

New Publication

« Les débats concernant le droit français et le droit anglais antérieurement à l'adoption de l'Acte de Québec de 1774 », (2014) 44 (2-3) R.D.U.S. 259-306

ABSTRACT

In the aftermath of the Royal Proclamation of 1763, British subjects newly established in Quebec demanded both the convocation of a legislative assembly and the right to trial by Protestant jurors. For their part, Francophone seigneurs, lawyers and businessmen lamented the apparent abrogation of French law and the fact that Catholics could not hold high public office. The British government requested or received reports drafted mostly by British jurists, some of whom practised in the colony. These documents compared the criminal law and the private law of New France with that of England. Many recommended that the former rules pertaining to immovables, succession and matrimonial regimes be reinstated, or that detailed rules of French origin be integrated into the exhaustive Provincial ordinances. The preservation of French criminal law incurred fierce opposition. In 1774, legislative drafts marred by numerous inconsistencies compelled the British government to conclude that the combination of French and English rules could not be achieved from afar. The idea of prohibiting the consultation of French legal sources was also abandoned, even though it had initially been considered to constitute an essential element of the reform. The Government was furthermore annoyed by the hostile attitude of the American colonial legislatures and by jury decisions that were adverse to its interests. In the end, the Quebec Act of 1774 reinstated the private law of New France and retained English criminal law. It authorized Catholics to hold public office, but created an unelected legislative council that had the power to gradually introduce some English private law rules.