

**BRITISH CATHOLIC POLICY IN EIGHTEENTH-CENTURY  
IRELAND AND QUEBEC**

by

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## ABSTRACT

The study is a comparative historical work that looks at three pieces of British Catholic legislation - the Treaty of Limerick ratification bill (1697), the Quebec Act (1774) and the Irish Catholic Relief Act (1778) - to clarify the processes leading to these policy outcomes and show how the outcomes were associated with the general trend toward Catholic relief in the British empire during the eighteenth century. It makes use of the *institutional approach*, a perspective, it is argued, that allows for much more detailed analyses of policy events and long-term social transformations than are possible using traditional sociological approaches to state power and social change. In each case, the most important formal (constitutional principles, legal statutes) and informal (norms, established procedures) institutions governing the negotiation of the policy are identified, and the circumstances that gave rise to them and helped to institutionalise them are assessed. It is then shown how these institutions structured each policy-making process by establishing the "rules" individuals participating in the process had to follow, or take into account, during policy negotiations. By providing the structural framework within which each policy process took place, institutions shaped the way in which human action and contingency came together to encourage the emergence of a particular measure. The indirect influence of institutions on policy outcomes helps to explain variations in Catholic legislation over time and across territories. More than this, the thorough analyses of each policy event required by the institutional approach show that the factors usually used to explain the movement toward Catholic relief - the gradual growth of more tolerant attitudes among British elites, or considerations concerning military security or international diplomacy - can misrepresent the movement. The analysis reveals that, although the Quebec Act and the Irish

Catholic Relief Act were linked, the nature of those connections was much less straightforward than these explanations suggest. The result shows that the movement toward Catholic relief was not driven by any one particular factor or force, but was the accumulation of the many complex, and largely unpredictable, outcomes of the specific events that comprised the transformation.

**Keywords:** Catholics, Catholic relief, Eighteenth century, Great Britain, Institutions, Ireland, Politics and Government, Quebec, Social Change, the State, State Power.

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## INTRODUCTION

After the Glorious Revolution, Irish Catholics were subjected to a series of laws restricting their political, economic and social behaviour. Although laws inhibiting their activities, religious or otherwise, had been in place since Tudor times, Catholics had enjoyed, if not a legal, at least a practical, toleration of their religious beliefs and practices in Ireland. The situation changed in the 1690s, however, when the ascendant Protestant minority in Ireland, in partnership with English officials, began to legislate policy that not only stripped Irish Catholics of most of their political, economic and social rights, but appeared, at least initially, bent on eradicating the Catholic religion in Ireland all together.

These laws are in stark contrast to the policy of toleration that was extended to Quebec Catholics some seventy-five years later in the Quebec Act of 1774. Although it appeared when Quebec was ceded to Britain in the Treaty of Paris in 1763 that French Catholics in the new colony would be subject to the same restrictive policies as their coreligionists in other parts of the empire, the Quebec Act ensured that Quebec's majority population would enjoy freedoms unknown to Catholics elsewhere in the empire. Four years later, a Catholic Relief Act was passed in Ireland, the first in a series of measures that eventually saw Irish Catholics acquire citizenship rights commensurate with their Irish Protestant counterparts.

As Jacqueline Hill (1989: 98) writes, the "growth of toleration" has long been considered the primary explanation for the relaxation of the penal laws in Ireland. In its purest form, this argument says that Irish Catholic relief was a manifestation of the changing attitudes of British elites. The European Enlightenment encouraged the softening of the traditional ideas about Catholics held by Irish and British elites, which led to the gradual relaxation of

the penal laws. This "strong" view of the growth of toleration argument was most prevalent among early historians like W.E.H. Lecky, who, in the nineteenth century, wrote of "the growing spirit of liberty among all classes" in the latter half of the eighteenth century, a phenomenon that "led shortly to religious liberty" (quoted in Bartlett 1992: 66). As a basis for the Quebec legislation, the "growth of toleration" argument has enjoyed less prominence. It has, however, found its way into historical accounts of the period in which the document is upheld as an example of the pioneering spirit of enlightened British administrators toward Catholics in the empire, "the finest product of the benign statesmanship that signified a maturing awareness of the real responsibilities of imperial governance in the early modern period" (Lawson 1991: 301. See for example Coupland 1925). Writers who have been uneasy attributing policy changes entirely to attitudinal shifts have been inclined to add that the lessening of the Stuart threat with the death of the "old pretender" in 1766 and the general decline in the power and influence of the Catholic church in Western Europe by the mid-eighteenth century provided further inducements for a more lenient policy toward Catholics. But as Hill points out, even these writers have been reluctant to give up on the idea altogether. Irish historian James Kelly says that the Irish Catholic Relief Act of 1778 was the first "tangible result" of the "liberal strain" in Irish Protestantism that he says emerged in the 1770s (Hill 1989: 99). J.C. Beckett (1986: liv), although he acknowledges that other factors certainly played a role in the relaxation of the penal laws in Ireland, emphasises the importance of the dissemination of Enlightenment ideals: "Tolerance, which earlier ages had regarded as a sin, came to be regarded as a virtue. This more tolerant attitude...prepared Protestant opinion for a gradual relaxation of the penal code." And Francis James (1995: 164-65) stresses the significance of attitude change among the Irish peerage to the extension of concessions to Irish

Catholics in the later eighteenth century.

Another line of explanation put forth to explain the more charitable treatment afforded Catholics in the British empire by the late-eighteenth century focusses on what could be called "imperial considerations". "Imperial considerations" are associated with so-called "high policy" issues, war and diplomacy in particular. Writers who argue that Catholic relief in Ireland and Quebec in the 1770s came about because British administrators wanted to retain the loyalty of Catholics against French and American threats, for example, would fall into this category. Robert Donovan (1985) maintains that the Irish Catholic Relief Act was part of a larger plan to extend concessions to Catholics all over the British Isles to encourage their enlistment in the British army. Samuel Clark (1998) says that "international competition" was crucial in determining how Catholics were treated in Ireland and Quebec. Sometimes these types of explanations suggest that British administrators had in mind some grand scheme of empire in which the extension of Catholic relief played a central role. A contemporary American interpretation of the Quebec Act held that the legislation was part of a British plot to do away with representative government in the American colonies and impose despotic rule on the entire continent. This view continued to inform histories dealing with America after the conquest (see for example Metzger 1936).

As grounds for the advance of Catholic relief, both the "growth of toleration" and "imperial considerations" explanations have their problems. Attitudes are a slippery thing to grasp at the best of times, let alone when the individuals whose sentiments are being gauged lived over two centuries ago. For every study that maintains that Britons and Protestant Irish became more tolerant of Catholics and Catholicism as the century progressed, there appears another that claims that there occurred little or no change in Protestant attitudes toward Catholics during this period. Thomas Bartlett (1992: 66-67, 70-

71) provides evidence demonstrating that, from the mid-eighteenth century, Protestants in Irish society embraced Enlightenment ideals that eschewed religious "enthusiasm", and cites research by Colin Haydon (1985) that shows that English attitudes toward Catholics had softened considerably by the 1760's. Jacqueline Hill (1989: 106), however, points out that even "pioneering advocates of 'religious toleration'" like John Locke and John Toland "...argued that Catholics...could not be tolerated because their views threatened the 'moral rules' which were necessary to the preservation of free civil society." "In other words," Hill writes, "during this period, while there might be disagreement over the details of particular measures, the principle that Catholics must be restricted was not a contentious one." There is the problem, too, of what "toleration" meant to Protestant Britons and Irish in this period. There is a vast difference between a "softening" in attitudes toward Catholics because of the removal of external dangers like the Stuart threat, and the belief that Catholics should have rights commensurate with Protestants; between conscientious opposition to religious persecution, and the extension of concessions to recusants (Bartlett 1992: 68). Even if Protestants became more indulgent of Catholics and Catholicism over time, it does not mean their indulgence translated to political action.

Independent of the difficulties associated with the measurement of attitudes, however, there is the fact that Catholic policy varied widely across the empire during the latter half of the eighteenth century. If it was purely a tolerant spirit that inspired British administrators to allow such charitable treatment of French Catholics in Quebec in the 1760s and 1770s, why did they wait several decades to pass legislation that granted Irish Catholics similar rights? Even more troubling is the fact that they allowed the expulsion of upwards of 10,000 Catholic Acadians from Nova Scotia in 1755 (Brebner 1965), and continued to entertain the notion that those few who remained should be

expelled as late as 1765<sup>1</sup>, even while they were tolerating the new Quebec administration's generous treatment of Catholics there. They allowed Catholics in Newfoundland and the Maritimes to be persecuted and excluded from civil life by the administrations and Protestant inhabitants of these colonies until well into the next century (Garner 1953). And although French Catholics in Grenada were granted extensive political rights shortly after the conquest, those rights were withdrawn in 1784 when anglicisation of the colony began in earnest.<sup>2</sup> Clearly, something other than a charitable attitude was informing the policy-making decisions of British state officials, at least during this period.

The argument that British officials were thinking about "imperial considerations" when legislating for the colonies and periphery holds up better as an explanation of the motives behind the Catholic policy promulgated by the British state. Concerns over the military and strategic importance of acquiring the loyalty of far-flung Catholic populations were real, and "high policy" issues such as these had to have been of crucial importance to British officials when formulating Catholic policy in contentious areas. What does not appear true is that British administrators had in mind some grand imperial scheme when deciding what policy should be put into place. Again, this becomes clear when one compares Catholic policy across a number of areas. It is difficult to imagine a cohesive imperial strategy that simultaneously calls for the partial inclusion of Catholics in the political system in one province (Quebec), and their full inclusion in another (Grenada); the continued

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<sup>1</sup> In 1765, the Governor of Quebec, James Murray, recommended that the Acadians remaining in Bonaventure be removed (DCB Vol. IV: 571).

<sup>2</sup> France recaptured Grenada in 1779 during the American revolution. The island was returned to Britain in 1784 by the Treaty of Versailles. This time French Catholic inhabitants were denied all political rights. The oath against transubstantiation was resurrected, closing off Catholic access to Grenada's assembly. Roman Catholic churches and church properties were confiscated and conferred to the Protestant church or the crown. And all "popish emblems" - statues, altars, *et cetera* - were ordered put to flames (Steele 1974: 10-11).

repression of one population of Catholics (Ireland), the outright expulsion of another (Acadia), and the total disregard of yet another community of Catholics under British rule (Newfoundland).

Even if we do not accept that officials had some overarching plan concerning Catholics in the empire and assume they dealt with situations on an *ad hoc* basis, it is hard to believe that variations in “imperial considerations” could, on their own, have produced the great disparity in the policies affecting Catholics in different places. It could be said, for example, that concessions to Catholics in Quebec and Grenada came faster and were more generous than those granted to Irish Catholics simply because the colonies were farther away. Catholics overseas were less of a security risk than their coreligionists in Ireland. It would be much more worrisome for the central government if France gained a foothold in Ireland than if they retook their former colonies overseas. It makes sense that geography would have contributed to differences in the policies directed at Quebec and Irish Catholics. But is geography enough to account for such vast differences in legislation? Is it enough to explain why Catholics in Quebec were granted such extensive and unprecedented freedoms whereas Irish Catholics, as we shall see, received only token recognition? Samuel Clark (1998: 1300-1301) argues that the Quebec Act was passed “not out of any spirit of toleration, but because the security of Britain’s rule over its new colony depended on the loyalty of its inhabitants.” This may be true, but surely Britain required the loyalty of its Catholic inhabitants in Ireland, Grenada, and the Maritimes as well. Can “international competition” explain why British administrators decided to treat recusants so differently in each of these places?

Another difficulty arises when one tries to establish that considerations of empire were fundamental to the promulgation of a given policy. It is one thing for modern writers to look back on a situation and come up with such

factors to explain why Catholics were treated so differently in different areas. It is quite another to make the case that these were the reasons that led to those directives being implemented. Take the Acadians for example. On the surface, it almost seems understandable from an imperial considerations perspective that the British government would opt for expulsion rather than toleration in their case. First, there were far fewer Acadians - at the most 10,000 versus the estimated 65,000 to 80,000 Catholics in Quebec - making expulsion more feasible. Second, the Acadians had long refused to take an oath of allegiance to the British king; they insisted on retaining their neutrality. Quebec Catholics made no such demands. Finally, the Acadians were in an area that was strategically more important than Quebec. But the idea that British administrators weighed all these considerations carefully then decided that expulsion was the best option suggests that the Acadian situation was handled in a much more deliberate and rational way than it actually was. The decision to expel the Acadians was not made by officials in Britain at all. Rather, the local governor took it upon himself to do it. By the time British officials learned of the expulsion it was well underway. It is true that administrators had discussed the option of removing the Acadians before. It is also true that officials in England did nothing to stop the deed once it had started, and maybe even used many of the "rational" arguments above to justify their inaction. It is just that the act did not involve the careful taking stock and the calculated implementation of the most logical course of action that after-the-fact explanations imply. Really, whatever "considerations of empire" that were, and are, used to account for the expulsion came *after* the thing was done and not before. If there was any "rationality" associated with the expulsion it has been added by writers looking to explain the event in hindsight; it hardly characterised events at the time.

There are other examples. When ceded to the British by the Treaty of

Paris, the white population of the island of Grenada was about half French Catholic. These Catholics were granted full civil rights in 1768 and were allowed to vote, sit on the assembly and council and occupy important positions in the administration and defence of the island. As the argument goes, most of these French Catholics were wealthy landowners and planters on an island where the black slave population vastly outnumbered the white. These Catholics were granted full political rights because it was necessary for the white, land owning Protestant and Catholic populations to present a united front in case of a slave uprising. All this again seems perfectly reasonable in hindsight. It does not, however, tell the whole story. The instructions that accompanied the new governor of the colony, Robert Melville, ordered him to call an assembly in the province as soon as he thought feasible. This assembly, however, like most other assemblies in the British empire, was to be a wholly Protestant body. The French Catholic planters protested, insisting that they be allowed to participate fully in the political life of the colony. Upon consideration of their demands, Melville decided to let them vote for, but not sit in, the assembly. This was not enough for the French planters, who petitioned the British government asking that they be allocated positions in the provincial council and the assembly. It is true that the French planters pointed out to officials the importance of a united elite in a colony with a majority slave population (Higham 1926: 375n) but this was not the only thing the British Privy Council had to think about. By this time, governor Melville had already called an assembly in the province. There would have been an outcry from the British inhabitants had the government tried to suppress the assembly to avoid having to deal with the French Catholic situation. At the same time, the French planters made up such a significant and important number of the island's population that British administrators could not leave them out of the civil life of the island like the British planters wanted. The

Privy Council decided to allow most of the French planters' demands. These actions might have had the effect of better securing the island against a slave revolt and helped to bind the French inhabitants to the new regime. But considerations of this type were not the primary reason why these decisions were taken. Like in the Acadian case, the actual process was much more complicated than an imperial considerations argument suggests.

So the "growth of toleration" and considerations of empire arguments can falter when they are used to account for specific policy outcomes. When the events surrounding the formulation of legislation directed at Catholics are examined more closely it becomes clear that these factors, although they may have played a role in shaping how British administrators approached the Catholic situation, did not serve as the basis for policy in as straightforward and logical a manner as these explanations imply. This was especially true of early relief legislation, something that is evident in the brief accounts of the Acadian expulsion and events in Grenada after the conquest.

But how then was the general pattern, that is the tendency for British administrators to favour policies that extended *concessions* toward Catholics rather than repressed them, become established? At all times, concessions were only one way that politicians could deal with the Catholic situation. Expulsion, penal legislation, policies aimed at converting or anglicising Catholics in the empire - these and other options had been considered and employed by administrators throughout the eighteenth century. Why is it that more repressive legislation "won" over concessions in the earlier part of the century? Why did concessions win more often later? Why did they not win everywhere at the same time?

I would contend that one important piece of the puzzle that seems to be missing in prevailing explanations of the movement toward Catholic relief that could help clarify many of the problems put forth so far is the influence

on religious policy of the structures characterising British governance in the eighteenth century. The British state held a very different political relationship with Ireland than with the colonies, for example. It would be worth investigating how variations in the institutions governing policy making in these various areas might have affected the nature of the Catholic policies promulgated there.

So how do we begin? In starting to analyse a long-term social transformation like the movement toward Catholic relief, it must be remembered that long-term transformations consist of a collection of many discrete events. Each event is shaped by the particular circumstances surrounding the occurrence. To understand the long-term transformation we have to first understand the particular policy events that comprise it. We then must assess how these events related to one another to determine how the protracted trend developed, why certain decisions and options became more regular and recurring while others were increasingly discarded or ignored. Both of these aims require an approach to the state and government policy making that permits a detailed examination of the factors and forces involved in the policy process.

### Sociology and the movement toward Catholic Relief

It may be asked at this point what the movement toward Catholic relief in the British empire two centuries ago has to do with contemporary sociology. The connection is, however, quite plain because what we are dealing with are questions of state power and policy, policy change and social change. These areas of social theory can provide us with some guidance as to how to approach the problem of explaining why and how the movement toward legislating Catholic relief/Catholic concessions became established and how it was perpetuated.

### *Sociological theories of the state and state power*

What follows is not a comprehensive or thorough review of the sociological literature on the state and state power. Rather, it is a general overview of some of the major approaches that have been adopted by sociologists of the state, past and present, that relate specifically to the current study.

The sociology of the state is most concerned with state *power*, especially with who holds it. Traditionally, state theories have fallen into one of two general categories, *society-centred* or *state-centred* explanations. Proponents of “society-centred” models of the state have sought to demonstrate the extent to which the state is controlled by societal forces. The pluralist perspective, that which sees the state as an arena in which interests compete to influence government policy and acquire control of state institutions, is perhaps the most obvious of the society-centred perspectives; however classical functionalist and Marxist models fall into this category as well. Functionalists contend that institutions like the state perform certain desired “functions” in society. The state responds to forces in society and reacts and realigns itself to reestablish stability and equilibrium. Classical Marxist theory holds to the famous passage in *The Communist Manifesto* that says “the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie” (Marx and Engels 1980: 11), whose policies reflect directly the interests of the capitalist class. In contrast, “state-centred” theorists have tried to show that the state is not merely a reflection of societal forces. They argue that not only does the state possess its own interests but that “the state” is the dominant factor determining policy outcomes. Stephen Krasner (1979) explains how the state embodies a notion of the “national interest” separate from competing interests and seeks to uphold that vision independently in policy decision-making. Margaret Levi (1988) talks about states as rational

actors out to maximize their self-interests. Eric Nordlinger (1981: 7) maintains that state officials use their "autonomy-enhancing capacities and opportunities" to manipulate policy outcomes.

These approaches have not escaped criticism. Pluralists, by suggesting that any group can compete in the political arena, have been accused of overestimating the democratic nature of the modern state. Critics of functionalism say functionalists rely too much on the spontaneous adaptability of the state to adjust to external forces. The classical Marxist perspective, in viewing the state as the reflector and protector of the interests of the capitalist class, has been charged with being unidimensional and reductionist. State-centred theorists have been uniformly condemned for reifying "the state", for presenting the polity as a unified entity, a monolith, capable of formulating common policy options and acting in concert. There is not just one "state elite", there are many. If states act in their own interest like state-centred theorists say they do, then "which self and which interest?" (Mann 1995: 51). Both perspectives have been criticised for treating as relatively unproblematic the division between "the state" and "society". The division may not be difficult to make from a purely theoretical or conceptual standpoint, but state analysts run into trouble when they try to draw this distinction in real terms. Who is to be considered "the state"? Which officials, departments, branches of government? How are the departments not included in that definition to be analysed? How does one begin to classify the interests that belong to "society"? Are state-funded organisations included in this category? What about organisations that share executive members with the state? Clearly the division between state and society is more difficult to draw than is implied by these classical perspectives.<sup>3</sup>

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<sup>3</sup> For an interesting perspective on the problem of the state-society split in theories of the state see Timothy Mitchell (1991) and the ensuing discussion in the *American Political Science Review*, Vol. 86 (1992), pp. 1007-21.

Perhaps the most serious shortcoming of these traditional approaches to the state from our perspective, however, is that they treat "the state" as a black box from which policy is dispensed unproblematically. Government policy might be considered, but only as a manifestation of what group has control of the state (in the case of society-centred theorists) or a measure of the autonomy of some actor or collection of actors the writer has defined as "the state" (according to the state-centred theorists). But state policy is seldom the direct reflection of whoever "owns" the state, not even in the eighteenth century, something that was evident in the brief accounts of the Acadian expulsion and the Grenadian situation. In neither case did "societal interests" or "state interests" dictate the resulting policy. Instead, the measures emerged out of a more complex interplay of societal and state powers, contingency and other factors. If we are to understand how and why concessions to Catholics gradually overtook repressive legislation as British administrators' policy of choice, it will be necessary to undertake a more detailed examination of the events surrounding the passage of policy than these approaches advocate. Neither do these approaches give much attention to the influence of structure on government policy outcomes. When a particular group comes to power it does not begin its tenure with a *tabula rasa*. Existing government institutions mediate the group's ability to do what it wants whether it be in its own interests, in the "national interest", or whatever. To understand how government policy comes into being it is necessary to figure in the influence of these institutions.

Sociologists of the state have by no means been unmindful of these criticisms. Later theorists have improved the viability of these more traditional approaches to the state while still remaining true to their original spirit. In 1968, Nicos Poulantzas (1973) modified the classical Marxist assertion that state policy is the straightforward manifestation of the interests of the

bourgeoisie by arguing, for example, that the state did not represent the capitalist class so much as *capitalism*. It was an institution that sought to maintain and perpetuate capitalist class relations. By acknowledging that "the state" had an existence separate from the capitalist class, Poulantzas gave the polity some autonomy, and the Marxist view of the state the capacity to explain why the state sometimes made policy decisions contrary to capitalist interests. Poulantzas's thesis sparked a lively debate between himself and Ralph Miliband, a sociologist who was closer to the traditional notion that state personnel were an instrument of the capitalist class (Miliband 1969). Neo-Marxist theorists, like Bob Jessop (1990), Claus Offe (1985) and Gosta Esping-Anderson and Walter Korpi, have continued to rethink classical Marxist views of the state and state power. Jessop (1990) finds even Poulantzas's modified version of classical Marxism too confining and deterministic. He dilutes further the traditional notion that the state operates as an arm of the capitalist class and argues that political aims of capitalists are sometimes driven by forces other than capitalist ones, by contingency for example. Offe (1985) focusses on how the state bureaucracy operates and mediates the class conflict and thus state policy. Esping-Anderson and Korpi champion the Power Resources Model. They agree with the classical Marxist view of the state and state policy as reflections of class interests. They are not, however, as committed to the old idea that capitalists or capitalism always comes out ahead politically. They look at how class interests are represented by political parties and party coalitions in various countries over time to explain how and why policies of a "capitalist" or "socialist" nature are developed and adopted (Esping-Anderson and Korpi 1984; Korpi 1983; Korpi 1989).

As Michael Mann (1995: 45-46) points out, however, these modified versions of the classical Marxist approach to the state have not got rid of what he believes are the most serious problems with the old Marxist view of the

polity: they still treat "the state" as "passive and unitary"; they still reduce everything to do with "the state" to class conflict; and they still present the state as little more than an arena in which class interests are played out and are organised. Let it be added that neither do the newer theories solve the "black box" problem. Although they go farther in illuminating what actually happens within "the state" to give rise to policy outcomes, they still tend to assume that policy will reflect the interests of whoever is in control of the state. That state institutions can and will affect how state policy is formulated is not much considered.

Notwithstanding these criticisms, the movement of neo-Marxists and others committed to a "society-centred" perspective of the state toward analysing the polity as something more than just a site for societal conflict is an important one. They acknowledge that "the state" (and other factors like contingency in Jessop's case) somehow affects these conflicts and so needs to be included in analyses of state power. In doing so, they have moved closer to the ideas of "state-centred" theorists, who maintain that "the state" is an actor in its own right and imposes its own interests on government policy. For their part, proponents of the state-centred approach have responded to charges of being too vague about who is "the state" by identifying more clearly the state elites to which they are referring and how exactly they affect policy decisions. In other words, they have taken a page from society-centred state theory and tried to better incorporate individuals and human agency into their approach. As the two perspectives have come closer together, a picture of the state has begun to emerge that is much more complex, but more comprehensive than either of the two "pure" versions of state theory present. As early as 1956, C. Wright Mills depicted the state, not as a unified entity like most classical and neo-classical theorists do, but as comprised of many institutions and branches each "ruled" by its own power elite (Mills 1956).

Similar models of the state as fractured have been put forth more recently by Domhoff (1990) and Jessop (1990). Of particular interest to the current study are works by historical sociologists like Theda Skocpol, Richard Lachmann, Samuel Clark and Charles Tilly. Skocpol, although often depicted as a proponent of "strong" state-centred theory, adopts a weaker approach, that is one that is more of a synthesis of both sides of the debate, in her study of how elite relations contributed to the rise of social revolutions in France, Russia and China (Skocpol 1979). Lachmann (1989) focusses on the relations between particular groups of elites in France and England to explain differences in state development in those countries. Clark (1995) adopts a state-centred approach, but one that looks at the mutual interaction of states and aristocracies. And to show that elites are not the only ones who affect state factors, Tilly (1995) shows how the activities of the "masses" in Britain in the eighteenth century helped to determine the way in which popular protest and politics were, and still are, conducted.

It is in the spirit of these and other works dedicated to opening up the "black box" of the state to reveal the social relations behind state policy formulation and how state power is exercised that the current investigation of the movement toward Catholic relief in the British empire in the eighteenth century will be conducted. More specifically, this study will focus on the influence of state institutions on state policy making, how existing structures within "the state" affect the way in which policy negotiations, and ultimately policy outcomes, unfold.

### ***State institutions and state power:***

The study of how social institutions affect human behaviour is by no means a neglected area in sociology. Karl Marx stressed the interaction of social structures derived from the prevailing mode of production and social

relations. Durkheim was concerned with the effects of what he termed "social facts" on individuals in society, normative structures that, although they are products of human interaction, become "crystallized" and are experienced objectively by the society that created them. Max Weber emphasised the influence of a wide range of cultural "rules" - norms and social mores, as well as more formally defined principles such as constitutions and legal structures - on human behaviour. Charles Cooley, George Herbert Mead, Talcott Parsons, Peter Berger and Thomas Luckmann, and numerous other social researchers concerned themselves with understanding the connections between social structure and the individual in all manner of areas of social life. But as W. Richard Scott (1995: 14) points out, it is not until the latter half of the twentieth century that most sociologists began to differentiate between "institutions" and "organisations" in their theoretical work. Aside from Weber, who recognised and theorised the distinction between larger institutional forces and more "micro" structures, "most of the early theorists folded together their notions of organizations and institutions" (Scott 1995: 14). The distinction made it possible to assess how wider institutional structures affected intermediate organisational systems, like the state, and the institutions comprising the organisations themselves.

The problem from our perspective, however, is that there has been little overlap since Weber in the study of institutions as they relate to state power. Scott (1995: 16-24) notes that the translation of Weber's work on bureaucracy in the 1940s was a watershed in terms of the study of organisations in sociology. Work by Robert Merton, Philip Selznick and Arthur Stinchcombe, as well as Talcott Parsons and Herbert Simon transformed the sociological analysis of institutions, focussing the investigation on how social relations become institutionalised in bureaucratic organisations, how those institutions constrain human behaviour, and how and in whose interest they are created

and perpetuated. However, their research tended to ignore the state as a formal organisation, emphasising instead other bureaucratic systems and structures.

The past twenty years has seen a resurgence in the interests of social scientists in the influence of institutions on social life. "Institutionalists" have turned up in most of the social sciences propounding what has alternatively been called "institutionalism", the "institutional approach", "historical institutionalism" or the "new institutionalism" depending on the area of study. Proponents of this approach all share the general conviction that complex organisations are more than the sum of their parts, and the institutions that comprise organisations matter more than has been acknowledged. Given the long and rich tradition of institutional research in sociology, it is hardly surprising that our field has been influenced by this movement. Although many areas of sociology have been affected (see for example Dugger (1994), Grenstad (1995), Harvey (1992) and Hoksberger (1994)), it is researchers who study organisations that seem to have responded most strongly to the trend. All this talk of institutions would seem to bode well for our assessment of how the institutions of the British state influenced Catholic policy in the eighteenth century. Unfortunately, for the most part, sociology's "neo-institutionalists" have continued to stay away from the state as a focus of study, preferring to treat it as an external pressure or influence (see for example Zucker 1987: 443).

In contrast, the state figures prominently in the work of political scientists, who use the institutional approach to explain the policy outcomes of modern states. It is from their work that the basic framework for this study will be drawn. It is not so much that their ideas concerning institutions and their interaction with individuals differ dramatically from the theories put forth by organisational sociologists, particularly those who focus(ed) on the

normative features of organisational institutions such as Cooley, Merton and Selznick. In the pages that follow that describe the institutional approach from the perspective of political science, echoes of writers like Selznick will be discerned: "Institutionalization is a process. It is something that happens to an organization over time, reflecting the organization's own distinctive history, the people who have been in it, the groups it embodies and the vested interests they have created, and the way it has adapted to its environment" (quoted in Scott 1995: 18). It is just that "neo-institutionalists" in the political sciences have been much more active, much more recently, in analysing the effect of institutions on the promulgation of actual government policy than have their counterparts in sociology. Their approach provides a better model for the type of institutional analysis with which this study is most concerned.

#### *The institutional approach<sup>4</sup>*

Political scientists use the institutional approach to look at the institutionalised arrangements and relations that govern behaviour within the realm of the state to understand policy outcomes. The approach says that "the state" can have an influence on policy making independent of the individuals and groups involved in the formulation of state policy. It exerts this influence by means of institutions or "institutional factors". An institution, according to S.J. Gould, is a "regularized or crystallized principle of conduct, action, or behavior that governs a crucial area of social life and that endures over time" (quoted in Ethington and McConagh 1995: 86). Peter Hall (1986: 19) defines institutional factors as "the formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the polity and economy." When

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<sup>4</sup> The following is a synopsis of the descriptions of and ideas associated with the institutional approach provided by Dearlove (1989), Hall (1986), Ikenberry (1988) and March and Olsen (1984).

individuals come together in organisations like government, their activities often become regular and recurring. When these patterns of interaction are repeated enough, they become institutionalised, that is they become accepted by everyone as “the way things are done”. Institutional factors are, then, patterns of behaviour that have their origins in past interactions, and that have acquired a certain durability or “stickiness”, enough to require that contemporary actors abide by them, or at least take them into account, when formulating policy. They can have an important impact on policy outcomes because they constrain or enable the capacity of some actors over others to have a say in the policy process. Sometimes institutions are formalised. The most formal institutional factors are written laws and the constitution of the state. They make up the foundation of the policy-making process and define its fundamental bounds. Sometimes they remain informal. Informal institutional factors are organisational norms, routine procedures and the like. They may not be quite as rigid or enduring as formal factors, but informal institutional factors can still have as important an influence on policy-making activities as those specified by the constitution or the courts.

It would perhaps be helpful to note at this point that the definition of “institution” used here adheres most closely to that employed by institutionalists who focus on the *normative* elements of institutions. This is in contrast to economists who tend to concentrate on the regulative aspects of institutions (that is “rule-setting, monitoring, and sanctioning activities” (Scott 1995: 35)), or sociologists who emphasise the cognitive features of institutions (the rules that emerge from shared symbols and culture, for example) (ibid: 34-45). Although the idea of “formal institutional factors” is more or less straightforward, thinking about “informal institutional factors” loosely as “social norms” might help to clarify what the institutional approach is trying to communicate.

Institutional factors influence policy making in two main ways. First, they help determine which actors are eligible to participate in the policy-making process, and the fundamental power relations between those players. Second, they structure the relations and activities surrounding policy-making, defining the "rules" by which those actors must play when formulating policy. In other words, institutional factors influence who can take part in the policy-making process and define the bounds of what they can do when they are there. All other things being equal, state officials will hold the most power in the policy-making process. This is because the organisation they represent holds jurisdictional dominance. "The state", by whatever means, has procured the right to promulgate policy in a particular area. Its representatives, therefore, hold the predominant role in the formulation of policy. Jurisdictional dominance, however, does not mean that these officials can act autonomously or that institutional factors will always benefit state administrators. Depending on how policy making was organised in the past, current administrators may find that, because of institutional constraints, they must abide by procedures or take into account demands that are detrimental to their interests. On the other hand, by defining the institutional responsibilities of actors and their relationship to other actors, institutional factors help actors to formulate their aims and determine how best to approach any given policy-making process. Institutional factors may, for example, create circumstances that are unfavorable to a certain set of actors, but can also assist those actors in planning their best course of action.

This last point demonstrates how institutional factors can shape the character and influence the aims and strategies of the actors themselves. Groups and individuals will be more or less successful in policy negotiations depending on the extent to which their organisation, methods and goals mesh with the institutional factors governing the process. Actors can therefore

manipulate their impact on policy making procedures in a number of ways. They can work with the institutions surrounding the process, work around them, formulate strategies or modify their makeup to improve their chances of succeeding within them, even attempt to change them. Of course their success in any of these endeavours will be influenced by the actions of other actors, including state officials, in the policy domain, as they too try to better their chances relative to the institutions governing the policy-making process.

Finally, the institutional approach recognises that, although institutions influence the people engaged in the policy-making process, institutional factors are not fixed. Because they arise out of human interaction, all are subject to modification, or even elimination, by human activity. New choices and decisions on the part of individuals continually transform existing institutional factors. These changes can be purposive (as are those that occur when a government administration introduces modifications to an existing system) or involuntary (as a result of continual minor modifications to routine behaviour), incremental, or dramatic (as in the case of revolution). Institutions are also affected by contingency. Contingency helps shape the human interactions that give rise to institutions. Contingency can also help determine whether those patterns of behaviour are perpetuated and institutionalised. It is true that some institutional factors are more susceptible to change than others. Formal institutional factors like laws or the constitution are less likely to change because they tend to be entrenched in the political system. Informal institutional factors are more vulnerable to change because there is nothing formal dictating that things have to be done in that particular way. Institutions do not, however, comprise "iron cages" within which actors are bound to behave in a certain manner.

Clearly, the emphasis of the institutional approach is on structure. Its primary aim is to show how state institutions, by shaping the activities of the

individuals involved in policy making, come to affect policy outcomes. This is important because the influence of state institutions on policy making has not been much considered until relatively recently. The institutional approach does not claim, however, that institutions are the only factors that cause policy outcomes. It does not deny that other things, like human agency and contingency, have a role to play in the policy-making process. What it says is that these things happen within a particular *institutional context*. By influencing the way in which the policy process is conducted, by constraining, enabling and otherwise affecting the actors taking part in the process, institutions end up having an important, indirect effect on government directives. So even though institutions are the focus, the institutional approach requires that the other factors and forces impacting on policy making are specified in order to assess how and to what extent institutions affect them and so affect policy.

The institutional approach promises a comprehensive picture of the policy process, precisely what is needed to begin to understand the contemporary origins and objectives of policies directed at Catholics during the eighteenth century. It also provides another way in which the "black box" of the state might be exploded to reveal how government policy is actually formulated, and so contributes to that body of literature in sociology that seeks to expand our understanding of how the state operates and how state power is exercised.

There is, however, another important aspect to this study and that is the issue of policy *change*. How did specific policy outcomes translate into the more protracted tendency of British administrators to favour relief over more repressive measures to secure the fidelity of the empire's Catholic subjects? Again, sociology, the study of social change in particular, can be of some guidance here.

### *Sociology and social change<sup>5</sup>*

Sociologists have always been concerned with social change. It could be argued that the discipline itself arose out of the desire for people to explain the massive changes that enveloped the Western world in the nineteenth and early twentieth centuries. The movement from an agriculture-based, feudal society to an urbanised, industrialised, capitalist one dominated by powerful states and punctuated by labour unrest, colonial upheaval and world war was of great concern to Karl Marx, Max Weber and Emile Durkheim. Their ideas about how and why these changes occurred, along with those propounded by their predecessors and contemporaries in sociology (August Comte, Herbert Spencer) and other fields (most notably Charles Darwin) have since then served as the bases for theories of social change. Marx's feudalism-capitalism-communism model, Weber's observations on, among other things, rationalisation and bureaucratisation, and Durkheim's organic solidarity-mechanical solidarity dichotomy have informed successive generations of sociologists and social thinkers seeking to explain social change.

It has been argued that the models of social change proposed by these early writers were teleological. It is true that, in their simplest forms, they each presented a picture of society as moving to progressively more complex forms. These newer forms were not always "better". Marx condemned capitalism as dehumanising and exploitative; Weber worried that rationalisation, although it improved efficiency, would result in a world of automatons; and Durkheim bemoaned the loss of community. Neither were the paths to their realisation in any way smooth or predictable. Marx placed great emphasis on the importance of human agency in the transition from capitalism to communism. Weber, like Marx, was a careful student of history,

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<sup>5</sup> The following relies on Piotr Sztompka's review of evolutionary theories, their critique and alternatives (1994: Chapters 7, 12, 13 and 14).

and was very aware of the “unintended consequences” of human activity. Nevertheless, the end results they forecast seemed inevitable, bound to unfold as society moved from stage to stage.

If the charges of evolutionism in the writings of Marx, Weber and Durkheim have been overstated, there is little question that succeeding generations of sociologists produced theories that predicted that society would progress along predetermined lines. Modernization theory claimed that all nations went through the same stages of economic and political development and it would only be a matter of time before underdeveloped countries would “catch up” to the first world. Value theories sought to explain why certain countries failed to achieve the prosperity that modernization theory had predicted by focussing on the values and norms held by their populations. Once inhabitants embraced values “proper” to modernization and development, these theories claimed, their advance was ensured. Other theories held up technological innovation, or political, economic or social differentiation, as the driving force behind social change. These perspectives represented social life as subject to some, usually one, external or structural force propelling it to progress, advance or expand from more “primitive” to more “mature” stages of development.

The bald evolutionism that characterised modernization theory and theories like it has, for the most part, been purged from the study of social change. The critique of evolutionary theory, especially that part of it that said that the direction and/or character of social development was unilinear and inevitable, as if human activity was subject to some predetermined and overarching “laws” of social change, as well as the simple fact that the world was not adhering in any way to the predictions of these models, compelled social theorists to look for alternative ways of understanding social change. Evolutionists and modernists have given way to writers propounding “neo-

evolutionist” and “neo-modernist” frameworks that have been rid of the worst features of their parent theories.

Others researchers have been inspired to cultivate more novel approaches. As early as 1957, Karl Popper condemned the evolutionary tradition in sociology, calling its claims of historical destiny mistaken and superstitious, “holistic social engineering”. He urged sociologists to abandon the search for predictive, “scientific” theories of social development and instead look at social change as the undirected outcomes of the varied choices made by individuals. C. Wright Mills, in his seminal work, *The Sociological Imagination* (1970), encouraged social theorists to look beyond prevailing structures and systems for answers to society’s ills and imagine alternatives to existing social arrangements for solutions to world problems. There have since appeared theorists who emphasise history making as a wholly human endeavour, and see social change as “social becoming” not infused with the ideological baggage of evolutionary theory. Structure still plays an important role in these perspectives but no longer is it thought of as existing somewhere “outside” the influence of human activity. Rather, there is an attempt to link human agency to social structure and social change by examining how they interact, how individuals create and modify social structure and how that structure in turn affects human behaviour.

Of course, just as institutions operate at many different levels of social life, so too do social researchers operate at many different levels of analysis. Organisational sociologists, as we have seen, are concerned with how the institutions that comprise “intermediate” systems are created and constrain and affect human behaviour. Others are interested in coming to an understanding of the interaction between human agency and much larger institutional forces. Anthony Giddens is perhaps the best known for taking this sort of approach to social change and to sociology in general. His theory

of *structuration* is an attempt to bridge the old “structure-agency” debate and present a framework for sociological analyses that incorporates both in one coherent theory.<sup>6</sup> Although their foci may differ, all recognise that social life does not follow a fixed path toward some predetermined end, and that structure and the actions of individuals, rather than existing separately, are interdependent and must be examined together to get a truer picture of how society operates and social change happens.

As far as sociologists have come toward recognising that social change is much more complex than evolutionary theory has understood it to be, there is still much to be done. Typical, perhaps, of sociologists, many have spent more time *defining* what it is that this type of study of social change is about than actually *doing* any real analysis of social transformations. Certainly Anthony Giddens has spent most of his time producing works prone to “grand theorising” rather than trying to operationalise any of the myriad concepts associated with his theory of structuration. An important exception to this general tendency has been the work produced by historical sociologists. Charles Tilly (1978, 1995), Michael Mann (1986, 1995), Theda Skocopl (1979) and others have gone against the “old” method of doing historical sociology, the process that usually started with an *a priori* statement of some “social law” and was followed with the presentation of some random historical “evidence” to verify its existence, and have taken on the task of analysing history to develop explanatory models of historical events and processes. Their models are not imposed on history but emerge out of history and so acknowledge the “messiness” of the historical enterprise better than do traditional, evolutionary approaches to social change. Their research, therefore,

<sup>6</sup>More than one sociologist has remarked on how complex (even incomprehensible) Giddens’s structuration theory is. Giddens himself has published many books and articles on the subject, many of which have been criticised for their repetition and ambiguity. There is much of value in Giddens writings, however, although synopses and edited compilations of his work often present his ideas in a more intelligible manner. See, for example, Bryant and Jary (1991), Craib (1992) and Mestrovic (1998).

represents a natural extension, or better yet a practical execution, of the new way in which sociologists are looking at social change, that to understand social change it must be studied, not *deductively* with the intent to provide evidence for some prior statement of how events are supposed to transpire, but *inductively* through the careful examination of the factors involved. This is not to say that they all have the same ideas about what is the proper focus of historical analysis. Recall that Skocpol has looked at how elite relations on the plane of the state contributed to revolutions in France, Russia and China; in contrast, Tilly has focussed on the actions of ordinary people, "populist history", to account for social movements and revolutions. Mann has taken on a considerably larger task, looking at the "sources of social power", in his attempt to explain world history. Inherent in all these writings and others like them, however, is the basic idea propounded by theorists of the alternative approach to social change, that social life should be studied more as a process of *unfolding* rather than evolving or progressing and that, as Piotr Sztompka (1994: 212) puts it, "[t]he historical process is...the accumulated effect of productive and reproductive efforts of human actors, undertaken in the structural conditions shaped by earlier generations."

So how does all this help us in our immediate task, that of assessing the changes that occurred in Catholic policy in the eighteenth century from an institutional perspective? Well, it is interesting to note that, in some ways, the traditional explanations of the movement toward Catholic relief that the current study questions resemble traditional theories of social change. This is especially true of the "strong" version of the "growth of toleration" argument. In this case, human agency and ideas are emphasised over structure, but the notion that Catholic relief was somehow inevitable as elites became more enlightened puts the argument squarely in the company of monocausal, evolutionary explanations in sociology. As we have seen,

however, a comparative perspective and just a cursory examination of the real events surrounding the passage of relief policy reveal that the process was much more complicated than that. To understand how these multifaceted policy events came together to comprise the longer-term tendency of British administrators to favour Catholic relief over more repressive measures it is necessary to do more than just assume that these events were connected because they had similar ends. We have to take a more inductive approach and assess the factors that influenced policy negotiations at the time to see how both structure and the activities and aims of the individuals involved in each policy-process interacted and combined with contingency to create and perpetuate the trend toward Catholic relief. The relatively recent and coinciding movements in sociology, toward thinking about social change in the context of the tangled interplay of social structure and human agency, and the more detailed analysis of specific historical events in a comparative perspective, would seem to offer the best theoretical bases for coming to grips with the movement toward Catholic relief.

### *Institutionalism and social change*

How can the institutional approach help us to apply these theoretical concepts concerning how social life unfolds to the analysis of an actual example of social change? Institutionalists have shown how important it is to specify the institutions impacting on government policy making to get a grasp of why and how certain policies came to be. Studies by Theda Skocpol, Peter Hall, Grace Skogstad, Michael Atkinson and William Coleman, and others have shown how the institutional approach can help us to understand the expansion of pensions for Civil War veterans and survivors and the implementation of social policies for mothers in the nineteenth century (Skocpol 1992); why different Western nations chose such different policies

and political strategies to deal with similar economic problems in the early 1980s (Hall 1986); the reasons agriculture was included in the Canada-US Free Trade negotiations in the late 1980s and how and why different commodities were incorporated (Skogstad 1992); and the kind of industrial policy that would be most suited to Canada's economy (Atkinson and Coleman 1989). The results of these and other studies have shown how paying attention to the institutional context surrounding policy-making can cast new light on prevailing views of state policy.

The utility of the institutional approach with regard to the analysis of institutional and policy *changes*, however, is not as clearcut. Notwithstanding their stated concern with the human origins of institutions, in practice new institutionalists have still produced more works showing how relatively *stable* institutions influence behaviour and policy in the short term. Given that the current study is concerned with assessing *changes* in the legislation affecting Catholics over the course of the "long" eighteenth century this presents somewhat of a problem.

I say "somewhat" only because there is a dearth of analyses dealing with "institutional dynamism" (Thelen and Steinmo 1997) on which the current study can draw, not because I believe that institutionalism cannot handle social change. It seems a natural progression for institutionalists to begin to look more closely at social change, not only to answer the charges of structural determinism that have inevitably been levelled against them, but because the approach lends itself well to the analysis of long-term transformations. We have already seen that institutionalism, although its main focus is on the influence of structure on policy outcomes, requires that the many other factors and forces affecting policy making, like human agency and contingency, be specified. Since these are the things that the institutional approach says help to give rise to institutions in the first place, it

would make sense that an examination of changes in these factors could help reveal and explain changes in the institutions they help to create and perpetuate as well as in the policies those institutions affect. Institutionalists have not been entirely unmindful of the possibilities of this kind of investigation. In the volume edited by Sven Steinmo, Kathleen Thelen and Frank Longstreth, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (1997), for example, Victoria Hattam analyses working-class formation in England and the United States in the period 1820-1896 and shows how contingency "can cause certain previously latent institutions to become salient" and thus institute policy change. Colleen Dunlavy looks at railroad policy in the US and Prussia and demonstrates how the emergence of new actors pursuing new goals in existing institutions can lead to changes in policy. And there are other approaches to change. In the same volume, other authors talk about how "ideational innovation" within existing institutions can produce policy change. Peter Hall, for example, examines how the structure of British political institutions helps explain why new ideas concerning economic policy were sought in 1970s and '80s Britain, how they were "filtered and cultivated", and why some ideas persisted over others. As Thelen and Steinmo (1997: 23-4) put it, "by tracing the interaction of institutions, ideas and interests, Hall confronts a widespread characterization of institutions as biased toward policy continuity or even posing obstacles to change, and he explores the idea that some institutions may facilitate rather than impede policy change." Desmond King and Margaret Weir use different empirical evidence to illustrate similar outcomes. Finally, there are those who confront the issue of institutional formation and change. Ellen Immergut's look at health policy in France, Switzerland and Sweden shows how government institutions in each country shaped the political battles of actors that helped to redefine their relative powers as well as the institutional factors

surrounding policy-making. Changes in the institutional configurations had important and often unintended consequences for political actors down the road.

It is from these newer, albeit less numerous, studies that explore institutional formation and change and their association with policy change that the current study will draw inspiration to try to explain the movement toward Catholic relief. Whatever connections there were between successive relief measures that encouraged administrators to favour concessions to Catholics rather than repressive policies, it is hoped the current analysis will provide a better idea of their true nature than have other models.

### Outline of study

This work will focus on three pieces of Catholic legislation: the bill to ratify the Treaty of Limerick (1697), an anti-Catholic measure, and two relief measures, the Quebec Act (1774) and the first Irish Catholic Relief Act (1778). By concentrating on Irish legislation at the beginning and end of the century it will be possible to observe the interaction between institutions and policy change over time. The Quebec legislation is included not only for comparative purposes; its location in the timeline will allow us to assess in what ways the Quebec Act and the Irish Catholic Relief Act that followed four years later were related, if indeed they were, and how these specific policy events contributed to the emergence of the general trend toward Catholic relief that was to unfold over the next century or so.

In each case, the historical material will be presented more or less as follows. First, a brief sketch of the events surrounding the formulation and passage of the legislation will be provided. Then the formal and informal institutional factors associated with government policy making that most influenced the policy process will be described. Next, the major actors

involved in the legislation process as defined by these institutional factors will be identified, and their sentiments concerning Catholic policy assessed.

Finally, the events surrounding the formulation and passage of the particular legislation will be looked at in detail, ending with an evaluation of how institutional factors influenced the policy outcome. These sections will place special emphasis on identifying and explaining institutional formation and change, how and why new institutions were created and perpetuated, or existing ones modified or eliminated, and how these changes affected the strategies and aims of the players involved in the policy processes and so influenced policy outcomes.

The conclusions will bring together the results of all three sections to see if the analysis succeeds in its two aims, that is to explain these three policy outcomes better than could prevailing approaches, and to provide a more accurate account of the movement toward Catholic relief by British administrators in these two peripheries than could prevailing explanations. A general discussion of the usefulness of this way of looking at state power and social change, and of the institutional approach in particular, as evinced by the preceding analyses will follow. As we shall see, the institutional approach offers an innovative way of looking at government policy making, state power and social change. It allows government policy processes to be analysed as complex amalgams of human action, institutions and contingency, thereby contributing to that area of state theory committed to opening up the "black box" of the state to reveal the true workings of state power. More than this, however, like those sociological approaches that acknowledge how diverse and multifaceted social life is, the institutional approach allows us to transcend traditional monocausal, evolutionary views of social change to see how social life, as represented by these policy events, unfolds out of the interaction of structure and human agency. The detail provided by the approach permits us

to come to a truer understanding of the connections between events that comprise long-term transformations. It so helps us to avoid making generalisations about long-term transformations that are empirically and ideologically suspect and avoid missing important details whose effects on social outcomes might otherwise be obscured.

## Chapter II: The Treaty of Limerick

The Treaty of Limerick signalled the end of the Jacobite war in Ireland. Protestant alarm at the blatantly pro-Catholic stance and conduct of the Irish administration appointed by James II turned to all-out religious warfare soon after news reached Ireland of William III's landing in England in November 1688. Louis XIV recognised an opportunity to tie up William's forces in Ireland and so improve France's prospects on the continent. He urged James II, who had fled to France on William's arrival in England, to go to Ireland and take over control of the predominantly Catholic Stuart forces from his commander in the field, the earl of Tyrconnell. When James arrived in Ireland four months later with a bevy of French troops, the kingdom was drawn irrevocably into the larger disputes concerning the English constitution and the rivalry between England and France.

The war in Ireland was a thorn in William's side, an "exasperating sideshow" in the words of J.G. Simms, to his campaigns against Louis XIV and his allies. William wished to bring the Irish war to a speedy end to free up troops for battle on the continent. By the spring of 1690, however, Williamite forces had failed to induce the Jacobite surrender the king had hoped for. He left the continent for Ireland to take care of matters himself.

William landed near Carrickfergus on 14 June 1690 with enough troops and artillery to overwhelm his opponents. William's defeat of the Jacobite forces at the Boyne on 1 July 1690 was decisive but he was premature in thinking that he had destroyed his opposition. The Boyne victory was followed by successes at Cork and Kinsale, but the Williamite advance continued to be hampered by Jacobite resistance. As the conflict dragged on, William (who had left Ireland in September) implored his general in the field, Godard van Reede van Ginkel, to negotiate an end to a war that had already tied up his

troops for too long. Ginkel spent the winter and spring of 1690/91 trying to come up with a settlement that would satisfy both sides. He was unsuccessful.

Fighting resumed that summer. Athlone, Aughrim and Galway fell to Williamite forces in July. The Jacobite army congregated in Limerick. Uncertain of his ability to take the city, and loath to spend another winter in the field, Ginkel continued to press for a settlement. A negotiated settlement became the priority of an increasing number of Jacobites too, as many began to question the wisdom of Tyrconnell's determination to stand firm against William's army and wait for French assistance.<sup>1</sup> Tyrconnell's death in mid-August further undermined the pro-French position. A bloody show of Williamite force on 22 September outside the city finally destroyed the Jacobite resolve to resist. With the presence of an English fleet in the Shannon and no sign that French help would arrive, Jacobite leaders decided that a negotiated settlement would be in their best interest. On 23 September, they approached the Williamite camp and asked for a capitulation and a cease-fire. After ten days of talks, terms were agreed. The Treaty was signed on 3 October 1691.

The Treaty of Limerick was comprised of both military and civil articles. The military terms provided for the transport of French troops back to the continent, as well as for any Irish soldiers who wished to enter service abroad. The civil articles stipulated, among other things, that Irish Catholics could continue to exercise their religion, provided it be "consistent with the laws of Ireland" or as those laws existed in the reign of Charles II. They also granted a general pardon to all those surrendering to William in five counties, allowing them to retain their lands, regardless of their religion, provided that they remain in Ireland and take an oath of allegiance to the new rulers. Further, the treaty stated that William and Mary would do their best to have the articles of the Treaty of Limerick ratified by the Irish Parliament.

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<sup>1</sup> James II quit Ireland a few days after the Jacobite defeat at the Boyne, leaving Tyrconnell once more in command of James' forces.

The terms of the military articles were carried out by Ginkel without much fanfare. Over the course of the next few months, 11,000 of the 14,000 Irish troops were dispatched to the continent. The civil articles, however, were to prove more contentious. Trouble began shortly after the treaty's signing when it was discovered that the version of the treaty sent to England for approval failed to include "all those under their protection in the said counties" as beneficiaries of the terms granted to individuals surrendering in the five counties. Whether this "missing clause" had indeed been part of the original text of the treaty, as the Irish and the treaty's authors insisted, or whether, as Protestants claimed, it was a ploy on the part of vanquished Irish Catholics to wrest more assurances from the victors than they were entitled to, was hotly debated. It proved to be a sticking point that contributed to the delay in the ratification of the treaty that William III and his officials, not to mention Irish Catholics, sought.

The treaty as it was finally passed by the Irish Parliament in 1697 bore little resemblance to the agreement signed on the battlefield six years earlier. The bill "For the confirmation of the articles made at the surrender of Limerick" contained no reference to the allowances made in the Treaty for the practice of the Catholic religion; neither was there any mention of the article that specified that only the oath of allegiance be demanded. It also altered considerably the terms under which land claims were to be heard, and the controversial "missing clause" was absent. In the six years that it took to ratify the articles of the Treaty of Limerick, the tolerant spirit that had characterised the original treaty had been suppressed. An examination of the institutional factors surrounding the events preceding the passage of the Treaty bill will help clarify the circumstances that led to this outcome.

### Formal institutional factors governing Irish policy making after the Glorious Revolution

Institutional factors are the organisational rules or patterns of interaction that constrain and enable the players involved in the policy-making process in various ways. Institutional factors that are "formal" are more enduring, more explicitly defined, and less variable than institutional factors of a more informal nature like norms and procedures. Although they are, like all institutions, subject to modification, even invalidation, they tend, except in the case of revolution or other extreme occurrences, to be slower to change, embedded as they usually are in the constitutional and legal spheres of the polity.

There were two important and connected formal institutional arrangements governing Irish policy making in the late seventeenth century. The first pertained to the constitutional and legal existence of the Irish Parliament, the second to the operation of a statute known as Poynings Law.

#### *Ireland's Parliamentary tradition:*

Irish policy fell under the jurisdiction of the English state. England's claim to Ireland dated to the twelfth century, when the papacy granted Henry II (1154-1189) the lordship of the island (Beckett 1969: 18). But it was not until the sixteenth century that real political incorporation occurred. Until then, the power of England's royal government over Ireland was nominal. The Norman conquest of Ireland had been incomplete. Although Anglo-Norman invaders exercised considerable influence over the island initially, they had neither the numbers nor the support from English kings to secure and maintain their authority in conquered territories. The native Irish began to retake the parts of Ireland that the Anglo-Normans had seized, gradually

reducing the size of the area over which the invaders exercised control (Martin 1973: 55). By the fifteenth century, most of Ireland was being ruled by independent magnates, native Irish and "Old English" (as the descendants of the Anglo-Norman invaders came to be called) lords. The power of the royal government was confined largely to the counties surrounding Dublin, an area that was to be referred to as "the English Pale" (Beckett 1969: 14; Cosgrove 1973: 58, 59). The native Irish came to affect Anglo-Ireland in other ways as well. Many of the Old English both outside and inside the Pale began to adopt native Irish culture, their language, custom, dress, and so forth.<sup>2</sup> The territorial and cultural "encroachment" of the native Irish on English lands and lifestyle, and the continuing strength and independence of the Gaelic and Old English "rebel" magnates operating outside the authority of the royal government, became increasingly disturbing to the English crown and loyal Old English subjects in Ireland (Cosgrove 1973: 60).

In 1541, an attempt was made by Henry VIII to strengthen royal power in Ireland. The kingdom had heretofore been ruled by delegating power to great Norman lords. Although this may not have been the most effective way to govern, it was the cheapest. The island was secured without having to spend much English money. The most powerful of these lords were the FitzGerald of Kildare who by the late fifteenth century had come to dominate Irish governance. They had procured a monopoly of the position of lord deputy of Ireland and, as king's representative, controlled the Dublin administration and the army. In June 1534, angered by reports that England was looking to remove the current Kildare lord deputy from power and replace him with an English official, Kildare's son mounted an offensive on the Pale. Henry VIII

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<sup>2</sup> The intermingling of Anglo-Irish and native Irish cultures had long been a source of distress and an inspiration for Parliamentary legislation. The famous Statute of Kilkenny (1366) included provisions prohibiting the adoption of Gaelic culture in any form, the Gaelic language or surnames, and forbade the practice of Gaelic games such as hurling as well as riding practices (Martin 1973: 49).

responded with military force and a war ensued that lasted until 1540 when the FitzGerald's were finally defeated. Ireland was declared by the Irish Parliament a separate kingdom under the crown and Henry became king (as opposed to lord) of Ireland.<sup>3</sup> Independent lords were required to declare their loyalty to their new sovereign by means of the policy of "surrender and regrant". According to this policy, the magnate surrendered his land to the king then received it back, establishing a formal, feudal relationship between landlord and monarch (Beckett 1969: 16-18).

Henry VIII's Irish policy was well received by the Old English in Ireland and actually worked to secure the allegiance of Irish lords for a time. But his attempt to subjugate Ireland without using force came ultimately to naught. That some Irish magnates had viewed their agreement with Henry as a mere formality and their loyalty as contingent became clear during Elizabeth's reign. Her efforts to extend and strengthen administrative control of the island provoked the wrath of many Irish lords. The threat of political assimilation was combined with religious apprehensions. Although acts of supremacy and uniformity had been passed by the Irish Parliament in 1536 under Henry VIII and under Elizabeth in 1560 they were nowhere strictly enforced (Wall, 1967: 3). Fear that stricter administrative reforms might be accompanied by a more concerted effort to impose Protestantism on the largely Catholic kingdom manifested itself in violence. Insurrections led by local lords in Munster erupted in 1569 and again in 1579, the lords this time assisted by Spain. Both rebellions were put down and the lands of the agitators confiscated and resettled by the crown. But another uprising in Ulster in the late 1590's, even after some years of negotiation with the Irish magnates there, convinced Elizabeth that the threat to English power presented by these

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<sup>3</sup> Brendan Bradshaw points out that the act proclaiming Henry VIII the king of Ireland was not of his doing. On the contrary, Henry was "unenthusiastic when it was mooted, procrastinated when it was presented to him for his approval, and was enraged when he discovered too late what he had committed himself to" (Bradshaw 1973: 76)

independent chiefs had to be eliminated. When Spanish forces who had come to assist the Irish were subjugated by English troops at Kinsale in September 1601, the Irish leaders found themselves overpowered. Hugh Roe O'Donnell fled Ireland for Spain; his brother Rory took up the fight, but surrendered to English forces in December 1602. Hugh O'Neill submitted the following March. England's authority over Ireland had been formally secured (Beckett 1969: 19-23).

England ruled Ireland through a crown-appointed administration and a Parliament consisting of a crown-appointed House of Lords and an elected House of Commons. Originating in the middle ages, the Irish Parliament, like its English counterpart, was instituted by the Normans to facilitate communication between the central government and local power holders, men on whom the political centre depended to rule in the name of the crown in the localities (Martin, 1973: 38-40). But as Norman power over Ireland diminished, so too did the jurisdiction of the Irish Parliament. By 1495, the Irish Parliament spoke for only four counties of the English Pale (Cosgrove 1973: 66; McCracken 1971: 5). Furthermore, it was dominated by Old English magnates; the native Irish were not represented. The Tudors improved the representative nature of the Irish Parliament somewhat: native Irish chieftains were allowed to attend Henry VIII's Parliament in 1542, and Elizabeth created a number of new counties during her reign (Ball 1889: 13, 15; James 1973: 7). But as the area represented expanded, sessions became less frequent. An Irish Parliament that met almost annually from 1461 to 1494 met only eight times from 1494 to 1536 (Bradshaw 1973: 70). Henry VIII called Irish Parliament only six times during his long reign, Mary held one Parliament in 1557-58, and Elizabeth only three, the last in 1585-86. The Irish Parliament did not meet again until 1613 under James I (Quinn 1942: 72-77).

The frequency of meetings did not improve much over the course of the

seventeenth century - only four official sessions were held before 1692. Nor did the Irish Parliament become more representative. To ensure that he obtain approval of legislation that would have been opposed by an assembly in which sat a majority of Old English representatives, James I remade the Irish Parliament to his liking. He created forty new boroughs, most in areas where Protestant English or Scottish had recently settled, and installed 106 new men in the Irish House of Commons, all of whom were loyal to the crown and "the religion of the court" (Ball, 1889: 17-18; Kearney 1973: 90; MacNeill 1917: 52-54). Many objected to James' actions, especially since most of the new boroughs were "rotten", with few or no inhabitants, and their "representatives" were chosen from the largely Protestant Irish administration. Yet their maintenance was important to the preservation of a "court party" in the Irish Parliament and their validity was confirmed by successive monarchs (Kearney 1973: 90; 92-93; McCracken 1971: 8-9; MacNeill 1917: 34-35; 53, 55).

Even though its membership was manipulated for political and religious reasons, even though it was unrepresentative of the population and met only sporadically before 1692, the Irish Parliament represented a long history of constitutionally ordained participatory governance in Ireland. It empowered Irish elites and placed a formal restriction on the autonomy of English monarchs and ministers just because it existed. It is true that the import of that restriction varied. The main reason for calling for a session of the Irish Parliament was to vote supplies, and if the hereditary revenues voted in the previous meeting were sufficient to sustain the Irish administration, army and other costs of government, no assembly would be summoned. This was one of the major reasons why the Irish Parliament did not meet for twenty-six years after Charles II's Parliament was adjourned in 1667 (McGuire 1979: 1). The monarch was still constitutionally bound, however, to summon the Irish

Parliament periodically. This was especially true after the Glorious Revolution. William III was obliged by the dictates of the revolutionary settlement to summon regular Parliaments and was, from all indications, prepared to fulfill his obligations in England and Scotland, as well as in Ireland (Hayton 1995: 281-82; McGuire 1979: 4).

### *Poynings' Law*

Ireland's government may have resembled England's, but this did not mean that Irish elites controlled Irish policy. From 1495 onward, the power of the Irish Parliament to legislate for Ireland was limited by Poynings' Law. In 1485, the chief governor of Ireland, the Earl of Kildare, convinced the Irish Parliament to pass legislation that ensured that he would continue as the head of the Irish government regardless of whether or not Henry Tudor was successful in his attempt to wrest the crown from Richard III. When Henry won, he confirmed Kildare's position, despite the latter's support of the Old English proponents of the Yorkist cause. In 1487, Kildare called an Irish Parliamentary assembly to declare the Yorkist pretender, Lambert Simnel, the true King of England and Lord of Ireland. Although Simnel's attempt to seize the crown failed, the incident demonstrated that Kildare's power over the Irish Parliament could be a threat to Henry VII. When Ireland welcomed yet another pretender in 1491, Kildare was finally dismissed. In his place, Henry installed an Englishman, Sir Edward Poynings, and assigned him the task of consolidating English authority over the Old English on whom the king depended to rule Ireland on his behalf, and refashioning the relationship between the Irish and English governments to prevent any future Irish chief governors from using the Irish Parliament as a cover for treasonable activities. The result was the passage by the Irish Parliament of Poynings' Law (Cosgrove, 1973: 64-66).

Poyning's Law stipulated that the Irish Parliament could not originate legislation, pass bills, or even meet, without the approval of the English government. The Irish chief governor and his council were required to submit bills to the monarch and the English Privy Council as grounds for a session. Once the meeting was sanctioned, the English Privy Council and the monarch could accept, modify or reject the bills. Those that were not suppressed were sent back to Ireland where they were voted on by both houses of Irish Parliament. The bills returned from England could only be accepted or rejected, however; neither house had the power to make amendments to the legislation (James, 1973: 12; MacNeill 1917: 18).

Opinions vary on why Poyning's Law was instituted in the first place. The "old" view that the procedure was put in place to paralyse the Irish Parliament was, some have argued, overstated. According to R. Dudley Edwards and T.W. Moody, it was the Irish Parliament, and not the English government, that benefitted from Poyning's Law during the first century or so of its existence. Irish Parliamentarians used it as a tool purposely to obstruct the legislative programmes of the administration (Edwards and Moody 1941). However, Brendan Bradshaw has pointed out that the establishment of the Poyning's procedure coincided with an abrupt reduction in the frequency of Parliaments, a decline in the judicial functions of the Irish Parliament, and a fall in the volume of significant legislation being tabled (Bradshaw 1973: 70-71), suggesting that perhaps the "old" view of Poyning's Law is not as inaccurate as Edwards and Moody have claimed. Regardless of its original intent, there is general agreement that Poyning's Law was used by the Irish and English administrations to limit the power of the Irish Parliament during the Lord Deputyship of Thomas Wentworth in the 1630's and 1640's and thereafter (Clarke 1972; Edwards and Moody 1941: 415).

By the end of the seventeenth century, the Poyning's procedure had

gone through some modifications. During Mary's reign, the crown allowed that the Irish Privy Council could draft and submit bills to the English Privy Council while the Irish Parliament was in session. After the Restoration, the Irish Parliament drew up legislation itself in the form of "heads of bills", which it presented to the Irish administration for review, where, if they were not suppressed by the Irish Privy Council, they became bills and were transmitted to England (James, 1973: 11-12; MacNeill 1917: 18, 26). Although these adjustments streamlined the process somewhat, and gave the Irish Parliament some influence over at least the initiation of Irish legislation, the Poyning's Law procedure continued to structure the way in which Irish policy was generated after the Revolution and throughout the greater part of the eighteenth century. The power that Poyning's Law granted the English crown over Irish policy was expressed in a memorandum to William III in 1690: "to present a government bill to the Irish Parliament 'was no more in effect than referring it to yourself, since by the constitution of the government the acts made must be first approved here [Westminster], before they can be admitted or debated there'" (quoted in McGuire 1979: 5).

The long tradition of holding an Irish Parliament and Poyning's Law were the main formal institutional factors that governed the relationship between Ireland and England and influenced the Irish policy making process in the years immediately following the Glorious Revolution. Together, they defined the basic structure of Irish policy making: who were the most important individuals and groups participating in the process and the principal "rules" these individuals were required to follow or take into account when negotiating policy. Let us now take a closer look at the major players in the process as defined by these factors.

### The players

The major players involved in the Irish policy-making were the English monarch and the English Privy Council; the Irish chief governor and his council; and the Irish Parliament. This section will provide a description of each of these players and try to establish their sentiments regarding the Treaty bill. This is important in order to begin to trace the way in which institutional factors influenced, and were affected by, these players' actions and strategies and ultimately their success or failure with regard to the policy outcome.

#### *The monarch:*

Undoubtedly, the most important player in the English government in the Treaty bill process was the king, William III. It was William who had encouraged his officer in the field to negotiate an end to the Jacobite war, who had approved of the terms granted, and who had agreed to do his best, along with Mary, to have the treaty ratified by the Irish Parliament. The Treaty of Limerick was essentially William's creation and it appears that he stood behind its tenets throughout most of negotiations.

William was pleased with the Treaty and from all indications intended to make good on its terms. But whether his pleasure stemmed from his relief that a troublesome war had finally been brought to an end, or from a genuine desire to see Catholics treated fairly and equitably, is more difficult to discern. William had not always been keen on granting such generous terms to the Jacobites. He would have much preferred their unconditional surrender, or, if that were not possible (as became increasingly clear as the war dragged on), a negotiated settlement that did not allow for too many concessions (Simms 1986c: 204). His declaration at Finglas in the summer of 1690, for example, demanded that the leaders of the Jacobite forces simply submit; it said nothing

about granting toleration to Catholics (ibid: 204). But William's resolve to secure a surrender without concessions had less to do with religion than with his desire to get hold of Jacobite land. He wanted their estates to help pay for the war and pay back his Protestant supporters in Ireland (Hayton, 1991: 208; Simms 1986b: 186; 1986c: 204). When finally William was forced to forgo the estates in the interests of ending the war, he did not protest to the charitable terms recommended by Ginkel. In William's view, it was only logical to allow religious toleration in Ireland to secure the support of the majority of the population (Hayton 1991: 208).

William's military ambitions also required that he take a tolerant stance towards Catholics in Ireland. Alliances with Catholic countries were required to do battle with France. It was often necessary when negotiating with Catholic allies to assure charitable treatment of Catholics in his own realm as an indication of good faith. This was, in fact, a situation in which William found himself during the years preceding and following Treaty bill negotiations. When in 1695 Irish Catholics learned that a bill for the suppression of monasteries and the banishment of all the Catholic regular clergy had been transmitted by the Irish administration to England, they turned to William's ally, Emperor Leopold, for assistance in blocking the legislation. Through his envoy, the Emperor cautioned William that passage of the bill could jeopardise the whole alliance and asked that the bill not be laid before the English Privy Council. William complied (Simms 1986d: 237-38; Troost 1990: 244-45).

More practical considerations aside, it seems William may have just been more tolerant of religious differences than many of his contemporaries. Although raised in the Netherlands as a strict Calvinist (van den Berg 1990: 21-23), he grew up in a country where different religions coexisted relatively peacefully (ibid: 19-20), a situation that may have, if not erased his devoutness,

tempered his Protestant leanings. Most of his friends were apparently tolerant of Catholics, and many of his personal servants and military officers were Catholics. He even allowed mass to be sung every day in his army (Baxter 1966: 130-31). According to Gilbert Burnet, one of William's advisors, the king was unequivocal in his support of toleration in his discussions with William Penn: "no man was more for toleration in principle than he was: he thought the conscience was only subject to God: and as far as a general toleration, even of papists, would content the king, he would concur in it heartily" (quoted in van den Berg, 1990: 31).

William III maintained a pro-Treaty stance during the negotiation process. Passage of the Treaty in its original form would have benefitted the king both practically, as a reassurance to Irish Catholics and his Catholic allies, and personally, as a reflection of his comparatively tolerant nature.

#### *The English Privy Council:*

The English Privy Council dates back to the reign of Henry III (1216-1272) although it was under Edward the I (1272-1307) and Edward II (1307-1327) that it acquired the title "The King's Ordinary or Privy Council" (Ball 1889: 261). It was, in theory, an advisory body comprised of trusted men chosen by the monarch with whom he or she consulted before making any important decisions. Although the monarch was under no obligation to confer with these men or even heed their advice, the Privy Council was an accepted part of the government machinery, and was considered, by the English Parliament anyway, as the only proper body to give advice to the monarch, aside from Parliament itself (Thomson 1938: 102, 104).

Privy Council membership was acquired as "a reward for services rendered, an authority accompanying an executive position, or the consequence of rank" (Johnston, 1963: 89). No doubt as a result of this method

of appointment, the number of Privy Councillors increased over time to a point where the council became quite large. Under the Stuarts, membership rose from twenty-seven at the Restoration to forty in 1664 and to fifty in 1675. But Charles II's Privy Councils still managed to conduct a considerable amount of business in a wide range of areas in spite of their size. The king often attended meetings, where issues such as petitions, bills that had passed the English Parliament, treaties, and war strategies were discussed. Granted, Privy Council meetings never approached full attendance. The quorum was set at four in 1675, an action that must have facilitated the efficiency of these gatherings (Thomson 1938: 103).

As the reign of the Stuarts progressed, and the workload of the council increased, the sixteenth and seventeenth century practice of assigning Privy Council work to smaller committees became increasingly prevalent (Adams 1956: 349-50; Smith 1955: 356-57, 377; Thomson 1938: 104). Separate committees were appointed to deal with foreign affairs and intelligence, the military, trade and commerce, and with Ireland. With more and more of the responsibilities of the Privy Council falling to committees, the power of the Privy Council proper declined. Decisions were often made without its knowledge, and Charles II repeatedly ignored its counsel, dissolving Parliament and dismissing council members as he liked (Thomson 1938: 106). Gradually, the actions of the Privy Council were reduced to little more than the rubber stamping of decisions made by other government departments or council committees (ibid: 105, 211). Meanwhile, monarchs turned increasingly for advice to a smaller body of advisors who were influential in Parliament and could be depended on to support government policy. Members of this group, the king's chosen ministers mostly, could usually be found at council meetings and most meetings of council committees. Because of their close association with the monarch, and the exclusive knowledge that relationship

afforded them, these men exerted a disproportionate amount of influence at council and committee gatherings. Their functions, however, were not specific and their position relative to the monarch, the English Parliament and the Privy Council was undefined, a situation that unnerved English MPs but, because of the monarch's authority to appoint his own executive and consult whomever he chose, they were powerless to change (Adams 1956: 350; Thomson 1938: 104-107).

The Glorious Revolution did not produce a revolution in the functioning of the English Privy Council. The monarch still retained control over many areas of government, including the executive. William could appoint whomever he liked to his Privy Council. Likewise, William was free to choose his ministry as well as any other men who would be his special advisors, without recourse to Parliament. He maintained the Stuart practice of conferring with a "cabinet" of special advisors of his own choosing who continued to control the council and its various committees. "In a word, the Privy Council, after the Revolution, was a useful piece of governmental machinery rather than a great advisory body" (Adams 1956: 365-68; Thomson 1938: 211-12).

So the decisions of the English Privy Council regarding Irish policy, whether made by the Irish committee or the council as a whole, were essentially a reflection of the wishes of the king and his appointed ministers. We have already seen that William III would have maintained a pro-treaty stance during the Treaty of Limerick bill negotiations. His Privy Council would have held, or at least agreed to uphold, a similar position.

#### *The Irish House of Commons:*

The Glorious Revolution ushered in the beginnings of what was to be called the "Protestant Ascendancy" in Ireland. William III's victory in the

Jacobite war destroyed Irish Catholics' hopes of seeing James II restored to the English throne and ruined the Catholic interest in Ireland. From 1688, and throughout the eighteenth century, positions of power in the Irish government were monopolised by an Irish Protestant elite who belonged to the (Anglican) Church of Ireland. This happened despite the fact that Protestants were a religious minority in Ireland, a group whose members were outnumbered by Catholics by an estimated four-to-one.

The Irish House of Commons consisted of 300 elected members. After the Glorious Revolution, the Commons was dominated by representatives of the Protestant victors (McCracken 1971: 7, 9). These Irish MPs were in general intolerant of Catholics and Catholicism, an attitude influenced by their recent experiences under James II and the Jacobite war, as well as the long career of religious turmoil that characterised Irish history. Their most immediate concern was that the majority Catholic population in Ireland would attempt to overthrow the newly installed Protestant leadership, alone or in concert with French invaders. Their fears were fuelled by reports that Irish expatriates living in France, and even local populations, were financing or assisting French privateers targeting English ships off the coast of Ireland (Connolly 1992: 236-37; McGrath 1996: 28). They were also alarmed at the post-war increase in offenses committed by "rapparees", bands of Catholic outlaws who victimised mostly Protestants (Connolly 1992: 203-209; McGrath 1996: 28). But the main issue was land. At the beginning of the seventeenth century, Catholics owned most of the land in Ireland. The confiscations that occurred under Cromwell in the 1650's reduced the proportion of land owned by Catholics dramatically, from an estimated two-thirds to four-fifths of total profitable land in 1641, to one-third to one-fifth by the Restoration (Simms 1976: 14-17, 160). Protestants believed that a Catholic Ireland would mean that land confiscated in the past would be forcibly returned to their original

Catholic owners, and that the Protestant owners would, as a result, suffer a loss of power and liberty. Indeed, Jacobite Ireland had made clear that the land question was still an important one during the meeting of the so-called "Patriot Parliament" under James II in 1689. A Parliament dominated by Old English interests had passed legislation repealing the Restoration land settlement and authorising Catholics who had lost their lands during the Cromwellian confiscations to take steps to recover their property. The proceedings and acts passed by the Patriot Parliament were nullified by the Williamite Parliament of 1695 and its records burned. Nevertheless, it served as proof to anxious Protestants that their property would be in peril in a Catholic Ireland (Farrell 1973; Simms 1986a).

The activities of Catholic and Jacobite Ireland combined with tales of atrocities committed against Protestants during the 1641 rebellion to increase Protestant apprehensions. In October 1641, native Irish leaders in the north, concerned that the growing intolerance of the English Parliament towards Catholics and Catholicism might lead to their persecution in Ireland, had resolved to overthrow the Irish government. Within months, they had been joined by the Old English of the Pale and other Catholic gentry who, distrusted by the Irish and English administrations because of their faith, saw an alliance (and victory) as the only means to protect their land and status. The conflict, complicated and exacerbated by the Civil War in England, raged for over a decade until the Catholic alliance was finally put down by Cromwell's Protestant Parliamentary forces in 1652 (Beckett 1969: 80-103). But "atrocious stories" describing the slaughter and torture of Protestants at the hands of Catholic rebels lived on into the nineteenth century (Bartlett 1992: 6-9; Beckett 1969: 83). The fact that many Catholics suffered the brutality of Protestants during the uprising, or that time and intolerance had probably exaggerated the savagery, did not stop Protestants from propagating the stories as proof of

the barbarity of Catholics and the potential dangers of Catholic rule.

Fearful of any legislation that might empower Catholics, the House of Commons were opposed to the lenient terms contained in the Treaty of Limerick.

*The Irish House of Lords:*

The Irish House of Lords consisted of twenty-two spiritual peers - four archbishops and eighteen bishops of the Established Church - and a large number of lay peers, about 100 to 125 (James 1979: 52; McCracken 1971: 5). Most Irish peers - usually more than two thirds - resided in Ireland and most were politically active at some levels of government, although less than thirty attended sessions during William III and Anne's reigns (James 1979: 65; 1995: 99). In the years following the Glorious Revolution, it was the spiritual lords who were the most influential. As a minority ruling class, the Protestant-led government suffered for qualified lay people to fill government and administrative positions. The Church of Ireland bishops thus acquired a greater political eminence than their counterparts in England (Connolly 1992: 65). There was a larger proportion of bishops in the Irish upper house than in the English: approximately one in five peers were bishops in Ireland compared to about one out of seven in England. And they were more active, comprising more than thirty percent of the House during sessions in the first five decades after the Revolution (James 1979: 65; 1995: 129). As a result, they took a leading role in assembly business (McCracken 1971: 5-6).

Because of their political influence, it was usual for the crown to appoint English bishops to the Irish peerage (McCracken 1971: 6). Indeed, more than half of the spiritual peers serving between 1692 and 1800 were Englishmen. Of those who were born in Ireland, the majority descended from post-Reformation families, the "New English" interest (James 1995: 148).

Most of the temporal peers were born in Ireland and had deep roots in Ireland. Francis James has shown that the majority of the resident peers attending Parliament after the Glorious Revolution came from families that were established in Ireland during Charles I's reign or before (James 1979: 60; 1995: 11-12). The most influential of these peers in the post-Revolution period were those descended from the English and Scottish "Old Protestant" families established in Ireland during the sixteenth and early seventeenth centuries. But a number of others could trace their ancestry to Catholic "Old English" interests (James 1979: 69; 1995: 99-101).

So the Irish House of Lords in the aftermath of the Revolution was dominated by spiritual peers, most of whom were either born in England or came from families that had only recently arrived from England. Of the lay peerage, the majority were descendants of the "Old Protestant" interest, families that had been allied with the government interests since the Interregnum (James 1979: 60-61). These lords would have endorsed English government initiatives. Many of the remaining temporal peers were of "Old English" heritage (or had only recently become Protestant) and so would have been sympathetic to the Catholic interest. A good number of the Lords in the Irish upper house would have been supportive of the Treaty of Limerick bill.

#### *The Irish Lord Lieutenant:*

The head or chief governor of the Irish administration was known at first as the King's Justiciar or Deputy, then, later, the viceroy or Lord Lieutenant (Ball 1889: 6-7). The Lord Lieutenant was the monarch's personal representative in Ireland, the head of the Irish executive and the commander-in-chief of the military. His responsibilities were wide-ranging and included delivering commands and directives to troops and civil authorities, and issuing warrants for payments from the Irish treasury and for appointments to high-

level positions (Hayton 1975: 42). His most important task, however, was to ensure that bills - supply bills in particular - approved in England were passed by the Irish Parliament with as little fuss as possible (McCracken 1971: 15)

It was an English nobleman who occupied the position of Irish Lord Lieutenant in the early modern period. His appointment usually had less to do with his abilities or knowledge of Ireland than with his association with the current English administration. His tenure depended on the mutability of English politics. Furthermore, at the end of the seventeenth century and throughout most of the eighteenth, the Lord Lieutenant was not a resident of Ireland. He only stayed in the kingdom during Parliamentary sessions, usually about six months every two years, returning to England once the session was over (ibid: 15). When the Lord Lieutenant was absent, Ireland was governed by one or more Lords Justices (ibid: 17).

Between 1690 and 1697, Ireland was appointed two Lord Lieutenants/Deputies and several Lords Justices. Their views on the Treaty varied. When William III left Ireland in September 1690 he declared Viscount Sydney and Thomas Coningsby as Lord Justices of Ireland. They were sworn in on 15 September and were joined by Charles Porter in December. Both Porter and Coningsby were instrumental in the negotiation of the Treaty of Limerick and were present at its signing on 3 October 1691. Henry Sydney was a loyal friend of William III and supported the Treaty and its terms. He was sworn in as the Lord Lieutenant of Ireland 4 September 1692. Porter and Coningsby stayed on as Lord Chancellor and Vice-Treasurer respectively. When Sydney was recalled the following June, Lord Capel, Sir Cyril Wyche and William Duncombe were sworn in as Lords Justices on 28 July 1693. Henry Capel was known for his anti-Catholic sentiments; Wyche, who had come to Ireland originally as Sydney's Chief Secretary, and Duncombe were both moderates. Capel was sworn in as the Lord Deputy on 27 May 1695. He died the following

year. Porter was appointed interim Lord Justice on 2 June 1696 but died in December. Charles Powlett, Marquis of Winchester and Henry de Ruvigny, earl of Galway, became the next Lords Justices on 31 May 1697, with John Methuen as Lord Chancellor. Winchester, Galway and Methuen were all considered Protestant hardliners (New History of Ireland, VIII: 254-256; Troost, 1990: *passim*).<sup>4</sup>

So during the six years that it took to ratify the Treaty of Limerick, men more tolerant of Catholics were replaced in the offices of Ireland's administration by less tolerant officials.

*The Irish Privy Council:*

Irish Privy Council shared a number of characteristics with its English counterpart. It originated around the same time as the English Privy Council (Ball 1889: 7), and acted as the link between the administration and the Parliament, providing advice and assistance to the head(s) of the executive. Similarly, members were appointed not so much for their consulting or arbitrating skills but as a reward for services rendered or as a perquisite of one's position or rank (Johnston 1963: 89). It was also a fairly large body, its membership totalling thirty-five in 1690, although meetings were only attended by, at most, one-third that number (James 1995: 56). But whereas the English Privy Council (at least technically) decided policy together with the monarch, the Irish Privy Council was required to play a more supportive role in relation to the Irish chief governor. Councillors were to help him to institute policies transmitted from England by providing counsel or by backing directives in the Irish Parliament (Johnston 1963: 90). As more than

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<sup>4</sup> Galway in particular has been portrayed as an virulent anti-Catholic who contrived to have anti-Catholic legislation brought to Ireland in revenge for the injuries suffered by his fellow Huguenots at the hands of Louis XIV. This characterisation does not square with the actual behaviour of Galway who from all indications conducted himself as an able politician who sought simply to reconcile the Irish Parliament (Kelly 1987).

half of its membership sat in the upper house, this support came for the most part from the House of Lords (James 1979: 52; 1995: 56). We have already seen that a good number of the peers, lay and spiritual, attending the sessions of the House of Lords during the period leading up to the passage of the Treaty of Limerick bill would take a pro-Treaty stance for either political or religious reasons so at least some of the members of the Privy Council would have been pro-Treaty as well. Members were, however, appointed upon the recommendation of the Lord Lieutenant, so some would reflect the views of the Irish chief governor.

*Other Actors:*

In addition to the major players discussed above, there were other groups and individuals in Ireland who, although their positions in the Irish policy-making process were not specified by any formal institutions, nevertheless had the potential to influence negotiations by more informal or indirect means.

*Irish Catholics:*

As the majority population in Ireland, Irish Catholics had the capacity to impact on the Treaty bill negotiations. But William III's victory in Ireland ruined the Catholic political interest there. Devastated by years of war, feared and disdained by the ruling Ascendancy, perhaps what hurt Irish Catholics the most was the loss of their leadership. Most of the Catholic nobles and gentry who had not been killed or exiled had fled to the continent, leaving behind a Catholic populace that, although it comprised a majority in Ireland, was essentially powerless (Bartlett 1992: 17; Hayton 1991: 211). It is true that Irish Catholics did have some success in delaying a bill for the banishment of

Catholic regulars 1695.<sup>5</sup> But that small victory had more to do with William's desire to maintain good relations with his ally Emperor Leopold than with Irish Catholic power *per se*.

*Irish Dissenters:*

Protestant Dissenters were another group with the potential to influence Irish policy. Along with the accession of James I came increasing ministerial concern over Ireland's northern province of Ulster. Ulster was the most Gaelic, most "native", area in Ireland, and fears that the region's powerful lords might challenge English authority in the province prompted the English government to launch extensive reforms there. Two of the most powerful lords, the earls Tyrone and Tyrconnell, disenchanted with the loss of their old authority and under the suspicion of the English government, decided to quit Ireland for the continent in 1607. The "flight of the Earls" signalled the end of Gaelic Ulster. Six of the nine Ulster counties were declared to be at the disposal of the king and open for colonisation (Beckett 1969: 43-45).

The Ulster plantation transformed the Gaelic province into an Anglo-Scottish preserve. Lowland Scots made up an especially large proportion of the population settling in the north east, in Donegal and later in counties Antrim and Down. As a result, these areas took on a strong Scottish character, reflecting the culture and traditions of Lowland Scotland. This included the practice of Presbyterianism which was, at least initially, tolerated, despite the legal primacy of the Church of Ireland (*ibid*: 47-48).

Although not subject to the same grievous suspicions and treatment as were Catholics, Presbyterian Dissenters did experience discrimination in Ireland. Their opposition to the Church of Ireland did nothing to endear them

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<sup>5</sup> See below p. 37.

to the Restoration government. The 1660s saw Presbyterian ministers removed from their incumbencies and congregations harassed. The enactment in Ireland of the Act of Uniformity in 1666 placed Dissenters under more serious restrictions. Throughout the 1670's troops were sent into Ulster whenever there were disturbances in Scotland (Connolly 1992: 26-27; McGuire 1987: 257, 259, 264).

The accession of James II and the pro-Catholic policies of his Irish Lord Lieutenant, Tyrconnell, enhanced the unity of Irish Protestants, as did the ensuing war (Beckett 1948: 25-27; McGuire 1987: 265-66). Although this unity did not persist after the Revolution - Anglican intolerance soon became apparent, particularly amongst the Irish bishops in the House of Lords and Privy Council (McGuire 1987: 268) - the larger threat of a Catholic insurrection encouraged the indulgence of Irish nonconformists by Irish political leaders. Irish Dissenters were essentially treated as "second-class" Protestants. They could enter the public service (an English Act in 1691 replaced the oath of supremacy, in effect since 1560, with other oaths less objectionable to nonconformists) but they were still subject to the restrictions contained in the Act of Uniformity; their ministers were supported financially by the state, yet they had no legal right to exist (Beckett 1948: 29). Even so, as Protestants, they were beneficiaries of Protestant rule, and were as opposed to and as fearful of leniency towards Catholics as their Anglican counterparts. Aggrieved by the Irish government, they nevertheless supported it, and did not bring any independent pressure to bear on Irish Catholic policy.

#### Informal institutional factors governing Irish policy making after the Glorious Revolution

Formal institutional factors define the basic characteristics of the policy-making process, the individuals and groups that are permitted,

officially at least, to participate in the process and the fundamental rules that those players must follow, or take into account, when negotiating policy outcomes. In many cases, however, these formal factors describe the policy process at a fairly high level of abstraction. Although they supply the basic guidelines for behaviour, they do not specify how exactly their conditions should be implemented or met.<sup>6</sup> This is something that informal institutional factors help to do, the norms and procedures that arise out of the interactions that occur between players seeking to influence policy outcomes within the bounds of the more formal factors. According to the institutional approach, informal institutional factors are less durable, more variable, and have a greater propensity for change than do formal structures. They represent the more-or-less established "ways of doing things" that, while they govern the behaviour of actors, are more readily subject to modification by those actors because they are not as embedded in, in this case, the structure of the state.

Informal institutional factors exist and arise at many different levels of interaction: among states, among state departments, among departmental bodies, among the individuals occupying positions within those bodies. In assessing the informal institutional factors involved in the formulation and passage of the Treaty of Limerick bill, the following will concentrate on those factors that either helped or hindered the "proper" operation of the formal institutional factors governing Irish policy making. There will also be a greater emphasis on the "higher" sorts of informal institutional factors, more focus on the patterns of interaction affecting and arising among groups and individuals operating and interacting at a more "official" level, and less on the norms governing personal relationships. With these criteria in mind, the most important informal institutional factors influencing the events

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<sup>6</sup> This of course varies depending on how detailed is the constitution of the particular state. The British (unwritten) constitution is less specific than the American (written) constitution. The latter is more explicit in describing how the state is supposed to work.

surrounding the ratification of the treaty were those that pertained to the relationship between the Irish executive and the Irish Parliament; to the relationship between the English executive, particularly the monarch, and the English Parliament; and to the policy-making process itself.

*Informal institutional factors governing the relationship between the Irish executive and the Irish Parliament*

To establish what were the informal institutional factors governing the relationship between the Irish executive and the Irish Parliament during the passage of the Treaty of Limerick bill, it is necessary to examine the events leading up to its ratification.

*The Parliamentary debacle of 1692*

The first meeting of the Irish Parliament under William III was held in October 1692. There were a number of reasons why it was necessary that William call a Parliament in Ireland. First, as we have seen, there was the Irish tradition of participatory governance. William needed the support of Irish influentials to maintain the English interest in Ireland. It would not have been prudent for him to forgo calling a Parliament in Ireland and garner the ire of the men who governed the island in his name (McGuire 1979: 4). Second, the pressure on William to call a Parliament was especially strong because of the principles realised by the revolutionary settlement. Henceforth, it was necessary for the monarch to work through representative assemblies to establish his or her authority (Hayton 1995: 281). William had pledged several times during the war to summon a Parliament in Ireland once things had settled down (McGuire 1979: 2), a sign of his commitment to tradition and principle. A third and more practical reason for calling an Irish Parliament was that William needed money. The king's penchant for

international warfare meant that eventually the hereditary revenues that had been voted during Charles II's reign would need supplementing. He had to go to Parliament to procure the additional supplies required to pay for the costs of war and government (Beckett 1969: 152; Hayton 1995: 282). Finally, there was his promise made to the Jacobites in the Treaty of Limerick that he and Mary would "endeavour to procure" ratification of the Treaty by the Irish Parliament "as soon as their Affairs will permit" (Simms 1986c: 219). It is difficult to conceive of how William could have avoided summoning an Irish Parliament if indeed he had wanted to.

Of course whatever constraints any of the above demands placed on William were tempered by the existence of Poynings' Law. The Poynings procedure would prevent the passage of any legislation to which William and his ministers might be averse and ensure endorsement of acts that they wished approved. This was true, provided, of course, that everything worked the way it was supposed to. For the key to the "proper" operation of the Poynings procedure was that the Irish Lord Lieutenant have the capacity to usher through the Irish Parliament legislation that had been sanctioned by the English executive. This meant that the Irish Lord Lieutenant had to be able to control or at least manage the Irish Parliament to ensure passage of the desired legislation.

Opinions varied concerning what would be the disposition of the Irish Parliament once it was called. There is some indication that the Irish Lords Justices, Porter and Coningsby, delayed transmitting bills to England after the decision to hold an Irish Parliament had been made, concerned that the assembly "will not be for the King's service" (Troost 1983: 50-51). It is certainly true that Irish Protestants opposed the Treaty of Limerick and were becoming increasingly hostile toward an administration that endorsed and was determined to uphold its provisions (McGuire 1987: 269-70). Porter and

Coningsby had begun hearing land claims under the Treaty almost immediately. By January 1692 they had restored the estates of sixty people. Porter had also stopped all lawsuits against supporters of James II in accord with the sixth article of the Treaty. These actions were a clear sign that William and his Irish executive were serious in their intent to abide by the conditions of the Treaty (Simms 1976: 46; 1986c: 213). Irish Protestants were fearful that these generous land terms left Irish Catholics with too much power and the potential to again take up their fight for domination of Ireland (Connolly 1992: 264-65; McGuire 1979: 3; Troost 1990: 231-32). Protestants were also disturbed by William's willingness to allow ex-Jacobites into his army, an action intended to help decrease rapparee activity in post-war Ireland, but interpreted as a dangerous trend that could threaten state security (McGrath 1996: 30-31). English administrators were well aware of the explosiveness of the Irish situation. A state paper of 1690 wondered whether William should abolish the Irish Parliament and rule the island directly from England (Beckett 1969: 151).

The new Lord Lieutenant, Henry Sydney, was, nevertheless, optimistic about an Irish Parliament. It is not that he was unaware of the volatile political climate. In a letter to the secretary of state in England before Parliament sat, he expressed his concerns regarding the conflict over preparation of a bill of indemnity that was based on one of the articles in the Treaty of Limerick: "What I fear most is the violence that will be against the Papists, for they [Irish Protestants] do hate them to the greatest degree imaginable" (quoted in Troost, 1983: 51). He did not, however, believe that anti-Catholic sentiment would translate into political problems. So confident was Sydney that the Irish Parliament would be conciliatory toward the new administration that, contrary to the intentions of the crown, he and his council sent over to England three money bills to be considered with the other

legislation proposed for the first session (Beckett 1969: 152-53; McGuire 1979: 7-8).

That Sydney was so "upbeat" in the face of the growing hostility of Irish Protestants towards the administration and Irish Catholics is not hard to understand. After all, the Poyning's procedure virtually guaranteed (at least in theory) the subservience of the Irish Parliament. Besides, having just been delivered by William's army from Catholic domination, how could Irish Protestants be anything but acquiescent (James 1995: 54; Szechi and Hayton 1987: 265)? The Irish Parliament had not had much practice challenging the Irish administration and the crown anyway. It had only met five times before in that century; the last "official" session was held in 1665-66. It is true that, in all of these sessions, disagreements had arisen, with Irish Parliamentarians raising concerns of a constitutional nature.<sup>7</sup> But most of these disputes could be explained away. The resistance of Irish recusants in the early seventeenth century could be dismissed as irrelevant now that the Irish Parliament was exclusively Protestant; the constitutional claims of the "Patriot Parliament" could be written off in the same way. And opposition to Wentworth could be interpreted as a struggle against the "tyranny" present in England and Ireland in the last years of Charles I.<sup>8</sup>

Sydney's reading of the situation proved far from the mark. Although the session that opened in October began well enough, with the assemblies confirming their loyalty to William and Mary and promising to proceed with "moderation" (Troost 1983: 57), the House of Commons quickly became uncooperative. Only four out of the ten bills that had been prepared for the meeting were ratified by the Irish Parliament and passed into law (McGuire 1979: 16-19). Out of the six that were rejected, one was a money bill that Sydney himself had insisted would pass through Parliament without any

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<sup>7</sup> See above pp. 170-71.

<sup>8</sup> I am grateful to Sean Connolly for enlightenment on these points.

difficulty. They also voted down a government bill confirming the Acts of Settlement and Explanation from Charles II's reign, and a bill declaring void the proceedings and acts passed by the "Patriot Parliament" of 1689. Both of these bills the Irish Parliament saw as beneficial to Irish Catholics, the first because it legitimised some Catholic land holdings, and the second because it would erase the record of Catholic treachery under James II (James 1995: 55). But it was not anti-Catholic sentiment that ultimately galvanised the Irish Parliament. Rather, the House of Commons decided that it would assert its "sole right" not only to initiate money bills but to decide the "ways and means" of those bills. As we have seen, the Irish Parliament had been able to introduce "heads of bills", including money bills, since the Restoration. But the insistence of MPs that they had the right to decide how that money was to be raised was new. The Commons attack challenged directly the power of the Irish and English executive (ibid: 19-21). So demanding and disagreeable was the Irish House of Commons that Sydney prorogued Parliament on 3 November, less than a month after its first meeting.

Clearly, Sydney failed in what was the Lord Lieutenant's primary responsibility: that of ensuring the smooth passage through the Irish Parliament of bills approved in England. Sydney had not anticipated the need to establish executive dominance over the Irish Parliament. He and his administration had wrongly assumed that gratitude toward William for his defeat of the Jacobites and the Poynings procedure were enough to ensure that Irish Parliamentarians would endorse government-sanctioned bills (McGuire 1979: 29-30). The first meeting of the Irish Parliament under William III, although subject to the formal restrictions of Poynings' Law, was characterised by an almost complete absence of any informal institutional factors that could facilitate the proper operation of the Poynings procedure.

*Henry Capel's solution*

So the first meeting of the Irish Parliament under William III did not bode well for bills that were contrary to the will of the Irish Parliament. Any legislation confirming the terms of the Treaty of Limerick would likely have a hard time passing an anti-Catholic assembly in the mood for a fight, that is, of course, unless the administration could come up with a way of controlling the Irish Parliament.

That Henry Sydney would be the man to accomplish this was unlikely. It became clear soon after the prorogation that Parliamentary leaders, those who had championed the "sole right" campaign against the administration, wanted Sydney out. A number of them left Ireland to air their complaints against the Irish administration in England. They convinced the English Parliament that an investigation into the affairs of Ireland was necessary and in February 1693 an inquiry began. Witness after witness detailed the transgressions of the Dublin administration: quartering abuses, their lenient treatment of Catholics, their alleged mismanagement of the revenue, Sydney's sudden termination of Parliament. The investigation prompted the English commons to send an address to the King requesting that he deal with matters in Ireland. In June 1693, William III ordered a dissolution of the Irish Parliament and Sydney was recalled (McGuire 1979: 23-26; Troost 1983: 68-73; 1990: 237, 240-41).

Sydney was not the only one targeted by the "sole right" men. Porter and Coningsby were also accused of mismanagement of Irish affairs. Now it was their turn to face the wrath of Irish Parliamentarians determined to see them removed from the Irish executive. In December 1693, the English House of Commons was presented with articles of high treason and other crimes and misdemeanours against the Lord Chancellor and Vice-Treasurer. Included in the list of offenses was the charge that they "openly favoured and supported

the Papists in their robberies and their outrages committed upon the Protestants, refusing then to allow them liberty of taking their legal remedies against the Papists", an obvious reference to Porter and Coningsby's commitment to the sixth article of the Treaty of Limerick that forbade private suits against Catholic beneficiaries of the terms of the Treaty. This time, however, the English Parliament ruled against the Irish Parliamentarians, dismissing the charges against Porter and Coningsby and ruling against their impeachment (Troost 1983: 81-87).

Henry Sydney was replaced by three Lords Justices, William Duncombe, Cyril Wyche and Henry Capel. It was Capel, however, who emerged as the dominant administrator of the three. His success derived from his ability to placate both the English executive and the Irish Parliament. To the king and his ministers, Capel presented himself as a hardworking administrator, committed to establishing good relations between the Irish government and Parliamentarians. That it was a role he continued to play throughout his career in Ireland is evident from a letter to Shrewsbury, the secretary of state, in 1695, in which Capel apologised for not having written in some time, having been delayed "by a little journey I took, to run for a plate, the better to discourse with the gentlemen of the country" (quoted in McGuire 1979: 28). He always put a positive "spin" on Irish affairs when writing to English administrators anxious that another Irish Parliament would resurrect the "sole right" debate, exuding confidence that things could be put right with some skillful political maneuvering (ibid: 28). He encouraged the English executive to call a Parliament soon to replenish the depleted coffers of the Irish government (Troost 1983: 91).

To the Irish House of Commons, Capel represented himself as their champion. He quickly allied himself with the "sole right" men - or as Capel called them, the "angry gentlemen" - and set about cultivating their support.

For it was the Lord Lieutenant's job that Capel was after. If he could persuade the Irish Commons to back him, he would have a chance at convincing the English executive that he was the most capable of delivering a trouble-free Parliament and win the chief governorship (ibid: 95).

By the summer of 1694, Capel's strategy began to bear fruit. In April of that year, the king and his council had told Shrewsbury to ask the Irish Lords Justices for their opinion on the status of the "sole right" issue. In July, the trio submitted their reports. Wyche and Duncombe predicted that Parliamentarians would press the issue, and that there would be problems in the assembly. In their opinion, it would be unwise to call a Parliament. Not surprisingly, Capel came to the reverse conclusion, asserting that "A good session can take place if the English Protestant gentlemen are convinced that there is a real intention in the Government to do them good" (quoted in Troost 1983: 94).

The calling of the Irish Parliament was already overdue as far as William was concerned. The last session had only approved one of the two money bills sent from England and the king wished to hold a Parliament to vote more supplies and otherwise settle affairs in Ireland. He was angry that, by waiting so long to submit their opinions, the Lords Justices had forced yet another delay in the summoning of the Irish assembly. William was particularly upset with Wyche and Duncombe who William may have suspected put off responding to his request on purpose.<sup>9</sup> Wyche and Duncombe's recommendation that the king proceed with caution convinced William and his ministers that the two would be unable to manage a session if it was called, and they were dismissed (ibid: 96).

Capel learned that he was to be appointed chief governor of Ireland in

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<sup>9</sup> William said to one of his ministers, "the time is elapsed for holding a Parliament this year, whence those two Wyche and Duncombe who were adverse to a session, have indirectly obtained their end" (quoted in Troost 1983: 96).

March 1695 and he was sworn in on 10 May. A number of "sole right" men were appointed to his administration on his recommendations: Robert Rochfort became attorney-general and Alan Broderick was made solicitor-general; others were granted posts in the Irish Privy Council, the exchequer's office, and the judiciary (James 1995: 57; McGuire 1979: 28-29; Troost 1983: 100-101). An announcement was made that a Parliament would be held in Dublin on 27 August and in June Capel sent some bills to the English Privy Council for approval. Included was a money bill for an additional excise on beer, designed to bring in only a token amount of revenue, about £7000. The excise bill passed through Parliament without incident. Three days later, the commons announced that it would raise £163,000. After a month of negotiations, the commons presented Capel with the heads of three more money bills, one recommending that the excise on beer be extended for another two years, another that a duty be laid on tobacco, and another for a poll bill. Capel had managed to pull off a successful Parliament (McGuire 1979: 29; Troost 1983: 112-14; 1990: 243).

There is disagreement concerning the nature of the "deal" that Capel struck with the leaders of the Irish Parliament to ensure their cooperation during the 1695 session. James McGuire (1979) emphasises the political allowances that Capel made during the sitting, permitting the Irish Parliament to initiate money bills and determine the ways and means of raising additional funding. It was Capel's willingness to grant Irish Parliamentarians these powers that encouraged their compliance. David Hayton (1979: 40-41) is of much the same opinion, but stresses the importance of the appointments that Capel secured for key members on the "sole right" faction. Others are of a different mind. Wouter Troost (1983; 1990) maintains that in order to procure the support of the "angry gentlemen" Capel had to agree to pursue a strong anti-Catholic programme once he was appointed the head of the government.

Troost believes that it was no coincidence that two anti-Catholic bills - one for disarming Catholics and one prohibiting them from running schools or sending their children to be educated abroad - were introduced at the same time as the excise bill. Charles McGrath (1996: 33) agrees, asserting that the bills were "an integral part of the negotiations...for a compromise political solution over the issue of money bills in an Irish Parliament." Indeed, it seems clear that anti-Catholic legislation had a large part to play in Capel's dealings with the leaders of the Irish Parliament. As early as July 1694 Capel had recommended to English ministers that such bills be enacted "for strengthening and securing the English and Protestant interest" (McGrath 1996: 33; Troost 1983: 93). Capel prepared and transmitted to England the same legislation in June the following year, and implored William's ministers "not to raise any objections as these laws were absolutely necessary for the security of the Protestant subjects of his Majesty" (Troost 1983: 116). There is little question that the anti-Catholic members of the Irish House of Commons welcomed the penal legislation. In fact, there were a number in the assembly who felt that the laws were not strong enough. That anti-Catholic measures were on the minds of Parliamentarians during the 1695 session was further evinced when both the Lords and the Commons presented Capel with the heads of bills suppressing monasteries and banishing regulars, which Capel duly drew up and transmitted to England for approval (Troost 1983: 118). This bill, as we have already seen, was disallowed by William in response to concerns raised by Emperor Leopold.<sup>10</sup> But Capel's readiness to sanction such legislation (the bill was set to send to England within three days of the Commons' request) suggests that its appearance was not a complete surprise to the Lord Lieutenant.

Although these writers may differ in their judgements concerning the

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<sup>10</sup> See below pp. 37.

concession that was most crucial to obtain the cooperation of the Irish Parliament, none would disagree that all these factors contributed to making Capel's bargaining strategy a success. It allowed the Irish administration and, by extension, the English executive, to, if not control the Irish Parliament, at least manage it by offering concessions in exchange for compliance.

So as the Parliamentary session of 1692 made clear, although the formal institutional factors governing the relationship between Ireland and England after the Revolution were well-defined, the informal institutional factors that were necessary to allow the formal structures to actually function were absent. Capel's bargaining method filled in the gap and established informal procedures that gave the Irish, and by extension, the English, executive at least some of the authority over the Irish Parliament granted them by Poynings' Law.

*Informal institutional factors governing the relationship between the English executive and the English Parliament*

The Glorious Revolution and the "settlement" that emerged from it altered forever the relationship between the English Parliament and the crown. The two acts that comprised the revolutionary settlement, The Bill of Rights (1689) and the Act of Settlement (1700 and 1701)<sup>11</sup>, reduced considerably the personal power of the monarch who henceforth had to work with the English Parliament to establish his or her authority. Together, they signalled the end of the "personal rule of the monarch" and the start of a process that saw the English Parliament, or more specifically, the dominant faction or party therein, exert more and more control over English governance, particularly over the monarch's choice of ministers.

The revolutionary settlement had no direct influence on Ireland and

<sup>11</sup> For the texts of these Acts see Taswell-Langmead 1890: 681- 88 and 691- 96.

the Irish policy-making process. Poyning's Law was unaffected: the same groups and individuals decided Irish policy; directives were still channelled through the same cumbersome process. The place and power of the English Parliament relative to the Irish government remained undefined.<sup>12</sup> The settlement did, however, open the door for the English Parliament to influence Irish policy *indirectly*. As we have seen, English ministers exercised considerable control over Irish policy: they sat on the English Privy Council through which all Irish policy had to pass; and they influenced the king in his decisions concerning whom to appoint to the position of the Irish Lord Lieutenant, the Irish Privy Council, the Irish House of Lords. As the English Parliament came to exercise more power over the individuals assigned to these posts, its disposition was to have an increasing impact on most of the major players involved in Irish policy making and hence on Irish policy itself.

But the expansion of the power of the English Parliament over Irish, or for that matter, any policy making, was a gradual process. It is true that William III, more than any other monarch before him, may have had to consider the temperament of the English Parliament when making decisions. As we have seen, however, he was still free to appoint whomever he liked to his ministry and Privy Council without recourse to Parliament. Of course his administration would be more successful in securing the approval of desired legislation by the English Parliament if ministers could procure the support of a majority of MPs. But William was under no obligation to consider party politics or the recommendations of Parliamentarians in the selection of his administration (Adams 1956: 368). Compared to the influence that the English Parliament was to have over the appointment of ministers and, hence, government policy making later in the century, ministers and policy were, to large degree, still under the control of the sovereign in the last decade of the

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<sup>12</sup> Until 1720 with the passage of the Declaratory Act. See above, pp. 170-74.

seventeenth century.

From an institutional perspective, then, the revolutionary settlement did not establish any institutional factors, formal or informal, to help define the relationship between the English and Irish governments. It is true that Irish policy was eventually to come under the influence of the informal institutional factors that were developing to enable English Parliamentarians to acquire actually the authority over the English executive that the revolutionary settlement had granted them formally. But during the period of the Treaty bill negotiations the monarch still exercised considerable power over the choice of his or her ministers. Since these were the men who, along with the monarch, made most of the decisions regarding Irish policy, Irish policy making remained in the hands of the executive and relatively autonomous from the influence of the English Parliament.

*Informal institutional factors governing the policy-making process*

Executive control meant that the policy-making process remained a fairly "closed" procedure during this period. As the assemblies gained more influence over ministerial appointments and policy, the number of individuals, politicians and others, interested and involved in government policy making would increase. But for now, major decisions were taken by relatively few officials, who sought information from individuals of their own choosing. It is true that lobby groups did exist at this time (Olson, 1992). But these groups acknowledged that policy was the charge of the sovereign and his or her executive. The character of these groups reflected the exclusive nature of policy making at the time. Their membership consisted of men who were well-connected to government and the court, all of whom had a direct interest in the matter concerning them. It was uncommon for individuals

outside an interest to be included in a lobby. The "public" had not yet found, or been encouraged to find, its voice or the mechanisms through which to express it: the Wood's halfpence demonstrations and the Dublin anti-Union riot<sup>13</sup> were still far in the future; Charles Lucas<sup>14</sup> and John Wilkes<sup>15</sup> were not even born yet. And the methods and manner adopted by lobbies tended to be more conciliatory than confrontational, their appeals more courteous than demanding.

We can see many of these characteristics reflected in the activities and membership of what Francis James (1966) has identified as the "Irish lobby" that operated during the early eighteenth century in London and Ireland. Contrary to histories that say that Ireland did not have much political or economic influence during this period, James shows that the Irish did manage to affect government policy considerably with the help of this "lobby". This was no noisy public-interest group, however. James depicts the lobby as made up mostly of politicians and government-appointed officials. Individuals who solicited support for legislation desired by the Irish Parliament were for the most part English MPs with land, offices or relatives in Ireland, or Irish politicians in London. The Lord Lieutenant himself acted as Ireland's agent when he was in England between sessions of Parliament, helping to guide Irish legislation through the English Privy Council and to shape English legislation so it would not affect Ireland's ruling elites adversely. When the chief governor was not in London, the London secretary of the Irish Lord Lieutenant's Chief Secretary was the Irish agent. He was paid by the Irish House of Commons, who also supplied funds for the fees and gifts he needed to help sway the votes of English officials. James provides convincing evidence of the success of the Irish lobby in the early eighteenth century to influence

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<sup>13</sup> See above pp. 203-204.

<sup>14</sup> See above pp. 205.

<sup>15</sup> See above pp. 103-104.

Anglo-Irish policy. It is clear, however, that this group was representative of the "old school" of government lobbying: connected, influential with government officials, and more concerned with appeasing administrators than with challenging them.

The exclusive nature of policy making meant that it was difficult for individuals and groups not directly involved in government procedures and without established connections with government officials to have any significant impact on policy making. "Out-of-doors" groups representing the Catholic Irish and the Ulster Dissenters for example had a hard time soliciting the support of English government (James 1966: 545-46). It is true that the weakness of Irish Catholics and the general uninterest of Dissenters to involve themselves in Anglo-Irish politics contributed to their political impotence. But even if they had had the strength or desire to oppose the Irish Parliament on the Treaty, they would have found themselves at a disadvantage in relation to their opposition. The anti-Catholic forces were ensconced in the Irish Parliament and other positions of power that played a direct role in the process of Irish policy making. To counter this power, not only would the strength of these Irish "out-of-doors" interests have to improve, but the institutional fabric of political decision making would have to change: the policy process would have to become less restrictive and secretive, more accepting of outside influences, and ministers would have to become accustomed to listening to and heeding the advice (requested or not) of these interests. Many of these changes did occur over the course of the eighteenth century and will be discussed later. For now, however, we can accept that policy making, including Irish policy making and the process surrounding the negotiation and passage of the Treaty of Limerick bill, was a relatively closed system. It was more or less monopolised by the king and his chosen ministers, and whomever they chose to consult. Described from an

institutional perspective, the informal institutional factors governing English government policy making gave the English executive great authority over Irish policy making, and structured politics in such a way as to favour those players who were most closely related to the executive.

The preceding discussion identified what were the most important informal institutional factors influencing Irish policy making at the time of the formulation and passage of the Treaty of Limerick ratification bill. First, there were the informal mechanisms characterising Henry Capel's "bargaining method", which defined the way in which the formal conditions of the Poyning's procedure were to be realised, at least for the time being. Second, there were the informal factors governing the relationship between the English executive and the English Parliament that determined that, despite the formal changes wrought by the Glorious Revolution, Irish policy was still the responsibility of the monarch and his or her chosen ministers. Third and finally there were the informal institutional factors that governed the policy-making process itself, that defined the process as relatively "closed", shielded from pressure from the English Parliament and "out-of-doors" interests. Only players with established and close connections with the small group of English executives involved could have any real impact on policy decisions concerning Ireland.

Let us now examine in detail the fate of the Treaty, the actions and reactions of the various players involved in the policy-making process to the events surrounding the formulation and passage of the ratification act, and how institutional factors, both formal and informal, constrained, enabled and otherwise affected their impact on the final outcome.

### The fate of the Treaty

That the Treaty of Limerick did not come before the Irish Parliament until the 1697 session was not because the Treaty or its terms had been disregarded or forgotten. In fact, William had ordered that a confirmation of the Treaty of Limerick be prepared to be presented to the Irish Parliament in 1692. William's order came in response to complaints from the Irish Catholic community that an indemnity bill prepared by Sydney and his council was detrimental to their interests. William agreed and quashed the bill, but Parliament was prorogued before the ratification legislation that he replaced it with could be considered (Troost, 1983: 51-54). And, as we have seen, the Lords Justices Porter and Coningsby began hearing land claims almost immediately after the Treaty's signing, so that by 1694 fully 483 individuals had had their estates restored under the benefit of its articles (Simms 1986c: 213). Indeed, the Irish executive's determination to adhere to the terms of the Treaty was largely what prompted the Irish Protestant attacks on Sydney and Porter and Congingsby. It is interesting to note that the Treaty of Limerick was never mentioned by name by the "sole right" men as a motivation for their offensive against the Irish executive. This might have been because opposition to the Treaty was secondary to the constitutional aims of the Irish Parliament (McGuire 1979) or because the Irish Parliament was hesitant to criticise an agreement that was essentially authored by the king (Troost 1983). Their "official" silence on the Treaty does not mean that Irish Parliamentarians were unconcerned about the agreement. Its terms represented to Irish Protestants a betrayal by the Irish and English executive of the Protestant cause and informed their actions greatly (Beckett 1969: 151; Connolly 1992: 264).

The Treaty of Limerick also came under discussion before and during the 1695 session of the Irish Parliament. Charles Porter, who had been

appointed the Irish Lord Chancellor after the impeachment attempt, was anxious to have the Treaty ratified. Disliked and distrusted by Irish Protestants for having helped draft the Treaty as well as bring into effect some of its most contentious terms, Porter felt under constant threat of attack. Only ratification of the Treaty would absolve him and his actions. Capel, on the other hand, was not as enthusiastic about sending over a ratification bill, as his supporters in the Irish Parliament were adamantly opposed to it. Both Porter and Capel wrote to the secretary of state expressing their views regarding the advisability of bringing in a ratification bill at this time. Although the minister agreed with Capel, William came down on the side of Porter and ordered that his wish that a ratification bill be prepared be communicated to Ireland. On 11 October the Irish Privy Council decided, however, to go against the wishes of the king, declaring "that it was not a proper time" to introduce such a bill. Apparently, one of the leading "sole right" men, Thomas Broderick, had been allowed to address the council and had convinced its members that "if such a matter should then be brought into the House of Commons it would put them in the greatest disorder." Capel had succeeded in delaying the ratification bill for the present time (Troost 1983: 121-24; 1990: 246-47).

In the meantime, Porter's fears that he might come under attack from Irish Protestants materialised. From 30 September to 25 October 1695 Porter was subjected to the wrath of Irish Parliamentarians in the commons who wished him impeached. The attack apparently came as a surprise to Capel who, although he would have been pleased to see Porter gone, refused to take sides on the issue for fear that he be reprimanded by the king. The commons decided in a 121 to 77 vote not to impeach Porter, but his opponents immediately began to prepare to present their argument to the English Parliament. To this William objected and ordered the secretary of state to

inform the chief governor to prevent this action. Capel managed to stop the proceedings, but only in exchange for appointing three "sole right" men to high positions in government. Capel's bargaining strategy had once more succeeded in mollifying the "angry gentlemen" (Troost 1983: 124-34; 1990: 247-48).

Capel died in May 1696. After some political wrangling, Charles Porter was appointed Lord Justice by the Irish Privy Council over Capel's hand-chosen successors, Robert Wolseley and Lord Blessington, two men who had the confidence of the leaders of the Irish Parliament (Troost 1983: 140-46). But Porter was destined never to hold the position of Lord Lieutenant of Ireland, nor witness the ratification of the Treaty of Limerick that he so much desired. His attempts to convince the English executive to call an Irish Parliament without delay were unsuccessful. He died in December 1696, three months before the assemblies reconvened on 16 March 1697.

Twice William had been prevented from introducing Treaty legislation to the Irish Parliament. The *debacle* of 1692 had precluded any real discussion regarding ratification of the Treaty. The 1695 attempt had gone further, but was killed by the Irish Privy Council, a victim of the bargaining strategy that Henry Capel had used to bring the Irish Parliament to heel. In April 1697, William met with his Privy Council and gave the order for the Irish Lords Justices to draw up a bill "for confirming so much of the articles of Limerick as the King has promised to endeavour to have ratified" (quoted in Troost 1983: 164). The fate of the Treaty of Limerick would finally be decided.

Charles Powlett, Marquis of Winchester and Henry de Ruvigny, earl of Galway were sworn in as Irish Lords Justices on 31 May 1697, and John Methuen was appointed Lord Chancellor. All three men were known for their anti-Catholic sympathies (Troost 1990: 251-52). Together with an Irish Privy

Council dominated by the men of the "sole right" appointed by Henry Capel, they drew up a bill in response to William's request. A bill "for the confirmation of the Articles of Limerick" was forwarded to the English Privy Council in July. The bill bore little resemblance to the original treaty. Gone were the references to religious liberties and the article that stipulated that no other oath but the oath of allegiance be demanded. The article forbidding private suits against Catholic beneficiaries of the Treaty remained, but the date on which the war allegedly began was pushed up to 10 April 1689 (rather than November 1688), allowing Irish Protestants to sue for redress for injuries suffered during the Jacobite regime. And the controversial "missing clause" was absent (Simms 1986c: 213-14; Troost 1983: 168-70).

Despite its deficiencies, the bill transmitted from Ireland seems to have created little stir amongst the English executive. The only question that arose was whether the "missing clause" should be included in the legislation. The Privy Council decided to ask the king for his opinion on the matter, who, although he had previously certified that it had been a transcribing error (Simms 1986c: 212-13), chose this time to defer to the Irish Lords' Justices. Most of the Irish Privy Council agreed that the "missing clause" should remain missing, and William agreed to leave out the clause "which gives so much offence" (Troost 1983: 170-73). William and his Privy Council approved the mutilated bill, and it was sent back to Ireland.

There is little question that the anti-Catholic "sole right" men had been in control of the Irish House of Commons in 1692. It is evident by the strong majority that voted against impeaching Charles Porter, however, that by 1695 a fairly large contingent had emerged in the lower house that had come to view the actions of the "angry gentlemen" against the Irish executive as excessively harsh. It is possible that Porter's constant conviction that the Irish Parliament would ratify the Treaty of Limerick would have come true

had the Lord Justice lived to lead his supporters in the following Parliament.

Any support that Porter, and by extension, the Treaty of Limerick, had in the Irish commons, however, dissolved upon his death. Those Parliamentarians who had backed Henry Capel and were averse to any sort of concessions to Irish Catholics came to control the lower house in 1697 (Connolly 1992: 296; Troost 1983: 174-77). And it is clear that securing anti-Catholic legislation was the primary aim of this Parliament. The bill for the suppression of monasteries and the banishment of Catholic regular clergy that William had blocked in 1695 was among the bills that the Irish Privy Council transmitted to England before the session. This bill was later redrafted to expand the number of ecclesiastics included in its scope. Another bill was drawn up that restricted the property rights of individuals marrying Catholics (Connolly 1992: 269). All three bills were passed by the commons without difficulty.

The bill "For the confirmation of the articles made at the surrender of Limerick" came before the Irish House of Commons on 6 September 1697. In contrast to the other anti-Catholic legislation introduced earlier in the session, this bill did not pass the lower house easily. Many MPs thought the legislation was too lenient toward Catholics. But the Lords Justices and the Lord Chancellor managed to persuade a majority of Parliamentarians to endorse the bill. It passed the Commons on 14 September (Simms 1986c: 214; Troost 1983: 179-80).

The bill also had a difficult time in the House of Lords but for different reasons. A number of the Lords in the upper house objected to the absence of the "missing clause" and were opposed to confirming a bill that did not contain any of the terms of the Treaty in their original form (James 1995: 60). After much debate the bill finally did pass, but by only three votes. Fourteen of those who had been against the bill were so indignant that they signed a

formal protest against the vote. They were, however, unable to have the Treaty restored to its original form (James 1995: 60; Simms 1976: 62; Troost 1983: 181-82).

### **Discussion**

The above suggests that the Irish House of Commons was the clear “winner” in the process to ratify the Treaty of Limerick. How can institutional factors help explain that success?

From a strictly constitutional standpoint, William III and his executive held the upper hand in these negotiations. Although tradition bound the king to call the Irish Parliament and so restricted to some extent his autonomy, Poyning’s Law ensured, formally anyway, that the Irish and English executive would hold the balance of power as far as Irish policy-making was concerned. Certain informal mechanisms benefitted the English executive as well. The revolution settlement initiated the process that would see the English Parliament exert more and more control over the monarch’s choice of ministers and by extension English, and Irish, governance. At the time of the Treaty bill negotiations, however, the informal institutional factors that would allow for this transformation had hardly begun to develop. The sovereign still held considerable power over the selection of the English administration. Since these were the men who, along with the monarch, decided Irish policy, the Irish policy-making process was still largely under the control of William and his chosen ministers. Irish policy was the policy of the English executive which was the policy of the monarch. It seems as though William would have had little difficulty securing ratification of the original Limerick treaty.

Yet the English executive ended up giving in to the Irish House of Commons on the terms of the ratification bill. For, in spite of the institutional advantages working for the crown, there were other institutional factors,

mostly informal ones, that allowed the lower house in Ireland to seize the upper hand in the Treaty bill negotiations. The informal institutional factors surrounding the process of English policy making meshed well with the position and character of the Irish House of Commons. First, executive control of the policy process meant that most government directives, including those concerning Ireland, were determined by a fairly small group of ministers. So the number of officials that MPs in the Irish Parliament had to persuade to support their demands was manageable. Second, "out-of-doors" interests did not play as large a role in policy making as they were to later in the century. Consequently, the Irish House of Commons faced little serious competition from other forces on this issue.

Most importantly, however, the informal institutional factors surrounding the relationship between the Irish executive and the Irish Parliament were such that they favoured the Irish House of Commons. For Poyning's Law to operate properly, the Irish executive had to have enough control over the Irish Parliament to ensure that crown-approved legislation would be passed by both houses: the more control, the better the Poyning's procedure would work, the more power the English executive would have over Irish governance. But the bargaining process established by Henry Capel was more of a management than a control technique. Although it could deliver an uneventful session, that harmony had to be bought. Compliance could be secured but only in exchange for political appointments, anti-Catholic legislation and other favours. This meant that English administrators often had to strike a compromise with Irish MPs, even bow to their demands occasionally, actions that undermined the Poyning's procedure and the power of the executive over Irish politics.

It is conceivable that the English executive were not aware at first that the informal institutional factors that came to characterise Anglo-Irish

politics after 1695 had the potential to significantly diminish executive authority over the Irish House of Commons. If one takes a closer look at the anti-Catholic legislation that was granted to the Irish Parliament during the 1695 and 1697 sessions, the English executive gave up very little. The act for disarming Catholics and an associated bill that prevented Catholics from owning horses worth more than five pounds were essentially confirmations of policies that had been put in place in Ireland by William during the war. Both were measures that were commonly issued during times of crisis. The act forbidding Catholics from sending their children to schools abroad was to prevent contact between Irish and foreign, particularly French, Catholics (McGrath 1996). As a military man, it is not surprising that William might have agreed with the leaders of the Irish Parliament that these measures were necessary for the security of the kingdom.

William's apparent abandonment of the Treaty of Limerick to the whims of hard-line Protestants in the Irish government is more perplexing. But by 1697 the ratification of the Treaty of Limerick in its original form was not as important to William as it had been earlier. For one thing, relations between William and his ally Emperor Leopold had cooled considerably with the war nearing its end. Although still a concern, it was not as critical for William to uphold the Treaty as a measure of good faith now that the Emperor's support was no longer needed (Simms 1986d: 246). Also, there is some indication that William may have allowed passage of the Treaty bill (as well as other anti-Catholic legislation) because he knew that anti-Catholic laws in Ireland could never be implemented effectively. By 1697 William had been on the throne for several years and had developed some understanding of how the English and Irish governments operated in practice. It is possible that William made conscious use of the inefficiencies of the state apparatus to at once mollify intolerant Irish Protestants and ease the concerns of Catholic allies troubled

by the treatment of Irish Catholics.<sup>16</sup> When Johann Hoffman, Emperor Leopold's resident in London, approached the earl of Sunderland, one of William's ministers, for assistance in quashing the Bishops' Banishment Act, he was assured that penal legislation was rarely, if ever, enforced in Ireland (Simms, 1986d: 244).

It seems ironic that, given the importance that Irish Protestants placed on the terms of the Treaty and the energy they expended opposing its ratification, the Treaty bill did not make much difference to the condition of Catholics in Ireland anyway. The article in the original Treaty that had guaranteed to Catholics religious liberties enjoyed in the reign of Charles II was so vague that its confirmation would have meant little: the Bishops' Banishment Act, for example, had its foundations in policies put into effect in the 1670's. There was no great wave of private suits after the Treaty's ratification, and no one lost their estates as a result of changes made to the terms or the absence of the "missing clause". In fact, adjudications continued into 1699, the majority of which were allowed (Connolly 1992: 270; Simms 1976: 63-65; Troost 1990: 255-56). By allowing the ratification of a mutilated Treaty of Limerick, William was able to secure the compliance of the Irish Parliament and still maintain his comparatively tolerant policy towards Irish Catholics by continuing hearing and allowing land claims under its terms. What indication did he have that his actions would seriously undermine the power of the executive over the Irish House of Commons and Anglo-Irish politics in general?

But undermine executive power it did. As it turns out, the mutilation of the Treaty of Limerick and the penal legislation passed during the 1690's represented only the beginning of a process that saw the Irish House of

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<sup>16</sup> Maureen Wall (1967: 66n) has noted that passing draconian legislation then letting it sit on the statute books unenforced was an "unofficial policy" of the English state well into the nineteenth century.

Commons gain more and more influence over Anglo-Irish policy making. As the years went on, the informal institutional factors that had been established in Capel's time compelled William and his executive to cede to the Irish House of Common on an increasing number of policies restrictive of Irish Catholics. The Bishops' Banishment Act of 1697 was accompanied by legislation prohibiting Protestants marrying Catholics, and followed in 1698 by an act preventing Catholics becoming solicitors (McGuire 1987: 271). The act "to prevent the further growth of popery" passed in 1704 included provisions prohibiting Protestants from turning Catholic, forbidding Catholics from purchasing, inheriting or renting Protestant land and required that land owned by Catholics be "gavelled" (that is, divided amongst male heirs upon the death of the proprietor rather than remain intact). It also prevented Catholics from voting for MPs.<sup>17</sup> Whatever loopholes Catholics had managed to take advantage of to evade the previous legislation were blocked by an act in 1709 that strengthened the property laws against Catholics and placed further restrictions on the Catholic clergy (Connolly 1992: 273, 274-75; Simms 1986e: 267, 276; Wall 1969: 21). Other laws limiting the rights and activities of Catholic clergy and laymen continued to be passed until well into the eighteenth century, including an act of 1727 disenfranchising Protestants with Catholic wives (Johnston 1974: 36).

The English executive were, for the most part, less than enthusiastic about sanctioning the anti-Catholic legislation proposed by the Irish Parliament. They were always concerned about how the laws would affect England's relations with Catholic allies and whether the legislation was in accord with the articles of Limerick (Connolly 1992: 272; Simms 1986e: 266, 267, 268). Occasionally, they might make additions to Irish legislation that they

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<sup>17</sup> Unless they took the oath of abjuration "which contained a declaration against transubstantiation and the invocation of the Virgin Mary as well as a declaration that James III 'hath not any right or title to the crown of this realm'" (Johnston 1974: 28).

knew could hinder its passing in the Irish assemblies, as when the English Privy Council tacked on to the act of 1704 an article requiring that crown and municipal office holders be required to take the sacramental test, a clause to which Dissenting MPs would object.<sup>18</sup> They were, however, bound to abide by the wishes of Irish Parliamentarians if they wanted a peaceful session (Beckett 1946: 43-44). Of this the Irish Parliament was well aware. Bills were known to arrive from Ireland hinting, or even threatening, that the supply bill would be rejected if the proposed legislation was altered in any way (Connolly 1992: 273, 277; Simms 1986e: 270). And they were not afraid to follow through on their threats. When in 1713 one of the leaders of the opposition was told by the Lord Lieutenant that he would not cede to the opposition's demand that the current lord chancellor be removed from his office, the House of Commons did not hesitate to reject several government bills and refused to vote a supply for the following year (McGuire 1979: 39-40).

So the real significance of the Treaty of Limerick ratification bill lay not so much in its immediate impact on Irish Catholics, but in the *institutions*, the informal ones especially, that emerged during its negotiation and were strengthened by its passage. These institutions established a "new balance of power" (Connolly 1992: 270) between the Irish executive and the Irish Parliament that would have an enormous effect on the kingdom, and on Irish Catholics in particular.

Would the Treaty of Limerick have been ratified in its original form had William III and his ministers been more resolute in their efforts to push the legislation through the Irish Parliament? It is hard to say. Social relations

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<sup>18</sup> J.G. Simms (1986 e) rejects this argument as an explanation for the addition of the sacramental test. He argues that it was the secretary of state, Nottingham, who, knowing how much the Irish Parliament wished the legislation, simply "saw an opportunity of bringing Ireland into line with England by inserting the test". J.C. Beckett provides a compromise. He says English ministers recognised that the addition of the test would not prevent the bill's passage in Ireland. They included it to convince their Catholic allies that the responsibility for the bill lay in Ireland not in England (Beckett 1948: 45).

only become institutionalised through repeated use, and it is difficult to tell how entrenched were the procedures established by Capel by 1697. Certainly each time the English and Irish executive gave in to the demands of the Irish Parliament it strengthened amongst the individuals and groups involved in policy making (especially the Irish ones) the notion that Anglo-Irish politics was not an wholly one-sided enterprise, that it was based on a *reciprocal* relationship between governments. When William ceded to the demands of the Irish Parliament and allowed anti-Catholic legislation to pass in 1695 and 1697, he was, however unintentionally, contributing to the institutionalisation of patterns of behaviour that confirmed this notion of the Anglo-Irish policy-making process. Whether or not these patterns of behaviour were so established that they could have prevented the English executive from pushing through the Treaty in its original form is uncertain. What is certain is that William's allowing the Irish House of Commons to dictate the terms of the ratification bill and then passing the Treaty in a mutilated form did much to validate the idea and the patterns of behaviour that said that Anglo-Irish politics was a reciprocal exercise, and helped to establish further the informal institutional factors that were to serve as the basis for Anglo-Irish relations until well into the next century.

Could the Treaty have been ratified in its original form had other mechanisms been developed to curb the Irish Parliament? Perhaps. If the Irish and English executives could have come up with a way to *control* rather than just manage the Irish Parliament, government legislation of all kinds would have had a better chance of being approved in the Irish assemblies. It may also have prevented the passage of much of the penal legislation that was to aggrieve Irish Catholics for many generations. The way in which contingency interacted with institutional factors, however, ended up working against this kind of outcome. Poynings' Law required some procedure in place

that would allow the Irish executive to ensure that bills sent from England be approved by the Irish Parliament. Henry Capel came up with such an arrangement, although it only permitted the management of Parliament rather than its outright control. That Capel happened to be a Whig contributed to his willingness to include anti-Catholic legislation as part of the negotiations. William III happened to be a monarch who was more interested in doing battle on the continent than looking after domestic affairs. Because he needed supplies to fight his wars, he went along with Capel's arrangement in 1695 even though it meant that he might occasionally have to cede to the demands of Irish Parliamentarians. This is not to say, of course, that things might have been different had different conditions been in place. It does show, however, how structure, human agency and contingency came together in this particular circumstance to discourage the English executive from taking an alternative, perhaps more authoritative, approach toward Anglo-Irish policy-making.

### English party politics

Before we leave the Treaty of Limerick, a word about party politics. Most accounts of Anglo-Irish politics in the years following the Glorious Revolution emphasise the importance of party politics on Irish legislation. Let us look at this argument in light of what we now know about the institutional factors affecting the Anglo-Irish policy-making process in this period.

Although parties were not as well-defined as they are in modern politics - their membership was comparatively fluid and MPs could not be guaranteed to support one side or the other on every issue - a Whig or "country" interest and a Tory or "court" party could be clearly discerned in the English Parliament at the end of the seventeenth century. The views of these two parties differed widely on many issues, including religion. Whigs tended to be

more tolerant of Protestant Dissenters than of Catholics. In contrast, Tories, although they were not by any means completely accepting of Catholics, held a comparatively charitable attitude towards them. The bulk of Tory wrath was saved for Protestant nonconformists.

All this did not interest William III when he took the English throne. Preoccupied with his war with France, he was determined to steer clear of English party politics in order to avoid their influence. As E.L. Ellis puts it, "his aim was quite simple: he wanted the maximum amount of national unity as the best foundation for successful war abroad; he was not seriously interested in Englishmen's domestic concerns, nor their personal and party feuds, except in so far as these promoted or hampered the military effort" (Ellis, 1969: 117). Initially at least, William believed his best strategy was to remain neutral and maintain a balance of parties in his administration. Accordingly, he appointed a mix of Tories and Whigs to the various ministerial positions at his disposal (Ellis 1969: 120; Horwitz 1977: 17-19). This tactic proved unsuccessful, however, when party squabbles resulted in political confusion and immobility. The Whigs especially were offended by the king's "balanced" approach to politics. A number expressed their displeasure to William in very pointed terms, conduct that no doubt contributed to William's decision to favour the Tories over the next three years (Ellis 1969: 122). International objectives continued to inform his domestic decisions, as became clear during the 1692-93 Parliamentary session when the Tories decided to go against William's appeal for an increase in army expenditures and back instead a "blue water" strategy aimed at strengthening the English navy. Despite William's "personal distaste" for many Whig leaders (Ellis 1969: 122), the king had little choice but to approach the opposition for support of his war measures. His move bore fruit, as Parliament approved an enlargement of the English army in the following year's session (Troost 1990: 242). Thereafter, William tended to

appoint a preponderance of Whigs to his administration.

It is argued in most accounts of the events surrounding the negotiation of the ratification bill that the party politics being played out in England were reflected more or less directly in Irish politics and policy making. Initially, William applied his "balanced" approach to his Irish appointments, as is evinced by his naming two moderates, Wyche and Duncombe as Lords Justices after Sydney's removal along with an anti-Catholic, Henry Capel. His "turn toward the Whigs", used to explain his tendency after 1693 to cede to the wishes of Whig politicians and administrators in England, also explains his inclination to appoint mostly anti-Catholic administrators and approve of anti-Catholic legislation in Ireland after that date. It was a situation that, while it compromised his tolerant nature, was necessary in order to acquire the cooperation of the English and Irish Parliaments to continue to fund his war with France.

If this is the case, however, it would only be part of the story. Party politics could only have affected Ireland if the informal institutional factors that had come to structure Anglo-Irish politics had developed in the way that they had. Ireland was, formally, a subordinate kingdom. The English executive determined its policies. If there had been in place established procedures, or if new practices had been found, that would have allowed the Irish executive to control the Irish Parliament, decisions would have been made and implemented without the undue influence of English party politicking. But it was Sydney's inability to bring the Irish Parliament to heel that allowed the "sole right" men to introduce the discussion of Irish affairs to a wider scope of English politicians in the first place. Capel's solution to the problem of Irish Parliamentary recalcitrance meant that the executive would from now on have to bargain with the Irish Parliament in order to have government measures passed. This created a situation that would have

encouraged collaboration between anti-Catholic Irish Parliamentarians and English Whigs, and simply begged to be exploited by politicians wishing to influence religious policy in Ireland.

It is questionable, however, whether party politics had any real influence on Irish policy during this period at all. Capel's rise to dominance in Ireland had less to do with party politics than his political acumen. While his Whig/anti-Catholic stance may have encouraged his affiliation with the "sole right" men with whom he bargained, his success was based on his being able to read the situation in Ireland and institute a way in which both the Irish Parliament and the executive could procure desired ends. William's support of Capel, while no doubt partly influenced by the whisperings of Whig ministers, was based on the fact that the Whig Lord Justice was providing answers that the king wanted. Capel offered a peaceful Parliament and guaranteed the passage of additional supplies. William did not need to be pressured by Whig Parliamentarians in England to approve of Capel's plan or his appointment as the Irish chief governor.

By the time the all-Whig administration was appointed in Ireland in 1697 it really would not have mattered who was in charge of Irish politics or what was the disposition of the English Parliament towards Catholics. The bargaining procedure that Capel had initiated was by then well on its way to becoming the established manner in which Anglo-Irish policy making was conducted. The Irish executive had become more of a mediating than a controlling arm of government, there to serve as negotiator between the Irish Parliament and the English executive. The anti-Catholic Irish Parliament did not need the assistance of Whig politicians to achieve their ends; their power stemmed from the way in which Anglo-Irish policy making had come to be executed, the informal institutional factors that had been established by Capel and that governed the Anglo-Irish policy-making process for the next several

years.

The effect of English party politics on the events surrounding the formulation and passing of the ratification bill was thus either contingent upon or secondary to the informal institutional factors that came to define the relationship between the Irish Parliament and the Irish and English executives.

### Chapter III: The Quebec Act

The city of Quebec fell to the British in the early winter of 1759; Montreal capitulated a year later. Thus ended over a century and a half of French rule in Canada. The British victory did not signal the cessation of the larger conflict, however. Britain and France and their respective allies battled it out for another three years until 10 February 1763 when the Treaty of Paris finally brought the Seven Years' War to an end. It was not until then that it was decided that Britain would retain the former French colony. Now British officials had to start considering seriously how they were going to administer a province in which French Catholics made up 95 percent of the population.

In May 1763, a Royal Proclamation issued by the British government stipulated, among other things, how Britain's new possessions were to be governed. Quebec (as Canada was now called) was to be remade into a traditional British colony as soon as the provincial executive deemed it feasible, complete with British landhold and legal systems, an elected assembly, and an ascendant Protestant church. The position of the Catholic Church and French Catholics was given little consideration. The Treaty of Paris had ensured religious liberty to those who decided to stay in the colonies. But this was a vague promise, its ambiguity heightened by the addition of the statement that these freedoms would be enjoyed only "as far as the laws of Britain permit." The Proclamation did not clarify the situation.

The commission and instructions given to the new governor of Quebec, James Murray, however, provided a better picture of how British officials thought religion should be handled in this province. Members of the future assembly and all those serving the government would have to take oaths of allegiance, supremacy and against transubstantiation, as well as make a declaration abjuring the right of the Stuarts to the English throne. Since most

of these oaths were offensive to Catholics they were effectively barred from holding public office. Anglicisation of the French Catholic population was to begin in earnest. The governor was to work to this end by encouraging the establishment of Protestant schools, maintaining Protestant ministers and providing Protestant schoolmasters to promote the conversion of French inhabitants to the Church of England. So whatever religious freedoms had been guaranteed in the Treaty of Paris were to be narrowly interpreted; the Proclamation authorised the provincial government to *tolerate* Catholics and the Catholic Church in Quebec, nothing more (Gipson 1956: 162-64; Kennedy 1973: 39-41).

The Proclamation of 1763 was the only official statement of government policy in Quebec for eleven years. In 1774, the British Parliament passed the Quebec Act. It said that the province was henceforth to be ruled by governor and council only; there was no mention of an elected assembly. Quebec land and legal systems were to conform to French custom; English institutions occupied an ancillary position in the province. Most importantly for our purposes, the Act contained a number of concessions to Quebec Catholics. It guaranteed the free exercise of the Catholic religion in the province, that Catholic clergy be allowed to collect the tithes, and that Catholics not be forced to make any objectionable declarations. The removal of the offensive oaths opened the way for Catholics to hold public office. Indeed, the Quebec Act even stipulated that a few positions be made available to French Catholics in the provincial council, which, in the absence of a representative assembly, had legislative jurisdiction over the region. Protestants and the Protestant church would not hold privileged positions in the province. The Quebec Act placed the Catholic church on almost an equal footing with the established church and allowed Catholics the right to participate fully in the civil life of the colony.

In a little over a decade the position of British officials on Quebec

governance and administration had changed drastically. The tolerance granted to Quebec Catholics by the Quebec Act was unprecedented in the British empire. At the time of its passage, penal legislation in Britain and Ireland was still in full force. How and why did it come to pass that Catholics in Quebec were permitted not only to practice their religion without fear of reprisal but actually participate in an official capacity in the governance of the colony, while the activities of Catholics overseas continued to be subject to such severe restrictions? Let us look at the process that led up to the passage of the Quebec Act to see how institutional factors can help clarify this apparent anomaly.

#### Formal institutional factors governing Quebec policy making in 1774

As a colony and dependency of Britain, Quebec was subject to the rule of the British government. Upon British takeover, Quebec and all other territories ceded by the Treaty of Paris became the concern of officials in the British government who were responsible for colonial matters. There were, however, no formal institutional factors in place to specify how Anglo-Quebec policy making should be handled. In Ireland, the legislative process was governed by a number of centuries-old formal practices. Poynings' Law had been in operation since 1495 and required Anglo-Irish policy making to adhere to strict guidelines. Ireland had also long been ruled by a crown-appointed, and since the 1530s English, executive, and had a tradition of holding an Irish Parliament, conditions that structured further how Irish policy was formulated and passed. There were no such institutions in place to help determine relations between London and Quebec.

Under French rule, Quebec had of course been subject to French institutions. New France had been governed by a royal administration

consisting of a governor-general, three lesser governors in Acadia, Montreal and Trois-Rivieres, an *intendant*, a bishop and five appointed officials. There was no representative body in the province; all laws were adjudicated by the executive and ultimately the French crown. Justice was dispensed according to French law and land was held on seigneurial tenure. Of course Catholicism was the established religion. The crown controlled all patronage in the province. Wealth and social status in New France was determined by one's relationship to the crown just as in France. By controlling the main avenues of upward mobility, the metropolis in France ensured that officials in New France would maintain their allegiance to the French crown, an allegiance that facilitated the operation of government there (Stanbridge 1997). The system had worked well for the French, something that did not go unnoticed by the British conquerors. James Murray was impressed that France had been able to rule such a vast colony so cheaply and with so few men (Eccles 1987: 137). Even so, British officials were obviously under no obligation to adopt the institutions of New France.

Besides, even though relations between Quebec and the mother country were not formally as well-defined as the Anglo-Irish association, British administrators did have at their disposal a few measures that provided, if not a blueprint for the governance of Quebec, at least some formal guidelines to which they could refer. The first was the decision taken in *Calvin's Case* in 1609. The case determined that, in colonies established by *settlement*, colonists would enjoy English laws and institutions and could not be legislated for except by the King in Parliament or by a local representative assembly. The institutions of *conquered or ceded* colonies, however, were at the discretion of the crown. Until the crown decided on the form of governance to be implemented, existing laws and institutions would be maintained (Keith 1930: 9-10; Wight 1946: 28). Quebec of course, having just been ceded to Britain from

France, fell into the latter category. The second formal institution was the Declaratory Act, passed by the British Parliament in 1766. Modelled on the Irish Declaratory Act of 1720<sup>1</sup>, this measure established formally the authority of the British Parliament to legislate for the colonies. Although this measure was to have more of an impact on colonies with existing assemblies - indeed, the legislation was passed with the American colonies in mind - it did confirm that the British Parliament had a legal say in colonial policy, including Quebec legislation (Keith 1930: 350-51).

There was also the decision taken by the Court of King's Bench in the case of *Campbell v. Hall* in November 1774. It was concerned with taxation authority in Grenada. In 1764, an export duty of 4 1/2 percent was levied by Hall, collector for the crown in Grenada, on sugar exported from Grenada by Campbell. He imposed this tax on the authority of a letters patent<sup>2</sup> prepared by British officials on behalf of the crown 20 July. Campbell argued this letters patent was superceded by the Proclamation of 1763 and the Governor's commission of 9 April 1764, both of which had established that the island was to be governed like other royal colonies, which meant any tax levies had to be approved by a colonial assembly. Although an assembly had not yet been called in Grenada, Campbell maintained that, once the *promise* of a representative legislature had been held out, the monarch had not the power to impose taxation by prerogative. After several years of deliberation Lord Mansfield, the Lord Chief Justice, came down on the side of Campbell. In addition to confirming the principle laid down in *Calvin's Case* that the laws and institutions of a conquered territory remain in place until they are altered by the conquerer, Mansfield resolved that the monarch could not legislate after the promise of an assembly had been made. Only the colonial legislature

<sup>1</sup> For more on the Irish Declaratory Act see above, pp. 170-174.

<sup>2</sup> A letters patent was "the highest expression of the prerogative in all the royal provinces." It granted special powers to the colonial governor or lesser officials for various purposes (Labaree 1930: 8).

or the British Parliament could henceforth exercise legislative power in a conquered or ceded colony (Keith 1930: 14-17; Wight 1946: 37).

It is true that Mansfield's final decision came several months after the Quebec Act's passage in June. But it was a long-running case concerning matters of authority and jurisdiction that had been under consideration for years. Given its direct relevance to Quebec and the power of British officials and the crown to legislate for the new province without recourse to a colonial assembly or the British Parliament, the deliberations surrounding the case were bound to have an important influence on the way in which government officials were to handle Quebec legislation. Although unconfirmed, the matter was in the air and, as decision makers were to discover during the negotiation process, had the potential to constrain them considerably.

So there was not a complete absence of formal institutional factors applicable to the Quebec situation. These formal institutions were not, however, as extensive as those governing the policy process in Ireland, nor did they define the situation as explicitly. Whereas formal institutional factors spelled out clearly who were the major players in the Anglo-Irish policy making process, their powers, and the procedures they were supposed to follow, the few formal directives that applied to Quebec were much more general. They were not concerned with Quebec specifically so they placed fewer and less stringent conditions on policy-makers.

#### Informal institutional factors governing Quebec policy in 1774:

The most important informal institutional factors related to Quebec policy making were those pertaining to the relations between the metropolis and the colony. The other areas where informal institutional factors played an important role were in the operation of British politics - specifically, the relationship between the British executive and the British parliament, and the

policy process - and in the relations between the major players. The first two areas will be dealt with here. The third requires that the major players be identified, and so will be discussed after they are introduced.

*Informal institutional factors governing relations between London and Quebec:*

Although there may not have been many formal institutional factors to help guide relations between Britain and Quebec specifically, there were plenty of unwritten informal ones governing Britain's relationship with other colonies, particularly those in America, to which British officials could refer. By the middle of the eighteenth century, the oldest of Britain's colonial possessions in the "new world", Virginia, had been around for a century and a half<sup>3</sup>; others in North America and in the West Indies nearly as long. During this time officials in England had waged wars, appointed and directed public officials, collected taxes, pondered legislation and otherwise involved themselves in these distant territories. So long had Britain and the American colonies been affiliated that, by 1763, the practices associated with many areas of colonial management had become quite routine.

"Routine" was hardly the word to describe metropolis-colony relations during the seventeenth century, however. Most of the colonies in North America had been founded by private interests whose authority to establish settlements had been granted them by the crown. Maryland (1632), the Carolinas, the New Jerseys (1664), the Bahamas and Pennsylvania (1681) were each established by a grant to an individual or group of proprietors. Virginia (1606) and Massachusetts (1629) were each founded through a crown grant to a joint stock company. Some colonies, like Connecticut (1630s) and Rhode Island (1635), were established by colonists without royal sanction. Variations in the

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<sup>3</sup> Virginia was the first permanent English settlement in North America and was founded in 1607.

type of grant led to the development of different sorts of institutions in each colony and so each colony's relationship to the metropolis was different. The first company charter for Virginia, for example, stipulated that the company would appoint a provincial council to govern but the colony that would remain under crown control, supervised by a royal council in England. Colonists were guaranteed the "liberties, franchises and immunities" of Englishmen (Leder 1978: 37). Three years later the crown-supervised council was replaced by a *company*-appointed Lord Governor and a Captain General, reducing the amount of crown control over the colony. In 1619, the Virginia Company surrendered some of their authority to a representative body of settlers, the House of Burgesses. Finally in 1624, the self-governing Virginia colony became a crown possession, and was eventually given what was to become the standard sort of administration in royal provinces, a royally-appointed governor and council and an elected representative assembly (Rutman 1971: 109; Leder 1978: 37-44). In contrast to Virginia's experience, the first charter of the proprietary colony of Maryland said nothing about a council; it gave the proprietor absolute power over the colony, "as much authority within his territory as the king had outside it" (Leder 1978: 44). Connecticut and Rhode Island were on their own as far as their government and administration were concerned. Without a royal grant to their territories, the colonies' founders made do. In Rhode Island, colonists met every fortnight to discuss colonial affairs, agreeing to obey the decisions of the majority of householders. Connecticut decided on an elected governor, magistrates and representatives (ibid: 63, 65). In addition to these "colonies of settlement", Britain had collected a number of territories in the west by conquest: Jamaica in 1655, New York in 1664, and Nova Scotia in 1710 (Wight 1946: 28). These areas had been won from Spain, Holland and France respectively and had to be given separate consideration in accord with *Calvin's Case*.

Yet out of this hodgepodge of regimes there emerged, by the early eighteenth century, a collection of colonies with more or less matching systems of governance. Half a century of neglect had been followed at the Restoration by a conspicuous attempt by the English government to establish better control over its colonial possessions. A series of mercantilist trade directives were introduced to help secure the economic interdependence of the many parts of the empire. The responsibilities of existing central agencies like the Customs Service and the Treasury were expanded to include the colonies and new bodies like the Board of Trade were created to oversee colonial matters. These changes were accompanied by attempts by the English government to acquire greater control over the administration of the colonies. Previous colonial arrangements were revoked and established institutions were abolished with the intention of unifying colonial rule. There was even an effort to make the metropolis-colony relationship more like that between England and Ireland. In 1677, English officials in charge of colonial policy recommended that legislative initiative be taken away from the assembly in Jamaica and a system resembling the Poynings procedure be put in place. They sent along with the new governor, Lord Carlisle, a number of bills to be passed by the Jamaican legislature stipulating that bills were henceforth to be framed by the governor and council of the colony and sent to the British Privy Council for review. Bills approved by council were then to be returned to Jamaica, where the assembly was to give its consent to the directives. The same sort of system was planned for Virginia, whose governor received similar instructions two years later. Had the representatives in the Jamaican assembly reacted to the measures in the same way that colonials in Virginia did, the system would likely have been extended to include other royal provinces. The Virginian assembly passed all the bills necessary to put the system in place. Unfortunately for the Board, however, the Jamaican assembly

wanted nothing to do with the new procedures. Opposition to the measures was intense; Jamaican representatives refused to give up their right to initiate legislation. Finally the Board of Trade had to give in. In October 1680, they restored the initiative to the assemblies in both provinces (Keith 1930: 12-13; Labaree 1930: 219-22). The Glorious Revolution saw the end of the Stuarts' "colonial experiment" and the colonies resumed their separate existences. These authoritative measures were not without their consequences, however. Although the English government failed to consolidate colonial rule, administration became more standardised as the crown took over colony after colony and put in place in each a system of governance consisting of a crown-appointed governor, a nominated council and an elected assembly (Greene 1966: 15-22; Keith 1930: Chapters 4 & 5; 167-79).

This uniformity even extended to the conquered colonies. *Calvin's Case* stipulated that the administrations of these territories were at the disposition of the crown, and so could have been governed any way the crown wished. But since the English government wanted to attract settlers to these newly conquered areas, officials decided it would be a good idea to grant the same "conditions of freedom" to these territories as were held by the older settled colonies. So in spite of its "conquered" status, Jamaica received English law and a representative assembly in 1661. Other conquered colonies were extended the same rights for the same reasons (Wight 1946: 28).

Administrative uniformity translated into legislative uniformity. By the middle of the eighteenth century, procedures had developed that had made fairly regular the administration of colonial matters. Bills initiated and passed by the two "houses" of colonial government - the representative assembly and the provincial council - were forwarded to the governor. If the governor did not veto the measure, he signed it, at which point the bill became law in the colony. The bill was then sent to the British Privy Council for consideration,

where it was confirmed or disallowed. If it was rejected, the governor was informed of the law's reversal and the measure became null and void in the province. Otherwise, the measure received the consent of the king in council and the law remained in effect until it elapsed or was repealed. Sometimes the British government would require that legislation transmitted from the colonies include a "suspending clause". This was true especially of bills that British officials did not approve of. The suspending clause delayed implementation of the measure until it had received the consent of the king in council (Labaree 1930: 224-25). Not surprisingly, most colonial assemblies were reluctant to sanction the inclusion of the suspending clause and only consented to its addition as a "last resort" to secure desired measures (Dickerson 1962: 226; Keith 1930: 243).

Officially, this was the way all colonial policy was considered. In reality the procedure operated somewhat differently. The decisions taken by the king in council were actually adjudicated elsewhere. All colonial legislation sent to the Privy Council was immediately referred to the Board of Trade, the government body responsible for overseeing colonial matters. The Lords Commissioners of the Board would review the act and collect evidence and advice concerning the legislation from relevant documents, government law officers and other sources. It would then submit a report to the Privy Council advising members how to proceed. In many cases judgments made by "the king in council" were just a rubber stamp of the Board's recommendations (Dickerson 1962: 227-28; Keith 1930: 270).

If the procedures surrounding the making of colonial legislation had become routine by this period, so too had the administration of other areas of colonial business. In 1930, Leonard Labaree undertook an examination of the commissions and instructions issued to colonial governors between 1624 and 1783. Although the earlier documents varied widely in detail, around 1670 to

1680 they began to exhibit considerable uniformity. Indeed, Labaree found that there were few important differences in the commissions and instructions handed down to governors in the 1770's and those issued to the governors of Virginia, Jamaica, Barbados and the Leeward Islands a century earlier (Labaree 1930: 420-23).

The commissions and instructions spelled out the powers and responsibilities of the governor and what the colonial administration was to look like. The governor's commission was the more formal of the two documents. It revoked the authority of the old governor and appointed the new, and granted the latter the broad powers necessary to execute his office (Greene 1966: 93; Labaree 1930: 9-11). The actual way in which the governor was supposed to execute these powers was laid out in his instructions. The document consisted of three major parts. The general instructions were the longest and were concerned with civil government of the colony; the trade instructions outlined the governor's responsibilities in relation to the acts of trade and navigation; the additional instructions amended or added to the other instructions and were usually prepared after the other two (Keith 1930: 179-82; Labaree 1930: 14-18). There were other instruments through which the British government communicated with the colonial governor. Warrants and royal letters directed the governor to, for example, assume a certain attitude or policy toward some political matter or to secure the passage of some legislation through the colonial assembly; the commission declaring the governor the vice-admiral of the province gave him power over admiralty or maritime affairs in the colony. On a less formal level, British officials corresponded regularly with the governor. It was in the letters between the governor and the Secretary of State for the Southern Department and the Board of Trade in particular where specific matters of concern on both sides were dealt with and, as Labaree notes, were the best indication of how the system really

worked in practice (Labaree 1930: 23-30).

But it is the governor's commission and instructions that are most important for our purposes because, even though the terms they stipulated had no formal or legal backing, British officials and colonials alike came to consider these documents to be the "constitution" of the colony. The commission especially was significant because it was on this public instrument that the formal powers of the governor and the executive was based. The instructions too, although most of the sections were the concern of the governor alone, contained directives of a constitutional nature, including those that dealt with the powers and procedures of the provincial assembly. If the representatives in the legislature did not follow these directives, the governor could veto their bills and even dissolve the assembly (Greene 1966: 95-96; Keith 1930: 180-81; Labaree 1930: 30-32).

The Board of Trade was responsible for drawing up the commissions and instructions to new governors. By the mid-eighteenth century, commissions seldom changed from governor to governor so they usually took at the most only two weeks to prepare. In 1759, the Board completed the commission to the new governor of Virginia, Lord Amherst, on the same day its preparation was ordered (Labaree 1930: 51-53). The commission was then forwarded to the Privy Council, usually through the Secretary of State Southern, and from there proceeded through the final stages of approval. The instructions took longer to draw up, about two or three months. It was this document that would serve as the governor's guide to administering the province and so the Lords Commissioners were careful in its preparation. Any changes that had occurred since the last instructions were issued, such as modifications in policies concerning metropolis-colony relations or changes in the conditions of the province, were incorporated; former colonial governors and officials in other areas of government, law officers and merchants, virtually anyone of

any consequence with an interest in the colonies, were consulted (Labaree 1930: 52-62). The completed document, along with a representation explaining the changes made, were submitted to the Privy Councillors, who in most cases approved the document. The Secretary of State's office then prepared the final copy, which was signed by the monarch and given, along with the commission and other papers, to the new governor at his departure (ibid: 67-68).

The stability of the commissions prepared during the eighteenth century is perhaps understandable, given how general they were and, as Berriedale Keith put it, "the natural tendency of legal officers to follow the established form" (Keith 1930: 180). But the uniformity of the instructions, across time and across colonies, is, as all researchers who have studied these documents note, really quite remarkable. Differences did show up in sections that dealt with specific local conditions, but those parts concerning political, judicial and religious affairs remained virtually the same. After the late seventeenth century and the Board of Trade's failure to institute the Poynings' procedure in Jamaica and Virginia, every province was granted a local assembly that had the right to initiate legislation. The instructions may have become more protracted, as the Board strove to delimit the actions of the colonial legislatures relative to the crown and to the British government (Labaree 1930: 222-23). But for the greater part of the eighteenth century, "British officials showed no inclination to change the constitutional system of a single royal province" (ibid: 443). English law extended to the colonies, a principle that was expressed in the earliest colonial grants and in most provisions thereafter (Keith 1930: 3). The commissions and instructions, although they gave the colonial assemblies some say in determining how the judiciary might be administered in each province, specified that legal matters remained within the control of the crown and should be regulated by royal

rather than colonial officials. Hence it was the governor with the consent of his council that created the Courts of Justice in the colony as per the governor's commission; the instructions required that changes in the judicial system be approved by the crown and that new legislation be in conformity with English legal doctrines. British officials took these principles seriously and kept an eye on all colonial judicial affairs to make sure they did not stray from these standards (Keith 1930: 255; Labaree 1930: 373, 376).

The commission and instructions also identified the governor as the head of the established church in the colony. The documents directed him, in association with the Bishop of London, to oversee the operation of churches in the area, ensure that the Book of Common Prayer be read every Sunday, that maintenance was provided for the clergy, *et cetera*. He was also to encourage religious and moral behaviour among the colonists by setting up schools to instruct youth in the principles of the Church of England and punishing those who broke laws prohibiting blasphemy, sabbath-breaking and other conduct contrary to religious teachings (Keith 1930: 222-23; Labaree 1930: 115-18). As for the place of other religions in the colonies, it had never been formally established that English legislation respecting recusants extended to the provinces. Nevertheless, the principles contained in these measures were generally accepted. There was some tolerance shown toward Protestant non-conformists in the colonies in accord with the English Toleration Act<sup>4</sup> (Keith 1930: 226-27). Roman Catholics, on the other hand, were subject to penal measures of some sort in every province, measures that were imposed by both the provincial and British governments. In Maryland, for example, Catholics were disenfranchised in 1718, had to pay double taxation and could not inherit land; in 1705, the English attorney general declared that a British decision that sanctioned the perpetual imprisonment of any bishop or priest discovered

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<sup>4</sup> The Toleration Act of 1689 allowed Protestant non-conformists in England freedom of worship and education.

saying mass applied to the colonies. In addition to grievances such as these, Catholics were barred from holding public office. The commission and instructions issued to governors of royal provinces required that the governor, his council and any other office holders, including assembly men, take a number of oaths, including the oath against transubstantiation and a declaration of fidelity to the Protestant succession, pledges offensive to Catholics (Garner 1953: 203-204; Greene 1966: 54-55; Labaree 1930: 76, 87). But oaths and declarations were not the only way that Catholics were prevented from participating in politics. In Rhode Island, where there were no religious tests, Catholics were simply denied political rights (Keith 1930: 228).

It is important to emphasise how established this method of "government by instruction" was by the mid-eighteenth century and how routine the preparation of the governors' commissions and instructions had become. Indeed, it seems that the Board of Trade and the Privy Council made special effort to keep these documents as consistent as possible across time and across colonies. In the instructions to a new governor, changes from the old instructions were only introduced when absolutely necessary, and even then, both bodies appear to have tried to keep as close to the former phraseology as possible. The instructions also tended to match those issued to governors in other provinces around the same time. Whatever changes the Board of Trade decided to include in one set of documents were usually included in subsequent documents prepared for other governors (Labaree 1930: 425-26). As Labaree writes, the adherence of British officials to this method of colonial rule and their reverence for the conditions contained in the documents on which the system was based, was "almost fanatical" (Labaree 1930: 444), resulting in a system that "was fixed, static, and unchanging" (ibid: 426).

So even though there were few formal institutional factors applicable to royal policy making in Quebec, there was a well-established system of

informal institutional factors associated with royal government in other colonies overseas. It must be emphasised, however, that, as routine as these procedures had become, as taken for granted as were the powers, rights and freedoms embodied in the documents and practices that comprised this system, none were constitutionally entrenched. Although colonials may not have thought that this made any difference, officials in the metropolis had always believed that the "rules" associated with colonial governance were very different, more pliant, than those associated with, for example, Irish rule. In 1670, during a debate about the rights of the English Parliament to tax Ireland, the distinction was made between "the distinct kingdome" of Ireland and the colonial "plantacions." Whereas the existence of the Irish Parliament made it questionable whether Ireland could be taxed by the English Parliament, it was noted "That we do not yet offer to tax our plantacions which is in kindnesse to them" (quoted in Steele 1995: 38). The idea that the institutions, powers and privileges extended to the colonies were granted by the British government out of "kindnesse" and did not constitute immutable colonial rights was held by British officials throughout the eighteenth century, a fact that was to have important implications for the negotiation of policy in Quebec.

***Informal institutional factors surrounding relations between the British executive and the British Parliament:***

It was argued in the previous chapter that the influence of the English Parliament and English party politics on the process surrounding the negotiation and passage of Treaty of Limerick bill were, although not entirely inconsequential, not as important as most accounts of that period maintain. There were no formal institutional factors defining the relationship between the English and Irish Parliaments. And, although the revolution settlement determined that the English Parliament would henceforth have more control

over English politics, the informal institutional factors that were necessary for this power to be exercised actually had not yet developed to the point where that control was real. The monarch continued to wield a great deal of power over the choice of his executive. Since these were the men who determined Anglo-Irish policy, the policy-making process remained, to a large extent, in the hands of the sovereign and his chosen ministers. The influence of the English Parliament was marginal.

The situation was much the same in the colonies in the seventeenth and early part of the eighteenth centuries. The relationship between the British Parliament and the colonial assemblies was nowhere formally described, and in the relative absence of any informal institutional factors allowing Parliamentarians control over the monarch's choice of ministers, the officials in charge of colonial affairs were to a large degree the servants of the monarch. This was certainly true of the Lords of Trade (the body that was later to become the Board of Trade) under the later Stuarts. The Lords were the creation of advisers to Charles II and essentially an instrument of the crown, a truth that was evident in their "energetic" support of James II's authoritarian policy in the American colonies (Dickerson 1962: 18-20; Steele 1968: 9). With the accession of William III, the name of the body changed but its character did not. As had traditionally been the case, it was the monarch who set up the new board responsible for overseeing trade and plantations in 1696. Granted, William's decision to establish the Board of Trade was in response to attempts by Parliamentarians to institute an analogous body under the control of the English Parliament that would have weakened the power of the crown over the empire's trade and plantations. Nevertheless, William's actions ensured that colonial administration and commerce remained the domain of the royal prerogative, where it pretty much stayed until the Board's dissolution in 1782 (Basye 1925: 1-2; Steele 1968: 10-18).

By 1774, however, the role of the British Parliament in British politics, and so on the making of colonial policy, had changed considerably. As we have seen, the Declaratory Act of 1766 established formally the subordination of the colonies to the British Parliament. Perhaps more importantly, however, informal institutional factors enabling British Parliamentarians to determine who would constitute the sovereign's ministry were more firmly in place. Recall that William III, like his Stuart predecessors, made use of a group or "cabinet" of high office holders, who were part of his ministry but were essentially separate from the English Privy Council, to assist him in rule. At the time, the cabinet was considered unconstitutional and dangerous because Charles II and James II, and to a lesser extent, William III, used it to maintain the power of the crown relative to the legally recognised Privy Council and the English Parliament (Taswell-Langmead 1890: 699-701). So concerned was the English Parliament about the effect of the cabinet on its ability to enforce Crown responsibility that two provisions were included in the Act of Settlement to do away with the cabinet all together. Fortunately for future Parliamentarians, the provisions were later repealed because it was by means of the cabinet system that the British house of commons eventually acquired control of the British government (Adams 1956: 374-76).

Anne continued William's practice of using her prerogative of appointment and dismissal to choose her ministries and cabinets without any acknowledged recourse to Parliament. Like William, Anne was a proponent of "mixed" government and strove to avoid rule by party. During her reign, however, it became increasingly clear that a successful cabinet and ministry depended on Parliament, and that an administration based on party was much more stable than a coalition government. It also became apparent that the cabinet was a useful piece of government machinery. By Anne's death, it was primarily the cabinet and not the Privy Council that provided advice to the

monarch and directed state business. Although there was still some concern over how responsibility could be enforced upon its members, the cabinet was no longer considered dangerous (Adams 1956: 377-82; Taswell-Langmead 1890: 704).

It was during the reigns of the first two kings of the House of Hanover that the British Parliament, or more accurately the British House of Commons, began to acquire some real control over the cabinet and the ministry, and by extension, the British government. A number of elements came together to precipitate this change. First, there was the tendency of the first two Hanoverian kings to acquiesce to British politicians. George I had trouble understanding British ways and, because he spoke little English, had great difficulty communicating with his ministers. Traditionally, the monarch attended all cabinet meetings, voicing his or her opinions on government matters. Soon after his accession George I stopped this practice, finding the task of trying to understand discussions conducted in a language not his own too tiresome to endure (Adams 1956: 384, 390). He was more than happy to leave government business to his chosen ministers. George II, although he knew more about government matters than his father, did not involve himself much in British politics either. When he did, he generally (although not always cheerfully) supported his executive (Pares 1967: 61-64; Taswell-Langmead 1890: 721).<sup>5</sup> Under the first two Georges, then, British politicians

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<sup>5</sup> It is generally maintained that George II's political inadequacy had more to do with personal weakness than uninterest. Richard Pares says that George II simply did not know how to deal with the politicians. As a result, he rarely succeeded in controlling his ministers, or exercising influence in areas outside those that the politicians did not mind leaving to him (*King George III and the Politicians*, p. 63). There have been challenges to this portrayal, however. Ian Christie notes evidence offered by Richard Lodge and J.B. Owen that shows that George II had more power over his ministers than previously thought. In these accounts, George II is represented as a comparatively powerful king, dictating policy, overriding the recommendations of his officials, playing off ministers against each other to get his way, fending off their attempts to meddle in army and court appointments and overseeing general elections ("George III and the Historians - Thirty Years On" p. 213; 215-16).

operated relatively free of crown influence for almost fifty years. The process of transferring control of government business to a now independent cabinet progressed greatly during this period.

The cabinet may have been able to fix policy relatively independently of the monarch, but it needed the approval of the British House of Commons to carry it out. So, a second and related development was the emergence of the idea that the cabinet and ministry were responsible not to the crown but to the lower house. Although the government executive continued to be appointed by the monarch, during the reign of the first two Georges, the real power of the monarch to select and maintain ministers of his own choosing diminished considerably. By the middle of the century, it was very difficult for men who did not have the confidence of the House of Commons to form an administration (Adams 1956: 393-95).

Finally was the refinement of the party system. For the cabinet to be successful in promulgating government policy it was necessary that its membership be unified and that a majority of the house of commons be agreeable to their position. Although the British Parliament had been divided into two factions - Tory and Whig - at least since the restoration (Taswell-Langmead 1890: 660-62), it was not until the eighteenth century that party government became more established and these conditions were met (Adams 1956: 388).<sup>6</sup>

It is important to remember that the cabinet system of government as it developed during the eighteenth century did not suddenly appear, nor was it in any way planned. As George Adams (1956: 383) writes, "the progress made had to be progress with no definite aim, with no conception, even by the most far-sighted statesmen who were leading the advance, of the result towards which they were reaching." The idea that the cabinet and ministry were an

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<sup>6</sup> See Pares, *George III and the Politicians*, pp. 70-92 for a sketch of what party politics looked like during the latter half of the eighteenth century.

“Executive Committee of the two Houses of Parliament, practically chosen by the majority of the House of Commons” (Taswell-Langmead 1890: 701) was slow to take hold and exert itself. For all the advances this form of government made during the first half of the century, by 1760 it had not, as Richard Pares puts it, “formally passed over from the position of a check on the executive government and become, in effect, the executive government itself” (Pares 1967: 94). So when George III acceded to the throne in that year, determined to restore responsibility for ministers to the monarch and to reestablish the sovereign’s command over the initiation and direction of state business, the cabinet system of government was in no way so firmly established or even understood to prevent him from doing so.

The extent to which George III actually changed, or even wanted to change, existing procedures, however, has been the subject of some debate. The standard explanation, the one that has been most popular with American and British Whig historians in particular depicts George III as “the villain *par excellence*, a would-be autocrat seeking to turn back the constitutional clock” (Thomas 1985: 16). According to this account the king was a calculating despot who, together with his “secret cabal” of councillors, connived throughout his reign to override the authority of the cabinet and the British Parliament to put in place his own tyrannical policies. More recent research has determined that this picture of George III is inaccurate. It is true that the king involved himself in politics much more than either of the first two Georges, and kept himself informed on virtually all aspects of government business. It is also true that the king wanted to take back from the cabinet the power of appointing ministers. But it is now known that, although George III certainly influenced government policy, he was no dictator. “[H]aving chosen his ministers,” writes P.D.G. Thomas, “he let them govern” (Thomas, 1985: 17). The first colonial Secretary, Lord Hillsborough, described in February 1775 the

king's usual practice:

[The King] always will leave his own sentiments, and conform to his Ministers, though he will argue with them, and very sensibly; but if they adhere to their own opinion, he will say, 'Well. Do you choose it should be so? Then let it be' (quoted in Thomas, 1985: 17).

Furthermore, George III evidently thought it unconstitutional to influence policy by declaring his personal stand on government matters; he only ever made public his views at the urging of his ministers. Mostly, he would keep his opinion secret and supported his cabinet even when he disagreed with them. In 1766, American opposition to the Stamp Act forced the British government to take another look at the legislation. George III was against the repeal of the Act but refused to make his opinions known in case his ministers decided to revoke it. When the prime minister informed him that the cabinet had resolved to reverse the Act, George told him to make his support of its decision public. Even when the opponents of the repeal approached the king and offered to press for his preferred solution, modification of the Act, George held firm: "I do not think it constitutional for the Crown personally to interfere in measures which it has thought proper to refer to the advice of Parliament" (quoted in Thomas 1985: 23). The king apparently acted in much the same way - concurring with the policy of his cabinet and only involving himself in its formulation at his ministers' request - during the American crisis (ibid: 25-31). George III evidently understood and respected the British constitution; there is little evidence, either in his writings before he took the throne or in his actions during his reign, that he wanted to subvert or abolish representative government (Brooke 1972: 55-58; Pares 1967: 162-63).

What all this means with regard to the development of the cabinet system and the power of the British Parliament over government business is that it did not take the giant strides backward during George III's reign that is usually claimed. It is possible that the role of cabinet would have established

itself more quickly had George III been as apolitical as his two Hanoverian predecessors. But there is no question that the cabinet, its procedures and powers relative to the crown, were much better defined by the end of George III's reign than they had been at the start. At some time during his rule, for example, the cabinet began to consider government business without any reference from the king. In the past, the monarch had to give his or her permission for the cabinet to discuss government matters; by the early nineteenth century, it was becoming established procedure that any cabinet member could call a session on any subject within his department without recourse to the crown (Pares 1967: 154-57). And whereas it was unclear in 1760 whether or not the monarch was constitutionally bound to take the advice of his or her cabinet ministers, by 1809 at least, the idea that the monarch was obliged to follow the ministers' recommendations if they insisted upon it was becoming an accepted belief (ibid: 163).

Even what is considered to be George III's main accomplishment, that of returning greater control over ministerial appointments to the crown, did not introduce as significant a modification to the institutions of government as is sometimes claimed. Since it was impossible to rule effectively without a ministry that could secure a majority in both houses of the Parliament, he still had to consider party allegiances when deciding on the composition of his ministries. Granted, George III did, at the start of his reign, try to supercede this reality by appointing a politically inexperienced personal favorite, Lord Bute, to the post of prime minister. Bute failed to win over the politicians, however, and the king was forced to abandon the idea of governing through a friend and accept that ministries could not be formed without negotiation (Pares 1967: Chapter IV). Even Lord North, who served as prime minister from 1770-1782 and who is usually characterised as George III's "lackey", weak-willed and ready to defer to the king, was only able to head the government as

long as he did because he held the confidence of the majority of Parliamentarians. Once he lost that, he lost his power, and no amount of political manoeuvring on the part of George III could maintain North's ministry.

By the end of the eighteenth century, the British Parliament was well on its way to establishing most of the procedures that were to serve as the basis for responsible government in the nineteenth century. Even though many of Parliament's claims were still only dimly perceived and even less surely argued, a good number of the informal institutional factors that were to allow the British Parliament the control over government that had been granted them by the revolutionary settlement were in place.

Changes in the informal institutional factors surrounding relations between the British executive and the British Parliament affected colonial policy making and so had repercussions for Anglo-Quebec policy making specifically. As the British Parliament came to have more influence over the crown's choice of ministers and government policy in general, the relatively "closed" process of policy making for the colonies became subject to the more "open" and turbulent world of Parliamentary politics. The colonies, their economy, their governance, their social conditions, were more readily and openly discussed by Parliamentarians, a change that affected how British ministers, whose positions of power were becoming more and more dependent on maintaining the support and regard of the British Parliament, responded to colonial matters. What also happened was the British Parliament started passing more legislation respecting the colonies. Until the mid-eighteenth century, the British Parliament had not involved itself much in colonial affairs. It is true that British Parliamentarians had never been reticent in passing legislation dealing with colonial trade. From the Navigation Acts of

the late seventeenth century and through into the next century, the British Parliament passed measures restricting the way in which colonial commerce was conducted. But aside from these (albeit numerous) measures, little colonial legislation had issued from Westminster. In the 1760's this began to change. In 1765, the British Parliament voted overwhelmingly to impose stamp duties on legal documents and other printed materials in the colonies. The revenues raised from this tax were to go toward maintaining imperial forces stationed in the colonies since the close of the Seven Years' War. Although the Stamp Act was eventually revoked in 1766, the repeal was accompanied by the Declaratory Act, and was soon followed by the Townshend Acts, a series of measures that, among other things, sanctioned the right of the crown to tax certain items in the colonies without recourse to the provincial assemblies for the purpose of helping to finance the colonial administration. Any surplus was to be paid to the royal Exchequer and distributed by the British Parliament (Keith 1930: 299-305; 344-66). After years of relative neglect, the British Parliament began legislating for the colonies in earnest.

So whereas the monarch and his or her servants had once held a virtual monopoly on the formulation of colonial policy, colonial legislation was now being shaped by a much wider array of opinions and interests. This, of course, could work to the benefit or detriment of anyone involved in the process. The support of MPs in the British Parliament of measures desired by colonials was an obvious advantage to the colonial interests, whereas Parliamentary opposition could sabotage their efforts to secure approval or repeal of favoured legislation. Similarly, the disposition of the British Parliament toward government initiatives could help or hinder their cause. The point is that, with the addition of so many new voices to the colonial policy-making process, the entire procedure became much more unwieldy, less predictable and harder for players to manipulate and control.

***Informal institutional factors surrounding the policy-making process:***

It was not only British Parliamentarians who became more involved in the policy making process during the eighteenth century. The 1700's also saw an increase in the participation and influence of "the public" - organised lobby groups as well as less structured "popular" assemblies - in and on political decision making. Individuals who had once existed "outside" the corridors of power, both physically and effectually, became politicised to the extent that Parliamentarians and administrators had no choice but to consider their demands and protestations when formulating policy recommendations. Like the "rise of Parliament", the "rise of public opinion" was encouraged by and contributed to changes in the informal institutional factors surrounding British policy-making that permitted the inclusion of many more groups and individuals in the process.

Lobby groups were not new to the political process. In London, individuals with common interests had been banding together since the early seventeenth century to persuade government officials to adopt, modify or repeal policies that concerned them. What happened in the eighteenth century, however, was that the character of these groups, their composition, the arguments to which they appealed, and their general disposition, went through a number of changes. As Alison Olson explains, the early interests tended to be "ascriptive" or "institutional" in nature. They represented either kinship groups (in the former case) or legally chartered institutions like guilds, town corporations, universities and trading companies (in the latter case). Rather than pressure administrators to concede to their demands, these groups worked in cooperation with ministers to ensure that their interests were respected, rendering loans and gifts and the politically responsible

behaviour of their membership in exchange for political considerations (Olson 1992: 2). Although there were some colonial groups that could be described as either ascriptive or institutional - associates, neighbours and families of colonial proprietors were an ascriptive interest, for example, the provincial assemblies could be considered an institutional group - colonial interests in general did not engage in this type of lobbying, mostly because they lacked the more formal sort of organisational structure required (ibid: 2-3).

By the middle of the eighteenth century, however, the older groups had been superceded by what Olson calls "associational" or "voluntary" groups. These groups - which included mercantile and labour associations, dissenting churches, independent craftsmen and the like - had less control over membership and so could not provide the government the same guarantees than could the older groups. They were, however, able to supply officials with information concerning their various areas of expertise. This, in addition to their growing electoral influence, helped persuade government administrators, if not to abide by their demands, at least to allow them to participate in the policy-making process (ibid: 2-4). It was through these kinds of associations that colonial interests had the most impact on royal policy in the colonies. In cooperation with groups with similar concerns overseas, colonial interests pressed British officials for adoption, modification or repeal of measures important to them. The information they provided administrators about conditions in the colonies was vital to decision-makers with little direct knowledge of colonial realities. So most officials were quite willing to listen and concede to the demands of these groups. Olson argues that these transatlantic groups played a crucial role in helping to unite the empire, especially during their "heyday" from 1721 to 1754 (ibid: Chapters 7 & 8).

It was in the latter half of the eighteenth century that a kind of group

emerged that was very unlike those that had come before it. Almost everything about the public-opinion lobby was different from earlier groups. The membership of earlier associations was relatively homogeneous; the membership of public-opinion lobbies was diverse and claimed to speak for large sections of the public. Earlier groups pushed for policies that were of specific concern to their membership; public-opinion lobbies sought changes in major policy areas, including constitutional ones. Whereas early interests tended to be relatively conciliatory towards government and administrators, public-interest lobbies were more disputatious and often openly hostile to government (ibid: 4).

In Britain, particularly in London, the emergence of these more "radical" groups was accompanied and facilitated by a number of events. According to John Brewer, although there were demonstrations of popular protest and "political" activity and agitation before the mid-eighteenth century, it was not until the 1760s that this nascent political culture developed any sort of focus or began to have any real impact on the decisions emanating from Westminster. Government instability, a poor economy and the rise of a political press provided the ideal circumstances for the popularisation of the type of politics fostered by John Wilkes (Brewer 1976: Chapter 1). Wilkes was an MP who first garnered the wrath of the British administration and Parliament in 1762 for attacking the government in his newsletter, the *North Briton*. Wilkes accused the government of exercising arbitrary power and undermining the liberties of those he affectionately called "the middling and inferior class of the people", the "ordinary people". Arrested on a warrant for seditious libel, imprisoned in the Tower, released, expelled from Parliament and outlawed, he returned to London from Paris in 1768 and was elected MP for Middlesex. He was again imprisoned, released and again expelled from the House of Commons in 1769. Although he was twice reelected, Parliament

prevented him from taking his seat in the House by declaring void his victories.

It was around Wilkes and the issues that he raised and reiterated in his speeches and numerous publications that London's "radical" political community came together (Olson 1992: 146). Wilkes appealed to "the people"; he painted his struggle with the administration as the struggle of all Englishmen, that of the common man against the growing powers of the government. He emphasised his role as the guide rather than the leader of the movement, and stressed the responsibility of everyman to check arbitrary rule. Like no one else before him, Wilkes actively recruited public support, then "thrust the initiative into his supporters' hands" (Brewer, 1976: 171). By the time of his election as MP for Middlesex, they were ready to take up the cause. "Wilkites" across the nation expressed their support for the MP-become-martyr, sending petitions demanding his release from the King's Bench prison and holding public demonstrations on his birthday and celebrations on the day of his release in 1770 (Brewer 1976: 177-79). In addition to these and other more spontaneous exhibitions of popular protest, Wilkes helped spawn more organised lobbying efforts. The pro-Wilkite Society of Supporters of the Bill of Rights (SSBR) was the first "out-of-doors" group formed to campaign for Parliamentary reform<sup>7</sup> (Brewer 1976: 21; Olson 1992: 146). Here was a group that epitomised the new "radical" type of organisation that Olson argues emerged during the later eighteenth century: a loose-knit assemblage of individuals come together to lobby for a political cause who were unconcerned about encouraging the wrath of the administration.

Radicalism and popular protest were on the rise in the colonies too, particularly in the American provinces. There was a public outcry there

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<sup>7</sup> The SSBR's other mandate was to pay off debts incurred by Wilkes, debts that Brewer says were "incurred more through riotous living than political commitment" (Brewer 1976: 21).

when the British Parliament passed the Stamp Act in 1765. Its enactment incited riots in Boston and other towns and prompted American merchants to boycott English trade goods. There were more organised efforts as well, such as the Sons of Liberty, groups of radicals who harassed stampmasters and otherwise obstructed attempts to implement the Act, and the Stamp Act Congress, a group comprised of representatives from nine American colonies who came together to petition British officials for repeal of the Act (Leder 1978: 169-71). The Townshend Duties provoked another collaborative boycott of British trade goods. The acts also contributed to tensions that led to a group of radicals dumping English tea into Boston harbour in December 1773 and demonstrations in Annapolis, Maryland, Greenwich, New Jersey and Charleston, South Carolina (ibid: 186). True to the "radical" school, the colonists justified their actions in terms of a "larger" political issue, the constitutional right of the metropolis to tax the colonies for revenue without recourse to the provincial assemblies, as opposed to some specific complaint. Membership was varied and their methods were antagonistic rather than conciliatory.

The American radicals found sympathy among the radical community overseas, and in London especially. The drive to repeal the Stamp Act was a transatlantic enterprise, involving proponents of "Wilkite" methods and appeals on both sides of the ocean. They cooperated to protest the Townshend Duties, too. In May 1769, the SSBR included in their petition complaining of the government's treatment of Wilkes and its general abuse of English liberties an attack on the ministry's handling of American affairs. The colonial cause they linked to their own; as Olson puts it, "They applied the American demand for 'no taxation without representation' to the plight of the unenfranchised in England, using it as the rationale for demanding an expansion of the English electorate" (Olson 1992: 146). These and other efforts

caused considerable consternation among British officials and helped bring about the repeal of the offending measures. The embryonic political culture of the beginning the the century had become, by the 1770's, a focussed and comparatively powerful force in politics.<sup>8</sup>

The "rise of public opinion" in Britain and colonies during the eighteenth century influenced the informal institutional factors surrounding the formulation of royal policy, including colonial policy. Just as the increasing power of the British Parliament over British politics expanded the number of politicians who could now legitimately participate in government decision-making, the growing influence of public sentiment on policy negotiations helped alter the informal institutional factors that had once inhibited the influence of out-of-doors groups and opinion on policy outcomes to include these voices. Again, this could work to the benefit or detriment of those traditionally involved in colonial policy making. On balance, it made policy negotiations, already become unwieldy with the addition of more politicians to the process, even more difficult to manage.

In addition to essentially forcing the British policy-making process to be more open to other views and interests, the rise in popular protest, the "radical" sort in particular, changed the way in which out-of-doors groups could approach government on policy issues. No longer did government lobbying involve only groups and government officials negotiating mutually satisfying policy arrangements. Now organised and openly hostile attacks on government were possible. This was to have an important effect on the way in which other players reponded to these groups as well as on the character of the groups themselves and their power to influence royal policy in the

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<sup>8</sup> The preceding discussion only touches upon a number of issues that have been covered better and more thoroughly in other sources. For more on the "rise of public opinion" in England see, in addition to Brewer (1976) and Olson (1992), Bradley (1986) and Sainsbury (1987). See also Tilly (1995) for his interpretation of why and how spontaneous and disorderly demonstrations of public ire gradually gave way to more politically acceptable methods of agitation.

colonies.

### **The players**

The informal institutional factors associated with metropolis-colony relations just reviewed give an idea of who were the major players in the making of royal policy in the colonies and hence Quebec policy. On the British side, the monarch and the British Parliament were joined by the British Privy Council and the Board of Trade, as well as the Secretaries of State for the Southern and after 1768 the Colonial Department as actors playing an important role in the process. The Quebec side is less clear, but certain actors do stand out. The colonial executive, the governor in particular, certainly played a part in the process. The inhabitants of Quebec were also crucial to the negotiations, and expressed their views concerning provincial policy even in the absence of a representative body.

To assess the positions of these major players on the Quebec Act, it would be helpful to know how each of them had responded to colonial matters and the religious issue in the past. We can then begin to assess the extent to which institutional factors helped shape their capacities to influence the outcome of the process leading up to the passage of the Quebec Act.

#### ***The British monarch:***

According to John Brooke (1972: 174), during the years leading up to the Quebec Act, George III was not much concerned with colonial affairs. Most of his time during this period was taken up thinking about John Wilkes, finding a stable ministry, and the day-to-day business of court functions. Like everyone else in Britain, he wanted to maintain supremacy over Britain's colonial possessions. But beyond this general desire, he apparently had no clear plan or strategy when it came to colonial policy. George dealt with each

matter as it came up and tried to be fair to both sides. If he ever did favour one over the other, he tended to come down on the side of the colonies. It was his vote that decided that the Stamp Act was to be repealed rather than enforced militarily (Leder 1978: 171). Although he had wanted to see the Act modified, he chose to support his ministers and revoke the measure rather than force the legislation on the colonists.

As far as religion is concerned there are some who characterise George as a relatively tolerant monarch. His coronation oath bound him to uphold the privileged position of the Church of England in the empire. He was also apparently quite devout himself. But he had no desire to aggrieve Dissenters or Catholics (Brooke 1972: 260-61). He was quite accepting of the various Protestant non-conformist religions. Of Quakers he was particularly fond, and once declared that if it were not for his coronation oath he might have become a Quaker (Long 1962: 45-46, 181). According to these authors George's charitable views of Protestant recusants extended to the Catholic variety, especially French Catholics who George saw as "a breed apart" from their coreligionists, "who had their own peculiar [implying more endearing, less objectionable] ways" (ibid: 296). Not all of George's actions conform with this characterisation, however. Philip Lawson mentions that George's personal prejudices against Catholics "ran very deep", and notes his reaction to a proposal by Lord Radnor in 1766 to require all bishops in Britain to report to British officials the number of "papists" in each diocese. George III told Grafton, first lord of the treasury at the time, that "I wish to know who have most distinguished themselves in support" of this proposal, and added "Lord Radnor's zeal on this occasion is very meritorious and I shall certainly when I see him thank him" (Lawson 1994: 98, 100). His later actions also seem to confirm this view. His adamant opposition to concessions to Catholics in the 1790's and after the Anglo-Irish union in 1801 helped to delay Irish Catholic

emancipation until almost a decade after his death (Bartlett 1992: 203-204, 271, 288). George expressed openly his hostility and “invincible repugnance” to concessions to Irish Catholics (ibid: 271), and even demanded from his ministry in 1807 a written guarantee “that they would never, under any circumstances, propose to him further concessions to the Roman Catholics, *or even offer him any advice upon the subject*” (Taswell-Langmead 1890: 733). This hardly corresponds with J.C. Long’s portrayal of a monarch who had at all times “stood for liberty of conscience” and who had “protected the Quakers, the Methodists, the Moravians, and all other sects in their freedom of worship” (Long 1962: 242). If George’s attitudes toward Catholics at the time of the passage of the Quebec Act are unclear, what is certain is that, prior to 1774, the king had made no effort to change any of the laws affecting British recusants. In fact, he was adamant that existing laws be upheld, and said it was the duty of ministers to “prevent alteration in so essential a part of the constitution as everything that relates to religion” (Brooke 1972: 261).

Personal attitudes would not have been the only factors influencing George III’s views on Catholic relief, of course. Just as William III had to consider the international consequences of his treatment of Catholics, particularly how his Catholic policy would affect his relations with his Catholic allies, George had to be mindful of the bigger issues. There were, for example, the matters of military security and the loyalty of subjects, Catholic subjects, living under the British crown to consider. The Treaty of Paris left Britain in possession of territories with large populations of French Roman Catholics whose allegiance was still uncertain and whose future in the British empire had still to be determined. This was obviously on his mind in 1763. At the announcement of James Murray’s appointment to the top post in Quebec, the new governor was told that “the king suspected that the Canadians would use the liberty granted of professing their religion to hold on to the French

connexion and to combine for the recovery of their country." Murray was ordered to watch the priests closely and punish "the slightest suspicion of interference by them in civil affairs" by removing them from the province (Kennedy 1973: 40). George's suspicions were likely coloured by prejudice, but he was clearly aware of the larger issues - the French threat, the possibility of rebellion - at stake in Quebec. Once George started paying attention to colonial affairs, these matters would have a mitigating influence on his personal beliefs.

#### *The Board of Trade:*

We have already seen that the Board of Trade began its life as the Lords of Trade in 1675, a committee of the Privy Council created by Charles II and his advisors to oversee colonial matters. The Board of Trade was established by William III in 1696 in response to attempts by British Parliamentarians to set up a comparable body that would be answerable to the British Parliament. By instituting the Board himself, William managed to keep colonial affairs within the jurisdiction of the crown.

The Board of Trade was made up of seven chief officers of the state and eight members who were not otherwise employed by the government. The eight represented the "real" membership of the Board. They had to attend meetings regularly and ordinarily did most of the work. The "official" members were excused from attending all Board gatherings, although some or all of the principal Secretaries of State - those of the Northern, Southern, and after 1768 the Colonial Departments - would frequently show up, whether or not their attendance was specially requested (Basye 1925: 2-3; Dickerson 1962: 22-24). According to its commission, the Board's main tasks were to oversee England's trade, England's poor and England's colonies. To fulfill these responsibilities the Lords Commissioners were given authority over the

commissions and instructions to the provincial governors, colonial appointments, and provincial legislation. They were also to keep strict accounts of all funds raised by the colonial assemblies, and adjudicate complaints about colonial administration and other concerns. All this they were to accomplish by keeping in frequent contact with colonial officials, especially the governor, and other people connected to the colonies (Dickerson 1962: 25-26).

These were wide-ranging responsibilities, yet the Board was an advisory body only. It was not given the authority to act on its own, only to provide information requested by other government officials and departments. The king in council had final say on all colonial matters. Its president was not a Secretary of State. He could not initiate legislation, nor could he personally approach the king or council. Effectively, the Board was a division of the Secretary of State for the Southern Department's office. Although the Lords Commissioners handled most colonial business, it was the latter official who was officially responsible for colonial matters (ibid: 107). After 1768, colonial responsibilities were transferred from the Southern Secretary to the new office of the Secretary of State for the Colonies and the Board of Trade was subsumed by the new department. While the colonial Secretary became the president of the Board, the Board itself remained an advisory body. Until its abolition in 1782, it never occupied any more important a position in the administration.

Initially, issues relating to trade took up most of the Lords Commissioners' time. Although matters dealing with the administration of the colonies were to take on greater importance as the century progressed, commercial matters remained a priority. Consistent with this focus, the Board of Trade from its inception paid special attention to the disposition of Britain's merchant community. The merchants never failed to be consulted on colonial

matters and it was on information provided by them and their demands that the Board most often acted (Labaree 1930: 60-61). Predictably the merchants were most concerned with legislation that violated their interests in some way, measures that required they pay duties on British goods imported into the colonies for example. The Board of Trade kept a special eye on colonial legislation that might affect the merchants' interests and inevitably rejected any measure that might hurt them. The Board was even known to incorporate restrictions against similar legislation being proposed in the colonies in subsequent instructions to the governors (ibid: 61).

The British merchants were interested in more than just trade legislation, however. They, like most everyone else, had become accustomed to seeing the institutions traditionally associated with the "old representative system" - a representative assembly, English law, and established Protestantism - granted to British colonies. Whether, as David Milobar (1996) implies, the merchant community was more committed to these institutions than were others, whether they subscribed more strongly to the "country" ideology that held these were things on which the wealth of the British empire was based, is not so important here as is how the Board of Trade responded to these sentiments. As far as colonial governance is concerned, the Board seems to have worked at contradictory purposes. Throughout the colonial period, the Board was bothered by the growing power of the provincial assemblies and sought to reduce it. As we have seen, the Board was instrumental in transforming most of the colonies in America into royal provinces by the early eighteenth century, and never gave up trying to get the remaining colonies to conform to this system of rule. Control over the provincial executive was only one aim of the Board during this period, however. Control over colonial legislation was another. After failing to have imposed a Poyning's Law-type of procedure on the legislatures of Jamaica and

Virginia, the Lords Commissioners undertook to diminish the powers of the assemblies through their instructions to the colonial governors. As the century progressed the instructions got longer and longer as the Board tacked more and more restrictions on the methods of framing legislation (Labaree 1930: 222). The commitment of the Lords Commissioners to strengthening royal authority in the colonies was remarkably consistent, unaffected by changes in ministry or personnel.

One would think, given the energy spent by successive Boards on trying to rein in the powers of the colonial assemblies, that the Lords Commissioners would have been opposed to granting representative institutions of any sort to the colonies. But the Board was resolute in its support of the "old representative system" of colonial governance, even under circumstances that would be considered less than ideal, even dangerous, to modern observers. It was the Board of Trade that framed the Proclamation of 1763 that recommended that the newly ceded territories, including Quebec and Grenada with their large populations of French Catholics, be granted the same British institutions as all other royal provinces. And as late as 1772, in the face of growing acrimony of the American assemblies, the Lords Commissioners advised that the traditional form of governance be established in Vandalia, a new colony being planned for the American west (Fenton 1993: 223).

How much the Board was influenced by British merchants on these matters can only be guessed at. Lord Hillsborough was president of the Board of Trade when the Proclamation was framed and was good friends with the Southern Secretary at the time, Lord Halifax. Halifax had served as Board president from 1748 to 1761, and if those years had had any influence on him at all he would likely have asked the merchant community how they thought the new territories should be governed, or at least advised Hillsborough to do the same. Lord Dartmouth was Colonial Secretary and chief Lord Commissioner

of the Board when the Vandalia project was being considered. He too had been president of the Board before (in 1765) and perhaps carried some sympathy for the merchants from his past experience. Although it might be hard to find direct evidence of merchant influence on the Board of Trade, it is clear that the Lords Commissioners were committed to establishing government in the colonies that was in accord with merchant interests.

If the Board was consistent in its support of the "old representative system" in the colonies, it seems to have experienced a shift in its attitudes toward Catholics and the rights of Catholics in the new world. "Tolerant" is not a word that could have been used to describe the Lords Commissioners under Halifax in 1755. In that year, some 10,000 Catholic Acadians were removed from their lands by the governor of the province of Nova Scotia, Charles Lawrence. Although the Lords of Trade did not order the expulsion they "did nothing to make such an outrage, which had been often suggested, impossible or to punish those responsible for it" (Basye 1925: 44). Quite the contrary: after the thing was done they recommended that Lawrence be promoted to the post of governor of the province (ibid: 45). Compare these actions to those of the Board some thirteen years later. In 1768 the Lords Commissioners admonished the new governor of Grenada, Robert Melville, for passing a constituent act in the province that stipulated all assembly representatives had to conform to the requirements of the Test Act on the grounds that it gave "disgust and dissatisfaction" to French Catholics in the province. To correct this perceived wrong, they submitted to the Privy Council a report that recommended that French Catholics in Grenada be allowed to vote in elections, sit in the assembly and be appointed to the provincial council. The report was duly approved (Higham 1926: 373-74). Obviously the Board no longer held firm to that aspect of merchant "ideology" that said Protestantism should be ascendant in the colonies.

So the Board of Trade in 1774 had a long history of supporting the "old representative system" in Britain's colonies and a shorter one of upholding Catholic interests in the provinces, at least in Grenada.

*Secretaries of State Southern and Colonial:*

Colonial matters were the responsibility of the Secretary of State for the Southern Department until 1768 when they were transferred to the newly-created office of the Secretary of State for the Colonies. In the period 1763 to 1768 there were five different Southern Secretaries: the Earl of Egremont (1761-1763), the Earl of Halifax (1763-1765), Henry Conway (1765-1766), the Duke of Richmond (1766) and the Earl of Shelburne (1766-1768). Lord Hillsborough was the first Colonial Secretary. He was succeeded by Lord Dartmouth in 1772, a close friend of Lord North's, who was Secretary for the colonies in 1774.

What can be said about Dartmouth that might give us some insight into his position on the Quebec Act? It has already been suggested that Dartmouth, having served as president of the Board of Trade in 1765, might have had some sympathy for the merchant community given the pro-merchant stance of that body. He certainly seemed to be on the side of the "radical" faction of the commercial community. In 1766, Dartmouth had allied himself with these merchants and voted in cabinet for repeal of the Stamp Act. He had also opposed other similar sorts of taxation measures for the colonies. Even as the American situation worsened, Dartmouth's support of the "radical" stance did not waver. He was one of only two members of the cabinet that opposed the authoritative measures proposed by North to punish the Bostonians after the Boston Tea Party. Finding himself outvoted, Dartmouth took the liberty, as president of the Board of Trade, to insert directions in the instructions to the new governor of Massachusetts to use "gentle means" to quiet the people, and

to call in troops "only if absolutely necessary." He continued to push for conciliation with the colonists until the revolution (Valentine 1967: 259, 312-15, 323). Dartmouth's abiding support of causes consistent with merchant ideals shows an affiliation with the views of the merchant community, implying that he probably would have been behind the traditional form of governance in Quebec. Remember that he promoted the Vandalia project and supported the establishment of traditional institutions in the planned province as late as 1772.

Dartmouth's position on Catholics and Catholicism is harder to ascertain. What is known is that he was a very religious man, a devout Methodist, who could never shake rumours that he was considering taking orders in the Church of England. Although he always denied it, his religiosity still affected his relations with other politicians: the Southern Secretary, Lord Weymouth, apparently called him the "psalm-singer" (ibid: 77-78). All this of course says nothing concrete about Dartmouth's opinions about Catholics, but if he was as devout as reported he likely would not have been anxious to promote toleration toward the French Catholics in Quebec.

#### *The British Parliament;*

The position of the British Parliament toward Quebec policy before passage of the Quebec Act is difficult to assess since Parliamentarians did not really involve themselves in Quebec affairs between the passage of the peace treaty in 1763 and the Quebec Act eleven years later. They did, however, take an interest in the American colonies after 1760, and in policy toward Catholics at various times, so it is possible to glean from their judgments on these matters how they might have approached the Quebec question in 1774.

The British Parliament had a long tradition of passing anti-Catholic legislation. Roman Catholics were subject, like Protestant recusants, to the

finer under the Acts of Uniformity enacted during the first half of the sixteenth century. A series of penal laws restricting Catholics and Catholicism specifically were put in place between 1571 and 1593, laws that were extended in 1606 and 1610. A reprieve from serious persecution during Charles I's reign and the Interregnum was followed by the passage of a fresh assortment of anti-Catholic measures after the Restoration. The first Test Act in 1673 barred Catholics from civil and military positions, while the second in 1678 prevented them from sitting in Parliament. In December 1691, less than three months after the signing of the Treaty of Limerick, the English Parliament decided that Catholics had no place in the Irish Parliament either, and so passed legislation that required that all high office holders there take an oath offensive to Catholics. During the 1699-1700 session, English Parliamentarians approved an act to restrain "the growth of popery" in England to counter, its supporters claimed, the executive's excessive lenience towards Catholic subjects (Horwitz 1977: 268). In 1705, to show that English MPs were not above extending penal legislation to the colonies, Parliament raised no objections to the attorney general's decision to extend to the colonies an English decision sanctioning the perpetual imprisonment of any bishop or priest discovered saying mass.

Although enforcement of the penal laws was erratic, the British Parliament made no serious attempt to repeal or alter any of them as the century progressed. Nor did it feel it necessary after the Seven Years' War to rethink how Catholics should be treated in the colonies. The debate on whether Britain should retain Canada or Guadeloupe raged in the press and at Westminster. But MPs were quiet about the articles of the Treaty of Paris that stipulated that Catholics in the ceded territories could practice their religion only "as far as the laws of Great Britain permit". They were unconcerned, apparently, that these terms implied that Britain's penal laws would apply in

the new regions. So up until the 1760s British Parliamentarians had given little or no indication via legislation that they as a body would be agreeable to a policy tolerant of Catholics in Quebec.

The silence of British Parliamentarians on the Catholic question was in contrast to their zeal to involve themselves in matters of colonial taxation and governance after 1760. As we have already seen, the approval of the Stamp Act in 1765 ended a long spell of Parliamentary neglect of the colonies and the start of a period that saw the passage of a number of measures binding on the colonies. The Declaratory Act, the Townshend Duties and the so-called "intolerable acts" were all attempts by British Parliamentarians to press colonists, especially in the American provinces, to comply with their picture of how the metropolis-colony relationship was supposed to work: the American colonies and their assemblies were ultimately subordinate to the British Parliament when it came to not only trade but any sort of legislation. When the colonists took issue with this treatment and began to oppose Parliamentary legislation openly and actively, British politicians were surprised and somewhat confused. When American belligerence continued to grow - the Boston "Massacre" of 1770, the burning of the *Gaspee*, an English schooner sent to enforce the Navigation Acts and revenue laws in Rhode Island, in Providence Harbour in 1772 - they became annoyed and then angry. The Boston Tea Party was a watershed. When word of its occurrence finally reached Britain in January 1774, nearly a month after it happened, it "shocked Englishmen, who compared its importance to Bonnie Prince Charlie's rebellion of 1745" (Leder 1978: 186-87) and "galvanized public and government support against the colonists" (Fenton 1993: 252). The measures that were framed by Lord North and his ministers to punish the colonists - the "intolerable acts" - were supported by large majorities in the British Parliament in the spring. Some Parliamentarians thought they were not

severe enough (Valentine 1967: 313-22).

So from what can be read of its behaviour during the months, years, centuries, leading up to the passage of the Quebec Act, the British Parliament was a body with a long history of supporting and preserving anti-Catholic legislation that had only recently begun to take an interest in colonial matters, especially those American. By 1774 American reactions to the colonial legislation passed by the British Parliament had generated a good degree of anti-American feeling among Parliamentarians. Although the colonists had some support in London, the majority of MPs were not sympathetic to their cause.

*The British Privy Council:*

By 1763, most of the real work of the British Privy Council was being done by the cabinet. Since the Restoration, the membership of the council had grown steadily, while its ability to handle normal administrative duties had decreased. More and more, the business of advising the king on colonial matters fell to a committee of the Privy Council that was referred to by a variety of names: the committee on "Appeals from the Plantations", of the "whole Council", for the "Affairs of the Plantations", and others. The membership of the committee confirms, however, that it was essentially the cabinet making the decisions. Meetings were usually attended by one or both of the Secretaries of State for the Northern and Southern Departments and after 1768 the Colonial Secretary, the First Lord of the Treasury, the Lord President of the council, one or both of the chief justices and the president of the Board of Trade, and sometimes other important officials, including the Chancellor of the Exchequer, the heads of the Admiralty and the War and Navy departments (Dickerson 1962: 81-100; Gipson 1956: 7-9, 11).

Two factors need to be considered when assessing the position of the

cabinet and by extension the Privy Council on the Quebec Act. Of course the opinions of the individual members of the cabinet mattered. As important, however, were the views of the people to whom the cabinet was responsible. As we have already seen, the power of the cabinet to dictate government policy had increased since the days of William and Mary. Although the idea that the cabinet was the "executive committee" of the British Parliament had not yet taken firm hold, the cabinet needed the support of Parliamentarians to maintain its authority. But members still had to answer to the king, who appointed them and who could force them to give up their positions if he wanted. In the case of Quebec, then, the cabinet had to consider the traditionally anti-Catholic stance of the British Parliament and the relatively recent rise in anti-American sentiment among Parliamentarians, as well as the views of George III, which are less known but are implied in his support of anti-Catholic MPs and the benign, even sympathetic, disposition he had heretofore shown toward colonial matters.

With respect to individual members of the cabinet, judging from his position on other colonial matters and his religious nature, the Colonial Secretary and the president of the Board of Trade, Lord Dartmouth, would probably have backed the traditional form of governance for Quebec, the "old representative system" and an ascendant Protestant church. But what of the head of the ministry, Lord North?

North was appointed by George III to the position of First Lord of the Treasury in 1770. He remained prime minister for twelve years heading the most stable ministry since the king's accession to the throne ten years earlier. North enjoyed the unshakable confidence of the monarch to whom the prime minister remained steadfastly loyal, in spite of George's refusal to accept any of North's periodic requests to resign. North also had strong support in the British Parliament, which was by the late eighteenth century at least as

necessary as the backing of the king to ensure a ministry's survival.

"Preposterous" was what North called the Townshend duties as Chancellor of the Exchequer under the Grafton ministry (1767-1768). North was not, however, particularly sympathetic to colonial concerns. Although he had supported repeal of most of the measures, he had disagreed with Grafton that all the duties should be thrown out. North felt that one exaction, that on tea, should remain as a reminder to the colonists of the supremacy of the British Parliament. On his appointment as prime minister in 1770, North managed to convince the cabinet of the same and the Townshend duties were revoked, save one (Leder 1978: 178).

North remained committed to the principle of Britain's Parliamentary supremacy throughout the years leading up to the revolution. He, like everyone else in Britain, was confounded by the actions of the American colonists in the early 1770s, first in Rhode Island, then in Boston and elsewhere. By 1773 his disenchantment with colonials was obvious. He did not, however, respond to American belligerence with as heavy a hand as some of his contemporaries might have wanted him to. North received news of the Boston Tea Party with more bewilderment than indignation. He ignored cries for "bloody reprisals", concerned that such a response would just foster dissent in the colonies (Leder 1978: 187). Although he himself endorsed a more forceful approach in the colonies, he allowed the Colonial Secretary, Lord Dartmouth, every opportunity to persuade more vehement cabinet ministers to adopt a more conciliatory stance toward the Bostonians (Valentine 1967: 314). The measures that North finally presented to the British Parliament in March 1774 - the Boston Port Bill, the Massachusetts Government Act, the Quartering Act and the Justice Act - although roundly condemned by the American colonists, reflected the sentiments of the majority of British MPs and the public as well as the king. Dependent as he was on the support of the monarch

and the British Parliament, North could hardly have done otherwise.

Notwithstanding all the criticism he has endured for helping lose the American colonies, North seems to have behaved, at least in the period leading up to the passage of the Quebec Act, like the consummate British politician, dedicated to maintaining the supremacy of the British Parliament while being careful to consider the views of the king and other officials and the tone of public sentiment.

*The Colonial Governor:*

Quebec had two governors between 1764 and 1774, James Murray, who served from the establishment of civil government in the province until 1766, and Guy Carleton, governor from 1766 to 1777.<sup>9</sup> Both Murray and Carleton were military men first, administrators second, a fact that affected their approach to the Quebec situation in important ways.

Murray joined the British army when he was not yet twenty years old and saw a good deal of active service in Europe and in North America. In October 1760, Murray, along with Ralph Burton and Thomas Gage, were chosen by the commander-in-chief, Jeffery Amherst, to administer the newly conquered regions of Quebec, Trois-Rivieres and Montreal. For the next three years Murray's main task was to hold on to Quebec. Although the British had defeated the French on the Plains of Abraham, the Seven Years' War was not over, and there was always the chance that France would try to retake the area, or that the French Catholic inhabitants would rise up against their British conquerors. And there were the Americans to watch. Murray was already worried about them in 1759. In a letter to the Secretary of state William Pitt, Murray expressed his concern that if the British succeeded in driving the French from New France (which of course they eventually did)

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<sup>9</sup> The following relies on the biographies of Murray and Carleton found in the Dictionary of Canadian Biography, Volumes IV and V.

there would be nothing to secure the continued dependence of the American colonies on Great Britain and so little to stop them from leaving the empire (Fenton 1993: 72).

The commission issued to Murray on 21 November 1763 declared him the "Captain General and Governor in Chief" of Quebec. The commission gave him the authority, on the advice of his council, to call assemblies and create law courts in the colony. Once an assembly was called he could also make laws for the colony. Until then he was restricted "to make such rules and regulations, by the advice of our said council, as shall appear to be necessary for the peace, order and good government of our said province." These "rules and regulations" were to be sent to London for approval (Burt 1933: 80-81). Contrary to Murray's own expectations the commission did not make him commander of the troops in the province. This apparent omission was only in accord with American precedent. Governorships in the colonies to the south were civilian appointments only; British troops were detachments of the British army serving abroad (Neatby 1966: 31). Precedent did not impress Murray, who took the decision of British ministers to give responsibility of the colony's troops to Ralph Burton as a personal affront. Murray argued to officials that Quebec was not like other colonies, that given its small population of Britons it could only be governed by "military force", and that military government in the province had up to now been the norm (ibid: 32). Unfortunately for the governor, his pleas had little effect on government officials, and his quarrels with Burton concerning the proper defence of Quebec only contributed to his and the brigadier's recall to England two years later.

Like Murray, Guy Carleton had joined the army young, at seventeen, and had distinguished himself in the military service in Europe, North America and the West Indies. He was named Lieutenant Governor and

Administrator of Quebec on 7 April 1766 on Murray's recall, but had to wait for his commission as Captain General and Governor in Chief until 12 April 1768. Carleton's commission mirrored Murray's, except that the new governor was made commander-in-chief of the provincial troops and so was granted the military authority Murray had wanted so desperately. While Hilda Neatby (1966: 103) says that it would be "grossly unjust" to suggest, as William Kennedy (1973: 59) does, that military security "appeared to him the only vital issue as far as Quebec was concerned", Carleton certainly thought about it a lot. As commander of the troops, Carleton was responsible for evaluating the state of Quebec's defences, a task that apparently caused him great anxiety. The French threat had not disappeared, and, like Murray, Carleton was troubled by what would happen to the province if American belligerence, which had already exhibited itself in the furore surrounding the Stamp Act, were to increase. On 15 February 1767, the governor wrote a letter to General Gage in which he worried about the strategic role Quebec would play if this happened (Burt 1933: 154-55; Kennedy 1973: 59).

Murray and Carleton's dispositions toward the American colonies were affected by more than just concerns about defence, however. Like the majority of Britons in the metropolis, they were disturbed and frankly disgusted with the behaviour of the American colonists, an attitude that was enhanced by the aristocratic-military nature of their upbringing. Carleton was especially averse to the growing republicanism of the colonists. His fears of "mobocracy" underlay his repeated warnings to British officials that Quebec had to be prepared for an American attack (Fenton 1993: 159-61).

Whereas their army experience ensured that the two governors of Quebec would place an inordinate amount of importance on the military security of the province, there is nothing that would suggest that they would be especially supportive of a policy of toleration in Quebec. Rather, their

backgrounds suggest the opposite. Carleton was born in Ireland; his family had lived there since the beginning of the seventeenth century and was now part of the mostly anti-Catholic Protestant Ascendancy in that kingdom. If John Brebner (1965: 274) believed that Murray was more "enlightened" than the governor who ordered the Acadians expelled from Nova Scotia, that there was "little reason to doubt that Murray's stay in Halifax" around the time of the expulsion "had impressed him deeply with the unhappy fate of the Acadians" and predisposed him to the charitable treatment of Quebec Catholics he forgot that in 1765 Murray recommended the Acadians remaining in Bonaventure be removed in the same "illiberal and ill-considered" way.

So the two governors had much in common. It is true that Carleton was much better connected politically than Murray. Carleton's friends in government listed like a who's who of officials responsible for colonial policy: Shelburne, Hillsborough, Dartmouth, North. George III himself was an admirer and ally of Carleton's, calling him at his appointment to the Quebec governorship a "galant & Sensible Man." Murray's place among the politicians was not nearly as impressive. He did have the backing of the ministries in power while he was in Quebec, that of Newcastle, Bute, and Grenville, as well as the support of Lord Egremont. Halifax, Shelburne and Dartmouth, however, were indifferent toward him, as were other important officials. But otherwise, Murray and Carleton shared many of the same concerns about Quebec and colonial governance and likely held some of the same attitudes toward Catholicism.

*The Anglo-Quebec merchants:*

By 1760, Protestant British merchants had begun to arrive in the colony. They were from Scotland, England, Ireland and the American colonies mostly, come to the province to take advantage of new business opportunities.

The fur trade was what most of them were interested in - furs made up almost eighty percent of the colony's total exports in 1760 - although some invested in other industries like wheat, flour, lumber, potash and iron production (Fenton 1993: 25-26). Some arrived as independents, but most had connections with larger firms in London.

The circumstances facing these men trying to acquire a commercial foothold in the province were not ideal. Hostile country, hostile Amerindians, and a hostile climate all conspired against them. Bankruptcies were common and many returned to their homelands, or had to look for other ways to make a living in the province, having failed to survive the competition and conditions in the new colony (Fenton 1993: 24-25; Iguarta 1990: 262). These were not easy or particularly cultured times and the men who succeeded in business in such a harsh environment were not particularly cultured people, at least as far as some in the province were concerned. James Murray called them "cruel, ignorant, rapacious fanatics", "the most immoral collection of individuals I have ever known"; Carleton was less disparaging but still called them fortune hunters (quoted in Kennedy 1973: 43). Philip Lawson quotes a traveller to the colony in 1765 who was compelled to remark that "the British inhabitants as yet settled in Canada, are the scum of the earth" (Lawson 1994: 55). But it must be remembered that the Anglo-Quebec merchants were not there to impress administrators or tourists with their civility; they were there to make money. Although their characters might have offended the more genteel, their "feistiness" was perfectly consistent with their motives.

We have already touched upon the position of the British merchants on matters of colonial governance and administration and religion. David Milobar emphasises the effect of "British intellectual traditions" on the merchants' claims about what was the proper system of rule for Quebec. According to Milobar, they were firm supporters of the "country ideology", a

system of beliefs that upheld “the virtues of the rule of law, property rights, mixed government, the balanced constitution, and the Protestant ascendancy” (Milobar 1996: 366). These were the things on which the wealth of the British empire was based; one had only to look at the failure of New France to duplicate the golden experience of the American colonies to see how a despotic government and the practice of “popery” killed entrepreneurial spirit and commercial success. But surely it was more than ideology that influenced the merchants’ notions about how Quebec should be ruled. Britain’s long legacy of participatory governance was certainly a factor in the merchants’ claims (Stanbridge 1997). That most every other colony in the British empire had, since the seventeenth century, been granted English institutions as a matter of course contributed to the merchants’ expectations about what would happen in Quebec as well. Although strongly held convictions concerning “the rights of Englishmen” informed their position, simple precedent played as important a role. It is likely that these structural constants were responsible for promoting the formulation of such a set of beliefs in the first place.

What the Anglo-Quebec merchants were, then, was a collection of competitive, commercially-minded individuals who held strong opinions about what Quebec government and administration should look like. An “old representative system” of rule, English law and property rights and an ascendant Protestant church were the institutions that they wanted, indeed expected, established in the province.

### *The Canadians:*

Some have maintained that French Canada was “decapitated” by the British conquest, that the British victory resulted in the wholesale departure of the “better classes” of Canadians and deprived those inhabitants left behind

of their natural leaders.<sup>10</sup> According to A.L. Burt this view has been exaggerated. It is true the conquest prompted some of those who made up the upper crust of society in New France to quit the colony. But the vast majority of the inhabitants, including most of the "better sort", stayed behind (Burt 1933: 12). There were a number of reasons why this might have happened. Hilda Neatby (1966: 23) says it was a matter of money, that only the Canadians who could afford it went to France; the rest stayed. Lawrence Gipson (1956: 159) adds that most Canadians had been born and raised in the colony and may have been reticent to "return" to a homeland they had never seen. Also, he says there was a feeling among Canadians after France ceded the province to Britain in the peace treaty that they had been "forsaken" by the French king. Whatever their reasons, only 300 of the 60 000 or so inhabitants ended up leaving (Tousignant 1979: xxxiv).

Enough of the the wealthier merchants and seigneurs withdrew, however, to permit smaller traders and land holders to anticipate taking their places in commerce and in the social life of the province. For the Quebec merchants this was not to be. The arrival of the British and American merchants to the colony after the conquest introduced a climate of competition to which the Quebec merchants were unaccustomed. They had some advantages over the British at first. The Quebec merchants had more experience and established contacts in the fur trade, for example, having spent years in the business. For a while, some worked as partners with the British merchants, combining Canadian skill and their connections with British money. It did not take long, however, before the British, with their capital and their "unsavoury" trade practices, managed to overcome whatever advantages the Canadians had and take over trade and industry in the

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<sup>10</sup> The "decapitation thesis" was first put forth in the mid-nineteenth century by two French-Canadian historians, Michel Bibaud and F.X. Garneau. The thesis was picked up and expanded in the 1950s and 1960s by Maurice Seguin and Michel Brunet. For an overview of this thesis and its critics see Miquelon (1977) and Stanbridge (1994).

province. That the Quebec administration tended to favour British merchants over Canadian when handing out lucrative military supply contracts and other sorts of patronage only hurt the Canadians more, as did the suspicions and outright prejudice that Canadian merchants had to endure at the hands of the British military in particular. Whatever dreams Canadian merchants had at the conquest, of taking over where the larger French traders had left off, evaporated with the coming of the British (Iguarta 1990).

What did the Quebec merchants and the seigneurs hope their province would look like once the British took over? The institutions that operated in New France under French rule have already been described.<sup>11</sup> A British presence did not automatically bring a change in these conditions. During the three years following the conquest it was uncertain whether Canada would remain under British rule come the end of the war. General Amherst told the three military governors he left in charge to administer the colony as fairly and charitably as possible, to maintain many of the existing institutions in the province and to ensure generous treatment of the French Catholic inhabitants. Murray followed his orders closely. He and his immediates continued to work through the same French Canadian militia captains who had served as Canadian "justices of the peace" under the French regime. He appointed Canadians to his ruling council and to other administrative offices, and ensured that all legal cases involving French-speaking inhabitants would be tried in the French language and according to French law (Gipson 1956: 156-59). The inhabitants were allowed to continue to practice their religion unmolested.

It would be hard to believe, however, that the Canadians would have expected things to go on like this after the peace. They were, after all, a "conquered" people, come under the authority of a country well known for its

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<sup>11</sup> See below pp. 80-81.

Protestant biases and anti-Catholic legislation. It had not been many years since the Acadians had been expelled from their lands; that they might experience a similar fate must have caused the Canadians some worry. Although they were in the majority, they really were not in a position to start demanding concessions from their conquerors. Besides, they were not accustomed to presenting their interests in this way. Collective political representations were rare under French rule; if they had ever expressed their shared opinions to officials it was usually only at the request of the governor or the *intendant* (Reid 1946). Probably they hoped they would continue to be treated fairly and be allowed to exercise their religion as freely as possible. They certainly recognised that regular declarations of loyalty to their new masters could not hurt. The Catholic clergy were more than cooperative with Murray and his executive during the military regime. They encouraged their flocks to obey their new leaders and readily offered up prayers for the king on Murray's request (Neatby 1966: 25-27). On the appointment of Murray to the post of governor in 1763, a number of Canadians signed an address to George III stating that "[Murray's appointment] conformed fully to their wishes" and "stressed the new Governor's worthiness to occupy the post by reason of his 'paternal care' and his efforts to counteract the misfortunes that the war had brought" (Gipson 1956: 163).

Before moving to the actual events surrounding the passage of the Quebec Act, it is necessary to discuss the role that informal institutional factors played in the relations between the major players involved in the policy-making process. We have already seen that there were informal institutional factors in place that structured the way in which colonial policy was normally handled and helped define the major players that participated in the negotiations. These factors did not, however, specify what was the capacity of

each of these players to influence the actual policy outcome, how much importance was placed on the views of each actor, and what were their prospects for influencing the resulting legislation. The relative power of the actors involved is of obvious importance. One need only look at the Treaty of Limerick case to see how, even though the power relations between the actors participating in the policy-making process might be well defined (by Poynings' Law and the tradition of English governance in Ireland), informal institutional factors (like Henry Capel's perquisites-in-exchange-for-compliance arrangement) can end up dictating to a large degree how much authority these players really have over policy outcomes.

*Informal institutional factors surrounding relations between players involved in the policy process:*

Aside from the king and the Privy Council who had final say on all important colonial matters it was the Board of Trade that had the greatest potential to affect policy in the provinces. Almost all colonial business came under the scrutiny of the Lords Commissioners at some point, and each new Board had access to the records of previous Boards. Whereas the Secretaries of State "owned" their papers, and took them away with them upon leaving office, Board of Trade documents stayed at the Plantation Office. Over the years the office had assembled a massive archive of colonial orders, reports, minutes and correspondence along with maps, books and other materials about the colonies. With that kind of access to desired information they had the capacity to exercise a great deal of power over colonial affairs. At the same time, however, the Board was only an advisory body. It is true that its commission was inexact. The Lords Commissioners were granted the power to nominate colonial officials including governors and councillors but it was unclear whether this authority amounted to control of provincial patronage: and,

although the nature of their duties suggested that the Board had jurisdiction over colonial correspondence, there were no definite instructions specifying that authority. The commission was unambiguous, however, when it came to the Board's role in relation to the king and council and other state departments. The Board's primary task was to collect and present information; the actual initiation and execution of policy remained outside the scope of its powers (Basye 1925: 3-5). So the power of the Board over colonial affairs was indirect. Its capacity to affect colonial policy depended on how closely other government departments followed its counsel, which in turn depended on how the Board was viewed by these other offices.

As contingent as its powers were it is not surprising that the Board experienced periods of considerable influence as well as times when its control over colonial business was eroded severely. After an initial period of "settling in" during which their responsibilities and the extent of their powers were better defined, the Lords Commissioners under William III were active and influential. The Board experienced a blow to its stature in 1702 with the appointment of the Earl of Nottingham to the position of Secretary of State for the Southern Department. Nottingham deprived the Board of many of its most important tasks, taking over colonial correspondence and what little control the Lords Commissioners had over colonial appointments (Basye 1925: 25-31). Although the amount of colonial business handled by the Board continued to keep them busy, their power and prestige relative to other government departments suffered. The status of the Board of Trade continued to decline until the earl of Halifax took up the post of president in 1748. By 1752, he had managed to boost the Board's authority over colonial affairs. He obtained an order in council that assured the Lords Commissioners the powers granted them in their commission. He reestablished the Board of Trade's position as the primary body with whom colonial officials corresponded and its

control over provincial nominations, "which, under Halifax, meant an almost complete direction of colonial patronage" (Dickerson 1924: 108) . It was still an advisory body, but now it was able to launch colonial projects on its own and choose the matters to which it wanted higher officials to pay attention (Basye 1925: Chapter II).

Halifax was replaced as president by Lord Sandys in 1761. On 15 May, an order in council stripped the Board of Trade of its power over colonial nominations, diminishing the power and prestige of the Board considerably. Although the Lords Commissioners did retain control over correspondence with the colonies, provincial patronage was from then the prerogative of the Secretary of State for the Southern Department (Labaree 1930: 44). Sandys was succeeded by Charles Townshend on 2 March 1763, who was soon replaced by the earl of Shelburne a little over a month later. Shelburne had been reluctant to take up the presidency because the Board's powers were so restricted. Although he finally gave in and accepted the post he had no intention of relinquishing any of the Board's existing authority and wasted no time writing to the Southern Secretary, Lord Egremont, and telling him so (Dickerson 1925: 124-29). He was very protective of his and the Board's responsibilities, and tried to conceal Board business from Egremont's office as much as possible. This created a rift between the offices that was reflected in the correspondence of May to July 1763 concerning how the new territories acquired by Britain by the Treaty of Paris should be administered (ibid: 128-32).

Egremont died suddenly on 21 August and Shelburne resigned his post. Halifax became the new Southern Secretary and convinced officials to appoint his friend, the earl of Hillsborough, to the Board presidency. Whereas relations between the Board and the office of the Southern Secretary had been tense during Shelburne's term, they were now more congenial. Halifax knew

first hand how knowledgeable the Lords Commissioners were about colonial issues and asked for their opinions and recommendations regularly. Their importance was also acknowledged by other government officials, as when the first lord of the treasury, George Grenville, made funds available to increase the number of Board staff and their salaries (Basye 1925: 133, 140, 142).

Hillsborough was replaced as Board president by Lord Dartmouth in 1765. There was increasing talk of making the head of the Board a Secretary of State to consolidate colonial business in one powerful office headed by a new colonial Secretary of State but nothing came of the matter during Dartmouth's term. He and the Board continued dealing with colonial affairs with the same powers as the previous Board, albeit with less zeal than did Hillsborough and his officials. In fact, the Board had little to do with the most important issue of the day, the Stamp Act. Aside from collecting and copying documents related to the matter for the British Parliament to use, it stayed out of the matter (Basye 1925: 143-52).

In August 1766, the Rockingham ministry fell and Hillsborough was back as Board president. Changes came almost immediately. The Secretary of State for the Southern Department was made responsible for all colonial matters, and the Board of Trade was reduced to a board of report only. It is unclear whose decision it was to emasculate the Board. The new prime minister, William Pitt, was anxious that his ideas concerning the colonies hold sway. By transferring authority over the colonies to the Southern Department, he had more control over colonial policy, given that his "personal adherant", Lord Shelburne, was now ensconced in that office. On the other hand, it appears Lord Hillsborough only agreed to return to the Board on the condition that the Board's powers be formally (read: by order in council) reduced. What is certain is that the already waning influence of the Board of Trade on colonial affairs was diminished further (ibid: 154-66).

In 1768, colonial affairs were transferred from the Southern Secretary to the newly created office of the Secretary of State for the colonies and the Board of Trade came under his direct supervision. After that the Board was "little more than an adjunct to the secretary's office" (ibid: 171) a situation that "weaken[ed] the board as a body with a distinct individuality separate from and independent of the secretary" (ibid: 181). Although now headed by a Secretary of State, the Board's duties did not change much; they certainly did not increase. It continued reviewing colonial legislation, providing information on the request of other departments and considering and adjudicating petitions and complaints as before. But it had little to do with any of the important legislation affecting the colonies during the following years. In fact, in 1774, when so many unprecedented decisions were taken concerning the colonies, the Board held fewer meetings and dealt with less business than ever before (ibid: 190).

Historically, then, the power of the Board to affect colonial policy depended on its relations with other state officials, particularly with the Secretary of State for the Southern Department and later the Colonial Secretary. If the Secretaries of State were willing to allow the Board the authority to act in accord with its commission, as in William III's day and when Halifax was president, the Lords Commissioners could be quite influential. If, on the other hand, the Secretary was unmindful of the Board's rights with regard to colonial affairs, the Board's powers and influence could be undermined significantly.

There is another aspect to this, however, and that concerns the nature of the business over which the Board exercised control. It is true that Halifax raised the stature of the Board during his term and restored to the Board a number of its traditional prerogatives. But these prerogatives pertained more to routine administrative business, the "everyday" running of individual

colonies, than to the "bigger" aspects of colonial policy (Basye 1925: 73n). It is true that the review of colonial legislation, the nomination of provincial officials, the preparation of governors' commissions and instructions and the adjudication of grievances were crucial to the smooth operation of royal governance in the colonies. None of it, however, confronted seriously the larger issues related to royal government in the colonies, like the constitutional relationship between the colonies and the mother country, or the powers of the provincial assemblies relative to the British Parliament. This was fine during the first half of the eighteenth century, during which British officials, the ministry and the British Parliament in particular, were not so interested in colonial policy anyway. As long as everything was operating relatively smoothly on the provincial front, British officials were happy to let conditions remain as they were. But after 1760, these "bigger" issues started to gain importance and garner the attention of ministers and Parliamentarians. The Board's influence on these matters had never been great and once they took centre stage the relative power of the Board to affect colonial policy was naturally reduced. This, combined with the reduction of its authority in 1766 to a board of report only, meant that whatever capacity the Lords Commissioners had once had to influence and initiate colonial policy independent of other government departments was effectively erased. By 1774 informal institutional factors were in place that restricted the capacity of the Board of Trade to impact on policy outcomes. They were still consulted on colonial affairs, but their role in and consequently their power over the policy-making process was marginal.

Quebec policy was affected by changes in the relations between British officials responsible for colonial affairs and "out-of-doors" interest groups as well. As we have already seen, transatlantic interest groups, merchant groups especially, had for some time been carrying on a mutually beneficial

relationship with government officials in which merchants, in exchange for information about the colonies, would acquire some assurance from policy-makers that their demands would be considered. By the latter half of the eighteenth century informal institutional factors had developed that established that these out-of-doors interests would almost always be consulted on colonial matters, by the Board of Trade certainly, but by other officials responsible for colonial affairs as well. In the 1760s, however, the relationship started to change. Except for the Board of Trade, British administrators gradually stopped asking transatlantic groups for advice on colonial business and started to rely more on "in-house" informants - politicians, clerks, and military men with experience in or with the colonies, for example - and agents of their own choosing. It is true that there were four years, 1765 to 1769, when the Anglo-colonial merchants again enjoyed close relations with government ministers (Olson 1992: 144-45). But with the fall of the Grafton ministry, their influence evaporated. Come to talk to Lord North in 1773 about the American situation, the London merchants trading to North America were bluntly told to "return and set quietly in their counting houses" (ibid: 134). Why these changes in policy-making procedure? Alison Olson draws on traditional interpretations of the period when she says that the political instability of British politics during the 1760s and 1770s prevented out-of-doors groups and their agents from developing the lasting associations with ministers that were necessary to continue to affect policy outcomes. Nancy Koehn (1994) takes a different approach. She challenges the old view that political instability resulted in confusion and legislative inconsistency and argues that, despite all the changes in government during this period, British officials were constant in their commitment to the government's major concern, to do something about the debt accumulated during the Seven Years' War. With British MPs complaining about their personal tax burdens,

and colonists refusing to comply with taxes legislated by the British Parliament, British officials turned to the excise to help pay for the costs of the war. This meant, however, that the British government had to keep domestic interests happy so that protests about the levies on their manufactures might be kept to a minimum. Whereas Olson's explanation implies that all out-of-doors interests lost leverage with the British government during this period because of political instability, Koehn says it was really only the colonial and Anglo-colonial groups that suffered as the focus of ministers shifted from foreign to domestic concerns.

Whatever the cause, by 1774 the informal institutional factors surrounding the relationship between transatlantic groups and government officials responsible for colonial policy had changed to the detriment of colonial and Anglo-colonial interests. Once regular participants in the colonial policy-making process they now played a secondary role in negotiations.

### The Quebec Act

In relating the process leading up to the passage of the Quebec Act<sup>12</sup> most accounts begin with the Proclamation of 1763. It is necessary to understand what came before the Act in order to appreciate fully the effects of institutional factors on the Act's formulation.

#### *The Proclamation of 1763, the merchants and James Murray:*

After the signing of the Treaty of Paris in February 1763, the Secretary of State for the Southern Department, Lord Egremont, requested the Board of

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<sup>12</sup> The events leading up to the Act's passage have been recounted many times. The following relies especially on the following sources: Burt (1933), Kennedy (1973), Lawson (1994), Marshall (1971), Neatby (1966), Tousignant (1979). Most of the important documents associated with this period, including merchant petitions, have been reproduced in Shortt and Doughty (1918).

Trade to make some suggestions about how Britain's new territories should be administered. The information Egremont provided the Board concerning Canada included copies of the treaty and three reports prepared in 1762 by James Murray, Ralph Burton and Thomas Gage, the military governors who had been administering Quebec, Trois Rivieres and Montreal respectively since the conquest. Murray's report was the longest. In it he stated that the allegiance of French Catholics in Quebec could be secured by assuring them that their religion would be protected. He also reported that the French Catholics in the province were not "ripe for such a government as prevails in our other colonies". The then president of the Board, Lord Shelburne, and the Lords Commissioners seem to have taken Murray's remarks to heart. In their report dated 8 June 1763 they advised that Quebec should be governed by "a Governor and Council under Your Majesty's immediate commission and instructions." They also recommended that the boundaries of the province should be drawn closely so that the concessions they believed would have to be made to the French Catholics, a population they said would "greatly exceed for a very long period of time" all other settlers in the colony, could be confined to as immediate an area as possible (Burt 1933: 76, 82-83; Tousignant 1979: xxxv). Egremont disagreed with the Board's recommendation that the West should not be included within the bounds of Quebec, a point of difference that caused a rift between him and Shelburne. He was, however, comfortable with most of the rest of the Board's counsel, including the implication that Britain's "new French subjects" should, and would, be granted some special privileges. The Southern Secretary was anxious to keep the new subjects in the colony, a desire he had expressed three years earlier at the capitulation of Montreal (Tousignant 1979: xxxiii). The Board's report was consistent with these concerns. Notwithstanding disagreements on the boundary issue, the Board of Trade was directed to begin drafting the commissions and instructions for the

new governments of the ceded territories.

As it turns out, it was not Shelburne and Egremont that ended up framing the Proclamation. The Southern Secretary died suddenly in August and his post was taken up by Lord Halifax. Shelburne quit the Board presidency and was replaced by Lord Hillsborough in September. The Proclamation that was submitted by the Board to Halifax on 4 October and approved by the Privy Council the next day incorporated some of the Board's recommendations of the 8 June report, including its suggestion that the West remain free from any civil jurisdiction. As far as the province's form of governance was concerned, however, the system proposed in the Proclamation differed markedly from the sort that the Lords Commissioners under Shelburne had advised. Hillsborough and the Board decided that, in addition to a governor and council, Quebec should be granted an elected assembly "as in the other North American colonies". Also different was the Board's stance on other institutions in the province. French law was to be abolished, and there was no suggestion that any concessions to French Catholics would be made beyond the vague assurance that their religion would be protected "as far as the laws of Britain permit."

What the Proclamation did for Quebec, then, was to put in place the basic conditions necessary to turn the colony into a royal province. That this objective was in the minds of officials who framed its terms, and that this was to happen sooner rather than later, was confirmed in the new governor's commission and instructions. The documents were filled with particulars about how Quebec's assembly would be regulated, including all oaths that its Protestant representatives had to take; precious little detail was provided about the jurisdiction and powers of the governor and council that was to rule in the meantime. English law was to be instituted in Quebec; how exactly that was to be done was unclear, except that Murray should look to other colonies,

especially Nova Scotia, for guidance (Kennedy 1973: 36). And the process of Anglicisation was to begin immediately. A long and detailed section was also included that outlined how settlement was supposed to proceed in the province, including how townships were to be laid out and how land grants were to be administered. It also directed the governor to prepare a proclamation advertising these grants and extolling the virtues of the new province, and to arrange for its publication in the American colonies. Clearly British officials intended on populating the province with Protestant Britons and Americans (Burt 1933: 82).

Not surprisingly, the Proclamation was well-received by British merchants in Quebec. They had become restless under military rule, and fed up with having to abide by the French institutions that had remained in operation since the conquest. They were anxious that civil government be established so that they could get on with administering and legislating for the colony through a representative assembly. To say that they were "disappointed" with how Murray chose to interpret his instructions is an understatement. Having waited three years for Quebec to become a British province, the merchants were incensed by the governor's actions.

Murray believed most of the recommendations in the Proclamation were unsuited to conditions in Quebec. He ignored instructions to adopt wholesale British law in the colony, and continued to allow French law in the civil courts, eventually permitting Catholics to sit on juries and practice law in the colony. The old seigneurial land laws were maintained. Murray also decided to "postpone" the election of an assembly indefinitely and legislate by appointed council only.

Why did Murray stray so far from the terms of the Proclamation and his instructions? He had already, in his report of 1762, made clear his position concerning Quebec governance, particularly his opinion that the province

was not "ripe" for an elected assembly along the lines of those in America. First there was the problem of submitting the vast majority of Catholic inhabitants to the rule of only a handful of Protestants. It is not so much that there was no precedent for this. Ireland, of course, had been ruled that way for nearly a century, which makes sanctimonious remarks professing that such an assembly would represent a "travesty" of British governance sound hollow and hypocritical.<sup>13</sup> But the system was preserved in Ireland with the help of British troops. Since British MPs were averse to the presence and maintenance of a standing army in England during peacetime, British officials kept most of the country's troops in reserve in Ireland. At least 12 000 men were accommodated in - and paid for by - Ireland most of the time.<sup>14</sup> Although the number of troops in North America was boosted after the end of the Seven Years' War, this only amounted to about 7 500 men to secure all of Britain's possessions on that vast continent. As far as Murray was concerned, to prohibit almost 95 percent of the population from participating in any way in the administration of the province, especially when there were not nearly enough troops in the colony to maintain order if France did try to retake the colony, was not only unfair but downright dangerous.

Finally, Murray was loath to hand over rule of the province to men whom he personally detested. Perhaps it was, as some have said, simple aristocratic bigotry that made Murray hate the British merchants so much. As we have seen, cultured and obedient the traders were not. In contrast, Quebec's French inhabitants, who Murray called in 1764 "perhaps the bravest and the best race upon the globe" (quoted in Kennedy 1973: 41), had been respectful and complaisant since the conquest. The British merchants were

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<sup>13</sup> Unless, of course, they rationalised that it was somehow *less* unconstitutional for Protestants to rule over a kingdom where they were outnumbered four-to-one than over a colony in which they were outnumbered 95-to-one.

<sup>14</sup> An English Act of 1699 determined that the regular army would number 12 000 in Ireland and 7 000 in England (Connolly 1992: 199).

coarse and demanding in comparison, and their nature offended Murray.

The reaction of the British merchants on both sides of the ocean was swift. Already in December 1763, several months before Murray officially became governor<sup>15</sup>, the Board of Trade received its first indictment of Murray. Saying that they were responding on behalf of complaints from Britons overseas, the "merchants in London trading to Quebec" submitted a petition claiming that Murray's activities in the province were harming the colony's economic interests. In Quebec, merchants from around the province sent petitions and agents to air their grievances before Murray and administrators in London. On 16 October 1764 the grand jury of Quebec came up with a presentment that was highly critical of Murray and his government. The document declared that all public accounts should be laid before the grand jury as it was the only "representative body" in the province.<sup>16</sup> It also condemned Murray's decision to let Catholics serve on juries in judgement of Britons claiming that it was contrary to English law. These last comments were added to the presentment as an appendix unbeknownst to the few Canadians who sat on the grand jury and was signed only by the British members. Later, the Canadians who had included their signatures on the document apologised to an indignant Murray saying that they had not really understood what they were signing. The British merchants, however, were unrepentant and continued their tirade against the governor and his policies.

The removal of Murray from the province now became the merchants' main goal. In April 1765, they hired a London lawyer, Fowler Walker, to make their case to government officials and other notables. Walker immediately launched a slander campaign against Murray in London, bombarding the

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<sup>15</sup> The Proclamation was approved by the British Privy Council on 5 October 1763. It and Murray's commission and instructions did not go into effect until nearly a year later, on 10 August 1764.

<sup>16</sup> Members of the Grand Jury were appointed, not elected. Presumably, merchants called it "representative" only because it had merchant, including *Canadien*, representation.

British government with letters and remonstrations accusing Murray of all manner of atrocities in the province (Burt 1933: 123-24). That same month, another petition from the merchants in London trading to Quebec was presented to the Board of Trade. Again they admonished Murray for the way he was administering the province and urged that a representative assembly be called in Quebec immediately. This petition was different from the first, however. Not all who signed it were merchants. The petition included the signatures of the mayor and four aldermen of the city of London as well as four British MPs. This was to underline that the merchants' demands amounted to more than just self interest. They were a matter of principle (Lawson 1994: 54).

Something else notable about this petition was that it included the names of most of the leading North American merchants in London, a group of about fifteen or twenty who were emerging as the driving force behind most of the commercial lobbies in London. These men, like Barlow Trecothick and Brook Watson, were powerful and well-connected with government. Watson was a leading member of the Canada Committee, a group of merchants called upon by the British government to settle the Canada Bills issue after the conquest. They were to head the public agitation in London protesting the Stamp Act the following year, a campaign that was organised very much like the drive to have Murray recalled. Philip Lawson goes so far as to suggest that the Murray campaign was a "dress rehearsal" for the movement against the Stamp Act. It taught the leaders of the merchant community in London the effectiveness of petitions and public appeals to constitutional principles in lobbying government (Lawson 1994: 62-63).

Walker continued his assault on Murray's character and competence, appearing in front of the Board of Trade to complain of a billeting ordinance passed in the province by Murray, while two more petitions from Quebec and

London, this time addressed to the king, both demanded that Murray be dismissed and the province be granted a representative assembly. The merchants' campaign had the desired effect on government administrators. In June 1765, the Board of Trade reported to the Privy Council "that the Governor Murray, and Lieutenant Governor Burton, did not upon this occasion conduct themselves according to the duty of their several situations" (quoted in Lawson 1994: 59). Although the Privy Council did not automatically endorse the Board's report, they did express their "surprise" at some of Murray's actions. Finally, Murray lost whatever ministerial support he had when the Grenville ministry fell on 9 July 1765. Three months later, Murray and Burton were recalled from the province.

As it turned out, the charges against Murray were dropped for lack of evidence. This happened partly because the merchants in Quebec, having succeeded in getting Murray removed from the province, lost interest in the matter, leaving Fowler Walker and the London merchants to face Privy Councillor investigators without their help, and partly because evidence really was lacking. Many of the indictments against Murray had been exaggerated or fabricated outright. Walker admitted as much to the Privy Council when he told them "that the papers sent over from Canada were never intended to come before the Council in a judicial way and that he had no witnesses to support any of the charges." In early April 1767, the council dismissed the charges against Murray, calling them "groundless, scandalous and derogatory to the said governor" (Burt 1933: 126). Nevertheless the merchants had scored a major victory, and they looked forward to the appointment of a new governor who they were confident would see things their way.

*The government's response:*

Whereas the merchants responded quickly to the Proclamation, or more precisely James Murray's interpretation of the Proclamation and his instructions, there was little immediate reaction from most British officials. It is significant that those few who did express an early opinion on the terms of the documents, however, did so on grounds very different from the merchants. In December 1764, Lord Chief Justice William Mansfield, having learned through a representative of James Murray's in London of conditions in the province, wrote to the First Lord of the Treasury, George Grenville, expressing his disappointment and disbelief at how the Quebec situation had been handled by British administrators. "Is it possible," Mansfield wrote, "that we have abolished their laws, and customs, and forms of judicature all at once? - a thing never to be attempted or wished. The history of the world don't [sic] furnish an instance of so rash and unjust an act by any conqueror whatsoever: much less by the Crown of England, which has always left to the conquered their own laws and usages with a change only so far as the sovereignty was concerned" (quoted in Lawson 1994: 58). Mansfield did not follow the merchants and condemn Murray for failing to abide by the terms of the Proclamation. Rather, he implied that the document itself was legally flawed because it specified terms that were contrary to the decision taken in *Calvin's Case* in 1609.

At least one other law officer was concerned about the Proclamation with regard to legal precedent. After 1760 a number of British "land sharks" appeared in the province with the aim of augmenting their property holdings. In 1764 they approached the government complaining of Canadians who had refused to take the oath of allegiance to the new king, and charged that, in accord with English penal legislation, these Catholics should be considered aliens without the right to inherit or transfer property under the new

administration. The British attorney general, Fletcher Norton, decided against the speculators. "I conceive that the definitive treaty which has had the sanction and been approved by both Houses of Parliament meant to give, and that it has in fact and in law given to the inhabitants of those ceded countries a permanent and transmissible interest in their land there; and that to put a different construction upon the treaty would dishonour the crown and the truth, and it would be saying that by the treaty they were promised the quiet enjoyment of their property but by the laws were to be immediately stripped of their estates" (quoted in Lawson 1994: 57). Fletcher decided that the toleration granted to Quebec Catholics in the Treaty of Paris was more binding legally than the Proclamation's implication that England's penal laws extended to the colonies. This was because the Treaty had been approved by the British Parliament, whereas the other document had been instituted by an order in council only. Fletcher's statements were in accord with the principles that were later legally confirmed in the decision taken by Lord Mansfield in the case of *Campbell v. Hall*.

This attention to legal precedent seems to have fallen down in 1765, however. On 10 June, Fletcher and the solicitor general William De Grey ruled that Catholics in Quebec were "not subject; to the incapacities, disabilities, and penalties to which Roman Catholics in this kingdom are subject by the Laws thereof" (quoted in Lawson 1994: 45). In other words, they decided that the British penal laws did not extend to Quebec. In most accounts, the ruling appears to come out of the blue. Writers tend to ignore this, however, preferring to concentrate on the ground-breaking nature of the ruling. It is hailed as an enlightened decision, a watershed, a judgment that traced "the way to the eventual abolition of the oath under the Test Act" (Tousignant 1979: xli).

But the ruling raises many questions, not the least important being why

did the law officers ignore precedent in this case? There was a legal precedent: the 1705 decision of then attorney general Edward Northey that stated the colonies *were* subject to English penal legislation.<sup>17</sup> Was their ruling not contrary to this judgment? Philip Lawson suggests that they may not have understood the precedent (ibid: 45). But this seems unlikely, since they appear to have been up on all the other rulings that applied to Quebec. Alfred Burt implies they simply ignored precedent. They “gave no reason for this opinion, perhaps because their only reason was common sense and not law” (Burt 1933: 94). Again, however, given how much attention they gave to legal precedent in other matters, it is strange they would just disregard it in this case. Maybe they missed the precedent; after all, their decision came only three days after the Board of Trade requested their opinion on the matter. There is some evidence to suggest that this might have happened. Burt notes that in the papers of Lord Dartmouth, who became president of the Board shortly after the decision, the law officers’ decision is immediately followed by Northey’s ruling of 1705, “with exact references to statutes” (Burt 133: 509n34). Presumably it was the law officers and not Dartmouth who unearthed this ruling and forwarded it to the Board. If this is the case it means that Fletcher and De Grey were both aware of and understood the legal precedents on this issue and were concerned that they be brought to light. Their actions in this case were not so inconsistent with their previous behaviour after all.

Although the law officers might have been contemplating Quebec issues, it was really not until 1765 that the merchant-led furor surrounding Murray’s administering of the province compelled other British administrators to take a closer look at the Quebec situation. A number of reports were produced that year that exemplified the disagreement existing among British officials concerning Quebec policy. Whether or not the

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<sup>17</sup> See below pp. 115-16.

government should institute an assembly in the province depended on who one talked to and when. In May 1765, a report of the Board of Trade (still under Lord Hillsborough) said that Quebec could and should not be made into a royal province for some time (Lawson 1994: 68-69). In August, the law officers agreed. In a draft of a bill aimed at settling the revenue problems of the province they rejected outright the government's option of instituting a provincial assembly in the colony to levy taxes (ibid 70). By September, however, the Board (now under Lord Dartmouth) had reversed itself. In a report submitted to the king in September, the Lords Commissioners recommended that an assembly be called in the province as soon as possible.

Similar inconsistencies existed on the matter of religion. The Board's May report detailed all sorts of regulations that they believed should be put in place in the province to regulate the practice of Catholicism. These recommendations were in contrast to the decision of the law officers in June that the penal laws against Catholics did not extend to the colonies. On 2 September the Board again changed its mind. Now instead of restrictions on their behaviour, the Lords Commissioners counselled that Quebec Catholics should be allowed to vote for representatives in the assembly they were recommending. They also harshly criticised Murray's attempt at combining systems of justice in the province, not because he had combined English and French law, but because they thought the concessions Murray extended to French Catholics did not go far enough.

Some order did arise out of all this confusion. In response to the Board's admonishment of Murray's system of justice, the Privy Council looked into the matter in the early months of 1766 and with the help of the attorney general Charles Yorke and the Lords Commissioners came up with a plan to overhaul the Quebec justice system. They intended to include the new reforms in the instructions to the governor of Quebec. But when the plan came before the

council in June the lord chancellor, Lord Northington, refused to endorse it. It is true the reforms proposed went beyond those suggested by the Board of Trade. They included a provision that stated that all cases involving property would be adjudicated using French laws, and one that allowed for the appointment of Catholic judges. But the chancellor did not reject the reforms just because he thought they were too generous. Northington was more concerned about protocol. He questioned the right of the king and council to make policy for Quebec at all. He said that only the British Parliament could alter the post-conquest settlement. As far as Northington was concerned, "the old Canadian laws" were still in effect legally in the province and would remain that way until the British Parliament decided otherwise. Again, the principles of the *Campbell v. Hall* case, although they were not legally established until 1774, had entered into discussions concerning Quebec. That the principles were still "informal" enough to be overcome accounts for Philip Lawson's statement that "In different circumstances, supported by the king, the government probably could have pulled off the policy by order in council" (Lawson 1994: 83). Nevertheless, they were enough of an obstruction to delay approval of the reforms until the ministry that came up with them was dissolved. The program was shelved.

*Guy Carleton and Quebec:*

Meanwhile, with Murray gone, the British merchants in Quebec looked forward to the arrival of the new governor, Guy Carleton, who they were sure would be more sympathetic to their demands. Carleton, along with the new chief justice and attorney general for the province, William Hey and Francis Maseres, arrived in the province in September 1766 with a bias against Murray and a high regard for the British merchants. The traders had made sure through their representatives in London that Carleton was familiar with

their sentiments concerning Quebec before he left England. Hey and Maseres were friends with Fowler Walker and were no doubt also briefed on the merchants' views before their departure. On top of this, Maseres was a French-born Huguenot and an anti-Catholic. From all indications, things were looking up for the British merchants in Quebec.

Carleton's first years as governor were far from trouble-free. He immediately became involved in a political imbroglio with Murray adherents in the provincial council. British and Canadian merchants complained of oppressive restrictions on the western fur trade and a dispute arose between the traders and the governor of Newfoundland concerning the seal fishery in the east. And there were other distractions. A struggle between merchants and government officials, begun during Murray's term concerning the legality of certain duties imposed in the province, came to a head under Carleton. A protracted court battle ended with the administration finally giving up trying to collect the duties. Another conflict arose when law officers in the province decided that British bankruptcy laws applied to Quebec, a ruling to which merchants in the province were adamantly opposed. The British merchants in Quebec had obviously not lost their taste for political agitation. Yet the merchants had hardly anything to say about provincial governance during this period. Early on in his tenure, Carleton was approached by some British merchants and asked if he would mind if they submitted a petition for an assembly. Carleton said he objected to petitions of any sort, but told them he was in favour of assemblies in general and asked that they come up with a plan for a representative body that might fit the conditions of the province. When they returned a few weeks later, the tenor of Carleton's response evidently cowed them and the matter was dropped for a while. Later, a few British merchants tried to get the campaign going again but failed to stimulate enough interest in the project and gave up. Until 1770,

the issue that had helped to bring down James Murray was virtually ignored by the British merchants in Quebec.

Just because Carleton managed to avoid or defuse any major confrontations with the British merchants over the colony's administration during this period does not mean that he did not have some strong opinions on how the province should be governed. Although Carleton might have come to Quebec on the side of the merchants, it was not long before he adopted many of the same ideas as his predecessor. The commissions and instructions prepared for him by the Board of Trade were almost identical to the papers given to Murray. But, like Murray, Carleton made little effort to follow any of the directions contained in them. No representative assembly was called. He could not fathom how such a body could work in Quebec. For one thing, he told British officials, the "better sort" of Canadians were against an assembly. Carleton said they watched what was going on in the American colonies and wanted nothing to do with these institutions that appeared to them to breed only insolent behaviour. Carleton agreed with the seigneurs arguing that in a province like Quebec, "where all men appear nearly on a level", a representative assembly "must give a strong bias to republican principles" (quoted in Kennedy 1973: 45), a situation that Carleton evidently wanted to avoid. So he like Murray continued to govern the colony with his council only. English law was not instituted in the province either. It is true that Carleton was critical of Murray's handling of Quebec justice. This was not, however, because Murray had failed to abolish French law, but because Carleton disagreed with the way in which Murray had chosen to combine English and French systems. The new governor continued to advocate an integrated system, just a different one. And although initially suspicious of the French Catholic population in the province, within a few months of his arrival it was obvious that Carleton's attitude towards the Canadians was

changing. Already in November 1766, Carleton was writing to England begging for redress for the "poverty-stricken" French seigneurs, asking that the government sanction the application of the proceeds from liquor licences toward grants for relief of the Canadian *noblesse* (Burt 1933: 153). The softening of Carleton's attitudes toward Quebec French Catholics, especially the seigneurs and the senior clergy, was to affect profoundly the governor's vision for Quebec's future when combined with his tendency as a military man to view most everything in terms of the security of the province.

*The search for solutions:*

Northington quashed plans for Quebec legal reform in 1766 and the current ministry fell. After that, Quebec issues took a back seat to the events in the American colonies. It was not until May 1767, when rumours that the opposition in the British Parliament was ready to mount an offensive against the government accusing them of dragging their feet on Quebec, that the administration began again to look seriously at the Quebec situation. Of course nothing had happened in the meantime to make things any clearer, and this was reflected in the views espoused by the new administration. The advocate-general, James Marriot, was asked by the new Southern Secretary, Lord Shelburne, to review a re-write of the Archbishop of York's report of 1764 that recommended that the practice of Catholicism be strictly regulated in the province. Marriot supported the Archbishop's suggestions wholeheartedly, a clear indication that the notion that Catholicism could be eradicated in Quebec was still held by at least some high-ranking officials (Lawson 1994: 96). The Southern Secretary saw things somewhat differently as evinced by a letter he wrote to Board of Trade outlining his views on the situation. He expressed his disappointment that the plan to overhaul Quebec's legal system had not been implemented the previous year as well as his regret that an assembly had not

been called in the province and stated his conviction that "as perfect tranquillity would be established in Quebec as in any of the other American colonies, could an assembly be called" (quoted in Burt 1933: 151). He went beyond the Board's report of 2 September and proposed that Catholics should be allowed to sit in the assembly and be nominated to the provincial council. This he believed could be done without the approval of the British Parliament, through simple alteration of the governor's commission and instructions (ibid: 151-52).

These differences were exacerbated in 2 June when the rumours proved true and the Parliamentary opposition launched its attack (Marshall 1971: 55-57). This of course put a different spin on everything. Not only did administrators have to decide on a course of action, they would have to convince British Parliamentarians that whatever scheme they came up with was appropriate. Ministers decided they needed more information. An order in council was issued on 28 August directing the governor, council and law officers in Quebec to report on the system and make recommendations. Shelburne instructed his secretary, Maurice Morgann, to deliver the order to Quebec and to return with the reports. Shelburne also wrote to Guy Carleton telling him that the government was considering what to do about Quebec and asking for his comments.

Carleton provided yet another perspective on a situation already overburdened by conflicting opinions. In his response to Shelburne's letter and his subsequent correspondence Carleton stressed how important it was that Quebec be prepared in case of attack, from France certainly, but from the American colonies as well. To that end, Carleton recommended that forts be constructed in various parts of the colony, especially at the two "entrances" to Quebec, the inland waterways (to help protect the colony from invading Americans) and the St Lawrence (to block a French invasion). But beyond the

need for fortifications, the governor talked of the importance of securing the French Catholics in the province, especially the seigneurs and the clergy, the men who Carleton believed held the most influence over the rest of the population. But Carleton eschewed strong-arm tactics; instead he argued that these men - and hence the rest of the French population - could be won over to the British side by less aggressive means, through the proper system of rule and administration. He denounced the terms of the Proclamation, calling them too severe, and wrote that all should be repealed and Canadian laws be restored. He counselled that seigneurial tenure as it existed in New France be resurrected in the province. In light of the seigneurs' opinions on representative assemblies, Carleton said such a body should not be established, but official positions, including some on the provincial council, should be made open to Canadians. Carleton went so far as to recommend that a French Catholic regiment be raised, vowing that "no doubt but these gentlemen would prepare to serve where duty and interest require them" (quoted in Burt 1933: 155). He even suggested that some Canadians should be placed in British battalions in the American colonies to "make them turn their eyes from France" and "preserve an interest here for future events" (ibid: 155-56). Carleton made sure to praise the courage of the Canadians and emphasised their experience with the conditions in the province. Of the 18 000 men he estimated were available for duty, "above one half have already served, with as much Valor, with more Zeal, and more military knowledge for America, than the regular Troops of France, that were joined with them" (Shortt and Doughty 1918: 282). Carleton thus linked civil responsibility with defence, a connection that he was to continue to promote during the years leading up to the Quebec Act's passage (Kennedy 1973: 59-60; Neatby 1966: 100).

If all this were not enough, the Quebec traders in London decided to revive the cause of an assembly in the province. In 1768, two letters were

presented to the British Privy Council, one signed by the Canada Committee and the other by "Sundry Merchants Trading to and deeply interested in the Province of Quebec", asking that an assembly be established in Quebec. Nothing new here, except that, for the first time, the merchants recommended that Catholics be admitted to the council and the assembly. The efforts of the London merchants were not matched by their counterparts in Quebec. There was nothing forthcoming from the Quebec traders until 1770. It was only then that they forwarded their own demands for a representative body. It is significant, however, that this petition said nothing about permitting French Catholics to participate in Quebec governance. Neither did another petition from the Quebec merchants in 1773 mention that Catholics should be allowed in the assembly. Indeed, it was not until 1774, after the Quebec Act was passed, that the British merchants in Quebec made any concessions on this point.<sup>18</sup> The Anglo-Quebec merchant lobby was obviously not unified in their position on the assembly.

How did ministers respond to all these different opinions? In the end the merchants' demands were given short shrift. The council forwarded the letters from the Quebec traders in London to the Board of Trade (again under Lord Hillsborough, now the Colonial Secretary) for review. The result was a report issued in July 1769 endorsing the merchants' suggestions. In addition to reviving the 1766 plan for judicial reform, the Lords Commissioners counselled that oaths offensive to Catholics be waived in Quebec and French Catholics - seigneurs specifically - be admitted to the province's council, its proposed assembly, and all other important posts (Burt 1933: 165-66).

Unfortunately for the merchants, the Board's recommendations were shelved

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<sup>18</sup> The merchants ask the King to "call a General Assembly in such Manner, and of such Constitution and Form as to your Majesty, in your Royal Wisdom, shall seem best adapted to secure its Peace Welfare and good Government." Francis Maseres took this passage to mean that the British merchants in Quebec would now allow Catholics on the assembly if the King felt that it was proper. See Maseres (1775: 28-39). The merchants' petition to the king of 1773 is reproduced in Shortt and Doughty (1918: 497).

by the Privy Council mostly because ministers wanted to wait to consider Quebec until Shelburne's secretary Maurice Morgann returned from the province with the reports of the colonial officials. Whereas the London merchants' letters at least convinced the Board of Trade to issue an official report in support of their proposals, the representations from the Quebec merchants had little effect on anyone. Ministers had already let it be known that they were more interested in the opinions of Morgann and colonial officials than Protestant merchants. The Quebec merchants' appeals fell on deaf ears.

It is interesting to note that the difference between Quebec and London merchants on the Catholic question was only one of a few things that they appeared to disagree on after 1765. Once James Murray was recalled from the province, many of the London merchants who participated in the campaign against the erstwhile governor, flung themselves into efforts to repeal the Stamp Act. In contrast, the British merchants in Quebec appear to have submitted to the stamp duties without much complaint. Certainly they did not protest the tax with the same vehemence as their London and American counterparts, although there is evidence that suggests that at least some Quebec merchants had opposed the Act (Kerr 1932).<sup>19</sup> Around 1769 the Quebec merchants dropped Fowler Walker as their agent in London and hired in his place Frances Maseres, the former Quebec attorney general. Walker continued, however, to keep in close contact with the Quebec traders in England and to represent them on occasion. It is possible that the Quebec merchants had come to believe that Walker's London experience impeded his capacity to represent properly their interests and then decided to employ an agent who had actually suffered the province first hand. It seems that the

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<sup>19</sup> On Guy Carleton's arrival in the province, a group of merchants presented him with a representation welcoming the new governor that proclaimed proudly their happy submission to the Stamp Act duties. Another smaller group of merchants presented a separate petition of welcome. This one said nothing about the Stamp Act.

merchants who had once joined in common cause against Murray must have no longer felt it was possible or to their benefit to combine forces to push for an assembly.

In contrast to the experiences of the Board of Trade and the Anglo-Quebec merchants, Carleton's recommendations were well received in Britain. In 1768, the Colonial Secretary, Lord Hillsborough, wrote to Carleton saying that George III approved of "his every sentiment", including his recommendations concerning the treatment of the Canadians, and that once a new constitution was drawn up for Quebec, tolerance of Roman Catholics would be considered seriously. In the meantime, he was told to make sure that the Canadians be allowed to practice their religion undisturbed (Kennedy 1973: 60-61). Carleton's suggestions that seigneurs be allowed to serve in the army and other positions of trust were commended, although administrators said they would have to move cautiously on these points. Hillsborough expressed less enthusiasm for Carleton's opinions on Quebec's governance. As was mentioned, Carleton's instructions - prepared by the Board under Hillsborough's direction - specified that an assembly be called in the province as soon as possible. Aside from the Colonial Secretary's personal views on this matter, however, it seems the cabinet supported most of Carleton's ideas about Quebec. Anxious to drive home his points more forcefully, the governor requested leave to come to London to meet and discuss Quebec matters with ministers in person. It took two years, but leave was finally granted in December 1769. The governor was assured by Hillsborough that the Privy Council would do nothing about Quebec until they had a chance to talk to him (ibid: 62).

So there it stood at the end of 1769: so many opinions, so little apparent progress. Nor did the long-anticipated return of Shelburne's emissary

Maurice Morgann in January 1770 help matters. Although all in the province agreed that Quebec's justice system was in desperate need of an overhaul, each proposed a different solution to the problem. Chief Justice William Hey thought that the system should be based on English law; the attorney general Francis Maseres recommended an amalgam of French and English laws in a written code, and offered four different scenarios from which British ministers could choose. Carleton, having read the reports of his law officers and found them wanting, outlined his own plan, which counselled that the old French laws should be restored almost in their entirety. The only thing that the reports made clear was that a solution was far from imminent.

Four years later, however, a solution had been found. How the British government got there, how officials finally managed to put things together and come up with the terms of the Quebec Act, let alone get it passed by the British Parliament, has been the topic of wide debate. This is in part because much of the formulating and negotiating of Quebec policy after 1770 happened behind the closed doors of the British executive.

#### *The Quebec Act:*

Guy Carleton made a conscious effort to convince British officials that his assessment of the Quebec situation was the prudent one. As we have seen, he had already received some favourable responses to his recommendations before he was granted leave from the province in December 1769. On his arrival in London the following August, he continued to push his policy with cabinet ministers with all the adroitness of a twentieth-century salesman (Lawson 1994: 111). He repeatedly drove home the importance of securing Quebec in case of attack from France or the American colonies, fostering the notion among ministers that defence had to play a crucial role in any decisions made about the province. He stressed that French Catholics would

continue to outnumber Protestants in the province for some time, and painted a picture of mass depopulation and emigration from the province and economic disaster if the king's new subjects were not given some incentive to stay. He then of course offered his recommendations on these problems.

By 1771, it appears that Carleton's campaign was having some impact on cabinet ministers. At a meeting on 7 June, all the officials present agreed that an assembly should not be implemented in the province, everyone, that is, but Lord Hillsborough, who was "entirely of opinion to agree with the report of the Board of Trade (10 July 1769) for immediately convening a full legislature in the said province for the settling their laws, revenues, etc." (quoted in Lawson 1994: 116). At the same meeting the ministers requested that the law officers consider "the several reports and papers relative to the laws and courts of judicature of Quebec, and the present defective mode of government in that province" and "prepare a general plan of civil and criminal law for the said province" (quoted in Burt 1933: 182). In their request they specified that the law officers consult "Governor Carleton and such others as they should think fit" (Lawson 1994: 115). The officers took their time preparing their reports. The last was not received until the spring of 1773. In the end, two of the three reports - those prepared by attorney general Edward Thurlow and solicitor general Alexander Wedderburn - were in agreement with Carleton's recommendations (Burt 1993: 182-84).<sup>20</sup>

Lord North passed all three reports to the Privy Council for review. By July 1773 the prime minister had decided to act on the matter and introduce a

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<sup>20</sup> The third report was prepared by advocate general James Marriott, the same officer who recommended in 1767 that Catholicism essentially be eradicated from Quebec. Marriott's views had not changed much in six years. He recommended strict regulations be placed on the practice of Catholicism in the province - he did not agree with the 1765 decision that British penal laws did not extend to the colonies - and although he counselled that the "ancient laws and usages" be restored in Quebec, it was on the understanding that it only be temporary, and that English laws and ways would eventually be implemented (Lawson 1994: 117-19).

Quebec bill in the next session of Parliament. By November, orders had been given to the Board of Trade to prepare a Parliamentary bill. "[A]fter so many years of neglect of the business of Quebec from the first establishment of it," complained John Pownall, who was now undersecretary to Lord Dartmouth and the clerk ordered to put the measure together, "everything now is to be done in a hurry" (Lawson 1994: 124).

Word of the Boston Tea Party reached London a few days after Parliament opened in January 1774. If North had intended to present the Quebec legislation early in the session, he had to change his plans; the American situation took precedence. In the spring, the British Parliament passed by large majorities the acts labelled "intolerable" by the American colonists, measures that closed the port of Boston, suspended the Massachusetts assembly, permitted the governor to quarter British troops in colonists' homes and allowed British officials to go back to England to face trial for capital offences. It was not until these measures had been approved, in late May at the tail end of the Parliamentary session, when many members were already preparing to retire to their country estates for the summer, that North introduced the Quebec bill in the British House of Commons.

Opposition MPs were immediately suspicious of North's actions, and accused him of trying to force the legislation through a thinning house to circumvent criticism. They demanded to see the evidence supporting such a policy. North refused, telling them there was not enough time to produce and examine all the relevant reports. They insisted that Governor Murray be called to give testimony. North refused again, saying "if every person is to be called who has happened to have resided in the province, we may go on for ever and ever...his [Murray's] attendance is not to give necessary information, but to create unnecessary delay" (quoted in Fenton 1993: 245-46). They did, however, hear from proponents of the bill, Alexander Wedderburn, Edward

Thurlow, and of course Guy Carleton, whose able performance prompted one MP to gush, "He is the most valuable witness I ever heard in my life" (quoted in Lawson 1994: 134). Lord North himself campaigned vigorously for the Act, rising to his feet seventy-two times during the seven days over which the Act was debated. And there was debate, over the articles concerning Quebec law and justice, over the Western boundary, over the issue of government and in particular over the matter of religion. There were many MPs who just could not bring themselves to accept the degree of toleration toward Catholics that was being proposed by the government. The legislation was deemed "popish from the beginning to the end" and would open the gates to despotism. Virtually everyone in government was accused by these MPs of being a "papist"; only the king was spared. Yet the government prevailed. The Quebec Act was passed in the House of Commons on 7 June 1774 by a vote of 56 to 20. It passed the Lords ten days later 26 to 7.

In a last ditch attempt to stop the bill from becoming law, the mayor of London and a group of merchants went to the king's house to ask him not to sign the legislation. The merchants' complaints concerning the articles of the Act that said all disagreements over property would be adjudicated according to Canadian law had been heard during the Commons debates but had obviously not had much impact on the final vote. Maybe they could convince George III that the legislation should not be implemented. They could not. "Deviously," writes Mary Ann Fenton (1993: 248), "the king denied that the bill was even before him. He then rushed off to sign it and immediately prorogued Parliament." An inauspicious end, it seems, to the long process that established in Quebec a form of governance that was to be called "the greatest departure from tradition ever made, and the chief model upon which the Crown colony system was constructed a generation earlier" (Wight 1946: 38).

## **Discussion**

In the previous chapter, we were introduced to the formal institutional factors associated with Irish policy making. There was a long Parliamentary tradition in Ireland that assured Irish Parliamentarians a say in policy promulgated in their kingdom. This power was mitigated, however, by the presence of a crown-appointed executive and the legislative process dictated by Poynings' Law. These three factors together, although they could not determine policy, did much to shape the Anglo-Irish policy-making process in advance of negotiations by specifying the actors who could legitimately take part in the process, the relative powers of those actors, and so forth. In contrast, there were very few formal "rules" that applied to relations between London and Quebec. It is true that there were well-established informal procedures governing the relationship between the metropolis and other colonies overseas, but they did not apply to Quebec specifically. Moreover, they were still informal and so were more vulnerable to change. So the institutional framework surrounding Quebec policy making was more flexible, better able to accommodate new or unconventional ways of negotiating and formulating policy than was the Anglo-Irish system. In such an environment, the powers of the players involved, indeed the identity of the players themselves, was much less predictable than in the Irish case.

This flexibility was not immediately evident, however. The informal institutional factors that had emerged and endured around policy making for the American colonies were established well enough that, once it was determined that Britain would retain Quebec, individuals involved with Quebec policy conformed to those procedures almost automatically. Given how routine the governance of royal provinces had become by 1763, it is hardly surprising that the Proclamation and the commission and instructions to governor Murray read the way they did. In hindsight, the documents seem shortsighted

and prejudiced considering how little recognition they gave to the special circumstances surrounding Quebec governance. At the time, however, the intention was to transform Quebec into a British colony, complete with British institutions and a privileged Protestant church. The Anglo-Protestant settlers that British administrators had hoped would stream into the new province from Britain and the American colonies would not have accepted an administration different from that common in other royal provinces, so institutionalised had this form of governance become. Halifax and Hillsborough may be criticised now for ignoring Shelburne's more "thoughtful" analysis of Quebec governance and deciding to institute English institutions and a full-blown Protestant assembly in the province. As able and astute as Shelburne has been made out to be, however, "it would have been only by rare good fortune" that he could have produced a document much different from the Proclamation had he remained at the Board (Basye 1925: 136). Presuming that Shelburne was even interested in forging new political ground in Quebec - and there is some evidence that this was not the case at all (Humphreys 1934) - it would have been much more difficult for him in 1763 to go against the institutionalised procedures surrounding metropolis-colony relations and establish an entirely new form of governance in Quebec than is generally recognised.

The same institutional factors that helped to blind so many British administrators to the problems inherent to the Proclamation help to explain why they were for so long so hesitant to consider, let alone implement, alternatives to the "old representative system". The changes to the established method of administration that were bandied about for Quebec were substantial: an appointed council as opposed to a representative assembly, Catholic emancipation rather than penal legislation. These ideas had not for some time made it to the policy stage and it would take some time for administrators to get

used to the idea that these terms were better suited to the Quebec situation than the old established way of doing things. This seems as good an argument as any against those who thought, and those who might still think, that the Quebec Act was written in haste for the sole purpose of intimidating the American colonies into submission. As alien as the terms of the Quebec Act were to the usual method of British governance, it seems unlikely that British officials would have been able to come up with, and to have the British Parliament pass, such a novel arrangement in such a short period of time. That the Board of Trade clung longer than anyone else in the administration to tradition is really not surprising either. The Board had been preparing documents directing colonial governors how to administer royal provinces for nearly a century. It can hardly be blamed for advocating a system that it had so long sustained. The point is that habit and long-practiced procedure cannot be discounted as having an impact on the long process leading up to the passage of the Quebec Act. The "stickiness" of institutional factors provides for stability. That same quality can, however, help them to endure in the minds and actions of individuals involved in the policy process, even if they no longer make sense in the immediate context.

It was not only British administrators who were affected by these factors of course. The Anglo-Quebec merchants were as accustomed and committed to the "old representative system" as were British politicians. The governor's commission and instructions were accepted as the "constitution" in other royal provinces. The Quebec administration's refusal to abide by the conditions contained in these documents appeared to the merchants a felonious attempt to undermine what they saw as established constitutional principles. That these "principles" were nowhere formally specified did not concern the merchants. That the only formal institution that said anything about royal governance in the colonies, *Calvin's Case*, actually validated the

actions of the governors was not important to them. The informal institutional factors that had developed around the metropolis-colony relationship stipulated that Quebec receive the system of governance and administration specified in the Proclamation and in the governors' commissions and instructions, the same systems that were in operation in all other British provinces in the empire. It was on these precedents and procedural norms that the Anglo-Quebec merchants based their rejoinders.

Given the extent to which government administrators, merchants, and others on both sides of the Atlantic saw, in 1763, the procedural precedents associated with the metropolis-colony relationship as established, secure, indeed *entrenched*, some might contend that these "rules" were more "formal" than the current study has claimed. J.P. Greene (1986, 1994) has argued that the procedures characterising relations between London and the colonies in the eighteenth century composed an "imperial constitution" that, while it was based on very different ideas about the rights of Britons in the colonies and the power of the British Parliament over representative assemblies in the rest of the empire, was just as valid and lawful as were the written legal directives to which British officials turned for guidance and grounds in legislating for Britain's overseas possessions. This "new legal history" maintains "that constitutional power was ultimately whatever was both asserted and accepted, however much all parties insisted that their position was grounded in eternal verities" (Steele 1995: 33). There is little question that the political arrangements that this study has termed "informal institutional factors" and that Greene calls the "imperial constitution" were by the mid century accepted procedure. But the fact remains that they were *not* written, they were *not* legally constituted, and when placed on the continuum that runs from the most formal to the most informal institutional factors, would fall closer to the informal end of the scale than the written "rules" to which British

administrators adhered. This is more than just an arbitrary categorisation, because it was the written rules that would take precedence when push came to shove. Certainly British officials knew this. One gets the impression when observing the actions of British administrators during this period that, once they got around the idea that the old colonial system did not have to be implemented in Quebec, they believed they could do pretty much what they wanted in the new province, as long as they were true to the few written rules that applied to the colony. This is not to say that it was inevitable that that British administrators would "win" just because they based their actions on institutions that were formally and legally grounded. It is just that they would have had from the start an institutional advantage over individuals who based their stand on institutions that were not formally recognised because administrators had "the law" behind them. Whether that advantage translated into an actual policy victory depended on the coming together of a number of other factors, institutional and contingent.

One important development was the reduction in the power over policy of groups who remained steadfast in their desire to see the old representative system, or some variation of it, implemented in Quebec. Within the traditional informal procedures that had governed colonial policy making, merchants had occupied a relatively strong position. British officials had consulted them on virtually all colonial matters and their opinions and demands had almost always had a large impact on policy outcomes. This time, however, they were unable to persuade the British administration to abide by their demands. Indeed, they had a hard time convincing officials even to consider their appeals or to meet with them and their agents. Some of the contingencies that contributed to the modification of the informal institutional factors surrounding relations between British officials and "out-of-doors" groups representing colonial and Anglo-colonial interests were discussed earlier.

Political instability and the decision on the part of ministers to favour domestic over colonial interests are two explanations that have been put forth to account for the increasing tendency of government officials after 1760 to ignore well-worn policy procedures and leave colonial interests out of discussions concerning colonial matters. Changes in institutional factors can also help to explain the increasing political impotence of the merchants in this period.

The "rise of public opinion" was both a cause and a consequence of changes in the informal institutional factors surrounding British policy making that "opened up" the process to a wider array of interests both in Parliament and out-of-doors. These changes helped the merchant community gain access to policy negotiations that had once been closed to all but the government executive and select individuals and groups. During the first half of the eighteenth century, colonial and Anglo-colonial merchant groups engaged in a mutually rewarding relationship with British officials, the Board of Trade in particular, in which they would exchange information about the colonies for a "say" in colonial matters. After 1760, however, the lobbying methods of these merchant groups started to change. Many traders on both sides of the Atlantic began to involve themselves in the new public-opinion lobbies and adopt the more "radical" techniques typical of these associations. Openly hostile to government and unafraid to criticise publicly government policy, colonial and Anglo-colonial merchant groups began to be viewed by officials in a more negative light. It is not surprising that their access to policy makers became more restricted. Not only did the more radical tactics offend administrators, some in the merchants' own ranks opposed them. A number of members clung to the established, more conciliatory lobbying techniques and resisted attempts by the more radical merchants to adopt the new methods wholesale. This caused some obvious rifts in the merchant

community that weakened their capacity to present a united front to politicians.

What happened to the merchants then can be explained in part by the coming together of institutional factors and contingency. Informal institutional factors surrounding British policy making changed as the process became increasingly more open. The increased participation of Parliament in the policy-making procedure and the "rise of public opinion", processes that encouraged, and were encouraged by, the institutional changes, meant that a wider array of interests could take part in policy making than before. This worked to the advantage of colonial and Anglo-colonial merchant groups when they stuck to traditional methods of lobbying officials. When, however, contingency provided them with an alternative course of action - that of the "radicals" - some chose to throw over their old strategy for the new.<sup>21</sup> This hurt them in the end, however, as government officials and members opposed the new tactics, which weakened merchant influence overall.

Changes in the informal institutional factors surrounding relations between players involved in the policy process also helped to reduce the influence of merchants on Quebec policy. The Board of Trade had always been merchant-friendly, essentially the government broker of commercial interests. This worked to the benefit of colonial and Anglo-colonial traders during the first half of the eighteenth century when most decisions concerning the colonies were simply a rubber stamp of the Lords Commissioners' recommendations. But then the British government, especially Parliament, started to involve itself more in colonial affairs and

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<sup>21</sup> Note that the appearance of the "radicals", an occurrence referred to as a contingency here, was itself encouraged (but by no means created) by the institutional changes that permitted individuals "out-of-doors" to have a greater voice in government policy making. Institutional changes had a more direct effect on the rise of Irish "radicals". See above pp. 216-17.

focus on the "bigger" issues of colonial rule over which the Board never had any much jurisdiction. The informal institutional factors that had once affirmed that colonial policy would comply with the Lords Commissioners' recommendations, or at least take them into serious consideration, changed so that the Board, although it was still consulted on colonial affairs, no longer had as important a role to play in colonial policy-making. Its deliberate reduction in 1766 to a board of report only devalued the recommendations of the Board even further. Whatever power the Lords Commissioners, and by extension the merchants, had with ministers largely evaporated.<sup>22</sup>

So changes in informal institutional factors helped to undermine the position and power of colonial and Anglo-colonial merchants and the Lords Commissioners of the Board of Trade in the policy-making process, individuals who hitherto had provided most of the information on which British officials based their decisions concerning colonial policy. British administrators started getting their information from other sources, mostly "in house", and the views of the most ardent supporters of the traditional form of governance in Quebec were depreciated. The way was open for a new solution and James Murray and in particular Guy Carleton were there to provide British officials with one. Military men themselves, military considerations affected their opinions about how Quebec should be administered. Their interpretation of the situation in the province - the French and American threats certainly coloured their views as well as other factors such as the obvious difficulties associated with either removing the French Catholic inhabitants of the colony or keeping them under armed guard - ended up having a greater effect on policy makers than it would have if the opinions of the merchants and the Board had been as valued as they had been in the past. By helping to stifle

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<sup>22</sup> Alison Olson (1992) also maintains that the reduction in the power and influence of the Board of Trade on colonial policy was one of the major factors that diminished the political potency of merchant groups.

those with views different from Carleton and his adherents, informal institutional factors helped to shape the nature of royal policy in Quebec.<sup>23</sup>

This is not enough, however, to explain why it is that Carleton had such a great influence on ministers and in particular Lord North, who ended up being the driving force behind the Quebec bill. Just a cursory glance at the terms of the Quebec Act reveals the huge impact of Guy Carleton on the policy. Most of his suggestions concerning religion and the administration of the colony were adopted wholesale; the articles that were not entirely in accord with his views, such as those related to the justice system, at least reflected the spirit of his solutions. How is it that Carleton could have had such an overwhelming effect on Quebec policy? That the Quebec governor held the confidence of most of these officials, as well as the king, no doubt helped his cause. In the end, however, his success lay in his being able, out of a mixture of skill and not a little luck, to cast the problems of the province in terms of issues that only became more pressing as time went on, namely defence and the threat of American and French attack, then to convince officials that his were the only logical solutions to the problems that he himself had framed. American resistance to the Stamp Act and the Townshend Acts were followed by the Boston Massacre in 1770 and events in Rhode Island, Boston and elsewhere. Ministers might have agreed in principle with Carleton's recommendations but it took the growing recalcitrance of the American provinces and the possibility of French complicity to push them to finally act on those recommendations.

The British government decided to leave some 7 500 troops in North America after 1763. The British Parliament had okayed the money needed to

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<sup>23</sup> Something else that helped Carleton's scheme gain acceptance over his critics' was the colony's failure to attract British and American immigrants in the numbers hoped. By 1774, it was likely the British government no longer wanted to lure settlers to Quebec from New England, and so it was not as necessary to provide an assembly in the province. My thanks to Ian Steele for pointing this out.

support these regiments, but only on the condition that the American colonies be required to pay taxes (Bullion 1988; Thomas 1988). American opposition to the Stamp Act and later the Townshend Acts, however, forced British officials to rethink whatever plans they might have had concerning colonial defence. With no new tax revenues coming in from the American colonies, and British MPs refusing to contribute further supplies for North American defence, there was little money to spend on more troops or fortifications overseas.

Furthermore, with American belligerence on the rise, many of the troops that were already there had to be moved away from their assigned posts to contain the unruly masses on the Atlantic coast. This left areas already undermanned without any military supervision (Tousignant 1979: xxxvi-xxxvii).<sup>24</sup> The British government simply did not have the money or the men to secure Quebec or the Canadians by repressive means. Concessions were a cheaper and, if Carleton was to be believed, a foolproof way of securing the neutrality of the Canadians in case of war with France or the thirteen colonies, if not their allegiance and possibly even their military assistance. It was by combining concessions with colonial defence, something that ministers were already worried about and could readily understand, that Carleton managed to get British officials to start thinking seriously of actually instituting a more liberal policy in the province.

So even if North had decided that the Quebec question was to be resolved in the next session of Parliament, before difficulties arose in the American colonies, incidents in Boston only amplified an already pressing need to settle matters in the province. Not only this, but they seemed to provide proof to British officials that the foundations on which the terms of the Act had been formulated, that the French Catholic population had to be secured in case of

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<sup>24</sup> The removal of troops from the west was actually a relief to Quebec traders who for years had been complaining of the arbitrary duties and generally oppressive treatment meted out by officers in charge of these posts.

American and French recalcitrance, were accurate. The passage of the Quebec Act was not a sudden and deliberate attempt on the part of British officials to bully the American colonists into submission. Rather it represented a policy that had been framed in preparation for precisely such developments. Events in Boston made its authors that much more confident that the Quebec Act was necessary and British officials that much more anxious to implement its terms.

All this might go some way toward explaining how ministers were convinced of the viability of the Quebec Act, but what of the British Parliament? Carleton's "brilliant" presentation in the House of Commons of his recommendations for Quebec must have had convinced at least some MPs that it was worth giving the Quebec bill a chance. But there might have been something else going on to encourage the majority of British Parliamentarians to approve of the policy. If we are to believe Philip Lawson, there was no connection between the Quebec Act and the "intolerable acts" passed that spring to punish the rebellious colonists. Even though contemporary Americans immediately lumped the legislation together, even though the popular press had picked up on and was promulgating the idea, Lawson insists that "the connection escaped most MPs and informed observers at the time" (Lawson 1994: 141). According to William Kennedy (1973: 63), however, Lord North himself, upon presenting the Quebec bill, made it plain to British MPs that the legislation was indeed connected to the American troubles. North said that the Act was brought in because "His Majesty's message recommended Parliament to take up the subject." That message, dated 7 March 1774, urged the commons "to enable [the king] effectually to take such measures as might be most likely to put an immediate stop to the present disorders in North America, and also to take into their most serious consideration what regulations and permanent provisions might be necessary to be established for better securing the just dependence of the colonies on the

crown and Parliament of Great Britain." Although the king had said nothing specific about Quebec, North made a point of associating the Quebec bill with the "intolerable acts".

Again, this does not mean, as contemporary critics of the Quebec Act and some later historians maintained, that the Quebec measure was some hastily-written ruling tacked on to the other measures to warn the colonists to the south that they would be subject to a similar sort of "despotic" governance if they did not start behaving themselves. We have already seen that, given the unprecedented nature of the Quebec Act's terms, that would have been impossible. It does not preclude the possibility, however, that North might have decided to try to use the anti-American sentiment already coursing through the commons to help legitimate and gain approval of the Quebec Act.

Finally, what do we make of the actions of the king? Comparing the processes surrounding the passage of the Treaty of Limerick ratification bill and the Quebec Act, what is immediately evident is the reduced role of the monarch in the policy proceedings. Whereas William III occupied a major role in the process leading up to the ratification of the Treaty of Limerick, it is difficult to find any mention of George III in accounts describing the events surrounding the Quebec Act. It is the British ministry, Lord North in particular, who seems to have been the driving force behind the legislation. The change in focus, from the monarch to the ministry, is reflective of the transformations in the informal institutional factors that had occurred in British politics since the Glorious Revolution. The more modern idea that cabinet ministers were the "executive committee of the British Parliament" rather than the personal representatives of the monarch, and were answerable to Parliamentarians first, was in no way firmly established. But there is little question that their independent role in government decision making relative to the sovereign had broadened considerably, to the point

where, at least in the case of the Quebec Act, they more or less dictated the legislation emanating from London.

This is not to say that the monarch could not have raised objections to the measure given his apparent repugnance toward Catholics and Catholicism, nor that it was easy for the North ministry to win the king's approval of the legislation. Lawson more or less concedes his bewilderment on this last point, admitting "it is not known how this was done" but calls it "the great achievement of North's ministry in 1774" (ibid: 98). It is true that no one knows how North managed to get George III to come to his side. But given the king's respect for the views of his ministers, North's in particular, and that North presumably presented the Quebec measure to him as the best way in which to secure the continued dependence of the province on the crown as well as its defence, maybe George's support of the Act is not so hard to understand. As we shall see in the next and last chapters, it is likely that North and his advisors used many of the same arguments, especially those which linked concessions to Catholics with imperial defence, to convince George, as well as the British Parliament, to support Catholic relief in England and Ireland four years later. Carleton's legacy was to be felt well beyond the boundaries of the former French province.

#### Chapter IV: The Irish Catholic Relief Act

By the end of the 1770s, Irish penal laws had restricted legally the rights and activities of Irish Catholics for eight decades. It is true that the actual enforcement of the laws during the eighteenth century was spotty. Although measures against Irish ecclesiastics were ardently enforced during the early years of Protestant rule - over 400 regular clergy were transported out of Ireland after the 1697 passing of the Bishops' Banishment Act, and attempts were made to track down the hundreds more clergymen who defied the legislation and remained in the kingdom (see Burke 1969: 119-53) - the laws against the Catholic clergy gradually fell into disuse as the century progressed. Priest-hunters determined to collect the rewards offered by the Irish government for seizing and convicting unregistered clergymen were active in the first two decades of the eighteenth century, then disappeared (Burke 1969: 219-37; Wall 1969: 29-31). Laws were more rigidly enforced when Britain was perceived to be under a Catholic threat, as during the Stuart rebellion in Scotland in 1715 and the outbreak of war with Spain in 1718, but then eased up once the danger had passed (Wall 1969: 20, 23-24, 26).

Irish Protestants were more vigilant in their enforcement of laws against Catholic property owners. Their task was made easier after the "Popery Act" of 1709 established that any Protestant who reported a Catholic who had taken part in a transaction in violation of the penal laws was entitled to a share of that transaction. The legislation gave rise to the figure of the Protestant "discoverer", an independent enforcer of the penal laws, who helped overcome some of the difficulties associated with upholding anti-Catholic legislation in a kingdom wanting of Protestant state officials. Even so, there were a number of Catholic landowners who managed to get around the property laws and preserve their land holdings in various ways (Connolly

1992: 308). Catholics participated in illegal property dealings, some with the cooperation of Protestant discoverers: out of the more than 2000 "discoveries" reported between 1708 and 1778, over 90 percent were collusive, arranged to protect Catholic land-holdings (Bartlett 1992: 47-48).

Despite the inconsistency in their enforcement, however, there is little question that the penal laws aggrieved and inhibited Irish Catholics. Laws against the Irish clergy may have been evaded by many churchmen and mainly overlooked by ruling Protestants, but they still, as Maureen Wall put it, "hung like the sword of Damocles over the head of the Catholic clergy, who were thus reminded that they must tread warily" (Wall 1969: 54). Although Sean Connolly maintains that the penal laws did not have so great an impact on the structure of Irish society as has been claimed, he concedes that the Catholic community would have experienced the laws that forbade Catholics to vote, to hold positions of power, to buy land, to carry arms, and otherwise live and act freely, as grievous and oppressive (Connolly 1992: 312-13).

All this helps to explain why Irish Catholics were so pleased when, in 1778, the Irish Parliament passed the first in what they hoped would be a series of acts dismantling the penal laws in the kingdom. The Catholic Relief Act declared that Catholic land was no longer subject to the gavelkind and could be bequeathed in any manner that the proprietor wished, and that Catholics would henceforth be able to hold land on long-term leases of up to 999 years.

The act was initiated by British administrators who, for a number of reasons, wished to extend some relief to Irish Catholics. It is difficult to understand, however, how Irish Parliamentarians, the majority of whom were as ardently anti-Catholic as their forebears, could have approved such an act, even if the relief that it granted was quite limited. Why was this Irish Parliament not able to suppress or defuse tolerant legislation as had the

assemblies of the 1690's? Let us examine how changes in the formal and informal institutional factors surrounding the Anglo-Irish policy-making process can help us to answer this question.

### The Formal institutional factors governing Irish policy making in 1778

Anglo-Irish politics was governed by the same formal institutional factors in 1778 as it had been in 1697, although these institutions had undergone some changes. The Irish Parliamentary tradition still compelled British monarchs to assemble the Irish Parliament to vote additional supplies and pass other government bills. In contrast to earlier centuries, however, the Irish Parliament now met more frequently. After 1695, it granted supplies for only two years. Except for a time at the end of the seventeenth century when no Parliament was called for four years, sessions were held biennially (James 1973: 43-44; Johnston 1963: 16). Poyning's Law was still in place, inflicting Irish policy with its cumbersome procedures. But the Irish Parliament's practice of initiating legislation by debating then submitting "heads of bills" to the Irish executive for transmission to England was now the way in which almost all Irish legislation originated (James 1973: 262). Modifications had thus improved the situation of the Irish Parliament relative to the Irish and British executives somewhat. The executive was now compelled to meet with Irish Parliamentarians more often to obtain needed supplies, giving the Ascendancy more opportunities to press for desired legislation. Irish Protestants had more control over the substance of legislation as well. But whatever small increase in power that Irish Parliamentarians were able to procure as a result of these changes was offset by the passage of a more important directive.

*The Declaratory Act*

The Declaratory Act of 1720 established formally that the Irish Parliament was “subordinate unto and dependent upon” the British monarch and the British Parliament, and put an end to the constitutional question, if not the debate, concerning the judicial and legislative independence of the Irish Parliament. The authority of the British Parliament to legislate for Ireland had long been a subject of contention. By the end of the seventeenth century, the Irish Parliament had challenged the authority of the English Parliament to pass legislation binding on Ireland on several occasions. As early as 1460, Irish Parliamentarians declared that all laws applying to Ireland had to be sanctioned by the Irish Parliament (Ball 1889: 74; Cosgrove 1973: 62). In 1641, the Irish Parliament drew up a list of “queries” to submit to the judges that questioned the validity of laws not accepted and passed by the Irish legislature (Beckett 1969: 78; York 1994: 13). The Parliament under Charles II was critical of English acts restricting Irish trade with the colonies (James 1973: 191). And James II’s “Patriot Parliament” of 1689 passed a bill declaring the judicial and legislative independence of the Irish Parliament (Farrell 1973: 122; Simms 1986: 70-71).

The Irish argument was based on the notion that Ireland was a separate and independent kingdom connected to England in the person of the monarch. Henry II did not conquer Ireland; rather, Irish chiefs submitted voluntarily to the English king in exchange for the benefits of English law and other institutions. Hence, England did not “own” Ireland. The relationship was a contractual one between the Irish people and the sovereign (York 1994: 20, 22). The English Parliament had no place in that association.

English opinion of the Irish constitutional argument can be discerned from the English and Irish administrations’ response to the challenges of the Irish Parliament. The 1460 declaration led eventually to the implementation of

Poyning's Law (Cosgrove 1973: 64); the Irish judges' response to the "queries" confirmed that acts passed in England were binding on Ireland (MacNeill 1917: 7-8). The last decision did not, however, prompt the English Parliament to suddenly start passing policies to confirm its legislative power over the Ireland. It is true that the next several decades saw the approval of a number of directives affecting Irish trade. An act in 1663 restricting the export of Irish goods to the colonies was followed in the same year by English Parliamentary legislation forbidding the export of Irish cattle to England. Another cattle act was passed in 1667. And the import of articles from the colonies was restricted in 1671 and 1696. But if Irishmen were not very happy with these policies, the rulings did not challenge Ireland's status as an independent kingdom. It was not until 1699 when English MPs passed the Woollen Act, a directive prohibiting the export of Irish wool and woollens to any country but to England, that the English parliament exercised what the government believed was its right to legislate for Ireland. The Woollen Act was followed by an act of 1710 that required that hops be imported from England only. These directives infringed on what the Irish believed was their constitutional right to control their own economic affairs (Connolly, 1992: 107; James 1973: 191-92; Kelly 1980). The English argument was that Ireland, although it was a kingdom, was conquered territory, and as such, was completely subordinate to the government of England. This claim acquired some legal weight when, in 1607, English judges trying to determine the status of individuals born in Scotland after the union of the crowns of England and Scotland, were obliged to consider Ireland. Their judgment stated that, although Ireland was a separate kingdom, because it had been conquered by Henry II, it was bound by laws passed by the English Parliament (Ball 1889: 31-32; 66-69). The judges' declaration did little, however, to quell the remonstrations of the Irish constitutionalists.

The Glorious Revolution and the triumph of the English Parliament inspired a resurgence in the debate regarding its jurisdiction over Ireland. The most famous argument for the independence of the Irish assemblies was made by William Molyneux in 1698. His tract, "The Case of Ireland's Being Bound by Acts of Parliament in England Stated", although based on the reflections of earlier writers, became the handbook for generations of Irish patriots. It did nothing but enrage most English Parliamentarians, however, who ordered the tract burned (James 1973: 39-41; York 1994: 8-38).<sup>1</sup>

But it was not really the debate over the legislative independence of the Irish Parliament that gave rise to the Declaratory Act, although it certainly played a large part in the dialogue preceding passage of the Act. The Act actually arose out of a series of disputes concerning the right of the Irish Parliament to form the final court of appeal in the kingdom. The first case, that of *The Irish Society v. the Bishop of Derry*, ran from 1691 to 1703 and was concerned with the lease of certain lands and fisheries in the bishop's diocese. When the Irish Court of Chancery ruled in favour of the Society, the bishop appealed the case to the Irish House of Lords, who reversed the court's decision. The Society then asked the English House of Lords for redress, charging that there could be no appeal to the Lords from the Chancery Court in Ireland. Although constitutional issues concerning the status of the Irish Parliament relative to the English Parliament were discussed, it was decided that judgement would be confined to the matter of whether the Irish Lords were permitted to hear appeals from the Chancery. After listening to both

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<sup>1</sup> David Miller (1978: 29) notes the literary hoops through which Molyneux had to jump to avoid the "unavoidable reality" that, if "the Irish parliament was entitled to powers established by a contract of government between king and people...it must have been a contract with ancestors of the very people [Irish Catholics] who had been deprived of their property [by Irish Protestants]." He tried to sidestep this fact by claiming that the majority of Irish were "the Progeny of the *English* and *Britains*" and that "there remains but a mere handful of the antient [*sic*] *Irish* at this day," a fabrication that did not fool his detractors.

sides, the English Lords determined that appeals from the Irish Chancery court should be brought to Westminster, that the judgements of the Irish Lords be voided, and that the Society be permitted to repossess the disputed lands (James 1995: 68-69; Victory 1989: 10-12).

Virtually the same series of events occurred in the case of *Ward and others v. The Earl of Meath*, and the same judgement was passed down by the English Lords. This time, however, the injured party, the Earl of Meath, approached the Irish Lords for help. The Lords decided to uphold their decision to grant relief to the Earl, agreeing to "vindicate the 'honour, jurisdiction and privileges' of their House" (Victory 1989: 12). They also declared that, as the high court of Parliament in Ireland, the judgements of the Irish Lords were final and that its decisions could not be reversed elsewhere. Thanks to the efforts of the Lord Lieutenant, the Duke of Ormonde and the Lord Chancellor, Richard Cox, who convinced Lord Ward not to pursue the issue and managed to downplay the Lords' resolutions, the dispute ended there (James 1995: 69-70; Victory 1989: 12-13).

The matter of appellate jurisdiction was not settled, however, until resolutions were passed concerning the case of *Sherlock v. Annesley*. This time, it was the decision of the Irish Court of the Exchequer in favour of Annesley that was reversed by the Irish Lords. Annesley complained to the British House of Lords, challenging the Irish Lords' judgement and their right to hear appeals from the Exchequer Court. Again, the British Lords ruled that appeals could only be heard in Westminster, and confirmed the Exchequer Court's ruling for Annesley. Mrs. Sherlock then lodged a petition with the Irish Lords. Amidst declarations in defence of their jurisdiction, the Irish Lords decided again to support their "honour, jurisdiction and privileges" and resolved to grant relief to Mrs. Sherlock (James 1995: 71; Victory 1989: 14-15).

Meanwhile, the Irish Lord Lieutenant, the Duke of Bolton and Viscount

Middleton, the Lord Chancellor, did their best to manage the situation, fearful that the dispute might jeopardise passage of the money bills in the Lords. This time, however, their attempts to keep a lid on the issue failed. Annesley once more appealed to the British House of Lords, who, once again, ruled in his favour. In response, the Irish Lords drew up a representation to the king. The petition made the case for the judicial independence of the Irish Lords and incorporated many of the arguments of Irish constitutionalists, Molyneux in particular. The British House of Lords considered the representation and once more reviewed the facts of the Annesley case. The proceedings ultimately gave rise to the "Bill for securing the Dependency of Ireland".

It is obvious from the title and the terms of the bill how little British judges and ministers thought of the constitutional arguments presented by the Irish House of Lords in defence of their position. In accord with past rulings, the bill denied the Irish Lords the right to hear appeals. But beyond this, it declared that the British Parliament had the right to legislate for Ireland. Although some British MP's opposed the bill on the grounds that it increased the power of the British Lords, most were in favour of it. The Act passed the Commons on 26 March 1720 (ibid: 16-27).

So the formal institutional factors governing Irish policy making were the same in 1778 as they were in 1697, with one important addition. The Declaratory Act had finally defined formally the relationship between the British and Irish Parliaments. Now, not only was the Irish Parliament constitutionally subordinate to the British and Irish executives, it was subject to the British Parliament as well.

### The Players

The formal institutional factors described above defined who were the

major players involved in Irish policy making in the late eighteenth century. The British monarch and the British Privy Council, the Irish Lord Lieutenant and his council, and the Irish Parliament continued to be the main actors participating in the process. After 1720, the British Parliament was also sanctioned to take part in the policy process. As with the other two cases, it is important to take a closer look at these players, their motivations and sentiments concerning Catholic policy, in order to better understand how they were enabled, constrained, and otherwise affected by the institutional factors surrounding the negotiation and passage of the Catholic Relief Act.

*The British Parliament:*

It will be remembered that, until the latter half of the eighteenth century, the British Parliament was not very tolerant of recusants. After 1770, however, a different picture of the British Parliament emerges. Although there was opposition to the Quebec Act and its generous terms, the legislation passed easily in June 1774. Four years later, the British Parliament approved two measures benefitting Catholics, one that extended some relief to English Catholics, and another that repealed legislation enacted during Anne's reign that forbade Catholics from buying forfeited Irish estates (O'Connell 1965: 108-109). Clearly, the British Parliament had undergone some changes that had resulted in its support of more charitable measures toward Catholics in the empire.

Party politics played an uncertain role in the shift. The Whigs were the driving force behind the relief policies of 1778. But all the directives, particularly the English Relief Act, won the strong support of Whigs and Tories alike (O'Connell 1965: 109). The influence of the attitudes of Parliamentarians is also unclear. Edmund Burke, an avid supporter of relief legislation, was well-known for his Catholic sympathies and certainly helped

the Catholic cause. The address of loyalty presented to George III by a group of Catholics from the three kingdoms initiating the process that led to the English Catholic Relief Act was written by Burke (Bartlett 1992: 84). But not everyone was so consistent. George Savile, the MP who introduced the English Act, had actively sought the repeal of the Quebec Act in 1775 and actually urged revocation of a part of the Relief Act that he himself had sponsored when the Gordon riots broke out (Close 1992: 83; Donovan 1985: 87).

Whereas the attitudes and party allegiances of Parliamentarians cannot adequately account for their increasingly charitable treatment of Catholics, their views concerning contemporary issues suggest that their tolerance stemmed from somewhat more "practical" considerations. According to Robert Donovan, in early 1778, the opinions of back-bench MPs concerning the American hostilities had begun to change. The stunning defeat of General Burgoyne at Saratoga the previous fall had at first meant trouble for the proponents of the war. When fears that France would join the contest materialised<sup>2</sup>, however, there was a surge in pro-war sentiment in the British Parliament. "By April," Donovan writes, "many in the House of Commons were expressing more fervour for war than was North himself" (Donovan 1985: 88-89).

How does support for the war translate to support of Catholic relief? By 1778, the British army was suffering for recruits. The surrender of 4,000 men at Saratoga, and an urgent request from Lord Amherst for 30,000 to 40,000 more troops, meant that the British government had to find more military manpower, especially for service overseas. Administrators began to look seriously at the large and as yet untapped community of Catholics in Britain as a recruiting source (Donovan 1985: 92). "Relief as an inducement to enlistment" became an acceptable, albeit undeclared, strategy of pro-war

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<sup>2</sup> France and the American colonies signed treaties of alliance on 6 February 1778.

ministers and a way in which they and other proponents of Catholic relief could secure the support of British MPs.<sup>3</sup> If the British Parliament was to play a role in the negotiations for Catholic relief in Ireland, given the backing they had already granted to other pro-Catholic measures, MPs would likely continue to support charitable treatment of Catholics.

*The British monarch:*

According to Edith Johnston (1963: 12), "George III took an active and comprehensive interest in every aspect of the government of Ireland." In contrast to many of his royal and ministerial predecessors, the king apparently accorded Irish business a high priority. His approval was, of course, required for all major decisions concerning Ireland. But he chose to involve himself in even the smallest particulars of Irish administration. Always desirous of details concerning the kingdom, George solicited information from a variety of sources, including unofficial ones, such as the private correspondence of his ministers. To the embarrassment of the Irish and British executives, these unofficial communications often informed the king's decisions concerning Ireland, even forming the basis for Irish legislation. He took seriously his responsibility to appoint men who were able and of good character to the Lord Lieutenancy and to military positions. In fact, all things to do with the Irish army, from promotions to the size of recruits, were subject to the scrutiny of the monarch (ibid: 12-16).

If George III's interest in things Irish remained constant throughout his reign, it seems his sentiments concerning Catholic relief did not. As we have already seen, it was under George III that French Catholics on the island

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<sup>3</sup> It is interesting to note that none of the ministers who were privy to this scheme - Lord George Germain, Secretary of State for the Colonies, Attorney General Thurlow, the Northern Secretary Lord Suffolk and the First Lord of the Admiralty, Lord Sandwich, among others - had strong views on toleration (Donovan 1985: 89-90), another indication that the attitudes of officials did not necessarily coincide with their stance concerning Catholic relief.

of Grenada were given the right to vote and to sit in the island's assembly and council in 1768. And it was George who approved the Quebec Act in 1774. It was the same monarch, however, who refused to emancipate Irish Catholics after Britain's union with Ireland.

Attitudes were not the only things that would have influenced George's decisions concerning Catholic relief in Ireland. There was, of course, the matter of imperial security. As important as this was at the time of the passage of the Quebec Act, it was even more important in 1778. By this time, the discord between the metropolis and the American colonies had erupted into warfare, dividing a continent once united under the British crown into a battleground pitting a British, but largely French Catholic, Quebec against the rebellious colonials. When France joined the war in February 1778, the situation became even more critical. Now the enemy was considerably closer to home and the old fears of Irish Catholic collusion with France were again aroused. The American war also meant that the British needed men to fight it, and with all the British Catholics in the colonies and in England, Scotland and especially Ireland, the issue of Roman Catholic army enlistment was bound to come under consideration. It is well known that George was determined to keep up the fight in America and ignored the recommendations and pleas of his Prime Minister to bring the hostilities to an end. Issues such as these would have influenced his sentiments regarding the Irish Catholic Relief Act.

*The British Privy Council:*

We saw in the last chapter that, by the latter half of the eighteenth century, most of the important tasks assigned to the British Privy Council were being done by the cabinet. The size of the council had increased steadily during the eighteenth century making it more and more difficult for it to attend to normal administrative duties. In contrast, the number of officials in

the cabinet fell, from about 29 at the beginning of George III's reign to about eight or nine by the late 1770s (Johnstone 1963: 89, 90). Although it is hard to say exactly how many men attended meetings of a body that, as Edith Johnston writes, "was still in a very fluid condition and far from possessing rigidity of form or function" it appears that Irish affairs were usually considered by the First Lord of the Treasury (or Prime Minister), the Secretaries of State North and South and the Lord President of the Council, as well as ministers whose departments were involved in matters being discussed (ibid: 92).

A special committee of council was responsible for reviewing bills arriving from Ireland. Like the cabinet, the number of officials sitting on this committee varied. In 1760, thirty-four men signed the committee's recommendation concerning a Money Bill, including the Irish Lord Lieutenant the Duke of Bedford, twenty-five peers and seven commoners. Yet only six officials met in May 1778: the Lord President, Lords Hillsborough, Nugent (the vice-treasurer of Ireland), Townshend, North (the First Lord of the Treasury) and Charles Townshend (ibid: 101).

To gauge the position of these men on the issue of Irish Catholic relief it is necessary, as was done in the case of the British Parliament, to look at the larger issues with which the current ministry was dealing. It will be remembered that the urgent need for troops had encouraged a number of British officials to start considering the possibilities and benefits of recruiting Catholics into the British army. Although the swing toward support of the war in the British Parliament boded well for proponents of the "relief as an inducement for enlistment" camp, the project needed leadership. It was the North ministry that took on that role (Donovan 1985: 86).

Irish Catholic relief was actually only one component of a plan to introduce relief in all three kingdoms. Although discussions surrounding Scottish succour preceded those concerning Ireland, Irish negotiations soon

became a priority. Catholics of course made up the majority of the population in Ireland, 70 to 80 percent of the over 4,000,000 inhabitants of the island, as compared to about eight percent in England and four percent in Scotland (ibid: 82). Gaining the allegiance of Irish Catholics to the British cause, especially after France joined the war, became important for security reasons. Offering some sort of relief to at least the leaders of the Catholic community was a way to foster the loyalty of Catholic subjects (Bartlett 1992: 87).

Lord North and his ministry faced a number of obstacles, however. Changes in the English penal laws were necessary to introduce the relief measures North had in mind for Ireland. Certainly as important was the anti-Catholic attitude of the Irish Parliament. It was never intended that "Catholic relief" in Ireland, or anywhere for that matter, would mean more than a few small concessions to leading Catholics; the strategy was not to overhaul the penal code but to offer some inducement to priests and gentry to encourage enlistment among their lesser followers (Bartlett 1992: 83; Donovan 1985: 84). But as Donovan writes, "many Protestants invested an enormous symbolic importance in the code as an emblem of their superiority or, as they put it, their security" (Donovan 1985: 83). Even minor changes to the penal code would certainly elicit an outcry from the Irish Protestants. Indeed, rumors that the British government was considering relief for Irish Catholics had been circulating since December 1777, and had triggered the expected passionate response (Burns 1963: 185). To make matters worse, the American war had intensified debate in the Irish Parliament surrounding Anglo-Irish constitutional relations. North had to find a way to calm the fractiousness of Irish MPs enough to even consider Catholic relief measures. As Thomas Bartlett notes, it was likely no coincidence that the Prime Minister introduced the idea of commercial concessions to Ireland, modification of hated trade restrictions, in April 1778, just before serious open discussion of Catholic relief

in Ireland and England began (Bartlett 1992: 87).

The English Relief Act passed in the British Parliament without much fanfare. Thereafter, English Catholics were free to hear mass, educate their children and buy, bequeath or inherit land. The British Parliament also repealed legislation enacted during Anne's reign that forbade Catholics from buying forfeited Irish estates, abolishing an English restriction on Irish Catholic relief. It was hoped by pro-war and pro-relief supporters alike that the English action would serve as an example to the Irish Parliament to introduce similar charitable measures in Ireland (Bartlett 1992: 84). There is little doubt that British administrators in charge of Irish policy would welcome and approve an Irish Catholic relief bill.

*The Irish House of Commons:*

As we have seen, by the 1770's, enforcement of the penal laws in Ireland, especially those against Catholic ecclesiastics, had fallen off. This did not mean, however, that Irish Protestants were ready to repeal these laws. The majority of them were as committed to maintaining the subject condition of Catholics in Ireland as they had been when the laws were passed. Sixteen-forty one, the reign of James II and the anti-Protestant proclamations of the "Patriot Parliament" were ingrained in the minds of most Protestants. As far as they were concerned, Catholicism was still synonymous with tyranny (Bartlett 1992: 6-9; Kelly 1988: 40, 66). Convinced that Catholics were always on the ready to topple the Protestant interest by any means, most Irish Protestants became apprehensive when even the smallest courtesies were shown to Catholics by British or Irish administrators (Burns 1963: 181). Any measure that might offer concessions to Irish Catholics would have a difficult time winning the support of the majority of MPs in the Irish Parliament.

*The Irish House of Lords:*

The Irish upper house lost its position as the highest court in Ireland in 1720 with the passing of the Declaratory Act. Despite this loss of prestige, the Lords continued to play an important role in the legislative process. The Poynings' procedure required that they approve all acts of Parliament, and although most legislation originated in the House of Commons, the Lords initiated some bills and handled other political and quasi-judicial matters (James 1995: 73, 78-86). The lords spiritual, who numbered twenty-two in the upper house, were not as active in the latter half of the eighteenth century as in the early 1700's. Whereas they constituted at least one-third of the peers attending sessions between 1692 and 1750, their numbers fell to less than a fourth after that date (James 1995: 131). In contrast, the lay peerage experienced a significant increase in numbers and influence during the reign of George III. Between 1767 and 1785, fifty new peerages were created. Thirty-four of these positions were granted to Irish politicians. The remaining were bestowed on British MP's, many of whom had strong Irish connections (Johnston 1963: 257; McCracken 1971: 6).

As in the 1690's the Irish House of Lords was a relatively conservative body. It is true that the Lords gave the Irish administration a difficult time in the years leading up to the passage of the Declaratory Act. A majority of Irish-born "patriotic" peers dominated the upper house during these years (Hayton 1984: 101), and kept the Irish executive busy trying to downplay to British administrators the Lords' constitutional claims. For the rest of the century, however, the Irish administration could usually depend on the House of Lords to support government policy. Of course the fact that members of the upper house were appointed by the Crown on the recommendation of the Irish Lord Lieutenant did much to ensure their cooperation with the executive. As well,

compliance had partly to do with the religious and familial affiliations of the attending peers. It will be remembered that more than half of the spiritual peers serving between 1692 and 1800 were Englishmen. Of those who were born in Ireland, the majority descended from post-Reformation families, the "New English" interest (James 1995: 148). Although they no longer commanded the House of Lords, the bishops could always be counted on to back the administration (James 1995: 146; Johnston 1963: 264). The majority of temporal peers, now the leading group in the upper house, had deep roots in Ireland. Most descended from "Old Protestant" families established during the Tudor and early Stuart eras, but some could even trace their ancestry back to Anglo-Norman or Gaelic origins. During George III's reign, these individuals continued to outnumber the peers who descended from the post-1641, "New Protestant" interest (James 1995: 99-100)

So most of the Lords in the upper house would have been less antithetic toward the Catholic Relief Act. English-born spiritual lords and the temporal lords descending from the "Old Protestant" interest were known to back most government-sponsored initiatives; lay peers of "Old English" origins were, because of their background, sympathetic to Catholic concerns.

*The Irish Privy Council:*

By the middle of the eighteenth century, the task of initiating legislation had been appropriated by the Irish Parliament. But the Irish Privy Council was still bound by Poynings' Law to review and approve of all heads of bills submitted by the two Irish houses before they were transmitted to Britain. And councillors apparently took their jobs seriously, reading bills several times, and sometimes amending or blocking proposed legislation (Ball 1889: 268-69; James 1973: 282-83).

The nominal membership of the Irish Privy Council grew rapidly

during George III's reign. In 1771, there were seventy Privy Councillors; by 1778, there were eighty-four (Johnston 1963: 94). Given the unwieldy size of this body, most business came to be conducted by a smaller group, the King's Servants in Ireland, a group much like the British cabinet responsible for Irish affairs in number. Usually about ten Irish officials, including the Chancellor, the Attorney and Solicitor General and the Speaker of the Irish House of Commons, would meet in the Lord Lieutenant's or Chief Secretary's quarters (James 1973: 284n; Johnston 1963: 94-95, 96).

The sentiments of the council were largely the same as in the early part of the century. More than half of the membership of the council were peers, and more than a third were bishops (James 1995: 146). As we have seen, the House of Lords was, as a whole, a relatively conservative body, and the bishops were quite consistent in their support of the Irish administration. Although the councillors were known to give advice occasionally that was contrary to the views of the Irish chief governor or British ministers (Johnston 1963: 100), they usually sided with the executive.

#### *The Irish Lord Lieutenant:*

The main duties of the Irish Lord Lieutenant were the same in 1778 as in the 1690's. He served as the monarch's personal representative in Ireland and the only official contact between the government of Ireland and the British Privy Council. He was the commander-in-chief of the military and all appointments in the kingdom were made based on his recommendations. But his most important task was still the management of the Irish Parliament. The Lord Lieutenant was responsible for ensuring that directives approved by the British executive - particularly money bills - were ratified by the Irish Parliament as painlessly as possible (Johnston 1963: 27-28).

Except for the Duke of Ormond, who served as Ireland's Lord Lieutenant

under Queen Anne from 1703 to 1705 and again from 1710 to 1711, all eighteenth-century Irish chief governors were Englishmen. As we have seen, George III seemed to have been concerned to appoint able and experienced men to the position. The position remained, however, a political perk, "the consolation prize offered by every new ministry to those whom it wished to conciliate, but exclude from the cabinet, and honourably remove from the scene of political activity" (ibid: 27). The Irish Lord Lieutenant was still a creature of the current British administration whose presence and tenure in office had more to do with British politics than with his ability to manage the administration of Ireland.

John Hobart, second earl of Buckinghamshire, was sworn in as the Irish Lord Lieutenant on 25 January 1777. He was to serve in that capacity for four years. Buckinghamshire was cautious in his approach to Irish Catholic relief. When, in October 1777, he was asked to transmit to the king a petition signed by 300 Catholics protesting the restrictions against them, he agreed, but, to the annoyance of the British government, failed to say whether he supported or opposed the address (Burns 1963: 184-85). Later, aside from expressing some sympathy for the Irish Catholics, the Lord Lieutenant remained silent in response to the British Secretary of State's request concerning what sort of relief might best be granted (O'Connell 1965: 107). When pressed finally by the British government to give his opinion of a relief bill prepared by a leading Catholic, Buckinghamshire consulted Catholic-friendly Protestants in the Irish Parliament before advising that it would not be prudent to introduce any concessions at that time (Burns 1963: 185-86; O'Connell 1965: 107-108). So it is difficult to gauge what exactly were Buckinghamshire's sentiments regarding Catholic relief. It is likely, however, that the Lord Lieutenant maintained his careful approach during the negotiation and passage of the Catholic Relief Act some months later.

### *Other players*

#### *Irish Catholics:*

At the opening of the eighteenth century, the future facing Catholics in Ireland seemed bleak. Confiscations of land, especially under Cromwell in the 1650's and William III, had reduced the amount of Irish land in Catholic hands from about 60 percent in 1640 to about 14 percent in 1704. William's defeat of the Jacobite forces in 1691 had prompted the departure of most of the Catholic leadership, leaving the Catholics that remained unrepresented and powerless. Penal legislation enacted against Catholics by the Irish Parliament placed restrictions on almost every aspect of their lives.

The eighteenth century did not, however, see the ruin of Catholics in Ireland. Quite the opposite: many Catholics actually increased their wealth during the penal era. Although laws prohibited Catholics from owning land outright, some still managed to hold on to and even expand their land holdings. They did this, legally, by speculating on the thirty-one year leases that Catholics were permitted to hold, and illegally, via the acquisition of "renewable" leases or, as we have already seen, agreements with Protestant "discoverers" (Bartlett 1992: 46-48).

More significantly, perhaps, Catholic wealth was derived from commercial pursuits. Having been barred from politics, law and the military, ambitious Catholics turned to trade to make their living. Here their opportunities were comparatively open. In fact, there were a number of factors associated with Protestant rule that actually facilitated their commercial success and helped them to accumulate wealth. First, Protestant landowners, secure in their gentry status as long as the penal laws were in place, spurned trade, considering it a lowly occupation; they offered little competition to enterprising Catholics (Wall 1958: 97). Second, penal legislation prohibited Catholics from spending their money lavishly. They were not

permitted to participate in elections so politics cost them nothing. They could not legally buy land in Ireland, or build schools or churches, or even give to Catholic charities (ibid: 102-103). Finally, once Catholics had established themselves as important contributors to Irish commerce, the Irish Parliament was hesitant to interfere with their activities. Most of the men in Parliament were landowners and so were resistant to land taxes. When additional supplies were needed to meet the needs of government new taxes were usually levied on trade. The possibility that revenue might be adversely affected discouraged the Irish Parliament from meddling with the Catholic mercantile interest (ibid: 96). Their influence on revenue decisions was evident as early as 1724. Cornelius Nary, protesting a measure for banishing priests, declared, "Now if this bill should pass, all these merchants and dealers would be necessitated to leave the kingdom, to the great diminution of the revenue; and God knows in how many years this could be retrieved, if ever" (quoted in Wall 1958: 96-97 n. 16).

Their economic success certainly improved the situation of Catholics in Ireland. But there were other factors that contributed to their revival. Despite their obvious ideological and religious connections with the Jacobites, Irish Catholics failed to take part in the Jacobite risings in England and Scotland in 1715 and 1745. It is possible their burgeoning commercial success discouraged some from disrupting the status quo. In any case, their inactivity did much to enhance their reputations around Dublin Castle and Whitehall, if not with the Irish Parliament (McLynn 1981). Their standing with government officials was further enhanced by regular declarations of loyalty to the Irish and British administrations and to the king, particularly after 1759 (Bartlett 1992: 63, 74, 84; Burns 1963: 183-84). Catholic lords and clergy participated in the

suppression of Whiteboys, purportedly mostly Catholic,<sup>4</sup> who committed various of acts of agrarian terrorism in Ireland's south during the latter half of the eighteenth century (Beckett 1969: 176-79; Burns 1963: 182-83; Donnelly 1983). A number of leading Catholics even offered to raise Catholic recruits for British service in America. Although Protestant protest pressured the British government to abide by existing legislation<sup>5</sup> and not enlist these troops, officials were nevertheless impressed by Catholic efforts (Beckett: 1992: 57-58; Burns 1963: 183). The death of James III on 1 January 1766, and the pope's refusal to recognise his son, Charles Edward, as the king only helped their cause. With the Stuarts out of the picture, some of the suspicions against Catholics in Britain and Ireland were removed (Wall 1969: 18).

Another development that helped the Catholics' cause was their decision in 1756 to present to the Irish and British administrations a more united front. Until then, Irish Catholics had tended to handle grievances in smaller groups. It is not that this method of protest could not work: in the early part of the century, Catholic tradesmen in Cork, Dublin and other towns resisted the quarterage charges levied on Catholics by the corporations (Wall 1952: 91-102). But by and large Catholics had not had much luck persuading administrators higher up to listen to them (Bartlett 1992: 50). In 1756, the Catholic Association, later the Catholic Committee, was established by John Curry, a Catholic doctor, Charles O'Connor, the son of a Catholic landowner, and Thomas Wyse. From the start, the Committee, an association that included Catholic merchants, gentry and clergy, was wracked with disagreement, particularly with regard to how they should present themselves. Some members,

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<sup>4</sup> The notion that Whiteboy activities were committed by Roman Catholics exclusively was propagated by Irish Protestants at the time. Thomas Bartlett points out that recent research has determined that Whiteboyism was more "a protest against economic change and innovation in the rural economy" than a purely religious movement. There were some Protestant Whiteboys, and Whiteboy victims were "promiscuously" Protestant and Catholic (Bartlett 1992: 69).

<sup>5</sup> 2 Geo. I, c. 47 prohibited Catholics from serving in the military.

especially ecclesiastics, believed that silence and obedience was the best way to go. Others, O'Connor in particular, thought they should take a more active approach, assure the king of their loyalty and press for repeal of the penal laws (Bartlett 1992: 60-62; McDowell 1979: 186-87).<sup>6</sup> In the end, these disagreements were never entirely resolved. But the Catholic Committee did manage to come together enough to affect some legislation. They suppressed a number of attempts made in the 1760s and 1770s by Protestant tradesmen to have the Irish Parliament sanction the levying of quarterage, successfully arguing that the charge was illegal and would discourage trade and manufacturing (Wall 1952). They were also involved in the formulation of a Catholic "declaration of principles" that eventually served as the basis for a new oath of allegiance that was less objectionable to Catholics than were older oaths.<sup>7</sup> Most importantly, the Catholic Committee showed, to politicians and Irish Catholics themselves, that Catholics were capable of concerted and united political action.

By 1778, then, Irish Catholics had established themselves as a comparatively powerful force in Irish society, a situation quite different than they had found themselves in the 1690s.

### *Irish Dissenters:*

It will be remembered that, in the years immediately following the Glorious Revolution, Protestant non-conformists in Ireland, although subject

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<sup>6</sup> O'Connor, along with Curry, had for some time been writing pamphlets in the attempt to revise the Protestant version of Irish history, to counter Protestant representations of 1641, in order to gain support for the repeal of penal legislation (Bartlett 1992: 52-55).

<sup>7</sup> O'Connor was opposed to the oath that was passed by the Irish Parliament in 1774, largely because he felt it strayed too far from the declaration that he had submitted on behalf of the Catholic Committee. Although he eventually took the oath in 1778, he objected to its content, claiming that it was a Protestant creation designed to divide Irish Catholics. It is true that the oath was much more stringent than the oath that was required of Quebec Catholics. Maybe O'Connor was right in his charge that Irish Protestants passed the oath with the hope that Irish Catholics might emigrate to Canada (Bartlett 1992: 80-81).

to some restrictions on their activities, supported the Protestant government as beneficiaries of Protestant rule. This changed in 1704 when the bill "To prevent the further growth of popery", much desired by Irish Protestants because it placed severe restrictions on Catholic landownership, was returned to Ireland by the English Privy Council with the addition of a sacramental test clause. By requiring that all crown servants and borough corporation members be certified as having received the sacrament of the Lord's Supper "according to the usage of the Church of Ireland", the test clause barred Presbyterians from participating in politics (McGuire 1987: 273). The test remained in effect in Ireland until 1780.

From 1704 to 1714, British officials vacillated in their stance on the test in Ireland. Whereas the Whigs tried to secure its repeal during their stint in government, the Tories who succeeded them tried to strengthen restrictions against Irish Dissenters, suspending the payments that non-conformist churches in Ireland had been receiving from the British government (the *regium donum*) and making plans to impose the English Schism Bill<sup>6</sup> on Ireland (Beckett 1948: 60; McGuire 1987: 276). After 1714 the Whigs acquired firm control of British politics and a more consistently moderate approach toward Protestant Dissent was adopted. Payments of the *regium donum* were resumed under George I and "Presbyterian agents were accorded sympathetic hearing" (McGuire 1987: 277).

However, none of this changed the opinions of the MPs in the Irish Parliament, particularly the Anglican bishops who sat in the Irish House of Lords. The Irish Parliament may not have introduced the test but they were ready to fight any attempt to repeal it or any other laws limiting the activities of non-conformists. In 1719, British ministers apparently concerned with the flow of Irish Dissenters from the north to North American, brought up the

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<sup>6</sup> The Act forbade nonconformists to teach or to keep a school.

idea of a toleration bill to ease some of the restrictions against Irish non-conformists. A bill was eventually passed by the Irish Parliament (albeit narrowly in the Lords), but it fell far short of the concessions that British officials had initially intended (*ibid*: 277-278). Attempts by British officials to revoke the sacramental test in 1731 and again in 1733 were scuttled before they even reached the bill stage because of the Irish Parliament's opposition to relief for Protestant Dissenters.

British officials were baffled by the way in which the Irish of the established church treated the Presbyterians. In a kingdom where Protestants were vastly outnumbered by Catholics, they could not comprehend why the Irish Parliament would not want all Protestants to be on an equal (and more secure) footing. Had they not fought side by side during the revolution? But, as J.C. Beckett writes, the struggle was really not so hard to understand. Large in number, powerful and well-organised, Presbyterians were a threat to the privileged position of the established church. "So long as their toleration was based on favour and connivance rather than on law and so long as they were excluded from public employment, that danger was under control. Remove these checks and the danger would become active..." (Beckett 1948: 17-18). The Irish of the established church also knew that the Presbyterians hated and feared the Irish Catholics at least as much as they did. If it came down to it, Irish Dissenters would join forces with them to repel a Catholic or Jacobite threat. "The explanation, then, of the policy of the [Irish of the established church] is simply this, that the danger of according equal treatment to the presbyterians was great and immediate, while the benefits to be derived from such concessions were, in fact, already secure" (*ibid*: 18).

Protestant non-conformists did not spend a lot of time during the eighteenth century complaining about their treatment or pressing the Irish or British governments to lift restrictions against them anyway. They did

little to help push through the Toleration Bill. J.C. Beckett says their inactivity stemmed from the fact that the act failed to address the test (Beckett 1948: 78). The bill only legalised the practical tolerance that Irish non-conformists had long enjoyed (ibid: 15). It is true that Dissenters were more active in pressing for repeal of the test. In 1722, some sent addresses and petitions to the king complaining of the grievances they felt they were forced to endure under the provisions of the test clause (ibid: 87). And in 1731-1733, they sent an agent to London to discuss relief for Protestant non-conformists, a move that motivated British officials to twice try to pressure the Irish Parliament to repeal the test. But when both efforts failed, Dissenters dropped the matter. Except for a sideways mention of the "S.T." in a letter from the synod to coreligionists in Dublin in 1737, addresses sent to the Irish and British governments by Irish Dissenters focussed on Presbyterian loyalty toward the crown and the Irish administration, and mentioned only their wish that existing conditions be maintained (ibid: 91-97). By 1778, it had been forty-five years since the last serious attempt had been made by Protestant non-conformists to repeal the test, hardly a record of steady dissent.

So in spite of the increase in restrictions against Irish Dissenters since 1697, they still supported the Protestant Ascendancy. Presbyterians benefitted from Protestant rule and although they remained subordinate to the Irish of the established church, nothing in their history suggested that they would choose to rock the boat now, especially not on behalf of Irish Catholics.

### **Informal institutional factors governing Irish policy making in 1778**

As in the 1690's, the primary informal institutional factors influencing the events surrounding the Catholic Relief Act were those that pertained to the relationship between the Irish executive and the Irish Parliament; to the

relationship between the English executive and the English Parliament; and to the policy-making process itself. Since the 1690s, however, these factors had undergone a number of changes that were to influence policy negotiations and outcomes in important ways.

*Informal institutional factors surrounding the relationship between the Irish executive and the Irish Parliament*

In the 1690's Henry Capel had devised a way for the Irish executive to manage the Irish Parliament so that bills arriving from England, especially supply bills, would be passed. As a result of the coming together of a number of contingencies that encouraged its repeated use, Capel's basic strategy - one that rendered to leaders of the Irish House of Commons political perks and anti-Catholic legislation in exchange for a government majority in Parliament and a peaceful session - became institutionalised, that is, became the manner in which Anglo-Irish politics was conducted for the next several decades. This is not to say that the basic relationship did not undergo some modifications. Changes in the nature of Irish Parliamentary politics, for example, altered some of the features of the strategy established by Capel.

*The Undertaker System*

In the 1690s, the Irish Parliament split into two factions: the "Country" interest, known for its anti-administration, anti-Catholic views (the anti-Porter, anti-Treaty of Limerick "sole right" men belonged to this interest) and the "Court" interest, whose adherents typically supported the administration and the established church while taking a more tolerant stance toward Catholics and Catholicism (pro-Porter MP's were members of this faction). By the early eighteenth century, these two groups had developed into Whig and Tory parties respectively. For the next decade or so, Irish politics was

conducted along strict party lines. Tories actively supported the administration and the Church of Ireland, resisting attempts to improve the situation of Irish Dissenters while taking a more lenient (although by no means entirely supportive) position on Catholic legislation. Some "high-flying" Tories, especially clergymen, expounded more extreme Tory sentiments like the doctrines of Non-resistance, Passive Obedience and Hereditary Right, even disputing the validity of the Glorious Revolution. The Whigs on the other hand were more ready than the Tories to initiate and support penal legislation against Catholics. They also sought the repeal of the sacramental test. In response to Tory ambivalence concerning the Revolution and the right to the English throne, many Whigs became fierce Williamites and supporters of 1688, and spent much of their time after 1709 accusing Tories of being Jacobites. So strong were party divisions during this period that MP's could not avoid taking sides, and found it difficult to change parties once they did. Even family and patronage ties, the "old" ways in which Parliamentary groupings were forged, could not withstand the divisive effects of party affiliation (Hayton 1975: Chapters 4 and 5; Hayton 1979: 42-45).

After the death of Queen Anne in 1714, the Tory interest, stripped of political office, discredited by its association with Jacobitism and hurt by mass defections to the Whigs, collapsed. With the Whig party in firm control of the Irish Parliament, Irish politics took on a less rigid "Court" versus "Country" character again. Family and patronage connections once more were important. Having operated along fixed party lines for several years, Parliamentary politics became "almost kaleidoscopic, with new combinations forming and dissolving in the space of a session." (Hayton 1979: 47-48).

These changes did not alter the basic compliance-in-exchange-for-perquisites relationship that Capel had established between the Irish executive and the Irish Parliament in the 1690's. They did, however, influence the

nature of negotiations by reducing the number of Parliamentary managers with whom the Irish executive had to deal. In the days of party politics, the Lord Lieutenant had to negotiate with a caucus of party leaders. Chief governors are known to have conferred with seven and eight party rulers in the period leading up to 1714. Once the "rage of party" subsided, however, the number of leaders in the assemblies declined. Now the Lord Lieutenant had only to negotiate with two or three magnates to ensure the cooperation of the Irish Parliament, and in most cases one was enough. The practice of having just one man in charge of managing the Irish Parliament became the basis for the "undertaker system" of the eighteenth century, a system in which a Parliamentary leader "undertook" to secure a government majority in the Irish Parliament in exchange for the right to distribute royal patronage and other political powers (Hayton 1979: 48).

The "undertaker system" survived until the late 1760's, but it was not a deliberate creation of either British or Irish administrators. Rather, it developed out of the coming together of a number of contingencies. In addition to the collapse of party politics, the election of William Conolly as the Speaker of the Irish House of Commons in 1715, and his subsequent appointment as both a lord justice and the "first" commissioner of revenue, concentrated in the hands of one man an unprecedented amount of potential power. Conolly turned out to be a master at using the influence associated with each of these positions to foster a government majority in the Irish assemblies (Beckett 1969: 189). His success demonstrated to the Irish and British executives how useful it was to have an undertaker handling Parliamentary business and encouraged them to maintain the practice. His eventual successor, Henry Boyle, proved himself to be as capable a Parliamentary manager. He delivered to the administration in the 1730's and 40's two of the most politically uneventful decades in Anglo-Irish relations and established

the undertaker as a crucial component in the operation of Anglo-Irish politics (Beckett 1969: 189-90; Kelly 1992: 12-13).

Just because the British executive wanted to perpetuate the position of undertaker, however, does not mean that the system allowed them any more power over the Irish Parliament than they had during Capel's term. The undertaker system was, after all, only a modification of the system established by the former Lord Lieutenant in the 1690's; it still required that the British and Irish executive negotiate with the Irish Parliament to ensure a peaceful and profitable session. This meant that the executive would sometimes have to give in to the Irish Parliament on certain measures. In 1722, for example, Irish Parliamentarians took offence when the British government granted a patent to an English ironmaster, William Wood, to coin money for Ireland. No one in Ireland had been consulted on the deal, and when it became known that Wood had obtained the patent through less than legitimate means<sup>9</sup>, the Irish Parliament turned against the government. All other government business was put aside, petitions complaining of the deal were sent to the king, and Parliament became essentially unmanageable. To appease Irish MP's, the Lord Lieutenant, the duke of Grafton, was recalled and the amount of currency to be issued by Wood was reduced. Nothing worked to calm the recalcitrant Parliamentarians, however, and in September 1725 the administration finally admitted defeat. The chief governor, Carteret, informed the houses that "an entire end has been put to the patent formerly granted to Mr Wood" (Beckett 1969: 165-66).

Anti-Catholic legislation also continued to play a part in Anglo-Irish policy negotiations. Heads of bills for several anti-Catholic measures were forwarded to the British Privy Council during the 1731-1732 session. All were amended by the council to such an extent that the Irish Parliament refused to

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<sup>9</sup> Wood apparently paid the king's mistress, the duchess of Kendal, £10,000 to secure the patent (Beckett 1969: 165).

pass the returned bills. When a piece of anti-Catholic legislation was again proposed in the 1733-1734 session, however, Lord Lieutenant Dorset implored the council to approve the bill. The legislation was returned unchanged (James 1973: 165). In the 1735-1736 session, the British executive suppressed a measure proposed by the Irish Parliament preventing Irishmen from moving to foreign countries. Still, they were persuaded by the Lord Lieutenant to declare openly their support of the rights of Protestants in possession of forfeited estates in Ireland (ibid: 169-70).

Perhaps the best demonstration of how the Irish Parliament and their representatives could still seriously disrupt Anglo-Irish relations was the so-called Money Bill dispute of 1753. Up until the late 1740's the additional supplies granted by the Irish Parliament every second year to pay for governing costs above the hereditary revenue were never enough to cover the administration's expenses. In 1749, however, the situation changed. That year was the first in which the Irish treasury experienced a surplus. But to whom did this surplus belong, the King or the Irish Commons? The Irish administration, along with a faction in the Commons, maintained that it was the crown who had the exclusive right to determine the disposal of the surplus, and that the King had to give his consent before the money could be used. Some of the representatives in the commons disagreed. Although they did not insist that they had the exclusive right to apply the surplus - they allowed that the King had some claim to the supplementary funds - they did believe the commons should be able to dispose of the funds without prior consent (O'Donovan 1979: 59). A surplus in 1751 and yet another in 1753 brought the issue to a head. In November 1753, the Irish House of Commons drew up the heads of a bill claiming the right to apply a part of the surplus towards eliminating the Irish national debt. Similar heads had been drafted in 1749 and 1751, but this time the bill made no reference to the king's "previous

consent". The British Privy Council took issue with this omission, and returned the bill with the words included. The bill was defeated in the Irish commons in December (Clark 1978: 279; McCracken 1942: 167-69).

The Speaker of the House of Commons and chief undertaker, Henry Boyle, and his immediates were on the side of what came to be depicted as the "patriot" cause of the opposition. This was not the first time that Boyle had made trouble for the Irish administration. At the beginning of his term, Boyle had locked horns with the Lord Lieutenant, the duke of Dorset. When Dorset refused to back the new Speaker the Irish Parliament became very difficult to deal with, thanks to Boyle. The troublesome session persuaded Dorset to change his mind; thereafter he gave the undertaker his full support (Hayton 1979: 53-54). Granted, the situation surrounding the money bill dispute was somewhat different. This time, Boyle's position was not only being challenged by the administration but by a faction in the Irish Parliament who wanted to replace the Speaker with one of their own representatives. Boyle's own political survival was at stake. In the end, however, the result was the same: Boyle emerged from the fracas victorious. His party succeeded in suppressing the revenue bill, and the Irish Parliament (at least a faction of it) had once again demonstrated its capacity to obstruct government business.

The fall out from the money bill dispute saw Boyle and his supporters replaced by men who had supported the administration on the issue.<sup>10</sup> The undertaker system itself, however, survived the melee. That such a system would be maintained even after a disruptive event like the money bill dispute is usually attributed to the attitude of the British executive. Their main concern was that government business be conducted as smoothly and with as little fanfare as possible; beyond that, they were not, at least at the current

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<sup>10</sup> Boyle and other opposition leaders negotiated with the administration and were eventually bought out with titles and lucrative pensions, a testament to Boyle's continued influence with the executive.

time, interested in imposing a stricter control over the island's governance (Beckett 1969: 191; McCracken 1942: 179). Administrative indifference no doubt goes a long way toward explaining the survival of the undertaker system. But the system's survival is also indicative of the extent to which the relations that comprised the undertaker system, and more generally the perquisites-in-exchange-for-compliance method of Parliamentary management established by Capel in the 1690's, had become institutionalised as the manner in which Anglo-Irish politics was conducted. The undertaker system represented an extension of the basic measures introduced by Capel after the Glorious Revolution. The system that succeeded it, however, was of a different nature entirely.

#### *The Townshend Viceroyalty*

The Parliamentary in-fighting that had characterised the Money Bill dispute was to become more common in subsequent years. Power struggles between competing factions made it increasingly difficult for the undertaker to deliver to the administration a government majority in the Commons. The undertakers themselves were becoming harder to deal with, demanding greater rewards in exchange for their services (Bartlett 1979: 88). Although some administrators recognised that something needed to be done about the situation, Irish affairs were still assigned a low priority by British officials. They had not the time or desire to come up with a coherent strategy to apply to Ireland (Bartlett 1992: 73; Beckett 1969: 198-99).

Enter George Townshend. Townshend was appointed to the Irish lord lieutenancy in August 1767 and over the next five years transformed the way in which Anglo-Irish politics was conducted down to the Union in 1801. He did this largely on his own, with little help or instruction from the metropolis. Townshend arrived in Ireland assigned with the task of convincing the Irish

Parliament to support an increase in the number of troops paid for by Ireland. But when the Lord Lieutenant laid the measure before the commons in April 1768 the leaders of the house, speaker John Ponsonby, Lord Shannon and John Hely-Hutchinson, succeeded in getting the military augmentation rejected. Townshend's failure to acquire the backing of the commons on the augmentation bill convinced the chief governor that the "undertaker system" had to be broken and he so informed the British administration. British officials were reluctant to sanction a large-scale overhaul of the Anglo-Irish system, however, and for three years cautioned Townshend against using any "extreme measures" to control the opposition, suggesting instead that he try to negotiate and work alongside the powerful leaders of the house of commons to reach an amiable agreement (Bartlett 1979: 94). In other words, the British administration counselled Townshend to perpetuate the old perquisites-in-exchange-for-compliance method of Anglo-Irish politics that had been in place since the 1690s.

Undeterred, Townshend did his best to consolidate his and the government's power in the face of the influential undertakers in the commons without the support of the British executive. He began to cultivate a government or "Castle" party to counter the opposition, offering rewards and what little patronage he had available to him to independent MP's in return for their backing. He realised in the process that, to retain the support of these men and not lose them to the resident opposition leaders, it was necessary that he remain in Ireland full-time and not return to England after each Parliamentary session as his predecessors had done. The next time Parliament sat in October 1769, Townshend had improved the government's position in relation to the opposition. He had not, however, managed to break its majority in the commons. Not only did this Parliament reject again the military augmentation bill, but, thanks to the contrivances of Ponsonby,

Shannon and Hely-Hutchinson, it scrapped a government money bill on the grounds that it had not taken its rise in the commons. Townshend, faced with a situation much like the one that had confronted Henry Sydney in 1692, reacted like his predecessor and prorogued Parliament (Bartlett 1992: 73; Beckett 1969: 201-202).

The rejection of this money bill finally roused British ministers to action. They authorised Townshend to dismiss the leaders of the opposition and their supporters from important positions in the Irish government and replace them with "friends of the Lord Lieutenant". All patronage was removed from the hands of the undertakers and placed under the control of the chief governor. When existing rewards were not enough, new posts and pensions were created and granted. By the time the Irish Parliament reassembled in February 1771, the government was in firm control of the commons (Beckett 1969: 202). With the British executive at last behind him, Townshend had overpowered the undertakers in the Irish Parliament and instituted an entirely new system of Anglo-Irish politics in the process.

It is true that Townshend himself, his personal commitment to strengthening the position of the Irish executive in relation to the Irish Parliament, was crucial to implementing the new system. But there were other events that happened during this period that helped to establish Townshend's system. The 1760s were a particularly unstable period in British politics. As ministries rose and fell in Britain in rapid succession, so too did administrations in Ireland. Between 1760 and 1767, Ireland was governed by five different lords lieutenant, none whose term lasted more than two years (Johnston 1963). Independent MP's were initially reluctant to commit to Townshend for fear that a new administration might be appointed that would reverse its stance towards the undertakers. But when Lord North took over the post of Britain's First Lord of the Treasury in January 1770, British politics -

and by extension Irish politics - entered an era of relative stability. With Townshend firmly ensconced in Dublin Castle, his actions backed by the British executive, Irish MP's were more comfortable entrusting their support to the government (Bartlett 1979: 98). Townshend could hardly have instituted his changes under the previous erratic conditions. Furthermore, by the time the Irish Parliament met in 1771, serious rifts had developed between opposition groups that diminished their capacity to present a united front against government measures. Doubts amongst Irish MPs about the sincerity of the opposition leaders, whether their actions were inspired by real grievances or by self-interest, reduced their influence in the commons (ibid: 99-101).

If these conditions helped to establish Townshend's measures during his tenure in Ireland, their subsistence helped to maintain the system after his departure. British politics remained comparatively stable and so did Irish politics. After serving five years as Lord Lieutenant, Townshend was replaced in 1772 by Simon Harcourt, first earl of Harcourt, who stayed in office until 1777. And the opposition in the Irish Parliament continued to experience unity and discipline problems that undermined its attempts to reestablish some control over the executive (James 1973: 271-72).

All this is not to say that, once Townshend's measures were adopted and institutionalised, the Irish, and by extension the British, executive had an easy time securing the support of a majority in the Irish Parliament. Having got rid of the Irish undertakers, the Lord Lieutenant and his immediates were now responsible for persuading, coddling and seducing fickle Irish MPs to back government legislation. It is true that their indiscipline would occasionally cause problems for the administration. But there is little question that a shift in power had occurred: the government made no major concessions to the Irish Parliament for the rest of the decade (Bartlett 1979: 110; James 1972: 272-

73).

Changes in the informal institutional factors surrounding the relationship between the Irish Parliament and Irish and British administrators over the course of the eighteenth century resulted, by 1778, in a situation very unlike that which existed in the 1690s. Then, the Irish Parliament exercised considerable influence over policy making because of the implementation and endurance of the perquisites-in-exchange-for-compliance system of governance established by Henry Capel. Although this system underwent some modifications over the next several decades - the coming together of a number of contingencies encouraged the emergence of the "undertaker system", for example - the basic informal "rules" governing relations between the executive and the Irish Parliament remained unchanged. It was not until 1767 that the system was altered completely. George Townshend's own determination to establish executive control over the Irish Parliament combined with current political circumstances to produce a relatively rapid change in the informal institutional factors surrounding Anglo-Irish politics. These new arrangements were maintained after Townshend's departure thanks much to the continuation of those same political circumstances. Whereas in the 1690s informal arrangements had undermined the power accorded to Irish and British administrators by formal institutions like Poynings' Law, by the 1770s informal relations worked for and with formal arrangements to ensure that the executive would dominate the Anglo-Irish policy-making process.

*Informal institutional factors surrounding relations between the British executive and the British Parliament*

The previous chapter showed that over the course of the eighteenth

century the power of the British Parliament relative to the crown increased. The more influence the British Parliament had over the crown's choice of ministers and government policy in general, the more colonial policy making was affected by the disposition of the British assemblies. The shift had consequences for the informal institutional factors surrounding colonial policy-making process. The process had been essentially closed to everyone outside the British executive and select groups and individuals. It now allowed a larger number of politicians to participate.

This was all true of Anglo-Irish policy making too, although the effects were not as obvious as in the colonial case. British Parliamentarians did not start to pass more legislation binding on Ireland as they did for the colonies after 1760. The power of the British Parliament to legislate for Ireland was actually seldom exercised. Even after the passage of the Declaratory Act, except for matters related to the island's economy and trade and the occasional foray into administrative and religious issues, the British Parliament still left Irish policy making up to the executive (Beckett 1972: 124). What did happen, however, was that Ireland, like America, was more readily and openly discussed by Parliamentarians, a change that affected how British officials responded to Irish affairs. British MP's who owned Irish land, were friends of the Irish Lord Lieutenant, or had some other kind of connection to or stake in Ireland, were particularly vocal (James 1966: 556). As early as 1705, this "Irish interest" succeeded in having legislation that had originated in Ireland, allowing the direct shipment of Irish linen to the colonies, passed by the British Parliament (ibid: 546-48). They also managed to quash a bill to raise the duty on Irish yarn six years later (ibid: 548-49). Although the Irish "lobby" failed in their attempt in 1731 to have removed all British duties on Irish yarn, they did convince the British administration and Parliament to support a bill revising the Navigation laws to permit the importation of

unenumerated goods from the colonies to Ireland (ibid: 554-55). The opposition of the Irish interest in 1773 to a proposed tax on the estates of Irish absentee landlords was key to the rejection of the bill by the British executive and the Irish Parliament (Johnston 1963: 294-95). Their indictments of government policies restricting Irish trade preceded the tabling in the British Parliament in the spring 1778 of a number of resolutions designed to promote Ireland's commerce (McDowell 1979: 250-51; O'Connell 1965: 53-55).

So although British Parliamentarians did not really legislate for Ireland any more than they had in the past, they still influenced Anglo-Irish policy more in the 1770s than at the beginning of the century, thanks to the gradual shift in power that occurred in British politics that permitted the British Parliament more say in government policy making and the monarch's choice of ministers. The ministers in charge of Irish policy making were now representatives of the king *and* Parliament and so had to consider the views of the latter on Irish matters when formulating legislation for Ireland. British Parliamentarians for their part were much more willing to express their views concerning Anglo-Irish policy. These things contributed to changes in the informal institutional factors governing the relationship between the British elite and the British Parliament that made it more acceptable for a wider array of political interests to participate in discussions concerning Irish legislation. This could, of course, be a blessing or a burden to key players in the Anglo-Irish policy making process. The support of MPs in British Parliament of measures desired by Parliamentarians in Ireland was an obvious advantage to the Irish interest, whereas Parliamentary opposition could sabotage their efforts to secure executive approval of favoured legislation. Similarly, the disposition of the British Parliament toward government initiatives could help or hinder their cause. The point is that, with the addition of so many new voices to the Irish policy-making process, the entire

procedure became much more unwieldy, less predictable and harder for key players to manipulate and control.

*Informal institutional factors surrounding the policy-making process*

Anglo-Quebec policy making was affected by the rise of public opinion and the emergence of new kinds of lobby groups. The eighteenth century saw a similar pattern in the development of Irish popular opinion and interests, although the issues around which they rallied were singularly Irish. The “associational” or “voluntary” groups that Alison Olson sees emerging in England after the restoration also formed in Ireland, as merchants, cattlemen and other interests banded together to lobby the Irish and British governments on issues of common concern (Olson 1992: 26). “Out-of-doors” supporters of the Irish interest in London, churchmen, Irish MPs or officials, represented Irish concerns, although their efforts resembled the more conciliatory and cooperative endeavours of the “earlier” English groups described by Olson (James 1966: 556). It was not until the second half of the century that Irish lobbies took on a more “radical” flavour, having been preceded by several decades of less focussed popular political activity.

Some of the first significant examples of popular protest in Ireland accompanied the Wood’s halfpence affair in the 1720s. By 1724, opposition to Britain’s granting a patent to Englishman William Wood to produce Irish halfpennies had moved outside the confines of the Irish Parliament and into the public arena. In September, a crowd in Cork threatened to set fire to a ship arrived from England carrying seven casks of the new coins. The ship returned to England with the hated halfpence still onboard. Meanwhile in Dublin wooden effigies of William Wood were being paraded around in the streets by groups of two or three hundred Dubliners (Connolly 1992: 101).

Encouraged by Irish Parliamentarians, and spurred on by the constitutional rhetoric of Jonathan Swift<sup>11</sup>, the populace and their demonstrations caused considerable consternation among government officials in Ireland and Britain and contributed to the decision of the executive to back down on the deal.<sup>12</sup>

The Money Bill Dispute of the 1750s spawned more demonstrations of public sentiment. When the money bill was rejected by the Irish Parliament on 17 December, a noisy crowd of 2000 lit bonfires all over Dublin in support of the opposition and forced government officials to sneak out of the Castle by the back door (Bartlett 1979: 64; McCracken 1942: 169). Anti-government clubs met throughout the city, "and the practice of conveying insults [toward government officials] in toasts was brought to a fine art" (McCracken 1942: 170). In Dublin and elsewhere anti-government feeling was strong. In contrast, the dismissed officials, Henry Boyle and his associates, were "hailed as martyrs for liberty" (ibid: 172). Admiration for Boyle and his friends turned to indignation, however, when Dubliners discovered that the "martyrs" had been bought out by the Irish administration. A crowd of 1000 hanged the speaker in effigy (ibid: 177).

Events surrounding the money bill dispute had barely calmed down when in 1759 rumours of a union of Irish and British legislatures aroused the ire of the public yet again. On the day that the union bill was supposed to be introduced in the Irish House of Commons, a large crowd assembled around the Parliament building. MPs entering were threatened and forced to swear to oppose the measure (Beckett 1969: 195; Murphy 1989: 54). Despite attempts by

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<sup>11</sup> Swift, under the pseudonym "The Drapier", published four letters in 1724, the last of which linked the Wood's halfpence controversy to the more general (and explosive) issue of Ireland's political independence from England (James 1973: 120).

<sup>12</sup> According to Sean Connolly, these were the only demonstrations of public hostility toward the Wood's halfpence that occurred (Connolly 1992: 101-102). But the severity and number of public protests were exaggerated by English observers, reports that no doubt contributed to the executive's belief that the patent should be revoked.

government officials to restore order, grumbling and disturbances continued until an even larger and more hostile crowd appeared at Parliament house about a week later. This time they invaded the house of commons and, armed with swords and bludgeons, "abused, struck and otherwise ill-treated" (quoted in Murphy 1989: 54) many of the members and compelled them to swear "to be true to the interests of their country". The crowd retreated when troops were sent in to disperse the crowd. When the protesters started throwing stones at the soldiers, the cavalry responded with swords drawn, wounding a number of them and arresting some (ibid: 54-56).

There is evidence of collusion between the populace and the opposition factions in the Irish Parliament during these incidents, especially the events surrounding the Money Bill dispute. Henry Boyle and his colleagues certainly made the most of the popular support of his anti-administration forces. But it was not until later in the century when these largely reactionary and, using Brewer's terminology, "unfocussed" responses to government policy started to develop into a more organised and politically influential popular movement. Parliamentary and out-of doors "patriots" (so called because of their support of an independent Irish legislature and their indictment of other English infringements, economic and otherwise) found a champion and figurehead in Charles Lucas, a Dublin apothecary and publisher of the *Citizen's Journal*. In 1749, Lucas was declared by the Irish Parliament an enemy of the country for promoting the patriot cause and was forced into exile. Ten years later, he returned and won a seat in the Commons, where he became a staunch supporter of the patriot opposition (Beckett 1969: 192, 198; James 1973: 183-85). During the decade Lucas served as a member of the Irish Parliament, he did much to help Ireland's, particularly Dublin's, populace focus their political potential. Dublin's commercial interests were especially supportive of the patriot cause. As an MP and a member of the barber-surgeons' guild, Lucas

straddled both worlds and solidified the connections between out-of-doors patriots and the Parliamentary opposition (Cummins 1990: 118-120, 125, 126-27, 133).

The similarities between Lucas and John Wilkes were evident to contemporaries. Patriots in Dublin cheered the anti-government activities of Wilkes and his followers; Lucas drew connections between the situation of Wilkes' common man and that of ordinary Dubliners (Cummins 1990: 120). Irish patriots were also like their radical counterparts in London in condemning British action in the American colonies. By 1775, patriot societies like the Free Citizens of Dublin were joined by larger, less formal groupings in expressing sympathy for the Americans. Public meetings in Dublin and elsewhere passed resolutions supporting the colonists; petitions were forwarded to the king urging him to make peace with America for the sake of Irish trade (McDowell 1944: 43-44). In 1776, Lord Lieutenant Harcourt managed to secure a majority in the Irish Parliament to send to the king an address denouncing American defiance. The patriots put up a strong fight against the address, however, asserting that the colonists were only defending their rights (O'Connell 1965: 27).

The "rise of public opinion" in Britain and in Ireland during the eighteenth century influenced the informal institutional factors surrounding the formulation of Anglo-Irish policy. Just as the increasing power of the British Parliament over British politics increased the number of politicians who could now legitimately participate in government decision-making, the growing influence of public sentiment on the policy negotiations boosted the potential for out-of-doors groups to have an impact on legislation. Again, this could work to the benefit, or detriment, of those traditionally involved in Anglo-Irish policy making. On balance, it made policy negotiations, already become unwieldy with the addition of more politicians to the process, even

more difficult to manage for key players.

So by 1778 and the passage of the Irish Catholic Relief Act the informal institutional factors surrounding the Anglo-Irish policy-making process had changed significantly. The informal "rules" governing the relationship between the Irish, and by extension the British, executive and the Irish Parliament had been altered to better reflect the formal, constitutional relationship that existed between these bodies. The policy-making process itself had opened up considerably and was now more susceptible to the views and demands of a larger number of politicians and the public. Let us see how these factors affected the process surrounding the formulation and passage of the Irish Catholic Relief Act.

#### The Irish Catholic Relief Act

The matter of Catholic relief was raised in the Irish Parliament in May of 1778 by Luke Gardiner, independent MP for county Dublin. Although some historians have maintained that Gardiner's was a truly private measure, it is possible that he was the North ministry's "unofficial agent" in Ireland, a go-between employed by North to avoid the Prime Minister being associated with Irish Catholic relief (Bartlett 1992: 85-86).<sup>13</sup> The relief that Gardiner proposed was nothing like an overhaul of the entire penal code; he stated that his motion would deal only with matters concerning landed property. Nevertheless, the issue sparked heated debate among Irish MPs. After much discussion, it was voted on 25 May that Gardiner be permitted to bring in the heads of a Catholic relief bill (Burns 1963: 189-90, 191-192).

The proceedings of the last session were well publicised and drew

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<sup>13</sup> According to Thomas Bartlett, North frequently made use of agents; it was "his preferred tactic for dealing with tricky policy issues with which his government could not appear to be directly involved" (Bartlett 1992: 85).

criticism from many in Dublin. The public's response alarmed Irish officials and prompted the Lord Lieutenant to appeal to London for instructions. The Southern Secretary, Lord Weymouth, forwarded the details of the English relief bill to Buckinghamshire with instructions to inform the "friends of the Lord Lieutenant" in the Irish Parliament that the king was well-disposed to Irish Catholic relief. With the knowledge that the king and the British administration were firmly behind relief, the Irish executive permitted proceedings to continue (Bartlett 1992: 88-89; Burns 1963: 192-93).

There is evidence to suggest that until around the time of this communication, the Irish executive had no idea of North's plans concerning Catholic relief in England, Scotland and Ireland. It was likely Buckinghamshire himself who finally deduced that an Irish measure was part of a larger scheme that involved relief in the other two kingdoms as well. The Lord Lieutenant was not the only one kept in the dark: apparently not even Weymouth was privy to North's strategy until the matter was well underway (Bartlett 1992: 85, 86, 87-88). North's secrecy is understandable. Rumours that the British administration was planning to recruit Catholics into the army had caused considerable consternation among Irish Protestants in 1777. The idea that the government was going to arm Irish Catholics to kill Irish Protestant emigrants in the American colonies was bad enough. But as Robert Burns writes, "the great and enduring fear that 2,000 disciplined Catholics would return from the American war and train 10,000 of their co-religionists to murder Protestants was no less powerful in 1777 than it had been at any time during the century" (Burns 1963: 185).

Gardiner returned on 5 June to read the heads of his bill. Objections to the measure continued, and it was at this time that Dissenting MPs voiced their opposition to the legislation. One Dissenter, Sir Edward Newenham, declared that he would introduce the heads of a bill repealing legislation that required

Irish officeholders to take the Sacramental Test on 15 June, the day that Gardiner moved for committal of his bill (ibid: 193).

By 15 June, Newenham had changed his mind. Instead of introducing a separate bill for repeal of the Test, he decided to offer it as an amendment to Gardiner's relief bill. Supporters of Gardiner's measure were quick to object to the proposed amendment. There was no reason not to introduce repeal of the Test as a separate bill, they argued, unless Newenham was purposely trying to sabotage the relief measure. Despite these charges, the house decided to amend the bill (ibid: 193-94).

Over the next several days, debate over the contents of the bill raged until the small hours of the morning. In addition to the Test clause, the bill contained provisions that would permit Catholics to purchase land without any limitations or restrictions and to bequeath land in any way they liked. (The penal code stipulated that Catholic land was subject to the gavelkind and had to be divided among all heirs.) It was the first provision that concerned the bill's opponents the most. Ownership of land meant that Catholics could increase their political influence if the land they bought carried political rights with it, like the right to appoint candidates to certain government posts and nominate members of Parliament (O'Connell 1965: 117). If, however, Catholics were limited to leasing land, their political rights would also remain limited (Bartlett 1992: 88). On 16 June, an amendment was proposed by George Ogle, a virulent opponent of the relief measure, that the bill's first clause be struck and replaced with one permitting Catholics to take leases of up to 999 years. It was after midnight when debate was suspended and a vote was taken. Ogle's amendment passed, but by only a small margin: 111-108 (Burns 1963: 195-96).

Opponents of the bill were buoyed; maybe they could defeat the relief measure by "amending it to death" (ibid: 196). But a cryptic announcement by the Chief Secretary, Sir Richard Heron, near the end of the 18 June session

seemed to turn things around. Earlier in the day, George Ogle had asked Heron about a report that had indicated that the relief issue had become a "Government question". Until then, the Irish government had not made clear its position concerning Catholic relief. It had been thought best by officials in Ireland and in London that the Irish administration restrict their involvement to giving "moral support" to the bill so as not to appear to be interfering in the matter (O'Connell 1965: 118).<sup>14</sup> It was not until later that the Chief Secretary responded to Ogle's query. He said that it was true that the Irish government was behind Catholic relief, but "has by no means presumed what those measures should be" (quoted in Burns 1963: 197). Ogle's condemnation of the government's involvement in "principles of religion" was unequivocal, but it had little effect on subsequent proceedings. No more amendments were made to the long-term lease clause, and an amendment repealing the gavel passed easily (ibid: 197-98).

The next day, the house went through the bill line by line, but there was little dissension concerning its contents until the Test clause came under consideration. Despite valiant attempts on the part of government office holders to convince members to strike the Test clause from the bill, the provision remained, passed, as Buckinghamshire reported to Weymouth, "by so large a majority that it was not thought advisable to tell the numbers" (quoted in Bartlett 1992: 88). Thomas Bartlett maintains that earlier charges that the opposition was trying to sabotage the legislation by including the Test clause were on the mark. The addition of the Test clause to the relief bill was a "no lose" strategy on the part of opponents of the measure. If either of the Privy Councils threw out the clause, the Irish Parliament could vote it down when it returned; if it was allowed to remain, then the bill could be defeated by the

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<sup>14</sup> Robert Burns maintains that the government had decided to support the bill by 22 May . Although there was no official announcement of their position, the fact that the press coverage of recent house debates on the issue was "unusually detailed" and focussed on the English act was an "unmistakable sign" of the government's feeling (Burns 1962: 190).

bishops in the Irish House of Lords (Bartlett 1992: 88). All this is no doubt true. But given the large majority that voted to include the Test clause, perhaps it is fair to say that it was not only opposition MPs who were thinking this way. Maybe the "friends of the Lord Lieutenant" who would normally support government measures saw their endorsement of this clause as a surreptitious way in which to express their aversion - whether it stemmed from intolerance or constitutional principle - towards the bill. That Buckinghamshire was aware of this strategy is suggested in a letter to Weymouth in which he wrote that more councillors would have opposed "the Presbyterian clause, if they had not conceived that it might be more properly rejected in England than on this side" (quoted in Burns 1963: 198-199). The bill passed a thinly populated Irish Commons on 20 June and was in the hands of the British Privy Council by 2 July.

The law officers to whom the bill was forwarded for comment were cautious in their approach to the measures. They were disheartened by the lease clause; to prevent Irish Catholics from outright ownership of land would "maintain a principle which preserves an uneasy suspicion" (quoted in Bartlett 1992: 89). Neither were they pleased with the addition of the amendment repealing the Sacramental Test. Both officers recognised, however, that ridding the bill of either of these terms would risk the failure of the bill in Ireland. They referred the measure to cabinet with only minor revisions (ibid: 89).

Not surprisingly, the main discussion in the cabinet revolved around what to do about the Test clause. The concern was that if Irish Dissenters were granted this concession then their co-religionists in England would demand the same. On the other hand, if the clause was struck and the Irish Parliament rejected the bill, it would set up a situation that would encourage further "bargaining" between Irish Catholics and Protestant Dissenters for political

rights, leading to, as the Lord Chancellor Edward Thurlow put it, a “perpetual nursery of faction” (O’Connell 1965: 119-20). In the end the British Privy Council returned the bill to Ireland without the Test clause. That the bill would have a difficult time passing the Irish Parliament was recognised by the Irish administration; Edmund Sexton Pery, the Speaker of the Irish Commons, told Edmund Burke that its success depended on its open support by the Irish government. Indeed, the Irish administration did its best to ensure that the government’s “friends” would back the bill. MPs received letters from the Chief Secretary stating “that your attendance in Parliament on this urgent occasion will oblige him [Heron] and government in the most particular way” (Bartlett 1992: 89-90).

Irish Commons debate on the bill before its transmission to England had focussed on the issue of Catholics and property. Now the opposition argued that the bill should be rejected because the British Privy Council’s alteration of the measure was unconstitutional. One opposition member urged Irish MPs to throw out the bill and protect “the constitution and the rights of Parliament and laws of the land from violation” (quoted in Burns 1963: 202). The debate was furious, until a government official, John Hussey Burgh, announced in the course of a speech supporting the measure that the Irish government had enough votes in the House to pass the bill. Although the clamor in the House continued there was no more debate on the matter. The bill was put to a vote and passed 129 to 89 (Bartlett 1992: 90). It was approved by the Irish House of Lords on 10 August in a 44 to 28 vote, although not without some heated discussion. Just as the Irish administration actively solicited votes in the commons, the Lord Lieutenant secured proxies from absentees and disinterested Lords and made sure that all in the upper house, the bishops in particular, knew his position on the issue (Burns 1963: 203). The bill became law a few days later.

## **Discussion**

Accounts of the proceedings surrounding the passage of the Irish Catholic Relief Act vary in tenor with regard to how certain was the government's victory. Robert Burns and to a lesser extent Thomas Bartlett convey the idea that, once the Irish administration had "come out" on the issue of relief, passage of the act was more or less a foregone conclusion. According to Burns, Heron's 18 June announcement that the government was backing Irish Catholic relief was directly responsible for the poor turn-out of MPs in subsequent sessions. "Government's intervention had made enactment inevitable, and gentlemen wished only to report some kind of a bill and end the gruelling and interminable sittings of the committee" (Burns 1963: 198). Bartlett writes: "In 1778 the Irish Parliament was steam-rolled into concession, its inferior status being thereby doubly demonstrated, first by its acceptance of the British initiative, and secondly by its acquiescence in the British deletion of the sacramental test clause" (Bartlett 1992: 91). In contrast, Eamon O'Flaherty and Maurice O'Connell emphasise how close the relief measure came to failing. O'Flaherty describes "a definite feeling on all sides of political opinion that the first attempt to remove restrictions on Catholics by the Irish Parliament had been a near-disaster" and makes note of comments by the Lord Lieutenant and other supporters of the bill that suggest that they were annoyed with the way in which the whole matter was handled (O'Flaherty 1988: 38). O'Connell points out that the measure was almost defeated in the House of Commons several times and tells of Buckinghamshire's great relief when the issue was finally decided and his commendation from a London official "having gotten through the longest and most difficult session of Parliament I ever remember in Ireland" (O'Connell 1965: 122-23).

Despite differences in their readings of how strong the Irish

Parliament was during these proceedings, none of these writers would deny that the decision on the part of the Irish administration to let their views on the issue be known was crucial to the passage of the Irish Catholic Relief Act. Whereas Burns and Bartlett might focus on the failure of Irish MPs to influence the act in any significant way, O'Flaherty and O'Connell would emphasise the number of amendments the Irish Parliament managed to get added to the bill. But all would concede that it was the Irish government that made the difference in the end.

The formal institutional factors governing the making of Irish policy not only continued to favour the government executive but had been strengthened since the ratification of the Treaty of Limerick. Poyning's Law was still in place, giving the Irish and British executive formal control over the policy process. In 1720, the relationship between the Irish and British Parliaments was finally clarified with the passage of the Declaratory Act, a measure that ruled that the British Parliament had the legal right to legislate for Ireland.

But as the Treaty of Limerick negotiations demonstrated, constitutional predominance did not guarantee that government administrators would have their way with Irish legislation. Then, the ability of the English and Irish executives to exercise the power over Irish legislation constituted to them by Poyning's Law was hampered by informal institutional factors that allowed Irish Parliamentarians to, if not dominate, wield much more influence over Irish policy than they were supposed to. These informal institutional factors proved most enduring and, although they went through some modifications, conditions facilitated and encouraged their continued use.

By 1778, however, there were mechanisms in place that strengthened the actual power of Irish, and by extension British, administrators over the Irish Parliament. Drastic alterations in the informal institutional factors

surrounding executive-Parliament relations in Ireland were introduced by Townshend in 1767 and were perpetuated thanks to the commitment of succeeding administrations and the subsistence of contingent circumstances favourable to their institutionalisation. These changes made it possible for the Irish and British executive to exercise the power over Irish policy that the formal institution of Poynings' Law granted them and were, it is offered, the most important factor determining the government's victory in the relief act negotiations.

The picture of Anglo-Irish politics that emerges from accounts of these proceedings, of officials unwilling to let their support of Catholic relief be known out of concern that their views would unduly influence the House vote, of Irish Parliamentarians whose passionate tirades against the measure suddenly cease, indeed, who do not even bother to show up for its final readings, after the government declares its position, is very different from the picture of politics in the years following the Glorious Revolution. During the Treaty bill negotiations and for several decades after, the Irish Parliament was able to dictate to a large degree the nature and content of religious policy in Ireland; the Irish, and by extension the British, administrations were in no position to insist that measures contrary to the disposition of the majority of Irish MPs be adopted in the kingdom. By 1778 this situation had turned around completely. Changes in the institutional factors influencing Anglo-Irish politics were central to this reversal.

Still, the power of the Irish and British executives to dictate Irish policy in 1778 must not be overstated. One need only compare the limited nature of the concessions offered to Irish Catholics to those granted to Catholics in Quebec and England to see how Irish Parliamentarians were still able to check the capacity of the executive to pass legislation unhindered. Although it is true that changes to the informal institutional factors governing Anglo-Irish

politics had improved the extent to which the executive could control the Irish Parliament, formal institutional factors, namely Poynings' Law and the long tradition of participatory politics in Ireland, still required that Irish and British politicians pay heed to the disposition of the Irish Parliament when formulating relief legislation for that kingdom.

Institutional changes also diminished the capacity of the Irish Lord Lieutenant to influence Irish policy independent of the British executive. It is true that the chief governor and his officials were in control of Ireland's governance much more than before. The British executive still relied on the information provided by the Irish executive concerning the state of the kingdom. But the Lord Lieutenant had much less manoeuvrability as far as negotiation and formulation of Anglo-Irish policy. In the years following the Glorious Revolution, the chief governor was more negotiator than dictator. Given the power of the Irish Parliament in these days, policy was more flexible because it had to accommodate the demands of Irish Parliamentarians. As a result, a strong Irish Lord Lieutenant whose relations with Parliamentary managers were good could inject policy with his own personal and political views. Certainly Henry Capel showed how the Irish chief governor could be the representative of the crown while still dictating to a large degree the nature of Irish policy. After 1767, the Irish chief governor was the direct servant of the British government. His management abilities were still important, but the opportunity to influence policy and act independently of the British executive was reduced dramatically. Buckinghamshire's experience and actions during the process leading up to the passage of the Irish Catholic Relief Act provide much evidence of this. The chief governor was kept in the dark about the relief plans of the British executive; information was only given to Buckinghamshire on a "need-to-know" basis. The Lord Lieutenant's urgent appeals to London asking how the Irish

administration should approach the matter shows how dependent was the chief governor on British administrators for guidance in the process.

The other figure whose direct role in Anglo-Irish policy negotiations had declined is the monarch. As in the Quebec case, it was the North ministry rather than the king who seemed to have directed the course of relief legislation in Ireland, another indication that the power of the British Parliament to direct government policy had increased considerably since William and Mary's time. Of course the king could still cause difficulties for the ministry, as became evident when the matter of Irish Catholic emancipation came up after Britain's union with Ireland in 1801. This should not detract from the ministry's strength during the 1778 negotiations, however. Just because the king ended up supporting relief legislation does not mean that it was easy persuading him to do so.

The changes that Townshend made to the informal institutional factors governing relations between the Irish executive and the Irish Parliament affected the outcome of the process leading up to the passage of the Catholic Relief Act in other less straightforward ways. More specifically, the *interaction* of Townshend's measures with the changes that had occurred in the informal institutional factors related to British governance had important implications for the capacities of the Irish Parliament and other groups, especially Irish Catholics, to affect the policy outcome. Townshend's measures in combination with the "opening up" of British politics helped to shape the strategies these groups used to oppose or promote Catholic relief and ultimately helped determine their success or failure in the negotiation process.

The character of the Irish Parliament changed with the institutionalisation of Townshend's measures. There had always existed a "separation" between the Irish executive and the Irish Parliament. But before Townshend, conditions demanded that the administration forge cooperative

links with Irish politicians. The executive was almost exclusively British, political benefactors of whatever ministry happened to be in power. Until Townshend's term, most officials, including the Lord Lieutenant, were non-resident, coming to Ireland only for the sitting of the Irish Parliament, about eight months every two years (Bartlett 1979: 88). Lacking the knowledge and the personal connections necessary to manage the Irish Parliament, the executive really had little choice but to appeal to Irish politicians for help governing the island (Beckett 1969: 190). After Townshend's reforms, the executive relied less on Irish Parliamentary leaders to rule. It is true that the Lord Lieutenant and his officials still had to negotiate with Irish MPs to achieve desired ends. But that negotiation was now done by executive officials who lived in Ireland, who could develop the political know-how and cultivate the personal relationships to procure a "castle party" on their own. The "middleman" had been done away with and the type of reciprocal links that had once existed between the Irish executive and the Irish Parliament were weakened significantly. This was to have important consequences for Anglo-Irish politics as J.C. Beckett explains:

So long as government could rely on undertakers to manage the house of commons the true nature of the constitutional conflict between Ireland and Great Britain was obscured. It was so much mixed up in the squabbles of rival groups of self-seeking politicians that the issues seldom stood out clearly. Once the Castle became the real centre of power, exercising a direct control over government supporters in the house, the way was open for a straight trial of strength (Beckett 1969: 202-203).

The idea that Townshend's measures led inexorably to the constitutional battles of later in the century may be overstated here. But the more distinct separation between the Irish Parliament and the Irish executive that emerged after Townshend's term certainly played a part in the way the Irish Parliament was to approach Anglo-Irish policy making thereafter.

David Lammey (1988) has examined this matter in some detail. Although

his purpose is to show that the Irish Parliament was split into distinct administration and opposition parties during the 1770s, many of the points he makes can be used to show how institutional factors contributed to the failure of the Irish Parliament to block the Catholic relief bill. Lammey agrees with Beckett that the more pronounced division between the Irish executive and Parliament arising out of Townshend's measures brought to the fore constitutional issues once obscured by political posturing. But he also emphasises that changes in the nature of the constitutional challenges themselves, and the tactics employed by the Irish "patriot" movement both inside and outside Parliament contributed to this focus. Constitutional challenges to the authority of the British crown and Parliament over Irish affairs were nothing new in Irish politics. But the Wood's halfpence affair and the Money Bill dispute brought constitutional debate to a new level. The "patriots" in the Irish Parliament realised that there were some distinct political advantages to presenting themselves as defenders of Irish interests (Lammey 1988: 263). After 1767, their use of constitutional arguments became more regular. Now faced with a virtually "indestructible ministerial majority" in the commons, constitutional issues became a way in which they could "shake the resolve of ministerialists who were susceptible to the demands of their electorate and thus precipitate a desertion" (ibid: 275). In other words, by appealing to constitutional issues, the opposition could utilise public opinion in support of their causes and improve somewhat their chances of breaking the commons majority held by the castle. We saw the opponents of the relief measure adopt exactly this tactic when the Catholic Relief Act returned from London shorn of the Test Act repeal clause. George Ogle also tried to unsettle those MPs who had ignored what he felt was proper constitutional procedure by promising "to move an impeachment against any gentlemen who admitted voting on this question under Government

influence" (quoted in Burns 1963: 199). The threat had some effect but obviously not enough to change the vote significantly.

If we consider the activities of the Irish Parliament in the light of our discussion concerning the "opening up" of British politics and the "rise of public opinion" that accompanied and encouraged this process, we can see how Townshend's measures combined with these other institutional changes to shape the strategy adopted by the MPs in the Irish Parliament who were against the relief measure. Opposition MPs, their connections with the Irish administration severed thanks to the changes put in place by Townshend, responded to their new-found powerlessness by focussing on constitutional issues. They were inspired by and contributed to the simultaneous growth of the influence of "the public" on government policy making, an experience that was both a response to and a motivation for changes in the informal institutional factors characterising British policy-making that encouraged more "openness". Further, the appearance of more "radical" interest groups whose concerns paralleled their own encouraged Irish opposition MPs to adopt many of the same arguments and tactics employed by these public opinion lobbies: they appealed to a large and diverse public rather than specific interests; they focussed on larger, particularly constitutional, matters as opposed to narrower concerns; and they were anything but conciliatory towards government. Given all this, it comes as no surprise that the anti-relief forces were made up largely of Irish radicals, the "patriots". All but four in the patriot party opposed the act (O'Connell 1965: 123).

What did all this mean with regard to the capacity of the Irish Parliament to affect the discussions surrounding the Irish Catholic Relief Act? The employment by Irish MPs opposed to Catholic relief of "radical" methods of lobbying rather than the more pliant approaches used by earlier interest groups ended up hurting them. The reality was that "radicalism" in Ireland

was very different than radicalism in Britain. The potential of the patriots to cause trouble for the British government was, or at least could have been perceived to be, much more serious than that of the radicals in Britain. It is true that the Wilkites and other anti-government groups in London and elsewhere were critical of the crown and its officials; it is also true that they embarrassed and pressured administrators to listen to and sometimes consider or even concede to their demands. But the Irish patriot cause had much larger political implications than did London radicalism. This became especially clear during the American conflict. There were strong links between Ireland and the American colonies. Most straightforwardly, they shared Irishmen; emigration from Ireland, the north especially, to the "new world" was steady throughout the century (O'Connell 1965: 28). More seriously, Ireland and the American colonies held a somewhat similar constitutional relationship to the mother country, a fact that the patriots in the Irish Parliament were quick to point out when opposing Irish involvement in the war. Patriot leaders warned that the English "understand most perfectly that the cause of America is [ours]....From the highest to the lowest they are all agreed to the point of our dependence; some of them go so far to assert we are theirs by right of conquest. To ask them to prove this point is an insult. Mr. Molyneux's *Case they have not heard of*" (quoted in McDowell 1944: 45-46). As unlikely as modern historians claim it was that Ireland would go the way of the American colonies and assert their independence from Britain (O'Connell 1965: 30-31), the possibility of a constitutional battle of similar proportions in Ireland had to have been on the minds of British administrators during the American conflict. This certainly would have had an impact on their ideas about Irish policy and how they responded to the demands of the Irish Parliament.

So the "radical" stance taken by Irish Parliamentarians to oppose Catholic relief and other government measures did nothing to endear them to

British administrators. Had they been more compromising, less hostile to government officials, would the anti-Catholic forces have been able to ward off Catholic relief in Ireland? Had they used some of the "old" methods of lobbying, would they have been more successful? It is hard to say. The North ministry was definitely behind the bill and was committed to securing some relief measures in Ireland for military reasons. It is impossible to know whether North and his officials would have delayed or modified the act had the opposition in the Irish Parliament been "nicer" to them. Furthermore, the Irish Catholic Relief Act was already quite a benign measure. It granted far fewer concessions than did the English Relief Act, and did not come close to including the liberties that had been granted to French Catholics in Quebec. It is hard to imagine any sort of Catholic relief bill that would have provided for fewer freedoms, unless it was decided to forgo granting any concessions at all. In the end, circumstances were such that the Irish Parliament would not have even considered approaching the problem in this way. By 1778 the separation that had occurred in Irish politics as a corollary of Townshend's measures, together with the increase in the involvement of "the public" in the policy making process that was a consequence of the opening up of British politics, had combined with an history rife with constitutional struggles to create an Irish Parliament wholly radical in its approach to Anglo-Irish policy making. By the time the question of Irish Catholic Relief came up, conciliation was not an option.

The opposition in the Irish Parliament also had to contend with the fact that, given the more open political process, British officials, whether they wanted to or not, now had to take into consideration the demands of groups that had traditionally been outside the official policy-making process. The Irish Catholics were the most important "out-of-doors" interest in these negotiations. It is true that the Catholic Committee in Ireland did not become

directly involved in promoting the Irish Catholic Relief Act until the bill had passed the Irish Parliament and had been transmitted to England for approval by the British Privy Council. Then, it sent funds to its London agent, Daniel McNamara, to help convince British officials to support the measure (O'Flaherty 1988: 39). But Irish Catholic leaders had long been communicating their support of the Irish and British governments, directly, via addresses declaring their allegiance to the king and offers to assist the crown in recruiting Catholic troops for battle for the British cause, and indirectly, by not participating in the Jacobite risings earlier in the century. The methods used by Catholic leaders and by the Catholic Committee later in the process helped in their efforts to persuade the government to go ahead with plans for Catholic relief. Although there was some disagreement among their ranks concerning how to approach this matter, in the end Irish Catholic leaders made a deliberate decision to stick to traditional lobbying techniques - private conferences with government officials rather than more public campaigns, ensuring the loyalty of their membership and offering help to government in exchange for consideration of their demands as opposed to more aggressive techniques - and it worked well for them. Passage of the Act vindicated those members of the Catholic community who advocated establishing closer links with government officials (O'Flaherty 1988: 40).

Granted, their goals meshed with those of government officials, making it easier for administrators to react favourably to their humble requests for relief. But had they been more belligerent in professing their demands it is doubtful that they would have been as successful in persuading the British government to approve of relief measures.

Irish Dissenters played an indirect yet important role in the Catholic Relief bill process. They did not actively support the Catholic cause, nor did they as a group openly oppose it any more or less than did the Irish

Protestants of the established church. But it was a clause repealing the sacramental test that proved to be the most controversial portion of the bill. It was the position of the key players on relief for Dissenters and its implications, rather than on Catholic succour, that really decided the fate of the Irish Catholic Relief Act.

In some ways, those most affected by institutional factors during the eighteenth century were the Irish Dissenters. The hated test act was introduced in 1704 not as a separate measure but as an amendment tacked onto an anti-Catholic bill by an English Privy Council that some say only added the clause to prevent passage of the bill through the Irish Parliament.<sup>15</sup> The first time repeal of the test was actually supported by the Irish Parliament it was tabled again not as a separate bill but as an addition to a Catholic relief bill. Irish MPs hoped the clause would help bring about the bill's defeat somewhere along the way. In both instances, the fate of Irish Dissenters was being used by key players to try to make the institutional factors governing the policy process - in this case, Poynings' Law - work to their advantage. In the case of the introduction of the test, the strategy failed, and the bill was passed anyway. The British executive then spent the rest of the century trying to convince the Irish Parliament to revoke the test. In the case of the test's repeal, the scheme failed again. The "no-lose" strategy adopted by the Irish Parliament stumbled up against the power of the Irish executive. Institutional factors helped shape the experience of Irish Dissenters and contrived to involve them in negotiations concerning Catholic policy, even though they as a group made little concerted effort to participate themselves.

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<sup>15</sup> See below p. 72.

## Part V: Conclusions

The aim of this study was twofold. First, it was to analyse closely using the institutional approach the events surrounding the formulation of three pieces of legislation affecting Catholics in the British empire in the eighteenth century to determine the most important factors and forces involved in each process and how they came together to produce each policy outcome. In so doing it was hoped that information would be acquired to realise the second objective, that is to see how these specific policy events contributed and were linked to the general tendency on the part of British administrators to favour Catholic relief over more repressive measures as time went on.

With regard to the first objective, the three cases show how essential it is to explode the "black box" of the state and undertake detailed analyses of policy outcomes to grasp how government directives are formulated. Without this sort of investigation, the complex interplay of human agency, structure and contingency that helps give rise to policy outcomes remains obscured, increasing the chance that the purpose and foundations of government directives might be misinterpreted or misrepresented. All three cases demonstrate how much more complicated government policy making is than is suggested by traditional sociological approaches to the state and state power, and support the movement of both "society-centred" and "state-centred" theorists toward analysing the state, not as a passive entity that reflects the ideals of whatever group happens to be in power, but as being comprised of a collection of institutions or normative structures that affect, and are affected by, the behaviour of the individuals associated with them.

The cases also show how useful the institutional approach is for analysing specific policy events. By asking us to focus on institutional factors,

the "rules" that people participating in the policy-making process have to follow or take into account when negotiating policy, the approach allows us to assess the impact of institutions on policy outcomes, something that has, at least until recently, been little explored. The analyses show that institutional factors are not the sole cause of policy outcomes but rather help to arrange and interact with all the other factors involved in the process in a way that encourages the emergence of a particular end. Institutional factors thus affect policy outcomes but their effect is largely indirect via their capacity to structure the manner in which human agency and contingency come to bear on the policy-making process. This was true in all three cases, but perhaps was most clear in the case of the Quebec Act. The analysis of the Quebec Act showed how institutional factors, although they did not create the rationale behind the policy, helped to array the factors influencing Anglo-Quebec policy making in a way that provided opportunities for proponents of the newer or untried policy ideas on which the Act was based to prevail, and furnished structural conditions that fostered the serious consideration of these ideas and their eventual implementation.

What this means, then, is that to truly understand state policy outcomes, it is not enough to point to the attitudes, concerns or interests of policy makers, or factors more removed from the immediate negotiations like the international competition or geography. Although all these factors may have legitimate influences on the policy-making process, it is necessary to examine the structural framework within which the process takes place and the way in which that framework interacts with these other factors to arrive at a more realistic picture of the origins and purpose of state policy. Let us take as an example models of the state and state power that say that the capacity of societal groups to acquire political power depends on their ability to mobilise resources, be it money, status, unity of membership, or whatever. There is

little question that resources would affect a group's capacity to impact on politics. But one need only look at what happened to the Anglo-Quebec merchants during the Quebec Act negotiations to see how institutional factors can conspire to reduce the influence of a group regardless of how rich or connected are its members. The experience of Irish Catholics provides another interesting case. By the latter half of the eighteenth century, the situation of many Irish Catholic elites had improved as a result of their deciding, since their landholding possibilities were so restricted, to take up commercial pursuits. Here is a group whose collective resources had increased to the point where they could afford to begin to demand some political concessions of the Protestant ascendancy. What sorts of opportunities would have been available to them, however, had the policy-making process not become more open to groups and individuals outside government executive and select others? Would Catholic commercial interests have been as successful at convincing government officials partial to land owning elites to consider their grievances? Would Irish Catholics have been as likely to band together in associations like the Catholic Committee had this kind of political action not emerged as an acceptable, or at least tolerable, way to press for concessions as a cause and outcome of these institutional changes? An emphasis on the capacity to mobilise resources is fine, but it is necessary to look at how institutional factors structure political pursuits and so affect the relative power of the individuals and groups involved to really understand the ability of people to influence the political process.

The study did more, however, than just demonstrate how existing and relatively stable institutions impacted on these three measures at the time of their passing. It also showed the influence on policy of developing and/or changing institutions. As it turned out, it was necessary in each case to assess the emergence of *new* institutional factors and/or the modification of existing

ones either during or preceding the particular policy event. Although the formal institutional factors surrounding Anglo-Irish policy making remained fairly constant during the eighteenth century, the informal ones experienced considerable alteration. The informal institutional factors governing metropolis-colony relations also went through some major changes during the years in which the Quebec policy was formulated. If the institutional approach was more structurally deterministic it would have been difficult to come to some understanding of why and how these institutional changes happened and their consequent effects on government policy. But because the approach recognises that institutions are created by people, that they are not rigid but the product of human interaction occurring under particular circumstances, it was possible to specify the real factors - human agency, contingency, existing institutions, *et cetera* - that helped these institutions to emerge or change. By permitting this sort of "deconstruction" of institutional factors, the institutional approach allowed for the assessment of both stable and shifting institutions on government directives.

What, then, about the second aim of the study? What do these three cases say about Catholic relief in Ireland and Quebec in the eighteenth century and about the movement toward Catholic relief in general? First, they say that toleration, and the notion that concessions to Catholics were made for "imperial considerations", were not inventions of the later eighteenth century. The option of offering concessions to Catholics to secure their loyalty to the crown was always present and promoted by some government officials along with other alternatives. Whether or not relief became policy had much to do with the institutional factors surrounding the policy-making process.

In 1690s Ireland, a number of circumstances suggested that William III should have had his way and the Treaty should have been passed by the Irish Parliament in its original form. Although the Irish Parliament had been

known to challenge the Irish and English executive, it had never seriously impeded the passage of government policy before. Moreover, William had just saved Protestant Ireland from Catholic rule, a situation that would suggest that the Irish Parliament would be gratefully compliant to the wishes of the executive. Perhaps most importantly, formal institutional factors, especially Poyning's Law, were in place to ensure that policy desired by the English government would be approved by the Irish Parliament. The informal institutional factors that emerged after the first session of the Irish Parliament in 1692, however, militated against the "proper" operation of the formal institutional factors that were supposed to benefit the English and Irish executives and helped to establish conditions that permitted anti-Catholic Irish Parliamentarians to mutilate the Treaty. Subsequent attempts by English officials to prevent passage of anti-Catholic measures in Ireland failed because circumstances - including William's surrender of the Treaty to the Irish Parliament and his general lack of interest in Irish affairs - were favourable to the perpetuation of those same informal institutional factors that gave the Irish Parliament the power to dictate policy outcomes. Purposeful changes to these informal institutions came in 1767 with the appointment of Lord Townshend. These changes endured thanks to a number of contingencies. By 1778 when tolerant legislation was again considered, the institutions allowed for its implementation.

In the Quebec case, toleration was once again present as one of a number of options available to administrators grappling with the Catholic situation there. The institutions governing policy making for that province provided the opportunity for proponents of toleration to acquire preferred access to government administrators and allowed those same administrators the latitude to offer such generous measures to Quebec Catholics.

Something else that emerges from the analysis is that the process that

led to the passage of the Quebec Act formed a very important precedent to the English and Irish Catholic Relief Acts that were to follow four years later. The connection is not so obvious, however, that once administrators had "broken the ice" and instituted a more liberal Catholic policy in Quebec that it was easier, even inevitable, that Catholic relief would follow in other areas of the empire, because this is not the case. Rather the Quebec Act was important to the later relief acts because its proponents had framed Catholic relief in such a way that it could be "sold" in a similar manner in these other situations.

Generous terms were granted to Catholics in Quebec as part of a larger scheme concocted by Guy Carleton and supported by his proponents that said the terms were necessary to secure the loyalty of the Catholic population in case America or France threatened. The idea that relief could be exchanged for allegiance was not new. Certainly William III knew this when he extended generous terms to the surrendering Jacobites in the Treaty of Limerick. What was new, or at least relatively untried, was the proposition that Catholics should be encouraged to join the British army. This, advocates of the Quebec Act argued, could be accomplished by offering inducements to those whom they saw as the leaders of the Catholic community in Quebec, the land-holding seigneurs. Concessions would bind them to the crown and they would in turn encourage their *habitant* followers to take up arms against any potential enemies, including France.

When the circumstances surrounding the passage of the Irish Catholic Relief Act are examined we see the same justifications were used for extending relief in Ireland four years later. The terms of the Act were much more limited than in Quebec, largely because existing institutions, the Irish Parliament in particular, prevented administrators from ignoring the opposition to the Act as completely as they did in the Quebec case. All it did was make it easier for wealthier Irish Catholics to own and inherit land. Still,

it was hoped that these small concessions would encourage leading Catholics to persuade lesser Catholics to join the British army, which was suffering for troops.

That the reasons behind the extension of relief to Quebec and Irish Catholics were so strictly defined in these two cases helps to explain why Catholic relief continued to vary so much across the empire after these measures were passed. Relief was not offered in and of itself but as one part of a package prepared out of and for very specific circumstances. These circumstances did not exist elsewhere so other alternatives and solutions came to be applied. It also helps to explain a number of things that continue to puzzle historians of this period. It helps to explain how Lord North managed to convince an otherwise intolerant George III to approve of the measures taken in Quebec, something that still strikes historians writing about the Quebec Act as some sort of miracle, and his compliance to later relief Acts in England and Ireland. It also helps to account for the King's seemingly inconsistent behaviour toward Irish Catholic emancipation in later decades, which he so strongly opposed. First, concessions and emancipation were very different things. The first offered toleration, the second rights commensurate with followers of the established church. George was clearly against emancipation. As Charles Fedorak (1992: 54) writes, the king "considered the established church as vital to the security of the realm and believed that granting further privileges to Catholics would violate the Coronation Oath [that stated that the monarch would uphold the established church] that he took seriously." Second and perhaps more importantly the concessions offered in the 1770s were linked to the defence of the empire in such a way that made relief more palatable to the king, politicians and a public that still held strong anti-Catholic views.

What the analysis shows then is that, yes, the Irish Catholic Relief Act

was in some ways an extension of the Quebec Act, but not in the simple way suggested by the growth of toleration or imperial considerations arguments. The institutions structuring Anglo-Quebec policy combined with circumstances to allow for the formulation of Quebec legislation in which relief played a major but highly contingent role. Many of the same circumstances that had served as the bases for the Quebec measure, namely the American and French threats, still existed, indeed had worsened, in 1778. This encouraged policy makers to think about the option of Catholic relief in Ireland in much the same way as in the Quebec case. Meanwhile, institutional factors had developed so as to permit British administrators to secure the passage of a more limited relief measure through the Irish Parliament despite virulent opposition there.

What all this suggests about the general movement toward Catholic relief in the British empire is that chance and circumstance played a significant role in first the process that led to the legislating of the relief option and second in the linking of the specific policy events that came to comprise this long-term trend, especially the ones at the beginning of the movement. There was not much purposive action going on here on the part of British administrators. Of course, once Catholic relief was institutionalised in the legislation pertaining to Quebec and Ireland, the option of extending more concessions to Catholics in Ireland and elsewhere in the empire gained some ground relative to the alternatives available to British administrators. It did not, however, gain so much ground that other options were not still considered and implemented, as French Catholics in Grenada were to discover in 1784 when they were stripped of the rights they had held before the French interregnum there<sup>1</sup> and a stringent policy of anglicisation was put into place. Nor did it lead to an immediate decline in hostility toward Catholics in the British Isles. So the start of the long-term trend toward Catholic relief in the

<sup>1</sup> See below p. 4, n. 1.

British empire was fraught with inconsistencies and unintended and unpredicted consequences. The tendency for British administrators to favour toleration over other kinds of measures did increase but only gradually. It was not a sudden change but a result of the accumulation of a number of specific policy outcomes whose connections with the relief legislation that came before it may or may not have been as direct as other perspectives imply. Investigations like this one of subsequent measures affecting Catholics in the empire would be required to see how the protracted trend toward Catholic relief proceeded from here.

Finally, why is it so important to get to the bottom of why and how government policy was formulated? Certainly it is the general trend toward Catholic relief and eventually emancipation that is most important and interesting when looking at history. Why complicate things by breaking down the process associated with each specific policy event? The reason is to avoid making generalisations about state power and social change that are empirically and ideologically suspect and avoid missing things whose effect on social outcomes might otherwise be obscured. Certainly the "strong" versions of each of the traditional explanations for the movement toward Catholic relief in the British empire are guilty of all these offences. The first chapter showed that the "growth of toleration" argument and arguments that focus on imperial considerations, even in their "softer" versions, cannot adequately explain the variation in Catholic policy that existed in the British empire in the latter half of the eighteenth century. In addition to these deficiencies, both arguments present a picture of British elites of the period as more tolerant, more rational and more knowledgeable than they really were. There is little doubt that the British liberal tradition has made hay from the growth of toleration argument. The notion that British government officials were

more tolerant toward recusants than other elites in Western Europe and that they exhibited that toleration earlier by granting concessions to Catholics in Quebec, Ireland and England in the 1770s, has played well in the hands of these writers. So too has the idea that British elites were so aware of the various dispositions and circumstances of Catholics scattered across the empire that their policies affecting Catholics in these areas were perfectly in tune with the "imperial considerations" associated with each territory. That historical researchers can tout the charitability of government officials toward Catholic recusants in Quebec while ignoring the conditions of Catholics elsewhere in the empire, that they can laud administrators for being so astute when considering Catholic policy, then chastise them for their ignorance and ineptitude when it came to the situation in the American colonies, shows how attached accounts and explanations of historical events and social change are to our own beliefs about what is important in history and why.

Part of the problem has to do with how society at large comes to understand the past and social change. Most people understand how complicated social events are. We regularly grasp and respond to the fact that social life represents a complex amalgam of social structure, human actions and chance. When we look back at events to try to understand their place in history, however, we inevitably start to pick out certain things as being more important than others, assign significance to some incidents and ignore others, and organise them in a linear, cause-effect arrangement. Why we do this is not so important here as what happens when we do it. The complexity of social life with its unpredictable outcomes and unintended consequences is replaced by an artificially coherent model of social "development" or change to which we can refer as a short-hand way of remembering. There is nothing wrong with that as long as we are aware that it *is* artificial, that it *is* short-hand and that its foundations are inextricably linked to the ideological and

historical context in which it was developed. When researchers begin to use these models as the bases for their explanations of actual historical events, however, the possibility that these events might be misrepresented becomes real.

One can at least start to correct this problem by taking a cue from recent movements in sociology and undertaking more detailed examinations of the factors and forces involved in whatever one is studying. This is not to say, of course, that the choice of what factors and forces the researcher examines are made without some bias or preconceived ideas. It will be remembered that historical sociologists, for example, vary widely in what they consider to be the factors crucial to the outcomes of particular events. But at least their approach recognises that social life is not as straightforward as it is sometimes depicted. They and other sociologists, committed to coming to some understanding of the complicated nature of social events and transformations, try to put back some of the complexity and uncertainty that characterised events at the time and in so doing build up a picture of the occurrence or era or trend that, if it is not a perfect representation of the thing, at least moves closer to it simply by acknowledging its multi-faceted nature. It is hoped that the current study has gone some way toward showing the benefits of this kind of approach.

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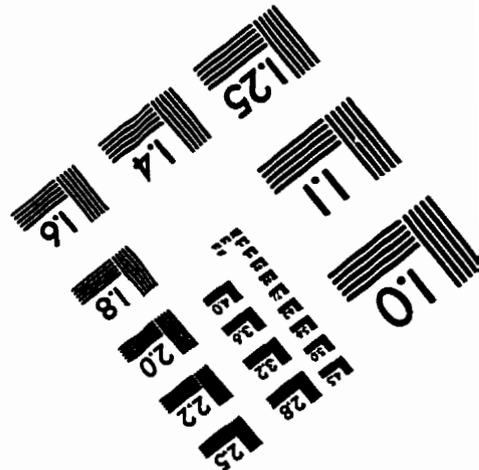
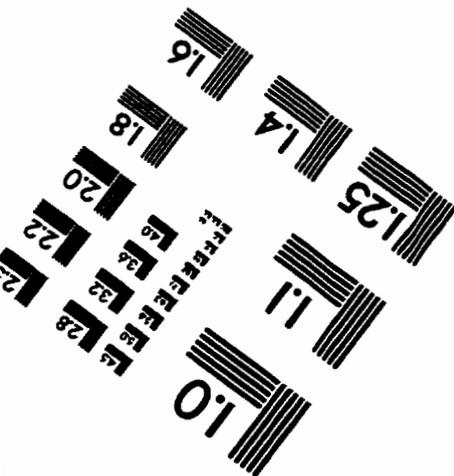
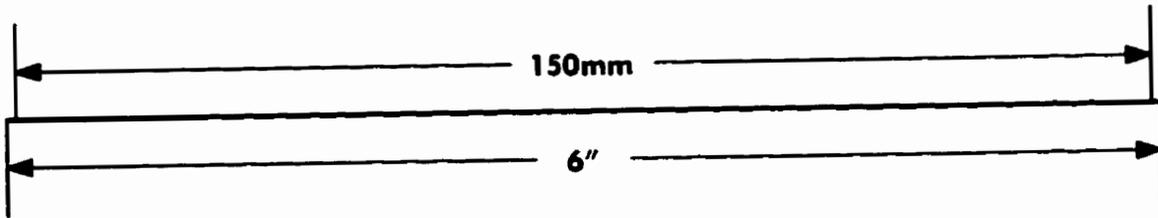
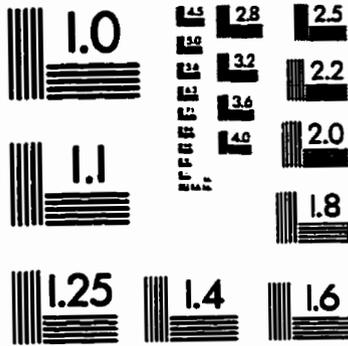
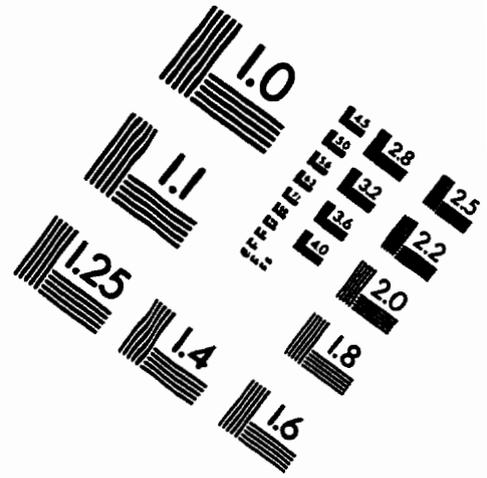
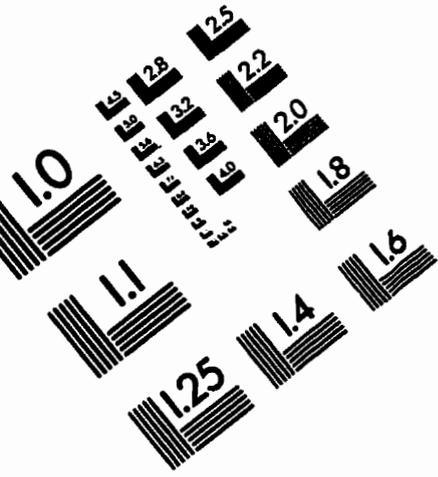
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