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## The Discovery and Assimilation of British Constitutional Law Principles in Quebec, 1764-1774

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Michel Morin\*

The Discovery and Assimilation of British  
Constitutional Law Principles in Quebec,  
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*This paper examines information available to Francophone persons regarding their rights as British subjects prior to the adoption of the Quebec Act of 1774, as well as the use they made of these concepts. The bilingual Quebec Gazette reported on legal developments in France, England, and the American colonies, including challenges to the traditional vision of governmental authority. It discussed the right to be taxed by elected representatives and the conflicts between the metropolis and the colonies. Debates about these issues are thought to have appeared in Quebec only after the beginning of the American Revolution, but they circulated earlier. Educated members of the Francophone elite sought more specific information about the new legal system. Many of them were eager to obtain an Assembly, if Catholics could sit in it. This was considered one of their rights as British subjects, together with the continuation of property rights guaranteed by the Capitulation of 1760 and, by extension, inheritance, and matrimonial laws. In the end, requests for an assembly were shelved in order to obtain religious equality. Thus, British officials were free to declare that Canadians had no interest in such an institution, creating a lasting and misleading impression.*

*Cet article examine l'information dont disposaient les francophones sur leurs droits en tant que sujets britanniques avant l'adoption de l'Acte de Québec de 1774, ainsi que l'utilisation qu'ils en ont faite. La Gazette de Québec, journal bilingue, rapportait les développements d'ordre juridique en France, en Angleterre et dans les colonies des États-Unis; le journal faisait état de la vision traditionnelle des autorités gouvernementales. Il discutait du droit d'être imposé par des représentants élus et des conflits entre la métropole et les colonies. Des débats sur ces questions auraient été soulevés au Québec après le début de la Révolution américaine, croit-on, mais ils sont apparus bien avant. Des membres éduqués de l'élite francophone ont voulu obtenir des renseignements plus précis sur le nouveau système judiciaire. Beaucoup étaient enthousiastes à l'idée d'obtenir une Assemblée, si les catholiques pouvaient y siéger. Cela était considéré comme l'un de leurs droits en tant que sujets britanniques, tout comme le maintien des droits de propriété garanti par la Capitulation de 1760 et, par extension, des lois sur les successions et des lois matrimoniales. À la fin, les demandes pour obtenir une Assemblée ont été abandonnées en faveur de l'égalité religieuse. Ainsi, les fonctionnaires britanniques étaient libres de déclarer que les Canadiens n'avaient aucun intérêt pour une telle institution, ce qui a créé une impression aussi fautive que durable.*

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*Introduction*

- I. *Constitutional debates in France, Great Britain, and the British Empire, 1764–1774*
  1. *The contestation of royal authority in France*
  2. *The consolidation of constitutional rights in Great Britain*
  3. *The quest for constitutional autonomy in the British colonies*
- II. *The assimilation of British constitutional principles in Quebec*
  1. *Discovering British constitutional law in the gazette*
  2. *Invoking the rights of British subjects*

*Conclusion*

“Are the Canadian inhabitants desirous of  
having assemblies in the province? —Certainly not”  
—Governor Guy Carleton, 1774<sup>1</sup>

*Introduction*

In 1760, at least 60,000 persons inhabited the territory called “New France.” Concentrated in the Saint-Lawrence Valley (“Canada” properly said), these Catholics of French descent (with very few exceptions) were surrounded by Aboriginal peoples, who were generally considered allies rather than subjects of the King.<sup>2</sup> On 8 September, the Capitulation of Montreal marked the beginning of a period of debates concerning the legal regime applicable to the new colony. At first, the integration of Francophone and Catholic inhabitants in the British Empire—the so-called “new subjects”—did not seem to be problematic. Both in Great Britain and in the colonies, most people felt that major public offices must be reserved for Anglicans and that all colonists should enjoy such rights as trial by jury, habeas corpus, representative institutions, and freedom of

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1. Henry Cavendish, *Debates of the House of Commons in the year 1774 on the Bill for making a more effectual provision for the Government of the Province of Quebec* (New York: SR Publishers, Johnson Reprint, 1966) at 105.

2. See among others Luc Huppé, “L’établissement de la souveraineté européenne au Canada” (2009) 50 C de D 153; Michel Morin, “Des nations libres sans territoire? Les Autochtones et la colonisation de l’Amérique française du XVIe au XVIIIe siècle” (2010) 12 JHIL 1.

speech.<sup>3</sup> British constitutional rights were also conceived as the antithesis of the subjection allegedly imposed by French Kings.<sup>4</sup>

Many Americans believed as well that an Imperial Constitution founded on usage and custom curtailed the powers of the British Parliament, although this implicit limit remained highly controversial.<sup>5</sup> Non-Christians were generally considered incapable of enjoying political rights. As for Catholics, their status varied.<sup>6</sup> In Ireland and in Nova Scotia, they were subject to the discriminatory laws of Great Britain, but where the British represented a small fraction of the population, like in Minorca or Gibraltar, they held important public functions and retained their own legal system, including the Criminal Law.<sup>7</sup>

In 1763, the *Royal Proclamation* created the Province of Quebec.<sup>8</sup> Anxious to encourage its “speedy settling,” the King declared that, “so soon as the state and circumstances” would “admit,” the Governor and

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3. See, notably, Elizabeth Mancke, “Colonial and Imperial Contexts” in Philip Girard, Jim Phillips & Barry Cahill, eds, *The Supreme Court of Nova Scotia, 1754–2004: From Imperial Bastion to Provincial Oracle* (Toronto: University of Toronto Press, 2004) 30 at 31; Peter James Marshall, *The Making and Unmaking of Empires: Britain, India, and America c. 1750–1783* (Oxford: Oxford University Press, 2005) at 160.

4. See Karl David Milobar, *The Constitutional Development of Quebec from the Time of the French Regime to the Canada Act of 1791* (PhD Thesis, University of London, 1990) [unpublished] at 23–28 [Milobar, Thesis]; and, Karl David Milobar “The Origins of British-Quebec Merchant Ideology: New France, the British Atlantic and the Constitutional Periphery, 1720–1770” (1996) 24:3 *Journal of Imperial and Constitutional History* 264–390.

5. See Jack P Greene, *The Constitutional Origins of the American Revolution* (New York: Cambridge University Press, 2010) at 50–55; Jack P Greene, “1759: The Perils of Success” in Philip Buckner & John G Reid, eds, *Revisiting 1759: The Conquest of Canada in Historical Perspective* (Toronto: University of Toronto Press, 2012) at 95; see also Daniel J Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World* (Chapel Hill: University of North Carolina Press, 2005).

6. Marshall, *supra* note 3 at 193–195 and 201–202.

7. Peter Marshall, “The Incorporation of Quebec in the British Empire” in Virginia Bever Platt & David Curtis Skaggs, *Of Mother Country and Plantations: Proceedings of the Twenty-Seventh Conference in Early American History* (Bowling Green, OH: Bowling Green State University Press, 1971) at 43–63; Thomas Garden Barnes, “‘The Dayly Cry for Justice’: The Juridical Failure of the Annapolis Royal Regime, 1713–1749” in Philip Girard & Jim Phillips, eds, *Essays in the History of Canadian Law, Nova Scotia*, vol 3 (Toronto: University of Toronto Press for the Osgoode Society, 1990) 10; Jacques Vanderlinden, “À propos de l’introduction de la common law en Nouvelle-Écosse (1710–1749)” (2008) 10 *RCLF* 81; John G Reid & Elizabeth Mancke, “From Global Processes to Continental Strategies: The Emergence of British North America to 1783” in Philip Buckner, ed, *Canada and the British Empire* (Oxford: Oxford University Press, 2008) at 22; Hannah Weiss Muller, *An Empire of Subjects: Unities and Disunities in the British Empire, 1760–1790* (PhD Thesis, Princeton University, 2010); Stephen Conway, “The Consequences of the Conquest: Quebec and British Politics, 1760–1774” in Buckner & Reid, *supra* note 5 at 141; Heather Welland, “Commercial Interests and Political Allegiance: The Origins of the Quebec Act,” in *ibid* at 166; Barry M Moody, “Delivered from all your distresses: The Fall of Quebec and the Remaking of Nova Scotia” in *ibid* at 218.

8. Adam Shortt & Arthur Doughty, eds, *Documents relating to the Constitutional History of Canada, 1759–1791*, 2d ed, Part I (Ottawa: King’s Printer, 1918) at 7 (Capitulation of 1760), 97 (Treaty of Paris of 1763) and 163 (Royal Proclamation) [CD I].

his Council would summon an assembly, following the practice of other colonies in British America. Local legislation should strive to be “as near as may be agreeable to the Laws of England.” In “the mean Time,” all inhabitants of the new province were promised “the Benefit” of these laws, while Courts constituted by the Council were to determine “all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England.” As it happened, an assembly was never summoned. Confronted with a population composed of roughly 95% French-speaking Catholics, the Governors refused to call elections in which only Protestants subjects would be eligible, since only British-born or “old” subjects would qualify, as well as a handful of Protestants living in New France prior to 1760.<sup>9</sup> In large measure, the introduction of English Law was also delayed in civil matters.<sup>10</sup>

Historians often assume that the inhabitants of New France had a distinct identity. Recent research, however, has shown that they considered themselves to be, first and foremost, French subjects, although Denys Delâge has provided much evidence supporting the opposite view.<sup>11</sup> Following the Conquest they had to redefine their identity and call themselves “Canadians” at a time when the relationship between the British Empire and its colonies was in a state of flux.<sup>12</sup> Indeed, conquered peoples who requested reforms often relied deftly on their rights as British subjects. Meanwhile, colonial authorities tried to rally the elites until it was possible to impose effectively British institutions.<sup>13</sup>

9. The Commission of the Governor required him to ensure that all members of the Assembly swear the Test Acts in force in Great Britain, which no Catholic could do in conscience, *ibid* at 175.

10. See text accompanying note 110.

11. See Denys Delâge, “Les Premières Nations et la Guerre de la Conquête (1754–1765)” (2009) 63 *Les Cahiers des dix 1*; Denys Delâge, “La peur de ‘passer pour des Sauvages’” (2011) 65 *Les Cahiers des dix 1*; those denying the existence of a distinct identity at this stage include Christophe Horguelin, “Le XVIII<sup>e</sup> siècle des Canadiens : discours public et identité” in Philippe Joutard & Thomas Wien, *Mémoires de Nouvelle-France, De France en Nouvelle-France* (Rennes : Presses Universitaires de Rennes, 2005) 209; Louise Dechêne, *Le Peuple, l’État et la Guerre au Canada sous le Régime français* (Montréal: Boréal, 2008) at 438; John A Dickinson, “L’héritage laissé par la France au Canada en 1763” in Serge Joyal & Paul-André Linteau, eds, *France–Canada–Québec 400 ans de relations d’exceptions* (Montréal : Presses de l’Université de Montréal, 2008) at 39; Colin M Coates, “French Canadians’ Ambivalence to the British Empire” in Philip Buckner, ed, *Canada and the British Empire* (Oxford: Oxford University Press, 2008) at 181.

12. Nancy Christie, “Introduction: Theorizing a Colonial Past,” in Nancy Christie, ed, *Transatlantic Subjects: Ideas, Institutions and Identities in Post-Revolutionary British North America* (Montreal: McGill-Queen’s University Press, 2008) at 3 *et seq.*

13. See Marshall, *supra* note 3; Muller, *supra* note 7; some groups or individuals can adhere more quickly to the institutions of the conquering nation or use them selectively: Laura Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002).

When discussing such issues, it is important to eschew a deterministic vision of the Conquest of New France, which has often been considered the distant cause of the socio-economic retardation of Quebec in the 1960s. For some, this was due to the decimation of the Francophone elite (the clergy, the nobility, the seigneurs, merchants, and the more successful professionals, such as notaries, surveyors, etc.); others blamed the prolonged survival of Ancient Regime structures.<sup>14</sup> In general, the idea that Francophone persons had little interest for a representative assembly at this early stage seems plausible, since nothing similar existed in France or in New France.<sup>15</sup> Furthermore, the vast majority of the population derived their subsistence from agriculture and had little or no education. Louise Dechêne has also observed that there were no urban riots in the colony, contrary to what occurred in France.<sup>16</sup> A similar indifference might be expected towards the cherished rights of British subjects, which had to be found in a constitution that was mostly unwritten. According to British administrators, Canadians were indifferent to these privileges, a statement that has seldom been questioned in the historiography.<sup>17</sup>

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14. See, generally, Charles-Philippe Courtois, ed, *La Conquête, une anthologie* (Montréal: Typo, 2009); and Michel Bock, "Overcoming a National 'Catastrophe': The British Conquest in the Historical and Polemical Thought of Abbé Lionel Groulx" in Philip Bucker & John G. Reid, eds, *Remembering 1759: The Conquest of Canada in Historical Memory* (Toronto: University of Toronto Press, 2012) at 161; B Young, "Below the Academic Radar: Denis Vaugeois and Constructing the Conquest in the Quebec Popular Imagination" in Bucker & Reid, *ibid* at 226; N Neatby, "Remembering the Conquest: Mission Impossible?" in Bucker & Reid, *ibid* at 251; and J Létourneau, "What Is to Be Done With 1759?" in Bucker & Reid, *ibid* at 279.

15. Christian Blais, "La représentation en Nouvelle-France," (2009) 18:1 *Bulletin d'histoire politique* 51-75; Gustave Lanctôt, *L'administration de la Nouvelle-France* (Paris: Honoré Champion, 1929).

16. Dechêne, *supra* note 11 at 268-269.

17. See among others Henry Brun, *La formation des institutions parlementaires québécoises, 1791–1838* (Québec : Presses de l'Université Laval, 1970) at 10; Marcel Trudel, *La Révolution américaine, Pourquoi la France refuse le Canada* (Sillery, QC: Boréal Express, 1976) at 68; Philip Lawson, *The Imperial Challenge: Quebec and Britain in the American Revolution* (Montréal: McGill-Queen's University Press, 1989) at 75-76 and 111; Milobar Thesis, *supra* note 4 at 107 and 159; Jacques-Yvan Morin & José Woehrling, *Les constitutions du Canada et du Québec—du Régime français à nos jours* (Montréal: Les Éditions Thémis, 1992) at 43 and 49; Denis Vaugeois, *Québec 1792: Les acteurs, les institutions et les frontières* (Montreal: Fides, 1992) at 32-38; Jean-Paul De Lagrave, *L'époque de Voltaire au Canada* (Montréal: L'Étincelle, 1994) at 71-73; Yvan Lamonde, *Histoire sociale des idées au Québec, 1760–1896* (Montréal: Fides, 2000) at 70-71; Michael Dorland & Maurice Charland, *Law, Rhetoric and Irony in the Formation of Canadian Civil Culture* (Toronto: University of Toronto Press, 2002) at 98 and 127-133; Michel Ducharme, *Le concept de liberté au Canada à l'époque des Révolutions atlantiques (1776–1838)* (Montreal: McGill-Queen's University Press, 2010); Muller, *supra* note 7 at 107 and 118-119. A notable exception is the unpublished dissertation of Pierre Tousignant: *La Genèse et l'Avènement de l'Acte constitutionnel de 1791* (PhD Thesis, Université de Montréal, 1971) for instance at 23-40; Hilda Neatby also systematically relates the initiatives of a political nature taken by Francophone subjects in *Quebec, The Revolutionary Age, 1760–1791* (Toronto: McClelland & Stewart, 1966) notably at 127-133.

For instance, in 1774, Governor Carleton, Francis Maseres (a former Attorney General of Quebec), and Chief Justice William Hey stated before a House of Commons Committee that most or all Canadians had no interest in an Assembly but were quite satisfied with the introduction of English Criminal Law.<sup>18</sup> Therefore, in 1774, the *Quebec Act* reinstated the rules relating to property and civil rights that were applicable in New France, but retained English Criminal Law. The King could now appoint the members of the Legislative Council, with no power of taxation, except for local works; ordinances touching on religion or providing for a sentence of imprisonment exceeding three months had to be approved by the King.<sup>19</sup>

Prior to the adoption of this legislation, how could members of the Francophone elite familiarize themselves with the fundamental rules of British Law and use them to their advantage? What information was available to them? In Quebec, there seems to exist few manuscripts allowing us to answer these questions. In any case, they would represent only the views of a small number of literate persons.<sup>20</sup> From 1764 to 1774, however, the *Quebec Gazette* (hereafter the “Gazette”) contained a lot of information on these issues; it could be supplemented with other sources, such as books and foreign or colonial periodicals.<sup>21</sup> During this period, the ideas of the Enlightenment are generally thought to have been absent from

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18. Cavendish, *supra* note 1 at 105–106 (Carleton), 124–125 (Maseres) & 160 (Hey). There were very few criticisms of the English Criminal Law, but almost no evidence that it was universally admired in the colony: see André Morel, “La réception du droit criminel anglais au Québec (1760–1892)” (1978) 13 RJT 449. Statistics on convictions and executions were quite similar prior to and after the Conquest. Before the King’s Bench, Anglophone plaintiffs or victims were also over-represented; Francophone accused were systematically tried by mixed juries, which was not the case for Anglophones. Finally, seigneurs despised trial by jury: Douglas Hay, “The Meanings of the Criminal Law in Quebec, 1764–1774” in Louis A Knafla, ed, *Crime and Criminal Justice in Europe and Canada* (Waterloo, ON: Wilfrid Laurier University Press, 1981) at 77. These differences are much less pronounced before justices of the peace, which try misdemeanours: see Donald Fyson, *Magistrates, Police and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764–1837* (Toronto: University of Toronto Press for The Osgoode Society, 2006).

19. *An Act for making more effectual Provision for the Government of the Province of Quebec in North America*, 1774 (UK), 14 Geo III, c 83 [*Quebec Act*]; there is a vast literature on this Act; see, for instance, Philip Lawson, *The Imperial Challenge, Quebec and Britain in the American Revolution* (Montréal: McGill-Queen’s University Press, 1989); Hilda Neatby, *The Quebec Act: Protest and Policy* (Scarborough, ON: Prentice-Hall of Canada, 1972); Karen Stanbridge, “Quebec and the Irish Catholic Relief Act of 1778: An Institutional Approach” (2003) 16:3 *Journal of Historical Sociology* 375.

20. It is estimated that only 4 per cent of the population could read: Maurice Lemire, ed, *La vie littéraire au Québec Tome 1 (1764–1805) : La voix française des nouveaux sujets britanniques*, vol I (Sainte-Foy, QC : Presses de l’Université Laval, 1991) at 82.

21. *Quebec Gazette*, printed by Brown & Gilmore, (1764–1850), Ottawa, National Archives of Canada (NLC reels N-25-N38).

Quebec.<sup>22</sup> But the *Gazette* kept its readers informed of current developments in France, where this new way of thinking was steadily gaining ground and sparked off many political controversies. It also opened a window on the British “Atlantic world” and on debates concerning the rights of British subjects in England and the Empire. The premises of a public sphere were therefore present, although there was as yet no mass movement claiming to represent public opinion in an overt attempt to influence governmental decisions.<sup>23</sup>

Though there is no conclusive evidence about this, we assume that the ideas disseminated in the press or other publications found their way in the political discourse of “Canadians.” For them, the religious issue—the possibility for Catholics to hold positions of trust in the colonial government—was no doubt dominant, but they were interested in their new constitutional rights.<sup>24</sup> To reflect the variety of issues that were being discussed between 1764 and 1774, the paper will be divided into two parts. First, we will examine the reports published in the *Gazette* concerning constitutional debates occurring in France, England, and the British Colonies, in order to ascertain what a francophone reader could learn about imperial Constitutional Law (I).<sup>25</sup> Next, we will try to document the reception and acceptance of these principles in the political and legal discourse of the time, as well as the strategies chosen by members of the francophone elite to preserve some fundamental aspects of their identity and culture (II).<sup>26</sup>

### I. *Constitutional debates in France, Great-Britain, and the British Empire, 1764–1774*

Prior to the Conquest there was no printing, nor a tradition of large-scale petitioning for political grievances in New France. Starting in 1764, the *Gazette* (which was founded by a relative of Benjamin Franklin) published governmental documents, news reports (lifted mostly from British and colonial newspapers, perhaps with some taken directly from French

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22. See for instance Lagrave, *supra* note 17 at 71-73; Lamonde, *supra* note 17 at 70-71; and Ducharme, *supra* note 17.

23. David Zaret, *Origins of Democratic Culture, Printing, Petitions and the Public Sphere in Early-Modern England* (Princeton: Princeton University Press, 2000) at 14-15.

24. For the religious debates see Neatby, *supra* note 19.

25. This is an abridged version of Michel Morin, “La découverte du droit constitutionnel dans une colonie francophone : la *Gazette* de Québec, 1764–1774” (2013) 47:2 *RJT* forthcoming [Morin, “Découverte”].

26. This is a condensed version of Michel Morin, “Les revendications des nouveaux sujets, francophones et catholiques, de la Province de Québec, 1764–1774” in Blaine Baker & Donald Fyson, eds, *Essays in the History of Canadian Law: Quebec and the Canadas* (Toronto: Osgoode Society for Canadian Legal History and University of Toronto Press, 2013) [Morin, “Revendications”].



Gazettes), letters to the editor, and commercial or personal advertisements, which occasionally contained political opinions. There were 148 subscribers out of approximately 70,000 inhabitants, though at the time, one copy was normally used by multiple readers.<sup>27</sup> Curates in parishes were required to read aloud recently adopted colonial ordinances after mass.<sup>28</sup> One would expect justices of the peace and legal professionals to have been subscribers as well. Thus, the information contained in the Gazette did circulate in the countryside, like secular books.<sup>29</sup> Another important feature of the Gazette was its bilingual character: each text (or almost) appeared in both languages.

The Gazette was similar to many British North American papers. It was privately-run and was primarily a newspaper, with a pronounced interest in international and colonial issues and a section containing private advertisements.<sup>30</sup> In 1760, there were 42 printers in the British colonies; a few cities had five or more.<sup>31</sup> Personal relationships and business networks among colonial printers greatly facilitated the circulation of news reports.<sup>32</sup> According to Michael Warner, during the 1720s a public discourse appeared in the press. It assumed the presence of a community whose readers could oversee the decisions of public authorities.<sup>33</sup> In the mid-eighteenth century, in all major cities, local issues were also debated. As for the Gazette, it also served as the official vehicle for the publication of governmental documents such as ordinances, proclamations, imperial statutes, etc. This could represent an important source of income; therefore, its editors could not totally alienate the Government.

27. Lemire, *supra* note 20 at 212-215 and 227-231. In France, around 1760, about 12,000 copies of the official *Gazette de France* were printed each week; 3,000 copies of various Gazettes were sold, each circulating in many hands: Gilles Feyel, *L'Annonce et la Nouvelle, La presse d'information en France sous l'Ancien Régime (1630-1788)* (Oxford: Voltaire Foundation, 2000) at 531-545; Jack R Censer, *The French Press in the Age of Enlightenment* (London: Routledge, 1994) at 11-12 and 184. In England, about 20,000 copies of newspapers were printed daily, with a number of readers or listeners five to ten times higher. Foreign newspaper reports were liberally used after being translated: Hannah Barker, *Newspapers, Politics and English Society, 1695-1855: Themes in British Social History* (London: Longman, 2000) at 46, 63 and 105. Overall, very rough calculations show that the availability of copies was proportionately higher in Quebec than in Europe.

28. *Quebec Gazette* (21 February 1765).

29. Most books in rural areas belonged to the clergy, but some seigneurs or jurists also possessed secular works: Gilles Proulx, *Loisirs québécois : des livres et des cabarets, 1690-1760* (Ottawa: Service canadien des parcs, 1987) at 44-45.

30. Patricia Lockhart Fleming, Gilles Gallichan & Yvan Lamonde, eds, *History of the Book in Canada. Beginnings to 1840*, vol 1 (Toronto: University of Toronto Press, 2004) at 63-64 and 72-75.

31. Michael Warner, *Letters of the Republic: Publication and the Public Sphere in Eighteenth-Century America* (Cambridge, MA : Harvard University Press, 1990) at 23.

32. *Ibid* at 68.

33. *Ibid* at 29-41.

Notwithstanding the need to maintain a good relationship with colonial administrators, the editors of the *Gazette* made a large place for new ideas and criticism. In this regard, their paper was quite similar to the *Halifax Gazette*, which did not shy from publishing controversial reports about events occurring in England or the colonies generally. On the other hand, the editor either suppressed information or comments on local matters that seemed controversial or asked for the approval of the Provincial Secretary, unless he was reprinting a piece first published in London.<sup>34</sup>

To understand the importance of the information relayed by the *Gazette*, this part will recall the main political and constitutional issues discussed at the time. It will focus first on the challenges posed to royal authority in France (1). Next, the consolidation of constitutional rights in Great Britain will be examined (2). Finally, the claims of the American colonies to a greater autonomy will be discussed (3). Although these events are well known, the availability of translated versions of news reports published in English outside of Quebec is not.<sup>35</sup>

### 1. *The contestation of royal authority in France*

Beginning in 1764, readers of the *Gazette* could easily follow the burning controversies taking place in their former mother country, in which an absolutist conception of monarchy was being forcefully challenged. The ideal of a constitutional order superior to the King, with some immutable aspects restraining his powers, was asserted vigorously, but did not prevail. Nonetheless, during the second half of the eighteenth century, there was a call to reform French laws and institutions, using arguments based on reason and natural law. Montesquieu's *The Spirit of the Laws* appeared in 1748, while Rousseau's *Social Contract* was published in 1762.<sup>36</sup> Philosophers began criticizing the administration of Justice.<sup>37</sup> Thus, Voltaire launched into a crusade to rehabilitate a protestant who was unfairly sentenced to death; Beccaria criticizes the immoderate use of the

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34. Dean Jobb, "'The first that was ever publish'd in the Province': John Bushell's *Halifax Gazette*, 1752–1761" (2008) 11 *Journal of the Royal Nova Scotia Historical Society* 1.

35. One exception would be Pierre Tousignant's dissertation, see Tousignant, *supra* note 17, but he focuses on events occurring in Quebec.

36. Charles Louis de Secondat Montesquieu, *De l'esprit des lois* (Genève: Barillot & fils, 1748); Jean-Jacques Rousseau, *Du contract social* (Amsterdam: Marc Michel Rey, 1762).

37. Élizabeth Badinter, *Les passions intellectuelles, III : Volonté de pouvoir (1762–1778)* (Paris: Fayard, Références le Livre de Poche, 2007) at 128–141 [Badinter, *Volonté de pouvoir*].

death penalty.<sup>38</sup> These authors were not widely known in Quebec, but a few high ranking officials or jurists owned many of their books.<sup>39</sup>

In these days, the French King could order his subjects imprisoned by a simple administrative document, the *lettre de cachet* (sealed letter), in marked contrast to the protection of individual freedom afforded by the writ of *habeas corpus*. He could make laws or impose taxes of his own free will. The Parliaments (which were actually courts of appeal) could delay the registration of an ordinance before them, an essential formality for the coming into force of royal legislation.<sup>40</sup> In this way, judges hoped to convince the King to modify the text or to abandon it, often publishing their “remonstrances.”<sup>41</sup> Some of these found their way to New France, as can be seen from the library of Guillaume Verrier, the attorney general for the French King from 1728 to 1758 and the first person to teach law in the colony.<sup>42</sup> Though local judges never indulged in such political activity, we may suppose that jurists formed by Verrier knew about challenges to royal authority occurring in France.

In November of 1763, after a royal edict seemed to invite suggestions for fiscal reforms, a flood of criticism was directed at the government. This was followed by an outright prohibition (in March of 1764) to print

38. On the Calas affair, see for instance Élisabeth Badinter, *Les passions intellectuelles, II. Exigences de dignité (1751–1762)* (Paris: Fayard, Références le Livre de Poche, 2002) at 490-501 [Badinter, *Exigences de dignité*]; Cesare Beccaria, *Traité des délits et des peines* (Lausanne: np, 1766) or (Philadelphia: np, 1766). The Gazette mentions the execution of the Chevalier de la Barre and the burning of the *Dictionnaire philosophique*, see *Quebec Gazette* (27 October 1766 and 16 February 1767). Other references are more superficial, see *Quebec Gazette* (25 April 1765); “Épître de Monsieur Voltaire à Monsieur le Cardinal Querini [...]” (23 March 1767); (29 November 1767); “Ode par M. De Voltaire, à un Marchand de Bretagne, qui avoit nommé un de ses vaisseaux de son nom” (9 February 1769); (3 January 1771); “Lettre de Monsieur de Voltaire au Roi de Prusse” (4 July 1771); (28 November 1771). See also, Marcel Trudel, *Le siècle de Voltaire au Canada, de 1760 à 1850*, vol I (Montréal: Les Publications de l’Université Laval, 1945) at 30, 39 and 58-64.

39. Mario Robert, “Le livre et la lecture dans la noblesse canadienne 1670–1764” (2002) 56:1 RHAf 3 at para 30; Nathalie Battershill, *Les bibliothèques privées sur l’île de Montréal, 1765–1790* (MA thesis, Université de Montréal, 1993) at 49-50 [unpublished]; Proulx, *supra* note 29 at 92 (Montaigne), 95 (Voltaire), Locke & 120 (Montesquieu); Lemire, *supra* note 20 at 90 (Montesquieu, Buffon, Rousseau, Voltaire).

40. This was often the case for fiscal edicts, see *Quebec Gazette* (4 June 1767; 29 September 1768; 14 June 1770; 31 January 1771; 4 June 1772; 5 November 1772).

41. See Jean-Louis Harouel et al, *Histoire des institutions de l’époque franque à la Révolution*, 6th ed (Paris: Presses Universitaires de France, 1994); John A Carey, *Judicial Reform in France before the Revolution of 1789* (Cambridge, MA: Harvard University Press, 1981) at 9-10; Julian Swann, *Politics and the Parlement of Paris under Louis XV, 1754–1774* (Cambridge, MA: Cambridge University Press, 1995).

42. See Claude Vachon, “Louis-Guillaume, Verrier,” online: *Dictionary of Canadian Biography* <<http://www.biographi.ca>>; Edouard-Fabre Surveyer, “Louis-Guillaume Verrier (1690–1758)” (1952) 6:2 RHAf 159-176; *Inventaire des biens de feu Me Guillaume Verrier, Conseiller du Roy son Procureur Général au Conseil Supérieur de Québec* (5 octobre 1755), Québec, Archives du Séminaire de Québec, Centre d’histoire de l’Amérique française (Polygraphie 15, no 81, fos 33, 48-51).

anything relating to such issues, a fact which was noted in the *Gazette*.<sup>43</sup> Readers were also reminded that the Parliament of Paris or the King's Council ordered books to be burned.<sup>44</sup> Nowadays, we know that the director of the censorship bureau, Malesherbes, deliberately protected philosophers and turned a blind eye to their activities, partly to shield printers from foreign competition.<sup>45</sup> Be that as it may, officially, freedom of the press was not recognized in France.

The famous case of La Chalotais, attorney general for the Parliament of Brittany is illustrative of the challenges to royal authority reported in the *Gazette*. He was exiled in another part of the Kingdom for having criticized the commander-in-chief of his province. Members of this Parliament then resigned to protest this decision and some fiscal measures, but the King replaced them all. Other parliaments rallied in support, arguing that they were emanations or classes derived from the first general court of the kingdom and, as such, depositaries of the rights of the Nation.<sup>46</sup> In 1766, the King declared bluntly that he alone held “the legislative power, without dependency or sharing” and that the “Rights or Interests of the Nation, which some dare to make a separate body from the monarch” were “necessarily united into his hands.”<sup>47</sup> Soon after, in the *Gazette*, a “Champion Of the Rights of Nature” complained that the coronation oath was understood as authorizing the “enslaving” of the people and as requiring a “blind Obedience” to ministers who acted as “Instruments for plaguing and oppressing Mankind.”<sup>48</sup> This was an “Insult offered to common Sense.”

In 1770, the conflict entered a new phase, which was well covered by the *Gazette*. The King forbade references to the theory of classes or the cessation of the parliament's activities. Nonetheless, the Parliament of Paris did just that, asserting that the letter and spirit of the constitution of

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43. Arnaud Decroix, *Question fiscale et réforme financière en France (1749–1789). Logique de la transparence et recherche de la confiance publique* (Aix-en-Provence: Presses universitaires d'Aix-Marseille, 2006) at 227-304; *Quebec Gazette* (23 August 1764).

44. “Une réponse à l'auteur de l'Anti-financier,” *Quebec Gazette* (27 September 1764); *Quebec Gazette* (19 July 1764, religious controversy; 4 April 1765); Elizabeth Badinter, *Les passions intellectuelles, I. Désirs de gloire (1735–1751)* (Paris: Références le Livre de Poche, Fayard, 1999) at 78-83, 345, 416 and 499; Badinter, *Exigences de dignité*, *supra* note 38 at 456, 538, 551-552; Badinter, *Volonté de pouvoir*, *supra* note 31 at 217-218; Swann, *supra* note 41 at 24.

45. See Raymond Birn, *La censure royale des livres dans la France des Lumières* (Paris: Odile Jacob, 2007) at 70-88.

46. See Harouel, *supra* note 41 at 531-533, 499-500; Swann, *supra* note 41 at 251 *et seq*; *Quebec Gazette* (19 June 1766; 14 May 1767; 21 May 1767; 28 May 1767; 15 October 1767; 30 August 1770; 13 December 1770; 20 December 1770).

47. See the excerpt in Daniel Teysseire, “Un modèle autoritaire : le discours de la ‘flagellation’” (1995) 43 *Mots* 118 at 126-127 [translated by author].

48. “To the Printers,” *Quebec Gazette* (26 June 1766).

France has been violated in an attempt to change the form of government.<sup>49</sup> For their pains, the King exiled them to barely inhabited villages and subsequently confiscated their offices; other parliaments suffered the same fate.<sup>50</sup> As he explained to the Parliament of Bordeaux, “obedience is a duty imposed by all the laws,” for he was the “sole legislator in this Kingdom, independent and undivided” who alone had “the right of putting the ancient laws in execution, of interpreting them, of abolishing them, and of making new ones” if necessary for “the good of the State.”<sup>51</sup>

The Gazette also published a letter addressed to the princes of royal blood that challenged this conception of royal authority. For the authors, “the Constitution of the Government and the Rights of the People are attacked” and “the Laws, Forms and Parliaments, established for securing the Honor, the Lives and Fortunes of the Citizens, are destroyed.”<sup>52</sup> In these circumstances, the “Nobility would immediately have the Privilege of assembling themselves.” Though the “Nation” did not think of meeting while the Parliaments existed, it did not “forfeit its Right” to do so. However, the authors hoped that the King would soon restore “the Constitution with which the Nation was satisfied.” The famous remonstrances of Malesherbes are to the same effect.<sup>53</sup> The convocation of the General Estates and the French Revolution are lurking here.

Another letter addressed to the sovereign appeared in the Gazette:

It is not then the Sovereign: It is the law, Sire, that ought to reign over the people. You are only its minister and first depositary – it is the law that ought to regulate the exercise of authority; and it is by the law that this authority is no longer a yoke to the subjects, but a rule that guides them; a help that protects them; a paternal watchfulness, that secures their submission, only because it secures their love.<sup>54</sup>

In 1771, the Gazette reported that there were riots in France and talks of refusing to pay taxes; numerous persons were imprisoned, some for having printed criticism of the King. According to a London article, ministers

49. *Quebec Gazette* (3 January 1771; 31 January 1771; 21 March 1771; 2 May 1771); see also Badinter, *Volonté de pouvoir*, *supra* note 37 at 236-237.

50. *Quebec Gazette* (23 May 1771, *supp*; 30 May 1771; 13 June 1771; 25 July 1771; 10 October 1771; 2 January 1772; 23 January 1772; 13 February 1772). Some magistrates died in exile: Swann, *supra* note 41 at 299 and 302.

51. *Quebec Gazette* (21 March 1771).

52. “From the AMSTERDAM GAZETTE, Paris, March 18,” *Quebec Gazette* (19 September 1771); Swann, *supra* note 41 at 358.

53. Badinter, *Volonté de pouvoir*, *supra* note 37 at 248-251; Swann, *supra* note 41 at 358.

54. *Quebec Gazette* (26 September 1771).

apprehended a civil war.<sup>55</sup> The author exclaimed, in relation to the English people: “Happy then that Nation, whose liberties are preserved sacred and inviolable.”<sup>56</sup> Though French philosophers were divided at the time, in October, everything seemed quiet. One observer opined that the reform was taking root, since the former courts were abolished because of their injustice and venality.<sup>57</sup> Indeed, the new ones functioned relatively well, until Louis XVI recalled the parliaments in 1774.<sup>58</sup>

The Gazette thus offered a striking image of the unremitting grip of the Absolute Monarchy in France. As for former *Canadiens* who decided to remain in Quebec, the French crown finally paid only 25% of the face value of “card money,” the currency used in New France.<sup>59</sup> Many military officers, generally nobles, found no employment in the French army and returned to Quebec.<sup>60</sup> In these conditions, the privileges inhering to British subjects may have seemed quite advantageous to readers of the Gazette.<sup>61</sup>

## 2. *The consolidation of constitutional rights in Great Britain*

In the early years of the reign of King George III (1760–1820), the Gazette related the stringent criticism of the government and controversial litigation, such as prosecutions against printers for seditious libel or against government officials for acting unlawfully. By doing this, it allowed Francophone readers to better understand their rights as British subjects. This was especially true of the tribulations of John Wilkes, a Francophile Member of Parliament who briefly considered becoming “Governor of Canada” but eventually decided to lead the opposition.<sup>62</sup>

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55. *Quebec Gazette* (12 September 1771; 19 September 1771; 2 January 1772); see also, concerning a pretended crisis in Brittany, *ibid* (26 September 1771). According to Badinter, *Volonté de pouvoir*, it seemed like Paris was ready to explode at the time, *supra* note 37 at 252; see also George Rudé, *The Crowd in History. A Study of Popular Disturbances in France and England, 1730–1848* (New York & London: John Wiley & Sons, 1964) at 50.

56. *Quebec Gazette* (12 September 1771; see also 26 December 1771).

57. *Quebec Gazette* (27 February 1772); Badinter, *Volonté de pouvoir*, *supra* note 37 at 254–262; Swann, *supra* note 41 at 360.

58. Harouel, *supra* note 41 at 533–536 fn 501–503; Carey, *supra* note 41 at 93–99; *Quebec Gazette* (11 October 1770; 13 June 1771).

59. See *Quebec Gazette* (18 October 1764; 1 November 1764; 22 November 1764; 29 November 1764; 30 May 1765; 24 October 1771; 30 January 1772; 4 June 1772; 13 August 1772).

60. Robert Larin & Yves Drolet, “Les listes de Carleton et de Haldimand. États de la noblesse canadienne en 1768 et en 1778” (2008) 41:82 *Social History* 563.

61. France was absolutely not interested in regaining its former colony: Françoise Le Jeune, “La France et le Canada du milieu du XVIII<sup>e</sup> siècle au milieu du XIX<sup>e</sup> siècle : Cession ou Conquête ?” in Serge Joyal & Paul-André Linteau, eds, *France-Canada-Québec 400 ans de relations d’exceptions* (Montréal: Presses de l’Université de Montréal, 2008) at 57; François-Joseph Ruggiu, “Falling into Oblivion? Canada and the French Monarchy” in Buckner & Reid, *supra* note 5 at 69.

62. See the excellent biography by Arthur H Cash, *John Wilkes, The scandalous father of civil liberty* (New Haven, CT: Yale University Press, 2006) at 58 and 90. For a much fuller discussion, see Morin, “Découverte,” *supra* note 25.

Arrested in 1763 for publishing a vitriolic pamphlet against the king, he was released following a habeas corpus petition.<sup>63</sup> He was also awarded punitive damages by a jury after an illegal search of his house.<sup>64</sup> This highlighted to Quebec readers the power of juries, except in contempt of court proceedings.<sup>65</sup> For instance, a London letter complained of “arbitrary Ministers” who opposed freedom of the press, which acted as “a Check upon their tyranny.”<sup>66</sup> Without trial by jury, this “Great and solemn Privilege of Englishmen” inherited from “virtuous and spirited Ancestors,” England’s liberties, and the “blessings which it boasts above other Nations,” would be lost. The people would become the “Slaves of a Minister.” Another author added: “Can our Liberties be secure, when that great and essential one of the PRESS is daily attacked, and PRINTERS and Book-sellers are so terrified by uncommon Rigour, that they will neither print nor publish? Can our Liberties be secure, if that highest and most valuable of all our Liberties, a JURY, be taken from us?”<sup>67</sup>

After fleeing to France, Wilkes returned in 1768 and was sentenced two years in jail and a £1,000 fine.<sup>68</sup> He was elected three times to the House of Commons, but expelled thereafter; the third time, his closest opponent was declared elected. All these events were immensely controversial and well publicized in England, in America, and in the Gazette. Celebrations were organized in his honour; his image was widely reproduced, though not in Quebec.<sup>69</sup> In 1769, he created the *Society for the Defence of the Bill of Rights*, with the aim of reforming the electoral system.<sup>70</sup> Petitions requested

63. See Ann Lyon, *Constitutional History of the United Kingdom* (London, UK: Cavendish, 2003) at 291-292; *R v Wilkes* (1763) 2 Wils 151; and the later account by Wilkes, *Quebec Gazette* (3 September 1767; 10 September 1767).

64. *Wilkes v Wood* (1763), 3 Lofft 1 98 ER 489 (C Pls); for a summary by Wilkes, see *Quebec Gazette* (3 September 1767; 10 September 1767); in 1769 Wilkes also obtained £4,000 against the Secretary of State: *Quebec Gazette* (15 March 1770); Cash, *supra* note 62 at 160 and John Brewer, “The Wilkites and the law, 1763-74: a study of radical notions of governance” in John Brewer & John Styles, eds, *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries* (London, UK: Hutchinson, 1980) 128-171 at 143.

65. Douglas Hay, “Contempt by Scandalizing the Court: A Political History of the First Hundred Years” (1987) 25 Osgoode Hall LJ 431-484; see also the proceedings against Mr. Bingley for publishing another issue of the North Briton, *Quebec Gazette* (13 October 1768).

66. “London, April 19,” *Quebec Gazette* (25 July 1765).

67. *Ibid.*

68. Cash, *supra* note 61 at 163-164; *Quebec Gazette* (14 February 1765; 21 February 1765; 2 May 1765; 30 May 1765). The Gazette did not explain why Wilkes has been forced to flee.

69. Cash, *supra* note 61 at 245-256; see *Quebec Gazette* (9 April 1767; 27 August 1767; 31 March 1768; 25 August 1768; 1 September 1768; 22 September 1768; 1 December 1768; 9 February 1769; 21 September 1769; 19 July 1770; 26 July 1770; 2 August 1770; 6 September 1770; see also 6 June 1771).

70. For an overview of the English electoral system, see Ann Lyon, *Constitutional History of the United Kingdom* (London, UK: Cavendish, 2003); on the *Society for the defence of the Bill of Rights*, see *Quebec Gazette* (8 June 1769; 15 December 1774).

that he be seated in the Commons, with more than 60,000 signatures collected in England, which represented one quarter of the electorate. In 1770 and in 1773, because his election had not been recognized, the mayor and the aldermen of the City of London questioned the legitimacy of Parliament.<sup>71</sup> In 1771, after becoming an alderman himself, he secured the acquittal of printers prosecuted in the municipal court for publishing parliamentary debates.<sup>72</sup> After his election as Mayor of London, in 1774, he was no longer a symbol of opposition to the King or the Government.<sup>73</sup>

In 1767, another parliamentary debate concerned a proposal to grant immunity to officers who had relied on an illegal proclamation. The Gazette published the speech of Lord Mansfield, for whom the British Constitution established “a Government by Law” in which “no Person, or Set of Men” and “no Power or Authority” were “superior to the Law.” In “no Case whatever can any Necessity be set up, or pleaded to extend the King’s Prerogative.”<sup>74</sup> It can be seen, therefore, that the Gazette allowed its readers to discover many important constitutional principles relating to freedom of the press, the electoral system, and protection against arbitrary detention or abusive search and seizures, as well as the crucial role played by the jury. A similar phenomenon could be observed in the American colonies to the south.

### 3. *The quest for constitutional autonomy in the British colonies*

Many themes discussed above resurfaced in various debates occurring in the colonies of British North America that were reported in the Gazette. The imposition of taxes by the British Parliament sparked off a prolonged controversy over the extent of its powers. This resulted in systematic protests and an open confrontation between Great Britain and its colonies.

In 1765, the *Stamp Act* required the stamping—for a fee—of various colonial documents, including judicial proceedings.<sup>75</sup> This provoked an intense controversy and forced many papers out of business, including

71. *Quebec Gazette* (14 June 1770; 28 June 1770; 3 June 1773).

72. Cash, *supra* note 61 at 277–285; Brewer, *supra* note 64 at 140–141; as the sheriff of the City of London, Wilkes made reforms favourable to prisoners and debtors (Cash, *supra* note 61 at 293; Brewer, *supra* note 64 at 166); he also set free a Black man that was supposedly a slave, since this could not be recognized in England (*ibid* at 307); on the publication of parliamentary debates, see *Quebec Gazette* (23 May 1771; 13 June 1771; 20 June 1771; 18 July 1771; 1 August 1771). The Society for the Bill of Rights paid £100 to three printers who were accused in 1771: *Quebec Gazette* (1 August 1771).

73. Brewer, *supra* note 64 at 348.

74. *Quebec Gazette* (14 May 1767).

75. On the contents of the Act and its receiving royal assent, see *Quebec Gazette* (9 May 1765 and 30 May 1765); see also the inflamed speech of colonel Barré in the Commons, who defended the rights of the colonies, 25 July 1765, like another member, 1 August 1765.



the Gazette.<sup>76</sup> British products were boycotted, riots erupted, and customs officers' houses were ransacked or burnt. In New York, lawyers stopped acting before the courts.<sup>77</sup> Some even feared that violence would spread to England and Ireland.<sup>78</sup> In London, delegates from the colonies famously complained of "Taxation without Representation." In 1766, this legislation was repealed, but a concomitant act solemnly declared the power of Parliament over the colonies to be unlimited.<sup>79</sup> In the Gazette, William Pitt could be seen to oppose the Stamp Act, while Benjamin Franklin defended the position of the colonies.<sup>80</sup>

In Montreal, the tax was dutifully paid, but local merchants knew all about "the proceedings of the Sons of Liberty and their Intention to oppose the Stamp Act"; for their part, Canadians expressed "an uneasiness at paying a Tax from which the other provinces are at present exempt" as a result of public protests.<sup>81</sup> Following the repeal, British merchants who supported the colonies reproached their New York counterparts for the violence that occurred there.<sup>82</sup> They sent the same letter to Quebec merchants.<sup>83</sup> An anonymous writer claimed that the latter were outraged by this accusation, since the Province, which lived under a "military" government, had remained peaceful.<sup>84</sup> A reader replied that this has nothing to do with the form of government in the Province.<sup>85</sup>

A few weeks later, Lieutenant-Governor Carleton, who replaced Governor Murray, was presented with a laudatory address by the "Merchants" and "Inhabitants" of the city of Quebec. They emphasized

76. A MERCHANT, "To the Printer of the PUBLIC LEDGER," *Quebec Gazette* (15 August 1765); and *Quebec Gazette* (10 October 1765).

77. Jack P Greene, "Law and the origins of the American Revolution" in Michael Grossberg & Christopher Tomlins, eds, *The Cambridge History of Law in America*, vol 1 (Cambridge, UK: Cambridge University Press, 2008) 447-480 at 469; Hulsebosch, *supra* note 5 at 139.

78. Marshall, *supra* note 3 at 175.

79. *AN ACT for the better securing the dependency of his Majesty's dominions in America upon the crown and parliament of Great Britain*, 1766 (GB), 6 Geo III, c 12; *Quebec Gazette* (5 June 1766). The festivities following the repeal of the *Stamp Act* were also described by the Gazette: *Quebec Gazette* (26 May 1766; 14 July 1766, suppl; 13 October 1766; see also 4 August 1766).

80. *Quebec Gazette* (29 May 1766; a debate ensued: 5 June 1766); "The EXAMINATION of Doctor BENJAMIN FRANKLIN, before an August Assembly, relating to the Repeal of the Stamp-Act, &c." *Quebec Gazette* (1 December 1766); *Quebec Gazette* (8 December 1766; 15 December 1766; 22 December 1766; 29 December 1766; 5 January 1767); see also "The Lords Protest against the repeal of the American Stamp-Act," *Quebec Gazette* (21 July 1766, suppl; 28 July 1766, suppl).

81. *Register of the Legislative Council of the Province of Quebec*, Library and Archives Canada [hereinafter "LAC"] (RG1, E1, vol 2, fo 123v).

82. *Quebec Gazette* (29 May 1766).

83. *Quebec Gazette* (21 July 1766).

84. "Copy of a Letter from the Merchants of Canada, in Answer to one received from a Committee of Merchants in London," *Quebec Gazette* (28 July 1766).

85. ANONYMOUS, "To the Printers," *Quebec Gazette* (25 August 1766).

their “heartly and untainted Loyalty” to their sovereign and their “most profound Reverence to the Legislative Authority of the British Parliament,” as illustrated by the “immediate and universal Obedience to the Stamp-Act” in the Province.<sup>86</sup> Of the 68 signatories, 39 or 56% have English-sounding names, while 30 or 44% seem to have Francophone ones, including a handful of Protestants born in Great Britain of French descent.

Simultaneously, an address from other merchants complained of the decline in business. They hoped that “the Clogs of Commerce” would be removed. If a “good and wise Administration” ensured this, the lieutenant-governor’s administration would be “happy and agreeable.”<sup>87</sup> Of the 46 signatories, 29 or 63% seem to be Anglophones and 17 or 37% seem to be Francophone names. This very qualified endorsement indicates a negative opinion of Governor Murray’s administration and, implicitly, of the *Stamp Act*.<sup>88</sup> The proportion of Francophone individuals who took a critical stance (37%) does not vary significantly from those who offered unwavering support (44%) in the first address.<sup>89</sup>

In 1767, the British Parliament imposed new taxes on products imported by the colonies and provided for the payment of governors and judges salaries out of this additional income, thus depriving colonial assemblies of an important leverage against the executive.<sup>90</sup> Even a cursory reading of the Gazette revealed the blatant conflict between the position of colonies and of the metropolis. Representatives from Massachusetts asserted the “most sacred Right, of being taxed only by Representatives of their own Free Election,” since they had an “equitable Claim to the full Enjoyment of the fundamental Rules of the British Constitution.”<sup>91</sup> They were supported by many other colonies.<sup>92</sup> The King and Parliament insisted on a proper constitutional subordination.<sup>93</sup> One London observer emphatically agreed: “to deny the Right of the Mother Country to tax” her colonies “is to deny her Sovereignty [...] and in Place of Sons and Provinces of their Mother Country, to become Aliens, and to form themselves into a Mother Country,

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86. *Quebec Gazette* (29 September 1766).

87. *Ibid.*

88. Alfred Leroy Burt, *The Old Province of Quebec* (Toronto & Minneapolis: Ryerson Press-University of Minnesota Press, 1933) at 136.

89. Burt estimates that the proportion of Canadian signatories is the same for both addresses, *ibid.*

90. That same year another act provided for the nomination of customs commissioners charged with collecting the new duties: *Quebec Gazette* (26 November 1767).

91. *Quebec Gazette* (12 May 1768; 19 May 1768).

92. *Quebec Gazette* (18 August 1768, Maryland and New Jersey; 23 February 1769, South Carolina, representatives from Georgia take no position; 23 March 1769 and 30 March 1769, Pennsylvania).

93. *Quebec Gazette* (9 June 1768; 28 July 1768; 16 February 1769; 2 March 1769).

and an independent Nation.”<sup>94</sup> In New York, in 1767, a British statute even forbade the governor to assent to legislation until the Assembly provided the supplies needed by the military.<sup>95</sup> In this volatile context, relations between representatives of the crown and colonial representatives were tense everywhere.<sup>96</sup>

In North Carolina, a rebellion even occurred in 1771 because of the high fees of public officials, a frequent subject of complaints in Quebec.<sup>97</sup> In 1773, Benjamin Franklin predicted the independence of the colonies.<sup>98</sup> The grant to the East India Company of a monopoly on the importation of tea reignited the conflict.<sup>99</sup> Following the Boston Tea Party, the intolerable acts of 1774 were adopted.<sup>100</sup> The colonies protested immediately against

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94. “LONDON, November 20. EXTRACT from the Constitutional Right of the LEGISLATURE OF GREAT BRITAIN TO TAX THE colonies,” *Quebec Gazette* (30 March 1769). The author nonetheless supports the admission of representatives from the colonies in the House of Commons, see *Quebec Gazette* (27 April 1769).

95. Hulsebosch, *supra* note 5 at 126; see *Quebec Gazette* (16 February 1769).

96. The Gazette regularly published speeches of the King or of governors as well as addresses of the Commons or of colonial representatives, especially if they criticized the policy of the Crown; see, among others: 16 May 1765, 21 February 1771, 22 August 1771 (House of Lords and House of Commons); 2 April 1767, 24 April 1767, 21 April 1768, 22 December 1768 (Massachusetts); 2 July 1767, 7 May 1767, 17 September 1767, 24 September 1767 (West Florida); 3 September 1767 (New York); see also 22 October 1767, 24 March 1768, 7 April 1768, 19 May 1768, 21 May 1772 (Ireland); 20 January 1774 (Prince Edward Island). For the summoning of the house of representatives outside the colonial capital, see Greene, *supra* note 77 at 468; *Quebec Gazette* (19 July 1770; 2 August 1770; 9 August 1770 and 14 July 1774); for debates on public expenditures, see *Quebec Gazette* (1 August 1765); on the right to address public resolutions, see *Quebec Gazette* (18 August 1766).

97. *Quebec Gazette* (4 July 1771; 11 July 1771; 8 August 1771; 28 November 1771; 5 December 1771).

98. *Quebec Gazette* (3 March 1774; 10 March 1774); the authorship was not known at the time.

99. For the prior repeal of most taxes on colonial imports, see *Quebec Gazette* (28 June 1770).

100. For the closing of Boston Harbour, see *Quebec Gazette* (9 June 1774); for the designation of public officers by the Crown instead of the Massachusetts Legislature, see *Quebec Gazette* (23 June 1774; 21 July 1774; 15 September 1774); for the trial of royal officers in other colonies or in England, see *Quebec Gazette* (7 July 1774; 8 September 1774); the Act granting the right to requisition unoccupied buildings to lodge the army is not reproduced.

the laws concerning Massachusetts.<sup>101</sup> The adoption of the *Quebec Act* also raised a storm.<sup>102</sup>

The fundamental individual rights of colonists were also debated in the *Gazette*. In 1765, a bill before the British Parliament would have allowed the billeting of soldiers in private houses, though the final version provided that they would be lodged in vacant buildings, at the expense of colonial governments.<sup>103</sup> The *Gazette* reproduced a horrified comment concerning the initial bill: would no one “oppose a Measure...destructive of the Happiness every English Man” which he has the “Right to Enjoy in his own House?” Indeed, the “Laws of England call every Man’s House, *his Castle*, but surely they never meant it should be garrisoned by hiring Soldiers!” A “Measure so contrary to the very *Being* of Liberty” must make “every Englishman...shudder at the Thoughts of so unconstitutional a Design,” since “Arguments, of one Sort or other, will not be wanting to impose the same on the *Mother Country*, whenever in future any weak, wicked, or arbitrary Minister shall please to attempt it.”<sup>104</sup>

Problems concerning the administration of justice in the colonies were also debated in the *Gazette*. For instance, in cases pitting the interests of the imperial government against those of the colony, jurors would often refuse to indict a suspect or to convict an accused.<sup>105</sup> Courts sitting without

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101. *Quebec Gazette* (30 June 1774, Virginia and creation of a General Congress; see also 23 June 1774, Maryland; 28 July 1774; 29 September 1774, refusal of jurors to be sworn in Massachusetts; 17 November 1774, protests of the representatives of Massachusetts; 9 February 1775, speech of the governor who admitted there was no quorum at the opening of the session in New York; 23 February 1775, address of the Council of New York; 16 March 1775, South Carolina Congress and Quakers from Pennsylvania and New Jersey were opposed to the use of force; 30 March 1775, the governor of Georgia deplored the troubles in other colonies; 6 April 1775, cautious answer of the Assembly). In February, the Commons declared the inhabitants of Massachusetts to be in a state of rebellion, *Quebec Gazette* (4 May 1775), whereas merchants trading in America still sought a compromise: *Quebec Gazette* (11 May 1775).

102. The discussion of the first bill in the House of Lords was mentioned in the *Quebec Gazette* on 28 July 1774, a summary of the bill was published on 18 August 1774, as well as an overview of the debates in the Commons (25 August 1774 and 8 September 1774) and of those concerning the act imposing dues on alcohol in Quebec (1 September 1774). Another version of the *Quebec Act* appeared on 8 September 1774. The brief comment made by the King was published on 15 September 1774; the official text appeared on 8 December 1774.

103. Marshall, *supra* note 3 at 283.

104. *Quebec Gazette* (1 August 1765).

105. Greene, *supra* note 77 at 469-474; Hulsebosch, *supra* note 5 at 48 and 120-122; James A Henretta, “Magistrates, Common Law Lawyers, Legislators: The Three Legal Systems of British America” in Grossberg & Tomlins, *supra* note 77. On the role of jurors regarding facts and legal issues, see “To the Printers,” *Quebec Gazette* (1 November 1770). See also the acquittal of the commander accused of having fired on a crowd near Boston: *Quebec Gazette* (23 August 1770; 13 December 1770); and a similar case from Boston, *Quebec Gazette* (24 January 1771).

a jury were regularly criticized in the colonies.<sup>106</sup> When personal liberty was at stake, however, English courts were willing to intervene. Thus in 1773, a merchant from the Island of Minorca was sent to jail and banished by the British governor without any kind of trial. He sued his persecutor in London and was awarded £3,000 in damages by a jury.<sup>107</sup>

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By translating news and comments concerning political and constitutional crises occurring in France, Great Britain, and in the American colonies, the Quebec Gazette allowed its readers to understand the important developments that occurred in all these jurisdictions between 1764 and 1774.<sup>108</sup> The idea that the French monarch was bound to respect a constitution and the law contradicted orthodox thinking. The suppression of parliaments ignited a crisis, which was easily resolved with the creation of new courts. In the end, the doctrine of the absolute power of the King carried the day.

In Great Britain, the attacks of government officials against pamphleteers and printers were successfully challenged. Involved in numerous judicial proceedings, John Wilkes became a symbol of the right of the electorate to choose even vitriolic critics as their representatives. All these events gave rise to a summary discussion of legal principles. This overview certainly allowed readers of the Gazette to appreciate the many differences between the French and British legal systems. Freedom of the press or abusive search and seizures were not live issues in Quebec, however; only the quartering of troops created serious problems.<sup>109</sup>

During this period, the American colonies were challenging the power of the British Parliament to impose taxes within their borders or to legislate in their stead. Numerous conflicts between elected representatives and governors were discussed in the Gazette. Constitutional and natural law principles were asserted on both sides of these debates. The role of juries in thwarting the will of imperial authorities could also be observed. Again, taxation by imperial legislation was not a pressing issue in a colony where no local taxes could be imposed, in the absence of an elected assembly.<sup>110</sup>

106. Henretta, *supra* note 105 at 566; Hulsebosch, *supra* note 5 at 60, 92 and 120-121; *Quebec Gazette* (15 August 1765; 28 July 1768; 19 January 1769; 11 February 1773).

107. *Quebec Gazette* (3 January 1774) summarizing *Fabrigas v Mostyn*, 1 Cowp 161; 20 State Tr 81, 226; 98 ER 1021 (BR).

108. French Canadians would continue to pay close attention to events occurring abroad and reflect on their implication for them: see Lamonde, *supra* note 17.

109. Neatby, *supra* note 19 at 42-43.

110. For the legal arguments, see Michel Morin, "Les changements de régimes juridiques consécutifs à la Conquête de 1760" (1997) 57 R du B 689-700 [Morin, "Conquête"].

No riots or massive demonstrations occurred in Quebec, contrary to what happened south of the province. To what extent, then, did members of the francophone elite master the principles debated in the British and colonial press? Can we speak of a public sphere in which public opinion was expressed? Why did Quebec refrain from openly supporting the rebellious colonies? We will attempt to provide some partial answers to these questions in Part II.

## II. *The assimilation of British constitutional principles in Quebec*

To understand the debates concerning the rights of British subjects in Quebec, it is necessary to examine the problems associated with the courts of that Province. In the aftermath of the Conquest, a military Regime was put in place.<sup>111</sup> This justice exacerbated the conflicts between soldiers and newly arrived British Merchants, who were often obligated to receive officers in their own houses. For instance, after two relatively minor altercations in Montreal, a military court imposed a fine or a period of imprisonment to civilians—it also ordered them to make apologies.<sup>112</sup>

A new system was established in 1764. If the amount at issue exceeded ten pounds, the plaintiff could choose between the Court of King’s Bench, in which the “Laws of England” applied, or the Court of Common Pleas, which had to rely on “Equity” and, as far as possible, the Laws of England.<sup>113</sup> Equity was synonymous with fairness, since the Council acted as a separate Court of Chancery. Criminal cases were heard in the King’s Bench or Sessions of the Peace. If the cause of action occurred prior to 1 October 1764, “French Laws and Customs” applied between former

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111. During the military regime, which ended on 10 August 1764, military courts are said to have applied the private law of New France: Jose Igartua, *The Merchants and Negotiants of Montreal: A Study in Socio-Economic History* (PhD Thesis, East Lansing College of Social Science Michigan State University, 1974) at 174-199 [unpublished]; Marcel Trudel, *Histoire de la Nouvelle-France, X, Le régime militaire et la disparition de la Nouvelle-France, 1759–1774* (Montréal: Fides, 1999) at 137-184; Douglas Hay “Civilians tried in Military Courts: Quebec, 1759–1764” in Frank Murray Greenwood & Barry Wright, *Canadian State Trials: Law, Politics, and Security Measures, 1608–1837* (Toronto: University of Toronto Press, 1996) at 114-128 [Hay, “Military Courts”]; Morin, “Conquête,” *supra* note 110; Donald Fyson, “Judicial Auxiliaries Across Legal Regimes: From New France to Lower Canada” in Claire Dolan, ed, *Entre justice et justiciables: les auxiliaires de la justice du Moyen Âge au XXe siècle* (Québec: Presses de l’Université Laval, 2005) at 383; Arnaud Decroix, David Gilles & Michel Morin, *Les tribunaux et l’arbitrage en Nouvelle-France et au Québec de 1740 à 1784* (Montréal: Les Éditions Thémis, 2012) at 394-397.

112. Hay, *supra* note 111 at 122.

113. *Ordinance establishing Civil Courts, CD I, supra* note 8 at 205. If the value of the controversy did not exceed five pounds, a single justice of the peace would hear the case; below ten pounds, two justices were competent; for ten pounds and above but below thirty, three justices of the peace would hear the case during the Quarter-Sessions, with a right of appeal to the King’s Bench. This jurisdiction was abolished in 1770 (*An Ordinance for the more Effectual Administration of Justice, and for Regulating the Courts of Law in this Province, ibid* at 401; see also Fyson, *supra* note 18).

French subjects.<sup>114</sup> Nevertheless, according to contemporary reports, in practice, for substantive issues French Laws were regularly resorted to under the guise of “Equity.”<sup>115</sup> Initially, natives of the Province were allowed to sit on all juries, but “Canadian” lawyers could appear only before the Common Pleas. A 1766 ordinance decreed, however, that the composition of civil juries must reflect the origin of the parties; if it differed from the latter, six Canadians and six “old subjects” had to be selected. Canadian lawyers were also allowed to practice in every court.<sup>116</sup> Contrary to what has long been assumed, there was no boycott of the courts or a widespread recourse to arbitration in family matters.<sup>117</sup> Donald Fyson also emphasizes that in most cases Francophone litigants had access to bilingual judges and that Anglophones easily adjusted to French rules and institutions, such as notarial acts.<sup>118</sup> The 1764 ordinance on the administration of justice also provided for the election of bailiffs in each parish; Canadians were enthusiastic participants in this novel political activity.<sup>119</sup>

The small civilian Anglophone community was composed mainly of merchants whose relations with the military were often strained. They expected to enjoy the rights recognized in other colonies. They criticized the accommodations just discussed and demanded an Assembly, especially in the famous presentment of 1764, in which they implied that Catholics could not sit on juries; later, they explained they were talking of litigation in

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114. *Ordinance establishing Civil Courts, CD I, supra* note 8 at 205; for lands and immovable rights of inheritance, French Laws remained applicable until 10 August 1765: *Ordinance of November 6th, 1764, ibid* at 229.

115. Seaman M Scott, *Chapters in the history of the law of Quebec, 1764–1775* (Ann Arbor, MI: University of Michigan, 1933); Neatby, *supra* note 19.

116. *An ORDINANCE, To alter and amend an Ordinance of His Excellency the Governor and His Majesty's Council of this Province, passed the Seventeenth of September 1764, CD I, supra* note 8 at 249.

117. Donald Fyson, “Judicial Auxiliaries Across Legal Regimes: From New France to Lower Canada” in Claire Dolan, *supra* note 111 at 383–403; Donald Fyson, “The Conquered and the Conqueror: The Mutual Adaptation of the Canadiens and the British in Quebec, 1759–1775” in Buckner & Reid, *supra* note 5 at 190 [Fyson, “Conqueror”]; Decroix et al, *supra* note 111 (with a full bibliography).

118. Fyson, “Conqueror,” *supra* note 117; Donald Fyson, “De la common law à la Coutume de Paris: les nouveaux habitants britanniques du Québec et le droit civil français 1764–1775” in Florent Garnier & Jacqueline Vendrand-Voyer, eds, *La coutume dans tous ses états* (Paris: La Mémoire du Droit, 2012) [forthcoming].

119. Donald Fyson, “Les dynamiques politiques locales et la justice au Québec entre la Conquête et les Rébellions” (2007) 16:1 *Bulletin d'histoire politique* 337–346; Donald Fyson, “The Canadiens and British Institutions of Local Governance in Quebec, from the Conquest to the Rebellions” in *Transatlantic Subjects: Ideas, Institutions and Identities in Post-Revolutionary British North America*, (Montreal: McGill-Queen's University Press, 2008) at 45–82.

which all the parties were Protestants.<sup>120</sup> This document generated a heated controversy in which Francophones started taking sides, with a few of them supporting the grand jurors.<sup>121</sup> Similarly, in a 1766 petition addressed to the King from Quebec City, twenty Anglophones recalled that, with the ending of an “oppressive” Military Government, they expected to “enjoy the Blessings of British Liberty,” including an Assembly composed of Protestants.<sup>122</sup> They complained of “Ordinances Vexatious, Oppressive, unconstitutional, injurious to civil Liberty and the Protestant cause” and of the Governor’s rude or divisive behaviour, such as encouraging the new subjects “to apply for Judges of their Own National Language!”

In the following years, Anglophone juries denied the validity of taxes carried over from the French regime.<sup>123</sup> They acquitted members of the military accused of savagely assaulting a justice of the peace.<sup>124</sup> Thus, the old subjects openly opposed the government, which would have been unthinkable in New France.<sup>125</sup> For their part, members of the Francophone elites—seigneurs and legal professionals—wanted an end to religious discrimination, so that they could be appointed to the executive council, the courts, or other public positions. They asked that French Laws be reinstated and complained regularly of the high cost of judicial proceedings, as well as the numerous cases of imprisonment for debt.<sup>126</sup>

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120. See, for instance, Presentments of the Grand Jury of Quebec, 16 October 1764, *CD I*, *supra* note 8 at 212; Petition for a General Assembly, *ibid* at 401; Petition to the King for an Assembly, 31 December 1773, *ibid* at 485; Heather Welland, “Commercial Interest and Political Allegiance: The Origins of the Quebec Act” in Buckner & Reid, *supra* note 5 at 166.

121. Michel Morin, “Les premières controverses concernant la justice au Québec sous le régime de la Proclamation royale de 1763” in Thierry Nootens, ed, *Justices et Espaces Publics* (forthcoming) [Morin, “Controverses”]; Fyson, “Conqueror,” *supra* note 117; *At the First Court of Quarter-Sessions of the Peace, Held at Quebec in October, 1764*, (sl: sd) (microfiche CHIM 41562) at 11, online: <[http://www.archive.org/details/cihm\\_41562](http://www.archive.org/details/cihm_41562)>.

122. *Petition of the Quebec Traders*, *CD I*, *supra* note 8 at 232.

123. Francis Maseres, *A Collection of Several Commissions, and Other Public Instruments, Proceeding from His Majesty’s Royal Authority, and Other Papers, Relating to the State of the Province of Quebec in North America, since the Conquest of it by the British Arms in 1760* (Toronto: SR Publishers Ltd, 1966); see also the works of Milobar, *supra* note 4.

124. Morin, “Controverses,” *supra* note 121; Alfred Leroy Burt, “The Mystery of Walker’s Ear” (1922) 3:2 *Canadian Historical Review* 233-255. The report of the third trial discusses some legal issues: ANONYMOUS, *The trial of Daniel Disney, Esq.: captain of a company in His Majesty’s 44th Regiment of Foot, and town major of the garrison of Montreal, at the session of the Supreme-Court of Judicature, holden at Montreal, on Saturday the 28th day of February, 1767, before the Honourable William Hey, Esq., chief-justice of the province of Quebec... in that case made and provided* (Quebec: Brown and Gilmore, 1767) at 15-16.

125. See Morin, “Controverses,” *supra* note 121.

126. See *Address of the French Citizens to the King regarding the Legal System, Jan. 7, 1765*, French text, *CD I*, *supra* note 8 at 223; *Petitions of Seigneurs of Montreal to the King, Feb. 3, 1767*, French Text, *ibid* at 270; *Petition for the Restoration of French Law and Custom*, French Text, *ibid* at 419; *Petition of French Subjects to the King, Dec. 1773*, *ibid* at 504.



In this heated context, some “new” British subjects wrote to the Gazette, sometimes with a tone that was quite critical. In 1766, the editors insisted that no system of prior examination existed or would be accepted, though they were secretly forced to do just that four years later.<sup>127</sup> Indeed, we will see that while he governed the colony, Guy Carleton prevented the discussion of controversial issues in the Gazette or in petitions. Nonetheless, some comments on the new legal regime did appear (1).<sup>128</sup> In this fluid context, merchants, seigneurs, and legal professionals positioned themselves in the tortuous process that would lead to the adoption of the *Quebec Act*. Actual petitions or projected ones, as well as private correspondence, show them invoking the rights of British subjects. By 1773, many of the new subjects were almost ready to demand the right to elect their own representatives, but they were convinced to remain silent in order to achieve religious equality (2).

#### 1. *Discovering British constitutional law in the gazette*

Some readers of the Gazette initially expressed some uneasiness about public debates concerning political issues. Thus, a “Canadian Citizen” was surprised by the “bitter Complaints” and the “Alarms” about English liberties. He wanted to understand the “Rights, Privileges and Liberties” of British Subjects, but could only form conjectures in this regard. He wondered whether “requiring that we should support the Army, that we should be taxed, that our Trade should be confined, or that Printers should be discommoded” amounted to “a Violation of English Liberty.” For him, it was natural for those who governed to decide what was in the common interest; he did not care to give his opinion on every issue “under Pretext of Liberty.” But he expected to be told that he was still under the influence of despotism!<sup>129</sup>

A reader answered him that “tho’ the Law of Nature, not only permits, but also prompts us to those evil Action to which we are naturally inclined, the English Laws certainly forbid us from indulging this Bent”; he believed that the “wise” ordinances recently made will encourage people to behave well.<sup>130</sup> Confronted with a multiplicity of opinions, a new subject did not

127. *Quebec Gazette* (29 May 1766); Tousignant, *supra* note 17 at 39. Many articles discussed in this section were also examined by Professor Tousignant in his dissertation.

128. See, on Bankruptcy Laws, *Quebec Gazette* (10 December 1767; 10 December 1767; 24 December 1767; 31 December 1767; 31 December 1767; 7 January 1768; 14 January 1768); on the role of juries regarding questions of fact, *Quebec Gazette* (1 November 1770); on the benefit of clergy, *Quebec Gazette* (28 March 1765).

129. CIVIS CANADIENSIS, “To the Printers,” *Quebec Gazette* (3 October 1765).

130. CIVIS BONUS USQUE AD MORTEM, “To the Printers. An Answer to a Letter from a CANADIAN CITIZEN, addressed to the Printers of the Quebec-Gazette,” *Quebec Gazette* (10 October 1765).

know what to think about the power to levy taxes in the colonies.<sup>131</sup> He attempted to gain a better understanding of the British Constitution by reading *Magna Carta*, without much success.<sup>132</sup> Following some advice, he read the second part of the *Institutes of the Laws of England* by Coke and exclaimed: “all my Labour has been in vain.” He added: “If you will have me to speak sincerely, I believe you meant to joke with me...for you have made me to pore three whole Days, and as many Nights, over a Quarto, written in three different Languages, almost unintelligible.”<sup>133</sup>

At the time, Blackstone’s *Commentaries on the Laws of England* was the most accessible work on these issues.<sup>134</sup> In 1767, the Gazette published an opinion written by three Parisian lawyers, which concerned the right to be compensated for the public taking of oak wood located on seigneuries. In such a case, the wording of the initial grant was determinative. The authors relied on the “excellent work of Mister Blackstone,” who distinguished between colonies “founded by Englishmen...first occupying the land; these were from the moment of their creation subject to the Laws of England,” and “conquered or ceded countries.” In the latter case, “the King may, in truth, reform and change their laws, but until he has done so, the ancient laws subsist.” They concluded that the obligation to compensate some seigneurs for the taking of oaks had been transmitted to the new sovereign.<sup>135</sup>

In 1765, the Gazette reprinted a paper taken from the North Briton.<sup>136</sup> Its author explained that the House of Commons was “a third Part of the Legislative Power” and that the three Estates of the Kingdom acted “as Checks and Counterpoises to one another, for the better securing of our Liberty.” For the Commons, taxation under pretence of the prerogative had always been considered incompatible with the Constitution. This was recognized by the *Bill of Rights* of 1689. Hence British subjects had the right to “tax themselves,” although they delegated it to their

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131. “Copy of a Letter from Quebec, dated the 7th of August, 1766, to a Friend at Montreal,” *Quebec Gazette* (18 August 1766).

132. “Copy of a Letter from Quebec, dated the 15th of August, 1766, to a Friend at Montreal,” *Quebec Gazette* (25 August 1766).

133. “Copy of a Letter from Quebec, dated the 20th of August, 1766, to a Friend at Montreal,” *Quebec Gazette* (1 September 1766).

134. William Blackstone, *Commentaries on the Laws of England*, vol 4 (Oxford, Clarendon Press, 1765–1769). The first French translation is by Auguste-Pierre Damiens De Gomicourt, *Commentaires sur les loix angloises de M. Blackstone*, 4 vol (Bruxelles: Chez J de L Boubers, imprimeur-libraire, 1774–1776).

135. Élie De Beaumont, Rouhette & Target, “Consultations rendues par trois des plus célèbres Avocats de Paris, au sujet des droits et propriétés des Seigneurs du Canada,” *Quebec Gazette* (3 September 1767). No English version appeared in the Gazette; the author has translated the quoted excerpts.

136. “North Briton, No. 135,” *Quebec Gazette* (1 September 1766).

representatives. Without this privilege, their liberty and property would be at risk. Nevertheless, the King had imposed taxes in the French colonies conquered during the last war. But he could not do so, since its inhabitants were now entitled to the privileges of a British government. Indeed, the Court of King's Bench would annul this measure in the celebrated case of *Campbell v Hall*, albeit for different reasons.<sup>137</sup> In a similar vein, Francis Maseres devoted a few interesting pages, written in French, to the history of habeas corpus and of the English Parliament.<sup>138</sup>

Another example of the newfound freedom of expression in Quebec concerned economic policy. One author asked for increased spending through the sending of additional soldiers and the undertaking of public works.<sup>139</sup> From Kamouraska, "Misopigros" wrote back that this was asking England to act like France "before the Conquest of this Country, viz. That she should drain her own subjects in Europe, to entertain here, like Lords, a Handful of idle People."<sup>140</sup> He added that under the new regime, there was "no more an Intendant to coin Money, nor so many Placemen to disperse it everywhere liberally and by Caprice; and the English Government is rigid enough to expect that every Individual should live on his own Substance, or by the Trade he professes, without suffering one Part of its Subjects to be pillaged to feed the other in Laziness and Abundance." Obviously this opinion, which is generally in accord with what we know of the French Regime, was not necessarily shared by all. One cannot be assured that the opposite position—i.e., a ferocious criticism of the new regime—would have been published in the Gazette. Be that as it may, some new British subjects were not shy about expressing their opinion forcefully.

## 2. *Invoking the rights of British subjects*

Canadians soon found themselves petitioning the King, another fundamental right of the British Constitution which had been exercised on a large scale with the advent of printing. After 1642, a public sphere appeared in the kingdom, with some illiterate persons taking part in discussions.<sup>141</sup> The number of signatories could vary between 3,000 and

137. First mentioned in *Quebec Gazette* (9 March 1775); a short but correct summary appeared in the edition of 16 March 1775; *Campbell v Hall*, 1 Cowp 204, 98 ER 1048 (BR); *CD I*, *supra* note 8 at 522.

138. *Mémoire à la défense d'un Plan d'Acte de Parlement pour l'Établissement des Loix de la Province de Québec, dressé par Mr. François Masères, Avocat Anglois, cy-devant Procureur-général de sa Majesté le Roi de la Grande Bretagne en la dite Province, contre les Objections de M. François Joseph Cugnet, Gentilhomme Canadien, Secrétaire du Gouverneur et Conseil de la dite Province pour la Langue Française* (London, UK: Edmund Allen, 1773) at 24-26 (habeas corpus) and at 65-80 (Parliament).

139. XP, "To the Printers," *Quebec Gazette* (17 December 1767).

140. "To the Printers of the Quebec-Gazette," *Quebec Gazette* (28 January 1768).

141. Zaret, *supra* note 23 at 14-19, 85-87, 91, 226, 248, 253 and 261.

20,000.<sup>142</sup> After 1661, a petition with more than 20 signatures had to be approved either by justices of the peace, grand jurors, or the mayor and council of the City of London; furthermore, a delegation presenting the document could not exceed ten persons.<sup>143</sup> A century later, a petition received on the throne was made public; if presented during the royal levee, it remained confidential.<sup>144</sup> The number of signatures could reach 50,000 or 60,000 (in 1769, 1775, and 1784).<sup>145</sup> This represented roughly one per cent of the total population of England.<sup>146</sup>

It was only in 1784 that printed petitions appeared in Quebec, with 2,291 signatures asking for an elected Assembly and 2,400 opposing it; this represented approximately two per cent of the population.<sup>147</sup> But from 1764 to 1774, “petitions” to the Council generally requested personal favours.<sup>148</sup> Some were signed by Francophone and Anglophone merchants alike.<sup>149</sup> For political issues, the procedure followed in 1773 seems typical. First, in Quebec and Montreal, committees discussed the document, then circulated it for signatures and engrossed it on parchment. If the governor allowed its presentation to the Council, a delegation attended in person; it was then sent to London.<sup>150</sup> In these years, Francophone signatories did not exceed 0.1% of the total population; the figure should be doubled

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142. *Ibid* at 222-224, 235 and 269.

143. *An Act against Tumults and Disorders upon pretence of preparing or presenting publick Petitions or other Addresses to His Majesty or the Parliament*, 1661 (UK), 13 Car II, c 5, s 1.

144. James E Bradley, *Popular Politics and the American Revolution in England, Petitions, the Crown, and Public Opinion* (Macon: Mercer University Press, 1986) at 5, 41 and 48.

145. *Ibid* at 136-140.

146. The English population is estimated at 5, 742, 415 in 1751: Edward A Wrigley & Roger S Schofield, *The Population History of England 1541–1871: A Reconstruction* (London: Edward Arnold, 1981) at 529.

147. See Tousignant, *supra* note 17 at 311 and 322; Marie Tremaine, *A Bibliography of Canadian Imprints 1751–1800* (Toronto: University of Toronto Press, 1999) at 201, 305 and 337; Patricia Lockhart Fleming & Sandra Alston, *Early Canadian Printing A Supplement to Marie Tremaine's A Bibliography of Canadian Imprints* (Toronto: University of Toronto Press, 1999) at 161-162 and 222. The petitions of 1773 which preceded the adoption of the *Quebec Act* were published shortly thereafter by Francis Maseres, *An Account of the Proceedings of the British, And other Protestants Inhabitants, of the Province of Quebeck, in North-America, in order to obtain An House of Assembly in that Province* (London, UK: B White, 1775) at 35 [Maseres, “Account”].

148. Fyson, “Conqueror,” *supra* note 117 at 204; a simple perusal of the Council’s registers allows us to draw this conclusion: see *Register of the Legislative council of the Province of Quebec*, LAC (RG1, E1, vol 1).

149. See for instance (30 March 1766) LAC (RG4 A1, vol 15, at 5732 MFILM C-2998).

150. “Délibération d’un groupe de onze marchands anglais—6 décembre 1773,” Québec, Bibliothèques et archives nationales du Québec (P1000, S3, D1741), online: <<http://pistard.banq.qc.ca>>.

for Anglophones.<sup>151</sup> Petitions were not printed—a fact which is often overlooked—and the Gazette quickly avoided publishing controversial comments on local affairs. Hence the Province did not have, as yet, a true public sphere.<sup>152</sup>

In 1773, Lieutenant-Governor Cramahé regretted having authorized the publication in the Gazette of a brief exchange in the House of Commons concerning Quebec's legal system. He declared privately that the inhabitants of the province did not need information “about what was happening in London concerning them”; rather, they must “wait respectfully for the arrangements” made by the Court, confiding entirely in Governor Carleton, who was in London at the time, for this purpose.<sup>153</sup> Freedom of the press was far from unlimited in the colony, as we can see.

Initially, Francophone persons solicited the permission to meet and discuss their grievances, as requested by British legislation.<sup>154</sup> In 1766, the Council agreed, but two of its members had to attend the meeting, with the power to dissolve it.<sup>155</sup> Soon after, the Secretary of State declared that the new subjects could communicate freely their requests to the King.<sup>156</sup> Guy Carleton, however, dissuaded old subjects from petitioning for an Assembly, unless they could suggest a scheme advantageous for the whole Province.<sup>157</sup> He did not take public dissent well. Thus, he dismissed two members of the Council, who had signed a petition criticizing the decision

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151. There were 65 francophone signatories for the 1773 petition and 151 for its counterpart (*Petition to the King for an Assembly*, Dec. 31, 1773, CD I, *supra* note 8 at 485; *Petition of French Subjects to the King*, Dec. 1773, *ibid* at 504); the total population of the small Province of Quebec, as defined in 1763, was roughly between 70,000 and 80,000 people. For the importance of petitions in later days, see Steven Watt, “Pétition et démocratie. Le cas du Bas-Canada et du Maine, 1820–1840” (2006) 14:2 Bulletin d'histoire politique 51–62; Steven Watt, “Duty Bound and Ever Praying”: *Collective Petitioning to Governors and Legislatures in Selected Regions of Lower Canada and Maine, 1820–1838* (PhD Thesis, Université du Québec à Montréal, 2006); Mathieu Fraser, “La ‘pratique pétitionnaire’ à la Chambre d’assemblée du Bas-Canada, 1792–1795: origines et usages” (2008) online: <<http://www.fondationbonenfant.qc.ca/stages/essais/2008Fraser.pdf>>; J O'Connor, “Review Essay: Politics, Indoors and Out” (2002) 69 *Social History* 235.

152. Dorland & Charland, *supra* note 17 at 98.

153. Marine Leland, “François-Joseph Cugnet 1720–1789 – XI” (1963) 18 *Revue de l'Université Laval* 339 at 358–360, Appendice H. The excerpts quoted in the text have been translated by the author; for more information on this episode, see Michel Morin, “William Blackstone’s and the Birth of Quebec’s juridical and bilingual legal culture, 1765–1867” in Wilfrid Prest, ed, *Re-interpreting Blackstone’s Commentaries: the Evolution and Influence of a Seminal Text in National and International Context* (Oxford: Hart, forthcoming).

154. See *supra* note 143.

155. 25 April 1765, 2 January 1766 and petition of the seigneurs, 27 March 1766, LAC (RG1, E1, vol 1, fo 235; RG1 E1, vol 2, fo 112 & RG1 E1, vol 2, fo 120).

156. 27 March 1766, LAC (RG1, E1, vol 2, fo 120).

157. *Carleton to Shelburne*, CD I, *supra* note 8 at 294.

of Chief Justice Hey to deny bail to some accused.<sup>158</sup> Carleton believed that there had been an abuse of “addresses of every kind” in the Province; he had “...taken a fixed resolution...to be recalled” as soon as a petition was sent to London against his will.<sup>159</sup>

In 1766, prior to Carleton’s arrival, the Council had authorized twenty seigneurs of the Montreal area to prepare representations to the British government under the surveillance of a councillor and local magistrates.<sup>160</sup> Previously, military commanders had intimated that an assembly of Catholics would be illegal. On the day announced, some old and new subjects attempted to block the meeting; they dispersed only under the threat of forceful expulsion.<sup>161</sup> The seigneurs then wrote an address thanking the King for his kindness, asking for the continuation of the free exercise of their religion and that Catholics be allowed to serve their (new) country. They also requested the reinstatement of their former customs and usages “in the most advantageous manner.”<sup>162</sup>

The following day, their opponents lodged two formal protests before the Council. One, written in English, was signed by fifteen old subjects. The first three paragraphs complained that seigneurs, who pretended to act as agents of their tenants, had previously sworn an oath to the French King. They could not, therefore, be “Representatives...under the British Constitution” or “guardians of the Liberty of a free people.” Supposedly, some were paid by the French King and had not sworn the British oath of allegiance; others had circulated a letter and assembled without the consent of the authorities.<sup>163</sup>

The rest of the protest was translated and signed by thirty-two new subjects. Both documents underlined that not every seigneur was summoned to the Montreal meeting. The signatories strenuously denied that the persons assembled there represented the public, since they were acting in “a private concealed Manner,” to the “intire exclusion” of the “Ancient British Subjects in general” and of “the Mercantile part of His Majestys new Subjects.” This division between the latter and “the noblesse” would soon infuse “a Spirit of Discontent.” Furthermore, the new subjects were led to believe that only the Governor could protect their religion and

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158. Neatby, *supra* note 19 at 89-93; *New York Gazette* (18 February 1767, no 410), Archives du Séminaire de Québec (Fonds George-Barthélémy Faribault (P29), pièce no 267).

159. William Hey to Fowler Walker (16 February 1767), LAC (Hardwicke Papers, Add Mss 3595 [transcription], fo 102).

160. *Register of the Legislative council of the Province of Quebec*, LAC (RG1, E1, vol 2, fo 120).

161. *Ibid* at fo 123v-125.

162. “Resolutions No. 9 in the Report,” *ibid* at fo 128-129.

163. “Protest No. 10 in the Report,” *ibid* at fo 129-132.

their participation in the administration of justice. The old subjects also demanded to have “a share in the Choice of their representatives.”<sup>164</sup> This little known document reveals the existence of a contest between different people claiming to speak for the new subjects.

In 1766, a very different address was signed by twenty-one Francophone seigneurs of Quebec, “as well in their own names as in those of all the inhabitants, their tenants.”<sup>165</sup> They deplored the recall of Governor Murray and the “Cabal, trouble and confusion” they had witnessed, as well as some “infamous libels.” Having been taught to respect their superiors and obey the Sovereign, they complied with the orders of civil officers whose high salaries “astonished” them. Meanwhile, old subjects sought to “oppress” the new ones, even to render them their “slaves,” and to seize their property. In such cases, Murray acted as their “protector” and “father.”

For them, followers of the army and clerks or agents of London merchants were “contemptible” because of their “want of education.” Some Canadians who had rallied to their cause did not understand what they signed. The rest were people “without birth, without education and without scruple, disbanded soldiers from the French army, barbers, servants, even children” and shopkeepers who had “made themselves the slaves of their creditors, even Jews, who...exalt themselves above the King’s new subjects.” However wise were English laws, of what use would be British liberty if it was “granted only to the old subjects?” Hence, they insisted on a traditional, elitist and racist vision of government and authority, which protected their rights and privileges, while dismissing with contempt the criticism of British-born subjects and Canadians.

Another example of a Francophone relying on the rights of British subjects is found in an attempt to thwart the homologation of an arbitral award. This petition to the Council was based on the “precision of the ordinance” adopted in 1764 and “the right held by a subject of His Majesty to have a jury hear his case.”<sup>166</sup> In reply, the judges explained that the

164. *Register of the Legislative Council of the Province of Quebec*, LAC (RG1, E1, vol 2, fo 130-132).

165. Douglas Brymner, ed, *Report on Canadian Archives, 1888* (Ottawa: A Sénécal, 1889) at 19 [translated by author].

166. Petition of Guillaume LeRoy to the Council (untitled), 1767, LAC (RG4, B17, vol 2, file 1a), translated by the author: “Cette ditte Cour arefusé aux instances du suppliant deluy accorder uncorp dejuré parluy reclamé malgré la précision de l’ordonnance susmentionné, Et qu’il a différente fois cité a cette dite Cour, Et malgré en outre Ledroit qu’a un sujet de Sa Majesté d’avoir dans sacause un corp de juré, rien de tout cela napue operer enfaveur du Suppliant.”

litigation was sent to arbitrators before the request for a jury trial; the petition was therefore dismissed.<sup>167</sup>

The use made by François-Joseph Cugnet of the principles of British constitutional law is also interesting. Born in a prestigious seigneurial family and trained in the law, he became, in 1766, the official translator of the Government and was asked to draft an overview of the rules in force during the French regime, which would lead to numerous publications.<sup>168</sup> In 1771 or in 1772, he criticized strongly one of the numerous draft bills printed privately by Maseres in London, whose object was to reform the rules of inheritance in Quebec.<sup>169</sup> Maseres answered in French, producing a 159 page memoir that was published in 1773 and circulated in Quebec.<sup>170</sup> This is the only information we have on the contents of Cugnet's initial criticism.

For Cugnet, the Royal Proclamation did not introduce English Laws to their full extent. Furthermore, the King's private instructions, sent in 1764, could not delegate to the Council a power to legislate; only the Governor's commission could achieve this purpose. It followed that the 1764 ordinance introducing English Law was void.<sup>171</sup> For him, if the British Government were to adopt Maseres' proposals, "it would be harsher than the Turkish Government!"<sup>172</sup> Similarly, asserting that the laws of New France were entirely repealed in 1763 disregarded the King's righteous intent and portrayed him as a harsh and barbarous conqueror.<sup>173</sup> Overall, Cugnet believed the Proclamation had introduced English Criminal Law and habeas corpus, but left intact the French Laws governing successions (including matrimonial regimes) and property (which were guaranteed by article 37 of the Capitulation of Montreal).

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167. *Register of the Legislative Council of the Province of Quebec* (4 May 1767), LAC (RG1, E1, vol 3, fo 234-235).

168. See *Quebec Gazette* (24 February 1768); see Sylvio Normand, "François-Joseph Cugnet et la reconstitution du droit de la Nouvelle-France" (2002) 1 *Cahiers aixois d'histoire des droits de l'outre-mer français* 127.

169. *A Draught of an act of Parliament for settling the laws of the Province of Quebec*, (London, UK: available only in the British Library, Adams and Bonswick Pamphlets, 177, 1771).

170. See *supra* note 138. Following Cugnet's criticism, Maseres revised his draft bill: *A Draught of an act of Parliament for settling the laws of the Province of Quebec, 1772* (London, UK: available only in the British Library, Adams and Bonswick Pamphlets, 188, 1772) [*Draught, 1772*].

171. *Ibid* at 2-3. Maseres had made the same point in his writings: Francis Maseres, "Considerations on the expediency of procuring an act of Parliament for the Settlement of the Province of Quebec," reprinted in Francis Maseres, *Occasional Essays on various subjects, chiefly political and historical* (London, UK: Robert Wilks, 1809) at 333; Maseres, *supra* note 123.

172. *Draught, 1772, supra* note 170 at 9.

173. *Ibid* at 17.



This reasoning is strikingly similar to the 1766 opinion of the English law officers summarized by Maseres.<sup>174</sup> Lord Hillsborough, a member of the Cabinet in 1763, also wrote in 1768 that “whatever the legal sense” of the Proclamation, he never intended “to overturn the Laws and Customs of Canada, with regard to Property”; instead, these were to be applied by local Courts following English procedural rules, as was the case in many “parts of England, where Gavel-king Bourough-English and several other particular customs prevail.”<sup>175</sup>

Cugnet’s positions was similar to ideas found in previous petitions, but he added an important element: he did not object to English Criminal Law or Public Law. Following the Law Officers of the Crown, he argued that the Royal Proclamation introduced the public and criminal law of England, but not the laws governing immovable property, successions or matrimonial régimes. Although not mentioned in the text, this distinction flowed from the promise made in the Capitulation of 1760 to respect both seigneurial and commoner’s property rights, whether movable or immovable. In a letter to William Blackstone which was later sent to the government, Cugnet also argued that freedom of willing was a necessary part of British liberties that enjoyed the support of his countrymen.<sup>176</sup> This would represent a substantial derogation from the rules of the (written) Custom of Paris, which were in force in New France since 1664 and which reserved a share of the estate to all descendants.<sup>177</sup>

174. “Report of the Attorney and Solicitor General regarding the Civil Government of Quebec,” *CD I*, *supra* note 8 at 251; Maseres, *supra* note 123 at 17-18.

175. *Hillsborough to Carleton*, *CD I*, *supra* note 8 at 297.

176. For a detailed analysis, see Morin, “Revendications,” *supra* note 25, Part II D or *supra* note 153.

177. Essentially, after the debts of a deceased parent had been paid, each descendant who had renounced the estate was entitled to his or her share of the *reserve des quatre-quints*, namely four-fifths of a parent’s particular property, called *propres*. This consisted in immovables inherited from the deceased parent’s ascendants, as well as those given or bequeathed by them (art CCXCV of the *Custom of Paris*, in TK Ramsay, *Notes diverses sur la Coutume de Paris* (Montreal: La Minerve, 1863). In general, the share of each child was equal (art CCCII), except for fiefs, in which case the eldest son was entitled to the manor (art XIII) and to either two-thirds, if he had only one sibling, or half of the fief, if he had more (art XV–XVI). Descendants were also entitled to half their share of the net value of the estate, augmented by the value of all bequests and gifts made during the life of the deceased (art CCXCVIII). In both cases, such liberalities could be annulled or reduced to insure payment of the *quatre-quints* or of the *légitime*. Finally, the wife was entitled to the usufruct of half the *propres* of her husband, with a somewhat different definition for this category of property and the possibility of renouncing or changing the amount and extent of the dower in the marriage contract. Upon her death, ownership of these *propres* was transferred to the children of the marriage who were not heirs; therefore, they were not required to pay any of their deceased father’s debts (art CCXLVII–CCLXIV).

In 1773, at the urging of Cugnet, a draft petition was prepared by a group of Francophone merchants and lawyers.<sup>178</sup> This document, whose legal contents does not seem to have been studied before, claimed that Canadians were entitled to “...the enjoyment of those parts of the constitution of the British government, which tend to secure their personal liberty, their rights, and possessions.” They demanded “an assembly of the people...consisting indifferently of Canadian and English members,” for this was “one of the most essential branches of the said British constitution.” They added that the choice of the legal system “ought to be left to the inhabitants of the province themselves,” who must be “the best judges, (as they are evidently the most natural ones,) of their own interests and wants,” just like in other colonies. This petition was shelved, however, because Anglophones wanted the British Government to decide freely if Catholics should be eligible in the new assembly.<sup>179</sup> But in 1774, Michel-Chartier de Lotbinière, a seigneur, expressed similar ideas before the House of Commons.<sup>180</sup>

Meanwhile, in a repeat of the events of 1766, a group of seigneurs and jurists, mostly from Montreal, drafted their own petition. They asked for the reinstatement of the laws of New France and for the end of religious discrimination.<sup>181</sup> They also emphasized that the colony was too poor to pay for the cost of the colonial government and could not support a representative legislature endowed with a power of taxation.<sup>182</sup>

Though they were initially puzzled by the rights recognized to British subjects, literate individuals in Quebec mastered these concepts relatively easily. The information available in the Gazette obviously made their task easier and drew their attention to some legal literature. In 1773, a representative assembly did not rally the support of those claiming to speak in their name. Some wanted to enjoy this part of the British Constitution, but their views did not carry the day. Meanwhile, a small group of seigneurs and lawyers were content to demand religious equality and the reinstatement of the laws of New France, two issues about which there seems to have been a broad consensus. Considering the hostility against Catholics all over the Empire, an assembly in which they would

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178. Francis Maseres, *Additional papers concerning the province of Quebeck: being an appendix to the book entitled, “An account of the proceedings of the British and other Protestant inhabitants of the province of Quebeck in North America, ...”* (London: sold by W White, 1776) at 35 [Maseres, “Additional papers”]. For a detailed analysis, see Morin, “Revendications,” *supra* note 25, Part II E.

179. See Morin, *ibid*, part II D or *supra* note 153.

180. “Examination of Chartier de Lotbinière before the House of Commons” in Cavendish, *supra* note 1 at 162.

181. *Petition of French Subjects to the King, Dec. 1773, CD I, supra* note 8 at 504.

182. *Ibid*.

have been eligible did not seem to be a realistic prospect in 1773.<sup>183</sup> Those of them who resided in Quebec were assumed to be more deferent than Protestant ones and less in need of representative institutions. Whether this vision was shared widely in the colony is unknown, but the image of an ignorant people with no appetite whatsoever for democratic institutions clearly needs to be revised.

### *Conclusion*

From 1764 to 1774, the bilingual Gazette discussed important political issues occurring in France, Great Britain, and its colonies. It provided a substantial amount of information on principles of constitutional law, such as the right to elect lawmakers, freedom of the press, trial by jury and habeas corpus. Some Canadians were puzzled by the controversies in the neighbouring colonies surrounding the rights of British subjects; they were directed to the legal literature of England. With the arrival of Guy Carleton, the Gazette avoided discussing controversial local issues. During this decade, petitions sent to London were not published. They were prepared by a handful of person and signed by an extremely small percentage of the population. In these conditions a true public sphere in which political issues could have been debated had yet to emerge.

By 1773, a few Francophone Canadians had mastered the main concepts of British Constitutional Law. They claimed for themselves the rights of British subjects, a fact seldom mentioned in the historiography. For them, this included respect of seigneurial or property rights and, by extension, freedom of willing. It is not clear if these ideas had been internalized by other people, especially merchants. But Governor Carleton was able to discourage Canadians from pressing for an assembly, giving the false impression that almost no one was interested in such a body. Those who disagreed said nothing, for they could not support an Anglophone petition which did not recognize religious equality.

When American soldiers invaded Quebec in 1775, they met with little resistance and received some active support, although they failed to capture Quebec City and retreated in 1776. Some farmers refused to follow the orders given by their seigneurs to take arms for the defence of the province—one of them was forcefully expelled from a village.<sup>184</sup> Both colonial administrators and local elites had fallen prey to the myth of peasant apathy, which they had created in large measure. Letters sent by

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183. For a detailed analysis, see Morin, "Revendications," *supra* note 25, Part II B.

184. Maseres, "Additional papers," *supra* note 178 at 105-106; Neatby, *supra* note 19 at 144-146.

the American Congress also had circulated widely.<sup>185</sup> On 26 October 1774, this body promised that if the Quebec population joined force with them, they would enjoy the benefit of an elected assembly, trial by jury in civil matters, habeas corpus, and moderate quit-rents—an implicit attack on the seigneurial regime.<sup>186</sup> These first three rights had been suppressed by the *Quebec Act*, which was consistently criticized for that reason. Congress also emphasized that “the Crown and its Ministers” now enjoyed absolute power in the Province, like “the despots of Asia or Africa.”<sup>187</sup> Meanwhile, the arrogance and insolence of the nobility was deeply resented, although no formal protest was made, in order to avoid jeopardizing the rights granted to Catholics.<sup>188</sup>

On 8 January 1776, Christophe Pélissier, who supported the invaders, wrote a letter to the President of the Continental Congress.<sup>189</sup> This hitherto unknown document lucidly summarizes the events of the previous decade. For him, the British government attempted to persuade Canadians that the *Quebec Act* was for their own good and that they should show their “everlasting gratitude” to the Crown. This was “the height of contempt” and a mistaken assumption.<sup>190</sup> After the first governor of the province was unable to “re-establish the Government on the same footing it had been under France,” his successor, General Carleton, sought to persuade Canadians that “their ancient laws would be most suitable and convenient for them.” But “those who knew the difference between liberty and despotism” opposed this plan. So he only communicated with “some *Canadian* officers and the clergy.” Those “courtiers,” hoping to “domineer over the people” again, served him well and “addressed a petition to the King, in the name of all the inhabitants of the Province of *Quebeck*, to have the wise *British* Constitution withdrawn; which, In effect, was asking chains for their fellow-citizens.” He concluded:

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185. See Pierre Monette, *Rendez-vous manqué avec la révolution américaine* (Montréal: Québec-Amérique, 2007) at 94.

186. “To the Inhabitants of the Province of Quebec” in *Journals of the Continental Congress, 1774*, vol 1 (Washington: Government Printing Office, 1904) at 105, online: <<http://www.memory.loc.gov/ammem/amlaw/lwjc.html>>.

187. *Ibid* at 111.

188. Maseres, “Additional papers,” *supra* note 178 at 131-135 and 138-140; Maseres “Account,” *supra* note 147 at 96-97 and 105-106.

189. “Translation of M. Pelissier’s Letter,” Peter Force, ed, *American archives: consisting of a collection of authentick records, state papers, debates, and letters and other notices of publick affairs, the whole forming a documentary history of the origin and progress of the North American colonies; of the causes and accomplishment of the American revolution; and of the Constitution of government for the United States, to the final ratification thereof* (Washington: M St Clair Clarke & Peter Force, nd) ser 4, vol 4 at 596, online: <<http://dig.lib.niu.edu/amarch>>.

190. *Ibid* at 602.

It ought not to be supposed that the *Canadians*, in general, were so base. Some flatterers, and some ignorant people, bigoted to ancient customs, signed this shameful [sic] petition, without being authorized by any but themselves, to the number of sixty-five only.

It was upon this bespoken petition that the Ministry, who had their views in obtaining it, seized with eagerness the opportunity of establishing arbitrary power in this country, by the *Quebeck* Act.

Thus, the favourable reception given the Americans invaders can be explained, at least in part, by the previous dissemination of British Constitutional Law principles. The failure of the invasion and the imposition of martial law put an end to such discussions until the end of the American War of Independence. A new period of debates followed, which culminated with the creation of an elected assembly by the *Constitutional Act*, 1791.<sup>191</sup> By that time, though most seigneurs and many farmers still opposed this reform, the constitutional stage has been set. Trial by jury in civil matters and habeas corpus were put in place or restored between 1784 and 1792. The ideas that were sown between 1764 and 1774 thus came to fruition. The right to challenge governmental decisions and to obtain reforms by peaceful means was now taken for granted, consummating the separation from France. Although the Ancient Regime mentality would continue to strive in Quebec, the identity of the Francophone elite had been indelibly marked by the ideals of representative institutions, for which Great Britain and its colonies were so famous in the Western world at the time.

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191. See generally *supra* note 17.