steps taken to procure these petitions that it was become highly necessary that the arrangements for the Government of Quebec should be no longer delayed; and I have the satisfaction to acquaint you that I did on Monday last present to the House of Lords a Bill for the regulation of that government, which is calculated to lay the foundation for those establishments that I hope will give full satisfaction to all His Majesty’s Subjects.”

According to the work done by Shortt and Doughty, final action on the drafting of a bill began sometime in the summer of 1773. The final bill took place within the ministry with various concerned parties consulted as

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637 Shortt and Doughty, 510.

638 Shortt and Doughty, 511.

639 The power of the importance of the landed classes for political stability was a key concept in both English tradition and those that they inspired. See J.C.D. Clark, English Society (New York: Cambridge University Press, 2000) and Peter Onuf, Jefferson’s Empire (Charlottesville: University of Virginia Press, 2000).

640 Shortt and Doughty, 503.

641 Shortt and Doughty, 534.
part of the drafting of the bill. Men like Maseres, Wedderburn, Mansfield, Carleton, and Hillsborough all contributed to a process that was managed by Dartmouth and carried out largely by William Knox, a serving Undersecretary of State.642

The final version of the bill was introduced by Dartmouth in the Lords on 2 May 1774. It received little debate in the Lords and was introduced into the Commons on 18 May. The “Anglo-Gallican Protestant-Popish Bill” as one Member of Parliament called the Quebec Act held several key clauses which highlight its lasting importance within British imperial history.643 The bill expanded the territory under Quebec’s control back to a boundary somewhat approximating its extent prior to the Proclamation of 1763. This was controversial for a number of reasons, including the threat outlined by Burke and others that it extended French law and religion over a large swath of territory, but it was crucial to support the policy goals of London and for the economic health of the colony.644 In addition, the bill granted broad toleration to the Catholic Church and guaranteed the continuation of tithes for the clergy. Critically for Catholics, the Test Act was removed and the Oath of Allegiance required for public office made no specific mention of religion, only swearing allegiance to George III and “renouncing all Pardons and Dispensations from any Power or Persons.”645 The bill maintained French civil law

642 The bulk of the drafting was done over the previous year by Knox with the final wording polished by Wedderburn. See Franklin Wickwire, *Subministers and Colonial America* (Princeton, N.J.: Princeton University Press, 1966), 149. For the various drafts, commentaries, and internal material dealing with this development within Dartmouth’s office, see Shortt and Doughty, 533-570. For detailed treatment of the process, see Jack Sosin, *Whitehall and the Wilderness* (Lincoln, NE.: University of Nebraska Press, 1961), 239-255; and Wickwire, *Subministers and Colonial America*, 139-153.

643 The label came from Dunning, see Simmons and Thomas, vol. 5, 141. The full text of the bill can be found in Shortt and Doughty, 570-576.

644 Ouellet, *Economic and Social History of Quebec*, 90.
for all matters related to property and other private matters, while instituting English
criminal law for the maintenance of public order. The civil government would be made
up of a legislative council headed by the Governor and appointed by the crown. Though
all taxes would continue to originate in London, the council had broad powers to create
new law subject to royal approval. These various clauses, existing in the draft sent to
Parliament and only slightly refined during its passage through the Commons, would
generate controversy from the moment of its introduction until well after its passage.

IV: The Final Hurdle

The Commons debate began in earnest with the second reading on 26 May
1774.\(^{646}\) The first speaker, Thomas Townshend Jr., rose to attack the bill. He admitted
that it was odd that he opposed a bill on Quebec after his many calls for a solution the
problems plaguing the colony.\(^{647}\) Like many opposed to the bill in, and outside,
Parliament Townshend opposed not the decision to finally act on Quebec, but rather the
means by which the anarchy of the colony was supposed to be brought to order. In what
would become a concerted line of attack on the bill, Townshend questioned the
authorship of the bill and the length of time it took to bring the bill before the body:

\(^{645}\) Shortt and Doughty, 573. For the nature of oaths and Catholics in Ireland, two works are
particularly important in relation to Quebec: Patrick Fagan, *Divided Loyalties: The Question of the Oath for
Irish Catholics in the Eighteenth Century* (Dublin: Four Courts Press, 1997); and Vincent Morely, 'Catholic
Disaffection and the Oath of Allegiance of 1774,' in *People, Politics and Power: Essays on Irish history
1660-1850*, eds. James Kelly, John McCafferty, and Charles Ivar McGrath (Dublin: University College
Dublin Press, 2009).

\(^{646}\) For a more narrative and tactical analysis of the debate and the politics of opposition behind it, see, Lawson, *Imperial Challenge*, 132-145.

\(^{647}\) Simmons and Thomas, Vol. 4, 442.
I was told that the opinion of the Governor and of the great law officers of the Crown had been taken. I was told that those opinions had been laid before the law officers of the crown in this country, the Attorney, and the Solicitor General, and the King’s Advocate; I have been told it had been considered by the Board of Trade. It having gone through all those steps, it then remained under the joint opinions of the Lord Chancellor, and President of the Council. I should wish to know who adopted, who is the father of the plan now before the House.648

The long history of the bill’s gestation proved to be both a sign of its strength and its weakness. While for supporters the multitude of opinions solicited and the time taken to gather information provided evidence of the bill’s well-constructed solutions, for opponents it offered a murky history with no clear authorship of the bill’s structures. The muddied composition only fueled conspiracy theories in relation to a bill many saw as tilting Britain towards arbitrary power and undermining the constitutional settlement developed after 1688.

Townshend highlighted his general objections to a plan that created a large colony with a legal and political system which was “oppressive to the English subjects.”649 He objected to the general principle, which he believed was enshrined in the bill, that “the best thing you can do with this country, is to make it a French colony: to keep the English out of it as much as possible, that they shall not mix with Canadians. It is a convenient kind of religion, a convenient kind of law.”650 For Townshend, such an approach would not create loyal subjects, but rather lead to a colony continually desiring to return to French rule. More damaging though was the fact that the bill extended French law over a

648 Simmons and Thomas, vol. 4, 443.
649 Simmons and Thomas, vol. 4, 443.
650 Simmons and Thomas, vol. 4, 443.
large portion of British territory in North America, especially those lands in Illinois and disputed territories in the Ohio River Valley. What was the benefit to the British subject after such a long and costly war? The conquest changed nothing; Britons were denied access to the disputed territory and French religion and law ruled the land.

Ultimately for Townshend the bill left too many unanswered questions with regard to the status of the Catholic religion, especially the place of the Bishop, the law and the power of the council, which could include Catholics, to let the bill pass at the tail end of the Parliamentary session. Townshend identified the one example of where the British deployed a similar strategy: Minorca. Yet it proved a powerful case against the bill before the Commons, for “when Minorca was attacked, had you one Minorcean that did not join the French? Will the Canadians be less Frenchmen than the Minorceans?”

Like many before him, Townshend suggested the better method would be to introduce English laws into the colony to bring the Canadians into line with British norms. For many, the preservation of the laws, religion, and customs of the French meant that assimilation would prove next to impossible. Opposition to the bill continued to rely on the same ideology and practices which shaped Halifax’s decisions in framing the Proclamation of 1763. While it was now the minority position it still held a powerful attraction for many.

Lord North responded in defense of his government’s bill. North made clear that the ministry acted as responsible policymakers in the run up to the bill’s final form:

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651 Simmons and Thomas, vol. 4, 443-444.

652 Simmons and Thomas, vol. 4, 445.

“Whose bill is this: it is a Bill of the Governor of Canada, it is the Bill of the law officers, it is the Bill of the Chancellor, it is the Bill of the Lord President.”

Yes the bill was the work of many minds, but it took shape in the combined efforts of those most qualified to write it. The plan emerged after “having maturely and fully considered the various opinions of those persons who could give the best light, and information upon the subject.”

The bill was not some nefarious plot, but rather a sound and principled policy. While the bill might not fully satisfy any one source of advice or commentary, it remained “the best plan for Canada, the best plan for Great Britain.”

Prudence ruled in the formulation of the bill and its underlying principles.

North’s defense of a council, in the place of an assembly, mirrored that presented by many of the reports produced on the colony. The logical conclusion arose from that fact that “the assembly can’t be granted, because the legislature must be composed of Canadian Roman Catholic subjects, or it will be oppressive to that country.”

It would prove unjust to force the new subjects to live under such conditions. The goal of the policy was to ensure that the bulk of the population supported the governing structures as legitimate and in line with their interests and desires. How could one expect stability if there was a constantly disaffected population which significantly outnumbered those in power and supporters of the governing structure?

With regard to the status of the laws in the colony North again referenced conditions in the colony, as opposed to the principles of Townshend, as the justification

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654 Simmons and Thomas, vol. 4, 445.
655 Simmons and Thomas, vol. 4, 446.
656 Simmons and Thomas, vol. 4, 446.
657 Simmons and Thomas, vol. 4, 447.
for the use of French law. He pointed out that British criminal law replaced French
criminal law. In addition, the use of French civil law served only as the baseline for the
colony. For the colony to start on sound footing “there must be a law established to be
amended, and altered as occasion shall arise, and as the circumstances of the colony shall
require.” Again, the property rights of the majority were deemed critical to
maintaining order, more so than imposing a more ‘civilized’ legal code. Resorting to the
committee-based process of the bill’s formulation, North argued that “it has been the
opinion of very many able lawyers that the best way to establish that country is to give
them their own laws, as far as it relates to their own possessions.” The success of the
colony would depend on the population which held the bulk of the land. Principles of
English liberty and law only held a rhetorical power, for North and others the reality on
the ground dictated policy.

As to the Catholic question North shrouded himself with the ruling of Yorke and
DeGrey arguing that, “now there is no doubt, but the laws of Great Britain do permit the
very full, and free exercise of any religion, different from the Church of England, in any
of the colonies. Our penal laws do not extend to the colonies. Therefore I apprehend this
is what we ought not to extend to Canada.” He added that the concessions only went as
far as the Treaty of Paris made necessary. North defended the concessions as a perfectly
legal action which followed the precedent of the other colonies. While Catholics would
have free exercise of their religion, “papal jurisdiction is abolished.” Thus the

658 Simmons and Thomas, vol. 4, 447.
659 Simmons and Thomas, vol. 4, 447.
660 Simmons and Thomas, vol. 4, 447.
religious aspects of the bill were not to be seen as a major revision of the Constitution, but rather a continuation of current imperial policy. Many would take issue with this defense, but North sought to downplay any threat to the stability of the state in the toleration of Catholic subjects. In the main, North’s defense centered on prudent necessary action and consistent imperial policy. The bill was nothing more than what was necessary for sound imperial management and instilling stability in a colony left far too long in a state of confusion.

The debate over the course of the next several days centered on the implications of the Proclamation of 1763; the place of French law and religion within the British system; the constitutional implications of removing the Proclamation; the rights of Britons to carry their laws with them; the boundaries of the colony; the benefits of English law and the decision to have a legislative council rather than an assembly. These were all important considerations at the time, and points well covered in previous chapters, but in the case of broader imperial policy a few exchanges stand out in importance. This is especially true regarding the nature of conquest, the rights of the conquered and the best means for assimilation. While examining some of the specifics, the debates are treated for their importance in illuminating these more generally applicable principles which were applied to future debates over empire and incorporation. This approach is not meant to decontextualize these debates or ideas, but rather to identify those that shaped similar debates in contemporaneous contexts directly influenced by the debates over imperial policy and ideology in Quebec.

Attorney General Thurlow rose to address the objections of several members and broached the subject of conquest and the proper means for securing new territory. While
importing the laws or constitution of the conquerors might be sound policy in uninhabited lands, it proved unnecessary and even cruel in places where a population was already established with its own laws and practices. “Look back to every page of history,” he challenged his opponents, “to produce a single instance, in which the conqueror went to take away from a conquered province by one rough stroke the whole of their constitution.”

Echoing his internal report, Thurlow argued the only changes that should be made were to laws regarding sovereignty. Changes could and should be made to ensure that sovereignty rested with the British Crown-in-Parliament, “but with respect to all other laws, all other customs, and institutions whatever, which are indifferent to the state of the subject, and sovereign; humanity, justice, and wisdom equally conspire to advise you to leave them to the people just as they were. Their happiness depends upon it. Their allegiance to their new sovereign depends upon it.”

Much like Charles Yorke’s ideas of indifferent laws in earlier chapters, Thurlow sought to remove the charged nature of legal codes and institutional structures.

On precedents for such expansion, Thurlow argued New York, an example offered in Parliament as in Mansfield’s ruling in *Campbell vs. Hall*, did not offer a sound precedent for conquest and assimilation in North America. He argued that “the difference between the establishment of New York, and the establishment of Canada, was the difference of 120,000 and 1700.”

Numbers mattered and it would be impossible and unjust to impose new laws on a large population that would scarcely be overtaken in

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661 Simmons and Thomas, vol. 4, 456.
662 Simmons and Thomas, vol. 4, 456.
663 Simmons and Thomas, vol. 4, 456.
the foreseeable future. As a result, “if the English laws would be a prejudice to them, it would be absurd tyranny, and barbarity to carry over all the laws of this country, by which they would lose the comfort of their property, and in some cases the possession of it.” Thurlow largely echoed the sentiments offered in his internal report, but the vocalization of his notions of conquest and justice provided the ministry with a strong intellectual case for the bill’s principles.

Wedderburn built on the argument put forth by Thurlow and clearly took great influence from Montesquieu and Grotius in his vision of the rights and duties of a conquering nation as expressed in Parliament. In understanding the history of both English and Muslim expansion nothing could be clearer than his opponents’ mistaken ideals

you hold the principles that enforce the slavery of the people conquered: that because you have a right to kill, (which is not true, that extends no further than the immediate heat of action) if you save the life, you may dispose of it as you please. There is no other ground upon which it can stand. They can preserve the acquisitions in time of peace, so as to give to the country subdued as much tranquility, as much property as is consistent with its own safety. The principles of humanity, the principles of natural justice demand this as a recompense for the evils of war. Not to aggravate the evils of war, by a total subversion of all its forms, and habits, when men’s minds have been attached to particular modes, etc.

In defending the seeming incongruity of removing criminal law, but leaving civil law, he pointed out how such a principle fits with Montesquieu’s vision of conquest. The British

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664 This is likely the same reason that removal as in the case of the Acadians was never broached as a solution. The Acadians, the previous French Canadian population to find themselves under British rule, present a stark example of forced migration. On the Acadians, see John Mack Faragher, A Great and Noble Scheme (New York: W.W. Norton and Company, 2005) and Christopher Hodson, The Acadian Diaspora (New York: Oxford University Press, 2012).

665 Simmons and Thomas, vol. 4, 457.

666 Simmons and Thomas, vol. 4, 466.
were changing their laws “where it is clearly for their advantage, they are sensible of their advantage, we repair the evil of conquest.” He directly invoked Montesquieu saying that the forced abolition of exposing children to the elements, “he says is one of the finest exercises of the power of the conquering people over a conquered nation.” Through Montesquieu, the logic of removing unjust or ‘barbaric’ practices retained legitimacy. Removing laws with regard to civil matters and property, however, could not claim the same principle of justice.

To change the nature of the laws governing property meant a direct attack on the very control and value of that property. “Upon this principle, I do not hold it would have been just to relax into the barbarity of former ages.” For “with regard to the transmutation of it, with regard to all the qualifications of the right of property beyond the mere actual occupancy, all this is changed, your property is changed. It is property of a different nature. He can’t understand you, unless he enjoys it in the manner he has been accustomed to enjoy it.” Prejudice did not excuse the theft of a conquered people’s property. According to Wedderburn, “if we had, with a rough stroke, said the laws of Canada shall be totally obliterated, the rights civil, and ecclesiastical of that country shall be formed to the model of England, as being better for them: it would have sounded somewhat harsh, to have told the Canadians, you are easy with regard to your property,”

667 Simmons and Thomas, vol. 4, 468.
668 Simmons and Thomas, vol. 4, 466.
669 Simmons and Thomas, vol. 4, 467.
your municipal law is bad, you shall have a much better.” Finally, “nobody will say they ought to confiscate the property of the whole country,” by removing its civil law.

For Wedderburn, the Canadians had never petitioned or seemed well disposed to any alterations other than that regarding criminal law, and in fact they opposed almost every other suggested alteration. Ruin was the only outcome of ignoring the principles of history and critical legal philosophers. To counter critics of the bill, Wedderburn disputed the effectiveness of the imposition of English norms in Ireland and suggested that the Quebec Act rested on stronger principles espoused by thinkers like Montesquieu and Grotius. The imposition of English law would prove ineffective and undermine the process of assimilation. He agreed that “the inhabitants of Canada should acquire the mode of thinking of British subjects; as much as possible to adopt British manners. But if you alter the laws, it will be difficult. If you alter the manners, it will be more so. You should not attempt it by any violent, or sudden alteration; otherwise you put by that event into a greater distance, than if you let things take their own course.” Only through gradual change under British rule would Canadians eventually adopt British religious and legal traditions. He used Ireland as historical evidence for this principle, “with respect to Ireland both instances [events in Ireland in 12th and 15th century] prove this, that all laws of the country must be the effect of time.” Wedderburn might have overestimated the

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670 Simmons and Thomas, vol. 4, 466.
671 See Simmons and Thomas, vol. 4, 466 for his use of Montesquieu and vol. 5, p. 190 for his evocation of Grotius, and vol. 4, 465 and 470 for Wedderburn’s comments on Irish history and his reading of Davies, Leland, and Coke.
672 Simmons and Thomas, vol. 4, 468-469.
673 Simmons and Thomas, vol. 4, 470.
level of assimilation in Ireland and the bulk of the Irish population’s desire to act in accordance with British norms, but others would not make the same mistake.

Yet ultimately for the man many historians credit with defining and refining the bill and its principles, the project was built on the standard of empirical science. In response to the demands by opponents that the bill be made temporary Wedderburn responded, “I consider the assembly sitting to make experiments, to endeavor to bring the country into the mode of living in those sentiments of government, as the nature, and the habit of this country and their sentiments will admit of it.” He later reiterated his point during continued questioning, arguing “I consider this Bill in its nature to be temporary, a Bill of this kind can’t but be temporary in its nature because it is a bill of experiment.”

He believed that the approach would be successful in generating some level of assimilation, but the plan was one where the final conclusions were still unproven. Quebec was a laboratory for empire and the principles and mechanisms enshrined in the bill were meant to provide experience and empirical data for the continued refinement of the British imperial project. In an empire run by men whose worldview was determined by precedents, whether legal, historical, or philosophical, Quebec offered an opportunity to test out new ideas and practices.

For both sides of the debate a critical point of contention rested on what the Canadians themselves wanted. Gauging these desires would go a long way towards determining whether the experiment would be successful. The assertion of those in

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674 Simmons and Thomas, vol. 4, 468.

675 Simmons and Thomas, vol. 4, 469.

support of the bill remained that trial-by-jury, an assembly, habeas corpus, and other principles that many assumed to be at the heart of the British Constitution were openly rejected by the Canadians. Opponents of the bill suggested that the true will of the Canadians was being masked by those like Carleton who favored a particular set of men, the seigneurs, over all others. During Carleton’s appearance in the Commons on 2 June many of the questions focused on this very point. When asked about objections to the English methods of trial, especially using a jury in civil cases, Carleton offered that “they think it very strange, that the English, residing in Canada, should wish to prefer to have matters of law decided by tailors, and shoemakers, mixed up with respectable gentlemen in trade, and commerce, that they should prefer their decision to that of a judge.”

When questioned the Commons the next day, William Hey echoed these sentiments claiming that “the higher part of the Canadians object to the institution itself as humiliating, and degrading. They have no idea of submitting their conduct to a set of men their inferiors. And the lower orders look upon it, as in truth it is, a burthen to them.” The legitimacy of the laws rested on the intelligibility and value of the code for those who lived under it. While, as discussed previously, they misjudged the docility of the habitants, they believed their position to be one based in fact.

Issac Barre, the Irish soldier and politician present at the Battle of Quebec, rose to take issue with the notion that the continuation of French law created loyalty. Instead the

677 Simmons and Thomas, vol. 5, 4.

678 Simmons and Thomas, vol. 5, 43.

679 For a treatment of the various reactions of the Canadian population to British institutions, including the ambivalent reaction of the habitants to the continuation of the old order, see Donald Fyson, “The Canadiens and British Institutions of Local Governance in Quebec from the Conquest to the Rebellions,” in Transatlantic Subjects, ed. Nancy Christie (Montreal: McGill-Queen’s University Press, 2008), 45-82.
imposition of English laws would have brought them great joy, for “if you had led them with any address, by degrees they would have received great part of the English law: they would have hugged it to their breasts; they would from time to time have stated customs. By this time you would have assimilated them to your constitution, and not left them standing single under an arbitrary power, standing Catholics.” Barre was extremely optimistic of the impact and rapidity of assimilation through the imposition of English law. His notion that through education and outreach Canadians would understand the benefits of English law found little support in Carleton’s testimony.

Opponents, like Barre, sought to push Carleton on his level of work in instructing the Canadians in the benefits and the functions of the English system of law and governance. The implication was that the Canadians’ resistance emanated from the fact that they did not understand the law well enough and that they were ignorant of its benefits and superiority over their native system. Two exchanges between Carleton and an unidentified interlocutor highlight the final thrust of an extended back and forth,

Q - Whether any pains have, or have not been taken to explain to such people the excellence of such a constitution, and the advantages that would arise from it, or whether they were left to conjecture?
A - It is a difficult matter to instruct a whole people in lessons of politics, and I have never attempted it.
Q - Whether he conceives it would be impracticable at this time without giving general lessons to all the people to explain the advantage they would derive from the English government without the abolition of all their usages?
A - They have very often told me, that during the military government, the English had frequently expressed to them the happiness, and great advantages they would receive by the introduction of the English government, and by the protection of the civil laws of the country. That they were to become a happy people by the change. Several years after, when they had experienced what it was, and found that they were debarred of what they looked upon as the civil rights of subjects, and that they

680 Simmons and Thomas, vol. 4, 460.
understood, that as Roman Catholics they could not enjoy places of profit, or trust, or honour, they thought it was adding mockery, and insult to severity; and were astonished, that people could hold such language to them.\textsuperscript{681}

The message was clear; explaining the superiority of British norms offered no benefits when the underlying principles of that system excluded them from the participation within it.

Like Carleton, William Hey, the Chief Justice of the colony, doubted whether a whole people could be easily instructed in the benefits of the English system saying, “I have harangued the juries upon the advantage of the British constitution. Whether it was my fault in not delivering my ideas upon the subject clearly, or that they were not interpreted into them in the French language, I don’t believe any Canadian took any notice of it.”\textsuperscript{682} You could not educate a people in order to gain their acceptance of a system which they found undesirable and alienating. The 1700 Dutch in New York might be easy to subsume demographically, but the 150,000 French Canadians would not simply be absorbed into a new dominant culture.

According to Carleton, the Protestants in the colony numbered no more than 360 men and he suggested that the number had declined since his return to London in 1770.\textsuperscript{683} This lack of significant presence suggested that tilting the administration to favor this population would be foolhardy. In addition, this population consisted principally of merchants and soldiers. Carleton made clear that the land was “almost entirely” in the

\textsuperscript{681} Simmons and Thomas, vol. 5, 11.

\textsuperscript{682} Simmons and Thomas, vol. 5, 50.

\textsuperscript{683} Women and children did not merit a mention in this exchange, but based on the nature of the population of disbanded soldiers and merchants it was likely fairly low.
hands of the French Canadians.\textsuperscript{684} Rather than entrust the governance of the colony and their property to the Protestant minority, the land-holders and the bulk of the population sought to be full subjects and have access to the levers of power. According to the Governor, they appeared “to confine their ideas chiefly to the restoration of their laws, and customs, and that all distinction should be taken away which separates them from the English subjects; by that I understand the admission into places, office of trust, and honour in equality with the English.”\textsuperscript{685} Carleton stood firm with his arguments in favor of his plan of letting the Canadians maintain their culture and systems as a means to engendering loyalty to their new sovereign and to contribute to the success of the empire. He spoke of the increasing productivity of the colony in producing grain and other products, but refused to attribute this to the imposition of English laws. It was the result of new population and the industry of the Canadians.\textsuperscript{686} Continuity and participation would pave the way for a successful imperial project. The proof of such a proposition, if not already clear from legal principles and evidence on the ground, could be found in a well-contested historical precedent.

On 7 June Burke rose to defend the imposition of English legal norms in Canada. He found much to criticize in the reversal of the Proclamation of 1763 and the continuation of French law in the colony. For Burke, the extension of English liberty trumped any value in the continuance of the local traditions. Only through experiencing the full benefits of English law would French Catholics become loyal British subjects, a

\textsuperscript{684} Simmons and Thomas, vol. 5, 4-5.

\textsuperscript{685} Simmons and Thomas, vol. 5, 15.

\textsuperscript{686} Simmons and Thomas, vol. 5, 32-33. Carleton estimated that estimated that through immigration of Acadians and natural increase the population was closer to 150,000 at the time of the bill’s passage.
position that mirrored his view of Ireland. Burke argued that he was not simply concerned with the benefits or harm to English subjects. In speaking on the Proclamation and the decision to revoke the extension of English laws it promised, Burke argued that, “the laws of England as they stand...they hold out a defence of the liberty of the person which other laws do not procure.” Denying these protections to the Canadians was against their best interests and “depriving” the Canadians of the benefit of English liberty, for like supporters of the bill, “so far as the Canadians. I consider them always, Sir, as the first object of my attention.” In the case of the colonies Burke wished to “have English liberty carried into the French colonies; but not have French slavery brought into” them. In the end, removing English law was “to the French a denial of a promise, to the Englishmen denial of law.” Towards the end of the days of debate, Burke rose to further push in favor of English laws, he hoped that the members who were in the house on the 10th after a lavish dinner, “and by being thus full of English meat, would undoubtedly be for English laws.” His comments found little support on the day, but did draw praise in the press.

As it did for Burke, the case of Ireland served as a key precedent for both sides of the debate. Opponents of the bill defended the imposition of English legal norms based on Sir John Davies *A discoverie of the true causes why Ireland was never entirely*

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688 Simmons and Thomas, vol. 5, 121

689 Simmons and Thomas, vol. 5, 122.

690 Simmons and Thomas, vol. 5, 122.

691 Simmons and Thomas, vol. 5, 213.
subdued. Speaking in the Commons on 26 May 1774 John Glynn argued that it was the prerogative of Parliament, and the soundest policy, to establish and enforce English law in Quebec. According to Glynn, history proved that all nations had the right, and exercised it, to enforce their laws on a conquered people. In British history the best example lay in Ireland, and here Glynn expressly relied on Davies, where “they were subdued, they receive the laws of the conquerors to this day, [and] they are indebted for all the happiness they enjoy.”692 While we might question how much happiness the Irish felt as a result of English law, for many opposed to the bill, the Irish model still held considerable legitimacy.

Building off the intellectual trend in conquest theory in favor of a more conciliatory approach, those who supported the bill found little to take from the strategies employed in Ireland. Robert Nugent, Lord Clare in the Irish peerage, was an active participant in Parliamentary debate. In his defense of the bill in the Commons, Clare pointed out the misguided motivation behind the penal laws in Ireland for, “the laws are made in the heat of blood, and great provocation certainly after this infamous rebellion [1641].” Yet the policy, according to Clare, did not convert Catholics. In fact, as a result of the penal laws, Catholic elites either emigrated or became poor. This process left the Catholic population under the leadership of their priests and more attached to their religion, not less. These laws made in a fit of fear proved counterproductive, for instead of leading them towards the Protestant church it forced the men of property abroad and did nothing to convert the masses of the people. He asked, “what is the cause that miserable, ignorant, bigoted people the clergy of Ireland are looked up to. Because they

692 Simmons and Thomas, vol. 4, 464.
have no men of landed property. Such has been the wisdom of the Irish laws, they have
not only made laws that have driven the people of property out of the country, but they
never can purchase." In Ireland, the penal laws ensured opposition to the state rather
than the desired assimilation and loyalty. As a means of conversion, legal disabilities
based on religious confession constituted a misguided policy.

But many opponents continued to rise and argued that once protections were
made for real property the best means of assimilation remained imposing the laws of
England. As Glynn argued towards the end of debate, the goal of the Parliament should
be “that which is best calculated to promote the permanent happiness of the people that
are to be governed by it, is the eligible plan, and such as in duty, the House is bound to
give it.” While Glynn was in favor of giving the Canadians happiness, he believed that
the most effective way to develop loyalty remained, “to give them that system of laws,
and judicature which has given so much happiness to ourselves.” Ireland clearly had
convinced him of the joys of English law and he argued that any negative effects would
be a “temporary evil”.

When thinking of the implications of the bill in front of him Glynn,
“contemplated with some horror the nursery of men they shall breed up with
irreconcilable aversion to the laws, and constitution of this country.” Such an aversion
might lead them to wish the destruction of it. The bill would ensure that the colony

693 Simmons and Thomas, vol. 5, 117.
694 Simmons and Thomas, vol. 5, 185.
695 Simmons and Thomas, vol. 5, 185.
696 Simmons and Thomas, vol. 4, 464.
697 Simmons and Thomas, vol. 5, 186.
would remain “so large a tract of country to be inhabited by a people who are to be forever aliens to the language, laws, and government of this country. If they are so, they will undoubtedly be very dangerous.” While the plan offered by opponents might not treat the Canadians as aliens, the long-term effects would be to make them effectively just that. They would remain outside of the norms of the metropole and either indifferent, or hostile, to British culture and law. While modern Quebec may be proof of Glynn’s assertions, in the moment such claims failed to generate much support.

Wedderburn again rose to take issue with Glynn’s support for the imposition of British norms. He again referred his Parliamentary friends and foes to the ideals of celebrated legal theorists. He did “not believe that any address, or any eloquence is sufficient in a polished assembly of men to inculcate…so barbarous an idea that the moment conquest is obtained…settled country in the possession of another, it consists with humanity, it consists with wisdom, it consists with common honesty to take away all their laws.” He continued, “in some less refined…than the present speaking of conquest, Grotius had these words, ‘cum Homini…usum eripere.’ There are the moderated ideas of conquest.” Wedderburn went on to say that the principle that taking away their laws because some believed the English to be better was partaking in “a great deal of ignorance and at the same time barbarity.” In an enlightened age and as a Protestant

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698 Simmons and Thomas, vol. 5, 190.


700 Simmons and Thomas, vol. 5, 191.
nation, persecution on religious or cultural grounds led Britain back into the dark and turbulent past. 701

Later in the day Wedderburn pushed this point further,

One argument I confess has struck me as exceeding dangerous…not as usual…he proved the truth of what I believe every man in the House is extremely well convinced, that the institution of trial by jury has proved by experience in this country to be superior to any other mode of trial of which we have any account from history.

Such thinking lead inexorably to using force to tell the Canadians that their rights and laws were “absurd,” making the British party to the same persecution that

the Spaniards have exercised over their subjects in America. The establishment of the Inquisition would be proved [by the] conviction of the Spaniards to be food for Mexico [as it is] necessary for the constitution of Spain. He who thinks their faith more valuable than temporal felicity, may by [some] stretch [argue] that the Inquisition is to be preferred to all other considerations. They would not think he acted barbarous in speaking this language to the people. Quit your prejudices, be wise. 702

The British did not want to act as the persecutory Catholic Spain had in its treatment of the native populations. 703 Anti-Spanish sentiment fueled by both fear of the strength of the empire in places like England and other Spanish rivals for empire and continental power and the writings by figures like Bartolomé de las Casas, generated a picture of the Spanish Empire which was cruel and persecutorial to the populations under its rule. In drawing on this imagery Wedderburn was inverting the claim that the bill pushed Britain

701 Contemporary commentators found persecution not only counterproductive, but also un-Christian. Overzealous Protestants lacked charity, used earthly means of punishment in a spiritual cause and succumbed to the same zeal that inspired Catholics to take so many Protestant lives. See, Tony Claydon, Europe and the Making of England (New York: Cambridge University Press, 2007), 79.

702 Simmons and Thomas, vol. 5, 196.

towards Catholic absolutism and arbitrary rule. Instead, those who wished to forcefully alter local rights and customs were pushing for a much harsher form of governance in line with the prejudices and persecution of Spanish rule.

Ultimately Wedderburn judged the value of the policy on its relationship towards the conquered, the Canadians. “I think the sentiments of the Canadians ought to be much attended to in every regulation you make. That is the political star. To that all the parts of the Bill ought to be directed. Steering to that point it would carry that along with it to assimilate the…laws, and customs of that country and this country.” In what in many ways summed up the motivations for the bill, Wedderburn finally declared that “there is one principle of which I am as well satisfied, that is, that the form of administration of justice is best which the people over whom justice is being exercised think best. That it is of the utmost necessity, that the [people] to whom justice is administered should think that justice is well administered and that they live under and equal law, to all men alike.”

Hey supported the ministry’s assertion that English legal and political systems did not fit with the nature or desire of the new subjects. While he maintained his position, in opposition to Carleton, that some hybrid system of civil laws would be best, he did not see any benefit in imposing an assembly. For they were:

too ignorant a people to understand the value of a free government: they are exceedingly obedient; would obey the King’s command let it be what it may: if he ordered an assembly to meet they would go, but they would not know what to do when they came there: the fact is, they are not capable of that government; they do not expect it: it is contrary to all their ideas, to all their prejudices, to all their maxims: their idea of a house of

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704 Simmons and Thomas, vol. 5, 197.
705 Simmons and Thomas, vol. 5, 198.
assembly is that of a house of riot and confusion, which meets only to impede public business, and to distress the crown; all which is a system extremely contrary to the ideas and principles of the Canadians.™

But before we leave Parliament with the warm feeling of the enlightened and tolerant benevolence of the North ministry, this attitude also holds the potential notions of difference that could operate in ways that make Glynn seem far from the misguided bigot Wedderburn made him out to be. In declaring the new subjects as fundamentally different in their nature and manners, Hey, Carleton and their allies were erecting a barrier between the new and old subjects, even as the claimed to avoid making distinctions between new and old.™

After the third reading on 13 June the bill passed the Commons 56 to 20. On 17 June it returned to the Lords who sat to debate the changes made to the bill in the Commons and vote the final form into law.™ Lord Chatham, formerly William Pitt, rose to attack the bill first. Chatham offered many of the same points of the Commons opponents and those who would come forward in the pamphlet debate after the bill’s passage. In order to give a final rhetorical summation to the opposition I present their case in his words. For Chatham and his supporters, the bill

would involve a great country in a thousand difficulties, and in the worst of despotism, and put the whole people under arbitrary power; that it was a most cruel, oppressive, and odious measure, tearing up justice and every good principle by the roots; that by abolishing the trial by jury, he

™ Simmons and Thomas, vol. 5, 35.

™ On the ways in which toleration can deepen and further the act of ‘othering’ or heighten notions of difference I am drawing on, Ranier Forst, “The Limits of Toleration,” Constellations 11(2004): 312–325.

™ The changes made in the Commons were points of clarification in the wording of the bill and the oath of allegiance, and the shifting of the barrier to fit Burke’s concerns. No opposition amendments made it into the final bill.
supposed the framers of the Bill thought that mode of proceeding, together
with the Habeas Corpus, mere, moonshine, whilst every true Englishman
was ready to lay down his life sooner than lose those two bulwarks of his
personal security and property. The merely supposing that the Canadians
would not be able to feel the good effects of law and freedom, because
they had been used to arbitrary power, was an idea as ridiculous as
false.\textsuperscript{709}

The civil aspects of the bill were repressive to all the king’s subjects and left little doubt
that the English liberties at the heart of the British constitution were under threat. It was
the duty of those in power to protect the settlement from those who wished to undue all
that British soldiers and politicians had fought so hard to secure.

On the Catholic question Chatham, again like many before and after, suggested
that the bill fundamentally undermined the constitutional settlement which underpinned
the stability of the British state. Here he:

directed his discourse to the bench of bishops, telling them that as by the
Bill the Catholic religion was made the established religion of that vast
continent, it was impossible they could be silent on the occasion. He
called the Bill a child of inordinate power, and desired and asked if any of
that bench would hold it out for baptism; he touched again upon the
unlimited power of the governor, in appointing all the members, and who
might be made up of Roman Catholics only. He also took notice of an
amendment which had been made in the House of Commons, which was a
new clause, repealing so much of the Act of Reformation of the 1\textsuperscript{st}
of Elizabeth as relates to the oath of supremacy, and substituting a common
oath of allegiance in its place. The Act of Elizabeth, he said, had always
been looked upon as one that the legislature had no more right to repeal,
than the Great Charter, or the Bill of Rights.\textsuperscript{710}

Chatham went on to delineate the threats posed by Catholics to civil society, the
reasoning for the barriers to Catholic participation, and that the bill brought down these
barriers threatening the stability of all of the king’s dominions and the loyalty of his

\textsuperscript{709} Simmons and Thomas, vol. 5, 229.

\textsuperscript{710} Simmons and Thomas, vol. 5, 230.
Protestant subjects. Chatham summarized the bulk of the attack on this new strategy of imperial incorporation, and he would gain public support for his words, but ultimately the Anglican bishops in the Lords, except one or two, refused to support the opposition.  

This line of attack led to public assertions that the bill fit not only with the desires of George III and his ministers for arbitrary rule, but also a shift in the Anglican Church towards a more Papist form of religious hegemony. A print in the London Magazine in July 1774 made this point well.  

Backed by North, Lord Bute, dressed in his Scottish kilt, the devil, and a figure variously identified, but likely Lord Dartmouth, the bishops dance around the bill in celebration of their shared triumph. The opposition spoke to a strong radical audience within the British public and the press worked to generate public opposition and horror at the bill. Despite the strong legal, empirical, and historical case in favor of the policies developed over the past decade, the principles of English radicalism would not simply stand down in the face of a strong case in favor of conciliation and continuity. The power of this rhetoric might have delayed action, but it could no longer stand against the tide of evidence in favor of the principles behind the Quebec Act and its importance to imperial stability.

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712 “The Mitred Minuet” BMC 5228 1 Aug 1774, (London Magazine, July 1774). The image was copied and reissued in America by Paul Revere.

Lord Lyttelton, an English peer, rose to challenge Chatham on the religious
toleration granted in the bill. In opposing his position he stated that the bill
breathed forth a spirit of moderation, candour, and universal toleration to
all religions that were not incompatible with the precepts of morality, and
the general welfare and happiness of mankind. That to oblige Catholics to
deny the supremacy of the Pope, was to compel them forcibly to abjure
their religion, and in reality to commence a persecution against them; that
opposition always grew and strengthened under the scythe of persecution,
and that fanaticism was never formidable till it was oppressed.\textsuperscript{714}

Like supporters of the bill in the Commons, he argued that the threat of rebellion and
instability came from intolerance and the un-Christian drive for persecution. He closed
by declaring that he supported the bill for its use of moderation as a means to draw the
Canadians away from France by improving their political and commercial situation and

\textsuperscript{714} Simmons and Thomas, vol. 5, 230.
granting them “liberty of conscience”. Lyttleton “observed the dark times of superstition were past, that the gloomy reign of persecution and priestcraft were now at an end, that science every where diffused had every where enlightened the human mind.” Both the nature of Protestantism as a religion that avoided persecution and the philosophical milieu of the time dictated against a policy built on prejudice against the religious beliefs of others.

Like his opponent Chatham, Lyttleton offered a forceful restatement of much of the case for the ministry and it likewise brought him public attention in the pamphlet debates. For the civil aspects of the bill Lyttelton argued that “forms of government must always be suited to the dispositions of the governed, and infinitely varied in different climates; that the mild constitution of this country would be rejected with contempt by the sons of despotism in Asia, and the excess of liberty happily spread over England would degenerate to an excess of licentiousness in Canada.” India and Quebec were different from Britain and this difference had to be recognized. Such declarations would work against a network of equal subjects, but it would stand firm in the defense of pluralist policies in the forms and structures of governance and legal norms in an empire that spanned the globe by the end of the century.

Horace Walpole made note of the debate in his journals and gave it particular color. If only for its wit, and to provide a break from the high-minded rhetoric, it deserves inclusion in any treatment of the debates:

715 Simmons and Thomas, vol. 5, 231.


717 Simmons and Thomas, vol. 5, 231.
The Duke of Richmond reproached Lord Dartmouth with supporting these bills [the Quebec and Boston] after having been one of the protestors against the Stamp Act. The Duke, being reproached by Lord Gower for dissenting from the majority and venting his opinions, answered with just severity, that in the last rebellion no man had been questioned for speculative prejudices, though they might have had one foot in the stirrup to join the Pretender – the case of Lord Gower’s father. Lord Hillsborough, all courtier as he was, opposed the Quebec Bill, and, glancing at Lord Dartmouth, said it must have been the work of a child in politics. The latter [Dartmouth] answered, that was the objection of an old dotard.\textsuperscript{718}

They may well have all been men of principles, but they weren’t above petty sniping.

On 22 June 1774 the king travelled to Westminster and gave his assent to the bill in the House of Lords. He praised the bill for solving the problems which had plagued the colony and proven a source of embarrassment for the crown. In the end, “the Bill which you prepared for that Purpose, and to which I have now given My Assent, is founded on the clearest Principles of Justice and Humanity; and will, I doubt not, have the best Effects in quieting the Minds and promoting the Happiness of My Canadian Subjects.\textsuperscript{719} The bill would be instantly controversial and on the very day of his trip to the Lords crowds in the streets decrying the bill and its toleration of Catholicism greeted the king with shouts of “Remember James II”.\textsuperscript{720}

The debates in Parliament signal that the issues raised by direct rule over Quebec led to serious discussions which went to the heart of imperial ideology and practice. The practices that resulted from these discussions provided a new set of tools for a rapidly expanding empire with swelling numbers of non-Britons. The principles enshrined in the

\textsuperscript{718} Simmons and Thomas, vol. 5, 232.

\textsuperscript{719} Simmons and Thomas, vol. 5, 234.

bill meant that a much more flexible approach was not only possible, but necessary. The experience on the ground in Quebec, case against the Irish model, the historical support for policies of toleration, and the power of the intellectual case built upon Grotius and Montesquieu proved too much for the older ideology and practices of empire. The public debate would be no different or less important in changing the political and ideological atmosphere.

IV: Quebec in the Public Consciousness

The public reaction to the final act entered the public consciousness in newspapers and pamphlets. Those opposed to the policy began their public campaign in the press no later than 19 May and continued to write against the Quebec Act through 1775 and the unsuccessful attempt at repeal in the next Parliamentary session.\(^{721}\) While this vocal resistance is important in shaping the public understanding of the Act, it did not fundamentally open the debate in new ways. The public discourse did not differ significantly from the terms and arguments deployed within official correspondence or in Parliament. While the final policy feed into already existing narratives for radicals and disenfranchised American colonists, the public discussion, though more bombastic in tone, did represented a minority view in political and public life. The importance of the press and popular politics means that a brief treatment of the public debate is warranted.

The attempt by members of the opposition to use the Quebec Act as a key platform for the election campaign in 1774 failed and the next session found North with a

\(^{721}\) Lawson, *Imperial Challenge*, 134.
greater majority in Parliament. They nonetheless mounted a well-planned campaign of repeal in the House and in the press as a means to score political points. This plan largely centered on: a rhetoric warning of impending arbitrary rule, the pernicious outcomes of secret influence, an increasingly romish Anglican Church or the return of Papal authority, the threat posed by a compliant Catholic army under the crown to the American colonies and then Britain itself, and the complete subversion of the principles of 1688 and the Protestant state. Yet, even when avoiding the mistakes that made their initial attempt to block the Act’s passage such a failure, they gained no widespread traction in Parliament or in the public beyond the radical press. Without reading too much into the limited successes of the arguments they presented, whether out of apathy or support for the government’s reasoning the bulk of the British public accepted the principles behind the Quebec Act. The ministry’s public supporters may have seemingly won the debate, but more importantly the vigorous attempt by the opposition and the concerted defense by the ministry means that the practices and ideas underpinning a pluralist empire were well covered in the public sphere.

722 The Quebec Act was used as a political rallying point in places like Bristol and Newcastle, among others; see, James Bradley, Religion, Revolution, and English Radicalism (New York: Cambridge University Press, 1990), 214 and 260-263.

723 This topic, in addition to the wider opposition position over Quebec within the Atlantic’s ‘constitutional periphery’ and radical politics is well covered in, Milobar, “Quebec Reform, the British Constitution and the Atlantic Empire,” 65-88.

724 This rhetoric has already been explored in the “Strictures on the Conduct of two successive Administrations” in Chapter Four. For an example of this case in response to the Quebec Act, see, A Letter to Sir William Meredith, Bart. in Answer to his Late Letter. (London, 1774).

725 For a treatment of the public debate over the Quebec Act see, Aaron Willis, “Liberty and British Identity: Printed Reactions to the Quebec Act, 1774-1775” (M.A. thesis, Texas A&M University, 2007).
While relatively few of the king’s subjects were enfranchised and with the distribution of Parliamentary seats grossly unbalanced, the press and popular politics were still able to assert influence and apply pressure to British politicians.\textsuperscript{726} This public influence, coupled with the fact that printed material helped to shape the political consciousness of the nation, makes a brief treatment of the government’s official pamphlet useful.\textsuperscript{727} For the principles behind the Quebec Act to have a wider influence on British politics and conceptions of empire it had to reach beyond the offices of the Board of Trade or the American Department. As this project seeks primarily to understand the ‘official mind’ what follows is a brief foray into a topic worth future consideration and study.

After the Quebec Act passed through Parliament, the North government employed William Knox, the Irish-born under-secretary for the American department, to defend the act in print. Knox was not just a hired gun used to produce propaganda for his employer; he held a central role in the drafting and completion of the Quebec bill.\textsuperscript{728} As a result, he was intimately connected to the principles which underpinned the act. In his 1774 pamphlet, \textit{The Justice and Policy of the Late Act of Parliament}, Knox acted as a staunch defendant of the policy and its ability to address a variety of concerns. In making his


\textsuperscript{727} Eliga Gould highlights the benefits of pamphlets in studying ‘political consciousness’ in the introduction to, \textit{The Persistence of Empire}, xix-xxi. Similarly Bailyn speaks to their strengths in the forward to \textit{The Ideological Origins of the American Revolution}, v-vi.

\textsuperscript{728} Knox was one of the first subministers to combine the role of proposing and drafting legislation and acting as a ministerial apologist. Knox worked for almost a year on the Quebec bill and was a critical figure in much of the legislation emanating from the American department. See, Jack Sosin, \textit{Whitehall in the Wilderness} (Lincoln, NE.: University of Nebraska Press, 1961), 239-255; and Franklin Wickwire, \textit{Subministers and Colonial America} (Princeton, N.J.: Princeton University Press, 1966), 139-153.
case Knox examined the comparative place of Ireland and its Catholic population. Echoing Lord Clare, Knox argued that the framers of the penal laws created the legal regime not through sound reasoning and judgment, but rather because of “dread of their numbers, and resentment for the cruelties they had inflicted upon the Protestants while their rule lasted.” Readers could recognize this rash and emotional motivation was a contrast to the decade of internal debate that gave birth to the Quebec Act. Knox spelled out the consequences of the resulting policies.

If the penal laws aimed to create stability, loyal subjects and convert Catholics to Protestantism then “the effect of these measures, if we may believe the Irish Protestants, has not by any means answered these their avowed purposes, nor served in any degree to recommend them for our imitation in Quebec.” Instead, the Irish protestants “think themselves in the utmost danger of being massacred by the papists, if, even in time of peace, there should happen to be a less number than twelve thousand effective troops remaining in the island.” In referencing the recent crisis in Ireland over the crown’s desire to augment the number of troops raised in Ireland, Knox sought to highlight the Protestants’ own sense of precariousness.

A stark contrast existed between the Protestant demands for assistance in maintaining order and their assertions of the beneficial impact of the penal laws and the imposition of English norms in Ireland. It seemed undeniable that in Ireland English

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729 Justice and Policy of the Late Act, 21.
730 Justice and Policy of the Late Act, 22-23.
731 Justice and Policy of the Late Act, 23.
norms were not willingly and successfully adopted. It was not, then, a model worthy of emulation. Accordingly, Knox hoped a new type of politician would rise in Ireland. One who recognized “men to be more disposed to support a government that protects them in all the rights of humanity, than one whose policy it is to extirpate them,” and that, “men who invest their wealth in fixed property, are not the most apt to excite insurrections; and that to oblige men to transmit their property into foreign countries, is not the surest method of attaching them to the state they reside in.”

In fact he hoped Quebec would now act as an ideal for the further reform of Ireland.

Knox does a great deal more in his pamphlet to defend the ministry’s position. His main purpose was to protect the government from the ‘misrepresentation’ of the Quebec Act in the press and in the broader public sphere. Knox laid out a defense of the bill provision by provision, provided a chronological account of the development of the policy and the crises that arose, and submitted to the public the justice of granting to a newly conquered people the rights and privileges they requested. As his case is a restatement of the arguments made by the ministry and its supporters in Parliament, it need not be further delineated here. He appended to the pamphlet petitions from both the Canadians and the merchants, and the complete Act. Knox presented the case to the public unadorned with wild rhetoric and believing that the Act and the ministry’s practical solution built on an empirical, historical, and legal foundation would speak for itself. The Irish precedent sits at the center of his case as a well-understood and continuing problem of cultural and political incorporation. As a corrective to all that appeared to be going wrong in that first laboratory of empire, Quebec offered a solution

\[733\] *Justice and Policy of the Late Act*, 24-25
developed over a lengthy period of reflection and empirical investigation. These practical solutions were the directive moving forward, not policies based on ideas rooted in fear and short-sighted ideology.

Conclusion

In the definitive push for a bill to settle the problems facing Quebec, the North ministry offered a defense of its pragmatic policy based on historical precedents, Natural Law, and the undeniable realities on the ground. While the Act faced vocal and organized resistance, its principles were widely accepted by the public and political class alike. The ultimate policy enacted many of the ideas developed in the 1760s and rested on the work of Charles Yorke, James Murray, and many figures no longer directly involved in its final period of development. Yet, the work of these individuals accrued over time into a collection of reports, legal opinions, and various other communiques that made it nearly impossible for the ideology of the opposition to stand against it.

Defending the power of the seigneurs, granting broad toleration to the Catholic Church, and continuing much of the resident customs and usages, all without a local assembly seemed unthinkable a decade earlier. In the end the real-world and empirical case in favor of a flexible set of practices proved too strong for the principles behind the Proclamation of 1763. Long delayed by political upheavals and the reticence of successive ministries to do what they knew was necessary; the policy that emerged would provide the foundations for the spread of the British Empire across India and beyond.
CHAPTER 7:

EPILOGUE: THE RETURN OF THE ACADIANS

“Let the colonies always keep the idea of their civil rights associated with your government – they will cling and grapple to you, and no force under heaven will be of power to tear them from their allegiance. But let it be once understood that your government may be one thing and their privileges another – that these two things may exist without any mutual relation - the cement is gone, the cohesion is loosened, and everything hastens to decay and dissolution.” – Edmund Burke, *Speech on Conciliation with the American Colonies, 22 March 1775*

“Do not dream that your letters of office, and your instructions, and your suspending clauses are the things that hold together the great contexture of this mysterious whole. These things do not make your government. Dead instruments, passive tools as they are, it is the spirit of the English communion that gives all their life and efficacy to them. It is the spirit of the English constitution which, infused through the mighty mass, pervades, feeds, unites, invigorates, vivifies every part of the empire, even down to the minutest member.” – Edmund Burke, *Speech on Conciliation with the American Colonies, 22 March 1775*

“In the groves of their academy, at the end of every vista, you see nothing but the gallows. Nothing is left which engages the affections on the part of the commonwealth. On the principles of this mechanic philosophy, our institutions can never be embodied, if I may use the expression, in persons; so as to create in us love, veneration, admiration, or attachment. But that sort of reason which banishes the affections is incapable of filling their place. These public affections, combined with manners, are required sometimes as supplements, sometimes as correctives, always as aids to law.” – Edmund Burke, *Reflections on the Revolution in France, 1790*
We begin and end with Edmund Burke. Some might find that surprising, as he played an inconsequential and adversarial role in the formulation of the Quebec Act and its underlying principles. Yet it is he who was perhaps best placed to understand it. In the importance he placed on cultural identity and his broader attitudes towards the nature of empire, the Quebec Act had much to offer a politician and intellect like Burke. His position on the American colonies relied on many of the same principles that underpinned the Quebec Act. It was the protection of rights and a sense of shared communion with the state that bound the empire together. Ruling an empire at a great distance required common cause; instructions and orders from London were nothing more than ‘dead instruments’ only brought to life by the willingness of the colonial subjects to infuse them with legitimacy.

Burke was also aware of the centrality of customs and tradition to social order. In attacking the French Revolution, he defined the importance of cultural identity both by loyalty to the state and the stability of society. Laws on their own were not enough to hold the devotion of the people; their traditions were critical to the constancy of state. For Burke, tradition stood as the foundation of society and he doubted how willing, or able, people were to toss off their cultural past. In the end, British officials likewise realized that what would bind the Canadians to the British state were not laws or ethereal principles, but the protection of their customs and the dependence of their rights on British sovereignty.

A signal of the power of the ideals exemplified by Burke’s statements can be found in the efforts of a small band of Acadians, a population forcibly removed from British Canada in the 1750s and 1760s, to return to Quebec in the wake of new British
While arriving in the year before the bill was passed, the general trend towards conciliation undoubtedly convinced the Acadians of the shift in imperial practices towards non-Britons. Their assumptions were not to be misplaced. Lt. Governor Hector Theophilus de Cramahé and the colony’s council made sure that the new arrivals were allowed to settle anywhere they pleased and suffered no ill treatment by officials. The willingness to return provided support both for the policies espoused by figures like Guy Carleton and the notions of imperial stability delineated by Burke. Yet varied groups within the British dominions saw the bill in very different ways. Where Acadians, sensing the ultimate thrust of British policies, sought to resettle in Canada as a result of conciliation, popular reactions in London and in the American colonies signaled deep suspicions and dislike of the bill.

Samuel Martin, father to Josiah Martin, the disappointed applicant for Governor of Quebec, wrote to his son Samuel, Jr. about the bill, asking “pray tell me the purport of the late act of Parliament for Quebec, and Canada. The corporation of London, and the mob, represent it as an establishing popery in that country, and laying aside all juries.” Likewise, John Wilkes’ correspondents wrote to him expressing their fears over the bill and their desire to mobilize popular resistance to those who were responsible for its formulation and passage. John Dadd, a supporter from Cornwall wrote that:


735 See CNA RG1 E14, letter dated 31 May 1774.

736 BL Add. Mss. 41348, letter dated 26 August 1774.
as we look on you as the great defender of our religious and civil rights, hope you will excuse the liberty I have taken of troubling you with this. ---

- The kingdom in general of this country in particular being greatly alarmed at the consequence of the Quebec Bill is likely to produce of the general election approaching. Should take it as a particular favour if you would be so kind as to point out who were the framers and supporters of the said bill, which in its nature is pregnant with everything that is tiranical, unjust and cruel in the establishment of popery and French laws, by abolishing that bulwark of English liberty, tryal by juries.\footnote{738}

Other correspondents, perhaps rightly judging the political winds, felt little hope that ‘liberty’ would be restored, for they feared that “there will be too many Africans among you still, and the minister will pour in upon you a black majority of slaves from the coast of guinea - and so Popery and tyranny will be suffered still to sit brooding at Quebec and Boston.”\footnote{739} They were right to doubt the ability of the Quebec Act to generate widespread electoral victory. Yet resistance to the bill and its lasting influence signals that it was more important to the British Empire and efforts at toleration than many historians have allowed.

Fears of the wider implications were not just held by the radical opposition. Philip Yorke, the Earl of Hardwicke and Charles Yorke’s brother, found himself defending the bill to his own correspondents. Yet despite his efforts, the question of Catholic relief, especially in Ireland, was still a difficult idea for many to accept, making the wider implications of the bill a point of concern.\footnote{740} Yorke’s youngest brother,

\footnote{737 On the failure of the radical position to influence the electoral process, see, David Milobar, “Quebec Reform, the British Constitution and the Atlantic Empire:1774-1775,” \textit{Parliamentary History} 14.1 (1995): 78-79.}

\footnote{738 BL Add. Mss. 30871, f. 218. Letter dated 29 June 1774.}

\footnote{739 BL Add. Mss. 30871, f. 226, Letter dated 24 November 1774.}
however, made clear that for those involved in broader contexts Catholics were not to be feared and the perception of secret influence and the intentions of the crown were based on demagoguery. Even four years after its passage the Quebec Act persisted in both public and private debate. In June 1778 Joseph Yorke, the ambassador to the Dutch republic, wrote to Philip about his birthday celebrations where “people were much diverted at my having the Pope’s nuncio at Brussels amongst my guests, and I am persuaded our Gazetteer Politicians would easily combine it with the Canada Bill and that in favor of the R. Catholicks [the Catholic Relief Act of 1778], and prove that the present ministry have a settled plan to reconcile the Kingdom with the Church of Rome.”

Yorke’s joke and the fears generated by the Quebec Act after its passage illuminate an important aspect of the legacy of the bill; contemporaries recognized it as part of a wider turn towards Catholic relief in Britain and Ireland. Despite mocking the inclinations of the radical press, Yorke’s quote underscores the lasting influence of the bill in the consciousness of the political nation. It was not simply an ad hoc solution forgotten as quickly as it was supposedly conceived.

Ultimately, though, the bill seemed to have pleased the people for whom it was crafted. According to Carleton, the new subjects were pleased with the final bill and the rights and privileges it granted them. Dartmouth believed that when the British merchants understood the true content of the Act the “prejudices which popular clamour have excited, will cease, and that his Majesty’s subjects of every description will see and

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740 See the letter from Thomas George who feared the “idea of establishing popery in any part of his majesty’s dominions” based on knowledge developed in his home country of Ireland. See, BL Add. Mss. 35612, Letter dated 14 July 1774.

741 BL Add. Mss. 35371, Letter dated 9 June 1778
be convinced of the equity and good policy of the Bill.” 742 While Dartmouth might have been overly optimistic in his beliefs, the principles enshrined in the Act were a fundamental guide in the formulation of the practices that shaped the expansion of the British Empire. The bill, for many imperial officials, was a good policy worthy of emulation in other contexts. It recognized realities on the ground and the necessity of flexibility towards cultural, institutional, religious, and legal diversity when governing a far-flung, pluralistic empire.

At the core of these practices was the understanding that cultural identity would not simply drift away in the face of English law. Men like Carleton recognized this. In fact, the willingness of the Canadians to embrace British institutions and norms likely helped to shield them from assimilationist policies. 743 Even when new subjects embraced British rule, it was not in ways that led them towards assimilation as many hoped and believed contact with the vaunted British constitution would. There would be no acts of forgetting in Quebec, Ireland, India, or Africa. 744 The importance of cultural continuity for subject peoples meant that older practices towards assimilation proved counterproductive. With the new practices aimed primarily at engendering loyalty and stability, any assimilationist goals would remain unfulfilled.

It was hubris to assume that the superiority of British institutions, English laws, and the English church was so great as to be self-evident to non-Britons. Cultural

742 BL Add. Mss. 21697, Letter from Dartmouth to Carleton, dated 10 December 1774.


744 On the importance of forgetting in the formation of nations, see Ernest Renan, What is a Nation? (1882).
identity was not easily sloughed off and the prospect of such drastic change was no more sensible to the Canadians, Irish, Indians, or Africans as it was to Burke. Their response to the assumptions of the benefits of adopting the ‘light and reason’ of British cultural norms might have sounded strikingly similar to Burke’s attitude towards the innovations of the French revolutionaries:

But now all is to be changed. All the pleasing illusions, which made power gentle, and obedience liberal, which harmonized the different shades of life, and which, by a bland simulation, incorporated into politics the sentiments which beautify and soften private society, are to be dissolved by this new conquering empire of light and reason. All the decent drapery of life is to be rudely torn off. All the super-added ideas, furnished from the wardrobe of a moral imagination, which the heart owns, and the understanding ratifies, as necessary to cover the defects of her naked shivering nature, and to raise it to dignity in our own estimation, are to be exploded as ridiculous, absurd, and antiquated fashion. 745

For those who supported policies like the Quebec Act, the reality of assimilation in the short and long term meant that the state had to reassess the underlying goals of practices of imperial incorporation. So in the end if they were neither practices of assimilation nor signals of a nefarious plot, what were the implications of the policies developed for Quebec over the course of this project?

In the aftermath of the crises which erupted following the Proclamation of 1763 and Murray’s early attempts to rework the judicial system, British officials realized that continuity and conciliation were their best weapons in the battle for legitimacy, stability, and loyalty. While often existing in tension with the prevailing ideology of empire within British society and raising serious questions about the value and definition of the Protestant constitution, the concessions made to local customs and usages were aimed at

solving new and evolving questions posed by ruling over large populations of non-Britons. The responses formulated in reaction to the crises in Quebec laid the foundation for British imperial practices in a wide range of contexts moving forward. In responding to the attacks of those wedded to older notions of empire and the constitution, British officials developed an historical, intellectual, and legal case for policies of cultural continuity.

Ireland stood as a historical example and a continuing concern. Quebec had implications not only for places like India and Africa, but for older imperial dominions as well. In Ireland the attitudes displayed in the formulation of the Quebec Act began to appear more frequently when it came to efforts at Catholic relief. The language of continued loyalty, the benefits of relief for the majority of the subjects, the importance of preserving property were all utilized in making a case for the first significant push towards Catholic relief in 1778. In the years after 1763 Ireland looked like an increasingly questionable model for replication in Canada. In the eyes of many contemporaries the penal laws and the imposition of English legal norms in Ireland had not proved successful. While the opposition presented Ireland as an example to be followed, the North ministry and those making colonial policy, including many from past ministries, remained skeptical. From a number of perspectives Ireland proved a poor example. The debate over Quebec suggests that for a critical mass of British officials the

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747 See the various documents in, NLI – Mss. 13060. On the Catholic Question in Ireland, see, Tom Bartlett, *Fall and Rise of the Irish Nation* (Dublin: Gill and MacMillian, 1992).
policies deployed in Ireland were ultimately ineffective. What emerges in the public and internal rhetoric of this period is a unified and sustained case in favor of the protection of law, property, and custom as a means to ensure loyalty and stability. For this growing number of elites, the policies developed in Quebec offered a new way forward, both for the empire and for Ireland.

Ireland continually presented a threat to Britain as a strategic alternative to the English Channel for invading armies. If Ireland were to fall to a Catholic monarch or the Stuarts, Britain and its empire would be undoubtedly vulnerable. Yet Ireland also presented another threat to imperial stability. In an empire with a growing need for troops in North America, and increasingly across the globe, dedicating so many able bodies to protect against Ireland’s disaffected Catholic population threatened London's ability to maintain order in the rest of the empire. In addition, as Thomas Bartlett and others note, the Catholic population in Ireland represented a huge store of available bodies. These men could be willing and able to fight for the crown if they were only legally allowed to do so and offered reasons to be loyal and willing subjects. Carleton offered this line of reasoning for allowing Canadian continuity and rights. The Quebec Act, therefore, implicitly addressed this Irish problem and also pointed to a general strategy in the rest of the empire. To repeat the Irish model in ruling other colonies with a large population of non-Britons would require garrisons so large as to make it impossible to govern the empire effectively. Therefore, the more London could engender

748 See, William Knox, The Justice and Policy of the Late Act (London, 1774), for the summation of these points and similar ones made in Parliament.

loyalty and stability through policies like the Quebec Act, the easier and cheaper it would be to maintain order.

A strong historical example in favor of new policies, Ireland also illuminates the intellectual case in favor of the practices developed for Quebec between the failed policies of the Proclamation of 1763 and the final bill. This case centered on the benefits offered to the state by polices that granted broad rights to the communities who represented the majority of the colonial population. In defending the Quebec Act in public William Knox drew on Ireland in arguing for a policy that recognized “men to be more disposed to support a government that protects them in all the rights of humanity, than one whose policy it is to extirpate them,” and that, “men who invest their wealth in fixed property, are not the most apt to excite insurrections; and that to oblige men to transmit their property into foreign countries, is not the surest method of attaching them to the state they reside in.” This reasoned case in favor of conciliation suggested that policies of continuity were not a threat to imperial order, but rather necessary to maintain it. Drawing from theorists like Grotius and Montesquieu, supporters of the polices developed in Quebec suggested that in the aftermath of conquest the most appropriate actions were those driven by a light touch and the preservation of local customs. Creating the bonds of loyalty required for the British Empire to function with any amount of efficiency and productivity meant creating broader opportunities for native elites and cultural continuity.

The pragmatic benefits of the penal laws also came under fire. The principles of a Protestant constitution and certain legal structures, like trial by jury, might hold

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750 Justice and Policy of the Late Act, 24-25

338
importance for figures like John Wilkes and his supporters. For officials faced with the realities of governing an empire, however, the empirical evidence in Quebec and in Ireland suggested that they were barriers to stability and loyalty rather than bulwarks against disorder and disunion. British jurists, in building a legal case in support of the new practices of empire in Quebec, worked to create a constitutional interpretation that narrowed the territorial scope of many of the laws and principles which worked against legal diversity and the incorporation of alien populations. From Yorke and DeGrey’s decision denying the extension of the penal laws to Quebec, to Wedderburn’s final defense of the various constitutional innovations in the Quebec Act, Britain’s legal minds increasingly relied on Natural Law theory as a means to work outside of English Common Law and traditional constitutional precedents. Natural Law theory allowed eighteenth-century British jurists outlets for pragmatic decisions with questionable validity within the Common Law.\(^{751}\) As a result, the scope of possibility for legal pluralism within the British Empire expanded exponentially.

British politicians, jurists and officials also built off of the writings of Montesquieu and principles of Natural Law theory to develop a strong case for the bond between laws and the historical and cultural foundations of the peoples they govern. Those supporting the practice of legal pluralism and social continuity, in some ways echoing Burke, understood society and law to be so intertwined that only negative consequences would emerge from the separation of a people and their traditional laws.\(^{752}\)

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752 This point was made by Lord Lyttleton in the Lords’ debate over the Quebec Act. See the R.C. Simmons and P.D.G. Thomas, eds., *Proceedings and Debates of the British Parliaments Respecting North America, 1754-1783*, vol. 5, 231.
Legal pluralism and legal innovation beyond the Common Law tradition, then, became a critical part of the wider imperial structure and underpinned its ability to function while ruling over a diverse population with distinct historical, legal, and cultural traditions.\textsuperscript{753} For its supporters this flexibility ensured order, legitimacy, and efficiency of British rule in places like India and Africa. In their three pronged approach: historical, intellectual, and legal; advocates for the practices developed in Quebec laid the foundation for a new set of practices that would define British rule over India and other territorial dominions.

Incorporating the Catholics in Quebec and the other ceded territories “helped to breakdown inhibitions about bringing within an imperial framework Indians, people who were thought to be completely alien to all previous traditions of British rule.”\textsuperscript{754} In establishing direct rule over India in 1793, the British relied on several key strategies: the reformation of the criminal law, the use of the language of custom and usage, and the importance of the landed classes. These fundamental traits of British rule and reform offer a direct link to the practices and ideas developed in Quebec. Landed property provided the British government a means to define their empire in Bengal and ultimately their means of managing the whole of the Indian subcontinent after the 1790s. Lord Cornwallis, as the first imperial governor, managed to install a new set of reforms under British rule and much of the policies and strategies used in the Permanent Settlement mirrored those developed in Quebec. The language of ‘customs and usages’ defined both these principles of incorporation and governance and the trade-off between imperial officials and local elites ensured that British rule was supported amongst key populations

\textsuperscript{753} On legal pluralism see, Lauren Benton, \textit{Law and Colonial Cultures} (Cambridge University Press, 2002).

within the indigenous society. The same strategies for colonial rule and incorporation were used in British Africa in the late nineteenth and early twentieth centuries. This transaction of privileging the landed elites in exchange for the recognition of British authority represents a program of reform based on Quebec.

When the project was in its infancy, the Quebec Act appeared a bold turning point in the formulation of a new ideology and model of empire applied to India. India, however, offered its own set of challenges and Quebec was not so much a new ideology and model deployed unchanged in a different context as a general set of practices based on empirical evidence. The combination of a core set of practices and a strong empiricist bent drove the expansion of British rule over an expansive and pluralistic empire. In the end, the Quebec Act itself did not stand at the center of this story. Instead the core of the legacy of Quebec was found in the process of formulating policies for incorporating French Catholics over more than a decade. What developed over the course of the period covered in the preceding chapters was an argument in favor of a set of imperial practices and principles which could be generally applied to the integration of non-Britons in a range of imperial contexts. The core aspects of these practices were rule through local elites, cultural continuity, and the values of legal and institutional flexibility. This new set of principles developed through the slow Burkeian empirical accretion of novel solutions for increasingly diverse situations.


Ireland is often referred to as the first laboratory for British imperial practices.\footnote{Jane Ohlmeyer, “A Laboratory for Empire?: Early Modern Ireland and English Imperialism”, in \textit{Ireland and the British Empire}, ed. Kevin Kenny (Oxford University Press, 2005).} Quebec, then, served as the second. Through the experience of trial and error that led to the Quebec Act, British officials were forced to come to terms with imperial realities. These realities forced a wide range of figures to experiment with diverse solutions, justifications, and legal formulations to address the various crises in Quebec. The tension between ideology and the practical needs of the state led to new understandings of the imperial project. The older formulation of empire as ‘Protestant, maritime, and free’ did not offer a workable solution to the problems in Quebec.\footnote{David Armitage, \textit{The Ideological Origins of the British Empire} (Cambridge University Press, 2000).} In the face of the flood of information coming back from the colony officials realized that the solutions to the problems undermining British rule could not be found in older ideals of empire. Instead, solutions had to be developed based on the empirical data returning in reports from figures like Murray and Carleton. Out of the experiments in the laboratory of Quebec a new formula for incorporating non-Britons into the British Empire emerged.

The return of a small band of Acadians to Canada in 1773 is not, on the surface, a momentous occasion in the history of Quebec or the British Empire. Their readiness to place themselves back under British rule, however, takes on greater significance when read against the assumptions that underlay the policies of the Quebec Act and the realities of imperial rule espoused by Burke. The empire would rise and fall based on the willingness of subject peoples to participate within the British system. It is undeniable that British rule often required brutal repression and an authoritarian form of
Fundamentally, however, imperial rule in places like India and Africa required the tacit acceptance of British authority by the bulk of the population. As in Canada, the British required the assistance of the local population to impose and defend British sovereignty throughout the empire. Resident populations would have an important role in governing the empire at the local level. The French Canadians offered a critical trial population where the practices of this new style of rule could take shape.

In Quebec between 1760 and 1774 British officials recognized the importance of cultural identity and the thin strands that tied together an expansive, pluralist empire. In response, imperial officials, jurists, politicians, and colonial appointees reoriented imperial practice in ways that were fundamental to the expansion and practices of the British Empire until its ultimate collapse. British officials believed that a system based on the protection of customs and usages for, what might be styled as, the native elites and the acceptance of imperial diversity in constitutional and institutional structures, offered the best set of practices to instill colonial stability and grant legitimacy to British rule. The Acadian ship that arrived in the Bay of Chaleur propelled the first ripple of a wave that would spread across the globe linking Quebec with India and the rest of an empire where the sun never set.

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WORKS CITED

Archival Materials

Dublin, Ireland: National Library of Ireland

Mss. 13060

Edinburgh, Scotland: Scottish National Archives

GD32/17
GD32/24/76

London, England: British Library

King’s MS. 213
Add. Ms. 21697
Add. Ms. 30871
Add. Ms. 32982
Add. Ms. 35371
Add. Ms. 35612
Add. Ms. 35638
Add. Ms. 35914
Add. Ms. 35915
Add. Ms. 41348
Add. Ms. 41361
Add. Ms. 57834

London England: Public Record Office

CO 43/1
CO 43/2
CO 47/109

30/29/3/1/12
30/29/3/2/24
Primary Printed (Chronological)


*A Letter to Sir William Meredith, Bart. in Answer to his Late Letter*. London, 1774.


Renan, Ernest. *What is a Nation?*. 1882.


Printed Collections of Primary Sources


Articles, Books, and Book Chapters


