

# A Pragmatic and Conservative Measure: Catholic Toleration in Quebec after the Treaty of Paris

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## Abstract

In 1763, when Britain acquired the colony of Quebec from France by the Treaty of Paris, the colony's loyalty could not be taken for granted. How could the quiescence of "His Majesty's new subjects," the Catholic Canadiens, be assured, especially if renewed war with France should ensue? Furthermore, the eighteenth-century British constitution was profoundly anti-Catholic. How could it be applied in a colony populated by Catholics? British colonial administrators sought to secure the acquiescence of the Canadiens by offering them a civil administration patterned after a conservative and paternalistic interpretation of the British constitution. But when the exclusion of Catholics from public life made the implementation of the conservative political structure they envisioned unworkable, they chose the structure over anti-Catholicism and moved to permit the Canadiens to participate in public life. Landed men were more important to a stable political order than Protestant men. The Governors promoted religious toleration for the Canadiens, but this toleration reflected pragmatic concerns about security in a frontier colony and a fundamentally conservative view of political legitimacy, rather than the liberal attitudes implied by the term toleration.

Conflict characterized eighteenth-century British constitutional development. Profoundly shaken by regicide and civil war in the previous century, Britain's political elite sought to work out new definitions of political legitimacy while appealing to the "ancient constitution" for their justification. Continued competition with France for trade and empire, industrial, economic and population growth, as well as the ferment of new ideas all made for a "sense of a society in turmoil," as Paul Langford termed it.<sup>1</sup> But these changes had to be accommodated within a society hostile to the idea of change, one which believed the British constitution to be the best that could be devised.

This political contest has been thoroughly examined in Britain itself. Numerous scholars have discussed reform initiatives.<sup>2</sup> In contrast, Jonathan Clark argued that eighteenth-century British society was an *ancien regime* society, one characterized by monarchical rule, aristocracy and the importance of

the church.<sup>3</sup> His interpretation was rejected by Joanna Innes, (and others) who reminded us that the “eighteenth-century English state...was a state founded upon a revolution,” the Glorious Revolution of 1688.<sup>4</sup> So was it conservative or revolutionary?

When Quebec was ceded to Britain in 1763, it became one more arena where this contest was played out. The question of legitimate authority was posed with particular urgency in Quebec because of its unique situation. Acquired by conquest rather than by settlement, the colony’s loyalty could not be taken for granted. The British could not hold it by force.<sup>5</sup> And the inhabitants were *Catholic*. This fact had two serious implications for British government. The first was strategic. If Britain had to face war with Catholic France again, how could the quiescence of the Canadiens, “His Majesty’s new subjects”, be assured? The second was constitutional. How could the British constitution, fundamentally anti-Catholic since the Glorious Revolution,<sup>6</sup> be applied to a colony populated by Catholics?

How the British colonial administrators established a legitimate civil administration in the colony of Quebec, then, shows not what members of the British elite thought about political legitimacy, but what they *did* about it. They patterned it after the British constitution. But theirs was a conservative interpretation of the constitution and the political order they articulated was both conservative and paternalistic. Perhaps it was not an *ancien regime* society, but it *was* monarchical – authority derived from above, from the King, here represented by his commissioned servant, the Governor. The Governors regarded the colonists as subjects of the King, who were to be protected by His Majesty’s Paternal Care and who, in turn, owed the King obedience and due submission. It *was* aristocratic in that the qualifications of those who were to wield power in the colony were inherited status and ownership of land. And it *was* based on an acceptance of an established Church entwined with the state which ratified and enforced the political order.<sup>7</sup> It was a personal, or face-to-face society,

where people were linked together in a network of deference and obligation – a paternalistic social order. Such a society was stable, they believed, and stability was what they wanted in Quebec.

However, significant challenges to the implementation of the constitution arose in the colony. First, the Catholicism of the Canadiens made it nearly impossible for the Governors to create a civil administration. Catholics could not serve as Council members or Justices of the Peace, nor sit as jurors or members of an elected legislative assembly, nor vote for such an assembly. What was to be done?

Second, the English-speaking merchants in the colony, “His Majesty’s old subjects”, held significantly different conceptions of what constituted a legitimate political order. They criticized the Governors of the colony for what they regarded as a failure to provide constitutional government. They clamoured for an assembly, excluding the Catholic Canadiens from participation without qualm. In their view, legitimate authority derived from their participation in government. They regarded themselves as **citizens of a state** rather than as **subjects of the King**. They asserted their right to participation in government. David Milobar argued that the merchants used the language of political reform developed in the political battles at the centre.<sup>8</sup> Thus, although this conflict took place in the colony of Quebec, the debate remained the eighteenth-century constitutional debate.

Two conflicts, then, – the tension between the “ancient constitution” and the colonial situation and the tension between the differing conceptions of the civil order held by the British administrators and the merchants – made for interesting politics in the colony. The Governors had to mediate between the **demands** of the merchants and the **needs** of the Canadiens. The choices they made, protecting “His Majesty’s new subjects,” to use the expression invariably used by the Governors to refer to them, showed their beliefs about the British constitution and held implications for British constitutional development.

Governor James Murray began by recognizing the guarantees given in the capitulations of Quebec and Montreal and the Treaty of Paris<sup>9</sup> and on the common law principle that a conquered

people retained its laws until the new sovereign changed them. The Canadiens were granted security of property and the right to the free exercise of their religion. Security of property was broadly defined and was understood to encompass such things as seigneurial land tenure and the right of priests to tithes, even though these were unknown to the eighteenth-century British constitution.

Secondly, the Governors refused to overturn French civil law in the colony, especially laws respecting inheritance, land tenure and dower rights, because such a change would have caused hardship and distress among the Canadiens. Nor would they permit the creation of the legislative assembly promised by the Proclamation of 1763 as long as it excluded the Canadiens. Dominated by the English-speaking merchants, such an assembly most certainly would have passed legislation contrary to the interests of the Canadiens.

Pragmatic policy considerations further influenced the Governors' choices. When the exclusion of Catholics from public life made the implementation of the political structure they envisioned unworkable, they chose the structure over the anti-Catholicism of the British constitution and permitted Canadiens to sit as jurors, to act as lawyers, and to fill public offices. They believed that **landed** men were more important to a stable political order than **Protestant** men. Thus, a combination of paternalism and pragmatism shaped the response of the British Governors and policy-making elite to the constitutional questions posed by the colony of Quebec.

The blueprint for the civil administration was the Royal Proclamation of 1763.<sup>10</sup> The proclamation directed the Governor to summon an Assembly as soon as circumstances permitted and empowered him together with his Council and the Assembly to make laws and ordinances for the government of the colonies. The reason for this aspect of the proclamation was made clear: "And whereas it will greatly contribute to the speedy settling of 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."<sup>11</sup>

The government of the colony would be settled by the *Paternal* care of the King evidenced in the security given to the Liberties and Properties of His subjects by the calling of an Assembly. Until such an Assembly could be called, residents of the colony were to enjoy the benefit of the laws of England and to this end the Governor had the power, under the Great Seal, to create Courts of Judicature to hear and determine all cases, “according to Law and Equity, as near as may be agreeable to the Laws of England.” English law, then, was understood to be at the heart of the constitution. It was the benefits of living under the British constitution and English law that would both attract English settlers and win the hearts of the Canadiens.

Much of the well-known conflict between the Governors of Quebec and the merchants was based on this part of the proclamation. The merchants insisted both on their **right** to an assembly and on their **right** to English law. The Governors **refused** to call assemblies that would exclude the Canadiens, relying on the clause in the Proclamation, “so soon as the state and circumstances of the said Colonies will admit thereof.” And as we will see in a minute, Murray created a Court that stepped outside of the instructions to implement English law in the colony.

Murray found it difficult to create a civil administration in the colony because the colony lacked the kind of people whom he believed ought to be appointed to such offices. As he complained to the Board of Trade and Plantations:

Your Lordships will be pleased to observe in this, and in the appointment to all Civil Offices, I must be under the greatest Inconveniences. The British Subjects in this Province consist of two very different sets of People, the Military, and Mercantile, whom Duty or Interest have led here, and who can be considered only in the light of Passengers, few have acquired Property therein and consequently cannot be supposed thoroughly attached to its Interests, yet as there is no other Choice, we must endeavour to make the best of it for the King’s Service and the Good of the Province.<sup>12</sup>

Landed men were what the colony lacked, at least landed men who could take civil office, since the seigneurs were excluded by their religion. Thus, when Murray sought to appoint men to the Council, which, in the absence of an Assembly, was the only body to lend legitimacy to the regulations to be set

up in the colony, he had to appoint military men and merchants, rather than landed gentlemen, the appropriate men for office.

Once they were appointed and duly sworn, the Governor and Council undertook the task of making rules and regulations for the peace, order and good government of the colony. We have a copy of “All the Ordinances since the Establishment of Civil Government in August 1764, to the 3rd of June 1765, inclusive.”<sup>13</sup> This list covers almost the entire first year of the province’s civil administration and so provides a survey of what Murray and the Council deemed necessary to government in the colony.

The first ordinance passed in September 1764, “An Ordinance relating to the Assize of Bread and for ascertaining the Standard of Weights and Measures in the Province of Quebec,” was a two-part ordinance.<sup>14</sup> In order to prevent fraud, weights and measures were to accord with those of the Exchequer of England. The second part of the ordinance, the Assize of Bread, was an ancient English law, which set the price of bread sold to the public according to the price of grain. It was a paternalist measure designed to protect the public, the poor in particular, from profiteering by millers or bakers. Such a law reflects an idea of a just price – a price for bread at which the poor could afford to live. The moral idea of a just price stands in sharp contrast to the *laissez-faire* idea of prices being the result of the interaction of supply and demand. The market did not yet rule in eighteenth-century Britain or apparently, in Quebec. The “Ordinance to prevent Forestalling the Market, and Frauds by Butchers &C.,” was similar in intent. Forestalling the market, as buying in gross was called, was regarded as unfair exploitation of the people. These two ordinances dealt with commerce at its most basic level, the small transactions of everyday life. The concern was with fair dealing and the protection of the ordinary person – they were paternalist measures.

Also passed in September 1764 was “An Ordinance, For regulating and establishing the Courts of Judicature, Justices of the Peace, Quarter-Sessions, Bailiffs, and other matters relative to the Distribution of Justice in this Province.”<sup>15</sup> Clearly, the distribution of justice was regarded as a primary responsibility of government. As the preamble to the ordinance expressed it, “it is highly expedient and necessary, for the well Governing of His Majesty’s good Subjects...and for the speedy and impartial Distribution of Justice.” The Ordinance established three courts: the Court of King’s Bench,<sup>16</sup> the Court of Assize, to sit in Montreal and in Trois Rivières, “for the more easy and convenient Distribution of Justice to His Majesty’s Subjects in those distant Parts of the Province,”<sup>17</sup> and the Court of Common Pleas. Three things are noteworthy about this latter court. First, trial was to be by jury if either party requested it, and **Catholics** were to be allowed to sit on these juries. Second, the Judges in this court were to determine cases “**agreeable to Equity**” until the Governor and Council could pass ordinances “agreeable to the Laws of England.” Finally, the **French laws and customs** were to be allowed and Canadian advocats and proctors were to be allowed to practice.<sup>18</sup> By these three concessions, Murray and the Council hoped to provide for the needs of the Canadiens. This inferior court was intended as a temporary measure to ease the transition for the Canadians – a very pragmatic decision by the colonial administrator, but one rooted in paternalism. The immediate introduction of English law and procedure as promised in the Proclamation of 1763 would have caused hardship for His Majesty’s new subjects.

The “Ordinance for the better observing and keeping the Lord’s Day”, oddly enough, enforced the attendance of the Canadiens at Catholic worship. Fines were imposed for failure to attend church.<sup>19</sup> Here we find religion and public order inextricably entwined – and surprisingly, the Protestant civil order enforcing the attendance of Catholics at church.

But the support for the Catholic Church in the colony went further. In 1763, General Murray had written to the Earl of Shelburne respecting applications he had received from both clergy and lay people concerning church government. The church in Quebec had been without a bishop since 1760. It had been proposed that this problem be resolved by the election of a candidate by the chapter in Quebec who, with the consent of the British government, could proceed to Europe for consecration. The vicar-general of Montreal, Étienne Montgolfier, was elected. Murray judged him unfit for the position: “If so Haughty and Imperious a Priest... is placed at the Head of the Church in this Country, he may hereafter occasion much mischief if ever he finds a proper opportunity to display his Rancour and Malice.”<sup>20</sup> Instead, Murray recommended Jean Olivier Briand, Grand Vicar of Quebec, who had “constantly acted with a Candour, Moderation and Disinterestedness, which bespeak him a worthy, honest man.”<sup>21</sup> Briand, the governor’s choice, was sent to London where he eventually received permission from the British ministers to seek ordination in France. While the Canadian church had been provided with a Bishop, the superior authority of the civil government had been clearly established. The church might continue in Quebec, but only if it knew its place.

The Quebec Act of 1774 ratified these concessions made to Catholic Quebec by Governors Murray and Carleton. Was it a movement towards toleration on the part of the British government? Philip Lawson thought so.<sup>22</sup> But it was not respect for the religion of the Canadians that prompted the government to admit Catholics to participation in public life, but a particular view of what made a stable social order. The church was an essential pillar of society: it ratified the monarchy, it encouraged the due submission to the civil authority that was seen as the appropriate role of **subjects of the King** and it justified and legitimated the hierarchical order. The specific problem with the Catholic religion in the eyes of the government was political. Catholics gave allegiance and owed obedience to an authority other than the King – to the Pope. If that connection could be severed, and they believed it could be,



then they believed they had little to fear. This is one of the instances in the government of the colony in which the pattern of choices made by the governor and his superiors in London revealed their priorities, their understanding of the political order and the “ancient constitution.”

Others have argued that this growth of religious toleration was inspired by Enlightenment ideals or that the concern for imperial security led to a “toleration for loyalty” equation.<sup>23</sup> It may appear from what I have outlined that Governors Murray and Carleton made such an implicit deal. But I don’t think so. Rather they were part of a paternalist understanding of government in the colony, one that implicitly accepted the need for an established church to support the state, if only it could be made subordinate to the civil administration.

Let me illustrate this paternalist understanding of the constitution in the colony in another sphere. In 1768 Lord Hillsborough wrote to the Lieutenant Governor of Quebec, Guy Carleton, with respect to recommendations Carleton had made for the colony. Hillsborough doubted if his recommendations would be dealt with soon. “In the mean time His Majesty desires that His Canadian subjects should be assured of His gracious Disposition to give them every Mark of His Royal Protection that they can reasonably hope for or expect.”<sup>24</sup> The colonists were to wait patiently, secure in the knowledge of the King’s protection.

A little later in the colony’s life, Governor Carleton wrote to Hillsborough, concerning a petition of some colonists:

When last at Montreal the rough Draft of a Memorial to the King for the Reestablishment of the ancient Laws of the Country, and for some Alteration in the Administration of Justice, was communicated for my Approbation, but as I understand the King’s Intentions are to grant those very Corrections and Improvements for which they mean to Petition, and it is far more eligible that these should take their Rise from

His Paternal Attention to their Interests, than proceed from any Sollicitations on their Part, I took Care to get the same quashed.<sup>25</sup>

Why was it better for the corrections and improvements to be made without the colonists petitioning for them? It was preferable that such benefits be regarded as the gracious gift of the King to his subjects – the King’s Paternal Attention to their Interests. It would not do for the subjects to begin to think of reforms as their own doing or as their right. They were, rather, boons granted to his loyal subjects by their fatherly King.

Thus, the government of the colony of Quebec reflected a remarkably conservative understanding of the British constitution, one where paternalism and pragmatism worked together to create political order in which “His Majesty’s new subjects” were just that, **subjects of the King** rather than **citizens of the state**.

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<sup>1</sup> Paul Langford, *Public Life and the Propertied Englishman, 1689-1798*, (Oxford: Clarendon Press, 1991), Preface, v.

<sup>2</sup> Brewer, *Party Ideology*; Rogers, "Popular Protest"; Peter D. G. Thomas, *John Wilkes: A Friend to Liberty*. (New York: Oxford University Press, 1996); Peter D. G. Thomas, "The House of Commons and the Middlesex Elections of 1768-1769," *Parliamentary History* 12, no. 3 (1993): 233-248; John Brewer, "The Wilkites and the Law, 1763-74: A Study of Radical Notions of Governance," in *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries* (New Brunswick, N.J.: Rutgers University Press, 1980): 128-171; I.R. Christie, *Wilkes, Wyvill and Reform* (London, 1962).

<sup>3</sup> J.C.D. Clark, *English Society, 1688-1832: Ideology, social structure and political practice during the ancien regime* (Cambridge: Cambridge University Press, 1985), 6.

<sup>4</sup> Joanna Innes, "Jonathan Clark, Social History and England's 'Ancien Regime,'" *Past & Present*, 115 (May, 1987): 165-200.

<sup>5</sup> Nor did they attempt to hold it by force. From a garrison of nearly 12,000 men in 1760, the numbers quickly declined to less than 4,000 in 1763 and to only 1100 in 1766. Fernand Ouellet, "The British Army of Occupation in the St. Lawrence Valley, 1760 -74: The Conflict between Military and Civil Society," in *Armies of Occupation*, edited by Roy A. Prete and A. Hamish Ion, (Waterloo: Wilfrid Laurier University Press, 1984), 38.

<sup>6</sup> English society after the Glorious Revolution was self-consciously anti-Catholic. As Linda Colley has argued, "Protestantism was the dominant component of British religious life. Protestantism coloured the way that Britons approached and interpreted their material life. Protestantism determined how most Britons viewed their politics. And an uncompromising Protestantism was the foundation on which their state was explicitly and unapologetically based." Linda Colley, *Britons: Forging the Nation, 1707-1837*, (London: Pimlico, 1994), 18.

<sup>7</sup> J.C.D. Clark, *English Society, 1688-1832: Ideology, social structure and political practice during the ancien regime* (Cambridge: Cambridge University Press, 1985), 6.

<sup>8</sup> David Milobar, "The Origins of British-Quebec Merchant Ideology: New France, the British Atlantic and the Constitutional Periphery, 1720-70." *Journal of Imperial and Commonwealth History* 24, no. 3 (1996): 364-390.

<sup>9</sup> Adam Shortt and Arthur G. Doughty, *Documents relating to the Constitutional History of Canada, 1759-1791*, (Ottawa: Dawson, 1907), 94.

<sup>10</sup> Peter D. Marshall, "The Incorporation of Quebec in the British Empire, 1763-1774," in *Of Mother Country and Plantations: Proceedings of the Twenty-Seventh Conference on Early American History*, edited by Virginia Bever Platt and David Curtis Skaggs, (Bowling Green: Bowling Green State University Press, 1971).

<sup>11</sup> Shortt and Doughty, 120.

<sup>12</sup> James Murray to the Board of Trade and Plantations, 23 August 1764. PRO CO 42/1, ff. 392-393.

<sup>13</sup> James Murray to the Board of Trade and Plantations, 15 July 1765, PRO CO 42/3, ff. 72-119.

<sup>14</sup> Quebec Minute Book, 3 September 1764, NAC RG1 E1, Reel C-85.

<sup>15</sup> Quebec Gazette, 4 October 1764, Supplement.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Quebec Gazette, 20 December 1764.

<sup>20</sup> Governor James Murray to the Earl of Shelburne, 14 September 1764, PRO CO 42/1, ff. 50-53.

<sup>21</sup> Ibid.

<sup>22</sup> Lawson, *Imperial Challenge*, 151.

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<sup>23</sup> Karen Stanbridge, "Quebec and the Irish Catholic Relief Act of 1778: An Institutional Approach," *Journal of Historical Sociology* 16, no. 3 (2003): 375-404.

<sup>24</sup> Lord Hillsborough to Guy Carleton, 6 March 1768, PRO CO 43/8, ff.1-5.

<sup>25</sup> Guy Carleton to Lord Hillsborough, 7 August 1769, PRO CO 42/7, ff. 117-118.