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### The British Board of Trade and Canada, 1760-1774

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## THE BRITISH BOARD OF TRADE AND CANADA, 1760-1774

### I. *The Proclamation of October, 1763*

BY DUNCAN MCARTHUR

The commission creating the Board of Trade issued on May 15, 1696. By the time of the capitulation of Montreal, therefore, the Board had behind it more than half a century of experience in the consideration of problems of trade and of colonial administration. The Board was formed largely in consequence of criticism by the mercantile interests of the policies and methods of the Privy Council's Committee for Trade and Plantations which for twenty years had exercised an effective control over British trade and commerce. It is not surprising, therefore, that chief among its functions should be that of examining and taking an account "of the state and condition of the general Trade of England, and also of the several particular Trades in all Forreigne parts, and how the same respectively are advanced or decayed."<sup>1</sup> The members of the Board were required, likewise, to inform themselves "of the present condition of Our respective Plantations, as well with regard to the administration of the Government and justice in those places, as in relation to the Commerce thereof; and also to inquire into the Limits of Soyle and Product of Our severall Plantations and how the same may be improved, and of the best means for easing and securing Our Colonies there, and how the same may be rendered most usefull and beneficiall to our said Kingdom of England." To this end the Board was required to revise from time to time the Instructions issued to the governors of colonies; to recommend persons proper to be appointed as governors, deputy-governors or secretaries in the colonies; to consider acts passed by colonial assemblies, as, likewise, "what matters may be recommended as fitt to be passed in the assemblies"; to hear complaints of oppression and maladministration, and to give an account of all monies raised by the colonial assemblies and the manner of their expenditure.

The Board was composed of the chief officers of state as ex-officio members, of which regular attendance was not expected, and of eight ordinary members, paid at the rate of £1,000 per annum, who attended its meetings with varying regularity and performed the duties assigned to it by the instrument of its creation. The President received an additional salary of £500. For ordinary purposes three members constituted a quorum of the Board, but the signature of five members was required to representations to the King or to the Privy Council. To enable it to obtain such information as it might desire the Board was unpowered to send for persons and papers and to examine witnesses upon oath.

For nearly two decades following its creation the Board of Trade performed its duties with vigour and intelligence. Men of ability and of experience in administration or in commerce were appointed to its membership. It exercised an active and effective control over administrative officers in the several colonies. During the reign of Anne its personnel changed from Whig to Tory. A significant change in its membership and

<sup>1</sup> The Commission is published in *New York Colonial Documents*, Vol. IV, p. 145.

in its methods occurred, however, soon after the accession of George I. During the long period of Whig ascendancy associated with the name of Robert Walpole the Board of Trade declined steadily in influence. While its membership included a few men of distinguished talents, there were others whose appointments had been dictated by considerations of political expediency alone. By 1748, when the Earl of Halifax was appointed President, it had become little more than a custodian of records and had ceased to perform the significant functions created by its commission.

The appointment of the Earl of Halifax to the presidency of the Board of Trade marked the beginning of a new era in its history. Prior to 1748 Lord Halifax had virtually no association with trade or with colonial administration, but his alert mind and vigorous personality prevented his remaining content in an office requiring the performance of perfunctory duties only. During the long period of the Board's inactivity custom had confirmed the practice of referring to the Secretary of State all questions of importance disclosed in the correspondence of the colonial governors and of making reports and representations only upon the request of the Secretary of State or of the Committee of the Privy Council for Trade and Plantations. The exercise of such limited powers did not satisfy the new president who urged that he should be of the cabinet and that the Board should resume the powers conferred upon it by its original commission. By reason of the dependence of the Duke of Newcastle on the support of the Earl of Halifax and of his personal following it was necessary to make such concessions as would satisfy the President of the Board of Trade. In March, 1752, an order-in-council was passed requiring that the members of the Board "do with all Diligence care and concern apply themselves to a faithfull and vigorous Execution and Discharge of all the Trusts and Powers vested in them by their Commission under the Great Seal."<sup>2</sup> It was then laid down as a rule of practice that the ordinary correspondence of the colonial governors should be conducted solely with the Board of Trade. Lord Halifax's ambition to obtain cabinet rank had not yet been gratified although he was given the salary and many of the powers of a Secretary of State. According to a letter written by Horace Walpole in June, 1757, Halifax "had often and lately been promised to be erected into a secretary of state for the West Indies. Mr. Pitt says, 'No, I will not part with so much power.'" Halifax resigned but, as a means of obtaining his support, Newcastle and Pitt were obliged to restore him to the Board of Trade and admit him to the cabinet.

During the decade of the 1750's, therefore, the Board of Trade manifested new life and energy; its meetings were held more frequently and its activities were extended to cover the entire range of subjects contemplated by its commission. The fact that its president was a member of the cabinet not only increased its prestige but brought it into more intimate association with the forces determining public policy. This change had been attributable almost entirely to the energy and ambition of the president of the Board. When Lord Halifax resigned in 1761 to become Lord Lieutenant of Ireland there was a real danger that less vigorous leadership should deprive the Board of its newly acquired privileges and influence. In a measure such was its immediate fate. Lord Sandys who succeeded to the presidency possessed only moderate talents, exercised little political influence and was not a member of the cabinet. The order-in-council of March 11, 1752, extending the Board's authority was repealed in May,

<sup>2</sup> See *Acts of the Privy Council (Colonial Series)*, Vol. IV, page 154.

1761, except in so far as it related to the conduct of correspondence between the colonial governors and the Board. The control over colonial patronage which had been exercised extensively by the Board of Trade during the Halifax regime was now abandoned. Sandys retired in March, 1763, to be succeeded by Charles Townshend who lacked neither ability nor administrative experience. At the outset of his political career he had been associated closely with Lord Halifax and through the influence of that gentleman had been appointed to the Board of Trade in 1748. He retained this position for a period of five years and established a most enviable reputation for diligence and ability in the performance of his official duties. Although he held office for little more than a month, his appointment to the presidency of the Board of Trade is significant in that he was a member of the cabinet and was not the type of person to permit the work of the Board to decline in importance. With the retirement of the Earl of Bute and the formation of the Grenville ministry a further change was made in the presidency of the Board of Trade. The Earl of Shelburne was appointed to this post on April 23, 1763. The first significant reference to the Board of a matter relating to Canada, as distinguished from Nova Scotia, was made on May 5, 1763. The composition and character of the Board of Trade under the presidency of Lord Shelburne, therefore, becomes of importance in an understanding of the earliest influence of that body on the affairs of the Colony of Quebec.

The position of the Board of Trade had been the subject of much discussion at this time. There was, seemingly, a recognition of the fact that the existing machinery for the control of the colonies was not operating satisfactorily; the acquisition of further colonial possessions in consequence of the peace settlement made the issue of still greater consequence. The division of authority between the Board and the Secretary of State for the Southern Department constituted the crux of the problem. The Board lacked effective executive authority. In a memorial found among the Lansdowne (Shelburne) Papers the suggestion is made that a particular secretary might be appointed for Plantation affairs only, or that if the President of the Board were 'permitted to have daily access to the King in order to receive His Majesty's commands in all business relating to the Plantations...the Board of Trade would be always so perfectly acquainted with the King's pleasure, that great dispatch might be given even to distant matters.'

At the time of his appointment to the presidency of the Board William Fitzmaurice, second Earl of Shelburne, had not yet reached his twenty-sixth year. He was educated at Christ Church, Oxford, and entered the army on the outbreak of hostilities with France. Distinguished service at Minden and at Kloster Kampen gained for him promotion to the rank of colonel and, more significant, appointment late in 1760 as *aide-de-camp* to the new king. This connection marked the beginning of his public career. It earned for him immediately the jealousy and the hostility of the Newcastle Whigs, but it brought him into intimate association with the Earl of Bute. This minister, who was then at the summit of his influence, formed a high opinion of Lord Shelburne's talents and employed him in several delicate negotiations, including that which brought Henry Fox to the leadership of the King's Friends in the House of Commons. When Bute decided to retire from the ministry in the spring of 1763 he was entrusted with the formation of the new government which he hoped to control

from behind the scenes. He urged the appointment of Shelburne as Secretary of State but George Grenville, who was to be First Lord of the Treasury, expressed emphatic opposition on the ground of Shelburne's youth, "his inexperience in business, by having never held any civil office whatever, and from his situation and family, so lately raised to the Peerage, however considerable both may be in Ireland."<sup>3</sup> According to Bute, Shelburne behaved "in the handsomest manner"<sup>4</sup> and was induced by Bute to accept the presidency of the Board of Trade which had been offered to him previously but had been declined. Shelburne made his acceptance conditional, however, "on having equal access to the King with the Secretary of State."<sup>5</sup> When the new commission, reconstituting the Board of Trade, issued on April 23rd, the day of the appearance of no. 45 of the North Briton, Shelburne was already a member of the cabinet.

The other members of the Board were Soame Jenyns, John Yorke, Edward Bacon, George Rice, Edward Eliot, Lord Orwell and Bamber Gascoyne. The most picturesque personage associated with the Board was Jenyns, the senior member. He was now approaching his sixtieth year and had been a member of Parliament for twenty-one years. He had already acquired considerable repute as an author of verse and of disquisitions on philosophical and religious subjects. "He wrote verses upon dancing," says Richard Cumberland, his intimate friend and a secretary at the Board of Trade, "and prose upon the origin of evil, yet he was a very indifferent metaphysician and a worse dancer." He was not, however, lacking in virtues. "He was the man," says Cumberland, again, "who bore his part in all societies with the most even temper and undisturbed hilarity of all the good companions whom I ever knew."<sup>6</sup> Politically he was in the entourage of the Hardwicke family, one of the Whig groups supporting the Duke of Newcastle. In the election of 1754 he gave up his seat in Cambridgeshire to accommodate Lord Hardwicke and sought election in Dunwich. The "Disbursements for Parliament" made from secret service monies under the control of the Duke of Newcastle indicate the payment of £500 to procure his election to this seat.<sup>7</sup> In the following year, 1755, he was appointed by the Duke of Newcastle to the Board of Trade. The accounts of the disbursements of the secret service monies as presented by Mr. Namier indicate the payment to Mr. Jenyns of a pension of £600 in 1754, a pension which he received, seemingly, through the Hardwicke influence. The appointment to the Board of Trade made it unnecessary to make further payment of this pension. However worthy Mr. Jenyns may have been personally, it does not appear that he possessed any special fitness for this post. The circumstances surrounding the appointment, which carried with it the salary of £1000 per annum, indicate that it was made not only to reward political services, but as part of the plan then prevailing of using the patronage of the court to determine the complexion of the House of Commons.

The solicitude of the Earl of Hardwicke for the members and connections of his family had on more than one occasion perturbed the dispensers of the patronage. In the Parliament of 1761 Hardwicke was represented

<sup>3</sup> Grenville to Bute, March 25, 1763, *The Grenville Papers*. Vol. II, p. 35.

<sup>4</sup> *Ibid.* p. 41.

<sup>5</sup> Fitzmaurice, *Life of Shelburne*, Vol. I, p. 243.

<sup>6</sup> *Memoirs of Richard Cumberland* pp. 247 and 248.

<sup>7</sup> L. B. Namier. *The Structure of Politics at the Accession of George III*, p. 247.

by four sons, a son-in-law and two nephews of his wife. The Earl, writing to his eldest son in 1760, referred to the election to the House of a friend of the family as 'a good thing for you and your *fraternity*'.<sup>8</sup> John Yorke, the second in seniority of the members of the Board of Trade was the youngest of the Yorke fraternity.

George Rice was now thirty-nine years of age. He had represented Carmarthen in the House of Commons since 1754. He was regarded as one of the ablest of the Duke of Newcastle's political managers for Wales, and also appears in the distribution of secret service funds. In 1756 he married a daughter of the Earl of Talbot, lord steward of the royal household and thus acquired influence at court. He was appointed to the Board of Trade in March, 1761, and held office until 1770, when he was made Treasurer of the King's Chambers by Lord North.

Not the least interesting the members of the Board of Trade in 1763 was Edward Eliot of Port Eliot, a lineal descendant of Sir John Eliot, the sturdy leader of Parliament in its conflict with Charles I. "John Eliot died in the Tower. Edward Eliot finished in the House of Lords" in the trite observation of Mr. Namier. He was the head of a good county family. Since 1748 he had been a member of the House of Commons and exercised a control over six seats in Cornwall. His wife was the first cousin of Edward Gibbon and it was through his influence that Gibbon was elected to parliament. He was the intimate friend and patron of Reynolds, and, in the opinion of Bentham, "a modest, civil, good, kind man, sensible enough, but without those pretensions which one would expect to find in a man whose station in his country is so commanding and political influence so great." Yet, according to Mr. Namier, it was only 'by dint of continuous and insistent solicitation' that he obtained from Newcastle in 1760 appointment to the lowest board, the Board of Trade.<sup>9</sup> He held this position until 1776 and was created Baron Eliot in 1784.

Bamber Gascoyne who now received his first appointment to the Board was a barrister of Lincoln's Inn and member of Parliament for Malden. His father, who had also sat in parliament, had been Lord Mayor of London. By reason of his connection with the city, Gascoyne was regarded as a representative, and was the sole representative, of the commercial interest at the Board of Trade. It is worthy of observation that Frances Mary Gascoyne, granddaughter and heiress of Bamber, married the second Marquis of Salisbury and became the mother of the great marquis.

Of no less importance than the members was the secretary of the Board, John Pownall, elder brother of the distinguished governor of Massachusetts. His association with the Board began in 1745, and for many years he had held the post of clerk of reports and secretary of the Board. His long service made him familiar not alone with the custom and tradition of the Board but with much of the business which came before it from the colonies and enabled him frequently to exercise a significant influence on its reports and recommendations. His younger son, George, later Sir George, was appointed provincial secretary of Quebec and served on the Council of the province from 1775 to 1791 and subsequently in the first Legislative Council of Lower Canada.

<sup>8</sup> L. B. Namier. *The Structure of Politics at the Accession of George III*, p. 6.

<sup>9</sup> Namier. *Structure of Politics at the Accession of George III*, p. 434.

The personal relations between the new president and the members of the Board are a matter of consequence. Lord Shelburne owed his position and cabinet rank to the friendship of the Earl of Bute. It is difficult to avoid the conclusion that Bute hoped to use him as an instrument by which his own control over the new administration might be made more effective and that such a design was suspected by the young earl's colleagues. Shelburne was peculiarly lacking in experience in practical affairs and did not possess a disciplined mind. His early education, on his own admission, "was neglected to the greatest degree;"<sup>10</sup> he had obtained little benefit from his training at Oxford. He was unfamiliar with the somewhat tortuous technique of politics accepted at that time. He was inordinately suspicious of other men and found it most difficult to give his confidence even to his most intimate political associates. The completeness of his misunderstanding of the principles governing political action may be judged from his statement in a letter written to Henry Fox that "men of independent fortune should be trustees between King and people"—a statement which brought a thinly-veiled rebuke from that sturdy, battle-scarred, political realist: "it is in place that I long to see you; and it is the place-man, not the independent Lord, that can do his country good."<sup>11</sup> His lack of training and experience combined with his suspicion to make him singularly inept in the personal relationships involved in the discharge of his public duties. It is not difficult to understand that one of his manner and temperament should give the impression—as Shelburne unquestionably did—of insincerity and duplicity. Recording impressions of Lord Shelburne several years later, William Knox, who had served under him as secretary, wrote "my own experience soon proved to me that it was not without reason those who had served with him in office abhor'd him as a principal."<sup>12</sup> His colleagues at the Board of Trade, with the possible exception of Bamber Gascoyne, were of the type to be regarded by Shelburne as place-men; they had been appointed to office as reward for services rendered to a particular political faction. It happened that that faction, the Newcastle Whigs, was now the core of the opposition to Bute and to his political creations. This circumstance did not tend to promote the extension of confidences to the Board by its new president, inexperienced in administration, and naturally inclined to keep his plans to himself.

From the beginning lack of harmony marred the relations between the new President of the Board of Trade and the secretaries of state, particularly Lord Egremont, the Secretary of the Southern Department who had jurisdiction over American colonial affairs. During the period of active hostilities in America and until the conclusion of peace it had been necessary to suspend the procedure adopted in 1752 by which colonial officials corresponded with the Board of Trade. There seemed now to be no justification for a departure from the old practice. Shelburne early raised this problem and likewise the question of correspondence with the newly-acquired possessions. Lord Egremont confessed that he was unprepared to deal with the subject because he had never read the commission creating the Board of Trade, and pleaded in his behalf the great fatigue he had recently undergone. To this the youthful President of the Board gave the comforting assurance that the secretary of state would probably

<sup>10</sup> Fitzmaurice. *Life of Sherburne*. Vol. I, p. 14.

<sup>11</sup> *Ibid.* pp. 142, 143.

<sup>12</sup> Historical Manuscripts Commission, *Various Collections*. Vol. IV, p. 284.

have more fatigue before the affairs of America were put in order.<sup>13</sup> Two other contemporary statements cast a flood of light on the relations between the President of the Board of Trade and his cabinet colleagues. George Grenville reports a conversation with the Earl of Northington, the Lord Chancellor in the ministry of the triumvirate, in which the Earl stated that the king had told him that "upon occasion of some disputes between Lord Egremont and Lord Shelburne relating to the Board of Trade, Lord Mansfield had given it as his advice to His Majesty to show favour to Lord Shelburne, in order to play one against another, and by that means to keep the power in his own hands."<sup>14</sup> Fourteen years later in a discussion in the House of Lords regarding responsibility for employing Indians in warfare in America, Lord Shelburne, in an attempt to defend the Earl of Chatham, the secretary of state at the time when, it was alleged, Indians were used, suggested that orders might have been issued by the Board of Trade and declared that "he well recollected (when he was president of the Board), he made it a point, as much as possible, to keep all the official business transacted there as much a secret as possible from the secretary of State."<sup>15</sup> William Knox lets us into the secret of some of these differences. "A strong jealousy of his (Lord Shelburne's) intriguing and ambitious spirit was entertained by both Lord Halifax and Lord Egremont, but especially by the latter, who was guided in all colonial affairs by Governor Ellis and whose influence Pownall could not endure. He therefore stimulated Lord Lansdowne to underwork Lord Egremont, while Ellis incited the latter to thwart Lord Lansdowne. I was consulted by both Ellis and Pownall and saw into the whole intrigue."<sup>16</sup>

On May 5 a most significant reference was made to the Board of Trade by the Earl of Egremont. The Board was asked, in general, to give its opinion regarding the means by which the greatest possible advantage might be obtained from the new possessions acquired by the peace. More specifically, the Board was asked for its advice on three questions—(1), what new governments should be established, and the form of such governments; (2), what military establishments were required; and (3), the manner in which the new colonies might raise a revenue to provide for the cost of administration.<sup>17</sup> From the issuing of this reference there is a continuous development to the formulation of the Proclamation of October 7, 1763. It is proposed, therefore, to deal with it as a unit, limiting consideration, as far as possible, to the Canadian aspects of the problem.

The letter of the Earl of Egremont was read at the Board of Trade on May 6 at a meeting attended by all the members excepting Mr. Eliot. From that date until after June 8, when the first and preliminary report was signed, the minutes of the Board make no reference to the subject whatsoever. Lord Shelburne had already caused transcripts to be prepared of many of the records in the office of the Board of Trade. He now apparently obtained the opinions of various persons who possessed intimate knowledge regarding conditions in America. It may be significant that these records are preserved in the Shelburne manuscripts and not in the records of the Board of Trade. The usual practice involved the preparation of a draft report, the submission of this draft to the Board where it would be discussed fully, and the final revision in accordance with the views expressed in the

<sup>13</sup> Fitzmaurice, *Life of Shelburne*. Vol. I, p. 273.

<sup>14</sup> *The Grenville Papers*, Vol. II, p. 238.

<sup>15</sup> Hansard, *Parliamentary History of England*, Vol. XIX, p. 509.

<sup>16</sup> Historical Manuscripts Commission. *Various Collections*. Vol. VI, p. 282.

<sup>17</sup> Shortt and Doughty. *Constitutional Documents*, p. 127.

Board. In this case there is no evidence to indicate any discussion of the report by the Board. John Pownall, the secretary, prepared a draft<sup>18</sup> which gave expression to anti-expansionist principles. The Board met on June 8, with all members present; it is suggested that the report in its final form was submitted by Lord Shelburne, and was accepted by the members of the Board and signed, although there is no reference to the report in the minutes. A copy, however, is entered with the Representations of the Board of Trade.<sup>19</sup>

It is suggested, therefore that this report is Shelburne's, and not the Board of Trade's and that on this assumption the action of the Board later in the year becomes more intelligible. What evidence is there to support this theory? There is, first, the incurable suspicion of Shelburne's mind. During the month of May the Board had been called upon to deal with an encroachment of settlement on lands on the Susquehanna River claimed by the Indians and had given instructions that the settlement should be broken up. It is possible that Shelburne saw evidences of an inclination on the part of certain members of the Board to place rigid restrictions on the westward expansion of settlement, a policy with which he did not agree. It is doubtful, again, if he would have been willing to entrust to others the preparation of the report. To quote William Knox again. "Sir Richard Sutton had long ago told me that of all ministers, Lord Lansdowne was the most difficult to please. He was never satisfied with what anyone did, or even with what he did himself, but altered and changed without end."<sup>20</sup> Before the end of June Shelburne threatened to resign from the Board and communicated his feelings to the Earl of Bute, who attempted to dissuade him from such a course by the assurance that "every day you discharge your duty in this important trust, every report you draw, like the excellent one you have favoured me with, lays in materials to raise your character." The report of June 8 is the only one to which this reference could apply.

This report constituted the second step in the incorporation of the French colony of Canada within the British Imperial system. It was based upon two fundamental assumptions, first, that the back country, roughly, the country west of the Allegheny Range should be reserved, for the present at least, for the Indian tribes, and that European settlement within this region should not then be encouraged and, secondly, that a substantial military force—the ministry had apparently decided on 10,000 troops—should be maintained for the protection of the country against foreign attack and to prevent incursions from the Indians. The discussions relative to Canada are grouped around three questions—the use to be made of Canada, its limits, and the form of its government.

The chief commercial advantages to be derived from Canada were to be obtained from the fisheries and the fur trade, and the market to be provided for British merchandise. It is obvious, the report states, that the number of French inhabitants residing in the new government of Canada must greatly exceed for a long period of time that of the British and other subjects who may attempt settlement. One of the purposes of the new government must be to secure the French in the rights granted to them by treaty and "to increase as much as possible the number of British and other new Protestant settlers."<sup>21</sup>

<sup>18</sup> Pownall's draft is in the Shelburne MSS, Vol. 49, p. 333.

<sup>19</sup> C. O. 324, Vol. 17, p. 212.

<sup>20</sup> Historical Manuscripts Commission Report. Various Collections. Vol. VI, p. 283.

<sup>21</sup> Shortt and Doughty. *Constitutional Documents*, p. 142.

General policy with respect to Canada was revealed in the suggestions regarding boundaries. Shelburne and Pownall were in accord with respect to the wisdom of protecting Indian interest in the "back country" and of limiting the new colony to the valley of the St. Lawrence. Pownall's outline of the boundaries of Canada was adopted in the more detailed description contained in Shelburne's report, although in other respects the Pownall draft was not followed. It will be recalled that the report advised that the eastern boundary should be the high lands which range across the continent from Cape Raziere to Lake Champlain and which separate the waters falling into the St. Lawrence from those falling into the Atlantic, and that the southern boundary should be a line from the east end of Lake Nipissing to the point where the 45th parallel intersects the River St. Lawrence. As was demonstrated later, there was no single range of high lands separating the eastward from the westward flowing streams. The definition of the eastern boundary contained in this report was carried forward into the Proclamation of October 7, and thence into the Treaty of Paris of 1783 and became, in part, responsible for the Maine boundary dispute.

The fixing of the southern boundary was determined largely by considerations of general policy with respect to the Indian tribes and with the purpose of giving the colony natural boundaries. Pownall's definition was intended to constitute the watershed of the St. Lawrence and of its tributary, the Ottawa, as a single political unit. Objection to this boundary was made by the Privy Council's Committee for Plantation Affairs in a communication addressed by Lord Egremont to the Board of Trade on July 14 in which was urged the advisability of placing the back country under the control of one of the colonial governments, and preferably of Canada. This communication was referred to the Board of Trade and that body presented its reply on August 5, giving reasons for insisting on the the original proposal. This reply was prepared in the usual manner, with a draft submitted for the Board's consideration and approval.

Two specific questions entered into the determination of Pownall's and Shelburne's southern boundary, first, legal title, and, secondly, the control of the fur trade. Referring to the trade conducted by the French with the Indians of the interior of the continent, the Report of June 8th states that it "was acquired in virtue of the possession which they (the French) had taken (contrary to the stipulations of the Treaty of Utrecht) of all the Lakes in North America, communicating with the River St. Lawrence, tho' the circumjacent Territory avowedly belonged to the six nations of Indians, acknowledged by the French to be Your Majesty's Subjects in that Treaty."<sup>22</sup> The report of August 5 repeats the argument: "Your Majesty's Title to the Lakes and circumjacent Territory as well as to the sovereignty over the Indian Tribes, particularly of the Six Nations, rests on a more solid and even a more equitable foundation" than the Treaty of 1763, and concludes by stressing the dangers involved in bringing the Indians under the government of Canada. This argument, which possesses the merit of logical consistency, is based obviously on Shelburne's perusal of the earlier records of the Board of Trade. Following the military operations conducted by the French during Frontenac's second régime, the Five Nations became thoroughly alarmed regarding the safety of their hunting grounds in that region which is now the province of Ontario and in which

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<sup>22</sup> Shortt and Doughty. *Constitutional Documents*, p. 136.

they considered the French as interlopers. By a formal deed executed at Albany on July 19th, 1701, the Sachems of the Five Nations transferred these hunting grounds to the British crown. Article XV of the Treaty of Utrecht provided that "the subjects of France inhabiting Canada, and others, shall hereafter give no hindrance or molestation to the five nations or cantons of Indians subject to the dominion of Great Britain, nor to the other natives of America, who are friends of the same." It is certain, however, that this clause was not interpreted by the French as giving Britain title to land north and west of Lake Ontario and Lake Erie. The British position, nevertheless, was maintained consistently. The reconstruction of the Fort at Niagara by the French in 1726 and the construction of fortifications in the vicinity of Lake Champlain were considered by the governors of New York as encroachments on the lands of the Five Nations in violation of the Treaty of Utrecht. Repeated representations to this effect were made by the governors to the Board of Trade and by the Board to the Secretary of State but no action was taken by the government to prevent such alleged encroachment.<sup>23</sup> The Wraxall memorandum, with which Shelburne was doubtless familiar,—a copy appears among his papers—emphasizes the unhappy consequences in the mental attitude of the Indians growing out of the seeming indifference of the British regarding these encroachments.

Shelburne's purposes in this connection are clear and are consistent with earlier policy. He wishes to retain imperial control over lands ceded to the crown by deed, held by the crown in trust for the natives, and still regarded by the Indians as their hunting grounds. It had already become apparent to the ministry as well as to Lord Shelburne that the Indian problem was so complex and so extended in its ramifications as to make it incapable of solution by provincial action. Nothing short of a unified, central control was capable of dealing with this situation adequately and such control could best be exercised through the imperial government. To have merged the district bounded by the Lakes Ontario, Erie and Huron in one province along with the French settlements, and subject to a colonial governor, would have been inconsistent with what Shelburne regarded as a fundamental principle in the new settlement and would have permitted the use of lands which he considered as held in trust for the Indians in a manner which would have aroused their resentment.

A communication accompanying Lord Egremont's reference to the Board of Trade proposed the establishment of two governments "upon the River St. Lawrence and its dependent Territory." The Pownall draft report considers this proposal and, while admitting that it might "in some particular cases be attended with local convenience," is generally unfavourable. Its comment, however, is not without significance. "As the Proposition is founded upon a supposed Extension of Settlement and Jurisdiction as far as the Great Lakes and does therefore militate against the General Principle upon which all our System is founded, we cannot take upon us to recommend such a Plan, the Execution of which would also be attended with a very great additional Expense to which the advantage resulting from it would in our Opinion independent of any other objection, bear no proportion. There are other Reasons arising out of a consideration of ye Embarrassments which always have and necessarily must in

<sup>23</sup> See Governor Burnet to Newcastle, December 4, 1726, and enclosures, New York Colonial Documents, Vol. VII, p. 803. Lords of Trade to Newcastle, January 11, 1727, *ibid* p. 815; Governor Montgomery to Lords of Trade, August 2, 1729, *ibid* p. 889.

Commercial Points and in other Cases attend the having two Colonys Established upon the same River."

Shelburne's opinions regarding the fur trade, based, likewise, on a consideration of the records of the Board of Trade, led him to consider as undesirable the annexation to Canada even of the territory enclosed by the three eastern lakes. He was familiar with the controversy between the Canada Traders at Albany and New York and the merchants who sold directly to the Indian trade. He knew of the serious strain placed on the Iroquois—English alliance by the Canada trade and had little sympathy with it. In his view it was desirable to extend the range of the direct trade with the Indians which came by way of Oswego. If the fur trade were to be thrown open to the traders of all the colonies it was desirable that the Great Lakes, a necessary artery of transport, should be open to all the colonies. The condition could be best fulfilled if the lake region were not annexed to one particular colony.

These arguments carry a measure of conviction. It is doubtful, however, if the material available at the Board of Trade provided Shelburne with an adequate view of the fur trade. There was probably much more force in the position of the Canada Traders in New York than Shelburne appreciated. There was, in fact, little prospect of extending the fur trade of the eastern colonies. The French had succeeded in creating an organization for the collection of furs from the Indians—for the actual conduct of the barter—distinctly superior to any devised by the English. They enjoyed a superiority in method and, particularly, in personnel. The Canada Traders had seen this and were willing to permit the French to distribute goods to the Indians provided that they themselves should be allowed to supply the French with European goods. This involved an international division of function in the fur trade based on a sound realization of the importance of location and of special capacity. The British in large measure had acquired control of this excellent merchandising organization. Montreal was the logical distributing centre for the western fur trade. New York, Albany and other eastern cities might still supply Montreal with its requirements in European goods. The severance of Montreal and the St. Lawrence from the Great Lakes, by putting them under separate jurisdictions, indicated a lack of knowledge of the inwardness of the northern fur trade; it imposed restraints on the trade which were soon disclosed and which were removed by the Quebec Act.

The recommendation of the Shelburne Report with respect to the government of Canada is brief but definite. The new definition of boundaries had detached a slice from the eastern side of the French province of Canada and had annexed it to Nova Scotia to which it was proposed, likewise, that Cape Breton and St. John's should be attached. Of the northern colonies Nova Scotia was to become the centre towards which migration should be directed. "The utmost attention should immediately be given to the speedy settlement of this tract of country," says the report. This policy, however, was not regarded as excluding British and Protestant settlement in Canada which should be increased as much as possible. The achievement of this end and the protection of the rights guaranteed to the French by treaty were expressed to be the "chief objects of any new form of government to be erected in that country." These objects "will be best obtained by the appointment of a Governor and Council under Your Majesty's immediate Commission and Instructions." It is, again, part of Shelburne's policy of maintaining effective control on the part of the

crown in a situation where changes might occur and where the intervention of the Crown might be required to meet the new conditions. There was, therefore, no necessity of discussing at this stage the questions of law or of representative government.

The report of June 8th was intended to be only a general, preliminary report to be followed by more specific recommendations when more definite information became available. The recommendations of this report were accepted by the Privy Council's Committee for Plantation Affairs except with respect to the boundaries of Canada, which, it was suggested, should include all the territory possessed by the French and extending westward to the Mississippi as a means whereby this vast back country should be subject to specific governmental authority. This further reference was presented to the Board on July 15th and was answered in the manner indicated on August 5th. To meet the difficulty regarding jurisdiction the Board proposed that control of the Indian country should by a special commission be vested in the Commander-in-chief of the British forces in America. By this time reports had reached London of the active hostilities of certain of the western tribes under the leadership of Pontiac. The Board, therefore, urged the publication immediately of a proclamation declaring his majesty's determination to keep the Indian country as a hunting ground, to prohibit European settlement on these lands, and to divert the surplus population of the old colonies as well as foreign protestants to the Floridas in the south and to Nova Scotia in the north.

This marks the end of the first phase in the development of an American policy. During July the Board had held four meetings only. It met on the 4th and 5th of August, when the immediate issue of the proclamation was urged, and not again until August 30th. This session was the last attended by Lord Shelburne. The minutes contain no reference to a consideration of the American problem with which the Board had recently been concerned.

It is not necessary here to describe in detail the incidents which led to the resignation of Lord Shelburne from the Board of Trade. Soon after the formation of the ministry, and without the knowledge of his colleagues, he had been employed by Bute in a negotiation designed to bring the Earl of Bedford into the King's service. By August, Shelburne apparently became convinced that the ministry could not hang together much longer and again accepted a commission from Bute to conduct a negotiation with Bedford, the Earl of Gower and Pitt. These plans failed because of the excessive demands made by Pitt. It is of interest to observe, however, that, had they succeeded, it was proposed to create a new Board of Trade under the presidency of the second Earl of Bessborough. Mr. Grenville's diary contains this entry on September 2nd, 1763. "The King told Mr. Grenville that Lord Shelburne had been in his closet to desire leave to resign his office of First Lord of Trade: he says he means to support the King's Government and has no dislike of the present administration but finds the business of the Board disagreeable to him and attended with too many difficulties, and subjecting him to too close an attendance."<sup>24</sup> During the months of June, July and August the Board had held ten meetings.<sup>25</sup> Shelburne's intriguing during the

<sup>24</sup> *Grenville Papers*. Vol. II, p. 203.

<sup>25</sup> The statement of the late Professor Alvord in *the Mississippi Valley in British Politics* p. 198, note 358 that no meeting had been held between August 5 and September 28 is not correct. The Board had met on August 30.

summer of 1763 led eventually to an estrangement with the Earl of Bute, to a new association with Pitt involving support of the opposition in the House of Lords, and, finally, to his dismissal from the military staff of the King.

In the reorganization of the ministry necessary in consequence of the death of the Earl of Egremont on August 21st, Lord Halifax became secretary of state for the Southern Department and Lord Hillsborough was appointed president of the Board of Trade. No other change was made in the composition of the Board. The new president, who doubtless owed his appointment to his close friendship with the Earl of Halifax and his attachment to Mr. Grenville, was regarded as a man of moderate ability only. Up to this time he had not been obliged to make himself familiar with the problems of the plantations. Because of the friction which had occurred between Egremont and Shelburne, it was considered desirable by Halifax that he should have at the Board of Trade a person with whom he could work harmoniously. Certain it is, at least, that Hillsborough brought to the Board no preconceived ideas regarding the solution of the acute problem then presented by Indian affairs in America.

Although the new commission for the Board of Trade was issued on September 17th, because of the absence of Lord Hillsborough in Ireland, the first meeting of the Board was not held until September 28th. In its recommendation of August 5th, the Board had proposed the issuing immediately of a proclamation declaring the intention of the crown to prevent the granting of land or the making of settlement within the region proposed to be reserved for the Indians and to encourage migration, both from the old colonies and from Europe, to the newly established colonies of East and West Florida and to the old colony of Nova Scotia. The new Secretary of State, Lord Halifax, accepted the opinion of the Board of Trade respecting the boundaries of Canada and approved of the recommendation relating to the issuing of a proclamation. He suggested, however, that 'several other objects of much importance' might be included in this proclamation. That "the speedy settlement of the new colonies might be promoted and the friendship of the Indians more speedily and effectually reconciled," he proposed that the proclamation should include references to the limits of the four new colonies, the additions made to Nova Scotia, Georgia and Newfoundland; that it should declare the Constitution of the new Governments as established for the present and intended in future, should prohibit purchases of lands from Indians, declare freedom of trade with the Indians and empower military officers and Indian agents in the back country to apprehend criminals and fugitives. The Secretary of State, further, indicated the particular quantities of land to be offered to the disbanded officers and men in the several colonies. This communication was read at the meeting of the Board on September 28th and it was ordered "that the draft of a Proclamation conformable to His Lordship's Letter be immediately prepared and laid before the Board at their next meeting."

As one of the purposes of this paper is to question the validity of certain of the conclusions reached by the late Professor Alvord with respect to the Proclamation of October 7, 1763, it may be well to state those conclusions at this stage. "The wording of the proclamation which he (Lord Shelburne) had recommended on August 5, appeared to him to be the most important business of his office, and upon this he worked with his customary care without, however, calling his colleagues of the

Board of Trade to his assistance. Before his resignation the proclamation as he had conceived it was written; and Lord Hillsborough, on assuming his duties, found this first draft already completed and made it the nucleus to which the other clauses were added. Halifax's letter of instructions was read by the new president on September 28. . . . and within twenty-four hours such additions to Lord Shelburne's draft had been made as were required by the ministry. There were a few changes from the report of June 8." Professor Alvord argues that in consequence of changing the original Shelburne draft and of the inadequate attention given to it because of the haste in rushing the proclamation to completion several errors, some of them serious, were allowed to creep in.

The meeting of September 28 was attended by Messrs. Bacon and Rice and Lord Orwell, in addition to the president. On the 29th, morning and afternoon sessions were held, attended by the same members. At the morning meeting the secretary laid before the Board the draft of a proclamation which was read and considered. It was agreed to take it into consideration in the afternoon. In the afternoon the consideration of the draft was the only business before the Board. The same members met again on the 30th. "Their Lordships made a further progress in the consideration of the Draught of a Proclamation declaratory of the new arrangements in America." The only other business before the Board at this meeting was the signing of a letter to the governor of Georgia. On Saturday, October 1 "their Lordships (Lord Hillsborough, Lord Orwell and Mr. Bacon) took into further consideration the Draught of the Proclamation mentioned in the preceding minutes, and the same having been settled and agreed to, it was ordered that the Secretary should transmit it to His Majesty's Attorney General for his opinion whether it is conformable to Law and to the general form and tenor of Proclamations."<sup>26</sup> At this meeting the drafts of the commissions to be issued to the new governors were considered. On Monday, October 3, two meetings were held. At the morning meeting the Attorney General's report was considered and, in consequence certain verbal changes were made in the draft which was then agreed to and ordered to be transcribed. On October 4 the Proclamation in its completed form was presented to the Board and was signed. It is submitted that the record does not support the contention that the terms of the proclamation were fixed without careful consideration.

It is not improbable that Lord Shelburne did prepare a draft of a proclamation limited to the subjects proposed in the Representation of August 5. Such a draft however has not been found. It may be admitted that, if the Board had such a draft before it, the suggestions now made by Lord Halifax could not have been satisfied without enlarging the scope of the draft. The issue of first importance is whether the clauses added by the Board represented a divergence in policy from the report of June 8 on which Shelburne's draft would have been based or were in themselves unsuited to the colonies to which they were made to apply. The members of the Board doubtless found themselves handicapped in dealing with this problem in late September by having been refused the full and complete confidence of the former president when the general lines of policy were determined in early June. Had there been cordial coöperation between Shelburne and his colleagues of the cabinet and of the Board of Trade the task of the Board and of its new president would have been much easier.

<sup>26</sup> Public Records Office. C.O. 391 Vol. 70, pp. 222 et seq.

It does not appear, however, that there is any inconsistency in policy or principle between the Proclamation and the Report of June 8.

To the change in the presidency of the Board of Trade and to the inordinate haste in the preparation of the proclamation Professor Alvord attributed four blunders. Two of these were of minor importance but two involved serious consequences. The first of these was the failure of the proclamation to provide for the civil government of the French settlements in the interior of the continent. Up to this time, however, no adequate report on the Indian country had been submitted to any governmental office because no British officer had yet penetrated to this region. There is no ground for believing that the proclamation would have been improved in this respect had there been no change in the Board of Trade. In his observations on the Report of June 8 Lord Egremont had referred specifically to the 'great inconveniences' that might arise from excluding such a vast territory from the civil jurisdiction of some Governor. The Board of Trade's Report of August 5 had proposed, specifically meeting Egremont's objection to the restricted limits of Quebec, that the government of this country should be given to the Commander-in-chief of the North American army "for the protection of the Indians and the fur trade of Your Majesty's subjects"—a statement of purpose which does not reveal on Shelburne's part an appreciation of the problem caused by French civilian and agricultural settlements in this region. This suggestion, apparently, had already been adopted in part at least for General Amherst's new commission included the newly ceded territory. Nothing further was done in the matter by the Board at this time. It is doubtful if the Board did realize the existence of a problem in providing for these French settlements but it is equally doubtful if blame can be attached to them for ignorance of conditions in the interior of the continent.

The major count in Professor Alvord's indictment against the Proclamation, and that which most directly concerns Canada, is the inclusion of a paragraph indicating that authority was being given to the governors of the new colonies to summon representative assemblies, not "shortly," as stated by Professor Alvord, but "as soon as the state and circumstances of the said colonies will admit thereof." This provision was added at the suggestion of Lord Halifax as a means for the promotion of the policy outlined in the Shelburne report of June 8, of attracting settlement away from the frontier and encouraging it to go to the Floridas or to Nova Scotia. It may be agreed that this clause would probably not have appeared in a proclamation prepared by Shelburne. It is true, as Professor Alvord argues, that in the Report of August 5 proposing the issuing of a proclamation, Lord Shelburne makes no reference to the encouragement of settlement in Canada, but it is also true that in the report of June 8 the increase in the number of British and other new Protestant settlers was stated to be one of the purposes to be kept in view in determining the form of the government of Quebec. Such difficulties as arose were attributable, not to the promise of an assembly, which was surrounded with proper safeguards with respect to time, but to the assurance that in the meantime persons resorting to the colonies might "confide in Our Royal Protection for the enjoyment of the Benefit of the Laws of our Realm of England."

Few documents in Canadian history have been the subject of as much discussion as this clause of the Proclamation of October 7, 1763. We are concerned here with the intent of the clause as representing in part the

policy of the Board of Trade. Edward Thurlow, the Attorney-General, in the debate on the Quebec Bill in 1774 gave much attention to the Proclamation of 1763. He claimed to "have heard a great deal of its history." "The proclamation certainly," he declared, "gave no order whatever with respect to the constitution of Canada. . . . a proclamation conceived in this general form, and applied to countries the most distant, not in situation only, but in history, character and constitution, from each other, will scarcely, I believe, be considered as a very well studied act of state, but as necessary immediately after the conquest. But, however proper that might be with respect to new parts of such acquisitions as were not peopled before, yet, if it is to be considered according to that perverse construction of the letter of it; if it is to be considered as creating an English constitution, . . . as importing English laws into a country already settled and habitually governed by other laws, I take it to be an act of the grossest and absurdest and cruellest tyranny.<sup>27</sup> Only "a perverse construction of the letter of it" could, it is respectfully submitted, lead to the conclusion accepted by Professor Alvord that "legally English law supplanted French law."

There can be no reasonable doubt regarding the intent of the members of the Board of Trade. They made no reference to the law and custom of French Canada nor is there any evidence to support a construction of their act which would suspend the operation of such law and custom.

The Pownall draft of the June report indicates the secretary's conception of public policy with respect to French Canadian law and custom and may be taken as reflecting in general, at least, the secretary's estimate of the opinion of the Board. Pownall had reason to fear that certain of the Atlantic colonies—Massachusetts in particular—would demand an extension of their western boundaries still farther westward to the St. Lawrence and the Great Lakes, a change which would have involved the introduction of representative government and English law in the French Canadian settlements on the south side of the St. Lawrence. "The inhabitants", says Pownall, referring to the French Canadians on the south shore, "who are very numerous can not consistent with any rule either of Reason or good Policy be separated from their Countrymen on the other side and taken out of a Government under which they have always lived to be put under a Variety of Different Governments from which they could receive no Protection and to which they would Consequently pay no Obedience or yield any Subjection to Laws or Constitution to them unknown and founded on Principals the most adverse to their nature and Conscience that can be imagined, and therefore we hope that no claims founded upon verbal constructions of charters, to lands now Occupied or Possessed can be admitted to come in question upon this Occasion against every Principle of Nature and Reason." It would be preferable, in Pownall's opinion, to permit Massachusetts to extend its jurisdiction northward to the St. Croix.

The members of the Board of Trade may be open to the charge, however, that they did not visualise clearly the delicate problem involved in the operation of English law and of French law in the same community. It was unfortunate that at no meeting of the Board when the form of the proclamation was considered were there present more than half the members, and, particularly, that Bamber Gascoyne, a man of legal training and

<sup>27</sup> Cavendish, *Debates on the Quebec Bill*, p. 29.

experience, should have been absent throughout these deliberations. In the debate on the Quebec Bill Mr. Gascoyne made but one reference to the Proclamation. "For some little time after the proclamation," he said, "there was nothing to complain of, but, afterwards, ordinances were published, in consequence of which, no Canadians could have justice."<sup>28</sup>

In later years Lord Hillsborough placed blame for the grievances of the French Canadians on the Canadian law officers who were responsible for the formation of the ordinance of September, 1764, establishing civil courts. This has been interpreted generally as an attempt to evade a responsibility which should properly have been placed on his own shoulders. It is suggested, however, that the terms of the ordinance do not follow necessarily or logically from the terms of the proclamation and that Governor Murray and the members of the Council of Quebec, in relying on the opinion of their law officers, who were ignorant of conditions in the province, were misled into a "literal and subversive interpretation" of the proclamation. The specific grounds of complain in Canada were associated with the provisions of the ordinance, and with the policy of the proclamation only as it was interpreted by the ordinance. If blame is to be attached to the Board of Trade it would relate to its failure to appreciate the implications of the ordinance when that document was later submitted to it.

These facts, however, seem to emerge from a careful consideration of the events of the summer and autumn of 1763. For the first time British statesmanship was confronted with the problem of incorporating within the British governmental system a large, compact, people differing in religion, and of alien language and institutions. No ready-made scheme for effecting this process of engrafting had been devised. Because of inadequate information, many of the essential implications of the problem were not appreciated. The Secretary of State and the members of the Board of Trade were feeling their way; they were prepared to advance, in this case, two steps at a time. The movement was essentially experimental; improvements could be made as time and experience manifested defects in the system then introduced. Had the proclamation contained no reference to the subject of law it is simply impossible to suggest the form which the judicial system of Quebec would have taken. Had Murray and his council been left unhampered by instructions from London it is conceivable that they would have introduced a system which would have given as little satisfaction to the English as the system actually established gave to the French. Only through the lapse of time, could the ripened fruit of wisdom be plucked from the tree of experience. Only after the two races had lived together, each experimenting with his own law and custom, could valid deductions be reached regarding a common system which would contain promise of giving general satisfaction. Any system adopted in 1763 was necessarily experimental and was then recognised as such; it was inevitable that at some time there should be a Quebec Act embodying in an enactment of the supreme legislature the conclusions reached during this preliminary period of experimenting. In this view the Proclamation of 1763 may have served as well as any which could have been devised at that time even had his abnormal capacity for intrigue not deprived the government and the Board of Trade of the services of the noble Earl of Shelburne.

<sup>28</sup> Cavendish. *Debates on the Quebec Bill*, p. 93.