

THE QUEBEC ACT, A Study in Statesmanship (Excerpts)

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INTRODUCTION

There is, perhaps, no more important fact in modern history than the fact that the British people... were given the rare privilege of a second change - a chance to build on the ruins of the British Empire a greater, a better, and a more lasting British Commonwealth. To many, indeed, in that black February of 1783, when Parliament perforce accepted the most mortifying treaty a British Government has ever signed, it seemed as if the record of British colonial expansion, so triumphantly sustained in the previous war only twenty years before, was now closed. (...) There was something left - some groundwork for the second chance... some foothold in North America itself.

New British colonies were presently to be established in more distant continents in southern seas ; but the greatest of the Dominions in the British Commonwealth, as we now know it, was to spring and spread from that piece of North America that was 'left' in 1783.

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It is the purpose of this essay to explain how it happened that, when the thirteen southward colonies severed their old-standing ties with Britain, the great colony in the North, very recently acquired and by conquest, not by settlement, continued in its new allegiance.

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I - THE FRENCH-CANADIAN QUESTION

The acquisition of French Canada had thrust British statesmen into a new field of colonial policy. Before the Seven Years' War the expansion of the British Empire in the western world had been effected almost wholly by settlement rather than by conquest. (...) But British statesmen had now upon their hands a large and old-established colony, stretching far into the continent, whose white population was almost exclusively French

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Of the three main elements of French-Canadian nationality - the Roman Catholic religion, the French language, and a peculiar system of law - the Roman Catholic religion was the most vital, and on its treatment the success or the failure of British policy in Canada was chiefly to depend.(...)

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In Ireland, of course, the position of the Catholics was far worse : but even in Ireland the vigour of the penal laws was beginning to be relaxed by the second half of the century,

and from the first it had been obviously impracticable to enforce those laws which forbade three-quarters of the Irish people to worship in their own manner. (...) The Protestant tyranny, in fact, did not attempt the impossible task of suppressing Roman Catholicism : it was content with the easier achievement of excluding Catholics from all political and civic functions and deadening and degrading their social, their intellectual, and especially their economic life. It was a general subjugation of an alien and conquered people rather than a particular repression of their faith.¹

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'I feel the highest satisfaction', reported General Gage, who was in charge of the district of Montreal, in 1762, 'that I am able to inform you that, during my command in this Government, I have made it my constant care and attention that the Canadians should be treated agreeable to His Majesty's kind and humane intentions. No invasion of their properties or insult on their persons has gone unpunished. All reproaches on their subjection by the fate of arms, reviling on their customs or country, and all reflexions on their religion have been discountenanced and forbid.' (...) 'The inhabitants and chiefly the peasantry seem very happy in the change of their masters.

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Clearly, it would be easier to organize and control a community whose members all spoke the same tongue, possessed the same system of law, and followed the same legal procedure. It has always been the tendency of autocratic Governments to make such uniformity their aim and to secure it, if need be, by rigorous coercion. And to adopt such a course in Canada British statesmen had the power if they had the will.

Such a course was not to be expected from the men who had committed themselves to a liberal policy of toleration in religion ; and from the outset no attempt was made to restrict in any way the use of the French language, nor was a knowledge of English rendered obligatory even for official purposes.

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The question of the legal system was far more intricate. To the substitution of English for French *criminal* law there could be small objection. The English criminal law was still and for years to come a brutal law, but it was almost lenient in comparison with the French. Torture, for example, had always been regarded as foreign to English practice and its use for a long time past had been reprobated by public opinion; but such barbarous penalties as 'breaking on the wheel' were regularly imposed in France till the time of the (French) Revolution (1789).¹

¹ Lecky, *History of Ireland in the Eighteenth Century*, vol. i, pp. 136-169 ; vol. ii, pp. 181-217.

¹ 'Whereas the certainty and lenity of the criminal law of England' was the wording of the Quebec Act (see p. 214, below). In the debate on this Act Lord North described it as 'a more refined and a more merciful law' (Cavendish, *Debates on the Canada Bill in 1774* (London, 1839), p. 12 [K., p. 87]). The torture known as the *peine forte et dure* was not abolished in England till 1772 ; but it had not been used since one case in 1726 and not as a method of execution since 1658 (Maitland, *Constitutional History of England*, p. 212). Macauley, in preparation for his Indian penal code, studied the old French criminal law and was horrified at its unfairness and cruelty ; for his lively comments see Sir G. O. Trevelyan, *The American Revolution*, vol. ii, p. 74. note.

The introduction of the English criminal law, therefore, could scarcely be regarded as a hardship by most French-Canadians... But it was otherwise with the *civil* law, concerned as it was so much more closely with their normal life and particularly with the ownership of property.

'The Custom of Paris', as the code was called, had come from old France long ago. The sentiment and usage of generations had endeared it to them : its very singularity marked it as their most distinctive national possession. Yet it was far from an ideal code. No one sympathised with the traditions of French Canada more earnestly than Murray ; but Murray himself in deploring 'the litigious disposition' of the French-Canadians expressed his belief that 'the many formalities in their procedures and the multiplicity of instruments to be draw up on every occasion seem to encourage this disposition'.¹

Cumbrous, intricate, old-fashioned, it was clearly inadequate for the needs of a progressive community. How then court British colonists, whose immigration was to be encouraged, how especially could British traders, be expected to endure it? Yet how could it be superseded without undermining the whole existing system of property in Canada and plunging the legal relations of its people into chaos? (...)

The notorious Proclamation of October 7, which formally inaugurated civil government in Canada, was thus mainly the work of men new to their posts and uninstructed in the details of colonial policy, hurriedly adapting to their purposes the materials their predecessors had bequeathed them.² Under such circumstances no adequate consideration was or could be given to this intricate and highly technical question of law. The result was the framing of the following clause in the Proclamation (the treaty of Paris in 1763): '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 ; for which purpose we have given power under our Great Seal to the Governors of our said colonies respectively to erect and constitute ... courts of judicature and public justice ... for hearing and determining all causes, as well criminal as civil, according to law and equity, and as *near as may be agreeable to the laws of England.*'¹

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'Whatever the legal sense conveyed by the words of that Proclamation may be', he (Lord Hillborough five years later) wrote, 'I certainly know what was the intention of those who drew the Proclamation, having myself been concerned therein; and I can take upon me to aver that it never entered into our idea to overturn the laws and customs of Canada with regard to property.'

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¹ Report of the State of the Government of Quebec, June 5, 1762, C.D., p. 53.

² See vol. i, chap. viii, of Alvord's valuable *Mississippi Valley in British Politics*, based on detailed study of contemporary documents ; and also his earlier paper, *The Genesis of the Proclamation of 1763* (Michigan Pioneer and Historical Society, December 13, 1907).

¹ C.D., p. 65 [K., p. 19; B.K., p. 6].

The difficulties which were bound to arise from the introduction of British settlers into French Canada were soon to appear in the matter of constitutional as well as civil law. Could a form of government be set up in the province of Quebec suited equally to its old and new inhabitants ?

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The Governor was empowered 'by the advice' of Council (not necessarily, therefore, 'with its consent') to make rules and regulations, or in other words to legislate by ordinance and proclamation, 'for the peace, order and good government' of the province,(...) While the Quebec Government could not raise revenue itself, the Governor was of course enabled, with the advice *and* consent of Council, to expend' for the support of the Government' the funds yielded by taxes already in existence or imposed by Parliament.⁴

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The contrast between the relatively autocratic government thus provided for Canada and the self-governing institutions of the neighbouring British colonies is manifest at once. But there were obvious reasons for it. The Canadians, after all, were the enemies of yesterday ; however effective the policy of conciliation might prove to be, it was clearly premature to give straightway the same confidence to these new members of the Commonwealth as to the old and to trust them with the same measure of self-government as the inhabitants of the 'settled' colonies, British subjects from their birth, enjoyed as a matter of right. The Canadians, moreover, were Roman Catholics ; and tolerant as British ministers had proved themselves to be in Canada, they were not yet prepared to establish in any part of George III's dominions a little Catholic parliament.² And lastly, the Canadians had had no experience whatever in self-government ; they know nothing about it even in theory ; and they were quite incapable as yet of fulfilling its responsibilities. To them in fact a simple transition from French to British autocracy would seem natural and no hardship ;

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For a time the French-Canadians might remain contented or indifferent ; but although the *régime* of Murray and Carleton might be more or less as illiberal in form as the *régime* of Duquesnes and Vaudreuil, they could not but find it different in spirit ; they would breathe a freer air on British soil than French, and sooner or later a day would come when they would aspire to the same political liberty as other members of the Commonwealth possessed.

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II - MURRAY AND CARLETON

Thus the two or three hundred British residents in Canada in 1764 had grown two years later to not much more than five hundred, and ten years later had made very little

⁴ Commission, C.D., p. 179.

² See the debate on the Quebec Act, p. 99, below.

further increase.² But small as it was the influx accentuated from the outset the problem of nationality. Those particularly of the new-comers who hailed from New England were the least likely of men to fit smoothly into the life of New France.³ Their national antipathies and their uncompromising Protestantism had been accentuated by a century of barbarous border warfare which had burnt into their hearts a hatred of the Church of Rome and of the Frenchmen in Canada who had used or served it, more bitter and enduring than was easily comprehensible to Englishmen in far-off comfortable London, removed by leagues of ocean from the haunting fears and unforgettable tragedies of life in a colonial frontier village. If British statesmen had doubts about the status of a Roman Catholic in a British colony, the men of New England had none whatever. In their eyes, he was *ipso facto* disqualified from the privileges of citizenship.(...)

To men of this temper impartiality between the two races and the two religions seemed little short of treason ; and naturally they soon fell foul of Murray, who in fulfilling British treaty obligations and carrying out his instructions from home did not conceal, but made it indeed somewhat provocatively clear, where his personal sympathies lay. Unrestrained abuse of his policy, underhand intrigue against his authority, were rife from the outset in the little British community at Quebec and Montreal ;

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'Little, very little', he wrote home, 'will content the new subjects, but nothing will satisfy the licentious fanatics trading here but the expulsion of the Canadians.'²

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It was the behaviour of the British community towards the French-Canadians that condemned them most in Murray's eyes. It cut at the roots of his own policy. This assumption of racial superiority by a handful of self-seeking immigrants, this contempt of the old inhabitants and their ways, this bigoted hostility to their faith, were precisely what the soldiers who had conquered Canada had so scrupulously avoided.

Such conduct was bound in some degree to counteract the Government's efforts to win the friendship and allegiance of the French-Canadians ; it was bound to create the very atmosphere which in later days and many lands was to prove the worst and most persistent obstacle to successful treatment of the delicate problem of nationality ; (...) 'The leniency of the existing Government', declared the French members of the Grand Jury,

² An official return for the province in 1770 gave about 360 *male* Protestants ; and as there were only two or three French Protestants in Canada, 'Protestant' was practically equivalent to 'British'. By 1774 the number had diminished. See Carleton to Shelburne, November 25, 1767

³ An official analysis of the origin of the British population in the district of Montreal in 1765 gives only 12 out of 136 men as *born* in the American colonies as against 98 *born* in the British Isles. But it is clear that most of the British-born had lived in the older colonies before moving on into Canada, and the most vigorous and outspoken members of the British community in Canada were certainly 'American' in training and outlook. See the arguments in V. Coffin, *he Province of Quebec in the Early American Revolution* (Madison, Wis., 1896), pp. 303-305.

² Murray to Lords of Trade, Oct. 29, 1764, *ibid.*, p. 231 [K., p. 40]. In a postscript to this letter he describes the British residents who are seeking to get appointed members of Council as follows: 'The first is a 'notorious smuggler and a turbulent man, the second a weak man of little character, and the third a conceited boy. In short it will be impossible to do business with any of them.

'has made us forget our losses and has attached us to His Majesty and to the Government ; our fellow-citizens make us feel our condition to be that of slaves.'¹

To make matters worse the change in the legal system resulting from the Proclamation of 1763 was now beginning to operate, and in January 1765, a petition was addressed to the King by ninety-five of 'the principal inhabitants of Canada', complaining of the difficulty of understanding the new legal constructions and of settling their family affairs without the aid of obstructive lawyers 'who know neither our language nor our customs and to whom it is only possible to speak with guineas in one's hand',² and praying for permission to conduct their family business in accordance with their old customs and for the publication of a code of law in French.

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The news that the Proclamation of 1763 had already resulted in the suppression of the existing civil law came as a complete surprise to political circles in London. 'I have heard from the King in general', wrote Lord Mansfield to Grenville in December 1764, 'and afterwards more particularly, but very distinctly, from some persons who visited me last night, of a complaint concerning a civil government and judge sent to Canada.

Is it possible 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 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.'

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Accordingly on July 1, 1766, an amending ordinance was published proclaiming in the terms laid down in the Instructions that 'His Majesty's Canadian subjects' are henceforth permitted to practise professionally 'in *all or any* of the courts' in the province of Quebec, and that all British subjects without distinction are entitled to sit as jurors 'in *all* causes civil and criminal cognizable in *any* of the courts or judicatures within the said province'.

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Attorney-General Yorke and Solicitor-General De grey presented their report on the civil government of Quebec. The disorders in the province were due, they declared, to two causes - first, 'the attempt to carry on the administration of justice without the aid of the natives, not merely in new forms, but totally in an unknown tongue, by which means the parties understood nothing of what was pleaded or determined', and, secondly, the false interpretation put upon the King's Proclamation of 1763 'as if it were his royal intention... to abolish all the usages and customs of Canada with the rough hand of a conqueror rather than with the true spirit of a lawful sovereign'. The first of these mistakes, they continued, could be remedied by the admission of Canadians to sit on juries and to plead, as recommended by the Lords of Trade : the second by restoring the main body of French-Canadian civil law.

¹ Statement of French Jurors, October 26, 1764, C.D., pp. 227-229. It was explained in this document that those French jurors who had signed with the British the main part of the previous Presentment, had done so without fully understanding its contents.

² 'A qui on ne peut parler qu'avec des guinées à la main' (petition of January 7, 1765, C.D., p. 224).

Guy Carleton, who landed at Quebec in September, 1766, to take Murray's place, is one of the great figures in the history of the British Commonwealth ;

'Barring a catastrophe shocking to think of', he writes, 'this country must, to the end of time, be peopled by the Canadian race, who already have taken such firm root and got to so great a height that any new stock transplanted will be totally hid and imperceptible amongst them except in the towns of Quebec and Montreal,'¹ (...) He weighs the probability of a renewal of war with France and the possibility of disaffection in the British colonies to the South, and he perceives in Quebec the strategic key to North America.¹ (...) 'I can have no doubt that France, as soon as determined to begin a war, will attempt to regain Canada, should it be intended only to make a diversion... (...) Canada probably will then become the principal scene where the fate of America may be determined.

Just as his [Carleton] natural sympathies were with the old landed gentry of the province, so they were against the immigrant traders. (...) But his opposition to an Assembly was not only based on the character of the British or the incapacity of the French. (...)

(...) (Carleton) In a dispatch of 1768... after describing the presentation of a petition for an Assembly, continues:

(...) the better sort of Canadians fear nothing more than popular Assemblies, which, they conceive, tend only to render the people refractory and insolent. Enquiring what they thought of them, they said, they understood some of our colonies had fallen under the King's displeasure owing to the misconduct of their Assemblies, and that they should think themselves unhappy if a like misfortune befell them. It may not be improper here to observe that the British form of government, transplanted into this continent, never will produce the same fruits as at home, chiefly because it is impossible for the dignity of the throne or peerage to be represented in the American forests. Besides, the Governor, having little or nothing to give away, can have but little influence ...¹

At the date of this dispatch His Majesty's Councils had definitely begun the task of acquiring, if not a very superior wisdom, at least a little knowledge of the facts. The Government inquiry into the condition of Canada was already afoot. Masères, the new Attorney-General of Quebec, had stated plainly that no permanent settlement could be made without an Act of Parliament. How, he asked, except by Act of Parliament could the toleration of Roman Catholics, contrary to laws in force in England, be given an authority...? How otherwise can the question of an Assembly be determined? How, especially, can the provincial revenue be provided? Since the Governor-in-Council was

¹ Carleton to Shelburne, November 25, 1767, C.D., p. 284.

¹ In the dispatch cited in the preceding note he writes: 'Time must bring forth events that will render it essentially necessary for the British interests on this continent to secure this port of communication with the mother country.' An accurate forecast, as will be seen.

¹ Carleton to Shelburne, January 20, 1768, C.D., pp. 295-296. (Original spelling retained, but punctuation modernized.) McCord, pp. 77, 182, below.

expressly debarred from any powers of taxation,¹ the only existing sources of revenue were those which the British Crown had inherited from the French,² (...).

(...) unwilling to commit themselves to legislation without a closer knowledge of the facts,⁶ (...) His (Carleton's) request was granted : and in the autumn of 1770, he sailed for home. So indispensable did ministers find him that he remained there not for a few months only but till the passing of the Quebec Act in 1774.

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III - THE QUEBEC ACT

Spurred on by these misgivings, the French-Canadians did what they could to counter the British agitation. When Carleton left for England, they confided to 'this worthy representative of your Majesty,... a petition for the restoration of their law, 'the basis and foundation of their possessions and the rule of their family life'...

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Three years later they refused to be enticed by the organisers of the British party into joining in its demand for an Assembly,² and the British petition and memorials were pursued to London by a counter-petition and memorial of their own.

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(Carleton) was the chief witness before the House of Commons Committee on the Bill (the Quebec Act)... His picture of the 150,000 Canadians, almost wholly French and almost wholly Roman Catholic whose claims must in common justice rank superior to those of the 600 British immigrants, stood out clearly... As to the legal; system his principle statements were as follows:

With regard to any portion of their [civil] law, one custom separate from another, I believe they would be extremely hurt to have any part of their customs taken from them, except when the commercial interest of the country may require a reasonable preference ... I believe they would make no objection to any such commercial laws if they may know what those laws are.¹

Are the Canadian inhabitants desirous of having an Assembly ?- Certainly not.

¹ See Murray's Commission, p. 36, above.

² The decline, as Masères explains, was mainly due to the cessation of the import of wines and spirits from France. For a further reason see p. 79, below. The French had drawn most of their revenue from the monopoly of the fur-trade in the north, but the British Government had leased this for only £400 a year (Coffin, *op. cit.*, p. 362).

⁶ The proposals of the Yorke-De Grey report were reconsidered by the Chatham Government ; but Lord Northington, who was again Lord Chancellor, still opposed their adoption on the ground of insufficient information. *Autobiography of the Duke of Grafton* (Ed. Sir William Anson ; London, 1898), p. 170.

² See p. 77, below.

¹ Cavendish, *op. cit.*, pp. 106, 117 [K., pp. 106, III ; E. & G., pp. 55, 62].

Have they not thought with horror of an Assembly in the country, if it should be composed of the old British inhabitants now resident there ? - No doubt it would give them great offence.

Would they not greatly prefer a government by the Governor and Legislative Council to such an Assembly ? - No doubt they would.

Is that the only idea of the Assembly that you ever know suggested to the Canadians ...? - I put the question to several of the Canadians. They told me Assemblies had drawn upon the other colonies so much distress, had occasioned such riots and confusion that they wished never to have one of any kind whatever.

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That the merchants of Quebec and Montreal had stated their case in a somewhat less didactic strain than their *confrères* in the City of London had been largely due to the influence of the Attorney-General of the province. Francis Masères² was a capable lawyer and a clear-headed and indefatigable writer.

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For Masères was pleading for just such a compromise as is supposed to be peculiarly tempting to the British mind. 'The French-Canadians', he argued in effect, 'are a peasant people. On its material side their life is concentrated on their land, on the money they earn from it, and on the little stock of household treasures they hand down from generation to generation. To the legal customs that concern these things, cumbrous as they are, they have become devoted by a century and more of use and wont. Their replacement by an alien system, itself by no means perfect - the language in which it is presented, the principles on which it is based, alike strange and unintelligible - would not only involve these simple peasants in confusion and expense but would seem to them to shake and undermine the very foundations of their lives. Leave them, then their ancient mode of holding, buying, selling bequeathing land. Leave them, too, for a time at any rate, their marriage customs, their rules of dowry and the like. Let all that part of their law be codified and given authority by Parliament. But do not go on to cripple the commercial prospects of the country and ruin the British traders you have encouraged to settle in it by retaining, together with these customs, the whole body of the French-Canadian civil law.

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But, while on these points Masères shared the prejudices of the British minority in Canada, and while he had no more wish than they to see Roman Catholics admitted into a Canadian Assembly, he could not swallow their doctrine of race ascendancy and support their plea for a purely Protestant legislature. 'An Assembly so constituted', he said, 'might pretend to be a representative of the people there, but in truth it would be a representative of only the 600 new English settlers and an instrument in their hands of domineering over the 90,000 French. Can such an Assembly be thought just or expedient or likely to

² Masères (1731-1824) was born and spent most of his life in England. He had had a successful career as a mathematician at Cambridge ; he was 'fourth wrangler' in 1752 and became a Fellow of Clare College in 1756. For a good account of the man and his work, see W.S. Wallace's introduction to *The Masères Letters*.

produce harmony and friendship between the two nations ?⁴ He was therefore opposed to the creation of any Assembly at all ;

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Out of this complex of opinions the Bill at last took shape. In January 1774, a first draft of it was ready, a second in March, a third in April ; and on May 2 the Colonial Secretary, Lord Dartmouth, introduced the fourth draft in the House of Lords.¹

The Bill dealt first with the boundaries of Quebec Province, which were extended to include the western *hinterland* between the Ohio and the Mississippi, the northern country up to the frontiers of the Hudson's Bay territory, and eastwards the coast of Labrador and the islands in the mouth of the St. Lawrence, which had been entrusted since 1763 to the Government of Newfoundland.

Secondly, the Proclamation of 1763 as far as it applied to Canada, together with all commissions and ordinances relative to the civil government and administration of justice issued in pursuance of its terms, was revoked.

Thirdly, it was declared that Roman Catholics in the province were to enjoy the free exercise of their religion subject to the supremacy of the King and that their clergy were to receive their accustomed dues and rights, but from members of their own faith only.

Fourthly, *all* disputes as to property and civil rights were in future to be determined in accordance with the laws and customs of Canada. 'until they shall be varied or altered' by ordinance of the Governor and Council.

Fifthly, the criminal law of England was to be retained.

Sixthly, it being 'at present inexpedient to call an Assembly', a Council was to be appointed by the King 'with the advice of the Privy Council', consisting of not more than twenty-three nor less than seventeen residents. This Council, or the major part thereof, would have powers of legislating by ordinance for the peace, order, and good government of the province but not of levying any taxes or duties therein.

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It was impossible for Chatham in the Lords, for Burke and Fox and Barré in the Commons, to dissociate the Quebec Bill from the critical events which had occurred so recently in other colonies so close to Canada. The news of the 'Boston tea-party' had reached London and the end of January ; in the following months the Bills for coercing Massachusetts were forced through Parliament ;

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⁴ Considerations on the Expedience, &c., C.D., p. 267 [K., p. 51]. This was written before Masères went to Quebec ; and, being dependent on official papers, largely Murray's, it was coloured by some prejudice against the British settlers. He refers to them as 'English adventurers' and ascribes their desire for an Assembly to the ambition of 'displaying their parts and eloquence in the characters of leading Assemblymen' (p. 268). His attitude to the British was somewhat modified by his two years' residence at Quebec, but he maintained his opposition to a Protestant Assembly.

¹ The drafts are printed in C.D., pp. 535-548. The final text of the Bill is given in Appendix B, p. 208, below. The clause annexing the *hinterland* is not inserted till the third draft. Only part of the English criminal law is prescribed in the second draft; all of it in the third. In general the changes show an increasing desire to make the policy of conciliation as full and clear as possible.

Not without a struggle with his conscience, George III had made up his mind... he came down to Westminster amid cries of 'No Popery' from an angry mob and in a short speech assented to the Bill. 'It is founded', he said, 'on the clearest principles of justice and humanity, and will, I doubt not, have the best effect in quieting the minds and promoting the happiness of my Canadian subjects.'²

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The controversy over the Quebec Act long outlived its passing : it was an important factor in the American Revolution : and Chatham's indictment of it lingered on in the Whig tradition of the history of that disastrous time.¹ Even in the calmer atmosphere of our own day it has sometimes been condemned as a measure which solidified French nationality and doomed Canada to a permanent racial division.²

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The military rule of a Commander-in-Chief had been replaced by the civil rule of a Governor and Council. The next stage would clearly be the introduction of representative government and the establishment of an Assembly in Canada corresponding to the House of Commons in Great Britain.

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The *habitant's* whole heart was in the land - the one thing he really knew and understood : he know nothing, cared nothing, about the liberties of British subjects or the 'rights of man' for which his neighbours over the border were prepared to fight and die. His incipient revolt was against the tyranny of landlords, not of kings. Only in so far as his feudal connexion with the landlord involved service through the landlord to the state were his personal interests in any sense political.

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But would it have been wiser to follow Masères and Hey rather than Carleton, and establish a mixed code of French and English civil law ? (...) To that question there is not evidence enough to give a certain answer.² It can only be said that, if the rejection of the

² *Annual Register*, 1774, p. 78. The groans and hisses of the mob are described by Horace Walpole (*Last Journals* (London, 1910), vol. i, pp. 357-358). Some of the bystanders shouted 'Remember Charles II! Remember James II!' Walpole himself swallowed the Whig judgements of the Bill whole. He speaks of 'the Court preparing a Catholic army' (p. 353), and deplures the indulgence shown by the bishops towards the Catholics in Canada (pp. 346, 354). He likes the pro-Popish policy of George II to that of the Stuarts. 'The thought is so shocking, the prospect so gloomy, I am almost tempted to burn my pen and discontinue my journal' Fortunately he decides to 'continue it in hopes of better days' (p. 358).

¹ The most eloquent modern exponent of the Whig tradition of the Revolution breaks frankly away from it over the Quebec Act. 'From among the truculently impolitic laws by which it is surrounded in the statute-book, it stands out as the work of statesmen and not of policemen' (Sir G.O. Trevelyan, *The American Revolution*, vol. ii, p. 75).

² e.g. Goldwin Smith, *Canada and the Canadian Question* (London, 1891), pp. 80-81 ; Coffin, *op. cit.*, pp. 534-543.

² Carleton had said that he believed they would not object to the introduction of some English law in matters of commerce (see p. 75, above). For the Government's policy on this point, after the passing of the Act, see pp. 126-127, below.

compromise on the civil law in favour of conceding all the French-Canadians asked was a mistake, it was a mistake on the right side. Only by generosity can conquerors ever hope to conciliate the conquered.

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... (The American colonists) resented the whole policy of toleration which had begun with the conquest and only reached its logical culmination in the Quebec Act.

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Apart from principles and treaty obligations, the one obvious motive of the Bill was to reconcile the Canadians to their conquerors. And the one obvious reason for trying to attain this end without delay was the possibility, or rather the probability, of a renewal of war with France.

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It is true that Carleton and the Government recognized also from the outset that the active allegiance of the Canadians, could it be secured, might be of no little service to the Crown if the old colonies should carry their chronic discontent to the point of open rebellion.¹ (...) But at the time when the provisions of the Bill were being determined, the prospect of an American rebellion was regarded as a less immediate and a far less serious matter than the prospect of war with France. The purpose of the Bill was to forestall the greater danger : it was an additional but quite secondary advantage in its author's eyes that it carried with it an insurance policy, so to speak, against the lesser.³

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¹ See p. 60, above.

³ See p. 94, no. 3, above. It is sometimes suggested that William Knox, Under-Secretary of State for the American Department (1770-1782) and thus closely concerned with the Quebec Act, was mainly inspired by the idea of using the French-Canadians against the colonists. There is no evidence of this. What did influence Knox was the prior consideration that generous treatment of the French-Canadians might induce them to resist the appeal to join in a colonial rebellion if it should occur. In the pamphlet entitled *The Justice and Policy of the late Act of Parliament for making more effectual provision for the government of the Province of Quebec, &c.* (London, 1774), of which Knox was almost certainly the author (see his reference to such a pamphlet in his *Extra-Official State Papers, addressed to the Rt. Hon. Lord Rawdon, &c.*, London 1789, vol. i, part ii, p. 6) the following passage occurs (p. 28) : 'The inducement to adopt a plan of lenity and indulgence was greatly heightened by a consideration of the avowed purpose of the old colonies to oppose the execution of the laws of England and to deny the authority of the supreme legislature : for, however different the views and purposes of the leaders of this opposition might be from the wishes of the Canadians, yet, it was not to be doubted, they would take advantage of any discontent which a harsh proceeding might excite among them, and, by fair promises of redress, endeavour to lead them to take part in their undertaking.' This is scarcely tantamount to advocating the revival and perpetuation under British rule of the old menace of French Canada to the American colonies, with which aim Knox and the Government are sometimes, more or less vaguely, charged : and except those few sentences there is nothing else on this point either in the pamphlet or in the *Extra-Official State Papers* which disclose much of Knox's attitude to the American question. In another and slighter pamphlet, *Thoughts on the Quebec Act* (London, 1774), the Act is similarly represented (p. 37) as a means of deterring the French-Canadians from rising against British rule.

The alternative policy to the Quebec Act meant a repudiation in spirit of treaty-faith, a negation in a greater or less degree of nationality : (...) No one can be certain about the might-have-beens of history ; but in this case the probability is very strong. The incorporation of the Canadians in the British Empire was very recent ; they were still uncertain what the change would mean for them ; and if once they had been convinced that it meant the restriction or suppression of their national life and, above all, of their religion, surely they would not passively have acquiesced in such a fate, but, when the time came, they would have risen, *seigneur* and priest and peasant together, joined forces with the 'rebel' colonists, and for better or worse escaped with them from British tyranny.

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THE CRISIS

Within a few days he (Carleton) was writing to Dartmouth to report his satisfaction at the first impressions which 'the King's great goodness towards them' had created. 'All ranks of people amongst them', he wrote, 'vied with each other in testifying their gratitude and respect, and the desire they have by every mark of duty and submission to prove themselves not undeserving of the treatment they have met with.'¹

(...) Soon after the passing of the Quebec Act an organized propaganda was set on foot with the object of neutralizing its effects. On October 26 (1775) the Congress of Philadelphia addressed a formal appeal to the 'inhabitants of the Province of Quebec' for co-operation in obtaining redress...An elaborate exposition follows... of the general principles of British liberty. The 'first grand right' it bestows upon the people is representative government... An indignant paragraph follows on the refusal of an Assembly and the power of self-taxation. The rest of the Quebec Act is submitted to the same destructive analysis. 'Are the French laws in civil cases restored to you. It seems so. But observe... Those laws may be varied ... by arbitrary decree of the Governor in council...The injuries of Boston have roused every colony from Nova Scotia to Georgia. Your province is the only link that is wanting to complete the bright and strong chain of union.

This remarkable document was sent forthwith to the leaders of the British malcontents at Montreal... From both sides, therefore strong influences were brought to bear upon the 'habitants'. Never before had they been exposed to such a gale of argument and counter-argument.

It was now the last entrenchment of British rule in Canada... About 2 o'clock in the morning of December 31 (1775), in the midst of a wintry blizzard, two storming parties - one led by Montgomery himself and the other led by Arnold ... advanced ...with the object of forcing the barricades, meeting in the center of lower town (of Quebec city) and thence fighting their way up to the heights... as Carleton put it, before the second barricade and under fire from the houses. Its retreat was soon cut off and 431 surrendered. These few hours fighting had decided the fate of the siege.

¹ Carleton to Dartmouth, September 23, 1774, C.D., p. 583. See also Carleton to Gage, September 20, 1774, quoted p. 139, below.

(...) while Saratoga and York Town created a new American Nation, the defense of Quebec made it possible for Canada to remain outside it and build up a nation of her own... and the foundations of it were laid when the French and British fought side by side in the darkness of that December night. On the site of the Sault au Matelot barricade the inscription reads:

Here stood her old and new defenders
uniting, guarding, saving Canada.

(...) the policy of the Quebec Act was put to a further and, in some ways a severer proof by the entry of France into the war as the ally of the Americans in 1778... The French Admiral's manifesto, a copy of which was appeared on the doors of every Parish Church, was far more seductive than the Address from Congress. Unlike Congress, D'Estaing could outbid Carleton...

Haldiman, the practical Swiss professional soldier who succeeded Carleton as Governor told the Secretary of State:

the Quebec Act alone has prevented, or can in any degree prevent, the emissaries of France and the rebellious Colonies from succeeding in their efforts to withdraw the Canadian clergy and noblesse from their allegiance to the Crown of Great Britain. For this reason amongst many others, this is not the time for innovations, and it cannot be sufficiently inculcated on the part of Government that the Quebec Act is a sacred charter, granted by the king in Parliament to the Canadians as a security for their religion, laws and property'. (1. Haldimand to Germain, October 25, 1780, C.D., p. 720 [K., p. 166].

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Thirty years later the loyalty of the French-Canadians was put to the proof. Once more the United States and France were in allegiance against Britain... (they) no more desired annexation to the United States in 1812 than in 1775.

The British Government had been true to the promise of the Quebec Act. The Act of 1791, while superseding its constitutional provisions, had reaffirmed its policy of national toleration. In the first place, it had dealt with the problem created by the immigration of the British Loyalists... by providing the division of the Province of Quebec into Upper and Lower Canada so that the British minority... might develop a province of their own... while the old French community... could continue its own traditional life. And, secondly, to make more definite this rough and-ready solution of the old crux, it was enacted that in Lower Canada, while precisely the same measure of representative government was introduced as in Upper Canada... the French-Canadian law should still prevail.

(...) the controversy in which the Quebec Act was born has never quite died out.

If the facts of that distant time have been truly stated in this essay, the first answer to such doubts and questions is evident. It is probable, in the highest degree, that, if the policy of the Quebec Act had not been adopted, Canada would have been lost to the British Empire in 1775, and no distinct Canadian nation could ever have come into being.

And the second answer is so clear. The contrary policy - the suppression of French-Canadian nationality - was in its essentials precluded by the terms of the Capitulations and the Treaty of Paris. The Roman Catholic religion and, in part at least, the French-Canadian civil law could not have been suppressed without a violation of public faith.

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There are many examples in history, and some in very recent history, to show how hard it is for one nation to fuse another nation's life into its own, unless indeed the fusion be mutual and voluntary. For nationality is at root a spiritual thing and difficult to kill.

To the modern mind, indeed, it would seem a crime to have tried to stamp out French nationality in Canada, a crime not only against French-Canadians but against all Canadians of all time. For it cannot be questioned that, whatever the transient drawbacks and difficulties may be, Canada is the richer for its twofold national heritage, for being peopled from a Celtic as well as an Anglo-Saxon stock, for its pride in French as well as British customs and traditions, for its use of the two greatest languages and its access to the two greatest Literatures of the modern world. A multi-national state, moreover is not merely richer, in its complexity and variety, than a uni-national state: it is, as Acton long ago, a higher species of political organism, a greater achievement in civilized life, provided that its component nationalities are at once free and united.

No one will claim that Carleton ... and the rest were gifted with superhuman foresight... They were only trying to honour their treaty-pledges and to conciliate a conquered people...but the achievement was greater and more lasting than they knew. For they had acted in accordance with political principles of permanent force and universal application - that, in the long run, the unity of the whole is all the stronger for the diversity of its parts, and that on fidelity to the old, deep loyalties of local or provincial or national life, and only indeed on that sure foundation, can be built, if men are wise and patient, a broader and more generous communion of human fellowship and service.
