

**The Origins, Evolution, and Political Consequences  
of Britain's New Catholic Policy:  
From the Conquest of Quebec to the Eve of the American Revolution  
1759-1774**

A Thesis Submitted for the Degree of  
Doctor of Philosophy  
by  
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Margaret L. Herdeck  
September 2022

To

Otto George Funderburk (2005-2018)

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Francis Austin Nealon (1887-1968)

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## Summary

Out of the dramatic reconfiguration of the Anglo-French North Atlantic world as a result of the Seven Years War (1756-1763), in particular Britain's conquest and formal acquisition of French Catholic Canada, arose one of the most radical historic policy shifts in post-Reformation English/British history—the first statutory steps in more than two centuries to restore basic civil and political rights to its Catholic subjects long relegated to what Ian McBride calls the 'shadowy spaces created by the loopholes and imperfections of the penal code.'<sup>1</sup>

This study chronologically retraces the political, legal and diplomatic origins, evolution and geopolitical consequences of Britain's new Catholic policy from the 1759 Quebec conquest to late 1774 on the eve of the American Revolution. It examines the respective views, values, fears, and objectives of each of the principal communities involved in shaping, or who were shaped by, the historic policy shift—Canada, Imperial Britain, Ireland, and America. This approach provides a more accurate picture of the radical policy's transnational character and historical impact.

The 'greatest potential for the convergence of British and American history lies in the study of the eighteenth century,' David Armitage wrote in 1999, whose 'law, politics, and economics, as well as culture, religion, and social order, shaped and defined relationships between the Atlantic archipelago and the Western Hemisphere.'<sup>2</sup> The war and conquest reshaped and redefined relationships between former allies and former arch enemies across the North Atlantic expanse. A collection of essays published in late 2020, *Entangling the Quebec Act*, expands Armitage's view to representing eighteenth-century Atlantic history farther. Its editors aimed at demonstrating the 'interconnectedness of national histories and, indeed,

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<sup>1</sup> Ian McBride, *Eighteenth-Century Ireland, Isle of Slaves* (Dublin, 2009), p. 84.

<sup>2</sup> David Armitage, 'Greater Britain: A Useful Category of Historical Analysis?,' *The American Historical Review*, vol. 104, no. 2 (April 1999), pp. 427-45.

methodological approaches, from legal to cultural, political to religious, and beyond, the French term for which they note is *histoire croisée*, or ‘the growing practice of entangling histories.’<sup>3</sup>

This study has followed such an approach from the start, giving equal attention to all the principal communities with a stake in the outcome of the new Catholic policy by drawing on archival and printed primary collections from Canada, the United States, France, Ireland, Italy and the United Kingdom, and secondary sources from many of these same communities to reconstruct the policy’s origins, evolution, and impact throughout the Anglo-French North Atlantic.

The study’s primary argument is that the new policy resulted directly from the conquered Canadians’ leadership’s strategy of non-violent engagement with the British enemy forces during and immediately after the conquest and the post-treaty diplomatic campaign carried out by the Canadians in London to secure more formal guaranties for their religion than were provided in the peace treaty. Geopolitical exigencies related to the ongoing post-war Anglo-French global rivalry without doubt influenced imperial policymaking on the issue, but the Canadian strategies and actions were pivotal.

Another principal point of this study is that contrary to view that the new Catholic policy incorporated in the Quebec Act was intended solely for ‘an alien population in a conquered territory,’<sup>4</sup> the royal assent given the Irish Oath Act of 1774 three weeks before the Quebec Act suggests that the government had committed to making a new policy for all its Catholic subjects. Offering Ireland’s Catholics the first opportunity since the early part of the century to swear their allegiance to the Protestant sovereign without having to repudiate their faith, the Irish Oath Act is considered ‘the cornerstone’ of Catholic emancipation in Ireland,<sup>5</sup> just as the Quebec Act is considered Quebec’s Magna Carta.

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<sup>3</sup> Ollivier Hubert and François Furstenberg (eds.), *Entangling the Quebec Act: Transnational Contexts, Meanings, and Legacies in North America and the British Empire* (Montreal & Kingston, 2020), pp. 1-2.

<sup>4</sup> J. Steven Watson, *The Reign of George III 1760-1815* (Oxford, 1960), p. 198.

<sup>5</sup> Thomas Bartlett, *The Fall and Rise of the Irish Nation: The Catholic Question 1690-1830* (Dublin, 1992), p. 81.

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which holds one of the most impressive collections of papers on British-American eighteenth-century history, especially Terese Austin, provided excellent help during my on-site research visit and afterwards by email. The Vatican office of Propaganda Fide also fulfilled an important request for scanned documents from their archives.

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historic time, when nothing was or will ever be as certain as it was before, built a forever bridge of kindness and hope for all our futures.

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## **Note on the Text**

The names of Canada and Quebec are used interchangeably throughout as representing French Canada. The term Canadian(s) will refer to French Canadians unless otherwise indicated. Québec when used with an accent refers to the capital city. When referring to the colony or the province, no accent is used.

Under French rule, the colony was known as Nouvelle-France or Canada. After the signing of the Treaty of Paris in February 1763 by which Great Britain acquired the colony, it was called Canada, and then formally renamed Quebec under the Royal Proclamation of October 1763.

All quoted material or citations of contemporary primary sources reflect the original spelling and punctuation. Spelling and punctuation in the text of the study reflects American English and usage. The names of a few well-known historic events reflect their post-event iconic or formal names as now found in most histories of the period, such as the Boston Tea Party and the First Continental Congress called by the American colonies in September 1774.



## List of Abbreviations

- AA** *American Archives*, 4<sup>th</sup> Ser., Peter Force (ed.), 6 vols. (New York, 1972).
- AAQ** Archives de l'Archidiocèse de Québec.
- BRH** *Bulletin des recherches historiques*, <https://numérique.banq.qc.ca>
- Corr.** *The Correspondence of Edmund Burke*, Thomas Copeland et al. (eds.) 10 vols. (Chicago, 1958-78).
- Cavendish** *Debates of the House of Commons in the Year 1774, On The Bill for Making More Effectual Provision for the Government of the Province of Quebec Drawn Up From the Notes of Sir Henry Cavendish*. J. Wright (ed.) (London, 1839).
- DAJA** *Diary and Autobiography of John Adams*. Harry Alonzo Cushing (ed.), 4 vols. (Cambridge, MA, 1961).
- Dartmouth** William Legge, 2<sup>nd</sup> Earl of Dartmouth Papers, Library and Archives of Canada/Bibliothèque et Archives de Canada; <https://www.bac-lac.gc.ca>
- DCB/DBC** *Dictionary of Canadian Biography/Dictionnaire biographique du Canada* <http://www.biographi.ca>.
- DPDC** *Dear Papa, Dear Charley: The Peregrinations of a Revolutionary Aristocrat, As Told By Charles Carroll of Carrollton and His Father, Charles Carroll of Annapolis, With Sundry Observations on Bastardy, Child-Rearing, Romance, Matrimony, Commerce, Tobacco, Slavery, and the Politics of Revolutionary America*. Ronald Hoffman et al. (eds.), 3 vols. (Chapel Hill, 2001).
- Fortescue** *The Correspondence of King George The Third From 1760 to December 1783*. Sir John Fortescue (ed.), 6 vols. (London, 1967).
- GEO** *Georgian Papers Online*, <http://gpp.rct.uk>, (January 2021)
- JCC** *Journals of Continental Congress, 1774-1789*. Worthington C. Ford et al. (eds.) (Washington, D.C., 1904-1937). [memory.loc.gov/ammem/amlaw/lwjc.html](http://memory.loc.gov/ammem/amlaw/lwjc.html).
- Lawson** Philip Lawson, *The Imperial Challenge: Quebec and Britain in the Age of the American Revolution* (Montréal, 1994).
- LDC** *Letters of Delegates to Congress, 1774-1789*. Paul H. Smith et al. (eds.) [memory.loc.gov/ammem/amlaw/lwdg.html](http://memory.loc.gov/ammem/amlaw/lwdg.html).
- Mandements** *Lettres Pastorales et Circulaires Des Évêques de Québec*, Mgr. H. Tétu et

l'abbé C.-O. Gagnon (eds.), vol. 2 (Québec, 1888).

- PDNA** *Proceedings and Debates of the British Parliament Respecting North America, 1754-1783*. R.C. Simmons and P.D.G. Thomas (eds.), 6 vols. (London, 1982-1986).
- PH** *The Parliamentary History of England from the Norman Conquest in 1066 To the Year 1803*. William Cobbett (ed.) (London, 1806-20).
- PN** Dispatches of the Papal Nuncio of France, Pietro Pomphili-Colonna (1760-1766) to the Vatican on peace treaty negotiations between France and Great Britain, 1762-1763, from Archives de la Nunciature de France, in Fonds du Vatican. Microfilm copy in Library and Archives Canada/Bibliothèque et Archives Canada; [https://heritage.canadiana.ca/view/oocihm.lac\\_reel\\_h3](https://heritage.canadiana.ca/view/oocihm.lac_reel_h3).
- Shelburne** Papers of William Petty, 1<sup>st</sup> Marquis of Landsdowne, 3<sup>rd</sup> earl of Shelburne, William Clements Library, University of Michigan.
- S&D** *Documents Relating To The Constitutional History of Canada 1759-1791*. Adam Shortt and Arthur G. Doughty (eds.), 2 vols. (Ottawa, 1918).
- Trudel** Marcel Trudel, *L'Église Canadienne sous le Régime Militaire, 1759-1764* 2 vols. (Montréal, 1956, 1957).
- Verreault** Abbé H.A.B. Verreault's Report of correspondence between French peace negotiators in London and French Foreign Minister in 1762, as published in *Sessional Papers of the Dominion of Canada*, vol. 8, no. 40 (Ottawa, 1875).
- WWM BkP** Wentworth Woodhouse Muniments, Sheffield Archives, Edmund Burke Papers.

## Introduction

### Overview

Modern warfare waged on a global scale in and after the Seven Years War,<sup>1</sup> Linda Colley argues in her latest work, *The Gun, The Ship, and The Pen*, accelerated the proliferation of constitution-writing around the globe,<sup>2</sup> conjuring ‘Heraclitus’s maxim that war is the father of all things.’<sup>3</sup> These new constitutional writings, what Colley calls ‘those protean piece(s) of political technology,’ were of a kind Immanuel Kant would consider as fulfilling the purpose of history, *i.e.*, the expansion of human freedoms.<sup>4</sup> If Kant is correct, then a historian’s burden of reflecting history as accurately as possible is a heavy one. Although Colley covers the Seven Years War with accuracy and panache in her new work, she fails to mention two ‘writings’ of a constitutional nature given royal assent in June 1774, the Quebec Act<sup>5</sup> and the Irish Oath Act<sup>6</sup> which began the formal process of freeing Britain’s Catholic millions from the ‘shadowy spaces created by the loopholes and imperfections of the penal code.’<sup>7</sup>

The two Acts represented the first statutory ‘writings’ since the reign of Mary I (1553-58) to reinstate legal recognition of the long proscribed Roman Catholic religion and offer Catholics oaths of allegiance that did not require them to repudiate the basic tenets of their faith. This study retraces the geopolitical, diplomatic, legal and policymaking process leading to adoption of the new Catholic policy by the Irish and English parliaments in the spring and summer of 1774, respectively.

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<sup>1</sup> Known as La Guerre de la Conquête in French Canada and the French and Indian War in America.

<sup>2</sup> Linda Colley, *The Gun, The Ship. And The Pen* (New York, 2021), p. 8.

<sup>3</sup> H.V. Bowen, *War and British Society, 1688-1815* (Cambridge, 1998), p. 4

<sup>4</sup> Immanuel Kant, *Idea For a Universal History With A Cosmopolitan Purpose*, in H.S. Reiss (ed.) *Kant* (Cambridge, 1991), pp. 41-53.

<sup>5</sup> 14 Geo III, c. 83. Excerpts of the Act are in the Appendices.

<sup>6</sup> 13 & 14 Geo III, c. 35. Excerpts of the Act are in the Appendices.

<sup>7</sup> Ian McBride, *Eighteenth-Century Ireland, Isle of Slaves* (Dublin, 2009), p. 84.

## Principal Arguments

This study makes three principal arguments. First, it was the Canadian church leadership's pre-conquest strategy of non-violence vis à vis the enemy forces of Great Britain during the conquest of 1759, to work peacefully with the Protestant military authority after the conquest, and to use diplomacy with the imperial government after the signing of the peace treaty in 1763 that put their pre-conquest religious and property rights in grave danger, which generated and shaped the substantive provisions of Britain's new Catholic policy adopted in 1774.

Neither the newspapers of the day who closely tracked parliamentary debate of the Quebec Act in May and June 1774, nor their readership, nor even members of parliament themselves, appear to have gleaned how central a role the conquered people's church leadership and their European agents and Catholic friends had played in effecting the historic policy change in British law regarding Catholics. Instead, they looked toward their own imperial government to identify who was 'the *true as well as legitimate father* of this celebrated Popish, Gallican, Canadian, despotic, accursed, d—ned, traitorous Bill.'<sup>8</sup>

It was easier to see the policy as the child of what opposition members and popular sentiment saw as an illegitimate Jacobite clique around a Jacobite-hearted king than to imagine the conquered people capable of being its true and legitimate parents. After the American Revolution, Quebec's future chief justice and former New York colonist and loyalist, William Smith, Jr., commented that the Quebec Act was the 'unfortunate result of lobbying by Franco-Catholic elites.'<sup>9</sup> Unfortunate or not, Smith at least was willing to acknowledge the Canadians' central role in the historic new policy.

Secondly, the study refutes the view of some historians that the new policy incorporated in the Quebec Act was a *sui generis* 'realistic and tolerant attempt to deal with an alien

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<sup>8</sup> *St. James's Chronicle or the British Evening Post*, London, 2 June 1774-4 June 1774.

<sup>9</sup> William Smith, *History of Canada: From Its First Discovery, to the Year 1791* (Quebec, 1815), II, 64-74 (quoted in Hubert and Furstenberg (eds.), *Entangling the Quebec Act*, p. 2).

population in a conquered territory.’<sup>10</sup> The royal assent given the Irish Oath Act just three weeks before the Quebec Act suggests imperial policy on the Catholic question was evolving toward a more comprehensive application. The subsequent enactment of a steady stream of Catholic relief bills for Britain’s Catholics between 1778 and 1829 bears this out.

Third, in retracing the origins, evolution, and political consequences of Britain’s historic statutory *volte face* on its Catholic law as adopted in the Irish Oath Act and Quebec Act in 1774, it can be posited that those possessing the capability of adjusting their fixed ideas or attitudes about the other in times of crises, as the Canadian church leaders were able to do vis à vis their Protestant British conqueror, and the American leaders in 1774 were able to do vis à vis their ancient French Catholic enemies in Canada, it is possible not only to survive cataclysmic events like war and conquest, but to expand one’s freedoms in the process, proving Kant’s theory of the purpose of human history.

### Methodology

The subject matter is presented chronologically and the structure or approach, as stated in the Summary, was designed early on in the project to give equal attention to the perspectives, values, fears, and objectives of each of the principal communities who were involved in shaping or were shaped by the new Catholic policy. This approach differs from the handful of prior full histories of the Quebec Act in that its focuses principally on the Catholic question, or what Hilda Neatby called the Quebec Act’s ‘religious settlement.’<sup>11</sup> But it is not about religion as religion, but about the political and legal consequences of professing a particular religion and the policy changes relating thereto from the conquest of Catholic Quebec to the eve of the American Revolution.

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<sup>10</sup> Watson, *The Reign of George III 1760-1815*, p. 198.

<sup>11</sup> Hilda Neatby, *The Quebec Act: Protest and Policy* (Scarborough, 1972), p.3.

In the case of the Quebec Act's historiography, the authors of the few prior full studies of the Act, intentionally or not, reflect the perspective of one of the principal stakeholders more than that of the others.<sup>12</sup> If there is a slant in the present study, it is likely toward those whose freedom expanded as a result of the new policy without regard to their religious choice. This study has its own genesis in a prior study of the two years leading up to the formal declaration of war by the American colonies in July 1776 during which a question arose about when and why a particular revolutionary leader from New York, John Jay, committed himself to the revolution. This question led to the Quebec Act and the great fear it revived in many American colonists like Jay whose grandfather Auguste told him harrowing stories of his family's near-death experiences and escape from La Rochelle, France in 1685 during Louis XIV's brutal suppression of Protestants.<sup>13</sup>

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<sup>12</sup> There have been only four full-length treatments in English of Britain's Quebec policy and the Quebec Act by historians: two from the imperial perspective, Reginald Coupland's 1925 work, *The Quebec Act* (Oxford), Philip Lawson's *The Imperial Challenge: Quebec and Britain in the Age of the American Revolution* (Montreal & Kingston, 1994), and one devoted to the Act's impact on the American Revolution, by Charles H. Metzger, S.J., *The Quebec Act. A Primary Cause of the American Revolution* (New York, 1936). Hilda Neatby's *The Quebec Act: Protest and Policy* (Scarborough, 1972) presents selected excerpts from key documents on the Act with her comments in the first half of the book, and a review of secondary sources in the second half of the 142-page study, both Francophone and Anglophone. The most recent publication is a compendium of essays from leading scholars based on a 2013 conference held in Montreal on the Quebec Act, *Entangling the Quebec Act: Transnational Contexts, Meanings, and Legacies in North American and the British Empire* (Ollivier Hubert and François Furstenberg, eds.) (Montreal & Kingston, 2020). Brad Jones's 'A 'Fit Instrument': The Quebec Act and the Outbreak of the Rebellion in Two British Atlantic Port Cities,' appears in this compendium at pp. 232-264. British imperial scholar Peter Marshall contributed a major chapter on the legal and political background of the Quebec Act in 'The Incorporation of Quebec in the British Empire, 1763-1774,' in *Of Mother Country and Plantations: Proceedings of the Twenty-Seventh Conference in Early American History*, Virginia B. Platt and David C. Skaggs (eds.) (Bowling Green, OH, 1971), pp. 41-62. Karen Stanbridge, a Canadian political sociologist, included an analysis of the Quebec Act in two chapters of a broader study on Britain's Catholic policy, *Toleration and State Institutions: British Policy Toward Catholics in Eighteenth-Century Ireland and Quebec* (Lanham, MD, 2003). Stanbridge's work also focused on the high politics of Britain's Catholic question, but from the perspective of evolving institutional frameworks in England and Ireland, which she argued helped move British imperial policy toward a more tolerant policy regarding Catholics. A.L. Burt's major study, *The Old Province of Quebec* (New York, 1933), includes a chapter on the Quebec Act, and reference to the Act appears elsewhere throughout his study of Quebec between 1760 and 1791. Hilda Neatby's work, *Quebec: The Revolutionary Age, 1760-1791* (Toronto & London, 1966), is similar in structure and treatment to that of her mentor Burt and also includes a chapter on the Quebec Act. American historian Thomas Kidd addresses the impact of the Quebec Act on the old Protestant North American English-speaking colonies on the eve of their revolution in *God of Liberty: A Religious History of the American Revolution* (New York, 2010). Every American historian writing about the American Revolution and its foundations mentions the Quebec Act.

<sup>13</sup> In 1685, the 'Sun King' revoked Henri IV's 1584 Edict of Nantes, which had provided civil and religious rights to France's Protestants. The pope at the time of the revocation, Innocent XI, is said to have been appalled by Louis XIV's actions. Richard P. McBrien, *Lives of the Popes* (San Francisco, 1997), p. 311. More than a hundred thousand Protestants escaped, many of them to the British Isles in the same year that Catholic James II acceded to the throne.

In addition to focusing on the new Catholic policy triggered by the conquest of Quebec and presenting it from the perspectives of all the principal stakeholders of Canada, Imperial Britain, Ireland, and America, the emphasis throughout the study is on the human actors involved in creating, promoting, or resisting the policy. Paul Langford notes that ‘in defiance of the modern fashion for detecting the sway of impersonal forces, the politics of England in the 1760s are not reducible to simple formulas or straightforward generalizations; the critical factor at every turn is the role of personality.’<sup>14</sup> The same principle is applicable to a study of Quebec, Ireland, and America and every other people or community then or now.

In his study of British foreign policy during the age of the American Revolution, H.M. Scott makes a similar point, noting that in the second half of the eighteenth century, ‘personalities intruded at every point in the formulation and execution of foreign policy.’<sup>15</sup> This study falls squarely within the Langford and Scott camp. While it features only the most visible actors during this period whose actions brought the policy to the finish line, the groundwork had been prepared and nurtured by many not mentioned.

Williamson Murray, a scholar of the history of grand strategy in war, diplomacy and politics, in a recent study of the success and failures of grand strategy agrees with views of Langford and Scott. Williamson observes that the outcome of strategies or strategic policies are more often influenced in great part by the values possessed by those who conceive and execute them.<sup>16</sup> When a strategy or policy is successful, he argues, ‘it almost invariably involves the choices and guiding hands of individuals, for better or worse, rather than an effective bureaucratic system.’<sup>17</sup>

Institutions in any event do not exist to create and promote pathbreaking policies, certainly not policies, like the Quebec and Irish Oath Acts, which are perceived as an existential

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<sup>14</sup> P. Langford, *The First Rockingham Administration 1765-1766* (London, 1973), p. 3.

<sup>15</sup> H.M. Scott, *British Foreign Policy in the Age of the American Revolution* (Oxford, 1990), p. 8.

<sup>16</sup> Williamson Murray, ‘Thoughts on grand strategy,’ in *The Shaping of Grand Strategy: Policy, Diplomacy, and War* Williamson Murray, Richard Hart Sinnreich, and James Lacey (eds.) (Cambridge, 2011), p. 9.

<sup>17</sup> *Ibid.*

threat by a large swath of the dominant political culture they exist to serve. Artificial intelligence may one day soon assume control of both humans and their institutions, but in the eighteenth century, as is reflected in this study is that the ‘critical factor at every turn’ was still the role of the individual personality.

The final point on methodology pays obeisance to the fundamentals of the craft in the sense of going back to the origins of a particular historic question. The eminent American historian of the American Revolutionary era, Pauline Maier, published a widely read article in 1976 on the occasion of the American Bicentennial. In ‘Coming to Terms With Samuel Adams,’ Maier examined the question of when Samuel Adams began advocating for independence.<sup>18</sup> She embarked on her study, she wrote, because she found that historians over almost two centuries had written such conflicting accounts of the question, presenting Adams at times in wildly unflattering terms such that she felt a fresh examination was in order on the Boston patriot Thomas Jefferson called the ‘father of liberty.’ After reviewing all of Adams’s own writings, something she concluded most of the historians who had written about him had failed to do, Maier was able to answer the question and ‘refresh’ the record to her satisfaction, concluding that Adams had not advocated for independence as early as many historians had represented.

In tracing the origins, evolution and impact of Britain’s radical new Catholic policy triggered by the conquest of Quebec, the emphasis has been on identifying the roots and evolution and political consequences of the new policy. It has sought to connect as many relevant ‘dots’ of this policy made up of as many contemporary voices and writings as possible so as to make the best sense of how the policy came to be. To give a broader but closely related historical context to these voices and writings, moreover, a number of background topics are discussed below.

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<sup>18</sup> Pauline Maier, ‘Coming to Terms With Samuel Adams,’ *American Historical Review*, 81, no. 1 (February 1976), pp. 12-37.

## The Constitutional Nature of the Quebec Act and the Irish Oath Act

Descendants of Quebec's French settlers still consider the Quebec Act their *Magna Carta*. One Anglo-Canadian scholar even opined recently that all Canadian identity flows from the Quebec Act.<sup>19</sup> Six years after its enactment, Frederick Haldimand, a British general of Swiss Calvinist ancestry and Quebec's third royal governor, described the Quebec Act as 'a Sacred Charter granted by the King in Parliament to the Canadians as a Security for their Religion, Laws, and Property.'<sup>20</sup> Almost two centuries later, Quebec historians were still praising the Act. Gustave Lanctôt wrote that it 'accorded generous advantages to a small population different in race, religion and language from the ruling country in an age of monolithic empires.'<sup>21</sup> Thomas Chapais called it a 'British charter that we could invoke . . . and which preserved a base for our future claims.'<sup>22</sup>

Michel Brunet argues, however, that the Quebec Act did not fulfill the 'hopes of its Canadian supporters,' nor lead to equality of opportunity for Canadians in the political, administrative, and economic spheres of life after its enactment.<sup>23</sup> This is true,<sup>24</sup> but in the absence of the Quebec Act, this study shows, the conquered people in Canada would have been relegated to the same 'shadowy spaces' as all other Catholics throughout the British Atlantic

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<sup>19</sup> Edward Andrew, *Imperial Republics, Revolution, War, and Territorial Expansion from the English Civil War to the French Revolution* (Toronto, 2011), p. 86.

<sup>20</sup> Frederick Haldimand, governor-general of Quebec, to secretary of state George Germain, 25 October 25, 1780. S&D, II, 720. Haldimand was a Swiss-born Calvinist military officer. Germain was a graduate of Trinity College Dublin (1737) whose father served twice as Lord Lieutenant of Ireland.

<sup>21</sup> Gustave Lanctôt, *Le Canada et la Révolution Américaine: 1774-1783* (Montreal, 1965), p. 87. The translation is that of Edward Andrew, *Imperial Republics, Revolution, War, and Territorial Expansions from the English Civil War to the French Revolution*, p. 86. See also Gustave Lanctôt, *Canada and the American Revolution: 1774-1783*, Margaret M. Cameron (tr.) (London, 1967), p. 73.

<sup>22</sup> Thomas Chapais, *Cours d'Histoire du Canada* (Quebec, 1919-34), quoted in Hilda Neatby's *The Quebec Act: Protest and Policy* (Scarborough, 1972), p. 96.

<sup>23</sup> Michel Brunet, 'French Canada and the Early Decades of British Rule 1760-1791,' The Canadian Historical Association, Booklet No. 13 (Ottawa, 1971), pp. 10-12.

<sup>24</sup> Later twentieth century Quebec historians have de-emphasized the conquest and early colonial policies in favor of social and economic studies of the province, which speak to some of Brunet's points. For overviews of these historians' work, see Serge Gagnon, *Quebec and its Historians, The Twentieth Century* (Montreal, 1985), and Ronald Rudin, *Making History in Twentieth-Century Quebec* (Toronto, 1997).

before the conquest, the status of which Canadians were well-informed and fought to keep from their fate.

Attempts to devise and gain approval for an oath that did not require Ireland's Catholics to repudiate the basic tenets of their faith failed throughout most of the eighteenth century until the mid-1760s when George III appointed his former royal chaplain, Frederick Hervey, the future 4<sup>th</sup> earl Bristol, to the Anglican bishopric of Cloyne in 1767 and then to the lucrative See of Derry the next year. Hervey took up the oath cause with vigor and pertinacity, creating and winning approval for a new oath by 1774.

Even though the text of the Hervey oath fell far short of Catholics' expectations and comfort levels, opposed as it was by some influential Catholic ecclesiastical leaders for quite some time, Thomas Bartlett explains that it contained the '*sine qua non* for future concessions' to Ireland's Catholics for it 'conferred eligibility on those wishing to derive benefit from those concessions.'<sup>25</sup> It was in these respects, Bartlett notes, that the new oath constituted for Catholics 'the cornerstone of their future emancipation.'<sup>26</sup>

The Quebec Act and the Irish Oath Act were, therefore, 'protean pieces of legal technology,' Colley's description of constitutional writings. The Acts, moreover, aimed at expanding human freedoms, thereby affirming Kant's vision of the purpose of history. Constitutional writings can preserve rights already possessed, however tenuously, as was the case with the Quebec Act, or they can create them anew for those who have lost them, the case with the Irish Oath Act. Edmund Burke, who led the opposition fight against the Quebec Act for political and party reasons, nevertheless took time during debate to share his personal views

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<sup>25</sup> Thomas Bartlett, *The Fall and Rise of the Irish Nation: The Catholic Question 1690-1830* (Dublin, 1992), p. 81. Bartlett cites Maureen Wall as his authority for the phrase 'cornerstone of future emancipation.' Patrick Fagan attributes the quote to the historian Plowden (presumably the English Jesuit and scholar, Charles Plowden, although he does not give Plowden's first name or cite a specific work), as quoted in a work by J. Mitchel, I, 113. Although Fagan is likely referring to John Mitchell, author of *The History of Ireland from the Treaty of Limerick to the Present Time* (Glasgow, 1869), he does not cite a work or Mitchel's full name. Fagan, *Divided Loyalties*, p. 154. The full quote, as attributed to Plowden, reads as follows: 'It gratified the Catholics, inasmuch as it was a formal recognition that they were subjects, and to this recognition they looked up as to the corner-stone of their future emancipation.' Ibid.

<sup>26</sup> Ibid.

on the protean issue of human rights. ‘The noble lord has told you of the right of those people [Canadians] by the treaty; but I consider the right of conquest so little, and the right of human nature so much, that the former has very little consideration with me.’<sup>27</sup>

### Unsettled Imperial Policy on the Treatment of Conquered People

On Christmas Eve 1764, royal advisor and chief justice, William Murray, 1<sup>st</sup> earl Mansfield, wrote to George Grenville, the head of government, about an alarming report he had heard the day before that Britain’s anti-Catholic penal laws and other British laws were about to be introduced in Quebec. Urging Grenville to look into the situation at once, the royal advisor made it clear he had just spoken to the king ‘in general’ of the matter, rare reliable documentary evidence, although second-hand, linking George III to the Quebec Catholic question a decade before the Quebec Act became law. Mansfield told Grenville that ‘The Crown of England has always left to the conquered their own laws and usages, with a change only so far as the sovereignty was concerned.’<sup>28</sup> This may well have been crown policy, but it was not codified in any English statute, and thus wholly susceptible to the vagaries of the royal personality and those advising the crown.

The most recent example of British policy on the treatment a conquered people in the Seven Years War period, for example, is found in 1755 when Britain and American forces carried out the mass expulsion of more than 10,000 French Catholic Acadians from their British-ruled colony on the eve of the war on the pretext that the Acadians refused to take the necessary oaths of allegiance.<sup>29</sup> To prevent any hope of return, moreover, the Acadian towns

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<sup>27</sup> Cavendish, p. 222. The entire speech is found at pp. 222-4, with additional remarks at pp. 289-90. See also the speech as reported in *Parliamentary History*, XVII, 1397-99.

<sup>28</sup> Mansfield to Grenville, 24 December 1774, *Grenville Papers*, 2:476-7, quoted in Lawson, *The Imperial Challenge*, p. 58.

<sup>29</sup> France ceded the area known as L’Acadie to Britain under the 1713 Treaty of Utrecht after the War of Spanish Succession (1701-13). Until the opening skirmishes of the Seven Years War, however, Britain had kept a light footprint in the area that covers present-day Nova Scotia, New Brunswick, and Prince Edward Island. There was also an ongoing dispute between France and Britain over which part of the region had been ceded in the Treaty of Utrecht, with France insisting it was only the Acadian peninsula and Britain the entirety of what was then Acadia. In Article IV of the 1763 Treaty of Paris, France renounced ‘all pretensions [it] has heretofore formed or might have formed to Nova Scotia or Acadia in all its parts . . .’ The French text of the Definitive Treaty of Paris 1763 is in S&D, I, 97-112. The English text is at *ibid.*, 113-26. For recent histories of the Acadian expulsion, see Geoffrey Plank, *An Unsettled Conquest: The British Campaign Against the Peoples of Acadia* (Philadelphia,

and farms were burned to the ground, but only after the women and children were made to harvest the fields while the Acadian men were held aboard ships ready to disperse them throughout the Atlantic world.<sup>30</sup>

Writing to his son in Paris, Charles Carroll II, a wealthy Catholic planter in the colony of Maryland whose Irish grandfather had emigrated to Maryland in 1688 on the eve of the Glorious Revolution with a soon-to-be worthless royal commission from James II in hand and as the colony's new attorney general, explained that many of the 900 Acadians who had been forcibly shipped to Maryland's shores after the expulsion 'would have met with very humane Treatment from the Rom. Caths. here,' but for the governor's rejection of offers from Carroll and other Maryland Catholics to help them resettle.<sup>31</sup> The Maryland Assembly had also passed a law similar to that adopted by other colonies deeming Acadian children orphans whose parents could not support them, thereby making it legal for the children to be separated from their families and bound out as indentured servants.<sup>32</sup> Any Acadian who refused to work, moreover, or traveled farther than ten miles from his or her designated abode without a pass, could be jailed. The capitulation of Quebec, he added, now denied Acadians wherever they found themselves from any reasonable hope for relief from France. 'Thus they will fall Victims to our Cruelty, by wch they have been reduced from a state of ease & plenty to Misery, Poverty

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2001); John Mack Faragher, *A Great and Noble Scheme: The Tragic Story of the Expulsion of the French Acadians From Their American Homeland* (New York, 2005); and Christopher Hodson, *The Acadian Diaspora: An Eighteenth-Century History* (Oxford, 2012).

<sup>30</sup> Plank, *An Unsettled Conquest*, p. 149.

<sup>31</sup> CCII to CCIII, 26 July 1756 (*DPDC*, I, 30). Carroll's grandfather became wealthy from offering his private legal services to the Catholic Calverts, former proprietors of the colony, and acquisition of land through marriage and purchases to become one of the wealthiest men in America on the eve of the American Revolution. His son, Carroll III, was sent to Europe to study in Catholic schools there at the age of eleven, education of Catholics being illegal in Maryland and the rest of Britain at the time. Carroll II began the process of selling off all of his property in the wake of the Acadian expulsion and Britain's victories in the war, traveling to France to negotiate exchange of his Maryland lands for equivalent property in Catholic Louisiana. He did not go through with the plan, but as part of his exploration of doing so, Carroll befriended Acadians with financial support who had already done so. Ronald Hoffman and Sally D. Mason, *Princes of Ireland. Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill, 2000).

<sup>32</sup> *Ibid.* The Acadians were parceled out to nine of the thirteen colonies, with some like New Hampshire refusing to take any, as well as to other parts of the British Atlantic. *Ibid.*, p. 35n13 (citing Basil Sollers, 'Party of Acadians Who Sailed from the Potomac, Bound for the Mississippi,' in *Md. Hist. Mag.*, IV (1909), pp. 1-21; see also Plank, *An Unsettled Conquest*, pp. 149-150.

& Raggs.<sup>33</sup> The Canadians living next door to British-ruled Acadia took careful regard of the British government's treatment of the Acadians in devising a survival strategy on the eve of conquest.

Unlike Carroll II, most American colonists, especially those living just below the long Canadian border, were understandably ebullient with the British conquest of Quebec, even if the news put political agitator and future American revolutionary leader Samuel Adams of Boston in 'an uncertain state of mind.'<sup>34</sup> Although Adams rejoiced 'in the overthrow of a 'popish' power' adjacent to the English colonies, he dreaded the consequences of incorporating so many thousands of Catholics into the King's oversea dominions.'<sup>35</sup> Although the issue of how to treat the Catholic colony remained in the background while influential voices exchanged views between 1760 and 1762 on whether or not Britain should retain the conquered Canadian territory or the French West Indies enjoyed a vigorous airing in competing published essays,<sup>36</sup> there were hints of how the conquered Catholics might be treated under British rule.

#### Competing Views on the Canada v. West Indies Debate

For three years following the capitulation of Quebec and prior to the signing of the peace preliminaries in November 1762, the principal question was not what to do with 'so many thousands of Catholics,' the question that kept Samuel Adams up at night, but whether Britain should instead keep Canada or the French West Indies, the sugar-rich islands in the Caribbean Britain had also captured in the war.<sup>37</sup> If William Pitt, grand architect and executor of the global

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<sup>33</sup> CCII to CCIII, [9<sup>th</sup>] January 1760 (*DPDC*, I, 144). Under the Treaty of Paris of 1763, the Acadians were permitted to leave the British empire and most did so. Plank, *An Unsettled Conquest*, p. 165. There were some who had eluded British authorities in 1755 and remained in Acadia. Even after the peace treaty was signed, however, many who had remained in Acadia were arrested and hired out to Protestant settlers as farm workers. *Ibid.*, p. 164.

<sup>34</sup> Quoted in Charles H. Metzger, S.J., *The Quebec Act: A Primary Cause of the American Revolution* (New York, 1936), p. 199.

<sup>35</sup> Metzger, *The Quebec Act*, p. 199.

<sup>36</sup> Jack M. Sosin, Review of Philip Lawson's *The Imperial Challenge: Quebec and Britain in the Age of the American Revolution*, in *The William and Mary Quarterly*, 48, no. 1 (January 1991), pp. 151-3.

<sup>37</sup> Lawson's argument that the matter was resolved early on after the conquest is contradicted by his own evidence. *Imperial Challenge*, ch. 1 & p. 25. Pamphlets and articles continued to appear well into 1762 as the second round of peace talks got under way between France and Britain. The dispatches the Vatican's papal nuncio in Paris sent daily to Rome concerning the progress of the talks in late 1762 did not confirm that France was ceding Canada

war, had remained in office, France would have been allowed to keep nothing, but ‘generally speaking,’ as Lewis Namier notes in *England in the Age of the American Revolution*, ‘British opinion, both as recorded in private letters and in the press, inclined to favour the retention of Canada, considerations of security and distrust of the French being foremost in people’s minds.’<sup>38</sup> If the first published essays appearing in the metropole on the question did not address the issue troubling Samuel Adams—they hinted of troubling possibilities in that regard for the conquered people of Canada.

One of the earliest published essays appeared in January 1760, a little more than three months after the capitulation of Quebec, entitled *A Letter Addressed to Two Great Men on the Prospect of Peace*.<sup>39</sup> The author of the essay, Cambridge divinity graduate John Douglas, a future bishop of Salisbury, writing for his prominent and very wealthy Whig patron, William Pulteney, 1<sup>st</sup> earl Bath, did not address the question of what might be done with Quebec’s 65,000 Catholics, but the pamphlet’s heavy anti-French, Protestant Whig rhetoric would have worried the most latitudinarian Christian reader.

The essay recited a lengthy list of alleged French abrogations of prior treaties going back to the 1648 Treaty of Westphalia to support its argument that Canada should not be traded away based on any promises France might make in future peace talks.<sup>40</sup> The essay referenced religion only twice, but not in connection with the religion of the conquered colony. The first reference arose within the greater argument that Britain must continue its annual subsidy to Prussia to support Frederick II’s multi-front war with the Hapsburgs, a subsidy Pitt had railed against during the ‘all-night debate of 13-14 November [1756] on the address to the throne

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until the time of the signing of the peace preliminaries in early November. See discussion in chapter 2 on the peace talks and quotations from these dispatches.

<sup>38</sup> Sir Lewis B. Namier, *England in the Age of the American Revolution*, 2<sup>nd</sup> ed. (London, 1963), pp. 276-9.

<sup>39</sup> John Douglas and William Pulteney, 1<sup>st</sup> earl of Bath, *A Letter Addressed to Two Great Men on the Prospect of Peace; and on the Terms Necessary to Be Insisted upon in the Negotiation* (London, 1760). The two ‘great men’ to whom Douglas’s *Letter* was addressed were the country’s co-leaders, Thomas Holles-Pelham, 1<sup>st</sup> Duke of Newcastle, head of the treasury, and William Pitt, secretary of state and mastermind of the war strategy to crush French military power once and for all.

<sup>40</sup> *Ibid.*, pp. 8-17.

following the King's Speech.<sup>41</sup> If the subsidy were stopped, Douglas warned, it would mean the ruin of the Protestant religion in Europe and 'the blind Zeal of the bigoted *Austrian* Family will have no Check.'<sup>42</sup>

William III had used almost identical rhetoric to convince parliament in 1701 to fund his new war with France over the Spanish royal succession, a war whose peace terms in 1713 the earl of Bath, Douglas's patron, had overseen as George I's secretary of war.<sup>43</sup> 'Let there be no other distinction heard of amongst us for the future,' William told parliament in 1701, 'but of those who are for the Protestant Religion, and the present establishment, and of those, who mean a Popish Prince, and a French government' on the throne of Spain.<sup>44</sup> If Parliament desired 'to see England hold the balance in Europe, and to be indeed at the head of the Protestant interest,' the present opportunity must be seized.<sup>45</sup> Taking up William III's Protestant call to arms, the English gained their first major foothold in Catholic Canada during the War of Spanish Succession, including the territory first settled by the Acadians the century before.

The second reference to religion in *A Letter Addressed to Two Great Men* was more measured, reflecting the author's awareness of Britain's dual *raison d'être*—Protestantism and mercantilism. Keeping the conquered West Indian island of Guadeloupe, Douglas wrote, had "one great Advantage, . . . the potential for expansion of the Protestant presence in the island to complement such a presence already there. 'May we not hope and expect,' the author added, 'that this may be an Inducement to many others [of like persuasion] to make this their Retreat, and that the Colony may be enriched by them?'"<sup>46</sup>

An anonymous response to the Douglas/Pulteney pamphlet appeared soon after. Attributed to William Burke, the author favored retaining the sugar islands and leaving France

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<sup>41</sup> Stanley Ayling, *The Elder Pitt: Earl of Chatham* (New York, 1976), pp. 168-9. Pitt changed his stance later.

<sup>42</sup> Douglas/Pulteney, *Letter Addressed to Two Great Men*, p. 41.

<sup>43</sup> Pulteney served as a member of the Secret Committee following the War of Spanish Succession that oversaw the execution of the terms of the Treaty of Utrecht. See Douglas/Pulteney, *Letter*, asterisked note at p. 20.

<sup>44</sup> "King William of England Addresses Parliament on the French Question, 31 December 1701," online at [http://www.vlib.us/amdocs/texts/french\\_question.html](http://www.vlib.us/amdocs/texts/french_question.html), accessed May 13, 2017.

<sup>45</sup> *Ibid.*

<sup>46</sup> Douglas/Pulteney, *Letter Addressed to Two Great Men*, p. 43

in control of Canada as a check on American ambitions for greater political and economic independence.<sup>47</sup> Retaining the French West Indies sugar islands for their immense cash flow, moreover, the author argued, made far more sense financially than retaining Canada, which was ‘situated in a cold Climate, produces no Commodity, except for Furs and Skins,’ and which trade ‘fell short, in its most flourishing State, of 140,000 a Year. The rest of their Produce, with regard to the Market of Europe, is as nothing.’<sup>48</sup>

Benjamin Franklin and his possible co-author, Richard Jackson, penned an artful, if hair-raising, reply to what was likely Burke’s anonymous response to *A Letter to Two Great Men*. Franklin rebuked what he saw as Burke’s cavalier attitude on the historic violence the New Englanders had endured from their French Catholic Canadian neighbors and Native allies for well over a century. Britain’s return of Canada to France would allow this long and bloody relationship to begin again, Franklin warned, obliging his readers with details of that bloody history. Franklin explained that there were

wide extended forests between our settlements and theirs, [which] are inhabited by barbarous tribes of savages . . . strongly attach’d to the [French] by the art and indefatigable industry of priests, similarity of superstitions, and frequent family alliances. These are easily, and have been continually, instigated to fall upon and massacre your planters . . .<sup>49</sup>

To emphasize his point, Franklin inserted an excerpt from a pamphlet by a Dr. Clark that had appeared in Boston in 1755, the year of the Acadian expulsion. Clark asserted that the French Jesuits in Canada had aggressively instigated Indian attacks on the English colonists after which

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<sup>47</sup> [Anon.], *Remarks on the Letter Address’d to Two Great Men* (London, n.d.), pp. 31-4.

<sup>48</sup> *Ibid.*, p. 36.

<sup>49</sup> [Anon.] *The Interest of Great Britain With Regard to her Colonies* (London, 1760), pp. 5-6. Franklin unsurprisingly requested that Britain cede Canada to America during peace negotiations to end the American Revolutionary War, which demand was given no consideration by the British negotiators. The American Articles of Confederation that served as the governing document for the independent United State of America until implementation of the U.S. Constitution in 1789, however, contained a provision for incorporating Canada into the United States should the Canadians seek to become the fourteenth state. Article 11 of the Articles of Confederation, ratified March 1, 1781. Online at [avalon.law.yale.edu](http://avalon.law.yale.edu).

the Catholic priests negotiated the buyback of the English captives from the Indians and then offered the captives to their English families for a ransom.<sup>50</sup>

### The Imperial Challenge: How To Deal With New Colony of French Catholics

By the time the second round of peace talks opened between France and Great Britain in 1762, however, it was generally accepted that Britain would keep Canada and the question about what Britain would do with the new North American colony filled with Catholics began to appear on the periphery of imperial thinking. Philip Yorke, 1<sup>st</sup> earl Hardwicke, the retired lord chancellor, mentor to Lord Mansfield, and the duke of Newcastle's daily correspondent, wrote to the latter in April 1762, shortly before Newcastle was to be replaced as head of government by the king's close friend and mentor, John Stuart, 3<sup>rd</sup> earl Bute. Hardwicke agreed with the assessment expressed in Burke's essay concerning the lack of economic incentive to keep Canada. He noted that Canada's 'products are mostly or nearly of the same kind with those of Great Britain, and consequently will take off not much of our's.'<sup>51</sup> Trained to consider all sides of an issue, however, Hardwicke then expressed his concern about the potential trouble Britain might encounter if it retained the colony after the peace:

if you remove the French inhabitants, this Kingdom and Ireland cannot furnish, or procure people enough to settle and inhabit it in centuries to come; and, if you don't remove the French inhabitants, they will never become half subjects, and this country must maintain an army there to keep them in subjection.<sup>52</sup>

James Douglas, 14<sup>th</sup> earl Morton, a Scottish astronomer, philosopher, and Masonic Grand Master, was also among the first to express himself on the question of what to do with

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<sup>50</sup> [Anon.] *The Interest of Great Britain With Regard to her Colonies*, p. 6. Dr. Clark's pamphlet is titled *Observations on the late and present Conduct of the French &c.* (Boston, 1755). During the American colonies' invasion of Canada in 1775, Quebec's governor-general, Guy Carleton, however, refused to use Native Americans against the Americans across the 45<sup>th</sup> degree parallel or over the province line, restricting them to the Montreal area, a decision that drew strong criticism from some on the British side. Paul Nelson, *General Sir Guy Carleton, Lord Dorchester: Soldier-Statesman of Early British Canada* (Madison, 2000), p. 63.

<sup>51</sup> Namier, *England in the Age of the American Revolution*, p. 279 (quoting letter of Hardwicke to Newcastle, 2 April 1762).

<sup>52</sup> *Ibid.*

the conquered Canadians. Britain's security needs in North America required it to possess as much of the Canadian territory as possible in order to remove its 'bad neighbours,' Morton argued.<sup>53</sup> Like Douglas and Pulteney, Morton saw the French character as 'perfidious' and 'restless.' And as they had 'never suffered their neighbours to remain quiet,' Morton urged driving them 'intirely from the Continent of America.'<sup>54</sup>

The foregoing opinions were mostly Whig voices, which Geoffrey Plank contrasts with the 'broad pattern' of Tory philosophy about the treatment of conquered people, arguing that Tories did not seek to displace conquered peoples or replace their laws and customs, but nor did they see them as future British subjects. In the Tory view, new subjects were 'potential laborers and trading partners' only, not contemplated to become fully assimilated Anglicized citizens of a greater British empire of the Protestant persuasion, the general Whig view.<sup>55</sup> That a majority of any conquered people, including the Canadians and the Acadians, preferred their own laws and customs, language, and religion, however, was axiomatic. A conquered people, then, should favor a Tory government. In fact, it would be a Tory government that would finally enact the Quebec bill.

The point was valid for Ireland in the early part of the eighteenth century, McBride notes, where official attitudes in Ireland 'towards the Catholic threat varied depending on whether Whigs or Tories were able to dominate the ministry in London. . . . Architects of [Ireland's] penal code were well aware of the international pressures operating in favour of Catholics at the Court of St. James.'<sup>56</sup> The discussion in chapter three confirms that such pressures were operating again at St. James in 1763 after the treaty was signed between France and Britain and Canadian and Catholic European diplomats converged in London to back Canada's demands for concrete protection of their religion. In 1766, the Vatican sent overtures

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<sup>53</sup> Paper of Lord Morton to Lords Newcastle and Hardwicke, 15 January 1760, quoted in Namier, *England in the Age of the American Revolution*, p. 277; see also biography of Morton in *Oxford Dictionary of National Biography* (Oxford, Sept. 2004).

<sup>54</sup> Ibid.

<sup>55</sup> Plank, *An Unsettled Conquest*, pp. 54-5.

<sup>56</sup> McBride, *Eighteenth-Century England*, p. 222.

to George III that it did not intend to continue its recognition of the exiled Stuart court following the death of the Old Pretender, James Francis Edward Stuart, on January 1, 1766. The same year, William Pitt, made 1<sup>st</sup> earl Chatham on the occasion of his taking the reins of government, made plans to shake things up in Ireland, including finding a path to a new oath and relief for its Catholics, discussed in chapter six.

In any event, Whig-Tory distinctions concerning the treatment of conquered peoples, especially Catholics, do not hold up in an examination of the evolution of the Catholic policy in the 1760s, however, which saw the Rockingham Whigs propose some of the most radical concessions to Catholics that could still shock. That it would be the Tory government of Lord North assisted by the crown and its close advisors that would push the Quebec Act through parliament in 1774 did not mean, moreover, that they were prepared to adopt some of these more startling Rockingham proposals or the attitudes underlying them.<sup>57</sup>

#### A Warm Attachment To Their Religion

If the Catholic question raised by the Canadian conquest proved the most difficult to resolve vis à vis imperial governance of the new colony, it was because the Canadians were deeply attached to their religion and its ecclesiastical representatives, which attachment showed no signs of diminishment after the conquest. That event no doubt deepened the attachment. Quebec historian Jocelyn Létourneau, writing in the twenty-first century, remarks of his Canadian ancestors: ‘while there is some research that tends, quite rightly, to challenge the province’s image as a priest-ridden society, no one would seriously assert that the Catholic Church did not play a key role in Quebec’s past.’<sup>58</sup>

Britain’s military and colonial officers sent frequent affirmations of the Canadians’ deep relationship with their religion and church to their home office. No one from the king on

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<sup>57</sup> The Rockingham Whig proposals for Canada governance are discussed in chapter 5. Interestingly, the Rockinghams embedded their Catholic-friendly policies inside the proposals’ secular provisions.

<sup>58</sup> Jocelyn Létourneau, *A History for the Future: Rewriting Memory and Identity in Quebec*, Phyllis Aronoff and Howard Scott (trs.) (Montreal & Kingston, 2004), p. 130.

down appears ever to have questioned the reports on this subject. Imperial policymakers were, therefore, unable to ignore the demands of the Canadians, as we will discuss, concerning concrete protection for their religion and the church. Their attachment to their religion would be their saving grace, so to speak, and key to their successful campaign for the protections they sought.

### Anti-Catholic Feeling in England

Issues which had animated the great Christian split in the sixteenth century and fueled the ensuing religious wars were effectively irrelevant by the eighteenth century to all but religious scholars and politicians during election time. Tony Claydon and Ian McBride argue that religious differences or identities had by the latter part of the eighteenth century become subsumed in more secular considerations such as ‘constitution, race, language, and relations between local and European culture.’<sup>59</sup> French philosopher Jacques Derrida viewed what he called the ‘ambiguous secularization’ that followed the Enlightenment with a skeptical eye, opining that ‘secularization is always ambiguous in that it frees itself from the religious, all the while remaining marked in its very concept by it.’<sup>60</sup>

Such views help explain why a culture in which so few of England’s Protestants attended church regularly, as was the case in the eighteenth century,<sup>61</sup> and whose own establishment laws required so little by way of conformity compared to their Catholic forebears, nevertheless remained deeply anti-Catholic. Popular and press attacks on the king and his government for their sponsorship of the Quebec bill in 1774 particularly offer the best contemporary evidence

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<sup>59</sup> Tony Claydon and Ian McBride, *Protestantism and National Identity: Britain and Ireland* (Cambridge, 1998), p. 9.

<sup>60</sup> Jacques Derrida, *Rogues: Two Essays on Reason* (Stanford, 2005), p. 28.

<sup>61</sup> See Ian R. Christie, *Stress and Stability in Late Eighteenth-Century Britain: Reflections on the British Avoidance of Revolution* (Oxford, 1984). Christie discusses low church attendance in England throughout the eighteenth century, the high non-residency of clerics at the parish level being one of the chief causes. In 1782, for example, he notes, in the bishopric of Worcester, ‘only 82 out of 212 rectories, vicarages, and curacies had resident incumbents.’ *Ibid.*, 194.

of such a phenomenon, one further confirmed by historical studies such as that of Colin Haydon published in 1993 on the subject.<sup>62</sup>

It was a fact, Jeremy Black points out, this deep attachment to their anti-Catholic feelings that proved crucial to British attitudes toward their government during the early part of the Seven Years War when Britain was losing badly. As France notched up victory after victory, the public's anti-Catholic, anti-Gallican feelings rose in tandem, Black notes, leading to a 'sense that their nation was engaged in an existential and meta-historical struggle.'<sup>63</sup> Brad Jones agrees, writing that 'the most persuasive and unifying fears of British subjects in the eighteenth century [was] the threat of French Catholicism.'<sup>64</sup> By the late eighteenth century, moreover, as William Gibson comments, it no longer mattered 'whether anti-French feeling caused anti-Catholicism, or vice versa.'<sup>65</sup> In other words, imperial policymakers would be making new policy on Catholics in spite of popular sentiment on the Catholic question.

Even Edmund Burke tapped into this cultural phenomenon for party and political purposes during his parliamentary speeches against the government's Quebec bill, discussed further in chapter eight. 'All government is good,' Burke intoned, 'but compared with the English government, that of France is slavery.'<sup>66</sup> Opposition newspapers enthusiastically printed hearsay excerpts from Burke's anti-French remarks, one noting that he 'was said to have distinguished himself by his zealous endeavor to gain precision between the limits of the despotism of Canada and the freedom of the old colonies.'<sup>67</sup> Burke's anti-French attacks easily

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<sup>62</sup> Colin Haydon, *Anti-Catholicism in Eighteenth-century England, c. 1714-80* (Manchester, 1993). See also J.C.D. Clarke, *English Society, 1688-1832: Religion, Ideology and Politics During the Ancien Regime* (Cambridge, 2000); James E. Bradley, *Religion, Revolution, and English Radicalism: Nonconformity in Eighteenth-Century Politics and Society* (Cambridge, 2002); Linda Colley, *Britons: forging the nation 1707-1837* (New Haven, 1992). The bibliography below contains numerous other studies on this subject.

<sup>63</sup> Jeffrey Black, 'Strategic Culture and the Seven Years War,' in Murray et al., *The Shaping of Grand Strategy*, p. 66.

<sup>64</sup> Brad A. Jones, 'A "Fit Instrument": The Quebec Act and the Outbreak of Rebellion in Two British Atlantic Port Cities,' in *Entangling The Quebec Act* (Hubert and Furstenberg (eds.), p. 233-4.

<sup>65</sup> William Gibson, *The Church of England 1688-1832: Unity and Accord* (London, 2001), p. 223.

<sup>66</sup> *Ibid.*, p. 196.

<sup>67</sup> *Middlesex Journal and Evening Advertiser*, 7 June 1774-9 June 1774 reported Burke's extensive remarks in the Commons of 6 and 7 June on the New York boundary question in the Quebec bill. Since 1770, Burke had been acting as London agent for the New York Assembly, and used the Quebec bill's boundary provisions, which he succeeded in clarifying and amending with the help of John Pownall, to address his own party's objectives to

translated in the public mind, moreover, not only as attacks on France, but on Catholicism as well, garnering Burke and his party the attention and support of the most anti-Catholic Britons in 1774 without having to mention the words ‘Roman Catholic’ at all.

Burke’s subsequent election to a parliamentary seat for Bristol in 1780, one of the most anti-Catholic dissenting communities of England, is further proof of the attachment many Britons had to their anti-Catholic feelings. Acknowledging this reality is significant to this study if only to highlight how politically risky the new Catholic policy was for the king and the small group of imperial officials who pushed it through in 1774, having kept it out of the public eye until it was absolutely necessary to bring it forward in the midst of the growing revolutionary rumblings in Protestant North America.

#### Dominant Influences in America on the Eve of Revolution

Charles Metzger argued in his still impressive account of the Quebec Act’s impact on the revolutionary fires already burning in America that the Act was a primary cause of the American Revolution.<sup>68</sup> While it may not have been a primary cause, it was without doubt a precipitating cause, as historians of the American Revolution have largely recognized. Eminent American historian Gordon Wood’s argues, however, that a decidedly secular, republican spirit was a driving force behind the decision of the Americans to revolt against its home government.<sup>69</sup> The contemporary record of popular outcry and deep angst felt by Americans to news of the Quebec Act calls such a view into question.

In a stark departure from Wood, Brendan McConville argues in his 2006 study, *The King’s Three Faces*, that the dominant influences in America leading up to the outbreak of revolutionary activity were still ‘decidedly monarchical and imperial, Protestant and virulently

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oppose government policy toward America. See Ross J.S. Hoffman, *Edmund Burke, New York Agent, with his letters to the New York Assembly and intimate correspondence with Charles O’Hara, 1761-1776* (Philadelphia, 1956).

<sup>68</sup> Charles H. Metzger, S.J., *The Quebec Act: A Primary Cause of the American Revolution* (New York 1936).

<sup>69</sup> Gordon S. Wood, *The Radicalism of the American Revolution* (New York, 1991), p. 125.

anti-Catholic.’<sup>70</sup> McConville’s view comports with the deep betrayal American Protestant colonists felt on hearing news of the Quebec Act. Before the Quebec Act, popular opinion was that the king was being badly advised by his ministers with respect to his American policy. With the king’s assent to the Quebec Act, all trust in their sovereign as the constitutional upholder of the Protestant religion was effectively extinguished, reviving and reaffirming their deep suspicion of Catholics, especially French Canadian Catholics.

British-Americans found themselves once again, as they had during the Seven Years War, ‘engaged in an existential and meta-historical struggle,’<sup>71</sup> only this time it was against their own Protestant king and his government. The Quebec Act, as the final two chapters in this book establish, required the American colonial leaders gathering in Philadelphia in September 1774 to examine the complex implications the Quebec Act posed for their political and religious freedoms and their physical security as war with Britain became a distinct possibility.

#### The Impact of Ongoing Anglo-French Global Rivalry on Imperial Policy

Article I of the 1763 Treaty of Paris declared that ‘there shall be a Christian, universal, and perpetual peace, . . . and a sincere and constant friendship shall be re established between their Britannick, Most Christian, Catholick, and Most Faithful Majesties.’<sup>72</sup> The article reaffirmed no fewer than sixteen prior treaties from 1648 to 1761 signed between or among the multiple parties to the 1763 treaty ending the Seven Years War. No signer doubted they would be seeing one or all of their co-signers somewhere soon on a battlefield or body of water. Louis XV had already commissioned his spies to survey England’s east coast for the next confrontation and George III was soon receiving a stream of intelligence from his overseas observers about France’s rebuilding of its naval assets at Toulon. Thus, in making future policy

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<sup>70</sup> Brendan McConville, *The King’s Three Faces: The Rise & Fall of Royal America, 1688-1776* (Chapel Hill, 2006), p. 3. English anti-Catholicism, on the other hand, was not accompanied by any feeling of attachment to the king at the time, most of the anti-Catholic element being found in dissenting communities with historic suspicions of their monarchs, especially those willing to befriend Catholics.

<sup>71</sup> Jeffrey Black, ‘Strategic Culture and the Seven Years War,’ in Murray et al., *The Shaping of Grand Strategy*, p. 66.

<sup>72</sup> Text of 1763 Treaty of Paris in S&D, I, 113-26.

for its greatly expanded global empire, especially in North America, it was axiomatic that geopolitical and security concerns matters would have high priority for Britain.

Being French and the occupants of a strategic asset in North America for which Britain had fought for over a century, the conquered French Canadians had some leverage over imperial policymakers. Short of ‘extirpating’ them from the continent, as suggested by James Douglas, 14<sup>th</sup> earl Morton, the imperial government under George III was inclined to treat them carefully with regard to allowing them to practice their faith without much restriction to avoid pushing them back into France’s arms in the next war. To treat them harshly, moreover, might give France a pretext to come to the rescue of their former subjects to regain Canada.

A report in *Finn’s Leinster Journal* dated 28 May 1774 on the accession of Louis XVI to the French throne that month on the death of his grandfather, Louis XV, provides a more entertaining and highly cogent example of the dangers of the next Anglo-French face-off for Great Britain. The article recounted an anecdote circulating a few years back about France’s new king when he was still the *dauphin*, which anecdote the newspaper suggested held more than contemporary relevance to Britain in 1774. Simon Harcourt, 1<sup>st</sup> earl Harcourt, Ireland’s lord lieutenant in 1774, who had earlier served as Britain’s envoy to Versailles, was at the center of the anecdotal report.

Harcourt, a former governor to George III when he was still prince of Wales, reportedly asked the French foreign minister, the duc de Choiseul, what France intended to do with Corsica, which it had subdued in 1769. Choiseul, who could not wait for the next opportunity to re-establish France’s global supremacy after its humiliating losses in the Seven Years War, is said to have presented Lord Harcourt’s question to Louis XV and received a cryptic response. The king’s answer was said to have ‘delighted’ the minister, who thereafter spread the word that there would soon be another war with England. When the rumor made its way to the ears

of the fifteen-year-old *dauphin*, however, he stepped in to correct it, declaring ‘we shall have no war until I wear the crown, and I will pay the English a visit myself.’<sup>73</sup>

The author of the story in *Finn’s Leinster Journal*, writing as the Quebec Act was making its way through the English parliament, could not help ending the article with the rhetorical question: ‘what could England expect now that the dauphin was on the French throne?’ Louis XVI might not realize his wish to pay the English a visit himself, but both sides kept a close eye on their own shores while they simultaneously adjusted their global policies in preparation for the inevitable next confrontation. With the rebellion in America spreading against the mother country, moreover, and France already making secret overtures to help the beleaguered Americans, resolving the demands of their Catholic subjects in Quebec on the grounds of national security would eclipse policy concerns about the dangers of a new Catholic policy.

### Revolutions From the Top Down

The idea that revolutions can sometimes be introduced at the highest governing levels of a society may not be particularly fertile ground for historical inquiries, but in the mid-eighteenth century, Linda Colley points out in her most recent study already mentioned, that the ideas of Rousseau and Montesquieu and other enlightenment figures were inspiring some of the most absolutist monarchs of the times to consider radical changes to their kingdoms. Colley discusses the ambitions of Catherine the Great in Russia and Gustav III of Sweden in this regard, both contemporaries of George III.<sup>74</sup>

George III was in most senses a man of his times, intellectually curious, a patron of arts and letters, a lover of music, an amateur architect and farmer. He did not appear, however, like his counterparts in Sweden and Russia, to entertain thoughts about how he could improve the

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<sup>73</sup> *Finn’s Leinster Journal*, 25 June 1774.

<sup>74</sup> Colley, *The Gun, The Ship, and The Pen*, ch. 2.

general quality of life of his people at home or abroad. He accepted the system he inherited and believed it his duty to keep it on the same course. Britain's acquisition of vast new lands in the Seven Years War would have challenged the skills of an experienced monarch. George took the throne at twenty-three in the middle of war managed by his grandfather's long-serving advisors. His instincts and thinking were aimed at upholding Britain's mercantilist system and global power.

Had he adopted what John Lewis Gaddis describes as Elizabeth I's management style over England's laissez-faire commercial system, he might have left his American subjects to do what they did best: work hard, engage in as much smuggling as possible, and continue to buy British goods. Elizabeth 'let her merchants risk *their* ships and settlers, but not *her* navy or treasury,' Gaddis writes.<sup>75</sup> She, moreover, 'set the template . . . for British America,' Gaddis adds, 'a hodgepodge of colonies lacking common purpose, bound more to the sea and to England than to each other, strung out thinly along a thousand miles . . . and for the most part lightly—even absentmindedly—administered.'<sup>76</sup> That is the system Chatham and Burke urgently harangued George III and his ministers to readopt in 1774 in their parliamentary speeches.

Instead, the king precipitated a revolution with his new anti-American Coercive Acts and his new Canadian policy recognizing and empowering America's traditional enemies across that vast border. In June 1774 in his final speech to parliament that session, George III spoke sympathetically about his long-suffering Canadian subjects, thanking parliament for its passage of the Quebec Act. As to his 'deluded American subjects,' the king had this to say: 'I have long seen, with concern a dangerous spirit of resistance to my government, and to the execution of the laws, prevailing in the province of Massachusetts Bay in New England.'<sup>77</sup>

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<sup>75</sup> John Lewis Gaddis, *On Grand Strategy* (New York, 2018), p. 153.

<sup>76</sup> *Ibid.*

<sup>77</sup> *PH*, xviii, 1408. Emphasis added.

After thanking parliament for making provision for the ‘suppression of the present disorders,’ referring to the measures known as the Coercive Acts, the king added that it was his ‘most anxious desire to see my deluded subjects, in that part of the world, returned to a sense of their duty; acquiescing in that just subordination to authority and maintaining that due regard to the commercial interests of this country, *which must ever be inseparably connected* with their own real prosperity and advantage.<sup>78</sup> Adopting Elizabeth I’s light-handed control of Britain’s mercantilist interests would have left the British-American relationship intact and the king’s new Canadian Catholic subjects in the same perpetual limbo as Catholics elsewhere in the realm. The great revolution in English/British Catholic policy and the king’s wish to control his American colonies with a firmer hand exploded into revolution in America precipitated from the top, but one that quickly grew from the ground up.

### Chapters 1-3: The Conquest, The Peace, and Ensuing Legal Difficulties They Posed for Canadians

Very little of Nouvelle-France’s 151-year-old capital city of Québec was left standing after British general James Wolfe’s three-month siege and bombardment during the summer of 1759 in the middle of the Seven Years War.<sup>79</sup> The one-day battle on the Plains of Abraham below the walled city on 13 September ended with British general James Wolfe’s death, immortalized in Benjamin West’s panoramic painting, and the mortal wounding of France’s general, Louis-Joseph, marquis de Montcalm. Quebec signed a capitulation five days later. In July 2017, workers excavating a site at the corner of Hamel and Couillard Streets in Old Québec City unearthed a rusted 90-kilogram projectile/cannonball believed to have been fired by British forces from Lévis during the bombardment.<sup>80</sup> The ball still contained a live charge, a

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<sup>78</sup> Ibid.

<sup>79</sup> Bishop Pontbriand sent a lengthy report to authorities in France describing the destruction, some of which is quoted in *Mandements*, II, 6-8. Trudel also provides dramatic details of the damage done to religious properties throughout the colony in his two-volume work, *L’Église Canadienne sous le régime militaire, 1759-1764*.

<sup>80</sup> Stephen Smith, CBC (Canadian Broadcasting Corporation, July 14, 2017. <http://www.cbc.ca/news/Canada/montreal/cannon-ball-quebec-city-1.4202559>, accessed July 16, 2017.

fitting metaphor perhaps for the existential fact that Quebec's scholars have yet to reach a consensus on the full impact of the conquest on the 65,000 conquered people or their nearly eight million descendants in Quebec today.<sup>81</sup>

The Canadians' determination during and after the conquest to protect their pre-conquest religious and civil rights and preserve the church's institutions intensified after the signing of the peace treaty in February 1763, whose terms put their future in the greatest jeopardy since the conquest itself.<sup>82</sup> The capitulations signed by the military leaders in 1759 in Quebec and 1760 in Montreal had given the Canadians relatively liberal protection for their religion and property, which the military government honored for the most part during its four-year governance of the colony before the peace transferred Canada permanently to Britain. Chapter 1 traces the Canadian church leader, Henri-Marie Dubreil de Pontbriand's efforts to implement a strategy of non-violence and peaceful engagement with the enemy, the perils the church and Canada's established religion faced during this period, and how in the brief year left in his life after the invasion Bishop Pontbriand prepared his church chapter to carry on his strategy.

Chapter 2 examines the two rounds of peace negotiations in 1761 and 1762 on the religion question, with the final terms of the Treaty of Paris of 1763 considered by the Canadians and French negotiators as having rescinded Britain's original agreement.<sup>83</sup> British negotiators had insisted on inserting a limiting clause during the final round of peace talks in October 1763 allowing the exercise of the Roman Catholic religion only as far as the laws of

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<sup>81</sup> See, e.g., Cameron Nish (ed.), *The French Canadians, 1759-1766: Conquered? Half-Conquered? Liberated?* (Vancouver, 1966); Phillip Buckner and John G. Reid (eds.), *Revisiting 1759: The Conquest of Canada in Historical Perspective* (Toronto, 2012); Serge Gagnon, *Quebec and Its Historians: The Twentieth Century* (Montreal, 1985). Most Canadian historians, social scientists, and philosophers have weighed in on some aspect of the historic and continuing impact of the conquest on French Canada. The Quebec Act suggests a different paradigm.

<sup>82</sup> The formal English title of the treaty is 'The definitive Treaty of Peace and Friendship between his Britannick Majesty, the Most Christian King, and the King of Spain. Concluded at Paris the 10<sup>th</sup> day of February, 1763. To which the King of Portugal acceded on the same day.' *S&D*, I, 113-26.

<sup>83</sup> Article IV of treaty addressed the religious and property issues. *S&D*, I, 115-6.

Great Britain then permitted. There was no protection for Catholic property in Canada except for those wishing to leave the colony.<sup>84</sup>

Chapter 3 covers the diplomatic mission to London of Canadian abbé, Joseph-Marie de La Corne, immediately after the signing of the peace treaty to place Canada's demands for better terms on the free exercise of religion before the government and to stress the need for a new bishop. Assisted by France's foreign ministry and its diplomate-extraordinaire already in London, the chevalier d'Éon, France's acting minister plenipotentiary in London, they managed to obtain imperial permission for the election of a new Catholic bishop for Canada within six weeks of La Corne's arrival. Obtaining firmer legal guarantees on the free exercise of religion, however, would take another ten years.

#### Chapters 4 and 5: The Imperial Input

As pivotal as the Canadian strategy of peaceful engagement with their new government and the La Corne diplomatic mission in London in the spring of 1763 proved to be to the outcome of the imperial policy for Quebec in 1774, its ultimate fate lay in the hands of George III and his handful of advisors and appointees in a succession of administrations between 1763 and 1773, five altogether from Grenville to North.

Colonel Isaac Barré, a veteran of the Seven Years War in Canada and a member of parliament in 1774 when the Quebec bill came before it for consideration, spoke in the Commons on 31 May 1774 in support of one of several opposition motions to compel production of the government's decade's worth of 'Canada papers,' which had analyzed every possible issue on the Quebec governance question. Although the government managers of the bill in the House were convinced that the opposition's demand to see the papers was for purposes of delaying and ultimately defeating the bill, Barré was correct when he told his

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<sup>84</sup> S&D, I, 115-16.

colleagues that ‘the papers we now call for . . . [were] drawn up coolly, attentively, and upon long and mature consideration . . . by men of great character and abilities.’<sup>85</sup>

Between the signing of the Treaty of Paris in February 1763 and the eve of the introduction of the Quebec bill in the House of Lords on 2 May 1774, the colonial and imperial governments indeed generated a steady stream of reports, proposals, correspondence, and legal opinions on the Quebec governance question, the central complicating factor from a legal and political standpoint being that unwavering warm attachment of the conquered people to their religion.

Chapters 4 and 5 examine some of the key reports made to the privy council on the Canada question and some private writings that show how far the Canadians were from a final resolution in 1763 of the legal issues raised by the treaty and the royal proclamation. The ‘genesis of the Quebec legislation,’ Philip Lawson writes, ‘produced a lively popular and parliamentary debate that went to the core of political and philosophical assumptions derived from the Glorious Revolution.’<sup>86</sup> The debate in and out of parliament, however, was more often elegiac than ‘lively.’ The full weight of the task of reconciling the conflicting religious and legal cultures of Protestant Britain and its new French Catholic colony is reflected in the voluminous studies, papers, plans, and essays produced by a relatively small, but elite cadre of imperial and colonial officials.

#### Chapters 6 and 7: The Pitt Government, the Herveys, and New Oath for Ireland’s Catholics

Three weeks before the king faced angry crowds on his way to Westminster to give his royal assent to the Quebec bill in late June 1774, royal assent had been quietly affixed to a bill passed the previous March without division by the Irish parliament, the Irish Oath Act.<sup>87</sup>

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<sup>85</sup> Remarks of Col. Isaac Barré during parliamentary debate on second reading of the Quebec bill, 31 May 1774, PH, xvii, col. 1365.

<sup>86</sup> Lawson, *Imperial Challenge*, p. ix.

<sup>87</sup> Geo. 13 & 14, c. 35. The act was written with Catholics in mind although use of the name was avoided. The act is also referred to in various sources as the Parliamentary Test Act of 1774. This paper will refer to it hereafter as the Irish Oath Act of 1774. For a history of the oath issue in Ireland and the Irish Oath Act of 1774, see Patrick Fagan, *Divided Loyalties: The Question of the Oath for Irish Catholics in the Eighteenth Century* (Dublin, 1997). See also Bartlett, *The Fall and Rise of the Irish Nation*; and Vincent Morley, ‘Catholic Disaffection and the oath

Imperial historians like Reginal Coupland and J. Steven Watson represent the new Quebec policy as a ‘realistic and tolerant attempt to deal with an alien population in a conquered territory.’<sup>88</sup> The enactment of the Irish Oath Act at approximately the same time as the Quebec measure suggests the imperial government had plans to include its largest Catholic population in its new Catholic policy.

With two key appointments in the first days of the Pitt administration (1766-68), that of George Hervey, 3rd earl Bristol, as lord lieutenant, and his younger brother, Frederick Hervey, as an Anglican bishop of Cloyne and translated soon thereafter to the lucrative See of Derry, the imperial government and George III opened the door for a review of the Catholic question in Ireland, for which Ireland’s Catholic leaders had been peacefully petitioning and working before and after George III’s accession. The efforts of Anglican Bishop Frederick Hervey to create and gather support for a new Catholic oath is detailed in chapter six, a campaign he took up with great dedication and brio, using his frequent travels to the Continent and his ecclesiastical connections on both sides of the Channel in both the Anglican and Roman Catholic camps to study every nuance of the oath problem. His efforts culminated in passage of the Irish Oath Act in early 1774, which as Bartlett asserts, constituted for Catholics ‘the cornerstone of their future emancipation.’<sup>89</sup>

Chapter 7 follows the parliamentary debates on other Catholic-friendly bills the Irish parliament refused to approve that same session, which in part demonstrate what Hervey and the Catholic Committee headed by Charles O’Hara were up against in trying to win approval for Catholic relief at the time. The debate on the mortgage bill in particular, which chapter 7

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of allegiance of 1774,’ in *People, Politics and Power: Essays on Irish History 1660-1850, in honour of James I. McGuire*, James Kelly, John McCafferty and Charles Ivar McGrath, eds. (Dublin, 2009).

<sup>88</sup> Watson, *The Reign of George III 1760-1815*, p. 198.

<sup>89</sup> Bartlett, *Fall and Rise of the Irish Nation*, 81. Bartlett cites Maureen Wall as his authority for the phrase ‘cornerstone of future emancipation.’ Patrick Fagan attributes the quote to the historian Plowden (presumably the English Jesuit and scholar, Charles Plowden, although he does not give Plowden’s first name or cite a specific work), as quoted in a work by J. Mitchel, I, 113. Although Fagan is likely referring to John Mitchell, author of *The History of Ireland from the Treaty of Limerick to the Present Time* (Glasgow, 1869), he does not cite a work or Mitchel’s full name. Fagan, *Divided Loyalties*, p. 154. The full quote, as attributed to Plowden, reads as follows: ‘It gratified the Catholics, inasmuch as it was a formal recognition that they were subjects, and to this recognition they looked up as to the corner-stone of their future emancipation.’ Ibid.

quotes from extensively, offers a riveting record of how Ireland's leading Protestants and their constituents felt about allowing any legal changes to the penal laws.

#### Chapter 8: The English Parliament Debates the 'Canada' Bill

The 'lively' debate in parliament over the Quebec bill in June 1774 was dominated by the Rockingham Whigs hoping to use their opposition to the unpopular, but well-publicized controversial Quebec bill to catapult themselves back into power, or at least to a position where they could exert more influence over policy on America and a host of reforms they had begun in their brief year in office almost a decade before. Edmund Burke and Charles James Fox squared off against the bill's defenders and sponsors, Frederick, Lord North, head of government and leader in the Commons, and Alexander Wedderburn, the silver-tongued Scottish solicitor general, and future lord chancellor.

Each side played to the Protestant interests and 1688 revolutionary principles for different reasons, Burke and Fox with a view to the next elections and the government managers with a view to saving their necks as the newspapers engaged in daily seditious attacks on them for their sponsorship of the bill. Neither side was, in short, in a position to have an honest debate about the true issues addressed by the new Quebec policy. The bill passed because most of those who might have divided against it had long retreated to their country estates, which the opposition accused the government of making strategic use of in bringing in the bill in as the last one of a long session. The king followed the debates and divisions closely, expressing relief when North sent word that it was successfully pushed through. Four days before he went to Westminster to give his assent to the bill, however, the sheriffs knocked on the door of his residence late in the evening to deliver the City of London's petition against royal assent to the bill. The king brazened it out and never would repudiate his new Catholic subjects in Quebec despite continual attempts to repeal the bill over the next several years.

#### Chapters 9 and 10: The American Colonies and The New Catholic Policy

As fifty-six delegates from twelve American colonies made their way to Philadelphia to debate and decide how to respond to their government's statutory responses to Bostonians' destruction of East India Company tea cargoes the previous December, the *Connecticut Journal* of 2 September 1774 recounted George III's journey to and from Westminster on 22 June where he gave his royal assent to the Quebec bill:

Yesterday, the Park, Whitehall, and other parts of Parliament Street, were thronged with multitudes of people in dress and appearance much above the common level. As the King passed they gave him a most cordial salute of *groans* and *hisses*: the universal cry was, 'No popery! No French laws! No protestant popish King! The Duke of Gloucester forever! His Majesty was observed several times to change colour, but . . . he bronzed it out with a tolerable share of *firmness*. When he had executed the *Romish business*, by passing the Quebec bill, the people, on his return grew exceedingly clamorous . . . [continuing] the hisses, groans, and cry of 'No popery! No French laws! The Duke of Gloucester forever!'<sup>90</sup>

The article went on to assert that the 'present Gallican Monarch has done more for the ease and benefit of his subjects in ten days since his accession, than any of his predecessors, in the course of two centuries, have done during the whole of their respective reigns.'<sup>91</sup> The 'Quebec government bill appears to be an act passed in favour of the abdicated family,' attributing what it called the treasonable act to 'very unfaithful servants' about the king.'<sup>92</sup> The article also took note that following the recent death of Louis XV, George III appeared to be pursuing 'the most lasting union' with Louis's successor, writing a letter of condolence to Louis XVI 'in his own *hand writing*.'

Faced with the *fait accompli* of the enactment of the Catholic-friendly Quebec Act in June 1774, and the resulting popular outrage at the sheer effrontery of the government measure passed on the heels of the Coercive Acts, the American leaders gathering in Philadelphia had

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<sup>90</sup> *Connecticut Journal*, 2 September 1774. The king's brother, the duke of Gloucester, was one of seven who voted against the Quebec bill in the Lords (twenty-five were in favor), the first time he had voted against the king's position on a bill. *PDNA*, V, 233, as reported in the *London Evening Post*, 14-18 June, 1774.

<sup>91</sup> *Connecticut Journal*, 2 September 1774.

<sup>92</sup> *Ibid*.

to add the new law to their list of potential official grievances which they would be including in their petition to the king. Chapter 9 examines the popular reaction to the bill and Chapter 10, the final chapter, listens in on the final debate on the question of whether to list the Quebec bill as an official grievance.

The subcommittee appointed to consider which acts of the imperial government since 1763 should be listed in the petition to the king as official grievances for which redress would be demanded in the end recommended that the Quebec Act be so listed. John Sullivan, a New Hampshire delegate, along with John Adams from Massachusetts, were among those who thought the Quebec Act the most dangerous acts of their home government. During an intense debate in mid-October in which New York delegate John Jay, descendant of three lines of European Protestants forced into exile because of their Protestant religion, nevertheless argued against including the Act as an official grievance, but not before the well-regarded lawyer had clearly stated the case for all sides of the question.

Although the delegates voted to include the Quebec Act as an official grievance, in the prayer for relief section at the end of the petition, they did not demand repeal of the Act's provision for the free exercise of the Catholic religion. Chapter 10 analyzes the possible reasons for such a decision as well as the decision of the delegates to offer an olive branch to their old enemies in Canada. The Americans offered the Canadians better guaranties than were contained in the Quebec Act if they would join the colonies' cause against Britain. The Canadians were also offered an equal seat at the table of the next congress if matters were not yet resolved before it reconvened, an offer which stayed open well after the Americans had gained their independence.

## A Note on Sources

If full studies of the Quebec Act are few, as noted at the beginning of this section, the primary sources for any study of this subject are deep and rich. The Quebec Catholic question, if not a burning priority of most of the five British administrations that held office between from April 1763 through 1774, certainly claimed its share of serious attention in the five ministries from Grenville to North (1763-74).<sup>93</sup> Over a century ago, Canadian scholars Adam Shortt and Arthur Doughty compiled and annotated two volumes of key documents and correspondence relating to the constitutional history of Canada between the capitulations of Quebec and Montreal in 1759 and 1760 up through the 1791 Constitutional Act, which reorganized the province into two separate colonies, but which did not disturb the concessions made in the Quebec Act of 1774 as to the free exercise of religion and the civil rights of French Canadians. The Shortt & Doughty annotated compendium of more than a thousand pages includes dual French-English texts of many of the documents cited in this study, various drafts of the Quebec Act, and official imperial and colonial reports and correspondence, all of which shed a bright light on the making of the Quebec policy.

The discussions and analyses of the history of the Quebec Act as it relates to the imperial and British-American side of that history are based on a relatively well-fixed field of undisputed facts and published and digital sources on which this study has principally relied, the principal reason no onsite research was carried out in England. The William Clements Library in Ann Arbor, Michigan at the University of Michigan, moreover, houses one of the richest sources for primary documents relating to British eighteenth-century imperial policymaking, especially the nearly 200 volumes of the Shelburne collection. On-site research was carried out in these archives and follow-up assistance was forthcoming by email for additional documents when needed.

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<sup>93</sup> Bute left office shortly after the signing of the peace treaty. His successor, George Grenville, began the reorganization of Britain's post-war North American empire.

This study has also relied on the digital resources available at the Library and Archives of Canada/Bibliothèque et Archives de Canada in Ottawa, which, inter alia, houses nearly 5,000 documents in the William Legge, 2<sup>nd</sup> earl of Dartmouth collection on Quebec, and American and French subjects of the period mentioned in this study. I also accessed the digital records of the Vatican Papal Nuncio's dispatches to Rome from Paris and Fontainebleau where the French side of the peace talks took place. An on-site research trip to the archives in Ottawa occurred, but the pandemic prevented a major follow-up visit scheduled for several venues, including Canada's federal capital. The digital resources available from the Canadian national archives were sufficient for purposes of completing this study.

The most recent published full study of the Quebec Act, Philip Lawson's *The Imperial Challenge*, prior to the recent collection of essays, *Entangling the Quebec Act*, digs deeply into previously unanalyzed archives in Great Britain to supplement the tremendous work of Shortt and Doughty. My study relied heavily on Lawson's work as a basic research guide, but less so on his analysis. French Canadian scholars, particularly Marcel Trudel, Michel Brunet, and others mentioned throughout this study and in the bibliography, some of whose key works for purposes of this study remain untranslated, have also been fundamental to the views expressed and adopted in this study.

Finally, as the footnotes and bibliography suggest, the historical and physical landscapes with which the subject of this study is entangled explains in part why it has been the subject of so few full studies. Its history has been understandably subsumed in the revolutionary consequences to which the new imperial policy adopted in 1774 helped give rise. Retrieving the origins of a revolutionary policy that itself helped spawn a revolution, however, has been the object of this study. It has not been about establishing the significance of religion in human history, but the political significance of a people so attached to their religion as an essential element in their identity that any external threat to de-acknowledge it through law or pure might was simply not acceptable.

## Chapter 1

### Canada's Survival Strategy in Response to 1759

Very little of Nouvelle-France's 151-year-old capital city of Québec was left standing after British general James Wolfe's three-month siege and bombardment during the summer of 1759 in the middle of the Seven Years War.<sup>1</sup> The one-day battle on the Plains of Abraham below the walled city on 13 September ended with British general James Wolfe's death, immortalized in Benjamin West's panoramic painting, and the mortal wounding of France's general, Louis-Joseph, marquis de Montcalm. Quebec signed a capitulation five days later. In July 2017, workers excavating a site at the corner of Hamel and Couillard Streets in Old Québec City unearthed a rusted 90-kilogram projectile/cannonball believed to have been fired by British forces from Lévis during the bombardment.<sup>2</sup> The ball still contained a live charge, a fitting metaphor perhaps for the existential fact that Quebec's scholars have yet to reach a consensus on the full impact of the conquest on the 65,000 conquered people or their descendants, numbering nearly eight million in Quebec Province today.<sup>3</sup> What is uncontested is their survival for more than four centuries in North America before and after the conquest.

Two centuries after the conquest Canadian historian Lionel Groulx observed that 'as early as 1764, when the new [British civil] regime was implemented in Quebec, French Canada expressed its first and decisive action: an absolute rejection of the religious and cultural

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<sup>1</sup> Bishop Pontbriand sent a lengthy report to authorities in France describing the destruction, some of which is quoted in *Mandements*, II, 6-8. Trudel also provides dramatic details of the damage done to religious properties throughout the colony in his two-volume work, *L'Église Canadienne sous le régime militaire, 1759-1764*.

<sup>2</sup> Stephen Smith, CBC (Canadian Broadcasting Corporation), July 14, 2017.

<http://www.cbc.ca/news/Canada/montreal/cannon-ball-quebec-city-1.4202559>, accessed July 16, 2017.

<sup>3</sup> See, e.g., Cameron Nish (ed.), *The French Canadians, 1759-1766: Conquered? Half-Conquered? Liberated?* (Vancouver, 1966); Phillip Buckner and John G. Reid (eds.), *Revisiting 1759: The Conquest of Canada in Historical Perspective* (Toronto, 2012); Serge Gagnon, *Quebec and Its Historians: The Twentieth Century* (Montreal, 1985). Most Canadian historians, social scientists, and philosophers have weighed in on some aspect of the historic and continuing impact of the conquest on French Canada. The Quebec Act suggests a different paradigm.

alienation proposed by the conquering force.’<sup>4</sup> As the following discussion establishes, however, the Canadians did not wait until 1764 to implement what turned out to be a highly successful strategy to defend their religion and culture in the face of the conquest. Taking early strategic action aimed at minimizing violent engagement with the enemy and applying diplomatic pressure in Quebec’s new imperial capital of London after the signing of the 1763 peace treaty, Canadian church leaders not only succeeded in saving lives and shielding their religion and culture from annihilation, but ultimately led Great Britain to reverse more than two centuries of anti-Catholic laws and policies with the enactment of the Quebec Act and the Irish Oath Act in 1774.

Insufficient attention and credit have been given to the conquered people for successfully defending their interests during and after the takeover of their colony in 1759 by the world’s leading Protestant power. Had the Canadians not done what they did when they did it, there is no evidence Canada’s new imperial rulers would have granted the Canadians the concessions they sought after the conquest. This chapter and chapter 3 analyze the strategy conceived and implemented by the Canadian church leaders and their agents and friends in Europe to win formal protection for the free exercise of their religion and property, which the 1763 peace treaty and British law did not provide. Chapter 2 covers the peace negotiations in 1761 and 1762 between France and Britain regarding terms for the protection of the Catholic religion.

Michel Brunet comments that historians ‘have not taken sufficient account of the conquered people themselves’ in seeking to understand how the Canadians not only survived the conquest,<sup>5</sup> but in the process caused Britain to alter its own Protestant constitutional foundations as a result thereof. Brunet notes, moreover, that some historians find in the events

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<sup>4</sup> Lionel Groulx, ‘The History of French Canada Since Discovery,’ in Guy Laforest, Eugénie Brouillet, Alain-G. Gagnon, and Yves Tanguay (eds.), *The Constitutions That Shaped Us* (Montreal & Kingston & Chicago, 2015), p. 106 (excerpted from Lionel Groulx, *L’histoire du Canada français depuis la découverte*, 4<sup>th</sup> ed. (Montreal, 1960-61). From September 1759 to October 1764, Québec operated under a military government.

<sup>5</sup> Michel Brunet, ‘Premières réactions des vaincus de 1760 devant leurs vainqueurs,’ excerpted in *The French Canadians: 1759-1766: Conquered? Half-Conquered? Liberated?*, Cameron Nish (ed.) (Vancouver, 1966), p. 21.

of 1759 an ‘almost spontaneous submission of the conquered [people]’ to the British authority,<sup>6</sup> adding that what appeared to be the Canadians’ hasty submission ‘to the authority of a century-old enemy . . . surprises a twentieth-century observer a little.’<sup>7</sup> As Brunet and this study seek to demonstrate, historian A. L. Burt’s theory that it was the ‘benevolence of the English soldiers . . . [or] the impossibility for the *Canadiens* to dream of vengeance’ that accounted for the purported submissive conduct of the Canadians falls far short of reality. The Canadian Catholic church leaders, who assumed responsibility for the temporal as well as spiritual welfare of their people in 1759, devised and implemented a successful survival strategy that not only preserved their distinctive cultural and linguistic community in North America into the twenty-first century, but succeeded in changing Great Britain’s Protestant constitutional underpinnings by 1774.

More than two and a half centuries after the conquest, moreover, Lionel Groulx’s scholarly successors are still trying to explain how Canadians retained ‘the rights to define and protect their own interests.’<sup>8</sup> Quebec historian Jocelyn Létourneau provides his insights into this phenomenon from the twenty-first century. ‘While it must be admitted,’ he writes,

that the majority of francophones of Quebec have always as *Canadiens* and then French Canadians, been subject to attempts at assimilation, repression, marginalization, and even inferiorization by the English economic and political powers, the fact remains that, generally speaking, they have also been able to play their cards very skillfully, both politically and, for some forty years now, economically.<sup>9</sup>

The Canadians played their cards very skillfully from the start of the conquest as well. Far from the image of being a submissive people, as made out by some observers and later

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<sup>6</sup> Ibid.

<sup>7</sup> Brunet added that the ‘same reproach might be made against the explanations given by most of the other historians’ on the subject. After Quebec’s ‘Quiet Revolution’ of the 1960s dislodged the dominant influence of the Catholic Church in Quebec after two centuries since the conquest, however, even French-Canadian historians like Brunet have been reluctant to give too much credit to church leaders like Pontbriand, preferring to emphasize the success of the Canadian people themselves in surviving the conquest.

<sup>8</sup> Michel Brunet, *French Canada and the Early Decades of British Rule, 1760-1791* (Ottawa, 1963).

<sup>9</sup> Jocelyn Létourneau, *A History for the Future: Rewriting Memory and Identity in Quebec*, Phyllis Aronoff and Howard Scott (trs.) (Montréal, 2004), p. 130. Originally published as *Passer à l’avenir: histoire, mémoire, identité, dans le Québec d’aujourd’hui* (Montréal, 2000).

historians, Gustave Lanctôt sees in his Canadian forebears ‘a tendency to insubordination,’ a people who recognized ‘neither rule nor regulation.’<sup>10</sup> There was a spirit of equality in the colony, the historian notes, that did not exist in France.<sup>11</sup> Even the most secular-minded observer of French Canadian history, however, will not deny the deep attachment these freedom-loving, rule-averse colonists possessed for their religion before and after 1759 up until the Quiet Revolution arrived in French Canada in the 1960s. As Létourneau notes, ‘while there is some research that tends, quite rightly, to challenge the province’s image as a priest-ridden society, no one would seriously assert that the Catholic Church did not play a key role in Quebec’s past.’<sup>12</sup>

This and the following chapter analyze how the Canadian church leadership’s strategy of non-violence and peaceful engagement with the enemy in and after 1759 played out ‘on the ground’ during and after the conquest on both sides of the Atlantic, not only resulting in their survival and growth as a community, but causing Great Britain to make fundamental changes in its post-Reformation Protestant foundations.

### The Acadian Expulsion Influences Canadian Strategy

At the time of the Seven Years War, as discussed in the Introduction, there was no consensus within the imperial government of Great Britain about the treatment of conquered peoples. The most recent experience in that regard, the expulsion of Acadia’s Catholic population on the eve of the Seven Years War put the Catholic leadership in neighboring Quebec in a reflective frame of mind.<sup>13</sup> Henri-Marie Dubreil de Pontbriand, Canada’s sixth Roman Catholic bishop, moved quickly to prevent a similar fate in his colony as a British

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<sup>10</sup> Gustave Lanctôt, *Canada and the American Revolution* (London & Toronto, 1967), p. 4.

<sup>11</sup> Ibid.

<sup>12</sup> Létourneau, *A History for the Future*, p. 130.

<sup>13</sup> See discussion in Introduction for the history of Britain’s acquisition of L’Acadie during the War of Spanish Succession.

victory loomed over Quebec in 1759.<sup>14</sup> The youngest of nine children born to a noble Breton family, six of whom joined secular or regular religious orders, Pontbriand attended the famous Jesuit college at La Flèche attended by the sons of France's elite families.<sup>15</sup> He continued his studies in Paris with the Sulpician order, an order whose presence in Canada dates to 1657, and whose superior general in Paris exerted great influence over the naming of Canada's bishops.<sup>16</sup> After receiving a doctorate from the Sorbonne, Pontbriand took orders in 1731, and thereafter rose in the ranks of his native diocese of Breton. In December 1740, Louis XV appointed him Canada's sixth bishop and within a few months Pontbriand departed for Canada, never to return to France.

Though canonically conservative, Pontbriand had a passion for his pastoral duties as Canada's bishop, traveling often throughout the vast distances between towns and farms in his diocese to visit his parishes and religious communities. The Acadian expulsion and the impending conquest provoked Pontbriand into reexamining his conscience on what was for him a well-settled Catholic principle: that the 'spiritual welfare of my diocese and the 'good of the state require that no Protestants be allowed in the colony.'<sup>17</sup> In the face of the British invasion, and his interest in avoiding an Acadian-like extermination of his people, therefore, the bishop adopted a less exclusive frame of mind. Cut off from his hierarchy in France and the Vatican, Pontbriand would reach back to the church's primitive fathers, especially St. Paul, to find justification for his choice of survival strategy for his people, 'a quiet and tranquil life in all devotion and dignity'<sup>18</sup> rather than one of bloody martyrdom.

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<sup>14</sup> As war loomed between France and Britain in North America, Britain took action to clear away France's defensive forts at Louisburgh and Fort Beauséjour, which they believed the Acadians were supplying with provisions. The Acadians' history of periodically refusing to take an unconditional oath of allegiance that required a repudiation of their faith or a commitment to fight for Britain against France was also used to justify the expulsion. Fred Anderson, *Crucible of War: The Seven Years' War and the Fate of Empire in British North America, 1754-1766* (New York, 2000), p. 113.

<sup>15</sup> Lavalée, 'Pontbriand,' *DCB/DBC*.

<sup>16</sup> Auguste Gosselin, *L'Église du Canada depuis Monseigneur de Laval jusqu'à la conquête. Troisième partie. Mgr de Pontbriand* (Québec, 1914), pp. 9-10.

<sup>17</sup> *Ibid.*

<sup>18</sup> Paul to Timothy, 1 Timothy 2:1-8. See further discussion below involving Pontbriand's instructions to his religious community concerning Paul's words on this subject.

Pontbriand's first objective as both a temporal and spiritual leader of his people at the time of the siege of Québec, which began in the summer of 1759, aimed at preserving as many lives and as much property as possible while continuing the availability of religious services throughout the colony. The bishop issued his well-cited *lettre circulaire* of 5 June 1759 to parish priests and religious communities five weeks before the sixty-three-day bombardment of the 150-year-old capital commenced.<sup>19</sup> Pontbriand focused on anticipating and planning for every possible interaction with the enemy that might trigger violent confrontation, the warring parties' historic religious differences being the most obvious pretext for such violence.

To achieve his first objectives of preserving the lives and property of his church and all its members, the bishop directed that for those whose parishes 'the enemy might penetrate and gain control [of],'<sup>20</sup> they were to show the enemy all possible respect and beseech them to spare human lives and the physical churches.<sup>21</sup> Neither the priests nor the chaplains, Pontbriand directed, were to be armed. Convinced that the Acadian experience foretold 'what we would have to fear' in the event of a British victory' in his colony,<sup>22</sup> another of the bishop's first instructions to his parish priests directed them to take the oath of allegiance to the British sovereign if it were demanded of them by the invading forces.<sup>23</sup>

The parish priests could, however, attempt to qualify their oath by stating it was to be considered in effect only for the time the enemy was in control of the colony. They could also promise to do nothing directly or indirectly against the conqueror.<sup>24</sup> British brigadier general James Murray's diary entry for 21 September 1759, two days after he 'marched into town

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<sup>19</sup> Journal entry for December 1759, James Murray, *Journal of the Siege of Quebec* (Quebec, 1871), p. 4.

<sup>20</sup> Mgr. Henri-Marie Dubreil de Pontbriand, *Lettre Circulaire*, 5 juin 1759, *Mandements*, II, 137-141.

<sup>21</sup> Ibid. Although the English troops had orders to spare the churches, some were being used by the French as arms depots or defense posts and if a parish curé and his parishioners were seen to be aiding the French defense, the churches would not be spared. Trudel, I, pp. 2-5.

<sup>22</sup> Jean-Guy Lavalée, 'DuBreil de Pontbriand, Henri-Marie.' *DCB/DBC*.

<sup>23</sup> The Acadians typically declined to take the Elizabethan oath of allegiance when demanded. British presence in the colony was quite sparse until the opening of the Seven Years War, but the New England colonists, who joined the ministerial troops in the expulsion expedition, had long had their eye on the fertile Acadian lands. Anderson, *Crucible of War*, p. 113.

<sup>24</sup> *Mandements*, II, 139.

[Quebec City], or, more properly, the ruins of it,' as he wrote,<sup>25</sup> justified Pontbriand's preoccupation with the oath issue. Murray wrote that he had 'settled the form of an oath of allegiance to be taken by the inhabitants to the King of Great Britain.'<sup>26</sup>

With Canada's top tier of civilian and military leadership involved in the war effort, and most departing for France after the capitulations of Quebec and Montreal,<sup>27</sup> Canadians came to 'depend almost exclusively upon their priests to furnish them with a framework of leadership so necessary to human society,' Michel Brunet notes.<sup>28</sup> Walter Riddell confirms that the 'clergy became the logical and actual, though not the legal, successors of the French civil authorities' who returned to France.<sup>29</sup> Parishes and their priests had served as the link between the mostly rural population of the colony and government authority in Canada's capital from the latter part of the seventeenth century,<sup>30</sup> just as parish priests served as important figures of local authority, temporal and spiritual, in France's *ancien regime*.<sup>31</sup> Pontbriand's directives to his parish priests were communicated to the members of every parish in the colony on a regular basis, which system in 1759 assumed life and death importance.

### Pontbriand's Strategy Succeeds in Minimizing Violence

Pontbriand understood that even a small misunderstanding between the British soldiers and a local inhabitant could quickly end in what he considered a senseless loss of life and property. Given the sensitive and historic religious difference between the conquering authority

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<sup>25</sup> Murry, *Journal*, p. 3.

<sup>26</sup> Ibid.

<sup>27</sup> Lanctôt points out that the majority of Canadians remained in the colony after the war. *Canada and the American Revolution*, p. 7.

<sup>28</sup> Michel Brunet, 'La Conquête anglaise et la déchéance de la bourgeoisie canadienne,' excerpted in *The French Canadian*, Cameron Nish (ed.), p. 133. Brunet's entire article is in *La Présence Anglaise et les Canadiens*, Benoit Lacroix (ed.) (Montréal, 1958), pp. 49-57.

<sup>29</sup> Riddell, *The Rise of Ecclesiastical Control in Quebec* (New York, 1916), p. 187.

<sup>30</sup> Riddell offers a detailed discussion of Quebec's demography from its earliest times through the late eighteenth century. Ibid., ch. II.

<sup>31</sup> Gwynne Lewis, *France, 1715-1804: Power and the People* (Harlow, 2004), p. 48

and the besieged Canadians, moreover, the bishop wrote in his 5 June *circulaire* that if the enemy wanted to hold their religious services in the parish church, the parish priests should allow them to choose the time for doing so and then hold the Catholic service afterwards.<sup>32</sup> In the case of a great number of bombs falling on the town, which was soon to be the case, the priests could say mass in private homes, with the bishop adding that it would often be necessary to carry the Holy Sacrament without ceremony.<sup>33</sup>

Not only did Pontbriand not make a fuss about the Ursuline convent's chapel being used for Protestant services after the invasion, but he instructed his vicar general for Quebec, Jean-Olivier Briand, to remove the Catholic Holy Sacrament from the altar when the 'Anglais' assembled for their services, but *only if* Briand perceived that doing so would not cause discontent among the Protestant worshipers.<sup>34</sup> Otherwise, Pontbriand instructed, Briand should leave things 'as they are' so as not to upset the Protestants.<sup>35</sup> The Protestants also needed a place to bury their dead. Pontbriand immediately gave dispensation for their burial in Catholic cemeteries in the capital, ordinarily proscribed under Catholic law, an accommodation the British government saw no reason to relinquish even after passage of the Quebec Act.<sup>36</sup>

The church hierarchy also kept a constant ear to the ground for reports of British troop movements and sent out warnings to the community. In early July 1759, Jean-Olivier Briand, Pontbriand's right-hand assistant since the two Breton natives arrived in the colony together in 1741, and Pontbriand's future successor, sent off an urgent note to the parish priests in the town of Beaupré, warning them that the English fleet was moving up the river and urging them to follow the governor-general's orders to retreat into the woods with their parishioners, taking

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<sup>32</sup> *Mandements*, II, 139.

<sup>33</sup> *Ibid.*

<sup>34</sup> Pontbriand to Briand, 7 January 1760 (quoted in Trudel, II, p. 71).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, pp. 71-2. The royal instructions issued to Guy Carleton in 1775 after his appointment as Quebec's second governor provided that 'freedom of Burial of the Dead in Churches and Church yards be allowed indiscriminately to every Christian Persuasion.' § 21, ¶ 9 of Instructions To Governor Carleton, 1775 (*S&D*, II, 604).

whatever effects they could from the churches. The parishioners were to remain in the woods until the fleet had reached the environs of Québec City.<sup>37</sup>

In a similar directive, at the end of his 5 June *circulaire*, Pontbriand focused his attention on the dangers to the religious communities, telling their leaders that if the enemy sought to expel them, they should go into the countryside, if possible two by two, with the superiors of the orders supervising the flight.<sup>38</sup> Anderson points out that ‘although the British might conquer territory, they could never hold it so long as Canada’s French and Indian peoples remained united and capable of resisting *in the interior*.’<sup>39</sup> Canadian strategies involving ‘Indian alliance and wilderness warfare,’ Anderson notes, were tried and true.<sup>40</sup> As the war continued after the one-day battle on the Plains of Abraham on 13 September 1759 that saw the capitulation of Quebec, the Canadians continued to follow Pontbriand’s strategy of non-violence and peaceful engagement with the British forces.

#### Military Officials Differ in Attitude on Treatment of Conquered Canadians

The ultimate outcome of the conquest for the conquered people and their religion and property rights did not lie solely in the hands of either side, of course. Much would depend throughout the decade and a half that followed the conquest up to enactment of the Quebec Act in 1774 on geopolitical concerns, trade, fiscal pressures, and the personalities and character of the leadership and policy minds in each community. At the time of the conquest, however, British military officers in Quebec of war was to quash any threat to the military operation. The military leaders possessed different attitudes toward treatment of the conquered people, however, even in the middle of war.

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<sup>37</sup> Mgr. Jean-Olivier Briand, Extrait d’une letter . . . au clergé de la Côte-de-Beaupré, *Mandements*, II, 140-41.

<sup>38</sup> *Ibid.*, 140.

<sup>39</sup> Anderson, *Crucible of War*, p. 346.

<sup>40</sup> *Ibid.*

Britain's military commander in Canada, general James Wolfe, was inclined to treat the Canadians harshly if they did not submit completely to his war-time commands. His colleague, brigadier general Robert Monckton, believed, however, that as long as the Canadians showed *due* submission to British authorities, he would give them 'the strongest assurances of their safety, and even encouragement.'<sup>41</sup>

General James Murray's view was perhaps the most practical one in the circumstances as they stood in the fall of 1759. Murray wrote that with the 'country as yet but partially conquered, it would have been impolitic to have crushed the inhabitants at this time as it was necessary to oblige them to give a reasonable assistance to His Majesty's forces.'<sup>42</sup> The bitter winter that followed the conquest of Quebec indeed forced Murray to depend far more on local Canadian benevolence than he anticipated. This included dependance on the Catholic church's female religious orders who tended expertly to the wounded British officers and soldiers during and after the conquest. The Ursuline order's members likely contributed as much to the success of Pontbriand's strategy as all of the bishop's instructions combined.<sup>43</sup> One of the Ursulines' grateful patients was Quebec's future governor, colonel Guy Carleton, who served under Wolfe in Canada.

The terms of the Quebec capitulation signed 18 September 1759, five days after the battle on the Plains of Abraham, offered the Canadians and its established church some breathing room. Article II agreed the 'inhabitants shall be preserved in the possession of their houses, goods, effect, and privileges' and Article VI granted the 'free exercise of the Roman

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<sup>41</sup> Murray, *Journal*, p. 16.

<sup>42</sup> Ibid.

<sup>43</sup> See Julie Wheelwright's *Esther: The Remarkable Story of Esther Wheelwright, Puritan Child, Native Daughter, Mother Superior* (Toronto, 2011). Esther Wheelwright was captured by Native Americans allied with the French during a raid on her New England town early in the eighteenth century. She ended up becoming a Catholic Ursuline nun after having been traded to the Jesuits by the Native Americans, and thereafter was elected Mother Superior of the order at the time of the conquest. She maintained contact with her family in New England, but declined to return to her family.

Catholic religion.’<sup>44</sup> It was also agreed that the bishop was ‘at liberty to come and exercise, freely and with decency, the functions of his office.’<sup>45</sup> The Montreal capitulation a year later was more expansive regarding ecclesiastical rights, but suspended the tithe system and refused the request of the French side that France could have anything to do with choosing a successor bishop for the colony.

These capitulations became the legal baseline for the future Canadian demands following the troubling terms included in the 1763 Treaty of Paris, whose terms failed to guarantee either the free exercise of the Catholic religion or Catholic property in the colonies France was ceding to Britain. The issue between French and British negotiators on the qualifying clause on the free exercise of religion Britain insisted on inserting in the final treaty terms by Britain is discussed in the next chapter.

#### Pontbriand Intensifies Application of His Strategy After the Capitulation

Once General Murray took control of the military administration of Quebec after the capitulation, Bishop Pontbriand immediately sought to establish a close working relationship with the hard-driving, not completely unsympathetic, Scottish general. The bishop was convinced, he wrote his new vicar general Briand in Quebec several months after the capitulation, that if the church leaders remained careful to accommodate their hypersensitive, vigilant military overseer regarding issues of mutual concern that ‘Mr. Murrai Sera Content.’<sup>46</sup> It was clear that urging accommodation and diplomacy toward the conquering authority was not just for his subordinates. Pontbriand set the example by continually reaching out to Murray to assure him of his and Briand’s full cooperation.<sup>47</sup> The bishop repeatedly recommended

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<sup>44</sup> Article II, Articles of Capitulation signed at Quebec 18 September 1759 (*S&D*, I, 5).

<sup>45</sup> *S&D*, I, 6.

<sup>46</sup> Pontbriand to Briand, 16 February 1760 (quoted in Trudel, I, p. 71).

<sup>47</sup> Pontbriand to Murray, 13 November 1759 (quoted in Trudel, I, p. 71).

Briand to Murray, assuring him that his vicar general shared his own views on matters of importance to the new government.<sup>48</sup>

A month later, Pontbriand appeared delighted to tell Briand that Murray made clear he would welcome Briand 'pay[ing] court to the general from time to time.'<sup>49</sup> By urging Murray to work with Briand and vice versa, Pontbriand obviously hoped to secure Murray's support for the continued operation of the church in the colony. But another goal was no doubt to gain Murray's support for Briand as Pontbriand's successor. Pontbriand was very ill at the time, which in part explains the urgency of his campaign to cement relations between Murray and Briand. As no arrangements were in place for a successor bishop, Pontbriand knew that it was the new government, not the pope in Rome nor the king of France, who would decide the matter after his death. He was as correct on this point as he was on every other issue relative to the survival of his church and his colony throughout the early days of the conquest up to his death in June 1764.

When Canada's second largest city, Montreal, capitulated a year later, three months after Pontbriand's death in June 1760, the French negotiators requested that should Canada 'remain in the power of his Britannic Majesty, his most Christian Majesty [Louis XV] shall continue to name the Bishop of the colony, who shall always be of the Roman communion . . .'<sup>50</sup> Unsurprisingly, Jeffrey Amherst, who after Canada was for the most part safely in British hands arrived to conclude the takeover and negotiate the Montreal capitulation, gave a one-word answer to the French request: 'Refused.'<sup>51</sup> Pontbriand had anticipated such a reality in setting his sights so intensely on a Murray-Briand partnership. That Briand was ultimately consecrated in 1766 as Pontbriand's successor, further proof of Pontbriand's strategic skills.

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<sup>48</sup> Ibid.

<sup>49</sup> Pontbriand to Briand, 14 December 1759 (quoted in Trudel, I, 73).

<sup>50</sup> Article 30 of Montreal capitulation, French text, *S&D*, I, 16. Article XXX of English text is at *S&D*, I, 31.

<sup>51</sup> Ibid.

Pontbriand, however, never relied solely on interpersonal strategies to keep channels of good will open between his people and the British military leaders. He offered his religious community doctrinal justification for his philosophy of conciliation toward the new Protestant authority. This was in keeping, he told his religious subordinates, with instructions from ancient church fathers concerning the proper respect to be shown to a state's temporal leadership. As Pontbriand explained to the superior of the Hotel-Dieu, because 'the king of England is now by conquest sovereign of Quebec, we owe him all the sentiments about which the apostle Paul speaks.'<sup>52</sup>

Whether such ancient wisdom offered the beleaguered Canadian Catholics additional stamina to bear the daily 'crosses and humiliations' that the conquest inevitably introduced to their existence is uncertain. Murray exerted a tight grip over the church and its ecclesiastical members during both his military and civilian rule of the colony between 1759 and 1766, severely testing at times the Pontbriand philosophy of peaceful co-existence. In his June 1762 report on the state of Quebec sent to the home office, for example, Murray noted that as Quebec's priests 'were moved from their respective parishes at the Bishops pleasure, who thereby always kept them in awe, it may not be improper to adopt the same Method, in case His Majesty should think right, for the sake of keeping them in proper subjection.' The king, Murray continued, could nominate the priests themselves or it could be done 'by those who act

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<sup>52</sup> Pontbriand to the Supérieure de l'Hôtel-Dieu de Québec, 13 novembre 1759 (quoted in Trudel, I, 71). The French text reads: 'Le roi d'Angleterre étant maintenant, par conquête, souverain de Québec, on lui doit tous les sentiments dont parle l'apôtre saint Paul.' Letter also mentioned in Lavalée, 'Henri-Marie Dubreil de Pontbriand,' in *DCB/DBC*.

under his authority.’<sup>53</sup> As Trudel points out, Murray did not wait for any royal instructions to share his thoughts on how to keep Canada’s priests in check.<sup>54</sup>

There were also attempts by colonial officers in the other major towns to undermine church tradition. In Montreal, in the autumn of 1763, Governor Thomas Gage ordered the Sulpician priests to bless the marriages between Catholics and Protestants, which since the British victory had been on the rise between British soldiers and *les Canadiennes*. Pontbriand had in fact anticipated the problem and offered guidance in his pre-conquest circular letter to his parish priests.<sup>55</sup> But in 1763, Pontbriand was no longer around to guide the hands of his people and Montreal’s vicar general, Étienne Montgolfier, had just left on his diplomatic-ecclesiastical mission to London as the bishop-elect of the Canadian chapter.<sup>56</sup>

The crisis Gage stoked over the mixed marriage issue thus fell to the acting vicar general, Michel Peigné. When Peigné refused to implement Gage’s order, the general threatened to expel the Sulpicians from the colony, which would not only terminate their more than century-old presence in the island city, but lead to the confiscation of their considerable landholdings and other financial assets throughout the colony. Only the mutual face-saving

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<sup>53</sup> ‘General Murray’s ‘Report of the State of the Government of Quebec in Canada June 5<sup>th</sup>, 1762’ (*S&D*, I, 79). Although the capitulations had granted the vicars general the right to carry on their established duties in their regions, neither the Quebec or Montreal capitulation spelled out their role in assigning and supervising their subordinate ecclesiastics. The only reference to the subordinate prelates was with regard to their right to retain possession of their personal belongings. See also Kenneth J. Banks, *Chasing Empire across the Sea, Communications and the State in the French Atlantic, 1713-1763* (Montreal/Kingston, 2002), pp. 22-3. The author discusses Louis XIV’s ‘far-reaching administrative and political initiatives across the French Atlantic,’ among which was bringing the French clergy under his direct control, ‘ceaselessly championing the divinity of his royal person, bullying the French clergy into supporting the Four Gallican Articles (1682), which diminished the pope’s control over the French clergy and lay orders.’ As noted below, Canada’s first bishop, Laval, worked closely with the Sun King to centralize church operations in his diocese. Murray’s idea of controlling the Catholic church in the colony through control of clergy appointments, therefore, was not a novel concept, except that the authority proposing to step in to control the Gallican system was now Protestant.

<sup>54</sup> Trudel, I, p. 217.

<sup>55</sup> Pontbriand instructed his priests to do everything possible not to assist in such an event, but ‘s’il etait comme forcé, il n’y assistera que comme témoin, et ne prononcera aucune des paroles dont se sert l’Eglise.’ [If they were forced to take part, they should do so only as witnesses, and pronounce no words the church uses [to bless marriages]. The priest must also refuse absolution to the offending Catholic, he added. ‘Lettre Circulaire,’ addressed to ‘MM. les curés qui seront dans les quartiers ou il est à craindre que l’ennemi ne pénètre.’ 5 June 1759, *Mandements*, II, 140.

<sup>56</sup> Montgolfier, backed by the church canons and Montreal’s lay leaders, went to London to present himself to the imperial government for approval of his recent secret election as the Canadian church chapter’s choice for new bishop, a concession the church obtained due to the diplomatic efforts of its dean and agent in France, l’abbé Joseph-Marie de la Corne, discussed in chapter 3.

decision to await vicar general Montgolfier's return put off the immediate threat of expulsion. Gage's transfer shortly thereafter to New-York put it off indefinitely.<sup>57</sup>

### The Death of Pontbriand Threatens the Church's Future

With Pontbriand's death in June 1760 at the age of fifty-one, the Quebec church, having survived the initial impact of the invasion, would face its next crisis—how to replace its dwindling priestly ranks without a bishop in the province to consecrate new ones. When the siege of Quebec opened in May 1759, the thirty candidates for priesthood resident in the Séminaire de Québec were forced to halt their studies and leave the seminary. Some returned to their homes while others went directly into military service. With the commencement of the British bombardment of the capital in mid-July, the seminary's teachers and administrative clergy were also forced to seek shelter elsewhere.<sup>58</sup> Then the bombardment destroyed the seminary complex, which its founder had located in a prime spot at the top of the city overlooking the expansive St. Lawrence River. The first bomb hit the seminary chapel on 15 July, collapsing most of the ceiling. The next evening, five more bombs smashed onto the rest of the seminary.<sup>59</sup>

The local training of candidates for the priesthood had begun a century earlier when Quebec's first bishop, François de Montmorency-Laval de Montigny, whose ancestors reputedly served at the court of Clovis I and adopted Christianity alongside him early in the sixth century, received the royal nod to establish the Séminaire de Québec.<sup>60</sup> Laval's *mandement* of 26 March 1663 not only spelled out the parameters of the seminary as a training institute for Canadian candidates for the priesthood, but it also vested the seminary and its head,

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<sup>57</sup> Ibid., 203.

<sup>58</sup> Trudel, II, 31-32.

<sup>59</sup> Modest restoration efforts after the conquest allowed it to reopen to six students three years later. Ibid., II, 31; 52-53.

<sup>60</sup> Excerpt of *mandement* of Monsignor de Laval of 26 March 1663, reprinted in *Histoire du Canada par les textes*, Guy Frégault and Marcel Trudel (eds.) (Montréal, 1963), pp. 44-45; André Vachon, 'Laval, François de,' *DCB/DBC*.

Laval at the time, with authority and oversight over Canada's parish priests, a significant change from the status quo.<sup>61</sup> Although not universally welcomed by the independent parishes, Laval's new system helped unify and strengthen the institution of the church throughout Canada, which system would prove critical to the success of Pontbriand's strategy to guide his colony through the early days and months of the conquest.

Within two and a half decades of Laval's appointment in 1663 and the founding of the seminary, the number of priests in the colony quintupled from 24 to 102, the number of nuns in religious communities tripled from 32 to 97, and the number of parishes rose from 5 to 35. By 1754, almost a century later and sixteen years into Pontbriand's episcopacy, the number of parishes had tripled to 136. In 1690, moreover, only thirteen of the 102 priests (13 percent) and a little over 50 percent of the female religious orders claimed Canadian origins, a fact to which historian André Vachon states the Canadians were not 'indifferent.'<sup>62</sup> By the end of December 1760, of the 163 priests still in the colony, seculars and regulars, 81, or fifty percent were *Canadiens*.<sup>63</sup> The importance of Laval's Séminaire de Québec in increasing the number of Canadians ordained as priests is obvious. The seven-year war and the death of Pontbriand in 1760 threatened to undo a century of Laval's and Pontbriand's work.

Within a year of the capitulation, the number of priests, regular and secular, including the bishop, vicars, and the chapter canons, had declined by thirteen percent, from 196 to 163.<sup>64</sup> Had the thirty students at the *Séminaire* been able to complete their studies, it would have made up for this loss. By the end of 1764, however, another seventeen had died and ten had returned to Europe, a total loss of fifty-nine priests between 1760 and 1764, an overall decline of 30

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<sup>61</sup> Laval headed the North American diocese from 1659, at first under the titles of *evêque de Petrée* and then *vicair apostolique*, given full bishop rank only in 1674 after years of church-state-papal political infighting over control of the see in Canada. See André Vachon, 'Laval, François de,' *DCB/DBC*.

<sup>62</sup> Vachon, 'Laval, François de,' *DCB/DBC*.

<sup>63</sup> Data summarized by author from list of names of priests in religious orders or serving as parish priests throughout Quebec and Acadia in Trudel, I, 92-108. Only one of the eighty-one priests was Acadian, and of the total 163 listed, Trudel provides no origin for Louis Chaumont, age 60, priest in the parish of Baie-Saint-Paul in Quebec. *Ibid.*, I, 93 & n.35.

<sup>64</sup> Trudel, I, 89-91.

percent.<sup>65</sup> Failure to resolve the bishop issue after Pontbriand's death, therefore, promised to accelerate the decline. Adding to the challenges brought to its church doors by the conquest and Pontbriand's death was news in late 1762 that the preliminary terms of peace between Britain and France would allow the free exercise of religion in the Catholic colonies France proposed to cede to Britain only 'as far as the laws of Great Britain permitted,'<sup>66</sup> a clause the British negotiators inserted in the treaty in the final days of negotiations over the vigorous, but futile, protests of France's peace negotiators.

Eliminating the restrictive treaty clause on the exercise of religion in their colony, together with obtaining approval of a new bishop, became the twin objectives of the Canadian church chapter after the signing of the peace treaty. The next chapter discusses and analyzes the peace negotiations as they related to the religious issue. Chapter 3 addresses the successful diplomatic mission of l'Abbé Joseph-Marie de La Corne in London immediately following the signing of the treaty during which he won approval for the Canadian chapter's election of a new bishop, subject to royal consent. The issue of how far Britain would permit the free exercise of the Roman Catholic religion and recognize Canada's pre-conquest civil laws and customs on property would remain under study for another decade and be resolved by the Quebec Act.

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<sup>65</sup> Trudel, II, 433.

<sup>66</sup> Treaty of Paris of 1763, English text (*S&D*, I, 115).

## Chapter 2

### Peace Negotiations and Catholic Rights: 1761-62

Had the British peace negotiators not insisted late in the peace negotiations of 1762 with France on adding the explicit restriction on the free exercise of the Roman Catholic religion in the colonies France was ceding, the staunch Whig political interests the clause was intended to appease in parliament might well have avoided being witness to their government's reversal in 1774 of the country's 1688 Protestant constitutional foundations. That the French Catholic Canadian leadership would succeed in triggering the formal end to more than two centuries of anti-Catholic policy in a little over a decade time aided and abetted by hardline Whig politicians is more than historically ironic.

The clause on the free exercise of religion agreed on in the first round of peace talks between France and Britain in 1761 contained the kind of ambiguous phraseology that peace negotiators prefer to utilize to paper over issues which in reality are politically unresolvable. The explicit restriction British negotiators inserted in the final terms of the peace treaty in late October, which limited the exercise of the Catholic religion in the Catholic colonies France was ceding Britain to that permitted by British law naturally alarmed the Canadian church leaders and their European allies, including the Vatican. Britain's refusal to eliminate the offending clause despite France's repeated requests led to an intense diplomatic campaign by the Canada church's long-time agent in France, l'Abbé Joseph-Marie de La Corne shortly after the signing of the treaty. La Corne was focused on obtaining firmer guaranties from the imperial government on the exercise of religion in Canada to negate the infirmities of the treaty language.

Had the language in the treaty remained unchanged from the first round of peace talks until the final days of the second and final round, though still somewhat ambiguous, French negotiators and Catholic leaders would not have sought to obtain better terms directly from the imperial government after the peace. Had Canada's diplomat La Corne waited to launch his

campaign in London by even a month or little more with the help of the French foreign office, moreover, intervening events would very likely have relegated Canadian demands to the same ‘shadowy spaces created by the loopholes and imperfections’ of Britain’s existing anti-Catholic penal code,<sup>1</sup> which the 1763 treaty terms allowed.

### The First Round of Peace Talks and the Religious Question

The language agreed upon in the first round of peace talks on the Catholic question under the Pitt-Newcastle government was not as precise as France wanted, which ordinarily should have suited the British predilection for vagueness in matters on which they preferred to retain as much discretion as possible. As the second round of talks opened, however, Britain possessed much more leverage over its Gallican rival and fierce domestic political opposition to any concessions to France influenced British negotiators to add the restriction on the free exercise of Roman Catholicism in the soon-to-be French-speaking Catholic colonies of Britain. As soon as news of this restrictive clause in the treaty began circulating through the Catholic church hierarchy on both sides of the Atlantic and the Continent, l’Abbé Joseph-Marie de La Corne, a hand-picked protégé of the late Bishop Pontbriand and chapter agent for the Canadian church in France since 1750, made plans to be in London two weeks or so after the treaty was signed on 10 February 1763. The entire French and European Catholic diplomatic corps were put at La Corne’s disposal to assist in accomplishing his two-pronged mission: approval for a new bishop and reformation of the treaty language on religion.

This chapter examines how the treaty language changed between 1761 and late 1762 on the religious question, and the next chapter details how the Canadian church and its chapter agent and Catholic allies in France worked to counteract the change, and how these efforts would permanently reshape Britain’s post-Reformation history on the Catholic question.

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<sup>1</sup> McBride, *Eighteenth-Century Ireland*, p. 84.

Notably, the first of France's four conditions for peace with Great Britain in the first round of negotiations in 1761 specified that the 'Catholic religion would continue to be maintained in the ceded colonies *comme ci-devant* [as before].<sup>2</sup> Britain did not address this condition in its first response, secretary of state William Pitt being far more focused on shutting down all of France's fishing rights in Canada than guaranteeing or denying religious rights of its human inhabitants. Like the fishing rights issue, however, the religious clause would dog the peace talks down to the final hours of the second round in late 1762 in London and Fontainebleau.<sup>3</sup>

As Britain's response to France's first peace propositions of 15 July made no mention of the religious issue, France reiterated her demand on 5 August, stating that while France intended to 'cede Canada to England in the most extensive manner as specified in the memorial of propositions, . . . his majesty will not recede from the conditions he has annexed to the same memorial relative to the Catholic religion.'<sup>4</sup> In its 15 August communiqué to France's ultimatum of ten days earlier, Britain finally addressed the religious issue: 'As to what concerns the public profession and exercise of the Roman Catholic religion in Canada, the new subjects . . . shall be maintained in that privilege without interruption or molestation.'<sup>5</sup> The words 'without interruption' appeared to French negotiators to mirror their phrase, *comme ci-devant*,

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<sup>2</sup> Article II of The French Memorial of Propositions, 15<sup>th</sup> July 1761, in Papers Relating to Mr. Secretary Pitt's Negotiation for Peace Between England and France in the Year 1761, *PH*, XV, 1039-1040.

<sup>3</sup> France's demand for retention of fishing rights in the Gulf of St. Lawrence proved a major stumbling block, among others. Pitt had no appetite for giving an inch on this issue. See Answer of the British Court to Memorial of the French Propositions, 29 July 1761, *PH*, XV, 1047. The British memorial opened with the following words: 'His Britannic majesty will never recede from the entire and total cession on the part of France, without any new limits, or any exceptions whatever, of all Canada and its appurtenances: and his Majesty will never relax, with regard to the full and complete cession on the part of France, the isle of Cape Breton, and of all the other islands in the gulph or in the river St. Lawrence, with the right of fishing, which is inseparably incident to the possession of the aforesaid coasts, and of the canals or streights which lead to them.' See also Anderson, *Crucible of War*, ch. 49, for discussion of Pitt and the first round of peace talks.

<sup>4</sup> Ultimatum of France in Reply to that of England, of 5<sup>th</sup> of August, 1761, in *PH*, XV, 1050.

<sup>5</sup> The Answer of the British Minister to the Ultimatum of France, delivered to Mr. Busy, on the 16<sup>th</sup> of August, 1761, in *PH*, XV, 1062.

*i.e.*, that the exercise of the Catholic religion would be allowed to continue ‘as before, or as formerly.’<sup>6</sup>

While acknowledging Britain’s response to the religious proposition, it is clear France was unsure about what exactly Britain intended to guarantee, as suggested by the French reply: ‘His majesty had annexed four conditions to his guaranty [the first being the maintenance of the Catholic religion]: it *seems* that England agrees to them.’<sup>7</sup> France did not seek further clarification, however, on the point and the 1761 round of negotiations ended without resolution, requiring France to raise the religious question anew when talks reopened the next year.

By 1762, Britain held most of the negotiating cards and great party differences arose at home that made peace far more contentious than the continuing global conflict. Secretary of State William Pitt, who had resigned in 1761 over the issue of war with Spain, and who held sway over the opposition forces, favored stripping France of every asset it lost in the war.<sup>8</sup> With Newcastle replaced by the unpopular Bute in May 1762, moreover, getting any peace proposal through a querulous parliament meant that prickly questions involving religious issues could well fall victim to such political vagaries. The duc de Nivernois, appointed minister plenipotentiary to London for the second round of talks on behalf of France, wrote foreign minister Choiseul on 15 September 1762 that Bute’s back was against the wall on certain of the terms, and that ‘a powerful party are opposed to peace,’ though the ministry itself desired it.<sup>9</sup>

A month later, the religious issue raised its head. On 12 October, Nivernois reported to Choiseul that during a three-hour meeting with British Secretary of State Egremont, the British

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<sup>6</sup> Article II of The French Memorial of Propositions, 15<sup>th</sup> July, 1761, read in part: ‘First, that the free exercise of the Roman Catholic religion shall be maintained there, and that the King of England will give the most precise and effectual orders that his new Roman Catholic subjects may, as heretofore, make public profession of their religion, according to the rites of the Roman Church.’ *PH*, XV, 1039-40.

<sup>7</sup> The Last Memorial of France to England, delivered to Mr. Pitt, by M. Bussy, on the 13<sup>th</sup> of September, 1761, in *PH*, XV, col. 1067. Emphasis in the original.

<sup>8</sup> Anderson, *Crucible of War*, p. 482.

<sup>9</sup> Nivernois to Choiseul, 15 September 1762 (Verreault, p. 211).

minister proposed a change to the existing religious clause that had remained untouched since the previous round of talks. The new language, Nivernois reported, limited the free exercise of religion 'to the effect that it shall be in conformity with the laws of the country [Great Britain].'<sup>10</sup>

The new subordinate clause bore no signs of the artful ambiguity each side appeared ready to accept in the previous round of talks. Nivernois told foreign minister Choiseul that he showed Egremont that the 'proposal differs from what had been agreed upon' previously, and that Nivernois had recommended that the 'point should be discussed in Paris' where negotiations were ongoing outside the city at Fontainebleau.<sup>11</sup> In his response of 21 October, Choiseul agreed with Nivernois that the new language on the religious clause was 'absurd,' telling the duc that the 'article was agreed to, even by Pitt.' The new dispute, Choiseul added, was 'an act of bad faith.'<sup>12</sup>

As Nivernois awaited the latest report from the British privy council on the negotiations, he told Choiseul that he would 'rather be in the galleys than negotiate this peace,' comparing the English to the Romans for their pride and obstinacy, and to the Carthaginians for their 'avidity and love of gain.'<sup>13</sup> With the surprise news of the British victory over Cuba arriving that month, a devastating loss to France's Bourbon ally as well as to France's negotiating position, whatever little leverage France still possessed early in the second round of negotiations completely evaporated.<sup>14</sup> On 3 November, Choiseul advised Nivernois in London that France had signed off on the peace preliminaries, mentioning nothing more about the

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<sup>10</sup> Nivernois to Choiseul, 12 October 1762. (Verreault, p. 211).

<sup>11</sup> Ibid.

<sup>12</sup> Choiseul to Nivernois, 21 October 1762 (Verreault, p.211).

<sup>13</sup> Nivernois to Choiseul, 24 October 1762 (Verreault, p. 211).

<sup>14</sup> Most historians cover the highlights of the 1762 peace negotiations, but see Zenab Esmat Rashed, *The Peace of Paris 1763* (Liverpool, 1951) for a comprehensive study of the subject, especially Spain's role. Paul Mapp's *The Elusive West and the Contest for Empire* (Chapel Hill, 2011) is indispensable for a comprehensive appreciation of the foundations of the European powers' respective quests for control of North America, although neither Rashad nor Mapp address the religious issue.

troubling treaty language on the free exercise of the Catholic religion inserted late in the negotiations.<sup>15</sup>

Nivernois suspected that secretary Egremont, part of Britain's negotiating team in London, so feared the opposition to any Bute-led peace deal that the secretary was hoping to provoke France into throwing up its hands and walking away from the peace talks altogether. The British negotiators' stubborn refusal to amend the offensive religious clause upon France's protests may have been part of the British strategy, Nivernois suggested to Choiseul. Egremont, Nivernois told Choiseul, 'speaks of being in danger of the scaffold' should he be seen as backing the deal.<sup>16</sup> Placing the restrictive language in the religious clause of the treaty at the last moment could have been intended to push the French away from the peace table, or at the least to avoid giving the opposition Whigs political pretext to reject the deal. Nivernois assured Choiseul that he would not fall into what he called the 'English snare' and would see the peace deal through.<sup>17</sup>

As news leaked out about what were still supposed to be the secret peace preliminaries signed on 3 November, the Vatican intensified its campaign through its papal nuncio in Paris, Cardinal Pietro Porphili-Colonna, to have the offending religious restrictive clause removed from the final treaty terms, a futile quest despite the nuncio's herculean efforts. Given France's desperation to conclude a peace and George III's desire to do the same in the face of his growing domestic opposition to peace on any terms with France, the Vatican's hopes for an alteration of the restrictive clause on religion were doomed. Nevertheless, the Vatican's nuncio in Paris carried out his orders and in the process provided his secretariat, and historians, with a detailed account of the progress and setbacks on a variety of issues, including the religious question, as

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<sup>15</sup> Choiseul to Nivernois, 3 November 1762 (Verreault, p. 212).

<sup>16</sup> Nivernois to Choiseul, 15 September 1762 (Verreault, p. 271).

<sup>17</sup> Ibid. See also Nivernois to Choiseul, 7 October 1762 and 9 October 1762 (Verreault, p. 245).

well as his own efforts to change the treaty terms, which efforts he kept up until the signing of the definitive peace by France, Britain, Spain and Portugal on 10 February 1763.<sup>18</sup>

#### The Papal Nuncio's Dispatches to the Vatican on the Peace Talks

On 1 November the nuncio sent news to Rome from his office in Paris that he had learned the terms of the peace preliminaries agreed on at Fontainebleau finalized by the duke of Bedford, the French foreign minister, the comte de Choiseul (soon to be duc de Praslin), and the Spanish ambassador.<sup>19</sup> The nuncio's next two dispatches to Rome dated 8 November were sent from Fontainebleau from where the nuncio confirmed that the preliminaries had been signed, effective 3 November. Pomphili-Colonna also informed his home office that the comte de Choiseul had been elevated to a dukedom so that when he signed the peace preliminaries his title would be 'égal à celui du Duc de Bedford,' and perhaps more important, he advised Rome that the French court had sent an expedited order to its generals to suspend all hostilities. The terms of the peace would remain secret, however, the nuncio stated, until the other courts had received them and had a chance to respond.<sup>20</sup>

In other words, the nuncio was not at liberty to reveal the final wording of the terms governing the religious guaranties even if he knew of them. All that the nuncio revealed in his second dispatch of 8 November was that it appeared that Canada would indeed be ceded to England and that Minorca, another Catholic country, captured by France early on in the war from Great Britain would be restored to the Protestant power. The nuncio assured his superiors that he had not missed the chance to press the comte de Choiseul (now le duc de Praslin) concerning the conditions necessary for the conservation of the Catholic religion in the ceded

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<sup>18</sup> Archives secrètes de la Secrétairie d'État, au Vatican. Archives de la Nunciature de France. In Fonds du Vatican, Archives secrètes, microfilm copy, Library and Archives Canada/Bibliothèque et Archives Canada, lac\_reel\_h3, H-3 99776 (MG 17 A 1), [https://heritage.canadiana.ca/view/oocihm.lac\\_reel\\_h3](https://heritage.canadiana.ca/view/oocihm.lac_reel_h3), accessed September 19, 2020.

<sup>19</sup> Dispatch of 1 November 1762, PN, p. 303.

<sup>20</sup> Dispatch of 8 November 1763, PN, pp. 304-05.

colonies.<sup>21</sup> This last statement indicates that the nuncio may not have been privy yet to the final language restricting the exercise of his religion in the newly ceded colonies.

By mid-November, some terms of the proposed peace deal were appearing in the press, but all the nuncio could tell Rome was that while the reports differed from one another, it still seemed certain that Canada would be ceded to Britain along with one or two other African establishments.<sup>22</sup> The nuncio learned of the specific terms of the preliminaries in December, reporting to Rome that the articles touching on religion were ‘not at all satisfactory.’<sup>23</sup> The nuncio further noted that the new clause had not been part of the previous year’s proposed peace terms and vowed in his dispatch of 13 December to do everything possible the next day to press the duc de Praslin to obtain a clarification or correction of the offending clause.<sup>24</sup>

Praslin on his part told the nuncio that he had made it absolutely clear to his counterpart during the negotiations in early November that Versailles would not accept the new clause, but that the English court had responded that without the clause it could not accept the ceded countries for which such a question pertained. Had George III and his government rejected taking Canada and the other Catholic countries France proposed to cede because of France’s stance on the religious clause, assuming France refused to cede the colonies unless Britain removed the restrictive clause, it is highly unlikely the Whig establishment would have given their king credit for such a principled defense of Britain’s established church and the 1688 Revolution. Holding firm on the religious clause was not a difficult choice for Britain in any event as France had run out of negotiating room.

Praslin also relayed to the nuncio that the French negotiators had been further advised by their British counterparts that the British nation and the parliament had demanded the

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<sup>21</sup> Second dispatch of 8 November 1762, PN, p. 306.

<sup>22</sup> Dispatch of 15 November 1762, PN, p. 307.

<sup>23</sup> In his dispatch of 13 December 1762, the nuncio wrote: ‘Les articles 3 et 19, qui parlant de la religion catholique, ne me satisfont point du tout par la manière générale et succincte dont ils parlent de l’exercice de cette religion et aussi, à cause d’une insertion, omise dans les préliminaires de l’an dernier et inserté dans les préliminaires actuels d’une façon imprudente. Cette clause pourra causer un grand mal si l’Angleterre veut s’en prévaloir pour diminuer la culte catholique.’ Ibid., p. 308.

<sup>24</sup> Ibid., pp. 308-09.

alternative restrictive wording, and that even without the new clause, Britain could be expected to do no less than that which the wording expressed.<sup>25</sup> It was also suggested to the French officials by their Protestant counterparts, Praslin related, during the final fraught exchanges on the religious issue that the clause would not have a very great effect inasmuch as it was aimed for the most part at the fact that Catholics would be kept from certain employments in the new province for which they had no ‘aptitude’ in any event.<sup>26</sup> The nuncio reportedly responded to Praslin’s latest explanation on the treaty terms respecting religion by reiterating that the religious guaranties in the treaty were too general and demanded that France receive affirmation ‘plus explicite’ on the free exercise of religion, above all as it related to the ecclesiastical jurisdiction in Canada and the conservation of its hierarchical relationships, meaning its historic ties to Rome, possibly even Versailles.<sup>27</sup>

Although Pomphili-Colonna continued to press Praslin to obtain further assurances from Britain, by mid-January he concluded that too many other difficulties facing the French negotiators made any modification of the religious clause impossible. France’s retention of access to Canadian fisheries remained the most contentious item, together with the future disposition of Dunkirk.<sup>28</sup> By the eve of the signing of the final treaty, the nuncio advised Rome that any further entreaties by him to the French negotiators, or even to Louis XV himself, would have been pointless.<sup>29</sup> Even if they had had another six months to treat on the matter, the nuncio later commented, nothing would have changed. All the arguments that could have been made had been made. Britain was in a position to dictate the terms of peace, and France, desiring it and having obtained it at great sacrifice, was in no position to obtain better terms.<sup>30</sup>

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<sup>25</sup> PN, p. 310.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., p. 311. The nuncio added that these demands were in keeping with the terms Britain had accepted from other Catholic powers who had ceded Catholic colonies to Britain in previous treaties, including Spain’s cession of Gibraltar and Port Mahon (Minorca).

<sup>28</sup> Dispatch of 17 January 1763, PN, p. 314.

<sup>29</sup> Dispatch of 7 February 1763, PN, p. 315.

<sup>30</sup> Dispatch of 21 February 1763, PN, p. 317.

Notwithstanding the disturbing news about the treaty terms that began circulating throughout the Catholic church hierarchy on both sides of the Atlantic, having survived three and a half years of peaceful relations with the military government under the relatively generous terms of the capitulations, the Canadians had reason to be confident that they could persuade imperial officials in London of the importance of the treaty issue and the need for a new bishop. The next chapter examines the diplomatic campaign carried out in London by l'Abbé de La Corne with the help of the French government and other European friends of Canada.

### Chapter 3

#### Peace Negotiations and Catholic Rights: 1761-62

Quebec historian Jean-Guy Pelletier describes Canadian-born l'Abbé Joseph-Marie de La Corne as 'one of our great diplomats.'<sup>1</sup> Given what was at stake for his people and the Catholic church after 1759, and what La Corne accomplished in a few brief weeks during his diplomatic mission to London after the signing of the imperfect peace treaty in February 1763, La Corne can be considered one of the western world's greatest diplomats of his time.

This chapter examines in detail La Corne's diplomatic mission and the arguments he made to the imperial policymakers as they began their deliberations of how to reorganize their new world empire, particularly its new and old colonies in North America. Within weeks of his first meeting with Canada's new imperial government, La Corne had obtained its approval for the election of a new bishop by the Canadian chapter, whose candidacy would of course require royal approval. La Corne also took the opportunity to lay out the legal and political grounds on which the British government could ignore the restrictive treaty clause on religion as it related to Canada and other Catholic colonies ceded to Great Britain under the 1763 treaty. La Corne simply argued Britain's penal laws did not apply to Britain's colonies, a position ultimately adopted by the government. Moreover, La Corne warned the government if they refused to accommodate the Canadians on the religious issue, the Canadians would abandon the colony *en masse*.

Conquered peoples are not usually seen as being in a position of sending official representatives to their new imperial capitals to present their demands after a conquest. La Corne suffered from no feeling of inferiority due to Canada's reduced circumstances, focused solely on his twin objectives of gaining a new bishop for Canada and obtaining concrete

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<sup>1</sup> Jean-Guy Pelletier, 'La Corne De Chaptés, Joseph-Marie (Jean-Marie) De,' *DCB/DBC*, IV (1771-1800).

guaranties for the colony's majority religion. He utilized the full support, moreover, offered by the French government and other European powers through their London envoys to accomplish his goals. In the end, however, one is left with the impression that, after Pontbriand, La Corne was responsible for protecting Canadians rights in the Quebec Act of 1774.

Born in Canada in 1714, La Corne entered the Séminaire de Québec at age fifteen, traveling to France eight years later for his ordination. On his return to Canada, he was appointed a parish priest. Soon thereafter, Bishop Pontbriand came to regard La Corne as a person of 'intelligence and talent and a man of good family,' which led the bishop to appoint La Corne a canon of the Quebec diocese's cathedral chapter.<sup>2</sup> Within a decade of his ordination La Corne was serving on the Conseil Supérieur, the colony's secular governing body on which the bishop and other ecclesiastics regularly served. In 1750, La Corne's fellow canons elected him to go to France to assist in a pending lawsuit that had been dragging on between the cathedral and the Séminaire. Although he hoped to return to Canada as soon as possible, La Corne's services on behalf of his chapter expanded as his stay in France lengthened.

Having appeared often in the French courts and at Versailles on the Canada church's chapter business and having come to the attention of the royal court, Louis XV appointed La Corne *doyen* or dean of his Canadian church chapter in 1755.<sup>3</sup> In 1766, the French king conferred the benefice of a French abbey on La Corne personally, likely in recognition of the diplomat's success in gaining British approval for a new bishop for Canada, Jean-Olivier Briand, who was consecrated earlier that year outside Paris with the acquiescence of the British government and official bulls from Rome.

### La Corne's London Mission

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

Within two weeks of the signing of the peace treaty by Britain, France, Spain and Portugal on 10 February 1763, La Corne was in London to take up the chapter's business on the bishop and treaty issues. When La Corne first arrived in London in late February, Lord Bute was preparing to resign as head of government, which caused a delay in the business the eager abbé had hurried to London to address. Negotiations for a new government dragged on, but within two weeks of George Grenville taking office in mid-April 1763, La Corne had secured a meeting with the new president of the Board of Trade, twenty-six-year-old William Petty, 2nd earl of Shelburne.<sup>4</sup> Although Shelburne had no decision-making authority over the two subjects La Corne was in London to discuss,<sup>5</sup> and the trade lord was not favorably inclined toward Catholics, Shelburne was among a handful of imperial officials who would engage in a serious re-examination of his own attitude on the Catholic question the conquest had raised for Protestant Britain.

A Dublin native, one of Britain's and Ireland's wealthiest landowners, and great grandson of William Petty, the illustrious founder of laissez-faire economics, not to mention Cromwell's surveyor in Ireland,<sup>6</sup> the 2<sup>nd</sup> earl Shelburne first established himself in court circles as an aide-de-camp to George III during the Seven Years War. Also a Bute protégé, Shelburne held both Irish and English peerages at the time of his appointment to head the Board of Trade in April 1763. Bute had backed him to be secretary of state, but Grenville balked. The young lord thus played host to l'Abbé La Corne at his home in London on 1 May 1763, according to the *aide mémoire* La Corne wrote to Francis Vernon, Baron Orwell, the next day.<sup>7</sup> Lord Orwell had helped arrange the meeting.

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<sup>4</sup> See Lord Edmond Fitzmaurice, *Life of William, Earl of Shelburne*, 2 vols. (London, 1876), I, 243-278, for background on the drawn-out negotiations over Shelburne's appointment and his brief tenure at the Board of Trade. Bute attempted to have Shelburne appointed as secretary of state, but failing to do so, urged Shelburne to take the Board of Trade post. *Ibid.*

<sup>5</sup> The Board only undertook investigations or studies on request from the privy council or other ministers. Arthur Herbert Bayse, *The Lords Commissioners of Trade and Plantations* (New Haven, 1925). See also Bob Ruppert, 'The Board of Trade and Plantations, 1688-1761,' in *Journal of the American Revolution* (November 16, 2020).

<sup>6</sup> Shelburne's ancestor, William Petty, also served as secretary to Thomas Hobbes as well as becoming a noted political philosopher and economist himself, one who influenced Adam Smith, John Maynard Keynes, and Marx, inter alia.

<sup>7</sup> La Corne to Lord Orwell [La Corne spelled Orwell as 'Arouelle'], 2 May 1763, AAQ-11B-VII-62B.

Made a baron in the Irish peerage in 1762, Orwell, like Shelburne, was a recent addition to the Board of Trade.<sup>8</sup> How Orwell and La Corne became acquainted and why Orwell chose to assist the chapter dean to present his case to government is not apparent as he does not appear to have had any direct interest in Canadian affairs or interest in Catholic matters. It may be that it was Orwell's lifelong friend and political patron, George Montagu-Dunk, 2nd earl of Halifax, first lord of trade from 1748 to 1761, and in May 1763 the secretary of state for the northern department, who had a hand in putting La Corne together with Orwell. Halifax was not only highly knowledgeable about North America and Britain's colonies from his long-time position as first lord of trade, but he was also reputed to be 'an overt and strenuous advocate of universal religious toleration.'<sup>9</sup>

Halifax's maternal grandfather, Richard Lumley, was, however, a 'member of the so-called Immortal Seven who invited William III to Britain in 1688.'<sup>10</sup> But Lumley, Beaumont notes, 'served the crown from the Restoration through to the Hanoverian Succession,' despite 'being both a Catholic and an erstwhile favorite of the Stuarts.'<sup>11</sup> Halifax was also a member of the privy council with direct influence over the issues of greatest concern to the Canadians.

Whoever facilitated La Corne's meeting with Shelburne, and whatever their motivations, the resourceful La Corne could have fared far worse in his first meeting with the new imperial government. Shelburne, although no friend of Roman Catholicism, was one of Britain's most intellectually curious politicians and a patron of learned men throughout Britain and Europe. Later Shelburne became a devoted Francophile, hosting illustrious French visitors

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<sup>8</sup> Ibid. A Cambridge graduate and member of parliament, Orwell's political career was supported by his childhood friend, George Montagu-Dunk, Lord Halifax, long-time head of the Board of Trade (1748-61) and known as the 'father of the colonies.' Andrew D.M. Beaumont, *Colonial America & the Earl of Halifax, 1748-1761* (Oxford, 2015).

<sup>9</sup> Beaumont, *Colonial America & the Earl of Halifax*, p. 57. Halifax was secretary of state for the northern department at the time of the La Corne-Shelburne meeting in May 1763 and later that year moved to the southern department on Egremont's death on 21 August. He would become involved in the Canada bishop issue the next year when he took over for Egremont. Halifax would inform Quebec's governor, James Murray, that the government had no problem with the first person chosen by the Canada chapter to replace Bishop Pontbriand. See discussion in the next chapter.

<sup>10</sup> Ibid., p. 15.

<sup>11</sup> Ibid.

at his homes in England and becoming an habitu  of the Paris salons during his visits to that city. La Corne was likely the first French-Canadian to arrive in London to conduct official business with the government. Shelburne enjoyed the highest connections at court and was on an upward trajectory in his political career, which would end abruptly after he negotiated another Treaty of Paris, this time with the Americans.

Although La Corne appears to have met with Shelburne only for about an hour, as the abb  reported to Orwell the next day,<sup>12</sup> he told Orwell that he was more than satisfied with the *politesse* Shelburne had shown him.<sup>13</sup> Reading through the abb 's detailed *aide m moire* to Orwell of 2 May, however, it is apparent that La Corne had not had nearly enough time to discuss his objectives in any detail with Shelburne. La Corne took the opportunity in his report to Orwell to fill in some of these critical details. First, La Corne expressed great satisfaction with Shelburne's assurances that the government intended that Britain's new subjects in Canada would enjoy greater commercial liberty than was the present case.<sup>14</sup>

At the same time, La Corne noted to Orwell that Shelburne had not responded to Canada's request for approval of a new bishop, but had hinted during the meeting that Britain would not be able to agree to it.<sup>15</sup> While this would not long be Shelburne's view of the matter, as discussed in the following chapter, La Corne's memorandum does not mention that Shelburne offered any specific reason why Britain would not consent to a new bishop. Rather, La Corne wrote, Shelburne had limited his remarks to why he believed the Canadians did not need a bishop, a point the abb  refuted in great detail in his memo to Orwell.

Whatever advantages might ensue from the government's new commercial plans for Canada, La Corne wrote, ignoring the religious needs of the people would have an alarming effect on the spirit of the new subjects.<sup>16</sup> Canada's religion simply would not survive if there

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<sup>12</sup> La Corne to Orwell, 2 May 1763, AAQ-11B-VII-62B.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

were no bishop to ordain new priests. Shelburne's comment that the Catholic religion had managed to survive in the old American proprietary colony of Maryland, the patent for which Charles I granted in 1632 to the Catholic courtier, **Charles** Calvert and his son. Maryland had done fine without a Catholic bishop, Shelburne opined. La Corne pointed out in his *aide mémoire*, however, that there was a far greater number of clergy in Canada than was ever the case in Maryland, making appointment of a new bishop far more urgent so that their dwindling numbers there.

La Corne was obviously very well informed about the status of Catholics in Maryland and elsewhere in Great Britain. He noted, for example, that England may have granted the Catholic founders of Maryland complete liberty of religion in their charter, but little by little Catholicism had become no longer tolerated there, and its adherents were now excluded from all civil and military offices.<sup>17</sup> Charles Carroll II, a wealthy Maryland landowner whose Catholic grandfather arrived in the colony on the eve of the 1688 Protestant Revolution, which had effectively nullified his recent royal appointment as the colony's attorney general, would have been grateful to learn of La Corne's correction of Shelburne's information about the status of Catholics in his colony of Maryland, which resembled nothing of what Shelburne believed.

Furthermore, La Corne told Orwell, one need only consider the situation in Ireland regarding its Catholic majority to understand the fears of Quebec's Catholics about their future under British rule should no further protections be forthcoming from the new government.<sup>18</sup> La Corne then mentioned a cautionary example from Irish history for the imperial government to consider in deciding its Quebec policy—the Treaty of Limerick. Despite that treaty's promise concerning the peaceful exercise of the Catholic religion, persecution had followed, La Corne noted, forcing a great number of Irish to flee to France.<sup>19</sup> 'You know better than I, My lord,' La Corne told Orwell, 'what has happened since to the Roman Catholics in that country who

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<sup>17</sup> On the Carroll family history, see Ronald Hoffman and Sally D. Mason, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill, 2000).

<sup>18</sup> La Corne to Orwell, 2 May 1763, AAQ-11B-VII-62B.

<sup>19</sup> Ibid.

found it necessary to sell their goods and today possess almost nothing,<sup>20</sup> evidence that the Canadians knew full well that their religious rights, if denied, would determine their property rights under existing British law.

There were also contemporary examples to prove that his people's fears about their religion and the declining numbers of priests in Quebec were not exaggerated. One had only to peruse British gazettes, La Corne wrote, to see advertisements soliciting funds from wealthy persons to help send young Protestant ecclesiastics to Canada to convert the king's new Catholic subjects.<sup>21</sup> Lord Orwell knew better than La Corne, the latter wrote, what 'disastrous consequences could follow if a religion were attacked in the first moments of a new government.' History furnished too many examples to make it necessary, La Corne asserted, to go into great detail.<sup>22</sup> It was a rare hint by a Canadian official in the years after the conquest, especially a protégé of Bishop Pontbriand, the colony's chief proponent of peaceful co-existence, that Canadians were capable of reacting less than peacefully to any threat to their religion.

#### La Corne Sets Out His Arguments on the Treaty Defects

In the final paragraph of his memorandum to Orwell, La Corne addressed the serious defect in the treaty clause on the free exercise of the Catholic religion. There is no indication that La Corne had the opportunity to raise the treaty issue with Shelburne. Nevertheless, it appears La Corne fully expected that his arguments would not be ignored. 'Canadians would never be persuaded,' he wrote, 'that the restrictive language in the peace treaty *autant que le permettent les loix de la Grand Bretagne* [as far as the laws of Great Britain permitted] would not prejudice them in the exercise of their religion' for several reasons.<sup>23</sup>

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

First, the restrictive clause was a manifest contradiction of the principal treaty clause that preceded it, which promised Catholics in the ceded countries the free exercise of the ‘Romish’ religion. In addition to this inherent contradiction in the treaty clauses, La Corne’s second argument,<sup>24</sup> was that the laws of Great Britain only pertained and extended to Great Britain itself, not to its colonies, ‘above all [not] in Canada, where the King alone is the sovereign master.’<sup>25</sup> Thus, it was up to the king to provide the Canadians with a durable and solid regulation for the exercise of their religion without resort to Britain’s statutes on the Roman Catholic religion.

La Corne’s third point on the treaty language issue was that the Canadians had always based their right to exercise their religion on the two capitulations signed by Messrs. Townshend and Amherst in 1759 (Quebec) and 1760 (Montreal).<sup>26</sup> As such, the Canadians could not have supposed that there would be a clause in the treaty contrary to what was accorded them absolutely by the capitulations. La Corne asserted that the Canadians would never believe that this later treaty clause could prejudice the right to exercise their Roman religion as granted in the capitulations.<sup>27</sup>

The issue about whether the rights granted Canadian Catholics in the capitulations had survived the terms of the treaty would be one of the first to be raised and addressed by secretary of state Egremont only four days after the La Corne-Shelburne meeting as the ministry opened its formal inquiry on how best to integrate its new imperial acquisitions into existing colonial assets.<sup>28</sup> Only in 1774, with enactment of the Quebec Act, would the question of whether the

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<sup>24</sup> The imperial government’s lawyers ultimately adopted this exact view in mid-1765, one with which the chief justice, Lord Mansfield, expressed the year before in a letter to George Grenville, discussed in the next chapter. The chief justice’s intervention in the Canadian policymaking question, moreover, between 1764 and passage of the Quebec Act in 1774, was critical to the Canadian cause.

<sup>25</sup> *Ibid.*

<sup>26</sup> The Quebec capitulation of 18 September 1759 was signed by Charles Saunders and George Townshend for the British side. *S&D*, I, 4. Jeffery Amherst was the sole signature on the Montreal capitulation of 8 September 1760 for Britain. *S&D*, I, 36.

<sup>27</sup> La Corne to Orwell, 2 May 1763, AAQ-11B-VII-62B.

<sup>28</sup> While the government never made an explicit finding on the continued efficacy of the capitulations, Shelburne as secretary of state three years later would finally agree with La Corne’s view of this question.

treaty terms had superseded the terms of the capitulations be rendered moot, the Quebec Act having simply dropped the restrictive clause on that point. Until this resolution, however, the question remained on the minds of key imperial policy officials, Shelburne in particular. By late 1766, when secretary of state, he would come to believe the treaty had not replaced the capitulations. His reasoning is examined in chapter 5.

La Corne closed his extensive memorandum to Orwell of 2 May by assuring Orwell that he had no personal interest in the outcome of the issues for he had long ago renounced any plans to return to Canada even had it remained part of France. His only motivation, he assured Orwell and his government, was love of family, his parents, and to be of service to his compatriots at home who were so dear to him. Later on, Quebec governor James Murray, in his effort to undermine La Corne's diplomatic initiative of which he had had no prior knowledge, asserted that the abbé had been motivated by his wish to be Pontbriand's replacement as Canada's next bishop. The 2 May 1763 *aide mémoire* proves otherwise as did La Corne's death in France in 1779, never having returned to his country.

#### The Francophobic Secretary of State Declines to Meet La Corne

La Corne did not allow himself to be discouraged by Shelburne's apparent lack of support for a new bishop or other relief on the religious issue. He was likely disappointed, however, that secretary of state Egremont refused to see him. Francophobic and protective of Britain's 1688 Protestant foundations, Egremont wanted no part of La Corne's diplomatic mission. This fact did not, however, save the secretary from being the recipient of his own *aide mémoire* from the industrious and articulate abbé. La Corne's 18 May 1763 memorandum to Egremont set forth the purpose of the requested appointment as well as a full exegesis on the arguments he wished to present to the secretary, some of which were not mentioned in his previous memorandum to Orwell.

First, La Corne advised Egremont that he occupied the highest place in the clergy of Canada and enjoyed the most ample power of attorney from the Quebec chapter to act on behalf of its interests.<sup>29</sup> He was in London, he told Egremont, to demand a stable regulation concerning the exercise of the Catholic religion in Canada, which the treaty language had so obviously failed to provide.<sup>30</sup> La Corne employed an unadorned clear prose in his memorandum to Egremont, but one laced with clever dissimulation and exaggeration, perhaps piqued by his annoyance at the secretary's refusal to grant him a meeting. La Corne even exploited some stereotypical images of Quebec's people that he knew were in general circulation, which he likely referenced to put Egremont off guard. Describing his people as the most docile on earth and very easily led,<sup>31</sup> the abbé's motivation for doing so quickly emerged.

These docile, non-rebellious *Canadiens*, La Corne told the secretary, were at the same time very attached to their religion and to the opinions of their church fathers. They awaited 'un Règlement fixe & invariable pour l'Exercice du culte Religieux.'<sup>32</sup> If such a fixed ruling for the exercise of their religion were not forthcoming, or was contrary to the spirit of the treaty, La Corne warned Egremont, 'the Canadians would leave their country and the colony a desert.'<sup>33</sup> La Corne clearly was privy to the most recent preoccupations of some influential interests in and out of the imperial government who feared just such a scenario—a new colony shorn of its worker bees before new ones could be attracted to its hives.

When exactly Canadian leaders had ceased to worry that Great Britain might implement an Acadian-type expulsion to clear them off their lands as so feared by Bishop Pontbriand feared in 1759 is unknown. By early 1763, however, if La Corne's writings reflect Canadian thinking on the issue, he and his colleagues were not only no longer fearful of such a possibility, they were confidently threatening to pick up their marbles and leave the colony *en masse* if

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<sup>29</sup> La Corne to Egremont, 18 May 1763 (quoted in Trudel, I, 258).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

their demands were ignored. That the government needed to keep the colony populated until it could convince American colonists to move north rather than west where conflicts with the Native Americans on that frontier were on the rise appears to have been something about which La Corne was well-informed as he was on every issue.

In any event, the prospect that Britain's jewel in the crown of the Seven Years War might become a vast desert before Englishmen could be found to replace the fleeing native French population had indeed kept some English officials anxious. While there is little evidence that the French Canadians would have vacated the colony or turned violent if Britain failed to meet their demands, to the empire's aristocratic landowners and imperial policymakers the hint that such an event might occur, or that their failure to meet the Canadians' demands might provoke such an event, gave La Corne and the Canadians not a little leverage with the new government.

What also helped the Canadians achieve their goals over time is the fact that no one in a policymaking position, including George III, would or could deny the principal assumption behind La Corne's arguments, *i.e.*, that support for the future of the Catholic religion in Canada was essential to the happiness of the Canadians. Every report from Britain's colonial representatives in Quebec mentioned it, whether or not the authors were supportive of the need to accommodate the Canadians on this score or not.<sup>34</sup> Even governor Murray warned his superiors at one point that serious troubles could ensue if some remedy were not found to

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<sup>34</sup> For example, the reports Egremont received from the three military governors in London in 1762 offer almost identical information on religion's importance to the Canadians. General Murray's earliest report from Québec described the Canadians as 'very ignorant and extremely tenacious of their Religion,' adding that 'nothing can contribute so much to make them staunch subjects to his Majesty as the new Government giving them every reason to imagine no alternation is to be attempted in that point.' Murray's Report of the State of the Government of Quebec in Canada June 5<sup>th</sup>, 1762 (*S&D*, I, 71, 79). (Murray described the Canadians more generously two years later, calling them the 'bravest and the best race upon the Globe, a race, who cou'd they be indulged with a few privileges which the Laws of England deny to Roman Catholics at home, wou'd soon get the better of every National Antipathy to their Conquerors and become the most faithful and most useful set of Men in this American Empire.' Murray to the Lords of Trade, 19 October 1764 (*S&D*, I, 231). General Thomas Gage, military administrator of the Montreal region, described the people 'in general' as 'well enough disposed towards their new Masters,' but that the difference in religions between them and their new masters was a cause for anxiety. Their 'fears in that particular,' Gage noted, were 'much abated' due to the 'free & undisturbed Exercise of their Religion, ever since the Capitulation of the Country.' *Ibid.*, 95.

resolve the religious anxieties of the new subjects, adding that ‘His Majesty will lose the greatest part of this Valuable people.’<sup>35</sup>

### La Corne Gains Approval for Election of a New Bishop

The history of the Canadian church chapter’s role in resolving the bishop issue beginning in the fall of 1763 has been well-covered by other historians, including Hilda Neatby in her 1966 work, *Quebec: The Revolutionary Age, 1760-1791*, and more comprehensively by Marcel Trudel in his two-volume work, *L’Église Canadienne Sous le Régime Militaire, 1759-1764*. The following discussion, therefore, focuses on aspects of La Corne’s diplomatic efforts on the bishop issue which have received less attention, including the role of France’s extraordinary minister plenipotentiary at the time in London, the chevalier d’Éon, in opening doors for La Corne at the highest levels of society. The last part of the chapter examines the Vatican’s attempt to undo the results of La Corne’s and d’Éon’s success.

In his *aide mémoire* to Egremont of 18 May 1763, La Corne approached the bishop question with the presumption that the only question for determination by the imperial government was the type of new Catholic church leader it would allow the Canadians, not *if* it would allow one. But first La Corne assured Egremont that the government’s approval of a new bishop or equivalent would not cost it anything because the traditional Catholic tithe (suspended under the Montreal capitulation) could supply the material needs of the priests and church hierarchy.<sup>36</sup>

La Corne next explained to the suspicious secretary why Britain should prefer the appointment of a bishop in actual title, which the Canadians desired, and not a vicar apostolic with bishop-like powers, which is what the Vatican wanted. A vicar apostolic, La Corne explained, was a ‘dignitary’ subject to ‘a Foreign Power’ (the Vatican) and dependent on it for

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<sup>35</sup> Murray to Lords of Trade, 29 October 1764 (*S&D*, I, 231).

<sup>36</sup> The Quebec Act reinstated the tithe, but the issue elicited some of the most electrifying arguments during debate in the Commons led by Burke and Fox for the opposition and solicitor general Alexander Wedderburn for government. See discussion in Chapter 8.

direction as to the exercise of his duties. This would understandably make him suspect in the eyes of the new government, La Corne pointed out, which in turn would cause disquiet between the Canadians and their new government, which the Canadians of course did not wish to see happen.<sup>37</sup> Therefore, the better solution, La Corne urged, was to allow the Canadian chapter to elect a bishop candidate from among their Canadian ecclesiastics who would then be presented to the government for approval. If the government preferred someone other than the chapter's choice, it could propose an alternative agreeable to the chapter.<sup>38</sup>

As La Corne was making his entreaties to Shelburne and Egremont, France's diplomatic corps in London was engaged in carrying out foreign minister Praslin's directions to assist the Canadian abbé's mission for a new bishop in every possible way.<sup>39</sup> The chevalier d'Éon, former secretary to the duc de Nivernois while the latter served in London as France's chief peace negotiator, arrived in London in March as the newly appointed minister plenipotentiary and acting ambassador pending appointment of Nivernois's replacement. D'Éon was already well-established on the diplomatic and social circuit in London. His recent award of the Croix de St. Louis for his 'unusual heroism and bravery in the recent war' had raised him to noble rank. It also increased his prestige and already very high profile in London society and at court.<sup>40</sup> Even prior to receiving these accolades, however, the thirty-five-year-old d'Éon was already considered one of France's most talented and experienced diplomats. He was also one of Louis XV's top spies.<sup>41</sup>

With a lavish budget for entertaining and influence-peddling supplied by his foreign office, and his importation of the best French wines from his native region around Tonnere, the new minister plenipotentiary was in the most propitious position to assist Canada's energetic abbé-diplomat to accomplish his mission. As the order to assist La Corne had come from French

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<sup>37</sup> Trudel, I, 259.

<sup>38</sup> Ibid.

<sup>39</sup> Praslin to La Corne, 23 February 1763, *BRH*, XV, no. 10 (October 1909), pp. 294-5.

<sup>40</sup> Gary Kates, *Monsieur d'Éon is a Woman: A Tale of Political Intrigue and Sexual Masquerade* (New York, 1995), pp. 92-3.

<sup>41</sup> Ibid.

foreign minister Praslin himself, however, it was unlikely connected with d'Éon's concurrent royal assignment to oversee the secret survey of Britain's east coast for a possible invasion at the earliest opportunity. Such assignments emanated directly from Louis XV, not his ministers.<sup>42</sup> Had news of the surveillance scheme leaked out at that time, however, especially since Egremont was convinced La Corne was a French agent, it goes without saying how fatal such a revelation would have been to the Canadian cause.<sup>43</sup> D'Éon's dual assignments remained completely sealed off from one another at that time, however, even if the secret coastal survey assignment leaked out later.<sup>44</sup>

In May 1763, the same month La Corne was meeting and submitting his memoranda to the imperial officials in London, the chevalier was arranging meetings for the abbé with influential European Catholic envoys in the city who had received word from the Vatican that the Canadian mission was of interest to all Catholics. The message, prompted by France's request, asked these Catholic diplomats to offer all possible assistance to La Corne.<sup>45</sup> The comte de Viry, the Sardinian ambassador in London,<sup>46</sup> and the comte le Bailly de Solar Breille, Sardinian ambassador to Versailles,<sup>47</sup> enjoyed impeccable credentials at St. James and gave valuable support to the Canadian cause.<sup>48</sup>

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<sup>42</sup> This was a plot cooked up by the comte de Broglie as the ink was drying on the new Anglo-Bourbon peace deal. Ibid., pp. 92-4. Louis XV approved the secret survey plan in March 1763. Only he, Broglie, d'Éon, and three others who were part of France's Secret du Roi knew of it. Ibid.

<sup>43</sup> In July 1773, a French citizen by the name of Daurin approached Lord North through a third party to discuss his involvement in such a plan that 'had been form'd towards the last War, & renew'd at the the time of the last alarm about the invasion of Falkland's Islands.' Lord North to King, 31 July 1773 (Fortescue, III, no. 1299). Daurin believed if France's plans were executed, it would represent 'a most fatal Blow to the interest of this Country.' Ibid. The king expressed interest in meeting North the next day about the matter. It is not clear if Daurin was one of the other three persons who knew of the scheme.

<sup>44</sup> Such a revelation, if confirmed, would also have vindicated Pitt's view of the peace deal as having left France in a position to rebuild its defenses when Britain could have eliminated that possibility for some time to come had Britain insisted on a much tougher peace deal. See Kate Hotblack, 'The Peace of Paris, 1763,' in *Transactions of the Royal Historical Society*, vol. 2 (1908), pp. 235-67. Hotblack won the Alexander Prize Essay in 1907 for her paper defending Pitt's view of the peace deal.

<sup>45</sup> Trudel, I, 260 (citing La Roque de Roquebrune, R., 'Un grand diplomate canadien: l'abbé de La Corne,' in *Nova Francia*, vol. I, no. 3 (1925), pp. 106-12).

<sup>46</sup> François-Marie-Joseph-Justin de Viry, comte de Viry (1737-1813).

<sup>47</sup> [Anon.] *Almanach royal. Année bissextile 1760 contenant le naissances des Princes . . .* (Paris, 1760), p. 123.

<sup>48</sup> Trudel, I, 260.

D'Éon, at the height of his brilliant diplomatic career, but who was shortly to become the victim of political and bureaucratic perfidy, maintained a brisk schedule himself in May, mingling among Britain's political and social elites, 'visiting Strawberry Hill, Horace Walpole's patrician estate, dining there with Lord and Lady Holderness and the Duke and Duchess of Grafton, and attending a private wind ensemble concert with visiting French philosopher Charles Duclos.'<sup>49</sup> By mid-June, d'Éon and La Corne were writing their respective leaders to announce the news that the government had approved the request for a new bishop.<sup>50</sup>

D'Éon enthusiastically reported the news to foreign minister Praslin, giving La Corne full credit for the remarkable news. The zeal, prudence and wisdom with which La Corne had conducted himself throughout the past months in London, d'Éon wrote Praslin, to secure Canada's religion was successfully attained without pain or drama,<sup>51</sup> two states with which the chevalier would soon be far more familiar.<sup>52</sup> As part of the approved plan, d'Éon noted, the Canadian church chapter was given permission to choose a new Catholic bishop to replace Bishop Pontbriand.<sup>53</sup> On 12 and 13 June 1763, La Corne wrote the same news to his chapter in Quebec,<sup>54</sup> which in turn triggered the chapter to send out notice in August to its community to convene a general assembly of the chapter for the first time since the conquest at which the bishop issue would be 'spontaneously' raised.<sup>55</sup>

At the mid-September conclave in Quebec, without notice to governor Murray, one of the canons moved to elect a bishop, which was discussed and then promptly concluded the

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<sup>49</sup> Kates, *Monsieur d'Éon Is a Woman*, p. 96.

<sup>50</sup> Trudel, I, 260.

<sup>51</sup> Ibid.

<sup>52</sup> The chevalier clashed with France's new French ambassador with the latter's arrival in London in late 1763, which in turn led to a series of increasingly bizarre events and allegations involving blackmail of Louis XV himself by the chevalier, claims of attempted murder, and the chevalier's increasingly overt identification with a gender fluid existence. See Kates, *Monsieur d'Éon is a Woman*, for a more recent biography of this extraordinary diplomat.

<sup>53</sup> Ibid.

<sup>54</sup> La Corne's letters were referred to in a letter of 21 October 1763 by the Sulpician Louis Jollivet to vicar general Briand. Trudel, I, 273, fn. 96.

<sup>55</sup> Although La Corne's letters had not surfaced by the time historian Trudel undertook his pioneer research two centuries later, a reference to these letters in the chapter secretary's correspondence with Briand in October that year buttresses Trudel's conclusion about the existence and likely contents of the La Corne letters. Trudel, I, 273, fn. 96.

following day, 15 September 1763, with the election of Montreal's vicar general, Étienne de Montgolfier. Quebec's vicar general Jean-Olivier Briand, who would eventually replace Montgolfier as the bishop-candidate when Governor Murray blocked Montgolfier's selection, had signaled to his chapter that he had no interest in the position, which would have no doubt greatly disappointed his patron and mentor, the late Bishop Pontbriand.<sup>56</sup>

Governor Murray's interference in early 1764 with Montgolfier's election was prompted in part, as suggested above, by the fact that the La Corne mission to London and the subsequent election of Montgolfier had all taken place without his knowledge or input. He thus made known his opposition to Montgolfier to Lord Halifax, now secretary of state for the southern department following Egremont's sudden death in August 1763. Halifax wrote Murray that the government had no objection to Montgolfier, but that it would not overrule Murray's feelings on the matter. Montgolfier thereafter withdrew his candidacy and the chapter then elected Jean-Olivier Briand, Murray's preferred candidate, attributable directly to the late Bishop Pontbriand's intensive campaign after the conquest to create a strong bond between the two.

It would take nearly another three years from the time La Corne and d'Éon obtained approval for a new bishop for Briand to be consecrated as Pontbriand's successor. The delay, caused in part by George III's dismissal of the Grenville government in mid-1765, gave the Vatican the opportunity to try and reverse the outcome of La Corne's and d'Éon's accomplishment.

#### The Vatican Instructs Its Nuncio in Paris to Quash the Canadian Election

Like Murray, the Vatican did not appreciate being kept in the dark on matters they believed were clearly within their remit. Having learned of the Canadian chapter's election of

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<sup>56</sup> The chapter's *Register* shows that it met in mid-September and after preparing petitions and letters to the new government on matters of urgent concern, one of the canons moved for consideration of the matter of electing a bishop, which issue was concluded on 15 September 1763 with the election of Montreal's vicar general Montgolfier. Trudel, I, 275-6

Montgolfier to replace Bishop Pontbriand, the Vatican sent formal instructions to its nuncio in Paris on why and how to quash the election.<sup>57</sup> The Vatican document first notes that the usual method of naming a bishop successor in France or its colonies was still solely the right of the French king. Now that there was a Protestant sovereign installed in Canada, however, the previous protocol for appointment of a bishop was no longer applicable, and every right concerning such appointment had reverted to the Holy See in Rome.<sup>58</sup>

Accordingly, the Canadian clergy had no right to nominate, much less elect, a successor bishop, as they had reportedly done.<sup>59</sup> The only exception, the Vatican noted, was a chapter in Germany that possessed such a prerogative by way of special concessions made in a well-known agreement between it and the Vatican. The Canadian chapter's election of Msgr. Étienne de Montgolfier, based on no such special exception, was therefore null and void.<sup>60</sup>

Not only was it null and void, the Vatican secretariat's instructions continued, but the chapter's action had set a most dangerous example (*pericolossissimo esempio*). Thus, for the Vatican to allow the action to go forward on the pretext claimed by the chapter that it was doing so on the basis of some ancient church rites, would place the Canadian church above the authority of the Holy See.<sup>61</sup> The only proper way to proceed, the Vatican directed, was to have the papal nuncio convince Canada's new imperial government that the right to appoint a new church leader in the colony was 'clearly that of the Holy See.'<sup>62</sup> The Vatican's preference in this regard was for the British government to allow the appointment of a vicar apostolic who would then exercise the ministry of a bishop while the colony remained under the dominion of a Protestant prince.<sup>63</sup>

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<sup>57</sup> Istruzione Da Mandarsi a Monsig. Nunzio Di Parigi, 28 Marzo 1764. Vatican Archives of the Sacred Congregation De Propaganda Fide, Series V, Lettere, vol. 204 (1764), ff. 181rv-191rv. Author translation.

<sup>58</sup> Ibid., f. 182rv.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid., f. 183rv.

<sup>63</sup> Ibid.

Even supposing the Vatican could see its way to approving a bishop chosen by the Canadian chapter, the Vatican pointed out that major difficulties could nevertheless arise over, for example, where the seat of the bishopric should be located in Canada. With the chapter's recent election of Montgolfier who resided in Montreal, there would have to be a transfer of the episcopal seat to that city from Quebec. This could, the instructions explained, cause discord with the other regions, which in turn could cause disquiet with the government, which could then exploit the discord to break up the Catholic church, leading to a dangerous schism there.<sup>64</sup> La Corne's argument to Egremont the previous May had emphasized that the Canadian church chapter was much more concerned about the discord that an appointment of a vicar apostolic might cause between the Canadian church and the British government than any schism caused by the removal of the seat of the Canadian church to Montreal.

The Vatican clearly wished to appear reasonable despite its fantastical instructions and signaled that the pope was prepared to recognize Msgr. Montgolfier as apostolic vicar, not bishop, adding it would do so only if there was evidence of his entitlement to the position. The Vatican reminded the nuncio that Quebec had once had an apostolic vicar until Louis XIV created it as a bishopric.<sup>65</sup> The Vatican's previously undisclosed preoccupations finally came to light toward the end of the instructions. Once an apostolic vicar was in place, the Vatican contemplated that the chapter canons in Canada would no longer be needed and could return home to France and live off their prebends, or become directors of the seminary in Canada and live on the rents therefrom.<sup>66</sup> The Vatican obviously wished to remove as soon as possible what it clearly considered a subversive group of canons operating at the heart of the Canadian church who were prepared to rely on primitive Christian rites to choose their own leader rather than submit to the clear authority of the Vatican to do so. The Vatican's willingness to pay the apostolic vicar 300 Roman scudi annually, thereby lightening the new government's budgetary

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<sup>64</sup> Ibid., f. 185rv.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

burdens, mirrored La Corne's memo to the government on this issue. Both La Corne and the Vatican knew that Britain would not want to be put in a politically sensitive position of being accused of using public funds to support a Catholic establishment.

The Vatican's next instruction that the nuncio obtain La Corne's consent for this plan and have the abbé negotiate its approval with the court in London bordered on the bizarre. While it was certainly a well-deserved vote of confidence in the abbé's considerable and already proven diplomatic skills, it is puzzling that the Vatican could possibly conceive that the British government or its monarch would approve a vicar apostolic whose position was directly controlled by Rome, a point La Corne had taken great pains to point out to secretary Egremont the year before to convince the latter that a bishop was the only mutually acceptable choice in the circumstances.

Perhaps the victory La Corne had already won from the Protestant court made him something of a miracle worker in the eyes of the Vatican and they saw no reason to believe he was not capable of producing another one. In any event, the instructions ended with a warning that not a word should be breathed that the 'hand of Rome' (*la mano di Roma*) was behind this plan as such would provoke an irreparable prejudice against it.<sup>67</sup> This was the most realistic point made in the entire ten pages of instructions.

Had La Corne's initial mission to gain approval of a new bishop fallen through, the Vatican's instructions might have been useful in some manner in devising an alternative solution to the need for someone authorized to ordain new priests to be appointed to Canada. Had the imperial government ever approved a Catholic ecclesiastic whose duties were by canonical law controlled from Rome, however, heads might literally have rolled in London. The timing of the Vatican instructions, moreover, show how disconnected the Vatican was from the skein of events and personalities driving policy on the Canada religious question. It is not difficult to discern a silver lining in this fact, however, for the Canadian church chapter. If

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<sup>67</sup> Ibid., f. 190rv-191rv.

the Vatican's serious difference of opinion on the bishop issue with its Canadian chapter were known to British intelligence, as it likely was given the highly active eighteenth-century spy networks employed by Britain and most European powers, it would have protected the Canadian initiative from being the victim of, as the Vatican instructions put it, 'irreparable prejudice' against the 'la mano di Roma.'<sup>68</sup>

While La Corne and d'Éon carried out their individual and joint efforts on behalf of the Canadian Catholic church in May 1763, the policymaking officers responsible for incorporating all of Britain's new acquisitions into the existing imperial governing apparatus, had also begun their work. The evolution of the imperial policy on the issues raised by La Corne, including the rights conferred by the capitulations versus the treaty terms and whose laws Britain would apply in governing its new Catholic subjects in Canada, were all issues still to be resolved by the Quebec Act. As the discussion in the following chapter reveals, however, while imperial government struggled to justify accommodating the Canadians' demands with Britain's Protestant constitutional foundations, other events arose and complicated the rule of a greatly diversified North America.

This chapter has shown how the diplomatic mission of the Canadians in 1763 in London, aided by the French government and its extraordinary chevalier-diplomat d'Éon in London and Europe's leading Catholic envoys, expertly presented and successfully advocated for Canada's cause. Given the enormity of the British government's task in devising a new governance protocol for its vastly expanded empire, a subject addressed in the next chapter, it will become clear that had La Corne not arrived in London when he did and persisted in putting Canada's case before the government as soon as he did, new crises and events surely would have eclipsed Canadian demands in Whitehall or St. James.

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<sup>68</sup> Eventually, the Vatican accepted the election of Briand and the British government's approval for his consecration, sending its official bulls to Paris in early January 1766 to complete the election.

## Chapter 4

### Imperial Policy and the Quebec Question, Part I: 1763-64

Colonel Isaac Barré, a veteran of the Seven Years War in Canada and a member of parliament in 1774 when the Quebec bill came before it for consideration, spoke in the Commons on 31 May 1774 in support of one of several opposition motions to compel production of the government's decade's worth of 'Canada papers,' which had analyzed every possible issue on the Quebec governance question. Although the government managers of the bill in the House were convinced that the opposition's demand to see the papers was for purposes of delaying and defeating the bill, Barré was correct when he told his colleagues that 'the papers we now call for . . . [were] drawn up coolly, attentively, and upon long and mature consideration . . . by men of great character and abilities.'<sup>1</sup>

Between the signing of the Treaty of Paris in February 1763 to the eve of the introduction of the Quebec bill in the House of Lords on 2 May 1774, the colonial and imperial governments had indeed generated a steady stream of reports, proposals, correspondence, and legal opinions on the Quebec governance question, the central complicating factor being the warm attachment of the conquered people to their religion and their property, neither of which the February 1763 peace treaty nor the royal proclamation signed in October that year protected.

The 'genesis of the Quebec legislation,' Philip Lawson writes, 'produced a lively popular and parliamentary debate that went to the core of political and philosophical assumptions derived from the Glorious Revolution.'<sup>2</sup> The debate in and out of parliament, however, was more often elegiac than 'lively.' The conquest of all of French North America, as modestly populated as it was compared to the American colonies, had raised the religious

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<sup>1</sup> Remarks of Col. Isaac Barré during parliamentary debate on second reading of the Quebec bill, 31 May 1774, PH, xvii, 1365.

<sup>2</sup> Lawson, *Imperial Challenge*, p. ix.

question again, and it was, as Harvey Mansfield predicted, ‘as hot as ever.’ The demands of the Canadians immediately after the treaty signing pushed open the 1688 Protestant gates guarding Britain’s own religion and property rights. The full weight of the task of reconciling the conflicting religious and legal cultures of Protestant Britain and its new French Catholic colony is reflected in the voluminous studies, papers, plans, and essays in which a relatively small but influential number of imperial and colonial officials faced the questions and filed their stream of answers with government.

The opposition’s call for the Canada papers failed, thus depriving the members the opportunity to confirm the truth of Barré’s statements, but historians have been more fortunate in gaining access to these papers. They not only verify Barré’s characterization of the papers and their authors by and large, but they illuminate the path along which Britain’s historic policy shift on the Catholic question evolved between 1763 and 1774 on the Quebec side of the equation.<sup>3</sup> This chapter focuses on the first two years of imperial deliberations on the Quebec Catholic question as the government struggled to reorganize its greatly expanded global empire, attempted to raise revenues from its colonies to pay for its grand victory over France, and sought to manage the growing tensions on the western frontier of the American colonies between Anglo settlers and Native Americans.

Five changes in administration between 1763 and 1770, moreover, assured that the complex legal and political questions that Britain’s acquisition of French Catholic Quebec raised for the new imperial government would require more time to resolve. What the ‘tangled history of reports between 1763 and 1774 shows,’ Peter Marshall notes, moreover, is ‘how persistently ministers were compelled to examine the problem, even if an appreciation of its unpalatable implications engendered an understandable reluctance to reach decisions.’<sup>4</sup> The

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<sup>3</sup> The Irish policy changes on the Catholic question evolved along a separate track, as discussed later in this study, but they were occurring contemporaneously.

<sup>4</sup> Peter Marshall, ‘The Incorporation of Quebec in the British Empire, 1763-1773,’ in Virginia Platt and David C. Skaggs (eds.), *Of Mother Country and Plantations: Proceedings of the Twenty-Seventh Conference in Early American History* (Bowling Green, 1971).

record of these studies nonetheless reveals that as reluctant as policymakers often were to formalize and finalize a Quebec policy, they rarely avoided confronting the hard questions and historic implications the conquest raised for Britain.

That it would take a major challenge to imperial and mercantile interests in late 1773 by its English-speaking Protestant subjects in America, as some argue was case, to provoke the government to finalize its Canadian-Catholic friendly Quebec bill in June 1774 is hardly surprising. Governments rarely *sua sponte* adopt controversial policies, much less ones that implicate their constitutional principles, without compelling domestic political pressures or external threats. As Carl Ubbelohde notes, external pressures are often the ‘generative instruments’ in a government’s formal adoption of politically sensitive policies.<sup>5</sup> Although external events and geopolitical factors without doubt influenced the government to move forward to draft a formal Canada bill in early 1774, the focus in this chapter is on the first two years immediately following the peace treaty during which most of the policy issues ultimately decided in 1774 were first identified and deliberated by the imperial government.

### The First Reports

On 5 May 1763, secretary of state for the southern department, Charles Wyndham, 2nd earl Egremont, one of the chief peace negotiators in London the previous winter as noted in the last chapter, sent a formal request to the Lords of Trade for recommendations on how government should organize the new lands Britain had acquired under the late treaty.<sup>6</sup> Attached to the secretary’s request were, inter alia, copies of the peace treaty, the Quebec and Montreal capitulations of 1759 and 1760, respectively, and recent reports from Canada’s three military governors in Quebec, Montreal, and Trois Rivieres. The colonial reports provided useful data and commentary on each of three regions’ physical features, human assets, defenses and

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<sup>5</sup> Carl Ubbelohde, ‘Comment on Professor Marshall’s Paper.’ *Ibid.*, p. 68.

<sup>6</sup> Egremont to Lords of Trade, 5 May 1763 (*S&D*, I, 127-30).

religious communities.<sup>7</sup> The king, Egremont noted, was anxious to put his new expanded empire in order and the Board of Trade was to give due regard to the new acquisitions in North America.<sup>8</sup> Although Egremont's request did not mention the subject of religion, certain questions and subsequent discussions in privy council on the report suggest the subject was of interest to the secretary.

In requesting the thoughts of the trade lords on what forms of government should be erected in the new colonies, for instance, Egremont noted that it would 'be proper to examine what Privileges are reserved to His Majesty's New Subjects by the Terms of their Capitulations.'<sup>9</sup> The rights extended in the capitulations of 1759 and 1760 were relatively generous on the free exercise of religion and possession of property, as previously noted.<sup>10</sup>

Whether Egremont also raised the question with an eye to cornering the ambitious Bute protégé, Shelburne, who had vied for the secretary's position during formation of the new government,<sup>11</sup> or sincerely desired to have the opinions of the trade lords on the issue, both of which are possible, the secretary himself already had a fixed view about whether the rights granted under the capitulations had carried over to the treaty and it was not favorable to the Canadians. Egremont believed the treaty had completely superseded the terms of the capitulations. If the Board of Trade's report of 8 June did not offer a direct opinion on the capitulation question Egremont had posed, sprinkled throughout the Board's paper, of which Shelburne likely had

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<sup>7</sup> General Murray's Report of the State of the Government of Quebec in Canada June 5<sup>th</sup>, 1762 (*S&D*, I, 47-81); Col. R. Burton's Report of the State of Government of Three Rivers, ca. 6 April 1762 (*S&D*, I, 81-91); Gen. Gage's Report of the State of the Government of Montreal. 20 March 1762 (*S&D*, I, 91-6)..

<sup>8</sup> Egremont to Lords of Trade, 5 May 1763 (*S&D*, I, 127-30).

<sup>9</sup> *Ibid.*, 128.

<sup>10</sup> See Articles II, V, and VI of the Quebec Capitulation of 18 September 1759 (*S&D*, I, 1-4). See Articles XXVI, XXVII, XXXVII, XLVIII, XLIX of the Montreal Capitulation of 22 September 1760, *S&D*, I, 25-36. The Montreal articles relating to the various religious communities, male and female, and the vicar generals, are not listed above. See Appendices for several excerpts of the articles relating to religion.

<sup>11</sup> See discussion of the tortured deliberations on the appointment in Lord Edmond Fitzmaurice, *Life of William, Earl of Shelburne*, 2 vols. (London, 1875), I, 232-46. Shelburne accepted the lesser position as first lord or trade in early April on the condition that he would have direct access to the king on matters treated by the Board of Trade. On 20 April 1763, he was thus sworn a privy councilor. *Ibid.*, 245. His commission as president of the Board of Trade is dated 23 April, and he attended or 'took his seat' on 26 April. R.A. Humphreys, 'Lord Shelburne and the Proclamation of 1763,' in *The English Historical Review*, vol. 49, no. 194 (April 1934), p. 243, fn. 1 (citing Board of Trade Journals, C.O. 391).

primary oversight,<sup>12</sup> were vague references to the ‘rights and privileges’ of His Majesty’s new subjects. The Board’s comments were as equally unpropitious for the Canadians as were Egremont’s views.

The ‘Chief Objects of any new Form of Government . . . in that Country [Canada],’ the Board report stated, ‘ought to be to 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.’<sup>13</sup> With its reference to the titles, rights, and privileges granted to the Canadians *by treaty*, no mention of those conferred by the capitulations, and the need to increase of British and ‘other new Protestant settlers’ in Canada, the Board clearly believed at that time that the treaty had fully superseded the capitulations, but that the goal of the imperial government should be to ensure that Protestants replace the colony’s majority Catholic population. The report certainly did not address La Corne’s arguments and demands directly, but it can be seen as an indirect response to Canadian demands presented the previous month.<sup>14</sup>

The Board’s 8 June report understandably focused on trade and security matters in Canada and elsewhere. It nonetheless hinted in its recommendations on how the boundaries should be drawn in the newly acquired lands that the Canadians were seen as a foreign enemy

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<sup>12</sup> Arthur Herbert Bayse, *The Lords Commissioners of Trade and Plantations, Commonly Known As The Board of Trade, 1748-1782* (New Haven, 1925), p. 127. Bellot mentions that while Shelburne was not very knowledgeable about colonial matters at the time of his appointment, he ‘energetically attempted to master the business before the board as quickly as possible.’ Leland J. Bellot, *William Knox, The Life & Thought of an Eighteenth-Century Imperialist* (Austin, 1977), p. 48.

<sup>13</sup> Lords of Trade to Egremont, 8 June 1763 (*S&D*, I, 142). Emphasis added.

<sup>14</sup> Shelburne, 49:306-8. There was in fact no established imperial opinion on the question of whether treaty terms superseded rights granted under a capitulation. In considering the question later that year for Catholic Grenada, also ceded to Britain under the 1763 treaty, a ministerial paper opined that while the ‘opinion of able and learned Writers has established this Truth ‘that by the Law of Nature and Nations, both which oblige to the Observation of faith and promise, the Terms and Capitulations between the Conqueror and Conquered are to be observed—yet this can only be understood in cases where no treaty intervenes.’ The author concluded that while the treaty ruled the question as to the exercise of religion in Grenada, and the ‘Laws of England do not expressly allow even of any Toleration for the Roman Catholick Religion, the exercise of which is rather of connivance than Toleration, . . . that [although] such a constitution would be inconsistent with the obvious sense and Spirit of the treaty, it cannot . . . be adopted in the present case.’ A Sketch of a Report with Observations on the Commission and Instructions for the Governor of Grenada,’ author unknown. The paper went on to recommend a strictly controlled number of clergy subject to licensure by the governor and other standard means used in England and Ireland to contain the ‘growth of popery.’

of Great Britain, not new subjects to be integrated into the new British empire. Had they been Protestant even if not British, it is clear from the report's prior comments they would not have been seen as enemies. The advantage of restricting the boundaries of the colony of Canada, as stated in the report, was that it 'would prevent the French Inhabitants as well as unnamed 'others' from 'removing & settling in remote Places, where they neither could be so conveniently made amenable to the Jurisdiction of any Colony nor made subservient to the Interest of the Trade & Commerce of this Kingdom.'<sup>15</sup>

That the Canadians were to become cogs in Britain's mercantilist wheels of empire did not in itself threaten the Canadians' future in the colony, as La Corne acknowledged in his memorandum to Lord Orwell of 2 May 1763, in which he welcomed with 'great satisfaction' Shelburne's assurance that the new government intended to bring Canada into Britain's liberal trade system.<sup>16</sup> It was La Corne's threat in his *aide mémoire* to Egremont of 18 May that if the Canadians were not accommodated on their religion they would remove themselves en masse from the colony that may have influenced the Board's recommendation of 8 June that the boundaries of their colony be restricted so as to prevent such a possibility.<sup>17</sup>

The 8 June report did not acknowledge, much less recommend, any positive responses to these Canadian concerns despite the fact that the decision to allow Canada a new bishop had already been taken within government. Shelburne had in fact changed his mind on the bishop issue at the time of the filing of the 8 June report, as discussed further below. But the report did recommend that since the 'native' Canadians would far outnumber English émigrés for quite some time,<sup>18</sup> 'a large military Force be kept up 'till the number of British Inhabitants and new

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<sup>15</sup> Lords of Trade to Egremont, 8 June 1763 (*S&D*, I, 141).

<sup>16</sup> La Corne to Orwell, 2 May 1763 (*BRH*, XV, no. 10, 296). William Knox, former colonial official in Georgia and a key cog in the imperial policymaking apparatus on North American matters, prepared a position paper for Shelburne in which he stated that British colonists 'are merely Factors for the Purposes of Trade, and in all considerations concerning the Colonies, *this* must be always the leading Idea.' Shelburne Papers, 85: 26-34 (quoted in Bellot, *William Knox*, p. 49). Shelburne does not appear to ever had held such a narrow view of colonies' role.

<sup>17</sup> La Corne to Orwell, 2 May 1763 (*BRH*, XV, no. 10, 296-7).

<sup>18</sup> Lords of Trade to Egremont, June 8, 1763 (*S&D*, I, 142).

Settlers be very considerably increased, as well to secure the Obedience and Fidelity of the ancient French Inhabitants as to give full Protection & Security to the new British Settlers.’<sup>19</sup>

The reports from the military governors of the three principal regions of the Canadian colony had given no hint that the conquered people or any ‘others’ living there were possessed of a violent attitude toward the British authorities or the handful of English-speaking inhabitants in the colony at the time.<sup>20</sup> Four years of peaceful coexistence between the Canadians and the military authorities was proof of this. If, as Lawson suggests, the Board of Trade ‘did not formally take these reports from the colonial governors ‘into consideration’ until 28 October 1763, it might explain why its 8 June report read as if the war was still on in French Canada necessitating ‘a large military force’ be maintained in Canada.<sup>21</sup> The reports were, however, clearly attached to Egremont’s 5 May request for the Board’s formal recommendations.

#### Egremont and the Treaty v. Capitulation Issue

A month after the Board of Trade filed its report, the privy council took it up discussion. The minutes of the 8 July 1763 privy council meeting indicate that in considering the Board of Trade’s report the council had reached a consensus on the status of the Canadians’ religious rights even if neither the minutes nor the Board report itself addressed the question. The council did take up the question Egremont seemed intent on answering to his satisfaction concerning whether the treaty terms had superseded those of the capitulations.<sup>22</sup> The council minutes read

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<sup>19</sup> Ibid., 143.

<sup>20</sup> Lawson comments that the Board of Trade ‘did not formally take these reports ‘into consideration’ until 28 October 1763. Lawson, p. 36. Egremont’s 5 May 1763 request to the Board, however, clearly indicates the reports in question were attached with his request. Shelburne and his colleagues most likely perused the reports when they received them even if they did not take them ‘into consideration’ until the time of the issuance of the Royal Proclamation in October that year.

<sup>21</sup> Lawson, p. 36.

<sup>22</sup> Minutes of 8 July 1763 meeting of ‘King’s Ministers’ in *Additional Grenville Papers 1763-1765*, John R.G. Tomlinson (ed.) (Manchester, 1962), p. 317. Present were Egremont and Shelburne, chief justice, Lord Mansfield, Lord Orwell, who had helped facilitate the 1 May 1763 meeting between La Corne and Shelburne, and the lords Sandwich and Halifax, as well as prime minister George Grenville and the lord chancellor, Baron Robert Henley (the future 1<sup>st</sup> earl of Northington). The meeting confirms that the Quebec question was receiving attention at the

in part that ‘no Rights *Titles &c* are granted by the Treaty, which only stipulates the Toleration of Religion as far as is allowed by the Laws of Great Britain.’<sup>23</sup> Nor, the minutes continue, were the ‘Articles of Capitulation . . . confirmed by the Treaty; on the contrary it was expressly refused when the Treaty was considered.’<sup>24</sup>

Egremont likely led the discussion on this particular point, which he had first raised in early May in his request to the Board of Trade for formal recommendations on organizing the new empire. He appeared to want to put to rest La Corne’s claim that the rights granted by the capitulations had not been extinguished by the treaty. There being no such language in the treaty to back either side’s view, the secretary used the privy council meeting of 8 July to make a record supporting his view after the fact. The minutes also reflect that Egremont advised the council of his recollection of the question as discussed at the peace talks.

In a letter to Quebec’s governor, James Murray, a month after the privy council meeting, Egremont brought up the question again, the letter revealing more of his thinking than the privy council minutes. He wrote Murray that ‘it was clearly understood in the Negotiation of the Definitive Treaty’ that the free exercise of religion was ‘to be limited to bare toleration, having guaranteed it only ‘As far as the Laws of Great Britain permit.’<sup>25</sup> The secretary added that ‘the French Ministers had proposed to insert the Words, *comme ci-devant*, in order that the Romish Religion should continue to be exercised in the same manner as under their Government.’<sup>26</sup> They would ‘not give up the Point,’ Egremont told Murray, ‘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*.’<sup>27</sup>

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highest levels of the imperial government, even if at this point the council was clearly rejecting Canadian concerns over the treaty terms.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Egremont to Murray, 13 August 1763 (*S&D*, I, 169).

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

As determined as Egremont appeared to be to establish his version of the issue, the fact that he kept raising the question and repeating his recollections of the peace negotiators' discussion of it, it did not settle the matter. Clearly the treaty had introduced a specific restriction on the free exercise of religion in Canada and other ceded Catholic colonies, but it had not mentioned the capitulations, a legal gap that Egremont seemed obsessed with closing in the early stage of imperial policymaking on the Quebec question. Had Egremont not died suddenly the month following the privy council meeting in question, he might well have succeeded in having his position on the capitulation question ultimately adopted as the official government position, making it difficult for future policymakers with a different view to set it aside.

In the same letter the secretary wrote to Murray setting forth his recollections of the peace negotiations on the restrictive treaty clause on the exercise of the Roman Catholic religion, Egremont also informed the governor that the king did not want to stir up trouble among the Catholics in Canada over the issue, and that the king was 'far from entertaining the most distant thought of restraining' the Canadians in the exercise of their religion.' At the same time, Egremont added, because the king had received intelligence that France might seek to exploit Britain's permitting a more liberal tolerance of Catholicism in Canada 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,' it was imperative that Murray 'watch the Priests very narrowly.'<sup>28</sup>

Egremont's letter not only establishes very early on in the Quebec policymaking process that the king was paying some attention to the situation in Canada and was concerned that the religious feelings of his new subjects not be molested, but that there were those in government like Egremont who wished to guard Britain's 1688 revolutionary gates against anyone in or out of government who wished to give the Canadians anything more than any

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<sup>28</sup> Ibid.

other Catholic in the realm was given regarding their religion, *i.e.*, ‘bare toleration,’ as the secretary put it.

### Lord Shelburne Reverses Course on the Bishop Question

Although the 8 June Board of Trade report gives no hint that its authors were prepared to make any concessions to Canadians, a paper written by Shelburne dated 31 May 1763 entitled ‘On the Subject of Religion with respect to Canada,’ suggests that Canada’s request for approval of a new bishop was being discussed at the higher levels of government.<sup>29</sup> The first part of Shelburne’s paper shows him expressing classic Protestant suspicion of Catholics and their priests, showing he was not at all in favor of Canada being granted approval for a new bishop, the view he had indicated during his meeting with La Corne at the beginning of the month.<sup>30</sup>

Shelburne begins his essay by declaring that the ‘two Assertions, that *the influence of Religion or rather of Superstition, is confined to a certain Latitude*, and that *Nothing is to be feared from its Effects in America*, are both so erroneous’ that it was not even necessary to set out the ‘so many Facts’ that made it so.<sup>31</sup> These remarks mirror the recommendations of the 8 June Board of Trade report on the need to protect Britain’s English subjects from the Canadian inhabitants and ‘others’ who purportedly posed a real and present danger to English Protestants in the colony.

The Canadians’ religion, Shelburne continued, ‘operating in its Enthusiastic vigour, naturally tends to the destruction of governors, & the worst species of Anarchy, witness the Massacres of Paris, & the actual assassination of two French kings, & recent attempt on a third.’<sup>32</sup> Whatever regulations were put in place with respect to the Canadians’ religion,

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<sup>29</sup> Shelburne, 64:553-61. Lawson cites this paper incorrectly as being at 64:553-9 in the Shelburne Papers.

<sup>30</sup> La Corne to Orwell, 2 May 1763 (*BRH*, XV, No. 10, 296).

<sup>31</sup> Shelburne Papers, 64:553.

<sup>32</sup> *Ibid.*

therefore, must not be ‘deduced from our own credo, . . . *nor from the plausible & candid Professions of an Enemy just conquered* [a likely reference to his recent conversation with the erudite and earnest l’Abbé La Corne], but from the possibility of what may happen, should the Times change, should *their* strength increase, and *ours* diminish.’<sup>33</sup> This of course was a key reason that Canadians’ demands were not being dismissed outright and why the king urged his colonial officials to tread lightly with Britain’s new Canadian subjects on the issue of their religion.

Shelburne next recommended that all the religious orders be ‘totally abolished,’ and that the remaining secular priests ‘*be limited* in number, . . . registered with the Governor,’ and that none of them should be ‘natives of France, or have been educated there.’<sup>34</sup> If the priests ‘attempt to tamper in Religious matters with any of his Majesty’s Protestant Subjects,’ moreover, ‘they should be immediately exiled, and if they should be proved to have converted any, the Punishment should be capital.’<sup>35</sup> At this point, Shelburne was exhibiting far more paranoia about the Catholics in Canada than even secretary Egremont. Capital punishment for converting a Protestant to Catholicism seems startling unless one remembers that a British subject would be hanged for stealing a loaf of bread or forging a document.<sup>36</sup>

After recommending the standard penal law bulwarks against the ‘growth of popery’ in its new Catholic colony, however, Shelburne segued without any transition into a discussion of the bishop issue. Instead of continuing in the vein of a deeply anti-Catholic British Protestant, however, Shelburne suddenly endorsed granting the Canadians their request for a new bishop. There was no transitional paragraph or explanation of why he changed the whole thrust of his essay midstream, or attempt to justify the switch from his previous position on the dangers or religious orders and priests generally. Shelburne merely accepts that there should be a bishop,

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<sup>33</sup> Ibid., 555.

<sup>34</sup> Ibid., 555-7.

<sup>35</sup> Ibid., 557.

<sup>36</sup> See, e.g., Donna T. Andrew and Randall McGowan, *The Perreaus & Mrs. Rudd: Forgery and Betrayal in Eighteenth-Century England* (New Haven, 2013).

stating that the priests in the colony ‘should be under the Direction of a Bishop, to be nominated by his Majesty, which Bishop should hold his Rents & Revenues *by grant from the Crown, revocable at pleasure.*’<sup>37</sup> While the bishop was to be subject to dismissal of the Crown without cause, he would nevertheless be allowed to ‘exercise all acts of Episcopal Authority over those of his own Communion, except that he shd not presume to *excommunicate* any one *without Consent of the Governor.*’<sup>38</sup> As the Canadians had long operated under the Gallican church-state system in which the French king had similar control of ecclesiastical appointments and administrative (revenue) matters, Shelburne’s views on the subject would not have appeared unduly onerous to Canadian church leaders.

Shelburne was willing to go even further in recognizing the need for and the rights of a Canadian bishop. Not only should Canada have a bishop, he now agreed, but he insisted that the governor of the colony should be under the strictest orders to protect the bishop and his clergy from ‘everything Insolent or Contemptuous which may be offered to this Religion by the Protestant Inhabitants.’<sup>39</sup> Given the severe anti-Catholic thrust of the first three-and-a-half pages of the five-page paper, even a casual reader of no particular religious proclivity would be led to conclude the paper had two authors with diametrically opposed views on its subject matter. Since the handwriting is the same throughout, the only other possible explanation is that some external event of a significant nature had intervened during the writing of the paper to alter Shelburne’s thinking at least on the bishop issue.

It goes without saying that neither the king nor Shelburne nor any other imperial or colonial officer at that point considered the Canadians safely in Britain’s corner when the next war broke out with France. The return of Canada to France would represent a huge loss to Britain after so much blood and treasure had been expended to bring Canada into the British colonial empire after more than a century of efforts to do so. While this geopolitical reality

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., 561.

gave the Canadians strategic leverage with their new government to argue their demands, Shelburne had not indicated any interest up to that point in conceding any ground to them. By 31 May or thereabout, however, something had happened to change his position on the bishop issue.

Throughout the month of May, as detailed in the previous chapter, La Corne, with the help of the chevalier d'Éon, and other European aristocratic Catholic allies, had been busy influencing influential persons in the inner circles of power well above the levels at which Shelburne was then officially operating. Because Shelburne had access to these same inner circles by virtue of his wealth and aristocratic connections, however, he would more likely than not have been privy to the favorable attention La Corne and d'Éon were stirring up in and outside government. Being politically ambitious, Shelburne found himself at the first political crossroads of his career, whether to stick to his position as expressed in the 8 June Board report and the first part of his 31 May paper on the Catholic question or alter his position to mirror the favorable winds blowing in the direction of Canada's Catholics. The last part of his 31 May paper indicates the practical political side of the young ambitious lord prevailed. This would be the obvious explanation for Shelburne's schizophrenic 31 May essay except that as discussion in the next chapter suggests that Shelburne's views on the Quebec governance question as complicated by the French and Catholic parts of the problems came to reflect some of the most progressive, even visionary, of his day.

Shelburne likely started to write his paper on the Canada religious question on 31 May, but likely finished it sometime after he learned of the decision to allow Canada a new bishop. Shelburne's essay is historically important not just because it shows one key policymaker in the process of changing his views on a deeply serious and controversial policy matter, but also because it indirectly confirms that the news La Corne and d'Éon were busy conveying to their respective superiors was more likely than not true.

The actualization of the bishop decision did not occur until 1766 when Jean-Olivier Briand, Quebec's vicar general, was consecrated in a church outside Paris in March. A change in administration (Rockingham replaced Grenville), news of General Amherst's disastrous handling of Native American concerns over the terms of peace, which had left their rights, like those of the Canadians, unprotected, the resulting war on the northwest frontier of the American colonies led by Ottawa Chief Pontiac, the royal proclamation of October 1763 signed to help resolve Pontiac's War, Quebec governor Murray's unhappiness over the Canadians' first choice for a new bishop, and the Stamp Act crisis in the American colonies—all or any two would have been enough to keep the bishop matter on the back burner.<sup>40</sup>

#### The 1763 Royal Proclamation and the New Perils of Civil Government for Canadians

With the issuance of the royal proclamation in October 1763 in part to resolve the crisis over Pontiac's War and Native American anger over European encroachment on their grazing lands on America's western frontier, the small English merchant community in Quebec also believed their superior status in the Britain's new Catholic colony was assured. The proclamation provided for establishment of a popular assembly, a priority of the English community. The timing of the making of the new assembly was left to the governor. The proclamation also provided that the new recently acquired colonies, including Quebec, would be subject to English law for most intents and purposes. Thus, the proclamation reinforced the treaty language that restricted Canadians' free exercise of their religion to that permitted by British law.

If the royal proclamation issued in October 1763 added a new legal barrier to resolution of Canada's desire for concrete clarification of the restrictive treaty clause on the free exercise

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<sup>40</sup> The final upshot of Murray's interference, the election of his candidate, Jean-Olivier Briand, would have greatly pleased the late Bishop Pontbriand for it was obviously his intent, as discussed in the previous chapter, to have Briand succeed him. For a full discussion of the events surrounding these issues, see Trudel, I, chs. VII & VIII.

of religion,<sup>41</sup> the terms of the royal commission and royal instructions issued to James Murray, appointed Quebec's first civilian governor in November 1763, made things even more precarious for the Canadians. The oath issue was one of the first to raise its head again, with Murray's instructions directing him to 'summon the inhabitants at places and times of his choosing in order to 'take the Oath of Allegiance, . . . the Declaration of Abjuration . . . and that if 'any of the said French Inhabitants shall refuse to take the said Oath and make and subscribe the Declaration of Abjuration, . . . You are to cause them forthwith to depart out of Our said Government.'<sup>42</sup> There was no mention of what would happen to their property should they be expelled from the colony for refusal to take the oath, but the expulsion of 10,000 Acadians from their towns and farmlands a few years earlier with only the clothes on their back for their refusal to do so suggests one option.

On the specific issue of property, Murray was instructed to cause all French inhabitants possessed of lands in the province before 3 November 1762, the date France signed the Preliminary Articles of Peace, to register the instruments by which they claimed such lands.<sup>43</sup> The colonial government was then instructed to examine these instruments and any conditions contained therein and inform the Board of Trade if the conditions had not been complied with, whereupon the Board of Trade would send the governor instructions as to their disposition.<sup>44</sup>

The only silver lining in these instructions for the Canadians was that they appeared to affirm that Canadians in fact had retained some property rights without regard to the oath

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<sup>41</sup> The proclamation provided that the governors, council, and future assemblies to be created by the governors as soon as circumstances in the colony permitted were given the power under the Royal Proclamation of 1763 to 'make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies . . . *as near as may be agreeable to the Laws of England.*' Text of Royal Proclamation of 1763 (*S&D*, I, 165). Emphasis added. There was some discretionary power in the highlighted words, which governor Murray would make use of to his peril in his ordinance of 17 September 1764. Secretary of state Hillsborough wrote acting governor Guy Carleton in 1768 that he had been involved in drafting the Proclamation of 1763 and that 'it never entered into Our Idea to overturn the Laws and Customs of Canada, with regard to Property.' Hillsborough to Carleton, 6 March 1768 (*S&D*, I, 297). As the discussion thus far on the evolution of the government's policy toward Catholics demonstrates, Hillsborough's views in 1768 were barely visible in 1763 and 1764, except on the bishop question.

<sup>42</sup> Instructions to Governor Murray, 7 December 1763, ¶ 29 (*S&D*, I, 191).

<sup>43</sup> *Ibid.*, 193.

<sup>44</sup> *Ibid.*, 193-4.

requirement or the treaty even if the imperial instructions made clear the government intended to ferret out any pretext to cancel those rights. Governor Murray was in no mood to go out of his way at the time to withhold enforcement of his instructions. Having traded conspiracy theories about continuing French influence over priests in Canada with the Francophobic secretary of state Egremont throughout the summer, and having learned that La Corne and the Canadian church chapter had done an end-run around him in the imperial capital on the bishop issue, even if not intentionally, Murray seemed prepared to execute his commission and instructions without any regard for his four years of peaceful relations with the Canadians.

Murray was required only to publish his commission, not the instructions. Angry over being left out of the bureaucratic loop on the bishop issue, he not only circulated essential parts of his instructions that threatened Canadians' future status in the colony, he also falsely told the Canadians there would be no bishop. Murray's actions had the desired effect. The Canadians turned morbid about the prospects for their community and religion. Murray opposed the Canadian church chapter's choice for bishop, Montreal's vicar general, Étienne de Montgolfier, son of a wealthy merchant family in France and brother of the inventors of the first hot air balloon. Egremont's replacement, Lord Halifax, advised Murray that the government had no problem approving Montgolfier's candidacy, but it would not ignore Murray's opposition. It was also clear to governor Murray, however, that the decision to allow Canada a bishop was not one over which he had control, leaving Murray the sole option of proposing his choice of candidate for the position.

Like Shelburne, Murray had his eye on career advancement, or at least on avoiding being sacked over controversial disagreements with his home office. So Murray put forward his own candidate, Quebec's vicar general Jean-Olivier Briand, who the late Bishop Henri-

Marie Dubreil de Pontbriand had so assiduously encouraged the governor to trust and work with from the first days of the conquest.<sup>45</sup>

#### Governor Murray's Ordinance of 17 September 1764

Once Murray's choice of Jean-Olivier Briand was endorsed by the Quebec chapter in September 1764 (Montgolfier having gracefully withdrawn), Murray began to seek ways to repair his prior good relations with the Canadians and reduce the mounting tensions between them and the English community. Murray's reorganization of the colony's judicial apparatus by way of his ordinance of 17 September 1764 was in part an attempt to salve the anxieties of both the English and Canadian communities. It ended up satisfying neither and served as the beginning of a long end to Murray's governorship of Quebec. More historically significant than Murray's recall in 1766 to answer charges brought by the unhappy English merchant community, the controversial ordinance triggered a critical new examination of imperial policy on the Quebec question, which generated some of the most radical recommendations favorable to the Canadians than any prior efforts before or after, the core concepts of which would be adopted in the Quebec Act in 1774.<sup>46</sup>

The first problem with the ordinance from the English community's view was its inclusion of Canadians in civil administration, a privilege Catholics did not enjoy anywhere in the British world. It provided, for example, that in all trials in the Superior Court or Court of King's Bench, all subjects were to be admitted on juries 'without Distinction.' It also provided that '*Canadian* Advocats, Proctors, &c. may practice in this Court,' referring it appears to the

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<sup>45</sup> See Trudel, I, 299-300, on the issue of Murray's publication of his instructions and its impact on the Canadians. See discussion in Chapter 2 on Pontbriand's promotion of Briand as his successor with Murray in 1759-60.

<sup>46</sup> Hilda Neatby argues that Murray's ordinance was not as ham-handed an attempt to implement the 1763 proclamation as some policymakers in London believed, including those in the Rockingham administration. Neatby, *Quebec: The Revolutionary Age*, p. 52. Lawson generally approves of Murray's policies toward the Canadians as incorporated in the ordinance. Lawson, p. 49. This author agrees with both assessments. In addition, the controversy Murray's ordinance stirred up on both sides of the Quebec Anglo-French divide in fact helped gain the attention of the imperial policymakers and ultimately pushed the government to settle the issue over two different legal, religious, and linguistic cultures in Canadians' favor for the most part, which is all Murray attempted to do with his limited resources and lack of imperial guidance on the complex situation in his colony in promulgating the controversial ordinance.

Court of Common Pleas.<sup>47</sup> In the latter court, moreover, French laws and customs were to be applied in all causes of action between Canadians if they arose before 1 October 1764. This was the only exception the ordinance made concerning the application of English law, however.<sup>48</sup> But it was something, and it was likely aimed at slowing attempts by English colonists' challenges to Canadian property rights.

The English community struck back almost immediately against the ordinance by convening a grand jury a month later, which issued a presentment condemning the governor's actions as unconstitutional.<sup>49</sup> 'Among the many grievances which require redress,' the presentment stated, 'this seems to be the least, that persons professing the Religion of the Church of Rome do acknowledge the supremacy and jurisdiction of the Pope . . . [yet they] have been unpannell'd, en Grand and petty Jurys even where Two protestants were partys.'<sup>50</sup>

The Canadian response was in the form of a petition addressed directly to the king. It stood head and shoulders above the English presentment in eloquence and pathos: 'For four years we enjoyed the greatest tranquility,' the Canadians told their sovereign. 'By what sudden stroke has it been taken away through the action of four or five jurists, whose character we respect, but who do not understand our language.'<sup>51</sup> It is 'with deep bitterness in our hearts,' the Canadians continued, 'we have seen, that after all the proofs of Your Majesty's Paternal Affection for your new Subjects, these same fifteen Jurors . . . 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 other countries).'<sup>52</sup> The Canadian petitioners asked: 'Who are those who wish to have us proscribed? About thirty English merchants, of whom fifteen at the most are settled here. Who are the Proscribed? Ten thousand Heads of Families who feel nothing but

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<sup>47</sup> Ordinance Establishing Civil Courts, 17 September 1764 (*S&D*, I, 207).

<sup>48</sup> *Ibid.*

<sup>49</sup> Text of English community's Presentment (*S&D*, I, 212-6).

<sup>50</sup> *Ibid.*, 214.

<sup>51</sup> Text of Canadian Address to King, 7 January 1765 (*S&D*, I, 227-9). French text, *ibid.*, 223-6. The petition was signed by ninety-five of the colony's French subjects. *Ibid.*, 226.

<sup>52</sup> *Ibid.*, 228.

submission to the orders of Your Majesty.’<sup>53</sup> The French petition would have touched any honest monarch’s heart. It was tailor-made for George III who never forgot those who accorded him the proper respect he believed was due a sovereign or those who failed to do so.

Murray wrote to the Lords of Trade on 29 October 1764 to alert them to the troubles brewing in the colony and the controversy stirred up by his ordinance. He also advised the home office that he was sending his trusted assistant, Théophile Hector de Cramahé, to London to give the ministry ‘the most Minute and Clearest Acct of every thing relating to this Province.’<sup>54</sup> Murray assured the Board of Trade that ‘no Man has the good of this Colony more at heart . . . and certainly there doth not exist a Man of more Integrity and Application.’<sup>55</sup> The Dublin-born son of Huguenot refugees, Cramahé had served with Murray in the Canadian war, had been his closest assistant during the military administration of the colony, and now also served on the royal council there. As governors came and went from the colony, it was Cramahé who was often left in charge to administer the colony for more than twenty years from the time of the conquest.<sup>56</sup>

With his ordinance having divided the two communities even more than they were before, Murray was at his wits’ end. He told the Board of Trade that ‘little, very little, will content the New [French] Subjects but nothing will satisfy the Licentious [English] Fanaticks Trading here, but the expulsions of the Canadians who are perhaps the bravest and the best race upon the Globe, a Race, who cou’d they be indulged with a few privileges wch the Laws of England deny to Roman Catholicks at home, wou’d soon get the better of every National Antipathy to their Conquerors and become the most faithful and most useful set of Men in this

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<sup>53</sup> Ibid.

<sup>54</sup> Murray to the Lords of Trade, 29 October 1764 (*S&D*, I, 231).

<sup>55</sup> Ibid. Lawson praises the critical role of Cramahé played in rallying influential imperial officers, including Lord Mansfield, to the Canadian cause during Cramahé’s visit to London.

<sup>56</sup> Pierre Tousignant and Madeleine Dionne-Tousignant, ‘CRAMAHÉ, Hector Theophilus, in *DCB/DBC*. When Cramahé left Canada in 1781, the authors write, he ‘received the kind of stirring demonstration of gratitude, esteem, and affection which [governor] Haldimand was not to get when he in turn left in 1784. ‘The Address’ was signed by all the principal citizens both French and English’ the *Quebec Gazette* remarked. Ibid.

American Empire.’<sup>57</sup> Murray warned the Board, ‘certain I am, unless the Canadians are admitted on Jurys, and are allowed Judges and Lawyers who understand their Language his Majesty will lose the greatest part of this Valuable people.’<sup>58</sup> Besides, he told his home government, his ordinance and its Catholic-friendly provisions were a ‘temporary Expedient’ to ‘keep things as they are until His Majesty’s Pleasure is known on this critical and difficult Point.’<sup>59</sup>

La Corne had warned Egremont the previous year that the Canadians would emigrate *en masse* if their demands for concrete clarity on their religious rights were not forthcoming.<sup>60</sup> Murray’s warning to the home office in late October 1764, quoted in the previous paragraph, also confirms that La Corne’s warning to Egremont in May 1763 on the same point was more than a rhetorical threat. The Canadian petition of 7 January 1765 to the king made clear they expected to be allowed to hold public office and practice in all the professions without regard to their religion. It was hardly necessary, it seems, to add that they still awaited their government’s formal confirmation that they could practice their religion unfettered by the limitations of the treaty or the royal proclamation.

#### Britain’s Attorney General Defends Canadian Property Rights

Murray’s reference to the English merchant community in Quebec as ‘licentious Fanaticks’ reflected in part the fact that some in that community had been taking full advantage of the precarious legal situation in which the treaty, the proclamation, and Murray’s commission and instructions, had placed the French inhabitants with regard to their property because of their religion. The English, Lawson notes, sold ‘their goods at ten times the real value’ to the Canadians and had no compunction about challenging the legality of Catholic

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<sup>57</sup> Murray to the Lords of Trade, 29 October 1764 (*S&D*, I, 231).

<sup>58</sup> *Ibid.*

<sup>59</sup> Murray’s explanatory comments accompanying the copy of the ordinance sent to the home government (*S&D*, I, 206, fn. 2).

<sup>60</sup> La Corne to Egremont, 18 May 1763, quoted in Trudel (I, 258).

ownership of land. ‘Several land sharks had arrived in the province after 1760 with the targets of their operations’ being those ‘Canadians refusing to take the oaths of allegiance to the new king.’<sup>61</sup> Obviously the English subjects were confident that many, if not most, of the new subjects had not yet been summoned by the governor to take the required oaths, or if summoned, had refused to do so, which made a challenge to non-jurors’ property rights legally justiciable.

In July 1764, when such an English challenge to Canadian property rights came before the Board of Trade, however, had been resoundingly rejected by the government’s attorney general, Fletcher Norton.<sup>62</sup> In his opinion Norton stated that the 1763 Treaty of Paris had given the conquered people ‘a permanent and transmissible interest in their land and . . . to put a different construction upon the treaty would dishonour the crown and the truth.’<sup>63</sup> As brilliant a lawyer as Norton was considered to be by the bench and bar, he was no doubt perfectly aware that the plain language of the treaty offered no such assurances regarding Canadians’ property rights. Certainly Norton’s views of the treaty would have been vigorously disputed by the late secretary of state Egremont.

Norton, however, had no hesitation in declaring the most expansive view of how the treaty regarding Catholic rights should be interpreted, perhaps having in mind the principle of *contra proferentem*, which held that ambiguities in the meaning of an agreement should be resolved against the party who drafted it. Norton’s pronouncement that to put a different construction upon the treaty would ‘dishonour the crown and the truth’ put the government lawyer and future speaker of the Commons in line with La Corne’s view of Britain penal laws. In June 1765, Norton and solicitor general William De Grey filed their opinion with the Board of Trade in response to a request therefrom that ‘His Majesty’s Roman Catholick Subjects

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<sup>61</sup> Lawson, p. 57 (quoting the earl of Sandwich).

<sup>62</sup> Norton who would issue a pivotal opinion the following year that Britain’s religious penal laws did not apply to Canada, an argument La Corne had urged the year before in his *aide mémoire* to secretary of state Egremont. See discussion in next chapter.

<sup>63</sup> Lawson (quoting Fletcher Norton opinion of 27 July 1764 to Board of Trade), p. 57.

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 Catholics in this Kingdom are subject by the Laws thereof.’<sup>64</sup> The Grenville government under which this opinion was filed with the Board of Trade gave way the next month to the Rockingham administration, which held office for little more than a year from mid-1765 to July 1766.

The foundations of Britain’s new Catholic policy as they had evolved up to this time continued to gather supporters in the next administration headed by the consummate Whig, Charles Watson-Wentworth, 2d marquess Rockingham, nephew by marriage to Lord Mansfield, and who at fifteen had run away from home to join the Duke of Cumberland’s forces at Culloden. The next chapter analyzes the critical substantive contributions to the Quebec policy question made by chief justice, Lord Mansfield and the Rockinghams. It concludes with an examination of Shelburne’s new thinking on the Canada question in his new position as secretary of state in the Pitt administration, during which Ireland’s Catholic question also came under review as discussed in chapters 6 and 7.

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<sup>64</sup> Report of Atty. And Sol. Gen. *Re Status of Roman Catholic Subjects*, 10 June 1765 (*S&D*, I, 236). The Norton/De Grey opinion was never reversed and served as the legal underpinnings of the Quebec Act, which in turn reopened the Catholic question generally in imperial policy thinking.

## Chapter 5

### Imperial Policy and the Quebec Question, Part I: 1763-64

The arrival in London of Quebec governor Murray's right-hand man, Theophile de Cramahé, a few months after attorney general Fletcher Norton's gallant rebuff of the claims of the English land speculators against Canadian property rights came none too soon. Through Murray's Scottish connections, Cramahé was able to inform men like chief justice and royal advisor, William Murray, 1<sup>st</sup> earl Mansfield,<sup>1</sup> a Scottish nobleman with family connections to the Jacobite court in exile, about the standoff in Canada between English and French laws and customs and the rising tensions between the Canadian and English inhabitants. Murray's decision to send Cramahé to London to present the governor's views of the growing tensions in the colony, which by that time had once again grown more sympathetic to the Canadians, led to chief justice Mansfield's dramatic intervention in Quebec policymaking on Christmas Eve 1764.

In his Christmas Eve 1764 letter to prime minister George Grenville, Mansfield referenced a report he had just heard the evening before, which had palpably alarmed the royal advisor. 'For God's sake,' he told Grenville, 'learn the truth of the case, and think of a speedy remedy. I was told last night that the penal statutes of England concerning Papists are to be held in force in Canada.'<sup>2</sup> Britain's revenue laws and 'a thousand other heads' were also to be imposed as well,' Mansfield was told.<sup>3</sup> He hoped, he told Grenville, that 'the principal parts of this Report may be untrue,' but he was 'so startled at it that I cannot help writing to you.'<sup>4</sup> Was it possible, the chief justice asked

that we have abolished their laws, and customs, and forms of judicature all at once?—  
a thing never to be attempted or wished. The history of the world don't furnish an

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<sup>1</sup> Lawson, p. 58.

<sup>2</sup> Mansfield to George Grenville, 24 December 1764, *Grenville Papers*, ii, 476-8.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

instance of so rash and unjust an act by any conqueror whatsoever: much less by the Crown of England, which has always left to the conquered their own laws and usages, with a change only so far as the sovereignty was concerned.<sup>5</sup>

The chief justice then directed Grenville's attention to examples from English history on the treatment of conquered peoples, mentioning Edward III and the 1360 Treaty of Brétigny (Calais), and that of Queen Anne and the 1713 Treaty of Utrecht, which resolved the War of Spanish Succession and saw French Catholic Acadia and Catholic Minorca transferred to British authority.<sup>6</sup> Mansfield avoided reference to the Acadian expulsion of 1755 in his letter to Grenville,<sup>7</sup> giving his own opinion that the 'fundamental maxims' are that a country conquered keeps her own laws, 'till the conqueror expressly gives new.'<sup>8</sup>

Murray's ordinance of 17 September had unleashed the anti-Catholic furies in the hearts of the small English Protestant merchant community in Canada, which was causing them to spread alarm with their influential agents in London's merchant community. Possessing close merchant connections himself from his own lucrative portfolio of investments, Mansfield would have had access to the latest intelligence from this community to confirm what he was being told about events in Canada even if he was unaware at the time of the details of Murray's ordinance.<sup>9</sup> Had there been a settled view in Britain about the treatment of conquered peoples, moreover, as Mansfield asserted in his letter to Grenville, the chief justice would likely not

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<sup>5</sup> Ibid. Mansfield qualified his statement in regard to Ireland. 'Where other changes have happened, as in Ireland, they have been the work of great length of time, many emergencies, and where there was a pale of separation between the conquerors and conquered ...'

<sup>6</sup> Ibid.

<sup>7</sup> The forced removal of the Carib Indians from St. Vincent in 1772 moreover, and the East India Company's and later the British government's operations in India are just two examples that demonstrate how Mansfield's views reflected a philosophy far removed from the reality of how such matters were executed on the ground.

<sup>8</sup> Mansfield to Grenville, 24 December 1764, *Grenville Papers*, II, 476. Mansfield attended the first privy council meeting on 8 July 1763 in which the rights of the conquered Canadians were discussed, and he undoubtedly was involved in review of the 1763 royal proclamation as well. The alarm expressed in his Christmas Eve 1764 letter appears to have been focused specifically on whether the penal laws against Catholics were to be given full effect in Canada, which he argued could only be done 'expressly.' But the royal proclamation's provision for the application of English laws in the colony, it could be argued, had 'expressly' provided that the penal laws govern religious matters in the colony going forward. The author did not come across this specific argument, however, in the papers reviewed for this study.

<sup>9</sup> Mansfield's letter to Grenville makes clear he was previously not very well informed about what was going on in Quebec.

have been moved to delay his departure for the Christmas holidays to bring the situation to the attention of the king's prime minister, and George III as well.

What the urgent message confirmed, however, was Mansfield's philosophy about how fundamental settled law and custom were to Britain's imperial-mercantile global power. If disrupted by imperial fiat or neglect, the consequences would be obvious to someone possessed of Mansfield's substantial business and investment interests and his close ties to imperial power. It was Mansfield's obvious alarm at the report he had just received and his reference to the king in the first line of his letter to Grenville, which suggest a larger issue was at stake than concern over a local dispute over inferior officers with no knowledge of French being sent out to the French-speaking colony.

'Since I saw you I have heard from the King in general,' Mansfield wrote, 'and afterwards more particularly, but very indistinctly, from some person who visited me last night, of a complaint concerning a civil government and judge sent to Canada.'<sup>10</sup> Mansfield then expressed his alarm that a wholesale application of the anti-Catholic penal laws and English law generally was planned for Canada.<sup>11</sup> It is tempting to interpret Mansfield's alarm over the report that the penal laws were about to be applied in Canada as one of the primary motivations in his writing to Grenville given his family connections to the Catholic Stuart court, his unequivocal views in favor of religious toleration, and his decisions on the king's bench to rein in prosecution of Catholics under the penal laws.<sup>12</sup> His reference to the king, however, requires

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<sup>10</sup> Mansfield to George Grenville, 24 December 1764, *Grenville Papers*, II, 476.

<sup>11</sup> Lawson does not mention Mansfield's reference to the king in his discussion of the letter, nor does he make any note of Mansfield's direct reference to the penal laws. Lawson, p. 58. Neatby gives a brief quote from the Mansfield letter, but does not cite the author or the letter itself. Neatby, *Quebec: The Revolutionary Age*, p.54. Coupland quotes liberally from the Mansfield letter, including the reference to the king, but again, like Lawson, does not mention Mansfield's specific reference to the penal codes. Coupland, pp. 49-50.

<sup>12</sup> See Norman S. Poser, *Lord Mansfield: Justice in the Age of Reason* (Montreal & Kingston, 2013); and James Oldham (ed.), *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*, 2 vols. (Chapel Hill, 1992). Mansfield was a protégé of the all powerful duke of Newcastle, who had controlled the power of the purse and patronage under the first two Hanoverian kings. When Newcastle was pushed out of power in 1762 and replaced by George III's closest confidant, John Stuart, 3<sup>rd</sup> earl of Bute, Mansfield did not resign his chief justice position as Newcastle believed he should have. For some time thereafter, neither side trusted him.

the broader view to explain the chief justice's concerns beyond his personal business empire and his work on the king's bench.

Britain and France had just ended a seven-year conflict the year before, which had put its sponsors in deep financial debt. News of growing tensions in Canada on the religious issue and the imposition of laws antagonistic to Canadian interests, could give France a reason to consider reopening the global rivalry to retrieve its assets in North America without regard to the cost. From secretary of state Egremont's letter to governor Murray in Quebec in August 1763, it is certain that the king did not want his new Canadian subjects disturbed as to the free exercise of their religion. The king had heard rumors of France's plans to use the priests in the colony as a conduit to keep up their influence in the colony. Thus, the king was likely keeping an even closer eye on Canadian affairs before Mansfield turned his attention to it in late 1764.

As much as Mansfield had no use for religious persecution, as chief justice and a close advisor to the monarch of the world's leading Protestant power, he would not have invoked his sovereign's name in the same communication in which he raised his alarm over the penal laws being made applicable in Canada unless the king had given him some indication to do so. Mansfield was an extremely cautious astute political operative by nature and experience. This had as much to do with his outsider status as a Scotsman in England and his immediate family connections to the exiled Stuart court as with his judicial temperament and his own well-endowed investment portfolio. He would not have invoked the king's name without some indication that the king wished Grenville to get control of a potentially explosive situation in Canada that directly implicated Britain's imperial interests.

Mansfield had, moreover, only recently become part of the king's inner circle of advisors,<sup>13</sup> which factor alone would have made him extremely chary of making references to

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<sup>13</sup> See Norman S. Poser, *Lord Mansfield: Justice in the Age of Reason* (Montreal & Kingston, 2013), p. 18. Mansfield was a protégé of the all powerful duke of Newcastle, who had controlled the power of the purse and patronage under the first two Hanoverian kings. When Newcastle was pushed out of power in 1762 and replaced by George III's closest confidant, John Stuart, 3<sup>rd</sup> earl Bute, Mansfield did not resign his chief justice position as Newcastle believed he should have. For some time thereafter, neither side trusted him.

his conversations with the king to third parties on any subject, much less one as personally and politically sensitive as Catholic rights and the penal laws. Mansfield's Jacobite family connections were well-known and often grist for the gossip mill.<sup>14</sup> Mansfield had once had to defend himself against an accusation that he had once toasted the Stuarts. His parents, David Murray, the 5<sup>th</sup> viscount of Stormont and Margaret Scott Murray, were Jacobite sympathizers, his older brother James served as foreign minister to James II's son in exile, James Francis Edward Stuart (1688-1766) (known as the Old Pretender), and Mansfield's sister Marjorie Murray Hay, and her husband John Hay (Lord Inverness in the Pretender's court), were at the innermost circle of that court. In fact, Marjorie was rumored to be so close to the exiled heir to the throne of Great Britain that James's royal Polish consort removed herself to a convent for two years whereupon the Hayeses also removed themselves from the court.<sup>15</sup> Both Marjorie and her husband, and later Mansfield's brother James 'reconciled' themselves with the 'Roman Communion.'<sup>16</sup>

In 1765, a Mansfield protégé, possibly a nephew or some say, son of Mansfield, or possibly even a Stuart, Thomas Mills, was appointed receiver general for Quebec through Mansfield's patronage. In late 1765, early 1766, Mills corresponded with the Canadian bishop-elect, Jean-Olivier Briand, then in Paris awaiting final papers from Rome for his consecration.<sup>17</sup>

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<sup>14</sup> Mansfield had shown great fealty to the Stuarts while a student at Oxford. On an extended visit to Paris in 1725, he wrote to his brother-in-law Hay, Lord Inverness in the Stuart court, making 'a tender of my duty and loyalty to the King—a very small present but all I have to offer.' The young Murray wrote that 'the chief end I would propose from my studies and education and the greatest glory I can aim at is to be able to serve his Maty in any way that he pleases to command me.' William Murray to Lord Inverness, Paris, Aug. 6, 1725. Tayler, *The Jacobite Court*, p. 230.

<sup>15</sup> *Ibid.*, p. 135. The Hayeses were invited to return two years later after the queen consort herself returned.

<sup>16</sup> Lord Dunbar (James Murray) to James Edgar, Autin [Autun], Sep. 23, 1751, in Henrietta Tayler (ed.), *The Jacobite Court At Rome In 1719 From Original Documents at Fettercairn House and at Windsor Castle* (Edinburgh, 1938), pp. 232-3. Dunbar wrote the exiled king the same day, 'hoping the news 'would give his Majesty some pleasure, on account of the goodness yr Majesty was pleased to show me during the course of the many years which I had the honour to pass in your service.' *Ibid.*, 232, fn. 1.

<sup>17</sup> Mills's letters to Briand encouraged the prelate to have the consecration completed as quickly as possible and to keep as low a profile as possible until it was accomplished. Mills's origins have never been determined, adding to the possibility of his royal origins. Genealogist and physicist Rosemary Bentley, a relative by marriage to a Mills descendant, and legal historian Norman Poser, who examined Murray family papers at Scone Palace where Mills's papers are housed, have been unable to solve Mills's parentage. 'Mills's lavish lifestyle to which he acted very entitled and Mansfield's patronage and support for most of Mills's life provide grounds for speculating that Mills shared at least a Mansfield family connection, if not a Stuart one.'

Mills's letter to Briand of 10 December 1765, for example, assured Briand that 'our government is too good and too just to refuse the Canadians their religion and a priest with the power to ordain.'<sup>18</sup> Mills's letter of 18 February 1766 was much more explicit about the king's role in supporting the religion of his new Catholic subjects.

Responding to Briand's letter of 9 February, which likely carried news of arrival of the Vatican's bull allowing the consecration, Mills advised Briand to get himself consecrated as fast as possible and the sooner he returned to London the better.<sup>19</sup> Mills then swore 'au Bon Dieu,' and on his 'honor and all his worldly goods, that the King and the ministry will accord you all that you request for our Canada, that is to say, I know my friend, that you will never demand anything that is not reasonable, and I assure you, that you and the Canadians will be happy in all that regards their religion.'<sup>20</sup>

Mills may have had the reputation of exaggerating his influence over policy matters because of his connection with Lord Mansfield. And because his true parentage was never revealed, he was continually susceptible to negative innuendo regarding his origins. He was, however, given his correspondence with bishop-elect Briand in 1765-66, and his appointment to Canada, susceptible to valid rumors about his connection to the Quebec Act and the new Catholic policy it incorporated. As new Catholic relief bills were debated in both the Irish and English parliaments in 1778, the Quebec Act came under renewed attack as having been the genesis of such new policies. The Mills-Mansfield connection was of special interest to one writer calling himself 'CARACTACUS.' In an article entitled 'The *unchangeable Nature of POPERY*' in *The Freeman's Journal* in September 1778, the author wrote that 'I have always thought, and till I shall be better informed, I ever shall be of opinion, that our unnatural war with America, owed its origin and progress to the infamous Quebec Act, by which Popery was rendered the established religion of Canada.' He goes on to remark that 'we know very well,

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<sup>18</sup> Thomas Mills to Mgr. Briand, 10 December 1765, *BRH*, XVI, no. 1 (1910). Mills wrote to Briand in French. The translation is by this author.

<sup>19</sup> Thomas Mills to Mgr. Briand, 18 February 1766, *BRH*, XVI, no. 1 (1910).

<sup>20</sup> *Ibid.*

that William Earl of M\_\_\_\_\_d, was very active in promoting this favourite plan of empire; and his dear friend, Sir Thomas M\_\_\_\_d [a direct reference to rumors that Mills was a Mansfield] asserted that he was a main instrument to establish Popery and slavery at Quebec.<sup>21</sup>

The reference to Mills's Mansfield connection, their mutual involvement in the Quebec Act, and Mills's correspondence with Briand in 1765-66 conveying the positive sentiments of the king and his ministry for the Canadians' religion, suggest that Mills was in fact intimately involved in the Quebec policy issue early on. His letters to Briand, moreover, provide rare documentary evidence of favorable royal and ministerial attitude toward the Canadians' demands for protection of their religion especially, Lord Mansfield's Christmas Eve letter of 1764 providing another rare reference to royal interest favoring the Canadians.

#### A New Board of Trade Report Directly Addresses the Catholic Question

Three months after Mansfield's Christmas Eve 1764 intervention on the Canada question, the privy council requested the Board of Trade to submit its recommendations in response to communications the king had received from the Catholic church chapter in Quebec regarding the bishop issue, which remained unfulfilled because of Murray's interference.<sup>22</sup> Now headed by Wills Hill, 1<sup>st</sup> earl of Hillsborough, appointed to replace Shelburne who had resigned in September 1763, the Board submitted its report on 30 May 1765.<sup>23</sup> Instead of sticking to the narrow question at hand, the status of the bishop issue, the Board chose to address 'every Question that can arise in respect to the Exercise of the Religion of the Romish

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<sup>21</sup> *Freeman's Journal*, 24 September 1778. The article went on to say that 'I speak not, Sir, at random, for it is a truth well known, that in all companies where he could be admitted, this Knight, declared emphatically, that the Quebec act was HIS act. For the truth of this, I appeal to Sir Thomas himself. Is it so, or not, Sir Thomas?' The author went on to attack the 1778 Catholic relief acts.

<sup>22</sup> The letter from the Canadian church chapter dated sometime in September 1763 was forwarded to London through Murray.

<sup>23</sup> 'Heads of a Plan for the Establishment of Ecclesiastical Affairs in the Province of Quebec,' Lords of Trade to the Right Hon'ble the Lords of the Committee of His Majesty's Most Hon'ble Privy Council for Plantation Affairs, May 30, 176[5]. Shelburne, 66:19-32. Lawson points out that the copy of the report in the Shelburne Papers is mistakenly dated 1766 [it is], and the correct year is likely 1765. Lawson, p. 164, fn. 14. This would appear to be the case inasmuch as Hillsborough left the Board of Trade in July 1765 after the dismissal of the Grenville government.

Church in its full Extent, & under every Establishment now existing there.’<sup>24</sup> At the same time, the Board noted it could offer no opinion concerning whether its several propositions could be ‘legally established,’ and if so, ‘by what authority the several parts of them can be carried into Execution,’ such questions being ‘of too great Importance & Extent for us to give an Opinion upon.’<sup>25</sup>

Such matters, the report continued, must also be ‘decided upon a deliberate consideration and legal Construction of the Treaty of Paris, the Laws of England and the civil Constitution of the Colony, as established by His Majesty’s Proclamation of the 7<sup>th</sup> October 1763.’<sup>26</sup> The lack of any mention of the capitulations of 1759 and 1760 in the Board’s citation of the formal legal instruments to be considered when deciding whether anything to do with the Catholic religion in Canada could be ‘legally established’ indicates the Board was following the late secretary of state Egremont’s position that the Treaty of Paris had superseded the capitulations in their entirety. But the comprehensive focus of the Board’s May 1765 report, like Murray’s controversial September 1764 ordinance, show the imperial government was prepared to consider establishing a positive legal basis on which the Canadian demands could be satisfied.

On the bishop issue, the Board did not disturb the prior decision that one should be permitted, even if not allowed to use the name, stating that ‘a proper Person be licensed by His Majesty, during Pleasure, to superintend the affairs of the Romish Church,’ as being ‘necessary to the due Execution of the said Article of the Treaty of Paris,’<sup>27</sup> reflecting Shelburne’s about-face on the issue as set forth in his 31 May 1763 paper on the bishop question. In 1764, Anglican Archbishop Robert Hay-Drummond, at the request of secretary of state Halifax,<sup>28</sup> also weighed in on the bishop issue. Hay-Drummond was perhaps the first to state expressly that ‘the Articles

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<sup>24</sup> Shelburne Papers, 66:20.

<sup>25</sup> *Ibid.*, 20-1.

<sup>26</sup> *Ibid.*, 21.

<sup>27</sup> *Ibid.*, 23. Bishop-elect Briand was then in England awaiting the government’s final approval of his election.

<sup>28</sup> Lawson, p. 68.

of the Treaty may not be precise . . . but that his Majesty seems to have pledged his Faith, very properly, to allow the Exercise of the Romish Religion to his new Subjects in Canada.’<sup>29</sup> It was, therefore, a question of acting in good faith and that the spirit of the treaty required the government to make good on its promises.

The 30 May Board of Trade report also adopted some of the restrictions on the person to be licensed as bishop, which Hay-Drummond had also recommended. That person should ‘not take upon him any outward Pomp or Parade incident to the Dignity of Episcopacy in Roman Catholick Countries,’ nor ‘take himself nor appoint others to take—cognizance of any Matters of a civil or criminal Nature.’<sup>30</sup> The licensed superintendent must also refrain from using any ‘other Powers than such as are absolutely necessary to the Exercise of the Roman Catholic Religion,’ nor make any new Regulations in respect to ecclesiastical Affairs, or appoint any persons to benefices in the Romish Church in Quebec, without ‘the consent & License of the Governor or Commander in Chief.’<sup>31</sup> As strict a control over the Catholic business in the colony as the report and previous writings recommended, however, it was clear the matter was moving forward toward concrete resolution.

The Board’s report contained another twenty or so suggestions about the operations of the ‘Romish Church’ in Quebec. All ‘Orders, Ordinances, or other Regulations’ of the Crown of France or any ecclesiastical authority in that kingdom’ were to be deemed ‘null and void, and all connections and correspondence with, or dependence on, anyone in France would terminate.’<sup>32</sup> There was to be no proselytizing by any Roman Catholic ecclesiastical person of Protestants or ‘tampering with them in Matters of Religion,’ and no inveighing against the Church of England during sermons in the Roman Church, or forbidding or deterring people from assisting at the Protestant ceremonies.’<sup>33</sup> Roman churches were to be used for Protestant

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<sup>29</sup> ‘Heads of a Plan for the Establishment of Ecclesiastical Affairs in the Province of Quebec, by Archbishop Robert Hay-Drummond, of York.’ Shelburne Papers, 59:43-4.

<sup>30</sup> Shelburne Papers, 66:23-24.

<sup>31</sup> *Ibid.*, 24.

<sup>32</sup> *Ibid.*, 29-30.

<sup>33</sup> *Ibid.*, 30.

services and the respective heads of the Protestant and Catholic communities were to work out the details to prevent disputes,<sup>34</sup> a protocol the late Bishop Pontbriand had already instituted during and following the conquest.

The 30 May 1765 Board report also addressed the difficult matter of tithes, an issue on which Charles James Fox and Edmund Burke and the government's silver-tongued Scottish solicitor-general, Alexander Wedderburn, would clash during the debate on the Quebec bill in 1774, discussed in chapter 8. The report recommended that Protestants would not have to pay tithes or other dues to the Romish clergy, which implied that the Catholic tithe would be reinstated, having been suspended at the time of the capitulations. But any grant of land to a Protestant who subsequently converted to Catholicism would be forfeited,<sup>35</sup> further evidence that Catholic property rights remained in jeopardy.

The report also recommended that the support and growth of the established Church of England was to be promoted not only in the present, but 'to the purpose of weaning by Degrees the Inhabitants in general from the Errors of the Romish Church.'<sup>36</sup> Again, on their face, these recommendations suggest a continuing threat to Canada's Catholic population. On the other hand, they connote that the government fully understood the political necessity of putting a formal protocol in place to permit and also control the free exercise of the Catholic religion in Canada.

Ten days after Hillsborough's report went to the privy council, attorney general Fletcher Norton and solicitor general William De Grey filed their two-paragraph opinion in response to a request made only three days earlier by the Board of Trade, which if it were literally applied to the situation in Canada, would have rendered most of Hillsborough's recommendations moot, had the council been prepared to finalize a Quebec plan at that time. Citing to no prior statutory or common law principles, Norton and De Grey expressed the opinion that 'His

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<sup>34</sup> Ibid., 30-1.

<sup>35</sup> Ibid., 31.

<sup>36</sup> Ibid., 30-1.

Majesty's Roman Catholick Subjects residing in the Countries, ceded to His Majesty in America, by the Definitive Treaty of Paris, are not subject . . . to the Incapacities, disabilities, and Penalties, to which Roman Catholics in this Kingdom are subject by the Laws thereof.'<sup>37</sup> This was La Corne's clearly stated position as expressed in his *aide mémoire* to secretary Egremont in May 1763, Mansfield's view as expressed in his letter to George Grenville in December 1764, and now the government's top lawyers' official opinion as expressed to the Board of Trade on 10 June 1765. The Norton/De Grey opinion was never reversed, although opposing legal opinions on the applicability of the penal laws to all of Britain's dominions were offered and published. The Quebec Act of 1774 would incorporate the principals of the Norton/DeGrey opinion by omission, making no reference whatsoever to the penal laws or law of Great Britain with respect to religion.

Twice now, moreover, within the immediate past year, Fletcher Norton was on record as rejecting a narrow and literal interpretation of the treaty on the subject of Catholic property and religious rights. Norton's parliamentary biographer John Brooke gives no hint of the personal views of the Yorkshire native about Catholics, religious toleration, or the rights of conquered peoples. The first in his family to serve in parliament, educated at St. John's College, Cambridge, Norton read law at the Middle Temple, and was admitted to the bar in 1739. In time, he established a reputation in private practice before the courts that impressed many, including chief justice Mansfield.<sup>38</sup> Knighted in 1762 and appointed attorney general the next year, Brooke notes that it was the debates on the use of general warrants triggered by the Wilkes/*North Briton* affair that 'established Norton as one of the most formidable speakers in the Commons: coarse and brutal, but afraid of nobody and heard with attention in all parts of the House.'<sup>39</sup>

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<sup>37</sup> Report of Atty and Sol. Gen. *RE* Status of Roman Catholic Subjects, 10 June 1765. Full text of opinion in *S&D*, I, 236.

<sup>38</sup> John Brooke, NORTON, Fletcher (1716-1789), [historyofparliamentonline.org/volume/1754-1790/Norton-fletcher-1716-89](http://historyofparliamentonline.org/volume/1754-1790/Norton-fletcher-1716-89).

<sup>39</sup> *Ibid.* An interesting side note is that Wilkes was apparently desirous of being named governor of Quebec, but lost out to James Murray, which may have flavored Wilkes's bias against George III and Lord Bute, both of whom

It took such a personality no doubt to ignore the plain language of the treaty's restrictions, two centuries of anti-Catholic penal laws and policy, and the 1763 royal proclamation's establishment of English law in Canada, and to sweep it all aside and declare the penal laws were not applicable to the new colonies without bothering to support such an opinion with prior legal authority. What part Norton's co-author on the 10 June opinion, solicitor general William De Grey, played in formulating the opinion is uncertain. Mary Drummond writes that De Grey entered parliament in great part to enhance his legal career, and 'in the House supported each successive Administration.'<sup>40</sup> De Grey's 'political detachment,' Drummond adds, 'enabled him to retain his office in each change of Administration.'<sup>41</sup> This is not the typical profile of an independent political mind, much less one willing to risk his position over a long-settled policy against Roman Catholics, possibly indicating De Grey's understanding that there were powerful supporters of such a policy within government and he risked nothing with respect to his position and legal career by agreeing with Norton. De Grey, moreover, would endorse even more progressive opinions on the Catholic Canadian question during the Rockingham administration about to take office at the end of June.

#### A New Whig Government Moves Away From Its 1688 Forebears

In the Rockingham government's extremely busy, if brief, year in office beginning in July 1765, a great deal of which was consumed by the American crisis over the Stamp Act measure passed during the Grenville administration and which the Rockingham government fought a bitter, but successful, battle to repeal, the Rockingham government continued the study of the Quebec question and proposed some of the most radical plans yet offered on the question

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came under scurrilous attack in *The North Briton*. For background on Wilkes's hope for the Canadian governorship, see biography of Murray's older brother, Patrick Murray, 5<sup>th</sup> lord Elibank, 'Murray, Patrick,' Dudley Oliphant Murray, *Dictionary of National Biography* (1885-1900).

<sup>40</sup> Mary Drummond, DE GREY, William (1719-81), [historyofparliamentonline.org/volume/1754-1790/De-Grey-william-1719-81](http://historyofparliamentonline.org/volume/1754-1790/De-Grey-william-1719-81).

<sup>41</sup> Ibid.

by the previous government. Although the Rockingham proposals ostensibly focused exclusively on the administrative and judicial apparatus to be established, or reestablished, in Canada,<sup>42</sup> it was within this secular apparatus that the Rockingham policymakers and lawyers chose to redefine Catholic rights after more than two centuries of proscriptive laws and policies.

The starting point for the Rockinghams' review of Quebec policy was Murray's controversial ordinance of 17 September 1764, which they used as their whipping boy to justify their stunning deviation from classic Whig principles in the last half of their year in office. Whether or not the Rockinghams ever understood or took the time to understand the difficulties Murray faced in trying to keep the peace between the French and Anglo communities in Canada while implementing the ill-drafted 1763 royal proclamation,<sup>43</sup> they decided to use his ordinance as the basis to recommend dramatic changes in Catholic rights. The Board of Trade would once again be asked to make recommendations to the privy council on the Canada or Quebec question.

### A New Board of Trade Report on the Canada Question

In its 2 September 1765 report, the lords of trade, then headed by William Legge, 2<sup>nd</sup> earl Dartmouth, first identified 'some erroneous general Principles' adopted by the framers of the 17 September 1764 ordinance. 'The principal error by which the Framers of this Ordinance

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<sup>42</sup> In its report of 2 September 1765 to the privy council, the Rockingham government's Board of Trade incorporated the Board's 30 May 1765 ecclesiastical report by reference, making no separate report or recommendations on the purely religious matters.

<sup>43</sup> Neatby, for example, states that the Rockingham lawyers' interpretation of Murray's ordinance of 17 September 1764 contained 'five false statements, two of them clearly at variance with the wording of the ordinance itself.' *Quebec: The Revolutionary Age*, p. 52. Quebec Act historians, especially Neatby, have given much attention to Murray's governance of the colony and thus no further elaboration has been attempted here. Murray's recall and his return to London in 1766 to answer the complaints against him lodged by Quebec's English merchant community through their influential agent in London, Walker Fowler, did not affect his career or his good reputation. The complainants did not show up at the scheduled hearing at the Board of Trade to press their charges. The king met with Murray to learn about his new colony and subjects and later appointed Murray first as lieutenant governor of Minorca, another of Britain's majority Catholic colonies, then its governor.

seem to have been misled,' the Board noted, was that 'the native Canadians are under such personal Incapacity, and their Laws and Customs so entirely done away [with],' that they 'could not be admitted either as Suitors or Advocates to participate in common with the rest of His Majesty's Subjects of the Advantages of that System of Justice in respect to matters of Property, for the Administration of which the Superior Court seems to have been instituted.'<sup>44</sup>

Although Murray's ordinance had expressly mentioned 'peculiar Privileges' the Catholics were to enjoy in the inferior court, the Court of Common Pleas, the Board noted it was neither intended to allow the usage of their customs and usages on questions of property, 'nor themselves be admitted to practice therein as Proctors, Advocates or Attornies.'<sup>45</sup> Such distinctions and exclusions, the report continued, seemed to be as inconsistent with true Policy, as it was 'unwarrantable upon the Principles of Law and Equity, which do not, we apprehend, when Canadian Property acquired under the French Government is concerned, operate against the Admission in a Court of Justice, of such Laws and Customs of Canada as did heretofore govern in cases relative to such Property.'

This was a long introductory explanatory preface to prepare their readers not only for the imperial government's affirmation of Canadian property rights, but for a radical departure from Whig ideology on the subject of Roman Catholicism. 'Neither do we conceive,' the Board stated, 'what foundation there is 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 the opinion of His Majesty's Attorney and Solicitor General in a late Report made to us [10 June 1765], . . . that Roman Catholics &c. in Canada are not subject to any of the Incapacities, Disabilities or Penalties to which Roman Catholics in this Kingdom are subject by the Laws thereof.'<sup>46</sup>

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<sup>44</sup> Board of Trade 'Report To The Lords of the Committee For Plantation Affairs, On Several Papers Relative to Ordinances & Constitutions Made By the Governor Quebec,' 2 September 1765 (*S&D*, I, 241).

<sup>45</sup> *Ibid.* This last point was clearly in error as Murray's ordinance did provide for Canadian advocates in the court of Common Pleas (*S&D*, I, 207).

<sup>46</sup> Board of Trade 'Report To The Lords of the Committee For Plantation Affairs, On Several Papers Relative to Ordinances & Constitutions Made By the Governor Quebec,' 2 September 1765 (*S&D*, I, 241-2).

It was as if these lords of trade whose aristocratic Whig leader, the marquess Rockingham, who had run away from home at age fifteen to join the duke of Cumberland at Culloden, had never heard of the 1688 Revolution, the 1689 Bills of Rights, or their many statutory successors. In fewer than a hundred words, the lords of trade effectively proposed to reverse two revolutions, a regicide, a deposition, and more than two centuries of English law and history underpinning the Protestant-Catholic divide.

The Board next addressed the Quebec English community's complaints that Murray's ordinance had failed to state any qualifications for jurors, instead allowing all persons to serve as jurors 'indiscriminately.'<sup>47</sup> The grand jury presentment of 16 October had declared it unconstitutional for Catholics even to be serving as jurors, much less to the extent the ordinance had allowed by providing that an entire panel of Canadians could be jurors in a case involving a 'British-born Subject and a Canadian.'<sup>48</sup> While the trade lords were willing to entertain an adjustment on this score, it had far more Catholic-friendly policies up its sleeve, but used the juror qualification issue to introduce them.

It was true, the Board noted, that establishing formal juror qualifications was common practice in England and its colonies, but it was of doubtful applicability in Quebec 'where so few of the British-born Subjects have any Freehold, and who would consequently by such a Regulation be excluded from serving on Juries.'<sup>49</sup> Having thus not so subtly suggested why the English community might not wish to press its claim on the qualification issue, and after asserting that whatever tended to 'perpetuate a Distinction between British born Subjects and Canadians . . . ought to be avoided,' the Board agreed it 'would have been advisable' for the ordinance to provide that where a case involved a British-born and a Canadian subject, there

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<sup>47</sup> Ibid., 242.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 242-3.

should be an equal number of each on the jury if requested by either party.<sup>50</sup> Having demonstrated its practical bona fides in dealing with the jury issue to avoid having either the French or English community a majority on the jury if the opposing parties hailed from both communities, the Board proceeded to drop another bombshell in favor of the Canadians. It recommended that in *all* courts to be established under its new plan, not just the inferior Court of Common Pleas where most Canadian claims were heard, Canadians should be ‘admitted to practice, as Barristers, Advocates, Attornies and Proctors.’<sup>51</sup>

It next revisited one of the most complex and politically sensitive issues over which the English community in Quebec had first become unhappy with their governor: whose law should apply in Canada, an issue the 1763 proclamation had purportedly decided in favor of English law for the most part, but which Murray had been attempting to apply in a manner that would mollify both sides. The Board understandably moved cautiously on this point, recommending that in all cases ‘where any Rights or claims founded upon any Transactions & Events prior to the Conquest of Canada shall come in question, the several Courts shall admit and be Governed in their proceedings by the French Usages and Customs, which heretofore have prevailed in Canada, in respect to such property.’<sup>52</sup> Couched not so inconspicuously in this recommendation, however, was the proposition that Canadians possessed legal rights to their property notwithstanding the penal laws that recognized no such rights for non-jurors, which the terms of the 1763 treaty, Royal Proclamation of 1763, the Quebec governor’s royal commission and royal instructions did nothing to restore.

To ensure that its recommendations, if accepted, would be properly effectuated in the colony, the Board further proposed that ‘Care should be taken, that not only the Chief Justice, but also the puisne Judges should understand the French Language; and that one of those Judges

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<sup>50</sup> Ibid., 243. The Quebec Act did not allow for jury trials or habeas corpus, two issues that particularly drew protests and motions for amendment from the opposition.

<sup>51</sup> Ibid., 246.

<sup>52</sup> Ibid.

at least should be well versed in the French Customs and Usages above mentioned.’<sup>53</sup> Chief Justice Mansfield had expressed alarm in his Christmas Eve letter to Grenville the previous year over the failure of the government to appoint judges to Canada who did not know the language and were otherwise incompetent.

The Board was confident that if its proposals were adopted, the ‘minds of the new Canadian Subjects [would be] relieved from that anxiety and uneasiness, so strongly yet so Dutifully expressed in their Address to His Majesty,’ an anxiety, the Board added, which had been ‘entirely excited by the extraordinary Proceedings of the Grand Jury of the District of Quebec,’ in its ‘irregular Presentment.’ The Board called the English presentment of 16 October 1764 ‘indecent, unprecedented and unconstitutional.’<sup>54</sup> Some of the arguments in the presentment, however, clearly rested on much solidier Protestant constitutional grounds than the Norton/De Grey opinion of 10 June 1765, the Murray ordinance, and the Rockingham proposals.

#### Alternative Legal Opinions on Applicability of Penal Laws in Britain’s Dominions

The 1766 legal opinion of one of England’s leading legal authorities, Francis Maseres, whose ancestors had fled France when Louis XIV revoked Henri IV’s Edict of Nantes in 1685, on the issue of how best to implement a new Quebec policy—by order in council or parliamentary act—offered an alternative view from those of the Rockingham and Grenville lawyers on whether the penal laws should apply in Canada and elsewhere in the British empire. In line to be Canada’s new attorney general and not wishing to appear out of step with current thinking on the Canada question, which was obviously moving in a more Catholic-friendly direction with which Maseres was personally not in agreement, the Huguenot descendent set forth a clear and persuasive constitutional argument about why the penal laws in fact did apply to the new colonies acquired in 1763, as well as to all those in existence when the first laws

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

against non-conforming Christians were passed in the first year of Elizabeth I's reign. Nevertheless, even Maseres, who would spend nearly three years in Quebec as attorney general, agreed that the government would be justified in adopting a *sui generis* plan for Quebec for political reasons.<sup>55</sup>

The Rockinghams' only success on the Canada policy question before it left office was to push through an ordinance on 1 July 1766 addressing the make-up of juries and authorizing Canadians to practice in all courts as barristers, advocates, attorneys and proctors.<sup>56</sup> It also took action to replace some colonial appointees with those with a knowledge of the French language and local laws and customs. In this regard, in early 1766 the government notified Quebec's chief justice William Gregory and attorney general George Suckling that there would be 'no further occasion for their services.'<sup>57</sup> Shortt and Doughty note that Murray had reported to Whitehall that both were 'entirely ignorant of the Language of the Natives, . . . and tho' perhaps good Lawyers and Men of integrity, are ignorant of the World, and consequently readier to Puzzle and create Difficultys then remove them.'<sup>58</sup> The Rockinghams replaced Gregory and Suckling with William Hey and Francis Maseres, respectively, offering insight into the latter's measured views at the time on the new Catholic policy, with which he had fundamental legal and personal disagreements. But both Hey and Maseres knew the French language and possessed the highest legal reputations.

The privy council decided at its 19 November 1765 meeting that it needed the government lawyers to review the Board's recommendations of 2 September. The council also asked the Board to provide additional recommendations with respect to the many other

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<sup>55</sup> See Maseres, *Considerations on the Expediency of Procuring An Act of Parliament For the Settlement of the Province of Quebec*, in Maseres, *Occasional Essays*, pp. 329-31; p. 368. An excerpt is also reprinted in *S&D*, I, 257-69.

<sup>56</sup> The text of this ordinance, passed 1 July 1766, is at *S&D*, I, 249-50.

<sup>57</sup> *S&D*, I, 256, fn. 2 (quoting Murray). For background on both Gregory and Suckling and their deleterious roles in the administration of justice in Quebec and the confusion that ensued from their interpretation of what the 1763 Proclamation had ordered concerning the application of English law in the colony, inter alia, see Jacques L'Heureux, 'SUCKLING, GEORGE,' in *DCB/DCB*.

<sup>58</sup> *S&D*, I, 256, fn. 2.

memorials and petitions from His Majesty's new subjects, ordinances, reports, and other papers concerning Quebec. The goal was to formulate 'a proper plan of Civil Government' in proper legal terms.<sup>59</sup> Perhaps it was another classic privy council move to put off resolving the difficult Quebec question. The 2 September report no doubt had shaken up some of the privy council members given its revolutionary concepts. A month after the Rockinghams won their parliamentary fight for full repeal of the Stamp Act, their lawyers filed additional recommendations for a plan for Quebec's new civil government.

The 14 April 1766 report filed by attorney general Charles Yorke and solicitor general William De Grey endorsed most of the proposals made in the Board of Trade's report of 2 September 1765, but it went even farther. They recommended the inclusion of Catholics in the new colonial government and the application of pre-conquest Canadian law and customs. On the first point, the 14 April report suggested that in appointing justices of the peace in the three principal cities of the province, it 'may be useful and popular and endear his Majesty's Government to his new Subjects; if *one* or *Two* Canadians should be appointed Justices, with the others who are British, particularly if Protestants can be found fit for that Office.'<sup>60</sup>

The second new recommendation of the government lawyers finally addressed the unresolved issue of whether Canadians had retained any rights to their property. Whereas the Board of Trade in its 2 September 1765 report had recommended that for all cases and claims arising from events occurring before the conquest, 'French usages and Customs' should be applied in determining the outcome of such matters,<sup>61</sup> Yorke and De Grey, admitting such a concession was 'undoubtedly right, as far as it goes,' nevertheless declared it did not go far enough. 'There is not a *Maxim* of the *Common Law* more certain than that a Conquer'd people retain their antient Customs till the Conqueror shall declare New Laws,' the two lawyers declared. 'To change at once the Laws and manners of a settled Country must be attended with

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<sup>59</sup> Ibid., 251.

<sup>60</sup> Report of Attorney and Solicitor General Regarding The Civil Government of Quebec (*S&D*, I, 254).

<sup>61</sup> Ibid., 255.

hardship and Violence.’<sup>62</sup> These were nearly the exact words of chief justice Mansfield in his Christmas Eve 1764 letter to George Grenville and certainly expressed the sentiments of Fletcher Norton and De Grey on earlier occasions. The Quebec Act of 1774 would place no time limits on the application of French usages and customs in connection with the rights of Canadians to defend their property rights, stating only that such laws would apply ‘in all Matters of Controversy, relative to Property and Civil Rights.’<sup>63</sup>

Especially with respect to Canada, the report added, because it was a ‘great and antient Colony long settled and much Cultivated, by French Subjects, who now inhabit it to the number of Eighty or one hundred thousand,’ it was a ‘wise Conqueror’ who ‘provided for the security of their Dominion,’ and proceeded ‘gently’ and indulged their ‘Conquer’d subjects in all local Customs.’<sup>64</sup> The Stamp Act riots of late 1765 and early 1766 in the old American colonies and the trade embargo adopted by the Americans to force repeal of that Act may have influenced the new recommendations in the Yorke and De Grey opinion. If a restrictive policy were adopted toward the new Canadian subjects at the time, Britain would possibly be facing rebellions all of its North American empire. With no Protestant Ascendancy to deal with in Quebec as yet, and the Canadians still in a patient, if demanding, posture vis à vis their royal government, the government no doubt thought it was a ‘wise Conqueror’ who ‘provided for the security of their Dominion,’ and proceeded ‘gently’ and indulged their ‘Conquer’d subjects in all local Customs.’<sup>65</sup>

Yorke and De Grey had even more to say about Catholic property rights in the province. For actions relating to ‘Titles of Land, the Descent, Alienation, Settlements and incumbrances of *Real* property,’ Yorke and De Grey stated that ‘it would be oppressive to disturb without much and wise deliberation . . . the local Customs and Usages now prevailing there.’<sup>66</sup> Not only

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<sup>62</sup> Ibid.

<sup>63</sup> S&D, I, 573.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

would Canadian property rights be protected by their own pre-conquest laws and customs, but the two government lawyers recommended that ‘British Subjects who purchase Lands there, may and ought to conform to the fix’d *local* Rules of Property in Canada,’ as they do in other parts of the realm.’ The judges to be sent henceforth by the crown to Canada, moreover, the lawyers proposed, ‘may soon instruct themselves by the assistance of Canadian Lawyers and intelligent Persons in such Rules, and may Judge by the *Customs* of Canada, as your Lordships do in Causes from Jersey by the Custom of Normandy.’<sup>67</sup>

The French would never succeed in invading the shores of England as Louis XV still hoped to do and Louis XVI had promised to do when still the *dauphin*, but the conquered people of French Quebec and their advocates on both sides of the Atlantic by 1766 had apparently succeeded in doing so without bearing arms or threatening violence even if another eight years would pass before many of these policies were incorporated in the Quebec Act. The privy council endorsed the 14 April 1766 Yorke and De Grey report on 13 May and the two were ordered to ‘prepare a draught of an additional Instruction.’<sup>68</sup> Subsequent attempts to finalize the process ran aground as the king and his lord chancellor, Robert Henley, 1<sup>st</sup> earl Northington, conspired successfully to force the Rockinghams from office. There is nothing in the frequent letters going back and forth between the king and his chancellor at the time to suggest that the recommendations of the Rockinghams concerning Quebec policy itself triggered the king’s desire to be rid of the marquess and his government, although the chancellor made an issue of how the government proposed to implement it during privy council meetings. He disagreed with the Rockinghams that the new policy should be implemented by order in council, favoring a parliamentary act, no doubt in part to safeguard himself and the king from any political fallout from the adoption of such a radical policy. In the end, the dispute on this procedural issue proved a convenient pretext by which the chancellor could announce that he would attend no

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<sup>67</sup> Ibid.

<sup>68</sup> Report of Attorney and Solicitor General Regarding The Civil Government of Quebec (*S&D*, I, 257).

more meetings of the privy council. The Rockinghams were delighted to have Northington gone and continued to refuse to take the royal hint that they should voluntarily resign from government.<sup>69</sup> If the latest governance crisis in England once again prevented formal resolution of the Quebec governance and Catholic question, the expansive Canadian-friendly proposals made by the Rockingham government would find their way into the final policy.

#### Shelburne's New Views on the Quebec Question

Shelburne returned to government in late July 1766 as secretary of state for the southern department in the new Pitt government, the position he had sought three years earlier in the Grenville administration. The Canada remit was back in his bailiwick. This might or might not have bode well for the Canadians as he had left the Board of Trade position with a far less progressive view of the Quebec question than had evolved in Whitehall since his departure. But Shelburne appears to have undergone a significant change in his views on rights of conquered people and the religious and legal issues the Quebec conquest had raised for Britain. Or Shelburne was possibly conforming his thinking to the latest policy initiatives put forward by the Rockinghams. Or both.

The new secretary no doubt brought himself up to date on the latest government proposals and would likely have been following such matters while out of office, but as a member of the Lords. In his 'Account of the State of Canada' written sometime that year, Shelburne began with a lengthy chronology of relevant events in recent Canadian history, beginning with the conquest up through mid-1766, shortly before the dismissal of the Rockinghams. He then outlined his thoughts on the colony's civil government, its revenues,

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<sup>69</sup> See correspondence between Northington and the king between 6 July and 21 July 1766 (Fortescue, I, nos. 342, 346, 347, 349, 350, 351, 352, 354, 356, 357, 358); Langford, *The First Rockingham Administration*, pp. 255-8. Lawson, pp. 82-3.

and the religion issues. On the latter, Shelburne showed a distinct shift away from the narrow views he had expressed in 1763 on the rights and privileges of the French Canadians.<sup>70</sup>

In the section of his report entitled ‘The Ecclesiastical State of Canada,’ the new secretary addressed the fact that the capitulations had granted the Canadians the ‘free Liberty and Exercise of the Roman Catholic Religion,’<sup>71</sup> a point he had declined to acknowledge, much less favor, in his 8 June 1763 report to the privy council. Shelburne next acknowledged that the issue concerning the treaty’s restriction of the free exercise of the Catholic religion in Quebec ‘as far as the Laws of England would permit’ had been ‘the occasion of much uneasiness to the Canadians.’<sup>72</sup> This was another softer view than he had previously expressed on the question. His next words confirm that he likely had his first report to the privy council of 8 June 1763 very much in mind. ‘It may admit of a Question whether the Articles of the Capitulation are not superseded by the Definitive Treaty; tho’ in my Opinion they are not,’<sup>73</sup> thereby clearly repudiating the view of the late secretary of state Egremont as expressed in May 1763.

Shelburne’s next opinion, if still inchoate, evidences an even greater shift in attitude from his first encounter with the Quebec Catholic question. First, he asserts that because the ‘French Court had no Interest in preserving the Rights of Subjects they were just relinquishing,’ it followed that ‘the Canadians could not be conceived by any Construction or Implication to be a Party in the Treaty.’<sup>74</sup> Not being a party to an agreement, his reasoning would suggest, he meant to argue that they could not be bound by its terms. The capitulations, to which they were without doubt parties, on the other hand, Shelburne seemed to imply, were not, therefore, superseded by the treaty.

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<sup>70</sup> ‘An Account of the State of Canada from the Conquest to [unreadable],’ [n.d.]. Shelburne Papers, 64: 525-52. From the text of the paper, it is possible to put the date somewhere in 1766, between 30 July 1766 when Shelburne took office and the end of the year.

<sup>71</sup> Ibid., 544.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid., 544-5.

<sup>74</sup> Ibid., 545.

Shelburne was moving into much deeper legal waters than he might have intended or been able to defend, but his theory was sound even if his statement that the ‘French Court had no Interest in preserving the Rights of Subjects they were just relinquishing’ was far from the truth. The record of the peace negotiations discussed previously clearly establish that the French had made the religion of their ceded colonies and their inhabitants a principle subject for peace and had zealously advocated for the religious rights of the Catholics in those colonies up to the final moment of the negotiations.

Shelburne next examined the question of whether the penal laws applied to the new colony, which La Corne, Mansfield, Norton/De Grey, and others had already argued in the negative. But Shelburne added an interesting legal twist to the question. ‘However this may stand, according to the strict Rules of Civil Law,’ he wrote, ‘it seems highly improper and impolitic to extend the Penal Laws of England against Papists which Laws are in their Nature merely local to any part of America.’<sup>75</sup> Aside from the fact that most of the American colonies were not conquered, but settled by charter rights, England’s penal laws did not in fact apply in these charter colonies unless provided for in the charters themselves, or the local assemblies saw fit to adopt or adapt them in some way, as Maryland had after the 1688 Revolution.

Each American colony had different laws on religious matters. The problem for the Canadians was that should the English subjects in Canada get their assembly in which Catholics would not be allowed to sit because of their religion, that legislature could quickly adopt the penal laws from Britain in their entirety unless the imperial government first decided the issue unequivocally. During parliamentary debate on the Quebec Act, which did not provide for a local assembly in Canada, the government was clearly as worried about the troubles a local assembly might cause the imperial government in its administration of the colony as it was about such an assembly’s impact on Canadian rights. Even with the establishment of a royally-appointed council to run the colony, however, the Quebec Act was careful to provide that no

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<sup>75</sup> Ibid.

ordinance passed by the council ‘touching Religion’ would have any force or effect until approved by the monarch.<sup>76</sup>

Shelburne’s search for a satisfactory legal leg on which to rest his new commitment to lift both Canada’s Catholics and Britain’s Protestant government from the historical depths to which their ancestors had consigned them. Further proof of this is found in Shelburne’s criticism of Hillsborough’s Board of Trade ecclesiastical plan for Quebec of 30 May 1765, which the new secretary of state described as ‘severe and defective.’<sup>77</sup>

‘Upon the whole,’ Shelburne mused, ‘the only way according to the best of my Judgment of securing the Attachment of the Canadians to this Country is to treat them with the utmost Lenity.’<sup>78</sup> Judges of the courts in Canada should be ‘persons perfectly skilled in the French Language, in which Case all legal Disputes between Canadian and Canadian might be carried on in the French Tongues, and decided by a French Jury, and even for the Present, the written Pleadings might be in that Language.’<sup>79</sup> The Rockingham administration had made many of these same points in their reports, which Shelburne had no doubt reviewed.

Shelburne also noted that the ‘Pretence’ for collecting certain revenues (on imported spirits) in the colony to date ‘must be the want of a General Assembly in Canada, and that want imputed to the Disqualifications the Canadians lie under on Account of their Religion, tho’ according to the best of my Judgment, the difference of Religion does not seem to require those Disqualifications in that Country.’<sup>80</sup> Canadians, Shelburne asserted, should also be eligible to serve in a General Assembly. The Rockinghams had only gone as far as suggesting Catholics might be electors, but not members, of that body.

On the other hand, Shelburne equivocated on the language issue, stating that ‘the Sole use of the English Tongue in such an Assembly, . . . must necessarily be insisted upon, [as it]

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<sup>76</sup> See specific language of the text in the Quebec Act of 1774 in Appendices.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid., 548.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid., 543-4.

will prevent the Election of any Canadians but such as are proper for that Purpose; and this will without violence introduce into Canada, the Study and Practice of the English Tongue, after which it will be time enough to reduce the Law Pleadings, and other legal Instruments into English.’<sup>81</sup> Even if it was back to the Whig philosophy of assimilation of a conquered people into the dominant culture’s language, religion, and customs, regardless of how the conquered people felt about it, Shelburne’s philosophy of how to govern the Canadian people had undergone the proverbial sea change, imagining a future Canada in which different religions and languages and customs could live side by side without doing violent harm to one another.

Shelburne appears, however, to have viewed Canadian Catholics’ participation in a popular legislative assembly as a means to wean them away from what he and most Protestants still considered their undue subjugation to a superstitious religion. Not quite thirty years of age when he wrote up his second major report on the Quebec question, Shelburne waxed philosophical about the future of the Protestant-Catholic issue in Quebec, and perhaps for all of Britain:

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 dependency 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 Distinctions will soon be forgotten, or at least be productive of no ill Consequences.<sup>82</sup>

Shadows of Locke’s attitude toward the odious priestly caste of Roman Catholicism and continuing fears over France returning to North America are half- eclipsed by tinges of More’s

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<sup>81</sup> Ibid., 548-9.

<sup>82</sup> Ibid., 549-50.

*Utopia* in Shelburne's vision of the future. Now that Canada had a new bishop, however, who could ordain new priests, Shelburne's thoughts on the subject were more musings than preoccupations. His report acknowledged that 'a Romish Bishop was sometime ago approved of and sent to that Province.'<sup>83</sup> Earlier he wrote that 'it will require great Spirit and Vigour in a Governor to repress the Insolence of the British Inhabitants, and protect the Canadians from that Tyranny and illiberal Affectation of Superiority which has too much prevailed there.'<sup>84</sup> But Shelburne also retracted his criticism of the English inhabitants in the margin, writing that 'it is not true that the English in Canada have behaved insolently.' He had, he wrote, based his original remark on the late 1764 presentment of the Quebec English community's grand jury, a factious piece 'aimed against the governor,' Shelburne noted.<sup>85</sup>

Even the English merchant community in Canada was changing. By 1768, though still continuing their campaign for a popular assembly through their representatives in London, a group of London merchants trading to Canada, known as the Canada Committee, with headquarters at the New York Coffee House in the City, sent two petitions to Lord Hillsborough, once again secretary of state.<sup>86</sup> The petitions reiterated their demand for the creation of an assembly in Canada, but there was a major new feature. Like Shelburne, the merchant community appears to have undergone a sea change on the Catholic policy question in Canada. The merchants were prepared, they told government, to accept that Canadians could be admitted to such an assembly and to the royal council as well. This view of Catholics' eligibility to serve in public office, one which the Rockingham government had proposed just before it was dismissed, was at the time, Creighton notes, in fact the prevailing official view in government. The Board of Trade's 10 July 1769 report to the privy council confirms this.<sup>87</sup>

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<sup>83</sup> *Ibid.*, 547.

<sup>84</sup> *Ibid.* 549.

<sup>85</sup> *Ibid.*

<sup>86</sup> Donald Creighton, *The Empire of the St. Lawrence: A Study in Commerce and Politics* (Toronto, 2002), pp. 52-3.

<sup>87</sup> Report of Lords Commissioners For Trade and Plantations Relative To The State of The Province of Quebec, 10 July 1769 (*S&D*, I, 377-95). The recommendation for admission of Catholics to the council and an assembly is at *S&D*, I, 383.

Those Catholics serving on the council or in the assembly, the Board recommended, were to be made exempt 'from the obligation of Subscribing the Declaration against Transubstantiation' required by a statute passed in the twenty-fifth year of Charles II's reign, which the report noted was a matter determined to be in the king's discretion based on 'Antient precedent and late opinions of Law.'<sup>88</sup>

Sometime after the new administration under Frederick, Lord North, took office in 1770, however, the views about allowing an assembly in Canada changed again. In 1773, Frances Maseres, former attorney general in Canada and now representing English Canadian interests in London, learned from North 'that an assembly was not contemplated in the approaching legislation for Canada.'<sup>89</sup> Troubles with the old American colonies arose again in the wake of the parliamentary grant of a monopoly over the tea trade to the bankrupt East India Company under the Tea Act of 1773. The American colonial assemblies were increasingly a thorn in the parliamentary and imperial sides, one reason why the government was not anxious to allow another such vehicle in its newest North American colony.

The Quebec bill on which Lord Mansfield was putting important finishing touches on the eve of its introduction in the Lords on 2 May 1774 would provide, therefore, that 'it is at present inexpedient to call an Assembly,' instead authorizing the king to appoint a council 'to consist of Such persons resident there, not exceeding Twenty-three, nor less than seventeen' as the king and his heirs were pleased to appoint.<sup>90</sup> Residency in Quebec, not religion, moreover, was to be the sole qualification for consideration for appointment to the council.<sup>91</sup>

On the same day that an English ship drew close to Quebec City in June 1766 with Bishop Briand and his friend, Sir Thomas Mills, the colony's new receiver general aboard, Quebec Governor Murray's ship passed them heading east toward London where he was

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<sup>88</sup> Ibid.

<sup>89</sup> Creighton, *Empire of the St. Lawrence*, p. 54.

<sup>90</sup> Quebec Act (*S&D*, I, 574).

<sup>91</sup> The bill not only left out all mention of the penal laws, but it also adopted a new text for an oath of allegiance for Canadians which contained no mention of religion or the pope.

scheduled to answer the formal complaints made against him by the unhappy English merchant community in the colony. The departure of Murray, who had redeemed himself with the French community after a rocky interlude in 1764, weighed less heavily on the French Catholics in Canada with the arrival of their new bishop. The English community likewise should have felt less threatened with the new bishop's widely celebrated homecoming given that their government had ordered their nemesis Murray home.

The Catholic question for Canada was now half-resolved, the question over the penal laws being applicable or not in Canada and other colonies ceded to Britain by France in 1763 still pending. The government under the new Pitt administration would look to introduce a new plan for administration of its Irish affairs, including offering some relief to its Catholics, the subject of the next chapters. Two royal appointments involving two brothers, one to the lord lieutenancy, and one to the bishopric at Cloyne, then Derry, opened the door ajar to progress on the Catholic question in Ireland, leading to enactment of the Irish Oath Act of 1774.

## Chapter 6

### A New Oath for Catholics in Ireland: 1766-1774

Three weeks before the king faced angry crowds on his way to Westminster to give his royal assent to the Quebec bill in late June 1774, royal assent had been quietly affixed to a bill passed the previous March by the Irish parliament, the Irish Oath Act.<sup>1</sup> The history of the Irish Oath Act of 1774, which offered Catholics in Ireland a new oath of allegiance they and other non-conformers could swear without having to repudiate the basic tenets of their faith, establishes that the new imperial policy toward Roman Catholicism was broader in intent and scope, geographically and geopolitically, after the end of the Seven Years War. With the bishop issue resolved and the Canadians extremely satisfied with their new government, and a new administration in Whitehall, new initiatives were planned in Irish affairs, including doing something for Ireland's Catholics.

With two key appointments at the start of the Pitt administration, that of George Hervey, 2d earl Bristol, as lord lieutenant, and his younger brother, Frederick Hervey, as an Anglican bishop at Cloyne and soon thereafter to the lucrative See of Derry, George III and his new government opened a review of its Irish relationship. While much of what was initially planned to shake things up in the management of its Irish business failed to get off the ground because of Pitt's illness and Lord Bristol's early resignation from the lord lieutenancy, Frederick Hervey, by 1768 the bishop of Derry, had already seized the oath issue as his contribution to the broader plan for reorganizing imperial affairs in Ireland. The Irish Oath Act passed by the Irish parliament in March 1774 and given royal assent in June was the result.

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<sup>1</sup> Geo. 13 & 14, c. 35. The act is also referred to in various sources as the Parliamentary Test Act of 1774. This paper will refer to it hereafter as the Irish Oath Act of 1774. The act was written with Catholics in mind although use of the name was avoided. For a history of the oath issue in Ireland and the Irish Oath Act of 1774, see especially Patrick Fagan, *Divided Loyalties: The Question of the Oath for Irish Catholics in the Eighteenth Century* (Dublin, 1997). See also Bartlett, *The Fall and Rise of the Irish Nation*; and Vincent Morley, 'Catholic Disaffection and the oath of allegiance of 1774,' in *People, Politics and Power: Essays on Irish History 1660-1850, in honour of James I. McGuire*, James Kelly, John McCafferty and Charles Ivar McGrath, eds. (Dublin, 2009).

As troubling as the text of the new Irish oath was at first to many Catholic leaders in Ireland, lay and ecclesiastical, and as devoid as the Act itself was of any immediate *quid pro quo* for those willing swear it, the measure nevertheless, as Thomas Bartlett explains, contained the ‘*sine qua non* for future concessions’ to Ireland’s Catholics for it ‘conferred eligibility on those wishing to derive benefit from those concessions.’ It was with in these respects that the new oath constituted for Catholics ‘the cornerstone of their future emancipation.’<sup>2</sup>

As such, its Quebec counterpart, given royal assent three weeks after the Oath Act, must be considered more than a ‘symbolic’ gesture toward Catholics in Canada, as Vincent Morley first described the Quebec Act,<sup>3</sup> or as imperial historian Steven Watson described it, as a ‘realistic and tolerant attempt to deal with an alien population in a conquered territory.’<sup>4</sup> ‘Certainly,’ as Bartlett argues, ‘the oath for Irish Catholics’ must be considered ‘of a piece with that contained in the ‘Quebec Act.’<sup>5</sup> The same imperial hand had backed the two bills at the same time in British history. Given the high political risks the bills carried for its sponsors, their near simultaneous enactment cannot be reasonably characterized as coincidence.

For nearly a century, efforts to create a vehicle by which Catholics in Ireland might swear their allegiance to the Protestant sovereign without having to repudiate their beliefs or the spiritual authority of the pope in Rome eluded some of the best minds and most ecumenical spirits on both sides of Ireland’s political and religious divide.<sup>6</sup> The refusal of most of Ireland’s majority population to take the accretion of oaths, tests, and declarations from the reign of

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<sup>2</sup> Bartlett, *Fall and Rise of the Irish Nation*, p. 81. Bartlett cites Maureen Wall as his authority for the phrase ‘cornerstone of future emancipation.’ Patrick Fagan attributes the quote to the historian Plowden (presumably the English Jesuit and scholar, Charles Plowden, although he does not give Plowden’s first name or cite a specific work), as quoted in a work by J. Mitchel, I, 113. Although Fagan is likely referring to John Mitchell, author of *The History of Ireland from the Treaty of Limerick to the Present Time* (Glasgow, 1869), he does not cite a work or Mitchel’s full name. Fagan, *Divided Loyalties*, p. 154. The full quote, as attributed to Plowden, reads as follows: ‘It gratified the Catholics, inasmuch as it was a formal recognition that they were subjects, and to this recognition they looked up as to the corner-stone of their future emancipation.’ Ibid.

<sup>3</sup> Morley, ‘Catholic Disaffection and the oath of allegiance of 1774,’ in *People, Politics and Power*, p. 123. Morley would also opine that the Irish Oath Act ‘represented the first official recognition of the existence of a body of loyal subjects among the Catholic population’ in Ireland.

<sup>4</sup> Watson, *The Reign of George III 1760-1815*, p. 198.

<sup>5</sup> Bartlett, *Fall and Rise of the Irish Nation*, p. 81.

<sup>6</sup> Fagan discusses this history in *Divided Loyalties*.

Elizabeth I forward through successive Protestant monarchies and parliaments, whose purpose at the outset had been to contain the ‘growth of popery,’<sup>7</sup> had failed to do so. The blocking of reintegrating Catholics into mainstream political and civil society had evolved over time into an unalterable tenet of Ireland’s established Protestant culture without regard to religious differences themselves for the most part.

As Bartlett notes, early on in the eighteenth century ‘a section of the lay Protestant population’ was ‘indifferent, if not hostile, to conversion on grounds of economic and social self-interest.’<sup>8</sup> By the 1730s, the ‘missionary enterprise which had been launched in the 1690s’ to convert Catholics ‘had patently failed.’<sup>9</sup> Protestants for the most part ‘accepted that they would constitute a minority in Ireland.’<sup>10</sup> They did not, however, abandon use of the historic link between the early ‘missionary enterprise’ of conversion and the penal laws to justify continuing opposition to any change in those laws, which parliamentary debate and on the mortgage and lease bills in 1773 and 1774, and earnest, at times hysterical, commentary from the public as published in newspapers of the day, demonstrate.<sup>11</sup>

The *Penal Laws*, a ‘John Luther’ told *The Freeman’s Journal* six weeks before the oath bill passed the Irish parliament, ‘aim principally at *three great points*: ‘the prevention of *violence* from Popish hands, the removing the dangerous influence of their Clergy, and preventing both those mischiefs by the education of their *Children*.’<sup>12</sup> The writer listed the key elements in Ireland’s penal laws that he believed prevented such Catholic mischiefs:

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<sup>7</sup> The origin of Protestant distrust of Catholics in English history, and which Bishop Hervey took great care to address specifically in his draft of the Irish Oath Act, was the *Regnans in excelsis*, the papal bull of Pope Pius V which excommunicated Elizabeth I in 1570, declaring her a heretic, absolving all her subjects from any duty of allegiance and from any oaths sworn to her, and excommunicating all those who thereafter obeyed her. The papal bull was said to be the pope’s retaliation for Elizabeth’s re-establishment of the Church of England and Church of Ireland. The bull was issued at the time of the first Desmond Rebellion in Ireland and in part for support of that movement. Nicholas Canny notes that the bull remained an issue in Protestant-ruled, but majority Catholic Ireland, but not in England. Nicholas P. Canny, *Making Ireland British, 1580-1650* (Oxford, 2001), p. 124.

<sup>8</sup> Bartlett, *Fall and Rise of the Irish Nation*, pp. 28-29.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Parliamentary debate on these bills and newspaper coverage are discussed more fully in the following chapter.

<sup>12</sup> ‘John Luther’, ‘To the *Protestants* of Ireland,’ *The Freeman’s Journal*, January 22, 1774. The mortgage bill gave Catholics the right to secure their loans with mortgages, which would put Protestant borrowers and their

the forced division of whatever landed property Catholics still possessed except if made to a Protestant child; prohibition on length of leases; no securing of monies by mortgages; no right to carry arms; no right to hold any military or magisterial office; strict control over popish priests; no papist teachers or schools in Ireland, and prohibition against travel abroad to access Catholic education, or right to leave the kingdom ‘till of full age.’<sup>13</sup>

An oath that allowed Catholics to swear their loyalty to the Protestant monarch without repudiating their faith would theoretically and legally remove the original justification for these penal laws, which the Irish Oath Act of 1774 was intended to do. From the outset of taking office in August 1766, the Pitt government indicated an intent to shake up the status quo in Ireland with respect to how it administered and oversaw Irish matters. Whether or not this included a distinct plan to address the question of Catholic rights in Ireland, there are early indications that this was the case.

First, as discussed in the last part of the previous chapter, Shelburne, who became secretary of state under Pitt, appears to have been given ample leeway to fashion a policy for Canada in which, as Shelburne imagined it, would put Canadians and their English colleagues on an equal footing in most matters. Watson characterizes Shelburne as ‘busy with schemes of his own for America, devising the Quebec Act,’ and doing so ‘along lines indicated by Chatham.’<sup>14</sup> Two other appointments early in the Pitt government also suggested the king and Chatham were preparing to give the Irish business close attention: George Hervey, 2<sup>d</sup> earl Bristol, was appointed lord lieutenant, and his younger brother, Frederick Hervey, former chaplain to George III, one of whose birth sponsors was the king’s father, was named bishop of Cloyne and quickly translated to the lucrative See of Derry the next year when it became vacant.

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property under the power of the Catholic mortgagor of course, which understandably raised great fears among Protestants.

<sup>13</sup> Ibid.

<sup>14</sup> Watson, *The Reign of George III*, pp. 128-9.

George Hervey, 2d earl Bristol, as new lord lieutenant, Childe-Pemberton writes, was ‘chosen as the instrument to carry out Chatham’s intended plan to alter the political dynamics in Ireland vis à vis imperial oversight, which though never expressly divulged, was believed to include relief for the oppressed Catholics, and reform of abuses in the Government of Ireland.’<sup>15</sup> Although the historian offers no source for this observation, contemporary evidence appears to confirm that Pitt had a plan in mind for Ireland. In a letter dated March 12, 1767, Charles O’Hara wrote Edmund Burke from Ireland that “I hear Lord Chatham has laid a plan for new-modelling this country; and committed the execution to Lord Bristol; the present structure to be pulled down to the ground, and a new one built on the same foundation. The pulling down I have no objection to; but the rebuilding I hope will be in other hands.’<sup>16</sup>

In early June 1767, Bristol took a meeting with Lord Bessborough, brother of John Ponsonby, a member of the political triumvirate of Irish undertakers managing political affairs there. Bessborough sought to deliver to the new lord lieutenant his brother’s list of candidates for various patronage positions in Ireland. According to the report Bessborough sent Ponsonby after the meeting, Bristol had taken great umbrage at the presumption that the lord lieutenant would be acting as a mere rubber stamp for the undertakers. Bristol informed Bessborough he had no intention of following the dictates or recommendations of the undertakers on any appointments, or about how he would conduct the system of administration in Dublin Castle. Bristol made clear he would never consider Ponsonby a go-between on any matters and that ‘all applications or requests should be made directly to [Bristol] by the Individual who had any favor to ask and not through any other Channel and that this Plan was consonant to the Kings instructions to him.’<sup>17</sup>

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<sup>15</sup> W.S. Childe-Pemberton, *The Earl Bishop, The Life of Frederick Hervey, Bishop of Derry, Earl of Bristol*, 2 vols. (New York, 1924), p. 84.

<sup>16</sup> Charles O’Hara to Edmund Burke, March 12, 1767, in Ross J.F. Hoffman, *Edmund Burke, New York Agent, with his letters to the New York Assembly and intimate correspondence with Charles O’Hara, 1761-1776* (Philadelphia, 1956), pp. 392-3.

<sup>17</sup> Bessborough to Ponsonby, June 3, 1767 (Fortescue, I, no. 529).

To remove any possible ambiguity in the message, Bristol told Bessborough that as lord lieutenant he was determined to follow the king's instructions on this matter and that if he [Bristol] found he 'could not carry on the King's business upon this footing,' he would ask to be recalled.<sup>18</sup> Bessborough added a postscript to his report, telling Ponsonby that he had 'seen Lord Bristol at the House of Lords, who told me he had this morning told the King what passed between him and me and repeated to me in good Humour, that he was determined to try what he had mentioned to me and that if he was to be Got the better of he would as lieve [sic] be in your [Ponsonby's] Charms as the D[uke] of L[einste]rs or any other Persons.'<sup>19</sup> If Bristol had told Bessborough that he and the king were ready to push through full Catholic emancipation in Ireland within the year, the shock would likely not have been any greater than the message Bristol sent to Ponsonby through Bessborough in June 1767.

If, as Childe-Pemberton suggests, Bristol had also been given the remit or made the instrument to carry out a Chatham 'plan for Catholic relief' as well as 'reform of abuses in the Government of Ireland,'<sup>20</sup> this 'noble plan,' as it was referred to in a letter by Bristol's mother, Lady Hervey (Molly Lapel), was never put into execution, at least not by Bristol. In March 1767, Peter Brown notes, 'Chatham suffered from a nervous breakdown and was unable to impose a united policy upon the cabinet.'<sup>21</sup> Without Chatham to back up the new plan for Ireland, Bristol 'felt he had no other course but to resign his office.'<sup>22</sup>

In the meantime, his younger brother, Frederick, who at the request of his older brother had been given a preferment as bishop to Cloyne in 1767 and translated to Derry the next year, was already actively involving himself in the issue of a new oath for Catholics. idea originating Lord Bristol, Fagan writes. Lord Bristol was favorably inclined to Catholic relief, Fagan

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Childe-Pemberton, *The Bishop Earl*, I, 84.

<sup>21</sup> Peter Brown, *The Chathamites* (London, 1967), p. 50.

<sup>22</sup> Childe-Pemberton, I, 84.

explains, but insisted that the Catholics be willing to swear their loyalty to the king.<sup>23</sup> It is otherwise difficult to explain, Fagan adds, ‘why on his way home from Italy Frederick Hervey took time off to visit the principal Irish seminaries in France and Irish ecclesiastical émigrés to exchange ideas about such an oath.’<sup>24</sup>

With Pitt’s decline and Lord Bristol’s resignation of the lord lieutenantcy before he had spent a day in Dublin, it would be Frederick Hervey who would put flesh on the ‘noble plan’ to bring change to Britain’s Catholic policy for Ireland. Born the same year as George III, 1737, educated at Westminster and Corpus Christi, Cambridge, where his love for scholarship and the arts and an animated disposition impressed all those who knew him, Frederick Hervey decided to take Anglican orders after some years of tepid pursuit of a career in law. Appointed royal chaplain to George III in 1763, he afterwards also accepted a secular office as principal clerk of the privy seal on William Pitt’s gift. But as it paid very little and he had started a family, the future bishop looked to his brother, George, 2<sup>nd</sup> earl Bristol, for assistance, in achieving his aim of ‘high ecclesiastical preferment.’<sup>25</sup>

When Lord Bristol, as the new lord lieutenant of Ireland met with the king to transmit the formal notification of the lords justices’ naming Frederick as bishop of Cloyne, the king cut off Bristol’s presentation before he got started. Bristol wrote Lord Chatham about the meeting:

before I could move His Majesty in favour of my brother, the King, in the most agreeable, engaging and gracious manner, said: ‘Remember, you are engaged to me for the first bishopric. I desire my recommendation may take place, and that your brother shall be the new bishop;’ and upon my saying that His Majesty enhanced my obligation by his gracious manner of conferring this great favour, he kindly added: ‘I am well pleased as yourself with his being a bishop. I find it is impossible not to be penetrated with such a disposition, and such a manner.’<sup>26</sup>

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<sup>23</sup> Fagan, *Divided Loyalties*, p. 130.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Childe-Pemberton, *The Earl Bishop*, I, 85-86 (quoting letter of George Hervey, 2<sup>nd</sup> earl of Bristol, to William Pitt the Elder, 1<sup>st</sup> earl of Chatham, January 29, 1767). Later on, Hervey’s enthusiastic support for the Irish Volunteers in the early 1780s, his unguarded personal lifestyle, and his long absences from Ireland in favor of his

The king's translation of Hervey to the valuable See of Derry<sup>27</sup> the next year when that post became vacant is further affirmation that Anglican prelate possessed praiseworthy qualities, which even George III went out of his way to acknowledge. What the new Derry bishop possessed in spades, however, was independence of mind and spirit, which he liberally put at the disposal of Ireland's Catholic population.

Evidence that Hervey was disseminating proposed drafts of an oath as early as mid-1767 is found, Fagan points out, in the correspondence of Dublin's Catholic archbishop, Patrick Fitzsimons. In a letter of December 1768 from Fitzsimons to the ultramontane papal nuncio in Brussels, Thomas-Maria Ghilini, who would be the fiercest opponent of the Hervey oath, Fitzsimons told Ghilini that 'he first saw a draft of the oath around the beginning of the previous year.'<sup>28</sup> Bartlett's research of Bishop Hervey's correspondence in the Public Record Office of Northern Ireland also indicates that Hervey was actively exchanging opinions on the oath issue between October 1767 and March 1768.<sup>29</sup> The one exception is an even earlier letter from a Dr. Dower, superior at the Irish seminary in Toulouse, to Hervey dated March 9, 1767.<sup>30</sup>

Hervey was in fact traveling in Europe with his family when the king signed letters patent for his Cloyne appointment in early March 1767.<sup>31</sup> *The Belfast Newsletter* reported in

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beloved Europe, eventually soured the king's view of Hervey and George began referring to him as 'that wicked prelate.' *Ibid.*, 93.

<sup>27</sup> *The Freeman's Journal*, February 17, 1767, 1. The value of the Derry See was said to be £20,000 per annum, the highest in Ireland. According to a list of ecclesiastical offices and their values in England and Wales around that time, however, the Derry See might have been the most lucrative ecclesiastical post in the empire. The Archbishopric of Canterbury is listed as worth only £7,000 a year, the highest shown for England and Wales. See 'A List of the Archbishoprics, Bishops, Deans, and Prebendaries. In England and Wales, in His Majesty's Gift. With the reputed Yearly Value, of Their respective Dignities. 1762,' (Fortescue, I, no. 26). A week after his consecration as Cloyne's bishop, *The Freeman's Journal* reported the following: 'It is said that the Right Rev. and Hon. Frederick Hervey, lord bishop of Cloyne, in Ireland, will be translated to the first Archbishopric that becomes vacant in that Kingdom.' *The Freeman's Journal*, June 6, 1767.

<sup>28</sup> Fagan, *Divided Loyalties*, pp. 130-31. According to Fagan, Ghilini appears to have had possession of three different versions of the Hervey draft oath. *Ibid.*, pp. 154-156.

<sup>29</sup> See Bartlett, *Fall and Rise of Irish Nation*, pp. 79-80 & applicable footnotes at p. 358. A planned research trip to Belfast to examine the Hervey papers at PRONI was cancelled because of the Covid pandemic. Thus, this study has had to rely on Bartlett's and Fagan's studies more heavily than originally intended.

<sup>30</sup> The press kept an eye on Hervey's travels in Europe even before he was appointed bishop of Cloyne. According to the *The Belfast Newsletter* of October 24, 1766, Hervey was reported to have recently arrived at Genoa from Corsica, and on February 27, 1767.

<sup>31</sup> Childe-Pemberton, *The Earl Bishop*, I, 86. Fothergill states that the king signed letters patent for his translation to Derry February 18, 1768, 'two days after the degree of Doctor of Divinity had been conferred on him by Trinity College, Dublin.' Fothergill, *The Mitred Earl*, p. 25.

late February that Hervey ‘has been traveling with his family in France and Italy, also visiting Corsica, and was one of the Englishmen hurt in the eruption of Vesuvius the year before.’<sup>32</sup> *The Freeman’s Journal* reported that the bishop-elect arrived back in London Saturday, April 18, 1767, and the following Monday ‘was presented to his majesty at St. James’s.’<sup>33</sup> His consecration to Cloyne took place in late May in Dublin, a little over a year after Jean-Olivier Briand’s consecration as bishop of Canada outside Paris, an event Hervey may have learned of through the ecclesiastic grapevine while traveling on the Continent.

For the next several years, especially during his frequent travels to Europe, the Derry bishop’s campaign for a new oath are found in reports and correspondence of these travels, especially between 1770 and 1772. During this period, Hervey visited several French cities and met with French and Irish Catholic ecclesiastics to discuss the oath issue. While the Derry bishop was dining with professors at one of the Irish colleges in France at Toulouse, for example, he reportedly ‘expressed his regret that his kind and learned hosts should be obliged to spend the best part of their lives in a foreign land.’<sup>34</sup> Hervey added, however, that he ‘could not understand why his countrymen should refuse to the sovereign of their native country that allegiance which they gave to the monarch in whose dominions they were living.’<sup>35</sup> It was a disingenuous comment inasmuch as France’s king was Catholic and the oath to the French monarch did not require a repudiation of Catholic beliefs such as transubstantiation or papal authority in spiritual matters, as the existing oaths in Ireland did.

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<sup>32</sup> *The Belfast Newsletter*, February 27, 1767. Hervey described the injury he suffered at the summit of Vesuvius as it was erupting in a letter to his daughter, Mary, explaining how a ‘red hot stone’ struck his right arm, putting a two-inch wound, tearing his coat to shreds, and caused him ‘a great effusion of blood.’ He was bedridden for five weeks. Frederick Hervey to Mary Hervey, April 15, 1766 (quoted in Childe-Pemberton, I, 75-76).

<sup>33</sup> *The Freeman’s Journal*, April 21, 1767.

<sup>34</sup> W.J. Amherst, S.J., *The History of Catholic Emancipation and The Progress of the Catholic Church in the British Isles (Chiefly in England) From 1771 to 1820*, 2 vols. (London, 1886), v.1, 51, citing Rev. Thomas England’s work, *Life of Arthur O’Leary* (London, 1822). O’Leary was a famous Irish priest and noted author, a contemporary of and admired by Burke, Fox, and Grattan, among others. He promoted religious tolerance, Catholic relief, and close relations with the imperial government. He is also said to have been on the English government’s payroll well before the time it was generally known that he had a government pension.

<sup>35</sup> *Ibid.* Hervey was alluding to the established system of state-church relations set forth in the Gallican Articles implemented in 1682, which rejected the pope’s temporal authority, *inter alia*. See Fagan, *Divided Loyalties*, Appendix, for a list of the Gallican Articles.

Hervey's hosts naturally disputed these views and it was during the ensuing debate between the Anglican bishop and his Catholic hosts that Hervey is said to have become 'convinced of the loyalty of the Irish Catholics, and of the falsehood of the many gross charges that were made against them.'<sup>36</sup> When he returned to Ireland, therefore, he began to 'spread as widely as he could the statement that the Catholics were ready to testify in any reasonable way their loyalty to King George.'<sup>37</sup>

In early 1771, the Derry bishop took his campaign to the heart of Catholicism, spending time in Rome where he is reported to have held secret meetings with Pope Clement XIV. These meetings were likely undertaken in part to do an end-run around the Brussels' papal nuncio Ghilini who wanted the pope to condemn Hervey's proposed new oath, drafts of which had been in circulation for some years by then. The 'special object of his visit' to Rome, Childe-Pemberton states, was 'to confer secretly with the Vatican in order to obtain the countenance of the Pope with reference to his plans for the amelioration of the oppressed Roman Catholics in Ireland.'<sup>38</sup>

The Anglican bishop and Catholic pope established a jocular, easy relationship during which Hervey learned that the pope 'was desirous of cultivating friendly relations with England in the interest, as he said, of his 'Irish Sons.' At the time, there were rumors circulating in Rome that the 'English Government unofficially held out hopes of concessions to the Irish Catholics, provided that the Roman clergy in Ireland should consent to subscribe to the Declaration of the Gallican Church, which was aimed against Papal Supremacy in temporal affairs,'<sup>39</sup> a supremacy that Clement XIV himself disclaimed during his pontificate between 1769 and 1774.

Hervey's meetings with the pope were apparently also attended by 'd'autres évêques Irlandais [other Irish bishops],' according to Alexis de Guignard Saint-Priest's history of the

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Childe-Pemberton, *The Earl Bishop*, I, 107-08.

<sup>39</sup> Ibid., 108.

fall of the Jesuits in the eighteenth century, but the historian cited no names. Saint-Priest's study mentioned 'some allusions' in the correspondence of the Spanish Ambassador to Rome around the time of Hervey's visit about 'alleged secret relations between the Pope and the English Government.'<sup>40</sup> Childe-Pemberton argues that Hervey was acting on his own initiative, but 'if he had, in fact, any mission from England, King George, who was not much pleased with the Bishop's long absence from his diocese, was doubtless kept in ignorance of it.'<sup>41</sup> This seems highly unlikely.

First, George III's correspondence reveals he was aware of what was happening in the lives, official and unofficial, of his appointees and members of England's and Europe's aristocracies. Second, like all European governments, England engaged in active intelligence gathering and the king's own widespread family connections in Europe kept him well-informed about happenings there. Second, it would have been very difficult for a prominent Anglican bishop, much less one who the king had a personal hand in appointing and whose family enjoyed a long and close family connection with the Hanoverian monarchy and George III in particular, to travel throughout Europe and meet with the Catholic pope and keep his monarch in the blind about it. Even if George III had not have given his Anglican friend an official nod to visit the Roman Catholic pope, given the rumors in circulation about the subject of these meetings and how the pope wanted to establish better relations with Britain, the bishop would have been the first to inform his monarch about such news. H.M. Scott writes that George III 'was always actively involved in the conduct of foreign policy.'<sup>42</sup> Conversations between Hervey and Pope Clement XIV touching on Ireland's oppressed Catholics, a possible new oath

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<sup>40</sup> Ibid., 108-09. Childe-Pemberton bases this information on Alexis de Guignard de Saint-Priest's study and archival research of the history of the expulsion and dissolution of the Jesuit order, *Histoire de la chute des Jésuites au XVIII siècle: (1750-1782)* (Paris, 1846).

<sup>41</sup> Childe-Pemberton, *The Earl Bishop*, I, 108. Lord North was the prime minister during Hervey's European tour. The government's use of secret agents and emissaries was not unusual, and Hervey apparently interested himself in high politics during his travels. Thus, he may well have been helpful to the government on many occasions which were not related to his ecclesiastical portfolio, as hinted by his biographers.

<sup>42</sup> H.M. Scott, *British Foreign in the Age of the American Revolution* (Oxford, 1990), p. 15.

that would begin to alleviate their situation, and the pope's interest in better relations with St. James, all certainly fit squarely within the sphere of foreign policy as well as imperial policy.

Although Hervey did not obtain any commitment from the pope for his new Irish oath, his efforts 'were not without some success' upon his return to Ireland.<sup>43</sup> And although Rome never sanctioned the new oath, it never officially negated it either, which for the Vatican was tantamount to approval. What the above discussion helps establish is that Hervey, from around the time of his appointment in 1767 as bishop of Cloyne and thereafter to Derry actively promoted the new oath for Catholics. Childe-Pemberton notes that for 'all the idiosyncrasies and eccentricities of Hervey's chameleon-like personality,' there was 'one underlying tone which pervaded every serious thought and action, and in this, if in nothing else, he was earnest and consistent through life; he strove unceasingly for toleration and freedom in religion and politics, and against tyranny and oppression wherever it was to be found.'<sup>44</sup>

#### Hervey's Strategy for Parliamentary Approval of the New Oath

The strict language of the Hervey text of the oath as adopted in 1774 reflected Protestant, not Catholic, sensibilities.<sup>45</sup> Fagan argues that O'Connor and the Catholic Committee took too long to respond to Bishop Hervey's request for comments on the proposed oath in early 1774.<sup>46</sup> Considering the continuing opposition to any Catholic relief, how many decades the idea for a new oath had been pending without resolution, and the serious divisions between different Catholic camps about the proposed oath's orthodoxy, it is a wonder that O'Connor and the Catholic Committee responded to Hervey's request for comments in a month's time. The real rub was that Hervey had not informed O'Connor when he turned over the draft text to the Catholic leader that the bill was about to be brought into the Commons. From all evidence and

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<sup>43</sup> Childe-Pemberton, *The Earl Bishop*, I, 109.

<sup>44</sup> *Ibid*, I, 6.

<sup>45</sup> The text of the oath is set forth in the Appendices.

<sup>46</sup> After O'Connor met with Hervey in the first week of February 1774, O'Connor called together the Catholic Committee to review the draft and after two meetings, the committee approved the oath, but with some suggested changes as set forth in O'Connor's letter to Hervey of March 5, 1774. *LCOCOB*, Ward, no. 256, 307-309. See also Fagan, *Divided Loyalties*, 141. Two days later, Robert French brought in the heads of the Hervey oath bill, which did not reflect any of the Committee's comments.

appearance, therefore, it is Hervey's timing in making the text available to O'Connor that smacked of bad faith. On the other hand, there was very little time between the date the deal was likely struck at Dublin Castle on 31 January and its introduction in the Commons on 7 March.

Had O'Connor known that the heads of the bill were to be brought in by MP Robert French in early March, he and the Catholic Committee would not have waited until a day or two before that event to submit their comments to Hervey. When O'Connor learned the bill had been introduced without adopting any of the Committee's suggested language or comments, he immediately contacted members of parliament friendly to the Catholic cause to advise them of the Committee's concerns in the hope that the bill could be amended before final disposition.<sup>47</sup>

Playing the management of the bill very close to the chest as Hervey and the Castle likely did to minimize its derailment by public opinion or either Protestant or Catholic leaders, left Hervey open to allegations that he had run roughshod over the Catholic Committee and the people the oath was intended to benefit. One of the consequences included a long period during which Catholics would not take new oath, to Hervey's deep disappointment.

Bartlett writes that Hervey told one Protestant acquaintance that the oath would create a schism among Catholics, 'a party once so united [it] will be a thunder-stroke to all that sect and be the strongest security to the Protestant interest, and the most effectual safeguard against a foreign invasion.'<sup>48</sup> Hervey had labored for almost a decade on his project and if he had to persuade hardline Protestants not to oppose it, he was prepared to tell them what they needed to hear. And, in fact, there were divisions of every stripe among Catholics in Ireland as there were throughout all religious groups.

Fagan notes, for example, that among Ireland's Catholics, there was a 'great divide among the Catholic clergy . . . between seculars and regulars,' between clergy and laity, and

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<sup>47</sup> Fagan, *Divided Loyalties*, p. 143. The text was not amended.

<sup>48</sup> As quoted in Bartlett, *Fall and Rise of the Irish Nation*, p. 79.

between ‘the [Catholic] poor and the middle and upper classes’—all exacerbated and made more perverse by the penal code.<sup>49</sup> England was a hotbed of Protestant divisions in the eighteenth century.<sup>50</sup>

Clement XIV’s pontificate revealed terrible divisions between 1769 and 1774 as the Bourbon royals sought and successfully controlled papal policy, in particular their insistence that the Jesuits be permanently suppressed. In July 1773, the pope dissolved the order, ‘extinguishing their remaining 11,000 members, 266 colleges, 103 seminaries, and 88 residences.’<sup>51</sup> Given the spectrum of divisions that characterized most religious groups during this period and throughout history, if Hervey resorted to arguing to influential Protestants that the oath would serve to divide Catholics, it would have been harmless in its effects.

There is no evidence, moreover, that Hervey drafted the Irish oath bill as a tool to further divide Catholics. That he might have exploited the worst fears of Ireland’s anti-Catholic Protestants to win their support for the bill was perhaps not the best practice, but after eight years of laboring in the thorny field of religious politics from Dublin to Rome, the Derry bishop was not about to leave any stone unturned to reach his objective. Had he put a little more faith and trust in those sympathetic to his goal, *i.e.*, O’Conor and the Catholic Committee, matters might have worked out. It was a risk Hervey was not inclined to take, or was too arrogant to take. Nevertheless, he did have to convince Protestants that the modest bill to allow Catholics to swear their allegiance to their Protestant monarch was not a threat to Protestant interests. Inasmuch as the ‘entire apparatus of government was in the hands of the 15 percent who

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<sup>49</sup> Fagan, *Divided Loyalties*, pp. 17-18.

<sup>50</sup> See, *e.g.*, James E. Bradley, *Religion, Revolution, and English Radicalism: Non-conformity in Eighteenth-Century Politics and Society* (Cambridge, 1990).

<sup>51</sup> O’Brien, *Lives of the Popes*, pp. 325-7. Catherine the Great of Russia and Frederick II of Prussia declined to enforce the dissolution order, and many others, including the church leaders in Quebec who allowed the Jesuits to continue their ministries as seculars.

belonged to the established church,' and much of that fifteen percent were committed anti-papists,<sup>52</sup> it is difficult to fault Hervey's strategy.<sup>53</sup>

One of the consequences of this strategy, however, as suggested above, was that no Catholics had yet subscribed to the oath by the end of 1774<sup>54</sup> and the 'acceptability . . . of the text was still being debated . . . a full year after the act had become law.'<sup>55</sup> Hervey's disappointment was palpable. He wrote his friend Sir John Strange that he had

carried my point for the Roman Catholics last Session, and got an Act passed enabling them to take Oaths of Allegiance without blending them with the Oath of Supremacy, and tho' the bill passed in concert with themselves, not one has had courage or honesty enough to avail himself of it, and thus they preclude themselves from all further indulgence.<sup>56</sup>

Hervey speculated that had the bill offered Catholics some immediate concrete benefit in exchange for taking the oath, or a penalty for refusing to take it, Catholics might have been more inclined to take it. This is unlikely. If the oath had contained a concrete benefit, it would have run up against the same resistance the mortgage and lease bills debated and defeated in parliament that same session, the subject of the next chapter. If the bill had contained a penalty for not taking the oath, moreover, it would simply have hardened the resistance of Catholics against ever taking it.

#### Munster Archbishop Embraces New Oath and Praises Imperial Support for Catholic Relief

Munster Archbishop James Butler II, the most enthusiastic Catholic ecclesiastical proponent of the new Irish oath, clearly saw the imperial hand behind the new oath bill, writing a church superior in October 1776 about the 'experience of the Munster bishops for the previous

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<sup>52</sup> Fagan, *Divided Loyalties*, pp. 19-21.

<sup>53</sup> The more anti-Catholic country party was, moreover, grossly overrepresented in the Irish Commons, with Ireland's four major cities and towns—'comprising near a half of the members of the established church' holding a mere twenty-four seats out of 300 in that body.' Fagan, *Divided Loyalties*, 21.

<sup>54</sup> Morley, 'Catholic Disaffection and the oath of allegiance of 1774,' in *People, Politics and Power*, 124.

<sup>55</sup> *Ibid.*, 124-25

<sup>56</sup> Quoted in Brian Fothergill, *The Mitred Earl: An Eighteenth-Century Eccentric* (London, 1974), p. 36. For the text of an oath of supremacy, see Appendices.

three years.’ As Fagan explains, ‘Butler juxtaposed the understanding attitude of the king and the central administration in Ireland towards Catholics with the sectarian bigotry of the local magistracy in Munster and of the protestant population in general there.’<sup>57</sup> In a passionate defense of his zealous advocacy for the new oath,<sup>58</sup> Butler told the Cardinal Protector that it was certainly the ‘plan of the King and his administrators in supporting the oath bill to nullify the tricks and shut the mouths of certain people not less ill-disposed to his Majesty than most hostile to us.’ The most recent proof of this, Butler explained, could be found in these critics’

public addresses and in pamphlets, offered on the occasion of the recall of parliament, [who] gave vent to their hostility and contended bitterly that all the Catholics of this kingdom, most suspicious of a Protestant king, were completely unfaithful to him by virtue of their true devotion to the Roman pontiff.<sup>59</sup>

Butler likely identified the larger fear of the Protestant establishment, *i.e.*, that the present imperial government was supportive, even the instigator, of a new policy for Catholic relief. As Ian McBride points out, in the early part of the eighteenth century, ‘official attitudes towards the Catholic threat [in Ireland] varied depending on whether Whigs or Tories were able to dominate the ministry in London,’ but ‘the architects of the penal code were well aware of the international pressures operating in favour of Catholics at the Court of St. James.’<sup>60</sup> Certainly the Canadian diplomat La Corne had the entire European Catholic lay and ecclesiastical leadership at his disposal in presenting his case for better protection of Canadian religious and civil rights to George III’s government in 1763. In the case of the oath bill, and subsequent Catholic relief bills for Ireland passed between 1778 and 1793, Ireland’s Protestant

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<sup>57</sup> Fagan, *Divided Loyalties*, 147, quoting James Butler II’s October 4, 1776 letter to the ‘Cardinal Protector.’ Fagan gives no source for the letter itself.

<sup>58</sup> Dublin’s archbishop John Carpenter had been aggressive in seeking an express veto from Rome of the oath, which efforts caused much grief for Butler. Fagan, *Divided Loyalties*, 146. The ‘stumbling-block’ for Carpenter was its ‘denial of the pope’s temporal power,’ but once Carpenter ‘was sure the Holy See had no objection to the latest formula,’ he took the oath in November 1778 ‘with seventy of his priests and several hundred laymen.’ J. Anthony Gaughan, *The Archbishops, Bishops and Priests who served in the Archdiocese of Dublin in the eighteenth century* (Blackrock, 2013), 25.

<sup>59</sup> Letter of James Butler II to Cardinal Protectorate, quoted in Fagan, *Divided Loyalties*, 147. Fagan gives no primary source for his quotation.

<sup>60</sup> McBride, *Eighteenth-Century Ireland*, p. 222.

leaders were correct to worry. By 1780, after more concrete relief for Catholics had passed in both the Irish and English parliaments in 1778, approximately 6,500 Catholics throughout Ireland had taken the oath of allegiance.<sup>61</sup> It was still a tiny percentage of Ireland's Catholics, likely reflecting how few were in a position to benefit from the new Catholic relief.

Propelled at the start by the Pitt government's intent to make significant changes in Irish affairs, Bishop Hervey had applied his considerable genius and belief in equality and religious toleration to get the new oath accepted for the most part on his own initiative. As was the case with the evolution of Britain's Quebec policy, it was an aristocratic member of the ecclesiastical hierarchy with close court connections at home and in Europe who succeeded in bringing about historic change on the Catholic question in Ireland.

Whether the Quebec Act and Irish Oath Act were acts of enlightened statesmanship,<sup>62</sup> or reflected geopolitical, military strategic concerns of imperial policymakers at the time,<sup>63</sup> or both, such motivations were of far less historic significance than the changes themselves represented. If early eighteenth-century lawmaking was, as Bartlett comments, was often 'an odd mixture of pragmatism and prudence, zealotry and rapacity, sharp practice and conscience,'<sup>64</sup> it was no less so in the last quarter of the century. All but the most rigid minds understood that radical policy changes arose out of a confluence of interests and external pressures on the governments who adopted them. The risks, especially domestic political risks, were always high. The imperial government of George III, however, throughout the first decade and a half of his reign, appeared prepared to assume the risks.

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<sup>61</sup> Bartlett, *Fall and Rise of the Irish Nation*, p. 80.

<sup>62</sup> This was the conclusion of Coupland's study, *The Quebec Act*, the first full-length study of imperial policy behind the act.

<sup>63</sup> Documents and correspondence found in volume one of Shortt & Doughty, for example, support the accepted view that the Quebec Act's most influential advocate between 1770 and 1774, General Guy Carleton, at the time acting governor of Quebec, pressed the case for adoption of the Quebec policy as the only means by which the imperial government could address its great vulnerability with respect to military manpower and fortifications in Quebec. Bartlett's discussion of the political intent behind the new Catholic policy in 1774 argues similarly that it was Britain's military needs in the looming conflict with America that required it to adopt the Catholic concessions. This need continued as the decade wore on, prompt further Catholic relief measures, Robert Kent Donovan argues in his article, 'The Military Origins of the Roman Catholic Relief Programme of 1778,' *The Historical Journal*, vol. 28, no. 1 (March 1985), pp. 79-102.

<sup>64</sup> Bartlett, *Fall and Rise of the Irish Nation*, p. 22. Bartlett's cites J.G. Simms as the source for this comment.

The following chapter examines the Irish legislature's consideration in its 1773-74 session of two bills designed to expand Catholic rights, the mortgage and lease measures. The debates and public commentaries in newspapers and letters to MPs about why these two bills should not be passed suggest what Bishop Hervey was up against in trying to achieve his objectives and why even the limited scope of the Irish oath bill must be considered, as Thomas Bartlett states, the 'cornerstone of Catholic emancipation in Ireland.'<sup>65</sup>

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<sup>65</sup> Ibid., p. 81.

## Chapter 7

### The Irish Parliament Debates the Penal Laws: 1773-74

One of the seemingly paradoxical features of the legislative histories of the Irish Oath and Quebec Acts is that the oath bill sailed through a deeply anti-Catholic Irish Commons without division while the Quebec bill, which had no well-entrenched Protestant political class in Quebec to oppose it, encountered serious resistance in the English parliament and the English and American press. The explanation for the Irish oath bill's quiet passage through the Irish parliament appears to be related to a political compromise worked out in Dublin Castle in which the oath bill would be allowed to go through and the more substantive Catholic-friendly mortgage and lease bills were once again allowed to fail.

A brief notice on page four of *The Freeman's Journal* of 1 February 1774 hints of the environment in which the likely compromise was reached. The report noted that the day before there had been a very 'numerous meeting of the Privy Council at the Castle, on the subject, as supposed, of the Popish Mortgage-bill, at which their graces the Prelate, and Archbishop of Dublin, with all their members now in town, assisted.'<sup>1</sup> The article further noted that 'the result of their consultation has not yet transpired.' The mention that all the members of the ecclesiastical hierarchy were in town makes it likely that the Derry bishop was at the council meeting with his draft oath in hand.<sup>2</sup>

A little over a month after the Dublin Castle meeting of 31 January, MP Robert French brought in the heads of the oath bill, which was approved within a fortnight without division. The mortgage and lease bills did not make it through that session. This chapter features the debates over the two bills, which reveal the true feelings, often eloquently stated, about why these bills were not yet acceptable to Ireland's Protestant rulers.<sup>3</sup>

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<sup>1</sup> *The Freeman's Journal*, February 1, 1774.

<sup>2</sup> Hervey was made a member of the Irish privy council in October 1767 when still bishop at Cloyne. Fothergill, *The Mitred Earl*, pp. 24-25.

<sup>3</sup> See Ian McBride, *Eighteenth-Century Ireland*, p. 314, concerning the mortgage bill introduced in the mid-1760s. A bill to permit papists to take building leases in cities and corporate towns, and a two-acre lot in the country,

## The Mortgage Bill

In the first part of November 1773, Hercules Langrishe, MP for Knocktopher, moved to bring in the heads of the ‘Popish’ mortgage bill, which would ‘secure the Re-payment of Money that shall be really lent and advanced by Papists, or Persons professing the Popish Religion.’<sup>4</sup> Langrishe and other friends of the bill, a version of which had recently passed the Lords, but which the king’s privy council had failed to return, ‘thought fit’ to re-introduce it in the Commons. The thinking on the part of Langrishe and other supporters of the bill was that if it were ‘sent over from that house [Commons], the privy council of England would pay greater respect to it than they had shown the bill from the Irish peers, and if it should return back, there would be no doubt of its passing through the upper house.’<sup>5</sup> There was obviously support for the Catholic-friendly mortgage bill among Ireland’s political class, but the ensuing discussion shows there was also strong resistance to any change in the penal laws.

John Burke, Jr., MP for Naas, and a leading opponent of any change in the penal laws, led the fight against Langrishe’s motion, arguing that a ‘Protestant legislature ought not to give the least countenance to such a bill.’ Langrishe’s motion nevertheless prevailed on a division of 33 to 29, and he produced the heads of the bill immediately.<sup>6</sup> Protestant anxiety over its possible passage reached a crescendo in January as evidenced by the attacks on the bill in the leading newspaper.

A mortgage held by a papist creditor, the writer calling himself ‘John Luther’ warned readers of *The Freeman’s Journal* on 22 January, would give ‘an irresistible influence over an

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under the sponsorship of Sir John Bingham, was the subject of consideration in committee in the 1771-72 session of the Commons for several days, but was never reported. *JHCI*, XV, 167, 180, 206, 215, 216, 219, 228, 229, 232. In the 1773-74 session, as discussed further below, the Commons granted leave to bring in the heads of another lease bill on November 9, 1773, and there was a 77-74 division in favor of reading the heads, but it was ultimately killed by indefinite postponement on February 11, 1774. *Ibid.*, 181, 351, 390.

<sup>4</sup> *JHCI*, XVI, 194.

<sup>5</sup> ‘History of the late Session of Parliament,’ for Monday, January 24, 1774, *Walker’s Hibernian Magazine* (1775), V, 167-68

<sup>6</sup> *Ibid.*, 168.

extravagant or otherwise needy Debtor . . . and thereby an influence at Elections,' which could lead to nothing short of a complete repeal of the penal system so necessary to protect Protestant interests.<sup>7</sup> 'John Luther' declared he would 'rather live lonely in a desert [sic], than be surrounded by neighbours, capable (if occasion offered) of cutting my throat.'<sup>8</sup>

A less bloodcurdling, if equally unyielding, view of the mortgage bill appeared in *The Freeman's Journal* a few days later as news circulated that the bill was gathering endorsements from prominent parliamentary members. In a warning addressed to Kilkenny MP John Ponsonby, one of his constituents declared that he and many of the writer's acquaintances were 'determined never to support you again' if Ponsonby did not oppose the mortgage bill. 'Though no man would be against giving the Papists proper enjoyment of their religion, and safety to their persons, yet no friend to the present establishment ought to give Papists so much power, . . . as the mortgage bill would give them,'<sup>9</sup> the constituent declared.

In a related report from 'a correspondent' appearing just below the letter to MP Ponsonby, the writer hinted that those 'who proved honest in opposition, to the offers of government, are become more pliant to the *Papists*, who have promised to lend them money on *easy* terms, Provided they vote for the Popery bills.'<sup>10</sup> Papists with cash to lend land-rich, cash-poor Protestants were being accused of using it to buy Protestant votes for the mortgage bill.<sup>11</sup> The 'correspondent' also noted that the papists had fixed on 'Langrishe, as a respectable member, to introduce [the bill],' and though he had no doubt that Langrishe acted 'on best principal, viz. an idea that the act is just,' the writer hoped that on 'reconsidering it, [he] will find *some* parts of it totally repugnant to our present constitution.'<sup>12</sup>

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<sup>7</sup> *The Freeman's Journal*, January 22, 1774.

<sup>8</sup> *Ibid.*

<sup>9</sup> 'A Protestant Dissenter presents his respects to the Honourable John Ponsonby,' *The Freeman's Journal*, February 3, 1774.

<sup>10</sup> *Ibid.*

<sup>11</sup> The history of the inroads Catholics made in Ireland's commercial sector during the era of the penal laws because they were not legally banned from that activity was pioneered by Maureen Wall, and later confirmed and supplemented by other historians, including L.M. Cullen.

<sup>12</sup> *The Freeman's Journal*, February 3, 1774.

On the question of what Protestants believed was ‘just’ about the idea of granting of rights to Catholics, ‘Luther’ asked if it was ‘consistent with justice or humanity, to loosen those bonds, which restrain a ravenous wolf from devouring you?’<sup>13</sup> No one, ‘Luther’ said, who knows ‘himself in the power of a *Popish Mortgagee*, will venture to incense him, by causing any of the [penal] Laws to be put in force.’<sup>14</sup> Should the mortgage bill pass, it would ‘strip all protection from Protestants the penal laws were established to provide them. It would be folly, he concluded, to ‘invalidate those Laws, which now but sleep under the wings of charity.’<sup>15</sup>

*Walker’s Hibernian Magazine* did not report any details of the Commons debate on the mortgage bill, but it did carry extensive excerpts from the debate on the lease bill brought in by Thomas Maunsel, MP for Thomastown, on February 11, 1774.<sup>16</sup> The substance of the bill offered Catholics the right to hold leases on property for any term of years rather than the thirty-one years to which the penal laws then limited them. They would also be allowed to hold a lease on one lot in towns. The arguments against adoption of the bill reflected many of the same concerns expressed against the mortgage bill, but Dublin MP Luke Gardiner, for one, argued that the two bills did not represent the same level of threat to Protestant interests. Gardiner admitted he had concerns about the mortgage bill, but told his colleagues that there could be none ‘justly made’ against the lease bill as it sought to allow Catholics ‘some small property in this their native land, to attach them more cordially to us.’<sup>17</sup> Burke, Jr. strongly disagreed. Though it was true the bill allowed Papists to have no more than one lot in towns, he argued, ‘in small towns, sundry Papists may take one lot each, till the whole town will be in Papists hands.’<sup>18</sup>

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<sup>13</sup> ‘To the Protestants of Ireland,’ John Luther,’ *The Freeman’s Journal*, January 11, 1774.

<sup>14</sup> *The Freeman’s Journal*, January 22, 1774.

<sup>15</sup> *Ibid.*

<sup>16</sup> ‘History of the late Session of Parliament,’ February 11, 1774, in *Walker’s Hibernian Magazine* (April 1775), V, 209-12; see also *Walker’s* October 1775 edition of the history of the same session, 602.

<sup>17</sup> *Walker’s Hibernian Magazine* (April 1775), V, 210.

<sup>18</sup> Debate of Feb. 11, 1774, ‘History of the fourth Session of the Second parliament of Ireland . . . begun on Tuesday the 12<sup>th</sup> of October, 1773, and ended June 2, 1774,’ *Walker’s Hibernian Magazine*, V, 209.

Robert Jephson of St. Johnstown, a younger son of the archdeacon of Cloyne, said to sit in the government's interest, also a poet, dramatist, and retired captain in the British army,<sup>19</sup> supported the lease bill. He observed during debate that the Popery laws 'are so full of persecution, that they are written as it were in blood, and there can be no excuse to humanity for enacting them.'<sup>20</sup> It was the popery laws, he said, that had caused the widespread impoverishment of the country and were responsible for the 'large tracts of uncultivated land.'<sup>21</sup> His remarks reflected not only the more ecumenical attitudes of Protestant men of conscience in Ireland, of which there was a growing number, but of those who sat in the government's interest, evidence of the imperial government's backing of a new Catholic policy in Ireland.

Agreeing with Jephson, Mr. Clotworthy Rowley noted that three-quarters of the trade in Ireland was in the hands of the Roman Catholics (he did not use the more pejorative 'papists'), and though Ireland derived 'such great benefits from their industry, we suffer them, with great ill policy, to labour under sundry disadvantages to which they are subjected by the Popery laws, and which deserve to be relaxed, from any evil operation against our fellow subjects.'<sup>22</sup> John Mason of Blessington also criticized the 'over-regard and blind attachment some gentlemen pay to the code of Popery laws.'<sup>23</sup> In seventy-two years of operation of these laws, Mason said, 'no more than 4055 Conformists were made' out of 'about two millions of Papists.'<sup>24</sup> The purported *raison d'être* of the popery laws—to increase the numbers of conformed Catholics—had seriously failed.

Gervas Bushe of Granard thought that relaxation of the penal laws, not rigid adherence to them, was 'the only method to increase conformists.'<sup>25</sup> Luke Gardiner revealed what really worried him about the Catholic question during debate on the lease bill. 'Both humanity and

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<sup>19</sup> Alfred Webb, biography of Robert Jephson, *LibraryIreland*, <https://www.libraryireland.com>, accessed December 1, 2018.

<sup>20</sup> *Walker's Hibernian Magazine*, V, 210.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, 209.

<sup>23</sup> *Ibid.*, 210.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

policy plead for the passing this law,' Gardiner argued, 'as the Protestants in this country are but few, in regard to the number of Catholics.'<sup>26</sup> Should the latter rise up, as Thomas Jefferson worried American slaves would do, the outcome was obvious.

MP Atwell Wood of Castlemartyr begged to differ with Mason's numbers about how few Catholics had chosen to conform in seventy-two years as a result of the penal laws. Wood said that Mason had not considered that there were likely descendants of these 4055 former Catholics who had also conformed, who if counted, would no doubt increase the numbers of actual converts to 20,000 or 30,000. This could hardly be said to be a significant increase, however, when divided over seven or more decades and given the size of the Catholic population.

Neither side addressed the obvious fallacy in members' arguments against Catholics being accommodated with passage of the lease bill. The bill in fact required Catholics to take the existing oath of allegiance to qualify for the bill's concessions, and thus there was little chance Catholics would take advantage of the bill. The bill provided that 'every such Papist should, on taking such lease, take the oaths of allegiance, And, that after the death of said papist, the lease should gavel amongst his successors; and, that if his widow or children should conform within twelve calendar months, the conformist should have a larger share.'<sup>27</sup> Burke, Jr. failed to acknowledge this provision of the proposed bill when he warned his colleagues that Catholics would be buying up whole towns if the bill were enacted. To those who shared Burke's view of Catholics, the problem was not their refusal to take the oath, it was their being Catholic, which the taking of an oath could never alter.

MP Wood also sidestepped the oath requirement in the bill, warning if 'the Papists once get power, they will re-enter on all the estates in the country, to which they think they have a right.' Papist descendants, he warned, still keep the claims of their ancestors whose estates were

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid., 209.

forfeited, and ‘the ancient titles are carefully transmitted from father to son, even of those who live abroad.’<sup>28</sup> All the talk, moreover, that Catholics in 1774 were far milder in their attitudes about their religion than their ancestors and that Protestants need not fear any disturbances from them was belied, Wood warned, by the Whiteboy troubles and their ‘daring insolence, disorder and cruelty.’<sup>29</sup>

Langrishe deviated from most of the other members by addressing the oath issue, if in a very cautious manner. In hindsight at least, his remarks appear to hint of the negotiations that were likely in progress in the Castle on all three bills. Langrishe declared his faith in the efficacy of the oath and insisted that Protestant fears about the danger of the lease bill ‘may be secured by oaths,’ which the bill required. Langrishe next pointed out that though ‘some gentlemen have said that Papists can be discharged from their oaths [by the pope], yet, if that was the case, so many Papists would not submit to disqualifications and inconveniences, which they might avoid, by taking oaths with which they could dispense.’<sup>30</sup> Such a down-to-earth reality check did nothing to move MPs Wood and Burke, Jr. from their positions. Wood insisted that ‘Papists cannot be bound by oath’ and, moreover, the ‘likelihood there is of [Catholics] abjuring any temporal authority in the Pope’ was nil.<sup>31</sup>

Some of the legislators were honest enough to suggest that not only did the lease bill not pose a threat to Protestant interests, it did not offer much to induce Catholics to conform. With the gavel law still in place, John Ponsonby pointed out, ‘their [heirs’] portions will be scarce more than five pounds a year each, which cannot be thought a motive for conformity.’<sup>32</sup> Ponsonby opposed the bill not because it would do little to induce conformity—in truth, as

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid., 210.

<sup>30</sup> Ibid, 210-1. The principal origin of anti-Catholic policy in England/Britain is the *Regnans in Excelsis* issued in 1570 by Pope Pius V excommunicating Elizabeth I and anyone who thereafter obeyed her, and further absolving all subjects of their oath of allegiance to her and any other duty owed her. The December 3, 1776 edition of *The Freeman’s Journal* printed the entire text of Pope Pius V’s bull on page 4, as submitted by ‘A.B.’ to the Committee for conducting the Free-Press for ‘the entertainment’ of the paper’s editors and readers.

<sup>31</sup> *Walker’s Hibernian Magazine*, V, 209.

<sup>32</sup> Ibid., 211.

Bartlett notes, the last thing many Protestants desired to see occur in any meaningful way—but because he believed the ‘one evil’ in the lease bill was that ‘it will hurt agriculture, by drawing people from the country to dwell in the towns.’<sup>33</sup> The ‘increase of buildings will raise the price of house rent, and the influx of inhabitants raise the price of every necessary of life.’<sup>34</sup> Ponsonby’s attempt to move the discussion in a practical direction, away from the more intransigent arguments over oaths, attracted some concurring comments, even if they did not reflect the majority view.

Walter Hussey of Atby saw clear defects in the bill, but instead of opposing its passage, recommended that the house proceed to let the bill go through committee, be examined clause by clause, and ‘amended, where deficient, and made useful.’<sup>35</sup> The penal laws were made, Hussey said, ‘for two sorts of papists: those who had real estates, to which the gavel was pointed: and those who by their personal property, might acquire real property against which was pointed the discovery clause.’<sup>36</sup> As the ‘bulk of papists were those who had neither real nor personal property . . . they could not be affected or induced to conformity by those laws: had it not been for which, as many would have conformed as were induced to do so by the gavel.’

Hussey then addressed the issue of religious differences used to justify continuation of the penal laws: ‘Difference in points of faith is not the question: we differ in regard to the geography of the other world; I think there are but two climates in it, the papists think there are *three*; but yet they might agree in the geography and cultivation of this world; and I am careless what they think of the next, if they will let me go quietly through this.’<sup>37</sup> Like Luke Gardiner,

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid., 211. The gavel and discovery laws were intended to dilute or cut off any rights Catholics claimed in Irish lands. See, e.g., Charles O’Conor’s letters on the subject of his Protestant brother Hugh’s suits against Charles under both laws to deprive the latter of his possessory interest in land inherited from his father, especially to John Curry of February 25, 1777, which provides a good summary of the suits. *Letters of Charles O’Conor of Belanagare: A Catholic Voice in Eighteenth-Century Ireland*, Robert E. Ward, John F. Wrynn, S.J., and Catherine Coogan Ward (eds.) (Washington, DC, 1988), no. 281.

<sup>37</sup> Ibid., pp. 211-2.

Hussey could not ignore the fact that Catholics far outnumbered Protestants in the Irish state, and it was that fact alone, he implied, which dictated the need for Protestant accommodation of greater Catholic rights. As the number of Catholics with the means to take advantage of more liberal property and mortgage laws was comparatively minuscule in relation to the whole Catholic population, moreover, as Hussey pointed out, Protestant resistance to any changes in these laws was not well-founded.

While the Catholic pope still retained temporal or sovereign power over a number of papal states through the nineteenth century, most Catholics by the eighteenth century had no interest in refusing to swear an oath of allegiance to their own sovereign head of state, Protestant or Catholic, because of such limited papal powers. Even scrupulous Catholic Charles O’Conor wrote his friend John Curry in June 1766 that ‘I gladly take this occasion to assure you that no mortal has more cordial a good will to the nation or natives than I have; and I can give no better a proof of it, than solemnly to declare that I wish them all as free from the *chains of Rome* as I am; and upon my conscience I know no other more beneficent wish either to them or *you in particular*.’<sup>38</sup> O’Conor had the penal laws to thank in part for such freedom from Rome given that the laws had long prohibited any contact between Ireland’s Catholics and Rome, yet the Catholic faith had remained strong there.<sup>39</sup>

Later on O’Conor would remind Curry later that Clement XIV disclaimed ‘all jurisdiction over the temporal rights of princes’ and censured those in the church of ‘intemperate zeal’ who would believe differently and would rather stimulate ‘the Faithful to inquisitions and persecutions’ than dispense charity.<sup>40</sup> O’Conor thought Clement XIV’s

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<sup>38</sup> Charles O’Conor to Dr. John Curry, June 5, 1766 (*LCOCOB*, no. 149). See also O’Conor to the Bishop of Derry, March 5, 1774, in which O’Conor sets forth the Catholic Committee’s comments on the draft oath in response to Bishop Hervey’s request a month prior. *Ibid.*, no. 256.

<sup>39</sup> See McBride, *Eighteenth-Century Ireland*, especially Chapter 6, ‘How Catholic Ireland Survived,’ for a recent survey of the subject.

<sup>40</sup> O’Conor to Curry, February 25, 1777 (*LCOCOB*, no. 281).

‘apostolic doctrine’ would ‘vex and vex sorely the *Blackstones* of the present age to find a pope renouncing the only doctrines on which they justify the Penal Laws against British Catholics.’<sup>41</sup>

The year 1766 also found the bishop of Rome, Pope Clement XIII, breaking free from significant official chains as well, which came as welcome news to the third Hanoverian monarch in St. James. On 1 January 1766, James Francis Edward Stuart, the son of James II, died in Rome where the exiled Stuart court had resided since the end of the War of Spanish Succession. Clement XIII took the occasion to withdraw further official recognition of the Stuart claim to the thrones of England, Scotland, and Ireland. George III’s brother-in-law, Prince George Augustus of Mecklenburg-Strelitz, wrote George from Rome of the Old Pretender’s death at nine on the evening of 1 January. Two weeks later, the prince wrote the king that the pope decided that it was ‘proper to take such measures wick could by no means offend the court of England and the more the Person of Your Majesty wick he absolutely would menage.’<sup>42</sup>

The prince informed George III that ‘the true reason of this is, they fear, in case they should offend Your Majesty, a landing of English troops at *Civita vecchia*. Britain’s victory in the Seven Years War undoubtedly factored into Clement XIII’s decision to cut off further recognition of the Stuart court in 1766 notwithstanding the intense pressures the Bourbon powers exerted on Clement XIII not to do so. The prince assured George III that he had taken ‘all necessary measures to know everything that passes,’ making it clear he was privy to the pope’s thinking on the issue.<sup>43</sup>

At the time of the Old Pretender’s death, moreover, Jean-Olivier Briand, vicar general of Quebec, was in Paris awaiting arrival of the papal bulls allowing him to be consecrated Quebec’s new bishop. A week after Clement XIII decided to withdraw further recognition of

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<sup>41</sup> Ibid.

<sup>42</sup> Prince George of Mecklenburg-Strelitz to the George III, January 14, 1766 (Fortescue, I, no. 197). See also the prince’s letter of January 8, 1766 to the king. Ibid., no. 172. The prince wrote to George III in English, which he had studied after moving to London when his sister, Charlotte, married the king.

<sup>43</sup> Prince George to George III, January 14, 1766 (Fortescue, I, no. 197).

the Stuart claimants, he signed the bulls for Briand's consecration.<sup>44</sup> The pope's special regard for the 'person' of George III could well have reflected the support the British monarch and his government had given the Canadians for a new bishop.

None of these events, including the death of the Old Pretender, the pope's decision not to recognize the heirs' claim to the British throne, and the closer relationship the pope apparently desired with George III gave much solace to Ireland's Protestant legislators in 1773-74. During the debate on the lease bill, MP Wood insisted on recounting a story dating back to the time of a Stuart king, Charles II, when a certain Irish Catholic named Walsh sought and obtained approval from the pope for an oath that abjured his temporal authority. When he returned to Ireland and proceeded to organize a synod to introduce the new oath, Walsh found the church hierarchy there opposed to the new oath notwithstanding the papal imprimatur.

Not only was Walsh's synod a failure, according to Wood, Walsh ended up being excommunicated. The MP intended his cautionary tale to demonstrate that if Catholics could not agree among themselves on such issues, Protestants had no choice but to keep the penal laws firmly in place as there would always be some Catholics of 'intemperate zeal' ready to overthrow the Hanoverian line and persecute those who did not believe as they did.<sup>45</sup> How he reconciled the third Hanoverian government's support for a new oath of allegiance for Catholics is not clear.

Wood's argument was a *reductio ad absurdum*. No organized religion was ever free of internal differences on major and minor matters. To justify the continued legal oppression of a community based on the premise that as long as any members of that community held a position contrary to the interests of the other communities of different faith demonstrates how tenuous

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<sup>44</sup> Trudel, I, 331. The papal bulls arrived in Paris in early February and Briand was consecrated Quebec's bishop on 16 March at Suresne, outside Paris. Ibid.

<sup>45</sup> Fagan, *Divided Loyalties*, p. 12. There was never agreement among Catholics on this issue. In 1682, for example, Catholic France adopted the 'Gallican Articles,' one of which rejected papal temporal authority. Ibid., pp. 13-15. The Gallican model of Catholic church-state relations is what Bishop Hervey hoped to adapt for the path for Catholics in Ireland.

arguments against repeal of any of the penal laws had become. Nevertheless, such arguments prevailed on the lease bill.

As ‘so many learned, sensible and respectable members of both houses divided in their opinions of the expediency of relaxing or suffering any alteration in the popery laws,’ Robert Hellen of Bannow argued in response to the various members’ comments on the lease bill, ‘it is a proof to me, that this is not a fit and proper time . . . to try any experiments.’<sup>46</sup>

The order for going into committee on the lease bill being read, Burke, Jr. moved that it ‘be postponed till the first of August, the glorious day on which the protestant house of Brunswick acceded to the throne.’<sup>47</sup> Thus, the lease bill suffered an ‘unmanly’ demise by postponement.<sup>48</sup>

By 1774, opponents of any changes in the penal laws had at least to drop the pretense that such laws were needed to induce Catholics to conform to the established religion.

#### The Irish Press Draws Connections Between New Policy and Geopolitical Concerns

An April 1774 article in *The Freeman’s Journal* began connecting the dots between the British ministry’s resolve ‘to use coercive methods’ in America to subdue the rebellion in New England and Catholic Ireland’s potential role in that effort, only a month after the Oath Act passed the Irish Commons. While using troops from the 12,000-man standing army Britain kept offshore in Ireland to defend threats to its global interests was not in issue, the article mentioned that the ministry was concerned that ‘the troops that may be sent for this purpose [to America] may refuse to act against their oppressed brethren,’ in which case ‘Irish papists’ might be raised instead.<sup>49</sup> The article further noted that

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<sup>46</sup> *Walker’s Hibernian Magazine*, V, 212.

<sup>47</sup> *Ibid.*

<sup>48</sup> During a debate on the Stamp Act for Ireland that same session, one of the opponents of the Act, MP Chapman, argued that instead of killing it by postponement, he thought it ‘would be a more manly way of proceeding to move that it be discharged.’ Mr. Redmond Morres, another opponent of the bill, replied that as it was his intent in making the motion to postpone to ‘get rid of the bill,’ he was ‘quite indifferent as to the mode.’ ‘History of the late Session of Parliament,’ February 11, 1774, *Walker’s Hibernian Magazine*, V, 167.

<sup>49</sup> *The Freeman’s Journal*, 9 April 1774. As discussed in the next chapter, English parliamentary opposition to the Quebec bill accused the government of similar intentions with respect to use of the Canadians to help put down the rebellions in America.

In order to remedy this defect it has been proposed in the Council to issue orders for raising three regiments of *Irish papists*, from whose known attachment to arbitrary power, and hatred of all protestants, especially dissenters, there is no doubt but they will cheerfully obey the orders of Government, and totally extirpate (if required) the rebellious hereticks.<sup>50</sup>

As Vincent Morley points out, however, class differences among Irish Catholics led to different outcomes on the issue of the American war. The more elite Catholics, those willing to take the new oath, for instance, remained by and large supportive of the imperial government during the American war. Others not so privileged did not hesitate to join the revolution on the American side.<sup>51</sup> Opponents of the Quebec bill in Westminster would also accuse the government of similarly plotting to arm Canada's Catholics to help suppress rebellion in the old American colonies.

On the eve of the American Revolution, as the English parliament's debate of the Quebec bill was underway, *Finn's Leinster Journal* of 28 May 1774 reported on the accession of Louis XVI to the French throne that month upon the death of his grandfather, Louis XV. The article recounted an anecdote circulating a few years back about France's new king when he was still the *dauphin*, which anecdote the newspaper suggested held more than contemporary relevance to Britain in 1774. Simon Harcourt, 1<sup>st</sup> earl Harcourt, Ireland's lord lieutenant in 1774, who had earlier served as Britain's ambassador to Louis XV's court, was at the center of the story behind the anecdote.

Harcourt, George III's governor when the king was still prince of Wales, reportedly asked the French foreign minister, the duc de Choiseul, what France intended to do with Corsica, which it subdued in 1769. Choiseul, who could not wait for the next opportunity to re-establish France's global supremacy, presented Lord Harcourt's question to Louis XV and received a cryptic response. The king's answer was said to have 'delighted' the minister, who

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<sup>50</sup> Ibid. Emphasis added.

<sup>51</sup> Morley, *Irish Opinion and the American Revolution*.

thereafter spread the word that there would soon be another war with England. When the rumor made its way to the fifteen-year-old *dauphin* and future Louis XVI, however, he stepped in to correct it, declaring ‘we shall have no war until I wear the crown, and I will pay the English a visit myself.’<sup>52</sup> The writer in *Finn’s Leinster Journal* could not help ending his article of late June 1774 with the rhetorical question: ‘what could England expect now that the dauphin was on the French throne?’

Such speculation regarding French intentions toward their neighbor across the channel and France’s historic connections to aiding Catholics in Ireland during conflicts with England certainly help explain in part the imperial government’s interest in freeing Catholics from some of the penal laws and oaths they would not take, preventing them from being useful to empire. The crisis, G.H. Guttridge comments, handed the Rockingham Whigs in parliament ‘the cause for which they had been waiting’ to re-establish themselves as head of a powerful opposition coalition,<sup>53</sup> one poised to take the reins of power in Whitehall if they played the Quebec card for all they thought it was worth. The next chapter shows the folly of the Rockingham strategy in opposing the Quebec bill, as executed principally by Edmund Burke.

The Quebec bill, brought in as the last bill of the session, indeed handed the Rockinghams a near perfect vehicle with which to showcase their classic Whig principles against what the opposition alleged was George III’s dangerous romance with arbitrary governance, papism and Gallicanism. Compared to the quiet passage of the Irish oath bill marking a turning point in Ireland’s Catholic politics, the next chapter demonstrates that despite the popular and parliamentary attacks on the new Catholic policy as incorporated in the proposed Quebec bill, the imperial government led by Frederick, Lord North, together with the

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<sup>52</sup> *Finn’s Leinster Journal*, 25 June 1774. A

<sup>53</sup> G.H. Guttridge, *English Whiggism and the American Revolution* (Berkeley & Los Angeles, 1942), 41, 47. O’Gorman notes that the Rockinghams were at the head of another opposition coalition in 1769, the Petitioning Movement, in which twenty-five percent of the electorate signed the petitions circulating sparked by the unseating of John Wilkes by the Commons after the 1768 election. The ‘Rockingham Whigs were involved in the Petitioning Movement from the very beginning.’ Frank O’Gorman, *The Rise of Party in England: The Rockingham Whigs 1760-82* (London, 1975), p. 243.

government's sharpest legal tongues, out-Whigged the Rockinghams in debate and simultaneously overturned more than two centuries of anti-Catholic law and policy while they were about that business.

## Chapter 8

### The Rockingham Whigs v. the Quebec Bill: May/June 1774

The position taken against the Quebec bill by the Rockingham Whigs, the leading opposition party, in May and June 1774 reflected very little of the honest policy deliberations and discussions conducted over the previous decade by imperial and colonial officers on the Quebec Catholic question, including those in which the Rockinghams had played a major radical role, as detailed in chapter 5. In opposition since August 1766 when George III had replaced them with William Pitt, the Rockinghams hoped to use the Quebec Act to rally their old allies in the merchant communities throughout both sides of the Atlantic with whom they had joined together to repeal the Stamp Act in 1766. Their success had likely helped bring down their government as George III defended himself over rumors that he had undermined his government's commitment to full repeal.<sup>1</sup> The Rockingham party's new objective in 1774 during debate on the Quebec Act was to force the government to change course in its American policy. For that they needed the merchant community's support.

To rally its old allies from the Stamp Act, the Rockinghams chose to launch a classic 1688-inspired Whig attack on the Catholic-friendly Quebec bill, led by Edmund Burke. At the time, Burke was also serving as London agent for the New York Assembly, whose interests the Quebec bill also implicated.<sup>2</sup> Aside from a passionate call for religious toleration in the middle of his attacks on the tithe language in the bill, Burke put his rhetorical power at the service of

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<sup>1</sup> The king wrote two memoranda to defend his actions during the Stamp Act repeal crisis, denying he had gone behind Rockingham's back on the issue. (Fortescue, I, nos. 247, 248). The entire drama, however, is set out in Fortescue, I, nos. 247-260.

<sup>2</sup> See Hoffman, *Edmund Burke*, p.15 & pt. 1, ch. 1. Burke became London agent for the General Assembly of the Province of New York on Rockingham's recommendation in 1771. Hoffman notes that Burke did not discuss this work other than with those with whom it was necessary to carry on his agency work, mostly in the Board of Trade. *Ibid.*, pp. 73-75.

England's Glorious Revolution with a fireworks display of traditional English xenophobia toward the French Canadians, the bill's beneficiaries.

Examining the Quebec question as it stood between parliament and the North administration on the eve of the American Revolution, this chapter focuses on the exchanges between the Rockingham party's spokesmen against the Quebec bill and the bill's imperial defenders during debate. Not only did the government make a spirited and successful defense against the philosophical, political and legal challenges raised by the Whig opposition, but it did so as seditious calls for their heads appeared daily in the press. It was at times difficult to discern if the opposition in parliament was repeating attacks on the bill from the daily press stories, or the press was repeating what had been said in parliament.

#### The Conflicted Rockingham Whig Case Against the Quebec Bill

In his 'Imperfect notes for a speech on the Canada bill,' Burke wrote that he had 'no objection to the free Exercise of Religion as it was possessed originally' in Canada, 'or that the Clergy of the Country should possess such Estates of whatever kind as they legally possessed before the Conquest.<sup>3</sup> As chief spokesman for his party when the bill came before the Commons, however, it would be his notes on arbitrary government that would dominate his and the Rockingham Whigs' attack on the bill. He would never, Burke wrote, 'on any pretense' give his vote for the 'establishment of arbitrary government anywhere.'<sup>4</sup> The bill's provision for a legislative council subject only to royal control through a royal governor, its failure to provide for jury trials, an elected assembly, habeas corpus, and its complete revocation of the 1763 Royal Proclamation that had established the use of English law in Canada gave Burke and his party ample ground on which to showcase their 1688 Whig lineage during debate. Steering clear for the most part of attacking the bill's guaranty of the free exercise of the Roman

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<sup>3</sup> WWM BkP 6.4.

<sup>4</sup> Ibid., 6.5.

Catholic religion in Canada, they nonetheless tried to corner the bill's managers into admitting the bill did nothing to protect Protestant interests.

The Rockinghams chose the bill's tithe provision to hammer home their point.<sup>5</sup> The criticism led the bill's manager, Lord North, to include a provision for support of the Protestant church as well, but Burke and Charles James Fox then focused on the control the bill put in the monarchy over the tithes. The debate that ensued seesawed back and forth as the two sides sought to claim the keys to the rarefied 1688 Whig kingdom.

'I am not a little hurt,' Burke told North on 7 June during debate on the tithe clause, 'that the evils of arbitrary power are to be corrected by the insertion of other acts of arbitrary power.'<sup>6</sup> It seemed to Burke that 'every body is made to depend upon the King's pleasure. It leaves the possession of tithe not fixed agreeably to any certain rule, but dispossessable at the King's pleasure. . . . We find the King's pleasure twisting itself about every fibre of this bill. . . . I want as much of law as you please, and as little of the King's pleasure as possible.'<sup>7</sup> The law should be 'the golden rule, that establishes religion for the Frenchman, or gives it to the Englishman,' Burke urged. 'I want a legal provision, not an arbitrary provision. Let those who have the tithes, and those who get them, have them and get them by law.'<sup>8</sup> Parliament, Burke reminded his king, held the purse strings by law, having fought a revolution to establish the principle.

Burke next asked North if his amendment to the clause did not also 'give [the king] power to rob the Popish clergy, without giving any advantage to the Protestant clergy?'<sup>9</sup> Charles Fox joined Burke, adding that the bill gave to his Majesty's ministers the power 'to excite individuals to establish a religion contrary to the opinion of the majority of the people in it.'<sup>10</sup>

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<sup>5</sup> The debate over the tithe issue is in Cavendish, pp. 216-25. The tithe was suspended by the British military leaders in the Montreal capitulation. The Quebec Act reinstated it.

<sup>6</sup> Cavendish, pp. 216-7. Burke was referring to Lord North's amendment to the clause that provided for support of the Protestant church and clergy, but with control of the tithes remaining in the king's power.

<sup>7</sup> *Ibid.*, p. 217.

<sup>8</sup>

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, p. 218.

In pushing the government to clarify the language and declare itself clearly on the support of both Catholic and Protestant religions in Quebec, Burke and Fox hoped to tighten the noose around the government's arbitrary neck, which the daily press assaults on the bill, the ministry and the king was keeping firmly in place.

What he desired to see, Burke continued, was language that required 'that every one should contribute towards the maintenance of the religion he professes.'<sup>11</sup> Were the bill's imprecise language in favor of arbitrary royal control allowed to stand, he warned, Britain could end up promoting atheism in Quebec as it required only those professing the Roman religion to pay the tithe.<sup>12</sup> Those who wished not to pay the tithe need only not profess the Roman religion, but no religion at all. The clause 'does not provide for the establishment of popery,' Burke said, 'but it does provide for the establishment of atheism.'<sup>13</sup> Burke had, he told North, 'not yet heard a shadow of an answer to this charge; nor the slightest attempt made to remedy this evil.'<sup>14</sup> As he did throughout the debate, Burke switched back and forth between issues of concern to him personally and those intended to carry out the party strategy to rally the merchants to their cause. The bill's purported encouragement of atheism was of personal concern to Burke.

'Since the 1750s,' Richard Bourke points out, 'Burke had been on his guard against the rise of irreligion.' The year before parliamentary debate on the Quebec bill, on his visit to Paris, 'Burke had been dismayed by the public profession of scepticism.'<sup>15</sup> To Burke, the established church of any denomination was a far safer depository and distributor of funds meant for their support and growth than the discretionary control of monarchs who might choose to help themselves to the funds without regard to the support of the religions for which they were intended. Burke's proposed remedy was that all should pay tithes and those paid by persons

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<sup>11</sup> Ibid., p. 223.

<sup>12</sup> Ibid., p. 224.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> See discussion in Bourke, *Empire & Revolution*, pp. 717-27.

choosing not to profess the ‘Roman Catholic religion shall be handed over to the Society for the Propagation of the Gospel,’ the Church of England’s oversight vehicle for its foreign missions. Burke’s motion failed.

The government’s silver-tongued, politically dexterous solicitor general, Alexander Wedderburn, an Edinburgh native, and an old friend of Burke, rose to respond for government to the various points Burke and Fox made. Regarding the ‘proviso with respect to the establishment of a provision for the clergy of Canada,’<sup>16</sup> Wedderburn not so subtly sought to portray Burke and his party as over-solicitous of the Catholic cause and deflect some of the press attacks away from government. Purporting at first to agree with Burke and Fox that ‘the Roman Catholic religion ought to be the established religion of that country,’ albeit adding the words, ‘in its present state,’ Wedderburn seized back the Protestant Whig banner, explaining that he ‘did not mean to assert, that this should be perpetually the state of Canada; or that we are by law to enact that the people are not to be converted; or that the tithe shall remain in the Popish clergy.’<sup>17</sup> Nor would he ‘hold out the temptation, that if you are a convert you shall not pay tithe,’ directly addressing Burke’s charge that the bill promoted atheism.<sup>18</sup>

Protestant tithes, Wedderburn assured his colleagues, would go to support Protestant clergy, just as Catholic tithes would go to support the ‘Popish’ clergy. He would, however, leave the discretion allowed in the bill ‘so large, that if they [the Catholics] were to be converted to the Protestant religion, I should hold it to be absolutely necessary to adopt the mode of Protestant worship; and that all tithe should be paid by Popish inhabitants and others to the Protestant clergy. The bill awaits events,’ he concluded.<sup>19</sup> None of what Wedderburn said, of course, would have pleased the Canadians, but as was the case with Bishop Pontbriand on the eve of the British conquest of Quebec, and Bishop Hervey on the eve of pushing through his

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<sup>16</sup> Cavendish, p. 218.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Cavendish, p. 219.

new oath for Catholics in Ireland, one had to do what was necessary to reach exalted, or higher, ground.

Charles James Fox cautiously stuck with the Rockingham Whig theme of the necessity of curtailing royal power. He wanted further clarification from the solicitor general on the tithe language, asking if it was ‘contemplated to give to his Majesty the power of applying that tithe to the support of which clergy he pleases,’<sup>20</sup> which the proposed language appeared to allow.<sup>21</sup> Wedderburn’s response was necessarily evasive. Burke and Fox had pushed him as far as he was willing to go on the issue of royal control of the tithes, segueing instead back to his vision of a future Canada filled with Protestants.

‘Though I wish to tolerate the Popish religion, I do not wish to encourage it,’ Wedderburn said. ‘As soon as the majority of a parish shall be Protestant inhabitants, then I think the ministers of the Crown are bound to make the minister of that parish a Protestant clergyman; then, I think, it could not be felt by any man an act of injustice to say, that the whole revenue of that parish shall be paid to the Protestant clergy.’<sup>22</sup> Wedderburn was clearly playing to the gallery to defend the government against popular, not parliamentary, opposition.

No doubt for a brief moment or two after Wedderburn finished these remarks, Burke and Fox might have wished they had held their fire somewhat as they had clearly provoked Wedderburn to declare the government’s commitment to the founding revolutionary religious principles of 1688. On the other hand, Burke and Fox may have succeeded in pushing Wedderburn out on a very tricky political limb by leading him to embrace a vision of a mass

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<sup>20</sup> Ibid.

<sup>21</sup> The clause as proposed and adopted in the Quebec Act reads as follows: ‘and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion. Provided, nevertheless, That it shall be lawful for His Majesty, His Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.’ (*S&D*, I, 572).

<sup>22</sup> Ibid. The growth of the Protestant established church in Quebec and elsewhere in North America in the last half of the eighteenth century was slow-going, as Peter Doll’s history of the subject points out. The government was not prepared to advance the funds necessary to establish or support its official religion in Quebec and Protestants were not of sufficient number or inclination for quite some time to compel such support. Peter M. Doll, *Revolution, Religion, and National Identity: Imperial Anglicanism in British North America, 1745-1795* (Madison, NJ, 2000).

Protestant conversion of the Canadian Catholic population that might have scuttled the government's geopolitical strategy to keep the Canadians loyal to their new sovereign in the face of French perfidy. If such remarks filtered across the Atlantic to Quebec, the Canadians without doubt would feel far less sanguine about the government's statutory promises, especially if men like Wedderburn would come to have direct sway over their treatment.

Burke and Wedderburn were old friends. Before squaring off on the 'Canada' bill, Wedderburn had sought Burke's comments and support for a draft of the bill he had prepared in response to his government's request a year earlier. Several other government lawyers were also tasked with doing the same toward the end of 1772. In the first paragraph of Wedderburn's proposal, he provided for religious freedom for all residents of Canada, not just Catholics,<sup>23</sup> no doubt confident that this approach comported with Burke's own view of religious toleration.

In his undated letter to Burke most likely written in early spring 1774, Wedderburn wrote: 'I trust to your real Publick Spirit that you will rather consider how It is to be corrected than how it is to be opposed.'<sup>24</sup> Given the Rockingham party's uncompromising stance toward any government initiatives while in opposition, although individual members opted on occasion to deviate from this rule, including Burke, Wedderburn's appeal to Burke's 'real Public Spirit' to do so in the case of the Quebec bill did not bear fruit. Although there is no record of a written

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<sup>23</sup> Wedderburn's draft clause granting freedom of religion for all faiths was not incorporated in the final bill, possibly to avoid increasing the already rising number of dissenters emigrating to North America at this time, albeit for economic reasons mostly.

<sup>24</sup> Wedderburn to Burke, [ante 10 June], WWM BkP 516. Wedderburn had submitted his recommendations on Quebec policy pursuant to a formal request by the court on 6 December 1772. *S&D*, I, pp. 424-37. What is reprinted are extracts from Wedderburn's principal report and draft regulations, including a proposed clause that made it lawful 'for all His Majesty's Subjects of the Province of Quebec freely to profess their Religion in the said Province, without being subject to any Penalties or Prosecutions for the Exercise of the same.' *Ibid.*, 433. This provision appeared in the fifth paragraph of Wedderburn's draft of 6 December 1772, but a similar clause is found in the first paragraph of the draft bill Wedderburn sent Burke with his undated letter quoted above. It is clear from the contents of the letter that the two had been in touch about the Quebec policy issues as Wedderburn's letter appears to be a response to Burke's request for a 'report on the Laws of Quebeck.' Wedderburn and Burke had known each other since the late 1750s before either entered parliament. George H. Guttridge, 'Introduction,' *Correspondence of Edmund Burke*, Vol. III, July 1774-June 1778 (Cambridge/Chicago, 1961). The two are usually portrayed as political antagonists, even enemies, likely because of the duel they nearly fought in 1778 following an exchange in parliament during a contentious debate on the government's American policy. Their mutual admiration of their intellectual and political abilities and instincts continued, however, throughout their lives. They cooperated, for example, on future Catholic relief bills. Wedderburn was also one of the pall bearers at Burke's funeral in 1797.

response from Burke, from other remarks Wedderburn included in the letter, it is clear the two had been in contact about the Quebec matter. Burke, it appears, had requested a study on Canada's pre-conquest laws about which Wedderburn had some knowledge, indicating that Burke, despite some of his less than defensible remarks during debate, had likely followed his typical routine of thoroughly investigating a subject on which he meant to speak in parliament or write.

In any event, Wedderburn's Whig panegyrics of 7 June had opened the door for Burke to reclaim the high ground on the issue of religious tolerance for which both men shared true empathy, Wedderburn's draft bill having endorsed it in its broadest possible sense. Borrowing from an eloquent Shakespearean soliloquy in *The Merchant of Venice*, Burke urged his colleagues to introduce religious tolerance at home as well as in Canada in the middle of the debate on the tithe issue.<sup>25</sup>

Asking the Commons' indulgence to say 'in a few words' concerning his 'opinion with regard to the principle of toleration,' Burke said:

There is but one healing, Catholic principle of toleration which ought to find favour in this House. It is wanted, not only in our colonies, but here. The thirsty earth of our own country is gasping and gaping, and crying out for that healing shower from heaven. The noble lord has told you of the right of those people by the treaty; but I consider the right of conquest so little, and the right of human nature so much, that the former has very little consideration with me.<sup>26</sup>

Burke further urged that 'we ought to suffer all classes, without distinction, to enjoy equally the right of worshipping God, according to the light He has been pleased to give them.'<sup>27</sup> As he had on the issue of atheism, Burke was expressing his own views, which went well beyond those of 1688 revolutionaries on the subject of religious toleration. To those critics in and out of parliament who had been claiming that the Quebec bill's provision for a tithe for

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<sup>25</sup> Cavendish, pp. 222-5. Cobbett does not report the speech.

<sup>26</sup> Cavendish, p. 222. The entire speech is found at pp. 222-4, with additional remarks at pp. 289-90. See also the speech as reported in *Parliamentary History*, XVII, 1397-99.

<sup>27</sup> Cavendish, p. 223.

the Catholic clergy made Catholicism the established religion of the colony, not Protestantism, a charge Wedderburn had in fact sought to make against Burke and Fox, Burke boldly responded: ‘the establishment was not made by you; it existed before the treaty; it took nothing from the treaty; no legislature has a right to take it away; no governor has a right to suspend it.’

Echoing Lord Mansfield’s critical intervention on the Canada question on Christmas Eve in 1764 in his letter to George Grenville discussed previously, Burke told the Commons that ‘this principle is confirmed by every civilized nation of Europe. In all our conquered colonies, the established religion was confirmed to them.’<sup>28</sup> While this had certainly not been the settled policy for treatment of the Acadians in Canada after their transfer to Britain in 1713 under the Treaty of Utrecht, Burke’s reference in his speech on religious tolerance to the 1648 Peace of Westphalia was an indirect hint that such a policy as established by that treaty had yet to become established policy throughout Great Britain.

Both Quebec’s pre-conquest religion and Britain’s established church could be considered part of the colony’s religious establishment, Burke argued, citing the Treaty of Westphalia of 1648 ‘by which the duties of two or three establishments were discharged in the same church on the same day; the Roman Catholic, the Lutheran, and the reformed [Calvinist] religion. It sets an example worthy of a Christian church. It is a happy union that has fixed peace for ever in those provinces.’<sup>29</sup> Bishop Pontbriand had successfully applied the Westphalia principles to everyday Catholic interaction with the Protestant conquerors in his colony after the conquest and saved his church and Canadian lives as a result. But Burke was giving no quarter to the Canadians’ desire for their own civil laws and customs.

If he considered both sides’ views in his ‘imperfect notes for a speech,’ it did not carry over to his stated position during debate. The best mode of government for a conquered people, Burke wrote in his notes, is that ‘which they like—& they generally like best what they have

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid., p. 224.

practiced for the longest time. However it is sometimes otherwise,' he opined, reverting to the maxim, '*Spartam nactus es, hanc exorna.*'<sup>30</sup> He was ready, he wrote, to 'give men a little ease & security—wherever they are and whatever their opinions may be,' adding wistfully that he wished 'we could prevail on ourselves to govern our antient subjects with half the Justice & Equity & good policy wh. we use to this conquered people.'<sup>31</sup> Noting that Britain valued itself 'on our tolerating Spirit, yet if we establish certain principles of policy highly repugnant to [the] situation & prejudices of any large part of mankind wh. we may have to deal with and attempt to force them by violent penalties to the forfeiture of natural rights, we are the most implacable of all persecutors.'<sup>32</sup> As usual, Burke had no need to write the words 'Ireland' or 'Catholic' to convey the specific examples he had in mind.

Yet, he continued in his notes, he 'understood geography enough to know that if we hold no toleration is [to] be given to them we declare ourselves Enemies to mankind to the best of our power.'<sup>33</sup> While he was still thinking in terms of religious toleration no doubt, as his subsequent speeches throughout the rest of the debate suggest, Burke's principal tasks at this time as a Rockingham Whig political leader caused him to leave this subject and give his attention to winning the support of Britain's influential merchant communities throughout the empire. Carl Cone thought Burke gave too much regard to these interests, as discussed below. Without the support this community, however, which had been pivotal to the Rockingham government's hard-fought parliamentary battle to repeal the Stamp Act in 1766, the Rockinghams could not hope to reverse the government's increasingly militaristic American policy, they thought. Burke's more incendiary, anti-French, anti-Canadian xenophobic rhetoric was aimed at this party objective, and seriously undermined the high ground he had occupied on the issue of toleration.

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<sup>30</sup> WWM BkP 6.5.

<sup>31</sup> WWM BkP 6.7.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

On 10 June, after a long speech in support of member Mackworth's motion to add a clause allowing for jury trials in Canada, which effort failed notwithstanding the reasonableness and pithy eloquence with which Burke argued it,<sup>34</sup> he returned to his defense of English interests in Quebec. An Englishman, he said, 'ought to be worth more than twenty Frenchmen, if you estimate him as a freeman and the Frenchmen as slaves . . . Do you propose to take away liberty from the Englishman, because you will not give it to the French. I would give it to the Englishman, though ten thousand Frenchmen should take it against their will.'<sup>35</sup>

British commercial interests had to be protected, Burke insisted. 'Two-thirds of the whole trading interest of Canada are going to be deprived of their liberties, and handed over to French law and French judicature,' he warned.'<sup>36</sup> No English merchant, he said, 'thinks himself armed to protect his property, if he is not armed with English law.'<sup>37</sup> Accordingly, Burke claimed 'protection for the three hundred and sixty English families, whom I do know, against the prejudices of the noblesse of Canada, whom I do not know.'<sup>38</sup>

The Canadian *noblesse*, Quebec's landowning *seigneurs* who had for the most part remained in Quebec after the conquest,<sup>39</sup> were few in number. As Hoffman points out, however, one in particular, Michel de Lotbinière, who gave testimony during the committee phase of the bill, had a claim pending before the Board of Trade for confirmation of his pre-treaty grant from the French government of a large body of land in the Champlain region in eastern New

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<sup>34</sup> On 15 May 1774, lord chancellor Apsley wrote Dartmouth, who oversaw the final draft of the bill and introduced it in the Lords on 2 May, warning him to resist the opposition's request for the optional jury trial in cases involving merchants. 'They will say it must go to all Mercantile transactions,' Apsley noted, '& all revenue causes must have the same status.' Apsley urged Dartmouth to consult with Lord North before addressing the subject in the House. 'It seems more advisable to stand the Harangue of the Day there to yield to the request, which certainly squints at the Revenue.' Apsley to Dartmouth, 15 May 1774, Dartmouth, II, 2041.

<sup>35</sup> Burke's speech of 10 June 1774. Cavendish, p. 288.

<sup>36</sup> Cavendish, p. 288.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> On the phenomenon of a majority of Canadians remaining in the colony after the conquest, see Hubert and Furstenberg, *Entangling the Quebec Act*, p. 8. One of these *seigneurs*, M. Lotbinière, testified during the Commons' committee phase of the bill. When asked if he did not 'think the English laws the best for the Canadians in general,' Lotbinière responded that 'I make no doubt but your laws are wise and good and make you a happy people, but my countrymen prefer their old laws and customs.' Cavendish, p. 163. Francis Maseres, Cavendish notes, described Lotbinière 'as being a very sensible and reflecting man, and a great proprietor of land in Canada.' Ibid.

York, which leading New York land speculators, some of whom were Burke's clients in the New York Assembly, were disputing.<sup>40</sup> This may have colored Burke's attack on the Canadian *noblesse* on 10 June as he was certainly not known to harbor ill feelings toward nobility in general. By referring only to this small elite French group, moreover, Burke was able to avoid addressing the wishes of the other 65,000 inhabitants in Quebec about whom he claimed to know so little.

Burke then 'divided the people concerned in the Bill under three heads, with English merchants topping his list. Next were 'English subjects; and thirdly, the Canadians.'<sup>41</sup> He is then reported to have recalled the 'old vulgar saying that one Englishman was always worth two Frenchmen, that in this case he thought them preferable to fifty Frenchmen.'<sup>42</sup> The best bone he would throw the unfortunate Canadians was English law, whether or not they understood it or wanted it. Wedderburn had earlier castigated this Whig stance by arguing that to impose English laws and customs on others because Englishmen preferred them or thought they were the best was 'gross, barbaric, and absurd.'<sup>43</sup> Wedderburn warned his colleagues that

if you attempt by force to make men change their customs; if you attempt to make the establishment of the law precede the conviction of its expediency, you exercise the same power which the Spaniards have exercised over their subjects in America; and the . . . inquisition would be proved to be a right measure.<sup>44</sup>

'It requires us only to read history to be convinced,' Wedderburn added, 'that deluges of blood have been spilt by nations, in their endeavor to force others to adopt them, who have not had the same motives for veneration and attachment to them.'<sup>45</sup> No doubt the bill's contradictory principles of religious freedom for Quebec's Catholics and its lack of a political vehicle for elected representation as desired by the English community in Quebec led to

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<sup>40</sup> Hoffman, *Edmund Burke*, pp. 112-6.

<sup>41</sup> *PH*, XVII, 1398.

<sup>42</sup> *Ibid.*

<sup>43</sup> Speech of Alexander Wedderburn in Commons, 10 June 1774, Cavendish, p. 272.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

contradictory arguments by both sides during debate. To Burke's and Wedderburn's credit, they worked heroically throughout the Quebec bill debate to represent the interests of their party as conflicting as they were. Those unfamiliar with Burke's Whig party leadership duties, his duties as London agent for the New York Assembly, or his views on religious toleration, might reasonably have misinterpreted or been confused about much of what Burke said on the various features of the bill.

In his remarks on 6 June 1774 on the New York-Canada boundary language issue, for example, Burke raised the specter of a reprise of the bloody border wars that had characterized Canadian-American history since the early seventeenth century, fueled in great part by religious differences and centuries of Anglo-French military conflicts. Expressing deep concern that under the bill the 'Crown had the power of carrying the greatest portion of the actually settled part of the province of New York into Canada,' Burke was soon enflaming the discussion by arguing that the proposed reinstatement of Canadian civil law in British-controlled Quebec could lead to English-speaking subjects in the border region awakening to find themselves 'handed over to the French government.'<sup>46</sup> That Burke had recently been to France to settle his son for an extended stay there and had, during the Seven Years War, praised French colonial rule in North America in his collaborative history of the European settlement of the continent with William Burke, indicates the high political stakes for which the Rockinghams were playing the anti-French, anti-Canadian card.

On 6 June, Burke took the House through an excruciatingly detailed explanation of his proposed amendment of the bill's description of the boundary lines between New York and Quebec,<sup>47</sup> arguing that the effect of the language in the proposed bill was to 'reduce British free subjects to French slaves':

Whether the English mode of descent is better than the French, or whether a trial

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<sup>46</sup> Ibid., p. 190.

<sup>47</sup> Cavendish, pp. 188-97. Cavendish notes that 'after a long and desultory conversation, the words proposed by Mr. Burke were inserted.' Ibid., p.197.

by a judge is better than a trial by a jury, it is not for me to decide: but an Englishman has a privilege that makes him think it is better; and there is, Sir, as much reason to indulge an Englishman in favour of his prejudice for liberty, as there is to indulge a Frenchman in favour of his prejudice for slavery.<sup>48</sup>

‘All government is good,’ Burke continued, ‘but compared with the English government, that of France is slavery.’<sup>49</sup> Newspapers enthusiastically printed large excerpts from Burke’s remarks, one noting that he ‘was said to have distinguished himself by his zealous endeavor to gain precision between the limits of the despotism of Canada and the freedom of the old colonies.’<sup>50</sup> The danger of leaving New York’s western boundary to the vagaries of colonial infighting and royal pique in the face of rising antagonism between the colonies and the imperial government was in fact real. If Burke did not immediately comprehend the bill’s threat to his New York client at the start of the debate, as Hoffman suggests,<sup>51</sup> he got up to speed quickly enough, not only in time to protect New York’s boundaries (which remain the same as set by Burke in 1774), but to exploit the boundary issue to highlight the Rockingham Whigs’ timely political views about French despotism and the bill’s trampling of English law and customs.

Although he did not oppose ‘the principle’ of the bill or its grant of ‘every right, civil and religious, held either by the great charter of nature, or by the treaty of 1763, or by the King’s proclamation, or by what above all it ought to be held by, the lenity, the equity, the justice of good government,’ Burke nevertheless vowed on 6 June he would never allow an Englishman’s rights to be altered by any such concession.<sup>52</sup> Carl Cone comments that Burke’s remarks during the Quebec debate showed an ‘undue partiality for the small English minority

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<sup>48</sup> Speech of EB on 6 June 1774, Cavendish, p.192.

<sup>49</sup> Ibid., p. 196.

<sup>50</sup> *Middlesex Journal and Evening Advertiser*, 7 June 1774-9 June 1774 reported Burke’s extensive remarks in the Commons of 6 and 7 June on the New York boundary question in the Quebec bill.

<sup>51</sup> Hoffman notes that it was Baker who first raised the boundary issue on 31 May by introducing a petition from Pennsylvania. Hoffman, p. 149, fn. 31.

<sup>52</sup> Cavendish, p. 190.

in Canada,' implying it was an unworthy stance on Burke's part.<sup>53</sup> Unworthy of the great statesman it might have been, but it was not 'undue' in the circumstances. The Rockinghams sincerely believed the government's American policy was profoundly mistaken and that the key to overturning that policy rested in great part on being able to convince their friends in the merchant community to join them. The Quebec bill, destined to pass a lightly attended parliament in the last days of the session, handed the Rockinghams the political pulpit from which to make its final public overture to English merchants.

The Canadians, as Burke chose to represent them throughout debate for the most part, and in his final speech of 10 June, were doubly damned by their own despotic laws and slavish customs and now by the Quebec bill's withholding of the conqueror's superior laws to free them from their slavery. Burke waxed nostalgic about the 1688 revolution to justify his view. In 1688, he said, the 'wishes of the majority were sacrificed to the reason of the better part, and the interest of the whole.'<sup>54</sup> Great Britain was 'now enjoying the benefits of that choice—benefits brought upon the ignorant people, not by force, but with an easy hand.'<sup>55</sup>

Compared to William Burke's attack on the new Catholic oath successfully inserted by amendment on 8 June the king's principal man in the Commons, Charles Jenkinson, the future Lord Liverpool, Edmund Burke's relentless denigration of the Canadian people was pale. William Burke's attack on the bill even provoked a call for order by the speaker, but no comment from Edmund. William told his colleagues he could

not remember that I ever saw the House of Commons in so sick a situation as it is at present. [Cry of order! order! order!] . . . This is the worst bill, that ever engaged the attention of a British council. It is a bill to establish the Popish religion—to establish despotism. There have been instances in human affairs, in which, for purposes of commerce, we have established freedom, as far as we could, in a certain locality; but to

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<sup>53</sup> Carl B. Cone, *Burke and the Nature of Politics: The Age of the American Revolution* (Lexington, 1957).

<sup>54</sup> Cavendish, p. 289.

<sup>55</sup> *Ibid.*, pp. 288-9

establish Popery, to establish despotism, in a conquered province, is what we have never done.<sup>56</sup>

In his speech in the House of Lords when the bill returned from the Commons with the new oath language, Lord Chatham called it ‘a breach of the Reformation, of the Revolution, and of the King’s Coronation Oath,’ and other oaths dating back to the first year of Elizabeth I, which the ‘legislature had no more right to repeal’ than it did ‘the Great Charter, or the Bill of Rights.’<sup>57</sup> Turning to the bench of ecclesiastical lords, Pitt said he found it ‘impossible they could remain silent on the occasion’ given that ‘by the Bill, the Catholic religion was made the established religion of that vast continent.’<sup>58</sup> No one thought to raise Chatham’s support for a new oath for Ireland’s Catholics eight years earlier, even if it was far less secular in its language than was the Quebec oath.

#### Failure of the Rockingham Strategy

Despite Burke’s and his party’s efforts to put together its old coalition with the merchant community, by August 1775 Burke was writing to his leader that ‘we look to the Merchants in vain. They are gone from us, and from themselves. They consider America as lost, and they look to administration for an indemnity.’<sup>59</sup> The leading men among them were being ‘kept full fed with Contracts, remittances, and Jobbs of all descriptions,’ Burke told marquess Rockingham. ‘War,’ he lamented ‘indeed is become a sort of substitute for Commerce,’ though this was the ‘State of most—not of all Merchants,’ he added.<sup>60</sup>

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<sup>56</sup> Ibid., p. 251.

<sup>57</sup> Remarks of William Pitt, Lord Chatham, in the House of Lords on 17 June 1774 as reported in *PH*, XVII, 1402-4; *PDNA*, V, 230. The Act of Supremacy of 1558, 1 Eliz. 1, c. 1, required all those taking public or church office to swear an oath to the monarch that included a repudiation of the temporal or spiritual authority of any ‘foreign prince, person, prelate, state or potentate.’ A 1562 act made refusal to swear the oath of allegiance and supremacy a treasonable offense. Supremacy of the Crown Act, 5 Eliz. 1 c 1.

<sup>58</sup> Ibid.

<sup>59</sup> Burke to Rockingham, [22] 23 August 1775, *Corr.*, III, 194.

<sup>60</sup> Ibid.

Charles O'Hara had written in a similar vein to Burke a few weeks earlier. After praising Burke on his well-received speech on American taxation, which had recently appeared in print almost a year after Burke delivered it in the Commons to great acclaim,<sup>61</sup> O'Hara told Burke he heard no inside rumors 'which promise the least remission of the present pursuit [on the American policy]. Nothing surprises me so much as the tranquility of the merchants of London, and of the trade of England in general. Are there no thinking men that look with horror on what has passed, and on what is to come?'<sup>62</sup> Burke thought not, closing his letter to Rockingham in late August 1775 by inveighing against the 'rotten Contract-Hunting part of the Mercantile Interest.'<sup>63</sup>

Not only had the merchants 'gone from' the Rockinghams, and from themselves, as Burke put it to his leader, by that time Burke and the Rockinghams had little doubt the colonies would soon follow. If 1774 was the year the Rockinghams were handed a great cause on which to return to political relevancy, as Guttridge argues, and had achieved a 'coherence' and 'security' that had eluded them in the previous six years, as O'Gorman believes, the potential of that moment for them as a party and for a peaceful resolution of the American crisis was extinguished. The Quebec Act passed and the government's tragic American policy moved inexorably forward.

### The City of London v. George III

Four days before George was set to give his royal assent to the Quebec Act, the London sheriffs knocked on the doors of the royal residence in the late evening to request a time when the City leaders could deliver their eloquent petition against the Quebec Act to the king. A late evening unscheduled knock on the doors of a British monarch's residence over an issue

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<sup>61</sup> Burke's speech on American taxation was delivered in the Commons on 19 April 1774 and appears at *PH*, XVII, 1215-69. Cobbett notes that the version printed in *PH* is taken from that 'originally printed for J. Dodsley in Pall-Mall.' *Ibid.*, 1215.

<sup>62</sup> O'Hara to Burke, August 4, 1775, Hoffman, pp. 590-1.

<sup>63</sup> *Ibid.*

involving a despised act in favor of Roman Catholics would have given pause to the most phlegmatic English monarch, even more so to one whose sole right to the throne was grounded on his being Protestant and swearing to uphold the established church against all threats.

The weeks of incessant public vilification of the king and his ministers that preceded that late-night knock at his residence no doubt imbued it with an extra *frisson*. The king ordered that the visitors ‘be acquainted that I did not receive messages from the City but on Court days at St. James’s.’ He nevertheless quickly dispatched a note to Lord North advising his government leader of the visit and telling North that whatever form of answer was required, it ‘certainly ought to teach them that they are not proper advisers on Political Questions,’<sup>64</sup> the first hint in writing of the king’s characterization of the Quebec policy as a political question.

In reviewing North’s draft of an official response to the City the next day, George offered a second insight into his thinking on the Quebec bill. He told North he wished to make it clear that he hoped ‘the Crown will ever be able to prevent a Bill it thinks detrimental to be thrown out in one or other House of Parliament without making use of its Right of refusing the Assent.’<sup>65</sup> He had, in other words, every intention of giving his royal assent to the bill, the sharp warnings in the sheriff’s late night visit to his home and the City’s petition received the morning George gave his assent notwithstanding. The petition read in part:

the Roman Catholic religion, which is known to be idolatrous and bloody, is established by this bill and no legal provision is made for the free exercise of our reformed faith . . . that your majesty’s illustrious family was called to the throne of these kingdoms in consequence of the exclusion of the Roman catholic ancient branch of the Stuart line, that they should profess the protestant religion, and, according to the oath established by the sanction of parliament in the first year of the reign of our great deliverer, King William The Third, your majesty at your coronation has solemnly sworn that you would

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<sup>64</sup> The King to Lord North, 18 June 1774 (Fortescue, III, no. 1480).

<sup>65</sup> The King to Lord North, 19 June 1774 (Fortescue, III, no. 1481).

maintain the laws of God, the true profession of the Gospel, and the protestant reformed religion established by law.<sup>66</sup>

Few could have stated what British Protestants expected of their post-1688 English monarchs more clearly and correctly. George merely responded that as it was now a matter before parliament, he could not respond officially, whereupon he proceeded to Westminster to give his ‘official response.’ As his carriage took him to Westminster, crowds lined the streets, ‘hissing, groaning, and crying out ‘no Popery, no French government.’<sup>67</sup> Rocks struck the carriage. The king ‘was observed several times to change colour,’ it was reported.<sup>68</sup> ‘Whether this reflected a ‘consciousness that he was suffering in a *religious* cause, or whether from the supreme delight he felt at passing an act so universally *odious* to the *factious* citizens,’ the eyewitness writer commented, the king ‘*bronzed* it out with a tolerable share of *firmness*.’

The king offered a few more thoughts on the Quebec bill in his closing remarks to parliament on 22 June after giving his assent to it. He thanked parliament for the bill they had prepared to answer the ‘very peculiar circumstances of embarrassment in which the province of Quebec was involved.’<sup>69</sup> He further declared that the bill ‘to which I have now given my assent’ was ‘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.’<sup>70</sup>

The king turned immediately thereafter to the situation in his American colonies, as if to emphasize for his listeners the reasons for the different treatment he was meting out to his Canadian subjects and those in America. ‘I have long seen, with concern a dangerous spirit of resistance to my government, and to the execution of the laws, prevailing in the province of

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<sup>66</sup> *Address and Petition presented to the King by the Corporation of London, previous to his Majesty's signing the Bill for the better Government of Quebec*. Reprinted in *Annual Register* for 1774, XXIII, 4<sup>th</sup> ed. (London, 1789), pp. 232-3.

<sup>67</sup> *Connecticut Courant* (Hartford), 30 August 1774. Emphasis in original.

<sup>68</sup> *Ibid.*

<sup>69</sup> *PH*, XVII, 1407.

<sup>70</sup> *Ibid.*

Massachusetts Bay in New England.’<sup>71</sup> After thanking parliament for making provision for the ‘suppression of the present disorders’ there by way of the measures known as the Coercive Acts, he said that it was his ‘most anxious desire to see my deluded subjects, in that part of the world, returned to a sense of their duty; acquiescing in that just subordination to authority and maintaining that due regard to the commercial interests of this country, *which must ever be inseparably connected* with their own real prosperity and advantage.’<sup>72</sup>

If the Rockinghams understood the unique independent spirit of the Americans and urged their government to govern them with a light hand and let the empire continue to reap the commercial benefits of the connection, it was also the consummate Whig party’s refusal to make political compromises with the administration that may have allowed the American war to go forward.

The next two chapters examine the American responses to the Quebec policy in particular, how it impacted popular feelings and how America’s future revolutionary leaders meeting in Philadelphia in September and October 1774 debated every angle of its possible threats Act to America’s future security. In the end, the American leaders decided to take a leaf out of the imperial playbook on Quebec policy and offered not only to make peace with the ancient enemies in Canada, but to invite them to join the American cause. The Americans promised the Canadians better terms than those in the Quebec Act and a full seat at the table of their new congress. No doubt some found the offer difficult to resist, but the Canadians had just been granted the guaranties of the Quebec Act. The Canadian church, whose interests the Act also protected, remained loyal to their Protestant leaders about to engage in civil war with their Protestant subjects in America.

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<sup>71</sup> Ibid.

<sup>72</sup> *PH*, XVII, 1408. Emphasis added.

## Chapter 9

### The American Colonies React to the Quebec Act: Summer 1774

The trade and fiscal controls Great Britain sought to impose over its North American colonies at the close of the Seven Years War, beginning with the Sugar Act and Currency Act in 1764, the Stamp Act of 1765, the Townshend Acts of 1767, and the Tea Act of 1773, and related administrative reforms, came to a predictable denouement after a decade of American resistance and frequent violent protests. The destruction of East India Company monopoly tea cargoes in Boston Harbor in December 1773 led to the series of punitive imperial measures known as the Coercive Acts, one of which ordered a military blockade of Boston's port as of June 1, 1774. The lethality of the Boston Port Act, intended to bring the rebellious colonists of Massachusetts-Bay into swift submission, galvanized the disparate colonies in America to join together, as many had done in the past decade, to force the government to rescind the Coercive Acts.

It was toward the end of an intense summer of organizing an intercolonial congress to take place that fall in Philadelphia to develop a joint plan of action against the recently enacted measures that news of the final act passed in that same session of parliament, the Quebec Act, arrived via the English newspapers in the major port cities of America. The 'intensity of the dispute' that arose out of a decade of increasingly aggressive trade and tax measures against the American colonies, and the 'war that it wrought cannot be appreciated,' Frank Cogliano contends, 'without considering the anti-Catholic, anti-papist fears news of the [Quebec] Act incited in the breasts of American Protestants.'<sup>1</sup>

Francis Jennings summarized where he believes the Quebec Act fits within the broader historic divide that had opened between Britain and its old English American colonies by late

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<sup>1</sup> Francis D. Cogliano, *No King, No Popery* (Westport, CT, 1995), p. 50.

1774. ‘Like the Stamp Tax, the Quebec Act united the rebellious colonists, whether motivation was religious or expansionist. . . If the west was to be within Quebec’s boundaries, the Revolutionaries intended that Quebec should be within theirs.’<sup>2</sup>

This chapter examines Britain’s new Quebec policy and its role in galvanizing and shaping the American response to the crisis already in full progress in the colonies over the Coercive Acts. The following chapter analyzes the debate at the First Continental Congress over how to manage and harness the conflicting and dangerous implications of the Quebec Act for a people now in open rebellion against the world’s greatest military and economic power.

#### News of the Quebec Act Arrives in America

Newspaper reports of the Quebec Act began arriving in America in late summer of 1774 and enjoyed wide circulation throughout the colonies. The Quebec Act’s religious guaranties and extension of the new British colony’s borders alongside the western frontier of the old Protestant colonies no doubt helped imbue the organized resistance movement already in progress against the Coercive Acts with the spirit of a holy war. If, as this chapter discusses, Americans had lost some of their religious zeal by 1774, the Quebec Act helped revive their deep attachment to personal liberty that their religion had always represented to them. Newspapers, preachers, and respected leaders throughout the colonies were intent on reminding their listeners why the Quebec Act was the most dangerous of all the measures enacted that spring by their imperial government.

John Adams, a busy practicing attorney and constitutional scholar, soon to represent his colony of Massachusetts as a delegate to the Philadelphia conference, described the Quebec Act as ‘establishing the Roman Catholick Religion in the province of Quebec, abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger, from so total a dissimilarity of Religion, law, and government of the neighboring British colonies, by

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<sup>2</sup> Francis Jennings, *The Creation of America: Through Revolution to Empire* (Cambridge, 2000), pp. 146-48.

the assistance of whose blood and treasure the said country was conquered from France.’<sup>3</sup> If France’s cession of Canada to Great Britain at the close of the Seven Years War signaled an end to a century and a half of Anglo-French violence in North America, Adams, and others who believed as he did, could not help but see the Quebec Act as a perverse reprise of that bloody legacy perpetrated by their own government.

The publication between 1773 and 1776 of three reprints of *The Redeemed Captive Returning to Zion*, John Williams’ classic captivity saga of the 1704 French-backed Indian raid on his town of Deerfield, Massachusetts, Haefeli and Sweeney note, ‘was undoubtedly intended to feed upon and promote the rising tide of anti-Catholic sentiment that would reach new heights with Parliament’s passage of the Quebec Act of 1774.’<sup>4</sup> The following discussion places the Quebec Act squarely in the middle of the political crisis that led to the formal opening of the American revolution, not on the periphery where it is usually found in mainstream histories.<sup>5</sup>

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<sup>3</sup> *JCC*, I, 72.

<sup>4</sup> Evan Haefeli and Kevin Sweeney, ‘The Redeemed Captive’ as Recurrent Seller: Politics and Publication, 1707-1853,’ in *The New England Quarterly*, vol. 77, no. 3 (Sept 2004), 356. Eliminating French rule in Canada was not seen as necessarily good for the empire, however, by some in England’s policy circles. See Introduction for a fuller discussion of this issue.

<sup>5</sup> Historians who have given the Act’s connection with the American Revolution special attention are: Charles Metzger, *The Quebec Act: A Primary Cause of the American Revolution* (New York, 1938); and see Metzger’s other major work, *Catholics and the American Revolution: A Study in Religious Climate* (Chicago, 1962). See also Cogliano, *No King, No Popery*; Thomas S. Kidd, *God of Liberty: A Religious History of the American Revolution* (New York, 2010); Gustave Lanctôt, *Canada and the American Revolution* (London/Toronto, 1967); Robert Emmett Curran, *Papist Devils: Catholics in British America, 1574-1783* (Washington, 2014); Vernon P. Creviston, ‘No King Unless It Be A Constitutional King’: Rethinking the Place of The Quebec Act in the Coming of the American Revolution,’ in *Historian*, 73, no. 3 (Fall 2011), pp. 463-79; McConville, *The King’s Three Faces*; Patrick LaCroix, ‘Popery and Tyranny’: King George as a Late Stuart,’ in *Canadian Society of Church History* (2015), pp. 27-45; Daniel Kilgore, ‘Turning Papist: Anti-Papist Rhetoric in New England, 1754-1781,’ [ecommons.cornell.edu](http://ecommons.cornell.edu) (2016), pp. 83-103; Elizabeth Fenton, ‘Birth of a Protestant Nation: Catholic Canadians, Religious Pluralism, and National Unity in the Early U.S. Republic,’ in *Early American Literature*, vol. 41, no. 1 (2006), pp. 29-56.

The cause(s) for the Act’s uneven historiography may include the difficulty of addressing its complex religious and political implications without extensive commentary, which mainstream political treatments, forced to be selective given the vast amount of material that could be included, cannot accommodate. It may also be the case that mainstream political historians with their primarily secular perspectives are not comfortable discussing religious influences on political matters, preferring to leave it to specialists in religion and culture to undertake that task even where religious issues may go to the heart of the political issues being addressed. ‘By the early 1970s,’ moreover, as explained in *Telling the Truth About History*, ‘economic and social history had replaced biography and religious history as the largest categories after political history in many conventional journals,’ which likely pushed subjects with a religious theme further down the list of those to be included in political histories. Joyce Appleby, Lynn Hunt, and Margaret Jacob (eds.), *Telling the Truth About History* (New York, 1994), p. 84.

While this study does not contend that the Quebec Act was a primary cause of the American Revolution, as Charles Metzger argued,<sup>6</sup> Conor Cruise O'Brien's observation that most Americans could not help but see in the Quebec Act 'a great British and Catholic conspiracy against the freedoms and religion of American Protestants' cannot be overstated in studying the Act's immediate reception in America.<sup>7</sup> James Hutson notes that the 'notion of conspiracy is pervasive' in the official papers the Congress produced between 1774 and 1776 and that historians following the lead of Harvard historian Bernard Bailyn have 'given primacy to the ideology of the English opposition writers [over that of Locke], which assumed a continual conspiracy of the political high and mighty against liberty.'<sup>8</sup> The Act certainly helped convince a majority of Americans that their historic ties to their mother country and its monarch were irreparably severed.

#### The American Colonies Pledge Support For Boston

The 1 December 1774 edition of the *Massachusetts Spy* reported four items related to the recently adjourned Congress in Philadelphia, which had addressed the ongoing colonial-imperial dispute over the Coercive Acts and the Quebec Act. The four reports printed in the *Spy* originated from Quebec, Philadelphia, and Charlestown, South Carolina. The 30 October report from Quebec told of a committee of English merchants from Montreal arriving in New York City to meet with counterparts there about drawing up a petition to the king for repeal of the Quebec Act, given royal assent the previous June.<sup>9</sup> The next item mentioned the arrival in Charlestown, South Carolina on 4 November 1774 of a vessel from Philadelphia 'with the Delegates from the Congress, who were received by their fellow citizens with the ringing of

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<sup>6</sup> Metzger, *The Quebec Act*.

<sup>7</sup> Conor Cruise O'Brien, *The Great Melody: A Thematic Biography and Commented Anthology of Edmund Burke* (Chicago, 1992), p. 93.

<sup>8</sup> James H. Hutson, *A Decent Respect to the Opinions of Mankind: Congressional State Papers 1774-1776* (Washington, 1975), 5.

<sup>9</sup> *Massachusetts Spy*, December 1, 1774.

bells.’<sup>10</sup> The next day, the item noted, Charlestown’s inhabitants ‘gave up most of the tea they had in their houses to be burnt in one general bonfire.’<sup>11</sup>

A letter to the *Spy* from Philadelphia dated 17 November 1774 reported that Virginia’s royal governor, Lord Dunmore, held a ‘meeting with the Indians and made peace,’ bringing months of bloody skirmishes between whites and Native Americans on what would soon be the new border between Quebec and the old colonies to a temporary halt. The final item relevant to the instant discussion was from Philadelphia. It reported that a subscription of five hundred and thirty-four dollars had been raised in Gloucester County, New Jersey and handed to Continental Congress delegate Thomas Cushing of Massachusetts for the use of the besieged Bostonians.<sup>12</sup>

On 16 December 1774, Charles Lee, a lieutenant colonel in the British army, veteran of the Seven Years War, and future major general on the American side in the American War of Independence, reported from Annapolis, Maryland on the state of the colonies in a long letter to his friend, Edmund Burke, in London. Lee told Burke he had been traveling through the American colonies for the past year in a self-imposed exile of sorts to escape the ill effects of what he considered a dissipated imperial system back home. Lee had been following events in America for years from wherever he found himself. During the American rebellion against the Stamp Act in 1766, for example, Lee wrote his sister Sidney from Constantinople, commenting: ‘May God prosper the Americans in their resolutions, that there may be one Asylum at least on the earth for men, who prefer their natural rights to the fantastical prerogative of a foolish perverted head because it wears a Crown.’<sup>13</sup> Few Americans even in 1774 would likely have expressed such palpable despair over their imperial government as Lee had in 1766.

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Charles Lee to Sidney Lee, Constantinople, May 28, 1766. *The Lee Papers*, 4 vols. (New York, 1872-1875), I, 43. He wrote his close friend Lord Thanet in 1769 that he was ‘thrown into strange agitations of passion on the sight of every newspaper. Heavenly God! Is it possible we should be so far sunk?’ Charles Lee to Lord Thanet, Warsaw, May 4, 1769. Ibid., I, 77. Lee served in the army of Poland’s King Stanislaus II and became a close confidant of the king. For a sympathetic, but serious, biography of Lee, see John Richard Alden, *General Charles*

Lee told Burke he had ‘now run through almost the whole colonies from the north to the south . . . conversed with every order of men, from the first estated gentleman to the poorest planters, and cannot express my astonishment at the unanimous, ardent spirit reigning through the whole.’ Indeed, he said, ‘the tyranny exercised over Boston . . . seems to be resented by the other colonies in a greater degree than by the Bostonians themselves.’ He predicted that ‘unless the Boston bills (and I may add the Quebec [bill]) are repealed, the empire of Great Britain is no more.’<sup>14</sup> Lee had also spent time in Philadelphia with the American delegates at the Continental Congress and involved himself in advising them on future military strategy and their Canada policy.<sup>15</sup>

Lee also stayed three months in Virginia in the spring of 1774 where he met many of its emerging patriot leaders, Thomas Jefferson and Richard Henry Lee among them.<sup>16</sup> He was still in Virginia when news of the Boston Port Act arrived. Lee already had plans to visit Boston, specifically to meet its popular leaders, especially Samuel Adams. Arriving in the besieged city in early August after stopping in Rhode Island, Lee enthusiastically embraced the spirit of resistance and political planning he found in progress there. He also assiduously avoided meeting with his old friend, royal governor Thomas Gage, whose dutiful attempts to implement the Coercive Acts had made him the target of the colonists’ growing frustration and anger.

Jerrilynn Greene Marston’s review of 108 resolutions passed by towns throughout America (though not in Massachusetts) between May and September 1774 confirms Lee’s report to Burke about the ‘unanimous, ardent spirit’ of support for Boston’s plight that permeated the colonies. Marston notes that ‘assuming that sentiment in New England in 1774 was more radical (in the sense of desiring stronger measures against England) than to the south,’

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*Lee* (Baton Rouge, 1961). Lee joined the American Revolution as second in command to George Washington. Lee’s conduct during the Battle of Monmouth in 1778 led to a court martial. *Ibid.*, chs. 13-15.

<sup>14</sup> Charles Lee to Edmund Burke, Annapolis, December 16, 1774. *Lee Papers*, I, 146.

<sup>15</sup> See discussion in next chapter.

<sup>16</sup> Alden, *General Charles Lee*, 51-52.

the resolutions of these more conservative towns made their ‘considerable support for Boston and for a trade embargo . . . all the more remarkable.’<sup>17</sup> If one considers, however, that many of the other colonies were also engaged in making sure that East India Company tea would never be landed in their ports,<sup>18</sup> their solidarity with Boston appears less remarkable. Boston did not hold a monopoly on the spirit of resistance and unhappiness to which a decade of onerous and ill-timed imperial revenue measures had given rise in America.

Evidence of the growing solidarity among the colonies in the months leading up to the opening of the Continental Congress in Philadelphia in September and October 1774 is found in the colonies’ correspondence with Boston’s Committee of Correspondence. The colonies reported their respective selection and/or election of delegates to represent them and prepared their formal credentials and instructions. It was during this intense organizing phase that news of the passage of the Quebec Act began circulating in the colonies. As discussed previously, English papers had been attacking the bill since its introduction in the House of Lords in early May. Colonial newspapers began reprinting these English attacks on the bill as soon as ship captains delivered the English papers to American port cities.

The 15 August edition of the *Pennsylvania Packet*, for example, quoted a London critic of the bill who called it ‘the boldest stride of despotism . . . since the restoration,’ taking it back a little farther than many other critics of the bill who favored references to 1688 and the Glorious Revolution.<sup>19</sup> Later in August, the *Connecticut Courant* carried an eyewitness report of the popular demonstrations against the bill on the day George III traveled to Parliament to give it his royal assent. Americans read that the king encountered crowds ‘hissing, groaning, and crying out ‘no Popery, no French government’ as his carriage passed them on its way to

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<sup>17</sup> Jerrilynn Greene Marston, *King and Congress: The Transfer of Political Legitimacy, 1774-1776* (Princeton, 1987), p. 317.

<sup>18</sup> See Joseph Cummins, *Ten Tea Parties: Patriotic Protests That History Forgot* (New York, 2012), detailing ten other tea parties from New York to South Carolina occurring between December 1773 and March 1775. In Annapolis, Maryland in October 1774, local citizens formed a mob to prevent the landing of tea from the ship *Peggy Stewart*, erecting a miniature gallows in front of the house where the ship’s owner was staying. He thereafter ordered the burning not only of the tea, but the entire ship to avoid his own demise. *Ibid.* 154-55.

<sup>19</sup> The *St. James’s Chronicle*, 28 May 1774, reprinted in Philadelphia’s *Pennsylvania Packet*, 15 August 1774.

the House of Peers.<sup>20</sup> The article described the crowds as being ‘in dress and appearance much above the common level,’ *i.e.*, they were persons of some means, possibly even freeholders, and most likely of a dissenting character. The king ‘was observed several times to change colour.’ Whether this reflected a ‘consciousness that he was suffering in a *religious* cause, or whether from the supreme delight he felt at passing an act so universally *odious* to the *factionous* citizens,’ the eyewitness writer commented, the king ‘*bronzed* it out with a tolerable share of *firmness*.’<sup>21</sup>

On his return trip from Parliament, the report continued, having given his assent to “the *Romish business*,” the crowds were still there and grew ‘exceedingly clamorous,’ continuing their hissing and groaning. As the ‘state coach arrived opposite Mr. Churchill’s house, in Parliament Street,’ a ‘loud *huzza* ensued’ and the king bowed in grateful acknowledgement. But the reporter noted that ‘the people were too honest to deceive his Majesty, [and] instantly shouted, “*Wilkes forever!*” as they looked up at *The North Briton* polemicist himself peering down from an upper window in the Churchill home as the king’s carriage passed.<sup>22</sup> While some in the crowd shouted ‘God bless your Majesty’s head, but damn *Lord Bute*,’ others shouted a ‘huzza’ for the king’s younger brother, the Duke of Gloucester, who had voted against the Quebec bill in the House of Lords.

The account of the king’s journey to and from Parliament that day ended with a description of a ‘fellow running through the park with the sword of state on his shoulder, the case which contained it being shaped exactly like a *crucifix*, [when] some of the mob insisted on seeing the contents.’ When the crowd saw it was only a sword, they walked away saying

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<sup>20</sup> *Connecticut Courant*, 30 August 1774. Other American papers carried the same report, including the *Connecticut Journal* out of New Haven on 2 September 1774.

<sup>21</sup> *Connecticut Courant* (Hartford), 30 August 1774. Emphasis in original.

<sup>22</sup> *Ibid.* When elections were called later in the year, Wilkes ran on a platform that promised to repeal the ‘four late acts respecting America, the Quebec act, establishing popery, and the system of French laws in that extensive province.’ From text of ‘Engagement Signed by John Wilkes and John Glynn, Esqrs.,’ as reported in *Connecticut Courant* (Hartford), November 28, 1774. The king dissolved the thirteenth Parliament on September 30 and called new elections with the opening of the new Parliament set for November 29.

they thought ‘it was a present from the court of Rome of a *popish crucifix*, for the use of the *protestant King of England*.’<sup>23</sup>

A letter from London dated 1 July mentioned the ‘infamous *Quebeck Bill*’ that the writer charged ‘establishes popery and arbitrary power through a country capable of maintaining more people than *England, France, and Spain*,’<sup>24</sup> a reference to the expansion of the new Catholic colony under the Quebec Act to take in lands west of the old colonies and north to the Hudson Bay. The writer further warned that the government intended by its recent measures ‘to keep the old Colonies in awe; and people here in power make no secret of saying, that by keeping the *Canadian* militia well disciplined, they shall be able with them and the fleet, to keep the Colonies always in subjection.’<sup>25</sup> By the time such warnings arrived in America, the American leaders heading for Philadelphia had likely already considered the Quebec Act’s security implications for their colonies.

Another letter dated 5 July from London stated that the ‘staunchest friends to *Hanoverian* succession have not scrupled publicly to pronounce [the *Quebeck Bill*] the most daring stretch of the prerogative of the Crown, and the most sinful violation of the rights of a free people, that the annals of *Britain*, or any other Nation in the world, register.’<sup>26</sup> The writer was no doubt reflecting how Burke and Fox had carried the Rockingham party’s Whig banner into the parliamentary list during debate on the Act. The correspondent also referred to the address and petition the City of London had delivered to the king urging him to withhold his royal assent to the bill. The writer enclosed copies for his correspondent in Philadelphia, declaring the address ‘one of the grandest and most spirited addresses ever handed to a

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<sup>23</sup> Ibid. The crowd’s disparaging reference to the Scottish Lord Bute, moreover, was to be a continuing refrain in attacks on the Quebec Act as opponents of the bill believed it was the king’s ‘papist’ Scottish advisors, especially Bute, Chief Justice Lord Mansfield (William Murray), and Solicitor General Alexander Wedderburn, who were the ‘fathers’ of the Act. American newspapers circulated similar reports and dinner toasts often included a toast to the demise of the king’s Jacobite advisors.

<sup>24</sup> ‘Extract of a Letter from London, Dated July 1, 1774,’ *AA*, I, 498-9.

<sup>25</sup> Ibid.

<sup>26</sup> ‘Extract of a Letter From a Very Respectable Gentleman in London, To a Correspondent in Philadelphia, London, July 5, 1774,’ *AA*, I, 513.

Throne.’<sup>27</sup> The writer also noted that framed copies of the City’s petition were being eagerly bought up and hung as ‘household pictures by the nobility, gentry, &c to transmit to future ages the virtue, sincerity, and honest boldness of so respectable a body of men.’<sup>28</sup>

The London writer then warned his correspondent in Philadelphia that rumor had it that ‘many presses, I mean printing presses, in the Colonies, are at present fettered in *golden chains*, sent over by the Ministry for that purpose.’<sup>29</sup> Another letter to a gentleman in Philadelphia from London dated 23 July breathlessly told his American correspondent he was ‘very anxious to hear what reception’ the ‘detestable *Quebec* bill’ had met with in America, which the writer stated was ‘so evidently intended as a bridle on the Northern Colonies. That Act is looked upon in the most unfavourable light here than any of them.’<sup>30</sup>

Another London gentlemen informed his correspondent in Williamsburg, Virginia that he had it on ‘incontrovertible authority’ that Americans should ‘prepare too for the more effectual execution of this hellish plan’ of the king’s to subdue the colonies.’ The plan included, he said, orders being sent to Quebec to ‘raise and embody four thousand of his good and faithful Catholick subjects of *Canada*, to be formed into four regiments, and to be commanded by *Frenchmen*, you may guess for what purpose. But lest you should not, I will tell you, that these *good* subjects, and the *Indians*, are to be set to cut the throats of the King’s *disaffected* subjects of the old Provinces.’<sup>31</sup>

Recent émigrés from the British Isles residing in America possessed an even more passionate disposition on the issue of imperial policy than those long in America. In late August, Adam Stephen, a Scottish physician who had served in the Royal Navy before moving to Virginia to practice medicine, exhibited a fierce passion for American liberty. Serving in the local Virginia militia at the time, Stephen wrote Richard Henry Lee, soon to be a delegate in

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid., 514.

<sup>30</sup> ‘Extract of a Letter from London to A gentleman in Philadelphia, Dated July 23, 1774,’ *AA*, I, 628.

<sup>31</sup> ‘Extract o a Letter From a Gentleman in London to His Correspondent in Williamsburg, Dated August 14, 1774,’ *AA*, I, 708-09.

Philadelphia at the Continental Congress: ‘The fate of *America* depends on your meeting, and the eyes of the European world hang upon you . . . Despotism and the Roman Catholick religion is established in Canada.’<sup>32</sup> He urged Lee to have the Congress arrange as privately as possible for the importation of arms, gun-lock smiths and locks.’ The émigré physician was certain that the government intended to ‘irritate America into rebellion, and then govern us like a conquered people.’<sup>33</sup>

While some of the warnings being sent to correspondents in America were clearly part of a letter-writing campaign organized by American and English radicals resident in the imperial capital, including the Lee brothers of Virginia, the words of men like Adam Stephen and Col. Charles Lee about the spirit of American liberty with which they so passionately identified and wished to help protect call for more serious contemplation.

Stephen’s view that the imperial government hoped to provoke America into rebellion and then treat it as a conquered people may have reflected that of William Pitt, Lord Chatham, who told his fellow peers on 17 June as the Lords considered the amendments added to the Quebec bill by the Commons:

But, my Lords, from the complexion of the whole of the proceedings, I am apt to think, that Administration has purposely irritated them into those late violent acts for which they now so severely smart; purposely to be revenged on them for the victory they gained by the repeal of the Stamp-Act, a measure to which they seemingly acquiesced, but at the bottom . . . they were its ‘real enemies.’<sup>34</sup>

The violence in which the Americans had engaged during the Stamp Act crisis and subsequent occasions in response to imperial policies had no doubt affected George III’s attitude toward his American subjects. To negotiate with rebellious subjects would weaken the government in the eyes of rival powers, he believed, more so in his own. The king summed up

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<sup>32</sup> Adam Stephen to R.H. Lee, Berkley Court House, August 27, 1774.’ *AA*, I, 740.

<sup>33</sup> *Ibid.*

<sup>34</sup> Remarks of Earl of Chatham, House of Lords, 17 June 1774, as reported in the *New-York Journal; or, The General Advertiser, Supplement*, September 8, 1774. See comments in previous chapter on George III’s ambivalent position on the repeal bill.

the goal of his recent American policies in a letter to his government leader, Frederick, Lord North, in December 1774: ‘I do not want to drive them to despair but to Submission.’<sup>35</sup> The king’s other writings in the last part of 1774 are consistent on this point. In September, for example, he wrote North that ‘the dye is now cast, the Colonies must either submit or triumph; I do not wish to come to severer measures but we must not retreat.’<sup>36</sup>

### English Views of the Quebec Act Inform American Views

Because reports on the Quebec bill appearing in American newspapers reflected English views in the imperial metropolitan anti-government papers, it remains difficult to discern exactly if and how American reactions differed from those in England. Historian Charles Metzger worried that the American newspapers he made the foundation of his analysis of the impact of the Quebec Act in the colonies might not reflect the true feelings of the American people. He could no doubt take some solace from the unequivocally expressed alarms raised by men like John Adams about the Quebec bill, discussed in more detail in the following chapter. But Metzger also noted Adams’s belief that ‘the press, the pulpit and assemblies were so many means of ascertaining the mind of colonial America.’<sup>37</sup>

Seven decades after Metzger’s study, leading social historian of the American Revolution, T.H. Breen, put Metzger’s fears to rest. Breen’s study addresses in part the interplay between the print media of the time and its readership, confirming that the ‘common people’ in America read the newspapers and that this ‘relatively innovative’ form of communication was in fact influential on the people in the Revolution.<sup>38</sup> ‘Newspapers,’ Breen

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<sup>35</sup> King to North, 15 December 1774 (Fortescue, III, no. 1563). There is no impression in these letters that the king wished to provoke the Americans into further violence. Toward the end of 1774, however, George also expressed some relief that the Americans had not ‘put on an appearance of mildness, [as] it might have been difficult to chalk out the right path to be pursued.’ The king had a fixed view of his American subjects, which would not serve him or the interests of Britain he wished to protect. Memorandum by the King [n.d.] (Fortescue, III, no. 1361). Fortescue gives a probable date of 1773, but given the comments in the unfinished memorandum, it is likely the king wrote it sometime after news reached England of the decisions taken by the American Continental Congress in Philadelphia in September and October 1774.

<sup>36</sup> King to North, 11 September 1774 (Fortescue, III, no. 1508).

<sup>37</sup> Metzger, *Quebec Act*, p. 205.

<sup>38</sup> T.H. Breen, *American Insurgents, American Patriots* (New York, 2010), p. 99.

writes, ‘helped persuade colonial readers that no matter where they happened to live, they had a personal stake in what occurred in Boston.’<sup>39</sup>

The specific extent of the influence of newspapers on Americans may be difficult to measure, but from the undisputed wide coverage of the Quebec Act in American newspapers in 1774 alone, it can be reasonably conjectured that no aspect of the bill escaped the attention of the average American news reader, even if Breen chose not to include a discussion of the Quebec Act’s influence in the Revolution in his own study.<sup>40</sup> The relatively long debate at the Continental Congress on whether to include the Quebec Act as an official grievance in the petition to the king, however, clearly establishes its central importance to the crisis the American leaders had been sent to Philadelphia to examine and resolve. Had the Act received little or no attention in the public sphere before the Congress met, it is difficult to believe the future revolutionary leaders of America would have spent as much time as they did on how to manage the complex implications of that bill for America’s future.

The writings of some royal governors in America at the time also help confirm the influence of the newspapers on the American colonial mind in 1774. Governor Thomas Gage of Massachusetts wrote Lord Dartmouth, secretary for the colonies, in mid-July that the ‘Port Bill’ was not having the hoped-for effect the government intended as Bostonians were showing no signs of submission. ‘The people,’ he explained, ‘are kept up by the assurances of assistance from the other Colonies where their leaders have contrived to raise a flame, which has not been a little increased by letters, speeches, and paragraphs, sent from *England*,’<sup>41</sup> which were being reprinted in newspapers throughout the colonies.

In early October, Lt. Gov. Cadwallader Colden in New York echoed Governor Gage in complaining to Dartmouth about the influence of the ‘speeches in Parliament, and other

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<sup>39</sup> Ibid.

<sup>40</sup> A search of the word ‘Quebec’ in Readex’s *America’s Historical Newspapers* showed 119 references in 1772, 2,284 references in 1773, 4,430 references in 1774, 3,226 in 1775, 777 references in 1776, 277 references in 1777, and 151 references in 1778, showing that peak coverage of Quebec-related items during this period occurred in the year of the passage of the Quebec Act.

<sup>41</sup> ‘Extract of a Letter from Governour Gage to the Earl of Dartmouth,’ Boston, 20 July 1774,’ *AA*, I, 615.

inflammatory papers published in London, and reprinted in America, [which] make the worse impression on the minds of the people.’<sup>42</sup> Colden assured Dartmouth, however, that there were more ‘papers in favour of Administration’ being published in New York ‘than in all the other Colonies put together.’<sup>43</sup> Colden was not an administrator who liked to send his government upsetting news, always putting a positive spin on his reports to show he had control of events in the colony. For example, he assured Dartmouth that the delegates selected to attend the Continental Congress from New York were moderate men who would not easily give in to the agenda of popular politics. He failed to mention the compromise that had already been reached that summer in New York City between these so-called moderates and the city’s popular radical leaders concerning the key demand of the latter—that these moderates support a new trade embargo against British goods to be introduced at the upcoming congress.<sup>44</sup>

As of 5 October, the date of Colden’s letter to Dartmouth, moreover, the Congress had already unanimously adopted and ordered immediate publication of the powerful *Suffolk Resolves*, discussed further below, which Colden would certainly have seen a copy of at the time, and which Dartmouth and everyone from the king on down would have read about in the English papers by the time Colden’s letter arrived.<sup>45</sup>

The steady stream of news to and from London and the urgent advice and warnings from ‘friends’ of America in England about the pernicious intent and dangers of the Coercive and Quebec Acts without doubt influenced and helped shape the resistance movement throughout the colonies, even if exact measurements of the phenomenon are impossible. From the record of the First Continental Congress, however, as discussed in the following chapter, it is clear that few Americans needed help in interpreting or comprehending the nature and extent

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<sup>42</sup> ‘Extract of a Letter from Lieutenant Governour Colden to the Earl of Dartmouth,’ New-York, 5 October 1774, AA, I, 820.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid. See also, ‘Minutes of Committee of Fifty-one, July 27, 1774,’ in *The Papers of John Jay*, Columbia Digital Library Collections, dlc.library.columbia.edu/jay.

<sup>45</sup> The December 26, 1774 *Boston Gazette* reported an item originating from New-York that the ‘Suffolk County Resolves are published in the London Papers of the 29<sup>th</sup> of October, and has given some Uneasiness ‘tis said to the Ministry.’

of the threats the Coercive and Quebec Acts posed to their freedoms should they go unchallenged.

#### The Measure of Religious Feeling in America in 1774

A review of the texts of the 108 resolutions cited by Marston in her study, mentioned above, as well as the official instructions which ten of the twelve delegations formally presented to the secretary of the Congress on their arrival in Philadelphia in September reveal no mention of the Quebec Act. Only one instruction, moreover, that of Massachusetts, included any reference to religion or religious liberty.<sup>46</sup> The fact that a majority of the resolutions and instructions were in the process of formulation and/or approval prior to the wider circulation of the news of the Quebec Act's passage helps explain this, but the general absence of any reference to the Protestant religion or religious liberty in the resolutions and instructions is more surprising given the religious foundations of many of the colonies.

A decade earlier Sam Adams had expressed deep concern about what he saw as the loss of a specific religious feeling among his fellow New Englanders. They had, he wrote, allowed their religious vigilance to weaken to the extent that put America's political liberties at grave risk.<sup>47</sup> News coverage of the reactions to the Quebec Act suggests the Americans were not all inclined to downplay the religious features of the Quebec bill, however, as discussed above. The commentary from the English press and letters to correspondents in America from London do tend to the secular implications of the Catholic-friendly measure for America's security.

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<sup>46</sup> Massachusetts's instructions are found at *JCC*, 1:15-16 and refer to 'just rights & liberties, civil & religious.' All of the formal credentials and instructions, if any, are found at *JCC*, 1:14-25; 30-31. Of the twelve, New York and New Jersey delegates did not file any instructions, only paperwork attesting to their appointment. The dates of each colony's instructions and/or credentials are as follows, in the order they are printed in the official *Journal*: New Hampshire (July 21); Massachusetts-Bay (June 17); Rhode Island (August 10); Connecticut (June 3; July 13; August ?); New York (August 20 for Dutchess County; no specific dates given for other counties); New Jersey (July 14); Pennsylvania (July 22); Delaware (August 1); Maryland (June 22); Virginia (August 1 & 5); South Carolina (August 2); North Carolina (August 25). North Carolina delegates William Hooper and Joseph Hewes presented their credentials and first appeared on September 14, 1774. *JCC*, 1:30-31. All other delegations appeared on the opening day of the Congress, September 5, although a few members of various delegations arrived later.

<sup>47</sup> In *The Writings of Samuel Adams* Harry Alonzo Cushing (ed.), 4 vols. (New York, 1968). See also Metzger's discussion of Adams's views in *The Quebec Act*.

Although news of the passage of the Quebec bill can be seen to have revived Americans' identification with their Protestant roots, the Quebec Act had complicated the political crisis triggered by the blockade of Boston, adding geo-military dimensions that had to be acknowledged and managed. Peter Shaw observes that the 'Continental Congress, in order to establish good relations with Catholic Canada and Catholic France, denounced the wave of antipopery and effigy burning that burst forth in 1774 in response to the Quebec Act.'<sup>48</sup> Contemporary reports, however, show little evidence of such a wave. Shaw's own research in fact shows that 'celebrations' of Pope Day during and after 1765 declined, even in New England. This phenomenon could explain why reaction to the Quebec bill did not exhibit itself in large crowd actions in 1774, and why the delegates in Philadelphia were able to adopt a strategy to befriend their old Catholic enemies in Canada without breaching the trust of their constituents.<sup>49</sup> Anti-popery actions and religious fervor may well have declined over the decade before the outbreak of the crisis in 1774, but it also a fact that America's popular political leaders in 1774, including Sam Adams in Boston and New York's Isaac Sears, Alexander McDougall and John Morin Scott, who would ordinarily have been in the vanguard of mass protests against a measure like the Quebec Act, were preoccupied in the late summer of 1774 with promoting the conference in Philadelphia and canvassing their delegates to back the new trade embargo.

### Americans and the Impossibility of Submission

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<sup>48</sup> Peter Shaw, *American Patriots and the Rituals of Revolution* (Cambridge, MA, 1981), p. 199. The Congress did not launch its campaign to establish better relations with Canada until the final days of its first Continental Congress, although there were some clear earlier signals that it was moving in that direction. There also appears to be no record of Congress issuing any express orders to American colonists to desist from pope burnings or antipopery demonstrations at that time. On the other hand, the delegates continually urged colonists in Boston to remain calm and act defensively only. See *JCC*, 1:61-62 (Congressional resolution of October 11 advising Bostonians 'to conduct themselves peaceably towards his excellency General Gage, and his majesty's troops now stationed in the town of Boston, as far as can possibly be consistent with their immediate safety, and the security of the town; avoiding & discountenancing every violation of his Majesty's property . . . and that they peaceably and firmly persevere in the line they are now conducting themselves, on the defensive.')

<sup>49</sup> A perusal of American newspapers for 1774 did not disclose any reports of violent protests against the Quebec Act in contrast to the growing targeted violence or threats of violence in Massachusetts against government officials accepting appointments under the new Massachusetts Government Act.

Expecting traditional forms of submission from a people who had been ‘growing in strength, wealth, and population,’<sup>50</sup> as the Americans had for a century and a half away from metropolitan influence, was political folly, as the king and his advisors would learn the hard way. The Americans could not ‘be kept in a state of political dependence and financial subordination for an indefinite length of time.’<sup>51</sup> If his interest in enlightenment ideas in the arts and sciences had extended into the economic and political spheres, Adam Smith’s ‘forceful denunciation of mercantilism and its injustices’ and Smith’s analysis of its relationship to the ‘contemporaneous American crisis’ might have saved the king and the colonies from their violent separation.<sup>52</sup>

While Britain had a ‘comparative advantage in Europe’ as a result of its ‘superior development of its home market,’ as Peter Onuf explains Smith’s ideas, England’s ‘overseas empire was riddled with mercantilistic regulations that impeded market freedom and economic development.’<sup>53</sup> American revolutionary David Ramsay of South Carolina, a graduate of the College of New Jersey (Princeton) and the University of Pennsylvania medical school, was a physician and legislator during and after the Revolution, wrote one of the earliest histories of the Revolution. He described the comprehensive economic control that Britain exercised over its colonies as follows:

Great Britain planted Colonies, and made laws, obliging [the colonies] to carry to her all their products which she wanted, and all their raw materials which she chose to work up. Besides this restriction, she forbad them to procure manufactures from any other part of the globe, or even the products of European countries, which could rival her, without being first brought to her ports. . . This principle of commercial monopoly ran through no less than twenty-nine acts of Parliament, from 1660 to 1764. . . During this

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<sup>50</sup> Charles M. Andrews, *The Colonial Period of American History* (New Haven, 1938), p. 368.

<sup>51</sup> Ibid.

<sup>52</sup> Peter S. Onuf, ‘Adam Smith and the Crisis of the American Union,’ in *The Atlantic Enlightenment*, Susan Manning and Francis D. Cogliano (eds.) (Aldershot, 2008), pp. 159-63 (quoting Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*).

<sup>53</sup> Ibid., p. 163.

whole period, a parliamentary revenue was no part of the object of colonization. . . . Till the year 1764, all stood on commercial regulation and restraint.<sup>54</sup>

With the parliamentary passage of the Tea Act of 1773 granting the East India Company tea a monopoly and cutting out the private wholesalers who warehoused and sold tea throughout the British Atlantic, Americans rose up in protest, leading to no fewer than ten ‘Boston’ tea parties throughout the colonies. The Coercive Acts followed and Britain refused to conciliate, instead moving to cast the colonies outside its mercantilist network. One London observer in July 1774 believed ‘that the designs of the Ministry can no longer be kept a secret; they have already in fact, though not in form, declared War against the North-Americans.’<sup>55</sup> With the new duties ‘proposed to be laid on all Rum imported into Quebec, they have put the ‘French, Danish, and Dutch on a level with those from America, 6d. per gallon being the duty intended for each.’<sup>56</sup> Another correspondent mentioned the ‘high duties on spirits in *Canada*’ as open avowal of the ministry’s intent to tax *all America*.<sup>57</sup> Little wonder that some of the delegates in Philadelphia would express skepticism about the differences between internal and external revenue-raising regimes.

As Adam Smith saw it, Britain had two choices as it ‘stood at an epochal conjuncture’ in the imperial crisis leading up to the American Revolution. It could ‘extend its boundaries westward, to Ireland and the ‘plantations’, by incorporating subject peoples fully into the national market. Or, it could renounce its jurisdiction (in the colonies, at least), and acknowledge American independence.’<sup>58</sup> If Smith’s ideas did not penetrate the chief resident of St. James or policy minds at Whitehall, his ‘assault on the premises’ of the mercantilist system, which had increasingly constricted American economic life, fortified the American

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<sup>54</sup> David Ramsay, *The History of the American Revolution*, 2 vols. (1789, 1793); reprint (New York, 1968) I, 49.

<sup>55</sup> *Connecticut Journal*, 25 August 1774.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> Onuf, ‘Adam Smith and the Crisis of the American Union,’ p. 169 (paraphrasing Smith).

patriot resistance against what one London correspondent called the ‘wanton strokes of government.’<sup>59</sup>

Leading American merchants had circumvented the navigation and trade laws so successfully during the recent war, as Thomas Truxes details in his eye-popping study, *Defying Empire*, that the government’s attempts to curtail such conduct after the war with better enforcement were certain to encounter stiff resistance, as the Gaspée incident in 1770 and the Boston Tea Party in late 1773 demonstrate. The American response to the Stamp Act in 1765-6, the Townshend Acts in 1767-70, and now the Coercive Acts, was to impose their own trade restrictions against British goods. Massachusetts began an intensive outreach to communities throughout the colonies in the summer of 1774 to push for approval of such an embargo, calling it the Solemn League and Covenant.<sup>60</sup> This was a name, Jack Rakove explains, that ‘many colonists instantly grasped’ as it was ‘borrowed from’ the famous agreement of 1643 between the Puritans and Scottish Presbyterians aligned against the papist Charles I.<sup>61</sup>

Rakove argues that the Bostonians’ reference to the Solemn League and Covenant of Cromwell’s England was politically unwise given that colonists outside New England considered that period more as an ‘object lesson in the dangers of revolution and political excess.’<sup>62</sup> While this might have been the case before the passage of the Coercive and Quebec Acts, it was not so after mid-1774. Charles Lee’s eyewitness observations of the unanimity of the anti-government spirit throughout the colonies and the support for Boston throughout America, and the contents of the 108 town resolutions cited by Marston, verify the successful revival of the spirit animating the original Solemn League and Covenant. With the papist-friendly Quebec Act following on the heels of the Coercive Acts, moreover, the religious element deep within the American character was called up to active duty. As Thomas Kidd

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<sup>59</sup> Ibid., p. 149.

<sup>60</sup> Jack Rakove, *Revolutionaries* (Boston, 2010), p. 48.

<sup>61</sup> Ibid. The origin of the term ‘Dissenters,’ Bartholomew Schiavo notes, is from this 1643 Covenant. Bartholomew Peter Schiavo, ‘The Dissenter Connection: English Dissenters and Massachusetts Political Culture: 1630-1774,’ PhD Dissertation (Brandeis University, 1976).

<sup>62</sup> Ibid.

comments, ‘to the colonists, the Quebec Act seemed like outright betrayal’ by their popish monarch and his papist advisors.<sup>63</sup>

The possibility of new outbreaks of violence in reaction to the empowerment of Catholics in Canada hung over the colonies and the Congress throughout the latter half of 1774 as newspapers repeated the worst attacks on the bill from England. Prominent Protestant preachers also kept the Quebec Act issue before the American colonists from their pulpits and their published sermons and essays, as Cogliano and others detail. But the rising crisis in Boston with the closure of their port and their city occupied by ministerial troops remained the foremost threat to a peaceful and orderly resolution of the 1774 crisis, not the papist Quebec Act nor the pope in Rome.

The delegates sent to Philadelphia in September, propelled forward by popular political polemics and a minority group intent on giving no quarter to the imperial government, nevertheless would take the time to examine the roots of their historic connections with the mother country and the benefits of establishing mutually beneficial connections with their Canadian neighbors. As Alexander Butterfield notes, these delegates ‘repeatedly debated the Canada question’ throughout the seven-week Congress, the subject of the following chapter.

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<sup>63</sup> Kidd, *God of Liberty*, p. 69.

## Chapter 10

### The American Congress Debates the Quebec Act: Fall 1774

Ten days before the close of the First Continental Congress in Philadelphia in October 1774, Connecticut delegate Silas Deane explained to a friend in Hartford that the Congress's goals had always involved 'three capital, & general Objects . . .—A Bill of American Rights,—A List of American Grievances,—And Measures for Redress.'<sup>1</sup> On the proper statement of rights, Deane wrote, 'all the Consistency at least, of Our future proceedings, in America depends, and in a great degree, the peace, & Liberty, of the American Colonies.' Deane added that these issues were not as easy as they might seem at first glance. If his friend believed, for example, that America's grievances 'were evident To all, and may be enumerated in one Day as well as in a Month,' he urged him to think again and grant the delegates 'longer Time on that part—For a Greivance . . . must not only be a real [one], but one so general, That a Stand must be made against it, and Our measures for redress, be persevered in, until it is removed.'<sup>2</sup>

This chapter follows the debates in the Continental Congress in September and October 1774 on the Quebec Act both at the subcommittee stage and as it was thereafter dissected by leading delegates in the committee of the whole over several days in mid-October. While the delegates debated every side of the question unflinchingly, some without regard to their own personal views of Catholics and the 'Romish' religion, conversations had also begun outside of the formal deliberations about taking a page out of the imperial government's Canada policy and offering the Canadians even better terms than were contained in the Quebec Act. America's adoption of an imperial plan of its own is discussed in the last part of this chapter.

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<sup>1</sup> Silas Deane to Thomas Mumford, October 16, 1774, in *LDC*, I. Although the official record of the proceedings of the First Continental Congress indicates that Congress adopted a statement of rights and grievances on October 14 that included the Quebec Act, the notes and diaries of several delegates indicate that the debate on the Quebec question continued through October 17, six weeks after the question was first raised. *JCC*, I, 63.

<sup>2</sup> *Ibid.*, I, 203.

The issue of grievances, as Silas Deane told his friend, might appear ‘evident to all’ and easily enumerated, but fifty-six independent-minded delegates were bent on protecting the respective interests of their colonies as well their shared colonial liberties. Samuel Ward, one of Rhode Island’s two delegates and a former colonial governor and Supreme Court justice, wrote to his colony’s current governor in early October to advise that there would be no early exit for the delegates given the ‘Magnitude of the Subjects before the Congress . . . [and] the Danger of taking a false Step in a Matter of such vast Importance.’ Though much remained to be done, Ward noted, the delegates would ‘cheerfully continue here as long as the Service of our Country requires it.’<sup>3</sup>

The delegates arriving in Philadelphia in early September 1774 to address and hopefully resolve the Boston Port crisis as expanded by the other Coercive Acts and the Quebec Act represented a formidable combination of the best minds and most experienced leaders in the colonies. Nearly half were among the colonies’ leading legal experts. Altogether, they shared a ‘cumulative legislative experience’ that exceeded 550 years, ‘many of them having served in the local legislatures.’<sup>4</sup> Others were ‘prosperous farmers and businessmen,’ and at least eleven had served as speakers of one of the colonial assemblies in their respective colonies. ‘Two had been governors and a half dozen others had been judges in the superior courts.’<sup>5</sup> Massachusetts delegate John Adams described the background of his colleagues in Philadelphia in a letter to his former law clerk back in Massachusetts: ‘Here are Fortunes, Abilities, Learning, Eloquence, Acuteness to any I ever met with in my Life.’ There was a ‘Diversity of Religious, Educations, Manners, Interests, Such as it would Seem almost impossible to unite in any one Plan of Conduct.’<sup>6</sup>

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<sup>3</sup> Samuel Ward to Joseph Wanton, Philadelphia, 3 October 1774, in *LDC*, I, 142.

<sup>4</sup> Jack Greene, *The First Continental Congress 1774: A Documentary History* (Washington, DC, 1974), p. 6.

<sup>5</sup> *Ibid.*

<sup>6</sup> John Adams to William Tudor, 29 September 1774, *LDC*, I, 29.

All were Protestants, though of different denominations. All would have been exposed to or been aware of the influence of George Whitefield's 'Great Awakening' that had transformed Protestantism throughout the British empire, regardless of denomination.<sup>7</sup> It was the radical liberation from old Protestant hierarchical strictures ushered in by the Great Awakening, moreover, Breen argues, and not rational Enlightenment ideas, that imbued Americans with their revolutionary zeal at this time.<sup>8</sup>

Others point out that many of these founding fathers of the future republic in fact were imbued with Enlightenment ideas, however, just as many of them were steeped in the Greek and Roman classics. Many believed in 'freedom of conscience, liberty of thought, and religious equality,' favoring 'morality over dogma, good deeds over pious words, and reason over revelation.'<sup>9</sup> That some were fervently Protestant and still deeply anti-Catholic reflected the popular culture of the colonies as well, as Brendan McConville establishes in his 2006 study, *The King's Three Faces*, which challenged the views of historian Gordon Wood that the American Revolution reflected a dominant republican spirit in the Americans in the years leading up to independence.<sup>10</sup>

As conventions go, Marston notes, the First Continental Congress would be 'enormously successful.'<sup>11</sup> She attributes this in large part to the fact that the delegates closely adhered to their instructions,<sup>12</sup> but the following analysis of the work of the delegates suggests they were likely not fully dependent on their instructions to guide their discourse, but on their own particular beliefs, instincts, and interests.

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<sup>7</sup> Breen, *American Insurgents, American Patriots*, p. 32.

<sup>8</sup> *Ibid.*, pp. 31-32.

<sup>9</sup> Matthew L. Harris and Thomas Kidd, *The Founding Fathers and the Debate Over Religion in Revolutionary America: A History in Documents* (Oxford, 2012), p. 5.

<sup>10</sup> McConville, *The King's Three Faces*, *passim*.

<sup>11</sup> Marston, *King and Congress*, p. 97.

<sup>12</sup> *Ibid.*, p. 68. Marston's summary of the 108 resolutions and instructions appears in the Appendix to her study. This author reviewed all 108 resolutions for her analysis set forth herein.

### The *Suffolk Resolves*

Three days after the Continental Congress's subcommittee on rights and grievances began its work, Boston patriot and silversmith Paul Revere arrived in Philadelphia to deliver the text of a resolution adopted by the citizens of Suffolk County of which Boston was the hub. The *Suffolk Resolves* represented Boston's response to Governor Thomas Gage's attempt to implement the Coercive Acts. If the Coercive Acts represented Britain's declaration of war on Massachusetts-Bay and an 'example of terror' to the other American colonies, as Edmund Burke opined, the *Suffolk Resolves* were Boston's, and by wholesale adoption thereafter, the united colonies' response to that declaration.

Paragraph 10 of the *Suffolk Resolves* stated that the 'late act of parliament for establishing the Roman Catholic religion and French laws in that extensive country, now called 'Canada' was dangerous in an extreme degree to the Protestant religions and to the civil rights and liberties of all America.'<sup>13</sup> The *Resolves* thus placed the question of the Quebec Act officially before the Congress, ensuring that the committee tasked with coming up with the list of grievances to be included in the petition to the king would have good reason to include the Act in the petition.

After the Philadelphia delegates adopted the *Suffolk Resolves* unanimously, Cogliano points out, New Englanders from 'Connecticut to Maine, the seaports to the frontier, endorsed them and condemned the Quebec Act in their official resolutions. On Thursday, 22 September, the working committee on the statement of rights and grievances brought in a draft report on the rights issue only, which the Congress referred over for consideration until the following Saturday.<sup>14</sup> On Saturday, the 24<sup>th</sup>, according to the official journal, the same committee brought in its second report on grievances as prepared by its subcommittee, which being read, was

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<sup>13</sup> The full text of the *Suffolk Resolves* is found in *JCC*, I, 32-7.

<sup>14</sup> *JCC*, I, 42.

referred over to the following Monday for consideration.<sup>15</sup> As of 24 September 1774, therefore, the committee appointed to state the rights and grievances of the colonies had laid two reports before the whole congress for consideration.<sup>16</sup> The committee's report on grievances recommended that the Quebec Act be listed as an official grievance in the petition to the king.

### John Sullivan and the 'Sullivan Draught' on Grievances

Who prepared the draft report on grievances remains a mystery after more than two centuries even if what is not in question is the significant debate that took place over whether the Quebec Act should be listed as a formal grievance. For some time, John Sullivan of New Hampshire, a successful attorney, businessman, militia officer, and virulent anti-Catholic, was believed to have prepared the grievance report that was printed in the official journal on October 14, and which was referred to therein as the 'Sullivan's Draught.' Given Sullivan's adamant opposition to the Quebec Act as confirmed in an October 5 letter to his friend John Langdon, and the fact that he served on the committee to state the colonies' rights and grievances, he was very likely the author of the original grievance report. In his memoirs, John Adams stated that to be the case. Confusion arose, however, when Adams's grandson, Charles Francis Adams, edited his grandfather's papers and found among those papers a draft of the grievances report, which more than two centuries later historians determined to be in the handwriting of Pennsylvania/Delaware delegate, John Dickinson.<sup>17</sup>

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<sup>15</sup> Ibid.

<sup>16</sup> The committee on rights and grievances began its deliberations with the idea of looking all the way back to the origins of each of the colonies to compile their list. However, on 24 September, the Congress resolved to 'confine its attention to the period after 1763 'in which the Treaty of Paris was signed that formally ended the Seven Years War.' Richard Henry Lee of Virginia argued that to go back further would 'strike against the Navigation Acts [which] would unite every man in Britain against us, because the Kingdom could not exist without them.' Hutson, 5-6 (quoting Lee, *LDC*, I, 3).

<sup>17</sup> The following arguments concerning the issues surrounding the authorship of the report on grievances are those of the author who examined the sources involved in the confusion, which began with Charles Francis Adams's erroneous link between his grandfather's statement in his memoirs in 1804 that John Sullivan had 'drawn' up the committee report on grievances and the document Adams's grandson/editor found in Adams's papers on rights and grievances. Charles Adams believed the handwriting resembled that of Sullivan. See John Adams, *The Works of John Adams*, II, 377, 535-42; see also Butterfield, *DAJA*, III, 310. This is where matters took on a life of their own. The text of the report found in Adams's papers was thereafter inserted in the edited first volume of the First Continental Congress's official journal by its editor, Worthington C. Ford, in the early 1900s, and labeled 'Sullivan's Draught.' See entry for October 14, 1774, *JCC*, I, 63-73 (text in left hand column). Ford added a note,

Regardless of the long confusion over the manuscript labeled ‘Sullivan’s Draught,’ it is John Sullivan’s October 5 letter to a friend in New Hampshire, John Langdon, which not only provides strong corroborative evidence that Sullivan was likely the author of the first report on grievances, but one of the delegates who felt most strongly that the Quebec Act should be included as an official grievance. Sullivan’s entire letter to Langdon is taken up with that question. His views were shared by several other prominent delegates, including John Adams.

In his 5 October 1774 letter to Langdon, Sullivan reported that the delegates had now ‘selected those Acts which we determine to have a Repeal of or forever restrain our trade from Great Britain, . . . among which is the Canada Bill, in my opinion the most dangerous to American Liberties among the whole train.’<sup>18</sup> Sullivan was certain, he told Langdon, ‘that two Gods may as well exist in the universe as those two Religions where the Papists have power to

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however, that stated it was ‘*believed to be the report as first submitted.*’ Ibid., I, 63, fn.2. Emphasis added to original. Thus, even Ford appears to have been skeptical that the report found in Adams’s papers that Ford inserted and printed in the official journal labeled ‘Sullivan’s Draught’ was the original report on grievances brought in on 24 September. To make matters even more confusing, historians in the 1970s were able to determine that the document whose text was reprinted in the 14 October official congressional record was in the handwriting of John Dickinson, a prominent patriot and Pennsylvania delegate, further complicated by the fact that Dickinson only arrived in Congress as an accredited delegate on 17 October, three days after the date the official journal states the draft text on rights and grievances received approval by Congress. That the Congress continued debating the grievances even after October 14, however, is well documented. Dickinson could have contributed a draft grievance report on 17 October, his first day in the Congress. It is unnecessary to decide the issue, however, for it seems a more plausible explanation that the Dickinson draft published in the 14 October official journal was different from the one laid before Congress on 24 September, which Sullivan could well have drafted, but of which no copy has yet surfaced. Given that Congress was taking a new direction on the Quebec question, moreover, it may be that the original report on grievances brought in on 24 September, especially if drafted by the rabidly anti-Catholic Sullivan, was by 17 October thought to be too strident on the Quebec Act question, and thus not conducive to the Congress’s shift toward a more politically wise outreach to its old Canadian enemies. The ‘Sullivan’ report laid before the Congress on 24 September was, therefore, more likely than not quietly ‘buried.’

Hutson’s speculation that Dickinson may have been drafting papers for the Congress behind the scenes before he presented his credentials on 17 October is also possible, but unlikely, given all that is known about the issue. It is more likely the ‘Dickinson Draft’ was drawn up right around the time he officially made his appearance in the Congress and thereafter made its way into John Adams’s hands as Adams was apparently tasked with putting the final statement of rights, grievances, and means for redress into final form. Hutson, 51. What is undisputed is that Sullivan and Adams both served on the committee on rights and grievances. The official record, moreover, confirms there were two separate reports on rights and grievances brought into Congress on September 22 and 24, and Adams confirmed the existence of two distinct reports in his memoirs. Sullivan’s October 5 letter to his friend, John Langdon, moreover, confirms that by that date, October 5, delegates had ‘selected’ the Quebec Act to be included as a formal grievance, further confirming the existence of a report and preliminary decision on grievances as of that date. As it is also undisputed that the whole Congress had not yet decided the issue, Sullivan’s reference to the ‘selection’ of the Quebec Act as a formal grievance has to have been in reference to the separate committee report on grievances, not the final vote on the question taken by Congress taken some time between October 14 and 17.

<sup>18</sup> John Sullivan to John Langdon, 5 October 1774, *LDC*, I, 150.

extirpate the professors of the other.’<sup>19</sup> His denunciation of the ‘Canada’ bill continued for another two hundred words and constitutes one of the most passionate contemporary attacks on the bill and Roman Catholicism in or outside of the Congress or on either side of the Atlantic, the exception being the parliamentary speeches of William Burke and William Pitt, Lord Chatham, in June 1774 as that body finalized the terms of the bill.<sup>20</sup>

Sullivan came from politically passionate stock. A descendant of the Irish O’Sullivan Beare line who fought English rule until nearly the last Sullivan was standing, his grandfather, Major Philip O’Sullivan, born in 1690 in Ardea, left Ireland with French troops after the capitulation of Limerick to William III’s forces in 1691. Given such a background, Major Philip O’Sullivan’s grandson, now a New Hampshire delegate in Philadelphia, might be expected to have felt somewhat conflicted about naming the Quebec bill as a formal American grievance against Britain. Somewhere along the way, however, the Sullivan connection with Catholicism was severed.<sup>21</sup>

Master John Sullivan, as the delegate’s father was known, was educated in European schools and spoke five languages. He emigrated to New England in 1723 as an indentured servant, but soon impressed a New Englander who bought out the rest of his contract and helped

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<sup>19</sup> Ibid.

<sup>20</sup> It is worth quoting the rest of Sullivan’s remarks on the Quebec Act in his letter to Langdon as they address the broader aspects of the bill’s perceived dangers to the American colonies, even if Sullivan believed those posed by the bill’s Roman Catholic provisions were the most dangerous: ‘for when we reflect on the dangerous situation the Colonies were in at the commencement of the Late War with a number of those Canadians on their backs who were assisted by Powerful Indian Nations determined to extirpate the Race of Protestants from America to make way for their own Cursed Religion so Dangerous to the State & favorable to Despotism, & contemplate that by the late [Quebec] Act their Territory is so far extended as to include by far the greater part of North America: that this will be a city of refuge for Roman Catholicks who will ever appear in favor of the Prerogative of the Crown backed by an abandoned Minister, aided by the whole force of Great Britain & assisted by the same Indian Nations, we must suppose our Situation to be Infinitely more Dangerous now than it was then, for while we are engaged with the Canadians on our Frontiers our Seaports must yield to the Ministerial fleet & army & if they once prevail no man must expect safety until he professes that Holy Religion which our sovereign has been pleased to establish. I am certain that two Gods may as well exist in the universe as those two Religions where the Papists have power to extirpate the professors of the other. We can easily discover the designs of the Act & are determined to Counteract it at all events.’ Ibid., 150-1.

<sup>21</sup> Charles P. Whittemore, *A General of the Revolution: John Sullivan of New Hampshire* (New York, 1961), p. 3. Whittemore states that Sullivan’s émigré father, Master Sullivan, ‘undoubtedly had been raised as a Roman Catholic, but his connection with that church was short-lived.’ Irish immigrants to New England, he added, ‘had lost touch with Catholicism, and Master John may have also.’ Ibid. Inasmuch as Master John obviously had no alternative than to agree to an indentured situation to get to America, he likely had to repudiate his Catholicism in order to be eligible for such a position.

establish John as a schoolmaster. Andrews explains that ‘Ireland . . . was never encouraged by the continental colonies as a whole to send over servants, particularly Roman Catholics, who were feared and disliked and in Maryland were discriminated against by an act imposing a duty upon them, in order ‘to prevent the importing of too great a number of Irish papists’ into the province.’<sup>22</sup> This likely explains why the Sullivans severed their connection with Catholicism.

Because Master John’s son, John Sullivan of New Hampshire, future delegate to the first Continental Congress, had a thoroughly New England upbringing, moreover, the potential source of his attitude toward Catholicism and French Catholics in Quebec is no mystery. The Sullivans were in America for fifty years before the big troubles with Britain began in early 1774. They had already, however, lived through two wars between Britain and France, both partially fought on American soil.<sup>23</sup> The history of past conflicts with New France over ‘territory, power, fur, Indian trade and alliances,’ moreover, often took on the ‘character of religious crusades in many ‘sincere folk,’ especially those living in colonies bordering Canada, Metzger notes.<sup>24</sup> Although the Sullivans had reason to support the cause of their New England Protestant neighbors against French Canada, they also had their historic losses in Ireland to avenge against the same enemy.

If Sullivan’s deep-seated anti-Catholic attitudes influenced the committee’s recommendation of 24 September that the Congress include the Quebec bill as a formal grievance in its petition to George III, actions by other delegates in the second month of deliberations in Philadelphia signaled that the American political leadership was contemplating a second track on the Canada question, one reflecting the security concerns an imperial-controlled Catholic colony of Canada represented to America should the dispute move into armed conflict. It was likely with such concerns uppermost in their minds that some of the

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<sup>22</sup> Andrews, *The Colonial Period of American History*, p. 110. Andrews’s comments were made in the context of how the navigation and trade acts of the 1660s and after effectively operated in and on the various parts of the British empire.

<sup>23</sup> King George’s War (War of Austrian Succession) and the French and Indian War (Seven Years War).

<sup>24</sup> Metzger, *Catholics and the American Revolution*, pp. 269-70.

Congress's most prominent delegates decided to send a message to their counterparts in the imperial government that America would do what it had to do to defend itself. This included, as it had for Bishop Pontbriand on the eve of the British conquest of his colony, an examination of conscience on the need to adopt a more tolerant attitude toward those with whom one has fundamental differences.

On 9 October, about two weeks after the committee on rights and grievances brought in their reports, delegate George Washington, a Virginia planter who was nominally Anglican, and Massachusetts's John Adams, a practicing attorney and constitutional scholar and Congregationalist, and other delegates, attended a service at St. Mary's Catholic Church in downtown Philadelphia.<sup>25</sup> Neither Washington nor Adams noted in their respective diary entries for that Sunday afternoon why they attended that church service. Adams had noted the delegates' visits to a number of churches of different Christian sects while in Philadelphia, however. The only comment he made about his attendance at the 'Romish church' service at St. Mary's was that 'the Musick is so calculated to take in Mankind that I wonder, the Reformation ever succeeded.'<sup>26</sup>

Harris and Kidd note that throughout his life Washington 'frequently attended Anglican, Quaker, German Reformed, and Presbyterian services,' but they do not include Roman Catholic services among those mentioned.<sup>27</sup> Nor would Adams or any Protestant have been inclined to visit a 'Romish' service under any but the most extraordinary circumstances in or before 1774.<sup>28</sup> The delegates' ecumenical outreach likely had multiple motivations. They

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<sup>25</sup> *The Diaries of George Washington, 1748-1799*, John C. Fitzpatrick (ed.), 4 vols. (Boston, 1925); *DAJA*, I, 150. Fitzpatrick identifies the church as 'St. Mary's, on Fourth Street, above Spruce' and also mentions Adams's presence at the same service.

<sup>26</sup> *DAJA*, II, 150.

<sup>27</sup> Matthew L. Harris & Thomas S. Kidd, *The Founding Fathers and the Debate Over Religion in Revolutionary America* (Oxford, 2012), p. 136.

<sup>28</sup> Cogliano, *No King, No Popery*, pp. 116-17. Cogliano details how Adams's personal views changed after 1774, however. He described at great length Adams's role in drafting the 1780 constitution for Massachusetts and being instrumental in including a provision for religious tolerance for all, not just Christians. He also analyzes the town returns on the proposed 1780 constitution to trace the decline in anti-popery in Massachusetts during the Revolutionary period. He attributes this decline in significant part to the presence of the French allies in the state during the Revolution and the 'assiduous campaigning of men like John Hancock and Samuel Cooper that religious toleration was necessary to defeat the British.' *Ibid.*, p. 117 and rest of chapter.

could have wished to send a message to the colonists that they could not allow religious anger over the Quebec Act to get in the way of helping their leaders resolve the political crisis before them. It could also have been intended to tamp down potential protests over the Quebec Act at a time when Bostonians were already at a breaking point over conditions in their town and might resort to violence. Or, even more likely, the delegates could have intended their attendance at St. Mary's Catholic Church as a clear message to the imperial government that the American colonies were as prepared to befriend Canada's Catholics as the imperial government had recently shown itself capable of doing with enactment of the Quebec Act.

Although the delegates in Philadelphia enjoyed the fullest confidence of a majority of the colonists, making a public display of religious tolerance for the Roman Catholic religion at such a volatile time was as risky a political gambit as that taken by their own imperial government in backing the Quebec bill three months earlier. While the delegates were trying out their new policy of religious toleration at Sunday services, the issues of parliamentary authority and the statement of rights and grievances remained undecided. On 13 October, John Adams noted that from ten to half past four that day the delegates debated about 'the Parliamentary Power of regulating Trade. 5 Colonies were for allowing it, 5. Against it, and two divided among themselves, i.e. Mass. And Rhode Island,' Adams noted.<sup>29</sup>

Debate on the grievances to be included in the petition to George III occurred between October 15 and 17, a Saturday and Monday, according to the notes of delegates Samuel Ward and James Duane.<sup>30</sup> The more independence-minded delegates like Richard Henry Lee and Patrick Henry of Virginia and John Adams insisted that the Quebec Act was one of the worst British aggressions to be visited on the colonies, while two of New York's most active delegates in the Congress, New York City attorneys John Jay and James Duane, sought to exclude it from the grievance list.

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<sup>29</sup> *DAJA*, II, 151.

<sup>30</sup> See James Duane's Notes of Debates, [October 15-17? 1774], *LDC*, I, 199; Samuel Ward's notes indicate the Congress met on both the 15<sup>th</sup> and 17<sup>th</sup> of October to discuss grievances are at *LDC*, I, 206. Ward's notes for the 15<sup>th</sup> state that the Congress 'considered grievances,' and on the 17<sup>th</sup> 'enumerated grievances.' *JCC*, 1, 4.

## New York Delegates Make the Case to Exclude the Quebec Act as an Official Grievance

If by mid-1775 everyone on both sides of the Atlantic understood New York's strategic military importance in the approaching civil conflict,<sup>31</sup> at the time of the first Continental Congress the concern of New York's delegates, especially those representing the colony's economic lifeline of New York City, was focused on keeping trade between the colonies and the mother country open. As much as New Yorkers feared another war involving their Canadian neighbors with whom they shared the longest border of any of the colonies, economic death from an extended trade embargo with Britain presented a more immediate and terrifying threat. The New York City delegates in particular, therefore, hoped to convince the other delegates to keep the list of grievances as narrow as possible and as free of complex issues as possible in order to bring the dispute with Britain and the new trade embargo to a quick end, an embargo the New York delegates had already pledged to support.

Although New York's arguments that demanding repeal of the Quebec Act as a condition of settling the pending dispute with Britain would erect a substantial roadblock to any settlement did not sway the other delegates, their argument that it would unnecessarily antagonize Quebec's Catholics before the Americans developed a plan to deal with the military threat the Quebec Act represented may well have convinced a majority of delegates to refrain from including in their prayer for relief at the end of the petition to the king a demand that he rescind the religious guaranties contained in the Act.

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<sup>31</sup> Reports of British military strategy for the American campaign were in wide circulation by mid-1775 with New York at the heart of the strategy. By early 1776, John Adams and Maj. Gen. Charles Lee, now Washington's second in command, were almost apoplectic about defense of New York. Adams wrote Washington in Cambridge, Massachusetts that New York was the 'Nexus of the Northern and Southern Colonies, . . . a kind of Key to the whole Continent, as it is a Passage to Canada to the Great Lakes, and to all the Indian Nations. No effort to secure it ought to be omitted.' Adams to Washington, January 6, 1776, quoted in Barnet Schecter, *The Battle for New York* (New York, 2002), pp. 59-60. Lee wrote Washington the previous day that the 'consequences of the enemy's possessing themselves of New York have appeared to me so terrible that I have scarcely been able to sleep.' He wanted to be allowed to recruit a regiment in Connecticut to secure New York in order to suppress 'that dangerous banditti of Tories' on Long Island, and to 'crush these serpents before their rattles are grown.' *Ibid.*, p. 123.

New York was one of the most religiously and ethnically diverse colonies in America.<sup>32</sup> Although trade and economic issues often eclipsed matters of religion in the colony, religion remained an essential element in the character of its people. This included New York City attorney John Jay, the delegate who led the fight to keep the Quebec Act off the list of grievances. A devout Calvinist of French, Dutch and Bohemian ancestry, Jay often recalled the harrowing stories his Huguenot grandfather told him about his escape from Louis XIV's 1685 persecution of French Protestants.<sup>33</sup> But as he was in Philadelphia to represent his New York City constituents, among whom were its leading merchant families of which his own relatives were prominent members, the ardent Calvinist grandson of a Huguenot refugee argued the pros and cons of the Quebec Act's being named a formal grievance 'dispassionately.'<sup>34</sup>

An effective debater, clear thinker, and quick drafter of complex documents in his legal practice and in his long career in government,<sup>35</sup> Jay began his argument to keep the Quebec Act off the list of grievances by acknowledging that there were good reasons for the colonies to complain of the Act. He cited its dangers 'from the religion & arbitrary constitution which it establishes,' its 'excessive magnitude,' and the 'supposed and probable motives which gave birth to it.'<sup>36</sup> He also acknowledged the propaganda value of including it as an official grievance, specifically how complaining of it would 'meet the popular clamor in England,' a

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<sup>32</sup> There were 239 Protestant congregations in New York, for example, in 1775 of which 76 were Dutch Reformed, 50 were Presbyterian, 26 Anglican, 26 Lutheran, 22 Quaker, and several others. Milton M. Klein, *The Empire State: A History of New York* (Ithaca, 2001), p. 167, citing Richard W. Pointer, *Protestant Pluralism and the New York Experience: A Study of Eighteenth-Century Religious Diversity* (Bloomington, 1988), p. 4. See also Joseph S. Tiedemann, *Reluctant Revolutionaries: New York City and the Road to Independence, 1763-1776* (Ithaca, NY, 1997), pp. 21-5, for a discussion of the city's ethnic and religious diversity.

<sup>33</sup> William Jay, *The Life of John Jay: With Selections from his Correspondence and Miscellaneous Papers* (Bridgewater, VA, 2000), p. 6.

<sup>34</sup> James Duane's Notes of Debates, [October 15-17? 1774], *LDC*, I, 199. Although Duane's notes are merely outlines of the arguments made, the editors of the *Letters of Delegates to Congress* remark that the key arguments were made by Jay. Jay and Duane worked closely together at the first Congress, often adopting the same side on most issues at the First Continental Congress. Neither wanted to see the Quebec Act listed as a grievance as both represented New York City.

<sup>35</sup> Jay served in the first and second Continental Congresses, as president of the Congress for a year, then was appointed by the Congress as minister to Spain during part of the American Revolution, served as one of the official peace negotiators with John Adams and Benjamin Franklin in Paris to end the American Revolutionary War, thereafter served as the foreign secretary of the united States of America and then was appointed the first Chief Justice of the Supreme Court by George Washington in 1789. He also was elected New York's governor twice.

<sup>36</sup> *Ibid.*

point he would exploit with a vengeance when drafting the Congress's *Address to the People of Great Britain*, approved on October 21.<sup>37</sup> Jay 'readily conceded that [the Act] could be mentioned in the petition to the King,' but to make it 'one of the articles [of grievance] which is to operate on our commerce cannot be consented to by New York.'<sup>38</sup>

He insisted that that the delegates needed to 'consider the justice and policy of every article as if it was that singly on which we stood—for in the event all but that may be rejected.'<sup>39</sup> If the colonies demanded too much, it would 'weaken our efforts—lose the chance of securing what is reasonable and [we] may get nothing.'<sup>40</sup> Getting nothing would leave the colonies no option but to fight or submit. New Yorkers always preferred a broader spectrum of options. Expanding the list of grievances beyond those which directly picked American pockets, as Jefferson might put it, or threatened their constitutional rights, reduced the chances for a successful resolution of the crisis. Jay urged the Congress, therefore, to consider how far it was 'justifiable in us to resist . . . this [Quebec] Act and attempt to force its Repeal at the expense of our commerce—in the end perhaps of a civil war—.'<sup>41</sup>

In a final push to keep the Quebec bill off the list of official grievances, Jay posed several politically incorrect questions, which were nonetheless as valid as his previous points. First, he asked if it would 'not be said that we go beyond our sphere—and while we contend for an exclusive internal legislature [we] intermeddle with the policy of other governments.'<sup>42</sup> Second, he asked if it was 'not a disputable point with respect to religion whether more is granted [by the Quebec Act] to the Canadians than was solemnly promised by the capitulation?'

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<sup>37</sup> On October 11, the Congress passed a resolution ordering the preparation of a memorial to the people of British America to state the necessity 'of a firm, united, and invariable observation of the measures recommended by the Congress.' It also ordered a draft address to the people of Great Britain. Jay, Richard Henry Lee and Jay's father-in-law, William Livingston, a New Jersey delegate were appointed a committee to produce the drafts. *JCC*, I, 62. Jay prepared the draft of the *Address to the People of Great Britain*, and though it was long believed that Lee drafted the memorial to the British colonies, it was later determined that John Dickinson's draft of the memorial was the one approved by Congress.

<sup>38</sup> *LDC*, I, 199.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.* Charles Carroll III expressed the same fear in a letter to his father in September. Charles Carroll III to Charles Carroll II, September 9, 1774, *DPDC*, II, 734-5.

<sup>41</sup> *LDC*, I, 199.

<sup>42</sup> *Ibid.* In the printed version of Duane's notes in the *LDC*, the word is 'police,' not policy.

Jay's point was similar to the question that dogged several privy council deliberations on the Quebec question and government lawyers.<sup>43</sup>

Those most outraged about the Act's recognition of Roman Catholicism continually alleged, however, that the bill 'established' that religion in Quebec as opposed to merely guaranteeing the right to practice the Catholic faith.<sup>44</sup> As Jay's remarks indicated, the issue was not black and white and could be the subject of honest dispute, making resolution of issues involving historic religious divisions elusive, if not impossible. Jay clearly saw the Quebec Act as posing an insurmountable barrier to a quick and peaceful resolution of the crisis, especially if debate focused on the religious guarantees granted Canada's Catholics.

Jay next addressed the issue of the Act's failure to provide for a legislative assembly, one of the principal reasons for Whig opposition to the bill in parliament and a constant lament of the handful of English-speaking subjects living in Quebec, discussed previously.<sup>45</sup> Aware of these arguments, and mindful that the delegates had just spent weeks arguing over the true nature of the relationship of a people to their government, Jay asked: 'If government is founded on consent,' which he believed, 'is it not disputable whether the new form is not agreeable to the majority of [Quebec's] inhabitants?'<sup>46</sup>

Setting the notion of consent aside, Jay posed two final questions to his colleagues on the Quebec Act's suitability as a formal grievance: 'whether the conqueror has not a right to impose laws on the conquered,' and lastly, he wondered if there were not 'some uncertainty . . . [that] our constituents will be discontented with this part of our Resolution? And unwilling to

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<sup>43</sup> Duane's notes do not show any mention by Jay of the promise made in the Treaty of Paris to recognize and take measures to protect this right, which likely would have led to prolonged legal bickering over the implications of the giant loophole in that treaty that granted Catholics in Quebec and Grenada their religious rights only 'as far as the laws of Great Britain permitted.' 1763 Treaty of Paris, *S&D*, I, 115. Neither the Quebec nor the Montreal capitulations that preceded the 1763 peace treaty included the loophole language, however, making Jay's reference to the capitulations a far safer legal argument for his purposes than reference to the weak treaty language.

<sup>44</sup> The Act's reinstatement of the tithes to support Roman Catholic clergy, a recommendation of Lord Mansfield toward the end of the drafting process in April 1774, was the basis for the widespread charge that the bill 'established' the Roman religion in Quebec.

<sup>45</sup> See, e.g., parliamentary debate and the testimony of Quebec witness Labotinière and Lt. Gov. Guy Carleton on this point in Cavendish, pp. 142-9; 161-3.

<sup>46</sup> *LDC*, I, 198.

be under restraints on that account.’<sup>47</sup> It would be no good, he suggested, to establish a policy that some or all would refuse to follow if the Congress pushed them too far. He was thinking of the merchant community of New York no doubt who during the late war had continued to trade with Britain’s enemies in the war without regard to restrictions on such trade posed by laws and regulations. Having presented his arguments, Jay rested his case.

#### Delegates Favor the Quebec Act as a Formal Grievance

Thomas McKean of Delaware rose in opposition to Jay’s position. McKean thought the ‘Magnitude of the [Quebec] law compels us to make a stand’ and include it as a grievance.<sup>48</sup> Doing so would also, he noted, be popular in England, something Jay had already acknowledged in his remarks. McKean added that by including the Quebec Act as a grievance, the ‘Protestants in Quebec will join us in our opposition.’<sup>49</sup> The significance of this point was highly dubious given that Protestants in Quebec Province numbered fewer than a thousand and everyone knew it.

Richard Henry Lee of Virginia who rarely, if ever, found himself in agreement with men from the middle colonies like Jay and Duane, believed as McKean, Sullivan and others that the Quebec bill was ‘the worst grievance.’<sup>50</sup> One of the earliest proponents of independence and the delegate who would introduce the resolution to declare independence from Great Britain in late June 1776 at the second Continental Congress, Lee was a dominant influence throughout the Revolution as were his three brothers, William, Arthur, and Francis. Their father, Thomas Lee, had served as Virginia’s acting royal governor and was a founder of the Ohio Company, the major player in the western lands speculation business.<sup>51</sup> During the debate

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid. After much interaction and initial cooperation, the English-speaking Protestants in Quebec, mostly merchants, declined to join the colonies in their dispute with Britain because the Congress was unwilling to waive the obligation that the merchants adhere to the terms of the Association’s trade embargo protocol.

<sup>50</sup> Ibid.

<sup>51</sup> J.K. McGaughey, ‘Richard Henry Lee (1732-1794). November 21, 2016, in *Virginia Encyclopedia*. Retrieved from [http://www.EncyclopediaVirginia.org/Lee\\_Richard\\_Henry\\_1732-1794](http://www.EncyclopediaVirginia.org/Lee_Richard_Henry_1732-1794), accessed June 28, 2018; see also

on the Quebec Act, Richard Lee understandably argued for the Quebec Act's inclusion as a grievance in part because of its having made Ohio the boundary of the new Catholic province.<sup>52</sup> He also argued, however, against immediate implementation of the trade embargo against American exports because of its impact on Virginia tobacco exporters, of which his family was one.

Lee reserved his most caustic remarks during debate, however, for the Quebec Act's recognition of Roman Catholicism. He referenced the 'Massacre of Paris' and the "Cruelty of Roman Catholics' as reasons to make the Act a formal grievance.<sup>53</sup> Such references, the first to the St. Bartholomew's Day Massacre in 1572, and the second to the whole history of persecution of Protestants popularized and continually stoked by reprintings of Foxe's *Book of Martyrs*, were standard shorthand references to conjure up the most terrifying examples of Catholic atrocities.<sup>54</sup>

Lee also questioned to what end the Act had 'confirmed' the Catholic religion in Quebec, and accused Britain of deliberately establishing an arbitrary government there to 'keep the old colonies in awe.'<sup>55</sup> Similar arguments had been employed by American dissenting Protestant leaders to oppose the establishment of an Anglican episcopacy in the colonies in the previous decades. As Patrick Lacroix notes, the 'language of anti-popery targeted the Church of Rome, but also became code for British and American opposition to Episcopal authority and to the 'Anglo-Catholic high flyers' of the Church of England.<sup>56</sup>

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J.K. McGaughey, *Richard Henry Lee: A Portrait of An American Revolutionary* (Lanham, MD, 2003); Richard Henry Lee, ed., *Life of Arthur Lee, LL.D.*, 2 vols. (Boston, 1829); Paul C. Nagel, *The Lees of Virginia: Seven Generations of An American Family* (New York, 1990). The influence of the Lee brothers on both sides of the Atlantic during the American Revolutionary period needs much more study.

<sup>52</sup> Duane's Notes, *LDC*, 1, 200. See also Jack M. Sosin, *Whitehall and the Wilderness* (Lincoln, NE, 1961).

<sup>53</sup> *LDC*, I, 200.

<sup>54</sup> Original title of Foxe's 1563 English edition was *Actes and Monuments of these Latter and Perillous Days, Touching Matters of the Church*, etc. Foxe added an essay on the St. Bartholomew's Day Massacre in his 1583 edition of the book.

<sup>55</sup> *LDC*, I, 200.

<sup>56</sup> Patrick Lacroix, 'Popery and Tyranny: King George III as a Late Stuart,' in *Canadian Society of Church History* (2015), 29. This is an important point made in nearly every history that discusses the religious roots of eighteenth-century American revolutionary history.

### John Adams's Notes on the Quebec Act

Like his fellow delegates McKean, Lee, and Sullivan, among others, New Englander John Adams was all for including the Quebec Act as a formal and principal grievance. Adams's talking points focused on the historic nature of the Romish religion and its political twin, arbitrary rule. Adams's notes include the following description of the Quebec Act: 'Wickedness of Heart; . . . Romish Religion; . . . Union of Feudal Law and Romish Superstition; Danger to us all. An House on Fire.'<sup>57</sup> His other talking points made reference to the 'Knights of Malta. Orders of military Monks. Goths and Vandals—overthrew the roman Empire.'<sup>58</sup> According to Duane's notes on the debate, Adams also questioned one of Jay's remarks that it might be the prerogative of a conqueror to give any kind of government it wanted to a conquered people.

Butterfield examined the chronology of Adams's notes on the Quebec bill as found in the statesman's papers. Butterfield observed that the Adams notes on the Quebec bill were on 'loose sheets of minutes of debates.'<sup>59</sup> Their physical placement followed the minutes of the debates on the Galloway plan for an American Parliament, which debate occurred on 28 September.<sup>60</sup> Butterfield questioned, however, whether the location of Adams's Quebec notes just after the Galloway plan notes indicated when Adams had in fact composed them. The editor concluded that a comparison of Duane's notes on Adams's remarks during debate on the Quebec Act between October 15-17 and Adams's own notes, 'strongly suggest that both pertain to the same day's debate.'<sup>61</sup> It was Butterfield's supposition, therefore, that Adams's notes were made around the time of the final debate on the grievance question in mid-October and had been misplaced in Adams's batch of September notes. There is another possibility, however.

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<sup>57</sup> *DAAJ*, II, 154-5 & fn.1.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

It is possible that Adams made his notes on the Quebec Act in anticipation of a debate he believed would follow shortly after the committee on rights and grievances laid its two reports before the Congress on September 22 and 24. It would have been reasonable for Adams to assume that Congress would set debate on the reports soon after they were submitted given that it was essential for the Congress to agree on the rights and grievances issue before proceeding to finalize its demands of the king for redress.

As Adams was a member of the committee on rights and grievances, moreover, he would have been aware that the report on grievances included the Quebec Act, would likely have discussed the subject with John Sullivan, also on the committee, and then jotted down his own thoughts in anticipation of a debate after submission of the reports. Regardless of when he composed his notes, however, Adams remained consistent in his views on the wickedness of the Quebec Act and the need to include it as an official grievance in the petition to George III.

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### The Congress Addresses the People of Great Britain

The vote to include the Quebec Act as a formal grievance in the final statement of rights and grievances, whether made on October 14 or more likely on October 17, did not end consideration of the greater Quebec question looming over the increasingly militaristic-toned deliberations.<sup>63</sup> Although Quebec's geo-military significance in the expanding nature of the conflict would become obvious soon enough, in late 1774 it could only be measured in part by

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<sup>62</sup> Cogliano, *No King, No Popery*, pp. 116-17. If Adams stuck for quite some time to his belief that the Quebec Act was a highly grievous act by the imperial government, by 1778-79, as Cogliano discusses, he had changed his mind on the religious issue generally. In drafting his state's constitution of 1780, Adams provided for religious tolerance for all and his fellow New Englanders approved it.

<sup>63</sup> The statement bore the official title when printed on October 27, 1774 of 'The Bill of Rights [and] a List of Grievances.' Hutson, 49. The text of the section on the Quebec Act reads as follows: 'Also the act passed in the same session for establishing the Roman catholic religion in the province of Quebec, abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger, from so total a dissimilarity of religion, law, and government to the neighbouring British colonies, by the assistance of whose blood and treasure the said country was conquered from France.' Hutson, 56.

the inclusion of the Quebec Act in every official paper and pronouncement of that first Congress.

In a classic 1688 revolutionary Whig attack on the Quebec bill, one which exceeded the rhetoric of Edmund Burke during debate on the measure in Westminster, appeared in the Congress's *Address to the People of Great Britain*. The *Address* was intended to appeal to popular anti-Catholic dissenting interests in England to spur them to pressure their government to repeal the recent Coercive Acts. Quebec historian Gustave Lanctôt thought that 'in the Quebec Act the Continental Congress at once recognized a two-edged weapon of propaganda which could be used both in England and in Canada.'<sup>64</sup> Though Lanctôt describes the *Address To the People of Great Britain* as being written in the 'fanatical style of the age,'<sup>65</sup> it is more accurate to say that it was written to tap into the most fanatical anti-Catholic, radical Whig *views* of the age for the purpose of reversing the imperial government's American policy. The imperial government could easily have reversed that policy and retained its new policy for the Canadians, however. The Quebec Act became the new rallying cry for all good Whigs and anti-papists to oppose the imperial government on general principle, it appeared.

Expressing 'astonishment that a British Parliament should ever consent to establish in that country [Quebec] a religion that has deluged your island in blood, and dispersed impiety, bigotry, persecution, murder and rebellion through every part of the world,' the *Address* beseeched British subjects across the Atlantic to admit 'that the Ministry, by the powers of Britain, and the aid of our Roman Catholic neighbors, should be able to carry the point of taxation, and reduce us to a state of perfect humiliation and slavery.'<sup>66</sup>

The *Address* dexterously tied together the secular political issue of taxation with the Protestant's view of Catholicism's rapacious and arbitrary character and history. It was this intertwined religious and secular threat, as Thomas Kidd points out, that Boston's Sam Adams

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<sup>64</sup> Gustave Lanctôt, *Canada & The American Revolution, 1774-1783* (London & Toronto, 1967), p. 213.

<sup>65</sup> Ibid.

<sup>66</sup> *Address to the People of Great Britain*, JCC, I, pp. 82-9.

was agonizing over when he wrote in 1768 ‘that the Stamp Act [1765] and the Townshend Duties [1767] were intended to soften Americans’ resolve and to prepare them for the ultimate tyranny of religious oppression.’<sup>67</sup>

The *Address To the People of Great Britain*, Nuxoll writes, ‘propelled [its author, John Jay] into the front line of Whig propagandists’ and was ‘notable both for the republican rhetoric that it voiced and for the constitutional theories that it espoused.’<sup>68</sup> She needed to add, as Lanctôt noted, that it also espoused the most fanatical views of the period.

The *Address* in fact hit all the high notes of classic English Whig attacks on that religion as a symbol of the arbitrary nature of their current government and monarch, the same arguments Burke made throughout debate in Westminster on the Act. It pointed out that the late war ‘was succeeded by an inglorious peace’ formed by a minister of principles and ‘of a family unfriendly to the protestant cause, and inimical to liberty.’<sup>69</sup> Lord Bute was the object of this particular attack, but it was also a not-so-veiled attack on his former pupil, the king, and his ‘papist’ advisors. The *Address* spelled out the Congress’s most anti-Catholic views of the Quebec Act:

And by another Act the dominion of Canada is to be so extended, modelled, and governed, . . . detached from our interests, by civil as well as religious prejudices, that by their numbers daily swelling with Catholic emigrants from Europe, and by their devotion to Administration, so friendly to their religion, they might become formidable to us, and on occasion, be fit instruments in the hands of power, to reduce the ancient free Protestant Colonies to the same state of slavery with themselves.<sup>70</sup>

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<sup>67</sup> Kidd, *God of Liberty*, 58.

<sup>68</sup> Nuxoll, *The Selected Papers of John Jay*, I, 95.

<sup>69</sup> *JCC*, I, 82-89.

<sup>70</sup> *Ibid.* In May 1775, at the Second Continental Congress, Jay ‘assumed a more ecumenical attitude’ when he drafted a letter to the ‘Oppressed Inhabitants of Canada’ as ordered by Congress. It was ‘widely circulated in newspapers and in pamphlet form.’ Nuxoll, *Selected Papers of John Jay, Volume I*, pp. 116-18; *JCC*, II, 68-70. Jay wrote in part: ‘Nay, the enjoyment of your very religion, on the present system, depends on a legislature in which you have no share, and over which you have no controul, and your priests are exposed to expulsion, banishment, and ruin, whenever their wealth and possessions furnish sufficient temptation. . . . Permit us again to repeat that we are your friends, not your enemies, and be not imposed upon by those who may endeavour to create animosities.’ Nuxoll, I, 117.

But the *Address* also sought to sow discord among the wealthy landowning interests in England and Ireland, suggesting that a religiously free Canada would trigger a mass emigration of unhappy Catholics to that colony. Unhappy dissenting Protestants in Europe and Ireland would also take note. A letter from Dublin of July 1774 published in the *New-Hampshire Gazette* later that year would have increased the anxiety of that country's landowners. The Dublin writer declared that the 'Prospect of Liberty is one powerful Inducement to Emigrations from this Country, and as Slavery advances here, your Attraction grows stronger . . . On our Account then as well as your own: stand fast in the Liberty wherewith your Ancestors have made you free.'<sup>71</sup> The writer assured Americans that 'the important Crisis of your country is ever uppermost in our Thoughts, as the Fate of Liberty is suspended on your Courage and unanimity.'<sup>72</sup> The writer was likely a Protestant non-conformer whose lot in Ireland was little better than that of a Catholic.

Conor Cruise O'Brien thought that Edmund Burke 'must have read the *Address to the People of Great Britain* with disgust' as it was the 'language of the enemies of his people.'<sup>73</sup> It seemed to O'Brien that Burke would have seen the Americans as advocating that Canada's Catholics 'be submitted to the same treatment as was endured by the Catholics of Ireland.'<sup>74</sup> O'Brien apparently had not reviewed or given much credence to Burke's xenophobic attacks on the Quebec bill in parliament. Lord North's biographer, Alan Valentine, argued similarly as O'Brien, adding, however, that failure to pass the Quebec Act might 'have created another Ireland under a century of injustices.'<sup>75</sup>

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<sup>71</sup> 'Dublin, July 15<sup>th</sup>, 1774,' in *New-Hampshire Gazette*, 4 November 1774.

<sup>72</sup> *Ibid.*

<sup>73</sup> O'Brien, *The Great Melody*, p. 93. It appears that Burke may have received his first copy of the *Address to the People of Great Britain* directly from Arthur Lee, then one of the American colonial agents in London. Richard Henry Lee wrote that his brother Arthur presented 'copies of the several addresses of the congress, viz., to the king, to the people of British America, and to the people of Great Britain, to Lord Chatham, to Mr. Burke, and to many other distinguished friends of America.' Richard Henry Lee, *Life of Arthur Lee, LL.D.*, 2 vols. (Freeport, NY, 1829), I, 42. The Congress in fact directed copies of their official papers to key London agents of some of the American colonies, including Burke. Burke would also have read the text of the *Address* in the London papers as Lee, and likely the other American agents, undertook to ensure that the Congress's papers received wide circulation in the London press pursuant to the instructions from the American Congress.

<sup>74</sup> *Ibid.*

<sup>75</sup> Valentine, *Lord North*, I, 328.

It may be that Burke privately winced when he read the anti-Catholic rhetoric in the *Address to the People of Great Britain*. As an ardent believer in Britain's constitutional monarchy, however, he was likely as concerned with the *Address's* bold challenge to the authority of the imperial government than its anti-Catholic passages. But Burke of all people would have understood the purpose of the *Address's* rhetorical attack on the Quebec Act, his own attacks on it during parliamentary debate having matched those of the *Address* Burke had sought to rally the merchant class to the Rockingham party's political agenda with his attacks on the bill and in the *Address*. The Americans were seeking to stir up popular support for their cause in England and elsewhere in the British world to force repeal of the Coercive Acts. It has worked in 1765-66 with the Stamp Act riots and trade embargo forcing repeal of that Act. That both the Rockingham Whig and the American attempts failed suggests that such efforts must be advanced by those who truly believe what they are saying or writing. Jay and Burke were not the most convincing communicators on the positions they advanced in their respective efforts.

### The Congress's Prayer for Relief

If in the end the American Congress voted to include the Quebec Act as an official grievance in its petition to the king (it was listed among the top four grievances),<sup>76</sup> it was more noteworthy that the petition's closing prayer for relief only sought rescission of the Act's 'altering the government and extending the limits of *Quebec*,' *not* its recognition of Roman Catholicism.<sup>77</sup> A compromise had clearly been reached on the religious issue on which some of the Congress's most influential delegates, Adams, Lee, McKean, and Sullivan among them,

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<sup>76</sup> The petition complained of the Act's 'Extending the limits of *Quebec*, abolishing the English and restoring the French laws, whereby great numbers of British freemen are subjected to the latter, and establishing an absolute government and the Roman Catholic religion throughout those vast regions, that border on the westerly and northerly boundaries of the free protestant English settlements.' Petition 'To the Kings most excellent majesty,' *JCC*, I, 117; Hutson, 75-80.

<sup>77</sup> *Ibid.*, p. 120. The king never responded to either the Americans' first petition or the second 'Olive Branch Petition' sent by the Second Continental Congress in 1775.

had taken a hard stand. One of the many lawyers among them must have pointed out why it might be a good idea to avoid putting the king on the spot over the Quebec Act's recognition of Roman Catholicism.

First, in the preamble to the *Address To the People of Great Britain*, the Congress questioned the authority of Parliament, not the king, on this issue, stating 'That we think the Legislature of Great-Britain is not authorized by the constitution to establish a religion, fraught with sanguinary and impious tenets, or, to erect an arbitrary form of government, in any quarter in the globe.' In addition, the king would consider such a demand as a direct challenge to his royal authority to treat a conquered people as he saw fit.<sup>78</sup>

The more dangerous risk of demanding the government to rescind its recognition of Canadians' religious rights involved having it be seen as admission by the Americans that the king or parliament had authority to determine religious matters in the colonies. Such an admission could come back to haunt them if the pending dispute was resolved amicably and the parties resumed their *status quo ante* relationship.<sup>79</sup> Such an admission could also have led to the tarring and feathering of every member of the Congress thought to have taken part in such an admission.

### The Congress Extends An Olive Branch to the Canadians

The First Continental Congress's last official action before adjourning on 26 October 1774 represented the culmination of what had been evolving as a two-track policy on the Quebec question for several weeks. If John Adams's diary entry for 4 October was accurate,

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<sup>78</sup> Hutson, p. 24.

<sup>79</sup> When fifty-five delegates gathered in Philadelphia in 1787 to replace the Articles of Confederation with a constitution, they deliberated and disagreed about what role, if any, religion would have in the constitution or their deliberations to make one. Those who opposed any reference to God or religion 'said that it was not meant to promote paganism, but to stop the government from monitoring people's religious opinions.' Harris and Kidd, *The Founding Fathers and the Debate Over Religion in Revolutionary America*, p. 15. As noted above, had the delegates to the First Continental Congress insisted in their petition to George III that he rescind religious liberty for Catholics, it would also have been an admission on their part that he had a right to 'monitor' their religious practices.

the idea that a formal overture should be made to the French Catholics in Quebec to join the American cause against the imperial government was in circulation by early October. Adams noted that Col. Charles Lee, who like the wealthy Maryland Catholic Charles Carroll III was in Philadelphia mingling with the new patriot leaders during the first Congress, dropped by his lodgings and ‘shewed me an Address from the C[ongress] to the People of Canada which he had.’<sup>80</sup> Butterfield notes after Adams’s entry for 4 October that it was ‘not until 21 Oct. that Congress resolved to prepare an address to the people of Quebec.’<sup>81</sup>

In editing his grandfather’s memoirs, Charles Francis Adams also noted that John Adams’s entry for October 4 was ‘worthy of notice’ and that the paper Lee showed Adams was in the ‘hands of General Lee’ and that it had been prepared a ‘fortnight before the [Congress’s] resolution, directing such a memorial to be prepared.’<sup>82</sup> If only Adams had elaborated on his reaction to viewing the address Lee ‘shewed’ him. Lee’s Canada paper apparently did not alter Adams’s desire to have the Quebec Act included in the petition to the king as a formal grievance, however. Although Lee’s biographer offers no additional details on Lee’s Quebec paper, he mentions that ‘strangely enough, Lee’s activities at Philadelphia seem to have included even the authorship, or part authorship, of one of the official papers of the Congress, an address to the people of Canada asking for their support in the struggle against Britain.’<sup>83</sup>

Two days before the Congress adjourned, Lee, who had already drawn up ‘a plan for the formation and organization of American battalions,’ met with delegates Thomas Mifflin and John Adams and ‘expatiated upon the plan.’<sup>84</sup> By June of the following year, Congress had appointed Lee as second in command to George Washington.<sup>85</sup> On its face, Congress’s ecumenical outreach to the inhabitants of Quebec may have justifiably drawn guffaws and

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<sup>80</sup> *DAJA*, II, 147.

<sup>81</sup> *Ibid.*, fn.1.

<sup>82</sup> Charles Francis Adams, *Works of John Adams*, II, 392.

<sup>83</sup> Alden, *General Charles Lee*, 60.

<sup>84</sup> *Ibid.*, 61.

<sup>85</sup> Alden, *General Charles Lee*, 75.

charges of hypocrisy from English loyalists and government leaders in London, but the strategy itself could not be so easily dismissed for it put Britain on notice that the Americans were prepared to adopt the same kind of dramatic change on their historic relationship with Roman Catholicism as their imperial government had recently done.

Even more credible and dramatic evidence of the American Congress's serious intent to befriend the old Catholic inhabitants of Quebec, however, was its invitation to the Canadians to send delegates to the next Continental Congress, scheduled to meet in May 1775 if the crisis remained unresolved.<sup>86</sup> If the Protestant British parliament and its monarch could give statutory guarantees to Roman Catholics somewhere in the empire after more than two hundred years, moreover, they could hardly criticize the Americans for seeing the wisdom of emulating and improving on such a plan. The promise of full English liberties might not be understood or, if understood, not welcomed by a majority of Quebec's inhabitants, as Burke, Jay and others recognized during the great Atlantic-wide debate on the Quebec Act. But the Congress's invitation to Quebec to send delegates to the next Continental Congress offers the best evidence that the Americans were prepared to make Canadians full partners in their new political enterprise, something the imperial government was not prepared to consider vis à vis their own Protestant flesh and blood in the American colonies, much less their new Catholic subjects in Canada.<sup>87</sup>

After the Congress approved the *Letter to the Inhabitants of Quebec*, it ordered it to be translated immediately into French, printed, published and dispersed throughout Quebec. It

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<sup>86</sup> On October 21, 1774, Congress appointed a drafting committee to prepare an address to the inhabitants of Quebec, and letters to St. John's, Nova Scotia, Georgia, and West Florida. On the committee were Thomas Cushing of Massachusetts, Richard Henry Lee of Virginia, and John Dickinson of Pennsylvania, which brought in a draft on the 24<sup>th</sup>. The draft was read and re-committed as the Congress was not satisfied with it. A second draft, approved by the Congress on 26 October 1774. *JCC*, I, 105-13.

<sup>87</sup> The American offer to the Canadians, moreover, was kept open and made a formal clause in the Articles of Confederation Dickinson drafted in 1777 for the new United States of America, which articles were ratified in 1781. The Articles granted 'special status to the province of Quebec by providing for its immediate admission into the federation of American states.' Article XI provided that 'Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.' Fenton, 'Birth of a Protestant Nation: Catholic Canadians, Religious Pluralism, and National Unity in the Early U.S. Republic,' p. 29.

called on the delegates from the border colonies of New-Hampshire, Massachusetts-Bay, and New-York to ‘assist in and forward the dispersion of the said address.’<sup>88</sup> Two weeks earlier, New Englanders had already taken up the new ecumenical spirit urged by their leaders in Congress. In a published notice in the *Massachusetts Spy* addressed ‘To the CANADIANS’ and ‘signed’ by the ‘SONS of NEW ENGLAND,’ the latter advised their ‘brethren’ in Quebec that the only reason ‘why we condemn the *Quebec* bill, is that it lays a foundation for *your* and *our* slavery: We aim to establish a pure system of civil and religious liberty through all America, and that you should in all respects be as perfectly free as ourselves.’<sup>89</sup>

The same day the *Spy* ran the New Englanders’ letter to the Canadians, it also reprinted an item from the *Pennsylvania Journal* of September 28 that read: ‘We are assured that General Carlton, governor of Quebec, is sailed from England, and has orders to raise 30,000 Canadians, who are to act under the mandates of Lord North, who we are told, has *sworn* that *he will lay the Americans at his feet.*’<sup>90</sup> Although a blatant attempt to discourage, frighten, provoke and warn the Americans, the wily New Englanders kept their attention on outfoxing their papist enemies across the Atlantic as they sought to befriend Catholics across the St. Lawrence.

In March 1775, Sam Adams wrote to Arthur Lee in London that Bostonians had ‘lately opened a correspondence with Canada which, I dare say will be attended with great and good effects.’<sup>91</sup> Adams had caught the spirit of toleration that was apparently sweeping through the Congress, a sea change from his fears expressed on the conquest of Canada by British troops in 1760. On 21 February 1775, the Committee of Correspondence of Boston retained a Yale graduate and lawyer, John Brown, for twenty pounds to carry letters from the Committee to ‘some Gentlemen of Montreal and Quebeck’ to establish a ‘friendly Intercourse with their

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<sup>88</sup> Notice by Charles Thomson, Secretary, Continental Congress, *Norwich Packet* (Norwich), Thursday, December 8, to Thursday, December 15, 1774.

<sup>89</sup> *Massachusetts Spy*, 13 October 1774.

<sup>90</sup> *Ibid.*

<sup>91</sup> John Adams to Arthur Lee, Boston, 4 March 1775, *Writings of Samuel Adams*, III, 197. See also Mark Anderson, *Battle for the Fourteenth Colony: America’s War of Liberation in Canada, 1774-1776* (Hanover and London, 2013), p. 46.

Brethren and Fellow Subjects in your Province' for the purpose of 'uniting with you in the necessary Means of obtaining the Redress of our Common Grievances.'<sup>92</sup>

Friends of America in London joined in urging the colonies to continue to reach out to Quebec's Catholics. A London merchant writing to a friend in Virginia in early January 1775 advised the colonists to place no 'strictures on the Roman Catholick Religion, as it will be much more advantageous for you to conciliate . . . [with] the *Canadians*, than to exasperate or rouse the people here.'<sup>93</sup> The failure of the *Address to the People of Great Britain* to rouse the English opponents of the Quebec bill was proof of the validity of this advice. The writer was, moreover, certain that the Americans were infinitely better able to contend or manage the situation in Canada in 1774 than 'she will be ten or twenty years hence, if the *Quebec* Bill remains' without repeal.<sup>94</sup>

In twenty years' time, Britain's new Catholic subjects in the expanded Province of Quebec would likely have increased greatly.<sup>95</sup> The fur trade would have remained out of reach of the Americans by virtue of the continued links between Canadian French and Native Americans, now backed by British power in Quebec. As trade increased between Canada and Great Britain, moreover, as it inevitably would if Canada remained in Britain's orbit, it would likely be to the detriment of the estranged English-speaking colonies in North America. In other words, the Americans had little choice but to make friends with Quebec's inhabitants as quickly as possible. It had taken the imperial government more than ten years to offer a firm deal to the Canadians to protect their religious and civil liberties. It took the Americans seven weeks.

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<sup>92</sup> The Committee of Correspondence of Boston to John Brown, Boston, February 21, 1775, *Writings of Samuel Adams*, III, 182.

<sup>93</sup> 'Extract From a Letter written by a London Merchant To His Friend in Virginia, Dated January 9, 1775,' *AA*, I, 1103.

<sup>94</sup> *Ibid.*

<sup>95</sup> François-Xavier Garneau estimated the population of Quebec in 1791 at 125,000, which represents a doubling approximately of the 1774 population of 65,000 or so. By 1844, Garneau notes, the population of 'Lower Canada' (present-day Quebec) was approximately 691,000, of which 524,000 were French Canadian, 156,000 English and foreign, and a total of 578,000 Catholics. From an excerpt of Garneau's *The History of Canada From Discovery to the Present Day*, in *The Constitutions That Shaped Us: A Historical Anthology of Pre-1867 Canadian Constitutions*, Guy Laforest et al. (eds.) (Montreal & Kingston, 2015), p. 76.

## Epilogue

Proof that the Catholic issue would not be allowed to fade quietly into the background following the First Continental Congress's adoption of the formal outreach to Canada's Catholics was the appearance of a pamphlet in December 1774 by a precocious teenager studying at King's College in New York City by the name of Alexander Hamilton.

The nineteen-year-old Hamilton launched his political career with his publication, *A Full Vindication of the Measures of Congress, &c.*, in which he demanded to know of his fellow New-Yorkers if their blood did not 'run cold to think an English parliament should pass an act for the establishment of arbitrary power and popery in such an extensive country? They may as well establish popery in New-York and the other colonies as they did in Canada,' he wrote, 'as they had no more right to do it there than here.'<sup>1</sup>

Earlier in the essay, however, Hamilton had written in more conciliatory tones. He looked forward, he wrote, to the prospect that Canada and other colonies not represented at the first Congress in Philadelphia would 'ere long, be united in one indissoluble chain' and not persist in excluding themselves 'from the 'secure enjoyment of those heaven-descended immunities we are contending for.'<sup>2</sup> He had been carefully studying every pronouncement from the first Continental Congress and was obviously hedging his political bets by not wanting to appear completely out of step with the new ecumenical course running through America's political leadership. On the other hand, he knew the advantage of cultivating popular support and was prepared to exploit the Quebec Act to gain a foothold in the exciting events ahead.

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<sup>1</sup> Alexander Hamilton, *A Full Vindication of the Measures of Congress, &c.* (New York, 1774), in *The Papers of Alexander Hamilton, Volume I: 1768-1778*, Harold C. Syrett, ed. (New York, 1961), pp. 68-69. The original pamphlet was published by New York City printer John Rivington. Hamilton was engaged in a pamphlet war with the author of a series of pro-government essays signed by 'A.W. Farmer,' attacking the work of the First Continental Congress. Scholars later identified 'A.W. Farmer' as most likely being Anglican minister in Westchester County, New York, Samuel Seabury. *Ibid.*, p. 45, fn.1. The pamphlet war between Hamilton and the 'A.W. Farmer' was still going on in June 1775. Hamilton also addressed the Quebec Act by itself in two shorter pieces, 'Remarks on the Quebec Bill: Part One,' and 'Remarks on the Quebec Bill: Part Two.' *Ibid.*, pp. 165-176.

<sup>2</sup> *Ibid.*, p. 62.

While Congress surveyed the geo-political-military landscape in which the Coercive and Quebec Acts had placed them and extended an olive branch to Canadians in preparation for what appeared could turn into drawn-out violent conflict, some Americans remained fixated on the threat they perceived on their border with Canada and the threat the Quebec Act continued to represent, they believed, to their religious freedom. New York provincial leader Melancthon Smith requested that New York's delegates at the second Continental Congress, for example, obtain a guaranty of religious freedom for Protestants should a peace plan be negotiated with Great Britain, a proposal which would also have handed the imperial government a right most colonists would never admit it possessed. Nevertheless, Smith proposed the following language in New York's proposed peace plan for consideration by the Philadelphia delegates:

And as the free enjoyment of the rights of conscience is of all others the most valuable branch of human liberty, and the indulgence and establishment of Popery all along the interior confines of the old Protestant Colonies tends not only to obstruct their growth, . . . all concerns of a religious and ecclesiastical nature . . . ought to remain exclusively with the respective Colony Legislatures.<sup>3</sup>

Westchester County assemblyman and attorney, Gouverneur Morris, adamantly opposed raising the religious question, writing to Jay in Philadelphia that 'the Article about Religion is most arrant Nonsense and would do as well in a high Dutch Bible as the Place it now stands in.'<sup>4</sup> Unable to convince the other members of the provincial assembly to drop Smith's proposed clause on religion, Morris offered the substitute language 'that neither the Parliament of Great Britain, or any other earthly legislature or tribunal, ought or can interfere

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<sup>3</sup> Nuxoll, *Selected Papers of John Jay*, I, 128, fn.2.

<sup>4</sup> Morris to Jay, June 30, 1775. *Ibid.*, 127. See also Max M. Mintz, *Gouverneur Morris and the American Revolution* (Norman, OK, 1970), pp. 49-50. Mintz also describes Morris's role in June 1775 in helping to forestall a potential outbreak of war between New York and Canada. The Provincial Congress had received word that northern New York radicals had made raids into Quebec, leading Morris to draft an open letter from the New York Provincial Congress to Quebec's inhabitants disclaiming official New York responsibility for the invasion, and added an appeal 'for Canadian support.' The Provincial Congress had fifteen hundred copies printed in French and five hundred in English. Mintz, p. 54.

or interpose in any wise howsoever, in the religious and ecclesiastical concerns of the Colonies.”<sup>5</sup> Morris’s language would have saved him from being tarred and feathered.

Between Smith’s insistence that the imperial government recognize that all matters of religion remain ‘exclusively with the respective Colony Legislatures’ to Morris’s proposal that *no* ‘earthly legislature or tribunal’ should interfere in religious concerns of the colonies, the provincial leaders ended up agreeing to a proscription of state interference with religion under any circumstances whatsoever. The response of the New York delegation in Philadelphia to their province’s peace plan turned aside their provincial government’s concerns: ‘As the Inhabitants of the Continent are happily united in a political Creed, we are of opinion that it would be highly imprudent to run the Risque of dividing them by the Introduction of Disputes foreign to the present Controversy.’<sup>6</sup> The response was in Jay’s handwriting and he added that all the members had concurred ‘in a Desire of burying all Disputes on ecclesiastical Points which have for Ages had no other Tendency than that of banishing Peace & Charity from the World.’<sup>7</sup> This still devoted Calvinist grandson of a French Protestant refugee had undergone a great change in attitude toward the religious question the Quebec Act had raised for American Protestants.

Thus, whatever fears still lurked in the hearts of American Protestants regarding the Quebec Act, their leaders in Philadelphia were determined to exorcise them, at least for the duration of the crisis. Further evidence that the American leaders in Congress were moving to keep religious differences from derailing their important political work was the arrival in Philadelphia of their first Catholic delegate at the Continental Congress in May 1775—Charles Carroll III of Maryland.

Charles Metzger wondered if the bigotry against Catholics in America in 1774 as evidenced by the attacks on the Quebec Act in the newspapers, pulpits, and Congress had

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<sup>5</sup> Ibid.

<sup>6</sup> New York Delegates to Continental Congress to New York Provincial Congress, 6 July 1775, Nuxoll, I, 128, fn.2.

<sup>7</sup> Ibid.

‘warped the minds of men to such a degree that they perceived in the toleration clauses of the Quebec Bill an evil equally as great as the political and economic injustices of which they believed themselves victims.’<sup>8</sup> Metzger identified a handful of historians prior to 1938 who addressed the issue of religion’s impact in the revolutionary era, Catholic and Protestant. He found disagreement among them concerning which denomination contributed the greater impetus for the decision of the colonies to break with Great Britain. Was it the Catholic-friendly provisions of the Quebec Act, as Metzger believed, which played as great if not the greater role in pushing the colonies to separate from Britain? The element of ‘religious prejudice [against Catholics] was present,’ Metzger notes, ‘and it was active, not passive.’<sup>9</sup>

Frank Cogliano offers a possible response, approaching the question from the Protestant colonists’ perspective. Cogliano comments that the intensity of the conflict that was rooted in issues of ‘taxation and representation’ was so great that it ‘inspired the American political conflict with Great Britain and the move for independence.’<sup>10</sup> But, he argues, the intensity of that dispute and the ‘war that it wrought cannot be appreciated without taking anti-papal feeling into consideration.’<sup>11</sup> That the bigotry was a necessary element of the alchemy performed by the American Congress to move beyond its religious differences with Canadians in an attempt to bring all North Americans under a new umbrella of unprecedented freedoms cannot be overstated.

Elizabeth Fenton emphasizes, as does the discussion above, how the American Protestants transformed this active prejudice to serve both their present and future needs as free citizens. ‘In imagining Canadian Catholics as subjects whose private lives were entirely dictated by papal rule,’ Fenton writes, ‘Anglo-Protestant colonists constructed themselves as freely private subjects capable of shaping a religiously plural . . . nation that could

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<sup>8</sup> Metzger, *The Quebec Act*, pp. ix-x.

<sup>9</sup> *Ibid.*, p. 205.

<sup>10</sup> Cogliano, *No Popery, No King*, p. 50.

<sup>11</sup> *Ibid.*

accommodate diversity because it was ‘not Catholic.’<sup>12</sup> Sam Adams might not have explained New Englanders’ swerve toward religious tolerance in October 1774 quite this way, but the fact is he and many other Protestants in America were willing to bury their pre-revolution prejudices against non-Protestants and Canadians in particular in order to preserve the liberties without which their religious freedom was not safe.

#### Hope For Peaceful Resolution Denied By Results of New Elections in England

From the opening days of the First Continental Congress, the delegates had held out hope that rumored new elections in Britain would bring ‘better men and measures.’ In one of its formal resolutions issued in late October the Congress beseeched the people of Great Britain to ‘furnish a Parliament of such wisdom, independence and public spirit, as may save the violated rights of the whole empire from the devices of wicked Ministers and evil Counsellors.’<sup>13</sup> Rumors of plans for early elections began shortly after the last day of parliament of 22 June 1774 when the king gave his royal assent to the Quebec Act and other measures. The *New-York Journal* of 20 October 1774 carried a story from London dated 26 August that the ‘last resolution of the Cabinet relative to the Bostonians, we hear, is . . . to use conciliating measures *for the present*, call the parliament early, and *prevail* upon them to pass an act to enable a committee of 12 . . . to confiscate the lands, and property of all those *refractory* spirits, who sign conventions, or any other way disturb the public tranquility. This, it is thought, will effectively bring them to obedience.’

The final tally of votes late that year returned a comfortable majority to the North government, even slightly greater than it enjoyed previously.<sup>14</sup> Opponents of the government’s

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<sup>12</sup> Ibid., 30.

<sup>13</sup> Jay, *Address to the People of Great Britain*, 21 October 1774. *JCC*, I, 90.

<sup>14</sup> The fourteenth Parliament opened November 29. Lewis Namier and John Brooke, *The House of Commons 1754-1790* (Oxford, 1964), pp. 74-7, 535. See also correspondence of George III with his prime minister, Lord North, between July and mid- November, beginning July 6 when North mentions the ‘approaching Election,’ (Fortescue, III, no. 1488), and North’s report of final results of all the polls. North to King, 14 November 1774, and King to North of same date (Fortescue, III, no. 1554).

American policy who had been urging the Americans to continue to resist imperial policy were not numerous enough or unwilling to cooperate with one another sufficiently over the issue to force a change in that policy. Namier and Brooke note that the American situation ‘figured on the programme of the Opposition candidates’ in Bristol, London, and Westminster, and also in Middlesex, but nowhere else despite the widespread coverage of the crisis across the Atlantic.

In the merchant-dominated constituency of Bristol, where Edmund Burke was standing for election, however, Namier and Brooke note that ‘judging from broadsheets issued during the election campaign the Quebec bill was singled out by the opponents of Government as a more reprehensible measure than the Boston port bill or the legislation against Massachusetts Bay.’<sup>15</sup> ‘Radicalism had been growing rapidly in Bristol since 1769,’ the authors note, ‘and the Quebec bill was particularly obnoxious because it gave toleration to Roman Catholics (eighteenth-century radicalism was fiercely anti-Catholic).’<sup>16</sup> The American congress’s last action was its approval on 26 October 1774 of the petition of grievances. After mention of the Boston Port Act Congress complained of the Quebec Act’s extension of the limits of Quebec and establishing an absolute government, French law, and the Roman Catholic religion. ‘

Had our Creator been pleased to give us existence in a land of slavery,’ the Congress stated, ‘the sense of our condition might have been mitigated by ignorance and habit.’ But they had been born in freedom and their rights secured by the king’s royal ancestors who had ‘been seated on the British throne to rescue and secure a pious and gallant nation from the popery and despotism of a superstitious and inexorable tyrant.’<sup>17</sup> Clearly the Congress had not resolved its dispute over including the Quebec Act as a formal grievance, but by not demanding rescission of the Act’s religious guaranties in the petition’s prayer for relief, the Congress can be said to have conceded

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<sup>15</sup> Namier and Brooke, *House of Commons 1754-1790*, p. 75.

<sup>16</sup> *Ibid.*

<sup>17</sup> The text of the ‘Petition from the General Congress to the King,’ 26 October 1774, Philadelphia. *JCC*, I, 115-21.

The congress sent the petition to Benjamin Franklin, London agent for Massachusetts, New Jersey, and Pennsylvania, directing him and other named agents for various American colonies to deliver it to the king.<sup>18</sup> By the time the North government's first conciliation plan on taxation arrived in the colonies in late spring 1775, however, the first shots of the American Revolution had already been fired. As the final two chapters of this study have suggested, however, by the time those shots were heard 'round the world,' the Americans had already decided on an imperial plan of their own to win over Catholic Canada to the American cause. The king had been virtually decapitated by the Americans and his castle would be under siege for seven long years. The French Canadians remained non-violent for another six decades before making their own move for independence—a quest that has remained a 'live charge' since the conquest.

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<sup>18</sup> Other agents to whom the congress directed the petition included Edmund Burke for New York and Thomas Wentworth for New Hampshire. *JCC*, I, 121-2. Franklin sought to meet with secretary of state for the American colonies, Lord Hillsborough, five times, but the secretary refused to receive him. *JCC*, I, 124.

## Conclusion

This study has argued that the concessions the Canadian Catholic church leaders won from the imperial government between 1759 and 1774 on the bishop issue, reformation of the treaty clause restricting the free exercise of religion, and security of property, were primarily the result of their strategy of non-violence and peaceful engagement with their Protestant conquerors after the conquest. It has also argued that the statutory policy changes in Britain's centuries' old anti-Catholic penal laws were not limited to Quebec alone.

During the same period which saw the imperial policy accommodations made toward Quebec's Catholics, the government of George III set about to begin the process of legal relief for Ireland's Catholics. The Irish Oath Act of 1774 was a direct result, intentionally or not, of the king's appointment of his former chaplain, Frederick Hervey, as a bishop to Cloyne, then Derry, from which Hervey launched his one-man campaign to devise an oath Catholics could take in Ireland without repudiating the basic tenets of their faith.

As this study argues, the new Catholic policy did not cause the American Revolution. Nor did the Canadians cause the American Revolution by insisting on protecting their rights to their religion and property, which the conquest and the 1763 peace treaty had put in jeopardy. The Quebec Act with doubt, however, exacerbated the division that had opened up between Britain and the colonies over the Coercive Acts passed in the same session of parliament as the Quebec Act. As war became a distinct possibility between Britain and the colonies, however, the Quebec Act's security implications for the colonies forced American's politically astute leaders in Philadelphia in 1774 to come to terms with American Protestants' historic fear of Catholics to enable them to focus on their grievances with the mother country. The anti-Catholic furor over the Quebec Act could well have eclipsed America's need to devise a strategy to limit the number of fronts it would have to defend if they were pushed into a war with Britain. Americans could not win a war they would have to fight on three fronts.

The decision of the delegates of the First Continental Congress to put their faith in a policy of religious tolerance toward America's long-time French Catholic enemies in Canada and to welcome a Catholic delegate in 1775 in the person of Charles Carroll III to the Second Continental Congress adds to the historic significance of Britain's new Catholic policy in the American Revolutionary era. Its implications would stretch beyond the Revolution and find their way into America's federal constitution in 1788.

This study adopted an Atlantic history approach, or to use the more generic French term for writing history that crosses borders of every kind to write 'entangled history,' *histoire croisée*. The study examined the legal, diplomatic, and geopolitical origins, evolution, and political consequences of Britain's new Catholic policy from the perspectives of four principal communities who shaped or were shaped significantly by the imperial government's decision to begin the reinstatement of Catholic rights throughout its majority Catholic dominions.

The success of one generation's strategies to protect what is essential to their existence and well-being redounds to successor generations. This is proven in the Canadians' case by their survival in a physical space they have occupied for more than 400 years, more than half of which they have spent as a minority community in an often hostile environment.. In the Americans' case, their fight to be free of oppressive political and economic policies over which they had no say also succeeded in part because they were willing to keep their eye on the real enemy in 1774, their own government rather than the Canadians.

One could reasonably conclude after reading this study that the imperial government with all its power erred seriously with its obsessive preoccupation with its Anglo-French rivalry, and its rigid attitude toward the free-wheeling, independent-spirited American colonies. As discussed in the study, George III seemed incapable of adjusting his policies toward the Americans as recommended by economist Adam Smith, or toward the American colonists whose love of liberty rankled the king to the point he lost sight of Britain's own economic interests. The king's failure to adjust his attitudes during this period, except on the Catholic

question, led to his defeat in America. No one ever advised George III, as far as this study has discovered, that he could give the Canadians what they asked for by way of protections for their religion and property and not also accommodate the Americans in their demands for economic and political equity. The two were never mutually exclusive.

Within a decade of the passage of the Quebec Act, the special relationship the Act created between the Canadians and George III and his government experienced formidable stresses. The American Revolution saw English-American, mostly Protestant, loyalists take up residence in Canada, given land and support by Britain to restart their lives. It did not take long for these refugees to begin pressuring their home government for more English-friendly laws just as the first post-conquest English émigrés had done after the signing of the peace treaty. The British government responded to these new English Canadian demands with enactment of the Constitutional Act of 1791, dividing Quebec in two, creating an English-speaking majority in the southwest of the province (named Upper Canada), and leaving a French majority in the northeastern section of the old province (Lower Canada). The key provisions of the Quebec Act guaranteeing Catholics their religious and civil liberties remained intact, however.<sup>1</sup>

While the new law gave English-speaking inhabitants what they had wanted from the beginning of Britain's takeover of Quebec, a popular legislative assembly, the secular oath of allegiance incorporated in the Quebec Act ensured that the French majority in Lower Canada could be elected to and form a majority in their own assembly. Philippa Levine observes, however, that the 'system of representative government did little to deflect the tensions' to which the 1791 Act had given birth, a 'British Canada and a French Canada.'<sup>2</sup> As the post-1759 history of Canada suggests, however, such tensions existed from the first days of the conquest. They are, moreover, the inevitable effect of war and conquest. For a resourceful and wily conquered people, as the Canadians were, such tensions were not only preferable to

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<sup>1</sup> The two provinces were rejoined under the 1840 Act of Union, then separated again in 1867 under the British North America Act that created the Dominion of Canada.

<sup>2</sup> Philippa Levine. *The British Empire: Sunrise to Sunset* (Harlow, UK, 2013), p. 42.

annihilation or an Acadian-type expulsion, but the animating force for engaging more deeply with the new government to ensure that such options never befell them.

The political aim of the Anglo interests that brought about the Constitution Act of 1791 was the same as that which English people had always sought to secure, freedom from oppressive authority and self-determination. As this study has suggested throughout, the dynamics at play in 1774 on both sides of the Atlantic resulted in an expansion of liberties for all advocates of human freedom, even if French Canadians after 1783 would experience a shrinking of the possibilities the Quebec Act had promised. Jocelyn Létourneau sees the 1791 Act as a policy intended to confine the French Canadian population to a geographical hollow or crevice (*creux*) in which it was hoped they would be leveled, made to disappear, as the old penal laws had done to Britain's Catholics.

At the same time, Létourneau acknowledges that the 1791 Act that sought to confine French Canadians to such a crevice also created a political assembly based on the British parliamentary model in which they could air their dissensions and make new demands 'pertinent to their cause.'<sup>3</sup> As the Canadians had demonstrated since the conquest, they were more than capable of making demands 'pertinent to their cause.' After 1791, they had an additional forum other than membership on the legislative council to make them.

The American leaders in Philadelphia in September 1774, confronting the threats of imperial policy that culminated with news of passage of the Canada-friendly Quebec Act, stood in a relatively similar position vis à vis the imperial government as the Canadians had in 1759 and found themselves again in 1791. Yet the Canadians still had their 1774 'protean piece of political technology,' Linda Colley's description of constitutions, and the Americans would soon after the revolution see the need to adopt a similar piece of political technology by way of a federal constitution to protect the rights they had fought almost a decade to establish.

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<sup>3</sup> Jocelyn Létourneau, *Le Québec, les Québécois* (Québec, 2004), p. 23.

Forced to confront their respective weak positions vis à vis the imperial government while making demands of it for politically sensitive religious guaranties in the case of the Canadians, and political guaranties for control over their pocketbooks in the American case, both North American communities found reason to move beyond their historic differences in 1774. The American preemptive invasion of Canada in 1775 was directed at the British imperial authority, not the Canadians. Although it was a military failure, the Canadians obtained a personal view of how the Americans were willing to risk their lives to fight for their rights against British authority, giving the Canadians more leverage with that authority to remain in control of their destiny.

Although the fortunes of the French Canadians after 1791 were far inferior to those of their American cousins and the English American loyalists who emigrated to Canada, the fact that the population of French Quebec today is nearly eight million compared to that of 65,000 in 1759 speaks something of the success of their post-conquest strategies to retain their own religion, laws, language, and customs.

Within a century of the 1791 Constitutional Act, the population of English-speaking Ontario (old Upper Canada) exceeded French Quebec (old Lower Canada) by almost 600,000.<sup>4</sup> The tensions between Anglo and French Canadians continued and increased dramatically at times. In 1962, Canada's future prime minister, Pierre Trudeau, characterized the British attitude toward French Canadians as 'contempt,' adding that 'entire generations of Anglophones lived in Quebec without finding the means to learn three French phrases.'<sup>5</sup>

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<sup>4</sup> The population of Lower Canada (Quebec) in 1790 was 161,311. By 1881, it had climbed to 1.35 million. By 1784, Upper Canada's population stood at about 10,000. By 1824, it was about 155,000 and by 1881, it was 1.92 million, surpassing that of French Lower Canada. W.J.A. Donald, 'The Growth and Distribution of Canadian Population,' in *Journal of Political Economy*, vol. 21, no. 4 (April 1913), pp. 297-9. The numbers have been rounded.

<sup>5</sup> Corneillier, "Essais québécois-La Conquête sous toutes les coutures," *Le Devoir*, 7 November 2009. See also Pierre Elliott Trudeau, *Memoirs* (Toronto, 1993). Trudeau was elected prime minister in 1968. Despite the import of his statement about the inferior status of French Canadians vis à vis the Anglo community, Trudeau opposed French Canadian nationalism and the idea of Quebec independence. See Jacques Lacoursière and Robin Philpot, *A People's History of Quebec* (Montreal, 2009), pp. 170-1.

Today Quebec retains a unique status in the Canadian Federation. Its place in Euro-Canadian history, however, is secured. They founded the first European colony in North America. They obtained a constitution early on after the conquest. And Anglo-Canadian scholar Edward Andrew writing in 2011 that all Canadian identity flows from the Quebec Act deserves greater attention from scholars in the future.



## Appendices

### **The 1759 Quebec Articles of Capitulation on Religion and Property**<sup>1</sup>

#### Article II

That the inhabitants shall be preserved in the possession of their houses, goods, effects, and privileges. [Granted on condition of the laying down of arms.]

#### Article V

That the inhabitants shall not be removed, nor obliged to quit their houses, until their condition shall be settled by their Britannic, and most Christian Majesties.

#### Article VI

That the free exercise of the Roman religion is granted, likewise safeguards to all religious persons, as well as to the Bishop, who shall be at liberty to come and exercise, freely and with decency, the functions of his office, whenever he shall think proper, until the possession of Canada shall have been decided between their Britannic and most Christian Majesties.

### **The 1760 Montreal Articles of Capitulation on Religion and Property**<sup>2</sup>

#### Article XXVII

The free exercise of 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. These people shall be obliged, by the English Government, to pay their Priests the tithes, and all the taxes they were used to pay under the Government of his most Christian Majesty. [Granted as to the free exercise of their religion, but the obligation of paying the tithes was suspended and made dependent on the King's pleasure, which issue was not resolved until the Quebec Act reinstated the Catholic tithe.]

#### Article XXVIII

The Chapter, Priests, Curates and Missionaries shall continue, with an entire liberty, their exercise and functions of cures, in the parishes of the towns and countries.

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<sup>1</sup> Signed 18 September 1759. English text, S&D, I, 5-7.

<sup>2</sup> Signed 8 September 1760. English text, S&D, I, 25-36.

### **The 1763 Treaty of Paris Clause on Religion**<sup>3</sup>

#### **Article IV**

His Britannick Majesty, on his side, agrees to grant the liberty of the Catholick religion to the inhabitants of Canada: he will, I consequence, give the most precise and most effectual orders, that this new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit. His Britannick Majesty farther agrees, that the French inhabitants, or others who had been subjects of the Most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of his Britannick Majesty, and bring away their effects as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts or of criminal prosecutions: The term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty.

### **The Royal Proclamation of 1763**<sup>4</sup>

And whereas it will 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, We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under our Great Seal of Great Britain, by the said Governments are constituted, given express Power and Direction to our Governors of our Said Colonies [Quebec, East Florida, West Florida, Grenada] will admit thereof, they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, . . . *and We have also given Power to the said Governors, with the consent of our Said Councils, and the Representatives of the People, Welfare, and good Government of our said Colonies, and of the People so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England,* and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, 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. [Emphasis added.]

### **Excerpts from Gov. Murray's 'Ordinance Establishing Civil Courts' in**

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<sup>3</sup> The treaty was formally signed 10 February 1763 by Britain and the Bourbon powers. The English text quoted here is found *S&D*, I, 115-6.

<sup>4</sup>

**Quebec, September 17, 1764**<sup>5</sup>

In all Tryals in this Court [Superior Court, or Court of King's Bench], all His Majesty's Subjects in this Colony to be admitted on Juries without Distinction.

...

The Judges in this Court are to determine agreeable to Equity, having Regard nevertheless to the Laws of *England*, as far as the Circumstances and present Situation of Things will admit, until such Time as proper Ordinances for the Information of the People can be established by the Governor and Council, agreeable to the Laws of *England*.

The *French* Laws and Customs to be allowed and admitted in all Causes in this Court, between the Natives of this Province, where the Cause of Action arose before the first Day of *October*, One Thousand Seven Hundred and Sixty-four.

**Excerpts from 'Presentments of the Grand Jury of Quebec' by Leaders of Quebec's English Community, October 16, 1764**<sup>6</sup>

The Ordinance [of September 17, 1764] made by the Governor and Council for establishing Courts of Judicature in this province is grievous and some Clauses of it, We apprehend to be unconstitutional, therefore it ought forthwith to be amended to prevent his Majesty's Subjects being aggrieved any longer thereby.

...

Among the many grievances which require redress this seems no to be the least, that person professing the Religion of the Church of Rome do acknowledge the supremacy and jurisdiction of the Pope, and admit Bulls, Briefs, absolutions &c from that see, as Acts binding on their Consciences, have been unpannell'd, en Grand and petty Jurys even where Two protestants were partys, . . . We therefore believe nothing can be more dangerous to the latter than admitting such persons to be sworn on Jurys, who by the Laws are disabled from holding any Office Trust or Power, more especially in a Judicial Capacity . . .

That By the Definitive Treaty the Roman Religion was only to be tolerated in the province of Quebec so far as the Laws of Great Britain admit . . . We therefore believe that the admitting persons of the Roman Religion, who own the authority, supremacy and Jurisdiction or the Church of Rome, as Jurors, is an open Violation of our most sacred Laws and Libertys, 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.

That—so many Gentlemen of the Army and in actual service exercising any Judicial Authority, to be unconstitutional nothing but necessity by the want of a sufficient number of subjects qualify'd for the purpose, can excuse, even in a new Country,

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<sup>5</sup> Full text in *S&D*, I, 205-210. Excerpts at 206-7.

<sup>6</sup> Full text in *S&D*, I, 212-15. Excerpts at 213-14.

such an unwarrantable incroachment on the establish'd maxims of a British Government.

**Text of Oath in The Irish Oath Act of 1774**<sup>7</sup>

I A.B. do take almighty God, and his only son Jesus Christ, my redeemer, to witness, that I will be faithful and bear true allegiance to our most gracious sovereign lord king George the third, and him will defend to the utmost of my power against all conspiracies and attempts whatever that shall be made against his person, crown and dignity; and I will do my utmost endeavour to disclose and make known to his majesty and his heirs all treasons and traitorous conspiracies which may be formed against him or them: And I and defend, to the utmost of my do faithfully promise to maintain, support and defend, to the utmost of my power, the succession of the crown in his majesty's family against any person or persons whatsoever, hereby utterly renouncing and abjuring any obedience or allegiance unto the person taking upon himself the stile and title of prince of Wales, in the life-time of his father, who since his death is said to have affirmed the stile and title of king of Great-Britain and Ireland, by the name of Charles the third, and to any other person claiming or pretending a right to the crown of these realms; And I do swear, that I do reject and detest, as unchristian and impious, to believe that it is lawful to murder or destroy any person or persons whatsoever for or under pretence of their being hereticks, and also that unchristian and impious principle that no faith is to be kept with hereticks. I further declare, that it is no article of my faith, and that I do renounce, reject and abjure the opinion, that princes excommunicated by the pope and council, or by any authority of the see of Rome, or by any authority whatsoever, may be deposed or murdered by their subjects, or by any person whatsoever; and I do promise that I will not hold, maintain or abet any such opinion, or any other opinion, contrary to what is express in this declaration: And I do declare, that I do not believe that the pope of Rome, or any other foreign prince, prelate, state or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority or pre-eminence, directly or indirectly, within this realm: And I do solemnly, in the presence of God, and of his only son Jesus Christ, my redeemer, profess, testify and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any reservation, equivocation or mental reservation whatsoever, and without any dispensation already granted by the pope, or any authority of the see of Rome, or any person whatever, and without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other person or persons, or authority whatsoever, shall dispense with or annul the same, or declare that it was null and void from the beginning.

So help me God.

**Selected Provisions of The Quebec Act of 1774, 14 Geo III c. 83**<sup>8</sup>

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<sup>7</sup> 13 & 14 Geo III, c. 35.

<sup>8</sup> Full text of the Quebec Act is in *S&D*, I, 572-73.

Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title, or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provisions thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made.

And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of *Quebec*, and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above Sixty-five thousand Persons professing the Religion of the Church of *Rome*, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the First Establishment of the said Province of *Canada*; be it therefore further enacted by the Authority aforesaid, That the said Proclamation, so far as the same relates to the said Province of *Quebec*, . . . and all and every the Ordinance and Ordinances made by the Governor and Council of *Quebec* for the Time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the First Day of *May*, One thousand seven hundred and seventy-five.

And for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That His Majesty's Subjects, professing the Religion of the Church of *Rome* of and in the said Province of *Quebec*, may have, hold, and enjoy, the free exercise of the Religion of the Church of *Rome*, subject to the King's Supremacy, declared and established by an Act, made in the First Year of the Reign of Queen *Elizabeth*, over all the Dominions and Countries which then did, or thereafter should belong, to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

Provided, nevertheless, That it shall be lawful for His Majesty, His Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

Provided always, and be it enacted, That no person, professing the Religion of the Church of *Rome*, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the First Year of the Reign of Queen *Elizabeth*, or any other Oaths substituted by any other Act in the Place thereof; but that every such Person who, by the said Statute is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as His Majesty shall appoint, who are hereby authorized to administer the same; *videlicet*,

*I, A.B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His Majesty King George, and him will defend to the utmost of my Power, against all traitorous Conspiracies, and Attempts whatsoever, which shall be made against His Person, Crown, and Dignity; and I will do my utmost Endeavour to disclose and make known to His Majesty, His Heirs and Successors, all Treasons, and traitorous Conspiracies, and Attempts, which I shall know to be against Him, or any of Them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservations,*

*and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the Contrary.*

SO HELP ME GOD

And every such Person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to take the Oath required by the said Statute passed in the First Year of the Reign of Queen *Elizabeth*.

And be it further enacted by the Authority aforesaid, That all His Majesty's *Canadian* Subjects, within the Province of *Quebec*, the religious Orders and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments, had not been made, and as may consist with their Allegiance to His Majesty, and Subjection to the Crown and Parliament of *Great Britain*; and that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the Laws of *Canada*, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province, by His Majesty, His Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of *Canada*, until they shall be varied or altered by any Ordinances that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the Time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in Manner herein after mentioned.

...

And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs and Successors, by Warrant under His or Their Signet or Sign Manual, and with the Advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of *Quebec*, to consist of such Persons resident there, not exceeding Twenty-three, nor less than Seventeen, as His Majesty, His Heirs and Successors, shall be pleased to appoint.

...

Provided also, That no Ordinance touching Religion, or by which any Punishment may be inflicted greater than Fine or Imprisonment for Three Months, shall be of any Force or Effect, until the same shall have received His Majesty's Approbation.

**Examples of Texts of Oaths in Other Acts From 1558-1829**

### **1558 Act of Supremacy, 1 Eliz 1 c.1**<sup>9</sup>

I, A.B., do utterly testify and declare in my conscience that the Queen's Highness is the only supreme governor of this realm, and of all other her Highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal, and that *no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority ecclesiastical or spiritual within this realm*; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the Queen's Highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, pre-eminences, privileges and authorities granted or belonging to the Queen's Highness, her heirs or successors, or united or annexed to the imperial crown of this realm. So help me God, and by the contents of this Book.

### **1673 Test Act, 25 Car. II c.2**<sup>10</sup>

[Text of Declaration Against Transubstantiation required of all public officeholders, civil and military, along with oaths of allegiance and supremacy; amended 1678 to include all peers and members of parliament, 30 Car II St.2]

I, N, do declare that *I do believe that there is not any transubstantiation in the sacrament of the Lord's Supper*, or in the elements of the bread and wine, at or after the consecration thereof by any person whatsoever.

### **Oath of Allegiance in 1689 Bill of Rights, 1 Will & Mary 2 c.2**<sup>11</sup>

I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary, So help me God.

#### Oath of Supremacy in same Act:

I, A.B., do swear that I do from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm. So help me God.

### **1701 Act for the further Security of His Majesties Person and the Succession of the Crown in the Protestant Line, 13 & 14 William III c.6**<sup>12</sup>

[Following death of James VII/II and Recognition of his heir, James VIII/III, as rightful successor in exile by France, Spain, Papal States, and Modena, English parliament passed act requiring the swearing of new oath denying James VIII/III had any right to the crown. All civil and military officers, employees and students of colleges, school teachers, court officers (barristers, solicitors, clerks), etc. required to take new oath.]

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<sup>9</sup> Text from Henry Gee and Hardy William John (eds.), *Documents Illustrative of English Church History* (New York, 1896), pp. 442-458; also online at [history.hanover.edu/texts/engref/er79.html](http://history.hanover.edu/texts/engref/er79.html).

<sup>10</sup> Text online at <https://www.british-history.ac.uk/statutes-realm/vol5/pp.782-785>.

<sup>11</sup> Text online at [https://avalon.law.yale.edu/17th\\_century/england.asp](https://avalon.law.yale.edu/17th_century/england.asp).

<sup>12</sup> Text online at <https://www.british-history.ac.uk/statutes-realm/vol17/pp747-750#h3-0002>.

**1714 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 . . . , 1 Geo. I, c. 13.**<sup>13</sup>

Oath of Allegiance:

I, A.B., do swear, that I do from my heart abhor, detest and abjure, as impious and heretical, that dimmable doctrine and position, That princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm.

So help me God.

Oath of Supremacy (Same as text under 1701 Act above]

**Excerpt of Oath Relating to Repudiation of Rights of James III to Throne of England, Ireland, and Scotland**

I, A.B., do truly and sincerely acknowledge, profess, testify, and declare . . . That I do not believe in my Conscience that the Person pretended to be the Prince of Wales during the Life of the late King James and since his Decease pretending to be and taking upon himself the Stile and Title of King of England by the Name of James the Third hath not any Right or Title whatsoever to the Crown of this Realm or any other of the Dominions thereto belonging And I do renounce, refuse, and abjure any Allegiance or Obedience to him . . .

**1793 Catholic Relief Act (Ireland), 33 Geo III c.2**<sup>14</sup>

For those holding civil or military office, or holding professorships, or being masters, or fellows, of any college, the Act incorporates oath set forth in the 1774 Irish Oath Act as well as the following new oath:

I, A.B. do hereby declare, that I do profess the Roman Catholic religion. I, A.B., do swear, that I do abjure, condemn, and detest, as unchristian and impious, the principle that it is lawful to murder, destroy, or any ways injure any person whatsoever, for or under the pretence of being a heretic; and I do declare solemnly before God, that I believe, that no act in itself unjust, immoral, or wicked, can ever be justified or excused by or under pretence or colour, that it was done either for the good of the church, or in obedience to any ecclesiastical power whatsoever. I also declare, that it is not an article of the Catholic faith, neither am I thereby required to believe or profess that the pope is infallible, or that I am bound to obey any order in its own nature immoral, though the Pope or any ecclesiastical power should issue or direct such order, but on the contrary, I hold that it would be sinful in me to pay any respect or obedience thereto. I further declare, that I do not believe that any sin whatsoever, committed by me, can be

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<sup>13</sup> Text online at [https://www.law.umn.edu/library/irishlaw/1Geolc13Sec1\\_33](https://www.law.umn.edu/library/irishlaw/1Geolc13Sec1_33).

<sup>14</sup> Text on online at [members.pcug.org.au/~ppmay/acts/relief/\\_act\\_1793.htm](http://members.pcug.org.au/~ppmay/acts/relief/_act_1793.htm).

forgiven at the mere will of any Pope, or of my priest, or of any person or persons whatsoever, but that sincere sorrow for past sins, a firm and sincere resolution to avoid future guilt and to atone to God, are previous and indispensable requisites to establish a well-founded expectation of forgiveness, and that any person who receives absolution without these previous requisites, so far from obtaining thereby any remission of his sins, incurs the additional guilt of violating a sacrament; and I do swear that I will defend to the utmost of my power the settlement and arrangement of property in this country, as established by the laws now in being; I do hereby disclaim, disavow and solemnly abjure any intention to subvert the present church establishment for the purpose of substituting a Catholic establishment in its stead; and I do solemnly swear, that I will not exercise any privilege to which I am or may become entitled, to disturb and weaken the Protestant religion and Protestant government in this kingdom.

So help me God!

### **1829 Roman Catholic Relief Act, 10 Geo. IV c.7**<sup>15</sup>

Oath required to be taken by Catholic peers or members before allowed to take office, and by those eligible to vote for them, ‘instead of the Oaths of Allegiance, Abjuration, and Supremacy.’

I, A.B., do sincerely promise and swear, That I will be faithful and bear true allegiance to His Majesty King George the Fourth, and will defend him to the utmost of my power against all conspiracies and attempts whatever, which shall be made against his person, crown or dignity; and I will do my utmost endeavour to disclose and make known to His Majesty, His heirs and successors, all treason and traitorous conspiracies which may be formed against him or them: And I do faithfully promise to maintain, support and defend, to the utmost of my power, the succession of the Crown, which succession, by an Act, entitled, ‘An Act for the farther Limitation of the Crown, and better securing the Rights and Liberties of the Subject’, is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of these realms: And I do further declare, That it is not an article of my faith, and that I do renounce, reject and abjure the opinion, that princes excommunicated or deprived by the Pope, or any other authority of the see of Rome, may be deposed or murdered by their subjects, or by any person whatsoever; And I do declare, That I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority or pre-eminence, directly or indirectly, within this realm. I do swear, That I will defend to the utmost of my power the settlement of property within this realm, as established by the laws: And I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present Church. I do solemnly in the presence of God, profess, testify, and declare, That I do make this Declaration and every part thereof, in the plain and ordinary sense of the words of the Oath, without any evasion, equivocation, or mental reservation whatsoever. So help me God.

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<sup>15</sup> Text online at [http://multitext.ucc.ie/d/The Emanicipation Bill](http://multitext.ucc.ie/d/The_Emanicipation_Bill).

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AAQ-22CP-C15	Jollivet to Briand 9 October 1763
AAQ-22CP-C15	Montreal Petition to King for a bishop
AAQ-11B-VII-62A	Duc de Praslin to La Corne; De Bussy to Frischemau
AAQ-11B-IV-50A 1764	Le Chapitre to La Corne autumn 1764
AAQ-26CP-DM-C	Jollivet to Briand 21 October 1763
AAQ-10B-1-244v-250v	Registre du Chapitre

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MG23, A 1 Volumes 1-4 containing correspondence, plans, drafts of Quebec bill, America and Canada, pp. 1-5865. 3 reels. Digitized.

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Volume 83: Instructions for governor of Minorca

Volume 84: Civil government and constitutional history of Minorca

Volume 165: Dunning's Notes on Gordon Riots

Alexander Wedderburn, 1<sup>st</sup> Earl of Rosslyn Papers

Box 1, Folders 3-10: American Revolutionary War Correspondence: Boston

Box 1, Folder 14: George Germain Correspondence

Box 1, Folder 31: State of Facts and Proceedings respecting Black Charribs of St.  
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Box 2, Folder 13: Notes on Land Grants in Nova Scotia.

## Thomas Gage Papers

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RA GEO/ADD/32/273-357	A Short History of France from its first origin to the present time
RA GEO/ADD/32-2010-11	Essay on America and future colonial policy
RA GEO/MAIN/44721-9	Letter from Prince William to George III from Newfoundland 21 September 1786
RA GEO/MAIN/5366	Draft message from George III to House of Commons in which he reviews his political ideals and struggles that have prevented them from being realized [?1783]

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