

Summer 8-5-2019

Land Tenure in Acadian Agricultural Settlements, 1604-1755: Cultural Retention and the Emergence of Custom

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**LAND TENURE IN ACADIAN AGRICULTURAL SETTLEMENTS, 1604-1755:
CULTURAL RETENTION AND THE EMERGENCE OF CUSTOM**

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A DISSERTATION

Submitted in Partial Fulfillment of the

Requirements for the Degree of

Doctor of Philosophy

(in History)

The Graduate School

The University of Maine

August, 2019

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Dissertation Advisor: Dr. Jacques Ferland

An Abstract of the Dissertation Presented
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Starting in 1755, the British began the process of not only expelling some eleven thousand Acadians from their homes and farms, but also of uprooting a culture that had survived for over one hundred and twenty years. This dissertation applies a legal historical approach to elucidate a crucial feature of that culture, namely Acadian land tenure. In particular, it traces the way in which seigneurialism, and the French law supporting it, were central to property formation in Acadian agricultural settlements from their inception to their destruction in 1755.

Scholars have been at best ambivalent, and at worst hostile to the notion that seigneurialism existed in l'Acadie. While all agree that it was the intent of the French crown to transplant seigneurialism to l'Acadie, most question whether it actually took root. In some cases, Acadians have been portrayed as New England yeoman farmers, and several have written that seigneurialism was "moribund" in l'Acadie. Most recently, scholars have acknowledged that some Acadians paid dues to seigneurs to secure their properties, but continue to question whether seigneurialism was central to property formation.

A review of seigneurialism as it had evolved in France by the seventeenth century, and as it was practiced in Canada, begins the study and provides a baseline from which to assess seigneurialism's implementation in l'Acadie. This is followed by a close analysis of surviving concessions and land contracts. While most notarial documents were destroyed, an important collection remains, many of which are unpublished. These provide clear evidence that most Acadians held their land from, and paid dues to, a seigneur. Together with other documentary evidence, including accounts of seigneurial charges collected by the British after 1713, these legal documents demonstrate that seigneurialism not only survived, but was pervasive in the agricultural settlements.

A final chapter describes Acadians' land use practices, as revealed chiefly by their contracts. These show that while Acadians retained important elements of their French cultural inheritance, they also forged new custom in response to environmental conditions, most particularly the practical and equitable practices used in connection with the development of the marshes on which their agriculture depended.

ACKNOWLEDGEMENTS

I would like to thank my dissertation advisor, Dr. Jacques Ferland, whose gentle persuasion and encouragement, as well as keen insight, kept this work on the right track and moving forward. I would also like to thank the Canadian-American Center at the University of Maine for their generous financial support. This dissertation is dedicated to the memory of my parents, Lucille and Michael Blasi, who gave me the courage to set out, and the tools to find my way; to my husband, Kevin Curtin, who encouraged me to begin graduate school, and whose unflinching support and love saw me through to the end; and finally, to our son, John Blasi Curtin, who is just starting out on his own journey. May he be as fortunate as I have been to meet those who would help him find and pursue his life's work.

NOTE ON TERMS AND TRANSLATIONS

I have followed the *Chicago Manual of Style's* guidelines on italics for foreign terms. French terms used frequently are thus italicized only on their first occurrence. French names of institutions and French legal terms have generally been retained if there is no English equivalent or to give a sense of the color and texture of French and Acadian culture in the seventeenth and eighteenth centuries. All translations are my own, unless otherwise stated. English translations are provided in the body of the text with the original French placed in footnotes. French quotations have been left as in the original with no attempt to correct for spelling or grammar.

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CHAPTER 1

INTRODUCTION

Starting in 1755, the British began the process of not only expelling about eleven thousand Acadians from their homes and farms in what was by then called Nova Scotia, but also of attempting to eradicate a culture that had taken root and survived for over 120 years, and this notwithstanding the depredations of repeated Anglo-American attacks, and several transfers of political control. This dissertation takes a legal historical approach to elucidate a crucial feature of that culture, namely Acadian land tenure. In particular, it traces the way in which this land tenure was both consistent with French cultural inheritances, especially seigneurialism and the French customary law supporting it, and, at the same time, reflected adjustments made as a result of the material and political conditions found in the colony.

Historians have long debated the relative influence of “metropolitan cultural inheritances,” as against other factors, such as environmental conditions and contact with Native peoples, in the formation of North American colonial cultures.¹ The work of some scholars falls clearly on one side of the debate or the other. For example, in his essay, “The Simplification of Europe Overseas,” Richard Colebrook Harris argues, with echoes of Frederick Jackson Turner’s frontier thesis, that the availability of land, together with the lack of access to markets, allowed for an “abundant expression” of a common, overriding European aspiration for a “family-centered independence,” supported by the private control of land.² Under these conditions, Harris maintains, early settler societies in places as diverse as French Canada and New England were

¹ Jack P. Greene, “Transplanting Moments: Inheritance in the Formation of Early American Culture,” *The William and Mary Quarterly* 48, no. 2 (April 1991): 227.

² Richard Colebrook Harris, “The Simplification of Europe Overseas,” *Annals of the Association of American Geographers* 67, no. 4 (Dec. 1977): 473.

characterized by a “simplification,” or a stripping of cultural specificity, leading to a similar homogeneity and egalitarianism.³ In contrast, the work of other scholars of the colonial period have focused on the importance of metropolitan cultures in giving shape to colonial societies. David Hackett Fischer’s *Albion’s Seed: Four British Folkways in American History* comes to mind.⁴ Others, however, suggest that what is needed is a “more refined understanding of the intricate process of cultural reformulation that went on in the immigrant societies of early modern America,” and that both an “overemphasis on material forces,” as well as “cultural determinism” hinders that understanding.⁵

The nature of land tenure in l’Acadie has remained an elusive topic for scholars and there has never been a comprehensive treatment of the subject. While all agree that it was the intent of the French crown to employ the seigneurial system in l’Acadie, as it did along the St. Lawrence, as a way to both people its claimed holdings and develop trade in fish and fur, most scholars question whether the seigneurial system actually took root there. Most, but not all, of the records involving land transactions between Acadian seigneurs and settlers have been destroyed, either by fire or during attacks on the colony by Anglo-Americans. In the absence of such records, most scholars have emphasized material conditions while giving little consideration to the culture, one might say cultures, that the Acadian settlers brought with them from France, at least as it relates to land tenure. Thus, scholars of l’Acadie have tended to agree with those, like Harris, who

³ Harris, 470. In time, growing population and the development of markets restricted access to land and increased socio-economic stratification, but the aspiration, Harris argues, remains.

⁴ David Hackett Fischer, *Albion’s Seed: Four British Folkways in America* (New York: Oxford University Press, 1989). See also, David Grayson Allen, *In English Ways: The Movement of Societies and the Transferal of English Local Law and Custom to Massachusetts Bay in the Seventeenth Century* (Chapel Hill: University of North Carolina Press, 1981).

⁵ Greene, “Transplanting Moments,” 227, citing the work of George M. Foster, *Culture and Conquest: America’s Spanish Heritage*, Viking Fund Publications in Anthropology 27 (Chicago: Quadrangle Books, 1960), 232-233. Foster, writing about Spain’s North American colonies, recognized the need to take into account both cultural inheritances transplanted from Spain, and conditions encountered in the settlements including, in Greene’s words, “material considerations, environmental limitations and potentialities, the resistance and receptivity of native cultures.” Greene, “Transplanting Moments,” 227.

assume that culture generally broke down under frontier conditions. It is argued, for example, that the easy availability of land in l'Acadie, and the absence of French officials during the periods of nominal English control, created "an aspect of [] general frontier equality" in l'Acadie.⁶ In some cases, Acadians have been portrayed more like New England yeoman farmers than French *censitaires*.⁷

Through close analysis of surviving concessions and land contracts, however, as well as other documentary evidence, this dissertation will demonstrate that seigneurialism, and more broadly, French land tenure, was not "moribund" in l'Acadie, as several have claimed. Rather, it continued to be implemented in the agricultural settlements from their beginnings in the early seventeenth century to the expulsions starting in 1755. Moreover, it will be argued, while it was certainly affected by the environmental and political conditions in the colony, seigneurialism in l'Acadie was not very different than seigneurialism as it was implemented in the early years of what became France's most populous colony to the north, Canada, and would have continued to develop had the French not finally lost the colony in 1713.

Historiography

Scholars have traditionally been at best ambivalent, and at worst hostile to the notion that seigneurialism and customs relating to French land tenure survived for the duration of the existence of the Acadians' agricultural settlements around the baie Française, later the Bay of

⁶ John Mack Faragher, *A Great and Noble Scheme: The Tragic Story of the Expulsion of French Acadians from Their American Homeland* (New York: W.W. Norton and Co., 2005), 67. Naomi Griffiths similarly concluded that "Acadians were relatively unfettered by ideas of a rank-ordered system of land-ownership," and that they were "much more free-ranging in settlement than a strict seigneurial system would have permitted." Naomi E.S. Griffiths, *The Contexts of Acadian History, 1686-1784* (Montreal & Kingston: McGill-Queen's University Press, 1992), 21.

⁷ Griffiths suggested, for example, that during the period of ostensible English control, 1654 through 1668, the English introduced "ideas of yeoman and tenant" to Acadian society. Griffiths appears to have rethought this position in a later book. See N. E .S. Griffiths, *From Migrant to Acadian: A North American Border People, 1604-1755* (Montreal & Kingston: McGill-Queen's University Press, 2005), 10.

Fundy. There is general agreement that Charles de Menou d’Aulnay, the first to bring settlers to the Port-Royal area in the 1630s, had there “for the moment a tightly organized, though small, seigneurial settlement.”⁸ The scholarly consensus, however, is that seigneurialism declined in importance after d’Aulnay’s death, when, in the view of most, it became irrelevant. As noted above, a number of historians have gone so far as describing seigneurialism in l’Acadie as “moribund.”⁹ One historian even writes that “[s]eigneurialism . . . was virtually meaningless in the colony.”¹⁰

To explain this presumed failure of the seigneurial system in l’Acadie, Naomi Griffiths reasoned that the extended periods of British control in the area “made nonsense of any seigneurial structure as the basis for land-ownership within the colony.”¹¹ Moreover, in her view, “the existence of vast tracts of land, in the eyes of Europeans, entirely open for settlement meant a fundamental change in the power of the seigneurs.”¹² John Reid, on the other hand, credits the conflict between Acadian leaders for disrupting the development of the settlements and undermining the authority of any one of them to impose a land tenure system.¹³ He further maintains that the interests of the settlers, many of whom were by 1650 born in l’Acadie, diverged from that of the promoters, and suggests that they must have increasingly questioned interference from a presumed landlord, especially when land was so abundant.¹⁴ Jean Daigle

⁸ John G. Reid, *Acadia, Maine, and New Scotland: Marginal Colonies in the Seventeenth Century*, (Toronto: University of Toronto Press, 1981), 104.

⁹ Griffiths, *Contexts of Acadian History*, 20; Faragher, *A Great and Noble Scheme*, 66 (“If the Church was weak in late seventeenth-century l’Acadie, seigneurialism was moribund”); Reid, *Acadia, Maine and New Scotland*, 160 (“the seigneurial system was moribund. . . . The only real power left to the seigneur in Port Royal was the power to create confusion and conflict by throwing doubts on the validity of land titles”).

¹⁰ Leslie P. Choquette, *Frenchmen into Peasants: Modernity and Tradition in the Peopling of French Canada* (Cambridge: Harvard University Press, 1997), 287.

¹¹ Griffiths, *Contexts of Acadian History*, 20; Choquette, *Frenchmen into Peasants*, 287 (“What little there was of the system, moreover, was destroyed by extended British occupation”).

¹² Griffiths, *From Migrant to Acadian*, 110.

¹³ Reid, *Acadia, Maine and New Scotland*, 118.

¹⁴ Reid, 118-119.

writes that “even if they existed on paper, [seigneuries] had practically no influence on the everyday life of settlers.”¹⁵

As to what took its place as a system of land tenure, Griffiths suggested in one of her early books that during the sixteen year period of ostensible English control (1654 to 1670), the English brought with them “English ideas of yeoman and tenant.”¹⁶ In a later book she concedes that the Anglo-Americans never attempted to bring the “Massachusetts system of distributing ownership of land, on terms of free tenure,” into operation in l’Acadie during this period. Nonetheless, she maintains that “the fact that there would be no attempt whatsoever either to reinforce French customs or to introduce English practices meant that Acadian land tenure began to resemble the traditional English freehold system rather than a seigneurial system.”¹⁷

Others have taken a somewhat more cautious view. Andrew Hill Clark, for example, wrote that “seigneurial forms and procedures, such as they were,” could be found not only in the Port-Royal area, but also in the newer settlements around the Minas Basin and in Beaubassin.¹⁸ He asserted, however, that Acadian seigneurs “performed few if any of the traditional seigneurial functions, even in the emasculated form in which these were represented along the St. Lawrence.”¹⁹ He cautiously concluded that “flimsy and fragmentary as the institution undoubtedly was, it provided the only framework in which the Acadians could identify the land

¹⁵ Jean Daigle, “L’Acadie, 1604-1763: Synthèse historique,” in *Les Acadiens des Maritimes: Études thématiques*, ed. Jean Daigle (Moncton, NB: Centre d’études acadiennes, Université de Moncton, 1980); “même si elles existaient sur le papier, n’eurent pratiquement pas d’influence sur la vie quotidienne des colons.”

¹⁶ Griffiths, *Contexts of Acadian History*, 20.

¹⁷ Griffiths, *From Migrant to Acadian*, 80.

¹⁸ Clark, *Acadia: The Geography of Early Nova Scotia to 1760* (Madison: University of Wisconsin Press, 1968), 118. He does not reference his proof for this statement.

¹⁹ Clark, 120.

they held for right of occupation, for devise to their heirs, or for sale and exchange, and, as such, it may have performed a vital service for the settlers.”²⁰

Not all scholars have been as skeptical about the influence of seigneurialism in l’Acadie. Notwithstanding the title of his well known book on the subject, the nineteenth century French historian, François-Edme Rameau de Saint-Père had no illusions that Acadian seigneuries closely followed their European counterparts.²¹ In his view only Port-Royal corresponded to the model of a manor surrounded by tenants, and even here it presented “un type très-curieux,” because of its relative isolation and small number of immigrants.²² Seigneurs did, however, in Rameau’s view, have a role to play in the agricultural settlements around the baie Française. First, the seigneurs participated in the settlement experience in the same way as the *habitants*: “tout le monde y mettait la main à la pâte, participant aux mêmes fatigues, au même travail, aux mêmes privations.”²³ Moreover, while settlers could and did found successful settlements, such as at Les Mines and possibly Beaubassin, they were supported by the actions of seigneurs. For example, Beaubassin may or may not have been first settled by families who expanded out from Les Mines and Port-Royal. Michel Leneuf de La Vallière, the seigneur of Beaubassin, however, appears to have attracted additional settlers there by what Jacques de Meulles, intendant of New France, called his “consideration,” having “built a mill at his expense,” among other things.”²⁴

²⁰ Clark, 121.

²¹ François-Edme Rameau de Saint-Père, *Un colonie féodale en Amérique: L’Acadie (1604-1881)*, 2 vols (Paris: E. Plon, Nourrit, 1889). Rameau himself explained his title thus: “the history of l’Acadie provides an excellent specimen of a feudal colony, formed under very natural conditions, growing by itself and on itself, outside of any outside influence.” Rameau, 1:145; “Voilà pourquoi nous avons pensé que l’histoire de l’Acadie fournirait un excellent spécimen d’une colonie féodale, formée dans des conditions très-normales, grandissant par elle-même et sur elle-même, en dehors de toute influence extérieure.” In other words, the colony grew largely organically from natural increase which expanded out to the new settlements, and this largely without the efforts of the state.

²² Rameau, 1:144.

²³ Rameau, 1:194; “[E]veryone had their hands in the dough, participated in the same fatigues, in the same work, in the same privations.”

²⁴ Mémoire concernant Beaubassin ou Chignitou et La Baye verte, 1686, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fols. 50-51, accessed February 28, 2019, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN

Alexandre La Borgne de Belleisle, seigneur of Les Mines (Minas Basin) after the return of the colony to France in 1670, may not have directed settlement of the area, but, according to Rameau, conceded lands “à rente censive” to those who asked, and appears to have exerted authority in the area through his procureur fiscal, Pierre Melanson, who was also captain of the militia.²⁵ Unfortunately, Rameau does not provide references to support these latter conclusions regarding the activities of Belleisle at Les Mines.

More recently, scholars have begun to question the long held assumption that seigneurialism was “moribund” in l’Acadie, while leaving largely unanswered important questions regarding the manner and extent to which seigneurialism was implemented and its importance—or lack thereof—to Acadian society. Jacques Vanderlinden, Belgian legal historian who spent a number of years at the Université de Moncton as part of the Faculté de droit, has highlighted the substantial number of seigneuries created in the seventeenth century in greater l’Acadie (i.e. areas including what is now New Brunswick, Nova Scotia, and northern Maine), especially after France regained the area under the Treaty of Breda in 1667.²⁶ Beyond this,

2409969; transcription at <http://heritage.canadiana.ca/>, C-11359, fols. 115-116, images 589-590; “La Vallière . . . y a attiré par sa consideration presque tous les habitans qui y sont presentement établis[;] il y a fait bastir un moulin à ses dépens et estoit si considéré . . . que plusieurs se faisoient une douceur de prendre des terres dans sa seigneurie parce qu’il les a toujours souslagé autant qu’il a pu comme il fait encore presentement .” A transcription also appears in Rameau, *Une colonie féodale*, 1:161-163. Griffiths, in contrast, argues that “La Vallière made little attempt to establish cordial relationships with the established settlers of the colony.” Griffiths, *From Migrant to Acadia*, 119. It is interesting to note that Joseph de Villebon, governor of l’Acadie from 1691 until his death in 1700, repeatedly refers to the settlement of Beaubassin as “the seigneury” in his correspondence. Joseph Robineau de Villebon, “Journal of Acadia from 11th November 1692 to 7th August 1693,” in *Acadia at the End of the Seventeenth Century: Letters Journals and Memoirs of Joseph Robineau de Villebon, Commandant in Acadia, 1690–1700 and Other Contemporary Documents*, Monographic Series 1, ed. John Clarence Webster (Saint John, N.B.: The New Brunswick Museum, 1934), 44, 116, 123.

²⁵ Rameau, *Une colonie féodale*, 1:188.

²⁶ Jacques Vanderlinden, *Le lieutenant civil et criminel: Mathieu de Goutin en Acadie française (1688-1710)* (Moncton: Chaire d’études acadiennes, Université de Moncton, Collection Mouvange, 2004), 81-147. In addition to Vanderlinden’s book, other sources identifying concessions made include Joan Bourque Campbell, “The Seigneurs of Acadie: History and Genealogy,” *La Société historique acadienne, Les Cahiers* 25, no. 4 (octobre-décembre 1994): 285-313, vol. 26, no. 1 (janvier-mars 1995): 23-55, vol. 26, no. 2 (avril-juin 1995): 85-115, and vol. 26, nos. 3 and 4 (juillet-décembre 1995): 136-180; Pierre-Georges Roy, *Inventaire des concessions en fief et seigneurie, foies et hommages, et aveux et dénombremens, conservés aux archives de la province de Québec*, 6 vols. (Beuceville:

Vanderlinden has collected evidence showing that during periods of French control of l'Acadie there was clearly a legal apparatus in place whereby documents transferring rights in land could be created and registered in compliance with French law at the time, including concessions, leases and sales of real property. Notaries operated in some of the largest communities, and there were *greffiers* whose responsibility it was to register official documents. Vanderlinden's work confirms that seigneurialism was not abandoned in l'Acadie—there were in fact many more such concessions granted than has traditionally been recognized—and that the legal and administrative apparatus existed to implement this system of land tenure.²⁷ What is not known is the reality behind these concessions. In this regard, Vanderlinden writes that the concessions made to l'Acadie's seigneurs are a little like “des coquilles vides” (empty shells), in that they do not address “the impact of this regime seemingly seigneurial on the everyday life of the Acadians.”²⁸

Gregory Kennedy has endeavored to answer this question in his recent book, *Something of a Peasant Paradise? Comparing Rural Societies in Acadie and the Loudunais, 1604-1755*.²⁹ Kennedy finds parallels between the seventeenth century French rural society in the Loudunais, an area of west-central France from which a significant number of the original Acadian settlers are thought to have come, and that of the Acadian agricultural settlements. Kennedy finds that the Acadian seigneur differed from their Loudunais counterparts in significant respects. Acadian seigneurs received grants of land over large areas, as well as a monopoly on trade and substantial governing authority in exchange for peopling and providing security for the colony. As the

L'Éclaireur, limitée, 1927-1929); Clark, *Acadia*, 113--121; and, for seigneuries specifically within areas that would become New Brunswick, William Francis Ganong, *A Monograph of Historic Sites in the Province of New Brunswick*, Transactions of the Royal Society of Canada, 2d series, vol. 5 (Ottawa: J. Hope, 1899).

²⁷ Vanderlinden, *Le lieutenant*, 81-147.

²⁸ Vanderlinden, 146

²⁹ Gregory M. W. Kennedy, *Something of a Peasant Paradise? Comparing Rural Societies in Acadie and the Loudunais, 1604-1755* (Montreal & Kingston: McGill-Queen's University Press, 2014).

king's chosen "vehicle for colonial development," they played crucial roles "recruit[ing] settlers and tradesmen, encourag[ing] commerce, and provid[ing] security."³⁰ "In many ways," Kennedy writes, "life in the colony was a throwback to the feudal origins of the seigneurie, when the lords were warriors who defended their estates against foreign and domestic rivals, swearing fealty in exchange for titles and privileges."³¹ Similar to seigneurs in the Loudunais, however, l'Acadie's seigneurs were in a good position to exploit the natural resources for their own benefit, giving them positions of influence in the local economy.³² They also held an important social role in the community. Kennedy concludes that "the institution [of seigneurialism] endured right up to the Deportation, with the colonists receiving land grants and paying dues."³³ In the end, however, Kennedy remains cautious, and does not establish evidence regarding the prevalence of seigneurial grants or the centrality, or lack thereof, of seigneurialism to property formation in l'Acadie. After a summary discussion of evidence of seigneurial charges found in some surviving concessions and contracts, he concludes, much as did Clark did before him, that Acadians "needed recognition of their property rights and accomplished this through the paying of traditional dues."³⁴ Otherwise, he asserts, "Acadian farmers were not dependent on leases or concessions from the lords for access to the best lands."³⁵

³⁰ Kennedy, 165.

³¹ Kennedy, 164.

³² Kennedy, 153.

³³ Kennedy, 128.

³⁴ Kennedy, 165-167.

³⁵ Kennedy, 165. Even Griffiths, citing to Vanderlinden, agrees that Acadians, like other European settlers in North America had a "strong sense . . . of the probable need to obtain some official documentation of ownership," and admitted that "Port Royal paid at least minimal attention to seigneurial customs, as a process of record, if not an obligation to be fulfilled." Griffiths, *From Migrant to Acadian*, 118.

A Legal Historical Approach

Up until now, therefore, the scholarship, even where it agrees that seigneurialism survived in some form in l'Acadie, has not assessed the manner and extent to which it was implemented, a crucial step in evaluating whether seigneurialism remained an important part of Acadian cultural heritage. This dissertation seeks to answer those questions by systematically reviewing the evidence of seigneurialism and, more broadly, the implementation of French law and custom regarding property, in l'Acadie's agricultural settlements. Particular attention is paid to the handful of extant grants made by l'Acadie's seigneurs to settlers, as well as to contracts involving land transfers between settlers found in the notarial records. While it is true that many of the notarial records have been destroyed—whether because of a well-documented 1708 fire in the home of notary Jean Chrysostome Loppinot,³⁶ or as the result of deliberate acts of invading soldiers—important collections of such documents remain.³⁷ A careful analysis of these documents allows one to determine whether traditional French law and custom endured, or whether, on the contrary, other forms of land tenure, such as that under the English common law, began to change the way land was allocated and transferred in the colony. Moreover, because

³⁶ Vanderlinden, *Le lieutenant civil et criminel*, 71.

³⁷ These are found in three important collections. The first are the surviving records from the greffe of Loppinot. Loppinot's notarial documents are in the Archives nationales de France (AN), but are also found in Library and Archives Canada (LAC), Notariat de l'Acadie et du Canada, Fonds des Colonies (France), Série G3, vol. 2040, online at Archives Search, <http://collectionscanada.gc.ca/>; and in microfilm at the archives of the Centre d'études acadiennes Anselme-Chiasson at the Université de Moncton (CEAAC), AN, Fonds des Colonies, Série G3, Notariat de l'Acadie et du Canada, carton 2040, microfilm roll F-1960. All references to Loppinot's notarial documents will be to those found at the CEAAC. Another collection includes the contracts in connection with land transferred by Acadians after 1721, recorded by the British in the first registry of deeds for Nova Scotia. Old Grant Book 1 is found in the Nova Scotia Archives (N.S. Arch.), Commissioner of Public Records Collection, RG1, vol. 27 (hereafter Grant Book 1). There also exists a collection of late contracts from the greffe of Louis de Courville, notaire of Saint-Louis-de-Beauséjour, from 1754 to 1755, are found at the CEAAC, Fonds Adrien Bergeron 89.5, the originals being in the Archives nationales du Québec. See also, "Découverte du greffe acadien de Saint-Louis-de-Beauséjour, 1754 & 1755: Notaire Louis de Courville," a digest of seventeen acts by Courville in the archives of the CEAAC prepared by Adrien Bergeron. CEAAC, Fonds Adrien Bergeron, 89.4. Finally, several contracts for the transfer of lands in the Minas Basin made by Acadians who had emigrated to Louisbourg after 1713 are found at LAC, Notariat de l'Île Royale, Fonds des Colonies (France), Série, G3, vol. 2047, online at Archives Search, <http://collectionscanada.gc.ca/>.

these documents span the period under study, such analysis permits an assessment of the extent to which, and in what form, seigneurial rights were asserted, and acceded to, over the course of the long history of the Acadian settlements.

The second chapter of the dissertation examines seigneurialism as it had evolved in France by the seventeenth century when French settlers began to emigrate to l'Acadie. This chapter also examines French law and custom relating to land tenure, especially as it was transplanted to Nouvelle-France, and more particularly to Canada, as a baseline from which to judge its implementation in l'Acadie.

The next two chapters assess the persistence of French land tenure in l'Acadie prior to 1713 using, where possible, an analysis of legal concessions and contracts. As important as the legal documents are, however, they are not the only evidence that French land tenure, and in particular seigneurialism, structured property formation in the Acadian settlements up through 1713 and beyond. Taking the two periods during which the French controlled l'Acadie in turn—the period of French colonization under the auspices of l'Acadie's first seigneurs, including years of ostensible English political control, from 1604 to 1670 (chapter 3); and the period of French state administrative control, from 1670 to 1713 (chapter 4)—the dissertation not only analyzes the extant legal documents, but also traces the part played by l'Acadie's seigneurs in the Acadian agricultural communities in the context of the political vicissitudes experienced by the colony. Evidence includes correspondence of French officials, as well as court and other formal administrative decisions, especially regarding the competing claims of l'Acadie's seigneurs. While these claims and the conflicts that resulted from them may have been a distraction to the latter, and certainly affected their personal fortunes, the dissertation will argue that they did not,

as a practical matter, significantly interrupt the implantation and continued implementation of French land tenure in the colony, including the continuous recognition of seigneurial rights.

Chapter 5 addresses the final years of the Acadian settlements, now under British control, from 1713 to 1755. Not only did French land tenure endure during this period, but Acadians continued to hold their lands pursuant to their original French grants and contracts, and to pay their seigneurial charges and rents, only now to the sole “seigneur” in the colony, the British crown. British records thus contain not only important evidence of land tenure as it existed during this final period of the Acadian settlements, but also vestiges of the seigneurial system as it was implemented during the earlier periods when the colony was under French control.

The Persistence of Seigneurialism: The Case for Cultural Retention.

If this implementation did not look precisely like seigneurialism as it was practiced in France, or even in Canada, especially as the latter would develop in the late seventeenth and eighteenth centuries, it is not surprising, given the environmental and political conditions in l’Acadie. However, to suggest that Acadians accepted grants from seigneurs at will, and only as a way to protect their property rights, and that otherwise seigneurialism played no role in the social order and culture in Acadian communities, is not supportable.

In describing landed property in early modern North America in the sixteenth and seventeenth centuries, Allan Greer recently wrote that property was, among other things, “embedded in specific societies.”³⁸ This was the case in French, Spanish, and English colonies,

³⁸ Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge: Cambridge University Press, 2018), 13. It most certainly did not resemble our notion today, largely incorrect, of absolute individual ownership. Even today, land is held subject to the claims of the state and local

as well as, in Greer's view, in Indigenous societies.³⁹ Greer's language here comes as much from the anthropological studies of property as it does history. As Greer notes, anthropologists have long conceived of property as a social, and not just a legal, institution.⁴⁰ Anthropologist A. Irving Howell writes that property represents a "system of relations among individuals" as much as it does the relation of individuals with objects.⁴¹ As a social institution, property "structuralizes relations in order that certain ends may be achieved."⁴² Those ends may be thought of as supplying the means whereby individuals turn resources into food and shelter under circumstances where others are doing the same. It does this by assigning rights, duties and powers.⁴³ The distribution of "property" is part of a larger economic process which, as Karl Polanyi has written, is "embedded and enmeshed in institutions, economic and noneconomic," including religious and governmental institutions.⁴⁴ In short, property tenure is a "part of an

governments. Thus, the state may take one's land under the principle of eminent domain, provided such taking is for a public purpose and the owner is paid fair market value for the land. Similarly, state and local governments may regulate the use of one's land without compensation if it is a reasonable exercise of the police power (i.e. reasonably necessary to protect public health, safety, and the general welfare). Most of our zoning ordinances and environmental regulations are based on this principle. An "inverse condemnation," may occur, however, if the regulation destroys all value in the property or otherwise goes too far in "interfer[ing] with distinct investment-backed expectations," of the land owner. See *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). In that case, the government will be found to have effectively taken the property and must compensate the owner.

³⁹ Greer, *Property and Dispossession*, 13. Greer's book does not address property formation in l'Acadie, but presents a study of what Greer believes is a representative sample of property regimes in North America, including Indigenous as well as European and colonial forms of property. He compares property formation in three zones of European colonization of North America: Mexico (New Spain) in the territory of the Nahuatl peoples of Mexico; New England, in the territory of the New England Algonquian peoples; and Canada (New France) in the territory of the Innu of Quebec. For another recent treatment on the subject of Indigenous and European conceptions of property, see Jeffers Lennox, *Homeland and Empires: Indigenous Spaces, Imperial Fictions, and Competition for Territory in Northeastern North America, 1690-1763* (Toronto: University of Toronto Press, 2018). Lennox explores the way in which different understandings of land shaped military, economic and cultural interactions between Europeans and Indigenous peoples. The book is particularly focused on how geographic knowledge was put to use in those interactions.

⁴⁰ Greer, *Property and Dispossession*, 12.

⁴¹ A. Irving Hallowell, "The Nature and Function of Property as a Social Institution," chapter 12 in *Culture and Experience* (Philadelphia: University of Pennsylvania Press, 1955), 238-239. Hallowell is referenced in Greer's book, *Property and Dispossession*, at 11, n. 26, and 62.

⁴² Hallowell, 239

⁴³ Hallowell, 239.

⁴⁴ Karl Polanyi, "The Economy as Instituted Process," in *Trade and Market in the Early Empires: Economies in History and Theory*, ed. Karl Polanyi, Conrad M. Arensberg, and Harry W. Pearson (Glencoe, IL: Free Press, 1957),

organized scheme of social relations that gains its full significance only with reference to the values and institutions of a society considered as a whole.”⁴⁵ Property, therefore, cannot be easily separated from such social relations and institutions.

In l’Acadie, seigneurialism, understood as a “scheme of social relations” that was “embedded” in economic, legal and cultural institutions, may have faced challenges but continued to have vitality. For example, a record of a meeting of the community assembly in Port-Royal in 1673 indicates that Jacques Couraud, said to be the “lieutenant de M. Le Borgne seigneur et propriétaire de partie de Lacadie,” was asked to take charge of the construction of a new church that was to be built at the expense of the community.⁴⁶ Even after sixteen years of ostensible English control, therefore, it was understood that the seigneur of the place had certain responsibilities towards the community that included supervising the building of a new church.

There is also evidence that the church continued to enforce the rights of, and deference due to, l’Acadie’s seigneurs. Thus, Mathieu Goutin, lieutenant général, reported that in 1708 one Allein (Allain), who showed himself troublesome in other ways, “had walked in front of [Marie de La Tour], the said dame of the place at the door of the church and at the end of the high mass.” The insult did not go unchallenged, however, as “the sieur de Belleisle her son age fourteen years took the part of his mother [and] received a slap on the cheek with the back of his hand from Allein,” whereupon the priest, Monsieur Petit, “dressed in his priestly habits had

249-250. Polanyi’s essay is referenced in Greer, *Property and Dispossession*, at 13, n. 29. Polanyi writes that the instituting of the process serves several functions: “[it] vests that process with unity and stability; it produces a structure with a definite function in society; it shifts the place of the process in society, thus adding significance to its history; it centers interest on values, motives and policy.” Polanyi, 249-250.

⁴⁵ Hallowell, “The Nature and Function of Property,” 240.

⁴⁶ “Sur la convocation d’assemblée des habitans,” 18 juin 1663, Archives nationales d’outre-mer, Aix-en-Provence (FR ANOM), Secrétariat d’État à la Marine, Personnel colonial ancien (XII^e-XVIII^e siècles), Le Borgne Du Coudray, Emmanuel (1657/1667), COL E 266, pp. 308-309, last revised May 26, 2010 <http://anom.archivesnationales.culture.gouv.fr/ark:/61561/up424bvv1wzt>.

come running to have Allein removed.”⁴⁷ Goutin bemoaned the lack of authority that would permit Allein to act in this way, but the fact is that such deference was still expected in l’Acadie in 1708, and was incorporated into, and enforced by, church traditions. Moreover, while many of the parish registers for the Acadian settlements are missing, those that do exist show that it was not unusual for seigneurial families to be called upon to be godparents for children in the community, a sign not only of respect but also of the social and economic influence that continued to be exercised by these families.⁴⁸

In addition, while seigneurs in l’Acadie do not appear to have used their formal judicial authority often, preferring, it appears, to send matters to Québec to be adjudicated, they clearly, with the church, continued to play an informal role in resolving disputes between habitants.⁴⁹ One would not expect to find records made of such informal actions. However, a 1681 commission given by the La Vallière to one sieur Couraud to act in his absence shows that resolving differences that arose between the habitants was an important part of the responsibilities of the seigneur in l’Acadie. In that commission La Vallière, who was then commandant in l’Acadie living on his seigneurie in Beaubassin, writes of the necessity to have

⁴⁷ Le sieur de Goutin au ministre, 29 decembre 1708, LAC, Fonds des Colonies (France), C11D, vol. 6, fol. 279-289v, 284v, accessed March 8, 2019, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2410402; transcription at <http://heritage.canadiana.ca/>, C-11361, images 425-426; “[I] a excédé la dite dame du lieu à la porte de l’église et au sortir de la grande messe et . . . le sieur de Belle isle son fils agé de 14 ans prenant le party de sa mère recut un soufflet d’Allein . . . M Petit prestre revestu des habits sacerdotaux y avoit accouru pour faire retirer Allein.”

⁴⁸ See discussion, p. 200. See also, the social network analysis performed for seventeenth century Beaubassin in Gregory Kennedy, Thomas Peace, and Stephanie Pettigrew, “Social Networks across Chignecto: Applying Social Network Analysis to Acadie, Mi’kma’ki, and Nova Scotia, 1670-1751,” *Acadiensis: Journal of the History of the Atlantic Region* 47, no. 1 (Winter/Spring 2018): 18 (“It is no surprise that the seigneur, Michel Le Neuf La Vallière, was an important actor,” and that new settlers and old “sought relationships with the seigneur and his family”).

⁴⁹ For example, Michel Le Neuf de La Vallière, the seigneur of Beaubassin, referred a case involving the alleged sorcery of Jean Campagnard, a farmhand, to the Conseil souverain in Québec. See, Procès de Jean Campagna, 26 septembre 1684 to 28 juin 1685, Bibliothèque et Archives nationales du Québec (BANQ), Fonds Conseil souverain, TP1.S777.D117, accessed online March 10, 2019 at <http://numerique.banq.qc.ca/patrimoine/details/52327/3372917>, reproduced in part as, “Extraits tirés d’un procès de sorcellerie intenté au sieur Jean Campagna (ou Campagnard) habitant de Beaubassin et autre-fois de Pentagouët,” 1685, in Rameau, *Une colonie féodale*, 2:304-307.

someone in Beaubassin to “regler les différends qui pourroient naistre entre les habitants,” and to do all that was required “dans les service de Sa Majesté et l’interets de la seigneurie.”⁵⁰

In short, seigneurialism was not simply the form of legal land tenure in l’Acadie. It was woven into the social, religious and cultural life of the settlements. It is not reasonable to believe that the availability of land or the nominal political control by another power would have disrupted something so fundamental as to be, in Hallowell’s words, the “coordinating factor in the functioning of the social order as a whole.”⁵¹

This is especially true as there was nothing to replace seigneurial tenure. In his essay, “The Cultural Dimensions of Political Transfers: An Aspect of the European Occupation of the Americas,” Jack Greene explored the related issues of what he calls “cultural retention and reformulation” in colonial North America, especially in circumstances, including l’Acadie, where the English, later the British, took possession of a colony of another European power, and the existing population remained.⁵² He found that “the demographic and cultural density of the old population and the level of British immigration were the critical variables in determining whether a political transfer meant significant cultural change.”⁵³ When a European power conquered a colony where the European population and its culture—including its law and legal institutions, its language and its religion—remained, it would take many decades, a long series of cultural negotiations, and a concerted effort on the part of the conquering nation to instate its own institutions to effect cultural change. An example was the English conquest in 1664 of New

⁵⁰ Commission donnée par M. de La Vallière au S. Couraud, 16 juillet 1681, FR ANOM, COL E 266, p. 285; “settle disputes that may arise between the habitants,” and do all that was required “in the service of His Majesty and the interests of the seigneurie.”

⁵¹ Hallowell, “The Nature and Function of Property,” 246.

⁵² Jack P. Greene, “The Cultural Dimensions of Political Transfers: An Aspect of the European Occupation of the Americas,” *Early American Studies: An Interdisciplinary Journal* 6, no. 1 (Spring 2008): 3.

⁵³ Greene, 15. This demonstrates, according to Greene, that “most of the agency in the construction of the new polities that constituted early modern empires rested in the hands of the settlers themselves,” Greene, 15.

Netherlands, the population and culture of which was predominantly Dutch. Only over the course of seven to eight decades were the English able to “superimpose” English cultural forms and practices on the existing Dutch culture.⁵⁴ They did this not only by introducing English settlers, but also by controlling the “public sphere,” most notably by the introduction of “English common-law culture.”⁵⁵

In contrast, in l’Acadie, where the population and culture were overwhelmingly French, there was no attempt during the periods of Anglo-American and British control to attract immigrants to the colony. Moreover, with the local Catholic population barred by British law from holding office or formally participating in government, there could be no British form of representative government in the colony. Nor did the English or the British ever attempt to introduce the English common law. On the contrary, even after the British assumed permanent control of the colony in 1713, the Acadian population, as noted above, was permitted to continue to hold their lands under their original French grants. They continued, moreover, to conduct their every day business, whether selling and buying land, or composing their testaments and procurations, using French law and French legal forms almost wholly unchanged by contact with the British. When the British sought to collect rents from the Acadians they “purchased” all remaining seigneurial rights in the colony in a sale of dubious character, and proclaimed the British crown as the “sole seigneur” of the place who was thus entitled to collect the Acadians’ seigneurial *cens et rentes*.⁵⁶ The governing council in Annapolis Royal for the British even applied French civil law and local custom to disputes between Acadians when these disputes involved private law (as opposed to criminal law). In short, as Greene concluded, “Acadian

⁵⁴ Greene, 10.

⁵⁵ Greene, 11.

⁵⁶ Lawrence Armstrong to Lords of Trade, 5 October 1731, LAC, Colonial Office Fonds (Great Britain), Series CO 217, N.S. “A”, vol. 20, pp. 101-110, 109, accessed March 20, 2019, <http://heritage.canadiana.ca/>, C-9122, image 318.

French culture was never subjected to the process of anglicization.”⁵⁷ Under these circumstances, the Acadians and their culture thrived, their numbers increasing five-fold from 1714 to 1749.⁵⁸ The British only succeeded in replacing that culture when, beginning in 1755, it began the expulsion of thousands of Acadians, in what Greene calls a “striking act of cultural annihilation.”⁵⁹

Seen as part of the legal traditions that French emigrants brought with them from their home *pays*, it is not surprising that seigneurialism should have survived not only periods of English and British control, but also disruptive rivalries between seigneurs, as well as the inattention of the metropolitan government. Writing elsewhere about the issue of identity in England’s North American colonies, Jack Greene argues that law acted as “the principal instrument of cultural transplantation.”⁶⁰ “It was,” he writes, “a vivid and symbolically powerful signifier of the emigrant’s deepest aspirations to retain in their new places of abode their identities as members of the European societies to which they were attached.”⁶¹ Writing more generally, Greene maintains that “[s]ettler law was the main foundation for supplying a culture with legitimacy and one of the key elements in holding it together and giving it a coherent identity.” Making a similar point with specific regard to Nouvelle-France, Allan Greer writes that by “acknowledging the king as the ultimate source of state power and landed property,” feudal land tenure “contributed to colonists’ sense of security and legitimacy in their often-precarious overseas establishments.”⁶² Property law was, in other words, too fundamental to Acadian sense

⁵⁷ Greene, “The Cultural Dimensions of Political Transfers,” 15.

⁵⁸ Greene, 12.

⁵⁹ Greene, 13.

⁶⁰ Jack P. Greene, “Empire and Identity from the Glorious Revolution to the American Revolution,” in *Oxford History of the English Empire: Volume II, The Eighteenth Century*, ed. P. J. Marshall and Alaine Low (Oxford: Oxford University Press, 1998), 221.

⁶¹ Greene, “Empire and Identity,” 221; Greene, “The Cultural Dimension of Political Transfers,” 4.

⁶² Allan Greer, *Property and Dispossession*, 157.

of identity, security and legitimacy to have been abandoned without anything to replace it, or for that matter, to have become a purely instrumental means to protect interests in property. This paper seeks to provide the evidence to support this conceptual case for cultural retention.

Cultural Reformulation: The Emergence of Custom.

This of course does not mean that Acadian French culture, and property tenure in particular, did not evolve under North American conditions or through contact with Native peoples. As Allan Greer has written, “[c]olonial property formation is ... a fully historical process filled with contingency and driven by multiple actors.”⁶³ Property suggests “a process of mutual engagement through which native property, European property and new colonial property forms could coexist and shape one another.”⁶⁴ While Greer was not addressing land tenure in l’Acadie,⁶⁵ he asserts more generally that European colonists were forced, when establishing themselves on the land, to take into account Native claims with regard to the use and control of property.⁶⁶ Moreover, because seventeenth century European property tenure was itself a “patchwork of regional laws and customs,” and in a state of flux, “[i]mprovisation and *bricolage* were inevitable as [colonists] attempted to secure spaces for themselves in a Native American

⁶³ Greer, 19.

⁶⁴ Greer, 19.

⁶⁵ Greer sees l’Acadie as an “uncertain exception” to the use of seigneurialism in France’s North American colonies citing to the “scholarly consensus long held that seigneuries in that contested territory repeatedly captured by the English and restored to the French, remained empty shells.” Greer, 158, n. 26. He cites to Kennedy’s book, *Something of a Peasant Paradise* as the one dissenting voice.

⁶⁶ Greer argues that the French recognized Native property, and that, through their alliances with Native people, they were able to extend their sovereignty over land “not to the exclusion of native sovereignty, but *through* native sovereignty.” Greer, *Property and Dispossession*, 149 (emphasis in original). The Canadian seigneur, he writes, thus “had no need to extinguish prior indigenous property in order to enjoy the rights of a feudal proprietor within his estate.” Greer, 178. The New England colonist, in contrast “accorded formal recognition to native property in order to eliminate it and institute settler property in its place.” Greer, 178. Of course with population growth and the spread of settlement, especially along the St. Lawrence, Native people would eventually be dispossessed of the land and resources they traditionally relied on in these areas, and this notwithstanding measures designed to protect them. Greer, 187-188.

property universe, taking the first steps in the direction of new colonial property forms.”⁶⁷ While it is important to acknowledge here the influence of Native claims to, and understandings of, property on Acadian property formation, such influence is regrettably beyond the scope of this dissertation.⁶⁸

The dissertation does, however, address in chapter 6 the ways in which Acadians adjusted land use related practices and customs to accommodate the social and natural environments in which they found themselves. In some cases, such as in the area of inheritance of property, French law was simply applied. In other cases, however, where the matter was not legal, or the law was silent, new answers had to be found to the challenges posed. This was especially so in matters involving the creation, allocation and management of the all-important reclaimed marsh. While the Acadians inevitably turned to the culture or cultures they left behind for ideas of how to approach the challenges they faced, they were also obliged to create new custom—called here, the custom of the marsh—that would “crystallize” to become a unique Acadian culture.⁶⁹

This cultural “reformulation,” however, did not involve the jettisoning of so central an aspect of Acadians’ cultural inheritance as their form of land tenure, especially in the absence of anything to take its place. This dissertation will show that French land tenure, and seigneurialism in particular, was not moribund, but rather structured property ownership in each of the three major settlements throughout the period in question. This does not mean that seigneurialism in

⁶⁷ Greer, 95.

⁶⁸ At least one historian has argued that the Acadians and the Mi’kmaq were able to maintain good relations because the Acadians confined their farming operations to the marsh, ceding control of the uplands to the Mi’kmaq for migratory hunting and gathering. Faragher, *A Great and Noble Scheme*, 48. Others have pointed out that the relationship was not without tension. Lennox, *Homelands and Empires*, 16. As Acadian populations grew, and more and more marshland was reclaimed, natural habitats for waterfowl and other marine life on which the Mi’kmaq relied for subsistence shrank, and wandering Acadian livestock created opportunities for conflict. William C. Wicken, “Re-examining Mi’kmaq-Acadian Relations, 1635-1755,” in *Vingt ans après, Habitants et marchands: Lectures de l’histoire des XVII^e et XVIII^e siècles canadiens*, eds. Sylvie Dépatie, Catherine Desbarats, Danielle Gauvreau, Mario Lalancette, and Thomas Wien (Montreal & Kingston: McGill-Queen’s University Press, 1998), 100.

⁶⁹ Foster, *Culture and Conquest*, 233.

l'Acadie mirrored that which existed in France or even in Canada, although it may be seen to have resembled the latter in its early years and may have advanced in the same way if its development was not arrested by the conquest of 1713. This dissertation is, in short, a history of French land tenure in l'Acadie, "filled," as Allan Greer has written, "with contingency and driven by multiple actors."⁷⁰ It is a history of cultural persistence, as well as adjustment, in the face of specific material conditions and disruptive political forces.

⁷⁰ Greer, *Property and Dispossession*, 19.

CHAPTER 2

SEIGNEURIALISM TRANSPLANTED

Seigneurialism was transplanted as the form of land tenure to Nouvelle-France at least as early as the 1627 grant to the Compagnie de la Nouvelle-France, also known as the Compagnie des Cent-Associés.¹ The crown, however, had indicated its intention to do so in commissions dating as far back as the mid-sixteenth century.² As historian John Reid writes, “[c]olonization

¹ Nouvelle-France was described in the 1628 act establishing the *Compagnie des Cent-associés* as extending “along the coasts from Florida . . . until the Arctic Circle . . . and from [Newfoundland] to the great lake, called the fresh sea, and beyond that, in the lands and along the rivers that pass there and are discharged into the river called Saint Lawrence.” “Acte pour l’établissement de la Compagnie des cent Associés,” in *Edits, ordonnances royaux, declarations et arrêts du Conseil d’État du Roi concernant le Canada*, rev. ed., (Quebec: E. R. Fréchette, 1854), 1:7. Note that *Edits, ordonnances royaux, declarations et arrêts du Conseil d’État du Roi concernant le Canada* was originally published as the first volume of a series of two volumes from P. E. Debarats in 1803 and 1806 (the second volume is entitled *Ordonnances des intendants et arrêts portant reglements du Conseil Superieur de Quebec*). The later series from E. R. Fréchette, in three volumes—which in addition to *Edits, ordonnances*, are entitled, *Arrêts et réglemens du Conseil Supérieur de Québec, et ordonnances et jugements des intendants du Canada*, and *Complément des ordonnances et jugements des gouverneurs et intendants du Canada*—is more complete in that it includes documents in full that had only previously been listed under their titles. In the seventeenth and early eighteenth centuries (prior to 1713 and the Treaty of Utrecht), therefore, Nouvelle-France was composed of five colonies: Canada (including the Pays d’en-Haut, or the region of the Great Lakes); l’Acadie; the mer du Nord (Hudson Bay); Terre-Neuve (Newfoundland, also called Plaisance); and, Louisiane (including the Pays des Illinois). France’s two most populous seventeenth century North American colonies, and those in which seigneurialism was first transplanted, were l’Acadie and Canada.

² Francis I’s 1540 commission to Jean-François de La Roque de Roberval, appointing him *lieutenant-général* in Canada, gave him the authority, among other things, to grant lands “*en fief et seigneurie*.” “Roberval’s Commission,” in *A Collection of Documents Relating to Jacques Cartier and the Sieur de Roberval*, H.P. Biggar, (Ottawa: Public Archives of Canada, 1930), 178-185, 181. Letters patent to the Marquis de La Roche in the late sixteenth century stipulate that he was to grant land “*en fiefs, seigneuries, châtelainies, comtés, vicomtés, baronnies et autres dignités relevant de Nous*’.” Richard Cole Harris, *The Seigneurial System in Early Canada: A Geographical Study* (Kingston and Montreal: McGill-Queen’s University Press, 1966), 3. And a 1623 grant of a “fief” was made to Louis Hébert, the first apothecary in Quebec. Harris, *Seigneurial System*, 3. Henri IV’s 1603 commission to Pierre Dugua de Monts for the colonization of “la Cadie,” in an area between what is now central New Jersey, up to and including present day Quebec, names him *lieutenant-général* with extensive authority. This included, among other things, promulgating statutes and ordinances when not provided by French law; retaining lands for himself; assigning other lands; and attributing such titles and rights thereto as he judged appropriate. “Commission du Roi au Sieur de Monts, pour l’habitation ès terres de la Cadie, Canada & autres endroits en la Nouvelle-France,” reproduced in *Voyages en Acadie (1604-1607) suivis de la description des Moeurs, Souriquoises comparées à celles d’autres peuples*, by Marc Lescarbot, édition critique par Marie-Christine Pioffet (Québec: Presses de l’Université Laval, 2007), 74-79. Although the document does not on its face establish Nouvelle-France as a fief, de Monts could, it would seem, create *arrière-fiefs* and other forms of feudal property. In fact, the proposal de Monts made to King Henry IV for his commission in 1603 requests that he be given the authority to divide the land and attribute “titres et seigneuries” thereto. “Articles proposez au roy par le sieur de Monts par la decouverte et habitation des costes et terres de l’Acadie, avec les decisions de Sa Majesté,” *Collection de manuscrits, contenant lettres, mémoires, et autres documents historiques relatifs à la Nouvelle-France* (Quebec, 1883), 1:40. The king answered

on an extensive scale required a suitable structure of granting and holding land,” and seigneurialism provided this.³ In explaining the crown’s reasons for choosing seigneurial tenure, some stress what they see as the state’s employment of seigneurs as agents to help populate the land.⁴ Allan Greer stresses, in contrast, that the French state wanted to “support[] an aristocracy by appropriating to it the surplus of peasant-producers.”⁵ Louise Dechêne argues, on the contrary, that the state did not give much thought to its decision to transplant seigneurialism to North America.⁶

Regardless of the reason for transplanting the seigneurial system, it is clear that this was the sole system of land tenure established in seventeenth century Nouvelle-France—in l’Acadie as much as Canada and Newfoundland—and that it had undergone considerable changes by the time it was transplanted to North America, and would undergo many more in the face of local conditions. In order to understand these changes as they relate to the colony of l’Acadie, this chapter seeks to establish a baseline, or point of comparison. The chapter will first discuss seigneurialism as it had evolved, and was continuing to evolve, in seventeenth century France. This seigneurialism, which reflected growing tensions between older feudal forms and newer economic and social realities, was the system transplanted with the colonists in seventeenth century Nouvelle-France. The greater part of the chapter, however, will focus on a close examination of the customary law, as redacted in the Coutume de Paris, that to a large degree

that he wished to grant all that would be necessary and required for the discovery and peopling of the colony, and that de Monts’s authority was to conform to that given to the Sieur de Roberval, which as discussed above, included the right to grant lands “en fief et seigneurie.” *Collection de manuscrits*, 1:40.

³ John G. Reid, *Acadia, Maine, and New Scotland*, 28

⁴ Marcel Trudel argues that seigneurs were in effect agents of the state and played an important role in attracting colonists. Marcel Trudel, *Initiation à la Nouvelle-France* (Montréal & Toronto: Holt, Rinehart et Winston, 1968), 183. See also, Joan Bourque Campbell, “The seigneurs of Acadie: History and Genealogy,” *La Société historique acadienne. Les cahiers* 25, no. 4 (Octobre-décembre 1994): 303 (seigneurs described as “land settling agents”).

⁵ Allan Greer, *Peasant, Lord, and Merchant: Rural Society in Three Quebec Parishes, 1740-1840* (Toronto: University of Toronto Press, 1985), 8.

⁶ Louise Dechêne, “L’évolution du régime seigneurial au Canada. Le cas de Montréal aux XVII^e et XVIII^e siècles,” *Recherches sociographiques* 12, no. 2 (1971): 182.

determined the shape of seigneurialism in the early modern period in Nouvelle-France. A full understanding of that law, and the ways it was applied in Canada, France's most populous North American colony, will facilitate the investigation, in chapters 3 and 4, of how the law was actually implemented in l'Acadie, and any ways in which it varied as a result of local custom. If, as Christopher Tomlins argues, legalities "provided the epistemology for the colonial encounter," then to understand the French customary law as implemented, is to understand the range of what was possible for Acadian society.⁷

Finally, this chapter will provide a more general description of the development of Canadian seigneurialism, the defining feature of which was its adaptation to the great changes that occurred by the second quarter of the eighteenth century. As noted in the introduction to this dissertation, seigneurialism in l'Acadie is often described as having been "moribund." The comparison of development of seigneurialism in l'Acadie with that of Canadian seigneurialism, will help to discern whether seigneurialism was truly obsolescent, or simply in a nascent form—similar to what existed in Canada in the seventeenth century—the development of which was abruptly arrested by the conquest by the British and the Treaty of Utrecht.

Seigneurialism in Seventeenth Century France

In describing seigneurialism as it was instituted and practiced in Nouvelle-France, some scholars begin by explaining what it is not, namely, that it was not the feudalism that the

⁷ Christopher L. Tomlins, "Introduction: The Many Legalities of Colonization. A Manifesto of Destiny for Early American Legal History," in Christopher L. Tomlins and Bruce H. Mann, eds., *The Many Legalities of Early America*, (Chapel Hill: University of North Carolina Press, 2001), 2. By "legalities," Tomlins looks beyond what is typically understood as law, i.e. statutes, ordonnances, or case law, to include such things as "rule, custom, tradition, folkway or pastime, popular belief or protest." Tomlins, 2. By broadening the scope to legality, Tomlins means to direct the inquiry away from 'timeless' principles of law, to "social products," with histories that may be explored.

colonists would have known in France before emigrating.⁸ However, historians of early modern France have shown that French feudalism had evolved in significant ways by the seventeenth century.

Feudalism and its related term seigneurialism, has been described as follows:

Feudalism generally refers to a medieval system of political, social, and economic organization based on vassalage and the granting of a *foedum* (fief) that developed in Western Europe with the collapse of authority following Germanic invasions. Medieval feudal contracts involved the establishment of a hierarchical but mutually supportive relationship among private individuals, cemented by a ceremony in which a vassal paid homage and promised material and military support to a lord in return for the lord's protection and the investiture of a fief. Although feudal contracts governed the reciprocal obligations among the noble military elite, the landed estates that served as the basis of the warrior class's economic power required the labour of peasants. In need of protection, free peasants supposedly delivered their persons and lands to the authority of a lord, who returned land to peasants ... in perpetual tenancies but exacted from them various dues, services and obligations. The authority of overlords and obligations of peasants towards them together constitute the concept of 'seigneurialism' or 'manorialism', which stems from the basic physical unit – the *seigneurie* – into which nearly all of rural France was parceled.⁹

Feudalism in France, as described above, began to evolve following the Hundred Years War. It was at this time that the territory of what we now know as France largely coalesced. According to James Collins, beginning with the expulsion of the English at the conclusion of the war, and ending with the expropriation of the Bourbon estates in 1527, France was transformed “from a

⁸ See Naomi E. S. Griffiths, *From Migrant to Acadian*, 110; Richard Cole Harris, *The Seigneurial System in Early Canada*, 5.

⁹ Anthony Crubaugh, “Feudalism,” in *The Oxford Handbook of The Ancien Régime*, ed. William Doyle (New York: Oxford University Press, 2012), 220. “Feudalism,” is a somewhat fraught historical construct that gained currency in the nineteenth century to describe the social, political and economic system that characterized the Middle Ages. In this, British historians were following eighteenth century French thinkers like Montesquieu and Boulainvilliers who, by defining *féodalité* as a social structure, had expanded on an earlier notion of *feudum*, as a system of jurisprudence. Elizabeth A. R. Brown, “The Tyranny of a Construct: Feudalism and Historians of Medieval Europe,” *The American Historical Review* 79, no. 4 (October 1974): 1063-1065. The term has been criticized as too vague and oversimplifying. Scholars nonetheless continue to employ the term as useful abstraction. Brown, 1063-1065. In her article challenging the construct, Elizabeth Brown maintains that “feudal” should be used only with reference to fiefs, and that history should focus on more specific regional and temporal variations and eschew the umbrella term that wrongly suggests, she argues, a uniform social, political and economic system prevalent in Europe from the fifth to the fourteenth centuries. Brown, 1087.

family-run collection of principalities into an effective single kingdom.”¹⁰ People began to be more identified with the monarchy and less with individual lords. On the other hand, a relatively weak crown continued to rely on patronage to establish vertical ties of loyalty that ran from the crown through the upper nobility, then through their clientage networks to the lower nobility. As a result, on the eve of the Wars of Religion (1562-1593), the king had only a fragile hold on his nobles. The great nobles formed companies of lesser nobles to fight the wars and the loyalty of the latter was to their patron lords more than to the crown. The Wars of Religion showed the weakness of the king’s reliance on the nobles’ system of clientage.¹¹

Scholars largely agree that Absolutism, which may be said to have begun during the reigns of Henry IV and Louis XIII but would find its greatest expression in the monarchy of Louis XIV, arose in response to the disorder caused by the Wars of Religion.¹² Under Absolutism, especially during the reign of Louis XIV, the political power, although not the economic or social position, of the nobility was severely truncated through a combination of coercion and cooption by an increasingly powerful state.¹³ No longer did the great lords wield the unfettered administrative, judicial and police powers associated with the feudal system. To

¹⁰ James B. Collins, *From Tribes to Nation: The Making of France 500-1799* (Toronto: Wadsworth Thomson Learning, 2002), 189.

¹¹ J. Russell Major, *From Renaissance Monarchy to Absolute Monarchy: French Kings, Nobles, and Estates* (Baltimore: Johns Hopkins University Press, 1994), 108-110.

¹² Mack Holt, “Redrawing lines of Authority,” in *Renaissance and Reformation France*, Short Oxford History of France, ed. Mack Holt (Oxford: Oxford University Press, 2002), 202; Major, *Renaissance Monarchy*, 168; Collins, *Tribes to Nation*, 281-282; Philip Benedict, “Wars of Religion,” 161.

¹³ See e.g. Pierre Goubert, *Louis XIV and Twenty Million Frenchmen*, trans. Anne Carter (New York: Pantheon, 1966), maintaining that Louis XIV neutralized the nobility by giving princes of the blood offices with no authority; cutting governors terms to three years; subjecting them to title searches; and requiring them to live at court, thus cutting them off from their base of power; see also, William Beik, *Absolutism and Society in Seventeenth Century France: State Power and Provincial Aristocracy in Languedoc* (New York: Cambridge University Press, 1985), showing that Louis XIV was able to control the privileged class in Languedoc through a combination of collaboration, bureaucratization, coercion, clientage, ideology, and perhaps most importantly, by pursuing fiscal policies that benefitted these rulers at the expense of the peasantry.

the extent they retained these functions, they were overseen by law and by the state administrative apparatus.¹⁴

While feudalism might be said to have been weakened as a political and military force by the Absolutist state, it continued as a framework for property ownership and a form of economic and social organization, what Jean Gallet calls “*féodalité civile*.”¹⁵ Central to this was the *seigneurie*.¹⁶ The *seigneurie* continued to have “une grande vitalité” in seventeenth century France.¹⁷

Notwithstanding this, the *seigneurie* was undergoing important changes as it entered the seventeenth century as a result of broader social, political, and economic developments. First, while peasant tenements (*censives*) still represented the largest percentage of the total land, this percentage was shrinking as the land seigneurs reserved for their own use, their *domaines*, grew.¹⁸ This was the result of certain secular trends that began in the sixteenth century. In particular, the end of the sixteenth and the beginning of the seventeenth centuries saw the end of

¹⁴ Importantly, while those occupying a lord’s fief might still owe *foy et homage* to their lord, they no longer were required to follow him into war, as military service was now owed solely to the king. Roland E. Mousnier, *The Institutions of France under the Absolute Monarchy, 1598-1789*, trans. Brian Pearce (Chicago: University of Chicago Press, 1979), 486.

¹⁵ Jean Gallet, *Seigneurs et paysans en France, 1600-1792* (Rennes: Éditions Ouest-France, 1999), 168.

¹⁶ A *seigneurie*, the most prevalent form of land ownership in *ancien régime* France, was often said to be the combination of “*terre, fief, et seigneurie*.” Mousnier, *Institutions of France under the Absolute Monarchy*, 477, 479. *Terre* denoted the seigneurial *domaine*, also called the *réserve*. These were lands that the seigneur retained for his or her own use. *Fief* was the land that was transferred to others on the basis of various types of contractual arrangements (the *seigneurie utile*), but on which the seigneur maintained certain rights (the *seigneurie directe*), including the right to receive certain *redevances* or payments for the use of the land. And *seigneurie*, signified the rights of justice, as well as certain rights and authority that flowed from this. Technically, “[t]hese three elements had to be present for the territorial community called a seigneurie to exist.” Mousnier, 479. A *seigneurie* thus had both public and private dimensions. In its public dimension, the *seigneurie* carried with it the power of justice, that is, the seigneur had the power to decide disputes that arose with regard to those within his *ressort* or jurisdiction. The scope of a seigneur’s subject matter jurisdiction was determined by whether the seigneur had the right of high, middle or low justice. In its private dimension, as a form of private property, the *seigneurie* yielded both economic and social benefits for the seigneur. These and other aspects of seigneurialism, as implemented in France and in France’s overseas colony of *Nouvelle-France*, are discussed in more detail below.

¹⁷ Gallet, *Seigneurs et paysans*, 153.

¹⁸ Jean Gallet showed that by 1600, peasants had lost from 40-50% of their lands, but that this percentage dropped somewhat in the seventeenth century. Gallet, 202-203.

the dramatic growth that had followed the Hundred Years War.¹⁹ Smaller plots of land due to the equality of inheritance, and rising taxes made it harder for peasants to be independent, thus making their hold on their land more tenuous. At the same time, significant inflation resulted in the depreciation of fixed rents (*cens et rentes*) creating what Guy Bois has called a “crisis in the revenues of the seigneurie.”²⁰ The nature and extent of the response to this crisis has been the subject of much scholarly debate.²¹ Most agree, however, that rather than relying on stagnating

¹⁹ Scholars disagree as to the cause of the downturn. Jan de Vries, for example, rejects the notion that the downturn was caused by Malthusian crises. He argues instead that the very structure of the preindustrial economy created a barrier to growth, and that this ultimately led to stagnation. Jan de Vries, *The Economy of Europe in the Age of Crisis, 1600-1750* (Cambridge: Cambridge University Press, 1976). In short, he maintains, that peasants living near the subsistence level, their meager surpluses drained by tithes, feudal dues, taxes and rents, could not participate in the market. Demand therefore remained low. There were thus limited investment opportunities for the capital that merchants were beginning to accumulate. Any investment that the emerging bourgeoisie made was likely to be with an eye toward raising their status, i.e. the purchase of titles and the transfer of wealth and land in marriage contracts, rather than direct investment in production. Once ennobled, they, like the aristocrats they sought to be, were largely ‘passive’ economic actors living on their investments in land.

²⁰ Guy Bois, *The Crisis of Feudalism: Economy and Society in Eastern Normandy c. 1300-1550* (Cambridge: Cambridge University Press, 1984), 259.

²¹ Marc Bloch argued, for example, that urban and rural elites, many newly ennobled, began buying up land of those who could not pay their taxes and their debts. This latter group included not only peasants, but nobility impoverished by the devaluation of money and the resulting depreciation of rents. Bloch concludes that “seigneurial property had to a large extent changed hands. Marc Bloch, *French Rural History: An Essay on its Basic Characteristics*, trans. Janet Sondheimer (Berkeley & Los Angeles: University of California Press, 1966), 124. This “rejuvenated seigneurial class” not only began the process of enlarging their domains at the expense of peasant property holding, but also used sharp practices to exploit any opportunity provided by the law to increase charges on the peasant, thus making it more difficult for them to maintain their lands. Recent scholarship has painted a more nuanced picture of this “seigneurial reaction.” Some, like Gérard Béaur, expanded the temporal scope of the analysis, arguing that the “seigneurial reaction” was a continuing process beginning in the sixteenth century, slowing down in the seventeenth century, and then flaring up again in the eighteenth century. Gérard Béaur, *Histoire Agraires de la France au XVIII^e siècle. Inerties et changements dans les campagnes françaises entre 1715 et 1815* (Paris: Editions SEDES, 2000), 232. “La seigneurie,” Béaur argues, “a toujours essayé de reprendre ce qui lui avait été arraché” Béaur, *Histoire agraire*, 232; the seigneurie always tried to take back what had been taken from it. The work of others show that the nature of this reaction varied as to region. Louis Merle, for example, does not disagree that the seigneurs grew their domains, but argues that in the Gâtine poitevine in Haut Poitou, the traditional nobility never lost their lands to the bourgeoisie. Rather they kept their lands and grew their domains, leasing them at more easily adjustable prices. Louis Merle, *La métairie et l'évolution agraire de la Gâtine poitevine de la fin du Moyen Age à la Révolution* (Paris: Éditions Jean Touzot, 1958), 69. Annie Antoine finds that in eighteenth century Bas-Maine consolidation occurred far less than in the Gâtine poitvine and, in any event, the seigneurs, at least on well managed seigneuries, neither pressed new or forgotten rights on their tenants, nor seemed to have much difficulty enforcing the rights they had always had, and this regardless of whether they were bourgeois or noble owned. Annie Antoine, *Fiefs et villages du Bas-Maine au XVIII^e siècle: Étude de la seigneurie et de la vie rurale* (Mayenne: Editions régionales de l'Ouest, 1994), 249-254.

fixed rents from tenants, seigneurs took measures to enlarge their domaines, albeit in some areas more than others, in lieu of creating new hereditary tenures.²²

This consolidation of domaines had multiple consequences for the seigneurie and those that depended on it. First, the enlargement of the domaine often occurred at the expense of commons formerly used by peasants for grazing, forage, building material and firewood.²³ This occurred at the same time as collective obligations in some areas were beginning to disappear. These were more likely to survive in areas of open and elongated fields, than in the open and irregular fields or enclosed fields of the west of France, where, according to Marc Bloch, individualism already had a foothold.²⁴

In addition, as seigneurs sought ways to exploit their newly expanded domaines, a new economic system began to emerge, one based on “money and exchange.”²⁵ Although the seigneur sometimes farmed the newly expanded domaine with his or her own servants, the land was increasingly leased out either by the seigneur directly, or to a lessee, who would then lease

²² This consolidation has been carefully documented for sixteenth and seventeenth century Poitou. Louis Merle shows that in the Gâtine poitevine, an area just southeast of Loudun, a process of consolidation occurred by the existing noble seigneurs, largely complete by the end of the seventeenth century, whereby extensive *métairies* came to occupy nearly three quarters of the agricultural lands. Merle, *La métairie et l'évolution agraire*, 42. Paul Raveau, in contrast, and echoing Bloch, argues that the bourgeois and merchants bought up peasant land in Haut Poitou in the sixteenth century. He maintains, however, that while consolidation occurred throughout the area, there was considerable local variation. Paul Raveau, *L'agriculture et les classes paysannes dans le Haut-Poitou au XVI^e siècle* (Paris: Marcel Rivière, 1926), 8-9, 188, 290-291. In the Loudunais, specifically, he identified few *baux à ferme* and *baux à metayer*, at least in the sixteenth century. He notes, however, that there may have been verbal leases in cases where *métairies* were relatively small. Raveau, 296. This is not the place to address the literature regarding the effect of this consolidation and *métayage* on the peasant. Most agree, however, that where large-scale consolidation occurred, this caused “considerable reversals” (des bouleversements considérables) for the peasants. Gallet, *Seigneurs et paysans*, 203. Merle shows, for example, that as the result of the growth of *métairies* in the Gâtine poitevine, villages were destroyed and many small tenants were displaced. Merle, *La métairie et l'évolution agraire*, 203.

²³ Guy Bois has shown, for example, that on the seigneurie of Tancarville in Normandy, seigneurial receipts from uncultivated land rose significantly after 1500, even as rents remained flat or decreased. “The profitable development of marshland and forests . . . had a corollary: the progressive expulsion of the commoners to whom these pastures were indispensable.” Bois, *Crisis of Feudalism*, 259. See also Béaur, *Histoire Agraires*, 68.

²⁴ Bloch, *French Rural History*, 59.

²⁵ Bloch, 189.

lands to smaller producers for limited terms.²⁶ This was known as *métayage*, a kind of sharecropping where the rent was paid in half the produce.²⁷ This type of land arrangement could be found throughout the west of France, and would have been familiar to the Acadian colonists who left France in the seventeenth century.²⁸

Moreover, as more land became freely alienable, a market for seigneurial land and rights developed. New economic actors became involved with the workings of the seigneurie on a more commercial basis, resulting in what David Parker calls the “monetization of property relationships.”²⁹ The direct management of the seigneurie by the seigneur declined. Relations on the seigneurie were changing, changes that, according to some, would lead a century later to the destruction of the seigneurie.³⁰ A peasant might now farm a piece of land on the domaine of the seigneur leased by a bourgeois métayer who would take a share of the peasant’s yield. A *censitaire* might pay his *rente* to a *fermier* who had purchased the right to the income from the seigneur, thus further isolating censitaires from seigneurs, while at the same time introducing peasants to the world of business and the market.³¹ Thus by the seventeenth century, the

²⁶ Bloch, 145.

²⁷ A seigneur might employ other forms of lease. For example the *rente à bail d’héritage* was a perpetual lease that transferred the entire seigneurie, *directe* and *utile*, in exchange for an annual rent which represented part of the income from the land. Mousnier, *The Institutions of France*, 502. Other forms of lease for ground rent included the *bail à loyer*, a simple rental lease, or a *bail à ferme*, similar to the *bail à métayage*, but in exchange for a fixed annual rent rather than half the produce. Mousnier, 502-504. To either of these might be added a *bail à cheptel* by which either the lessor provided all the animals for the farm and received half the natural increase, or the lessor and lessee each provided half of the animals, and they shared the increase equally.

²⁸ And in fact, Charles de Menou d’Aulnay, the first seigneur of the agricultural settlement of Port-Royal, was said to have “caused to be cleared a considerable number of arpents of land which made three large métairies” “Mémoire concernant les prétentions des héritiers Le Borgne sur l’Acadie,” n.d., LAC, Fonds des Colonies (France), Série C11D, vol. 1, fol. 68, accessed March 21, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2409909 ; transcription at <http://heritage.canadian.ca>, C-11359, pp. 135, image 155; fait desfricher un nombre considerable d’arpens de terre quy font trois grosses metairies.

²⁹ David Parker, “Absolutism, Feudalism and Property Rights in the France of Louis XIV,” *Past and Present*, 179 (May 2003): 71.

³⁰ Gallet, *Seigneurs et paysans*, 204. Annie Antoine argues, in contrast, that relations on the eighteenth century seigneurie did not change, notwithstanding the mediation of those relations by a métayer. The smooth running of the seigneurie still depended, she maintains, on the recognition of authority and of the right of one with a superior interest in land. Antoine, *Fiefs et villages du Bas-Maine*, 179.

³¹ Gallet, *Seigneurs et paysans*, 207. Frédéric

relationship of a tenant to the seigneur increasingly involved an arms length transaction with a third party intermediary, and had thus come a long way from the personal dependency and fealty of the medieval period.³²

With the increasing number of economic actors involved in the workings of the seigneurie also came some opportunity for social and economic mobility, especially among the bourgeoisie. A growing number of bourgeois, many of them the “nobility of the gown” (*noblesse de robe*), ennobled as a result of their involvement in the highest levels of administration and justice, now owned seigneuries. These vied for advantage with the traditional “nobility of the sword” (*noblesse d’épée*). Seigneurial functionaries necessary for the working of the *seigneurie* were similarly drawn from the bourgeoisie. These included *fermiers généraux*, *magistrats*, *notaires*, *procureurs*, *avocats*, and *sergents*.³³

If the *seigneurie* and its social relations were changing as a result of secular trends, political realities also determined the shape of seigneurialism in France in the seventeenth and eighteenth centuries. The absolutist kings demonstrated a hostility to feudalism, as did the increasingly powerful lawyers, or *juristes*. For the monarchy, the seigneurie represented territorial autonomy and frustrated efforts towards “a better organization for the economy,” as well as plans “to unify all the structures of the realm.”³⁴ After 1600, the crown began limiting seigneurial power in areas such as justice, police, and seigneurs’ interaction with rural

³² Merle writes that “the multiplication of the large *métairies* broke the ties which united seigneurs and their tenants” Merle, *La métairie et l’évolution agraire*, 203; la multiplication des grandes métairies a rompu les liens qui unissaient seigneurs-fonciers et tenanciers.

³³ Merle, 92.

³⁴ Gallet, *Seigneurs et paysans*, 168; “La féodalité pouvait encore gêner la monarchie lorsque celle-ci recherchait une meilleure organisation de l’économie . . . et lorsqu’elle envisageait d’unifier toutes les structures du royaume.”

communities.³⁵ The “seigneurie was weakened,” Gallet writes, but “la féodalité was not destroyed, far from it.”³⁶

For the juristes, seigneurialism, with its local custom and seigneurial justice, interfered with the task of creating a uniform law of the realm, and was incompatible with Roman law. The latter was becoming increasingly influential in the *pays coutumier*. Already in the sixteenth century, the great French jurists were systematizing French customary law and reducing it to writing in the redactions known as the *coutumes*, the most influential of which was the *Coutume de Paris*. French customary law was not abandoned in this process, and indeed embraced, but it is clear that an attempt was being made to conform it with Roman law, and later with principles of equity, natural law and the law of reason.³⁷

If through the attacks by the crown and the *juristes*, however, the scope of the seigneur’s customary prerogatives were gradually narrowed, seigneurialism continued to provide the framework for rural life. Whether because the king was able to coopt the system for his own

³⁵ The crown, for example, took steps that would limit the seigneurs’ rights of justice. *Ordonnances* were promulgated requiring seigneurs to produce title or show long possession in order to assert the right, and beginning in 1667, the king prescribed uniform procedures for the exercise of seigneurial justice, sometimes abrogating the provisions of the relevant *coutume*. Gallet, 179. The king also appointed royal officers with authority to regulate in certain areas previously regulated by seigneurs, including waters and forests, hunting, and the fisheries. Gallet, 180-183. In 1659, acting as a “guardian” to the communities as against the seigneurs, the king returned lands to the communities that had been usurped by seigneurs after 1620. Gallet, 184. And the state, by the intendant or another royal officer, even addressed certain rural problems which had previously been resolved by the seigneurs, including in the areas of pasturage, gleaning, the planting of trees along royal roads, the draining of marshes, the sharing of the commons, and enclosing land. Gallet, 186.

³⁶ Gallet, 190-191; “La seigneurie a été affaiblie. . . . La féodalité n’était pas abattue, loin de là.” The crown did not, for example, interfere with the basic structure of feudal land tenure, nor with such essential seigneurial rights as the right to collect revenues, nor with seigneurial privileges and honorific rights. Gallet, 191.

³⁷ Gallet, 168-169. Roman law formed the basis of the law in the *pays de droit écrit* (that part of France south and east of a line drawn from Bordeaux to Sedan), and recognized only allodial title, which is essentially land held absolutely, and not by any lord. Gallet 102. Land held in *franc-alleu* was freely alienable, and not subject to annual payments or other obligations. Allodial property had largely disappeared in the *pays coutumier* (those areas north and west of the same line). Roman law, however, was influential in the North. It is hard, for instance, not to see the influence of Roman law in the northern courts’ steadfast defense of the hereditability of peasant tenures, as also in the growing idea that the peasant possessor of the *domain utile* was the real owner of the land, and that the *domaine direct*, held by the seigneur, was merely a servitude thereon. David Parker, “Absolutism, Feudalism and Property Rights,” 61.

advantage,³⁸ or because the jurists were willing to conform the feudal law to the new commercial realities of the market,³⁹ seigneurialism showed itself to be remarkably flexible. It remained integrated into the economy, and retained its vitality up through the end of the eighteenth century when it was finally abolished at the time of the Revolution.⁴⁰

Modernization, therefore, was occurring on the seigneurie in seventeenth century France, if by modernization one means a move towards a consolidation of farming operations and an increased, though clearly not an unimpeded, alienability of land.⁴¹ As well, “feudal perquisites and seigneurial rights [increasingly evolved] into money rents of one sort or another which could themselves be ceded, sold or farmed out.”⁴² Seigneurial obligations were thus being reduced to contractual ones, which most believe shifted relations on the seigneurie. In addition, social

³⁸ Gallet notes that the king only eliminated those seigneurial rights that threatened his powers and interests and left the rest, which he helped to maintain. Gallet, 191. See also, Mousnier, *Institutions of France*, 540 (“[The royal government] never violated the rights of the seigneurs, but, depending on circumstances, it either got round these rights or made use of feudal and seigneurial rights to strengthen the king’s power”).

³⁹ Annie Antoine has shown, for example, that in eighteenth century Bas-Maine, leases between the seigneur and the *métayer* increasingly replaced the concession on the seigneurie, but that “it is through the intermediary of the leases that many seigneurial mentalities and practices would be maintained.” Annie Antoine, *Fiefs et villages*, 459; c’est par l’intermédiaire des baux que de nombreuses pratiques et des mentalités “seigneuriales” pourront se maintenir. These more commercialized transactions could cause considerable confusion as courts attempted to reconcile them with enduring feudal forms. A good example was the litigation that arose concerning the new form of land tenure known as the *rente constituée*. The *rente constituée* was effectively a mortgage secured by the property being bought. Cases from the period show that the courts struggled to understand this new instrument in terms of the feudal law. Did the *rente constituée* give rise to *retrait féodal*, or the obligation to pay *lods et ventes*? Parker, “Absolutism, Feudalism and Property Rights,” 70-71. This kind of confusion was “the inevitable result of an attempt to reconcile feudal norms with the monetization of property relationships.” Parker, “Absolutism,” 71.

⁴⁰ Antoine writes that although changes had slowly come, for example with the rise of the *métairie*, the seigneurie “was not an empty shell in the eighteenth century,” Antoine, *Fiefs et villages*, 458; cette institution n’était pas une coquille vide à la fin de l’Ancien Régime. “The most remarkable phenomenon,” she argues, “turned out to be the smooth operation of the institution which did not appear to engender significant conflict.” Antoine, 458; Le phénomène le plus remarquable s’est avéré être le bon fonctionnement de cette institution qui n’a pas paru engendrer de conflits importants. She sees this as the result of the regular exercise of seigneurial justice, the use of *assises de fief*, a procedure periodically invoked to confirm and renew obligations of vassals, as well as the courts’ willingness to apply feudal law. Antoine, 238, 249, 458; see also, Gallet, *Seigneurs et Paysans*, 191.

⁴¹ Parker, “Absolutism, Feudalism and Property Rights,” 65-67. Parker points out that although there had developed a market in land long before 1600, there were still considerable restraints on the alienability of land, including alienation fees and the seigneurial right to retake the property subject to sale upon remitting the sale price (*retrait féodal*). Similarly, seigneurs were limited in what they could do on *terres roturières* within their fiefs because of customary limitations consistently upheld by the courts, such as the inheritability of *censives*.

⁴² Parker, 72. Bloch believed that this showed that seigneuries were increasingly being run according to “capitalist” principles of production. Bloch, *French Rural History*, 145. Parker argues that this “had little to do with capitalism and is much better described as a feudal rentier economy.” Parker, “Absolutism, Feudalism,” 72.

mobility was occurring as the bourgeoisie acquired noble status and purchased seigneuries. A limited differentiation was even beginning to appear among the peasantry, as some, frequently by engaging in trade in addition to agriculture, were able to amass enough capital to lease métairies and even small seigneuries which they cultivated themselves or let out in a sharecropping arrangement.⁴³ While these changes were quite slow in the first part of the seventeenth century, they increased as the century wore on, and especially into the eighteenth century.

And yet, by all accounts feudalism showed remarkable flexibility, and the seigneurie continued to structure in a real way the economy of rural France and the social relations of its people. This was not in small degree due to the law, as now contained in the redactions known as the coutumes, which was able to accommodate the new political and economic realities in the old legal structures, although not without a certain degree of tension. In this way, the law, and in particular the Coutume de Paris, helped to maintain “the traditional order founded in great part on fief and family” (l’ordre traditionnel, fondé en grande partie sur le fief et la famille).⁴⁴

In her book, *Frenchmen into Peasants: Modernity and Tradition in the Peopling of French Canada*, Leslie Choquette argues that migrants to Canada and l’Acadie were among the most ‘modern’ of French citizens at the time. Among other things, she argues that most migrants, having come from or been familiar with the west of France, were part of a cosmopolitan world of Atlantic trade and commerce, and were among the most mobile of French people. They thus brought with them more modern, individualistic attitudes to the New World. Those “[s]ectors responsible for colonization,” she maintains, “belonged increasingly to an Atlantic world ... that had little in common with the autarkic world of peasant communities too often associated with

⁴³ Raveau, *L’agriculture et les classes paysanne*, 229, 244.

⁴⁴ Yves F. Zoltvany, “Esquisse de la Coutume de Paris,” *Revue d’histoire de l’Amérique française* 25, no. 3 (décembre 1971): 367.

the *Ancien Regime*.”⁴⁵ The discussion above suggests, based on the work of historians of early modern France, that by the seventeenth century, other factors—economic, social, political—were contributing to a slow modernization of France, and in particular, its feudal structures, a modernization with which the emigrants to Canada and l’Acadie would have been familiar.

Colonists left France for its overseas colonies, therefore, at a time of when France was experiencing an increasing tension between older feudal structures and newer social, economic and political realities, a tension which put a strain on, and demanded flexibility from those structures. New World conditions would demand further flexibility, and new legal forms would be created that were nonetheless, hung on the old scaffolding of the feudal law.

The Law Governing Land Tenure in Nouvelle-France

Introduction

As Roland Mousnier has written, “the king, embodying the modern state, made use of very old institutional forms, the seigneurie and the fief, to develop the power of . . . the state.”⁴⁶ As “universal seigneur” of the realm, the king used his powers of enfeoffment to assert his authority and extend his influence in France’s overseas colonies.⁴⁷ The great trading companies that were created to colonize and increase commerce with Nouvelle-France in the seventeenth century—the Compagnie de la Nouvelle-France, also called the Compagnie des Cent-associés (1626 to 1663), and the Compagnie des Indes occidentales (1664 to 1674)—were granted far-

⁴⁵ Leslie Choquette, *Frenchmen into Peasants*, 2.

⁴⁶ Mousnier, *Institutions of France*, 544.

⁴⁷ At the time of colonization, there was no distinction between land owned by the monarch and that belonging to the state. Vanderlinden writes that “[t]he king exercised at the same time the rights of ownership and of sovereignty on all persons and territories that came under his crown” *Lieutenant civil et criminel*, 82; Le roi exerce à la fois les droits de propriété et de souveraineté sur l’ensemble des personnes et territoires qui relèvent de sa Couronne.

reaching fiefs in North America with broad authorities, yet remained under the supervision of the crown, the ultimate suzerain:

Implying the king's protection, and therefore supervision, on the one side, and fealty and services on the other, [the royal powers of enfeoffment] enabled the king to retain all his potential for intervening and safeguarding the common good, while leaving extensive freedom to new and remote enterprises and giving them the benefit of firm hierarchical structures of the feudal and seigniorial type.⁴⁸

Seigneurialism was thus part of "the fundamental legal framework of the colonies' property organization."⁴⁹

While differences in circumstance would shape the actual implementation of the seigneurial regime in the various parts of Nouvelle-France, the basic legal regime that applied, with some limited exceptions, was the same throughout the colony, at least after 1664. This was the result of the charter granted to the Compagnie des Indes occidentales. The charter established that the Coutume de Paris would be the only law to be applied in contracts concerning land in Nouvelle-France, as supplemented and modified by royal and local legislation and judicial decision.⁵⁰ Even before this time, the Compagnie de la Nouvelle-France had, with some exceptions, prescribed the application of the Coutume de Paris in the cessions it granted.⁵¹

⁴⁸ Mousnier, *Institutions of France*, 543-544. See also Jean-François Niort, "Aspects juridiques du régime seigneurial en Nouvelle-France," *Revue générale de droit* 32, no. 3 (2002): 464, n. 51. Niort writes that "[The king] claimed . . . at this time suzerainty on all the lands of the realm, including Canada" ([The king] prétend . . . à l'époque à la suzeraineté sur toutes les terres du royaume, y compris au Canada).

⁴⁹ Niort, "Aspects juridiques," 448; "le cadre juridique fondamental de l'organisation foncière de la colonie."

⁵⁰ Article thirty-three states that "judges will be established in all the said places, obliged to judge according to the laws and ordonnances of the realm, and the officers required to follow and to conform to the coutume de la prévôté et vicomté de Paris, in accordance with which the inhabitants will contract without being able to introduce any [other] custom to avoid diversity." *Etablissement de la Compagnie des Indes Occidentales, Mai, 1664*, "Edits, Ordonnances," 1:37; Seront les Juges établis en tous les dits lieux, tenus de juger suivant les Loix et Ordonnances du Royaume, et les Officiers de suivre et se conformer à la coutume de la prévôté et vicomté de Paris, suivant laquelle les habitants pourront contracter sans que l'on y puisse introduire aucune coutume pour éviter la diversité.

⁵¹ Niort, "Aspects juridiques," 475, giving as an example the 1640 cession for the Ile de Montréal. Before 1664, there were a number of cases in Canada where the Coutume du Vexin français, a local coutume from a small district within the jurisdiction of the *Prévôté et Vicomté de Paris*, was specified in the contract as a means of benefitting one of the parties, usually the seigneur. In addition, a small number of grants of land made before 1664 in Canada specifically applied the Coutume de Normandie, not surprising given that many of the earliest settlers were from Normandy. Dorothy A. Heneker, *The Seigniorial Regime in Canada* (Québec: Province of Quebec, 1927), 2-24, 98-99. Niort points out that even after 1664, the influence of the Coutume de Normandie would be felt, for example in

Royal and local actions, many of which were aimed at furthering the crown's goal of developing and peopling its colonies, would, however, derogate from provisions of the Coutume as they related to seigneurial tenure.⁵² This could occur by royal *ordonnance*, or by *declarations* and *arrêts* of the Conseil d'État du Roi; by *arrêts* of the Conseil souverain de la Nouvelle-France; or by *ordonnance* or decision of the *Intendant* and *gouverneur général*.⁵³ Local *gouverneurs*, such as the *gouverneurs* of l'Acadie or Plaisance, who fell under the authority of the *gouverneur général*, typically did not have the power to legislate, but could effect policy through decisions on individual matters, or by proposing measures to their superiors, namely to the *gouverneur général* in Québec, or to Versailles.

The following discussion will describe specifics of the law relating to land tenure, as found in the Coutume de Paris, and the instances where it was legislatively or judicially modified for Nouvelle-France in the seventeenth century and early eighteenth century.⁵⁴ The discussion

the wide acceptance of the *retrait censier*, which was not found in the Coutume de Paris. Niort, "Aspects juridiques," 475, n. 81. Regarding l'Acadie, Jacques Vanderlinden found some evidence that the customary law of Poitou was applied in certain marriage contracts. Jacques Vanderlinden, *Se marier en acadie française, XVII^e et XVIII^e siècles* (Moncton: Éditions d'Acadie, 1998), 188-195. Moreover, the Coutume du Vexin français was specifically listed as the choice of law in four out of the twenty-eight concessions granted for l'Acadie after 1667 after the French regained control over the area. Vanderlinden, *Le lieutenant*, 121-122. All other concessions specified that the Coutume de Paris would apply, except in two cases where the choice of law was not specified. Vanderlinden, 121-122.

⁵² Zoltvany, "Esquisse de la Coutume de Paris," 373.

⁵³ After 1663, when the crown accepted the concession of Nouvelle-France back from the Compagnie de la Nouvelle-France, the colony became a province of France, and an administrative structure was established similar to those of French provinces with a *conseil souverain*, an *intendant*, and a *gouverneur*. The Conseil souverain de la Nouvelle-France had both legislative and judicial powers as an appellate court. "Edit de création du conseil supérieur de Québec," in *Edits, ordonnances*, 1:37-39. Beginning around 1702, the Conseil souverain became known as the Conseil supérieur de Québec. Royal legislation that applied to both France and the colonies was registered by the Conseil, which played the role, in this respect, of the *parlements* in France. Upon receiving such legislation, the Conseil had an opportunity to remonstrate, in which case the crown could change the legislation, at least as applied to the colony, or let it stand. This the Conseil did on a number of occasions. Jacques Vanderlinden, *Regards d'un historien du droit sur l'Acadie des XVII^e et XVIII^e siècles* (Moncton: Université de Moncton, Institut d'études acadiennes, 2008), 12. Local legislative authority was shared between the Conseil, and the *intendant*, and the *gouverneur général* of Nouvelle-France located in Québec.

⁵⁴ There is relatively little legal history addressed to the Coutume de Paris and seigneurialism as implemented in Nouvelle-France. The discussion in this chapter is indebted to the treatment of this issue in Jean-François Niort's article on this subject, which relates primarily to Canada, but in many instances has broader application. Niort, "Aspects juridiques," 443-526. One of Niort's sources I found exceptionally helpful was the thesis of Dorothy A.

will include, for the purpose of comparison, what is known about how the law was implemented in Canada, the most populous of the colonies of Nouvelle-France. The next chapter will address the law as applied in l'Acadie, about which considerably less has been written up until now, and whether it was further modified by local custom.⁵⁵

Structure of the Coutume de Paris: Common lands and Noble lands.

By the late sixteenth century, French customary law had been collected and redacted in written coutumes. While each region in seventeenth century France had its own custom, redacted in the coutume générale for the region, Paris was the center of legal learning as well as the practice of law, and the Coutume de Paris was considered the most authoritative of all the coutumes générales. In fact, jurists turned to the Coutume de Paris in instances where a coutume of a province was silent, or there was a conflict between coutumes.⁵⁶ It was no wonder that the crown decreed the uniform application of this coutume in Nouvelle-France as it attempted to avoid in the colonies the confusing multiplicity of customary law found in France.⁵⁷ The first two titles of volume 1 of the Coutume address seigneurial tenure, and it is to these that one must look

Heneker, *The Seigneurial Regime in Canada*. As Niort points out, Henecker was one of the first women to hold a law degree from McGill University. Niort, "Aspects juridiques," 447, n. 4

⁵⁵ Where the Coutume was silent or unclear, the lived custom, or *l'usage*, could be consulted. Jacques Vanderlinden, "À la rencontre de l'histoire du droit en Acadie avant le Dérangement: Premières Impression d'un nouveau-venu," *Revue de l'Université de Moncton*, 28, no. 1 (1995): 57.

⁵⁶ Vanderlinden, 57.

⁵⁷ The multiplicity of customs included those of localities and seigneuries, referred to as *coutumes locales*. The Coutume de Paris had its beginnings in the fourteenth century in the jurisprudence of the *prévôté de Paris* which had appellate jurisdiction over the various *prévôts* in the region in and around Paris making up the *vicomté*, as well as over seigneurial judges. It was, therefore, the customs of this area, together with any case law of the *prévôté de Paris* that was codified in 1510, and amended in 1580, as the Coutume de Paris. The Coutume consists of sixteen titles divided into 362 articles. Niort, "Aspects juridiques," 477-479.

to understand the seigneurial regime in Nouvelle-France, always as modified by royal or local legislation, court decision, notarial practice or local custom.⁵⁸

Seigneurial lands could be possessed in one of two different ways; lands possessed “nobly,” or *en fief*, or lands possessed “commonly” or *en censive*, also known as *en roturier*.⁵⁹ The Coutume addresses these, respectively, in Title I and Title II. Land held nobly was granted to a *vassal* on the condition of *foi et hommage*,⁶⁰ and *aveu et denombrement*,⁶¹ together with certain other duties owed the seigneur, all as stipulated in a deed of enfeoffment, or concession.⁶² This was known as *inféodation* and created an *arrière-fief*, that is, a fief within the *mouvance* of another.⁶³ Land was granted *en censive*, a process known as *acensement*, to a *censitaire*, sometimes called a *tenancier*, a *roturier*, or, in Nouvelle-France, a *habitant*. Censitaires were not responsible for rendering faith and homage, but were required to pay *cens* and other seigneurial fees and *rentes*, as well as perform certain obligations, as will be discussed below. Mousnier writes that the censive was in effect a lease granted in perpetuity for lands that were both heritable and transferrable.⁶⁴ Whether land was alienated *en fief* or *en censive*, the seigneur continued to hold the *seigneurie directe* over the land transferred, while the vassal or the censitaire held the *seigneurie utile*.

⁵⁸ Niort 482.

⁵⁹ Claude de Ferrière, *Nouveau commentaire sur la Coutume de la prévôté et vicomté de Paris*, nouvelle éd. (Paris: Chez Les Libraires Associés, 1770), 1:5. Those land possessed nobly were the *fiefs* or the *francs-aleus nobles*, the latter being a form of “free” ownership not dependent on any dominant proprietor. Similarly, land held commonly, was either held *à cens* or *en censive*, or were *franc-aleus roturiers*. Ferrière, 1:5. *Franc-aleu* was something of an “anomaly,” both in France, especially in the North, and the colonies. Heneker, *Seigniorial Regime*, 26.

Notwithstanding this, at least one notable early grant, the Jesuits’ estate of Notre-Dame-des-Anges at Quebec, was originally created as allodial land. Greer, *Property and Dispossession*, 162-163. Technically, only nobles were permitted to hold noble fiefs, however an exception was made upon the payment to the king of a *frank-fief*, or five percent on income from the land. Ferrière, *Nouveau commentaire*, 1:10-11; Mousnier, *Institutions of France*, 483.

⁶⁰ “Faith and homage,” an oath of fealty.

⁶¹ A formal written representation as regards details relating to the conceded fief. This included a list of all parcels that made up the subordinate fief, and all seigneurial rights and obligations attached to that fief. Mousnier, *Institutions of France*, 486.

⁶² Mousnier, 482.

⁶³ *Mouvance* indicates those parts of a seigneurie that were conceded, and on which the seigneur retained a *directe*.

⁶⁴ Mousnier, 493.

The responsibility to make *foi et hommage*, unique to the vassal, was largely ceremonial by the seventeenth century, although there could still be consequences for failure to perform.⁶⁵ *Foi et hommage* was made typically at the manor of the seigneur. The vassal knelt before the seigneur, with bare head and without sword or spurs, reciting the *foi et hommage* required of a vassal.⁶⁶ In Nouvelle-France, each seigneur was required to appear before the representative of the company, or, after 1663, the royal representative of the king, or the intendant, at the Chateau St. Louis in Quebec.⁶⁷ Under the Coutume de Paris, the vassal was required to also offer his *aveu et dénombrement* to the seigneur, in this case to officials at Québec, within forty days of any change in the ownership of a seigneurie. We know that in Canada, and there is no reason to believe it would be different for Acadian seigneurs, this included the *aveu*, a general plan of the vassal's seigneurie, together with the *dénombrement*, or "statement of his title to ownership, the terms of his tenure, the degree of jurisdiction possessed, and . . . the progress made in development of the estate."⁶⁸ These documents gave the administration valuable information regarding the state of the seigneurie, and the colony. While the principal obligation of the vassal, namely to follow the seigneur into war, was no longer required by the seventeenth century, given that this obligation was only owed the king, the vassal's relationship with the seigneur remained one of personal loyalty. On the other hand, the obligation of the *tenancier roturier* with the seigneur was more like a "simple economic relationship," the obligations of which will "more

⁶⁵ A dominant seigneur could technically seize the estate for failure of the seigneur to follow the formalities of *foi et hommage* and *aveu et dénombrement*. However, the authorities in Nouvelle-France were forced to consider conditions in the colonies that made travel to Québec difficult within the specified time. Heneker, *Seigniorial Regime*, 89.

⁶⁶ Ferrière, *Nouveau commentaire*, Article 63, 1:137; *An Abstract of Those Parts of the Custom of the Viscounty and Provostship of Paris, which were received and practiced in the Province of Quebec, in the Time of the French Government*, by A Select Committee of Canadian Gentlemen (London: Charles Eyre and William Strahan, 1772), 7-8.

⁶⁷ In the case of the *arriere-fief*, or fief created by a seigneur from the dominant fief, *foi et hommage* was rendered to the granting seigneur rather than to the Intendant.

⁶⁸ Heneker, *Seigniorial Regime*, 88.

and more be reduced to the rank of simple servitudes on the land by the legal scholars of the eighteenth century.”⁶⁹ These obligations will be discussed further in the next section.

Seigneurial Rights

The seigneur had a menu of rights under the Coutume de Paris that differed somewhat depending on whether the land was held *en fief* or *en censive*.⁷⁰ These rights are often divided into three categories: the *droits réels fixes*; the *droits personnels or monopoles*; and, the *droits conventionnels et les servitudes*.⁷¹

Les droits réels fixes. The first, the *droits réels fixes*, are essentially rights that arose from the seigneurial ownership of the land. The right to certain payments, or what could be thought of as seigneurial taxes or levies, was based on that ownership.⁷² These rights include the *cens*, the principal seigneurial right, although by no means the most remunerative, and the mutation taxes. The latter are called *lods et ventes* in the case of lands held en censive, and *quint* and *relief*, for lands held en fief. Technically, *rentes* were among the *droits conventionnels* because they did not automatically attach, but rather had to be agreed upon in the *contrat d’acensement*. However, because they almost always were found together in contracts (“*cens et rentes*”), they will be discussed here.

⁶⁹ Niort, “Aspects juridiques,” 466.

⁷⁰ These could always be modified and supplemented by legislation, court decisions and *doctrine*, the latter referring to principles adopted by authoritative legal commentaries.

⁷¹ Niort, “Aspects juridiques,” 486, referencing Louise Dechêne, “L’évolution du régime seigneurial au Canada: Le cas de Montréal aux XVII^e et XVIII^e siècles,” *Recherches sociographiques*, 12, no. 2 (1971): 143.

⁷² Niort, “Aspects juridiques,” 486. Niort labels these *les droits seigneuriaux féodaux*, to emphasize the nature of these rights as part of the seigneur’s power to tax those who live on his or her lands.

The cens was an acknowledgment that the seigneur retained the seigneurie directe on the land, and a sign of dependence of the censitaire on the lord. The cens was also the basis for the recognition of other seigneurial rights, such as the mutation taxes. The cens was annual, perpetual, irredeemable and imprescriptible.⁷³ The *cens* was required to be delivered to the place and at the time named in the contract, usually at the seigneurial manor. It generally amounted to no more than a token payment, as it was meant to be principally symbolic of the feudal relationship.⁷⁴

Over time, seigneurs in both France and the colonies came to add the *rente* to the cens in their contracts. The *rente* represented some part of the produce of the soil, and could be collected in money or in-kind payments.⁷⁵ A *rente* provided seigneurs potentially with more freedom, as it, unlike the cens, could be set at whatever the parties agreed.⁷⁶ Even taking into account the increase represented by the *rentes*, however, “the rate of cens et *rentes* [in Canada] were capped at an indisputably low level.”⁷⁷ Custom limited this freedom, as did the colonial authorities. Some believe this “contributed to render very moderate the total of feudal fixed payments” in

⁷³ Niort, 488; Ferrière, *Nouveau commentaire*, Article 124, 1:276.

⁷⁴ In Canada, the *cens* was modest. For example, Dechêne found that it was 3 deniers per *arpent* at Montreal in the seventeenth century, Dechêne, “L’Évolution,” 151. According to Niort, a *sol* was one-twentieth of a *livre*; and there were twelve *deniers* in a *sol*. An *arpent* is approximately .3 hectares, or .74 acres. Niort, “Aspects juridiques,” 489, n. 128.

⁷⁵ Mousnier, *Institutions of France*, 495. As noted above, seigneurs often tied the *rente* to the *cens* and even stipulated in contracts that they be indivisible. This had certain advantages for the seigneur. For example, if the land was subdivided, the new owners would be jointly and severally responsible for the total amount. Louise Dechêne, *Habitants and Merchants in Seventeenth Century Montreal*, trans. Liana Vardi (Montreal: McGill-Queen’s University Press, 1992), 137-138.

⁷⁶ *Cens* and *rentes* were treated differently under the law in a number of ways, although seigneurs in Canada sometimes tried to treat them as one seigneurial obligation when this benefitted them. For example, failure to pay *cens* would result in a fine prescribed by the Coutume. The *cens* and fine could then be collected through the process of *saisie*, whereby the censitaire remained in possession of the land, but the seigneur could attach the “fruits,” or produce of the land. In contrast, the seigneur was in the position of a simple creditor with regard to any arrears of *rente*. No fine was assessed and *saisie* did not apply. Moreover, the *rente* was *rachetable* or redeemable; the cens was not. Niort, “Aspects juridiques,” 493-494.

⁷⁷ Dechêne, “L’Évolution,” 153; “[L]e taux des cens et *rentes* plafonne à un niveau incontestablement bas.”

Canada.⁷⁸ Other scholars, however, contend that notwithstanding the relatively light payments represented by the cens et rentes, they still weighed heavily on the habitant already burdened by debt and other levies, like the *dîme*, or tithe.⁷⁹

The other droits réels fixes are the mutation or transfer fees which are referred to as “*casuelle*” because they are not regularly occurring. These include the lods et ventes, which are due on the transfer of a censive, and the quint or relief, which was collected when a fief changed hands. The lods et ventes were legally dependent on the right to receive the cens, and attached whether stipulated in the contract or not. Under the Coutume de Paris, the lods et ventes were paid at one-twelfth the value of the land, although a seigneur could stipulate to a higher fee, and was payable by the buyer.⁸⁰ The seigneur was required to be notified within twenty days of the alienation of the land or a fine was assessed.⁸¹ Lods et ventes was “the fiscal expression of the ancient right of the seigneur to consent to the mutation.”⁸² It appears to have represented “an important part of the seigneurial revenue whether in Canada or France.”⁸³

Pursuant to the Coutume de Paris, the *quint* was due upon sale of a fief, or transfer equivalent to sale, with certain exceptions.⁸⁴ This did not apply, for example, in matters of direct succession. The quint was one-fifth of the sale price, and was paid to the dominant seigneur by the buyer.⁸⁵ Relief applied to all mutations other than sales, for example if land was bequeathed

⁷⁸ Niort, “Aspects juridiques,” 491; “[L]’usage, sous la pression des habitants, et parfois des autorités coloniales, va limiter cette liberté, et contribuer à rendre très modéré le total des redevances féodales fixes.”

⁷⁹ Dechêne, “L’Évolution,” 154. Dechêne also notes that French *censitaires* paid seigneurial *cens et rentes* on their arable only, as they enjoyed common access to the forests for building materials and firewood, and also to the commons for pasturage. She argues that the Canadian habitant, in contrast, paid these fees on total acreage, including wastelands and forests. As holdings could run in the hundreds of *arpents*, Dechêne argues, these amounts could be “overwhelming.” Dechêne, 154.

⁸⁰ Ferrière, *Nouveau commentaire*, Article 76, 1:155-156.

⁸¹ Ferrière, Article 77, 1:156.

⁸² Niort, “Aspects juridiques,” 497.

⁸³ Niort, 498.

⁸⁴ Ferrière, *Nouveau commentaire*, Article 23, 72

⁸⁵ Ferrière, Article 23, 1:72; Mousnier, *Institutions of France*, 487, 752. There was often some rebate of this amount. For example, in Canada, the rebate was one-third of the amount paid. Heneker, *Seigniorial Regime*, 90.

to one not in the direct line of succession.⁸⁶ Relief consisted of one year's estimated revenue as generated from the seigneurie.⁸⁷

Les droits personnels or monopoles. The *droits personnels* were rights tied to “the person and status of the seigneur as determined by the Coutume, legislation or seigneurial titles,” most importantly, the seigneur's status as *seigneur justicier*.⁸⁸ The personal rights included the *droit de justice* (right of justice), high, medium and low; the *banalités*, or monopolies for such things as building and operating grain mills or bake ovens; the *corvées*, the right to exact work from tenants; and additional rights, such as the *droit de peche and the droit de chasse* (fishing and hunting rights).

The right of justice was central to the notion of the *seigneurie*. Within the jurisdiction of the Coutume de Paris, the right of justice was required to be established by “specific title, concession, or permission from the king.”⁸⁹ In implementing this right, seigneurs appointed judges to hear disputes within their cognizance. This could include cases between a seigneur and those within his jurisdiction relating to the fief, such as arrears of seigneurial taxes and rentes. In this case the seigneur was both judge and party. Where the actions of the seigneur were placed in question, however, the case was required to be heard by either a higher seigneur or by a royal

⁸⁶ Mousnier, *Institutions of France*, 761.

⁸⁷ Ferrière, *Nouveau commentaire*, Article 47, 1:116; Henecker, *Seigniorial Regime*, 92. Under the Coutume du Vexin français, relief was required for every mutation, including sales or acts equivalent to sales and transfers by direct succession. It thus took the place of the quint in the Coutume de Paris, and applied to transfers that the quint did not. As a result, this coutume was, for the seigneur, “distinctly more advantageous than under the Custom of Paris,” and the use of it in concessions in Canada was for this reason understandable. Henecker, *Seigniorial Regime*, 94.

⁸⁸ Niort “Aspects juridiques,” 486. Niort would rather classify these under the heading of *droits seigneuriaux banaux*, as they arise from the public prerogatives of the *seigneur banal*, the most important of which was the right of justice.

⁸⁹ Mousnier, *Institutions of France*, 505. See also, Niort, “Aspects juridiques,” 500.

judge.⁹⁰ As a personal right, the seigneurial right of justice applied to all those living within the seigneur's *ressort*, or jurisdiction, and not only to those with whom the seigneur had a contractual relationship.

A seigneur might have the power of high, middle, or low justice. The scope of authority of each was not specified in the *Coutume de Paris*.⁹¹ French legal commentators, however, followed the custom of the *prévôte et vicomté* of Paris, which had been summarized in articles drawn up by drafters of the new *Coutume*, but never found its way into the final document.⁹² Generally, therefore, according to the commentators, seigneurs of high justice were required to hire for specific positions to help administer justice within their jurisdiction, including a *bailli*, or judge, a *procureur fiscal*, or public prosecutor, a *greffier*, or clerk/registrar, and other personnel to implement the judge's orders, such as *sergents* and jailers.⁹³ Seigneurs of high justice had broad civil and criminal jurisdiction, which included capital offenses, and helped to implement and enforce *règlements* and *arrêts* of higher authorities pertaining to such things as weights and measures, or the functioning of the highways.⁹⁴ Their jurisdiction, however, did not extend to crimes against the state, such as treason, counterfeiting, unlawfully bearing arms, or participating in seditious activities. Seigneurs *hauts justiciers* also had additional rights such as the right to claim property of a deceased without lawful heirs, or the right to claim flotsom and jetsom that

⁹⁰ Higher royal judges were courts of first instance for all *cas royaux* and *cas prévôtaux*. The former included all cases in which "the majesty of the sovereign, the dignity of his officials, or the safety and tranquility of the public are violated or concerned." Mousnier, *Institutions of France*, 505-506. Listed were specifically enumerated serious crimes.

⁹¹ The *Coutume* nevertheless makes reference to the different levels of seigneurial justice and certain of the rights attached thereto. For example, the seigneur of high justice has the right to seize the property of one who dies within his jurisdiction without apparent heirs. Ferrière, *Nouveau commentaire*, Article CLXVII, 1:364-365. Also, only the seigneur of high justice and seigneurs having fifty *arpents* of land may possess an elaborate dovecote called a *colombier à pied*. Ferrière, Articles LXIX and LXX, 1:145.

⁹² Mousnier, *Institutions of France*, 507.

⁹³ Mousnier, 507.

⁹⁴ Mousnier 510.

washed up on the lands of the seigneurie. Honorific rights included such things as the right of precedence in seating in the church, or the right to own a certain types of dovecote.

The jurisdiction of the seigneurs of middle justice was narrower in that it extended only to civil actions and more minor offenses. They too were required to maintain a court administration with a judge, an attorney, and a clerk or registrar. A seigneur of low justice's jurisdiction was narrower still, covering civil matters which involved small amounts of money, as well as minor offenses.⁹⁵

At the start of the colony of Nouvelle-France, justice was dispensed by the commanders of the colony as representatives of the king. Thus figures such as Samuel de Champlain, lieutenant and commandant at Québec, and Sieur de Mont, lieutenant-général of l'Acadie, were given broad authorities to issue laws, appoint judicial officers and impose punishment. The first courts in Nouvelle-France were established as seigneurial courts. The first such court was founded in Beaupré in 1646.⁹⁶ In 1648, the Société de Notre-Dame created a seigneurial court for the island of Montréal, and in 1651, the Compagnie de la Nouvelle-France established two seigneurial courts for the largest population centers, the Sénéchaussée de Québec and the Sénéchaussée de Trois-Rivière.⁹⁷ Seigneurial courts could also be found in areas surrounding cities where there was sufficient population.⁹⁸ The courts established by the Compagnie in Québec and Trois-Rivière were replaced by royal tribunals in 1663 when Nouvelle-France

⁹⁵ Mousnier, 511-512.

⁹⁶ John A. Dickinson, "New France: Law, Courts, and the Coutume de Paris, 1608-1760," *Manitoba Law Journal* 23 (1995): 32-54, par. 12.

⁹⁷ Marcel Trudel, *Histoire de la Nouvelle-France, IV: La seigneurie de la Compagnie des Indes occidentales, 1663-1674* (Québec: Éditions Fides, 1997), 36.

⁹⁸ John Dickinson, for example, finds evidence that seigneurial courts were operating on the Île d'Orléans as early as 1660, and that a seigneurial court for the seigneurie of Notre Dame des Anges, which included all the areas surrounding Quebec itself, from Beaupré to Cap Rouge, had an operating court as early as 1664. John A. Dickinson, "La justice seigneuriale en Nouvelle-France: Le cas de Notre-Dame-des-Anges," *Revue d'histoire de l'Amérique française* 28, no. 3 (décembre 1974): 326, 345.

became a royal province, and a royal court replaced the seigneurial court in Montréal in 1666.⁹⁹ After 1693, high justice was withdrawn from seigneurial courts which now exercised only medium and low justice.¹⁰⁰

While most seigneurs in Nouvelle-France were accorded rights of justice that included high justice, at least in the seventeenth century, it is unclear to what extent justice was actually exercised by seigneurial courts outside the large population centers.¹⁰¹ Scholars have generally tended to minimize the impact of seigneurial justice in Canada.¹⁰² This is attributed to the fact that the exercise of judicial authority became overly burdensome and prohibitively expensive for the Canadian seigneur.¹⁰³ What is clear, even with regard to larger seigneuries, is that seigneurial justice in Canada remained, at least after 1663, under the oversight of the state, which oversight made it more difficult for seigneurs to benefit from this right.¹⁰⁴ Not only were appeals to be heard by the royal courts, but the state administration took specific action regulating the seigneurs' exercise of their rights.¹⁰⁵ For example, the Conseil souverain issued an arrêt in 1664, "forbidding all inferior judges and procurators fiscal to take any payment or fees from the parties," beyond their salaries, thus limiting the financial advantage to seigneurial functionaries,

⁹⁹ Trudel, *La seigneurie*, 40.

¹⁰⁰ Ministère de la justice, Gouvernement du Québec, "La justice sous le Régime français," accessed April 4, 2017, <http://www.justice.gouv.qc.ca/>.

¹⁰¹ In Nouvelle-France, where the Coutume de Paris applied, followed the maxim that "fief and justice have nothing in common." Mousnier, *Institutions of France*, 517; Heneker, *Seigniorial Regime*, 210. In other words, justice did not automatically attach by the mere possession of a seigneurie, but rather must be granted expressly in a deed of concession. This was not the case in all provinces in France.

¹⁰² For example, Cole Harris argued that the near absence of appeals of seigneurial courts before the royal courts demonstrated the inactivity of the former. Cole Harris, *Seigneurial System*, 190. It is interesting to note that the Special Court constituted under the authority of the Seigniorial Act of 1854 to assess the various rights of seigneurs for the purpose of calculating compensation upon the abolishment of seigneurialism in Lower Canada, addressed the issue of the extent to which justice had actually been exercised by Canadian seigneurs during the French regime. The court found "scarcely any instances . . . of the exercise of the superior jurisdiction," and in fact, "very few of these seigniors appear to have exercised even the mean or inferior jurisdiction." Simon Lelièvre and François Réal Angers, eds., *Lower Canada Reports: Decisions des tribunaux du Bas-Canada: Seigniorial questions* (Québec & Montréal: A. Coté, and Duvernay Bros., 1856), 1:351.

¹⁰³ E.g. Heneker, *Seigniorial Regime*, 210-211.

¹⁰⁴ Niort, "Aspects juridiques," 502.

¹⁰⁵ *Edits, Ordonnances*, 1:236-37.

and ultimately to the seigneurs themselves.¹⁰⁶ Another ordonnance, issued in 1670, provided that criminal proceedings required three “*juges gradués*” to be present, which most likely meant judges with some University training.¹⁰⁷ Given the dearth of the latter in the colony, this probably contributed to a decrease in criminal cases before seigneurs with high justice.¹⁰⁸

Notwithstanding this, some have expressed the view that the activity of the seigneurial courts in Canada has been underestimated.¹⁰⁹ According to John Dickinson, given the high percentage of the overall population in the Québec region that lived within large seigneuries, it was reasonable to estimate that by the end of the French regime, 60 percent of Canada’s population came under the jurisdiction of a seigneurial judge.¹¹⁰

Le droit de banalité. The banal rights took their name, according to Niort, from the power of the seigneur banal (the seigneur exercising justice) to command.¹¹¹ The seigneur had the right to require the use of certain facilities which he or she built—grain mills, bread ovens—and to impose a fee for that use. The *droit de banalité* was, in effect, a seigneurial monopoly on certain essential services and applied to all those who lived on the seigneurie. Pursuant to Article 71 of the Coutume de Paris, there was no right of banalité without title, meaning that it had to be

¹⁰⁶ *Decisions des tribunaux*, 1:352, quoting “Arrêts du Conseil Supérieur de Québec défendant à tous Juges subalternes et Procureurs fiscaux de prendre aucuns salaires des parties [. . .],” dated 12 November 1664, in *Arrêts et réglemens du Conseil Supérieur de Québec, et Ordonnances et Jugemens des intendans du Canada* (Québec: E.R. Fréchette, 1855), 2:22. This order of the *Conseil* is not on its face limited to Canada, and so may theoretically apply to other colonies of Nouvelle-France, including l’Acadie. However, the problem to which it was expressly addressed, namely abuses by subordinate judges, was undoubtedly at this time largely, if not exclusively, limited to areas with larger population centers in Canada.

¹⁰⁷ Dickinson, “La justice seigneuriale en Nouvelle-France,” 330, and 330, n. 35.

¹⁰⁸ Dickinson, 330. Dickinson also notes that criminal cases required more work and in Canada, resulted in lower fees, and that seigneurs had to pay the costs of jailing criminal suspects. Dickinson, 330.

¹⁰⁹ Niort, “Aspects juridiques,” 502, n. 178, referencing Dickinson, “La justice seigneuriale en Nouvelle-France,” 346.

¹¹⁰ Dickinson, “La justice seigneuriale en Nouvelle-France,” 346.

¹¹¹ Niort, “Aspects juridiques,” 502.

established contractually in the concession of fief or censive.¹¹² Censitaires were required to grind grain at the seigneurial mill, bake bread in the seigneurial oven, or press wine in the seigneurial winepress. The seigneur, however, retained the right of monopoly only to the extent that the mill, oven, or press was provided and kept in good functioning order.¹¹³

As early as the seventeenth century, commentaries on the Coutume de Paris considered this right a usurpation of the public power, and contrary to the “*droit commun*” and “*liberté naturelle*.”¹¹⁴ As such, it was to be interpreted narrowly.¹¹⁵ Niort argues that Canada inherited this negative view of the right of banality.¹¹⁶ Of the banal rights found in France, only two were claimed with any regularity in Nouvelle-France, the grist mill and the bake oven.¹¹⁷ The latter, however, was hardly enforced as winter conditions made it impractical to bake outside the home.¹¹⁸

The banal right to build and operate flour mills, however, was a right asserted by seigneurs in Canada, although surprisingly few inhabited seigneuries contained a flour mill in the years before Canada became a royal colony.¹¹⁹ An arrêt of the Conseil souverain, dated June 1667, sets the fee seigneurs could charge for milling grain at one “fourteenth portion,” an amount

¹¹² Ferrière, *Nouveau commentaires*, Article 71, 1:147-148; Mousnier, *Institutions of France*, 497.

¹¹³ Mousnier, *Institutions of France*, 497.

¹¹⁴ Niort, “Aspects juridiques,” 503, n. 182. As Niort notes, in other coutumes, the *droit de banalité* was considered a power inherent in the seigneur’s right of justice, or even in the holding of the fief. This includes the coutumes of Bretagne, Marche, Maine, Poitou, and Anjou. Niort, 503, n. 183.

¹¹⁵ Niort, 503.

¹¹⁶ Niort, 504; *but see* Dechêne, “L’évolution,” 164, arguing that “[t]he right of *banalité* was much more vigorous in Canada than in France where towards the fifteenth and sixteenth centuries it was often enough redeemed by the rural communities” (Le droit de banalité est beaucoup plus vigoureux au Canada qu’en France, où, vers les XV^e et XVI^e siècles, il fut assez souvent racheté par les communautés rurales).

¹¹⁷ The *droit de bac*, or right to operate and charge for a ferry, appears to have been asserted and not questioned in Canada on occasion. Heneker, 136. Dechêne has written that in her search of the archives for Montreal, she found no trace of the assertion of the right of weights and measures (*droits de poids et mesures*), or the right to recover maintenance costs for fairs and markets. Dechêne, “L’évolution,” 167.

¹¹⁸ Heneker, *Seigniorial Regime*, 114.

¹¹⁹ Trudel found that only seven of the forty-seven seigneuries which appeared to be occupied contained mills in 1663. Trudel, “Les obligations du censitaire à l’époque des Cent-Associés,” *Revue d’histoire de l’Amérique française* 27, no. 1 (Juin 1973): 27.

seigneurs were willing to accept, but only grudgingly, given the high costs of building and maintaining such mills in the colony.¹²⁰ This arrêt appears to apply to the entire colony of Nouvelle-France, including l'Acadie. In some areas, as in Montréal, the right could be farmed out by way of a long term lease.

Perhaps in recognition of the high costs for constructing and operating mills in the —at least in the seventeenth century when populations were lower—and the habitants' need for such mills, the state modified the terms of the Coutume de Paris in ways that encouraged seigneurs to build mills, and provided recourse to habitants when they did not. First in 1675, by order of court and again 1686, by a royal arrêt, the banal right was made automatic upon possession of a seigneurie.¹²¹ Moreover, it was held that seigneurs must construct a banal grain mill, whether water or wind, within a year from the order or from acquiring the seigneurie, or lose the banal right to any person who could build a banal mill in the seigneur's stead.¹²² This order was not promulgated by the Conseil souverain until 1707, and in any event was not consistently enforced until after 1711.¹²³ By its terms, this arrêt was applicable to all of Nouvelle-France, including l'Acadie.

¹²⁰ “Arrêt: Qui règle les moutres à la quatorzieme portion,” *Ordonnances des intendants et arrêts portant reglements du Conseil Supérieur de Quebec* (Quebec: P. E. Desbarats, 1806), 2:131-132.

¹²¹ Heneker, *Seigniorial Regime*, 115; “Arret: Du Conseil d’Etat au Sujet de Moulins Bannaux,” *Edits, Ordonnances Royaux, Declarations et Arrets du Conseil D’etat du Roi, Concernant le Canada*, vol. 1 (Quebec: P.E. Desbarats, 1803), 266-267. The *arrêt* states that “all seigneurs who possess fiefs in the extent of the said country of Nouvelle-France are required to construct there banal mills within one year after publication” (tous les seigneurs qui possèdent des fiefs dans l’étendue du dit Pays de la Nouvelle-France, feront tenus d’y faire construire des Moulins Bannaux dans le tems d’une année après la publication du présent arrêt). This was read as changing this right from a personal to a *réel* right, like the *cens*, connected with the fief itself. François Joseph Cugnet, *Traité de la loi des fiefs* (Quebec: Chez Guillaume Brown, 1775), 36-37.

¹²² “Arret: Du Conseil d’Etat au Sujet de Moulins Bannaux,” *Edits, ordonnances royaux, declarations et arrets du Conseil D’État du Roi, concernant le Canada* (Quebec: P. E. Desbarats, 1803) 1:266-267; Heneker, *Seigniorial Regime*, 123; Niort, “Aspects juridiques,” 508; Francis Joseph Cugnet, ed., *An Abstract of the Several Royal Edicts and Declarations, and Provincial Regulations and Ordinances, that were in force in the Province of Quebec in the Time of the French Government [. . .]* (London, 1772), 6.

¹²³ Niort “Aspects juridiques,” 508, n 202.

The *droit de peche* (fishing rights) and the *droit de chasse* (hunting rights) are not expressly provided for in the Coutume de Paris. While these are often categorized as banal rights, the source of these rights appear to be more complicated, at least with regard to fishing rights, as will be discussed below. Nonetheless, as with the other rights considered banal, they were a form of monopoly and a source of revenue for the seigneurs, at least as relates to commercial fishing. In the case of commercial fishing, the percentage of take realized by the seigneur varied and was set by agreement.¹²⁴ Commercial fishing rights in particular could be “farmed out, leased or redeemed directly by the habitants” and others.¹²⁵

The extent of the seigniorial *droit de peche* depended on whether the water body in issue was navigable or non-navigable. Navigable and floatable rivers in France seem always to have been part of the public domain as a matter of common law, mirroring Roman law.¹²⁶ The same may be said of the seas and the lands flowed by the tide, or foreshore, (*l'estran*), both of which were considered part of the maritime domain of the state. The fish within the sea and in navigable rivers were, by extension, also part of the public domain.¹²⁷ These belonged to the community, but “devolved essentially on the Sovereign as uniting in his person all the rights and interest of the community, by reason of the public power which resides in him alone.”¹²⁸

Activities undertaken in navigable waters and lands flowed by the tide that interfered with public uses, such as navigation, were prohibited.

¹²⁴ Trudel, “L’obligation,” 27-28.

¹²⁵ Niort “Aspects juridiques,” 508-509.

¹²⁶ Pierre Dufrénoy, *Histoire du droit de chasse et du droit de pêche dans l’ancien Droit français*, thèse pour le doctorat, Faculté de droit de Paris (Paris: Arthur Rousseau, 1896), 109.

¹²⁷ Dufrénoy, 111.

¹²⁸ Bernard Gainot, “Les cadeaux de Neptune; les lais et relais de mer dans le droit maritime moderne,” in *Le milieu littoral*, ed. Jacques Malézieux (Nantes: Éditions du CTHS, 2002), 18, quoting René-Josué Valin, *Nouveau Commentaire sur l’ordonnance de la Marine, Du Mois d’Août 1681*, vol. 2 (La Rochelle: Chez J. Legier, 1766), 624; “est dévolu essentiellement au Souverain comme réunissant dans sa personne tous les droits et les intérêts de la communauté, à raison de la puissance publique qui réside en lui seul”; see also Germain-Antoine Guyot, *Traité des fiefs, tant pour le pays coutumier que pour les pays de droit écrit*, vol. 5, part 2 (Paris: Chez Saugrain, 1751), 663.

And yet, in feudal times, when the king's proprietary and sovereign rights over property were sometimes inseparable, the king often agreed to grant waters in a river and fishing rights therein as part of the concession of the adjacent upland, or to allow development in navigable waters of one sort of another. The latter might include a concession to build a *moulin à marée* across a sound that was the outlet of a river, or a franchise to local habitants to drain coastal marshes in order to farm them.¹²⁹ The rule was clear, however, that the riparian owner had no right in navigable waters or lands flowed by the tide without express title granted by the king.

In contrast, by the beginning of the fourteenth century it was clear that non-navigable rivers and streams, and the fish in them, were private property belonging to the owner of the land over which they flowed.¹³⁰ Thus, the seigneurial *droit de pêche* in non-navigable waters was “considered as an attribute of ownership,” and seigneurs were free to transfer those rights, for example as part of a concession to a censitaire, or lease them for consideration.¹³¹

The customary law in Canada was the same as in France with regard to property rights in rivers, streams, intertidal lands and the fish resources they contained, and there is no reason to believe it was not the same in other parts of Nouvelle-France. In order to have fishing rights in a navigable river, or tidally flowed lands, an express concession from the king was necessary, and indeed many seigneurial titles in Canada conferred these rights.¹³² Further, as in France, “to give validity to the concession of these rights,” they could not be “contrary to the public usage of

¹²⁹ Dufrénoy, *Histoire du droit*, 110; Gainot, “Les cadeaux,” 19. A 1566 ordonnance proclaimed the inalienability of property in the public domain. Louis XIV attempted unsuccessfully to extinguish private property rights in rivers granted before this time, if the holders could not produce good title. He was forced to recognize the property right to navigable rivers even to those who could not produce such titles, agreeing instead to accept two years revenue. Dufrénoy, *Histoire du droit*, 111.

¹³⁰ Dufrénoy, *Histoire du droit*, 117-118. Guyot writes, “In the Pays de Droit écrit [the non-navigable rivers] commonly belong to the seigneurs of high justice. In the Pays de Coutume, they are generally a right of fief; . . . the ownership, which carries the exclusive right to construct a mill and of fishing, belongs to the fief.” Guyot, *Traité des fiefs*, 664; ès Pays de Droit écrit, communément elles appartiennent aux hauts-justiciers. Dans les Pays de Coutume, elles sont généralement un droit de fief; . . . la propriété, qui emporte droit de moulin & de pêche exclusif, appartient au féodal.

¹³¹ Dufrénoy, *Histoire du droit*, 119.

¹³² Lelièvre and Angers, eds., *Décisions des Tribunaux*, 1:374.

these rivers, in regard to navigation and commerce, which usage is inalienable and imprescriptible.”¹³³ As to non-navigable rivers and streams, seigneurs had the right of property in these as a matter of title of concession.¹³⁴ In Canada, where habitants fished for their own use, they typically were not charged.¹³⁵ Where they fished for the market, however, the custom appears to have been that the seigneur would take a certain percentage of the fish caught per season.¹³⁶ The *droit de peche* was no longer mentioned in concessions in Canada granted after 1711, and was therefore effectively abolished in navigable waters going forward.¹³⁷

The *droit de chasse*, or the seigneurial hunting right, had its origin in the notion that hunting was preparation for war, and, so, it was reasoned, should be exercised by those who fought wars, which in the ancient France, were the nobles.¹³⁸ By the seventeenth century in France, this notion had evolved into a rigid rule limiting the right to engage in hunting to seigneurs and nobles. All others were prohibited from hunting under the threat of severe punishments, including death in the case of repeat offenders.¹³⁹ For seigneurs of high justice, the right extended to the entire extent of their judicial jurisdiction.¹⁴⁰ This included the seigneur’s own *domaine*, any fiefs or *censives* holding from him, and any other fiefs or *censives* or allodial properties that fell within that jurisdiction.¹⁴¹ A seigneur without high justice also held a right to hunt, but this was limited to the extent of his or her own fief, including vassals’ and censitaires’

¹³³ Lelièvre and Angers, 1:374.

¹³⁴ Lelièvre and Angers, 1:345. The nineteenth century court that convened to assess the scope of seigneurial rights in Lower Canada for purposes of providing compensation for those rights upon the abolishment of seigneurialism, considered the seigneurial right to fish in non-navigable waters part of the “common law of fiefs.”

¹³⁵ Trudel, “Les obligations,” 27.

¹³⁶ Heneker, *Seigniorial Regime*, 136, citing William Bennett Munro, *The Seigniorial System in Canada: A Study in French Colonial Policy* (Cambridge: Harvard University Press, 1907), 140.

¹³⁷ Noirt, “Aspects juridiques,” 509, n. 210.

¹³⁸ Dufrenoy, *Histoire du droit*, 24. It was thought that extending this right to laborers or even artisans and mechanics of any sort would only encourage them to leave off their work in the fields and shops, to the detriment of themselves and society.

¹³⁹ Marcel Marion, *Dictionnaire des institutions de la France aux XVII^e – XVIII^e siècles*, reprint of 1923 edition (Paris: Éditions A. & J. Picard, 1993), 87

¹⁴⁰ Dufrenoy, *Histoire du droit*, 44.

¹⁴¹ Dufrenoy, 45.

lands, at least, it seems, where the fief was composed of land relatively contiguous.¹⁴² The right to hunt was considered a personal right, as opposed to one derived from property ownership, attaching as it did to one who was a member of the warrior class.¹⁴³ Following this logic, this honorific right could not, at least in theory, be the subject of a transaction for money.¹⁴⁴

In Canada, where the seigneurs eagerly sought recognition of this right in their titles, it nonetheless seems to have been difficult to enforce. As Louise Dechêne wrote, “[i]t is hard to imagine how they would be able to enforce it in a country where each habitant is armed for his defense and where game abounds.”¹⁴⁵ As with fishing, the practice appears to have been that censitaires were free to hunt within the limits of their own land. The freedom to fish and hunt was confirmed by Governor Lauzon in 1652, as long as one did not do so on or in front of lands not conceded or the lands of one’s neighbors.¹⁴⁶

Les droits conventionnels. The conventional rights were those that only existed if the parties stipulated to them in the concession document. They thus applied only to the parties to that contract.¹⁴⁷ Included in this category are the *corvées*, the *droit de retrait*, and various *servitudes* and *reserves*.¹⁴⁸

¹⁴² Dufrénoy, 47-48.

¹⁴³ Louis Dechêne, “L’évolution,” 166, n. 3; Dufrénoy, *Histoire du droit*, 55.

¹⁴⁴ Marion, *Dictionnaire*, 871; “Different from the right of fishing which was a right that could produce profit and could be leased out, the right of hunting was essentially a personal right” (À la différence du droit de pêche qui était un droit utile et pouvant être affermé, le droit de chasse était essentiellement un droit personnel); Dechêne, “L’évolution,” 166, n. 3; Dufrénoy, *Histoire du droit*, 46.

¹⁴⁵ Dechêne, “L’évolution,” 166; “on imagine mal comment ils auraient pu le faire renforcer dans un pays où chaque habitant est armé pour sa défense et où le gibier abonde.”

¹⁴⁶ Ordonnance du Gouverneur de Lauzon, 13 avril 1652, found in *Rapport de l’archiviste de la province de Québec pour 1924-1925* (Québec: Ls.-A. Proulx, 1925), 377, referenced in Trudel, “L’obligations” 27, n. 91.

¹⁴⁷ Niort, “Aspects juridiques,” 510.

¹⁴⁸ Some scholars include the *corvées* in the category of banal rights. I follow here the categorization of Niort who argues that although *corvée* is treated in article 71 of the Coutume de Paris relating to the banal rights, it was read even more restrictively by the commentators than the banal rights (e.g. the mill monopoly). Niort, “Aspects juridiques,” 511.

The right of *corvée* was the right to exact a specific number of days of work from the habitants on the seigneurie. By the seventeenth century, the *corvée* was criticized by French legal scholars,¹⁴⁹ and the practice had fallen out of favor.¹⁵⁰ Pursuant to Article 71 of the Coutume de Paris, the right of *corvée*, like that of the banal right of mills also covered in Article 71, had to be expressly provided for in the concession.

It appears that it was not customary to assert the right of the *corvée* in early Canada, at least *corvée* for the sole benefit of the seigneur,¹⁵¹ and that it was only in the beginning of the eighteenth century that the *corvée* began appearing with any regularity in concessions.¹⁵² In any event, there seems very little concern about it by either the habitants or government officials in the early days of the colony. This would change, as Canadian seigneurs began stipulating days of *corvée*, and requiring it even where it had not been agreed upon.¹⁵³ By 1716, officials were complaining about these practices to the French minister.¹⁵⁴

Seigneurial *corvées* should be distinguished from *corvées* organized by the state for public works. A *réglement* addressed to certain remonstrances made by the burghers of Quebec shows that at least as early as 1706, the state called upon habitants to build public roads under

¹⁴⁹ Niort, "Aspects juridiques," 510.

¹⁵⁰ Harris, *Seigneurial System*, 69. Dechêne argues that the need for the *corvée* in France diminished as the practice of farming out the domaine increased. In Canada, where labor was scarce, there was more reason to assert the right. Dechêne, "L'évolution," 168.

¹⁵¹ Munro, *Seigniorial System in Canada*, 127; Heneker, *Seigniorial Regime*, 131. In his study of the obligations of *censitaires* in the time of the Cent-Associés (prior to 1663), Trudel found only three cases on two seigneuries where concessions contained work requirements that were for the sole benefit of the seigneur (as opposed to work *censitaires* did in common to benefit the seigneurie and therefore themselves). "The personal *corvée*," he writes, "is no longer an established system" (La *corvée* personnelle n'est pas encore un système établi). Trudel, "Les obligations," 30-31.

¹⁵² Harris, *Seigneurial System*, 69.

¹⁵³ Munro, *Seigniorial System in Canada*, 128. During the French period, the *corvée* rarely exceeded six days a year. Heneker, *Seigniorial Regime*, 133.

¹⁵⁴ Munro, *Seigniorial System in Canada*, 128. In 1716, intendant Michel Bégon issued an ordonnance prohibiting seigneurs from attaching conditions requiring *corvée* in future concessions. "Ordonnance qui [. . .] défend à tous seigneurs de cette colonie d'insérer cette clause de *corvées* dans concessions qu'ils feront, à peine de nullité," 22 janvier 1716, *Edits, Ordonnances*, 1:57-58. It is not clear to what extent this was enforced.

the supervision of an official known as the *grand voyer*.¹⁵⁵ This was known as the “king’s corvée” to distinguish it from corvée owed to seigneurs.¹⁵⁶

Pursuant to the Coutume de Paris, a seigneur enjoyed the right of *retrait féodal*, allowing him or her to regain the domaine utile of his fief that had been sold to a third party by paying the purchase price within forty days of the sale.¹⁵⁷ Under the coutume, this applied only to fiefs and not to censives. “This meant,” Mousnier writes, “that wherever the custom of Paris was applicable, the *seigneurie utile* became a very well-protected and free form of ownership, quite close to quiritarian ownership.”¹⁵⁸

In Canada, however, seigneurs began introducing into their contracts a right of *retrait roturier*, also called *retrait censier*, by which they could effectively apply the right of retrait to lands held en censive.¹⁵⁹ Administrators considered this an abuse of seigneurial authority, and even questioned the appropriateness of retrait féodal in the colony. However, no measures were ever taken to restrict these practices,¹⁶⁰ and indeed, intendants upheld actions taken by seigneurs exercising their right of *retrait censier*.¹⁶¹ It should be noted that under the Coutume de Paris, *retrait lignager*, the right of vassals and censitaires to retake land sold out of the family by paying the purchase price, took precedence over *retrait féodal*. Thus, retrait lignager could be exercised up to a year and a day from the sale, even after the seigneur had retaken possession.¹⁶²

By the end of the French regime in Canada, however, the retrait roturier would come to take

¹⁵⁵ “Reglement de Police du premier Février, 1706, VII,” *Ordonnances des intendants*, 2:170.

¹⁵⁶ Munro, *Seigniorial System in Canada*, 132; Heneker, *Seigniorial Regime*, 133.

¹⁵⁷ Ferrière, *Nouveau commentaire*, Article 20, 1:62-63.

¹⁵⁸ Mousnier, *Institutions of France*, 499.

¹⁵⁹ Heneker, *Seigniorial Regime*, 153. Niort notes that the retrait censier was practiced in Normandy as well as in Poitou, and the Canadian practice, which began early in the colony, may have been derived from the former. Niort, “Aspects juridiques,” 513, n. 227. Retrait roturier began appearing in contracts in Montréal at the end of the seventeenth century. Dechêne, “L’évolution,” 168.

¹⁶⁰ Heneker, *Seigniorial Regime*, 154-155.

¹⁶¹ Dechêne, “L’évolution,” 169.

¹⁶² Ferrière, *Nouveau commentaire*, Article 129, 1:284-285. Which relatives may exercise this right, the conditions necessary for the validity of the retrait, and the types of property interests subject thereto are all discussed at length in the Coutume in the articles following Article 129.

precedence over the retraits lignagers, in direct contradiction of the provisions of the Coutume de Paris, and thus reducing the protections the law had provided to preserve the family land.¹⁶³ The retraits féodaux and retraits censiers should not be confused with the *droit de réunion*, which allowed Canadian seigneurs to request that the intendant “reunite to their domaine a censive which has been abandoned by its holder or that has not been cleared, or for which the arrears of seigneurial fees had become too sizeable.”¹⁶⁴

Finally, depending on the strength of the *censitaire*'s bargaining position, the seigneur could include a variety of *servitudes* and *réserves* in the concession. In instances where the seigneurie was relatively empty, the colonist was in a stronger position to resist these. Where, however, land was at a premium, the seigneur could make greater demands.¹⁶⁵ This perhaps explains why the appearance of servitudes in contracts increased in Canada at the end of the seventeenth century when seigneuries were becoming more populated.¹⁶⁶ Seigneurs included some common reservations, such as those for wood and stone, mines, ores, and minerals; for the use of beaches; for mill and church sites; and for rights of passage for public roads.¹⁶⁷ There were instances, as intendant Bégon complained in correspondence of 1716, that seigneurs allowed habitants to cut wood on their *censives*, but only on condition that they pay a fee.¹⁶⁸ In addition, the crown regularly reserved trees that could be used for building ships in seigneurial concessions, as well as a right to be notified should ores and minerals be discovered in order to secure a share. In order to ensure that these royal reservations were respected, they were repeated in the concessions the seigneur granted to vassals and censitaires.

¹⁶³ Dechêne, “L’évolution,” 169, citing to Harris, *Seigneurial System*, 75.

¹⁶⁴ Niort, “Aspects juridiques,” 512.

¹⁶⁵ Niort, 514.

¹⁶⁶ Dechêne, “L’évolution,” 170.

¹⁶⁷ Munro, *Seigniorial System in Canada*, 134; Niort, “Aspects juridiques,” 513

¹⁶⁸ Munro, *Seigniorial System in Canada*, 134.

Concessions in the colony often contained miscellaneous obligations constraining the censitaire. This included the requirement to establish a residence (*tenir feu et lieu*), often within some specified period; to clear and cultivate the land; to enclose the concession, in the absence of which no damages could be claimed for any harm caused by neighbors' animals; to permit access roads to be built across one's concession, often to the water, and to help build the roads in some cases; to pay the *dîme*; and, in at least four seigneuries in the early years of the colony, to seek the seigneurs authorization before selling one's cession.¹⁶⁹

Les droits honorifiques. The *droits honorifiques* were the opposite of *droits utiles*, discussed above, all of which carried some economic advantage. In contrast, the *droits honorifiques* were a mark of authority and social superiority. These are sometimes associated with *seigneurs hauts justiciers* and seigneurs who were patrons of the church.¹⁷⁰ These seigneurs could be given precedence in activities associated with the parish church, such as the right to have a fixed pew, the right to a sepulcher in the choir, the right of preference in procession, or the *droit de litre funèbre*, which was the right on the death of the seigneur to have the church hung with black banners with the arms of the lord.¹⁷¹ Seigneurs also had certain precedence in social matters, such as the right to decide whether festivals could or could not be held in a village.¹⁷² The Canadian custom of "*premier mai*," whereby the habitants planted a trimmed fir tree before the seigneurial manor house, appears to be connected to the *droits honorifiques*, in that it is a way to recognize the seigneur's preeminence in the community.¹⁷³

¹⁶⁹ Trudel, "Les obligations," 31-34.

¹⁷⁰ Niort, "Aspects juridiques," 461, n. 41; Marion, *Dictionnaire*, 190, s.v. "droits honorifiques."

¹⁷¹ Marion, *Dictionnaire*, 190, s.v. "Droit honorifiques."

¹⁷² Marion, 190.

¹⁷³ Niort, "Aspects juridiques," 461, n. 43, referencing Marcel Trudel, *Le régime seigneurial*, Les brochures de la Société historique du Canada 6 (Ottawa: 1956), 12.

Seigneurial Obligations

In addition to the obligations placed on all French seigneurs—the personal obligations of *foy et hommage*, and *aveu et dénombrement*, and the monetary obligation to pay *quint* and *relief* to the dominant seignior, in this case, the crown—concessions of land granted *en seigneurie* in Nouvelle-France imposed additional burdens on seigneurs that were unique to the colonies.¹⁷⁴ Concessions of land granted in Canada as well as in l'Acadie, for example, often included specific obligations for the seigneur to people their seigneuries with tenants.¹⁷⁵ Certain colonial concessions also required a seigneur to live on the *seigneurie*, and to impose the same condition on those to whom lands were conceded, an obligation sometimes honored in the breach.¹⁷⁶

Concessions also contained royal prohibitions and reservations addressed to colonial conditions. Concessions granted by the Compagnie de la Nouvelle-France frequently contained, for example, a prohibition against trading with Native peoples.¹⁷⁷ Royal reservations included

¹⁷⁴ Even if they could be said to derive from the Coutume, these obligations changed to meet colonial conditions. For example, as discussed above, seigneurs in Nouvelle-France not only had a right to a monopoly on their grain mills, but were required to provide this mill or lose the banal right to anyone who constructed a mill in his or her stead. Other limitations found in the Coutume were not enforced in the colonies. For instance, the Coutume placed certain limitations on a seigneur's right to alienate his or her seigneurie. Up to two thirds of the fief could be alienated, as long as the granting seigneur remained responsible to the dominant seigneur for *foi et hommage*, and retained some seigneurial rights on the lands alienated. Heneker, *Seigniorial Regime*, 108-110; Ferrière, *Nouveau commentaire*, Article 51, 1:121-123. This was not enforced in Nouvelle-France. Dickinson, "New France," par. 31.

¹⁷⁵ An example in l'Acadie is the concession made to Mathieu Martin for a fief in the Minas Basin in an area known as Cobeguit. The concession is made "à la charge d'habiter et cultiver la dite terre et la faire habiter par des tenanciers" (on the condition that he live and cultivate the said land and people it with tenants). "Le Sieur Mathieu Martin," in *Pieces et documents relatifs à la tenure seigneurial* (Quebec, 1852), 333-334. The concession was made to Martin, a commoner, in light of the fact, as stated in the document, that he was "d'une des plus anciennes familles de l'Acadie y estant le premier né" (of one of the oldest families in l'Acadie being the first born there).

¹⁷⁶ Vanderlinden, *Le lieutenant*, 87. An example is the concession to Dame Marie Françoise Chartier the widow of sieur de Marson who was granted the title of fief on the rivière Saint-Jean in 1691 on the conditions of *tenir feu et lieu*, and that she hold those to whom she conceded land to the same condition. "Dame Ve. de Marson," *Pieces et documents*, 400-401.

¹⁷⁷ Heneker, *Seigniorial Regime*, 101. Other prohibitions, seen less often, included those against selling timber or collecting tolls from vessels navigating through seigniorial waters.

such things as reservations of land for fortifications, of trees that could be used by the king's navy, of minerals, of the use of beaches, or of rights of way.¹⁷⁸

In addition, a provision was included in colonial concessions, beginning in the late seventeenth century, requiring that the land be cleared within a certain period or the seigneur could face forfeiture.¹⁷⁹ This latter requirement grew out of an effort by the state, beginning in 1663, when all rights of *propriété, justice, et seigneurie* previously accorded the Compagnie de la Nouvelle-France were reunited to the crown, to take measures to ensure that seigneurs of Nouvelle-France were developing and peopling their seigneuries.¹⁸⁰ In 1663, finding that concessions in the colonies were largely uninhabited, and too large to be cleared and the inhabitants adequately protected, the king ordered that lands must be cleared within six months from the date of the order, or be distributed by new concessions to others.¹⁸¹ This began a series of actions, known as the "Edicts of Retrenchment," by which the crown attempted to assess and order property holdings in the colonies, both for purposes of administrative record keeping, and more importantly, as an attempt, only moderately successful, to establish a more efficient and successful colonization process.¹⁸² On their face, these apply to Nouvelle-France as a whole.

¹⁷⁸ Heneker, 101-102. Reservations are found in concessions for lands in Canada as well as l'Acadie. An example of the latter is the reservation in the letters patent of 1647 to Charles de Menou Sieur d'Aulnay Charnizay for l'Acadie in which the king reserved a tenth of any profits made from mining gold, silver or copper. "Lettres Patentes en faveur du Sieur de Charnisay," février, 1647, in *Collection de manuscrits*, 1:123.

¹⁷⁹ Heneker, *Seigniorial Regime*, 83.

¹⁸⁰ "Acceptation du Roi de la démission de la Compagnie de la Nouvelle-France," mars 1663, *Édits et ordonnances*, 1:20-21 (Desbarats).

¹⁸¹ "Extrait des Régistres du Conseil d'Etat. Révocation des Concessions non deffrichées," 21 mars 1663, *Édits et ordonnances* (Desbarats), 1:24-25.

¹⁸² This decision was followed by a decision of June 4, 1672, "Arret du Conseil d'Etat du Roi pour retrancher la moitié des concessions," *Édits et ordonnances* (Desbarats), 1:60-61; and, an order of June 4, 1675, "Arret pour retrancher les concessions de trop grande étendue et pour faire un recensement," *Édits et ordonnances*, 1:71-72. Vanderlinden writes that these seem to concern mostly Canada. Vanderlinden, *Le lieutenant*, 285. However, there is nothing on their face that limits them thus, and in addressing uncleared land "along rivers," and in leaving implementation in the hands of the gouverneur général and the intendant, both of whom have jurisdiction across Nouvelle-France, appear to have been intended to have a broader application, at least in principle. As noted below, a later iteration of these orders was specifically cited as the authority to place limits on an Acadian concession. They seem not, however, to have had much effect. These would be followed by orders of May 9, 1679, "Retranchement des concessions de trop grande étendue et ordre d'en disposer, Octobre 1679," *Édits et ordonnances* (Desbarats),

Two edicts, known as the Arrêts de Marly both dated July 6, 1711, could have changed the course of land ownership in the colonies if they had been faithfully enforced.¹⁸³ The first required that seigneurs concede lands when asked, on terms customary in their area and without entry fee.¹⁸⁴ This obligation to concede became known as the *jeu de fief*. Seigneurs with undeveloped lands were required to obtain settlers or risk their seigneurie reverting to the crown. The second Arrêt de Marly provided that uncleared censives were to be forfeited to the seigneurs by decree of the intendant upon request of the seigneur.¹⁸⁵ It appears that the first decree was generally ignored, while the seigneurs did not hesitate to invoke the second arrêt against habitants who failed to cultivate their land.¹⁸⁶

An edict of March 8, 1699 specifically addressed concessions in l'Acadie.

Concessionaires were ordered to remit their titles to His Majesty within the year, or be deprived of them.¹⁸⁷ After the extension of the filing deadline, and a considerable period of deliberation by the commissioners appointed to the task, the Conseil du Roi issued its order in 1703 resolving specific conflicts, and confirming or rejecting proprietary claims. The king ordered that the

1:247; and another of April 17, 1687. The latter is referenced in an ordinance issued by Intendant Bochart de Champigny, dated 18 avril 1690, which appears to be the first action of the state limiting an overly large concession in l'Acadie, the concession of Nicolas Denis located in Miramichy. Pierre-Georges Roy, ed., *Ordonnances, Commissions, etc., etc., des gouverneurs et intendants de la Nouvelle-France, 1639-1706* (Beuceville, QC: L'Éclaireur, 1924), 196-197. The ordonnance is also published in Vanderlinden, *Le lieutenant*, 327-328.

¹⁸³ By this time, the British had control of peninsular l'Acadie (Port-Royal and other areas of what is now Nova Scotia, except Louisbourg) thus limiting the *arrêts*' effect in l'Acadie to Louisbourg and other areas outside Nova Scotia (e.g. areas in what is now New Brunswick).

¹⁸⁴ "Arrêt du roi qui ordonne que les terres dont les concessions ont été faites, soient mises en culture et occupées par des habitants," 6 juillet 1711, *Edits, Ordonnances* (Frêchette), 1: 245-246

¹⁸⁵ "Arrêt du roi qui déchoit les habitants de la propriété des terres qui leur auront été concédées, s'ils ne les mettent en valeur, en y tenant feu et lieu, dans un an et jour de la publication du dit arrêt, du 6e. juillet 1711," *Edits, ordonnances* (Frêchette), 1: 246-247

¹⁸⁶ From 1711 to 1732 Canadian habitants forfeited two hundred small grants to their seigneurs. W. B. Munro, "The Seigneurial System and the Colony," in Adam Shortt and Arthur G. Doughty, eds., *Canada and its Provinces: A History of the Canadian People and their Institutions by One Hundred Associates*, vol. 2 (Toronto: Glasgow, Brook & Company, 1914), 548-552. It is assumed that these grants were found in Canada.

¹⁸⁷ Arrêt du Conseil du roi concernant les concessions faites des terres de l'Acadie, 20 mars 1703, LAC, Fonds de la Nouvelle-France, Troisième série, vol. 2, 538-569, transcription found online at www.heritage.canadiana.ca/, C-13997, image 844 ff.; published in Vanderlinden, *Le lieutenant civil et criminel*, 368-390. All references going forward will be to the published source. The March 8, 1699 edict is referenced in the 1703 arrêt at 368-369.

province of l'Acadie be reunited to his domaine in all its extent, confirming only a limited number of titles, while rejecting all others' claims.¹⁸⁸ All fiefs confirmed were to be held of His Majesty, and all land not specifically covered by a title was considered the king's domaine. All habitants were confirmed in the ownership of their lands, conditioned on their continuing to make the appropriate seigneurial payments.¹⁸⁹ This 1703 order provides an important snapshot of the seigneurial system in l'Acadie in the beginning of the eighteenth century near the end of the French regime.

The Commons

Under the Ancien Régime, the “commons” included two forms of common property rights: the commons owned and managed by a community of inhabitants or municipal corporation; and, user rights exercised by individuals, as individuals, on private property provided for the purpose. The ownership and management of the former was determined by

¹⁸⁸ Arrêt du Conseil du roi, 20 mars 1703, LAC, in Vanderlinden, *Le lieutenant civil et criminel*, 385. Examples include the French heirs of Emmanuel le Borgne, whose claims to much of the inhabited area of l'Acadie was rejected by the king. As compensation, the le Borgne were given Pentagouët *en fief* and the river of Pentagouët (Penobscot River), as well as lands extending south to the boundary with New England, and north to the “rivière Dadouakek” to include Monts Désers (Mount Desert Isle). The La Tour family was accorded the “vieux logis” near Cap de Sable at the southern tip of Nova Scotia, as well as the fief and seigneurie of Port-Royal, including five leagues up the river, as well as the seigneurie of Les Mines to be divided in seven equal parts, five to the La Tour heirs, and the last two to the children of Alexandre Le Borgne de Belleisle and one of the La Tour heirs, Marie de Saint-Étienne de La Tour. *Cens et rentes* on houses and lands situated above the fort at Port-Royal were to be paid to the new seigneurs, and *lods* to follow the ‘custom of the land’. Some others whose titles were confirmed were required to ask the gouverneur générale and the intendant to provide the king advice as to whether the concessions should be reduced; while others saw their fiefs reduced, and the rights, including payments, they previously enjoyed transferred to the king.

¹⁸⁹ Other limitations were placed on the Acadian seigneurs by the 1703 arrêt. They were prohibited from raising the stipulated *redevances* (feudal payments), or from preventing the habitants from trading furs with the Natives, or fishing. The king also took the opportunity to prohibit the inhabitants of l'Acadie from trading alcohol with the Mi'kmaq. Interestingly, the king also determined to cede to the latter, “en pleine propriété,” the place called Chikabenacky between the baie des Mines (Minas Basin) and the baie de Chibouctou (probably Halifax Harbor), expressing a hope that if they had land they would further develop their establishments in the area, with full “permission” to hunt and fish on the peninsula of l'Acadie. As Vanderlinden points out, this is a rare case where the French crown formally asserted jurisdiction over Native lands. Vanderlinden, *Le Lieutenant*, 142.

custom, which might or might not be written in local bylaws. These commons could be wastelands, marshes or arable lands. Proceeding on the theory that the lands belonged originally to landowners who granted the community the use of these gratis, the state prescribed by royal edict in 1699 that landlords could reclaim ownership of one-third of land possessed by the community if they gave up all claim to the remaining two-thirds.¹⁹⁰ This was known as the right of *trriage*. The practice in the Parisian region was to grant triage unless the community could prove its ownership, which rarely was possible.¹⁹¹

The second type of common right are use rights over private land, typically established in contract, as will be discussed below, but could also be determined by custom. The latter included such things as the right to glean grain (*glanage*), to harvest stubble (*chaumage*), as well as the important rights of *vaine pâture* and *parcours*. *Vaine pâture* was the right of tenants to pasture their cattle on fallow arable within the parish. *Parcours* was similar but involved the neighboring parishes.¹⁹² *Vaine pâture* was practiced in the early years of Canada, but the practice faded in the early eighteenth century as more and more fields were enclosed to protect against roaming livestock.¹⁹³

According to Louise Dechêne, the first type of commons was “one of the institutions which disintegrated the most rapidly in [Canada].”¹⁹⁴ She notes that the seigneurie in Nouvelle-France clearly predates the communities, and thus a community’s right to the commons could not be said to have been in existence since time immemorial, but rather was specifically conceded by a seigneur. An example was the grant of pasturage en censive to the communauté

¹⁹⁰ Nadine Vivier, “The Management and Use of the Commons in France in the Eighteenth and Nineteenth Centuries,” in Martina De Moor, Leigh Shaw-Taylor, and Paul Warde, eds, *Management of Common Land in North West Europe, c. 1500-1850* (Turnhout, Belg.: Brepols Publishers NV, 2002), 151.

¹⁹¹ Vivier, 151.

¹⁹² Vivier, 143.

¹⁹³ Greer, *Property and Dispossession*, 265-266.

¹⁹⁴ Dechêne, “L’*évolution*,” 156.

des habitants de Ville-Marie by the Compagnie de la Nouvelle-France. The community was given the authority to manage the commons, but could not alienate the property, making the grant, as Dechêne writes, more like a simple usufruct.¹⁹⁵

This must be distinguished, however, from “*le droit de commune*,” the second of the common rights discussed above. This right was granted by the seigneur to individuals within the seigneurie, typically in their contracts, who were permitted to use certain lands on the seigneurie set aside for that purpose. This might include land for pasturage or wooded areas for cutting wood for warmth or for construction. Early in the colony (prior to 1663), the use of the commons was generally, although not always, free.¹⁹⁶ Later, such use required an additional, usually minimal, payment. This could be covered by the concession or contained in a separate contract.¹⁹⁷ In 1667, an ordonnance of Talon encouraged the establishment of common pasturage on the seigneuries as a way to prevent the destruction of crops by roaming livestock.¹⁹⁸ By 1700, a third to a half of all settled seigneuries in Canada included commons.¹⁹⁹ It appears that during the French regime in Canada, the censitaires were generally responsible for maintaining any enclosures of the common pastures and the access roads, with some oversight provided by the seigneur.²⁰⁰ It was not until the British regime that one sees the censitaires, in some cases,

¹⁹⁵ Dechêne, 156.

¹⁹⁶ Trudel, “L’obligation,” 29.

¹⁹⁷ Dechêne, “L’évolution,” 156; Harris, *Seigneurial System*, 71.

¹⁹⁸ Rodolphe De Koninck, Anne-Marie Turcot, and Andrée G. Zubrzycki, “Les pâturages communaux du lac Saint-Pierre: de leur histoire et de leur actualité,” *Cahiers de géographie du Québec* 17, no. 41 (septembre 1973): 320, published in part in *Ordonnances des intendants*, 2:128.

¹⁹⁹ Harris, *Seigneurial System in Early Canada*, 71. Allan Greer suggests that this number may be lower. Greer, *Property and Dispossession*, 266.

²⁰⁰ De Koninck, Turcot, and Zubrzycki, “Les pâturages communaux,” 322.

incorporating to better regulate the use of common pastures.²⁰¹ The evidence of commons in l'Acadie will be addressed in later chapters.

Inheritance Law and Property

Inheritance laws contribute greatly to the pattern of land holding in an area, in addition to the fortunes of heirs. In areas that follow a regime of partible inheritance, as in many parts of early modern France, the land was equitably distributed, but the size of peasant holding could be diminished, often beyond the point necessary to support a family. Other regimes of succession favoring one heir over the other, such as primogeniture, tended to keep family lands more intact, to the benefit of one heir at the expense of all others. This section will briefly discuss the law regarding the transmission of property under the Coutume de Paris, and its implementation in Canada.

As an initial matter, the key principle of the heritability of tenants' estates was well established as early as the thirteenth century in France. French peasants, therefore, were in some respects better protected than English tenants of the early modern period in that the former could pass on lands to their children and, theoretically, could not be removed from their land.²⁰²

Under the inheritance provisions of the coutume, in the absence of an agreement to the contrary, married couples were subject to the regime known as the *communauté de biens*. All

²⁰¹ De Koninck, Turcot, and Zubrzycki, 322. The authors point out that even as late as 1973, five areas located on islands and in riparian areas of lac Saint-Pierre in Québec were continuing to function as common pasturage after three hundred years.

²⁰² French historian Henri Sée argues that the possession by peasants of a considerable part of the land, albeit in some areas in very small holdings, distinguished patterns of land holding in France from those in both England and central Europe where large holdings of the nobility eventually eliminated peasant holdings. This "has given to French society an original character," he writes, "and has exercised a notable influence upon its entire historical development." Henri Sée, *Economic and Social Conditions in France During the Eighteenth Century*, trans. Edwin H. Zeydel (New York: Alfred A Knopf, 1927), 6.

mobile property and all “*conquêts immeubles*,” or real property that was acquired for consideration before or during the marriage was within the *communauté*.²⁰³ Real property that was inherited by one of the spouses, or given by a relative in the direct line, was referred to as *propres*. This latter was not included in the *communauté* and was treated as that spouse’s personal property. The husband was permitted to sell the common property of the marriage on the condition that the goal was for the good of the *communauté*. He must have the consent of his wife to sell her *propres*, but he was permitted to manage and sell without such consent the fruits of the latter, such as the harvest.²⁰⁴

Some of the striking features of the *coutume*’s inheritance provisions are the protections provided for the widow and for the heirs, as well as the equality of inheritance. At the death of her husband, the widow had the right of her *douaire coutumier*, a usufruct right of part of her husband’s *propres*. The amount could be stipulated by the parties in a marriage contract. In the absence of such an agreement, the amount was set by custom at half the revenue from the husband’s *propres*.²⁰⁵ The *communauté* was divided equally between the surviving spouse, on the one hand, and the heirs of the deceased on the other.²⁰⁶ The heirs received the other half of the *communauté* upon the death of the surviving spouse.

The order of succession was different depending on whether the land was held en fief or en censive. In the former case, if the land was a *fief de dignité*, for example a duchy or barony, the eldest son received the entire fief, on the condition that he indemnify his siblings. If the fief

²⁰³ Zoltvany, “Esquisse,” 365-368. The *conquêts* included investments that produced returns without diminishing principal, such as *charges vénales*, and the *rentes constituées*, two types of investment first appearing in the sixteenth century. Zoltvany, 369.

²⁰⁴ This was the only way, Zoltvany notes, that a wife could take part in the management of the family business. She could not sue, nor start a business without her husband’s authorization. Zoltvany, 369.

²⁰⁵ The husband could not sell or otherwise transfer the *douaire*, nor was it subject to the liabilities of the *communauté*, thus protecting both wives and children from bad management of the family property by the husband. Zoltvany, 370. If there were no *propres*, the widow received a lump-sum payment, as indicated in the marriage contract, drawn from the *communauté* (*douaire préfix*). Dechêne, *Habitants and Merchants*, 241.

²⁰⁶ Zoltvany, “Esquisse,” 370.

was instead an ordinary seigneurie, the land was transmitted according to the *droit d'aînesse* whereby the eldest received the manor, the court, and two thirds of the fief, if there were two children; if there were more, he received instead one half of the fief, the other half to be divided among the remaining siblings. If the deceased had only daughters, the fief was divided equally between them.²⁰⁷ In the case of *successions roturières*, movable property and land held en censive was shared equally between heirs: generally, the descendants took first (children and grandchildren), the ascendants next (parents, grandparents), and the finally, the collaterals (brothers, sisters, aunts, uncles and cousins).

The coutume contained certain measures that were designed to preserve property in a lineage. On the death of a spouse, for example, his or her propres, not including the douaire, passed to the direct heirs, or, if there were none, to the nearest relatives in that spouse's line. Moreover, the propres could not be diminished by inter vivos gift (*donation entre vif*) from one spouse to the other. It was permissible, however, for spouses to agree that a surviving spouse would have a usufruct right on some or all of the propres of the deceased spouse. On the death of the survivor, however, the property would return to the deceased's line.²⁰⁸

The coutume also contained provisions that protected the heirs, in particular the children, including measures to prevent a parent favoring one child over another. For the most part, one could not deprive the rightful heirs of their customary inheritance by testament.²⁰⁹ For example, according to the principle of the *réserve*, a testator could only dispose of one-fifth of his or her propres. The other four-fifths must go to the customary heirs. Similarly, the heirs were guaranteed a minimum amount from the estate called the *légitime*. The *légitime* was that

²⁰⁷ Zoltvany, 379.

²⁰⁸ The *retrait lignager*, moreover, provided a mechanism by which the closest relatives in the lineage could regain property sold out of the lineage by reimbursing the sale price within one year and a day of the sale. Zoltvany, 371-372.

²⁰⁹ Zoltvany, 378.

“obligatory portion reserved to certain presumptive heirs, and notably to the children, of property that they would have received in totality without the dispositions made by the deceased to their prejudice.”²¹⁰ The *légitime* was equal to half of all the property that each child would have received if the testator had died intestate.²¹¹

Louise Dechêne, in her study of seventeenth century Montreal, has shown that inheritance practice in Canada deviated substantially from the strict provisions of the coutume. Importantly, the law regarding the spouses’ *propres* appears to have had limited application in Canada, at least in the first years of the colony when the *propres* were generally treated as part of the *communauté*.²¹² Even later, the concept of *propres* was not as important in the colonies as in France. In many cases any such land was worthless without many years of shared labor needed to clear and develop it. Adding a spouse’s inheritance to the *communauté* avoided having to determine the value added from that labor.²¹³

Dechêne also found that marriage contracts often included the outright mutual gift of all property to the surviving spouse, including moveables and real estate, where there were no living children, even including in some cases *propres*, in derogation of the coutume.²¹⁴ This not only circumvented collateral and ascending forms of inheritance in favor of the surviving spouse, but also avoided any chance that the property would revert to the seigneur by escheat.²¹⁵

Finally, Dechêne uncovered evidence that neither the *réserve* nor the *légitime* applied in practice in Canada, at least in the seventeenth century. This did not mean, however, that parents

²¹⁰ Marion, *Dictionnaire*, s.v. “*légitime*,” 327; “Portion obligatoirement réservée à certains héritiers présomptifs, et notamment aux enfants, des biens qu’ils auraient recueillis en totalité sans les dispositions faites par le défunt à leur préjudice.”

²¹¹ Marion, 327.

²¹² Louise Dechêne, *Habitants and Merchants*, 241.

²¹³ Dechêne, 241.

²¹⁴ Dechêne, 243.

²¹⁵ Dechêne, 243.

regularly favored one child over another in their wills. On the contrary, while a will might contain some small legacy in gratitude to a family member for some service provided, only about one quarter of the wills she examined demonstrate a preference for one child over another.²¹⁶ Parents typically relied on inter vivos gifts if they intended to favor one child, and this, in most cases, to compensate a child who would care for them in their old age, almost always with the consent of the co-heirs.²¹⁷ Dowries, another possible way to favor one child over another, were instead understood only as an advance on inheritance.²¹⁸ In short, equitable inheritance could have been defeated by will or gift, but seldom was.

Historians have conventionally argued, based solely on the fact of partible inheritance, that censives in Canada were subdivided so often that the habitant was left with minimal lots, and that this stunted economic growth.²¹⁹ Again, Louise Dechêne has shown that the facts do not support common suppositions regarding inheritance practice in colonial Canada. Unlike in France, she argues, where peasants had access to communal lands and could count on supplementary income from rural industries, the habitant in Canada had to survive on the land. Necessity, therefore, dictated that the land stay intact. Typically, one heir took on substantial debt to buy out the inheritance rights of the others, such as sons choosing to leave home for elsewhere, or married daughters.²²⁰ Where a testator had managed to amass large holdings, the land might be subdivided, but this did not result in undersized lots.²²¹

The steady adherence, and practical approach to equitable inheritance, as well as other modifications of the inheritance provisions of the coutume, Dechêne argues, reveals much about

²¹⁶ Dechêne, 245. Dechêne notes that “[m]erchants had fewer scruples about imposing their wishes” in this way.

²¹⁷ Dechêne, 246.

²¹⁸ Dechêne, 244.

²¹⁹ Dechêne, 165-166.

²²⁰ Dechêne, 166.

²²¹ As Dechêne writes, “[I]and accumulation should be viewed as a strategy to provide for children rather than a trend towards large-scale agriculture.” Dechêne, 167.

the nature of French colonial society in Canada. Lineal property “was not the cornerstone of the family,” as in France, and “the latter’s unity was not tied to its preservation.”²²² Instead, the paucity of institutions of social control, and the difficult circumstances of colonial life, engendered reciprocal relations which strengthened the bonds between parents, children and siblings. Mutual need and affection, not property, gave rise to family solidarity, she argues. The trend towards placing all assets into the communauté in particular revealed a move away from aristocratic traditions that sought to preserve lineal property at the expense of family unity and the individual. Inheritance practice in Canada, she writes, demonstrates a return to an “older, simpler, and more generous tradition.”²²³

The Evolution of Seigneurialism in Canada

There is no question that from the very beginning of the colony, the seigneurial regime and the customary law supporting it provided the legal framework within which Canadian colonists lived. The Coutume de Paris was formally adopted in 1674 as the only law to be applied in the whole of Nouvelle-France. As the common law of France, however, it was used in the colony before that time, with some exceptions. As the above discussion shows, moreover, seigneurial tenure was for the most part faithfully applied in Canada, although changes were made to address colonial conditions.²²⁴

The degree and nature of the seigneurie’s influence on the lives of the habitants, however, has been the subject of significant scholarly debate. Some see a positive role for the seigneur in

²²² Dechêne, 249.

²²³ Dechêne, 243-244.

²²⁴ Thus, for example, the seigneurial monopolies on building and operating mills and bake ovens, or on hunting, were all modified in the seventeenth century because of material circumstances that made them untenable or unenforceable.

seventeenth century Canada as, in effect, a “collaborateur” with the state in the colonization project.²²⁵ In this view, the seigneurie provided a ready-made social structure around which colonial society grew, with all participants—seigneurs, habitants, and the state—playing their respective roles in making colonization a success.²²⁶ While rejecting the view that the habitants’ interests were in harmony with those of the seigneurs, Allan Greer in his study of three parishes in the Lower Richelieu Valley agrees that “the seventeenth-century seigneurie was ... an institution of prime importance, the basic framework within which seigneurs and habitants, sometimes collaborating and sometimes contending, shaped the emerging communities.”²²⁷ The seigneurie played an important role “largely because of the weakness of other structures of authority,” including the state and the Church which were not established in the newly settled area.²²⁸ Others roundly reject these views. Louise Dechêne, for example, maintains that seigneurial tenure in the seventeenth century was “as useless as it was cumbersome and the image of supervised colonists, guided, protected by institutions in harmony with their needs is only perhaps another aspect of that ideology that has perverted our vision of the past.”²²⁹

²²⁵ Marcel Trudel, *Le régime seigneurial*, 2.

²²⁶ Marcel Trudel, for example, maintains that the seigneurial system was essential to colonization: it would “on the one hand, prevent a disorderly distribution of the land, and on the other, lead the large property owners to establish as many inhabitants as possible on their land” (d’une part, prévendraient une distribution désordonnée du sol et, d’autre part, amèneraient les grands propriétaires terrien à établir le plus d’habitants possible dans leurs domaines). It would do this “by fixing in advance and in a precise fashion the reciprocal rights and responsibilities, on which the state reserved a careful surveillance” (en fixant d’avance et d’une façon précise les droit et devoirs réciproques, dont l’État se réserve la surveillance minutieuse). Marcel Trudel, *Initiation à la Nouvelle-France* (Montreal, 1968), 183, quoted in Dechêne, “L’Evolution,” 148, n. 2. Under the seigneurial system as Trudel sees it, both the seigneur and the habitant “make [their] contribution to the common good.” Marcel Trudel, *Regime seigneurial*, 17.

²²⁷ Allan Greer, *Peasant, Lord, and Merchant*, 13. See also Niort, “Aspects juridiques,” 471; on balance, the seigneurial regime “had to be efficient and fulfill the colonial functions that the state assigned it; it could not therefore be totally unjust nor totally ‘oppressive’ because the habitants were at least as important as the seigneurs in the success of the colonial project” (il doit aussi se montrer *efficent* et remplir les fonctions *colonisatrices* que l’État lui a attribuées: il ne peut donc être totalement injuste ni totalement “oppressif,” car les habitants sont *au moins aussi importants que les seigneurs dans la réussite du projet colonial* (emphasis in the original)).

²²⁸ Greer, *Peasant, Lord, and Merchant*, 12. Greer discusses instances where seigneurs did their best to provide banal gristmills and common pastures, and to exercise other seigneurial functions, such as the right of justice.

²²⁹ Dechêne, “L’Evolution,” 183; “ce régime . . . semble aussi inutile qu’encombrant et l’image de colons, encadrés, guidés, protégés par des institutions harmonisées à leurs besoins n’est peut-être qu’un autre aspect de cette idéologie qui a perverti notre vision du passé.” Dépatie, Lalancette, and Dessureault similarly argue that seigneurialism

Dechêne reasons that seventeenth century seigneurs were either absent or too indigent themselves to have had the wherewithal to attract colonists. If habitants found assistance anywhere, it was from their neighbors and common effort and not their seigneurs.

Perhaps the one fact about the seigneurial system in Canada that appears to be without dispute is that it evolved from a relatively benign, loosely organized institution in the seventeenth century, to a more structured, exacting, and intrusive regime by the second quarter of the eighteenth century. Louise Dechêne described this evolution, as she found it in Montreal between 1642 and 1730:

In the beginnings, the seigneurial power is paternal and reserved. . . . The system is supple, the formulation of the *baux à cens* brief and imprecise. The authorities do not have to intervene because on their own the seigneurs yield to the circumstances: nothing can be demanded from those who have nothing and one is not even inclined to make provisions for the future. . . . But as the improvement and population of the lands progress, the regime seeks to take advantage of all the rights conferred by the *coutume*, to add some others of its own invention. Nothing is left to chance; the contract, one page in the beginning, spreads over two and three pages. At the end of a century, the seigneurie has become more rigid, more intrusive, there is nothing to envy the French seigneurie.²³⁰

“limited property rights on the land and levied a portion of the proceeds of their economic activities.” As such, they write, “the relations between seigneurs and censitaires do not appear to us to have been a set of reciprocal rights and duties where there was a fair balance of which the state was a guarantor.” Sylvie Dépatie, Mario Lalancette, and Christian Dessureault, *Contributions à l'étude du régime seigneurial canadien* (Ville de LaSalle, QC: Hurtubise HMH, 1987), 229; la seigneurie représente une institution qui restreint leurs droits de propriété sur la terre et qui prélève une partie du produit de leurs activités économiques. En ce sens, les relations entre seigneurs et censitaires ne nous sont pas apparues comme un ensemble de droits et de devoirs réciproques où règne un just équilibre dont l'État se porte garant. Richard Colebrook Harris takes a different approach. Harris found that the economic, religious and social life of the settlements as they developed, were not necessarily, or even usually, coterminous with or contained by the *seigneurie*. From this and other evidence regarding the limitations on seigneurial authority and effectiveness, he concluded that “[t]o the most important aspects of the habitant's living, and to much of the geography of his settlement, seigneur and *seigneurie* were simply irrelevant.” Harris, *Seigneurial System*, 192.²³⁰ Dechêne, *L'évolution*, 172;

Dans les commencements, le pouvoir seigneurial est paternel et timide Le système est souple, la formulation des baux à cens brève et imprécise. Les autorités n'ont pas à intervenir car d'eux-mêmes les seigneurs se plient aux circonstances: on ne peut rien exiger de ceux qui n'ont rien et on n'est même pas enclin à faire des provisions pour l'avenir Mais à mesure que le peuplement et la mise en valeur progressent, le régime cherche à tirer parti de tous les droits conférés par la coutume, à leur ajouter quelques autres de son crû. Plus rien n'est laissé au hasard; le contrat, d'une page dans les débuts, s'étale maintenant sur deux et trois pages. Au bout d'un siècle, la seigneurie est devenue plus rigide, plus envahissante elle n'a rien à envier à la seigneurie française.

Trudel also notes that the first concession gave only the geographic location. Seigneurial charges and other obligations first appeared in 1636. Trudel, “Les obligations,” 3.

Greer reasons that a paternalistic ideology, together with some degree of state control, and habitant resistance all contributed to limit the power of the early seigneurs.²³¹ Marcel Trudel adds that during the time of the Compagnie de la Nouvelle-France, seigneurs realized relatively little from the various seigneurial exactions and monopolies.²³² As Dechêne showed, however, this would change in the second quarter of the eighteenth century as seigneuries became more populated and seigneurs had more leverage as regards their censitaires.²³³

Seigneurialism, therefore, proved itself to be a highly adaptable system. Even before they left France, colonists were experiencing changes in the system: the seventeenth century saw the beginning of what David Parker called the “monetization of property relations,” and as a result seigneurialism had already lost some of its paternalistic character. The relationship of seigneur and tenant, thus, had come a long way from the personal dependency and fealty of the medieval period. Colonial conditions presented new circumstances that forced the system to evolve further. While seigneurs of the seventeenth century maintained a certain preeminence in

²³¹ Greer, *Peasant, Lord, and Merchant*, 13.

²³² Trudel, “Les obligations,” 41.

²³³ Seigneurialism would continue to evolve after the Conquest. As land became ever scarcer, seigneurs, many but not all of whom were now Anglo merchants and British speculators, exacted more and more of the habitant’s surplus through higher rents and tighter restrictions. Brian Young writes that “[t]here was no contradiction between feudalism and commercial capitalism in post-conquest Montreal.” Brian Young, *In its Corporate Capacity The Seminary of Montreal as a Business Institution, 1816-1876* (Kingston & Montreal: McGill-Queen’s University Press, 1986), xiii. “The relevance of seigneurial tenure in the century after the Conquest,” Françoise Noël argues, “stemmed not so much from its differences from freehold tenure as from its similarities: it could be used by large proprietors to monopolize scarce resources,” which, in addition to land, included fish, timber and water power. Françoise Noël, *The Christie Seigneuries: Estate Management and Settlement in the Upper Richelieu Valley, 1760-1854* (Montreal & Kingston: McGill-Queen’s University Press, 1992), 136. In addition, British rule supported, and indeed enhanced, the feudalistic nature of seigneurialism by adopting a stricter reading of the civil law than had ever been applied in Nouvelle-France. Gérald Bernier and Daniel Salée. *The Shaping of Québec Politics and Society: Colonialism, Power, and the Transition to Capitalism in the Nineteenth Century* (New York: Taylor and Francis, 1992), 45. “Québec society,” Bernier and Salée conclude, “was reproducing only with increasing difficulties the social and economic system within which it had functioned ever since it became a colony.” Bernier and Salée, 10. Government reform came with the advent of responsible government in 1848, and seigneurialism, after showing itself to be exceptionally flexible in adapting to changing conditions over the course of more than two centuries, was finally abolished in 1854.

Canadian society, they were most likely to be of limited financial means, especially in the areas outside the larger settlements of Québec and Montréal. Bowing to circumstances, they would not seek real profit from their holdings until populations increased, and the habitants themselves generated surpluses that could be demanded for seigneurial charges of various kinds.

As will be discussed in the following chapter, Acadian seigneurs were in much the same circumstances as the early seigneurs of Canada. It is one of the contentions of this thesis that had the French retained control of l'Acadie after they regained control of the colony in 1670, seigneurialism would have continued to develop, much in the same way it did in Canada. The cession of l'Acadie to the British in 1713, however, froze this development in time. The fact that seigneurialism was not fully developed, however, does not mean, as many have assumed, that it was "moribund," or that it did not provide the basic legal and social framework within which the Acadian settlements grew.

CHAPTER 3

SEIGNEURIALISM TAKES ROOT IN L'ACADIE: 1598-1670

Introduction

A survey of French colonizing efforts in North America, beginning in 1598, reveals that seigneurialism was consistently employed as a means to effectuate the expansion of the king's power, and of trade. This was true in l'Acadie as it was in the neighboring colony of Canada. Despite these efforts, it cannot be said that at the end of the first third of the seventeenth century there was anything like a functioning seigneurial system in any part of Nouvelle-France, and this is because of the lack of colonists. This demographic situation would begin to change in 1632 and 1633 when, on behalf of the Compagnie de la Nouvelle-France, a French presence was reestablished by Samuel de Champlain in Québec, and Isaac de Razilly at La Hève. For the first time, meaningful numbers of French were brought to the two colonies.

Seigneurialism, however, could not be said to have been firmly established in l'Acadie until after Razilly's death in 1635, when one of his lieutenants, Charles de Menou d'Aulnay, moved the base of operations to Port-Royal. It was here, as most scholars agree, that the first fully functioning seigneurie was established in l'Acadie. That seigneurie, although rough, would have been familiar to those living along the St. Lawrence, or for that matter, in the west of France at the time. D'Aulnay created métairies on his domaine, as well as conceded lands on his *directe seigneuriale*; built mills, forts, a convent, a church and a seminary; established a seigneurial manor; asserted his banal rights of ovens, as well as his rights to control hunting and fishing; and provided, or planned to provide commons for the use of the community. In the one extant contract from the period, d'Aulnay used a Paris trained notary to craft an agreement that

employed sophisticated legal forms then in common use in the metropole, which nonetheless permitted him to shape the terms to meet colonial conditions.

Most scholars have adopted the notion that d'Aulnay's death in 1650, the predations of his chief creditor, Emmanuel Le Borgne, and the sixteen-year period of ostensible Anglo-American control that followed (1654-1670), was the beginning of the end of seigneurialism in l'Acadie. With no one enforcing French customs, Naomi Griffiths argues, "Acadian land tenure began to resemble the traditional English freehold system rather than a seigneurial system."¹ This study will argue that, on the contrary, notwithstanding the disruptions caused by periods of ostensible English control, and the competing claims of Le Borgne, Jeanne Motin, widow of d'Aulnay, representing her own and her children's proprietary interests, together with her new husband, Charles de La Tour, maintained a presence in the area until her death sometime before 1663. It will further argue that, under the circumstances—including the fact that Le Borgne had never legally perfected his belated seigneurial claims to d'Aulnay's lands in l'Acadie, and was not even present in Port-Royal during this period—it is more likely than not that she continued to be considered seigneur, or at least to represent the seigneurial rights of the d'Aulnay heirs until her death. At that time, the people turned to Le Borgne as seigneur. In other words, this study argues that the people would not have experienced any change in land tenure during the sixteen years of Anglo-American control, although it is clear that seigneurialism as an institution was, in effect, frozen in place, if only because no new French colonists could be sent to the colony. Seigneurialism would resume its growth when the French regained control of l'Acadie in 1670, and Alexandre Le Borgne, the self-styled sieur de Belleisle, assumed the role of seigneur in the Port-Royal area and Minas Basin.

¹ Griffiths, *From Migrant to Acadian*, 80.

The timeline of the settlement of l'Acadie has been thoroughly set forth in numerous studies.² This work will begin by tracing that history only to the extent that it will help to illuminate the transplanting of seigneurialism in l'Acadie, and what this study argues was its continuous implementation.

The First Seigneurs of l'Acadie: Marquis de La Roche, Pierre Dugua, sieur de Mons, Jean Biencourt de Poutrincourt, and Isaac de Razilly, 1598-1635

The first efforts at establishing a settlement in l'Acadie began and ended before Champlain founded his trading settlement of Québec in 1608. The marquis de La Roche made a failed attempt to colonize Sable Island off the coast of what is now Nova Scotia based on a 1598 grant that authorized him to grant land “en fiefs, seigneuries, châtellenies, comtés, vicomtés, baronnies et autre dignités relevant de Nous.”³ Following this, in 1603, Henri IV granted a commission to Pierre Dugua, sieur de Mons for the colonization of “la Cadie,” in an area between what is now central New Jersey, up to and including present day Sorel, Québec. The commission names de Mons *lieutenant général* with a fur trading monopoly and extensive authority including, among other things, promulgating statutes and ordinances when not provided by French law; retaining lands for himself; assigning other lands; and attributing such titles and rights thereto as he judged appropriate.⁴ Although the document does not on its face establish Nouvelle-France as a fief, de Mons could, it would seem, concede land, en fief.⁵

² Examples of relatively recent general works surveying this history include, Griffiths, *From Migrant to Acadian*; Faragher, *Great and Noble Scheme*; Brenda Dunn, *A History of Port-Royal/Annapolis Royal, 1605-1800* (Halifax: Nimbus Publishing, 2004); Reid, *Acadia, Maine and New Scotland*; Daigle, “Acadia 1604 to 1763”; Clark, *Acadia*.

³ Harris, *Seigneurial System*, 3.

⁴ “Commission du Roi au Sieur de Monts,” in Lescarbot, *Voyages en Acadie*, 74-79.

⁵ In fact the proposal de Mons made to King Henry IV for his commission in 1603 requests that he be given the authority to divide the land and attribute “titres et seigneuries” thereto. “Articles proposez au roy par le sieur de Monts par la découverte et habitation des costes et terres de l'Acadie, avec les decisions de Sa Majesté,” *Collection*

Pursuant to the authority given him by this commission, De Mons would indeed grant a concession of the Port-Royal area to Jean Biencourt de Poutrincourt et de Saint-Just on the condition that within two years he relocate there with several other families “to cultivate and inhabit the country” (pour cultiver & habiter le pays).⁶ This grant was ratified by the king in 1607.⁷

In 1605, after attempting, but failing to gain a foothold on St. Croix Island in the river by that name, de Mons established a settlement on the north bank of what was then called the rivière l'Equille for the small sand eels found there.⁸ The river, which became known as the rivière du Dauphin after 1609, and after the British conquest, the Annapolis River, created a natural basin that de Mons and his party named Port-Royal. The Habitation, as it was called, where de Mons established fortified living quarters, storehouses and gardens for himself and his men, was opposite Goat Island, down river from the site of the future town of Port-Royal. Beginning in the spring of 1605, a small company that began with about 45 males lived in the Habitation under the command of François Gravé, sieur Du Pont. One of these, Samuel de Champlain, from whom we have a sketch of the settlement, and established gardens.⁹ Champlain described the garden as being surrounded by “channels full of water, wherein I placed some very fine trout; and through

de manuscrits, 1:40. The king answered that he wished to grant all that would be necessary and required for the discovery and peopling of the colony, and that de Mons's authority was to conform to that given to the Sieur de Roberval, which had included the right to grant lands “en fief et seigneurie.” *Collection de manuscrits*, 1:41; Roberval's Commission,” 181.

⁶ Samuel de Champlain, *Les voyages de la Nouvelle-France occidentale, dicte Canada*, in Charles-Honoré Laverdière, ed., *Oeuvres de Champlain*, 2nd ed. (Québec, 1870), 5:110; Lescarbot, *Voyages en Acadie*, 143.

⁷ Champlain, *Les voyages*, 5:110.

⁸ Champlain, *Les Voyages*, 5:61.

⁹ Dunn, *History of Port-Royal/Annapolis Royal*, 5.

it flowed three brooks of very clear running water, from which the greater part of the settlement was supplied.”¹⁰

It was in 1606, however, that the first seeds of French colonization in Acadie may be said to have been planted. Poutrincourt, now seigneur of Port-Royal and lieutenant-gouverneur of l’Acadie, de Mons having returned to France to try to protect his monopoly, brought between forty and fifty men to the Habitation site with the intention of establishing an agricultural colony. With him were his young son, Charles de Biencourt de Saint-Just, and other aristocrats, including Marc Lescarbot, a Paris lawyer who would leave a record describing the settlement and the Native peoples that played an important part in the welfare of these first explorers. Also among these were Claude de Saint-Étienne de La Tour and his son Charles, both destined to play major roles in the development of the colony. With them came skilled artisans and unskilled laborers.

For Poutrincourt, this was not solely or even primarily a commercial venture; rather, it was his intent “to live beyond [the sea], and establish his family and his fortune there, together with the name of God.”¹¹ He had a dual role as seigneur, but also the representative of de Mons’s interests in l’Acadie. In the latter role he was expected to ensure the welfare of the men under his charge, but also to explore on de Mons’s behalf the coast south of Port-Royal for purposes of locating a future settlement.

Poutrincourt set about building new living quarters at the Habitation. He also had the site of what would become the town of Port-Royal upstream cleared and planted, and built a grist

¹⁰ Henry Percival Biggar, ed., *The Works of Samuel de Champlain*, 6 vol. (Toronto: Champlain Society, 1922-36), repr., 1971, 1:371, quoted in David Hackett Fischer, *Champlain’s Dream* (New York: Simon & Schuster, 2008), 203.

¹¹ Lescarbot, *Voyages en Acadie*, 143 (“Poutrincourt . . . était d’habiter par-delà, y établir sa famille & sa fortune, & le nom de Dieu tout ensemble”).

mill on what was later called the Allain River, which ran next to the clearing and emptied into the rivière l'Equille (fig. 1).¹² Men were expected to put in three hours of work a day at their trade, whether carpenters, masons, stone cutters, or sailors, but were then free to do as they chose.¹³ The Habitation was also used by de Mons's men as a base for exploring and fur-trading activities.¹⁴ Rameau de Saint-Père claimed that Poutrincourt established some colonists in the Port-Royal basin.¹⁵ He reproduced a *mémoire* attributed to Lamothe-Cadillac, that repeats the tradition attributed to the "oldest habitants which were [in Port-Royal] in 1685," that the sieur de Poutrincourt made concessions of land by simple notes (*simples billets*), as did his son, the sieur de Biencourt who succeeded him.¹⁶ This *mémoire* was said to be in the Archives de la Marine in Paris, but appears now to be lost or misplaced.¹⁷

If it was Poutrincourt's desire to establish a foundation for what would be the first seigneurie of many in l'Acadie, his hopes must have been greatly dampened when he received word in the summer of 1607 that the king had rescinded de Mons's monopoly. Poutrincourt and all of the rest of the company returned to France, leaving the nascent settlement of Port-Royal in the hands of Membertou, the Mi'kmaw *sakamow*, or chief, with whom the French had had good relations.¹⁸ De Mons turned his sights to the St. Lawrence Valley where in 1608, Champlain, on de Mons's behalf, took charge of the new settlement he founded at Québec.

¹² Lescarbot, 210.

¹³ Lescarbot, 181. Lescarbot remarked that the men were thus "very humanely treated."

¹⁴ Dunn, *History of Port-Royal/Annapolis Royal*, 6.

¹⁵ Rameau *Une colonie féodale*, 1: 80.

¹⁶ Rameau, 2:300-301.

¹⁷ Similar billets were in use in the province of Canada, at least the seigneurie of Montreal, before land distribution became more regularized, as there is mention of them in certain official documents. As in Acadie, however, the original documents, which would not have been registered, have not survived. Dechêne, "L'évolution," 150.

¹⁸ Dunn, *History of Port-Royal/Annapolis Royal*, 7.

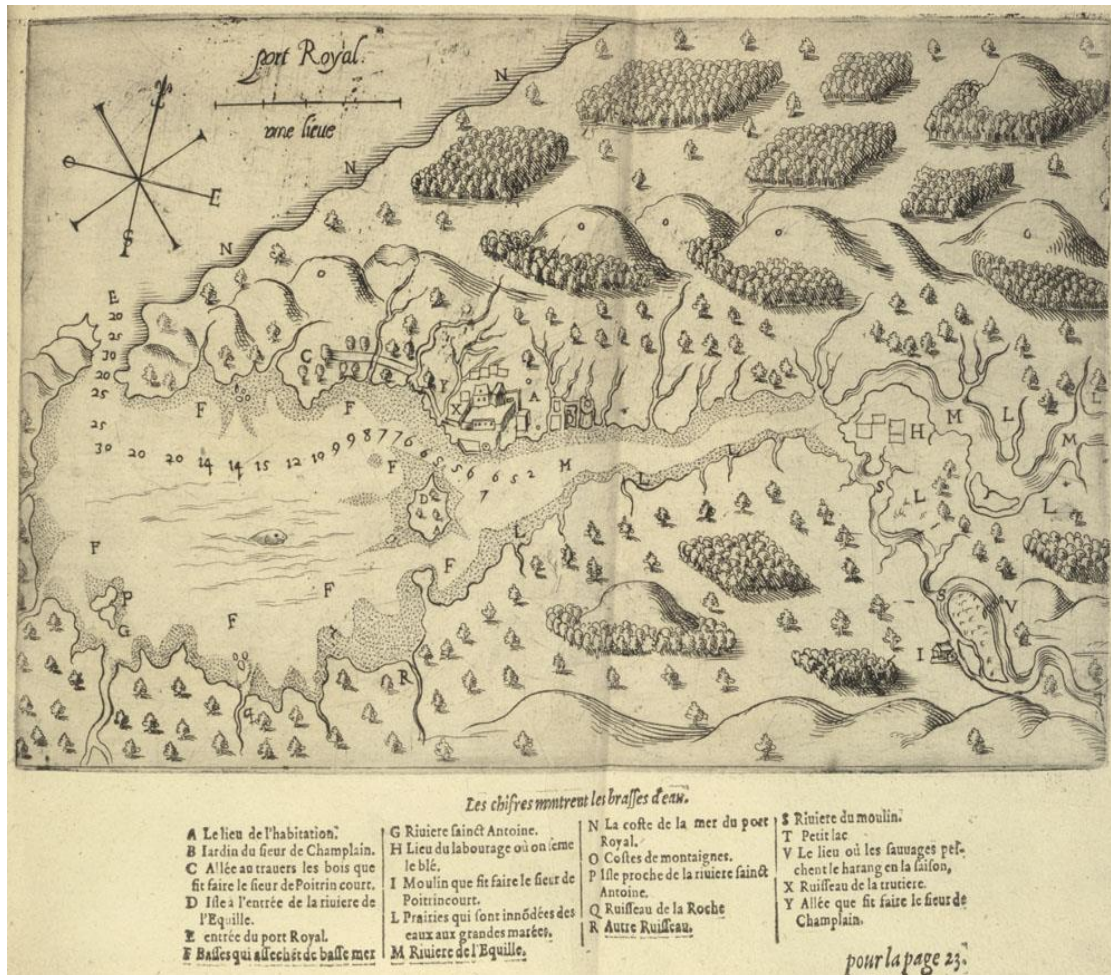


Figure 1. *Port Royal*, cartographer, Samuel de Champlain. From, Samuel de Champlain, *Les voyages du sieur de Champlain, Xaintongois, capitaine ordinaire pour le Roy en la marine* (Paris, 1613), 23. Source Bibliothèque et Archives Canada, e010764738.

Poutrincourt did not, however, give up his project. He returned to l'Acadie in 1610 having obtained the necessary financing, where he found the Habitation the way he had left it. However, it would be another twenty-two years before an agricultural settlement would be firmly established by the French at Port-Royal, and not under the auspices of Poutrincourt. Poutrincourt left for France to settle his affairs in 1613, this time leaving control of the settlement to his son, Biencourt. Meanwhile the English continued their colonization efforts further south and the Virginia Company of London and the Virginia Company of Plymouth together were given

charters for lands that stretched from the thirty-fourth to the forty-fifth parallels (approximately mid-North Carolina to Eastport, Maine). In 1613, Captain Samuel Argall, tasked with removing European competitors from areas claimed by England, destroyed the small mission of Saint-Sauveur on Mt. Desert Island founded by Jesuits earlier that year, and afterwards burned the undefended Habitation at Port-Royal, destroying all livestock and crops. Biencourt was said to be away visiting Native encampments, and other men were up river tending the settlement's crops. The mill on the Allain River escaped harm as the tide had prevented Argall from reaching it.¹⁹

Poutrincourt returned to l'Acadie in 1614 to find the Habitation destroyed. He ceded his rights to his son, Biencourt, who remained in the colony with a handful of men including Charles de Saint-Étienne de La Tour. Without support from the crown or new recruits, however, the settlement at Port-Royal largely collapsed.²⁰ Biencourt and La Tour turned now chiefly to fur trading and the dry fishery, apparently achieving some success.²¹ There is evidence that Biencourt continued to urge the king to send colonists to Port-Royal, or at least to erect forts, if nothing else to protect the fishery.²² His base of operations apparently moved to the south shore

¹⁹ Dunn, 8.

²⁰ Huia Ryder, "Charles de Biencourt de Saint-Just," in *Dictionary of Canadian Biography*, vol. 1, University of Toronto/Université Laval, 2003 —, (hereafter *DCB*, vol. 1), last revised 1979, http://www.biographi.ca/en/bio/biencourt_de_saint_just_charles_de_1E.html. There is evidence that some French remained in the area of Port-Royal: the Capuchins who arrived when Razilly liberated the town from the Scots in 1632 found "Gauls" who had lived there many years and who had some knowledge of the Native language of the area. See Relation of F. Leonardus and F. Josephus, 15 April 1633, reproduced in full in Candide de Nant, *Pages glorieuses*, 138.

²¹ H.P. Biggar, *The Early Trading Companies of New France* (Toronto: Warwick Bros. & Rutter, 1901), 101.

²² Biggar, 110. In 1618, Biencourt wrote to the Town Council of Paris from Port-Royal that if only they could help people the colony for two years, it could thereafter support itself as "the land is here good to work, sirs, the hunt is plentiful and the fish abundant." "Lettre de Monsieur Poutrincourt aux autorités de la ville de Paris, du Port-Royal, en la Nouvelle-France, ce premier Septembre, 1618," *Collection de manuscrits*, 1:57-58, referenced in Biggar, *Early Trading Companies*, 110; La terre est icy bonne au labourage, Messieurs, la chasse y est abondante et le poisson à foison.

of what is today Nova Scotia, where he died in 1623 or 1624.²³ Charles de La Tour maintained that Biencourt left his rights to Port-Royal to him.²⁴ La Tour established himself at Cap de Sable on the southern tip of peninsular l'Acadie where he continued to trade in furs. La Tour would later persuade Cardinal de Richelieu that he should be given the title of lieutenant général of l'Acadie, and went on to play a major role in the next phase of the development of the colony.²⁵ For now, however, the first attempt at establishing an agricultural settlement, and the first seigneurie, in l'Acadie had come to an end.

The next settlers in the Port-Royal area was a group of about seventy Scots led by Sir William Alexander the younger, son of Sir William Alexander the elder who had received a charter in 1621 from King James VI of Scotland and I of England to establish a Scottish colony in North America. Archeologists have confirmed that Alexander built his fort on the site of what is now the Fort Anne National Historic Site in Annapolis, and what had been the agricultural fields established by Poutrincourt.²⁶ A small contingent of Scots settlers, including women, inhabited this area from 1629 to 1632 when Port-Royal was returned to the French under the terms of the Treaty of Saint-Germain-en-Laye (1629). During this same period the English had seized not only Québec, but other areas of Nouvelle-France including Cap Tourmente, Tadoussac, Gaspé, Cape Breton, Miscou and Pentagouët.²⁷

²³ Dunn, *History of Port-Royal/Annapolis Royal*, 9.

²⁴ Faragher, *Great and Noble Scheme*, 38; Dunn, *History of Port-Royal/Annapolis Royal*, 9.

²⁵ "Lettres patentes nommant Charles de Saint-Étienne, sieur de La Tour, lieutenant général du roi en Acadie (8 février 1631)," published in part in Vanderlinden, *Le lieutenant civil et criminel*, 258-259.

²⁶ Dunn, *History of Port-Royal/Annapolis Royal*, 12.

²⁷ Fischer, *Champlain's Dream*, 429, referencing a map Champlain made of French losses during this time. One must assume that no new French settlers arrived in either l'Acadie or Canada during this period, and that no new concessions were granted. As noted above, p. 22, n. 2, at least one fief was granted in Canada prior to the English attack, that of Louis Hébert in 1623. Before this grant, however, Hébert, who had agreed to leave Paris to be a colonist in Québec in 1617 (he had earlier been with Poutrincourt in Port-Royal), was treated effectively as a company servant. Biggar, *Early Trading Companies*, 105. Notwithstanding their promises, companies receiving monopolies to trade in the St. Lawrence Valley had managed to bring only two families by 1620, one couple from

Meanwhile, Cardinal Richelieu, Louis XIII's first minister, had created in 1627 the Compagnie de la Nouvelle-France, also known as the Compagnie des Cent-Associés. The Compagnie was granted "en toute propriété, justice et seigneurie," all of Nouvelle-France, from "Floride," to the "cercle Arctique."²⁸ The act establishing the Compagnie de la Nouvelle-France shows clearly the central role settlers were to play in France's plans for its North American colonies. The preamble states that "the sole means to dispose [Native peoples] to the knowledge of the true God was to people the said country with natural French Catholics, for, by their example, to dispose these nations to the Christian religion, to the civil life, and as well to establish the royal authority, to draw from the said newly discovered lands some advantageous commerce for the use of the king's subjects."²⁹

In 1632, Isaac de Razilly, a Catholic nobleman and naval officer, was commissioned by the king to accept Port-Royal from the Scots in the king's name.³⁰ Shortly thereafter, he received a concession from the Compagnie de la Nouvelle-France for the Saint Croix River, the bay and islands therein, and the adjacent lands.³¹ The land was granted "en toute propriété, justice & seigneurie," on the condition of foi et hommage to be made at the fort Saint-Louis in Québec, or other place acceptable to the Compagnie; as well as the right of relief on each mutation to consist of a small coin of gold and the revenue of one year, which Razilly was to keep for himself.

Appeals of any courts he might establish were required to be heard by the sovereign court which

Vienne, and the ill-treated Héberts. Biggar, *Early Trading Companies*, 110-111. Agricultural settlement in Canada, therefore, could not be said to have been much more advanced prior to the English attacks than in l'Acadie.

²⁸ Acte pour l'établissement de la Compagnie des Cent Associés, 29 avril 1627, *Edits, ordonnances* (Fréchette), 1:7.

²⁹ Acte pour l'établissement de la Compagnie des Cent Associés, *Edits, ordonnances* (Fréchette), 1:5; "[L]e seul moyen de disposer ces peuples à la connoissance du vrai Dieu, était de peupler le dit pays de naturels François catholiques, pour, par leur exemple, disposer ces nations à la religion chrétienne, à la vie civile, et même y établissant l'autorité royale, tirer des dites terres nouvellement découvertes, quelque avantageux commerce pour l'utilité des sujets du roi."

³⁰ Commission au sieur de Razilly, 10 may, 1632, *Collection de manuscrits*, 1:110.

³¹ Concession par la Compagnie de la Nouvelle-France à Isaac de Razilly, 19 mai 1632, published in part in Vanderlinden, *Le lieutenant civil et criminel*, 259-260.

would be established at Sault Saint-Louis. In this concession, Razilly is referred to as le Commandeur and lieutenant général of l'Acadie, although a specific commission naming him as such has not been found.

In 1632, acting on behalf of the Compagnie, Razilly brought some three hundred “hommes d'élite” to La Hève, now La Have, on the southern Atlantic shore of peninsular l'Acadie.³² In December of that year he went to Port-Royal on behalf of the king to receive it from the Scots. The first arrivals appear to have been primarily soldiers and *engagés*, or contract workers, together with certain men that served as Razilly's partners or lieutenants. The latter included Nicolas Denys and Charles de Menou, Sieur d'Aulnay de Charnizay, a French nobleman and a cousin of Razilly. Meanwhile, Charles de La Tour continued to trade from his base at Cap de Sable, although in 1635 he received a concession from the Compagnie for land along the rivière Saint-Jean (today the Saint John River) and thereafter moved his operations there.³³

It appears that Isaac de Razilly, and especially his brother, Claude de Launay-Razilly, financed the voyage of 1632, and a similar one the following year, the Compagnie de la Nouvelle-France having little funds to contribute to the effort. Around this time, or shortly thereafter, a group of shareholders that included the Razilly brothers, a friend, Jean Condonnier, and Cardinal Richelieu, established a smaller company that is often referred to as the Compagnie Razilly-Condonnier to pursue operations in l'Acadie. Richelieu held a fifth part of the assets of this company, which he would later use to endow Capuchin seminaries for Native children in

³² Theophraste Renaudot, *Recueil des gazettes nouvelles: Relations & autres choses memorables de toute l'annee 1632* (Paris, 1633), 282, published November 26, 2012, <https://gallica.bnf.fr/ark:/12148/bpt6k63911039?rk=21459;2>.

³³ Concession de la Compagnie de la Nouvelle France à Charles de Saint-Étienne sieur de La Tour, 15 janvier 1635, *Mémoires des Commissaires du Roi et de ceux de sa Majesté Britannique, sur les possession et les droits respectifs des deux couronnes en Amérique*, vol. 2 (Paris, 1755), 493-494.

Port-Royal. Claude de Razilly, Isaac's brother, held the majority position in the company. The Compagnie de la Nouvelle-France was operating in l'Acadie on the same principle as it was in Canada, namely to rely on smaller companies to pursue trade and establish colonists, in exchange for a part of the trade. It might supply a ship while the shareholders in the smaller company furnished the greater part of the funding for the enterprise.³⁴ In 1634, the Compagnie de la Nouvelle-France granted a concession, in Claude's name, for the forts and habitations of La Hève and Port-Royal, as well as Sable Island, in addition to half the profits from the fur trade for ten years.³⁵ This appears to be in recognition of the significant investment that Claude in particular had already made in the colony.³⁶

The extent to which Isaac de Razilly was able to establish an agricultural colony, even on a small scale, remains a question. Nicolas Denys wrote that Razilly's sole desire was "to people this land, and every year he had brought here as many people as he possibly could for his purpose."³⁷ Denys describes there having been forty habitants living on land that Razilly had caused to be cleared on a "petite rivière," just south of La Hève, at the time of Razilly's death in 1636, and that any settlers that would later be found along the rivière du Dauphin, were those

³⁴ René Baudry, "Charles d'Aulnay et la Compagnie de la Nouvelle-France," *Revue d'histoire de l'Amérique française* 11, no. 2 (septembre 1957): 222.

³⁵ Baudry, 222-223; Robert Le Blant, "La Compagnie de la Nouvelle-France et la restitution de l'Acadie (1627-1636)," *Revue d'histoire des colonies* 42, no. 146 (premier trimestre 1955): 86, n. 2, citing to concession of 15 janvier 1634, discussed in Arrêt du Conseil du 13 juillet 1655, AN, V6 308, a copy of which may be found at CEAAC, Archives privées, fonds René Baudry, série 20.6.25, and also at LAC, Fonds Archives nationales (France), Conseil d'état privé, Série V6, cart. 308, pièce 24 (transcription), last accessed February 20, 2019, <http://heritage.canadiana.ca/>, C-12559, image 309-316.

³⁶ This grant in Claude Razilly's name by the Compagnie de Nouvelle-France appears to have been contributed by him to the assets of the partnership. See, "Dotation du séminaire de Port-Royal par Richelieu (13 janvier 1640)," Candide de Nant, *Pages glorieuses*, appendice III, 312-313, in which Richelieu established an endowment for the Capuchins' seminary for the instruction of Native children in Port-Royal consisting of "the fifth part belonging to his Eminence in the rights and concessions accorded par the compagnie de la Nouvelle-France to the sieur Delaunay Razilly .. the sixteenth of January, 1635." While the date is different than that normally cited for the grant of the Compagnie to Claude de Razilly (15 janvier 1634), there is no record of any other major grant by the Compagnie de la Nouvelle-France to the latter.

³⁷ Nicolas Denys, *The Description and Natural History of the Coasts of North America (Acadia)*, trans. and ed. William F. Ganong (Toronto: The Champlain Society, 1908; facsimile ed. New York: Greenwood Press, 1968), 146-147.

brought by Razilly and relocated by d'Aulnay.³⁸ John Mack Faragher questioned, however, whether, given the less than ideal conditions for agriculture at La Hève, Razilly's aim was rather to create a trading post.³⁹ Historians further question how it could be, if Razilly had brought families to La Hève in the early 1630s, that Mathieu Martin, who arrived on the Saint-Jehan in 1636 around the time the colony was being relocated to Port-Royal, was recognized as the first child of European origin born in l'Acadie.⁴⁰ Notwithstanding these questions, most historians accept that Razilly probably did establish some colonists at La Hève, and that these would relocate to Port-Royal with Charles de Menou d'Aulnay, a lieutenant of Razilly, after Razilly's death.⁴¹

This short survey of the early days of French colonization in l'Acadie demonstrates that seigneurialism was consistently employed to effectuate the expansion of the king's power, as well as trade, in his colony of l'Acadie, just as it was in Canada. The marquis de La Roche, in his failed project to colonize Sable Island, was authorized to grant lands "en fief" (1598). De Mons was made lieutenant général (1603), and as the representative of the king in the colony, was given the authority to grant lands, which he did, when he granted the Port-Royal area en fief, to

³⁸ Denys, 123-124. The editor writes that this settlement was along a river "named Petite Rivière by Champlain who mapped it, together with the neighboring bay now called Green Bay." Denys, 146, n. 3.

³⁹ Faragher, *Great and Noble Scheme*, 43.

⁴⁰ Ronnie-Gilles LeBlanc, "Les origines françaises du peuple acadien avant 1714," in *Le fait acadien en France: Histoire et temps présent*, ed. André Magord (La Crèche: Geste éditions, 2010), 27-28, citing to the work of Archange Godbout, "Le rôle du Saint-Jehan et les origines acadiennes," *Mémoires de la Société généalogique canadienne-française*, 1(1944): 19-30, and Rameau, *Une colonie féodale*, 1: 323.

⁴¹ Candide de Nant wrote that "a dozen were married and left with their families." *Pages glorieuses*, 95; Une douzaine sont mariés et partent avec leurs familles. See also, Clark, *Acadia*, 96. Clark writes that the farmland was not, as some have thought, poor in the area of La Hève, and would have been adequate for an agricultural colony at the time. He suggests, citing Rameau, that there was "a fairly elaborate seigneurial machinery for the forty allotments ... very like that of the later seigneuries of New France." Clark, 95. No concessions, however, have come to light that would support this. Denys also claims that the Acadians who moved up river after Sedgwick's taking of Port-Royal were all "the ones whom Monsieur le Commandeur de Razilly had brought from France to La Hève." Denys, *Description and Natural History*, 123-124. See also George MacBeath, "Razilly, Isaac de," *DCB*, vol. 1, revised 1979, http://www.biographi.ca/en/bio/razilly_isaac_de_1E.html. MacBeath writes that the three hundred people recruited by Razilly initially included some twelve to fifteen families of colonists, and that it is reasonable to expect that the Razillys brought some one hundred twenty permanent settlers to l'Acadie.

the sieur de Poutrincourt (1604). By all accounts the latter had every intention of living in Port-Royal on his seigneurie, and may have taken the first steps towards this in issuing “*simple billets*,” or a kind of temporary title, before the revocation of de Mons’s monopoly (1607), and Argall’s raid (1613) put an end to Poutrincourt’s project. In 1627 Nouvelle-France was conceded en fief to the Compagnie de la Nouvelle-France which included Canada, l’Acadie and beyond. Then, in 1632, the sieur de Razilly, as de Mons before him, was made the king’s lieutenant général (1632), but also the representative of the newly formed Compagnie de Nouvelle-France, and later, a shareholder with his brother Claude in a subsidiary company, the Compagnie Razilly-Condornier, formed to develop trade as well as colonize l’Acadie. He was also granted a concession en fief from the Compagnie for the St. Croix River and surrounding lands. His brother, Claude was granted a concession for La Hève and Port-Royal from the Compagnie in recognition of the efforts, and investments, the Razillys had made in the colony (1634).

In spite of the king’s hopes, however, it cannot be said that at the end of the first third of the seventeenth century there was anything like a functioning seigneurial system in any part of Nouvelle-France, and this because of the lack of colonists. It had been almost thirty years since de Mons had attempted a settlement of St. Croix Island. During this time efforts to colonize Nouvelle-France, whether in l’Acadie or the St. Lawrence Valley, had been sporadic and largely ineffective, as much because of the abruptly changing fortunes of those who undertook the task with little or no help from the king, as the disruptions caused by other European powers seeking North American hegemony. In 1633, when Samuel Champlain arrived in Québec to reclaim it, three years after he had surrendered the town to the Kirke brothers, only seventy-seven French lived there, among whom were only one family, the extended Hébert-Couillard family.⁴² In l’Acadie, at around the same time, when Razilly was accepting l’Acadie back from the Scots, the

⁴² Fischer, *Champlain’s Dream*, 465.

number of French may not have been much less. These included La Tour and his men dispersed throughout the region, some of whom had married Native women.

This would begin to change in 1632 and 1633 when, on behalf of the Compagnie de la Nouvelle-France, Champlain reestablished a French presence in Québec, and Razilly at La Hève. Champlain would bring some one hundred fifty colonists to Québec, to be followed shortly by two hundred more, while Razilly was said to have set sail from La Rochelle and Moriban in 1632 with “trois cens hommes d’élite.”⁴³ The latter may or may not have included families, but it is likely that some of those who came with Razilly would shortly follow d’Aulnay and establish themselves at Port-Royal to become part of the first permanent settlement in l’Acadie. In any event, the years 1632 – 1633 represent a turning point in efforts by the French government, through the Compagnie de la Nouvelle-France, to reestablish a French presence in Nouvelle-France and to secure that presence with colonists. The seigneurial system would be the framework within which these communities of settlers would grow.

The Seigneurie of Charles de Menou, sieur d’Aulnay: 1636 – 1650

At the death of Razilly in 1636, d’Aulnay effectively took charge of the operation of the Razilly-Condonnier Company in l’Acadie, and represented the interests of Razilly’s brother and heir, Claude de Launay-Razilly who remained in France.⁴⁴ In that same year, the *Saint-Jehan*

⁴³ Fischer, 466.

⁴⁴ There has always been a question of how d’Aulnay came to take command of the colony over others who might have had the claim, such as La Tour. Launay-Razilly, as his brother’s heir, majority shareholder in the Razilly-Condonnier Company, and concessionaire of La Hève and Port-Royal, was the largest land owner in l’Acadie. Baudry, “Charles d’Aulnay,” 225. As such, Baudry argues, he was at his brother’s death the de facto head of the colony and therefore was in a position to confide the conduct of his affairs in l’Acadie to d’Aulnay, who was a relative. Baudry, 225-226. The first shares D’Aulnay received in the Compagnie Razilly-Condonnier were probably those his wife, Jeanne Motin, brought to the marriage as part of her dowry, her father being a shareholder in the company. Baudry, 226.

arrived in l'Acadie on board of which were French colonists and engagés recruited by Nicolas Denys for the Razillys. The ship carried Jeanne Motin, the daughter of one of the directors of the Razilly-Condorner Company and the soon to be wife of d'Aulnay, together with seventy-eight other colonists and contract workers.⁴⁵ They were from different areas including Anjou, the Basque region, Aunis, Saintonge, Gascogne, Champagne, Paris and Dijon. These passengers include the names of some of the first families that we know for certain to have been established in l'Acadie, including Martin, Trahan, Bugaret, and, possibly, Pesselet.⁴⁶ Among the artisans and contract workers were five saulniers, or salt-marsh workers, who almost certainly would have built some of the first dikes used to drain the extensive marshes in and around Port-Royal, making them suitable for agriculture.⁴⁷

D'Aulnay decided to move operations and colonists to the Port-Royal basin, leaving La Hève as a trading post for the company. The *Saint-Jehan* passengers joined him and any of those that moved from La Hève there. Archeological investigations reveal that d'Aulnay set up in the Scots fort on the high ground first farmed by Poutrincourt's men, the area that would become the town of Port-Royal, and the center of Acadian life and culture.⁴⁸

In his first years at Port-Royal, it does not appear that d'Aulnay immediately took measures on his own to people an agricultural settlement. From the time of commander Razilly's death, d'Aulnay had acted as the representative of Claude de Launay-Razilly, but he did not receive any formal recognition directly from the Compagnie de la Nouvelle-France or, at that time, the king. In these early years, he owned little or no land in l'Acadie. The only financial interest he owned in the Razilly-Condorner Company were rights he acquired through his

⁴⁵ Godbout, "Le rôle du Saint-Jehan," 19-30.

⁴⁶ Ronnie-Gilles LeBlanc, "Les origines françaises," 22-23.

⁴⁷ Dunn, *History of Port-Royal/Annapolis Royal*, 1.

⁴⁸ Dunn, 16.

marriage with Jeanne Motin.⁴⁹ Before 1641, it was the Razillys acting through the Compagnie Razilly-Cordonnier, and not d'Aulnay, who attempted to secure settlers. Thus, in 1640, the compagnie, still led by Claude de Launay-Razilly, sent an additional twenty-five men and five women to l'Acadie. Notwithstanding these efforts, by 1641 there were only 120 men and 40 soldiers at all four of the forts held by this company.⁵⁰

It was not until 1641 that Claude de Launay-Razilly gave d'Aulnay a share in the Compagnie Razilly-Cordonnier.⁵¹ Then in 1642, d'Aulnay purchased all of Claude's interests in l'Acadie, whether these were lands inherited from his brother, Isaac de Razilly, such as the St. Croix concession, or Claude's majority shares of the Compagnie Razilly-Condorner.⁵² This purchase also included the 1634 concession of La Hève, Sable Island, and Port-Royal made by the Compagnie de la Nouvelle-France in Claude's name.⁵³ Although he was now the majority shareholder in the Compagnie Razilly-Condorner, D'Aulnay still did not have a formal concession from the Compagnie de Nouvelle-France, which nevertheless did register the contract of sale.⁵⁴ The 1642 sale, however, transformed d'Aulnay from a mere lieutenant of Razilly, to

⁴⁹ Some have opined that the marriage between d'Aulnay and Motin occurred shortly after she arrived on the St.-Jehan in 1636. See Baudry, "Charles d'Aulnay," 226; George MacBeath, "Motin, Jeanne," *DCB*, vol. 1, revised 1979, http://www.biographi.ca/en/bio/motin_jeanne_1E.html. Others have placed the date of their marriage closer to 1638. Stephen A. White, *Dictionnaire généalogique des familles acadiennes* (Moncton, NB: Centre d'études acadiennes, Université de Moncton, 1999), s.v. "Motin," 2:1235.

⁵⁰ Baudry, "Charles d'Aulnay," 235.

⁵¹ Baudry, 227.

⁵² See, *Mémoire sur les contestations qui sont à régler au sujet de l'Acadie, 1703*, and *Arrêt du Conseil du Roi, 20 mars 1703*, both published in Vanderlinden, *Le Lieutenant civil et criminel*, 362-368, 367, and 368-390, 372, respectively (referencing a January 16, 1642 contract of sale made at Paris, registered by the Compagnie de la Nouvelle-France on the 28th of the same month and year); "Pièces justificatives de ces demandes [des terres, fonds et habitations concédés au sieur d'Aulnay et a ses auteurs], 1700," *Collection de manuscrits*, 2:365.

⁵³ In this same year, 1642, d'Aulnay was also named syndic of the Capuchins in l'Acadie and administrator of the order's shares in the company given by Cardinal Richelieu. René Baudry, "Menou d'Aulnay, Charles de," *DCB*, vol. 1, revised August 2017, http://www.biographi.ca/en/bio/menou_d_aulnay_charles_de_1E.html. See also, "Dotation du seminaire de Port-royal par Richelieu (13 janvier 1640)," Candide de Nant, *Pages glorieuses*, appendice III, 312, and 313-315.

⁵⁴ There was friction between the Compagnie de la Nouvelle-France and d'Aulnay, as evidenced by the fact that when he purchased Launay-Razilly's rights, the Compagnie registered the sale but did not offer d'Aulnay any title to reflect his change in status. Instead, d'Aulnay was forced to go directly to the crown resulting in his 1647 lettres patentes. Baudry, "Charles d'Aulnay," 220. The Compagnie would later approach the court with a request for a

the largest land owner and seigneur on the coast of l'Acadie.⁵⁵ In 1647, Queen Anne, Regent of France, granted d'Aulnay lettres patentes providing him wide-ranging powers as gouverneur and lieutenant général in all l'Acadie, thus officially confirming his legal authority to, among other things, appropriate and grant lands in the full extent of the colony.⁵⁶

Within two or three years of his assuming control of the company, d'Aulnay was reporting that he had four hundred mouths to feed, of which two hundred were soldiers, contractors and artisans.⁵⁷ While this disproportionate number of soldiers probably reflects a redoubled effort to man his forts against Charles de La Tour's forces, with whom he was then engaged in a contest for control of the colony, it does appear to show that d'Aulnay took steps to

judicial inquiry against d'Aulnay and the revocation of his commission as governor. As discussed further below, d'Aulnay's death in 1650 would not end the Compagnie's efforts to discredit him.

⁵⁵ Other seigneurs in l'Acadie at this time included Charles de Saint-Étienne de La Tour, who received a concession for the mouth of the rivière Saint-Jean from the Compagnie de la Nouvelle-France in 1635, and Nicolas Denys, who received a concession to the coast of Miscou in 1645, also from the Compagnie. The latter concession was expanded in 1653 to include a vast area from the cap de Canso, the easternmost point of what is today peninsular Nova Scotia, to cap des Rosiers, on the eastern tip of the Gaspé peninsula. In 1652, Jean de Lauson, governor general of Nouvelle-France granted a concession for Miscou to cap des Rosiers, an area which would overlap Denys's 1653 concession, to eleven associates from Québec; and in 1653, La Tour rewarded his friend, Philippe Mius d'Entremont, who had joined him in l'Acadie as lieutenant-major and commander of the troops, by granting him the Pobomcoup fief as a barony. This extended from cap Nègre to cap Fourchu, along the southeastern coast of what is today peninsular Nova Scotia. Vanderlinden, *Le Lieutenant civil et criminel*, 95. Vanderlinden has an extended discussion of these seigneuries, which were never settled, with the exception of d'Entremont's barony of Pobomcoup which eventually attracted a small number of families. Clément Cormier, "Mius (Muis) d'Entremont, Philippe," *DCB*. vol. 1, revised January 2019, http://www.biographi.ca/en/bio/mius_d_entremont_philippe_1E.html. Denys established trading posts, sedentary fisheries and forts in various areas of his holdings, and lived there with his family, but there is no evidence that he otherwise established settlements. Nor is there evidence that La Tour actually brought colonists to live on his seigneuries. Candide de Nant, *Pages glorieuses*, 135. It appears that for these two men, the monopoly provided by their concession for the fur trade and for the exploitation of natural resources was their principle interest. Vanderlinden, *Le lieutenant civil et criminel*, 96-103. Because the chief concern of this dissertation is property tenure in Acadian agricultural settlements, it will not go into detail regarding Acadian seigneuries that were never settled and were instead chiefly commercial ventures. For this, the reader is referred to Vanderlinden's discussion cited above.

⁵⁶ "Lettres patentes en faveur du sieur de Charnisay, Paris, février, 1647," *Collection de manuscrits*, 1:120-124. An earlier letter signed by Louis XIII to d'Aulnay issued in 1638 had appointed d'Aulnay lieutenant général for an area from the baie Française (Bay of Fundy) to English-controlled Virginia to the south, as well as gouverneur of Pentagouët. La Tour, who has already been named lieutenant général, was to have jurisdiction north from the middle of the baie française to cap de Canso. *Mémoires des Commissaires*, 2:391-393. At the same time, the king acknowledged that the base of operations for the two lieutenants were actually located in each of the other's territory: D'Aulnay was commandant at La Hève and Port-Royal, in La Tour's territory, while the rivière Saint-Jean, La Tour's base, was under d'Aulnay's jurisdiction. The king's letter, therefore, neither settled d'Aulnay's seigneurial claims, nor the escalating tensions between the two lieutenants.

⁵⁷ Baudry, "Charles d'Aulnay," 235.

increase the number of settlers in Port-Royal after 1642 when he was in a stronger position to do so. By his own estimate in a mémoire he dictated in 1643, he had brought, “20 ménages français” (French households) to Port-Royal.⁵⁸

Since the 1960’s, when Geneviève Massignon wrote her influential book, *Les parlers français d’Acadie*, most, but not all scholars have accepted that d’Aulnay recruited some or all of these settlers from the seigneurie of his mother, Nicole de Jousserand, located in the Loudunais region which was then on the border of the provinces of Poitou and Touraine.⁵⁹ Massignon based her conclusions in part on a comparison of names found in parish registers from near the d’Aulnay estates with names contained in a 1671 census in l’Acadia. From the concurrence of names found, she concludes that “the seigneurie of d’Aulnay . . . could have been the cradle of about twenty of the oldest families who settled in Acadia.”⁶⁰

⁵⁸ Baudry, 235.

⁵⁹ For an analysis of the scholarship on the issue of the origins of Acadians who arrived before 1713, see Gregory Kennedy, *Something of a Peasant Paradise*, 9-12; and LeBlanc, “Les origines françaises,” 25-48. Kennedy cites what he calls circumstantial evidence supporting the Massignon hypothesis, including the fact that d’Aulnay was in France in late 1641 and 1642 when he was in a position to recruit his own colonists. After securing support from the crown in Paris, d’Aulnay spent several months with his mother where, Kennedy argues, it is likely he recruited colonists. Kennedy, *Something of a Peasant Paradise*, 10-11. LeBlanc notes that while there is no direct evidence of d’Aulnay having recruited any settlers, the increase in numbers in the last ten years of d’Aulnay’s life indicate that he probably succeeded in attracting more colonists than Razilly had, contrary to Denys’s assertions. LeBlanc, “Les origines françaises,” 34. As to the place of recruitment, LeBlanc concludes that though the sample is small, and Acadians appear to have come from a variety of French provinces, largely because of the military recruits, “it is nevertheless quite obvious that the Poitou-Charentes region furnished most of the colonists to l’Acadie,” LeBlanc, “Les origines françaises,” 38; “Il est quand même assez évident que la région du Poitou-Charentes a fourni le plus de colons à l’Acadie.”

⁶⁰ Geneviève Massignon, “La seigneurie de Charles de Menou d’Aulnay, gouverneur de l’Acadie, 1635-1650,” *Revue d’histoire de l’Amérique française* 16, no. 4 (mars 1963): 471. She was also able to identify records of the baptism of the daughters of settlers known to be established in l’Acadie between 1646 and 1650 in the parish register of La Chaussée, as well as the baptismal record of the probable wife of another Acadian named in the 1671 census. Most, including Vanderlinden and Kennedy, accept that a core group of influential families were recruited from the Loudunais based on Massignon’s work and other circumstantial evidence. Vanderlinden, *Se marier en Acadie*, 78-80; Kennedy, *Something of a Peasant Paradise*, 9-12. LeBlanc similarly takes the position that Massignon’s work is well supported, and until proven otherwise, has been accepted, including by the noted genealogist, Stephen White. LeBlanc, “Les origines françaises,” 29, referencing White, *Dictionnaire généalogique*. But see Clarence-J. d’Entremont, “Origine des Acadiens,” *La société historique acadienne, Les Cahiers* 22, no. 4 (Octobre-décembre 1991):128-143. D’Entremont argues that to the extent that Massignon’s conclusion regarding the Loudunais origin of colonists recruited by d’Aulnay is based on the frequency of Acadian names in this area, it is “entirely false,” given that “this frequency was at the time also just as numerous in other regions of France.” D’Entremont, “Origine des Acadiens,” 129; Quant à vouloir s’appuyer sur la fréquence des noms acadiens dans le

Scholars generally agree with John Reid that in the relatively short time he was in control of the colony, d'Aulnay “had for the moment a tightly organized, though small, seigneurial settlement at his base” in Port-Royal.⁶¹ The historical record provides information not only about the ways in which d'Aulnay fulfilled his seigneurial responsibilities, but also how land was held and farmed on his seigneurie. A 1685 document discussed by Reid and written by the Le Borgne heirs states:

Since the time sieur de Menou saw himself sole proprietor of l'Acadia, he built at Port-Royal the existing fort, a church, and a convent, some mills, many dwellings; and had cleared a considerable number of arpents of land that made three large métairies which cost him more than 150,000 livres.⁶²

While the Le Borgne heirs had reasons to exaggerate d'Aulnay's contributions to the establishment of the colony—they were attempting to claim d'Aulnay's legacy as creditors—their account is consistent with the 1687 testimony of Michel Boudrot, then lieutenant général of l'Acadie, and certain “anciens habitants du pays.” These certified that the late d'Aulnay had constructed three forts on the coast of l'Acadie, and at Port-Royal, two mills, a number of vessels, as well as “deux fermes ou meteryes,” with the necessary appurtenant buildings, such as dwelling houses, barns and stables.⁶³

Loudunais au temps de d'Aulnay, cette fréquence était dans le temps tout aussi nombreuse dans d'autres régions de la France. Others have similarly questioned Massignon's conclusions Kennedy, *Something of a Peasant Paradise*, 9-12.

⁶¹ Reid, *Acadia, Maine, and New Scotland*, 104.

⁶² “Mémoire concernant les prétentions des héritiers Le Borgne sur l'Acadie,” n.d., LAC, C11D, vol. 1, fol. 68; p. 135 on transcription (C-11359, image 155):

Depuis que le sieur de Menou s'est vu seul propriétaire de l'accadie, il a fait bastir au port Royal le fort... une eglise, et un couvent, des moulins, beaucoup de logements, fait desfricher un nombre considerable d'arpens de terre quy font trois grosses metairies quy luy coustent plus de cent cinquante mil livres.

⁶³ Certificat de Michel Baud[r]ot, lieutenant général en Acadie, 5 octobre 1687 (copy, dated 27 septembre 1688), LAC, Fonds des Colonies (France), C11D, vol. 2, fol. 85-86, accessed August 25, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2409980. “Deux fermes ou meteryes,” has been translated, first by Murdoch, and then by others following him, as “farms and manors.” See, Beamish Murdoch, *A History of Nova-Scotia, or Acadie* (Halifax: James Barnes, 1865), 1:180-181, and Dunn, *History of Port-Royal/Annapolis Royal*, 21-22. However, the original cited above reads “meteryes.” This reading is supported by Margry's transcription of this document which may be found at LAC, Fonds de la Bibliothèque nationale de France, Département des manuscrits,

In addition to the Le Borgne heirs' mémoire and the testimony submitted by Boudrot, there is other evidence regarding the type of land tenure that d'Aulnay employed on his seigneurie. Denys's description of Port-Royal maintains that d'Aulnay retained personal control over the settlement of Port-Royal,⁶⁴ and particularly, that "there is a great extent of meadows [in the area of Port-Royal] which the sea used to cover, and which the Sieur d'Aunay had drained."⁶⁵ It is likely that this refers to the métairies discussed in the Le Borgne and Boudrot documents. Also, a 1668 letter to Colbert written on behalf of the d'Aulnay's heirs requesting indemnification for losses caused by Le Borgne in l'Acadie claimed that after the 1654 seizure of Port-Royal by Robert Sedgwick, Le Borgne proceeded to "releguer ces pauvres mineurs dans des cabanes champestres" (relegate these poor minors to *cabanes champestres*).⁶⁶ "Cabane" is a term that was used in the west of France to mean a large farm made of drained marsh.⁶⁷ Thus, "des cabanes champestres," were large marshland farms, located away from the village or other dwellings.⁶⁸ Gregory Kennedy has found that in the parish of Martaizé, near Loudun and d'Aulnay's seigneurie of Aulnay, "*métairies* called *cabanes* were created ... out of drained

Nouvelles acquisitions françaises (1603-1787), MG 7, I, A 3, vol. 9281, p. 284, accessed August 25, 2017, <http://heritage.canadiana.ca/>, C-9197, image 724.

⁶⁴ Denys, *Description & Natural History*, 151, 483. Denys claimed that in contrast to Razilly whose "first desire was to make known the country's goodness and to people it," d'Aulnay "took away all the residents of La Haive to Port-Royal, holding them there as serfs, without allowing them to make any gain." Denys, 151. He also claimed that the disposition of d'Aulnay and his "conseil" was to "rule." Denys, 151. While Denys, who was no friend of d'Aulnay, may be exaggerating here, his language tends to support the notion that the first Acadians worked the drained marshland métairies as sharecroppers rather than receiving the more desirable concessions of land.

⁶⁵ Denys, 123. Scholars accept that "the preparation of the marshes for agricultural use was carried out under [d'Aulnay's] supervision." Reid, *Acadia, Maine, and New Scotland*, 104. See also, Clark, *Acadia*, 103. Faragher, however, disputes Denys's assertion attributing the draining to d'Aulnay on the grounds that local officials generally took a dim view of marshland clearing. Faragher, *Great and Noble Scheme*, 49. This reasoning is less than convincing given d'Aulnay's almost certain familiarity with the benefits of marshland farming. This includes not only the large drainage projects of the first half of the seventeenth century in the marais Poitevin, but also smaller projects in the Loudunais, where d'Aulnay's seigneurie was located. Kennedy, *Something of a Peasant Paradise*, 22.

⁶⁶ Placet des enfants d'Aulnay de Charnisay adressé à Colbert, 1668. LAC, Fonds de Bibliothèque nationale, Département des manuscrits, Mélanges Colbert (1665-1668), MG 7, I, A6, vol. 147, p. 270 (transcription), accessed September 1, 2017, <http://heritage.canadiana.ca/>, C-12868, image 322.

⁶⁷ Yannis Suire, "L'oeuvre de dessèchement du Marais poitevin," *Dix septième siècle*, no. 221(2003/4): 614, n. 8.

⁶⁸ *Dictionnaire de L'Académie française*, 1re éd. (1694), found online at *Dictionnaire vivant de la langue française* (DVLf), s.v. "champestre," accessed September 3, 2017, <https://dvlf.uchicago.edu/mot/champestre>.

marshlands.”⁶⁹ One could reasonably assume, therefore, that the large marshland farms referred to in the 1668 mémoire were the métairies that others have confirmed that d’Aulnay had constructed in his lifetime.⁷⁰

As will be recalled from chapter 2, ‘métairie’ was a form of land tenure, increasingly popular in western France in the seventeenth century, whereby parts of the seigneurial domaine were leased to a tenant who worked it for a certain period in exchange for which the seigneur would receive a portion of the harvest, either in kind or in money. Depending on the terms of the lease, the seigneur might provide the seed, equipment or animals to the tenants. In the case of the latter, the tenant and the owner would share the natural increase. There is a claim in another undated mémoire supporting a request for reimbursement by the Le Borgne heirs that d’Aulnay and LeBorgne did indeed supply cattle to their métairies.⁷¹

It is not surprising that d’Aulnay created métairies on his domaine, although, as the following discussion shows, this was not the only type of tenure employed on his seigneurie of Port-Royal. First, the bail à métairie would have provided colonists with the necessary seed, tools and quite possibly livestock, that they could obtain only from shipments from France arranged by d’Aulnay. Moreover, d’Aulnay was very familiar with this form of tenure and would not have hesitated to employ it where it otherwise made sense, as it did in this context. In 1654 the Parlement de Paris dismissed an appeal by the d’Aulnay heirs of an award to the widow of Claude de Razilly for amounts d’Aulnay owed (14,000 livres) on his 1642 purchase of Claude

⁶⁹ Kennedy, *Something of a Peasant Paradise*, 22.

⁷⁰ See also the testimony of the Reverend Père Ignace, d’Aulnay’s confessor, who wrote that on the day before d’Aulnay’s death, he saw him return covered with mud, having come from “la grande et petite Rée,” where he had been “to place some stakes, plot some lines and stretch the guiding lines to make a draining of land.” Lettre du Rev. Père Ignace, Capucin, 6 aout 1653, *Collection de manuscrits*, 1:138; Il venoit de poser des piquets, tracé les lignes et tendre les cordeaux pour faire un nouvel asséchement de terre. Candide de Nant opined that “la grande and petite Rée” referred to the two farms or métairies that d’Aulnay had constructed in Port-Royal. Candide de Nant, *Pages glorieuses*, 227.

⁷¹ Mémoire concernant le Canada, LeBorgne, n.d., FR ANOM COL E 266, p. 313 (seeking reimbursement for, among other things, costs in establishing “metairies peuplées de bestis a Cornes”).

de Razilly's holdings in l'Acadie. The principal plus interest was to be paid out of revenues from the d'Aulnay seigneurie near Loudun, including d'Aulnay's share of the monies collected by the *fermiers* on all leases established on the lands.⁷² In addition, the widow Razilly was awarded, on a priority basis, the money needed to make urgent repairs "for the exploitation of the said land of l'Aulnay and of the métairies dependant thereon."⁷³ Thus d'Aulnay was very familiar with the métairie from his own seigneurie near Loudun, and would naturally have employed this type of tenure on his domaines in l'Acadie.⁷⁴

In addition to constructing métairies on his domaine that he would have leased out to others under various types of lease agreements, d'Aulnay employed a variety of other kinds of tenure on the *directe seigneuriale*. The historical record contains two specific references to concessions which are identified as having been granted by d'Aulnay. The first is known only by reference in an anonymous mémoire sent to the comte de Pontchartrain, Secrétaire d'État à la Marine, in 1702 containing certain allegations against the then gouverneur of l'Acadie, Jacques François de Monbeton de Brouillan. Among other things, the writer complains that Brouillan had pressured a habitant to sell land that had once belonged to Jacques Bourgeois who was granted it by d'Aulnay more than forty years before.⁷⁵ The second, the only extant concession granted by d'Aulnay, is dated 1649, one year before d'Aulnay's premature death from exposure, and two

⁷² Arrêt du Parlement du Paris, entre Guillaume Lebel et Perrine Gaultier, veuve de Claude de Rasily, 29 décembre 1654, LAC, Archives nationales (France), Section ancienne, Série X1, Parlement civil de Paris, vol. 5789, pp. 1-3, transcription accessed, September 10, 2017, <http://heritage.canadiana.ca/>, C-1256, images 45-48.

⁷³ Arrêt du Parlement du Paris, entre Guillaume Lebel et Perrine Gaultier. "Dépendant," indicates lands that are part of the seigneurie, and subject to the obligations this entails.

⁷⁴ John Reid finds further evidence of d'Aulnay having constructed métairies in Denys's claim that having moved the residents of La Hève to Port-Royal, d'Aulnay "[held] them there as serfs, without allowing them to make any gain." Denys, *Description and Natural History*, 151, discussed and cited in Reid, *Acadia, Maine and New Scotland*, 104, n. 7.

⁷⁵ Mémoire contre M. de Brouillan et son administration, 1702, LAC, Fonds des Colonies (France), Série C11D, Correspondance générale, Acadie, vol. 4, fol. 152-157v, 153v, accessed September 12, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2410135; transcription at <http://heritage.canadiana.ca/>, C-11360, images 615-640; also published in part in Rameau, *Une colonie féodale*, 2: 307-310.

years after d’Aulnay was confirmed in his authority to grant lands in the colony.⁷⁶ A careful analysis of this concession, from d’Aulnay to Martin Chevery, master ship carpenter and his wife, reveals that d’Aulnay had intended to establish, and at least at Port-Royal, did establish a seigneurial tenure using quite sophisticated forms that would have been familiar to anyone involved in property transfers in France or Québec at the time.

D’Aulnay and his wife, Jeanne Motin, were then living in “their chateau and seigneurial manor of the said Port-Royal” (en leur chasteau et manoir seigneurial du dit port Royal), where the contract was signed before witnesses. The document grants two arpents of “cleared land ready to sow” (deux arpens de terre deffrichés et prest a ensementer) in Port-Royal where Chevery and his wife were already resident.⁷⁷ The document conveys the property by way of “cens et rente fonciere” and a “bail d’heritages.” There were two types of *baux à rente foncière* created by contracts under the ancien régime; the *bail à rente seigneuriale*, and the *bail à rente simple*. The former created a rent owed to a seigneur, in money or in kind, by reason of his or her *direct*, or superior proprietary interest on the property rented. It was a seigneurial right preserved at the time of the concession.⁷⁸ The seigneur retained the direct, and all his or her seigneurial

⁷⁶ “Extrait du premier contract de concession donné par les ancienne Seigneur de la Cadie,” 20 mars 1649 (hereafter, “Martin de Chevery concession”), FR ANOM COL E 12 (Menou d’Aulnay de Charnizay, Charles, gouverneur de l’Acadie, et sa famille (1638/1700), pp. 241-243, 222, last revised May 26, 2010, <http://anom.archivesnationales.culture.gouv.fr/ark:/61561/up424g027z2f>; also, published in part in Vanderlinden, *Le lieutenant civil et criminel*, 266-267; .

⁷⁷ The land was said to be located in Port-Royal “at a place called Paradis” (en une piece scis au dit port royal au lieu dit Paradis) bordered by the river on the northeast and by the “Great Royal Road which goes to Mont Jesus, and Nôtre Dame de Liesse” (grand chemin Royal qui va au mont Jesus, et a nôtre dame de Liesse). Neither of the latter places are located on known maps of the area, the earliest of which appears to have been drawn in 1686, more than 35 years later. See “Plan très exact du terrain où sont situées les maisons du Port-Royal,” ca. 16., Bibliothèque nationale de France, département Cartes et plans, GE SH 18 PF 133 DIV 8 P 2, published February 2, 2015, <https://gallica.bnf.fr/ark:/12148/btv1b530899866>. This map is attributed to Jean-Baptiste Franquelin, cartographer and king’s hydrographer at Quebec. It is thought that Franquelin created this map and possibly others when he accompanied the intendant Jacques De Meulles on a visit to the area. Dunn, *History of Port-Royal/Annapolis Royal*, 31; Raymonde Litalien, Jean-François Palomino, Denis Vaugeois, *La mesure d’un continent; Atlas historique de l’Amérique du Nord, 1492-1814* (Paris: Les éditions du Septentrion, 2007), 107, 127.

⁷⁸ Merion, *Dictionnaire*, 484, s.v. “rente.”

rights. Certain legal consequences flowed from this. For example, the bail à rente seigneurial did not trigger the right to lods et ventes, because it was not a sale.⁷⁹ The bail à rente simple was rent that was due, not by reason of the seigneurial direct, but simply as the price paid for the alienation of an interest in property held by the lessor. The bail d'heritage was the original name for the bail à rente simple. In either case, these rentes were considered a form of tenure creating a real interest in property, as opposed to the bail à métayage which was a kind of lease or rental.

The rent for a bail à rente foncière was annual, and could be either perpetual, which it often was, or for an extended term of years. If the term spanned more than one generation, the property, and the obligation to pay rent, was passed on to the renter, or *preneur's* successors.⁸⁰ The *rentes foncières* were essentially non-redeemable, unless stipulated otherwise or by operation of law. In other words, the renter could not free himself or herself from the rent by paying a lump sum. These perpetual leases increasingly came to be seen in France as unduly burdening the property, hindering the development of agriculture, and shackling the property holders who could never free themselves from the rent payments.⁸¹

In the case of the Martin Chevery, the sieur d'Aulnay included not only the “rente foncière,” which, attached as it was to the cens would clearly have been understood to create a bail à rente seigneuriale, but added a perpetual “bail d'heritage,” or bail à rente simple. Contracts like this were not unknown in France, and examples were cited in the province of Poitou.⁸² They appear to create two different types of contract, with different legal effects. For example, the bail à rente seigneuriale was not subject to prescription, but the bail d'heritage was.

⁷⁹ Ferrière, *Nouveau commentaire*, Article 87, 169-170.

⁸⁰ Pothier, *Traité du contrat de constitution de rente; Traité du bail à rent*, nouvelle éd. (Paris: Letellier, 1806), 9.

⁸¹ In the fifteenth century, Charles VII declared that the rent on houses in Paris that had been burdened with perpetual rent payments, and neglected by their owners, would be redeemable. By the end of the ancien régime, those holding rents on rural properties were demanding similar relief. Merion, *Dictionnaire*, 484-485, s.v. “rente”; Pothier, *Traité du contrat de constitution de rente*, 48 (in *Traité du bail à rent*).

⁸² Joseph Boucheul, *Coûtumier general ou Corps et compilation de tous les commentateurs sur la Coûtume du comté et pays de Poitou*, vol. 2 (Poitiers: Jacques Faulcon, 1727), 600.

The question remains, why use both forms? The answer may lie in the fact that the bail à rente d'heritages provided certain flexibility that a simple concession requiring cens et rentes did not, a flexibility that was very useful in a colonial setting.

The Chevery contract is a case in point. The fact that the property was given by way of cens et rentes (seigneuriales) meant that d'Aulnay retained his direct on the property and was due all his seigneurial rights and fees. Thus, as seigneur, d'Aulnay was to receive “four Parisian deniers of cens per arpent” yearly. The property also carried “lots et ventes saisines,” or alienation fees, “and fines when required of sixty Parisian sols for each sale hid and not notified in twenty days from the date of the contract.”⁸³ In addition, “a half of a large fat capon cens et rente” per arpent per year was to be delivered to the seigneurial manor. This latter rente was, by virtue of being seigneurial, also subject to mutation fees and fines. Moreover, on the eve of the Feast of Kings, Chevery and his wife were to deliver to the seigneurial manor in Port-Royal “a round cake made of a quarter of bushel of the finest white wheat flour kneaded and half a dozen eggs, a half pound of butter of the very freshest kind, in the edge of which cake they will place a black bean.”⁸⁴ He also exercised his banal rights, granting Chevery and his family “the right of the hunt the days of the feasts and Sundays of the year after the divine service with arquebuse and from the first day of May until the first day of July every day, the right of fishing for the

⁸³ Martin de Chevery concession, FR ANOM COL E 12, pp. 241-243; “amende quand le cas y eschet de soixane sols parisis pour chacune vente celée et non notifiée dans vingt jours de datte du contract.”

⁸⁴ Chevery concession; “un gasteau rond fait d’un quart de boisseau de fleur de farine de froment pestry et demy douzaine d’oeuf et demy livre de beurre ce tout frais, dans le bord duquel gasteau ils mettront une fève noir.” By tradition, a bean was baked into a cake that was shared the eve, or the day of the Kings (Epiphany). The one who found the bean was the “Roy de la fève.” *Dictionnaire de l’Académie française*, 1re éd., 1694, s.v. “fève,” online at *DVLF*, accessed September 15, 2017, <https://dvlf.uchicago.edu/mot/feve>. This tradition continues in France, using small ceramic charms instead of a black bean, and the cake is known as a *galette des rois*. The tradition also existed in French Canada at least into the 20th century.

seals with arquebuse from which they will be able to make oils, cod and all other fish.”⁸⁵ As well, they will have “the right of the oven until twelve years which being finished . . . [they] can request the continuation of the latter to the seigneur, and dame, who will grant them if it seems good to them.”⁸⁶ Chevery was also granted the *droit de pacage*, or right to pasture their cattle “in the commons which will be hereafter designated . . . by the said seigneur and dame,” together with the right to cut wood in the adjacent forest as was necessary “for heating, building their houses, as well as to make all sorts of works, utensils, and commodities for the families.”⁸⁷

However, unlike in the case of a censitaire, who for all intents and purposes owns the land, albeit subject to the cens et rentes and other seigneurial exactions and duties, and may sell it or pass it on to heirs at will, the contract provides that in the event that Martin de Chevery and his wife abandon the land, “they would not dispose of the said two arpents of land and houses that they were able to have built . . . Rather the said two arpents of land and houses . . . will remain with the said seigneur and dame d’Aulnay to dispose of it as belonging to them and just as it will seem to them good.”⁸⁸ The Coutume de Poitou allowed for what is called *retrait conventionnel*, also called *remeré*, or *retrait censuel* where the land was held en censive. *Retrait conventionnel* could be used in the case of sale or even of contract of bail à rente.⁸⁹ This

⁸⁵ Chevery concession; “[Le] droit de chasses les jours des festes et dimanches de l’année apres le service divin a l’arquebuse, et depuis le premier jour de may jusques au premier jour de juillet tous les jours, droit de pescherie aux lousps marins a l’arquebuse, desquels ils pourront faire des huilles, mollues et tous autres poisons.”

⁸⁶ Chevery concession; “[Le] droit de four jusques a douze années lesquelles estant finies lesdits preneurs, et leurs dits hoirs, ou ayans causes pourront demander la continuation d’iceluy ausdits seigneur, et dame, qui leur accorderons sy bon leur semble.”

⁸⁷ Chevery concession; “[Le] droit de pascage de leurs bestiaux dans les communes qui leur seront cy apres designées et indiquées par lesdits seigneur, et dame . . . [et] du droit de chauffage dans la plus prochaine forest qui est, et sera cy-apres la plus proche; et laquelle ils pourront couper et abatre du bois tant pour les chauffer, bastir leurs maisons, que pour faire toutes sortes d’ouvrages, . . . pour leur familles seulement.”

⁸⁸ Chevery concession; “[E]n cas que lesdits Martin de Chevery et sa dite femme eussent volonté de quitter et abandonner ledit pays, . . . ils ne pourront disposer desdits deux arpens de terre et maisons qu’ils pouroient avoir basties . . . Ains ledits deux arpens de terre et maisons . . . seront demeurerons ausdits seigneur et dame d’Aulnay pour en disposer comme a eux appartenans et ainsy que bon leur semblera.”

⁸⁹ Boucheul, *Coûtumier général*, 2:363, 534. Pothier sets forth the ways contracts can be cancelled, including through rémeré, by which the seller reserves the ability to redeem the thing sold. Robert Joseph Pothier, *Traité du*

permitted the seller or bailleur to reserve the right to redeem the property sold, typically on the sale to a third party, and in exchange for the price the latter had been willing to sell. Some coutumes, however, such as the influential Coutume de Paris, did not permit retrait censuel, only allowing retrait where the property sold was a fief, and the seigneur sought to rejoin it to his or her domaine. This was called retrait féodal. The property of a censitaire who lived within the jurisdiction of the Coutume de Paris, therefore, was protected from retrait.

The clause in the present contract, though not typical of retrait censuel—it does not permit any sale of the property and does not provide for any compensation, even for buildings that Chevery may have built—provides as does the retrait censuel for the retaking of the land subject to the bail à rente. The use of the bail à cens form ensured that d’Aulnay continued to hold the direct on the land, and enjoyed all of his seigneurial rights. But by fashioning it also as a bail à rente simple, he could better control what happened on the land in a situation where the commitment of the would-be colonist, Chevery, was perhaps less than certain.⁹⁰ Moreover, the inclusion of a bail à rente simple allowed him to employ something like the retrait censuel in the colony of Nouvelle-France where the choice of law was less than clear, and could, if the Coutume de Paris was applied, prevent him from retaking the land.⁹¹

contrat de vente, selon les règles tant du for de la conscience, que du for extérieur, vol. 1 (Paris: Chez Debure, 1772), 374. He notes that a contract of bail à rente may contain any of the recessionary clauses as a contract for sale, presumably, as permitted by the applicable coutume. Pothier, *Traité du contrat de constitution de rente*, 2:68.

⁹⁰ This was not a foolproof solution. Some courts writing in France at the time found that where a bail à rente simple was joined with cens et rentes in the same instrument, and tended towards the same thing (i.e. the transfer of the same property interests by way of certain payments to the seigneur), the bail à rente simple could take on some of the same characteristics as the bail à cens et rentes. Boucheul, *Coûtumier général*, 2:599-600, citing to a 1617 order of the Parlement de Dijon holding that a rente foncière was imprescriptible, as well as the cens, when joined together in the same contract “of which the effect only tends to the same thing” (dont l’effet ne tend qu’à la même chose).

⁹¹ As noted in chapter 2, the Compagnie de Nouvelle-France had already granted some concessions using the Coutume de Paris as the choice of law. See e.g. Niort, “Aspects juridiques,” 475, giving as an example the 1640 cession for the Ile de Montréal.

The Le Borgne heirs, though not entirely trustworthy informants, write that in addition to “cens et rentes,” d’Aulnay and Le Borgne held their lands subject to certain “droits de fruits.”⁹² The “droits de fruits,” would appear to be something like *champart*, also called *terrage*, and *agrièr*, depending on the region in France, a payment levied by the seigneur on the harvest, usually grains. Champart was sometimes in lieu of, and other times in addition to the cens et rentes.⁹³ Champart could be as much as a third of the harvest, but more often a sixth, a fifth or even a twentieth. It was collected only on cultivated lands, and thus the seigneur received nothing on fallow or wastelands.⁹⁴ While champart is discussed in the Coutume de Paris,⁹⁵ it was not much in evidence in Québec, if it existed at all.⁹⁶ This is perhaps another reason to approach the Le Borgne heirs’ statement, which sought compensation for their losses in l’Acadie, with some degree of skepticism. Nonetheless, this document does show, at the very least, that the idea that d’Aulnay may have provided cattle and seed to colonists in l’Acadie, or included seigneurial exactions such as champarts, was considered within the realm of possibility in the new colony.

The evidence provided by the Chevery concession, together with the testimony of the contemporary accounts, as well as the later statements of the Le Borgne heirs, supports the notion that d’Aulnay had established a small, but functioning seigneurie in Port-Royal on the shores of the rivière du Dauphin. He used legal forms current in France and the St. Lawrence Valley at the time to secure his rights as seigneur vis à vis his censitaires and lease holders,

⁹² Memoire concernant le Canada, LeBorgne, n.d., FR ANOM COL E 266, p. 313. The LeBorgne heirs were here seeking compensation for “cens et rentes des baillettes qui ont esté données aux habitans dud^t. pais tant par led^t. feu S.^r Daulnay que les leborgne, ensemble les droits de fruitz qui se tenent sur leurs terres” (cens et rentes from the tenements which were given to the habitants of the said country whether by the deceased sieur d’Aulnay or the LeBorgne, together with the droits de fruits which attach to their lands).

⁹³ *Encyclopédie méthodique, ou par ordre de matières. Jurisprudence*, vol. 8 (Paris: Panckoucke, 1789), 18, s.v. “terrage”; Guyot, *Traité des fiefs*, 5:774-775.

⁹⁴ Marion, *Dictionnaire*, s.v. “champart,” 83.

⁹⁵ See e.g., Ferrière, *Nouveau commentaire*, 5.

⁹⁶ Dechêne, “L’évolution,” 153. And indeed, as Dechêne notes, it was seen less and less in France during the modern era, except that it seems to have reappeared in the second half of the eighteenth century, applying for the most part where new land was being cleared.

forms that were, moreover, flexible enough to adjust for the uncertain conditions of a colonial setting. He also met his traditional responsibilities as a seigneur in causing mills to be built, settling colonists, ensuring tithes would be paid to the local parish, Saint Jean Baptiste, as well as providing land for missionaries, and planned to, and probably did, establish areas of commons from which the community could gather wood and pasture their animals.⁹⁷ The banal right to build an oven is acknowledged, but the tenants are given a “right of oven” for twelve years, and could request of the seigneur and dame an extension after this period. This allowed them to build and use their own ovens for the same reasons that habitants in Canada did.⁹⁸ The Chevery contract also acknowledges d’Aulnay’s seigneurial right to grant permission to hunt and to fish.

D’Aulnay, however, was not just the seigneur of the area, he was also gouverneur and lieutenant général, and as such was concerned with the government of the colony. It is important to understand something about this government, as it created a superstructure in which seigneurial tenure operated. The Chevery contract provides some clues as to the form government took while d’Aulnay was alive. While the administration of the colony was almost certainly rudimentary, we know that d’Aulnay had a “Prevost [and] garde du sceau royal” for the “Prevosté et Justice des costes d’Acadie et Isles adjacente,” in the person of Guillaume Le Bel. Le Bel was a Paris trained notaire before whom the parties appeared and who wrote the Chevery contract which contains his title. Le Bel was almost certainly appointed by d’Aulnay himself, and would have been authorized, as provost, to hear disputes, and also to seal, date and

⁹⁷ Candide de Nant writes that d’Aulnay designated a square mile to accommodate the needs of the missionaries at Port-Royal. Candide de Nant, *Pages glorieuses*, 228. This grant was probably made in his capacity of seigneur, as he did not become the administrator of the Capuchin’s shares in the Razilly-Condorner Company until 1642, and we know that the Capuchins were there much earlier (Candide de Nant argues that they established a convent there as early as 1632). Although the Capuchins undertook to instruct Native children from the time they arrived, seminaries were only built after Richelieu made his endowment in 1641. Candide de Nant, 228. D’Aulnay would have ensured that a church was built on the land. The Capuchins also built a monastery in Port-Royal, which must have been a substantial building. An inventory made from the destruction of the monastery during Sedgewick’s 1654 raid estimated the losses at 5,000 livres. Candide de Nant, 230.

⁹⁸ See discussion, p. 49.

countersign official documents issued by d'Aulnay.⁹⁹ Le Bel was later appointed *subrogé tuteur*, for the d'Aulnay heirs after their father's death. A *subrogé tuteur* was one appointed by relatives and by a judge to prevent the tuteur or guardian from doing anything against the interests of a minor.¹⁰⁰ The Prevost also had a greffe, or registry, in which the signed minutes of the Chevery concession was filed. It is not known whether Le Bel or anyone else ever acted in the capacity of judge in l'Acadie during d'Aulnay's lifetime. The specific reference to the "Prevosté et Justice

⁹⁹ A prévôt was "the lowest-ranking of the royal judges, who presided over civil courts of first instance, dealing with cases not important enough to be reserved for the *bailliages* and *sénéchaussées*." Mousnier, *Institutions of France*, 760. In his 1647 commission, d'Aulnay was given the authority to "establish and institute all officials, whether of war or of justice and police for the first time." Lettres patentes en faveur du sieur de Charnisay, février, 1647, *Collection de manuscrits*, 1:120-124. This is not the first time one sees this title in l'Acadie. In 1635 François Le Sueur, "Prevost General en la justice et police établie en la Nouvelle France," was sent to Canso to investigate allegations that one Jean Thomas was inciting Natives against the French, and this by the power given him "by Monseigneur le Commandeur de Razilly, lieutenant général pour le Roy." Vanderlinden, *Le Lieutenant civil et criminel*, 24, 261-262. It is interesting to note that Thomas's trial did not take place in l'Acadie, but rather in La Rochelle. It may be because of the nature of the allegations; crimes against the king were not within the jurisdiction of the prévôt, the lowest level of justice. In addition, in 1645, d'Aulnay directed that statements be taken to be used against La Tour. One such statement was made by André Certain, "Prevost et garde du Sel [scel or today, sceau] Royal a la Cote d'Acadie." Vanderlinden argues that the origin of the titles both in the case of Le Sueur and Certain, must be the seigneurial powers of justice held by Razilly and d'Aulnay. Vanderlinden, *Le lieutenant civil et criminel*, 24-25. However, this argument is undermined by the fact that Le Sueur, in the procès verbal he prepared on the Thomas matter, recognizes that his authority is pursuant to power given him by Razilly, as lieutenant général, not as seigneur. Moreover, both Certain and Le Bel also held the title of keeper of the royal seal, suggesting that they were not simply employees of the seigneur, but were acting in their capacity as officials of the state, through the power vested in them by the king's representative in l'Acadie, the lieutenant général. While d'Aulnay had not yet received the near sovereign powers granted him in the 1647 concession, the king had earlier confirmed his title of lieutenant général in l'Acadie, by letter dated 1638. While not much is known about the title of garde des sceaux, or keeper of the seals, as implemented in l'Acadie, there is information about its establishment in Canada. It appears that early in the colony's history, the governor or governing body probably determined who would exercise this authority. At first, one of the members of the Conseil souverain functioned as the keeper of the seal. However, shortly after it was constituted, the Conseil created the office of the keeper of the seal. It was determined that each member of the Conseil would hold the office for a month before passing it on to the next member. Raymond du Bois Cahall, *The Sovereign Council of New France; A Study in Canadian Constitutional History* (New York: Columbia University Press, 1915), 180-181; Arrêt du Conseil Supérieur de Québec ordonnant que le Sceau du dit conseil sera déposé ès mains de l'un des Conseillers de mois en mois, 18 oct., 1663, *Arrêts et réglemens*, 11. Later, the king granted commissions for garde des sceaux, often to reward an official for some service performed. Cahall, *Sovereign Council*, 181.

¹⁰⁰ *Dictionnaire de l'Académie française*, 1re éd. (1694), at *DVLF*, s.v. "subrogé," accessed September 18, 2017, <https://dvlf.uchicago.edu/mot/subrogé>.

des Costes d'Acadie," however, demonstrates that, even if in an embryonic form, d'Aulnay had begun to establish a governmental structure in the colony.¹⁰¹

There is also evidence, in early documents, that, as in France at the time, the colonists at Port-Royal already had in place certain institutions of local governance that worked with the seigneur to address issues important to the community. A baptismal record of d'Aulnay's daughter Marie, now apparently lost, told how the baptism was "consecrated to the Virgin by Claude Petitpas and M. Boudrot first syndics of Port-Royal."¹⁰² The syndic, also sometimes called delegate, was an agent of a rural community and represented its interests. In France at the time, the syndic was generally chosen by, and presided over, the community assembly, the local governing institution that was responsible for such things as collecting taxes, managing the commons, or responding to provincial or royal authorities on behalf of the community.¹⁰³ This does not necessarily mean, however, that there existed an assembly at this time, and indeed we have no evidence that such an assembly existed this early in the colony. It may be, that in these early colonial conditions, the seigneur harkened back to an earlier practice whereby the seigneur with powers of justice named the community representative in as yet unorganized localities with the general agreement of the community.¹⁰⁴ The functions of the syndic were variable in France before the eighteenth century; but like the "prud'hommes" of old, they governed "the property, [the burdens], the rights, the uses of the commons, the customs and the liberties" of the

¹⁰¹ Almost nothing is known about Le Bel. It is known, however, that in 1652, Le Bel, then in Paris, similarly identified himself on a partnership agreement between the duc de Vendôme and Jeanne Motin as, "Grand Prévôt de la justice souveraine et Garde du Sceau roial." Vanderlinden, *Le lieutenant civil et criminel*, 25.

¹⁰² Massignon, "La seigneurie de Charles de Menou d'Aulnay," 484.

¹⁰³ Mousnier, *The Institutions of France*, 551-561; see also discussion in Kennedy, *Something of a Peasant Paradise*, 187 ff.

¹⁰⁴ Albert Babeau, *Le village sous l'ancien régime*, 4e éd. (Paris: Librairie Académique Didier, 1891), 60. In the eighteenth century, the intendants in France again began to assume the right to confirm the nomination of the syndics, and even in some cases to name or revoke their appointments. Babeau, 64.

habitants.¹⁰⁵ It is not known what specific responsibilities the syndics had in Port-Royal during the time of d'Aulnay, although one may assume that they were the means by which the community's concerns were communicated to the seigneur and gouverneur, and similarly, directives of the latter were made known to the community.¹⁰⁶

Seigneurial Tenure, 1651 – 1670

At the time of d'Aulnay's death, "the settlement [of Port-Royal] had firmly taken root [with] [a]pproximately three hundred French residents, in about forty-five or fifty families, . . . cultivating extensive expanses of dyked salt marshes."¹⁰⁷ Most scholars see the death of d'Aulnay, and especially the British conquest of the French forts on the rivi re Saint-Jean, at Pentagou t, and at Port-Royal, as the beginning of the end of the seigneurial system in l'Acadie.¹⁰⁸ It is the contention of this study, however, that, contrary to this prevailing view, French land tenure continued unabated up through and including the period of the next British conquest (1713-1755), albeit, clearly in a less robust form than what was then beginning to take shape in l'Acadie's more populous and less conflict-afflicted sister colony to the north.

As a preliminary matter, governance and land tenure must be seen as separate issues when attempting to understand how Acadians held and used their land. Governance in l'Acadie

¹⁰⁵ Babeau, 67 ("les biens, les faiz, les droits, les usages, les coutumes et les franchises' des habitants").

¹⁰⁶ As noted above, Denys made mention of d'Aulnay's "conseil." This is the only mention of this body that this author has found. See Denys, *Description and Natural History*, 151, 483.

¹⁰⁷ Dunn, *History of Port-Royal/Annapolis Royal*, 21.

¹⁰⁸ For example, Reid finds that after the 1654 English conquest, the habitants removed up river in part to escape seigneurial authority, and that by the 1670's "the seigneurial system had become an annoyance rather than a social institution." *Acadia, Maine, and New Scotland*, 141. Griffiths similarly argues that the Sedgwick raid had "interrupt[ed] the establishment of a seigneurial system in Acadia." *From Migrant to Acadian*, 71. Going further, somewhat surprisingly given the lack of supporting evidence, she concludes that "the fact that there would be no attempt whatsoever either to reinforce French customs or to introduce English practices meant that *Acadian land tenure began to resemble the traditional English freehold system rather than a seigneurial system*," Griffiths, 80 (emphasis added).

remained contested for this period. When Anglo-Americans seized the forts of Pentagouët, of the rivière Saint-Jean, and of Port-Royal, the English appointed governors for the area, who nonetheless were never, or for only short times, resident in the colony. At the same time, the French, believing that these areas were seized unlawfully and that l'Acadie was still a French colony, commissioned no less than four different gouverneurs for the colony during this same period.¹⁰⁹

The system of land tenure, however, was not contested, and remained the same under Anglo-American control as it had under French control. English law provided that “the king might impose upon a conquered people what law he chose, subject only to the condition that until he did so, if the conquered were Christian, their existing law would obtain.”¹¹⁰ There is absolutely no evidence that the Anglo-Americans attempted to impose an English common law system of land tenure on the Acadian people when they held the colony in 1654, or for that matter, during the attacks in the 1690s, or even after 1713 when British sovereignty over l'Acadie was finally settled by the Treaty of Utrecht. On the contrary, as will be discussed further below, Sedgwick specifically agreed in the articles of capitulation at Port-Royal in 1654 that the habitants would retain their property, “by means of the recognition and seigneurial obligations for which they are obliged by their concessions.”¹¹¹

¹⁰⁹ Charles de La Tour had been named gouverneur and lieutenant général on 27 February 1651. At about the same time, 24 June 1651, the Sieur de La Fosse was given a commission from the king, following the death of d'Aulnay's father, the Sieur de Charnizay, who himself had been gouverneur, to serve as gouverneur until the children of the Sieur d'Aulnay obtained majority. Emmanuel Le Borgne would next be named gouverneur of l'Acadie for nine years on 10 December 1657. And after the Treaty of Breda, 31 July 1667, but before Temple handed the control of l'Acadie back to the French, Le Borgne would relinquish his title in favor of his son Alexandre. Clarence-Joseph d'Entremont, *Histoire du Cap-Sable de l'an mil au Traité de Paris, 1763* (Eunice, LA: Hebert Publications, 1981), 3:884-886.

¹¹⁰ Thomas Garden Barnes, “‘The Dayly Cry for Justice’: The Juridical Failure of the Annapolis Royal Regime, 1713-1749,” in *Essays in the History of Canadian Law III: Nova Scotia*, ed. Philip Girard and Jim Phillips (Toronto: University of Toronto Press, 1990), 11.

¹¹¹ “Capitulation de Port-Royal, du 16 août 1654,” in *Mémoires des Commissaires*, 2:509; manuscript at LAC, Fonds des Colonies (France), Série E, Dossiers personnels, vol. 12, pp. 32-33, accessed September 20, 2017, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 3052091.

The question remains, however, whether and in what manner such “seigneurial obligations” were met by the Acadian people, especially during the chaotic period that followed d’Aulnay’s death up through the end of the period of Anglo-American control (effectively, 1670). This sixteen-year period has been critical to scholars’ thinking about the shape land tenure would take in l’Acadie going forward. John Reid has written that “the intervention of an alien force had had the effect of drastically weakening the seigneurial system, with the concomitant loosening of its restraints.”¹¹² More specifically, Reid writes that the Acadians took the opportunity to move up the river, to both get away from the English, but also to establish themselves on marshland “where Le Borgne had no practical authority even though it was still technically within his seignury.”¹¹³ Emmanuel Le Borgne was a merchant from La Rochelle and the chief creditor of d’Aulnay, who would claim to be seigneur in l’Acadie as will be discussed further below. Similarly, Naomi Griffiths writes that after Sedgewick’s raid, “whatever landholding regulations had been established were significantly changed.”¹¹⁴ While Griffiths acknowledges that the “Massachusetts system of distributing ownership of land, on terms of free tenure ... was not brought into operation,” she argues that “the fact that there would be no attempt whatsoever either to reinforce French customs or to introduce English practices meant that Acadian land tenure began to resemble the traditional English freehold system rather than a seigneurial system.”¹¹⁵

This study argues that these assessments are not supportable and rest on incorrect assumptions. Specifically, given the fact that General Sedgewick expressly recognized the seigneurial rights of the d’Aulnay heirs, these assessments could only be correct if (1) the heirs

¹¹² Reid, *Acadia, Maine, and New Scotland*, 140.

¹¹³ Reid 141.

¹¹⁴ Griffiths, *From Migrants to Acadians*, 71.

¹¹⁵ Griffiths, 80. No evidence is provided for this rather sweeping, and consequential claim.

or their mother, acting in her own and their interests, did not remain in Port-Royal, or, (2) that Le Borgne was already the seigneur of the Port-Royal area, as suggested by the Reid quote, and had so disrupted the seigneurial claims of Jeanne Motin and the d'Aulnay heirs that his absence from Port-Royal during this period left the inhabitants to do with the land what they pleased.

A careful reading of the documentation, however, both legal and commercial, demonstrates that in fact Motin remained in Port-Royal, for most or all of this period until her death sometime between 1664 and 1667; and that Le Borgne's legal right to the d'Aulnay land holdings in l'Acadie was always contested, in contrast to his rights with regard to d'Aulnay's seigneurie located near Loudun, France. Le Borgne, it will be shown, began to claim proprietorship of d'Aulnay's Acadian land holdings only after 1657. He did not, however, attempt to enforce those claims in either a court of law or in the Port-Royal area, until after the deaths of Motin and La Tour, and France had regained l'Acadie. Jeanne Motin was therefore in a position to protect her own and her children's rights in the Port-Royal area while she was alive, including, at least theoretically, accepting the modest seigneurial cens et rentes and lease payments from her tenants and censitaires. The following discussion will begin with an outline of the relevant events that occurred between the time of d'Aulnay's death in 1650 and the return of Le Borgne to Port-Royal in 1670 after Motin's death. This will be followed by an analysis of each of the points made above.

Events Following the Death of d’Aulnay

After d’Aulnay’s death, Jeanne Motin, d’Aulnay’s widow, was left to care for their seven or eight children, none of whom was older than ten or eleven years old.¹¹⁶ Her father-in-law, René Menou de Charnizay, who was in his seventies, was appointed governor of the colony, “until [d’Aulnay’s] oldest son was of age to serve his Majesty there.”¹¹⁷ He was also charged, after deliberations of a family assembly on November 5, 1650, with assuming the responsibilities of *tuteur*, or guardian for the children’s property located in France.¹¹⁸ Guillaume Lebel was named *subrogé-tuteur* for the d’Aulnay estate in France.¹¹⁹ Jeanne Motin was named guardian with regard to the “education and administration of the persons of the said minors in the said Acadie,” while the sieur de La Verdure was named subrogé-tuteur “for the protection of the said property of Acadie.”¹²⁰

A merchant of La Rochelle, Emmanuel Le Borgne, learning of d’Aulnay’s death, approached the sieur de Charnizay in order to collect a substantial debt owed him by Charnizay’s deceased son. Le Borgne had handled d’Aulnay’s commercial affairs in France, but also made significant outlays, providing or chartering ships on behalf of d’Aulnay containing food,

¹¹⁶ “Homologation, devant la Prévôté de Paris, des décisions de l’assemblée des parents des enfants de d’Aulnay . . . pour l’élection de tuteurs et le règlement de la succession,” 5 novembre 1650, (hereafter, “Homologation”), LAC, Fonds des Archives nationales (France), Minutier central des notaires de Paris, Étude XX-274 (minutes de Leroux), annexé à la transaction du 9 novembre 1650, 21-25.

¹¹⁷ M. C. Moreau, “Histoire de l’Acadie française,” in *Le Cabinet historique: revue mensuelle* [. . .], ed. Louis Paris, vol. 17, part 1 (Paris: Bureau du Cabinet historique, 1871), 193-120, 93, in the collection of the Bibliothèque nationale de France, published December 31, 2012, <https://gallica.bnf.fr/ark:/12148/bpt6k63271927>.

¹¹⁸ Homologation, LAC, Étude XX-274.

¹¹⁹ Homologation.

¹²⁰ Homologation, 24-25. See also, Émile Lauvrière, *La tragédie d’un peuple: histoire du peuple acadien de ses origines a nos jours*, vol. 1 (Paris: Éditions Bossard, 1922), 88. Notwithstanding Charnizay’s chief charge, which involved his son’s French holdings, he was also authorized to reach other property belonging to the succession if necessary to cover d’Aulnay’s debts. Homologation, 23-24.

supplies, and even personnel bound for Port-Royal.¹²¹ Four days after being named the children's guardian, the elderly sieur de Charnizay came to a settlement with Le Borgne that recognized that d'Aulnay's estate was liable for 260,000 livres of debt assumed by d'Aulnay during his lifetime. This *accomodation* or agreement will be discussed in detail below. Suffice it to say at this point that the debt was to be satisfied, in part, by the sale of d'Aulnay's seigneurie in France, and in part by profits from pelts and other trade items produced by d'Aulnay's holdings in l'Acadie.¹²²

In 1651, Le Borgne organized a commercial voyage, led by his son, Alexandre Le Borgne, to Port-Royal with the intent to collect the goods that were assigned to him, pursuant to the November 1650 agreement with Charnizay. At that time, there appears to have been cooperation between the principals, as evidenced by a joint mission to the Massachusetts colony seeking to establish good relations. Alexandre Le Borgne carried letters from the governor, René de Charnizay, through his lieutenant, one Sieur de Saint Mas,¹²³ and also from Madame

¹²¹ See e.g. Procuration, 23 septembre 1642, LAC, Fonds des Archives départementales de la Charente-Maritime (La Rochelle), Série E, Notaires, 1634-1678, Minutes Teuleron, vol. 7, fol. 6, September 25, 2017, <http://heritage.canadiana.ca/>, C-9187, image 271 (by virtue of a general power of attorney of d'Aulnay, Le Borgne loaded one of his ships, *La Vierge*, with merchandise and food bound for l'Acadie); Charte partie, Massé, et Boeuf et Emmanuel Le Borgne, 12 février 1642, LAC, Fonds des Archives départementales de la Charente-Maritime, Série E, Minutes Teuleron, vol. 7, fol. 15, accessed October 5, 2017, http://heritage.canadian.ca, C-9187, image 287 (Le Borgne charters the *Marguerite* on behalf of d'Aulnay to carry crew chosen by him for l'Acadie).

¹²² "Transaction entre René de Menou, sieur de Garnisay [sic] ... et Emmanuel Le borgne, pour le règlement de créances au montant de 360 300 livres tournois," 9 novembre 1650, LAC, Fonds des Archives nationales (France), Minutier central des notaires de Paris, Étude XX-274 (minutes de Leroux), fols. 1-20. D'Aulnay's French estate was already in the process of being seized by Le Borgne when the agreement was signed. It would later pass to Claude de Razilly's widow as a priority creditor to satisfy d'Aulnay's 1642 debt to Razilly for his shares in the Compagnie de Razilly-Cordonnier, and finally to her *cessionnaire* in 1679, Gabriel de Lomeron sieur de Pataudière. Geneviève Massignon, "La seigneurie de Charles de Menou d'Aulnay," 474. See also, "Arrêt du Parlement de Paris, par lequel la terre d'Aulnay, saisie sur Emmanuel La Borgne, est déclarée appartenir à Gabriel de Lomeron-Petaudière, cessionnaire de la veuve de Claude de Razilly," 11 juillet 1677, LAC, Fonds des Archives nationales (France), Série X1, Parlement civil de Paris, vol. 6166, fols. 18v– 20v, last accessed, March 30, 2019, <http://heritage.canadiana.ca/>, C-12561, images 51-54.

¹²³ Some believe that the Sieur de Saint-Mas was also acting as Le Borgne's agent. George A. Rawlyk, *Nova Scotia's Massachusetts: A Study of Massachusetts-Nova Scotia Relations, 1630-1784* (Montreal & London: McGill-Queen's University Press, 1978), 19.

d'Aulnay, who acted on her and her minor children's behalf.¹²⁴ In this regard, Motin was not only named the children's guardian, but also enjoyed the right of *garde noble* to the children's Acadian properties until they reached their majority.¹²⁵ D'Aulnay's last will and testament also gave Motin the enjoyment of all his possessions, in l'Acadie as well as in France, during her lifetime.¹²⁶ Charnizay's letter notified the governor and magistrates of New England that he had been chosen guardian of d'Aulnay's children, his grandchildren, the owners of the country of l'Acadie, and that he had been appointed gouverneur by the King, "until such time that my deceased son's eldest son should be of age, to take upon him the execution of the said trust."¹²⁷ Jeanne Motin's letter stated that in assigning the governorship to her father-in-law pending the majority of her son, the king had determined to protect the proprietary and governmental interests of her children.¹²⁸ She also assured the magistrates of her own good will.

Charnizay's letter was written some five months after the 1650 agreement with Emmanuel Le Borgne and betrays no indication that Charnizay believed that this agreement had transferred property rights in l'Acadie belonging to the d'Aulnay heirs. Quite the contrary, his letter asserts the proprietary interests of his grandson. Nor did Alexandre Le Borgne hesitate to transmit these letters reasserting the d'Aulnay heirs' seigneurial and governmental rights. Further evidence of cooperation between Le Borgne and Jeanne Motin may be found in what

¹²⁴ Reid, *Acadia, Maine, and New Scotland*, 127.

¹²⁵ Her right in this regard is acknowledged in the Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 370. *Garde-noble* is "the right granted to the survivor of two noble spouses, to enjoy the property of the children, coming from the succession of the predeceased, until they have attained a certain age, on the condition that the surviving spouse feeds and maintains them, and pays their debts." *Centre National de Ressources Textuelles et Lexicales* (CNRTL), at DVLF, s.v. "garde-noble," accessed October 5, 2017, <https://dvlf.uchicago.edu/mot/garde-noble>; Droit accordé au survivant de deux époux nobles, de jouir du bien des enfants, venant de la succession du prédécédé, jusqu'à ce qu'ils eussent atteint un certain âge, à la charge de les nourrir, de les entretenir et de payer toutes les dettes.

¹²⁶ "Testament de Charles de Meno," 20 janvier 1649, and 20 février 1649, transcribed in Candide de Nant, *Pages glorieuses*, appendice VII, 317-325.

¹²⁷ Letter from Charnizay, 2 March 1651, *Collections of Massachusetts Historical Society (CMHS)*, series 3, vol. 7 (Boston, 1838), pp. 114-115.

¹²⁸ Jeanne Motin to the Gouverneur and Magistrates of New England, 27 May 1651, *CMHS*, series 3, vol. 7, pp. 115-116.

was probably a joint effort to dislodge Nicolas Denys and his brother from their establishments on Cape Breton and perhaps Nipisiquit.¹²⁹ During this 1651 visit, Le Borgne no doubt collected any pelts that Madame d'Aulnay had in the storehouses at Port-Royal, pursuant to his rights under the agreement with Charnizay.¹³⁰

Charnizay died in 1651. At this time, the Queen Regent continued to treat the governance of l'Acadie as an hereditary office, as evidenced by the document naming the sieur de La Fosse “intendant, director and administrator of l'Acadie until the eldest son of d'Aunay has reached his majority” (intendant, directeur, et administrateur de l'Acadie jusqu'à ce que le fils aîné dudit d'Aunay eût atteint sa majorité).¹³¹ La Fosse did not spend any time in l'Acadie.

Notwithstanding the appointment of the latter, in February 1651, Charles La Tour convinced the crown to reinstate him as “gouverneur et lieutenant général,” and to confirm him in the possession of all previously conceded lands.¹³² In September of 1651, on the basis of the latter,

¹²⁹ Candide de Nant, *Pages glorieuses*, 272; d'Entremont, *Histoire du Cap-Sable*, 2:366 (quoting a report by Jesuits in Québec when Denys arrived from Port-Royal on his way to France to protest his treatment).

¹³⁰ An attachment to a petition addressed to Colbert in 1668 on behalf of the d'Aulnay heirs claims that the sieur de St. Mas took the fort by force, imprisoned Dame d'Aulnay and took all the merchandise without rendering any account of the value of what was taken. Placet des enfants d'Aulnay de Charnisay adressé à Colbert, 1668, LAC, Fonds de la Bibliothèque nationale de France, Département des manuscrits, MG 7, I, A6, vol. 147, p. 269 on transcription (C-12868, image 321). These allegations of force, at least in 1651, are not repeated in later statements by the La Tour heirs and are belied by the evidence of cooperation between the parties at that time. The 1668 petition also states, somewhat more believably, that Le Borgne had claimed all the pelts that had been already delivered, or were expected to be delivered, to France, by d'Aulnay and Motin, pursuant to the 1650 agreement, but had never made a proper accounting of those profits.

¹³¹ Commission quoted in Moreau, “Histoire de l'Acadie française,” 196.

¹³² La Tour's commission confirms his 1631 appointment as gouverneur and lieutenant-général, and again established him in these titles, “in all the said country, territory, coast and confines of Acadie,” with broad powers to govern. The commission also confirmed him in his possession of lands previously conceded, including his lands and fort on the rivière Saint-Jean and in the area of Cape Sable, and specifically authorized him to distribute these latter as he judged proper. All trade of furs with the Natives “in the country and coast of l'Acadie,” was only permitted with his “express leave and permission.” “Charles de St-Étienne de La Tour Commission, 1651,” Acadian Archives, University of Maine at Fort Kent, MCC-00142. A transcription of this document, which appears to be the original brought by La Tour upon his return to l'Acadie, may be found in “A Guide to ‘Charles de St-Étienne de La Tour Commission, 1651,’ MCC-00142,” prepared by Nicolas Hawes for the Acadian Archives, UMFK, 31 May 2005. A transcription made from a ‘register copy’ found in the Archives de la Charente-Inférieure, may be found in Azarie Couillard-Després, *Charles de Saint-Étienne de La Tour, gouverneur, lieutenant-général en Acadie et son temps* (St.-Hyacinthe, QC: Le Courrier de St.-Hyacinthe, 1932), 401-404.

La Tour was able to convince Motin to restore to him the fort on the rivière Saint-Jean, which d'Aulnay had captured in 1645.

Perhaps fearing an attack by La Tour, Motin sent her procureur, Brice de St. Croix, to Paris in 1652 to seek support. This agent would enter into an agreement signed in February of 1652 on behalf of Motin and the d'Aulnay heirs, giving the duc de Vendôme, the uncle of Louis XIV, among other things, half of the d'Aulnay property in l'Acadie, including the rivière Saint-Jean, in exchange for assuming half of the debt. By virtue of this contract, the duke became an associate of Motin and was said to be “co-seigneur” with her.¹³³ The crown authorized the signing of the agreement in December of the same year, writing that by taking this measure, the Dame d'Aulnay could hope to be restored in “that which had been usurped,” and saved from “total ruin which would have been inevitable had [she and her children] lost the ownership of this said country.”¹³⁴ Presumably, one of the usurpers was Charles La Tour, to whom the crown had only recently given extensive rights as his “gouverneur et lieutenant-général.”

In a decided turnabout, perhaps fearing the agreement St. Croix signed with Vendôme would cause more harm than good, Madame d'Aulnay decided early in 1653 to take matters into

¹³³ “Contrat d’association entre le duc de Vendôme et la Dame veuve Charnisay,” 8 février 1652,” LAC, Fonds des Colonies (France), C11D, vol. 1, fols. 87-90, accessed October 7, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN no. 2409915; transcription, <http://heritagecanadiana.ca>, C-11359, images 211-227. See also “Reconnaissance par le roi d’un traité d’association entre Jeanne Motin ... et le duc de Vendôme,” décembre 1652, published in Vanderlinden, *Le lieutenant civil et criminel*, 270-271. The crown recognized this partnership agreement accepting “the Duke de Vendome and his heirs as coseigneurs of l’Acadie with the same rights as [those described in] the letters patent of 1647.” Vanderlinden, *Le Lieutenant*, doc. 16, 270-271; Le Roy autorise le Traité d’Association, accepte le Sr Duc de Vendosme et ses hoirs comme coseigneurs de l’Acadie aux mêmes droits que les lettres patentes de 1647. By order of the Conseil du Roi of 9 February 1700, however, the Sieur de la Croix was found to have had no authority to enter into the agreement which was thus declared invalid. *Collection de manuscrits*, 2:369-370; Vanderlinden, *Le lieutenant civil et criminel*, 370. This determination was upheld by the Conseil in its decision of 20 mars 1703, to the extent that it dismissed both the Duc de Vendome’s and le Borgnes’ seigneurial claims in l’Acadie. Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 385. Notwithstanding this, the Conseil conceded Pentagouët to the Le Borgne en fief together with ten leagues on both sides of the river, extending to the boundary between l’Acadie and New England.

¹³⁴ “Reconnaissance par le roi,” published in Vanderlinden, *Le lieutenant civil et criminel*, 271; Vendôme “pourrait mieux que personne la rétablir dans ce qui luy a esté usurpé . . . et la garantir avec ses enfants d’une ruyne totale qui serait inévitable s’ils perdoient la propriété des d. pays.”

her own hands and try to protect the d'Aulnay's heirs' property; she would marry the sworn enemy of her late husband, Charles de La Tour.¹³⁵ The civil marriage contract was signed in February 1653 and the nuptials were performed in July of that year.¹³⁶

Around the same time, Le Borgne himself arrived in Port-Royal. He no doubt feared that Motin's agreement with Vendôme and her marriage to La Tour was an attempt to undermine his rights under the 1650 contract with Charnizay. The cooperation that had existed between Madame d'Aulnay and Le Borgne was gone. While accounts vary, it appears that Le Borgne and his forces closed the seminary d'Aulnay had built, and two Capuchin brothers, as well as Madame Brice, who taught Native children at the seminary as well as the d'Aulnay children, were detained and ultimately sent back to France.¹³⁷ He also took possession of the fort at Port-Royal, which included storehouses, barracks and the family quarters,¹³⁸ up until then occupied by Motin and her children, and seized all merchandise.¹³⁹ Also at this time, Le Borgne "surprised" Motin into signing a current statement of account by which she agreed that the d'Aulnay heirs owed Le Borgne 239,412 livres.¹⁴⁰ Before coming to Port-Royal, Le Borgne seized the fort

¹³⁵ The Duke de Vendôme threw in his lot with Le Borgne, rather than attempting to assert his rights by force. Émile Lauvrière, *La tragédie d'un peuple*, 1: 98.

¹³⁶ D'Entremont, *Histoire du Cap-Sable*, 2:717-719. On July 17, 1653, La Tour conceded the baronnie of Pobomcoup to Philippe Mius d'Entremont and Pierre Ferrant, today, Pubnico. Reproduced in part in Rameau, *Une colonie féodale*, 2:412-413.

¹³⁷ Candide de Nant, *Pages glorieuses*, 274; "Letter of Father Ignace re Acadia," 1656, *Report Concerning Canadian Archives for the Year 1904* (Ottawa, 1905), 331-341, 337. It is unclear why Le Borgne closed the seminary. De Nante suggests that Le Borgne saw the seminary as an unnecessary expense that diverted profits from the fur trade which was rightfully his. Mason Wade, on the contrary, assumes that it was because of the seminary's involvement in the duke's intercession. Mason Wade, "Le Borgne, Emmanuel," in *DCB*, vol. 1, revised October 2016, http://www.biographi.ca/en/bio/le_borgne_emmanuel_1E.html.

¹³⁸ Dunn, *History of Port-Royal/Annapolis Royal*, 120.

¹³⁹ Placet des enfants d'Aulnay de Charnisay adressé à Colbert, 1668. LAC, Fonds de la Bibliothèque nationale de France, Département des manuscrits, MG 7, I, A6, vol. 147, p. 270 (transcription). One might ask where La Tour was during the time that Le Borgne was despoiling his wife's home and goods.

¹⁴⁰ Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 368; "Mémoire: In re," 1700, *Collection de manuscrits*, 2:357. A brief on behalf of the La Tour heirs submitted to the Conseil du Roi in 1700 as it deliberated on the competing property claims of the La Tours, Le Borgne and the duc de Vendôme, claims that Le Borgne "made an entitlement of this account statement to seize most of the effects of the habitations of the children of sieur d'Aulnay, and especially to exercise an absolute empire at Port-Royal and to appropriate all the furs belonging to the d'Aulnay succession in l'Acadie as in other parts of the realm." "Mémoire: In re," 1700, *Collection*

Denys had established on Cape Breton at Saint Peters, taking him prisoner, and, for reasons that remain obscure, burned the buildings at La Hève, including a chapel.¹⁴¹

Le Borgne left l'Acadie, but returned to Port-Royal in 1654 with a ship load of supplies. His plan to finally dislodge La Tour from his fort on the rivière Saint-Jean, however, was disrupted by an expedition led by Robert Sedgwick of one hundred New England volunteers and two hundred of Oliver Cromwell's soldiers.¹⁴² Sedgwick first took the fort on the Saint-Jean. La Tour was taken to London where, in 1656, Cromwell granted him, on the basis of the old Nova Scotia baronetcy he inherited from his father, together with Thomas Temple and William Crowne, rights to vast areas of l'Acadie.¹⁴³ The grant was made on condition that La Tour pay his Boston creditors and accept allegiance to England. He shortly, however, sold his rights under the Cromwell patent to his two partners and returned to l'Acadie.

de manuscrits, 2:357; Il se fit un titre de cet arrêté de compte pour s'emparer de la plupart des effets et des habitations des enfans du Sieur d'Aulnay. The 1668 letter sent to Colbert, then controller general of finance for France and secretary of state for the navy, on behalf of the d'Aulnay heirs seeking compensation for their losses in l'Acadie, claims that in 1653, Le Borgne personally took possession of the forts, declared himself governor, and took all the merchandise from the two preceding years. Placet des enfans d'Aulnay de Charnisay adressé à Colbert, 1668. LAC, Fonds de la Bibliothèque nationale de France, Département des manuscrits, MG 7, I, A6, vol. 147, p. 270 on transcription (C-12868, image 322). An earlier statement on behalf of the La Tour heirs claimed that in 1652, Motin ceded the enjoyment of the fruits and revenues of the property belonging to her in l'Acadie, including at Port-Royal, for 9 years. See "Memoire des enfans du sieur de la Tour, 1688" *Collection de manuscrits*, 1: 439. This claim was apparently reprised before the Conseil du Roi as it deliberated property claims in l'Acadie in 1703; while no proofs of this claim are listed as having been submitted to the Conseil, a mémoire prepared in connection with the decision of the Conseil references this claim of the La Tour heirs. "Mémoire sur les contestations qui sont réglés au sujet de l'Acadie, 1703," published in part in Vanderlinden, *Le Lieutenant civil et criminel*, 362.

¹⁴¹ Denys, *Description and Natural History*, 99-100. In January of 1654 Denys, having returned to France, obtained letters patent naming him gouverneur in lands stretching from the Cap de Canceaux to the Cap des Rosiers, Newfoundland, the islands of Cape Breton and Saint-Jean, and confirming a previous concession by the Compagnie de la Nouvelle-France for lands from Cap de Canceaux as far as Cap de Rosiers. "Letters Patent for the Sieur Nicolas Denys, 1654, January 30," translated in full in Denys, 61-67. In 1655, Denys also prevailed in an action in repleven against Emmanuel Le Borgne for the goods taken from him, and obtained an order preventing Le Borgne "and all others pretending right to the succession of the Sieur d'Aulnay Charnisay to undertake any enterprise in the places left to the said Denys." *Arrest du Conseil privé* rendered in favor of Nicolas Denys, Esquire, against Emanuel Le Borgne, 1655, October 15," extracts from the registers of the Conseil Privé du Roy translated in full in Denys, 67-70.

¹⁴² It is not clear whether Motin was with her husband at this time, or at Port-Royal.

¹⁴³ Murdoch, *History of Nova-Scotia*, 138; *Mémoires de Commissaires*, 511-516; George MacBeath, "Saint-Étienne de La Tour, Charles de (1593-1666)," *Dictionary of Canadian Biography*, vol. 2, (hereafter *DCB*, vol. 2), revised 1979, http://www.biographi.ca/en/bio/saint_etienne_de_la_tour_charles_de_1731_2E.html.

Sedgwick's expeditionary force next moved to Port-Royal. After putting up a short-lived defense against Sedgwick's more experienced and numerous troops, the French at Port-Royal surrendered the fort. The capitulation was negotiated by Germain Doucet *dit* La Verdure, in his capacity as "Captain commanding in Port-Royal for the King," as also the subrogé tuteur for the Acadian property of the minor children of the deceased Monsieur d'Aulnay.¹⁴⁴ Soldiers and employees at the fort were permitted to return to France with their gear, including furs for the payment of their wages.¹⁴⁵ La Verdure was concerned to preserve for the d'Aulnay heirs all their movables, goods, livestock and lands. Specifically, he asked that all livestock and movable property be placed in his hands to be taken to France, if the children wished to go there, or left in their possession in l'Acadie, if they and he remained there.¹⁴⁶ He also asked that cultivated and other lands belonging to the children be reserved for them, presumably until they reached the age of emancipation, and be cultivated, for the children's profit.¹⁴⁷ This latter demand suggests that some of d'Aulnay's lands were presently being leased out and that his heirs were sharing, or were entitled to share, in some portion of the produce. This is consistent with the later statements made by the Le Borgne heirs and others that d'Aulnay had established a number of métairies.

The English agreed, excepting the cattle taken during the siege, as well as all movables, goods and food supplies found in the house and storehouses of the fort, for which an inventory would be made. The ultimate disposition of these would be within the sole discretion of General

¹⁴⁴ "Capitulation de Port-Royal, du 16 août 1654," *Mémoires des Commissaires*, 2:507.

¹⁴⁵ "Capitulation de Port-Royal," *Mémoires des Commissaires*, 2:508.

¹⁴⁶ Specifically, he asked that "all the moveables and immovables, & merchandise and animals which are in the said Fort & farms belonging to the said minor children, will be placed in good faith into the hands of the said sieur de La Verdure, to be transported to France if they wish to go there, or left in the country, provided that the said minor children and he remain there." "Capitulation de Port-Royal," *Mémoires des Commissaires*, 2:508; La Verdure asked that "tous les meubles & immeubles, & marchandises & bestiaux qui se trouveront dans ledit Fort & fermes appartenantes audits enfans mineurs, seront remis de bonne foi entre les mains dudit sieur de La Verdure, pour être transportés en France s'ils desirent y passer, ou laissés dans le pays, si tant est que lesdits enfans mineurs & lui y demeurent."

¹⁴⁷ "Capitulation de Port-Royal," *Mémoires des Commissaires*, 2:508; "... & quant aux terres mises en labour, & autres appartenant auxdits enfans, la propriété leur en sera réservée, pour être cultivées à leur profit."

Sedgewick.¹⁴⁸ Nowhere is there the slightest suggestion in the agreement that any but the heirs of d’Aulnay were the rightful owners of the lands—including the fort and any building, like the house, that were contained in the fort—and the fruits thereof.

This is confirmed in La Verdure’s next demand on behalf of the heirs. He asked that the habitants of Port-Royal and the surrounding areas be offered the opportunity to return to France, or to remain on their property “according to the concessions accorded to them up to now.”¹⁴⁹ The English agreed that the habitants would retain their property, “by means of the recognition and seigneurial obligations for which they are obliged by their concessions.”¹⁵⁰ Most of them seemed to have remained in l’Acadie.¹⁵¹

Le Borgne is referred to in the capitulation document simply as a “bourgeois & merchant of the city of Rochelle.”¹⁵² He asked to be permitted to return to France with his ship and all the goods he had brought with him. He also asked, however, for other goods in the storehouses in the

¹⁴⁸ “Capitulation de Port-Royal,” *Mémoires des Commissaires*, 2:509. This latter condition could very well have been at the urging of Le Borgne. He may have convinced the English that he was owed such goods and household items as were within the enclosure of the fort, including storehouses and house, in payment of the late d’Aulnay’s debt. This is suggested by a subsequent clause in the agreement that states that Le Borgne asked that he be permitted not only to have the ship he had sailed in on, but also “the goods belonging to the said Le Borgne, in both the ship as in the storehouses of the said Fort of Port Royal.” “Capitulation de Port-Royal,” *Mémoires des Commissaires*, 2:510. Sedgewick answered that an inventory was to be made of these goods. It appears, however, that an agreement was made by which Le Borgne was permitted to return to France with his ship and everything on it, and, although it is not clear, certain of the goods in the storehouses. On the other hand, the invaders may have appropriated some or all of these items. This would be consistent with the La Tour heir’s claim that in 1654, that the English took all the effects of Motin. “Mémoire: In re,” *Collection de manuscrits*, 2:359.

¹⁴⁹ “Capitulation de Port-Royal,” *Mémoires des Commissaires*, 2:508; “Quant aux habitans du Port Royal . . . il leur sera libre de demeurer dans ledit pays, & jouir de leurs biens . . . suivant leurs concessions à eux accordées jusqu’à cejour’hui.”

¹⁵⁰ “Capitulation de Port-Royal,” *Mémoires des Commissaires*, 2:509; “. . . moyennant la reconnaissance & devoirs seigneuriaux auxquels ils sont obligés par leurs concessions.”

¹⁵¹ Dunn, *History of Port-Royal/Annapolis Royal*, 23-24. The English also agreed to a guarantee of “freedom of conscience.” The Capuchins would be allowed to remain provided they remain two to three leagues from the fort. “Capitulation de Port-Royal,” *Mémoires des Commissaires*, 2:509. No sooner were these words written than the English attacked and destroyed an empty convent, even taking the objects of worship. Contrary to the terms of the Capitulation, the Capuchins were expelled, and their superior, Léonard de Chartres, who remained, was murdered by the English. English soldiers would shortly after vandalize and eventually burn the monastery and the new church. The Capuchins, who lost everything, would not return to l’Acadie. Dunn, *History of Port-Royal/Annapolis Royal*, 23-24; Candid de Nant, *Pages glorieuses*, 282-287.

¹⁵² “Capitulation de Port-Royal,” *Mémoires des Commissaires*, 2:509-510 (“bourgeois & marchand de la ville de la Rochelle”).

fort which he claimed belonged to him. Sedgewick agreed, as much as his “kindness and generosity would permit,” the agreement suggesting that there was some understanding between the two men.¹⁵³ In addition to La Verdure, Le Borgne signed on his own behalf, Guillaume Trahan signed as syndic, representing the interest of the habitants, and Leonard de Chartre, Vice-préfet, signed on behalf of the Capuchins. La Verdure’s son-in-law, Jacques Bourgeois and one of Le Borgne’s sons were left as “hostages,” until the accomplishment of the terms of the agreement. The fact that Motin did not sign may mean that she and the children were not in Port-Royal at the time.

Thus began sixteen years of at least nominal control by the Anglo-Americans of an area from Canseau (Canso) to New England.¹⁵⁴ John Leverett, son-in-law of Robert Sedgewick, became the commander of the forts of the Saint-Jean, the Penobscot (Pentagouët) and Port-Royal. It appears, however, that while small garrisons were maintained at the forts on the rivière Saint-Jean and Pentagouët, the fort at Port-Royal was unoccupied.¹⁵⁵ Temple and Crowne had divided the territory of l’Acadie sold to them by La Tour in 1656 among themselves, with Port-Royal falling within Temple’s territory.¹⁵⁶ In 1657, Leverett, who seems to have spent little or no time in l’Acadie, was ordered by Cromwell to turn the three captured forts over to Temple, who was to be governor of these forts.¹⁵⁷ Interested mostly in trade, Temple established a headquarters and trading post on the rivière Saint-Jean and returned to Boston.¹⁵⁸

¹⁵³ “Capitulation de Port-Royal,” *Mémoires des Commissaires*, 2:510; “[s]ur lequel article Monsieur le Général requiert qu’inventaire en sera fait, ce fait être porté par-devant lui, pour en après être fait telle grace & donation qu’il peut & doit espérer, comme il lui a promis qu’il sera autant que sa bonté et générosité lui pourra permettre.”

¹⁵⁴ Murdoch, *History of Nova-Scotia*, 1:135. Denys remained in control of the main settlements on Cape Breton, as well as on the east coast of what is now New Brunswick.

¹⁵⁵ Dunn, *History of Port-Royal/Annapolis Royal*, 25.

¹⁵⁶ Dunn, 26.

¹⁵⁷ Murdoch, *History of Nova-Scotia*, 1:138.

¹⁵⁸ Dunn, *History of Port-Royal/Annapolis Royal*, 26.

The area, however, remained disputed. In December 1657, the French crown appointed Emmanuel Le Borgne gouverneur and lieutenant général of l'Acadia for nine years, replacing La Tour.¹⁵⁹ The next year, France remonstrated with England regarding Sedgwick's attack, and the damage it had caused. These actions show that, for France, l'Acadie remained a French colony.¹⁶⁰

During this time as well, parties in France sought to assert their proprietary and jurisdictional rights in l'Acadie. The Compagnie de la Nouvelle-France had always maintained that the Queen Regent's 1647 commission giving d'Aulnay vast authority in l'Acadie both to govern and to grant land, was a violation of its rights.¹⁶¹ D'Aulnay had given the Compagnie an opportunity to regain what it believed it had lost when he seized a vessel belonging to the Compagnie de Miscou, a subsidiary with trading privileges granted by the Compagnie de la Nouvelle-France.¹⁶² The latter pursued legal avenues against d'Aulnay in the role of a parent company. This resulted ultimately in a decision of the Conseil privé in granting restitution and costs. Moreover, "for the felony committed by the said deceased de Charnizay," the arrêt deprived d'Aulnay's heirs of "all and each right which they claim in lands and habitations in Nouvelle-France."¹⁶³ This arrêt did this not only by reuniting all lands previously granted to the Razillys to the Compagnie's domaine, but also by annulling d'Aulnay's 1647 letters patent.

¹⁵⁹ Murdoch, *History of Nova-Scotia*, 1:134. Commission dated 10 December 1657, published in Couillard-Després, *Histoire des seigneurs*, 70-72.

¹⁶⁰ Griffiths, *From Migrant to Acadian*, 84.

¹⁶¹ Helen Dewar, "'Y établir nostre auctorité': Assertions of Imperial Sovereignty through Proprietorships and Chartered Companies in New France, 1598-1663" (PhD diss., University of Toronto, 2012), 263-264.

¹⁶² Dewar, 263-265.

¹⁶³ "Arrêt du Conseil privé déclarant exécutoire un arrêt précédent, du 16 février 1652," 13 juillet 1655, LAC, Fonds Archives nationales (France), Conseil d'état privé, Série V6, cart. 308, pièce 24 (transcription). The Compagnie de la Nouvelle-France had received a default decision in its favor from the Conseil privé in 1652, but this appears to have been stayed pending further proceedings. "Arrêt obtenu par le Cie. de la Nouvelle France... contre la veuve et les heritiers de Charles de Menou d'Aulnay," 16 février 1652, LAC, Série V6, cart. 263, pièce 50 (transcription), accessed February 20, 2019, <http://heritage.canadiana.ca/>, C-12559, image 301-307.

This 1655 arrêt was subsequently reversed or overridden, although there is some lack of clarity as to when this occurred. In 1667, the Compagnie des Indes occidentales granted Le Borgne a concession for a large part of l'Acadie which expressly excepted land previously conceded to Razilly and sold to d'Aulnay, thus assuming that both were still valid.¹⁶⁴ This concession replaced an earlier concession granted Le Borgne's by the Compagnie de la Nouvelle-France in 1657. Descriptions of the 1657 concession are less clear on this point.¹⁶⁵ A 1703 arrêt of the Conseil du Roi assessing various claims to land in l'Acadie, discusses the 1657 concession, but is inconclusive as to whether it excluded lands previously conceded to the Razilly and sold to d'Aulnay.¹⁶⁶ It describes the 1657 concession, for example, as excluding only lands previously conceded to La Tour, but then describes a mémoire submitted by the Le Borgne characterizing the 1657 concession as excepting "the lands which had been conceded to the sieurs de La Tour, de Razilly and to d'Aunay Charnizay."¹⁶⁷ An analysis that was prepared, presumably by legal counsel, in connection with the 1703 arrêt is clearer. The analysis states expressly that Le Borgne's 1657 concession was made "reserving the concessions previously made to the sieur Charles de St. Etienne, sieur de La Tour and to the Commander Razilly and his

¹⁶⁴ Concession faite par la Compagnie des Indes occidentales au S. Emmanuel Le Borgne, 17 décembre 1667, FR ANOM COL E 266, 259-271. [Also, the Conseil's 1655 decision is never mentioned in the Conseil du Roi's 1703 decision assessing seigneurial claims in l'Acadie, nor the submissions of either the Le Borgne or the La Tour heirs relative to that proceeding.](#) See Arrêt du Conseil du Roi (20 mars 1703), in Vanderlinden, *Le lieutenant civil et criminel*, 368-390.

¹⁶⁵ A brief description of the concession is contained in *Collection de manuscrits*, 1:152, without details as to the extent of the grant. This writer has been unable to locate the original or any further reference thereto.

¹⁶⁶ "Arrêt du Conseil du Roi, 1703" in Vanderlinden, *Le lieutenant civil et criminel*, 371, 373.

¹⁶⁷ "Arrêt du Conseil du Roi, 1703", 371 ("des terres qui ont été concédées aux Srs de la Tour, de Razilly et d'Aunay Charnizay"). Murdoch states that the 1657 concession to Le Borgne excludes what had been granted La Tour, with no mention of the concessions of Razilly or d'Aulnay. Murdoch, *History of Nova-Scotia*, 1:134. Others appear to have followed him. See Dunn, *History of Port-Royal/Annapolis Royal*, 26; Mason Wade, "Le Borgne, Emmanuel" *DCB*, vol. 1. Griffiths maintains that Le Borgne's 1657 concession excepted lands granted to La Tour and Nicolas Denys. Griffiths, *From Migrant to Acadian*, 84. No sources, other than the brief description contained in *Collection de manuscrits*, were provided for these statements.

brother,” adding that the latter concessions were “subsequently sold . . . in favor of the sieur de Menou d’Aulnay.”¹⁶⁸

It is thus possible that the victory the Compagnie de la Nouvelle-France had achieved over d’Aulnay after his death was very short-lived. This makes sense when one remembers that around the same time, Claude de Razilly’s heirs were pursuing the d’Aulnay heirs for moneys owed them from the 1642 sale of Razilly’s holdings in l’Acadie to d’Aulnay. It is reasonable to think that the Razilly would have quickly challenged the Conseil’s 1655 order which essentially voided their previously granted concessions, and any sale of those concessions, as potentially interfering with their claims against the d’Aulnay. Moreover, as the following discussion shows, the d’Aulnay heirs had their own supporters in France who may very well have complained of the draconian nature of the decree. Le Borgne, on the other hand, would not necessarily have understood the exception in his concession as fatal to his broad ambitions in l’Acadie, as he was already resting his claims to the d’Aulnay lands on the debts owed him.

The d’Aulnay heirs, meanwhile, continued to seek to have their claims recognized. In 1658, a petition was submitted to the crown on the behalf of the d’Aulnay sons asking that their father’s letters patent of 1647 be confirmed, and offering that “some persons will undertake the reestablishment of Joseph d’Aulnay in his possessions and will chase out the English.”¹⁶⁹ Six

¹⁶⁸ “Memoire, sur les droit de M. le Duc de Vendosme, du Sr. le Borgne et des Sieurs Latour concernant l’Acadie et pais circonvoisins,” 1700, LAC, Fonds des Colonies (France), Série E, Dossiers personnels, accessed October 12, 2017, Archives Search, <http://collectionscanada.gc.ca/>, pp. 74-89, 77-78, MIKAN 305291; concession made “a la reserve des concessions cy devant faites au Sr. Charles de St. Etienne, Sr. de la Tour et au Sr. Commandeur de Razilly et son frere, des quelles concessions ils ont ensuite disposé . . . en faveur du Sr. de Menou Daulnay.”

¹⁶⁹ Lauvrière, *La tragédie d’un peuple*, 1:96; “Si le Roy consent à confirmer pour le fils aîné Joseph . . . les lettres patentes qu’il accorda au père en 1647 des personnes entreprendront le rétablissement de Joseph d’Aulnay en ses possessions et en chasseront les Anglais.” Lauvrière writes that although the young men had some support among the powerful, they would eventually all, Joseph, Charles, René and Paul, die on the battlefield without issue. Lauvrière, 97. Paul, the youngest, was last to be killed at the siege of Luxembourg in 1684. The daughters all joined religious orders. Massignon, “La seigneurie de Charles de Menou d’Aulnay,” 483-484. The d’Aulnay heirs continued to assert their rights during this period, as evidenced by a 1668 petition sent to Colbert, apparently for the second time, in which they sought an accounting of all Le Borgne had received from the agreement of 1650, and questioned whether, in light of all the facts, Le Borgne “is able call himself owner of this country.” Placet des

years later, the Compagnie de la Nouvelle-France was replaced by the Compagnie des Indes occidentales, which, as noted above, reissued Le Borgne's concession in 1667. The 1667 concession reduced the extent of Le Borgne's grant, extending it only as far south as the "rivière des Mines." As noted above, the grant also expressly excluded the "concessions previously accorded by the old Compagnie to Claude de Rasily ... and to Commander de Razilly his brother which concessions they would then transfer with the consent of the old Compagnie in favor of Charles de Menou chevalier sieur d'Aulnay."¹⁷⁰ As a result of the exceptions contained in this, and perhaps also his previous concession, Le Borgne would chiefly rest his seigneurial pretensions going forward on the fact that he was d'Aulnay's creditor rather than on his concessions.

Le Borgne would attempt, unsuccessfully, to take l'Acadie from the English before it was formally relinquished under the terms of the Treaty of Breda. In 1658 he assembled a force led by his son, Alexandre Le Borgne, to take La Hève.¹⁷¹ The latter arrived in the summer of that year and seized pelts and other merchandise. Temple responded, however, taking Alexandre Le Borgne prisoner, holding him first at Boston and later at London.¹⁷² Another attempt was made at La Hève by the Le Borgnes the following year, and again repulsed, only to be followed, if

enfants d'Aulnay de Charnisay adressé à Colbert, 1668. LAC, Fonds de la Bibliothèque nationale de France, Département de manuscrits, MG 7, I, A6, vol. 147, p. 271 on transcription (C-12868, image 323).

¹⁷⁰ Concession faite par la Compagnie des Indes Occidentales au S. Emmanuel Le Borgne, 17 decembre 1667, LAC, Fonds des Colonies (France), Dossiers personnels, Série E, items 13-25, 19, accessed November 8, 2017, Archives Search, <http://collectionscanada.g.ca>, MIKAN 3053277; concession made "et encore à la reserve des concessions ci devant accordées par ladite ancienne Compagnie à Charles de St. Etienne de La Tour, à Claude de Rasily chevalier sieur de Launay, et au sieur commandeur de Rasily son frere, desquelles concessions ils auroient ensuite disposé du consentement de ladite ancienne Compagnie en faveur du sieur Charles de Menou chevalier sieur d'Aunay."

¹⁷¹ Griffiths, *From Migrant to Acadian*, 85.

¹⁷² Griffiths, *From Migrant to Acadian*, 85.

Denys is to be believed, by “plusieurs guerres entr’eux.”¹⁷³ During this time Le Borgne was holding himself out as “lieutenant général en Acadie et seigneur et proprietor.”¹⁷⁴

Neither Le Borgne nor his sons were able to enforce their claims, however, until the colony was formally returned to France. Alexandre Le Borgne returned to l’Acadie after the Treaty of Breda was signed in 1668 with Hector d’Andigné de Grandfontaine who was appointed gouverneur of l’Acadie in Le Borgne’s stead. Grandfontaine was tasked with accepting the return of the forts from the English. Once again, Le Borgne returned to France without being able to enforce his apparent claims. It was not until 1670, when Temple finally agreed to the restitution, that he returned to Port-Royal and established himself as seigneur. By that time, both La Tour and Motin were deceased, the d’Aulnay heirs reduced to one survivor, the Dame Marie de Menou de Charnizay, a canoness of Poussay, and the children of the union of Motin and La Tour were too young to resist.

Le Borgne’s Claims to the d’Aulnay Heirs’ Land in L’Acadie

Scholars often quote Nicolas Denys to say that in 1654, Le Borgne “pretended to be Seignior of all that country as creditor of the Sieur d’Aunay.”¹⁷⁵ It is unlikely that Le Borgne actually claimed to be seigneur, as Denys suggests, at this time; as shown above, he signed the

¹⁷³ Reid, *Acadia, Maine, and New Scotland*, 139, quoting Denys, *Description and Natural History*, 467.

¹⁷⁴ In a contract signed in January 1658, procuring the services of one Jean Périer for the 1658 expedition to La Hève, Emmanuel Le Borgne’s oldest son, Emmanuel Le Borgne du Coudray, refers to his father as “lieutenant général en Acadie et seigneur et proprietor” in most of the country until New England. “Contrat, Emmanuel Le Borgne (fils) et Jean Périer, 17 janvier 1658.” LAC, Dossiers personnels, Série E, Minutes Teuleron, 1658, vol. 7, fols. 6-6v (extract), accessed November 23, 2017, <http://heritage.canadiana.ca/>, C-9187, image 262. Notwithstanding the terms of his 1657 concession, Le Borgne appears to have included the rivière Saint-Jean in his seigneurie which clearly belonged to La Tour. A letter from the king to his ambassador in London reflects Le Borgne’s expansive claims. The king asks his ambassador to renew his efforts to obtain the release of the younger Le Borgne, as well as the restitution of the forts of Port-Royal, the rivière Saint-Jean and Pentagouët “belonging to his father.” “Lettre of the king to Bordeaux, 7 octobre 1658,” *Collection de manuscrits*, 1:153.

¹⁷⁵ Denys, *Description and Natural History*, 99.

capitulation of the fort at Port-Royal in which he is referred to simply as a “bourgeois and merchant in the city of La Rochelle.” That capitulation recognized the fort and lands in Port-Royal as belonging to the heirs of d’Aulnay. In any event, as the following shows, his legal authority to do so would have been very much in question at that time, as indeed it would remain.

As noted above, Le Borgne had come to a settlement of d’Aulnay’s debts with the latter’s father, the sieur de Menou de Charnizay, who was also the guardian of the d’Aulnay heirs. This settlement recognized that the succession owed Le Borgne 260,000 livres.¹⁷⁶ Charnizay was an old man, and in fact, would very shortly die. Le Borgne clearly overreached in the extremely harsh terms that he was able to impose on the d’Aulnay heirs. But, while ensuring that these heirs would remain bound to him for a long time to come, the agreement does not, as some have supposed, give away their birthright in l’Acadie, nor, at least in theory, make it impossible to get free of their debt. It is thus important to understand the specific terms of the agreement.

The debt of 260,000 livres was to be paid by two principal means. First, the sieur de Charnizay agreed, on behalf of himself and as guardian of the d’Aulnay heirs with regard to their French holdings, to relinquish d’Aulnay’s land and seigneurie near Loudun, as well as all moveable property therein.¹⁷⁷

The second means was in furs and other trade goods from l’Acadie. This included the value of any furs that already had been sent to France by d’Aulnay, or his agents.¹⁷⁸ More than

¹⁷⁶ Transaction entre René de Menou et Emmanuel Le Borgne, 9 novembre 1650, LAC, AN, Minutier central, Étude XX-274, fols. 1-20,

¹⁷⁷ Le Borgne had been in the process of taking steps to seize the d’Aulnay seigneurie near Loudun together with all moveable property when d’Aulnay died in 1650. Transaction entre René de Menou et Emmanuel Le Borgne, fol. 5. See also d’Entremont, *Histoire de Cap Sable*, 2:616. Le Borgne’s action against d’Aulnay in Rennes in 1650 for the “terre et seigneurie d’Aulnay” was “prest à juger,” or set down for decision, when d’Aulnay died.

¹⁷⁸ As the agreement recounts, Le Borgne had already moved to seize certain of these shipments (*saisie*), including one intended for one sieur d’Ariteguy at Nantes in the vessel *Jacque Caillau*, and pursued permission from the court

this, it effectively established a monopoly on the fur trade in all of l'Acadie. To maintain the trade and thus protect his interests, it was agreed that Le Borgne would continue to supply the colony, and that he would be reimbursed from the succession for the money he spent, "whether for the subsistence, wages and nourishment of men who are there at present and those it will be necessary to send there, as for the upkeep of trade and other expenses for the good and utility and conservation of the country, and the advancement of the Catholic religion."¹⁷⁹ The agreement further provided that all "furs and other merchandise from [l'Acadie] would be delivered and provided to the sieur Le Borgne . . . in the same vessel that had carried men, victuals and merchandise."¹⁸⁰ Neither Jeanne Motin, nor the heirs, nor anyone commanding in any of the other settlements, would be permitted, according to the agreement, to "divert the furs and other merchandise nor deliver and give it to other than Le Borgne or his agents who will be required to take them in the storehouses of the country."¹⁸¹ In other words, Le Borgne could seize furs and other trade goods wherever he found them. Le Borgne was to receive in furs and other merchandise, not only the value of the cargo shipped, but an additional fifty percent of the value of the cargo to cover the costs of transport as well as the risks assumed. Nowhere does the agreement sign over the rights to d'Aulnay's land holdings in l'Acadie.¹⁸²

to dispose of furs seized in an action called *main-levée*. The agreement with Charnizay would also permit him to do the same with shipments intended for other merchants, including Holde and La Land.

¹⁷⁹ Transaction entre René de Menou et Emmanuel Le Borgne, 9 novembre 1650, LAC, AN, Minutier central, Étude XX-274, fol. 14; ". . . soit pour la subsistance, gaiges et nouritures des hommes qui y sont à present et qu'il sera besoing d'y envoyer que pour l'entretien du negoce et aultre despence pour le bien et utilité et conservation du dict pays et advancement de la religion catholique."

¹⁸⁰ Transaction entre René de Menou et Emmanuel Le Borgne, fols. 14-15; "toutes les pelleteryes et autres marchandises quelzconques provenans dudict pays seront livrées et fournyes audict sieur Le Borgne . . . dans les mesmes vaisseaux qui auront conduit et mené les hommes, vivres et marchandises."

¹⁸¹ Transaction entre René de Menou et Emmanuel Le Borgne, fol. 15; "divertir aulcunes desdictes pelleteryes et aultres marchandises ny les livrer et donner à aultres qu'audict sieur Le Borgne ou ses commis qui seront tenuz de les prendre dans les magasins dudict pays."

¹⁸² In one sense, one can see this, and perhaps Charnizay did, as a continuation of the arrangement Le Borgne had had with d'Aulnay: Le Borgne supplied the colony and d'Aulnay paid him in pelts. Although it must have been cold comfort to the heirs, it was an acknowledgement of sorts that the latter continued to have the rights to, and responsibility for, the colony. The difference, and it was a big one, was that, unlike when d'Aulnay was alive, under

While there is nothing in the agreement that purports to transfer the d’Aulnay heirs’ seigneurial rights in l’Acadie to Le Borgne, there is one clause that some have read, I submit erroneously, to effectuate this result. Le Borgne inserted a multipart provision limiting his responsibilities under the agreement. First, he reserved the right to send only those vessels which he decided were necessary to supply the various places presently visited by the supply ships.¹⁸³ Further, Le Borgne could not be held to provide the costs for new settlements. Existing settlements would be supplied as before. These settlement were described as including La Hève, Port Royal Pentagouët, the rivière Saint-Jean, Miscou, Ile Royale, and other dependences “affectées spécialement et par privilege au payement de tout ce qui est deub audict sieur Le Borgne.”¹⁸⁴ Naomi Griffiths reads this last phrase to mean that Le Borgne “had gained legal rights not only to d’Aulnay’s property in France but also to ‘all the dwellings of La Heve, Port Royal, Pentagouët, the St. John river as well as Miscou, the island of Cape Breton and other dependencies’.”¹⁸⁵ In this she relies on a later letter written by the heirs of the duc de Vendôme

this agreement the heirs would not see any of the profits from the fur trade, nor have any say in controlling the all important supply of the colony. It must be said that Le Borgne appears to have been quite unscrupulous in his dealings with the d’Aulnay heirs. Jeanne Motin and her children would claim that Le Borgne never produced a proper accounting of moneys owed him, on the one hand, nor the value of merchandise and properties received to satisfy the debt on the other. In 1672, Jeanne Motin went to court to attempt to force Le Borgne to produce proofs of the statement of account he “surprised” her into signing in 1653. She died before this could be litigated but her daughter, Marie de Menou de Charnizay, a canoness of Poussay, pursued the matter and obtained an order for an accounting in 1671. Le Borgne seems not to have complied with the court order. The La Tour siblings claimed that if the full value of the property and goods appropriated by Le Borgne was known, it would be found that Le Borgne was a debtor of the d’Aulnay and La Tour heirs and not a creditor at all. “Mémoire: In re, 1700,” *Collection de manuscrits*, 2:360, 376.

¹⁸³ The agreement uses the phrase “lieux presentement arreste.” I have translated “arreste,” in the context of the clause, to mean places at which ships presently stop and anchor. See *Jean Nicot: Thresor de la langue française (1606)*, at *DVLF*, s.v. “arrestar,” accessed November 28, 2017, <https://dvlf.uchicago.edu/mot/arrestar>.

¹⁸⁴ “Transaction entre René de Menou et Emmanuel Le Borgne,” 9 novembre 1650, LAC, AN, Minutier central, Étude XX-274, fols. 16-17.

¹⁸⁵ Griffiths, *From Migrants to Acadians*, 62-63. In this context “habitations” should be read as settlements and not individual dwellings. *Dictionnaire de l’Académie française* 1re éd. (1694), at *DVLF*, s.v. “habitation,” 2nd entry, accessed November 28, 2017, <https://dvlf.uchicago.edu/mot/habitation> (“pour un établissement fait de nouveau dans un pays esloigné, & qui n’estoit point habité auparavant”).

and one of the Le Borgne sons, claiming that by this language, Charnizay had “assigned and mortgaged all the habitations of the said country of la Cadie.”¹⁸⁶

When read in context, however, the language of 1650 agreement can not bear this reading, and makes clear that the Le Borgne heirs were refashioning the facts to support their current claims. First, as noted above, the language in question is part of a longer clause whose purpose is clearly to limit Le Borgne’s responsibilities with regard to supplying the colony. It would be odd indeed to hide something so momentous as the transfer of the rights to all of the heirs’ Acadian properties as part of a longer provision on a different subject. Where the agreement does transfer rights to property, for example in the case of the d’Aulnay seigneurie near Loudun, it is very clearly set forth, and careful details are provided on how the agreement is to be executed. There is nothing like that with regard to the lands belonging to the d’Aulnay succession in l’Acadie.¹⁸⁷ It should be recalled as well that some of these settlements, for example Cape Breton and Miscou, were not even part of the d’Aulnay succession, having been ceded to Denys, as the king would shortly confirm.

The language “affectées” here should be read to have its common meaning as, “assigned” or “designated,” in this case assigned to meet the amounts owed Le Borgne by the late d’Aulnay. It does not say how these areas will meet those debts; for this one must look elsewhere in the

¹⁸⁶ Griffiths, *From Migrants to Acadians*, 63, n. 95, citing to “Le Duc de Vandosme et le S^r Le Borgne sur leur prétensions sur l’Acadie, *Collection de manuscrits*, 1:154-155; “il a affecté et hipotéqué toutes les habitations dudit païs de la Cadie, sçavoir celle de la Hève, du Port royal, Pentagouët, la rivière de St. Jean, celle de Miscou du Cap Breton, et generalement tout ce quy leur appartient.” Griffiths is not alone. Candide de Nant wrote that during his 1652 (1653?) trip to Port-Royal, Le Borgne “dépouillée,” or stripped Madame d’Aulnay of her titles. Candide de Nant, *Pages glorieuses*, 274. Following Denys’s statement that Le Borgne “claimed to be seigneur of all these lands,” d’Entremont wrote that Le Borgne wanted to appropriate for himself all of l’Acadie. He found further evidence in a short, and somewhat misleading, summary of the November 9, 1650 transaction found in the Francis Parkman papers. The summary states that “the balance due Le Borgne was 260,000 livres for which the Charnizay property in Acadia was ‘specialement obligée.’” D’Entremont, *Histoire du Cap-Sable*, 2:350; *The French Colonial Government and the Abenakis*, Parkman Papers, Bound volumes, First numbered series, vol. 1, 1885, fol. 141, Massachusetts Historical Society, Boston.

¹⁸⁷ Nor is there any indication that Le Borgne ever received a judgment awarding him the ownership of d’Aulnay’s lands in l’Acadie, as he had the d’Aulnay estate in France.

agreement. It specifically does not say “affectées *et hypothéqués*,” or “assigned and mortgaged,” as the Le Borgne heirs claimed. In fact, the phrase in question is followed directly by the qualification, “without derogating from *or adding to* his mortgages by the present agreement and transaction.”¹⁸⁸ “Par privilege,” simply means something like, ‘to the exclusion of others’, or ‘as a priority before all others’. Thus the language in issue should be read not to create a lien on the lands, still less to transfer the heirs’ property rights, but rather to recognize that these lands are assigned, to the exclusion of others, to the payment of all that which is due to Le Borgne. In other words, these are the areas that are subject to the trade monopoly created elsewhere in the agreement.

Further, as the election of guardians for the minor d’Aulnay children signed a month before shows, Charnizay was the guardian of the children only with regard to the minors’ property “in this realm and neighboring lands,” that is for properties in France and neighboring countries.¹⁸⁹ Madame d’Aulnay was named guardian for the education and conduct of the children in l’Acadie, and Germain Doucet, the sieur de La Verdure, was named subrogé-tuteur for the “protection” and “conservation” of the minor’s property in l’Acadie. As subrogé-tuteur, it was La Verdure’s job to prevent the tuteur, in this case Charnizay, from taking actions contrary to the interests of the heirs in their Acadian properties. It is inconceivable, therefore, that Charnizay had the authority to transfer or mortgage the d’Aulnay heirs’ property rights in

¹⁸⁸ Transaction entre René de Menou et Emmanuel Le Borgne, 9 novembre 1650, LAC, AN, Minutier central, Étude XX-274, fol. 17; “sans desroger ne innover à ses ypotheques par le present traicté et transaction” (emphasis added).

¹⁸⁹ Homologation, 5 novembre 1650, LAC, AN, Minutier central, Étude XX-274, f, 23, annexé à la transaction du 9 novembre 1650; “en ce royaulme et aultres circonvoisins.” Charnizay was given authority to dispose of “aultres effectz” belonging to the succession to meet Le Borgne’s demands. “Effects,” when used in the plural meant a person’s, in this case, the succession’s property, and most commonly, moveables. *Dictionnaire de l’Académie française* 6e édition (1835), at *DVLF*, s.v. “effets,” accessed November 28, 2017, <https://dvlf.uchicago.edu/mot/effets>. This no doubt permitted him to agree to give Le Borgne a monopoly on furs and other trade goods that would otherwise belong to the d’Aulnay heirs. This language cannot, however, reasonably be read to allow Charnizay to completely override the careful design for the protection of the minors’ property in l’Acadie, which included the specific assignment of a separate guardian.

l'Acadie without the consent of the sieur de La Verdure who was not present and who does not appear to have ratified the November 1650 agreement.¹⁹⁰

In 1658, the Duc de Vendôme and the Le Borgne's eldest son Andre le Borgne du Coudray, writing to the crown and his conseil, responded to a request that they justify their claims of ownership of Acadie.¹⁹¹ The letter relies on the 1650 agreement between d'Aulnay's father, Charnizay and Le Borgne, which, it claims, was found valid by a 1658 arrêt issued by the Parlement in Paris. Interestingly, the letter does not refer to Le Borgne's 1657 concession from the Compagnie de la Nouvelle-France, suggesting that the concession was not determinative, whether because it excepted lands already conceded, as did Le Borgne's 1667 concession, or for some other reason.¹⁹²

The decision relied on by Le Borgne was an arrêt rendered by the Parlement in Paris, on July 27, 1658.¹⁹³ The matter consolidated a number of claims between Guillaume Le Bel, tuteur subrogé for the d'Aulnay children, and Le Borgne, and does indeed find that the 1650 agreement between Charnizay and Le Borgne was in effect. The decision, however, does not concern the lands in l'Acadie. Instead the actions consolidated before the court involved various matters having to do with the accounts Le Borgne submitted to justify the debts he claimed were owed by the heirs; the *saisie réelle*, or attachment, of the d'Aulnay seigneurie near Loudun and the disposition of the effects of the succession of Nicole de Jousserand, d'Aulnay's mother from whom he had inherited the d'Aulnay estate; and the approval by a lower court of the act by the

¹⁹⁰ On the other hand, a 1658 arrêt issued by the Parlement in Paris states that Le Borgne produced a copy of the agreement ratified by Jeanne Motin, and that the representations to the contrary of Guillaume Le Bel, tuteur for the d'Aulnay children, were not truthful. Arrêt rendu à Paris en Parlement le 27 juillet 1658 entre Guillaume Le Bel et Emmanuel Le Borgne, Archives nationales (France), Parlement de Paris, Parlement civil, Registres, Série X1A, 2445, fols. 423v – 431.

¹⁹¹ "Le Duc de Vandosme et le sieur Le Borgne sur leur prétensions sur l'Acadie," *Collection de Manuscrits*, 1:154-155.

¹⁹² Nor does it mention the 1655 decision of the Conseil privé purporting to void the d'Aulnay heirs' rights in l'Acadie.

¹⁹³ Arrêt rendu à Paris en Parlement le 27 juillet 1658, AN, Parlement de Paris (civil), X1A, 2445, fol. 430.

d'Aulnay heirs' relatives giving Charnizay the authority to settle the late d'Aulnay's debts with Le Borgne. Nowhere in the decision are the lands in l'Acadie addressed, nor is the language in the agreement that concerns Le Borgne's rights in l'Acadie mentioned. When the court orders that Le Borgne be placed in possession "de la terre d'Aulnay," it is clearly referring to the seigneurie that d'Aulnay inherited from his mother near Loudun.¹⁹⁴ The fact that the court ordered that "la transaction du neuf novembre six cent cinquante sera executé selon sa forme et teneur," therefore, begs the question, namely, What is the proper interpretation of the language of the agreement with regard to the lands in l'Acadie?¹⁹⁵ The court simply does not reach this issue.

For that interpretation, one must turn not only to the language of the agreement, as discussed above, but also Le Borgne's own actions after the agreement was signed. Those actions belie the notion that the agreement had transferred to him the d'Aulnay heirs' proprietary rights in l'Acadie. As recounted above, the year after this agreement was signed, Alexandre Le Borgne delivered letters to the Massachusetts Bay Colony from Charnizay and Motin asserting the d'Aulnay heirs' proprietary and governmental rights. Moreover, while by all accounts Le Borgne did not hesitate to seize the furs and other merchandise he believed were his under the agreement, we have no indication, other than Denys's statement written some twenty years later, that he held himself out as seigneur before Sedgwick's attack on Port Royal. On the contrary, the papers of capitulation, which he signed, confirm the d'Aulnay heirs' proprietary rights, and list him only as a "bourgeois and merchant from La Rochelle."

It is worth reiterating that in 1667, the Compagnie des Indes occidentales confirmed Le Borgne's concession for l'Acadie, explicitly excluding the lands previously conceded to

¹⁹⁴ The same language is used when upholding the attachment of the d'Aulnay estate near Loudun. Arrêt rendu à Paris en Parlement le 27 juillet 1658, AN, X1A, 2445, fol. 430v.

¹⁹⁵ Arrêt rendu à Paris en Parlement le 27 juillet 1658; "the transaction of November 9, 1650 will be effective according to its form and tenor."

d'Aulnay. It is difficult to believe that his concession would have contained this clause if Le Borgne had a legally perfected right to d'Aulnay's Acadian holdings as a result of the 1650 agreement with Charnizay, or the 1658 arrêt of the Parlement of Paris.

In short, the 1650 agreement between Charnizay and Le Borgne did not, and could not, mortgage, let alone alienate, the settlements in l'Acadie. Le Borgne thus would have had no grounds on which to press this claim on Jeanne Motin prior to 1654 when he was forced to leave Port Royal, not to return until 1670. The actions he took were rather entirely consistent with his rights under the agreement, namely his right to seize furs and other merchandise in all the forts and ports of l'Acadie belonging to the d'Aulnay heirs.

The controversy over the Le Borgne's claim to the d'Aulnay lands would not end. The Treaty of Breda was signed in 1667 at which time Le Borgne named his son Alexandre in his place as gouverneur.¹⁹⁶ A month later, the king formally named Alexandre Le Borgne gouverneur for the area covered by his concession, namely from the rivière de l'isle Verte to the rivière des Mines.¹⁹⁷ The appointment was for three years only and Le Borgne never had the opportunity to exercise his gubernatorial authority in l'Acadie; l'Acadie was only restored to the French in 1670 at which time Hector d'Andigné de Grandfontaine was named the first gouverneur of l'Acadie replacing Le Borgne. Assuming the title of sieur de Belleisle, Alexandre Le Borgne arrived in Port-Royal claiming that he was seigneur. As the La Tour heirs wrote "Le Borgne found no obstacle because Dame Motin and the sieur La Tour were dead." Moreover,

¹⁹⁶ Couillard-Després, *Charles de Saint-Étienne de La Tour*, 74, n. 1 (contains extract of the substitution).

¹⁹⁷ "Provisions du gouvernement d'une partie d'Accadie dans la Nouvelle France pour le S. le Borgne," 4 avril 1668, FR ANOM COL E 266, 246-247. The Le Borgnes' presence and actions during this time of transition earned them a rebuke by Morillon Du Bourg who arrived in l'Acadie in 1668 as the representative of the French king to take possession back from the English. Reid, *Acadia, Maine, and New Scotland*, 157.

“[t]here remained no children of sieur d’Aulnay in l’Acadie . . . and the children of the sieur La Tour being all infants.”¹⁹⁸

Belleisle’s title of seigneur continued to be contested, at least by certain French authorities in l’Acadie. Shortly after taking the governorship, Grandfontaine apparently told the inhabitants to consider Belleisle as a “simple habitant.”¹⁹⁹ A later gouverneur of l’Acadie, Joseph Robinau de Villebon, complained in 1699 that Belleisle was charging the English to trade at Port-Royal, contrary to king’s authority, and that he did not believe that Belleisle “has any reason to call himself Seigneur of Port Royal.”²⁰⁰ It seems the ministry in France was at least aware of the contested nature of Belleisle’s claims.²⁰¹ The Conseil du Roi, taking heed of the concerns of those, like Villebon, that the seigneuries in l’Acadie were not being adequately developed, issued the arrêt of 1699 ordering all concession holders in Acadie to submit their titles to the king for a comprehensive review. This review resulted in a decision in 1703 that

¹⁹⁸ “Memoire: In re,” *Collection de manuscrits*, 2: 361; “Le Borgne n’y trouva aucun obstacle parce que la Dame Motin et le Sieur de la Tour étaient décédez. Il ne restait aucun des enfans du Sieur d’Aulnay en l’Acadie . . . et les enfans du Sieur de la Tour, étant tous en fort bas âge.”

¹⁹⁹ “Mémoire concernant l’Acadie par le chevalier de Grandfontaine,” 1671, LAC, Fonds des Colonies (France), C11D, vol.1, fol. 139v, accessed December 6, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2409927.

²⁰⁰ “Villebon’s Last Journal Sent to Count Pontchartrain,” October 27, 1699, in John Clarence Webster, ed., *Acadia at the End of the Seventeenth Century: Letters, Journals and Memoirs of Joseph Robineau de Villebon, Commandant in Acadia (1690-1700)*, Monographic Series No. 1 (Saint John, NB: New Brunswick Museum, 1934), 123.

²⁰¹ There is correspondence from the Ministry to Joseph-Antoine Le Febvre de la Barre, gouverneur-général of Nouvelle-France from 1682 to 1685, complaining that someone in the government had signed an order confirming Le Borgne in the possession of lands in l’Acadie, and that this was a matter for justice, an allegation that la Barre denies. “Lettre du ministre à La Barre,” 10 avril 1684, LAC, Fonds des Colonies (France), Correspondance générale, Série C11A, vol. 6, fols. 242-243v, accessed December 14, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 3037302; “Lettre de La Barre au ministre,” 14 novembre 1684, LAC, Correspondance générale, C11A, vol. 6, fols. 355-368, accessed December 14, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 3037310 . While I have not found the ordonnance to which the minister refers, there is an ordonnance dated two years later from Jacques de Meulles, intendant of Nouvelle-France from 1682-1686, dated May 13, 1686, only months before he left for France, in which he confirms Belleisle in his possession of contested lands in the Minas basin. Ordonnance de M. de Meulles, 13 mai 1686, LAC, Fonds des Colonies (France), Correspondance générale, C11A, vol. 8, fols. 222-222v, accessed December 15, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 3049446. He does not address the issue of competing claims by the La Tour heirs, the Le Borgne and Vendôme, a matter the Conseil du Roi would take up beginning in 1699. Rather, he simply declared that Belleisle would henceforth enjoy possession of all lands in the Minas basin, “depuis le Cap quy fait l’entrée de ladite baye” (from the cape that serves as the entrance of the said bay).

finally determined the competing claims of the La Tour heirs, André Le Borgne, representing Le Borgne's heirs in France, and the heirs of the duc de Vendôme.²⁰² The claims of the heirs of Jeanne Motin and Charles La Tour will be addressed in the next chapter. As to Le Borgne's assertion of rights to d'Aulnay's lands, the Conseil chose to avoid the issue of the legality of those claims altogether, simply dismissing them instead.²⁰³ However, the king found that in light of the expenses made in the colony, the Le Borgne heirs would be granted a concession stretching from the Penobscot River to the boundary with New England, which was then the Saint George River, all on the condition that Le Borgne "cultivate the land, people it, and establish some settlements within ten years." Failure to meet these conditions would result in the revocation of the concession. As it was very unlikely that the Le Borgne heirs in France, who had never set foot in l'Acadie, would be able to meet these conditions, the 1703 order effectively put an end to the tortuous history of their claims to the d'Aulnay lands.

Jeanne Motin: Acadian Seigneuresse

The question remains, however, whether Jeanne Motin continued to reside in Port-Royal and was able to take advantage of what rights she had as the widow of d'Aulnay and the heirs' representative in l'Acadie?²⁰⁴ The record is not clear as to whether Motin and the children were

²⁰² Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 368-390.

²⁰³ Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 385-386. The advice of D'Aguesseau, Amelot and Le Haguais, conseillers to the Conseil is only slightly more enlightening regarding the analysis of Le Borgne's seigneurial claims. They simply write that the king's edicts of May 1664 and December 1674, that is, the orders dissolving first the Compagnie de la Nouvelle-France, and then the Compagnie des Indes occidentales, reunited all lands in l'Acadie to his Majesty's domaine, and thus Le Borgne's claims are dismissed as are those of the heirs of the duc de Vendôme. "Avis de M. d'Aguesseau, Amelot et Le Haguais sur l'Acadie, 1701," LAC, Fonds des Colonies (France), Dossiers personnels, Série E, vol. 12, fol. 66, accessed December 17, 2017, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 3052091.

²⁰⁴ As noted above, Motin held the right of *garde noble* to enjoy the heirs' property until they reached their majority. In addition, pursuant to d'Aulnay's last will and testament, she was given all of his possessions, including moveable and immovable property, to enjoy during her lifetime. See discussion, p. 113. She was, in effect, the acting seigneur for her eldest son, and indeed the king recognized her as such when he named her "co-seigneur" with the duc de

in Port-Royal at the time of the Sedgwick raid, or with La Tour on the rivière Saint-Jean, nor what they did in the immediate aftermath of the attack. Did she accompany some or all of the children to France, as her daughters wrote in a petition to the king some thirty years later.²⁰⁵ Or did the children, as Nicolas Denys claimed, find asylum with him on Cape Breton?²⁰⁶

The record is clearer, however, notwithstanding some opinions to the contrary, that for the longer term, Motin, La Tour and their children would make Port-Royal their home until their deaths sometime between 1663 and 1667. In his entry for Charles de La Tour in the *Dictionary of Canadian Biography*, George MacBeath asserts that La Tour returned to l'Acadie from London and settled at cap de Sable with Motin and their children.²⁰⁷ Some scholars have followed his lead,²⁰⁸ while others have cautiously adopted the opinion that La Tour and Motin established themselves at Port-Royal.²⁰⁹ These latter rely on Clarence-J. d'Entremont who argues that La Tour returned to l'Acadie in 1656, and after a short time on the rivière Saint-Jean, went to live with Motin in Port-Royal, where he died in 1663.²¹⁰ D'Entremont in turn relies on the evidence of an account book of Joshua Scottow, a Boston merchant, who acted as purchasing agent for La

Vendôme in 1652. When Joseph, her eldest son came of age—which was 25 in France in the seventeenth century—he would have assumed the title of seigneur. This was probably in 1664. Jeanne Motin would have acted for him pending that time. For age of emancipation in Nouvelle-France see, France Parent, *Entre le juridique et le social: Le pouvoir des femmes à Québec au XVII^e siècle* (Québec: Les Cahiers de recherche du GREMF, Université Laval, 1990-1991), 32. Joseph, however, would shortly die on the field of battle as would all of his male siblings. Each of d'Aulnay's four daughters entered the convent in France. Religious typically gave up their inheritance rights in exchange for the dowry paid to enter the convent. Sarah A. Curtis, *Civilizing Habits: Women Missionaries and the Revival of French Empire* (Oxford: Oxford University Press, 2010), 30. Perhaps because she was the sole survivor, Marie de Menou d'Aulnay, a canoness of Poussay, was given permission to accept the inheritance of her mother and father in 1667, which she then transferred to her La Tour half siblings. D'Entremont, *Histoire du Cap Sable*, 2:730. It was therefore only after Motin's death that the succession was finally determined. It is reasonable to infer, as will be argued below, that during her lifetime, Jeanne Motin would have continued to represent her own and the heirs' interest on the d'Aulnay lands in l'Acadie.

²⁰⁵ “Requêt des filles du feu sieur d'Aulnay Charnisay,” juin 1686, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 6, 1686, cited in Dunn, *History of Port-Royal/Annapolis Royal*, 27, accessed December 28, 2017, Archives Search, <http://collections.canada.gc.ca/>, MIKAN 2409954.

²⁰⁶ Denys, *Description and Natural History*, 152

²⁰⁷ George MacBeath, “Saint-Étienne de La Tour, Charles de (1593-166),” in *DCB*, vol. 1.

²⁰⁸ Most recently John Mack Faragher adopted this view in his book, *A Great and Noble Scheme*, 59. The tradition goes back to an older generation of scholars. Couillard-Després, *Charles de Saint-Étienne de La Tour*, 451.

²⁰⁹ Dunn, *History of Port-Royal/Annapolis Royal*, 27; Griffiths, *From Migrant to Acadian*, 83.

²¹⁰ D'Entremont, *Histoire du Cap-Sable*, 2:726.

Tour, and probably traded for the latter in the 1650s. Scottow also faithfully delivered to La Tour the one twentieth share of the profits from the fur trade in l'Acadie, as provided in the agreement La Tour had made with Temple and Crowne. D'Entremont contends that the account book shows that in 1657, provisions from Boston were sent to the rivière Saint-Jean for La Tour, but that, thereafter, they were always sent to Port-Royal.²¹¹

A close look at the account book confirms d'Entremont's view that La Tour returned to the rivière Saint-Jean when he first returned from London in late 1656 or 1657, after which he joined Motin at Port-Royal where she appears to have been living for some period of time.²¹² These entries also tell us much about what the couple was doing and how they lived.

The first entry that gives some indication of the pair's whereabouts is for the year 1657. It indicates that Scottow has been instructed to obtain "621 pieces de huit," or pieces of silver, of different types for Madame de La Tour. On the same folio, Scottow writes that Madame de La Tour delivered to Scottow, at Port-Royal in 1657, "a scroll" of beaver pelts weighing about 18 pounds. It is said that it was put with the other beavers from "the forts."²¹³ Also, for the same year, 1657, Scottow has listed the merchandise shipped to La Tour at "John's fort," or his fort on the rivière Saint-Jean.²¹⁴ The next entry lists amounts due to La Tour from the sale of items, including the eighteen pounds of beaver pelts offered by Jeanne Motin.²¹⁵ Another entry, this time for 1658, lists the amounts due to La Tour as a result of the sale of pelts, including moose,

²¹¹ D'Entremont, 2:726.

²¹² D'Entremont has carefully summarized each page of Scottow's account book. D'Entremont, 2:763-268. See also, Gilbert O. Bent, "Latours in Massachusetts Bay," *Acadiensis: A Quarterly Devoted to the Interests of the Maritime Provinces* 14, no. 1 (January 1904): 34, quoted in d'Entremont at 762. The account book itself is housed at Boston Public Library, the Rare Book and Manuscript Department, and has recently, as a result of a request from this writer, been digitized and made available online at archives.org. See the following note.

²¹³ Joshua Scottow's account with Monsieur de La Tour, 1657, Boston Public Library, Rare Book and Manuscript Department, bound with MS G.41.15 no. 2, fol. 2v, accessed April 25, 2018, www.archive.org/details/joshuascottowsac00scot/page/n1 (hereafter "Scottow account"). Another entry mentions that one Thomas Jones has received from La Tour sixteen beaver pelts weighing 25 and a half French pounds. Scottow account, fol. 4v.

²¹⁴ Scottow account, fol. 3r.

²¹⁵ Scottow account, fol. 3v.

wolf and beaver.²¹⁶ Three entries from 1657-1658 also show that Scottow delivered to La Tour the twentieth part of the profits realized by Temple and Crowne, as provided in the agreement made in London.²¹⁷ In the year 1657, therefore, Motin and La Tour, far from having retired to a quiet life in Cape Sable, were carrying on a fur trade with Boston from Port Royal and the river Saint-Jean, and this, notwithstanding Le Borgne's claim to have an exclusive right to this trade under the 1650 agreement with Charnizay.²¹⁸

Beginning in 1658, the account book gives clear indication that La Tour was in Port-Royal with Jeanne Motin. There is at least one entry that refers to an invoice that La Tour signed October 22, 1658 at Port-Royal.²¹⁹ The next entry that clearly establishes the couple's whereabouts, is dated from March to April 1659, and shows that Scottow has delivered a number of items bought on the account of La Tour (including flour, corn, butter, candles, a small "runlet of aniseed water") to the "Port."²²⁰ On this same folio, one finds an account of a meeting that had occurred between Scottow and La Tour at Port-Royal on May 21, 1659. Another meeting took place between the two at Port-Royal described in folio 9 which covers a period from June, 1660 to the beginning of 1661. No specific date is given for the meeting.²²¹ Scottow continued to act for La Tour through at least the middle of 1663.²²² These entries confirm d'Entremont's contention that La Tour and Motin were living together in Port-Royal at least from 1658 through 1663.

²¹⁶ Scottow account, fol. 6v.

²¹⁷ Scottow account, fols. 1v, 4v, and 6v.

²¹⁸ Recall that under the agreement, Motin and the d'Aulnay heirs were not permitted to transfer any pelts to anyone but Le Borgne. The pair may very well have been engaging in trade of other personal and household goods, as well as provisions, given the amount and variety of items Scottow bought in Boston on La Tour's account and shipped to him in l'Acadie. See e.g. Scottow account, fol. 2r (the list of items delivered include shoes, tobacco, stockings, silk, combs, butter, bread, peas, pork, wine, oil, rum, white sugar, oatmeal, vinegar, and "many other objects.").

²¹⁹ Scottow account, fol. 9r.

²²⁰ Scottow account, fol. 6r.

²²¹ Scottow account, fol. 9r.

²²² Scottow account, fol. 10r.

Scottow made an additional entry in his account book that helps to identify the date of La Tour's death. On August 14, 1663, he records that he has sent a final accounting of what was owed on La Tour's account to Jeanne Motin.²²³ D'Entremont argues that, as Scottow was always timely in his business affairs and would have heard about La Tour's death fairly quickly, La Tour probably died early August or July, 1663.²²⁴ This is supported by a letter written in November of 1663 by Michel Dantèz to Colbert, regarding his voyage to Newfoundland that same year. He relates that bad weather forced him to put in at New England where he learned of the death of Charles La Tour.²²⁵

As to the death of Jeanne Motin, Denys writes in 1672, of "a great meadow," upstream of Port Royal, "which belongs at present to Madame de la Tour."²²⁶ It is likely, however, that Denys wrote this while still in l'Acadie, where he was up until at least the beginning of 1670.²²⁷ There is some evidence that Motin only survived La Tour for a short time. A mémoire given by the La Tour heirs recounts that Motin had pursued a lawsuit in 1662 to force Le Borgne to give an accounting of the amounts he had already collected towards the debt of 206,000 livres recognized by Charnizay in 1650, but that she died "a little time after."²²⁸ Dame Marie de Menou de Charnizay, a canoness of Poussay and only surviving d'Aulnay heir, accepted the succession of her mother and father in 1667, indicating that Motin was deceased at that time.²²⁹ She then obtained, in 1671, an order requiring Le Borgne to provide documents supporting the debt still owing him, which he apparently always claimed as \$206,000 livres, notwithstanding that he had

²²³ Scottow account, fol. 10r.

²²⁴ D'Entremont, *Histoire du Cap-Sable*, 2:727.

²²⁵ Lettre de Michel Dantèz à Colbert, 6 novembre 1663, LAC, Bibliothèque nationale de France, Mélange de Colbert, vol. 118, fols. 153-154, accessed December 28, 2017, <http://heritage.canadiana.ca/>, C-12868, image 963. The letter is quoted and discussed in d'Entremont, *Histoire du Cap-Sable*, 2:727.

²²⁶ Denys, *Description and Natural History*, 128.

²²⁷ D'Entremont, *Histoire du Cap-Sable*, 2:729.

²²⁸ Memoire: In re, 1700, *Collection de manuscrits*, 2:360.

²²⁹ Émile Lauvrière, *La tragédie d'un peuple*, 96-97.

already seized a considerable amount of the d'Aulnay heir's assets.²³⁰ Thus it appears to be the case that some time between 1663, the date of La Tour's death, and 1667, the year Marie de Menou de Charnizay accepted her inheritance, Jeanne Motin was deceased.²³¹

If Motin and La Tour were in Port-Royal for much of the period in question, one must ask what their status was with regard to the agricultural lands in and around Port-Royal.²³² What evidence there is regarding Motin's land holdings during this period are found in statements submitted to the Conseil du Roi at the end of the seventeenth century as it deliberated the contesting claims of the La Tour heirs—these were the children and grandchildren of Motin and La Tour, who were also named heirs of the last surviving d'Aulnay heir, Dame Marie de Menou de Charnizay—André Le Borgne Du Coudray, one of Le Borgne's sons living in France, the heirs of the duc de Vendôme, as well as others.²³³ All of these statements are intended to advocate particular positions, and must be read carefully for overstatement and bias. Where facts are repeated, however, or where they go against the interests of the parties making them, they may be seen to be more reliable.

A chief claim of the La Tour heirs' position in these proceedings was that Le Borgne had usurped the d'Aulnay heirs' properties in l'Acadie without ever having “pursued an action in court allowing him to seize the properties and sell them, nor obtained judgement enabling him to be in possession of them.”²³⁴ They further argue that Le Borgne never submitted a proper accounting showing the value of goods and properties he seized in satisfaction of those debts, and that d'Aulnay's debts had been paid many times over. It was thus in the heirs' interest to

²³⁰ Memoire: In re, 1700, *Collection de manuscrits*, 2:360.

²³¹ D'Entremont, *Histoire du Cap-Sable*, 2:730.

²³² These being the only lands that may be said to have been truly settled, with the possible exception of Cap-Sable, after La Tour created a *barronie* and a fief there in 1653.

²³³ Note that the La Tour heirs included the heirs of Alexandre Le Borgne de Belleisle who had married Marie de Saint-Étienne de La Tour, one of the daughters of Jeanne Motin and Charles de La Tour.

²³⁴ Reponse aux pretention du sieur Le Borgne, 1700, *Collection de manuscrits*, 2:376; “Ne les ayant pas fait saisir réellement, et n'ayant obtenu aucun jugement qui leur ait permis de s'en mettre en possession.”

argue, and they did argue, that Le Borgne was wrongly in possession of the forts and habitations belonging to the d'Aulnay heirs beginning in 1653, although they admit that this was “a little” interrupted by the invasion of the Anglo-Americans. They insist, however, that Le Borgne continued to have possession of La Hève during all of this period, and several other areas, but not Port-Royal or other areas²³⁵

Thus, one may assume that the La Tour heirs had an interest in stressing, if not exaggerating, the extent to which Le Borgne was able to benefit from the lands in and around Port-Royal and other lands that they claimed belonged to them. And yet, their statements make clear that Motin lived in Port-Royal, and that she at least retained the métairies and mills that d'Aulnay had established, and lived on the fruits therefrom. Nor do they claim that Le Borgne was present at Port-Royal, or that he received any benefit from the lands there.

In a mémoire from 1688, the La Tour heirs assert that Motin had secured an agreement with Le Borgne that he would allow her to keep her two farms and two mills. In that same statement, we learn that these farms and mills, situated in Port-Royal, were “always enjoyed and possessed [by her] during her life until her death.”²³⁶ In the later mémoire submitted by them to the Conseil, the heirs wrote that while some of the d'Aulnay children came to France, “other children, the sieur de La Tour and Dame Motin, remained in l'Acadie where stripped of all things, they subsisted with difficulty from the fruits of some pieces of land that the English permitted them to cultivate.”²³⁷ How much difficulty is questionable, as we know from

²³⁵ Reponse aux pretention du sieur Le Borgne, 1700, 2: 376.

²³⁶ Mémoire des enfans du sieur de La Tour, 1688, *Collection de manuscrits*, 1: 441; “ladite Dame d'Aulnay . . . ne se réserva que 2 fermes et deux moulins . . . dont la dite veuve d'Aulnay a toujours jouy et possédé, sa vie durant, jusques à sa mort.”

²³⁷ Memoire: In re, 1700, *Collection de manuscrits*, 2:351; “les autres enfans, le Sieur de la Tour et la Dame Motin, restèrent dans l'Acadie où, dépouilles de toutes choses, ils subsistèrent avec peine des fruits de quelques pièces de terre que les Anglois leur permirent de cultiver.” A manuscript copy (“Memoire pour Mre Charles de Saint Estienne”) is also found online at FR ANOM, COL E 12, pp. 207-213, and at LAC, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 3052091.

Scottow's accounting book that La Tour, during his life, was regularly collecting a twenty percent share of Temple's profits, and that the pair was profiting from their own trade in pelts and perhaps other goods that they purchased from Boston. As Naomi Griffiths points out, "[t]he goods ordered between 1657 and 1660 argue a fair standard of living for the Motin-La Tour family."²³⁸

Denys confirms that during this period, the habitants drained the meadows above and below a "great meadow" bearing good wheat, "which belongs at present to Madame de la Tour."²³⁹ It is reasonable to conclude that this is one of the *métairies* or *cabanes champestres* established by d'Aulnay and enjoyed by Motin during her lifetime. It is highly unlikely that La Tour and Motin, whose children were still young, and even more that Motin herself, farmed this meadow. It is much more reasonable to expect that it was maintained as a *métairie*, and that Motin and La Tour enjoyed "the fruits" by way of sharecropping agreements, as well as employing wage labor.²⁴⁰

This does not, however, show that Motin acted as seigneur. Indeed, there is no direct evidence that during this time Motin and La Tour conceded lands or collected the minimal seigneurial dues on lands conceded by d'Aulnay during his life, or were otherwise treated as seigneur. However, it is hard to imagine any other scenario. As this study has argued, Le Borgne's claims to the d'Aulnay lands based on the latter's debts were never legally perfected: the 1650 agreement with the sieur de Charnizay did not transfer an interest in d'Aulnay's

²³⁸ Griffiths, *From Migrant to Acadian*, 83. These items included a quantity of looking glasses and knives, which, Griffiths writes, were "likely for trade." Other items included a significant amount of food, tobacco, white sugar, prunes, raisons, nails, powder, pots, pans and clothing, including silk and woolen yardage, canvas, ribbons, stockings, children's shoes and combs.

²³⁹ Denys, *Description and Natural History*, 123, 474; "les habitans . . . ont fait leurs défrichemens au dessous & au dessus de cette grande prairie, qui appartient à present à Madame de la Tour."

²⁴⁰ "Fruits" in the plural, as used in the La Tour heir memos most probably referred to the revenues from the land, as it would from an office or title. This could be provided in kind, or in cash. *Dictionnaire de L'Académie française*, 1re éd. (1694), at *DVLF*, s.v. "fruit," accessed December 29, 2017, <https://dvlf.uchicago.edu/mot/fruit>.

Acadian lands to Le Borgne, and the latter never succeeded in reducing his later assertion of rights to these lands to a court judgment. On the contrary, Jeanne Motin continued to press in the courts for an accounting from Le Borgne until her death, a fight later taken up by her daughter, Marie de Menou de Charnizay.

As discussed above, in 1655, the Conseil privé reunited all lands claimed by d'Aulnay, whether by his purchase of the Razillys' interests or by his 1647 letters patent, to the domaine of the Compagnie de la Nouvelle-France. Jeanne Motin and the d'Aulnay heirs were to relinquish all lands they owned in Nouvelle-France in three days. Moreover, the Conseil specifically admonished the habitants of l'Acadie not to recognize the d'Aulnay heirs as "propriétaires, seigneurs et gouverneurs," at the risk of a "chastiment exemplaire" (exemplary punishment) for the heirs, and the habitants' loss of their goods and properties.²⁴¹ While this arrêt was reversed, perhaps as early as 1657, it is difficult to see how the Compagnie could enforce this draconian decision as against Motin, even for the limited time it remained in effect. Clearly, Motin never gave up her properties, as she continued to live on, and draw profit from them until her death, and Le Borgne did not return to Port Royal until after the British relinquished the colony to France in 1670, by which time his 1667 concession clearly assumes that the d'Aulnay claims are valid. If anything, the Conseil's decision tends to show that after the capitulation, and in accordance with the terms thereof, Motin continued to hold herself out as seigneur, pending the majority of her oldest son, and that the habitants considered her as such. These shifts in fortune show that in France and on paper, rights to land in the colonies were subject to political maneuvers and the favor of powerful patrons, and that things could change abruptly.

²⁴¹ Arrêt du Conseil privé, 13 juillet 1655, LAC, Fonds des Archives nationales, V6, cart. 308, pièce 24.

In l'Acadie, however, one can believe that things would have been simpler. If her heirs are to be believed, Motin had married La Tour "in the hope that he would protect her from the undertakings of Le Borgne and that he would restore her authority in Port-Royal."²⁴² In the marriage contract signed by Motin and Le Tour, the latter promised to "support and preserve, to the extent of his power, the messieurs the minor children of said lady in the possession of all and singular their right and grants in conformity with the titles and patents which they have thereof."²⁴³ Motin and La Tour would have represented to the people two of the most powerful families in l'Acadie. In the absence of any other seigneur, the people would have naturally turned to them not only to protect their rights in the marshlands they worked so hard to claim from the sea, but also for access to comestibles and other trade goods they could not produce themselves. Seigneurial dues would have been minimal. However, to protect their holdings, those who had received concessions from d'Aulnay when he was alive, as well as those who were draining new lands in the Port-Royal area, would have wanted to meet their obligations in order to secure their holdings. To whom would they have paid their cens et rentes but Motin?

Moreover, in the context of changing decisions and continuing efforts on behalf of her family to protect their rights, why would Motin and La Tour have yielded to another's claims? In fact, there was no one there to prevent them from acting in accordance with Motin's own claims (on her own behalf and that of the d'Aulnay heirs) to the d'Aulnay lands, especially as the English had specifically agreed that d'Aulnay's heirs would continue to enjoy their lands and

²⁴² Memoire pour Mre Charles de Saint Estienne, 1700, FR ANOM COL E 12, pp. 108 to 109; "dans l'espérance qu'il la garentiroit des entreprises de le Borgne et qu'il rétablirait son autorité dans Port Royal." The same language is transcribed in *Collection de manuscrits*, as "établirait son autorité dans Port Royal." Mémoire: In re, *Collection de manuscrits*, 2:358.

²⁴³ "Marriage contract between LaTour and Madame d'Aulnay, 1653," published in translation in Murdoch, *History of Nova-Scotia*, 1:120-123.

receive the income therefrom.²⁴⁴ In view of this, it would have been odd if Motin and La Tour had deferred to Le Borgne's claims with regard to Motin's and her children's seigneurial rights, especially as they did not do so in the case of the fur trade, where Le Borgne's rights under the 1650 Charnizay/Le Borgne agreement were much clearer.

Of course, other scenarios are possible. The La Tour heirs claimed, for example, that Motin made an arrangement with Le Borgne to receive the revenues from her property in l'Acadie for a period of nine years, reserving only the above-mentioned métairies and mills.²⁴⁵ Joseph Robinau de Villebon, gouverneur in l'Acadie from 1691 to 1700, in a similar vein, wrote that a deal had been made with the d'Aulnay heirs "to abandon to [Le Borgne] all the extent of the country which [they] possessed for nine years only, by which means he would have no longer any claim to make against the heirs of the said Sieur d'Aunay."²⁴⁶ According to Villebon, however, Le Borgne claimed that he was no longer bound by the agreement because he was "disturbed in his possession," by the English occupation. Villebon claimed to have heard from

²⁴⁴ The marriage contract generally acknowledges the debts of the d'Aulnay heirs, providing that all of Motin's rights and effects and those of the d'Aulnay heirs will be separated from the future marriage community until the debts created in the lifetime of the said late seigneur d'Aulnay were paid. Murdoch, *History of Nova-Scotia*, 1:120. However another clause suggests that those debts were subordinated in the minds of Motin and La Tour to the needs to maintain the d'Aulnay heirs. Thus, the contract provides that, with the agreement of the Capuchins, Motin's children by her former marriage "shall be fed and maintained during their minority, whether in this country of New France or in Old France, at the expense and out of the revenue and funds of the society subsisting between the seminary, the said lady their mother, and the said seigneurs minors," in other words, out of any revenues produced by the late d'Aulnay's holdings and the property of the Capuchins that had been overseen by d'Aulnay. Murdoch, *History of Nova-Scotia*, 1:122.

²⁴⁵ "Memoire des enfans du sieur de la Tour, 1688" *Collection de manuscrits*, 1:439. While no proofs of this claim are listed as having been submitted to the Conseil, a writing prepared by advisors to the Conseil references the claim. "Mémoire sur les contestations qui sont réglés au sujet de l'Acadie, 1703," published in part in Vanderlinden, *Le lieutenant civil et criminel*, 362. A letter written by the Capuchin Ignace de Paris in 1656 tends to support this reading. He writes that "in consideration of the large expenditure incurred by him in the interests of Acadia, during the lifetime of the late ... Sieur D'Aulnay de Charnizay, ... [Le Borgne] is entitled for ten years on end to receive all the revenues of the said Acadia, and that he had made an arrangement as to this with the widow of the late Viceroy." Letter of Father Ignace re Acadia, (1656), in *Report Concerning Canadian Archives for the Year 1904*, 340.

²⁴⁶ "Villebon au fort St. Jean, 27 oct. 1699," LAC, Bibliothèque nationale, Département des manuscrits, Nouvelles acquisitions française, Collection Magry MG 7, I, A 3, vol. 9281, fol. 278 (transcription), accessed January 4, 2018, <http://heritage.canadiana.ca/>, C-9197, image 718; "abandonner toute l'étendue du paye quil possedait pour 9 années seulement moyennant quoi il n'auroit plus aucune repetition à faire contre les heritiers du dit Sieur d'Aunay."

some old habitants that the Sieur Le Borgne removed from the registry all the papers disadvantageous to him, and that this explains why there is no record of the agreement.²⁴⁷

It is difficult to credit these accounts in the absence of the agreement. It is possible, perhaps even likely, that Villebon's letter was confusing the terms of the 1650 Charnizay agreement, signed on behalf of the heirs. In any event, even if Motin had made an agreement to this effect, Villebon's letter makes clear that Le Borgne did not get the benefit of his bargain during the period of Anglo-American control. Moreover, it would show that Motin never gave up the seigneurial claims of her children, instead only giving Le Borgne a usufruct right to the lands and their fruits for nine years, a right that he was unable to claim. Under these circumstances, could Motin and La Tour be expected to have honored such an agreement, especially when Motin was continuing to contest the accounting on which Le Borgne made his claims? It seems not, although any sort of definitive answer to this question would require the discovery of new archival findings.

Perhaps the best argument to be made that seigneurialism persisted in l'Acadie during this first period of Anglo-American control is the ease with which the habitants appear to have accepted Le Borgne as seigneur after the death of Motin and La Tour, notwithstanding all the questions surrounding his right to such a title. In a record of a meeting of habitants in 1673, Jacques Couraud, "lieutenant of Monsieur Le Borgne seigneur and owner of part of l'Acadie," was asked to take charge of the construction of a new church that was to be built at the expense of the "Commun des habitants."²⁴⁸ Thus by 1673, Alexandre Le Borgne had assumed the responsibilities and rights as seigneur in the Port-Royal area, at least as far as the leaders of the

²⁴⁷ "Villebon au fort St. Jean, 27 oct. 1699," fol. 279.

²⁴⁸ "Sur la convocation d'assemblée des habitants," 18 juin 1663, FR ANOM, COL E 266, pp. 308-309.

community of habitants were concerned.²⁴⁹ It appears, therefore, that the French habitants of Port Royal had never lost sight of the maxim, “*nulle terre sans seigneur.*”²⁵⁰

²⁴⁹ Even earlier, in 1664, before the Treaty of Breda was signed, but after La Tour and possibly Motin had died, Emmanuel Le Borgne wrote to the Compagnie des Indes occidentales listing the expenses he had made to maintain certain outposts in l’Acadie, and the need to rescue the forts of Port-Royal, Saint-Jean and Pentagouët. Letter of Emmanuel Le Borgne, 7 decembre 1664, transcribed by Couillard-Després, *Histoire des seigneurs*, 72-73. A manuscript copy is at LAC, Fonds des Colonies (France), Série E, Dossiers personnels, Le Borgne, Emmanuel, sieur du Coudray, vol. 266, accessed January 5, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 3053277, pp. 8-11. In this letter, Le Borgne makes reference “to the contents of a letter which has been written to [Emmanuel Le Borgne, the son] by the bourgeois habitants and bearing the procuration of the habitants of the said Port Royal” (au contenu de la lettre qui luy a esté écrite par le SR bourgeois habitant et porteur de procuration des habitants du d. port Royal). One can only speculate as to the nature of the procuration, however it is tempting to think that the habitants of Port-Royal turned to Le Borgne, as the presumed seigneur, after the death of La Tour and possibly Motin, to act on their behalf, perhaps in the important task of bringing supplies from France. In 1668, after the signing of the Treaty of Breda in 1667, Le Borgne as governor and self-proclaimed seigneur would indeed attempt to send 30,000 livres worth of cargo to l’Acadie with his son Alexandre, but was repulsed by the English who refused to allow him to deliver this to the forts. Couillard-Després, *Histoire des seigneurs*, 74.

²⁵⁰ “No land without a lord.”

CHAPTER 4

CULTURAL CONTINUITY: 1670 TO 1713

The forty-three year period from 1670, when the French regained l'Acadie, to 1713, when l'Acadie was permanently transferred to the British by the Treaty of Utrecht, had its upsets and confusion. The Acadians would experience another seven years under ostensible Anglo-American rule (1690 to 1697), and were subject during this time to raids by New England troops as well as pirates. As a result, they were subject to certain deprivations, and compelled by circumstances to trade with New England, “nos amis les ennemis.”¹ On the other hand, Acadian settlements were never occupied by an invading force, nor was there any attempt by the English to introduce English settlers. The would-be conquerors did not even leave a governor in place. Instead it relied on a council made up of prominent Acadians, much as Sedgwick had in 1654, in this case led by an agent of the French commander, Joseph Robinau de Villebon, who had removed to the rivière Saint-Jean and still exerted influence and authority over the Acadian population.

Most importantly, although Sir William Phips, the commander of the expedition that took Port-Royal, had attempted to assert political power over the Acadians by making them take an oath of loyalty—something the Acadians were anxious to disavow to the French authorities—he made no attempt whatsoever to impose English cultural authority. Acadians continued to retain their land under a seigneurial system which, as shown by the contracts and other materials reviewed in this chapter, remained firmly in place, practiced their own religion, and had administrative and legal structures that reflected French custom and law. Moreover, in forty

¹ Jean Daigle, “Nos amis les ennemis: Relations commerciales de l'Acadie avec le Massachusetts, 1670-1711” (PhD diss., University of Maine, 1975).

years, and notwithstanding setbacks, the French population in the agricultural settlements around the top of the baie Française (Bay of Fundy) increased nearly fivefold. New settlements were founded which were successful not only in feeding themselves, but also in sending their products to other parts of l'Acadie and New England. Under these conditions, as discussed in the introduction, it would have been almost impossible for the conquerors to have transferred their cultural, or for that matter, political patterns to the existing population, which was culturally French. Instead, this paper argues, by the end of the forty-year period, the Acadians were in nearly the same cultural position they had always been; that is, they were firmly rooted in French law and culture, albeit shaping the latter to meet the challenges presented by a new environment.

The first section of this chapter will generally address population growth and the geographic expansion of settlement in l'Acadie during the period from 1670 to 1713 in the context of a changing political landscape. A short discussion of French administrative, legal and ecclesiastical structures in the colony follows, succeeded by a discussion of each of the settlements and the evidence of the implementation of seigneurialism in each. This latter section will rely as much as possible on primary documents, especially contracts involving land transfers, but also general correspondence from the period.

Population Growth and the Geographic Expansion of French Settlements in l'Acadie, 1670 – 1713

The first census after the French regained l'Acadie was taken under the new gouverneur, Hector d'Andigné de Grandfontaine's direction by the Recollet, Laurent Molin in 1671. While it is generally agreed that the census is under inclusive, it provides a snapshot of life in l'Acadie at the start of a new period of French control. According to the census there were approximately

four hundred people of European origin living in six locations.² The census showed that fourteen people lived in Pobomkoup made up primarily of the extended family of Phillipe Mius d'Entremont, the seigneur and baron. One family of four was reported as living at cap Neigre; one at Pentagouët, plus twenty-five soldiers; thirteen unspecified persons living at Mouskadaboutet; and one family with five children at Saint-Pierre on the island of Ile Royale (Cape Breton). The largest settlement by far was in the Port-Royal area along the rivière du Dauphin with sixty-eight families consisting of sixty-three men, as many women, five widows and one hundred and twenty-seven children, making two hundred and fifty-eight people altogether.

Most families in Port-Royal owned land, as well as some cattle and sheep. Out of sixty-eight families, fifty-three owned land, while twelve did not (three people were uncooperative and refused to give the census taker the information requested).³ Those who did not own land all owned cattle, sheep or a milk cow, except for two of the four widows listed. Non-landowners included some of the artisans in town, such as a weaver (*tixier*), a farrier and horse doctor (*mareschal*), an armorer (*armurier*), and one of the four barrel makers (*tonneliers*), but also five *laboureurs*, or those who work the land. The amount of land owned ranged from one to thirty arpents with sixty percent owning between two and six arpents.⁴ The fact that at least five *laboureurs* were without land suggests that the latter were workers, or could potentially have held

² Recensement nominal de Port-Royal, 1671, LAC, Fonds des Colonies, Dépôt des papiers publics des colonies, État civil et recensements, Série G1, vol. 466 (hereafter “1671 recensement”), accessed January 25, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2319362 and MIKAN 2319375; transcription at <http://heritage.canadian.ca>, C-2572, images 3-13.

³ The census taker is clearly concerned with lands that are being farmed or are farmable (e.g. “terres labourables et en valeur,” or “terres en labour”). For the twelve families I have identified as having no land, the census taker writes for some, “point de terre labourable.” In other places, he has written “point de terre en labour,” and in still others, “point de terre,” or “aucune de terre en labour.” There does not appear to be a distinction between these. The fact that there is no category for “pasturage” suggests that pasturing was done on commons set aside for this purpose.

⁴ An acre is 43,560 square feet, while an arpent was equal to approximately 36,000 square feet.

leases on another's lands. Moreover, that all but two of the twelve without land owned some cattle and sheep, leads strongly to the conclusion that there were common grazing areas.

Using the work of the late Régis Brun, an historian and archivist working out of the Centre d'études acadiennes Anselme-Chiasson, it is possible to get an idea of the distribution of settlement in the Port-Royal area as of the 1671 census. Brun used a combination of sources, including records kept by the British after 1713 of rentes paid by the French inhabitants, various censuses, maps, old contracts, parish registers, and the genealogical work of Stephen A. White, to show the location of the family hamlets located on the rivière du Dauphin, together with the names of the heads of family, some of whom are found on the 1671 census.⁵ Keeping in mind that the census was not complete, and the considerable gaps in the historical record, Brun's work suggests that as of 1671, Acadians ranged up and down the river, it would seem more on the north shore than the south. The largest number of families was at Belle-isle, located on the uplands overlooking a large marsh, and in Port-Royal itself

During the next decade or so, life could not have been so different for the Acadians living along the rivière du Dauphin than from what it had been during the recently concluded period of ostensible English rule. The seat of government was located first at Pentagouët (1670 to 1674) under gouverneurs Grandfontaine and Chambly; next at Jemseg (1676 to 1678), under commandant and then administrator, Pierre de Joybert de Soulanges et de Marson; and then at Beaubassin (1678 to 1683); under Michel Leneuf de La Vallière de Beaubassin, also the seigneur

⁵ Régis Brun, *Les Acadiens avant 1755* (Moncton: self-pub., 2003). See also Clark, *Acadia*, fig. 5.3, p. 122. Other maps showing the location of family hamlets along the river prior to the expulsions include, for the year 1707, R. Cole Harris, ed. and Geoffrey J. Matthews, cartographer, *Historical Atlas of Canada, Vol. 1: From the Beginning to 1800* (Toronto: University of Toronto Press, 1987), Plate 29, author, Jean Daigle; and, Placide Gaudet, "Plan of the River of Annapolis Royal in Nova Scotia," in *Captain John Knox, An Historical Journal of the Campaigns in North America for the Years 1757, 1758, 1759, and 1760*, ed. Arthur G. Doughty, vol. 1 (Toronto: Champlain Society, 1914, reprinted, New York: Greenwood Press, 1968). The latter map is based on surveys of 1733, and 1753.

of Beaubassin. In 1683, however, Port-Royal again became the administrative seat of the colony when La Vallière was ordered to move operations there. In 1684, François-Marie Perrot (1684-1687) replaced La Vallière as gouverneur and similarly took up residence in Port-Royal. By that time, the population of l'Acadie had grown substantially. A census compiled by Jacques de Meulles, intendant of Nouvelle-France, during his visit to l'Acadie in 1685-1686 shows 875 people living in thirteen areas, more than double the population of 1671.⁶ While there was some in-migration from Canada and France, mostly single men, the population increase is almost entirely attributable to natural increase.⁷ The Port-Royal area continued to grow and, for the time being, remained the most populated settlement, with 96 families, and 583 people in total. Significant growth, moreover, had occurred in new areas peopled by the sons and daughters, and sometimes entire families, from Port-Royal. For example, there were some 127 people and seventeen families now living in the area known as Beaubassin on the Chignecto Isthmus. De Meulles also counted fifty-seven people and ten families living at Les Mines in the bassin des Mines (Minas Basin). At Cap-Sable, there were fifteen persons and four families. The farmable land (terres labourables) had doubled, and the number of cattle and sheep had also nearly doubled.⁸ The fact that many of the inhabitants had origins in Port-Royal, and often still had family there, meant that these communities were linked by ties of kinship and friendship.⁹ These networks, together with fifty years of shared experiences and interactions in a relatively small

⁶ "Recensement fait par de Meulles ... de tous les peuples de Beaubassin, Rivière Saint-Jean, Port-Royal, Isle Percée et autres costes de l'Acadie," 1686, LAC, Dépôt des papiers publics des colonies, Série G1, vol. 466, accessed January 28, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2319364 (hereafter "1686 recensement"). The transcription of this and the other censuses made in l'Acadie are found online at <http://heritage.canadiana.ca/>, C-2572. All subsequent references will be to the transcription. Note that in the 1686 census, Alexandre Le Borgne is identified as "seigneur du lieu," at Port-Royal, as Michel Le Neuf de La Vallière was identified as the "seigneur de Beaubassin."

⁷ Griffiths, *From Migrant to Acadian*, 124

⁸ 1686 Recensement, LAC, Série G1, vol. 466, C-2572, fols. 14-57.

⁹ Griffiths, *From Migrant to Acadian*, 124; see also, Vanderlinden, *Se marier en Acadie* (arguing for the importance of social networks in l'Acadie, and in particular, the relation between these networks and social and economic status).

agricultural community, meant that by 1686, “Acadia was not just a scattering of trading posts but an emerging society.”¹⁰ See figure 2.

The region, however, was about to experience significant disruptions caused by increasing hostilities between l’Acadie and New England. By 1688, France and England were again at war, the War of the League of Augsburg, or Nine Years War, known in North America as King William’s War (1688-1697). In 1690, Sir William Phips attacked Port-Royal, took Meneval, the French gouverneur, prisoner, plundered the fort and military stores, destroyed the church, and pillaged the dwellings of the inhabitants. Phips set up a governing council that included, among others, Mathieu de Goutin, lieutenant général for justice, and Alexandre Le Borgne, sieur de Belleisle, the seigneur of the area. Charles La Tourasse, chosen by Phips to preside at the council, was also an agent of the French regime.¹¹ As a result of Phips’s raid, Joseph Robinau de Villebon, who was appointed commandant in l’Acadia by the crown in April

¹⁰ Griffiths, *From Migrant to Acadian*, 132. In 1689, Joseph de Gargas, *écrivain principal de la Marine* who arrived in l’Acadie with the new gouverneur of l’Acadie, Louis-Alexandre des Friches de Meneval (1687-1690), found fewer numbers in the Port-Royal area and Beaubassin than in the de Meulles census, but significantly more at Minas. He reported, however, significant difficulties collecting information which might account for some of the discrepancies. The Gargas census is reprinted in William Inglis Morse, *Acadiensia Nova (1598-1779)* (London: Bernard Quaritch, 1935), 1: 144-166. The instructions given Gargas suggests that the *écrivain principal* had several functions, including to facilitate the transfer of officials; ensure a proper accounting of monies sent to the colony for fortifications and personnel; as well as reporting on the state of the colony, such reporting to include a description of the various settlements, as well as census reports. Gargas was in l’Acadie from 1687-1688 when he was recalled. “Gargas, Joseph de. *Écrivain principal de la Marine, choisi par le roi pour servir en Acadie, 1687, mémoire pour servir d’instruction*,” LAC, Fonds des Colonies (France), Dossiers personnels, Série E, vol. 198, accessed February 1, 2018, Archives Search, <http://collections.canada.gc.ca/>, MIKAN 3052905. Gargas also wrote an account of his sojourn in l’Acadie, “Gargas: Mon Séjour de l’Acadie,” translated in Morse, *Acadiensia Nova*, 1:165-199. Among other things, he described the village of Port-Royal itself as containing only nine or ten dwellings, with the other buildings being barns. Morse, *Acadiensia Nova*, 1:179.

¹¹ Charles La Tourasse, known as Chevalier, who was chosen by Phips to preside over the governing council at Port-Royal, had been a sergeant in Villebon’s military company, and, according to Villebon, only accepted this position with the latter’s approval. Upon his giving up his post in 1693, Villebon wrote to the minister that “since my coming to this country, [La Tourasse] has done everything I ordered with the greatest exactitude.” Webster, *Acadia*, 169.



Figure 2. *Carte générale du voyage que Monsieur de Meulles intendant de la justice, police et finances de la Nouvelle France a fait par ordre du Roy par Jean-Baptiste Franquelin, 1686* (detail). Map shows the top of what is today the Bay of Fundy. Source gallica.bnf.fr/Bibliothèque nationale de France.

1691, removed the seat of French government first to Jemseg, then further up the rivière Saint-Jean to Naxouat (Nashwaak), and finally, after the war ended in 1697, to fort Saint-Jean at the mouth of the river.¹² Villebon continued to exercise influence on the French habitants through La Tourasse, however, his absence left the French settlements open to the depredations of English privateers, as well as at least one further attack from New England, namely Benjamin Church's raid on Beaubassin in September 1696.¹³

¹² Émery Le Blanc, "Robineau de Villebon, Joseph" *DCB*, vol. 1, revised 1979, http://www.biographi.ca/en/bio/robinau_de_villebon_joseph_1F.html.

¹³ The habitants at Port-Royal were concerned that Villebon not misunderstand their reasons for taking the oath required of them by Phips. Griffiths, *From Migrant to Acadian*, 184. Villebon also seems to have been involved in more everyday decision-making in the colony during the period of ostensible English control. He was asked by the habitants of Minas, for example, to confirm "three of their number to settle the differences which arise daily among them concerning their lands, and other disputes." Journal of Villebon between October 13, 1691 and October 25, 1692, in Webster, *Acadia*, 35. He similarly assigned three settlers to resolve disputes at Beaubassin in January 1693. Journal of Villebon from 11 November 1692 to 7 August 1693, Webster, *Acadia*, 45.

In spite of these disruptions, the Acadians had not had to endure an occupying army in their villages, and by the time peace was reestablished by the 1697 Treaty of Ryswick, the French settlements had experienced not only an increase in population, but also significant economic growth.¹⁴ Notwithstanding the out-migration from Port-Royal to the settlements of bassin des Mines and Beaubassin during the 1680s and 1690s, the population of Port-Royal was only slightly diminished by the end of the century. This was due mostly to natural increase, but also to new arrivals. On the other hand, the population of the bassin des Mines grew more than nine times in these decades, and exceeded that of Port-Royal by the end of the century. This included two new areas of settlement, Pisiguit, along the rivière l'Ascension (Avon River) and the rivière Saint Croix, and Cobiguit, at the bottom of the basin.¹⁵ The population of Beaubassin had also increased by fifty percent by the turn of the century and was now half that of Port-Royal.¹⁶ Also, beginning in 1698, settlers moved across the bay to the rivers at Chipoudy and the Peticoudiak.¹⁷ A 1701 census showed a population of 1,200 at Beaubassin and the Acadian peninsula, although Clark estimates this number to be higher at 1,400 or 1,450, more than three times what the population was when the first census was taken in 1671.¹⁸

¹⁴ Griffiths, *From Migrant to Acadian*, 166.

¹⁵ While the precise timing of this expansion is not known, by 1701 there were thirty-three families in Pisiguit with a total population of 188. Clark, *Acadia*, 149. Similarly, by 1701, at Cobeguit, north and west of Pisiguit, three families had joined Mathieu Martin, who had been granted a concession for a seigneurie in 1689. This concession is published in several places including Pierre-Georges Roy, *Inventaire des concessions en fief et seigneurie, fois et hommages, et aveux et dénombrements, conservés aux archives de la Province de Québec*, (Beauceville, P.Q., 1927-29), 4:38-39; *Pieces et documents*, 333-334; Rameau, *Une colonie féodale*, 2:323; and, Vanderlinden, *Le lieutenant civil et criminel*, 315. An English translation may be found in *Titles and Documents Relating to the Seigniorial Tenure: In Return to an Address of the Legislative Assembly, 1851* (Quebec, 1852), 108.

¹⁶ Clark describes the 1671 and 1686 censuses, together with the results of six more complete or partial censuses completed for l'Acadie from 1689 to 1707. Clark, *Acadia*, 121-132.

¹⁷ Pierre Thibodeau, a miller, and Guillaume Blanchard, a relatively prosperous farmer, both from Port-Royal, were reported to have approached Villebon, then on the rivière Saint-Jean, for permission to establish a settlement along the "Chipoudy" (Shepody), which was given. Rameau, *Une colonie féodale*, 1: 239.

¹⁸ Clark, *Acadia*, 121, 129. Rameau also puts the population around 1,400, but includes in this number "[d]ivers lieux sur la côte et dans l'intérieur," which Clark reads as isolated pockets of population along the Fundy coast in what is today New Brunswick and Maine, as well as along the Gulf of St. Lawrence coast. Clark, *Acadia*, 128, citing to Rameau, *Une colonie féodale*, 2:205-206. As a mémoire written by Villebon in 1699 shows, the population along

Villebon, the commandant in l'Acadie throughout King William's War, died on the rivière Saint-Jean in 1700. Claude-Sébastien de Villieu, La Vallière's son-in-law, held temporary command in the colony until 1701, when Jacques-François de Monbeton de Brouillan was appointed commandant of l'Acadie. He would be appointed gouverneur the following year. Brouillan reestablished the seat of government at Port-Royal, bringing with him the soldiers that had been stationed on the rivière Saint-Jean with Villebon, and rebuilding the fort. During his tenure, he fostered economic development in the area by supporting the fisheries, ship building and forestry.¹⁹ Population increased in all areas, and that of Port-Royal, which had lagged behind the populations of Beaubassin and especially Les Mines, began to grow.²⁰

By 1702, however, France and England were again at war (War of the Spanish Succession, 1701-1714). Nonetheless, it was not until 1704 that the French settlements of l'Acadie felt the effects of war. That year, the governor of Massachusetts, in retaliation for attacks along Massachusetts's western border by French from Québec and their Native allies, sent Major Benjamin Church to first raid Pentagouët and the Passamaquoddy area, and then move on to Les Mines and Chignecto. There he was to "use all possible methods for the burning and destroying of the enemies houses, and breaking the dams of their corn grounds in the said

the Atlantic coast of peninsular l'Acadie had stagnated or fallen during the war years, presumably due to the early attacks and continued dominance of the area by New England and New England fishermen. Thus Villebon counted only the family of one of the sons of the sieur d'Entremont at Pobomcoup (Pubnico); another family of nine at Cap-Sable; two families, one another son of sieur d'Entremont, for a total of ten people at "Port Razoïr" (Shelborne); two families at La Hève (La Have); and only the remains of the fort built by the Compagnie d'Acadie at Chedabouctou (Guysborough), which had been captured and burnt at the beginning of the war. See "Memoir on the settlements and harbors from Minas at the Head of the Bay of Fundy to Cape Breton, by Villebon, 27 Oct. 1699," in Webster, *Acadia*, 132-137.

¹⁹ René Baudry, "Monbeton de Brouillan, Jacques-François de," in *DCB*, vol. 2, published 1974, <http://www.biographi.ca/en/bio.php?BioId=35117>.

²⁰ Clark, *Acadia*, 130.

several places, and make what other spoils you can upon them, and bring away prisoners.”²¹ In the summer of 1704, Church’s men set the village of Grand Pré on fire, including the church, and breached some seven dikes, ruining the equivalent of more than two-hundred large barrels (barriques) of grain. Prisoners were also taken at Pisiguit. English Royal Navy ships joined by Church approached Port-Royal, apparently burning and pillaging the lowest houses on the river, but then turned back. In August, Church arrived at Beaubassin, where for the second time, he burned buildings—this time twenty houses—and killed cattle, and other domestic animals.²²

While the losses at Les Mines and Beaubassin would have resulted in hardships in the short run, by 1706, the harvest in these areas rebounded.²³ The population continued to grow in all areas of settlement. Notwithstanding this, the settlements, receiving little support from France and at odds with New England, suffered from a lack of supplies and troops. Brouillan had died in 1705, and was replaced by Daniel d’Auger de Subercase who arrived in Port-Royal in October 1706. Subercase found the fort structurally weakened, and everything in short supply. He was forced, for example, to clandestinely buy his officers’ shoes and stockings from Boston.²⁴ He successfully repelled two attempted attacks by New England on Port-Royal in 1707, in spite of the latter’s superiority in troop numbers. Subercase would, however, be the last gouverneur of French l’Acadie. In October 1710, General Francis Nicholson sailed into the Port-Royal basin with a force of two to three thousand men. Subercase commanded fewer than three hundred men.

²¹ Griffiths, *From Migrant to Acadian*, 206, quoting from Benjamin Church, *The History of the Eastern Expeditions of 1689, 1690, 1692, 1696, and 1704, Against the Indians and French*, intro. and notes by Henry Martin Dexter (Boston: Wiggin and Lunt, 1867), 251.

²² “Invasion des anglois de Baston par Monsieur de La Bat, Port royal, le 1 juillet, 1704,” in *Collection de manuscrits*, 2:416-425. The engineer Labat was in Port-Royal at the time, and received the testimony of those reporting from Les Mines and Beaubassin. According to him, about fifty buildings were burned in the bassin des Mines and thirty cattle killed. Notwithstanding this, he believed the attack had one good outcome; it revealed the zeal of the habitants for the service of the king, of which the administration had hitherto been doubtful. “Invasion des anglois de Baston,” *Collection de manuscrits*, 2:425.

²³ Griffiths, *From Migrant to Acadian*, 209.

²⁴ René Baudry, “Auger de Subercase, Daniel D’,” *DCB*, vol. 2, revised 1982, http://www.biographi.ca/en/bio/auger_de_subercase_daniel_d_2E.html.

Under the circumstances, he was forced to accept surrender, and a well-connected Anglo-American merchant, Samuel Vetch, was left in charge of the fort, with 450 men at his command. It has been estimated that at least 1,500 and as many as 2,000 Acadians were living in l'Acadie at this time.²⁵ Two years later, the Treaty of Utrecht was signed, permanently ceding l'Acadie's principal agricultural settlements to Great Britain.²⁶

Civil and Religious Structures in l'Acadie

Nouvelle-France became a royal province in 1663 and administrative structures were established in Québec that mirrored those of provinces in France. This included an intendant, a gouverneur, the Conseil souverain (becoming the Conseil supérieur in 1717), with administrative and judicial appellate functions much like those of the parlements in France, inferior courts, and numerous government functionaries. This new scheme was superimposed on, and played an oversight function with regard to the existing seigneurial structure. By the time the French regained l'Acadie in 1670, the colony had some catching up to do with in regard to the new administrative system that Louis XIV had prescribed for his North American colonies.²⁷

²⁵ Clark, *Acadia*, 130.

²⁶ This included Port-Royal, the bassin des Mines and Beaubassin. The French expressly retained certain rights to fish off of Newfoundland, and the island of Cape Breton. Other areas remained contested, with the French arguing that the treaty ceded only peninsular l'Acadie, and the British maintaining that it covered all of l'Acadie which would have included all of what is today the province of New Brunswick.

²⁷ Vanderlinden argues that the transfer and receipt of the French legal system took place between 1670 and 1710. Vanderlinden, *Regards d'un historien du droit*, 6. There is reason to believe, however, that French law was transferred much earlier, and even that, as gouverneur, d'Aulnay had appointed certain functionaries to implement that law, like Guillaume Le Bel, whose title was "prevost garde du sceau royal et nottaire public de la Prevosté et Justice des Costes d'Acadie et Isles adjacentes en l'amerique septentrionale de la Nouvelle France." See discussion of Chevery contract, pp. 96-108. This would have been in addition to a *procureur fiscal* who was responsible to look out for d'Aulnay's seigneurial interests especially with regard to his land holdings. From other documents, we know that there were other notaires in Port-Royal in the time of d'Aulnay or shortly after his death, as well as a registry office (greffe) where records of official bodies, such as courts or councils were kept. See "Procuracion générale donnée par Jeanne Motin à François Brice de Sainte-Croix (31 juillet 1651)," extract found in Vanderlinden, *Le lieutenant civil et criminel*, 267.

As noted above, Grandfontaine, who accepted l'Acadie back from the English, located the seat of government at Pentagouët (1670 -1673). He did not, however, neglect the settlement of Port-Royal, but brought to bear what resources he had to establish some administrative structures. Grandfontaine quickly moved to make clear to the residents that with his arrival, Belleisle, the would-be seigneur of the colony, had no governing authority.²⁸ Philippe Mius d'Entremont, baron of Pobomcoup, who was brought to l'Acadie by La Tour in 1650 or 1651, was named king's attorney (*procureur de roi*) for l'Acadie, a post he held for eighteen years.²⁹

By the time François-Marie Perrot became gouverneur (1684-1687), it is clear that there were laws and orders in place that were specific to l'Acadie. In a letter of 9 August 1686 to the minister, Perrot wrote that "there are sufficient regulations and orders," in the colony.³⁰ Perrot also found a *lieutenant général*, a *procureur du roi*, and a *greffier* operating in Port-Royal. These were, respectively, Michel Boudrot, Philippe Mius d'Entremont, and Claude Petitpas.³¹ Boudrot's appointment is said to have gone back to the time of d'Aulnay, and Petitpas was probably appointed some time in the 1650s.³² It is likely that these would have played some role, together with the syndic, Guillaume Trahan, in the resolution of disputes among habitants during the first period of English control (1654-1670).³³

The administration of justice in the colony, however, appears to have suffered from a lack of support from Québec, at least in the first decades after the French regained l'Acadie, and there

²⁸ He was to be considered, in Grandfontaine's words, as a "simple habitant." "Mémoire concernant l'Acadie par le chevalier de Grandfontaine," 1671, LAC, Série C11D, vol.1, fol. 139v.

²⁹ Clément Cormier, "Mius (Muis) d'Entremont, Philippe," *DCB*, vol. 1; d'Entremont, *Histoire du Cap-Sable*, 3:818.

³⁰ Le Sr. Perrot au port Royal, 9 août 1686, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fols. 26-28, 27 (transcription), accessed February 10, 2018, <http://heritage.canadiana.ca/>, C-11359, image 492; published in part in *Collection de manuscrits*, 1:365 ("Il y a d'assez bons règlements et ordonnances").

³¹ "Résumé d'une lettre du sieur Perrot au ministre."

³² Kennedy, *Something of a Peasant Paradise*, 157-158.

³³ Kennedy, 158.

are only a few instances of the exercise of seigneurial justice in the historical record.³⁴ In 1686, the intendant of Nouvelle-France, de Meulles, wrote during his visit to l'Acadie that "justice is very badly done," in the colony, and that those who administered it were not paid and neglected their duties.³⁵ Perrot's assessment dated that same year was characteristically more acerbic. The judges established in this country, he wrote, are "not in a state to render justice." According to him, Boudrot, the lieutenant général of justice, was eighty and deaf; and d'Entremont, the procureur du roi, and Petitpas, the greffier, "are simpletons who know nothing at all."³⁶

These would shortly be replaced. One sieur de Gargas was sent from France in 1687 to be *écrivain du Roi*, only to be replaced the next year by Mathieu de Goutin.³⁷ Goutin had a number of titles in addition to *écrivain du Roi*, the most important of which was the lieutenant civil et criminel. As such, he was responsible for the administration of justice in Port-Royal. Unlike those who held this position in France, however, he was specifically charged with preventing the inhabitants, "as much as possible from bringing actions in court by employing the functions of an

³⁴ Kennedy cites to a report by Grandfontaine that Le Borgne "had ordered the hanging of a slave, the killing of an Aboriginal, and the banishment of three censitaires." *Something of a Peasant Paradise*, 157. La Vallière, the seigneur of Beaubassin, may have exercised his rights of justice in a more sustained fashion. He referred a case of sorcery to Québec for trial; was tasked by the intendant, de Meulles, with adjudicating cases arising under the latter's ordonnance prohibiting the trade in liquor; and probably "established at least a rudimentary court as well as officials to keep the peace and enforce his seigneurial rights." Kennedy, 157.

³⁵ Kennedy, 158 ("la justice y est fort mal rendue").

³⁶ "Résumé d'une lettre du sieur Perrot au ministre," LAC, C11D, vol. 2, f. 13; "[L]es juges establys en ce pais ne sont pas en estat de rendre justice. Le Lieutenant général a 80 ans, et est sourd; et le procureur du Roy et le greffier sont des ygnorans qui ne savent rien du tout."

³⁷ As Vanderlinden has described it, the *écrivain* was an "intendant at the local level," Vanderlinden, *Le lieutenant civil et criminel*, 41. In fact, Goutin was sometimes described as a "subdélégué" of the intendant of Nouvelle-France. As such, he had responsibility over the maintenance of the fort and soldiers, the development of the economy and expansion of the agricultural communities, the management of natural resources, as well as record keeping and reporting responsibilities. One interesting, and it would seem prescient, direction given Gargas, the *écrivain*, was to ensure that the mesh of the fishing nets were not such as to destroy the fish. "Gargas, Joseph de. *Écrivain principal de la Marine, mémoire pour servir d'instruction*," 1687 or 1688, LAC, Fonds des Colonies (France), Dossiers personnels, Série E, vol. 198, accessed February 15, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 3052905 ("Il observera surtout avec soin . . . si l'ouverture des mailles est telle qu'il est a propos qu'elle soit pour ne pas detruire le poisson").

arbiter rather than a judge.”³⁸ During Goutin’s tenure as lieutenant général, at least two judges functioned in the bassin des Mines: Pierre Thériot, appointed sometime in the early 1690s, and Pierre-Alain Bugeaud, who assumed the function of a judge in 1707.³⁹ In settlements where there were no judges, habitants were sometimes chosen either by the community or the authorities to help resolve differences, especially in the area of land disputes.⁴⁰

While the gouverneur did not have formal judicial functions, he was sometimes called on to decide matters, as when Meneval, who replaced Perrot in 1687 as gouverneur, deported a young man accused of impregnating the daughter of a “considerable” family in the colony.⁴¹ Meneval also attempted to resolve land disputes, of which he complained there were many, but urged the need for judges, or other responsible officials, who could travel to the various settlements and help sort out the underlying issues.⁴² It is reasonable to assume that given the small number of judges and the large geographic area covered, disputes were not so much resolved through formal judicial processes, as arbitrated by anyone from the gouverneur and the lieutenant général, to community leaders, and even priests.

³⁸ “Memoire pour servir d’instructions au Sr Gouttin choisy par le Roy pour faire les fonctions de Juge et d’escrivain du Roy à l’acadie, 10 avril 1688,” LAC, Fonds Nouvelle-France, Correspondance officielle, Troisième série, MG8-A1, pp. 159-162, published in Vanderlinden, *Le lieutenant civil et criminel*, 311-314. Vanderlinden notes that prior to 1670, the lieutenant général, a title held by d’Aulnay for example, was the representative of the king, whose authority was usually coterminous with a seigneurie. He did not typically exercise justice himself, unless it were seigneurial justice, but rather delegated that authority to a judicial officer, such as a sénéchal in the sénéchaussées or a prévôt in the prévôtés. This changed in 1670 when the functions of the lieutenant général were now assumed by the intendant and the gouverneur. Vanderlinden, *Le lieutenant civil et criminel*, 21-23.

³⁹ Vanderlinden, *Le lieutenant civil et criminel*, 37.

⁴⁰ Vanderlinden, 38, referencing a 1692 request by the habitants of Minas that Villebon approve their choice of three among them to arbitrate disputes, as well as a decision by Villebon to similarly appoint three habitants in Port-Royal to serve the same function at a time when Goutin was travelling in France.

⁴¹ Mémoire du sieur de Menneval, gouverneur de l’Acadie, touchant les affaires de cette province pour l’année 1688, 10 septembre 1688, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fols. 96-106v, 101v-102, accessed February 17, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 2409985; transcription at <http://heritage.canadiana.ca/>, C-11359, pp. 179-221, images 659-705.

⁴² Mémoire du sieur de Menneval, 10 septembre 1688, fol. 101v, item 12.

During his tenure as gouverneur, Meneval chose Pierre Chenet Du Breuil to replace d'Entremont as procureur du roi, because "he was there and was the most capable."⁴³ The duties of the procureur du roi included taking appeals to the Conseil souverain on behalf of the king, and levying certain payments connected with the occupation of land in the king's domaine.⁴⁴ In 1690, Du Breuil was appointed juge.⁴⁵ The court in which he sat had jurisdiction in the first instance over all civil and criminal matters, and was to apply "the customs and orders in the realm, and of the prévôté et Vicomté de Paris."⁴⁶ Claude Petitpas, the greffier, probably died before 1688, and does not appear to have been replaced until Loppinot, who was also a notaire, was appointed to the position in 1699.⁴⁷

During the second period of English control (1690-1697), the legal structure of the colony undoubtedly remained in place.⁴⁸ Du Breuil and Goutin stayed in the colony, serving on the council established by Phips, and would have almost certainly continued to serve in their official capacities.⁴⁹ There is evidence that judges continued to sit in Port-Royal during this period: Kennedy, for example, has discussed a letter written by Goutin in 1694 that refers to matters brought that same year before "les juges du Port-Royal."⁵⁰ After the Treaty of Ryswick and the return of French control, these same officials continued to administer justice in the

⁴³ Mémoire du sieur de Menneval, 10 septembre 1688, fol. 101v, item 12.

⁴⁴ Vanderlinden, *Le lieutenant civil et criminel*, 70.

⁴⁵ "Provisions de l'office de juge du siege du Port Royal, dans l'Acadie, pour le sieur Dubreuil," 1 juillet 1690, LAC, Archives des colonies, Série C11D, Correspondence générale, vol. 2 (1686-1695), fols. 337-338, accessed February 18, 2018, <http://heritage.canadiana.ca/>, C-11359, images 831-832.

⁴⁶ "Provision de l'office de juge," fol. 337.

⁴⁷ As early as 1640, there appears to have been a greffier in the colony under d'Aulnay. Célestin Moreau refers to one Mathieu Cappon, who was investigating a sea battle between d'Aulnay and La Tour in which the captain of La Tour's ship was killed, as "commis au greffe de la justice et police de la Nouvelle-France en la côte d'Acadie" (clerk at the registry of justice and police of Nouvelle-France on the coast of l'Acadie). Célestin Moreau, *Histoire de l'Acadie française (Amérique septentrionale) de 1598 à 1755* (Paris: Chez Léon Techener, 1873), 159-160.

⁴⁸ Griffiths, *From Migrant to Acadian*, 183.

⁴⁹ Kennedy, *Something of a Peasant Paradise*, 159.

⁵⁰ Kennedy, 159, referencing "Goutin au ministre de la Marine (9 septembre 1694)," published in Vanderlinden, *Le lieutenant civil et criminel*, 333.

colony. Goutin remained in his position as lieutenant civil et criminel until the final surrender of Port-Royal to Nicholson in 1710. After Du Breuil's death sometime around 1700, Jean-Chrysostome Loppinot was named procureur du roi in 1704 and served in this position, as well as greffier and notaire until 1710.⁵¹

There were several notaires in the colony before Loppinot. The first was the same Domauchin who wrote up d'Aulnay's grant of land to Martin de Chevery, discussed in chapter 3. Next, Claude Petipas appears as a notaire in an account of a baptism of a Native American in 1680,⁵² and is followed by Jacques Couraud (also Courault), who functioned as both a notaire in Port-Royal and a procureur fiscal for the seigneur Alexandre Le Borgne. Couraud left Port-Royal in 1685 for Plaisance and took his notarial records with him. While the gouverneur of Plaisance was ordered by the minister of the Marine to return these to Port-Royal, this does not seem to have occurred.⁵³ After Couraud's departure in 1685, Antoine Laumet, dit de Lamothe Cadillac, was appointed notaire for the colony but never acted on his commission. The colony thus operated without a regularly functioning notaire for fourteen years before the arrival of Loppinot in 1699.

⁵¹ Kennedy describes the administration of justice during Brouillan's tenure as gouverneur as "rough and arbitrary," with habitants appealing to France, especially concerning some of the many land use disputes, and the gouverneur intervening at times in the judicial process. Kennedy, *Something of a Peasant Paradise*, 159. The gouverneur himself wrote the king that "il n'est guère possible que cette province se puisse passer d'une justice réglée." "Memoire de Brouillan au roi au sujet de l'Acadie (1701)," published in Vanderlinden, *Le lieutenant civil et criminel*, 346-347, and quoted in Kennedy, 159. Kennedy writes that "[i]t appears that Governor Subercase inspired more confidence and was willing to intervene directly in sorting out property disputes." Kennedy, 159-160. As a result, by 1708 Subercase noted that the number of land disputes started to drop, only to be criticized by the minister for acting arbitrarily. Kennedy, 160.

⁵² Vanderlinden, *Le lieutenant civil et criminel*, 74, referencing CEAAC, Fonds Placide Gaudet, boîte 45, Juges en Acadie et notaires, 1.45-27.

⁵³ "Le ministre à M. de Monic," 4 juin 1699, LAC, Fonds des Colonies (France), Lettres envoyées, Série B, vol. 20, fol. 261v.

In those periods where there was no notaire, others in official capacities and even members of religious orders provided some of the functions of a notaire.⁵⁴ In the earliest years of the colony the Capuchins, for example, were called upon to make an inventory on the death of Isaac de Razilly in 1636, a task usually undertaken by a notaire.⁵⁵ Other officials stepped in when a notaire was not available. In 1688, for example, Meneval wrote that there was a need to confirm and ratify by public act (*confirmer et ratifier*) the concessions in the colony, which were apparently in a confused state, leading to many conflicts.⁵⁶ Until this office was filled, Meneval wrote, it would be necessary for the lieutenant général to fulfil this function.⁵⁷ Thus, it was Goutin who gave proper legal form (*legalisée*) to a procuration, or power of attorney, for Charles de La Tour to represent his brothers and sisters before the Conseil du Roi.⁵⁸ It was also Goutin who drafted an *acte de tutelle* or guardianship papers for the children of Jacques de Saint-Étienne de La Tour in October 1699, around the time Loppinot arrived in Port-Royal.⁵⁹ After Loppinot

⁵⁴ A 1694 arrêt of the Conseil du roi required that contracts of marriage be made before a notaire, or be subject to nullification. Vanderlinden, *Se marier en Acadie*, 233. Compliance with this arrêt, as Vanderlinden notes, was probably inconsistent.

⁵⁵ Joan Dawson, "The Governor's Goods: The Inventories for the Personal Property of Isaac de Razilly," *Nova Scotia Historical Review* 5, no. 1 (1985), 99-112, referenced in Vanderlinden, *Le lieutenant civil et criminel*, 77.

⁵⁶ Mémoire du sieur de Menneval, 10 septembre 1688, LAC, Série C11D, vol. 2, fol. 101v.

⁵⁷ Mémoire du sieur de Menneval, 10 septembre 1688, fol. 101v, stating that "il faudra que le lieutenant general en attendant fasse toutes leurs fonctions" (it will be necessary in the meantime that the lieutenant général do all their functions). Menneval described his difficulty in filling the positions of notaire, but also greffier and sargent: "je n'en connoit point encore qui y soient propre ne se trouvant icy presque personne qui sache escrire" (I know of none yet who are suitable here there being almost nobody who knows how to write). It is difficult to judge the accuracy of this statement. It is hard to believe, for example, that no one in the Port-Royal area was "suitable" to be named sargent. Perhaps Menneval's next sentence sheds more light on his dilemma: "Outre que sans appointment personne ne s'en voudra charger" (besides without a salary no one will want to take on the responsibility).

⁵⁸ Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 368-390, and discussed therein at 75.

⁵⁹ Acte de tutelle des enfants de Jacques de Saint-Étienne de La Tour, 10 octobre 1699, published in Vanderlinden, *Le lieutenant civil et criminel*, 340-341. Loppinot received his commission as greffier at Port-Royal on April 5, 1699. René Baudry, "Loppinot, Jean-Chrysostome," *DCB*, vol. 2, revised 1982, http://www.biographi.ca/en/bio/loppinot_jean_chrysostome_2E.html. It is not clear, however, when he arrived in l'Acadie.

arrived in the colony in 1699, contracts drafted earlier without the help of a notaire could be formally ratified.⁶⁰

Dispersed Acadian communities did not always have easy access to the services of notaires located in Port-Royal, the chief place of the colony. There is reason to believe that notaires from Canada may have occasionally travelled to outlying areas, such as along the rivière Saint-Jean, at least when a contract involved persons of some importance.⁶¹ Some of the other communities would come to have their own notaires. Two notaires, for example, are known to have operated in the Minas Basin, Pierre-Alain Bugeaud, who was approved to continue exercising the functions of a notaire by the ministry in 1707,⁶² and Alexandre Bourg, who was named a notaire in 1711, and remained in this position until 1744.⁶³ In addition, at least one notaire, Louis de Courville, practiced around Fort Beauséjour, between 1754 and 1755. This area was claimed by France after the Treaty of Utrecht, but was surrendered to the British in 1755 after the French lost the Battle of Fort Beauséjour.⁶⁴

⁶⁰ An example is the permission granted by Le Borgne de Belleisle to the blacksmith Alain to construct saw mills and take wood throughout his seigneurie. This grant was made in 1687 as a *contrat sous seing*, or private agreement without the presence of a notaire, but was confirmed by public act and filed in the greffe by Loppinot in 1700. "Permission accordée par le Borgne de Belle-Isle au forgeron Alain," 3 juillet 1687, CEAAC, AN, Fonds des Colonies, Série G3, Notariat, carton 2040, microfilm roll F-1960; also found online at LAC, Fonds des Colonies (France), Dépôt des papiers publics des colonies, Série G3, vol. 2040, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2476877.

⁶¹ Vanderlinden mentions an act written in 1700 at the fort of the rivière Saint-Jean by one "Philippe Prat ... notaire commis en ce pays," on the occasion of the marriage of the daughter of Michel Le Neuf de La Vallière. Vanderlinden, *Le lieutenant civil et criminel*, 74. Vanderlinden does not give a reference.

⁶² "Le Ministre à M. de Subercase," 30 juin 1707, LAC, Fonds des Colonies (France), Lettres envoyées, Série B, vol. 29, fols. 191-206v. Bugeaud must have been serving in this function for some time before this more formal approval.

⁶³ Maurice Basque, "The Third Acadia: Political Adaptation and Societal Change," in *The "Conquest" of Acadia, 1710: Imperial, Colonial, and Aboriginal Constructions*, John G. Reid, et al. (Toronto: University of Toronto Press, 2004), 175.

⁶⁴ CEAAC, Fonds Adrien Bergeron 89.5, the originals being in the Archives nationales du Québec; see also "Découverte du greffe acadien de Saint-Louis-de-Beauséjour, 1754 & 1755: Notaire Louis de Courville," a digest of seventeen acts by Courville in the archives of the CEAAC prepared by Adrien Bergeron. CEAAC, Fonds Adrien Bergeron, 89.4. Courville's commission dated May 28, 1754, is found at LAC, Fonds des Ordonnances des intendants de la Nouvelle-France, MG8-A6, pp. 248-249.

The records of the notaires and the greffiers were typically kept in their houses, the vast majority of which were lost in fires or enemy raids.⁶⁵ Most of the extant notarial actes from the French period were drafted by Loppinot. They exist only because they happened to be in Goutin's hands the night of a fire at Loppinot's house that destroyed all his other records.

While not part of the civil state apparatus, seigneurs had their own intendants and procureurs that handled financial and other affairs for the seigneur.⁶⁶ Seigneurs also kept *livres terriers* and *plans terriers* for their seigneuries. The state would be expected to keep the same for lands within the king's domaine. These contained a description and plan of all lands conceded by the seigneur and the terms on which these were held. While none of these have survived for seigneuries in l'Acadie, correspondence and other reports from the beginning of the eighteenth century show that such Acadian seigneurs did maintain these records.⁶⁷

⁶⁵ For example, Menneval wrote in his report to the minister on the state of the country in 1688 that he had looked carefully for anything that would establish l'Acadie's southern boundary with New England, but "je n'en ay pu rien trouver au greffe de ce pais, les Anglois en ayant emporté ou faict brusler tous les papiers lorsqu'ils prirent le fort du Port Royal" (I could not find anything at the registry office in this country, the English having taken away or burned all the papers when they took the fort of Port-Royal). *Mémoire du sieur de Menneval*, 10 septembre 1688, LAC, Série C11D, vol. 2, fol. 96-106v. See also letter from the intendant, Jean Bochart de Champigny, to the minister, dated november 12, 1691, describing how Villebon was able to remove some of the papers from the greffe, "the rest having been destroyed by the English." "Lettre de Champigny au ministre," 12 novembre 1691, LAC, Fonds des Colonies (France), Série C11A, fol. 290-293v, 291v, accessed February 25, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 3049690; le reste ayant esté bruslé et déchiré par les anglois.

⁶⁶ For example, in a procuration given by Jeanne Motin to François Brice de Sainte-Croix in 1651, she refers to him as having been the intendant of her house. *Procuration générale de Jeanne Motin à François Brice de Sainte-Croix*, 31 juillet 1651, AN, Minutier, LIII, 7 (minute de Louis Daubenton, notaire), CEAAC, Fonds René Baudry, 20.9-4; published in Vanderlinden, *Le lieutenant civil et criminel*, 267-269.

⁶⁷ In 1706 Goutin wrote that "Les livres terriers sont au greffe et j'en ai donné des extraits aux habitants qui l'ont demandé" (the livres terriers are in the registry and I gave extracts to the people who asked for it). "Correspondance de Desgouttins, 1706," reproduced in Rameau, 2:340-349. The engineer Labat submitted a report in 1705 concerning lands to be appropriated for the fort, which report refers to "le plan de l'ancien terrier" (the plan of the old terrier). Report of Labat, engineer to the King, dated 1705, also reproduced in Rameau, 2:344. Finally, in 1703, Loppinot wrote to Pontchartrain that "Il serait bon de faire un nouveau papier-terrier, tant pour le domaine du roi que pour les Seigneurs," (it would be good to make a new papier-terrier, for the domaine of the king as well as for the seigneurs). *Mémoire de plusieurs choses qui regardent la justice de l'Acadie*, 1703, Fonds des Colonies (France), Série C11D, vol. 4, fol. 297-299, accessed February 26, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2410196; also published in Vanderlinden, *Le lieutenant civil et criminel*, 355-356.

In addition to the state administrative structure and the seigneurie, one finds institutions of self-governance in l'Acadie modeled on those in France and seen in other parts of Nouvelle-France.⁶⁸ In France, heads of household were eligible to participate in a decision-making body or assembly that addressed issues of concern to the parish. The assembly appointed collectors to gather the land taxes due to the state, and also chose a syndic, or delegate, who was charged with representing the parish's interests with the seigneur and state officials. In addition, parishes had a vestry (fabrique) that was responsible for such things as the church building and grounds, as well as maintaining the sacristy. The assembly elected a churchwarden to keep the parish accounts.⁶⁹

Going back as far as d'Aulnay's time, there are a number of mentions in the documents of syndics acting on the people's behalf in l'Acadie.⁷⁰ Kennedy posits that there was a vestry in l'Acadie, and that "colonists regularly appointed a churchwarden, normally referred to as a marguillier."⁷¹ There is also at least one document reporting the results of a "convocation et assemblée des habitans de la paroisse de St. Jean baptiste de port Royal," that occurred in 1673.⁷² The assembly in that case addressed the funding of new church construction, weights and measures, and damage by roaming livestock. In a mémoire written in 1703, then gouverneur Jacques-François de Monbeton de Brouillan wrote that he had assembled the "communauté du Port Royal," to, among other things, deliberate on what each person would pay toward the

⁶⁸ See e.g. Allan Greer, *The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada* (Toronto: University of Toronto Press, 1993) (discussing the part that the vestry played, among other institutions, in creating a "culture of solidarity," that permitted the community to act collectively).

⁶⁹ Kennedy, *Something of a Peasant Paradise*, 181.

⁷⁰ See discussion, pp. 106-107. Also, "Extrat de mémoire du Roi au sr de Subercaze gouverneur de l'Acadie, 22 mai 1706," LAC, Archives des Colonies (France), Série C11D, vol. 5, p. 268, accessed February 28, 2018, <http://heritage.canadiana.ca/>, C-11360, image 1208 (directing gouverneur to grant habitans' request that syndics be chosen yearly and by a plurality of voices).

⁷¹ Kennedy, *Something of a Peasant Paradise*, 185.

⁷² "Sur la convocation d'assemblée des habitans," 18 juin 1663, FR ANOM COL E 266, pp. 308-309.

construction of a new church.⁷³ While there appears to be no further documentary evidence of actions taken by assembly, Kennedy argues that the ability of the Acadian community to act in concert demonstrates that such assemblies existed and that, as the colony grew and the French administration set new requirements for the communities, these assemblies and their delegates took an “increasingly active role in local administration.”⁷⁴

The Church played an important role in Acadian communities, although there were periods (e.g. 1654 to 1670), and also areas where there were no resident parish priests.⁷⁵ The absence of a priest, however, did not preclude the possibility that Acadians had access to missionaries, or that they did not find other ways to practice their Catholic faith until a priest was available.⁷⁶

The Acadian Church was officially under the auspices of the bishop of Québec. After the French regained control of l’Acadie, Bishop Laval named the Abbé Petit his vicar general of l’Acadie, after which Abbé Petit took up residence in Port-Royal. Petit ministered to the people of Port-Royal for seventeen years until he retired in 1693. He was instrumental in establishing a school for boys and also bringing a nun of the Congrégation de Notre-Dame who set up a

⁷³ M. de Brouillan au ministre, 25 novembre 1703, Fonds des Colonies (France), Série C11D, vol. 4, fol. 278v-279, accessed March 3, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2410192; published in part in Vanderlinden, *Le lieutenant civil et criminel*, 393-394

⁷⁴ Kennedy, *Something of a Peasant Paradise?*, 194-197.

⁷⁵ Kennedy, 172.

⁷⁶ The parish registers show that children were often baptized immediately, and the baptism later solemnized by a priest. See e.g. the record of the baptism of Charles Amiraut, who had been baptized on the day of his birth by the seigneur, ‘Monsieur de Pobomkoup’, and then baptized by the Recollet missionary Felix Pain almost five years later. Nova Scotia Archives, the Registers of St. Jean-Baptiste, Annapolis Royal 1702-1755, RG1, vol. 26, p. 34, accessed March 14, 2018, <https://www.novascotia.ca/archives/acadian>. Colonists were also said to have celebrated a “messe blanche” in the absence of a priest. As Rameau described such a mass in Chipoudy, “everyone gathered . . . and the *doyen* of the pioneers . . . recites the prayers of the mass, intermixed with liturgical chants which are supported in unison by the whole of the assistants.” Rameau, *Une colonie féodale en Amérique*, 1:241; tout le monde s’assemble . . . et là le doyen des pionniers . . . récite les prières de la messe, entremêlées des chants liturgiques qui sont soutenus en chœur par l’ensemble des assistants.

boarding school for girls, both at Port-Royal.⁷⁷ When Bishop Saint-Vallier visited the colony in 1686, he was asked by the Abbé Petit, as well as the habitants, to send a new priest for Port-Royal and also priests for the settlements at Les Mines and Beaubassin. These appeals were answered when in 1693 four new priests were assigned to the colony.⁷⁸

Not only parish priests, but also missionaries were sent to the colony to serve both the Acadians and the Mi'kmaq.⁷⁹ Some, like the missionary, Father Moireau, ministered to people across vast areas, in Father Moireau's case, from the rivière Saint-Jean to the Gaspé. Between journeys Moireau lived at Beaubassin. He became the parish priest there around 1678 when the seigneur, La Vallière, gave a piece of land for a chapel and residence.⁸⁰ Father Moireau dedicated the church he built on the site to Notre-Dame de Bonsecours. His name appears as the recording priest on the earliest extant parish records for l'Acadie.⁸¹

In addition to the parish of Notre-Dame de Bonsecours at Beaubassin, extant parish registers show that prior to 1710, parishes existed in Port-Royal (Saint-Jean-Baptiste), as well as Grand Pré (Saint-Charles-des-Mines). There were also parishes in Pisiguit (Sainte-Famille), and one at the Rivière-aux Canards (Saint-Joseph), although no parish registers have survived.⁸² By 1750, there were at least two additional parishes, a second at Pisiguit (Notre Dame de l'Assomption), and one at Cobeguit (Saint-Pierre et Saint-Paul), not including missionary churches.⁸³

⁷⁷ Gérard Desjardins, "Petit, Louis," in *DCB*, vol. 2, revised 1982, http://www.biographi.ca/en/bio/petit_louis_2F.html.

⁷⁸ Kennedy, *Something of a Peasant Paradise?*, 172.

⁷⁹ Daigle, "Synthèse historique, 1604-1763," 33.

⁸⁰ René Baudry, "Moireau, Claude," *DCB*, vol. 2, revised 1982, http://www.biographi.ca/en/bio/petit_louis_2F.html.

⁸¹ Winston de Ville, trans and comp., *Acadian Church Records, 1679-1757* (New Orleans: Polyanthos, 1975), 2-9.

⁸² Faragher, *Great and Noble Scheme*, 76-77.

⁸³ Kennedy, *Something of a Peasant Paradise*, 173, referencing Clark, *Acadia*, 217.

The priests and missionaries played important roles in these communities. The habitants relied on them for spiritual guidance. Also, because of their influence in the community, “they were consulted often and acted in many cases as non-official judges in disputes between habitants.”⁸⁴ Gisa Hynes has found evidence of the influence of the Catholic Church on the life of the Acadians in the fact that premarital conceptions were nearly non-existent in the community. Further evidence is provided, Hynes argues, by the fact that there was a “virtual absence of marriages during the times of Lent and Advent.”⁸⁵

The civil administrative and religious structures in French l’Acadie are not the focus of this paper, and no attempt was made here to provide an exhaustive treatment of these subjects. The above discussion demonstrates, however, that whatever civil and religious institutions existed in the colony, and they were not inconsiderable, were French. They persisted throughout the period from 1670 to 1710, even if at times they functioned in skeletal form, and their operations required some flexibility and even creativity on the part of both officials and community members. These structures helped give shape to the life of the community, as did their land tenure, which is the focus of the next section.

⁸⁴ Jean Daigle, “L’Acadie, 1604-1763,” 33 (“A cause de l’ascendant dont ils jouissaient auprès de la population, ils furent consultés souvent et agirent dans bien des cas comme juges non-officiels dans des disputes entre habitants”).

⁸⁵ Gisa Hynes, “Some Aspects of the Demography of Port Royal, 1650-1755,” *Acadiensis* 3, no. 1 (Autumn 1973): 14-15. Others have suggested that there is insufficient evidence concerning the actual piety or religiosity of the Acadian community. See e.g. Michael P. Carroll, “Were the Acadians/Cajuns (really) ‘devout Catholics’?,” *Studies in Religion/Sciences Religieuses* 31, nos. 3-4 (September, 2002): 323-337, cited in Kennedy, *Something of a Peasant Paradise*, 180. Carroll argues that the evidence may be read in a number of different ways, and does not necessarily prove the religiosity. For example, he cites to the work of Carl Brasseaux on eighteenth century Acadian communities in Louisiana, which suggested that Acadians saw priests primarily as “‘religious administrators’ whose job was to record information (relating to property ownership, for example) and to administer sacraments (mainly marriage) on an occasional basis.” Carroll, 327.

The Settlements and their Seigneurs

At the resumption of French rule in 1670, Alexandre Le Borgne de Belleisle established himself as seigneur and proprietor of the areas described in his father's 1667 concession, namely from the rivière de L'Isle Verte (Saint Mary's River) until the rivière des Mines.⁸⁶ As of 1670, there were only a handful of seigneuries that had been granted in l'Acadie. These included Charles de La Tour's concessions of Cap-Sable, Pentagouët, and the rivière Saint-Jean;⁸⁷ the baronie granted Philippe Mius d'Entremont by Charles de La Tour in 1653 at Pobomcoup (Pubnico); and the extensive concession from the cap de Canseau to the cap des Rosiers granted by the Compagnie de la Nouvelle-France to Nicolas Denys in 1653, and renewed by the Compagnie des Indes occidentales in 1667.⁸⁸

Numerous concessions, however, would be granted after 1670, including those for lands as far south as what is today Machias and the St. Croix River, and all along the coasts and coastal

⁸⁶ Concession fait par la Compagnie des Indes occidentales au S. Emmanuel Le Borgne, 17 decembre 1667, LAC, Série E, online at Archives Search, MIKAN 3053277, items 12-25. Le Borgne functioned as seigneur initially as his father's representative, and then, upon his father's death in 1675, as representative of Le Borgne's heirs. Dunn, *History of Port-Royal/Annapolis Royal*, 28. Le Borgne's eldest son, Emmanuel Le Borgne sieur du Coudry died sometime before 1683, leaving Alexandre Le Borgne, his mother Jeanne Françoise, and eight other siblings as heirs of the deceased Emmanuel Le Borgne. "Ordonnance de M. Lefebvre de La Barre, 22 mars 1683," *Ordonnances, Commissions*, 22-26.

⁸⁷ The continued validity of Charles de La Tour's concessions would have been in question at the time the French resumed control of l'Acadie in 1670. La Tour, who was deceased in 1670, had sold his rights to Temple and Crowne in 1656, in exchange for five percent of the profits, which he received regularly. Any claims La Tour continued to have for lands along the rivière Saint-Jean would seem to have been undermined by the numerous concessions that were granted on the latter by Jean Talon, intendant of Nouvelle-France beginning 1672. See Vanderlinden, *Le lieutenant civil et criminel*, 106-107. Notwithstanding this, his heirs would later claim that they were entitled to these lands, relying on La Tour's earlier concessions. The 1703 order adjudicating property claims in l'Acadie vindicated their position to some extent in recognizing the claims of the children of La Tour and Motin.

⁸⁸ Denys's extensive concession, being largely undeveloped, would be subsequently reduced, beginning with a concession to François Doublet of the Îles de la Madeleine and the Ile Saint-Jean in 1663. "Concession à François Doublet des Iles de la Madeleine et de l'Île Saint-Jean," 19 janvier 1663, *Mémoires des Commissaires*, 2:521. Denys was able to convince the Compagnie des Indes occidentales to invalidate another concession to one Monsieur de La Giraudiere at Chedabucto (Guysborough). Denys, *Description and Natural History*, 104.

rivers and islands of present day New Brunswick.⁸⁹ Many of these concessions were held by Canadians, having been granted by the intendant and gouverneur in Québec. In this way, the new administration had effectively replaced the large companies and “great vassals” as the conceding authorities.⁹⁰ Most of these new concession holders were more interested in trade than peopling their seigneuries, and neither lived on their concessions, nor attempted to colonize them.⁹¹ The reader is referred to Vanderlinden’s close analysis of these concessions in his book, *Le Lieutenant civil et criminel: Mathieu de Goutin en Acadie Française (1699-1710)*.⁹² The following sections will focus solely on the seigneuries of the agricultural settlements of Port-Royal, the bassin des Mines, and the isthmus of Chignecto. This is not to suggest that there were no settlers that had colonized seigneuries in other areas, only that these, being relatively few, left few records.⁹³

Port-Royal: Alexandre Le Borgne sieur de Belleisle, Philippe Mius d’Entremont, Marie de St. Étienne de La Tour, and the other heirs of Jeanne Motin and Charles de La Tour

In 1674 or 1675, Alexandre Le Borgne de Belleisle married Marie de Saint-Étienne de La Tour, the oldest daughter of Charles de La Tour and Jeanne Motin.⁹⁴ Belleisle’s marriage to

⁸⁹ See “Tableau II, Concessions accordées en Acadie après 1667,” Vanderlinden, *Le lieutenant civil et criminel*, 106-107.

⁹⁰ Vanderlinden, 108.

⁹¹ Talon, who had granted numerous concessions in 1672 hoped that his actions would be as successful in increasing the population of l’Acadie as it had been in Canada. Jean Daigle, “Michel Le Neuf de La Vallière seigneur de Beaubassin et gouverneur d’Acadie, 1678-1684,” (thèse de maîtrise, l’Université de Montréal, 1970), 35. Colbert suggested to Talon that this was “certainement le meilleur moyen (de peupler)” (certainly the best way to populate [the country]). Daigle, “Michel Le Neuf de La Vallière,” 35

⁹² Vanderlinden, *Le lieutenant civil et criminel*, 108-120. See also other sources discussing seigneurial grants in l’Acadie listed above, p. 7, n. 26.

⁹³ For example, by the early eighteenth century, there were habitants living in Port-Razoir (Shelbourne) on the seigneurie of Abraham Mius d’Entremont, sieur de Pleinmarais. An inventory filed by his widow shows that he was owed four livres of rente from these habitants. Inventaire de biens par Marguerite de Saint-Étienne de La Tour, 30 avril 1705, LAC, Fonds des Colonies (France), Dépôt des papiers publics des colonies, Notariat, Série G3, vol. 2040, accessed April 1, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2476904.

⁹⁴ Dunn, *History of Port-Royal/Annapolis Royal*, 28.

Marie de La Tour was an attempt to bolster and consolidate what rights the parties had in the area, much as Marie's mother had done when she married La Tour. They moved into Port-Royal where they lived in what was referred to as the seigneurial manor.⁹⁵

Belleisle's actions as seigneur, specifically his land grants, were both acknowledged and criticized by certain of the French administrators in the colony. In a letter of 1686, Perrot, then gouverneur of l'Acadie, complained of the "great abuse touching the extent of land conceded[,] with it being said that some have more than sixty leagues of front which they have not developed, serving only to place them far from inhabited places."⁹⁶ This abuse, he writes, comes from the "considerable number of concessions" granted by Le Borgne de Belleisle. Belleisle, he writes, is "extremely given to wine, [and] gives concessions to the first who comes, and then passes contracts [for the same land] to others which causes many disputes."⁹⁷ Some of Perrot's concerns were repeated by later gouverneurs. Meneval, who became gouverneur of l'Acadie after Perrot, also noted that concessions for the area were haphazardly granted, causing disputes among the inhabitants.⁹⁸ In 1687, Meneval placed Le Borgne in prison for several days "for all the nonsense he does and says."⁹⁹ Almost twenty years later gouverneur Brouillan wrote that the

⁹⁵ Dunn, 28.

⁹⁶ Le Sr. Perrot au port Royal, 9 août 1686, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 26 (transcription); "Il a trouvé un grand abus touchant l'estendue des terres concédées aux particuliers ayant remarqué que quelques uns en ont de front plus de 60 lieues qu'ils ne font pas valoir et qui ne leur servent que pour s'éloigner des lieux habitez." Perrot slanderously opines that this allowed habitants to more easily indulge themselves in relations with Native women. As will be discussed below, later officials acknowledged more reasonably that the habitants moved up the river to seek out new areas of marsh on which to farm. A French league or *lieue*, as employed France's North American colonies, was variable, and ranged from 2.422, to 2.761, to 3.027 statute miles. Roland Chardon, "The Linear League in North America," *Annals of the Association of American Geographers* 70, no. 2 (June, 1980): 144.

⁹⁷ Le Sr. Perrot au port Royale, 9 août 1686," fol. 27 (transcription); "C'est un homme extremement adonné au vin, qui donne des concessions au [première] venu, et qui en passe ensuite des contracts à d'autres ce qui cause beaucoup de procès et désordres."

⁹⁸ Mémoire du sieur de Meneval, 10 septembre 1688, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 101v.

⁹⁹ This was in connection with a dispute involving land in Cobequid. "Mémoire instructif de la conduite des Sieurs de Souligne & Desgoutin au Port Royal de l'Acadie par le sieur de Meneval Gouverneur," 1 septembre 1689, LAC,

early concessions of lands in the Port-Royal area were too large, encompassing a large amount of upland as well as marsh, and were more land than the owners could work.¹⁰⁰ Brouillan's concern, echoed by many other officials, appears to have been that the large conceded expanses of uplands were left uncultivated.¹⁰¹ In describing the land use along the rivière du Dauphin in 1703, the engineer de Labat similarly complained that "these families hold by concession all the arable land and much more land, of which they make no use."¹⁰²

It is notable that in all of the official reports criticizing land use practices in Port-Royal—the size of the concessions, the distance between them, the haphazard way they were granted, the underutilization of the uplands—there were no complaints regarding the failure of habitants to obtain concessions for the lands they occupied. While this would not perhaps have been the first concern of these officials, especially during the times they faced existential threats to the colony, the implementation of seigneurial tenure was considered part of an orderly colonization process. If squatting was rampant, one would expect to have heard something about it from administrators, all of whom were either from France or from Canada where seigneurial tenure was the norm. The lack of any expressed concern in the historical record, and the repeated reference to concessions granted in the Port-Royal area—presumably by either d'Aulnay prior to 1650, Jeanne Motin, Alexandre Le Borgne de Belleisle, or Marie de Saint-Étienne de La Tour, after Le Borgne's death in 1692—shows that Port-Royal's seigneurs carried on the primary function of a seigneur in France's North American colonies, namely conceding lands.

Archives des Colonies, Série C11D, , vol. 2, pp. 275-300, 288, accessed April 4, 2018, <http://heritage.canadiana.ca/C-11359>, image 776 ("pour toutes les sottises qu'il a faites").

¹⁰⁰ "Extrait d'un rapport de 1701 par le gouverneur de Brouillan," published in part in Rameau, *Une colonie féodale*, 2:337-338.

¹⁰¹ "Extrait d'un rapport de 1701 par le gouverneur de Brouillan," Brouillan believed, quite unrealistically, that if the conceded land was divided among the young "many [of them] might decide then to cultivate the uplands" (bien des jeunes gens se détermineraient peut-être alors à cultiver les terres hautes).

¹⁰² "Letter to Monsieur de Villermont Concerning Acadie from Delabat," November 2, 1703, translated and printed in Morse, *Acadiensia Nova*, 2: 9.

The question is raised whether these seigneurs provided other services, for example constructing and operating banal mills. As noted above, d'Aulnay had constructed two mills, which Jeanne Motin owned during her lifetime. These mills ultimately passed into the hands of Marie de Saint-Étienne de La Tour, the Dame de Belleisle, who operated them. However, whether banal mill rights were strictly enforced by seigneurs in Port-Royal remains a question. There were at least two professional millers in the area, and certain hamlets along the river also had mills.¹⁰³ Like Alain, who, as discussed below, was given permission by Le Borgne to build and operate sawmills on his seigneurie, these were likely granted permission for a yearly charge. By 1704, however, at least on the king's domaines, the habitants had freedom to build and operate mills without charge.¹⁰⁴ As in Canada, the banal oven right seems never to have been enforced in Port-Royal, and for similar reasons.¹⁰⁵ Settlement in Port-Royal during the period in question was still in its initial stages. The goal of both the state and the seigneurs was to keep what colonists there were, and they were not likely to enforce overly burdensome restrictions. Moreover, Le Borgne and his wife, like many other seigneurs in Nouvelle-France in the early years of colonization, were not wealthy, and thus were probably not in a position to deliver many seigneurial services.¹⁰⁶ The strict enforcement of the full panoply of their banal rights under these circumstances made little sense. This does not mean that Le Borgne forewent all profits from the natural resources found on his seigneurie. On the contrary, whether in board feet from

¹⁰³ Kennedy, *Something of a Peasant Paradise*, 151. Kennedy writes that "members of a few families, like the Thibaudeaux and the Allains, became professional millers, but larger hamlets, like the Melanson site, had their own mills." Mills in other settlements will be addressed under those sections.

¹⁰⁴ When the gouverneur Brouillan wanted to construct a mill in Port-Royal on the king's domaine, he was given permission to do so, on the condition that habitants have the liberty to do likewise, and that they be permitted to use other mills rather than Brouillan's when it was convenient to do so. "Extrait de la lettre du Ministre à M. de Brouillan, 5 juin 1704," LAC, Fonds des Colonies (France), Série C11D, Correspondance générale, Acadie, vol. 5, p. 26, accessed May 3, 2018, <http://heritage.canadiana.ca/>, C-11360, image 946.

¹⁰⁵ See discussion, p. 49.

¹⁰⁶ "Extrait de la lettre de Mr de Meneval à Monseigneur le Marquis de Seignelay," 31 oct. 1689, LAC, Archives des Colonies (France), Série C11D, Correspondance générale, Acadie, vol. 2, pp. 264-274, 273, accessed May 4, 2018, <http://heritage.canadiana.ca/>, C-11359, image 761; "il est vray que le dit sieur Le Borgne et ses freres sont pauvres."

logs taken from his lands and cut in mills established on his waterways, or license fees for fishing off his shores, Le Borgne was able to reap financial benefits from his banal rights.

There are two extant contracts made by Le Borgne before his death in 1682, both of which demonstrate Le Borgne's assertion of his seigneurial rights in Port-Royal and throughout his seigneurie. The first is a concession granted by Le Borgne to Pierre and Mathieu Martin along the rivière du Dauphin, on August 9, 1679, and made before the notaire Jacques Courand.¹⁰⁷ The second is permission granted by Le Borgne to the blacksmith, Alain, to construct sawmills and take wood "dans l'estendue de nostre seigneurie" (in the extent of our seigneurie), dated July 3, 1687. The second contract was made "sous seing privé," or without the presence of a notaire. A copy was later "collationné," or compared with the original, and filed in the registry by Loppinot, November 1, 1700.¹⁰⁸

The concession to the Martins is for land on the north side of the river, between the "ruisseau Domanchin" on the west, and the "Grand Pré," or the great marsh called Belle-isle, on the east, in a place that Régis Brun identifies as the hamlet of Beausoleil.¹⁰⁹ The land was bounded on the north by the mountain. Pierre Martin was one of the first settlers in the colony, his name appearing on the passenger list of the St.-Jehan's voyage of 1636. It is not certain when

¹⁰⁷ Concession from the Sr de Bellisle to Pierre and Mathieu Martin, 1679, N.S Arch., Grant Book 1, p. 67. This concession may also be found in Vanderlinden, *Le lieutenant civil et criminel*, 289-290; and, Rameau, *Une colonie féodale*, 2:318-319. An English translation is found in Murdoch, *History of Nova-Scotia*, 1:156-157.

¹⁰⁸ Permission accordée par le Borgne de Belle-Isle au forgeron Alain, 3 juillet 1687, CEAAC, AN, Fonds des Colonies, Série G3, Notariat, carton 2040, microfilm roll F-1960.

¹⁰⁹ Brun, *Les Acadiens avant 1755*, 9. Pierre Martin appears to be the same Pierre Martin named in the 1671 census of Port-Royal as being 66 years old, and married to Catherine Vigneau, with five children, the youngest of which was Mathieu at 35 years old. 1671 Recensement, LAC, Fonds des Colonies (France), Série G1, vol. 466, part 1. He is said to have had two arpents of farmable land. 1671 Recensement, C-2572, image 6-7. In de Meulles's 1686 census, Mathieu is listed as still living in Port-Royal, now with eight arpents of farmable land. 1686 Recensement LAC, Série G1, vol. 466, part. 1, C-2572, p. 16. It would not be until 1689 that he was granted a concession of land by the crown in Cobeguit, as will be discussed below. Pierre Martin, his older brother, also appears on the Port-Royal census of 1686, with ten arpents of farmable land. Pierre Martin, the father, had by this time died. 1686 Recensement, C-2572, p. 35.

he and his family had moved up the rivière du Dauphin to this land adjacent to the great marsh, but it is clear that it was before the 1679 concession. The grant was for “une piece de terre & pree par eux mise en partie en Valeur et ont ils font residence.”¹¹⁰ The concession thus legalized their possession and improvement of the land.¹¹¹ By this means, the habitants in l’Acadie ensured that their lands were legally protected even when they had initially moved into areas without a grant. The grant was in all other ways standard for a colonial concession. The cens was minimal at one denier tournois, and the rente was paid in kind with a capon and a bushel of wheat, which rente was not redeemable (*non rachetable*). Both cens and rente were to be paid annually on January 1 at Belleisle’s “maison seigneuriale” in Port-Royal. The concession also recited the application of lods et ventes, as arising out of the cens, the right of saisine, for non-payment of cens et rentes, and fines in the event that the seigneur was not notified within twenty days of a sale that would trigger the payment of lods et ventes.¹¹²

The second of the two extant contracts granted by Belleisle, this one involving permission to build mills and take wood throughout Belleisle’s seigneurie, is similarly what one would expect in the colonies at the time, if somewhat broad in its reach.¹¹³ The concession, dated July 3, 1687, recites that Le Borgne is the seigneur and owner “of all the lands from the Isle verte to the Cap des mines,” which is consistent with a 1686 decision of de Meulles interpreting the southern limit of Le Borgne’s rights under his 1667 concession from the Compagnie des Indes

¹¹⁰ The concession granted a “piece of land and marsh improved by them in part and on which they reside.”

¹¹¹ Could Belleisle have conceded land that had previously been conceded by Jeanne Motin, which he would not have recognized as valid? Or had the Martins moved to the area after Motin had died but before Belleisle came to Port-Royal in 1670?

¹¹² As will be recalled, under the Coutume de Paris, which applied in all of the colony of Nouvelle-France at this time, the censitaire was not subject to *saisie féodale*. Thus, if the censitaire failed to pay cens or rente, the seigneur was required to move against him or her in court as any other creditor. It is therefore by no means certain that this term could be enforced. Note that this concession was also registered by William Shirreff, Secretary of the His Majesty’s Council at Annapolis Royal on February 14, 1738. N.S. Arch., Grant Book 1, p. 67.

¹¹³ Permission accordée par le Borgne de Belle-Isle au forgeron Alain, 3 juillet 1687, CEAAC, AN, Fonds des Colonies, Série G3, Notariat, carton 2040, microfilm roll F-1960.

occidentales at this cape.¹¹⁴ In the concession, Le Borgne grants Alain, blacksmith, permission to build and construct sawmills along rivers and streams in the extent of the seigneurie, provided they were not on land that had already been conceded. He would also be permitted to take wood for numerous purposes, including planks, beams, cordage, among others, and this “knowing certainly that it is of public utility that such enterprises are done and succeeded in order to establish commerce and by this means increase and strengthen this colony following the intention of the King.”¹¹⁵ In return, Alain was charged with providing Le Borgne one hundred planks at twelve feet per plank in length annually. Le Borgne notes his desire that this contract *sous seing privé*, be drafted in proper form before a notary once one was established in the colony.

There are no other extant concessions signed by Alexandre Le Borgne, although as noted above, official documents cite the fact that he made many such concessions.¹¹⁶ Moreover, as the following discussion shows, later contracts of land transfers in the colony recite the fact that the seller had acquired the land by concession of Alexandre Le Borgne. There is also some evidence that Le Borgne actually collected *cens et rentes* from habitants, at least in Port-Royal, during his lifetime.¹¹⁷

¹¹⁴ See discussion, pp. 209-211.

¹¹⁵ Permission accordée par le Borgne de Belle-Isle au forgeron Alain, 3 juillet 1687, CEAAC, AN, Fonds des Colonies, Série G3, Notariat, carton 2040, microfilm roll F-1960; “Connaissant certainement qu’il est des utilités publiques que de telles entreprises se fassent et même réussissent pour établir le commerce et par ce moyen augmenter et fortifier cette colonie suivant l’intention du Roy.”

¹¹⁶ A letter from the intendant, Jean Bochart de Champigny explains why more concessions have not survived. The letter confirms that during the attack of Port-Royal in 1690, Phips’s men destroyed the papers from the greffe that existed at that time. He states that Villebon was able to remove some of the papers from the greffe, “the rest having been burned and torn up by the English” (le reste ayant été brûlé et déchiré par les anglais). Lettre de Champigny au ministre, 12 novembre 1691, LAC, Fonds des Colonies (France), Série C11A, vol. 11, fols. 290-293v. It is also known that a fire destroyed Loppinot’s house in 1708, and with it nearly all of his notarial papers.

¹¹⁷ In response to a request by Le Borgne—who Meneval refers to as the “so-called owner of the country of l’Acadie” (soy disant propriétaire du pays de l’Acadie)—for reimbursement for moneys spent by his father and d’Aulnay in establishing the country, Meneval wrote that “they enjoy around six hundred in rente per year in seigneurial rights on the habitants of Port-Royal” (ils jouissent d’environ 600 de rente par an en droits seigneuriaux

After Le Borgne's death in 1692, his widow, Marie de Saint-Étienne de La Tour, continued to concede land as seigneur.¹¹⁸ It was not uncommon to find women listed as seigneurs in seventeenth century Nouvelle-France.¹¹⁹ Some have argued that in Canada, women did not really have power over the business of the seigneurie and only held the land pending the transfer to their son.¹²⁰ Josette Brun has argued, however, based on, among other things, the Loppinot contracts from this period, that Marie de Saint-Étienne de La Tour "always looked after the management of her seigneurie, even when her sons had reached adulthood."¹²¹ As seigneur, Marie de La Tour was also due certain deference, for example with regard to precedence in entering and leaving the church.¹²²

In May of 1692, the Dame de Belleisle signed a "billet," or promissory note granting Denis Petitot, surgeon, three arpents of land in Port-Royal at a place called the "Camp des Anglais."¹²³ The rent was one capon payable annually. This was formalized in a concession made a year later before du Breuil, the procureur du roi, in the absence of a notaire, and

sur les habitans du Port Royal). Extrait de la lettre de Mr de Meneval à Monseigneur le Marquis de Seignelay, 31 oct. 1689, LAC, Archives des Colonies, Série C11D, vol. 2, 264-274, 273.

¹¹⁸ His death is traditionally given as 1693, however, a promissory note signed by Marie de La Tour on May 10, 1692, suggests that Le Borgne had died before that time. Concession de terre par Marie de Saint-Étienne à Denis Petitot, 2 mai 1693, CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton 2040, microfilm roll F-1960. Josette Brun has also placed Le Borgne's death around 1691, for the same reason. She does raise the possibility, however, that Marie was acting as procuratrice of her husband when she signed the billet in 1692, noting that this would not have been thought exceptional in Nouvelle-France at the time, including in l'Acadie. Josette Brun, "Marie de Saint-Étienne de La Tour," *La société historique acadienne. Les Cahiers* 25, no. 4 (Octobre-décembre 1994): 253.

¹¹⁹ Brun, "Marie de Saint-Étienne de La Tour," 248. In 1663, Brun writes, 54.5 of seigneuries in Nouvelle-France belonged to widows. Brun, 250, citing Micheline Dumont-Johnson, et al., *Le collectif Cléo, L'histoire des femmes au Québec depuis quatre siècles* (Québec: LeJour, 1992), 67.

¹²⁰ Brun, "Marie de Saint-Étienne de La Tour," 250-251.

¹²¹ Brun, 251; "s'occupe toujours de la gestion de sa seigneurie même quand ses fils ont atteint l'âge adulte."

¹²² Goutin reported to the minister that one Allein, who showed himself troublesome in other ways, had walked in front of Marie de La Tour when leaving the church. Her 14 year old son confronted Allein who slapped the boy, at which point the priest intervened to remove Allein. While Goutin bemoaned the lack of authority that would have induced Allein to act in this way, it does show that the seigneurs continued to assert their prerogatives, and that these were enforced by the church. *Le sieur de Goutin au ministre*, 29 decembre 1708, Monsieur de Goutin, LAC, Fonds des Colonies. Série C11D, vol. 6, p. 375 (transcription).

¹²³ "Cession de terre par Marie de Saint-Étienne à Denis Petitot, 2 mai 1693," CEACC, A.N, Fonds des Colonies, Série G3, Notariat, carton 2040, microfilm roll F-1960. The Camp des anglais was located opposite the town of Port-Royal on the north shore of the rivière du Dauphin.

registered in the greffe of Loppinot in February 1700. The concession followed closely the form that Le Borgne had used, requiring, in addition to the rente of one capon, the charge of one denier tournois of cens to be paid at the “maison seigneuriale,” which cens carried “lots et ventes.”¹²⁴ Petitot would be subject to the usual remedies (saisine et amendes) should he fail to notify the seigneur of any sale within twenty days. This is the only extant concession granted by the Dame Le Borgne before the king reevaluated land claims in the area in 1703 and redistributed the lands within her seigneurie among her, her siblings (the children of Motin and La Tour), and her own children.¹²⁵ There are no extant post-1703 grants from the newly confirmed seigneurs, although, as will be discussed further in chapter 5, there are mentions of such grants in the records kept by the British.

There do exist, however, a number of contracts drawn up by Loppinot and others between the inhabitants of l'Acadie involving land transfers. A clear majority of these recognize that the land was within the mouvance of a seigneur, in all but one case, the late Alexandre Le Borgne, or Le Borgne's widow, Marie de Saint-Étienne de La Tour. The seigneurial charges, where specified, are variable.

The first such contract is a 1691 bail à rente from Jean Labat to Bernard Doucet, the original of which probably remained in the hands of one of the parties, and thus escaped the destruction of the greffe. A copy of this contract was registered after the British took permanent control by William Shirreff, secretary of the His Majesty's Council at Annapolis Royal in 1737/1738, and thus has been preserved.¹²⁶ The procureur du roi, du Breuil, signed the original in the absence of a notaire. The contract involved several pieces of land, both marsh and upland,

¹²⁴ One livre equaled approximately 20 sols, or 240 deniers.

¹²⁵ The 1703 arrêt will be discussed further below.

¹²⁶ Bail à rente, Jean Labat à Bernard Doucet, 3 avril 1691, N.S. Arch., Grant Book 1, p. 62. This contract is also published in Vanderlinden, *Le lieutenant civil et criminel*, 330-331.

located on the chemin du Cap in Port-Royal, and east of the village in an area of settlement known as the ruisseau Fourchu. The rente of fifteen livres during the life of the seller, and ten livres to his heirs, was annual and perpetual, and the buyer agreed to pay “les droits seigneuriaux” (seigneurial rights) which were otherwise unspecified. Unlike other contracts, this one is not clear what these rights were or to whom they were due.¹²⁷

The contract of sale of property located in the town of Port-Royal made November 21, 1699 by Antoine Hébert to Jean Mitifeu found in the Loppinot collection, however, is much more specific regarding the seigneur and his rights. The contract recites that the land belongs to the seller “par une concession du seigneur” (by a concession from the seigneur).¹²⁸ It also describes the land as being in the “censive du sieur Belleisle,” at the charge to him of “dix sous de rente.”¹²⁹

Another sale of land that similarly references the seigneurial “rente,” this time due to Madame de Belleisle, is the sale of land from the same Antoine Hébert to Claude-Sébastien de Villieu, son-in-law of Michel Leneuf de La Vallière, seigneur of Beaubassin.¹³⁰ This contract is again specific regarding the continuing seigneurial charges with which the land was burdened. The land, also in Port-Royal, was said to belong to the seller “by a concession from the seigneur of the place” (par une concession du seigneur du lieu), dated June 4, 1694, which land was “of

¹²⁷ It is possible that details regarding the seigneur were removed by the British when copying the contract in the register, given that the Board of Trade had in 1733 purchased the seigneurial rights of the La Tours from Agathe Saint-Étienne de La Tour, and by this, they claimed, extinguished all previous seigneurial rights.

¹²⁸ “Contrat de vente pour Jean Mitifeu, 21 novembre 1699,” CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton 2040, microfilm roll F-1960.

¹²⁹ “Contrat de vente pour Jean Mitifeu.” CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton 2040, microfilm roll F-1960. It may be recalled that a “censive” was land conceded by a seigneur by means of a “cens.” It is noteworthy that no cens is listed in this case, which, while typically a nominal amount, was important as a recognition that one held one’s land subject to the rights of the seigneur. It may have been an oversight, as they are referred to in other contracts of the period, or it might have been that the amount was so small, that it was no longer worth it to the seigneurs to collect it, and was therefore, as in this case, sometimes dropped from mention in land transfers.

¹³⁰ “Contrat d’acquisition Monsieur de Villieu, 1699,” dated 21 novembre 1699, CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll F-1960.

the censive of Madame de Belleisle “seigneur du Port-Royal.”¹³¹ The land of approximately ten and a half arpents in width was charged with “twelve sols six deniers de rente.”¹³²

A contract for the sale of land by Étienne Pellerin to Jean Naquin, a master tailor, also in 1700, recites that the seller owns the land pursuant to “a concession of Monsieur Alexandre Leborgne sieur de Belleisle seigneur of the said Port-Royal.”¹³³ The land, which appears to be up along the Petite Rivière (Allain’s Creek) in Port-Royal, is said to be in the “censive of Madame de Belleisle,” and is charged with “a denier parisis of cens and a half bushel of wheat of rente.”¹³⁴ In this case, the price of the land was the payment of the cens and rente of half a bushel of wheat, as well as other seigneurial rights – specifically the “lots et ventes, saisine et amende” – to the Dame de Belleisle.

Similarly, Jean Prijean (Préjean) dit Le Breton, ceded to his nephew, Jacques Lebroy (Levron) in 1700 half a piece of land on the upper river, provided that Levron was responsible for the droits seigneuriaux and paid the rente of one boisseau of wheat to the seigneur of the place, all of the land being in the censive of Madame de Belleisle, “dame owner and seigneur du Port and parts of Acadie.”¹³⁵

Two additional contracts in the Loppinot collection specify that the land was within the censive of the seigneur of the place, but do not list the specific charges. In a 1700 contract, Jean

¹³¹ “Contrat d’acquisition Monsieur de Villieu, 1699.”

¹³² “Contrat d’acquisition Monsieur de Villieu, 1699.”

¹³³ Vente d’une terre par Étienne Pellerin à Jean Naquin, 10 mai 1700, CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll F-1960; “une concession de monsieur Alexandre Leborgne sieur de Belleisle seigneur du dit Port Royal.”

¹³⁴ Vente d’une terre par Étienne Pellerin à Jean Naquin, 10 mai 1700; “un denier parisis de cens et d’un demie boisseau de bled froment.”

¹³⁵ “Contrat de Jacques Lebroy, 1700,” 12 juillet 1700, CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll F-1960; “... ladite terre en la sensive de Madame de belisle ... propriétaire et seigneur de Port Royal et des parties de laCadie.” The land was said to be situated between the ruisseau Saint-Antoine and the ruisseau Saint-Charles on the upper river. Jean Préjean was married to Andrée Savoie, Jacque Levron’s maternal aunt. White, *Dictionnaire généalogique*, s.v. “Levron dit Nantois” and “Savoie,” 2: 1092, 1456.

Labat sold ten arpents of land on the ruisseau du Gaspereau, a stream feeding into the Petite rivière in Port Royal, to Claude Landry and Jean Babinou to build a saw mill, for the annual and perpetual rente to Labat of eleven livres.¹³⁶ Although the contract itself does not list the seigneurial charges, Labat represents that the land belongs to him “par une concession du seigneur de ce dit lieu” (by a concession of the seigneur of this said place) and promises to deliver a copy to the buyers in eight days of the date of the contract. Thus, the buyers will know what if any charges are due to the seigneur. The second document is for a gift of land located further up the river in 1700 and was made “at the charge of the seigneurial rights and of the annual and perpetual rente owed to the seigneur.”¹³⁷ While the specific amount of rente is not specified, the seigneur is, the land being said to be “in the censive of Madame de Bellisle.” Madame de Bellisle was still alive and living in Port-Royal, which makes it more likely that the charges were known and enforced, and thus perhaps did not need to be specified in the contract.

Another contract shows that Belleisle and his widow were not the only seigneurs in the Port-Royal area. In 1701 Martin Bourg sold a habitation or homestead on the north side of the rivière du Dauphin called “Pleinmarais,” to Nicolas Babino (Babineau), otherwise known as Deslauriers.¹³⁸ The land was said to be “en la censive du defunt Monsieur d’Entremont” (in the censive of the deceased Monsieur d’Entremont), which was probably Philippe Mius

¹³⁶ Vente d’une terre par Jean Labat à Pierre et Claude Landry et Jean Beliveau, 26 février 1700, CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll, F-1960. A 1710 map by Delabat shows a “moulin a planche aux landry” (a saw mill of the Landry) on a stream feeding into the Petite rivière. “Plan du cours de la rivière du Dauphin/Delabat,” 1710, Bibliothèque nationale de France, département Cartes et plans, GE SH 18 PF 133 DIV 8 P 6, published February 2, 2015, <https://gallica.bnf.fr/ark:/12148/btv1b53089737/f1.item>. See also Jean Sauvageau, *Cartes de l’Acadie ancienne, 1604-1755*, Contribution No. 45 (Société de généalogie de Québec, 1984), Carte 6, “Plan de Delabat.”

¹³⁷ “Donation de Marie Gaudet a Etienne Potvin 1700,” 15 mai 1700, CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll, F-1960; donation made “a la charge des droits seigneuriaux et de la rente annuelle et perpetuel [due] au seigneur.” Potevin, dit Parisien, was married to the daughter of Marie Gaudet by her first marriage, Anne Daigre.

¹³⁸ “Contrat pour Deslauriers 1701,” 18 juillet 1701, CEACC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll, F-1960. The habitation consisted, according to the contract, of a house, barn, stable, arable (terres labourables), marsh, high land and woods.

d'Entremont, baron de Pobomcoup, who had moved to the Port-Royal area at the end of his life.¹³⁹ The sale was made “a la charge desdits ... droits seigneuriaux” (at the charge of the said seigneurial rights), as well as a sale price of twelve hundred livres. The contract lists the rente due to the seigneur, which includes two capons and an apple.

One contract of sale does not make reference to the seigneurie in which the land was located or seigneurial rights and dues, but it is the exception that proves the rule. In July, 1700, Bernard d'Amours, sieur de Plaine, sold a piece of land within the town of Port-Royal to his brother, Louis D'Amours, sieur de Chauffours.¹⁴⁰ At the time Bernard, who was himself an Acadian seigneur,¹⁴¹ was married to the Dame de Belleisle's daughter, Marie-Jeanne La Borgne. It is unclear why there was no mention of seigneurial charges; it is possible the land may have already been considered within the mouvance of the fort.

In 1703, the Conseil du Roi, having reviewed the concessions that had been granted in l'Acadie, resolved that all land would remain united to the king's domaine with certain express exceptions.¹⁴² This arrêt would change the landscape as concerns seigneurial rights and duties in Port-Royal, as well as the other agricultural settlements. First, the Conseil dismissed the claims of the duc de Vendome and André Le Borgne, Alexandre's brother in France, to extensive lands in l'Acadie. This included lands along the rivière Saint-Jean, as well as all the settled areas of l'Acadie. In consideration of the expenses made by Emmanuel Le Borgne, however, André and

¹³⁹ Clément Cormier, “Mius (Muis) d'Entremont, Philippe, *DCB*, v. 1.A map attributed to Delabat and thought to be made around 1708, shows Pleinmarais just outside the limits of the banlieue on the north shore, west of the town of Port-Royal. “Plan de la banlieue du Port Royal,” Bibliothèque nationale de France, département Cartes et plans, GE SH 18 PF 133 DIV 8 P 5, published January 26, 2015, <https://gallica.bnf.fr/ark:/12148/btv1b53089727d>.

¹⁴⁰ “Contrat d'acquisition d'un morceau de la terre de Mr de Plaine pour Mr de Chauffours,” 12 juillet 1700, CEAAC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll, F-1960.

¹⁴¹ In 1695 Bernard Damours was granted a seigneurie on the Kennebecasis, a tributary of the lower rivière Saint-Jean. Vanderlinden, *Le lieutenant civil et criminel*, 107.

¹⁴² Arrêt du Conseil du roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 368-390.

his siblings were granted a concession of land that included Pentagouët (Penobscot) and extended to the southern limit of l'Acadie at the rivière Saint-George. As a condition of the concession the Le Borgne were required to “cultivate the said lands, people them and found settlements within ten years,” subject to forfeiture, a condition that was highly unlikely to be met.¹⁴³

With regard to the heirs of Jeanne Motin and Charles de La Tour—these were also legatees of any rights of the d'Aulnay heirs, pursuant to the testament of Marie de Menou, last surviving child of the late sieur d'Aulnay and Jeanne Motin—the Conseil was more generous. Motin and La Tour had five children: Charles; Jacques, at that time survived by his widow, Anne Melanson; Marie, widow of Alexandre Le Borgne; Anne, wife of Jacques Mius d'Entremont; and Marguerite, widow of Abraham Mius de Pleinmarais. All would share equally in two concessions of land, one located at Cap de Sable, and the other at Port de La Tour. In addition, the “seigneurie du Port-Royal,” and the “seigneurie des mines,” would be divided into seven shares with each of the five La Tour siblings getting one share. The remaining two shares were granted to the children of Marie de Saint-Étienne de La Tour and Alexandre Le Borgne, to be divided as they would agree.

The seigneurie of Port-Royal was to begin at two thousand *pas géométrique* from the fort, and extend five leagues up the river, with two leagues on either side.¹⁴⁴ The La Tours were also specifically granted the cens et rentes and mutation fees on existing houses and occupied

¹⁴³ Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 386; “le tout à la charge par le dit le Borgne ou ses ayant causes de cultiver les dites terres, les peuples et y faire des établissements dans l'espace de dix années . . . faute de quoi ils demeureront déchus de la dite concession.”

¹⁴⁴ A “pas géométrique” was five feet. *Encyclopédie du dix-neuvième siècle: Répertoire universel des sciences, des lettres et des arts*, 3e éd. (Paris: H. Carion, 1870), 15:88, s.v. “Mesures françaises du moyen-âge et des temps modernes.” Two thousand pas géométrique feet would be approximately 1.9 miles.

lands along the river below the fort.¹⁴⁵ The town of Port-Royal and its *banlieue*, or immediate environs, was understood to be within the dependance of the fort, and therefore part of the king's domaine. This does not appear to have been readily accepted by the seigneurs in this area. Charles de La Tour, the son, for example, was still claiming to be seigneur of the banlieue in 1705, when the king wrote to the gouverneur reiterating that the sieur de La Tour had no claims in the banlieue as defined in the 1703 arrêt.¹⁴⁶ Beyond the banlieue, the mémoire states, de La Tour would have no difficulty conceding lands.¹⁴⁷ De La Tour "et autres seigneurs du Port Royal," were warned several months later by sieur de Bonaventure who had taken over command at Brouillan's death, that they should claim no rights in the banlieue.¹⁴⁸ Bonaventure further ordered all those within the banlieue to bring their seigneurial dues to Goutin, the lieutenant général, creating a fund that he intended to use to support the hospital.¹⁴⁹ It seems this was not the end of the matter, however, as the minister found it necessary to remind Subercase in

¹⁴⁵ The arrêt reads, "les cens et rentes établi sur quelques maisons et terres situées *au-dessus* du dit fort." Vanderlinden, *Le lieutenant civil et criminel*, 386. But as this is followed by the words, "en descendant la riviere," it is clear that this is an error. It should read, "maisons et terres situées *au-dessous* du dit fort." And indeed this is how it is written in the advice given by Daguesseau which was followed exactly, but for certain unrelated additions made by the Conseil, in the arrêt. Avis de D'Aguesseau, Amelot et Le Haquais sur l'Acadie, 5 avril 1701, LAC, Archives des Colonies (France), Série E, carton 12, p. 50, accessed May 5, 2018, <http://heritage.canadiana.ca/>, C-9153, image 1059. The banlieue, which would now be part of the king's domaine, included most of the land along the river below the fort. This would explain why the La Tours' rights were limited to existing structures and currently occupied lands.

¹⁴⁶ "Mémoire du Roy à M. du Brouillan, gouverneur au de l'Acadie," 3 juin 1705, LAC, Fonds des Colonies (France), Lettres envoyées, Série B, vol. 27, fols. 165-174, 167, accessed May 6, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 3129207.

¹⁴⁷ "Mémoire du Roy à M. du Brouillan."

¹⁴⁸ M. de Bonaventure au ministre, 30 novembre 1705, LAC, Fonds des Colonies (France), C11D, vol. 5, fol. 117v, accessed May 6, 2018, Archives Search, http://collectionsCanada.gc.ca, MIKAN 2410268.

¹⁴⁹ M. de Bonaventure au ministre, 30 novembre 1705. Brenda Dunn writes that the dependance of the fort was extended in 1705 to an area within a three-mile radius. Dunn, *History of Port-Royal/Annapolis Royal*, 65. I have been unable to find evidence for this, and indeed the mémoire du roi sent to Brouillan in that year continued to refer to the two thousand pas géométrique established in the 1703 arrêt. The "Plan de la banlieue du Port Royal," from 1703, shows the limit of the banlieue. If the plan is to scale, it shows the banlieue extending approximately 1600 toise (9,600 common feet) or 10,000 pas géométrique. "Plan de la banlieue du Port Royal," Bibliothèque nationale de France, département Cartes et plans, GE SH 18 PF 133 DIV 8 P 5. The map is also reproduced in part in Dunn, *History of Port-Royal/Annapolis Royal*, 68.

1707 that the revenue from the banlieue was meant for the hospital, and that nothing was therefore due to the heirs of the sieur de Belleisle.¹⁵⁰ Subercase was told, however, that the king would be willing to consider whether justice required some compensation be given the family, and requested that Subercase advise him on the subject.¹⁵¹ As to the seigneurie of the Mines, the description is considerably vaguer. The seigneurie encompassed six leagues “beginning from and including the first house on the Port Royal side.”¹⁵²

All habitants in the province were to be maintained in “the full ownership and possession,” of their lands. If these lands fell within the king’s domaine, they were to register the information regarding their land on the king’s papier terrier, and pay such fees as the king would determine, which fees promised to be minimal as they would be determined taking into account what was appropriate to “advance the culture of the land and increase the colony.” The king further forbade the seigneurs who had conceded land to raise their seigneurial fees, to prevent the habitants from trading furs with the Natives, or from fishing by any means. The administrators of the colony were charged with keeping close records of the concessions made, and whether the lands were being diligently worked, which records, if ever made, have not surfaced.¹⁵³

¹⁵⁰ Le Ministre à M. de Subercase, 30 juin 1707, LAC, Fonds des Colonies (France), Série B, vol. 29, f. 188.

¹⁵¹ Le Ministre à M. de Subercase, 30 juin 1707.

¹⁵² Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 386; “en outre la seigneurie des mines ... dans l’étendue de six lieues, le tout à commencer depuis et compris la première maison établie qui regarde du costé du Port Royal.” With regard to the six leagues, the Dageusseau memo clarifies that it will extend, “in all directions” (de tout sens). Avis de M. d’Aguesseau, Amelot et Le Haguais sur l’Acadie, 1701,” LAC, Dossiers personnels, Série E, p. 50, accessed May17, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 3052091, image 1059. The La Tour heirs were granted middle and low justice for the seigneurie of Port-Royal and high, middle and low justice for the seigneurie of Les Mines. Both fiefs were held of the king, to which foi et hommage was due, as well as mutation fees. Aveu et dénombrement were to be made pursuant to the Coutume de Paris.

¹⁵³ Habitant concessionaires were not all satisfied with the arrêt, notwithstanding that it sought to maintain the status quo with regard to their rights. A 1705 Mémoire du Roy to Brouillan noted that the king had received several mémoires from habitants with concessions “complaining that they had been harmed by the arrêt,” and asking Brouillan to determine if any of them had merit. “Mémoire du Roy à M. du Brouillan gouverneur a de l’Acadie,” 3 juin 1705, LAC, Fonds des Colonies (France), Lettres envoyées, Série B, vol. 27, f. 162v-174, 170v-171, accessed March 14, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 3129207. One possible reason might be

After this determination of the La Tour heirs' seigneurial rights, land ownership in the settlements of Port-Royal and the Mines changed. Marie de Saint-Étienne could no longer claim any greater seigneurial rights in these areas than her siblings. Moreover, it was made very clear that any lands outside of those specifically described in the arrêt as belonging to the La Tour heirs were part of the king's domaine, and that thus any seigneurial charges in this area were due to the crown.

Two years after the arrêt was issued, the Dame de Belleisle entered into a contract transferring rights to a one-seventh part of a *ferme* called Notre-Dame-du-Levant, to Alexandre Girouard and Pierre Dupuis.¹⁵⁴ Girouard was Marie de La Tour's son-in-law and godson, and Pierre Dupuis was Girouard's cousin, his mother, Marie Gautrot, being the half-sister of Girouard's mother, Marguerite Gautrot.¹⁵⁵ The contract was fashioned both as a sale and as bail à rente, or a sale with an annual payment of rente.¹⁵⁶ In reality, the contract was less like a sale than it was a kind of annuity, as the rente was expressly non-redeemable.¹⁵⁷ The contract is interesting for the detail it provides regarding the arrangements made to secure Madame Belleisle's future, and the choice of instrument to accomplish these purposes, as well as the evidence it provides of the continuing viability of the seigneurial system.

that their concessions were not formalized, and that they now found their property located in the king's domaine, and subject to seigneurial charges, which although likely minimal, they may not have been previously required to pay.

¹⁵⁴ "Contrat d acquisition d'une part de la ferme [pour] pierre dupuis du 31 janvier 1705," CEACC, AN Colonies, Série G3, Notariat, vol. 2040, microfilm roll F-1630. A *ferme* was an agreement by which the owner of land or other right, abandoned its possession for a certain time and price, e.g. a *bail à ferme*. Ferme also referred, as in this case, to the thing given à *ferme*, such as a métairie or other land à roture. *Dictionnaire de L'Académie française*, 1re éd. (1694), at *DVLF*, s.v. "ferme," accessed May18, 2018, <https://dvlf.uchicago.edu/mot/ferme>.

¹⁵⁵ White, *Dictionnaire généalogique*, s.v. "Pierre Dupuis" and "Alexandre Girouard dit de RU," 1:600, 723.

¹⁵⁶ "Contrat d acquisition d'une part de la ferme [pour] pierre dupuis du 31 janvier 1705," CEACC, AN Colonies, Série G3, Notariat, vol. 2040, microfilm roll F-1630; "Marie de St-Etienne de La Tour ... reconnu et confesse avoir bailée cedde quitte delaisse et transporté tant a tilre de vente que de rente."

¹⁵⁷ Claude de Ferrière, *La science parfaite des notaires, ou Le moyen de faire un parfait notaire* (Paris: Chez Charles Osmont, 1682), 239. Given this, under the law, the land never technically passed out of the grantor's hands, and thus, for example, no lods et ventes were due at the time of the contract as would have been the case in a sale, pure and simple, or a bail à rente where the rente was redeemable.

Notre-Dame-du-Levant, according to Brun, was located on the south side of the rivière du Dauphin, across from the east end of the Belleisle marsh.¹⁵⁸ It was one of the farms originally developed by d'Aulnay, and later possessed by Jeanne Motin, and almost certainly leased out by her as a métairie.¹⁵⁹ Some years after Motin died, Alexandre Le Borgne, who was or would shortly be married to Marie de Saint-Étienne de La Tour, took possession of the farm, effectively dispossessing the other children of La Tour and Motin.¹⁶⁰ Thus, the seventh part in question was part of a larger farm that had been owned by Le Borgne, and after his death, Marie, for more than thirty years. Now, as a result of the 1703 arrêt, it would seem that the farm was required to be divided in seven parts, as were the rest of the seigneuries of Port-Royal and Les Mines. The contract states that the formal division was to happen the next spring.

The land conveyed contained “marsh, meadow, woods, a house, stable, barn, court and garden.” It would be reasonable to conclude that the property, together with its buildings, were at the time of the contract being leased by Girouard from the Dame de Belleisle, and that this contract made the existing arrangement more permanent.¹⁶¹ In exchange for the land and buildings, Girouard and Dupuis were obligated, jointly and severally, to provide the Dame de Belleisle, for the duration of her life, “ten bushels of grain of which eight ... [are] of wheat, unmixed and clean and in good and merchantable condition, delivered to her house at Port-

¹⁵⁸ Brun, *Les Acadiens avant 1755*, 8. Brun has the name as “Notre-Dame-Delavant,” however, at least in this contract, it appears that the word is as I have written it.

¹⁵⁹ Brun, 8. See also “M. Subercase au ministre, 20 décembre 1708,” LAC, Fonds de Colonies (France), Série C11D, vol. 6, fols. 181v-182, accessed March 8, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 241037 (discussing how Subercase had consulted with old inhabitants and they assured him that d'Aulnay had created the farm and that Jeanne Motin had possession of the land for fifteen or sixteen years after d'Aulnay's death).

¹⁶⁰ “M. de Subercase au ministre, 20 décembre 1708,” fol. 182.

¹⁶¹ Both Brun and Placide Gaudet place Jacques Girouard at this place, the father of Alexandre Girouard. Gaudet writes that Jacques Girouard died in 1703, leaving fourteen children, and that six of his sons settled on the south side of the river, presumably at the family hamlet Brun calls Notre-Dame-Delavant. Gaudet, “Plan of the River of Annapolis Royal in Nova Scotia.” Placide Gaudet identified this area as “Girouard Village.”

Royal.”¹⁶² In addition, the two agreed to nourish and winter two cows, bringing them to the house of Marie de La Tour in Port-Royal at the beginning of each spring. Finally, Girouard and Dupuis were obligated to pay her, and after her death, her heirs, the annual rente of eight livres payable on the Feast of St. Martin, which rente was non-redeemable.¹⁶³ The contract states that the land was “charged with seigneurial fees (redevances),” it being currently in the censive of the Dame de Belleisle. The type and amount of those fees were not specified. Nor was it yet clear to whom the fees would eventually be paid, as the division of the farm had not yet taken place.¹⁶⁴

In June of that same year (1705), the Conseil ordered, upon request of the Dame de Belleisle, that she be formally given possession of what appears to be this part of the ferme.¹⁶⁵ The order does not assume, however, that she would be the seigneur of this land, as the Conseil specified that she pay 10 sols of cens and lods et ventes to whichever of the La Tour heirs ended up owning the seigneurie in which the land was located.¹⁶⁶

¹⁶² “Contrat d acquisition d’une part de la ferme [pour] pierre dupuis du 31 janvier 1705,” CEACC, AN Colonies, Série G3, Notariat, vol. 2040, microfilm roll F-1630; Girouard and Dupuis were obligated to provide Marie de La Tour “dix boisseaux de bled dont huit [sont] La barrique de bled froment pur et net bon loyal et marchand en sa maison sise au port royal.”

¹⁶³ The feast day of St. Martin of Tours was celebrated on November 11, around the harvest. Livre tournois at that time, which was money issued at Tours, was worth 20 sols, while livre parisien, or that issued at Paris, was worth 25 sols. *Dictionnaire de l’Académie française*, 1694, at *DVLF*, s.v. “livre,” accessed May 21, 2018, <https://dvlf.uchicago.edu/mot/livre>.

¹⁶⁴ Vanderlinden believed that seigneurial contracts were becoming simpler and that it could be an indication that the seigneurial directe was becoming less important in l’Acadie. Vanderlinden, *Le lieutenant civil et criminel*, 176-177. Given the circumstances, this contract can not be used to support this hypothesis.

¹⁶⁵ Arrêt pour faire mettre en possession la veuve du sieur de Belle-Isle d’une ferme et d’un moulin à eau, 2 juin 1705, LAC Fonds des Colonies (France), Série C11D, vol. 5, fols. 79-80, accessed May 22, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2410256.

¹⁶⁶ In 1735, another part of this same ferme of Notre-Dame-de-Levant changed hands. Jeanne Loreau, widow of Charles de La Tour, now living in Louisbourg, sold all of her and Charles’s heirs’ interest in the seventh that Charles had in the ferme to the same Alexandre Girouard and his wife Marie de Saint-Étienne de La Tour. “Vente d’un terrain situé dans l’Acadie, appartenant à feu Étienne de la Tour, passé par Jeanne Loreau, veuve de Charles Saint-Étienne ... à Alexandre Girouard,” LAC, Fonds des Colonies, Dépôt des papiers publics des colonies, Série G3, vol. 2039, accessed May 23, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2476718. This piece of land, unlike the earlier sold to Girouard, consisted only of grazing meadow and land which had been planted in wheat. The contract also sold to Girouard the right to receive rente on the property which had previously been the subject of a contract between Charles de La Tour (son) and Jacques Girouard, one of Alexandre Girouard’s brothers. Jacques Girouard was to be permitted to maintain his rights to the land as a condition of the contract. This was a sale,

Contracts for the sale of land made after 1703 also show that the French officials in Port-Royal were quick to collect the seigneurial charges on transfers of land within the king's domaine. Consider a contract of sale between the seller, Charles Robicheau (Robichaud), a habitant of Port-Royal, and the buyer, Maistre Gautier, a *constructeur* or builder for the king, for a piece of land located on the north shore of the rivière du Dauphin below the village of Port-Royal at a place called La grosse roche.¹⁶⁷ In accordance with the 1703 arrêt, the principal seigneurs of Port-Royal, the La Tours, only had the right to existing homesteads below the fort. All other lands were within the king's domaine. Thus, in addition to the sale price of thirty-six livre, the buyer in this case took the land "at the charge of the said lots et ventes," payable to the seller, who "has had to pay the ventes to the seigneur[,] the said land in the mouvance of His Majesty."¹⁶⁸

Land within the village and banlieue of Port-Royal was also, as noted above, within the domaine of the king who enforced his seigneurial rights, at least with regard to the transfer fees. There do not appear to have been any cens et rentes attached to the properties in Port-Royal village. Thus, in 1706, Louis Simon Le Poupet de La Boularderie sold a house and garden to Louise Guyon, widow of Mathieu Damours de Freneuse in the lower village of Port-Royal.¹⁶⁹ In

"pure and simple," and thus transferred all rights and obligations, including any seigneurial rights, to Girouard. If Charles de La Tour was seigneur of this seventh, as it would seem, then under French property law his direct would transfer along with the utile, and Alexandre Girouard would now hold the fief directly from the king. There is, however, no mention of seigneurial rights and duties in the contract. The British had been governing l'Acadie for twenty-five years. In addition, the Board of Trade was maintaining that they had purchased all seigneurial rights from Agathe Campbell, the great-granddaughter of Charles de Saint-Étienne de La Tour, in 1734, a year before this contract was signed. These circumstances may have something to do with the fact that this contract, signed in 1735, was silent as to the issue of seigneurial rights.

¹⁶⁷ "Contrat de M Gautier de la terre de la grosse roche, 1705," 11 novembre 1705, CEAAC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll F-1960. The land is said to be near the land of the Bourgs.

¹⁶⁸ "Contrat de M Gautier de la terre de la grosse roche, 1705"; "... en outre a la charge des lotz et ventes a ledit vendeur s'est obligé de payer les ventes au seigneur ladite tere relevant e de Sa Majesté."

¹⁶⁹ "Contrat d acquisition pour Madame de Freneuse," 21 décembre 1706, CEAAC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll F-1960. Mathieu Damours de Freneuse was an Acadian seigneur who

addition to the sale price of two hundred livres, the buyer was required to pay the “lots et ventes and seigneurial rights due to His Majesty the said land being in His Censive.”¹⁷⁰ In another contract from this period, Pierre Chouteau sold Louis Marchadien (Marchand?) two arpents of land and a house in the village.¹⁷¹ In this case, the seller represented that the land was “in the censive of His Majesty on which is charged no redevance as is evident by his contract of marriage passed by Loppinot ... the eleventh of November, 1703.”¹⁷² The marriage contract is lost, and it is not clear why the king would have waived the lods et ventes in this case, but it is significant that the seller felt it necessary to clarify for the buyer that he would not be responsible for the charges to which he would normally be subject. Finally, the sale of land and house within the banlieue of the town from François du Pont Duvivier and his wife Marie Mius d’Entremont to Jean-François Flanc (Flan) was made, in addition to the sale price, at the charge of the lods et ventes.¹⁷³

Other than the d’Amours contract discussed above, there is only one other contract involving the transfer of land in the Loppinot collection that contains no mention of seigneurial

in 1684 was granted a seigneurie on the rivière Saint-Jean between Jemseg and Nashwaak. He is said to have built a lumber mill, residence and barns there and even attracted some settlers. In 1696, his settlement was destroyed by an expedition from New England. Damours de Freneuse died shortly thereafter and his widow moved to Port-Royal. George MacBeath, “Damours de Freneuse, Mathieu,” in *DCB*, vol. 1, revised 1979,

http://www.biographi.ca/en/bio/damours_de_freneuse_mathieu_1E.html. The house that Louise Guyon bought is shown on the 1710 Delabat map as number 37, next to the house of Monsieur Flan, number 36. “Plan du cours de la rivière du Dauphin/Delabat,” 1710, BnF, département Cartes et plans, GE SH 18 PF 133 DIV 8 P6.

¹⁷⁰ “Contrat d acquisition pour Madame de Freneuse,” 21 décembre 1706; “et ... a la charge des lots et ventes et droits seigneuriaux deub a Sa Majeste lad. terre estant en sa Censive.”

¹⁷¹ “Contrat d acquisition [. . .] Marchadien 1706,” 14 décembre 1706, CEAAC, Série G3, Notariat, carton no. 2040, microfilm roll F-1960. There is a Louis Marchadien (also spelled Marchalieu and Marchandieu) listed as the father of three children by Marie Gaudin in the parish registers of Saint-Jean-Baptiste, Port Royal. This appears to refer to Louis Marchand and Marie Godin. See White, *Dictionnaire généalogique*, s.v. “Louis Marchand,” 2:1118. The registers from 1702 to 1755 may be found in searchable form online at N. S. Arch., “An Acadian Parish Remembered: The Registers of St. Jean-Baptiste, Annapolis Royal, 1702-1755,” accessed May 24, 2018, www.novascotia.ca/archives/acadian.

¹⁷² “Contrat d acquisition [. . .] Marchadien 1706”; “... la ditte terre en la censive de sa majeste envers elle chargée d’aucune redevances ainsy quyl appert par son contrat de mariage passe par Loppinot ... le onziesme novembre mil sept cents trois.”

¹⁷³ “Duvivier Enseign and Marie Mius to Jean-François Flanc, dated 30 mars 1707,” registered May 25, 1733, N.S. Arch. Grant Book 1, pp. 40-41.

rights. In 1707, Jeanne Tériot, the widow of Pierre Thibodeau, made a donation or gift to her sons, Michel and Claude, of the family homestead, including buildings and a mill, located above and on the same side of the river as Port-Royal in a place called Prée Ronde. The contract, which provides very detailed conditions for the support of Tériot during her life, and for contributions to the care of her other children, is unusual in that it does not appear to make reference to seigneurial rights or charges.¹⁷⁴ It is not clear, therefore, how Thibodeau and Tériot held their land. Thibodeau was one of the earliest settlers, having arrived in l'Acadie in 1654.¹⁷⁵ He was married around 1660, and the couple appears in the 1671 census for Port-Royal.¹⁷⁶ Thibodeau would have arrived during the time that Jeanne Motin was the seigneur of the colony. Whether Motin gave Thibodeau a promissory note (billet) for the land at Prée Ronde, and what occurred when Le Borgne was finally installed as seigneur in the 1670s, is unknown. It is clear, however, that in accordance with the Conseil du Roi's 1703 arrêt, this land, at the time of the donation, fell within the seigneurie of the La Tour heirs. It is possible that the division called for among the heirs had not yet been carried out, or, that whatever right Port-Royal's seigneurs had on the property had been neglected. It seems unlikely, however, that the profits from the mill located on the property, would have been ignored by the seigneurs. It is also possible that Thibodeau, a relatively well off miller, had purchased the direct of the land, and thus owned the land as a seigneurie. Thibodeau owned at least one other seigneurie, on a river between what is today Mt.

¹⁷⁴ "6 juillet 1707 Jeanne Teriot," CEAAC, AN, Fonds des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll F-1960. There are parts of this contract that are indecipherable. Thus, it is possible there is some reference to seigneurial rights that this reader has been unable to ascertain.

¹⁷⁵ Clément Cormier, "Tibaudeau, Pierre," in *DCB*, vol. 2, revised 1982, http://www.biographi.ca/en/bio/tibaudeau_pierre_2E.html.

¹⁷⁶ 1671 Recensement, LAC, Série G1, vol. 466, C-2572, p. 7 (transcription).

Desert Island and Machias, and sought, unsuccessfully, to establish another in Chipoudy.¹⁷⁷ For now, these questions remain unanswered.

In sum, there is ample evidence that land tenure in Port-Royal between 1670 and 1713 was organized according to the principles of seigneurialism. This evidence includes not only the small number of concessions granted by the seigneurs of the place, Alexandre Le Borgne or his wife, Marie de Saint-Étienne de La Tour, but also the reference to many other concessions in the correspondence of French officials, and especially, the references made to seigneurial rights in contracts transferring land from one habitant to another. Of the fifteen extant contracts involving land transfers in the Port-Royal area, only two contained no mention of seigneurial rights or charges, and these may have involved special circumstances.¹⁷⁸

Beaubassin: Michel Le Neuf de La Vallière

Between 1671, the year of the first census, and 1686, when the next census was taken, the first wave of out-migration from the Port-Royal area brought Acadians to the Isthmus of Chignecto, in a place they called Beaubassin.¹⁷⁹ Some have written that Jacques Bourgeois, surgeon, was the first to lead his family to Beaubassin, and that they arrived before any seigneur was in the area, perhaps as early as 1671 or 1672.¹⁸⁰ Jean Daigle, however, has shown, quite

¹⁷⁷ See discussion, pp. 205-207.

¹⁷⁸ A sixteenth contract for the sale of land located in Chignecto is found in the Loppinot collection. This contract is also conditioned on the payment by the buyer of specifically prescribed cens et rentes to the seigneur, Michel Le Neuf de La Vallière, and will be discussed below.

¹⁷⁹ 1686 Recensement, LAC, Série G1, vol. 466, C-2572, fols. 14-57. See also Daigle, "Michel Le Neuf de La Vallière," Appendice II, "Étude sur le recensement des habitants de Beaubassin en 1686," 123-133. A comparison of the two censuses shows that seven heads of family counted in the 1671 census for Port-Royal, appeared in the 1686 census for Beaubassin.

¹⁸⁰ Griffiths, *From Migrant to Acadian*, 116 ("there seems little doubt that ... Jacques Bourgeois helped to establish a settlement at Beaubassin, either immediately before or at the very time that La Vallière was granted his seigneurie there"); Clark, *Acadia*, 141 ("not long after 1671 Jacques Bourgeois ... decided to move to Beaubassin"); Rameau, *Une colonie féodale*, 1:156-167 ("we may therefore consider it certain that a few years after the census of 1671

convincingly that there is insufficient evidence to support this conclusion, given that Bourgeois still appeared in the 1686 and 1693 censuses as a habitant living in Port-Royal.¹⁸¹ Bourgeois was also at Port-Royal in 1673 for a meeting of habitants called to discuss funding for a new church.¹⁸² As Daigle concludes, “there were maybe some colonists at Beaubassin before the arrival of La Vallière but we do not know for certain who their leader was or who established themselves there first.”¹⁸³

If colonists were not in Chignecto before Michel Le Neuf de La Vallière received his concession for the area in 1676, they were there shortly after. A donation of land to the mission of the Recollets given by La Vallière and his wife in 1678 describes the land as extending half-way to the houses of “Martin and La Vallée.”¹⁸⁴ Moreover, parish registers show that marriages were occurring in Beaubassin as early as 1679, including the marriages of two of Jacques Bourgeois’s daughters, Marguerite and Marie.¹⁸⁵ Jean-Baptiste de La Croix de Chevrères de Saint-Vallier, second Bishop of Nouvelle-France, also noted in a letter he wrote containing an account of a journey he took to l’Acadie in 1686, that the first French came to Beaubassin ten years before and had since then built dykes creating farmlands.¹⁸⁶ By the 1686 census, there were sixteen families counted in Beaubassin, in addition to the family of La Vallière.

Bourgeois founded on the territory of Chignitou a semi-commercial and semi-agricultural establishment” ([n]ous pouvons donc considérer comme certain que peu d’années après le cens de 1671 Bourgeois fonda sur le territoire de Chignitou un établissement demi-commercial et demi-agricole)).

¹⁸¹ Daigle, “Michel Le Neuf de La Vallière,” 64.

¹⁸² “Sur la convocation d’assemblée des habitants,” 18 juin 1763, FR ANOM COL E 266, pp. 308-309.

¹⁸³ Daigle, “Michel Le Neuf de La Vallière,” 64; “Il y eut peut-être des colons à Beaubassin avant l’arrivée de La Vallière mais nous ne savons pas d’une manière certaine qui fut leur chef ou qui s’y installa le premier.”

¹⁸⁴ Sixte Le Tac, *Histoire chronologique de la Nouvelle-France ou Canada, depuis sa découverte (mil cinq cents quatre) jusques en l’an mil six cents trente deux (1689)*, ed. Eugène Réveillaud (Paris: Grassart et Fischbacher, 1888), 191-192.

¹⁸⁵ De Ville, *Acadian Church Records*, 2.

¹⁸⁶ “Lettre de monseigneur l’évêque de Québec, ou il rend compte a un de ses amis de son premier voyage de Canada...,” in Henri Têtu et C.-O. Gagnon, eds., *Mandements, lettres pastorales et circulaires de évêques de Québec* (Québec, 1887), 191-265, 217.

La Vallière received his concession on October 24, 1676 in high, middle and low justice for an area that included the Chignecto peninsula, and probably extended from what is today the River Philip in Nova Scotia, to Shemogue Harbor in New Brunswick.¹⁸⁷ La Vallière was given the seigneurial rights of the hunt as well as fishing, and was subject to “droits et redevances accoutumés,” in accordance with the Coutume de Paris, all at the charge of foy et hommage to be made at the château de Saint-Louis in Québec. The concession contains certain limitations familiar from concessions granted in other parts of Nouvelle-France. La Vallière must require that those to whom he granted a concession live on the land (feu et lieu), the failure to do so resulting automatically in his regaining possession. As to himself, the concession recites the fact that it is his desire to live on his seigneurie and pursue there both a sedentary fishery and farming. Neither he nor his tenants would be allowed to cut oak trees that grew on the land, these to be reserved for shipbuilding. Finally, La Vallière was required to notify the government of any mines found on the land; and to preserve all necessary paths and passages on the land. La Vallière’s concession was confirmed by the king, along with other concessions that had been granted by Frontenac and Duchesneau, by order dated May 29, 1680. The confirmation was

¹⁸⁷ “Concession de Chignito ou Beaubassin au sieur Le Neuf de La Vallière, par M. Le Comte de Frontenac, Gouverneur du Canada, 24 octobre 1676,” FR ANOM COL E 277 (Le Neuf de La Vallière, Michel), pp. 179-182, last revised May 26, 2010, <http://anom.archivesnationales.culture.gouv.fr/ark:/61561/up424vpqoqry>. The intendant, Jacques Duchesneau de la Doussinière et d'Ambault, issued a separate concession for the same seigneurie. “Concession de Chignito ou Beaubassin, au Sr Leneuf de La Valliere,” pp. 183-186. The description of the land in this concession uses Native names no longer used today. The grant is for “dix lieues de terres de front ... à commencer depuis la riviere Kiskauabougouet icelle comprise jusqua une autre riviere appelée Kimongouiche.” It also grants “dix lieues de profondeur dans lesdites terres, dont la baye de Chignito et le cap Tormantin font partie.” Ganong identified the Kigiskouabougouet as the River Philip in present day Cumberland County, Nova Scotia; and the Kimongouiche as a misprint for Simougouiche, or Little Simougouit, today, Little Shemogue. Lauren Beck, “Early Modern European and Indian Linguistic Influences on New Brunswick Place Names,” *Journal of New Brunswick Studies* 7, no. 1 (2016): 26, referencing William F. Ganong, *An Organization of the Scientific Investigation of the Indian Place-nomenclature of the Maritime Provinces of Canada*, Transactions of the Royal Society of Canada, 3rd Series (Ottawa: Royal Society of Canada, 1912), 188.

conditioned on the concession-holders clearing and working their lands within six years, on pain of losing their concessions.¹⁸⁸

More than one commentator has written that La Vallière's title contained the admonition that he was not to disturb the habitants already established on the lands in Beaubassin¹⁸⁹ This is sometimes cited as evidence that there were settlers established there at the time La Vallière's concession was granted, and that La Vallière was forced to accommodate them. However, this language does not appear in the 1676 concession. Instead, a 1705 order of the Conseil d'État du Roi, reviewing La Vallière's land claims as it had other land claims in the province, confirmed his concessions, but added, that La Vallière would not be able to "dispossess the habitants of the said Province who will be in possession of lands and inheritances which they occupy."¹⁹⁰ This is not unlike what the Conseil prescribed for the La Tour heirs in the 1703 arrêt confirming their seigneuries in Port-Royal and Les Mines. La Vallière was admonished to maintain the habitants "in the full ownership and peaceful enjoyment of the said lands, properties and inheritances which they cultivate, inhabit and make productive," subject only to charges "des censives et droits seigneuriaux."¹⁹¹ The order affirms, therefore, the unexceptional proposition, consistent with French law, that the censitaires in Beaubassin, although safe on their tenures, must continue to pay their cens and rentes, and other seigneurial dues.

¹⁸⁸ "Arrêt qui confirme les Concessions faites par Monsieur le Gouverneur et Monsieur l'Intendant, depuis le 12 octobre 1676 jusqu'au 5 septembre 1679," *Edits et ordonnances*, 1:240-241.

¹⁸⁹ Kennedy, *Something of a Peasant Paradise*, 141; Rameau, *Une colonie féodale*, 1:169; Griffiths, *From Migrant to Acadian*, 116, n. 90, citing to Léopold Lanctôt, *L'Acadie des origines: 1603-1771* (Montréal: Éditions du Fleuve, 1988), 66.

¹⁹⁰ "Arrêt qui maintient le Sr. de La Vallière Major de Montréal dans les concessions à lui faites à l'Accadie," 2 juin 1705, FR ANOM, COL E 277 (Le Neuf de La Vallière, Michel), pp. 216-217; "sans toutefois que led. Sieur de La Vallière . . . puissent déposséder les habitants de lad. Province qui se trouveront en possession des terres et héritages qu'ils occupent."

¹⁹¹ "Arrêt qui maintient le Sr. de La Vallière Major de Montréal dans les concessions à lui faites à l'Accadie," 2 juin 1705, 217; ". . . en la pleine propriété et paisible jouissance des d. terres biens et héritages qu'ils cultivent, habitent et font valoir . . . à la charge seulement des censives et droits seigneuriaux."

La Vallière moved to his seigneurie with his family in 1678 or 1679.¹⁹² He was not, however, just the seigneur of this new area of settlement, he was also a government official. Around the same time he moved to l'Acadie, Frontenac gave him command of the colony. He was, in effect, acting gouverneur in the absence of the king's appointee, Jacques de Chambly, who remained outside the country.¹⁹³ The appointment of gouverneur, however, required a royal commission. Although Frontenac advocated for him for years, an official commission for "commandant en Acadie" was only issued in August, 1683, one year before he would be ousted from the position.¹⁹⁴

Meanwhile, in 1682, Colbert helped set up the Compagnie de la pêche sédentaire or Compagnie d'Acadie, a commercial venture, which was granted the right to "to trade fish, oil from their fish, wood to build, and other merchandise of the country of the said coast of l'Acadie and the rivière Saint-Jean."¹⁹⁵ As the location of their principal place of business was not yet known, the company was granted "six leagues around the settlement which they will establish."¹⁹⁶ The founding members included Berger des Hermeaux of La Rochelle, Gabriel Gauthier, and Boucher and Mantes of Paris, and was under the authority of the duc de Chevre.¹⁹⁷

¹⁹² La Vallière acted as a witness for marriages in Beaubassin as early as April 1679. De Ville, *Acadian Church Records*, 2.

¹⁹³ Chambly was appointed in 1673 to replace Grandfontaine, who had been recalled. René Baudry, "Andigné de Grandfontaine, Hector d'," in *DCB*, vol. 1, revised January 2015, http://www.biographi.ca/en/bio/andigne_de_grandfontaine_hector_d_1E.html. However, he was also made military commander of the Antilles and never came to l'Acadie. Daigle, "Michel Le Neuf de La Vallière," 41. Pierre de Joybert de Soulanges et de Marson had been delegated the responsibility to administer the colony from Jemseg on the rivière Saint-Jean. It was on his death in July 1678 that Frontenac granted governing authority to La Vallière. Daigle, 41.

¹⁹⁴ Daigle, 50.

¹⁹⁵ Daigle, 51-52, quoting from "Concession au sieur Bergier," 28 février 1682; the Compagnie de la pêche sédentaire was granted the right "négotier ... du poisson, huile de leur pêche, bois à bâtir, et autres marchandises du pays de ladite côte de l'acadie et rivière Saint-Jean." This concession is found at LAC, Fonds des Colonies, Série C11D, vol. 1, fols. 150-151, accessed May 24, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 2409932.

¹⁹⁶ Daigle, "Michel Le Neuf de La Vallière," 51, quoting "Concession au sieur Bergier," 28 février 1682, fol. 150v; the company was granted "six lieues aux environs de l'habitation qu'ils feront."

¹⁹⁷ Daigle, 51.

These established themselves at Chedabouctou (Guysborough), but would receive another concession, this time from “Cap Rouge (Cape Argos, Guysborough) . . . jusqu’à la baie de toutes les Iles (La Hève).”¹⁹⁸ This concession extended inland a distance of ten leagues, making the Compagnie d’Acadie “the most important seigneurs in l’Acadie.”¹⁹⁹ La Vallière and the Compagnie d’Acadie clashed in the years that followed, especially over La Vallière’s practice of selling permits to the English to fish off the coast of l’Acadie, a practice that reflected the practical need to reach some accommodation with the New Englanders, but which was seen by the Compagnie as a threat to its monopoly. The Compagnie succeeded in 1684 in having La Vallière replaced by François-Marie Perrot, who had been recalled from his position as gouverneur of Montréal. With Perrot’s appointment, La Vallière’s governmental functions came to an end.

As noted above, La Vallière donated land for a mission as one of his first acts as seigneur. A church built on this land would be known as Notre-Dame de Bonsecours.²⁰⁰ While La Vallière probably did not bring families to Beaubassin from Canada, he is credited with having brought single men, engagés, domestics, and artisans, some of whom assimilated to the Acadian culture by marrying Acadian women. As seigneur, La Vallière was involved in the clearing of land and diking marsh. He built a mill, and provided security for the settlement, thus fulfilling his seigneurial responsibilities.²⁰¹ He established regulations for the seigneurie and

¹⁹⁸ Daigle, 52.

¹⁹⁹ Daigle, 53. At the start of the company, Bergier was responsible for bringing up to thirty people to live in the Chedabouctou area, including at least one woman, where they built dwellings, cultivated the soil and planted fruit trees and vines. Griffiths, *From Migrant to Acadian*, 122.

²⁰⁰ Daigle, “Michel Le Neuf de La Vallière,” 71.

²⁰¹ A description of his seigneurie may be found in certain contemporary documents including reports written by visiting functionaries and court documents. Jacques de Meulles intendant of Nouvelle-France, 1682-1686, visited the area in 1685-1686, and wrote about La Vallière’s seigneurie at Beaubassin. *Mémoire concernant Beaubassin ou Chignectou*, 1686, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fols 48-51v. De Meulles wrote that there were already twenty-two habitations there each with three or four separate outbuildings, cattle, pigs and sheep for wool. In the six to seven years La Vallière had lived there as seigneur, de Meulles maintained, La Vallière had, by

resolved disputes.²⁰² As was fitting for the seigneur, La Vallière and his children were also called on to witness marriages, and to be godparents in baptisms. Of the six marriages listed in the parish register for Beaubassin between 1679 and 1686, La Vallière was listed in five, and two of his sons were listed on the sixth. His children are shown as sponsors in ten of the thirty-six baptisms.²⁰³

While there are no extant concessions granted by La Vallière, there is clear evidence that such concessions were made. A contract of sale drawn up by Loppinot in 1701 for land in Chignecto shows that the land there was dependent on La Vallière's seigneurie, and that the habitants continued to pay their seigneurial charges to La Vallière, even after he had left the colony in the hands of his son-in-law, Claude-Sébastien de Villieu. On June 25, 1701, Jean Beliveau sold a piece of land, part of which was cultivated, to Jean Potie (Poitier), a habitant of Chignectou.²⁰⁴ The sale price was one hundred and fifteen livres "payable . . . en argent ou pelleteries" (payable . . . in silver or furs), as the parties would agree. In addition to this, the sale

his "reputation and esteem" attracted "nearly all the habitants" present there, a questionable assessment. De Meulles observed that La Vallière had not only built a mill there at his own expense, but notwithstanding the little he had himself, lightened the load of the habitants as much as he could. De Meulles appeared quite happy with the seigneur of the place: "One would wish that the other seigneurs had the same sagacity and moderation; the whole country of l'Acadie would be well established" (Il serait à souhaiter que les autres seigneurs eussent la mesme sagesse et modération, tout le país de l'Acadie en seroit bien plus tôt estably). For additional information concerning the functioning of La Vallière's seigneurie, see Procès de Jean Campagna, 26 septembre 1684 to 28 juin 1685, BANQ, Fonds Conseil souverain, TP1.S777.D117. Testimony given at this sorcery trial involving a habitant from Beaubassin shows, among other things, that La Vallière hired engagés, and perhaps wage workers to work on his marshland farm, and that the people generally looked to him to establish order and provide security. Those attempting to replace La Vallière as gouverneur, on the other hand, sought to minimize what he was able to accomplish as seigneur. See "Placet a Colbert par les intéressés dans la pêche de la côte d'Acadie," 1682, LAC, Fonds des Colonies (France), Série C11D, vol. 1, fols. 175-176, 176, accessed May 25, 2018, Archives Search, <http://collectionscanada.gc.ca/>. Presumably written by those with interests in the Compagnie d'Acadie, the letter argues that, in addition to other deficiencies, La Vallière had "only one very small settlement very far from the south coast of l'Acadie" (ledit valiere n'ayant qu'une tres petite habitation fort esloignee de la coste du sud de la cadie).

²⁰² In 1681, La Vallière commissioned Couraud to undertake, in his absence, both governmental and seigneurial functions at Beaubassin, including enforcing the ordonnances La Vallière had established for the seigneurie and resolving disputes between the habitants. Commission donnée par M. la Vallière au S. Couraud, 16 juillet 1681, FR ANOM, Col E 266, p. 285.

²⁰³ De Ville, *Acadian Church Records*, 2-9.

²⁰⁴ Contrat d acquisition p[our] Jean Potie d une tere de Chignictou," 25 juin 1701, CEAAC, AN, Archives des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll F-1960.

was conditioned on the buyer paying “the seigneurial rights and rentes which are two bushels of wheat and two capons of rent the said land being in the censive of Monsieur de La Valier seigneur of the said place.”²⁰⁵

Further evidence that the habitants of Beaubassin lived and farmed on lands conceded by La Vallière is provided by a 1682 *assignation*, or complaint, filed by La Vallière against eleven habitants, all or most of whom had relocated from Port-Royal and were living on the seigneurie of Beaubassin. The complaint alleged that the habitants had refused to accept the contracts of concession that La Vallière offered them.²⁰⁶ They had been served notice to appear before the Conseil at Québec which would determine the dispute, together with any charges to which the habitants would be subject. The document also states that the seigneur now considered the “billets”—a kind of promissory note allowing them to occupy the land—which he had previously furnished them, void; and that one of the habitant’s existing concessions would be reduced, possibly in an exchange of lands.²⁰⁷ Whether in the form of billets or concessions, therefore, the habitants in Beaubassin held their lands subject to the seigneurial rights of La Vallière.

In discussing this case, Naomi Griffiths notes that “none of the settlers whom La Vallière had brought from Canada was party to this suit,” and that the habitants’ refusal “was apparently upheld by the council.”²⁰⁸ This fits into the narrative that the Acadian habitants who had settled in Beaubassin resisted paying seigneurial exactions, and perhaps resented what Griffiths has

²⁰⁵ “Contrat d acquisition p[our] Jean Potie,” 25 juin 1701”; the buyer must pay “des droits seigneuriaux et des rentes qui sont du deux boisseaux de bled et du deux chapons du rente etant la dite tere en la censive de Monsieur de La Valier Seigneur du dit lieu.”

²⁰⁶ Assignation par Michel Le Neuf à ses censitaires, 20 mars 1682, LAC, Fonds Beaubassin, MG 9, B9-2, vol. 1, p. 5

²⁰⁷ Assignation par Michel Le Neuf (“ledit seigneur pretand nullité des billets quil leur a cy devant fournes pour ce sujet et a pierre Morin le retranchement de partie de la terre a luy conceddée pour avoir souffert prendre a son fils en consideration du [] partie estoit concedde des fermes sur les terres dautres habitans”).

²⁰⁸ Griffiths, *From Migrant to Acadian*, 119.

written may have been a larger attempt by La Vallière “to regularize the ownership of land broadly and impose strict seigneurial practices.”²⁰⁹ According to Griffiths, moreover, the authorities in Québec took the habitants’ part.

This, however, overstates the case. First, there is no evidence that the Conseil held in favor of the habitants. Daigle suggests that, in the absence of any record of a final decision on the matter, it is instead likely that the parties reached some kind of settlement.²¹⁰ Moreover, it is not the case that La Vallière was attempting to enforce his right to concede lands or that the habitants in question had previously resisted his right to do so. As noted above, the complaint refers to “billets” that La Vallière had previously issued for the lands held by these habitants, as well as a concession that La Vallière was now attempting to reduce in size. Why these habitants should now object to a more formal contract of concession is not clear from the complaint. It is possible, however, as Daigle posits, that La Vallière was now, by this means, attempting to raise the cens et rentes, and that this was unacceptable to the habitants.²¹¹ In any event, the complaint cannot be used as evidence that the habitants were resisting seigneurial authority itself.

La Vallière did, however, apparently meet some resistance with regard to his authority as commander, at least initially. A letter from Frontenac to the king reported that “the habitants had shown some difficulty in receiving his orders.”²¹² It is not clear what the problem may have been, but it is understandable, as Daigle suggests, that an administrator without resources or the

²⁰⁹ Griffiths, *From Migrant to Acadian*, 119.

²¹⁰ Daigle, “Michel Le Neuf de La Vallière,” 82.

²¹¹ Daigle, 82.

²¹² Daigle, 86, quoting “Lettre du gouverneur Frontenac au roi,” 6 novembre 1679, in *Rapport de l’Archiviste de la Province de Québec (1926-1927)* (Québec: L.-Amable Proulx, 1927), III; “les habitants avaient témoigné quelque peine de recevoir ses ordres.”

full backing of the crown might have faced challenges. In any event, after the initial difficulties, La Vallière was said to be able to “unite all minds and bring everyone back to their duty.”²¹³

Moreover, La Vallière’s assertion of governmental powers overlapped, and in some cases conflicted, with the rights and authorities of other Acadian seigneurs. It has already been mentioned that the Compagnie d’Acadie resented La Vallière’s granting permission to New Englanders to fish in the waters off the coast of l’Acadie, and eventually was successful in having him removed as commandant and gouverneur. La Vallière’s actions also gave rise to a complaint made against him by Alexandre Le Borgne de Belleisle to the gouverneur of Nouvelle-France, Joseph-Antoine le Lebvre de La Barre (1682-1685). Belleisle alleged that La Vallière, it would seem in his capacity as commandant, permitted fishing off the coasts of Le Borgne’s seigneurie and gave concessions on the latter’s lands without having any rights to do so, and asked that La Vallière be enjoined from doing so in the future.²¹⁴ Le Borgne wrote that he had never refused to grant land to those who presented themselves. La Barre ordered La Vallière not to interfere with Belleisle’s property rights, as set forth in the 1667 concession from the Compagnie des Indes occidentales, including the right to permit fishing off his coasts. Le Borgne’s rights, however, expressly did not include the right to govern nor extend to foreign fishers, which apparently remained under La Vallière’s authority. The gouverneur also ordered Le Borgne not to interfere with those who wanted to build in Port-Royal, suggesting that for

²¹³ Daigle, 86, quoting “Lettre du gouverneur Frontenac au roi,” 6 novembre 1679; La Vallière was able “réunir tous les esprits et ramener chacun à son devoir.”

²¹⁴ Ordonnance de M. Lefebvre de La Barre qui enjoint au Sr La Vallière de faire jouir le Sr Le Borgne de Belle isle de sa dernière concession, 22 mars 1683, LAC, Fonds des Colonies (France), Collection Moreau de Saint-Méry, Série F3, vol. 6, part. 1, pp. 60-67, accessed May 26, 2018, <http://heritage.canadiana.ca/>, pp. 60-67, C-10525, images 83-90.

some reason he had refused to grant lands in that village, and that La Vallière had gone around him and permitted such building.²¹⁵

La Vallière remained on his seigneurie for a time after he was dismissed as gouverneur in 1683. He was in l'Acadie during the visit of de Meulles who stayed at La Vallière's house in the winter of 1685 to 1686.²¹⁶ La Vallière left for Canada in 1687 and did not return to l'Acadie.²¹⁷ He went on to hold a number of posts in Canada. There is some reason to believe that heirs of La Vallière may have continued to grant concessions on his seigneurie, even after the British claimed it under the Treaty of Utrecht.²¹⁸ Despite his absence, however, Beaubassin was still understood as La Vallière's seigneurie.²¹⁹ La Vallière's son-in-law, Claude-Sébastien de Villieu, remained in l'Acadie and continued to police his father-in-law's seigniorial rights. Villieu was known for sharp dealing with the habitants at Beaubassin, "whether with regard to the goods he sold them, or in the payment that he received from them, and for the payment of the arrears in

²¹⁵ While La Barre's decision appears to confirm Le Borgne in his possession of a seigneurie that included Port-Royal and extended to the Minas Basin, the minister would later admonish La Barre for appearing to maintain Le Borgne in this possession, writing that he was in effect prejudging a matter of justice, which could appear before him in his capacity as a member of the Conseil Souverain. "Le Ministre à La Barre, 10 avril 1684," *Collection de Manuscrits*, 1: 324.

²¹⁶ "Account of the Voyage of Monsieur de Meulles to Acadie," in Morse, *Acadiensia Nova*, 1:104.

²¹⁷ Daigle, "Michel Le Neuf de La Vallière," 94. Goutins wrote in 1702 that it was fifteen years since La Vallière lived in Beaubassin. Lettre de M. de Goutin au ministre, 20 octobre 1702, Fonds des Colonies (France), Troisième série, vol. 2, p. 520 (transcription), accessed June 4, 2018, <http://heritage.canadiana.ca/C-13997>; also published in Vanderlinden, *Le lieutenant civil et criminel*, 353. See also J.-Roger Comeau, "Leneuf de La Vallière de Beaubassin, Michel (d. 1705)," in *DCB*, vol. 2, revised 1982, http://www.biographi.ca/en/bio/leneuf_de_la_valliere_de_beaubassin_michel_1705_2E.html.

²¹⁸ Comparing the censuses of 1686 and 1693, Daigle concludes that La Vallière did not grant concessions to any new Canadian families after he left l'Acadie. Daigle, "Michel Le Neuf de La Vallière," 80-81. However, in a letter Paul Mascarene sent to the Deputies of Chignecto in July of 1742, he informs them that "Grants that have been made by Mr. de La Valeire since this Province was reduced to ye Crown of great Britain cannot be valid as this said Gentleman had withdrawn out of the Province & thereby relinquished his right," thus suggesting there may have been such grants. Governor Mascarene to the Deputies of Chignecto, 12 July 1742, in *Selections from the Public Documents of the Province of Nova Scotia*, Thomas B. Akins, ed. (Halifax: Charles Annand, 1869), p. 121.

²¹⁹ In 1693, Villebon collected census information at the "seigneurie" of Beaubassin, and repeatedly refers to Beaubassin as a seigneurie in his writings. See, Webster, *Acadia at the End of the Seventeenth Century*, 46, 116, 123.

rentes which he made them pay.”²²⁰ At least one Acadian seigneur, or rather his agent, therefore, showed himself to be as hardnosed as some Canadian seigneurs when given the chance.

Villieu also zealously enforced La Vallière’s seigneurial rights as against colonists in new areas of settlement that he believed were within the bounds of the seigneurie of Beaubassin, especially in Chipoudy and Peticoudiak. In 1698, Pierre Thibodeau, a miller from Port-Royal then in his seventies, moved from Port-Royal together with some of his sons across the bay to settle in Chipoudy, where he hoped to be granted a seigneurie.²²¹ Another habitant from Port-Royal, Guillaume Blanchard and his two sons joined them and founded a settlement they called Petitcoudiak on the river of the same name. Rameau writes that the settlement at Chipoudy consisted of eighteen people, including some that were not family and engagés.²²² There was a mill, and, according to Rameau, the settlers trenched and diked the marshes, and “the storehouses [were] full of feed and supplies of all kind” (les magasins, pleins de fourrages et d’approvisionnements de toute sorte).²²³ Villieu claimed that the land was within the seigneurie of his father-in-law, a claim that Thibodeau disputed. In 1699, the latter enlisted Mathieu de Goutin, who was married to Thibodeau’s daughter Jeanne, to intercede with the ministry on Thibodeau’s behalf and convey his request for a concession en fief.²²⁴ According to Rameau,

²²⁰ Lettre de M. de Goutin au ministre, 20 octobre 1702, LAC, Troisième série, vol. 2, p. 520 (transcription).

²²¹ According to Brun, the Thibodeau may have founded the settlement, but were only there on a seasonal basis until the 1720s. Brun, *Les Acadiens avant 1755*, 59. Chipoudy is today Hopewell Township New Brunswick.

²²² Rameau, *Une colonie féodale*, 1:250.

²²³ Rameau, 1: 252.

²²⁴ Le sieur Degoutin au ministre, 1 novembre 1699, LAC, Fonds des Colonies (France), Série C11D, vol. 3, fols. 225-226v, accessed June 10, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2410093; also published in Vanderlinden, *Le lieutenant civil et criminel*, 343. Thibodeau had originally received permission from the gouverneur of l’Acadie at the time, Joseph Robinau de Villebon, to settle the area. However, once informed by Villieu that the area was in La Vallière’s seigneurie, Villebon published a decree in Port-Royal warning the habitants that they must get concessions from La Vallière if they wished to settle in the area. M. de Villieu au ministre, 29 septembre 1700, LAC, Fonds des Colonies (France), C11D, vol. 4, fols. 18v-19, accessed June 11, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2410110; also published in Vanderlinden, *Le lieutenant civil et criminel*, 345-346. De Goutin dismissed Villebon’s latter action, writing that the gouverneur was the nephew of La Vallière. Le sieur Degoutin au ministre, 1 novembre 1699.

Thibodeau granted land at Chipoudy to settlers en censive, however, these grants were made subject to Thibodeau being confirmed in his seigneurie.²²⁵

Goutin's correspondence provides an account of the interaction between Villieu and the settlers, albeit one that was not free of self-interest.²²⁶ According to Goutin, La Villieu first offered the settlers small concessions of land that would not be sufficient to support the settlement.²²⁷ The settlers rejected this offer, as well as a later offer that would have provided a concession for all of the rivers and valleys in Chipoudy and Peticoudiak, maintaining that the area fell outside of La Vallière's patent.²²⁸

In 1703, as noted above, the Conseil du Roi issued its arrêt reviewing the seigneurial claims in l'Acadie and settling disputes. With regard to La Vallière, the Conseil confirmed his concession of Beaubassin, conditioned on him submitting his documents within two years.²²⁹ In an arrêt issued two years later, the Conseil clarified its 1703 arrêt, and thereby confirmed La Vallière's seigneurial title over the settlements of Chipoudy and Peticoudiak.²³⁰ The Conseil directed, as it had in 1703, that La Vallière, like the La Tours, was not to dispossess the habitants of the lands they presently occupied, nor burden them with charges over and above the cens and other seigneurial rights. The founders of Chipoudy and Peticoudiak could thus keep the lands they had already settled, but they could not concede such lands, nor collect seigneurial fees on

²²⁵ Rameau, *Une colonie féodale*, 1:254.

²²⁶ Four pieces of Goutin's correspondence, and one of Villieu's responses have been published in Vanderlinden, *Le lieutenant civil et criminel*, documents numbered 86, 87, 89, and 94.

²²⁷ Le sieur Degoutin au ministre, 1 novembre 1699, LAC, C11D, vol. 3, fol. 226.

²²⁸ Rameau, *Une colonie féodale* 1:254.

²²⁹ Arrêt du Conseil du Roi, 20 mars 1703, in Vanderlinden, *Le lieutenant civil et criminel*, 387. The arrêt makes reference to a declaration submitted by La Vallière in 1700 notifying the Conseil that the seigneurie had been divided between himself and his six children. Vanderlinden, 380.

²³⁰ Arrêt qui maintient le sieur de la Vallière . . . dans les concessions à lui faites à l'Acadie, 2 juin 1705, LAC, Fonds des Colonies (France), Série C11D, vol. 5, fols. 81-83, accessed July 5, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2410257; published in Vanderlinden, *Le lieutenant civil et criminel*, 401-402.

them.²³¹ As Vanderlinden noted, after 1705, the seigneurs of Beaubassin were confirmed in their rights to an expansive seigneurie, and no longer had the “counterweight” of the Compagnie de la pêche sédentaire, their formidable rival in their region, which had effectively disappeared by that time.²³²

The Seigneurs of Les Mines, Pisiguit and Cobeguit

Beaubassin was not the only area into which the Acadians of the Port-Royal region expanded. In the early 1680s, Acadians moved from Port-Royal to what was known at the time as Les Mines (Minas Basin), named after copper deposits found in the area.²³³ Les Mines would become the largest agricultural center of l’Acadie as more and more of the intertidal zone was diked and by this means turned into farmland. Around 1682, Pierre Melanson, *dit* La Verdure, and his wife, Marie-Marguerite Mius d’Entremont, and their family moved to an area known as Vieux Logis (probably at what is today Horton Landing) where the community of Grand Pré may have begun.²³⁴ At around the same time, Pierre Terriot and his wife, Cécile Landry, settled at the rivière aux Canards (Canard River), and Claude Landry and Catherine Thibodeau moved to the rivière Saint-Antoine (Cornwallis River).²³⁵ As time went on, Acadians established

²³¹ As Rameau notes, they would have been better off accepting Villieu’s last offer in that it included all the rivers and valleys, whereas after the 1705 arrêt, they were confined to the lands already settled. Rameau, *Une colonie féodale*, 1: 270.

²³² Vanderlinden, *Le lieutenant civil et criminel*, 402.

²³³ Copper deposits were reported in the area as early as 1604. Brenda Dunn, *The Acadians of Minas*, Studies in Archaeology, Architecture and History, Parks Service, Environment Canada, rev. ed. (Ottawa: Minister of the Environment, 1990), 5. The resource was never exploited, although Acadians were said to have made “spoons, candlesticks and other necessities,” out of copper. Dunn, 5.

²³⁴ A. J. B. Johnston and Ronnie-Gilles Le Blanc, *Grand Pré: Landscape for the World* (Halifax: Nimbus, 2015), 42-43. Rameau inferred from various circumstances that Melanson was procureur fiscal for Belleisle in Les Mines (he was said to be captain of the militia, the guns were stored at his house, he seemed to represent the public authority, and was related to Belleisle). This remains speculation. Rameau, *Une colonie féodale*, 2:333.

²³⁵ Johnston and Le Blanc, *Grand Pré*, 43.

villages on other rivers and creeks around the basin, and the population grew quickly.²³⁶ The Gargas census of 1687-88 counted one hundred sixty-three persons, with approximately twenty-five French families, a priest, and about fifteen Native families.²³⁷ By the start of the eighteenth century “the Minas area was the most populous of the three principal areas of Acadian settlement, with 506 people in 76 families, compared with 456 people in the Port-Royal area and 188 in the Chignecto area.”²³⁸

With one exception, that being a concession en fief granted to Mathieu Martin by the administration in Québec, there are no extant concessions granted to the migrants from Port-Royal who settled the Minas Basin.²³⁹ The historical record, however, contains ample evidence that Le Borgne granted such concessions as seigneur of Les Mines, one of three large communities in the basin, the others being Pisiguit and Cobiguit. The 1689 census, for example, contains a summary of “terres du pays d’Acadie appartenantes à Monsieur Le Borgne,” which

²³⁶ Johnston and Le Blanc list them as follows: “the rivière Saint Croix (St. Croix River), the rivière de l’Ascension or rivière Piguit (Avon River), the rivière Saint-Antoine, also called rivière des Habitants (Cornwallis River), the rivière “des Gasparots” (Gaspereau River), the rivière aux Canards (Canard River), and rivière des Vieux Habitants, or of the Vieille, or Old, Habitation (Habitant Creek).” Johnston and Le Blanc, 44.

²³⁷ “General Census of the Country of Acadie, 168-1688 (Gargas),” in Morse, *Acadiensia Nova*, 1:144-155.

²³⁸ Dunn, *The Acadians of Minas*, 6-7.

²³⁹ A concession accorded by Alexandre Le Borgne to Pierre and Mathieu Martin included land and meadow (pré) already partly developed by them, and on which they resided located “du Coste de L’est a la Grand Pré.” “Concession from the Sr de Bellisle to Pierre et Matthew Martins,” 9 August 1679, N.S. Arch., Grant Book 1, 67. Some have read this as referring to Grand Pré in the Minas Basin. See e.g. Kennedy, *Something of a Peasant Paradise*, 148. However, the Martins were living in the Port-Royal region at the time, and the Minas Basin was not yet settled. Clarence J. d’Entremont, “Martin, Mathieu,” in *DCB*, vol. 2, revised 1982, http://www.biographi.ca/en/bio/martin_mathieu_2E.html. The “Grand Pré” referred to in the concession thus would appear to refer to the large extent of marsh previously owned by Jeanne Motin on the north side of the rivière du Dauphin known as Belle-Isle. See Brun, *Les Acadiens avant 1755*, 9. Jonathan Fowler suggests that another concession, this time granting permission to Louis Allain to build and operate sawmills, pertained to the Grand Pré area. Jonathan Fowler, “From Acadians to Planters in the Grand-Pré Area: An Archaeological Perspective,” in *The Nova Scotia Planters in the Atlantic World, 1759-1830*, eds. T. Stephen Henderson and Wendy G. Robicheau (Fredericton: Acadiensis Press, 2012), 44. The concession, however, provides permission “to build and construct saw mills on the lands, rivers and streams . . . in the extent of our seigneurie” (de batir et construire des moulins a scie dans les terres rivieres et ruisseaux qui seront commodes dans l’estendue de nostre seigneurie), and was not limited to Grand Pré. “Permission accordée par le Borgne de Belle-Isle au forgeron Alain,” 3 juillet 1687, CEAAC, Série G3. Notariat. Carton no. 2040, microfilm roll F-1960 (emphasis added).

includes not only Port-Royal, but also “Les Mines, Cap de Sable, La Hève and Chibouctou.”²⁴⁰

Dièreville also noted of the settlement of Les Mines that “the habitants of Port-Royal have established their children there on concessions they have purchased.”²⁴¹ There are also references in correspondence and orders of British officials to contracts for land in Les Mines dating from the French period.²⁴²

Moreover, an ordonnance issued by Jacques de Meulles, intendant of Nouvelle-France, from 1686 when he was visiting the area, refers to lands conceded by Le Borgne along some rivers in Les Mines where habitants had already settled.²⁴³ The question before de Meulles involved the proper bounds of Le Borgne’s 1667 concession from the Compagnie des Indes occidentales. The seigneurie was described in the concession as extending to the “rivière des mines.” De Meulles rejected Le Borgne’s suggestion that this referred to a “une tres belle rivière” at the bottom (fond) of the bay, and found it was impossible to ascertain at that time the location of the “rivière des mines.” Instead, he determined simply that the latter could “enjoy the use of the land that he had already conceded, and would concede, to take from the cape which forms the entrance to the said bay, ten leagues in depth.”²⁴⁴ Without this ordonnance, de Meulles wrote, Belleisle could be disturbed in the future by those who sought seigneuries in Les Mines,

²⁴⁰ “Recensement des terres du pays d’Acadie appartenantes à Monsieur Le Borgne,” 1689, LAC, Fonds des Colonies, Séries G1, Vol. 466, part. 1, accessed July 7, 2018, Archives Search, <http://collectioncanada.gc.ca/>, MIKAN 2319366, transcription online at <http://heritage.canadiana.ca/>, C-2572, p. 58, image 60 (hereafter “1689 Recensement”).

²⁴¹ Sieur de Dièreville, *Relation of the Voyage to Port Royal in Acadia or New France*, ed. John Clarence Webster (Toronto: Champlain Society, 1933), 90, 255 (“les habitants du Port Royal ont établi leurs enfans dans les concessions qu’ils y ont achetées”).

²⁴² See e.g., “Order for Peaceable Possession,” issued by Lawrence Armstrong, May 11, 1732, providing that Claude Gautrau be allowed to occupy land “as is mentioned and agreed on by a contract given for the same the 4th of July, 1688.” Archibald M. MacMechan, ed., *Nova Scotia Archives II: A Calendar of Two Letter-Books and One Commission-Book in the Possession of the Government of Nova Scotia, 1713-1741* (Halifax, 1900) (hereafter “NSA II”), 189. See also, Chapter 5.

²⁴³ De Meulles writes, “il jouiroit simplement des terres qu’il a concedées, et pourra a l advenir conceder a prendre depuis le cap quy fait l’entrée de laditte baye dix lieu[es].” Ordonnance de M. de Meulles, 13 mai 1686, LAC, Fonds des Colonies (France), Série C11A, vol. 8, fols. 222-222v.

²⁴⁴ “Ordonnance de M. de Meulles,” 13 mai 1686.

including, presumably, on lands that were already conceded.²⁴⁵ Thus, de Meulles in effect recognized that Le Borgne had legitimately granted concessions in Les Mines in the past, as well as his right to do so in the future.

The identity of the “cap qui fait l’entrée de laditte baye” is somewhat unclear. One obvious candidate is the prominent land feature that forms the western flank of the basin, containing what is today Cape Split. A number of French maps from the period identify this as “cap des Mines,” including a 1686 map made by Jean-Baptiste Franquelin on de Meulles’s voyage.²⁴⁶ In a 1687 grant made for land in the Port-Royal area, Le Borgne himself described his seigneurie as extending as far as the “Cap des mines.”²⁴⁷

Note that pursuant to Le Borgne’s concession from the Compagnie des Indes occidentales, and de Meulles’s decision, Le Borgne’s rights extended “ten leagues in depth,” in this case creating a band along the coast between the cap des Mines and the St. Mary’s River to a depth of ten leagues. Such a band could arguably have included areas of Les Mines already populated by Acadians, such as those living between the rivière Canard and the east side of the rivière Saint Antoine (Cornwallis), perhaps as far as Grand Pré, depending on how the ten league

²⁴⁵ A letter written by Mathieu de Goutin, suggested that the Michel Le Neuf de La Vallière, sieur de Beaubassin, was one of those who sought to “disturb” Le Borgne’s enjoyment of his seigneurial claims in the Mines, and had already interfered with the settlement of the area by his actions. As we have already seen, however, Goutin and La Vallière were involved in other disputes and his accusations should be read with that in mind. Lettre de M. de Goutin au ministre, 20 octobre 1702, LAC, Troisième série, vol. 2, p. 520 (transcription).

²⁴⁶ “Carte gé[n]érale du voyage que Monsieur De Meulles intendant de la justice, police et finances de la Nouvelle France a fait par ordre du Roy...” par Jean Baptiste Franquelin,” 1686, BnF, département Cartes et plans, GE SH 18 PF 132 DIV 2 P 2, published March 11, 2018, <https://gallica.bnf.fr/ark:/12148/btv1b55012939c>; “Carte particulière des côtes de l’Acadie, 1702,” unsigned, BnF, département Cartes et plans, GE SH 18 PF 132 DIV 2 P 7, published February 2, 2015, <https://gallica.bnf.fr/ark:/12148/btv1b53090015n/f1.item.zoom>; and, “Carte d l’Acadie,” 1708, unsigned, BnF, département Cartes et plans, GE SH 18 PF 132 DIV 2 P 5, published February 2, 2015, <https://gallica.bnf.fr/ark:/12148/btv1b530900430>.

²⁴⁷ “Permission accordée par le Borgne de Belle-Isle au forgeron Alain,” 3 juillet 1687, CEAAC, Série G3, Notariat, carton no. 2040, microfilm roll F-1960.

band is drawn .²⁴⁸ It certainly would not have extended to areas soon to be populated, such as Piguit or Cobiguit.²⁴⁹ Unfortunately, no contracts have survived from the French period for the bassin des Mines that could shed light on the precise extent of Le Borgne's seigneurie there, or what seigneurial charges were paid by the habitants.²⁵⁰

As to the question of what, if any, seigneurial services Le Borgne may have supplied to the settlers in Les Mines, the historical record is mostly silent. Goutin wrote in 1702 that while Le Borgne was the seigneur of Les Mines, he "contributed nothing there and [it is] the people there who have placed Les Mines in the state that it is."²⁵¹ It is difficult to assess the accuracy of this statement. One can say that there is no evidence of Le Borgne having done anything other than granting concessions on the land, and possibly providing common pasturage.²⁵² There is similarly no evidence that Marie de Saint-Étienne de La Tour, Le Borgne's widow, or after 1703, the other La Tour heirs who shared the "seigneurie des Mines," provided any seigneurial services to those at Les Mines.

There were at least two other seigneurs on lands that surrounded the baie des Mines. In March of 1689, the authorities in Québec granted a fief to Mathieu Martin, a weaver living in

²⁴⁸ Les Mines sometimes included Pisiguit, as in the 1701 census which counted those living on the rivière St. Croix, the rivière l'Ascension, the rivière St. Croix and the rivière de Kiniscout, all part of Pisiguit, as living in Les Mines. "Recensement de la Colonie des Mines," 1701, LAC, Série G1, vol. 466, part. I, pp. 200-202 (transcription), accessed July 14, 2018, <http://heritage.canadiana.ca/>, C-2572, pp. 200-202, images 205-207.

²⁴⁹ The heirs of La Tour argued in 1700 that Le Borgne could not be entitled to Les Mines by his 1667 concession, because, among other things, he was granted only up to the entrance of the "rivière des Mines." "Reponse aux pretentions du sieur Le Borgne," *Collection de manuscrits*, 2:371. Placide Gaudet placed the rivière des Mines at what is today the Cornwallis River. Placide Gaudet, "Le pays d'évangéline," *Moniteur Acadien*, 13 août 1886, quoted in Brun, *Les Acadiens avant 1755*, 17-18. If this is correct, Le Borgne's concession may never have been intended to extend to the Grand Pré marsh or areas to the east thereof. It is noteworthy that the Conseil du Roi's 1703 arrêt granted the La Tour heirs "la Seigneurie des mines dans l'étendue de six lieues, le tout à commencer depuis et compris la première maison établie qui regard d'un côté le Port Royal." "Arrêt du Conseil du Roi (20 mars 1703)," in Vanderlinden, *Le lieutenant civil et criminel*, 386 ("... the seigneurie of Les Mines extending six leagues, all to begin from and including the first house established which faces Port Royal"). This may have been an attempt to stay within the bounds of what was originally intended as Le Borgne's seigneurie.

²⁵⁰ Several contracts for land transfers exist from the period post 1713, that refer to seigneurial charges for land in Grand Pré. These are discussed in the next chapter.

²⁵¹ Lettre de M. de Goutin au ministre, 20 octobre 1702, LAC, Troisième série, vol. 2, p. 520 (transcription).

²⁵² See chapter 6.

Port-Royal, for a tract of land “called Oüecobeguy, and which he has designated by the name of St. Mathieu, containing all that portion of land situated at the extremity of the Basin of Mines.”²⁵³ Martin was granted this land “under the title of fief, seigneurie and jurisdiction, subject to the condition that he inhabit and cultivate the ... land and cause the same to be inhabited by tenants,” in addition to other customary duties and reservations. This somewhat unusual concession of fief, having been granted to a habitant, was based on the fact that Martin belonged “to one of the most ancient families of Acadia and being the first born therein.” The fief would become the settlement of Cobeguit. In 1701, the first time the census was taken of this area, three single men were said to reside there.²⁵⁴ Martin must have taken his responsibility to people the land seriously, given that in 1714, just after the Treaty of Utrecht was signed, there were twenty-one heads of household, one widow and the seigneur himself.²⁵⁵

Another unusual concession was granted by the administration in Québec for land located at the bottom of the basin, this time to a single woman, the daughter of the seigneur of Beaubassin. One month after Mathieu Martin was granted the fief of Cobeguit, Marie-Josèphe Leneuf de La Vallière received a concession for land along the rivière Chicabénacady, which flows into the bay of Cobeguit.²⁵⁶ The grant was made in “fief, seigneurie et justice,” at the charge of rendering “foy et hommage” in Québec, and contained the customary conditions and reservations, all subject to the Coutume de Paris. Like Martin, La Vallière was required to begin

²⁵³ Concession to the sieur Mathieu Martin, 28 March 1689, *Titles and Documents Relating to the Seigniorial Tenure*, 108.

²⁵⁴ “Recensement de la Colonies établies dans la province de la Cadie 1701” (Dans La baye de Cobequit), LAC, Fonds des Colonies (France), Série G1, vol. 466, part. 1, p. 202 (transcription), accessed July 28, 2018, <http://heritage.canadiana.ca/>, C-2572, image 207.

²⁵⁵ “Recensement des habitans de Yekopeguit avec leur familles,” 1714, LAC, Fonds des Colonies (France), Série G1, vol. 466, part. 1, 244 (transcription), accessed July 29, 2018, <http://heritage.canadiana.ca/>, C-2572, p. 244, image 252.

²⁵⁶ Damoiselle Marie Joseph Lenœuf, 23 avril 1689, *Pièces et documents*, 392-393.

settling habitants on the land within three years on pain of losing the concession. There is no evidence that she ever brought settlers to her seigneurie or lived there herself.

Conclusion

Chapter 3 showed that French cultural institutions, and especially French land tenure, was implanted in l'Acadie as far back as Pierre Dugua, sieur de Mons in the beginning of the seventeenth century, and survived the period of Anglo-American control from 1654 to 1670. Through the use of the available documentary evidence, this chapter has demonstrated that those French legal and cultural institutions, and in particular seigneurialism, persisted in the agricultural settlements of l'Acadie around the baie Française from 1670, when French control resumed, until the time the British assumed final control of the colony in 1710. They survived despite another period of ostensible English control, from 1690 to 1697, as well as the inadequacies and in-fighting of l'Acadie's seigneurs. The reason is that these cultural institutions were enforced by the seigneurs, as well as the local French administrators and the clergy. Tellingly, the available contracts show no sign of "reformulation or hybridization," that might suggest the adoption of British forms of land tenure, even in outlying areas.²⁵⁷ On the contrary, of the sixteen extant contracts involving land transfers, only two contained no mention of seigneurial charges, and these may have involved special circumstances.

As Jack Greene has noted, "cultural override" by one European culture of another in colonial societies typically required the establishment of new settlers: "[T]he incoming settler populations were the principal agents in the transformation of the spaces acquired as a result of

²⁵⁷ Greene, "The Cultural Dimensions of Political Transfers: An Aspect of European Occupation of the Americas."

these political transfers from one kind of national cultural space to another.”²⁵⁸ These “culture-bearing creatures,” were the agents of “cultural imperialism” whereby one culture was ultimately replaced, or largely replaced, by another.²⁵⁹ L’Acadie, as Greene acknowledges, was unique in that the Acadians were culturally “annihilated” by the British government before any non-French settlers were brought in. There simply were never the non-French settlers in l’Acadie that could challenge French cultural hegemony.

Greene writes that in settler societies, law was “the main foundation for supplying a culture with legitimacy and one of the key elements in holding it together and giving it a coherent identity.”²⁶⁰ This chapter has shown that it simply is not easy to jettison law, especially when there is nothing to replace it and that law provides the legal basis by which one holds one’s land.

This is not to suggest that the Acadians did not negotiate French cultural norms in ways that allowed them to tailor those norms to their environment. Chapter 6 will discuss land use related practices developed by the Acadians, especially with regard to the creation and management of their marshland farms. Other examples discussed in this chapter include the apparently widespread use of *billets* (also used in Canada), to grant and secure rights in lands in the absence of a notary, and the practice, sometimes employed, of settling land first, and only later legitimizing one’s holding by a grant from the seigneur. In short, settler communities like the Acadians could, and did, show their inventiveness and independence when faced with new environments, while at the same time holding fast to their cultural heritage, including seigneurial land tenure.²⁶¹

²⁵⁸ Greene, 24.

²⁵⁹ Greene, 24.

²⁶⁰ Greene, 4

CHAPTER 5

L'ACADIE OCCUPIED: THE PERSISTENCE OF CULTURE, 1710-1755

Introduction

This chapter will focus on land tenure in the agricultural areas of peninsular Nova Scotia following the seizure of Port-Royal by British and American colonial troops in 1710. The purpose is two-fold. The first is to set forth how land was held by Acadians during the forty years that the British controlled the area prior to the expulsions that began in 1755. For both legal and practical reasons, the British retained French land tenure for Acadian held land, and went so far as to attempt to apply the Coutume de Paris in deciding land related disputes. The British intent, however, was to restrict Acadians to their existing homesteads, with the objective of ultimately attracting Protestant settlers to occupy Nova Scotia. With this same goal in mind, moreover, the British sought to invalidate the claims of Acadian seigneurs to major portions of what was now the province of Nova Scotia, an end they were able to accomplish through a number of questionable legal means.

The second objective of this chapter is to examine evidence concerning land tenure in Acadian communities during the period of British control in order to augment our understanding of land tenure during the French period, and, it will be argued, confirm that seigneurialism continued to have vitality in Acadian communities up until, and even after the time that the British assumed permanent control of the colony. In order to support this argument, various documents will be surveyed, including minutes of the British governing council, land related contracts between Acadians, and especially, accounts of seigneurial charges collected by the British Crown after it came to assume the position of the sole “Signior” in Nova Scotia.

The Treaty of Utrecht and the Decision to Remain in Nova Scotia

In 1710, about thirty-four hundred British and New England troops attacked Port-Royal. With only three hundred French troops, Governor Subercase fought off the attack for several days. In the end, he was forced to surrender, yielding the fort at Port-Royal, which would now be called Annapolis Royal.¹ In the 1713 Treaty of Utrecht, the French ceded to England “all Nova Scotia or Acadia, with its ancient boundaries, as also the city of Port Royal, and all other things in those parts, which depend on the said lands and islands.”² The “French inhabitants,” as the British called them, were free to “remove themselves within a year to any other place, as they shall think fit, together with all their moveable effects.”³ Pursuant to the treaty, the real estate of those who left would revert to the British crown. Those who remained would be “subject to the Kingdom of Great Britain,” but would “enjoy the free exercise of their religion . . . as far as the laws of Great Britain do allow the same.”⁴ Following the signing of the treaty, in June of that year, Queen Anne clarified and modified the treaty by granting the Acadians the right to “retain and enjoy their said lands and tenements without any molestation, as fully and freely as other our

¹ Samuel Vetch took command of Annapolis Royal, and was the first British governor of Nova Scotia. In 1711, Vetch left Sir Charles Hobby in temporary command. He was replaced, again temporarily, by Thomas Caulfeild. Vetch was replaced by Francis Nicholson, who arrived in 1713 only to delegate his authority to Caulfeild. Vetch again became governor in January 1715, but never returned to Nova Scotia. In 1717, Richard Philipps became governor, but did not arrive until 1720. Philipps only stayed until 1722. John Doucett, Philipps’s lieutenant governor, administered the colony in his absence. Lawrence Armstrong replaced Doucett as lieutenant governor in 1726 and remained in that position until his death in 1739. Philipps only returned for a short period (1729-1731). Paul Mascarene administered the province after Armstrong’s death, first as president of the governing council at Annapolis Royal, and then, in 1744, as lieutenant governor. See the *DCB* for more detail on these figures.

² Akins, *Selections*, 14-15, fn.

³ The British would continue to call the French speaking people who now found themselves subjects of the British crown, the “French inhabitants.” It is not certain how the latter referred to themselves at the time the British took control of the colony. However, in a letter from 1743, the Collector of His Majesty’s Customs in Nova Scotia wrote that the French speaking people living under British rule in Nova Scotia, referred to themselves as “the Natives of Accadie.” Letter re: Clandestine Trade, 1 September 1743, Adam Shortt, Victor K. Johnston, and Gustave Lanctôt, ed., *Documents Relating to Currency, Exchange and Finance in Nova Scotia with Prefatory Documents, 1675-1758* (Ottawa: J.O. Patenaude, 1933), 224. I have referred, and will continue to refer to them as Acadians or inhabitants.

⁴ Akins, *Selections*, 14-15, fn.

subjects do or may possess their lands or estates, or to sell the same, if they shall rather choose to remove elsewhere.”⁵

The French, who had retained Ile Royale (Cape Breton Island), were eager for the Acadians, who then numbered approximately 2,200,⁶ to relocate to French territory, including the Ile Saint-Jean and the baie des Chaleurs, but especially Louisbourg where they planned to construct a military fortress.⁷ Apparently, however, delegations from Acadian communities were not satisfied with what they saw at Louisbourg and determined to stay on their marshland farms around the Bay of Fundy. Correspondence from what appears to be a contingent from Beaubassin expressed what was likely the prevailing sentiment: “There is not in all the island,” they wrote, “land suitable for the maintenance of our families since there are no meadows sufficient to feed our cattle, which are our principal means of subsistence . . . [T]o leave our residences and our cleared lands to take new waste lands . . . would expose us to die of starvation.”⁸ They added that “[w]e do not yet know in what manner the English will use us. If

⁵ Murdoch, *History of Nova-Scotia*, 1:333. A description of Nova Scotia, prepared for Governor Philipps by Paul Mascarene in 1720, estimated that there were approximately two hundred families in the town of Annapolis Royal and along what he called the British River. He gives no number for the inhabitants of Les Mines, which the British called Manis, Minas or Menis, but writes that they are more numerous than at Annapolis Royal. He also estimates fifty French families at Cobeguit, and seventy to eighty families at Chignecto. “Description of Nova Scotia, by Paul Mascarene,” transmitted to the Lords of Trade in 1720, in Akins, *Selections*, 43-47.

⁶ See the census taken in 1714 for Port-Royal, Les Mines, Cobeguit, and Beaubassin, LAC, Sèrie G1, vol. 466, part. 1, online at www.heritage.canadiana.ca, C-2572, images 239-261. The census appears to have been organized with the help of Félix Pain, Recollet, who left Port-Royal to serve as a missionary in the other agricultural settlements after it was taken by the British. Pain helped to “guid[e] the Acadian community as best he could through the perilous diplomatic morass into which they were thrown by the treaty of Utrecht.” Bernard Potier, “Pain, Félix,” in *DCB*, vol. 3, published 1974, http://www.biographi.ca/en/bio/pain_felix_3E.html. He may have been assisting in getting an accurate count of the Acadian population at the request of the British.

⁷ The agricultural settlement of the Ile Saint-Jean began after 1719 when colonists were brought from France. Between 1719 and 1724, the immigration of Acadians to the island was negligible, but then began to increase until there was almost an equal number of Acadians and French in 1735 (198 from Nova Scotia and 216 from France). Acadian migration to the Ile Saint-Jean would increase substantially after the founding of Halifax in 1749. Daniel Cobb Harvey, *The French Régime in Prince Edward Island* (New Haven: Yale University Press, 1926), 99.

⁸ Faragher, *Great and Noble Scheme*, p. 139, citing to Bona Arsenault, *Histoire et généalogie des Acadiens* (Quebec: Le Conseil de la vie française en Amérique, 1965), 1:103-04, and Pain to Costebelle, 23 September 1713, in Murdoch, *History of Nova-Scotia*, 1:336-37. Faragher writes that the Acadians were also reluctant to move to the Ile Royale because they would have to pay cens et rentes. The inhabitants of the agricultural communities, however, as chapter 4 has shown, were no strangers to seigneurial exactions of various types.

they burden us in respect of our religion, or cut up our settlements to divide the land with people of their nation, we will abandon them absolutely.”⁹ The Acadians probably harbored the hope that, as in the past, the French would regain the area.¹⁰ The British, for their part, did not initially want the Acadians to leave, and did what they could to prevent them from doing so. As Faragher writes, “[t]he British simply had no intention of investing in the development of the province, and they needed the Acadians to provide support for the garrison at Annapolis Royal.”¹¹ Moreover, a mass migration to Ile Royale would strengthen the French hold on that strategically important position.¹² In the end, only sixty-seven families of settlers emigrated to Ile Royale, mostly to Port Toulouse (today, Saint Peter’s). By 1734, however, only eighteen families remained at Port Toulouse.¹³

The Oath and the Right to Hold Land

Much has been written about the Acadians’ response to the British demand that they take an unconditional oath of allegiance. It is well known that the Acadians’ determination to maintain their neutrality during conflicts involving the British and the French would eventually be used by the British as a justification, some would argue a pretext, for destroying their

⁹ Faragher, 139, quoting from Letter from Felix Pain to M. de Costabelle, 23 September 1713, Murdoch, *History of Nova-Scotia*, 1:336-337.

¹⁰ Daniel Cobb Harvey, *The French Régime in Prince Edward Island* (New Haven: Yale University Press, 1926), 34.

¹¹ Faragher, *Great and Noble Scheme*, 137.

¹² Letter from Caulfeild to Board of Trade, Nov. 1, 1715, *N.S. Arch. II*, 25-26 (“If the French remain in this country, it will tend to its improvement: their numbers are considerable, and if they quit us we strengthen the enemy . . . If the French leave, we shall never be able to protect our English families from the insults of the Indians, ‘ye Worst of Enemeyes”). See also, Letter from Colonel Vetch to the Lords of Trade, Nov. 24, 1714, in which Vetch answers an inquiry regarding the consequences of the French inhabitants moving to Cape Breton. He writes that this would leave Nova Scotia “intirely destitute of inhabitants.” Moreover, “they will carry along with them to Cape Breton both the Indians and their trade . . . [and] make [Cape Breton] a very populous Colony.” He asked the Lords of Trade to consider that “one hundred of the French, who were born upon that continent, and are perfectly known in the woods; can march upon snow shoes; and understand the use of Birch Canoes are of more value and service than five times their number of raw men, newly come from Europe.” Akins, *Selections*, 5-6.

¹³ Bernard Pothier, “Acadian Emigration to Ile Royale After the Conquest of Acadia,” *Histoire sociale/Social History* 3, no. 6 (November 1970): 120.

communities, breaking up their families, and cruelly dispossessing them of their lands and all they had built. In light of the exhaustive coverage of this issue by others, and the focus of this paper, the following will treat the issue of the oath only to the extent that it affected land holding.

From the start of their government in Nova Scotia, land ownership was a fraught issue for the British. As noted above, the treaty between the British and France, as modified by Queen Anne's letter, had permitted Acadians who were "willing to . . . be subject to the Kingdom of Great Britain," to "retain and enjoy their said lands and tenements . . . as fully and freely as other our other subjects do." The implementation of this agreement proved to be more difficult than it would appear. What did it mean to "be willing to be subject to the Kingdom of Great Britain," and did the clarification provided by the Queen apply to the vast lands conceded to the seigneurs of l'Acadie, even if they no longer were resident in the colony, or never developed their seigneuries? What of lands claimed by those Acadians who remained on their lands, but had not developed all that they claimed? Local British officials were concerned that the Acadians paid no quit-rents to help maintain the government, but continued to be beholden to their seigneurs.¹⁴ As Governor Philipps wrote, the inhabitants held their lands not from the King of Great Britain, but "from Lords of Mannors who are now at Cape Breton where at this day they pay their rent."¹⁵ More concerning, from the perspective of the British officials, if seigneurs continued to own

¹⁴ British colonial subjects generally held their land in "free and common socage," or from the king, and, unless otherwise waived, paid a "quit-rent" to the crown as a mark of this dependence. The quit-rent was a vestige of England's feudal past, and was a payment which "absolved or made quit the tenant . . . in respect of personal service or other similar obligation to the lord." Beverley W. Bond, *The Quit-rent system in the American Colonies* (New Haven: Yale University Press, 1919), 16. These lands were "free" in that they were freely alienable and heritable. Though originally intended to apply in New England, they were never put into effect in Massachusetts Bay, Plymouth, Connecticut or Rhode Island. Bond, 35-50. In Nova Scotia, however, the government made a much more concerted effort to establish quit-rents on lands that came under British control. Bond, 368. Problems in collecting the quit-rents, however, proved to be insuperable, and by the late eighteenth century it was clear that "the quit-rent system . . . was practically a complete failure." Bond, 374.

¹⁵ Governor Philipps to Secretary Craggs, 26 May 1720," in Akins, *Selections*, 35.

large areas of undeveloped land, that land could not be made readily available to Protestant colonists.¹⁶

In order to show that they were “willing to be subject to the Kingdom of Great Britain,” the Acadians were required to take an oath of allegiance. Local British officials tied the Acadians’ continued enjoyment of their lands and estates to their taking the oath.¹⁷ The Acadians, for their part, showed a willingness to take an oath of loyalty in all things, except in agreeing to take up arms against France in the event hostilities once again broke out with Britain. It appears that during his second sojourn to Nova Scotia in 1729 to 1730, Governor Philipps gave his verbal assurance that Acadians taking the oath could remain neutral in the event of a conflict.¹⁸ Moreover, Lieutenant Governor Armstrong, with the advice of the council, agreed to include a clause written in the margin of the French version of the oath, whereby the French inhabitants, at least those living in the Annapolis River area, would not be obliged to carry arms.¹⁹ While whatever oaths the Acadians took would be found insufficient after the founding of Halifax, they sufficed, apparently, until 1749, to allow Acadians who owned improved land in the colony to continue in the enjoyment of those lands, and to have the right to freely devise, or otherwise transfer them.²⁰ Any claims that involved large areas of unimproved lands, however, would be considered by the council on a case by case basis.²¹

¹⁶ “Governor Armstrong to Lords of Trade, Annapolis Royal, 5th October 1731,” in Akins, *Sections*, 91-94.

¹⁷ See e.g. Archibald M. MacMechan, ed., *Nova Scotia Archives III: Original Minutes of His Majesty’s Council at Annapolis Royal, 1720-1739* (Halifax: 1908) (hereafter *N.S. Arch. III*), 129 (notes of meeting on 25 September 1726 between Lieutenant Governor Armstrong and Acadian deputies in which Armstrong related that upon them taking an oath of fidelity they would be permitted among other things “ye enjoyment of their estates”).

¹⁸ Griffiths, *From Migrant to Acadian*, 305.

¹⁹ Record of the meeting of His Majesty’s Council, 25 September 1726, Akins, *Selections*, 67; Charles Bruce Fergusson, ed., *Nova Scotia Archives IV: Minutes of His Majesty’s Council at Annapolis Royal, 1736-1749*, (Halifax: Public Archives of Nova Scotia, 1967) (hereafter *N.S. Arch. IV*), 129-130.

²⁰ Winthrop Pickard Bell, *The “Foreign Protestants” and the Settlement of Nova Scotia: The History of a Piece of Arrested British Colonial Policy in the Eighteenth Century* (Toronto: University of Toronto Press, 1961, co-published by Centre for Canadian Studies, Mount Allison University, 1990), 74-75. Bell cites to two letters from

The Transfer of Seigneurial Rights to the British Crown

This does not mean that the British abandoned the effort to regularize land holding in Nova Scotia, and to convert seigneurial lands to free and common socage tenure. As early as 1720, Governor Philipps wrote that “some procedure should be devised whereby the habitants should hold their lands of the king by a new tenure.”²² He pursued this idea when he returned to Nova Scotia in 1729.²³ The Acadians, however, resisted giving up their old titles, and there is no evidence that a general exchange of titles ever occurred. Indeed, all indications are to the contrary.²⁴ The Acadians may not have wanted to pay the quit-rents charged by the British crown which were significantly more than the cens et rentes they paid under their French grants.²⁵ Alternatively, they may have believed that l’Acadie would again change hands. Attempts by the government to survey the lands were similarly resisted.²⁶ The government does appear, however,

Governor Mascarene. The first was sent in 1742 to the Deputies of Chignecto, writing about lands that the Acadians “were in possession of at the taking of the oath of allegiance which confirmed them in that possession.” Bell, 75, quoting from Govr. Mascarene to Deputies of Chignecto, 11 January 1742, in Akins, *Selections*, 117. The second is a letter from Mascarene to the Secretary of State, dated 1 December 1743, referring to the “French Roman Catholics who were allowed on their taking the oaths of allegiance to keep their possessions.” Bell, 117, quoting from Governor Mascarene to Secretary of State, 1 December 1743, in Akins, *Selections*, 129.

²¹ Board of Trade to Armstrong, November 2, 1732, *N.S. Arch. II*, 194; see also Council minutes, 21 August 1731, *N.S. Arch. III*, 189, setting a deadline for the submission of claims to “the waste and uncultivated land.”

²² “Governor Philipps to Secretary Craggs, Annapolis Royal, May 26th, 1720,” in Akins, *Selections*, 35. For a thorough review of the documents relating to British actions taken with regard to Acadian land ownership from 1713 to 1749, see Bell, *The “Foreign Protestants,”* 64-83.

²³ R. Philipps to Minister, 25 November 1729, LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. “A” vol. 18, f. 144, accessed September 5, 2018, <http://heritage.canadiana.ca/>, C-9121, pp. 145-146, images 1694-1695 (“it is my humble opinion that in order to confirm [the French inhabitants] in their obedience, and make them entirely dependent they should hold their possessions by New Grants from the King upon such conditions as shall be thought proper and the old ones to be called in and cancelled”).

²⁴ Armstrong to Lords of Trade, 5 October 1731, LAC, Colonial Office Fonds (Great Britain), Series CO 217, N.S. “A”, vol. 20, p. 105 (transcription) (“I desire you will signify ... whether it is not necessary, as they refuse to renew and take grants from the government, that their french grants should be recorded”).

²⁵ Armstrong suggested as much to the Secretary of State: “I have frequently discoursed with the inhabitants about renewing their grants and taking patents in His Majesty’s name, but as yet to no purpose; their present quit-rents being but a mere trifle in comparison of what is required by His Majesty’s Instructions.” Armstrong to Secretary of State, 10 May 1734, LAC, Colonial Office (Great Britain), Series CO 217, N.S. “A”, vol. 22, 209 (transcription), accessed September 6, 2018, <http://heritage.canadiana.ca/>, C-9122, image 819.

²⁶ The government required such a survey before any new grants could be issued in the province. Surveys would also permit the council, when sitting as a court, to more easily resolve land related disputes. Gov. Armstrong to the Deputies of Pisiqid, 30 December 1731, in Akins, *Selections*, 90-91 (deputies have given no response to

to have had some success in 1733, when George Mitchell undertook a survey of the lands along the Annapolis River, and the Acadians, after some initial resistance, cooperated.²⁷

Meanwhile, the issue remained of whether seigneurial claims were valid under the terms of the treaty. In 1730, Governor Philipps ordered, without resolving this legal issue, that all “quit rents, homages and other services formerly paid by the inhabitants at Mines and other places up the Bay of Fundy, to their respective seigneurs should be paid to his sacred Britannick Majesty.”²⁸ This included cens et rentes, but also any lods et ventes, or what the British called, “fines of alienation.” Any money collected, however, was to be held pending resolution of the issue regarding seigneurial claims of ownership.²⁹ The government appointed rent collectors from among the Acadian population, who tended also to function as notaries in the various settlements.³⁰ Notwithstanding this, some Acadians were, according to the British, still sending their rents to their seigneurs, “which tho it may be forbid, cannot be easily prevented , no more

Armstrong’s order for the Acadians to survey their lands, a measure he considered “equitable and advantageous” to the Acadians themselves); Council minutes, 11 August 1733, *N.S. Arch. III*, 285-286.

²⁷ Armstrong to Board of Trade, 20 November 1733, LAC, Colonial Office fonds, Series CO 217, N.S. Vol. 22, 165, accessed September 6 2018, <http://heritage.canadiana.ca/>, C-9122, image 774. See also, Gaudet, “Plan of the River Annapolis Royal in Nova Scotia.” The latter is based on Mitchell’s map. Armstrong’s letter suggests that Mitchell produced a map marking the specific boundaries of the settlements along the river. If that is the case, the Mitchell map referenced here, which is very general, may not be the only map produced.

²⁸ Murdoch, *History of Nova-Scotia*, 1:468.

²⁹ Council minutes, 27 March 1733, *N.S. Arch. III*, 278.

³⁰ In December of 1730, Philipps, with the approval of the council, appointed Alexandre Bourg “of Menis” to “collect[] the quitt rents formerly paid to their seigneurs.” Council minutes, 7 December 1730, *N.S. Arch. III*, 172. Borg was said to have the greatest understanding of these matters, given that “He had bore ye Office of Procurator General to ye [French] King.” Philipps may have been confused: in 1710, the intendant of Nouvelle-France had named Bourg surveyor, judge and notary, Vanderlinden, *Regards d’un historien du droit*, 206. In 1737, Bourg was replaced by one Mangeant, but would later be reinstated. Order Depositing a Rent-Gatherer, 28 December 1737, *N.S. Arch. II*, 217; Commission to Bourg as Notary, 7 May 1740, *N.S. Arch. II*, 237-238. Bourg was again removed and replaced as notary in 1744 by René Le Blanc. Akins, *Selections*, 152; Council minutes, 17 December 1744, *N.S. Arch. IV*, 53. In January 1733, the council agreed with Lieutenant Governor Armstrong that the inhabitants of the Annapolis River should similarly remit their seigneurial “quit-rents” previously paid to their seigneurs. Council minutes, 3 January 1732/3, *N.S. Arch. III*, 260. Prudane Robicheaux (Prudent Robichaud) was appointed to collect rents in the banlieue of the town, and John Duon (Jean Duon), collected rents from elsewhere on the Annapolis River. Order to Prudane Robishau, 1 December 1733, *N.S. Arch. II*, 197. In addition, first James O’Neill and then Pierre Bergeau, or Bergereau, were appointed rent-collectors and notaries for Chignecto. Order Appointing James O’Neal Rent gatherer and Notary Public at Chignecto, 15 December 1736, *N.S. Arch. II*, 212-213; Mascarene to Bergeau, 7 July 1740, *N.S. Arch. II*, 137. See also, Mascarene to the Deputies of Chignecto, 20 May 1742, *N.S. Arch. II*, 164; Order to Peter Bergeau, n.d., *N.S. Arch. II*, 224.

than their clandestine trade with the people of Cape Breton.”³¹ Also, some seigneurs were themselves claiming their rights to the rents that the government was attempting to divert.³² In an effort to get a firmer grasp on land holdings, Philipps ordered, with the consent of his council, all people claiming unimproved land “to show cause before April 10, 1732, why the same may not be disposed of for the benefit of the Crown.”³³ With the issue still unresolved, Lieutenant Governor Armstrong, who took charge after Philipps returned to England, urged the Board of Trade to obtain a determination of the legality of the French seigneurs’ claims.

In September 1734, the Board of Trade finally determined that those seigneurs who were present in the province at the signing of the Treaty of Utrecht could keep what they legally possessed as of that date, subject to “owning allegiance to the Crown of Great Britain and conforming themselves to the government of the Province.”³⁴ Thus all those who had removed to French territory lost their rights, even, apparently, if they returned, as did those who did not take the oath by some prescribed time that was not entirely clear. Most, but not all, seigneurs appear to have left the province after the British captured Port-Royal in 1710. Some, however, remained.³⁵ This resulted in a somewhat confusing situation where Acadians would pay any cens

³¹ Armstrong to Lords of Trade, 5 October 1731, LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. “A”, vol. 20, p. 109 (C-9122, image 318).

³² See Petition of Charles d’Entremont of Pobomcoup on behalf of himself and his family to Armstrong, 10 June 1732, asserting his loyalty to the British crown and asking that his rights to collect rentes from those on his seigneurie be confirmed. LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. “A”, vol. 21, 5 (transcription), accessed September 10, 2018, <http://heritage.canadiana.ca/>, C-9122, image 398. Agathe de Saint-Étienne de La Tour also protested the loss of her seigneurial dues. Clarence d’Entremont, “Saint-Étienne de La Tour, Agathe de,” *DCB*, vol. 2, revised 1982, http://www.biographi.ca/en/bio/saint_etienne_de_la_tour_agathe_de_2E.html. Alexandre Le Borgne de Belleisle, son of Marie de Saint-Étienne de La Tour, Madame Belleisle, would also continue to press his inherited rights. *N.S. Arch. II*, 90. His mother, it appears, had left for Canada when the British took Port-Royal in 1710 for about three years, but then returned. Her claims are discussed further within.

³³ Proclamation Regarding Unclaimed Lands, 26 August 1731, *N.S. Arch. II*, 183.

³⁴ Bell, *The “Foreign Protestants,”* 71, referencing the 11 September 1734 transmission by the Board of Trade of an October 1731 ruling by the Privy Council.

³⁵ According to Philipps, four seigneurial families had remained, although he did not name these. Gov. Philipps to the Board of Trade, 7 June 1733, LAC, Colonial Office fonds, Series CO 217, N.S. “A”, vol. 22, 80 (transcription), accessed September 12, 2018, <http://heritage.canadiana.ca/>, C-9122, image 688. It appears that certain of the second

et rentes owed to their seigneurs, providing these latter had remained in the province after 1710. Otherwise, they would make such payments to the government. Local British officials reached some accommodation with seigneurs who lived in the province, but whose rights had been affected by the 1734 Board of Trade determination. For example, Lieutenant Governor Armstrong ordered that Marie de Saint-Étienne de La Tour, who had left the province for Québec but returned, be given “half of the usual rents” of the farms of three habitants living along the Annapolis River.³⁶ The other half was to be delivered by the inhabitants to His Majesty’s stores. Just four months later, however, the council found that Madame Belleisle was entitled to the entire amount as these were “farm” and not “seigneurial rents.”³⁷ In other words, she was, according to the council, leasing them out in the same manner as any other land owner, and not as seigneur. The Board of Trade’s decision ostensibly left the lieutenant governor free to grant the undeveloped lands of absentee seigneurs which were now considered Crown Lands, subject always to the requirement that they be surveyed first for mast trees.

Meanwhile, the Board of Trade eagerly took advantage of an opportunity presented to it to purchase what would be represented as all the remaining seigneurial rights of the La Tour heirs.³⁸ Agathe Saint-Étienne de La Tour, granddaughter of Charles de La Tour and Jeanne

and third generation of the La Tour heirs (children and grandchildren of Charles de La Tour and Jeanne Motin) remained. These included Agathe de Saint-Étienne de La Tour, who went by her married name, Agathe Campbell, as well as her youngest sister and minor brother. Letter of Armstrong to the Board of Trade, 30 November 1734, *N.S. Arch. II*, 93-96. Lieutenant Governor Armstrong also refers to certain of Agathe Campbell’s aunts and cousins that remained in the province after 1710, although again, he does not name these. Also, at least one of Marie de La Tour’s children, Alexandre, had remained in the province, depending on how Nova Scotia was defined, having left to live along the rivière Saint-Jean, but then returned to Grand Pré. Decision of John Adams, Esquire, 16 April 1723 (in French, and enclosed in letter from Armstrong to the Lords of Trade, 10 November 1733), LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. “A” vol 22, fol. 146 (transcription), accessed September 14, 2018, <http://heritage.canadiana.ca/>, C-9122, image 755.

³⁶ “Order to Pay Half Rent,” signed L. Armstrong, Jan. 8, 1733/4, *N.S. Arch. II*, 197. The rent consisted of “six hogsheads three bushels wheat and thirteen fowls yearly.”

³⁷ “Order to Pay Half Rent,” 199.

³⁸ As Bell reports, the Board of Trade went so far as to suggest that, not only had they purchased the La Tour heirs’ rights, but possibly all seigneurial rights found in the province. Bell, *The “Foreign Protestants,”* 71.

Motin—otherwise known as Agathe Campbell, having taken the name of her second husband, a British officer at Annapolis Royal—represented that she had been assigned all of the rights of her co-heirs, and was willing to sell these to the British government. The Board of Trade reported to the Privy Council that “the rights of Mrs. Campbell should be purchased for as much as it will remain a doubt whether, without this Purchase, His Majesty can grant any land in Nova Scotia.”³⁹ The king ordered that Agathe de La Tour’s seigneurial rights be purchased by Order in Council of December 20, 1733, and a treasury warrant was issued to draft a deed of conveyance for the purchase of her rights for £2,000 in August of 1734.⁴⁰ It was recommended that she also receive whatever seigneurial rentes she was due at the time of the execution of the deed.⁴¹ Henceforth, Acadians who had held their land by seigneurial grant at the time of the Treaty of Utrecht, now held it from the British crown. They would thus continue to hold their estates on the same terms, but pay their seigneurial duties to the king, who according to one governor at Annapolis Royal, was now the “Lord of the Several Mannors in the Province.”⁴² The government thus retained the seigneurial charges it had collected from the Acadians since 1731, and thereafter collected such charges, as described in the old concessions and contracts, now known as quit-rents.⁴³

³⁹ Bell, *The “Foreign Protestants,”* 71-72, quoting Report to Privy Council, 23 Oct. 1733, found at the Public Archives of Nova Scotia, vol. 16.

⁴⁰ William A. Shaw, ed., *Calendar of Treasury Books and Papers, 1731-1734* (London: Byre and Spottiswoode, 1898), 572.

⁴¹ Mr. Popple to Nicholas Paxton, Oct. 2, 1734, in Shortt, Johnston, Lancôt, *Documents Relating to Currency, Exchange and Finance*, 201.

⁴² “Mascarene to the Deputies of Chignecto,” 20 May 1742, in *N.S. Arch. II*, 164. See discussion in Bell, *The “Foreign Protestants,”* 74. See also, Letter from Mascarene to Bergeau, 7 July 1740, *N.S. Arch. II*, (according to contracts, seigneurial payments to be paid “here at the seigneurial mansion”); and, Letter from Mascarene to Bourg, 23 August 1740, *N.S. Arch. II*, 138-139 (writing that the king bought all seigneurial rights).

⁴³ Of course any new grants on undeveloped lands previously belonging to seigneurs or the French crown would include quit-rents at the higher rate of one penny an acre, subject to an increase of another penny per acre. As will be discussed below, however, Acadians were not permitted grants on unappropriated lands.

In accepting Agathe Campbell's representations, the British were either ill-informed, or willfully ignorant of the facts and unwilling to pass up an opportunity to extinguish all seigneurial claims.⁴⁴ While the authorities in London could have perhaps rationalized that the second generation of La Tour heirs (the children of Charles de La Tour and Jeanne Motin) had either abandoned their lands in leaving the province, or had assigned their rights to Campbell, this did not account for the valid rights of some in the third generation.⁴⁵ As Armstrong pointed out in objecting to the sale, this did not adequately account for Agathe's own siblings, including a younger sister, and an underage boy who could not legally have waived his rights.⁴⁶ Also

⁴⁴ Agathe Campbell's petition asserting the rights of all the heirs and complaining about Philipps's order to collect seigneurial rents, was first found frivolous by the Privy Council, although it is not clear on what grounds. LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. "A" vol. 22, fol. 91, accessed September 15, 2018, <http://heritage.canadiana.ca/>, C-9122, image 699. Philipps had protested in response to her petition that, among other things, Campbell was not the only La Tour heir remaining in the country, and that all of these had agreed to partition the lands among them. Gov. Philipps to the Board of Trade, 7 June 1733, LAC, CO 217, N.S. "A", vol. 22, 80.

⁴⁵ The eldest son of Charles de La Tour, Charles de Saint-Étienne, the sieur de La Tour, fought against the English in the battle for Port-Royal in 1710 and left the country when the British took the fort. According to the 1734 decision of the Board of Trade, he thus abandoned all of his rights. Concessions made by him after he fled the province were deemed by the council at Annapolis to be without legal effect, as he had no right to grant land. *N.S. Arch. III*, 303-304, 16 September 1734. Agathe Campbell submitted letters from her surviving aunts and her mother and brother assigning her their seigneurial rights, "cependant le temps que la ditte provinse de la nouvelle Ecosse et Accadie restera sous la possession et domination de la Couronne de la grande brestaigne" ("during the time that the said province of Nova Scotia and l'Acadie remain in the possession and domination of the Crown of Great Britain"). This included nearly identical letters from Anne de Saint-Étienne de La Tour and her husband Jacques Mius d'Entremont, Anne Melanson, the widow of Jacques de Saint-Étienne de La Tour and her underage son, and Marguerite de Saint-Étienne de La Tour, widow of Abraham Mius, sieur de Pleinmarais. All were dated November 7, 1714. LAC, Colonial Office fonds (Great Britain), CO 217, N.S. "A" vol. 22, fols. 59-64, accessed September 16, 2018, <http://heritage.canadiana.ca/>, C-9122, images 666-672. While the Treaty of Utrecht had provided that the Acadians be permitted "to remove themselves within a year to any other place, as they shall think fit," a subsequent letter from Queen Anne set no time limit and suggested the Acadians had the right to sell their land. Griffiths, *From Migrant to Acadian*, 262. French officials believed that together these allowed the Acadians "to sell their Habitations and leave letters of Attorney for that purpose." Letter of Pontchartrain to d'Iberville, 7 Nov. 1714, printed in part in Akins, *Selections*, 4, and quoted in Griffiths, *From Migrant to Acadian*, 262. While the British authorities would ultimately dispute this reading, it may explain why the La Tours would have assigned their rights to Agathe Campbell in anticipation of their leaving the colony. That this was not an unreasonable thing to do may be seen in similar actions taken by the Spanish inhabitants of St. Augustine fifty years later. The Spanish were given eighteen months to vacate the town after the British assumed control under the terms of the 1763 Treaty of Paris. Seeing that there was no market for their properties, evacuating Spanish landholders gave their power of attorney to a Spanish agent, who in turn sold the properties to an English buyer. It was agreed that the latter would sell the properties and pass the sale price to the Spanish land owners, presumably minus some fee. As in l'Acadie, however, it is unlikely that those land owners ever saw a penny from the sale of their property. Robert L. Gold, *Borderland Empires in Transition: The Triple-Nation Transfer of Florida* (Carbondale, IL: Southern Illinois University Press, 1969), 41.

⁴⁶ Armstrong to the Board of Trade, 30 November 30, 1734, *N.S. Arch. II*, 93-96.

unaccounted for were the rights of the children of Marie de Saint-Étienne de La Tour. Even if any rights that they had from their mother were extinguished by her removing temporarily from the province—which is itself legally questionable—they held in their own right a two-sevenths part interest in the lands inherited from their grandfather under the terms of the French crown’s arrêt of 1703. Even according to their own criteria, therefore, the British should have recognized the right of Alexandre Le Borgne de Belleisle, Marie’s son, to some portion of the La Tour seigneurie of what was now Annapolis Royal and the Minas Basin. Nor could he be denied based on his not having taken the oath, given that he was certified as having done so in 1733.⁴⁷ The Agathe Campbell sale clearly did not justify the abrogation of Alexandre Le Borgne’s seigneurial rights. It is perhaps ironic that Emmanuel Le Borgne’s grandson would lose his seigneurial rights in as legally suspect and politically expedient a manner as his grandfather had obtained them decades before.⁴⁸

⁴⁷ “Certificate that Belleisle hath taken the Oath of Allegiance to His Majesty,” 27 September 1733. *N.S. Arch. II*, 196.

⁴⁸ Local British officials investigated Belleisle’s claims, but in the end rejected them. John Adams, a member of the council at Annapolis Royal, was asked to examine Alexandre Belleisle’s claims in 1733, and wrote that Belleisle had left for the Penobscot River after 1710, but had since returned to Grand Pré. In Adams’s view, Belleisle was entitled to take possession of all lands of his father, Alexandre de Belleisle, in les Mines, and benefit from any contracts made by his father. Decision of John Adams, Esq., 16 April 1723, LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. “A” vol 22, fol. 146 (transcription). This was the inevitable conclusion, given the British insistence that the Penobscot was transferred to them by the Treaty of Utrecht, a claim the French disputed. Adams even took certain steps to implement his decision by ordering the inhabitants of the Mines to show their boundaries and their contracts to Belleisle “in order that he may report to me whether there were lands that were not conceded by his deceased father.” Decision of John Adams, Esq., fol. 142. In forwarding Adams’s findings and order to the Board of Trade, however, Armstrong seems to believe that Belleisle’s claims would depend on whether “[seigneurs] who remained and are now present have any right at all or pretensions to claim the shares of those who departed at the reduction of the place,” showing that at least at that time he was unaware that Belleisle could claim parts of the La Tour seigneurie in his own right. Lieutenant Governor Armstrong to the Lords of Trade, 10 November 1733, LAC Colonial Office fonds (Great Britain), Series CO 217, N.S. “A” vol 22, fols. 140-141 (transcription), accessed September 16, <http://heritage.canadiana.ca/>, C-9122, image 748. While the British would ultimately (wrongly) conclude that the rights of Belleisle and his siblings were extinguished by the Campbell sale, they did extend to Belleisle certain consideration. For example, the Council permitted Belleisle, on account of “the miserable condition he was then in” when he returned to Grand Pré to cut hay and firewood on the king’s land. Council minutes, Alexandre Le Borgne against Charles Richards, 16 September 1734, *N.S. Arch. III*, 303; see also Letter of Otho Hamilton, Secretary to the Council to Mangeant, 1736, *N.S. Arch. II*, 111-112 (“two Belleisles” exempt from paying use tax to Emanuel Hébert for taking wood from the so-called “commons of Menis”).

As to the lands of l'Acadie's other seigneurs, the British found ways to dismiss their claims. Michel Leneuf de La Vallière de Beaubassin had long ago removed from the province and thus, according to the Board of Trade's 1734 decision, was considered to have abandoned his seigneurial rights. Any grants made by him after 1713 were thus considered invalid.⁴⁹ The rights of the deceased Mathieu Martin, the seigneur of Cobeguit, were found to have been escheated to the state, as a result of his failure to take the oath of loyalty.⁵⁰ Governor Philipps also refused, without specific orders from Britain, to take the oath from Charles d'Entremont on behalf of himself and his family, "the time for taking the oath of allegiance being elaps'd."⁵¹ In short, through one device or another, the British were able to justify, at least to themselves, the transfer of all seigneurial rights in the province of Nova Scotia to the British crown. In assessing the British government's good faith in this matter, consider that in a report to the Treasury, the British attorney general opined that the instruments produced to support Agathe Campbell's claims "are very oddly drawn in a way that might render a title here in England questionable."⁵²

⁴⁹ Mascarene to the Deputies of Chignecto, 12 July 1742, Akins, *Selections*, 121.

⁵⁰ In deciding a complaint by Joseph Dugas (Dugas) and Jean Bourg, Martin's brother-in-law, against Peter Triquelle (Pierre Triquelle, dit Patron) who, it was alleged, falsely claimed to be Martin's heir in connection with a piece of land in Cobeguit, the council found that "Matthew Martain was not Qualified, by Will, to make the said Patron his Heir." Council minutes, Joseph Dugas petition, 20 April 1724, *N.S. Arch. III*, 53. Seven years later, the council recognized the right of Jean Bourg, among others, to rents from land in Beausoleil on the Annapolis River, as heirs of Pierre and Mathieu Martin. Council Minutes, 14 October 1731, *N.S. Arch. III*, 198-199. This land was granted to the Martins by Alexandre Belleisle, and was continuously occupied by the family. Thus, the council appears to have ignored its former decision of 1724. On the other hand, the land in issue in 1731 was not Martin's seigneurial lands. And in fact, during the same proceeding, Jean Bourg and the other heirs sought to have their status as heirs of Martin's seigneurie in Cobeguit confirmed by the council. The council, again disregarding its summary dismissal of such claims in 1724, said only that "Mrs Campbell was gone to Britain to solicit the affairs of the seigniors and that as soon as he recd any directions about them then the prayer of their petition should be taken into consideration." Council minutes, John Bourg petition to succeed Matthew Martin, 13 October 1731, *N.S. Arch. III*, 197. In addition to showing their decision-making on this point to be highly inconsistent, the Council's actions with regard to Martin betray their ultimate goal, which was clearly to extinguish the rights of l'Acadie's seigneurs.

⁵¹ "The Petition of Charles d'Entremont Inhabitant of Pobomcoops River," enclosed in letter of 10 June 1732 from Armstrong to the Lords of Trade, LAC, Colonial Office fonds, Series CO 217, N.S. "A" vol. 21, 5-6 (transcription). The petition was sent to the Council of Trade and Foreign Plantations (Lords of Trade) which wrote back that more information was needed. D'Entremont, *Histoire du Cap-Sable*, 4:1678. Nothing more is heard about the petition. This may well be because, as d'Entremont maintained, in the eyes of the British, Agathe Campbell's sale of her family's seigneurial rights put an end to all such claims.

⁵² Shaw, *Calendar of Treasury Books*, 572.

He nonetheless approved the purchase, on the rather thin grounds that “since 1714, date of said instruments, no claim has been set up against Mrs. Campbell.”⁵³

New Grants on Unappropriated Lands Proscribed

As noted above, the conditional oaths taken by Acadians who remained on their land in Nova Scotia permitted them to retain their estates, subject to paying their cens et rentes, now called “quit-rents,” to the government. Their rights and responsibilities with regard to the land were determined by their old contracts and concessions, unless they had accepted new contracts from the British, which appears to have happened, if at all, only rarely. Any new contract, however, would have required that they first survey their property, which was costly.⁵⁴ It would also mean, as noted above, an increase in land taxes. Under these circumstances, most Acadians held on to their old contracts. As early as 1731, Lieutenant Governor Armstrong wrote to the Board of Trade about the difficult position in which this placed the government. In an attempt to regularize land holding in the province, he recommended that “as [the inhabitants] refuse to renew and take Grants from the Government, . . . their french grants should be recorded.”⁵⁵ This suggestion does not appear to have been acted upon in any substantial way.⁵⁶

Acadian families were growing, however, and, as was the case in the French period, young people sought to establish themselves on new areas of marsh. One administrator after another sought guidance from London regarding the need to grant Acadians new lands within which to expand, reasoning, as Armstrong wrote in 1731, “that if grants be given to these new

⁵³ Shaw, 572.

⁵⁴ Council minutes, 13 October 1731, *N.S. Arch. III*, 197.

⁵⁵ Armstrong to the Board of Trade, 5 October 1731, LAC Colonial Office fonds (Great Britain), Series CO 217, N.S. “A” vol. 20, p. 105 (transcription).

⁵⁶ Earlier, in 1725, John Adams, a member of the council and a notary, was directed to register forty pages of contracts that had been turned over by Jean Duon, who had acted as notary along the Annapolis River. Council minutes, 26 April 1725, *N.S. Arch. III*, 98. There is no record of this having been done.

planters, that the others may be thereby induced to renew their old grants, and hold immediately of His Majesty, and not of these seigniors.”⁵⁷ Ten years later, Paul Mascarene, now in charge of the government at Annapolis Royal, similarly wrote of the need to make new settlements because of the increase in the Acadian population and the subdivision of their lands.⁵⁸ He complained that without the ability to do so, young people were seeking out new farms on unappropriated land in derogation of government orders to the contrary.⁵⁹

Acadians filed petitions for land grants.⁶⁰ Notwithstanding this, and the clear need for such grants, there is only one instance in which these petitions were granted. The latter involves a grant to Charles Roy (the British referred to him as Charles King), who received a patent for two hundred and thirteen acres on the north side of the river, downstream from Annapolis Royal.⁶¹ According to a notation on the patent, Roy voluntarily relinquished his patent some four years later.⁶² Although the reasons are not given, it appears that Roy was in considerable debt before he surrendered his patent.⁶³ There are several instances where it appears that the council

⁵⁷ Armstrong to the Board of Trade, 5 October 1731, LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. “A”, vol. 20, 107 (transcription) (C-9122, image 316).

⁵⁸ Mascarene to the Secretary of State, 14 October 1742, LAC, Andrew Brown collection, Major Paul Mascarene’s journal, minutes, etc., Add. MSS. 19071, fol. 38, accessed September 17, 2018, <http://heritage.canadiana.ca/>, C-11964, p. 223, image 607.

⁵⁹ Mascarene to Secretary of State, 15 November 1740, Akins, *Selections*, 108; Mascarene to Lords of Trade, 23 November 1741, Akins, *Selections*, 114; Mascarene to Duke of Newcastle, 28 June 1742, Akins, *Selections*, 119.

⁶⁰ Letter of Armstrong to the Board of Trade, 5 October 1731, LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. “A”, vol. 20, 107 (transcription) (“there are several people who have petitioned for grants, some of them are for small plotts, in and adjacent to the town for houses and gardens, and others for tracts fitt for farms, at Mines, but especially by several young people who have settled themselves, some years ago, at a place called Chipody . . . where if upon the surveyor’s report there is no wood proper for masting I presume grants may be made out for the same”).

⁶¹ Charles King patent, 10 August 1733, N.S. Arch., Grant Book 1, pp. 37-38. The land had apparently been surveyed, as it was said to be “conformable to his Majestys instructions.” Council minutes, Charles King and Lewis Fontaine petitions, 17 January 1732/3, *N.S. Arch. III*, 265; Council minutes, King patent approved, 11 August 1733, *N.S. Arch. III*, 286. At the same time it approved the patent for Charles King, it appears to have done so for Louis Fontaine, King’s brother-in-law. However, as was the case with King, no patent was ever registered in Fontaine’s name.

⁶² Patent to Charles King, 10 August 1733, N.S. Arch., Grant Book 1, 37-38.

⁶³ Council minutes, Douglass Gunner et al. against Charles King, 18 June 1736, *N.S. Arch. III*, 353-354.

intended to grant a patent.⁶⁴ These were never, however, recorded in Grant Book 1, the first registry of deeds for the province of Nova Scotia. Some forty-one patents are recorded for non-Acadians in Grant Book 1, mostly belonging to military personnel and members of the council.⁶⁵

From the council's minutes, it appears that when an Acadian submitted a petition for a grant of land, the governor or the council found some reason to deny it, require additional information, or put off the decision. For example, Governor Philipps came close to granting land in Chipoudy in 1731 to the son of Jacques Leger who had been in possession of the land for five years. The council, however, asked for additional information regarding potential competing claims on the land and there is no record of grants ever having been made.⁶⁶ Philipps also seems to have promised Alexandre Bourg land "on the other side of Mines," in consideration of moneys advanced. The council again asked for further information from Bourg, Philipps having left

⁶⁴ The first concerns a petition made to the council for a "plot of land," the location not stated, by "James Boumon alias Bounevie" (Jacques Bonnevie dit Beaumont). The council found that "a patent may be given for the same according to his Majesty's Instructions." Council minutes, 30 January 1732/3, *N.S. Arch. III*, 266. Beaumont was the first husband of Françoise Mius, daughter of Philippe Mius d'Azy, son of Philippe Mius d'Entremont baron of Pobomcoup, and Marie Mius, a Mi'kmaq woman. Three and a half years after the council's decision, one finds Beaumont before the council apologizing for having built, and removed, a house that he had built on "the Kings Land," that being the same land for which Beaumont had requested a patent. Council minutes, 14 May 1736, *N.S. Arch. III*, 338. No patent was ever registered in Beaumont's name. Similarly, in 1738 the council took steps to make a grant of the l'île de bout, or Boot Island, located at the end of what is today Long Island in Grand Pré, to one Mangeant. Order to Bourg Regarding Mangeant Grant, May 5, 1738, *N.S. Arch. II*, 219. In 1726, Mangeant had come to Nova Scotia from Québec, where he had killed a man in what appears to have been a duel. Council minutes, 5 September 1726, *N.S. Arch. III*, 123. He was apparently seeking the protection of the British government. Mangeant married an Acadian woman and eventually settled in Grand Pré where he replaced Bourg as rent-collector in 1737, only to be replaced himself by Bourg. Vanderlinden suggests that Armstrong "made a friend of Mangeant," and that he was greatly disliked by the people because he "played the role of informant of Armstrong too well." Vanderlinden, *Regards d'un historien du droit*, 232 ("[il] a trop bien joué le rôle d'informateur d'Armstrong"). Notwithstanding this, as in the case of Beaumont, a patent for Mangeant was never recorded.

⁶⁵ *N.S. Arch.*, Grant Book 1. Grant Book 1 does include contracts for the sale of land involving Acadians that took place after the British assumed control of the colony. It also records certain transactions between Acadians that occurred during the French period when these were relevant to a then current transaction. This includes, for example, the concession made by Le Borgne to Pierre and Mathieu Martin in 1679.

⁶⁶ Council minutes, 21 August 1731, *N.S. Arch. III*, 189. Other Acadians who were established in Chipoudy similarly petitioned for land. Council minutes, 7 January 1731/2, *N.S. Arch. III*, 207-208. When the parties appeared before the council, however, they were told that they had to comply with His Majesty's order to survey the land, and that their papers would not be considered unless certain missing parties were present. Council minutes, 10 January 1731/2, *N.S. Arch. III*, 208-209.

again for England, and this seems to have been the end of the matter.⁶⁷ Petitions from certain Acadians at Chignecto were rejected out of hand because the petitioners had taken steps to improve the lands.⁶⁸ Other Acadians were given various permissions to mark out lands, or to winter in certain areas for fishing, but if there were grants made, they were never recorded.⁶⁹

The Board of Trade's policy prohibiting the granting of land in Nova Scotia until at least two hundred thousand (later three hundred thousand) acres could be surveyed for mast wood, may have done much to stymie the early settlement of Protestant colonists in Nova Scotia.⁷⁰ It was not, however, the mast wood policy that determined that Acadians would never receive patents to expand their land holdings, as shown by a 1740 letter written by Paul Mascarene to the Secretary of State: "[Governor Philipps] and the late [Lieutenant Governor Armstrong] did not think themselves authorized to make new grants to the French inhabitants," Mascarene wrote, "*as His Majesty's instructions on that head prescribe the grant of unappropriated lands to Protestant subjects only.*"⁷¹ It is difficult not to see this as part of a long-term effort to contain, and ultimately eliminate an Acadian presence in Nova Scotia.⁷²

⁶⁷ Council minutes, 20 September 1731, *N.S. Arch. III*, 193-194.

⁶⁸ Mascarene to Bergeau, July 16, 1741, *N.S. Arch. II*, 152-153.

⁶⁹ Council minutes, 31 July 1740, 2 August 1740, and 7 August 1740, *N.S. Arch. IV*, 29-31.

⁷⁰ The policy was finally dropped in 1749. For an extended treatment of the timberland policy, see Bell, *The "Foreign Protestants,"* 43-50.

⁷¹ Mascarene to Secretary of State, 15 Nov. 1740, Akins, *Selections*, 108-109 (emphasis added).

⁷² As early as 1720, the Board of Trade wrote to Governor Philipps that "as [to] the French Inhabitants of Nova Scotia, who appear so wavering in their inclinations we are apprehensive they will never become good subjects . . . , for which reason we are of the opinion they ought to be removed as soon as the forces which we have proposed to be sent to you shall arrive." Board of Trade to Governor Philipps, 28 December 1720, Akins, *Selections*, 58. Almost twenty-five years later, during King George's War, this notion was explicitly echoed by the council: "if they are not absolutely to be regarded as utter Enemies to His Majesties Government they cannot be accounted less than unprofitable inhabitants for their conditional Oath of Allegiance will not entitle them to the Confidence and Privileges of Natural British Subjects." "Representation of the State of His Majesties Province of Nova Scotia . . . Approv'd in Council," 8 November 1745, *N.S. Arch. IV*, 84. "Upon the whole," the council concluded, "it is most humbly submitted whether the said French Inhabitants may not be transported out of the Province of Nova Scotia and be replac'd by good Protestant Subjects."

Continuity of French Land Tenure

Martial law was in force following the conquest of l'Acadie.⁷³ Colonial governors were permitted broad powers to make law and address issues of justice, provided that their actions did not conflict with British law. Governor Vetch was said to have set up a tribunal to adjudicate differences between Acadians that consisted of four officers and two Acadians, although little is known of this tribunal.⁷⁴ Caulfeild, who administered the province for Governor Nicholson, also found himself in a position of having to arbitrate disputes among Acadians, and sought advice from London regarding his authority to do so.⁷⁵ Upon his arrival in 1720, Governor Philipps created a governing council at Annapolis Royal, consisting of five civilians and two officers. The council implemented its legislative function by issuing orders and proclamations, the first of these relating to specific individuals or matters, and the second, of a more general nature.⁷⁶

Governor Philipps saw the lack of a formal judiciary as a hindrance to attracting Protestant settlers.⁷⁷ Moreover, this state of affairs did not answer to what he said was “the daylly Cry here for justice by many of the inhabitants and residents of this Province.”⁷⁸ Thus on April

⁷³ Philipps to Secretary of State, 1721, *N.S. Arch. II*, 76.

⁷⁴ Vanderlinden, *Regards d'un historien du droit*, 229.

⁷⁵ Thomas Caulfeild, lieutenant governor at Annapolis Royal from 1711-1717, attempted, in such cases, “to arrange matters to suit both parties.” Caulfeild to Board of Trade, 16 May 1716, *N.S. Arch. II*, 39. After being upbraided by Governor Nicholson, who “asked to see the commission that authorized him to do justice in civil affairs,” Caulfeild answered that “tho’ I [have] no Comn for that Effect yett I held myselfe blamable to suffer injustice to be done before Me without taking Notice thereof, having Never Interposed farther than by ye Consent of both Partyes.”

⁷⁶ Vanderlinden, *Regards d'un historien du droit*, 224. Subjects of ordonnances and orders included such things as road and dyke maintenance, and surveying land.

⁷⁷ Philipps to Secretary of State, 1721, *N.S. Arch. II*, 76.

⁷⁸ Council minutes, 19 April 1721, *N.S. Arch. III*, 28-29. Vanderlinden writes that this exaggerates the matter, given that the number of cases brought by the Acadians was relatively unimportant. Vanderlinden, *Regards d'un historien du droit*, 240. However, that number was not insignificant in a community of its size, and the council did provide an option for resolution of cases that could not be resolved otherwise. Vanderlinden himself writes that this option was particularly attractive to those who were not from one of the better connected Acadian families, and who hoped that they would find a more impartial decision maker in the council. Vanderlinden, 291. He even suggests that filing a petition with the council may have given some an occasion “to show themselves to be very confident in the institutions of the new order,” and thereby have their case considered with sympathy. Vanderlinden, 291.

19, 1721, the governor's council at Annapolis voted to establish a court of judicature consisting of the governor and council. This court would meet four times a year, on the first Tuesday in May, August, November and February, and had jurisdiction over misdemeanor crimes and civil cases.⁷⁹ The laws of Virginia would be applied, "where they are applicable to the present circumstances until such time as the Government shall be settled upon a sure foundation according to the Lawes of Great Brittain."⁸⁰ With the council's approval, deputies were chosen from the French speaking communities by the inhabitants themselves. Similar to the syndics of old, these deputies would communicate and enforce the council's orders. Deputies were also called on to gather facts relating to particular partitions, and sometimes to help arbitrate disputes.⁸¹

Circumstances in His Majesty's Province of Nova Scotia, however, were very different than those in Virginia. Here there was a population made up almost entirely of French speaking inhabitants who ordered their individual affairs, as well as their civic life, in accordance with French law and custom, and who were, moreover, Roman Catholics. Thus, the contracts by which they continued to hold their lands were made pursuant to French law, as were the testaments by which they bequeathed their estates, and the contracts made upon their marriages. The Virginia instructions assumed a population of English Protestant colonists, and the existence of a fully formed judicial, legislative and executive apparatus.⁸² None of this existed in Nova

⁷⁹ Council minutes, 19 April 1721, *N.S. Arch. III*, 28-29.

⁸⁰ Council minutes, 19 April 1721.

⁸¹ Akins, *Selections*, 21-23. The council required that the representatives be members of the community of good standing and particularly, that they be "freeholders." Akins, 24. See "Memoire pour Monsieur [Bourg]," 27 May 1740, *N.S. Arch. II*, 241-242, listing the duties of Bourg upon being appointed deputy. Lieutenant Governor Armstrong had attempted to appoint judicial officers from among the Acadians. For example, he appointed Prudent Robichaud Sr. justice of the peace for Annapolis Royal, and Jean Duon to serve as his clerk. "Commission for J. P." and "Commission for Clerk," 5 April 1727, *N.S. Arch. II*, 172. Armstrong, however, was rebuffed by the Board of Trade, which wrote that "no one can be a justice of the peace without taking the regular oaths." Board of Trade to Armstrong, 2 November 1732, *N.S. Arch. II*, 194.

⁸² Barnes, "Dayly Cry for Justice," 15.

Scotia for the simple reason that, according to English law, Catholics were incapable of serving as officials, including as official representatives in a legislative body.⁸³ Thus, while the Virginia instructions served as “an ultimate resource, a fungible model, a convenient device and a security-blanket for the governor and council,” the government of Nova Scotia had to improvise with the resources available to them in executing their governmental and judicial responsibilities.⁸⁴

The governor must also have been cognizant of the fact that, under English law, “the king might impose upon a conquered people what law he chose, subject only to the condition that until he did so, if the conquered were Christian, their existing law would obtain.”⁸⁵ Prior to the forcible removal of the Acadians beginning in 1755, the British remained a minority in Nova Scotia, and were not in a position to impose English law. As Philipps and his council wrote to the King, the “King’s authority does not carry beyond the guns of the fort.”⁸⁶ The applicable civil law in the agricultural settlements of Nova Scotia, therefore, was French law as set forth in the *Coutume de Paris*.⁸⁷ Given the applicable law, and the realities they faced, the council had little choice but to decide private disputes, such as property or inheritance disputes, according to French law and custom, as long as such laws did not conflict with English law.⁸⁸ This does not

⁸³ Council to Philipps, June 10, 1738, *N.S. Arch. II*, 120.

⁸⁴ Barnes, “Dayly Cry for Justice,” 15.

⁸⁵ Barnes, “Dayly Cry for Justice,” 11.

⁸⁶ Philipps and Council to the King, 27 September 1720, *N.S. Arch. II*, 66-67.

⁸⁷ As Lawrence complained to the Lords of Trade, “the French here upon every frivolous dispute, plead the laws of Paris, and from that pretended authority condemn all the order of the Government.” Extract of Letter from Govr Armstrong to Lords of Trade, 10 June 1732, Akins, *Selections*, 94.

⁸⁸ The council also adjudicated misdemeanors involving Acadians, presumably applying principles of English common law, although it was not so easy at times to distinguish between English and French law. An example is the Petition of Mary Daigre against Joseph Broussard dit Beausoleil, for committing fornication with her daughter Marie, denying paternity, and refusing to pay child maintenance. Council minutes, 20 April 1726, *N.S. Arch. III*, 112-113. The council admitted the testimony of the midwife who declared that the mother “did declare when she was in her most violent pains that the said Joseph [Broussard] was the real father of her said child.” Under a 1688 Massachusetts law, which adopted English practice, the statement of an unwed mother during labor naming the father of her child, was enough evidence of paternity to require that man to pay support. Laurel Thatcher Ulrich, *A*

mean that every case was decided strictly in compliance with French law. In fact, most disputes were decided by way of more informal processes, where general principles of justice appear to have guided the outcomes. When a civil dispute could not be settled informally, however, the council attempted to apply French law and custom.

The council thus determined that it would “[make] it a rule to follow ye Antient laws & Customs established with the Inhabit’ts in judging of their Suits & shall continue so except in cases where such would Affect the rights of the Crown or be repugnant to the Laws of Great Brittain.”⁸⁹ One of the council members, William Skene, had even “read in the Civil Law.”⁹⁰ While the council was wary of what they feared were “new customs or Laws trump’t up by [the inhabitants],”⁹¹ it did resort to the advice of those in the community they considered particularly knowledgeable regarding French law and custom. An example are the petitions of Antoine Hebert and Joseph Robicheau (Robichaud), which involved land that Robicheau had bought from Jean Hebert, Antoine’s brother. Antoine claimed that he had a right to retake the land from Robichaud upon payment of the sale price. Prudane Robicheau, Sr. (Prudent Robichaud), Acadian deputy and elder, represented Jean Hebert, and Prudent’s son, Joseph Robichaud in the

Midwife’s Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812 (New York: Knopf, 1990), 149. The idea was that “a woman asked to testify at the height of travail would not lie,” especially if it confirmed an earlier statement made before a justice of the peace. Ulrich, 149. Midwives regularly recorded these statements, and were asked to confirm the mother’s testimony. This was similar to French law on the subject. Under Henri II’s edict of 1556, confirmed in 1708, unwed mothers were encouraged to file a *déclaration de grossesse* naming the baby’s father, which in some regions, was made in the presence of a midwife or priest at the time of her labor. The primary purpose for these declarations was to prevent infanticide, although it also acted as a first step in a paternity suit. Rachel G. Fuchs, *Contested Paternity: Constructing Families in Modern France* (Baltimore: Johns Hopkins University Press, 2008), 21. As in England, a woman in France who disclosed the father’s name in labor was assumed to be telling the truth. “Well into the eighteenth century, parish priests, with midwives at their elbows, recorded these alleged fathers’ names into the baptismal records of illegitimate children.” Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley: University of California Press, 2004), 185. Thus, although the council may have been applying principles found in the English common and statutory law, their decision was consistent with French law and custom, which explains why the Acadian midwife would have taken note of the mother’s statement and been able to testify thereto.

⁸⁹ Mascarene to Alexandre Bourg, 2 July 1741, *N.S. Arch. II*, 151-152.

⁹⁰ Barnes, “Dayly Cry for Justice,” 24. Vanderlinden suggests that Skene had studied Scottish law. Vanderlinden, *Regard d’un historien du droit*, 209. Scottish law is a mixed system of civil law and common law elements.

⁹¹ Mascarene to Alexandre Bourg, 2 July 1741, *N.S. Arch. II*, 152.

proceeding. The council asked Prudent, “What the Custom of the french Inhabitants was in Such Cases?”⁹² Prudent Robichaud responded that “those of the family had always the preference of such lands as any of them (of the said family) should at any time be obliged to sell; and that in case the land should be sold to a stranger, that the said stranger is obliged to deliver up said land if demanded, within a year and day to any of the said family, upon his being repaid the said sum.”⁹³ Antoine Hebert having made a timely demand, the council held that “Antoine Hebert ... Should Enjoy the same according to the Custom of the ffrench inhabitants Declared as aforesaid by Prudane Robicheau Senr.”⁹⁴ Robicheau had accurately described, and the council had applied, the French law of *retrait lignager*, found in the Coutume de Paris, as well as coutumes for a number of provinces in the west of France.⁹⁵

Resolving land disputes was particularly challenging for the council, especially when the disputants did not have written documents establishing their claims, or where boundaries were unclear. It appears, however, that the government was not inflexible in cases where deeds were lost or destroyed.⁹⁶ The council often enlisted the help of deputies to resolve disputes, whether it was to make a division of disputed land among the parties;⁹⁷ to arbitrate or informally attempt to

⁹² Council minutes, 20 July 1732, *N.S. Arch. III*, 237-238.

⁹³ Council minutes, 20 July 1732, 237-238.

⁹⁴ Council minutes, 20 July 1732, 238.

⁹⁵ See discussion of *retrait lignager*, pp. 56-57; also, Vanderlinden, *Regards d'un historien du droit*, 256.

⁹⁶ Govr. Mascarene to Deputies of Chignecto, 11 January 1742, in Akins, *Selections*, 115-118 (if inhabitants have lost their deeds of concession, but “can bring proofs of it, the Government may insure them their possessions”); Mascarene to the Deputies of Chignecto, 12 July 1742, Akins, *Selections*, 120-121 (“it will be requisite ... that those who have lands granted by the late Signiors, but unfortunately have lost their deeds get proofs that may be rely'd upon to be laid before me in Council that they may thereby obtain surety for their possession till deeds can be given which cannot be till the lands are duly surveyed”).

⁹⁷ See e.g. the case of John Depuis (Jean Dupuis), on the one hand, and Claude Boudrot and Claude Landry, heirs of Peter Teriot (Jacques Thériot), on the other, regarding a piece of land in Menis where the deputies were directed to divide the land and put the parties in possession thereof. Order for Division of Land, 12 January 1730/1, *N.S. Arch. II*, 187.

resolve the matter;⁹⁸ to preserve the status quo and keep the peace until the matter could be heard before the council;⁹⁹ to examine the claims of parties, and report to the council before the matter was heard;¹⁰⁰ or to enforce an order of the council.¹⁰¹ Others from the community were also selected to assist the council in complex land disputes. Arbitrators were chosen from the community by the parties or the council, and assisted by the deputies.¹⁰² In other cases, “ancient and indifferent habitants” were called upon to make preliminary determinations in disputes before they were heard by the council.¹⁰³ There is also some indication that parish priests helped to decide disputes, although the government resisted involvement of priests in civil matters, and indeed were deeply suspicious of their motives.¹⁰⁴ Where a council order required land to be

⁹⁸ Mascarene to Deputies of Piziquid, In re: Pierre Breaux and Charles Le Blanc against Estienne Hebert, 28 November 1740, *N.S. Arch. II*, 141.

⁹⁹ Mascarene to Deputies of Chignecto, Matter of Jean Forrest, 28 November 1740, *N.S. Arch. II*, 141-142.

¹⁰⁰ Where Hebert, Thèriot, and Daire represented that Pinet, Comeau and others had taken possession of their land in Chignecto, deputies ordered to examine the case and report to the governor. Order to Deputies of Shickanecto, 29 October 1734, *N.S. Arch. II*, 203.

¹⁰¹ Council minutes, In re: Reny Le Blanc against heirs of Peter Melanson, 25 March 1732, *N.S. Arch. III*, 217.

¹⁰² Mascarene to Deputies of Piziquid, In re: Pierre Breaux and Charles Le Blanc against Estienne Hebert, 28 November 1740, *N.S. Arch. II*, 141; Order to Deputies to Inquire, In re: Claude Thibodeau against widow of Michael Thibodeau, 2 June 1740, *N.S. Arch. II*, 239-240 (council names arbitrators to go to the place in dispute and determine what had been agreed upon with regard to the building and upkeep of a common fence); Order for Division of Lands, In re: Francis Le Blanc and René Landry against Anthony Landry, Anthony Depuis and James Le Blanc, 29 July 1740, *N.S. Arch. II*, 244 (council assigns Bourg to arbitrate dispute regarding the division of land between the parties and report in writing).

¹⁰³ Order to View a Road in Dispute, In Re: René Blanchard against Antoine Celestine and Claude Babin, 26 April 1735, *N.S. Archives II*, 206 (council ordered the deputies to choose “four Ancient Indifferent inhabitants” to inspect the land in dispute, draw a plan of it and report to the Governor-in-council); Order Regarding Disputed Land, In re: Stephen Rivette against Claude Broussard, 17 August 1736, *N.S. Arch. II*, 210 (“a committee of four ‘ancient’ inhabitants, two being chosen by each party” is to examine the claims regarding disputed lands in Pisiguit); Order for Running a Dividing Line, In re: Alexander Trahan against William Trahan, 7 May 1740, *N.S. Arch. II*, 234 (order to select “the Ancientest Best Knowing and Least Interested Inhabitants of Minas,” to draw the dividing line between the parties’ properties); Council minutes, In re: Etienne and Charles Martains and Antoine Broin against Thibodeaus, *N.S. Archives III*, 24 January 1735/6, 332 (council advised parties in matter regarding the diversion of a stream to “consider well of the consequence of the work, to advise friendly with on another, and to call such of the other inhabitants and neighbors for their assistance as were well acquainted with such works and undertakings,” and if they could reach agreement, members of the council would visit the place and make their report thereon).

¹⁰⁴ Shortly after arriving in Nova Scotia for the first time, Governor Philipps wrote that two priests, Père Vincent and Père Felix, were “inveterate enemies of the British,” who “rule at Minas and Chignecto over 400 families, who acknowledge no other authority.” Philipps to Craggs, 2 January 1719, *N.S. Arch. II*, 55. Over twenty years later, the British administration was still trying to contain the influence that they believed priests had on the community: In 1741, Mascarene complained to a parish priest in Annapolis that “the missionaries have often usurp’d the power to make themselves the sovereign judges & arbitrators of all causes amongst the people,” going so far as to refuse to administer the sacraments to those who do not accept their determinations, and “render[ing] all civil judicature

divided, informal surveys were sometimes done by deputies or others in the community. Such surveys, however, were not always acceptable to the parties, as in the case of Alexander and William Trahan of Minas, who had an agreement to divide their land dating from 1717, after which an informal survey was done. The two men, however, could not agree on the line, one taking issue with the compass that was used.¹⁰⁵ The matter was not resolved until 1740, some twenty-three years after the initial agreement, when Mascarene ordered that a council member and two English captains, assisted by “the Ancientest Best Knowing and Least Interested Inhabitants of Minas,” draw the line.¹⁰⁶

In addition to land disputes, the council was called upon to apply French law to decide other matters, including inheritance claims. There are several instances in the council’s minutes where it is evident that Acadians continued to adhere to the French law of partible and equal inheritance, which was recognized by and enforced by the council. For example, in a dispute involving land along the Annapolis River between Pire Commau (Pierre Comeau) and Francis Richard, the council found for Comeau, subject to the payment of any improvements made by Richard. It further ordered that the land should be divided equally among the Comeau heirs.¹⁰⁷ After this, the heirs apparently reached an agreement, probably in order to maintain the family

useless.” Mascarene to des Enclaves, 29 June 1741, Akins, *Selections*, 111-112. The problem, however, may be less with the priests usurping power and more with them doing a difficult job that others would not do. Mascarene, for example, had to urge the Acadians to elect deputies every October, as well as encourage people to take these positions. “Deputies,” he wrote, “ought to take their office as an honor not as trouble.” Mascarene to Deputies of Minas and Chignecto, 7 January 1741, *N.S. Arch. II*, 143-144. It appears that at least in one case, a priest stepped in to see that a bridge was repaired, because the deputies failed to act. Mascarene to des Enclaves, 7 January 1741, *N.S. Arch. II*, 144.

¹⁰⁵ Council minutes, 23 June 1733, *N.S. Arch. III*, 280.

¹⁰⁶ Order for Running a Dividing Line, 8 May 1740, *N.S. Arch. II*, 234. This case is also discussed in Vanderlinden, *Regards d’un historien du droit*, 267.

¹⁰⁷ Council minutes, 7 July 1725, *N.S. Arch. III*, 104-105. The council granted the land equally to the “heirs of François Commau.” It appears that this name may be an error.

farm intact, a strategy often seen in other parts of Nouvelle-France at the time.¹⁰⁸ In another case, Elizabeth Godet brought a claim against her brothers for depriving her of her share of land and moveables left her by her deceased father, Jean Godet of Pisiguit. The council ruled that Elizabeth should be put in possession of her share of the property.¹⁰⁹ One finds as well, the case involving René Guillot dit l' Angevin and Charles Duron (Doiron), where the plaintiff, Guillot, asserted the right to his wife's land which he claimed was given to her by her father, who was said by a witness to have wanted "each of his Children . . . to have an equall share of his estate."¹¹⁰ Also, in the matter of Claude Broussard against Etienne Rivette (Rivet), one sees an alleged grant of land, either by testament, or by *donation entre vif*, made by a father, Etienne Rivet, to both a son of his first marriage, Etienne Rivet, and a daughter of his second, Cecile Rivet.¹¹¹ Cecile sold her share of the land to Broussard who now accused Etienne of preventing him from cutting hay on his land. Etienne claimed Cecile had no legal right to the land, although it is not clear on what grounds. The matter was submitted to arbitration which apparently concluded in Broussard's favor, although Rivet was still resisting compliance with the arbitrator's decision in 1740.¹¹²

In addition to the law of partible inheritance, council members showed they had familiarity with, and attempted to apply, other aspects of the French law of inheritance. In a memorandum to John Doucett, then Lieutenant Governor, Skene and Shireff found that a sale of land made to Prudent Robichaud by his younger brother Charles was not valid, because the land

¹⁰⁸ Council minutes, 22 July 1725, *N.S. Arch. III*, 105. On inter vivos gifts and agreements regarding land among heirs in Canada, see discussion, p. 68-69.

¹⁰⁹ Council minutes, 24 April 1735, *N.S. Arch. III*, 320.

¹¹⁰ Council minutes, 24 May 1736, *N.S. Arch. III*, 346. Charles Doiron, Guillot's brother-in-law did not deny this. His claim was that the land in question was not part of his father's estate because he was the one who purchased the land, not his father.

¹¹¹ Council minutes, 17 August 1736, *N.S. Arch. III*, 361-362.

¹¹² Order to Give Possession, 27 May 1740, *N.S. Arch. II*, 239.

had belonged to his children, these being “the apparent heirs by virtue of their deceas’d mother, and not by their father.”¹¹³ This is consistent with French law under the Coutume de Paris. As property belonging to the children’s mother—either inherited by, or gifted to her—it was not made part of the *communauté de biens*, or marriage property. Rather, the land was considered part of their mother’s lineage property, or *propres*. On her death, her *propres* passed to her children as her direct heirs.¹¹⁴ Skene and Shireff write that “Charles Cadet had no power to sell said land being only a tutor and guardian to his said children the Minors.”¹¹⁵ This also accurately reflects French law: whether Charles was appointed by relatives as a *tuteur* for the children, or simply was considered their guardian in his capacity as their father, he had no right to sell their property, without specific authority from a family council. On the contrary, he had an affirmative duty to conserve their property as if it were his own.¹¹⁶ Skene and Shireff, therefore, appear to have decided the matter correctly under French law.

A final example shows that although the council managed to apply the correct principles, they may have sometimes been less than exact in their use of terms, substituting English legal terms for the French. In a case brought before it, the council determined that what they called the “nuncupative” will of the Widow Brosard (Broussard) was valid.¹¹⁷ Vanderlinden believes that the “Widow Brosard” was the same person as the “Widow Richards.” The Widow Richard’s will was discussed at a council meeting a month before the council made its decision on the will’s

¹¹³ Council minutes, Skene and Shirreff to Doucett, 21 August 1731, *N.S. Arch. III*, 190.

¹¹⁴ See discussion, pp 66-68.

¹¹⁵ Council minutes, Skene and Shirreff to Doucet, 21 August 1731, *N.S. Arch. III*, 190.

¹¹⁶ Robert-Joseph Pothier, *Traité des personnes et des choses*, in *Oeuvres de Pothier*, t. 9, ed. Jean-Joseph Bugnet, (Paris: Videcoq Père et fils, 1846), 65 (“Le pouvoir du tuteur ne s’étend pas jusqu’à pouvoir aliéner les immeubles de son mineur”).

¹¹⁷ Council minutes, 22 January 1731/2, *N.S. Arch. III*, 213.

validity.¹¹⁸ The Widow Richards was said to have made a will signed by three persons, one of whom, Jean Duon, was probably a notary at the time. As Vanderlinden notes, under French law, the *testament solemel* may be oral, but is required to be made before the requisite number and type of witnesses. These include, as one option, three witnesses, one of which is a notary.¹¹⁹ Thus under most coutumes in the *pays coutumier*, including the Coutume de Paris, the testament in question was valid, as found by the council. Confusion arises, however, with the council's use of the qualifier, "noncupative." A non-cupative will under English law generally means an oral will. Under French law, however, as Vanderlinden points out, a *testament nuncupatif* appears mostly in the south of France, and require seven witnesses.¹²⁰ Thus, the council correctly applied French law in finding the will to be valid, but used the wrong term in describing the will.

The above discussion demonstrates that the British applied, often successfully, French law to private disputes between Acadians. More importantly, it shows that the Acadians themselves continued to adhere to French law and custom to order their affairs, including in areas of critical importance to them, such as their land holding, and the means they chose to safeguard the future of their children on the land.

Further Evidence of the Vitality of Seigneurialism

Accounts of Seigneurial Charges Collected by the British

As discussed above, the British were preoccupied with extinguishing the rights of the French seigneurs in Nova Scotia, through one means or another, including the purchase of what

¹¹⁸ Vanderlinden, "À la rencontre de l'histoire du droit," 72; Council minutes, 30 December 1731, *N.S. Arch. III*, 206.

¹¹⁹ Vanderlinden, "À la rencontre de l'histoire du droit," 73; Ferrière, *La science parfaite des notaires*, 328-329.

¹²⁰ Vanderlinden, "À la rencontre de l'histoire du droit," 72.

they maintained were all of the La Tour heirs' rights from Agathe Campbell. The primary reason was to remove any legal obstacles to the eventual settlement of the province by Protestants. The notion that there could be a layer of quasi-governmental authority between the British administration and the people must also have been intolerable to them, as was the idea that the Acadians were paying land rents to French lords living on French territory, while being exempt from paying quit-rents to help support His Britannic Majesty's government in Nova Scotia.¹²¹

The British administrators attacked the last of these problems by requiring the Acadians to submit their cens et rentes and lods et ventes—what the British called quit-rents and fines of alienation—which they would have otherwise paid to their seigneurs, to the government. These were held, as noted above, pending London's decision regarding the validity of French seigneurial claims in Nova Scotia. Ultimately they were found to belong to his Britannic Majesty, as the only seigneur of Nova Scotia. The efforts of the British to collect these seigneurial payments are relevant to the issue of the extent to which Acadians still held their land from their seigneurs at the time control of the colony was permanently transferred to the British. If seigneurialism was indeed as moribund as many scholars have maintained during the French period, Acadians would not have been able to produce contracts establishing their seigneurial cens et rentes, and presumably, would have been made to pay the quit-rents at the higher rates established by the government.

On his arrival in the colony in 1730, Governor Philipps raised the idea of enlisting the help of a local man, Alexandre Bourg, to ascertain what land taxes the people had been used to

¹²¹ Governor Philipps, for example, wrote to the Lords of Trade that people continued to send their rents to the "Lords of Mannors," currently living in Cape Breton. Governor Philipps to Secretary Craggs, 26 May 1720, in Akins, *Selections*, 35; Armstrong to Lords of Trade, 5 October 1731, LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. "A", vol. 20, p. 109 (C-9122, image 318).

paying to “the Crown.”¹²² In December of 1730, presumably after having been educated about how the land was held, Philipps ordered the inhabitants of Minas, “and other places on the Bay of Fundy,” to pay their “quit-rents, homages, services of whatever kind which [they] . . . had paid to their respective seigneurs” to his Britannic Majesty.¹²³ Apparently this was not done, as in January 1732 they were ordered to pay the arrears of such seigneurial dues since 1731. The order also required them to submit their contracts at the same time to their deputies so that “A[rmsstrong] may satisfy himself what their rents are.”¹²⁴ In January 1733, the council decided to extend the order to inhabitants of the Annapolis River.¹²⁵ It was not until December 1733, however, that two rent collectors, or as they were often called, “rent-gatherers,” were appointed: Prudent Robichaud for the town and banlieue of Annapolis Royal, and Jean Duon for the rest of the river.¹²⁶ By 1736, a rent-gatherer was assigned at Chignecto,¹²⁷ and there is indication that, at least by 1740, the rent-gatherers at Minas had extended their efforts to Cobeguit.¹²⁸ Forms were created by the British administration to be used by the rent-gatherers showing clearly the type of payment (quit-rent or fines of alienation), and amounts, although they appear to have had a difficult time enforcing the use of the forms.¹²⁹ Payments were made in kind, as well as in species. Those responsible for collecting rents in the outer settlements often reduced in-kind payments to species, or other goods specifically requested by British administrators.¹³⁰ That this

¹²² Council minutes, 7 December 1730, *N.S. Arch. III*, 172-173.

¹²³ Proclamation Regarding Quit-Rents, Homages, etc., 14 January 1732/33, *N.S. Arch. II*, 192.

¹²⁴ Proclamation regarding Quit-Rents.

¹²⁵ Council minutes, 3 January 1732/3, *N.S. Arch. III*, 260.

¹²⁶ Order to Prudane Robishau, 1 December 1733, *N. S. Arch. II*, 197.

¹²⁷ Order Appointing James O’Neal Rent gatherer and Notary Public at Chignecto, 15 December 1736, *N.S. Arch. II*, 212-213.

¹²⁸ Mascarene to Bergeau, 7 July 1740, *N.S. Arch. II*, 137. See also, Quit-Rents paid by the Acadians in the various districts, 1743, 1752-53, 1754, LAC, Andrew Brown collection, Mascarene’s journal, minutes, etc. Add. MSS. 19071, pp. 175-176, 182-189, accessed September 18, 2018, <http://heritage.canadiana.ca/>, C-11964, image 926-927, 933-940 (showing quit-rents collected from Cobeguit, among other places).

¹²⁹ Shirreff to Alex. Bourg, 20 September 1735, *N.S. Arch. II*, 98.

¹³⁰ For example, Bergeau had converted in-kind payments by selling what he had collected to a merchant trading at Chignecto, who delivered species to Mascarene Mascarene to Bergeau, 16 July 1741, *N.S. Arch. II*, 152.

was sometimes the case is shown by the letter Mascarene wrote to rent-gatherers in Chignecto and Minas, saying that he would “be glad to have the value of the rents . . . received in wheat and pease.”¹³¹

It is not surprising that the effort was most orderly and effective on the Annapolis River, being closer to the seat of British authority. Robichaud and Duon delivered the required payments in March of 1734, for all of 1732 and 1733, only three months after they had been appointed collectors.¹³² As to the effort in Minas and Chignecto, the record is replete with scolding letters reminding rent-gatherers to present their quit-rents and their accounts.¹³³ For example, in 1736, Otho Hamilton, secretary to the council, wrote to Mangeant, rent-gatherer for Minas, ordering him to make a full account of quit-rents collected by Alexandre Bourg, his predecessor, which had not been submitted since Governor Philipps’s departure in 1731.¹³⁴ It also appears that the people in those areas were not always eager to pay their quit-rents and fines of alienation to the government.¹³⁵ Nonetheless, there is evidence that quit-rents and fines of alienation were collected from all of the settlements, at least for some years.¹³⁶

¹³¹ Mascarene to Bergeau, 11 April 1741, *N.S. Arch. II*, 145; Mascarene to Bourg, 15 April 1741, *N.S. Arch. II*, 146.

¹³² Council minutes, 4 March 1733/4, *N.S. Arch. III*, 293-294.

¹³³ See e.g. Mascarene to Bergereau, 24 March 1740, *N.S. Arch. II*, 130 (directing Bergereau to send an accounting of what has been remitted, and what is still due); Mascarene to Mangeant, 25 March 1740, *N.S. Archives II*, 130 (similar letters to Mangeant and Bourg to submit their accounts).

¹³⁴ Hamilton to Mangeant, 15 December 1636, *N.S. Arch. II*, 112.

¹³⁵ Order to Ensign John Slater, 21 May 1739, *N.S. Arch. II* (Slater, together with “a sergeant, corporal and eight private men,” ordered to Minas to assist Mangeant in collecting quit-rents, as the inhabitants “have refused to pay the said rents”); Mascarene to Bergeau, 16 July 1741, *N.S. Arch. II*, 152 (Mascarene writing to Bergeau that “the people of Chignecto ‘appear in all things of a refractory spirit,’ pay the King’s Dues unwillingly, ‘& in bad Species’”); Mascarene to Bourg and Deputies of Piziquid, 23 August 1740, *N.S. Arch. II*, 138-139 (Mascarene responding to Bourg’s report of certain “frauds on the ‘lots et ventes,’ apparently referring to the failure of certain inhabitants of Minas to pay alienation fees required on the sale of land).

¹³⁶ For the settlement of Chignecto, see e.g. Mascarene to Bergeau, 16 July 1741, *N.S. Arch. II*, 152 (Bergeau placed goods worth sixty livres into the hands of merchant William Winniett “on account of the King’s Dues,” although Winniett claimed some of the wheat was defective); Mascarene to Bergeau, 7 January 1741, *N.S. Arch. II*, 143 (Mascarene similarly received three hundred livres from Winniett that Bergeau had remitted “of the King’s dues,” but without a letter or bill of lading). See also Shirreff’s 1740 estimate of yearly quit-rents collected from Annapolis Royal, Mines, Pisaguit and Cobeguit. Shortt, Johnston and Lanctôt, *Documents Relating to Currency, Exchange and*

While there is mention in the correspondence of accounts having been submitted by the Acadian rent-gatherers from Minas, Pisiguit and Cobeguit as early as 1740, there are only two accounts that survive from these areas.¹³⁷ The first is an account from 1743 and 1752-1753, drawn up by Isaac Deschamps, acting as judge and located at Fort Edward. This includes amounts collected from Cobeguit, Grand Pré, and the rivière Canard.¹³⁸ The second is an account submitted for quit-rents from 1754, paid to officers at Ft. Edward, for Pisiguit, the rivière Canard, the rivière Saint-Croix and Cobeguit.¹³⁹ These accounts list the family that owned the land, often by village, when the quit-rent was paid and by whom, and the amount. They do not divide the amounts into quit-rents and fines of alienation. Nor is there any indication regarding the basis for the amount of the payments i.e. whether the amounts were taken from old French seigneurial grants and actual contracts. Whether the people in these instances were required to show their seigneurial grants and contracts to the rent-gatherers to establish the amounts listed, therefore, cannot be established from the accounts.

There is evidence, however, that people living in the outer settlements were also asked to submit their grants in connection with the British effort to collect their seigneurial rents. As noted above, a 1732 proclamation required the people of Minas “and other places on the Bay of

Finance, 220-221. Where the Annapolis River produced 60 plus bushels of wheat, 72 capons and £17, 17 shillings, 8½ pence in cash, Minas, Cobeguit and Pisiguit produced 65¾ bushels of wheat, 43 capons and £36, 10 shillings, in cash. For the years 1739 to 1741, see Shortt, Johnston, and Lanctôt, 222-223.

¹³⁷ Mascarene to Bergeau, 7 July 1740, *N.S. Arch. II* (letter from Mascarene asking for statement of rents collected at Chignecto, and indicating that “Bellehumeur (Bourg), Mangeant, and ‘Duyon’ have made out their papers clearly for this river, ‘toutes les Mines et Cobequid,’ and received their quittance from the Council”). See also, “Estimate of Quit Rents in Sterling & New England Money,” in *Documents Relating to Currency, Exchange and Finance*, 221.

¹³⁸ Quit-Rents paid by the Acadians in the various districts, 1748, 1752-3, LAC, Andrew Brown collection, Mascarene’s journal, minutes etc., Add. MSS. 19071, pp. 176-177 (transcription).

¹³⁹ Quit-Rents paid by Acadians in 1754, LAC, Andrew Brown collection, Mascarene’s journal, minutes, etc., Add. MSS. 19071, fols. 182-189 (transcription). Governor Hobson wrote to the Board of Trade in 1753 that the inhabitants of Cobeguit had represented to him that the rent-collector for the settlement had refused to take their quit-rents for years, alleging that he feared the Natives would rob him of them. Hobson enquired whether the people could thus be excused from paying their arrears. It was recommended that the governor be given the authority to waive the collection of these arrears where it would be helpful “to animate or engage these inhabitants in some public undertaking.” Bond, *Quit-Rent System in the American Colonies*, 369, quoting National Archives, Kew, Treasury Board Papers 1, vol. 353, fols. 26, 27.

Fundy,” to submit the arrears of their seigneurial cens et rentes to the British back to 1731, and, in connection with this, to provide their contracts to their deputies “to prevent frauds.”¹⁴⁰ The British apparently had some success in the latter effort to collect grants and contracts. In 1735, Armstrong ordered the deputies from Pisiguit and Cobeguit to require the people to “hand in their contracts and deeds of sale.”¹⁴¹ This was in connection with both the collection of seigneurial rents, but also, ostensibly, to aid in the resolution of disputes. In a cover letter addressed to Louis Maufiles, the missionary at Pisiguit and Cobeguit to which was attached the order, Armstrong wrote that the “people of Minas have already brought in most of their grants.”¹⁴²

The extant accounts for Annapolis Royal and the settlements along the river are more detailed and provide a clear source of additional evidence that the people there had held their land from l’Acadie’s handful of seigneurs prior to 1713. The council minutes contain the accounts of Robichaud and Duon for the years 1732 to 1740.¹⁴³ The accounts submitted for 1732 and 1733 are especially informative. These were first described in the council’s minutes of March 1734, and copies were enclosed in a letter Armstrong sent to the Board of Trade two months later.¹⁴⁴ The rent-gatherers in both cases indicate whether the payor had produced a

¹⁴⁰ Proclamation Regarding Quit-Rents, Homages, etc., 14 January 1732/3, *N.S. Arch. II*, 192.

¹⁴¹ Armstrong to the Deputies of Piziquid and Cobequid, 28 April 1735, *N.S. Arch. II*, 97.

¹⁴² Armstrong to Maufiles, 28 April 1735, *N.S. Arch. II*, 97. The same order may have been sent to the deputies of Grand Pré and Chignecto in September of that year. The letter to Maufiles is followed in the Governor’s Letter Book by cover letters to the priests at Grand Pré and Chignecto. Shirreff to de La Goudalie, 4 September 1735, *N.S. Arch. II*, 98, and note following. These refer only to an enclosed order, without specifying the nature of the order. If the order was sent to the deputies of Grand Pré, it would mean that the British had had less than full compliance from that settlement, contrary to the impression given in Armstrong’s letter to Louis Maufiles.

¹⁴³ Council minutes, 19 January 1739/40, and 26 January 1739/40, *N.S. Arch. IV*, 22-25.

¹⁴⁴ Council minutes, 4 March 1733/34, *N.S. Arch. III*, 293-294; “Schedule of the Seigneurial Rents . . . payable by the Inhabitants of the Banlieue of the Fort at Annapolis Royal,” enclosed in letter from Armstrong to Secretary of State, dated 10 May 1734, LAC, Colonial Office fonds (Great Britain), Series CO 217, N.S. “A” vol. 23, fols. 7-11v, accessed September 19, 2018, <http://heritage.canadiana.ca/>, C-9122, images 843-853; “Schedule of Seigneurial quit rents . . . paid by the inhabitants of Annapolis Royal . . . excepting those of the banlieue,” also enclosed in Armstrong to Secretary of State, 10 May 1734, fols. 12-19, C-9122, images 854-868.

contract to support his or her statement of the seigneurial amounts due. The payments were then broken down into “cens” and “rent fontiere” (rente fonciere). The cens were paid in “deniers parisis,” “deniers tournois,” or “oboles parisis,” an old form of copper coinage valued at one half of a denier. The rents were paid in partridges, chickens, capons and wheat. Some also paid pounds, shillings and pence, presumably in lieu of other forms of payment. “Fines of alienations,” or lods et ventes, were also listed, with particulars provided. The amounts collected were not large.¹⁴⁵

Twenty-five payors are listed for the town and banlieue of Annapolis Royal, with six being in the town, and the rest in separate “plantations” on both sides of the river.¹⁴⁶ In only two cases was it indicated that “no contract [was] found,” or “no contract as yet produced.” Moreover, both the “first grantees” and the “present possessor” are listed, which may indicate that Robichaud and Duon were reviewing either the original grant, or contracts of sale shown them by the residents that described the original grant. There is, further, no indication from the council’s minutes that the rent-gatherers were having difficulty seeing the contracts which would allow them to verify the amounts owed. In fact, it appears that some number of contracts from the people living in the Annapolis Royal area had previously been collected by the British authorities, and their seigneurial cens et rentes had been recorded by the secretary of the council. At the council meeting where the accounts of Robichaud and Duon were presented, Armstrong ordered that a committee of the council examine the accounts “and compare them with the minutes taken of the contracts in the Secretary’s Office and the state Mr Secretary has made of

¹⁴⁵ In Annapolis Royal and its banlieue, for one year (1732 to 1733), sixteen of the inhabitants owed cens. This included, 25 deniers tournois, 8 deniers parisis, and 2 oboles. Twenty-three paid rent, consisting of 4 partridges, 2 chickens, 60½ capons, and 41½ bushels of wheat. In addition, two of the inhabitants paid in British money only, and one paid in British money, as well as cens in deniers tournois. Payments in British money equaled 3 pounds, 5 shillings and 6 pence. The fines of alienation from four transactions amounted to 2 pounds, 13 shillings.

¹⁴⁶ Schedule of seigniorial rents (town and banlieue of Annapolis Royal), LAC, Colonial Office (Great Britain) Series CO 217, N.S. “A” vol. 23, fols. 7-11v (C-9122, images 843-853).

the same.”¹⁴⁷ The designation of payments in cens and in rente foncière also suggests that Robichaud was making his accounts with the benefit of specific documents.

Outside of the banlieue of the town, Jean Duon identified thirty-eight separate families who paid rent for the years 1732 and 1733.¹⁴⁸ Like Robichaud, Duon identified the original grantees as well as the present possessors, and divided the amounts he received into cens, “rent fontiere,” and fines of alienation. Out of the thirty-eight families, twenty-eight owed cens and thirty-three owed rent. Two of those living on the river also paid rent for lands in Minas in which they had an interest. Only three were identified as having no contracts, and one additional contract did not contain mention of cens or rent. In the first case, Guillaume Bourgeois and his brothers at the village of Beaulieu did not have a contract, but represented that they owed seigneurial rent in the form of a beaver with the tail. They were permitted to make a payment in lieu of this rent of one pound, five shillings. The family of Jacques Girouard of Notre-Dame-de-Levant also produced no contract. They were permitted to continue to pay Marie de La Tour, Madame Belleisle, the monthly rent, which, as discussed above, the council found to be “farm rent” as opposed to seigneurial rente. In the village of Cul-de-Sac, Pierre and Augustin Comeau could not produce a contract. Notwithstanding this, Jean Duon collected from them 1 denier parisis of cens, and 2 capons and 2½ bushels of wheat of rent. The Comeaus had a contract for the settlement of Vieux-Logis, but the contract makes no mention of rent.¹⁴⁹ Thus the vast majority of families (thirty-four out of thirty-eight) living along the Annapolis River were, it

¹⁴⁷ Council minutes, 4 March 1733/4, *N.S. Arch. III*, 294. Records of these contracts or notes taken therefrom have not been found.

¹⁴⁸ Schedule of seigniorial rents (outside the town and banlieue of Annapolis Royal), LAC, Colonial Office (Great Britain) Series CO 217, N.S. “A” vol. 23, fols. 12-19 (C-9122, images 854-868).

¹⁴⁹ Schedule of seigniorial rents (outside the town and banlieue of Annapolis Royal), fol. 14. Again the total amounts collected were not great, but were greater than in the town and banlieue. Duon collected each year 28 deniers tournois, 6 deniers parisis, and 2 oboles in cens; 42 capons and 85 bushels of wheat in rent; and 6 shillings 8 pence. Fines of alienation for the period amounted to 8 pounds 7 shillings 6 pence.

appears, able to show Duon contracts that verified the amount of cens et rentes that had been due to their seigneur prior to the British assuming control.

These accounts strongly support the view that land in the town of Port-Royal and along the rivière du Dauphin was held from French seigneurs up until the time the British gained control. While there no longer exist accounts that might have provided similar evidence with regard to other settlements, the fact that the British were able to collect contracts from some, at least in settlements in and around Grand Pré, and that rent-gatherers collected cens et rentes and fines of alienation from people around the basin and in Beaubassin, tends to show that some portion of the land there was held from a seigneur as well.

The grants and contracts on which Robichaud and Duon relied have now disappeared. In addition to the surviving contracts from Loppinot's greffe, however, there are at least nineteen contracts involving the transfer of lands by Acadians during the British period recorded in Grant Book 1, the first registry of deeds created at Annapolis Royal. These are dated from 1721 to 1741. In addition, there is one concession and two contracts of sale registered from the period of French control that were later registered in Grant Book 1. These latter were discussed in chapter 4. There are generally too many gaps in the information provided by these contracts as regards the location of the land and the record of ownership, to tie them to the 1734 accounts of Robichaud and Duon. There are, however, at least two instances where extant documents clearly tie an amount recorded by a rent-gatherer with what we know to have been the seigneurial cens et rentes found in a seigneurial concession. The first involves land that was the subject of a 1679 concession that Alexandre Le Borgne granted Pierre and Mathieu Martin in the village known as

Beausoleil on the rivière du Dauphin.¹⁵⁰ Under the terms of the grant, the Martins were obliged to pay seigneurial cens et rentes of one denier tournois cens, and one capon and one bushel of wheat rente. A contract from 1732 shows that at least some part of the conceded property was then currently farmed by one René Martin who appears to have held a lease on the property.¹⁵¹ In another contract from a year earlier, Pierre Godet and his wife Madeleine Pellerin redeemed the rent from Godet's rent à bail for land at Beausoleil which appears to be another part of the original grant made to Pierre and Mathieu Martin, by paying a lump sum to the heirs of Mathieu Martin and his sister, Marguerite Martin.¹⁵² The contract states that henceforth, "the buyers will be obliged to pay the seigneurial duties for the share of the rent that they take."¹⁵³ The 1734 accounting presented by Jean Duon for the village of Beausoleil on the Annapolis River shows that René Martin and Pierre Godet together paid seigneurial charges of one denier tournois cens, and one capon and one bushel of wheat rente, consistent with the original grant to the Martins by Le Borgne.¹⁵⁴

In another contract that appears to confirm the seigneurial charges listed in the 1734 accounts, Martin Bourg sold Nicolas Babineau his interest in a homestead called "Pleinmarais"

¹⁵⁰ Concession by Alexandre Le Borgne de Belleisle to Pierre and Mathieu Martin, 9 August 1679, N.S. Arch., Grant Book 1, p. 67.

¹⁵¹ Under the terms of the contract, Louis Bourg, and other heirs of Pierre and Mathieu Martin, assigned the rent from the family homestead in Beausoleil to Prudent Robichaud. The contract states that the homestead is as described "in the contract that [Martin] holds from the seigneur according to the full extent of the contract" (suivante comme il est porte sur le contrat quil tient du seigneur suivant toute lestendue du dit contrat). The contract provides that henceforth, René Martin, who had been leasing the property, would pay the rent to Robichaud. Deed of Sale from John & Louis Bourgs, et al to Prud. Robisheau Junior, 8 October 1732, N.S. Arch., Grant Book 1, p. 70. The contract does not discuss the seigneurial cens et rente, although the reference to the seigneurial concession may point beyond the four corners of the contract. On the other hand, it may indicate that in this case, by 1732, the leaseholder was no longer paying these seigneurial charges. That would change when the British asserted their right to collect those charges.

¹⁵² Deed of Sale from John Bourg & Joseph Robisheau to Peter Godet, 29 October 1731, N.S. Arch., Grant Book 1, 67-68 (les dits acquereurs seront obligés de payer les droits seigneuriaux pour la part de [la] rente quil prend).

¹⁵³ Bourg & Robisheau to Godet, N.S. Arch Grant Book 1, 67. Curiously, another contract of redemption made between the Martin heirs to Godet, also for land at Beausoleil, does not mention seigneurial charges. Contract from Catherine Bourg to Peter Godet, 29 July 1732, N.S. Arch., Grant Book 1, p. 69.

¹⁵⁴ Schedule of seigniorial rentes (outside the town and banlieue of Annapolis Royal), LAC, CO 217, N.S. "A", vol. 23, fol. 13.

on the north side of the rivière du Dauphin.¹⁵⁵ Pleinmarais was in the seigneurie of Philippe Mius d'Entremont, baron de Pobomcoup. According to the 1701 contract, Babineau was to pay seigneurial rente of two capons and one apple annually. Robichaud's 1734 account of rentes collected at Pleinmarais for 1732 and 1733 lists the seigneurial rent as four capons, two per year, consistent with the seigneurial rente listed in the 1701 contract.¹⁵⁶ Ironically, this is one of the few listings in Duon's 1734 account where it is indicated that "no contract as yet produced."¹⁵⁷

In contrast to the above, at least one seigneurial grant shows seigneurial charges that are different than the seigneurial charges listed in the 1734 accounts. A 1700 grant of land at a place called the Camp des Anglais (Grand Nijigan) from the seigneur Marie de La Tour to Denis Petitot and his wife, Marie Robichaud, specifies a cens of one denier tournois and rente of one capon.¹⁵⁸ Robichaud's 1734 account, however, indicates that Petitot, who relinquished Grand Nijigan, paid arrearages, "p[er] contract," of three shillings four pence "seigneurial rent" annually.¹⁵⁹ The seigneurial rent listed in Robichaud's account, therefore, is considerably more than that in Petitot's original grant. Of course it is possible that Petitot had expanded his holdings in the area after 1700 by way of an additional grant, now lost, which increased his seigneurial charges. It is impossible to know for certain.¹⁶⁰

¹⁵⁵ "Contrat pour Deslauriers 1701," 18 juillet 1701, CEACC, AN, Fondes des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll, F-1960. See discussion of this contract, pp. 183-184.

¹⁵⁶ Schedule of seigniorial rents (town and banlieue of Annapolis Royal), LAC, Series CO 217, N.S. "A" vol. 23, fol. 9.

¹⁵⁷ Schedule of seigniorial rents (town and banlieue of Annapolis Royal), fol. 9.

¹⁵⁸ Concession de terre par Marie de Saint-Étienne à Denis Petitot, 2 mai 1693, CEACC, A.N. Fondes des Colonies, Série G3, Notariat, carton no. 2040, microfilm roll F-1960. The Camp des Anglais was located opposite the town of Port-Royal on the north shore of the rivière du Dauphin.

¹⁵⁹ Schedule of seigniorial rents (town and banlieue of Annapolis Royal), LAC, Series CO 217, N.S. "A" vol. 23, fol. 11.

¹⁶⁰ What appears at first to be a similar case, may actually confirm that Robichaud's account was based on cens et rentes contained in a seigneurial grant. In 1700, Etienne Pellerin sold Jean Naquin a piece of land in Port-Royal for the price of the seigneurial charges as contained in the original grant from Alexandre de Belleisle. The cens et rentes are listed as one denier parisien of cens and one half bushel of wheat rente. Vente d'une terre par Étienne Pellerin à Jean Naquin, 10 mai 1700, CEACC, Colonial Office, Série G3, carton no. 2040, microfilm roll F-1960. Robichaud's

It should be noted, moreover, that transfers made after the 1734 accounts—to the extent it is possible to identify the land subject to the contract—do not necessarily reflect the seigneurial charges listed in those accounts. This is seen in three contracts for the sale of land from Jacques Levron, two to Alexandre Hébert (son), and one to Charles Girouard (son), at the place called Village Emmanuel on the south bank of the upper river.¹⁶¹ These contracts, executed by Jean Duon acting in lieu of a notary, make no mention of seigneurial charges, even though four years earlier Duon's accounts show that Alexandre Hébert (father) and Jacques Levron owed seigneurial charges of one denier tournois cens and two bushels of wheat rente for what appears to be this property.¹⁶² It is hard to know what to make of this, given that the British were clearly collecting such charges. It is very possible that the issue of how much rent was to be paid was now considered by some to be settled and in the hands of the governing authority, and no longer a private matter between individuals.

Thus, while there remain questions due to the lack of original documents, on balance, the collection of “seigneurial rents” by the British after 1732 lend further support for the notion that the people of l'Acadie had held their land from the seigneurs of the place prior to British rule.¹⁶³ This is especially so in the case of the accounts of rents collected in Annapolis Royal and along

1734 account shows that Nicolas Gautier, then owner of what appears to have been the same property (the land is in the same area of Port-Royal and the grantee is listed as Jean Naquin and his wife Marguerite Bourg), paid cens of one denier tournois, plus 1 shilling 3 pence of rent per year. Schedule of seigniorial rents (town and banlieue of Annapolis Royal), LAC, Series CO 217, N.S. “A” vol. 23, fol. 8. Armstrong stipulated that a bushel of wheat was to be valued for the purpose of the collection of rents at 50 pence. Schedule of seigniorial rents, fol. 11. The half bushel Gautier owed would thus have been worth, according to the British calculation, 25 pence or 2 shillings 1 pence. Is it not perhaps reasonable to think that Robichaud reduced Gautier's half bushel rent to English money, and in the process of doing so gave Gautier the benefit of a fluctuating rate of currency?

¹⁶¹ Deed of Sale from James Levron to Alexander Hebert, 20 janvier 1738, N.S. Arch., Grant Book 1, pp. 72-73; Deed of Sale from James Levron to Alex. Hebert, 18 fevrier 1738, N.S. Arch., Grant Book 1, p. 74; Deed of Sale from Jacque Levron to Charles Girouard, 23 janvier 1738, N.S. Arch. Grant Book 1, 78-79.

¹⁶² Schedule of seigniorial rents (outside town and banlieue of Annapolis Royal), LAC, Series CO 217, N.S. “A” vol. 23, fol. 14.

¹⁶³ Before 1703 this would have been d'Aulnay, Jeanne Motin, Alexandre Le Borgne de Belleisle, Marie de Saint-Étienne de La Tour, Belleisle's widow, or Philippe Mius d'Entremont or his heirs; after 1703, the La Tour heirs would be seigneurs. See discussion of the 1703 arrêt du Conseil du Roi, pp. 182-186.

the river. In almost all cases, the rent-gatherers indicated that the cens and rents recorded were based on contracts. Council minutes reflect the fact that the council itself had collected such contracts from the people and indicated that it intended to check the accounts of Robichaud and Duon against the contracts received. To believe anything other than that these contracts existed and contained the seigneurial cens et rentes on which the amount of payments due were based, would be to assume without any basis that the rent-gatherers, the inhabitants, and the council participated in a highly orchestrated charade, and a fraud against the British authorities in London, to whom the accounts, at least those along the Annapolis River, were sent. While the evidence is strongest with regard to the settlements along the Annapolis River where detailed accounts have survived, a similar argument may be made as to the other settlements, given the evidence that grants were ordered collected by the deputies, and were in fact collected, and that rents submitted were based on these grants. In short, there is only one reasonable inference to be drawn from the evidence that the British collected seigneurial cens et rentes: that the people of l'Acadie had held their land from their seigneurs and paid their cens et rentes, and lods et ventes, just as French colonists did in other parts of Nouvelle-France at the time; and that when the British assumed power, they were able to use the then existing records of that seigneurial ownership to collect those charges in the seigneurs' stead.

Activities of Acadian Seigneurs after the British Assumed Control

As discussed above, the British were concerned that Acadians were sending their seigneurial cens et rentes to their seigneurs who had removed from the colony and were living in

Louisbourg and elsewhere.¹⁶⁴ In addition to this, there is evidence that the few French seigneurs that remained in the colony continued to collect seigneurial charges even after the British assumed control, lending further support to the proposition that seigneurialism persisted in l'Acadie up to, and even after, 1713. For example, at the request of Agathe de Saint-Étienne de La Tour (Agathe Campbell), Governor Philipps ordered those who had bought land in her seigneurie of Mines—land that was no doubt at least in part conditionally conveyed to her in 1714 by her La Tour relatives who fled the province—to pay her their lods et ventes.¹⁶⁵ Thirteen years later, in her 1734 petition to London asking that her seigneurial rights be recognized, Campbell was said to have produced evidence that she had been collecting seigneurial rentes from those living in and around Annapolis Royal until 1729/30, after which time such rents were paid to the British.¹⁶⁶ The council's minutes also contain evidence that Campbell collected seigneurial rents in Ruisseau Fourchu, a community adjacent to Annapolis Royal, up until 1730 (the British referred to this area as Russhu Forshew).¹⁶⁷ The British government, convinced that she had a right to these amounts, or perhaps only for sake of consistency, agreed to pay Campbell the arrears of her rents from 1730 until the time it purchased her seigneurial rights in 1734.¹⁶⁸ The record also shows that Marie de Saint-Étienne de La Tour was collecting

¹⁶⁴ Governor Philipps, for example, wrote to the Lords of Trade that people continued to send their rents to the “Lords of Mannors,” currently living in Cape Breton. Governor Philipps to Secretary Craggs, 26 May 1720, in Akins, *Selections*, 35.

¹⁶⁵ Order of Richard Philipps, 5 July 1731, LAC, Colonial Office, CO 217, N.S. “A” vol. 22, fol. 65, accessed September 18, 2018, <http://www.heritage.canadiana.ca/>, C-9122, 673.

¹⁶⁶ “A nos Seigneurs Les Commissaires des plantation,” recv'd 2 April 1733, LAC, Colonial Office (Great Britain), CO 217, N.S. “A” vol. 22, fol. 23, accessed September 24, 2018, <http://heritage.canadiana.ca/>, C-9122, 628. She also claimed that she would have collected rents from the Mines, but that she was fearful of attacks by Natives if she travelled there.

¹⁶⁷ James Mitchell (Jacques Michel) and his partners produced a receipt from Agathe Campbell dated 2 March 1730/31 in a dispute with Prudent Robichaud, the rent collector, regarding the validity of their contract. The receipt showed that they had paid Campbell three bushels of wheat and three capons for the rent for 1730. Council minutes, 25 January 1733/4, *N.S. Arch. III*, 292.

¹⁶⁸ Recommendation to the Lords of the Committee of His Majesty's most Honorable Privy Council, 23 October 1733, LAC, Colonial Office (Great Britain), CO 217, N.S. “A” vol. 22, fols. 113-128, 128, accessed September 28, 2018, <http://heritage.canadiana.ca/>, C-9122, 721-736, 736.

“seigneurial rents” on her property on the upper river known as “the Farm,” until the British ordered such rents to be paid to the government.¹⁶⁹ She must have quickly agreed that these payments were instead “farm rents,” i.e. lease payments, rather than seigneurial rents when she realized that this would permit her to keep them.¹⁷⁰

There is evidence, moreover, that Acadian seigneurs continued to grant or otherwise dispose of their seigneurial lands in Nova Scotia, notwithstanding the change in government and British claims to those lands.¹⁷¹ Thus Charles Richards rested his claim to lands in Minas on a grant from Charles de La Tour, apparently after the latter left the province.¹⁷² The council found that “[s]uch a person has no right to grant lands in this province.”¹⁷³ Joseph Dugas also claimed that a piece of “mash land” in Minas had been granted him by Monsieur de La Tour.¹⁷⁴ D’Entremont writes that La Tour was in the province in 1713 when he made this grant, and that shortly thereafter, he made a gift of lands in the Cap-Sable area to Joseph Mius.¹⁷⁵ More than twenty years later, in 1735, Jeanne Loreau, Charles’s widow then living in Louisbourg, sold Charles’s seigneurial rights in one-seventh part of the farm known as Notre Dame de Levant on the upper Annapolis River to her niece, Marie Le Borgne, Marie de La Tour’s daughter, and her

¹⁶⁹ Council minutes, 5 February 1732/3, *N.S. Arch. III*, 268.

¹⁷⁰ Order to “Renny Fforest, James Girroir, and Richards, “10 April 1734, *N.S. Arch. II*, 199; Council minutes, 10 April 1734, *N.S. Arch. III*, 295..

¹⁷¹ Council minutes of adjudications of land disputes also contain scattered references to concessions made by Belleisle during the French period, again supporting the argument made in chapter 4 that Acadians held their lands from seigneurs. This includes land in Minas, Council minutes, 7 February 1731/2, *N.S. Arch. III*, 215, as well as in Annapolis Royal, Council minutes, 15 February 1734/5, *N.S. Arch. III*, 314.

¹⁷² Orders to Alex. Bourg and Deputies of Minas, 20 September 1734, *N.S. Arch. II*, 200-201.

¹⁷³ Council minutes, 16 September 1734, *N.S. Arch. III*, 303-304.

¹⁷⁴ Order not to cut hay on disputed ground, 7 May 1735, *N.S. Arch. II*, 207.

¹⁷⁵ D’Entremont writes that Charles de La Tour was in Grand-Pré in late 1712, where he acted as godfather to the child of the surgeon Jean Mouton. He is referred in the register as “Monsieur de La Tour, lieutenant d’une compagnie du detachment de la Marine et seigneur en partie de l’Acadie.” The next year, in March 1713, La Tour is said to have granted Joseph Dugas a contract for land in Les Mines. Some weeks after this, he made a gift *inter vivos* of lands to Joseph Mius near the Cap-Sable. D’Entremont, *Histoire du Cap-Sable*, 4:1542.

husband, Alexandre Girouard.¹⁷⁶ The couple paid good consideration, 550 livres, for the land as well as for the right to receive annual rentes owed by the leaseholder, Jacques Girouard, Alexandre's brother. Had Le Borgne and Girouard not heard that the British had purchased all the La Tour seigneurial rights, or more, that the British administration considered that Charles had relinquished his rights on leaving the province? Or did this seigneurial family believe that one day the French would retake the area, and their property claims would be restored? In any event, l'Acadie's last seigneurs were still asserting their seigneurial rights decades after the British established control of the colony.

In sum, the evidence supports the notion that at the time of the conquest, and for some time beyond, Acadians held their land from their seigneurs. Some even continued to pay their seigneurial rentes, as well as their lods et ventes, to those seigneurs until they were ordered in 1730 to make these payments to the British instead. This is further evidence of the vitality of the seigneurial system in l'Acadie prior to British rule.

Did Acadian Land Tenure Evolve as a Result of Contact with English Land Tenure?

As discussed above, the British continued to enforce a French system of land tenure in Nova Scotia after they assumed control both for reasons of law and for practical reasons (the Acadians were not willing to give up their French grants on their existing holdings in exchange for grants from the British). Is there any evidence that land holding in Acadian communities

¹⁷⁶ Jeanne Loreau à Alexandre Girouard, 10 août 1735, LAC, Fonds des Colonies (France), Série G3, Notariat de l'Île Royale (Notaire Desmarest), accessed October 5, 2018, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 2476718.

evolved as a result of contact with English land tenure? While there can be no definitive answer to this question, records of contracts found in Grant Book provide some clues.

Whether these contracts evolved to reflect English land tenure appear to have depended on where the land was located. With one exception involving a late contract to be discussed below, the only contracts written in English and in the style of an English bargain and sale agreement involved property located in the Lower Town of Annapolis Royal, that area of the town immediately adjacent to the fort. After the Maliseet and Mi'kmaq attack on the fort in July of 1724, the British moved to make this area more secure. Ruined houses belonging to the king were torn down and the wood was used to build defensive structures.¹⁷⁷ Moreover, Acadians were no longer allowed to live in the Lower Town, although some owned property there and in certain cases rented this property out to British personnel.¹⁷⁸ Acadians continued to live in the Upper Town, an area extending from the buffer area around the fort to the Cape. The shift to an English form of land contract in the Lower Town undoubtedly reflects the complete control the British had over this area.¹⁷⁹ Thus, a 1733 contract of sale by Jean-François Flanc of property in the Lower Town to Samuel Douglas was basically the same as the bargain and sale contracts

¹⁷⁷ John Doucett to Paul Mascarene, 19 July 1724, LAC, Colonial Office (Great Britain), CO 217, Nova Scotia "A" Series, vol. 16, pp. 72-74, accessed October 15, 2018, <http://heritage.canadiana.ca/>, C-9121, image 1059-1061.

¹⁷⁸ Dunn, *History of Port-Royal/Annapolis Royal*, 124.

¹⁷⁹ This may also reflect the fact that after 1703, property in the town of Port-Royal was technically within the domaine of the French crown, although it is not clear how strictly this was enforced. Ownership of this land, therefore, would have escheated automatically, by operation of law, upon the transfer of political control to the British crown. This gave the British more control in this area from the very start of their occupation. A similar circumstance occurred after the 1763 Treaty of Paris transferring all Spanish possessions in North America east of the Mississippi River to Great Britain. Spanish occupants of St. Augustine were given, much like in l'Acadie, a limited time in which to sell their property. While the Spanish evacuated the city immediately upon the transfer of political control of the city, there remained a question of disposing their property. All properties in the town belonging to the Spanish Crown, however, including substantial Church properties, escheated to the British Crown. Gold, *Borderland Empires in Transition*, 42.

used by the British with each other,¹⁸⁰ as was a contract of sale for a house in the Lower Town made by René LeBlanc in favor of two British soldiers, John Seal and Edward Cook.¹⁸¹

Other contracts, however, especially for lands outside of the Lower Town, and even when they involved non-Acadian buyers, continued to be written in French according to French legal conventions. Thus, a 1737 contract for sale of lands located at the Cape in Annapolis Royal and at Ruisseau-Fourchu from Madeleine Corporon to John Easson, carpenter for the king at the garrison, could have been written by a French notary, and states that the buyer “will be held and obliged to pay every year the seigneurial rentes to the seigneur which is the sum of fifteen sous per year for the buyer, and five sous per year that Baptiste Raymond owes on the said rente, which makes twenty sous in all.”¹⁸² Similarly, a contract of sale from 1737 by Pierre Préjean to Jean Le Prince for land located along the upper river is in French and states that “buyers will be obligated to pay for the said share of the seigneurial rights in accordance with their share and portion,” but does not give the amount.¹⁸³ Other contracts, while written in French and following French conventions, do not contain mention of seigneurial dues. This includes a 1721 contract of sale in anticipation of inheritance of lands located at Annapolis Royal by Antoine Godet and his

¹⁸⁰ Deed from Jean-François Flanc to Samuel Douglas, N.S. Arch. Grant Book 1, 25 May 1733, pp. 42-43. The language is the essentially the same as that used in the deeds from John Adams to Richard Watts, also in Grant Book 1, pp. 39-40, and Samuel Douglas to John Hargrave, pp. 51-52.

¹⁸¹ Deed from René Le Blanc to John Seal and Edward Cook, 29 March 1732, NS. Arch., Grant Book I, 120-121. The contract specifies that Seal and Cook will pay the “ordinary dues or quit-rents if demanded,” on the property. Evidence that LeBlanc, the seller, originally held this land from a seigneur, however, is provided in the contract by reference to “a receipt for fines of alienation signed by Mr. Villattes Seigneur of said ground.” This receipt, dated 12 February 1711, is offered to support LeBlanc’s rights in the property and refers to Jean-François Villate, the second husband of Marguerite Saint-Étienne de La Tour, one-seventh owner of the seigneurie of Port-Royal. This receipt indicates that the 1703 arrêt holding that the town was henceforth to be considered the domaine of the king, may not have been uniformly enforced.

¹⁸² Deed from Madeleine Corporon to John Easson, 18 June 1737, N.S. Arch., Grant Book I, 64; “le dit acheteur sera tenue et obligé de payer tous les ans les rentes seigneuriale au seigneur qui est la somme de quinze sous par an pour le dit acheteur, et cinq sous par an que Baptiste Raimond doit sur la dite rente, qui fait vingt sous pour toute.”

¹⁸³ Deed from Pierre Préjean and Marguerite Doucet to Jean LePrince, 15 November 1737, N.S. Arch., Grant Book 1, 71-72; “les dits acquereurs seront obligés a payer pour la dite part les droits seigneuriaux suivant leur part portion.”

wife to Bernard Godet and his wife;¹⁸⁴ a 1726 contract of exchange between two Robichaud brothers and their wives involving land in Cobeguit, and in Les Mines;¹⁸⁵ and a 1737 contract for sale of land in what appears to be the town of Annapolis Royal or the banlieue by Marie Doucet to John Easson.¹⁸⁶ Therefore it appears that but for certain properties in the immediate vicinity of the fort, specifically in the Lower Town, contracts made by Acadians for the conveyance or transfer of land after 1713 continued to be made in the same form as those made by French notaries before 1713. The difference is that among the extant contracts, there are at least as many that make no mention of seigneurial charges as there are those that do. This may reflect confusion caused by the departure of the seigneurs, as well as the efforts by the British to assume the rights of those seigneurs.

Of the limited number of contracts we have from this period, there is one instance where an Acadian seller employed an English style contract for the sale of land located outside of the Lower Town of Annapolis Royal. This was the 1741 contract of sale by François Lejeune to John Easson for lands located in both Belleisle, a village along the upper river, and Annapolis Royal.¹⁸⁷ Unlike other contracts for lands outside of the immediate environs of the fort, this one was written in English and is in the form of an English bargain and sale contract. It makes no mention of seigneurial charges. The contract affirms that Lejeune is the lawful owner of the property, “in mine own proper right as a good perfect and absolute estate of inheritance.” This language was used by New Englanders when a grantor intended to indicate that the land was free

¹⁸⁴ Deed from Antoine Godet to Bernard Godet (Beaubassin), 21 November 1721, N.S. Arch., Grant Book 1, p. 106.

¹⁸⁵ Exchange between Joseph Robichaud and Madeleine Depuis and Joseph Robichaud and Claire Le Blanc (Cobequid), 7 May 1726, N.S. Arch., Grant Book 1, pp. 79-80.

¹⁸⁶ Deed from Marie Doucet to John Easson, 18 June 1737, N.S. Arch., Grant Book I, 63-64. It is difficult to ascertain the location of the property, although it was executed before Robichaud acting as notaire, which would indicate it was in the town or banlieue.

¹⁸⁷ Deed from Francis Lejeune to John Easson, 11 March 1741, N.S. Arch., Grant Book I, pp. 128-129.

from all tenurial burdens, including quit-rents.¹⁸⁸ It is hard to see how the latter would have been considered enforceable as against the government of Nova Scotia, which was determined to collect such quit-rents from settlers in the new province, and thus not repeat the same mistakes that had been made in New England in this regard. That aside, Lejeune included some curious language which may indicate that he was not as certain in his claims to absolute ownership in the property as the language of the contract suggests. He confirms “all his rights and privileges in this place, *excepting that part belonging to the Old Princess.*”¹⁸⁹ Might he have been referring to the fact that the land in Belleisle had been part of Marie de La Tour’s seigneurie? Was he hedging his bets, even thirty years after the British took control of l’Acadie, in recognizing the rights of the old seigneurs of the place?

Land Tenure Among Acadians in French-held l’Acadie

In addition to the Loreau contract discussed above, notarial records from Louisbourg contain a small number of contracts of sale made by Acadians who had relocated there after the British assumed control in 1713. These sales involved lands located in the Minas Basin. As would be expected, the contracts were written by French notaries at Louisbourg and reflect French law. Even decades after the British gained control of l’Acadie, these contracts still reflect the understanding that the land being sold was within a seigneurie and was subject to seigneurial charges. Thus, a contract for sale of land in Grand Pré from Manuel Hebert (Emmanuel Hébert) to Joseph LeBlanc made at Louisbourg in October 1741 states that the buyer is responsible for

¹⁸⁸ Bond, *The Quit-rent System in the American Colonies*, 15, n. 3.

¹⁸⁹ Deed from Francis Lejeune to John Easson, 11 March 1741, N.S. Arch., Grant Book I, p. 128 (emphasis added).

paying “all the duties of the cens et rentes and other seigneurial rights.”¹⁹⁰ Although the contract is not specific as to the amount or nature of the charges, the contract shows that Grand Pré was considered part of a seigneurie, and that the people there recognized it as such, even if in reality seigneurial cens et rentes were now being paid to the British. Similarly, a 1741 contract of sale by Marie Joseph Hébert, another heir of Michel Hébert and Isabelle Pellerin, to her brother, René Hébert, currently living in Grand Pré, involving land she inherited from her mother and father, states that the buyer is obligated to pay “tous droits seigneuriaux.”¹⁹¹ The contract does not give the location of the land; however, it is from the estate of Michel Hébert and Isabelle Pellerin, as in the previous contract, and thus is almost certainly located in Grand Pré.¹⁹² Another contract, dated October 27, 1721, involves a sale of land by Marie Joseph Rivet to her brother, Etienne Rivet of land inherited from her father, Etienne Rivet. One piece of land was located in Pisiguit and the other was on the rivière aux Canards. The contract states simply that the buyer commits to pay “the charges and arrearages, if any, found to be owed on the land,” without specifically mentioning seigneurial charges.¹⁹³ However, as there was no property tax at the time, these “charges” can only refer to seigneurial charges. valuable

¹⁹⁰ Contrat passée par Manuel Hebert à Joseph LeBlanc, 11 octobre 1741, LAC, Fonds des Colonies (France), Série G3 (Notaire Laborde), vol. 2046, accessed October 20, 2018, Archives Research, <http://collectionscanada.gc.ca/>, MIKAN 2478047; buyer responsible for paying “tous les droits des cens et rentes et autre droits seigneuriaux.”

¹⁹¹ Contrat passée par Marie Joseph Hébert à René Hébert, 5 octobre 1743, LAC, Fonds des Colonies (France), Série G3 (Notaire Laborde), vol. 2047, accessed October 25, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2478225.

¹⁹² Brun places Michel Hébert and Isabelle Pellerin in the settlement of the rivière des Gaspareaux as of 1693. Brun, *Les Acadiens avant 1755*, 19. Similarly, the census of 1701 lists them as being in this same settlement. Recensement de la Colonie des Mines (1701), LAC, Fonds des Colonies (France), Série G1, vol. 466, part. I, fols. 203-204, accessed November 2, 2018, <http://heritage.canadiana.ca/>, C-2572, images 208-209. In 1714, however, the census no longer lists Michel Hébert as living in the rivière des Gaspareaux. Instead he is included in an untitled list that appears to include those living in Grand Pré. “Recensement des habitans des mines avec leurs familles de cette presente année mil sept cent quatorze,” LAC, Fonds des Colonies (France), Série G1, vol. 466, part. I, fols. 238-239, accessed November 3, 2018, <http://heritage.canadiana.ca/>, C-2572, images 246-247.

¹⁹³ “Convention faite entre Pierre Toussaint ... et Etienne Rivet,” 27 octobre 1721, LAC, Fonds des Colonies (France), Série G3, vol. 2057, Notariat de l’Ile Royale (Louisbourg), accessed November 8, 2018, Archives Search, <http://collectionscanada.gc.ca/>, MIKAN 2479099; “l’acquireur .. s’oblige de payer les charges qui se trouverent sur les dites terres ensemble les arrerages des elles s’il y en a dechûs.”

During the period of British rule, only a small number of Acadians relocated to other areas still under French control, like Louisbourg or Île Saint-Jean.¹⁹⁴ This would change to some extent after the end of King George's War in 1748. The conclusion of the war had created a fragile peace that left the area in a state of heightened tension. This tension, together with the establishment of Halifax and the arrival of Governor Edward Cornwallis in 1749, made it likely that the areas populated by Acadians would become a flash-point in the final struggle between Britain and France for North America. In particular, the isthmus of Chignecto became the focus of the ambitions of both powers. The French claimed that the Missiguash River on the isthmus was the boundary between that part of l'Acadie that had been ceded to the British by the Treaty of Utrecht and that part retained by France. The British disputed this, arguing that the area ceded included all of what had been French l'Acadie. The Treaty of Aix-la-Chapelle ending the War of the Austrian Succession (in North America, King George's War) established a commission to resolve the issue. In the meantime, however, the two powers began a military buildup in Chignecto. In 1750, the British built Fort Lawrence south of the Missiguash, and in 1751, the French built Fort Beauséjour on the north side. Abbé Le Loutre, a missionary working with the French, made efforts to persuade Acadians living in British Nova Scotia to move to French held territory. The village of Beaubassin was burned, it is thought by Le Loutre and Mi'kmaq allied with him, and the people were forced to relocate to Fort Beauséjour. While some Acadians living in Annapolis relocated to Chipoudy, Peticoudiac, and Memramcook, most stayed on their holdings on the Annapolis River.¹⁹⁵

¹⁹⁴ For reasons why Acadians decided to remain in Nova Scotia after the Treaty of Utrecht, see Griffiths, *From Migrant to Acadian*, pp. 273-274.

¹⁹⁵ Some were apparently made to do so. Brenda Dunn writes that "in May 1750 Charles Préjean and Jacques Michel presented a petition to the council on their behalf, requesting permission to 'retire' from the province. The council refused, stating that passports would be granted only after 'peace and tranquility' had been reestablished in the province." *History of Port-Royal/Annapolis Royal*, 197.

In 1754 the notaire Louis de Courville established himself at Fort Beausejour. He would record some seventeen contracts for the Acadians who had relocated there before he was forced to leave after the British took the fort in June of 1755. Only a handful of these contracts involve land transfers, and these concern land located around Fort Beauséjour. None of the contracts mention the seigneur of the place, La Vallière, who, it will be recalled, was confirmed in his holdings by the French crown in 1705, but who left the area and was now deceased. Instead the contracts specify that the buyer takes the property “franche et quitte,” or free and clear, of all seigneurial charges accrued as of the day of sale.¹⁹⁶ The transfer, however, is expressly conditioned on the buyer paying “les cens et droits seigneuriaux á qui dús,”¹⁹⁷ in one case specifically recognizing that such charges may be due to the domaine of the Beauséjour.¹⁹⁸ Thus, it appears that the area surrounding the fort, as had been the case at Port-Royal, had been removed from La Vallière’s seigneurie and restored to the king’s domaine. Not surprisingly, therefore, the French had not abandoned the seigneurial system on lands the French still held in l’Acadie.¹⁹⁹

¹⁹⁶ “Contrat d’échange du S. de Billy avec ses freres et soeurs a Buot,” 12 août 1754, CEAAC, Fonds Adrien Bergeron, 89.5, no.3; and, “Vente d’un terrain et maison par Grand-Maison et sa femme au proffit de M. de Vergor,” 3 septembre 1754, CEAAC, Fonds Adrien Bergeron, 89.5, no. 4.

¹⁹⁷ “Vente d’un terrain et maison par Grand-Maison et sa femme au proffit de M. de Vergor,” 3 septembre 1754, CEAAC, Fonds Adrien Bergeron, 89.5, no. 4; “Vente d’un terrain situé a Beauséjour par Jean Bernard et Cecile Gaudet à Jean Hebert,” 13 janvier 1755, CEAAC, Fonds Adrien Bergeron, 89.5, no. 11.

¹⁹⁸ “Contrat d’échange du Sieur de Billy avec ses freres et soeurs a Buot,” 12 août 1754, CEAAC, Fonds Adrien Bergeron, 89.5, no. 3.

¹⁹⁹ One of the de Courville documents, a testament dividing lands belonging to René Hautcoïn (Aucoïn) and his wife, Magdelaine (Madeleine) Bourg, involved land outside of the banlieue of the fort. In arranging for their children to share their properties along the rivière aux Canards, then under British control, as well as along the Memramcook and Petitcoudiac Rivers, arguably under French control, the 1754 will provides that the children will take the land “en toute propriété.” Partage et testament de René Hautcoïn et de Magdelaine Bourg à leurs enfants, 18 juillet 1754, CEAAC, Fonds Adrien Bergeron, 89.5, no. 1. This formula was used from the time of the earliest seigneurial grants in l’Acadie, including those made by the Compagnie de la Nouvelle-France, and was not understood in the same way that one would understand it today, namely ownership in fee simple. See Le Blant, “La Compagnie de la Nouvelle-France et la restitution de l’Acadie (1627-1636),” 70. It appears, instead, to indicate that the grant was for undivided ownership, i.e. no co-owner.

CHAPTER 6

ACADIAN LAND USE PRACTICE AND THE CUSTOM OF THE MARSH

Acadian land use practice is identified above all with marshland farming, a method of farming that required the diking and drainage of the areas of vast saltwater marshland found in the agricultural communities around the baie Française, renamed the Bay of Fundy after the British assumed control. The actual techniques employed by the Acadians to dike the marshes and bring them into cultivation have been written about extensively in the literature and will not be rehearsed here.¹ This chapter will instead be concerned with the manner in which land, and especially the valuable marshlands, were transferred, allocated and worked prior to the expulsions that began in 1755. During the more than 120 years that the Acadians worked the

¹ See e.g. Gregory M. W. Kennedy, "Marshland Colonization in Acadia and Poitou during the 17th Century," *Acadiensis* 42, no. 1 (Winter/Spring 2013): 37-66; J. Sherman Bleakney, *Sods, Soil, and Spades: The Acadians at Grand Pré and Their Dykeland Legacy* (Montreal & Kingston: McGill-Queens University Press, 2004); Karl W. Butzer, "French Wetland Agriculture in Atlantic Canada and Its European Roots: Different Avenues to Historical Diffusion," *Annals of the Association of American Geographers* 92, no. 3 (September 2002): 451-470; Yves Cormier, *Les aboiteaux en Acadie, hier et aujourd'hui* (Moncton: Chaire d'études acadiennes, 1990); Special issue, La société historique acadienne, *Les Cahiers* 19, nos. 1-2 (Janvier-juin 1988), dedicated to the Acadian aboiteaux; and, D.C. Milligan, *Maritime Dykelands: The 350 Year Struggle* (Halifax: Province of Nova Scotia, Depart. of Agriculture and Marketing, 1987). For likely French precursors of the Acadian aboiteaux, in addition to Kennedy and Butzer above, see Yannis Suire, "L'oeuvre de dessèchement du Marais poitevin," *Dix-septième siècle*, no. 221 (2003/4): 611-636 (traces the development of drainage projects in the Marais poitevin, from the local initiatives by groups of peasants in the late sixteenth century, which probably adopted earlier drainage technologies going back to those of the monasteries in the Middle Ages, to the more elaborate drainage schemes of the seventeenth century, encouraged by incentives from the crown, but implemented and financed by associations of private investors); Matthew G. Hatvany, "The Origins of the Acadian Aboiteau: An Environmental-Historical Geography of the Northeast," *Historical Geography* 30 (2002): 121-137; Jean-Luc Sarrazin, "Maîtrise et gestion des eaux dans les marais littoraux de la Bretagne méridionale et du Poitou (vers 1050-vers 1350)," in *Le Milieu littoral*, ed. Jacques Malézieux, Nantes Éditions du CTHS, 2002, 159-178; Jean-Luc Sarrazin, "Maîtrise de l'eau et société en marais poitevin (vers 1190-1283)," *Annales de Bretagne et des pays de l'Ouest* 92, no. 4 (1985): 333-354; and, Étienne Clouzot, *Les marais de la Sèvre niortaise et du Lay du X^e à la fin du XVI^e siècle* (Paris and Niort: H. Champion, and L. Clouzot, respectively, 1904). There are some striking similarities between Acadian and French diking techniques used in the Marais poitevin in the Middle Ages and up through the seventeenth century. Examples include, the *coi*, or ducts made of hollowed tree trunks, placed in *bots*, or dikes used by French salt makers. These are similar to the hollowed logs found in old Acadian dikes. Also, the monks and later seventeenth century drainers used *portereaux*, or swinging gates, placed in dikes to control the flow of water. Particularly interesting were those placed in dikes built where a drainage canal (or tidal river) discharged to sea (*le bot de Garde*, or *le bot des Relais*). Like the aboiteaux built into Acadian dikes, these permitted fresh water to drain from the marshes at low tide, but prevented the sea water from flooding back into the drained areas at high tide. Clouzot, *Les marais*, 97, 101-103. Yet another example is the fact that the bots or dikes in the Marais poitevin were generally made of earth armored with *gazons*, or turf, much like Acadian dikes. Clouzot, 97.

marshes, they developed a set of practices and customs that permitted them to successfully exploit this valuable resource in a way that was not only practical, but also equitable.

As discussed in chapter 5, after the British assumed control, Acadians continued to hold their land in accordance with their original grants and contracts, with the difference being that the British crown had now stepped into the shoes of the departed French seigneurs. Further, French law and custom governed land use practice, and were applied in the case of disputes. This paper has, moreover, shown that the British failed to introduce not only their law, but also their culture in l'Acadie, and that Acadian communities continued to maintain their own culture, which nonetheless evolved to accommodate North American conditions. It follows that it is reasonable to consider evidence from the British period when assessing Acadian land use practice.

Subsistence and Market Farmers

The agricultural settlements of l'Acadie operated on a subsistence basis at first but later produced enough of a surplus to trade both within and outside the colony. In his "Relation de la province d'Acadie," François-Marie Perrot, gouverneur of l'Acadie from 1684 to 1687, found that the country produced enough wheat, peas, apples and some cherries to meet the people's needs. In his assessment, the people worked to provide for themselves and their families and were not interested in amassing goods or money, of which there was little or none to be had in the colony.² It appears, however, that by 1699, and notwithstanding the continued political upheavals, farmers in the Port-Royal area were growing enough food to sell some surplus to

² Relation de la province d'Acadie (Perrot), n.d., LAC, Fonds des Colonies (France), Série C11D, vol. 2, fols. 38-53 (transcription), accessed December 8, 2018, <http://heritage.canadiana.ca/>, C-11359, images 504-519.

other places in l'Acadie.³ It was Les Mines, however, that came to be thought of as the breadbasket of l'Acadie. Beaubassin, on the other hand, produced enough livestock to trade both with Louisbourg and New England.

Size and Type of Land Conceded

Surviving contracts, as well as officials' reports and letters, show that land concessions were often of a relatively large extent, and included extensive areas of uplands as well as marsh.⁴ French officials often complained about the size of concessions. For example, in a letter written in August of 1686, Perrot complained of the "great abuse regarding the extent of land conceded to individuals having noticed that some have more than sixty leagues of front which they have not developed."⁵ This concern was echoed almost twenty years later by then gouverneur Brouillan who claimed that the early concessions of lands in the Port-Royal area were too large, encompassing a large amount of upland as well as marsh, and were more lands than the owners could work.⁶

Undoubtedly, a large part of the complaints about the size of concessions were related to the view of these and other French officials that Acadians should be making more use of the

³ "Mémoire sur l'état présent de Port Royal," Villebon, 27 octobre 1699, LAC, Fonds des Colonies (France), Série C11D, vol. 3, fols. 454-467, 454, accessed December 9, 2018, <http://heritage.canadiana.ca/>, C-11360, images 183-198. Villebon also called Port-Royal a "little Normandy," for the types and quality of apples found there.

⁴ See e.g. "Concession from the sieur de Belleisle to Pierre and Mattheu Martin," 9 August 1679, N.S. Arch., Grant Book 1, p. 67.

⁵ Le Sr. Perrot au port Royal, 9 août 1686, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 26 (transcription); "un grand abus touchant l'estendue des terres concédées aux particuliers ayant remarqué que quelques uns en ont de front plus de 60 lieues qu'ils ne font pas valoir."

⁶ "Extrait d'un rapport de 1701 par le gouverneur de Brouillan," reprinted in part in Rameau, *Une colonie féodale*, 2: 337-338.

uplands for farmlands.⁷ While some mistakenly attributed this to lassitude on the part of the habitants,⁸ others understood the problems in turning the uplands into farmlands along the coast, citing to the difficulty of clearing the uplands,⁹ the need for a larger workforce,¹⁰ or the lack of sufficient manure to fertilize the soil.¹¹ Others specifically recognized the benefits of marshland farming. Perrot himself wrote that to farm the marshlands, “[the habitants] have only their first efforts ... to enclose them[,] first to dry them for a year to desalinize them and after to put there

⁷ Brouillan’s chief concern appears to be that the large conceded expanses of uplands were left uncultivated. He believed, quite unrealistically, that if the conceded land was divided among the young “many [of them] would decide perhaps then to cultivate the uplands” (bien des jeunes gens se détermineraient peut-être alors à cultiver les terres hautes). Rameau, *Une colonie féodale*, 2:338

⁸ See e.g. Gargas’s comments that “also [it would be wise] to obliger the inhabitants to cultivate the higher grounds ... the effort of clearing it seems too great to the inhabitants: they are used to more leisure than this work would permit.” “Mon Séjour d’Acadie 1687-8,” in Morse, *Acadiensia Nova*, 1:179. Also, “Le Sieur Sacardy: Description de la baye de Chedabuctou, description du Port Royal,” 3 janvier 1690, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fols. 302- 333, 311, accessed December 11, 2018, <http://heritage.canadiana.ca>, C-11359. Vincent Sacardy, the king’s engineer in Nouvelle-France, writes that dyking and farming the marsh “renders them lazy in that they do not have enough to occupy them” (les rend paresseux en ce qu’ils n’ont pas assez d’occupation).

⁹ Perrot, for example, confirmed that Acadians farmed very little in the uplands, but appeared to find this understandable, listing all the steps that would have to be taken to make the uplands productive. This included cutting down the wood on the land, cutting it in pieces, stacking it, and breaking up the land by hand, “not being able to use the hand pushed plow across the stumps” (ne pouvant pas se servir de la charrue au travers des souches). *Relation de la province d’Acadie* (Perrot), n.d., LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 42. Later in his *Relation*, Perrot writes that the “habitants of Acadie are very industrious and skillful in all things, necessity having constrained them to become so” (Les habitants de l’Acadie sont fort industrieux et adroits à toute chose, la nécessité les ayant contraint de le devenir). *Relation de la province d’Acadie*, fol. 43. They are, he wrote, “weavers, masons, carpenters, *menuisiers* (artisans that do fine carpentry for buildings), [and] tool makers.” They also made their own cloth made into the clothes they wore. He appears very impressed by one of the habitants living at Les Mines who made a water mill of his own invention.

¹⁰ In a description of Port-Royal, Saccardy reasoned that the habitants did not clear the uplands because they did not have the men to help them “and they die of hunger before they have cleared an acre.” “Le Sieur Saccardy: Description de la baye de Chedabuctou, description du Port Royal,” 3 janvier 1690, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 310; parce qu’ils n’ont pas d’hommes pour leur aider et qu’ils mourroient de faim en attendant qu’ils eussent défriché un arpent. In 1699, Villebon, then commandant of l’Acadie, commented that Les Mines “would become considerable once the people sell their produce and the king brings to this country engagés to develop their lands.” *Mémoire sur les établissements et havres qui sont depuis les Mines ... jusqu’à l’Isle de Cap Breton*, 27 octobre 1699 (Villebon), LAC, Fonds des Colonies (France), Série C11D, vol. 3, fol. 439, accessed December 14, 2018, <http://heritage.canadiana.ca/>, C-11360, image 166; ce lieu se rendre considerable aussitost que ces gens trouveront le debit de leurs denrées, et que le Roy [fera] passer en ce pays des engagés pour faire valloir leurs terres.

¹¹ *Relation de la province d’Acadie*, n.d., LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 42. Menneval, who followed Perrot as governor of l’Acadie, also noted the difficulty of farming inland. The habitants, he wrote, would have to clear a large area of land around their houses for air, but also to prevent the wild beasts from killing their animals. *Mémoire du sieur de Menneval*, 10 septembre 1688, LAC, Fonds des Colonies (France), Série C11D, vol. 2, 208 (transcription).

the plow to draw much wheat.”¹² Perrot may here be underestimating the labor it took to enclose the marshes and maintain the dykes, but his comment shows that he appreciated the benefits of farming the marshes.

Perrot also noted what may have been a downside of turning meadow into farmland. By destroying the meadows to make farm fields, he wrote, the habitants of Port-Royal reduced the amount of fodder available. This is why, he argued, “they can no longer feed as large a quantity of cattle as before.”¹³ The lack of manure, in turn, made it even more difficult to farm the uplands.¹⁴ Gargas made a similar observation several years later.¹⁵ The same concern was raised, somewhat surprisingly given the amount of marsh available, with regard to farming the extensive meadows in Les Mines.¹⁶ It is difficult to assess such claims without more precise evidence regarding the percentage of meadow transformed into farmland in both areas, but the fact that more than one eyewitness raised this as an issue makes it worth considering.

¹² Relation de la province d’Acadie, n.d., LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 42; “dans les marais ils n’ont que leurs premiers soins à y donner qui ne sont que de les enfermer d’abord les mettre à sec les laisser pendant une année se dessaler et après y mettre la charü pour en tirer beaucoup de grains.”

¹³ Relation de la province d’Acadie,” n.d., fol. 42; “ils ne peuvent plus nourrir si grande quantité de bestiaux comme auparavant.” Dièreville noted that in Port-Royal the sheep and the cattle grazed on the upland, “the only place for them to graze.” Dièreville, *Relation of the Voyage to Port Royal*, 110.

¹⁴ At least one official wrote that after fifteen or twenty years the enclosed marshes lost much of their fertility, and leaving them fallow did not improve them. *Mémoire des costes de l’Acadie* (joint à la lettre du Sieur Bonaventure dudit jour), 12 octobre 1701, LAC, Fonds des Colonies (France), Série C11D, vol. 4, fol. 179, accessed December 28, 2018, <http://heritage.canadiana.ca/>, C-1360, image 507. While this may have been a problem where the marshland was limited, as along the rivière du Dauphin, it would not be where there was sufficient marsh to either move to or to pasture animals to manure the old fields.

¹⁵ Gargas, écrivain to the king, perhaps with the benefit of Perrot’s earlier observations, also noted that the habitants were short of fodder because they ploughed their marshes, resulting in a shortage of cattle both useful for labor and for food. “Mon Séjour de l’Acadie,” in Morse, *Acadiensia Nova*, 1:178. See also “Le Sieur Saccardy: Description de la baye de Chedabuctou, description du Port Royal,” 3 janvier 1690, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 310.

¹⁶ In 1701, Simon-Pierre Denys de Bonaventure, second in command to Brouillan, also wrote in a description of the settlement of Les Mines, that few habitants worked the upland, but in truth, these lands would yield little wheat with the amount of manure available to them. If the salt marsh were left as meadow, he opined, the settlement would draw great benefits as there would be available great amounts of manure. *Mémoire des costes de l’Acadie* (joint à la lettre du Sieur Bonaventure dudit jour), 12 octobre 1701, LAC, Fonds des Colonies (France), Série C11D, vol. 4, fol. 218.

After they assumed control, British officials certainly noted the large size of the land grants claimed by the Acadians, a good part of which were uncultivated. In the 1730s, after unsuccessfully attempting to persuade the inhabitants to exchange their French grants for British deeds, officials posted notice throughout the colony that the Acadians were to present their land claims to the council's secretary as a way of "forwarding the improving and cultivating the waste lands in this province."¹⁷ When some years later the British sent out their own surveyors, they were directed to take note of the uncultivated lands.¹⁸ British officials would eventually bow to necessity and accept the old French land grants, but their actions show that they sought to limit them to lands enclosed or cultivated. There is no evidence, however, that they ever took action to dispossess the Acadians of undeveloped uplands to which they laid claim.

Settlement Patterns

The dispersed settlement pattern along the rivière du Dauphin has been much discussed in the literature, leading some commentators to assume a spirit of independence among the people, and even, according to a particularly impetuous outburst by one official at the time, a kind of antisocialism.¹⁹ Settlement patterns in Port-Royal, as well as the other agricultural settlements, however, were much more likely based on the particular geography of the area and

¹⁷ Council minutes, 13 August 1731, *N.S. Arch. III*, 187-188.

¹⁸ Armstrong to George Mitchell, 20 July 1733, *N.S. Arch. II*, 195; Order to Mitchell to Survey Minas, 7 April 1734, *N.S. Arch. II*, 198.

¹⁹ Perrot claimed that habitants moved up river on large concessions "affin de s'entretenir plus facilement dans la débauche avec les sauvagesses." Lettre du sieur Perrot au ministre, 9 août 1686, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 26 (transcription) (C-11359, image 491). Others have argued that habitants moved away from the town center to escape official interference, especially after the administration of the colony was reestablished at Port-Royal, as well as for protection against attacks by the English and by pirates.

access to the all-important marsh.²⁰ Thus in Port-Royal, where marsh was said by more than one official to have been in relatively short supply, small “villages” or hamlets sprung up along the river both above and below Port-Royal next to distinct areas of marsh.²¹ These areas of settlement often contained extended families, sometimes with other associates, and in some cases bore the family name (e.g. Village-Gaudet).²² The movement of families out of the town of Port-Royal was noted by Perrot in 1686. He wrote that few habitants remain in Port-Royal, and that those that had “having gone to live along the river . . . where they have built houses and enclosed the marsh with large dikes of clods of turf (*gazons*).”²³ Maps from this period generally show groupings of houses along the river above and below the town.²⁴ The Gargas census made just one year after Perrot made his remarks divided the river into twenty-four distinct areas of settlement containing anywhere from one to ten houses, while the town of Port-Royal and Le

²⁰ Menneval, governor at the time, confirmed that Acadians moved to locations up and down the river in order to “take advantage of their pieces of marsh which are in small quantity.” *Mémoire du sieur de Menneval*, 10 septembre 1688, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 207 (transcription); they are distant from one another “pour se prévaloir de ses morceaux de marais qui sont en petite quantité.”

²¹ *Mémoire du sieur de Menneval*, 1688, fol. 207 (transcription).

²² These small villages or hamlets are thought to have contained several generations of the same family, as well as extended family and allied households. Jean Gaudette, “Famille élargie et copropriété dans l’ancienne Acadie,” *La société historique acadienne. Les cahiers*, 25, no 1 (Janvier-mars 1994): 15-26. Families lived in separate houses or the family house could be extended to accommodate married children and their family. Gaudette, 17, quoting Otis Little’s account of Minas in his book, *The State of Trade in the North Colonies Considered with an Account of their Produce, and a Particular Description of Nova Scotia* (London: G. Woodfall, 1748), 69-70 (“for here it is customary when one of a family marries, to enlarge the mansion-house, and by the addition of new apartments, they make room for the expected progeny; from this practice ‘tis common to find three or four generations under one roof”).

²³ *Relation de la province d’Acadie*, n.d., LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 39; “les autres estant aller demeurer le long de la rivière . . . où ils ont basti des maison, et enfermé des marais avec de grandes levée[s] de garons.” The transcription reads, “enfermé des marais avec de grandes levée[s] de garons . . .” My assumption is that this should read *gazons* or clods of turf.

²⁴ See “Coast of Acadie by LaLanne, 1684,” from the Archives du Service Hydrographique de la Marine, Paris, and reproduced in Morse, *Acadiensia Nova*, 2: Map B. See also, “Carte générale de la baye et rivière du Port Royal,” n.d., BnF, département Cartes et plans, GE SH 18 PF 133 DIV 8 P 1, published February 2, 2015, <https://gallica.bnf.fr/ark:/12148/btv1b530897638>. The latter indicates that the map was “de la Baye et Riviere du Port Royal, et de toutes les habitations que Mon.^r De Meulles Intend.^t de la nouvelle france a visité, et dont il a fait tirer le plan en sa presence avec beaucoup de soin” (of the Bay and River of Port Royal, and of all the settlements that Monsieur De Meulles Intendant of Nouvelle-France visited, and of which he had the plan drawn up in his presence with much care). It is likely therefore that the map was drawn up in 1686 when de Meulles visited the area and that it was drawn by Jean-Louis Franquelin, King’s Hydrographer from Canada, who was known to make other maps of de Meulles’s trip. The map shows dwellings above and below the fort, some clustered.

Cap (a part of the upper town of Port-Royal located on a promontory), had fourteen and eleven houses, respectively.²⁵ By 1710, separate hamlets are clearly shown on a map of the river drawn by Delabat.²⁶ Houses along the river were located on areas of upland facing the marsh and river. Vincent Saccardy, engineer general for the king in Nouvelle-France visited Port-Royal in 1689 and wrote that there was hardly any habitant that did not have five or six hundred toises (1,847 to 2,216 feet) of marsh in front of his house.²⁷

Settlement patterns along the rivière du Dauphin had certain features in common with the “enclosed fields” regime practiced in much of the west of France, an area from which most Acadians came. In contrast to the large common fields found on the plains in the north, agriculture in many parts of the west was characterized by small individually owned fields enclosed with *haies vives* (hedgerows) or fences.²⁸ This regime was found where the soil was poor or the terrain hilly, and in less populated areas; in other words, where there were pockets of good land on which several families farmed. Houses tended to be clustered around small hamlets located near the fields rather than organized into villages, much like what was found up and down the rivière du Dauphin. As in France, then, the settlement pattern along the rivière du Dauphin was determined to a large extent by environmental factors, most importantly the existence and configuration of distinct areas of marsh found up and down the river.

²⁵ “General Census of the Country of Acadie, 2687-1688 (Gargas),” in Morse, *Acadiensia Nova*, 1:144-155.

²⁶ By 1710, Delabat’s map of the rivière du Dauphin clearly shows family hamlets. “Plan du cours de la rivière du Dauphin/Delabat,” 1710, BnF, département Cartes et plans, GE SH 18 PF 133 DIV 8 P 6.

²⁷ “Le Sieur Sacardy: Description de la baye de Chedabuctou, description du Port Royal,” 3 janvier 1690, LAC, Fonds de Colonies (France), Série C11D, vol. 2, fol. 311.

²⁸ Bloch, *French Rural History*, 57. The “enclosed fields” regime was in contrast to the “open and elongated fields” regime found on the northern plains of France. There people lived in villages apart from their fields, and the community established and enforced crop rotations and determined the time when animals could be pastured on the stubble after harvest.

In the 1670s and 1680s, Acadians living in Port-Royal began to migrate to the new settlements of Beaubassin and Les Mines. Historians posit various reasons why Acadians would have moved into these new areas. Naomi Griffiths suggests that the reasons for the migration included not only a general shortage of marsh in the Port-Royal area, but also “social, political, and religious tensions within the older communities as well as the lure of the frontier itself.”²⁹ Gisa Hynes rejects the idea that the move was precipitated by a lack of marshland in the Port-Royal area. Rather, she argues, it was because the people wanted to “live out of reach of the authorities . . . who attempted to prevent illicit trading with New England,” or to escape the raids of pirates or the English.³⁰ While the migrations were probably due to a number of factors, contemporaries focused on the shortage of marsh in Port-Royal, and the desire of the people, especially the next generation, to establish themselves on new areas of marsh. Perrot wrote that “the marsh being all occupied at Port-Royal, the young not wanting to touch the uplands as I have said left like a swarm thirty leagues from here positioning themselves in the marshes in a place called Les Mines . . . from which they already take much wheat.”³¹

Settlement patterns in the new settlements, like those in Port-Royal, were determined by the need for easy access to those meadows. In Grand Pré, for example, where the habitants farmed pieces of the great marsh, settlement was more concentrated. Houses were spread along an upland ridge overlooking, and providing access to the marsh. Historians for Parks Canada estimate that by 1750 there were about nine hundred people, and one hundred and fifty houses

²⁹ Griffiths, *From Migrant to Acadian*, 129-130.

³⁰ Gisa Hynes, “Some Aspects of the Demography of Port Royal,” 6.

³¹ “Relation de la province d’Acadie,” n.d., LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 45; “Les marais estant tous occupés au Port Royal, la jeunesse qui n’a pas voulu comme jay déjà dit toucher aux terres hautes, s’en est allée comme un essin à trente lieues de là se poster dans des marais en un lieu appelé les mines . . . d’où ils tirent déjà beaucoup de bled.”

plus the same number of auxiliary structures spread across the ridge over a one and a quarter mile stretch between what is today the national historic site and the Gaspereau River.³²

At Beaubassin, the land was characterized by both large expanses of meadows and woods. Farming was more difficult here because of the exposure to heavy fogs and high winds. The people turned instead primarily to raising livestock in the vast meadows which they sold to Louisbourg and traded with Boston merchants for food and supplies. Jacques de Meulles, intendant of Nouvelle-France, visited the area in 1686 and described about twenty-two homesteads, each with three or four buildings built on islands of high ground (*eminences*) with easy access to both the meadows and the woods.³³

Marshland Drainage: Organic Process or Planned Development?

To find evidence that some authority, be it the state or a seigneur, planned or directed the development of the marshes, one must go back to the time of d'Aulnay. The missionary, Père Ignace, addressing the circumstances of d'Aulnay's death, wrote that the day before he had seen d'Aulnay return from up the river where he had gone "to place some stakes, plot some lines and stretch the guiding lines to make a new draining of land."³⁴ A number of contemporaries or near

³²"Le paysage au début des années 1750," signage at the Grand Pré National Historic Site, Grand Pré, NS, visited June 2018.

³³ "Mémoires généraux 1686: Beau Bassin ou Chignitou et La Baye Verte," LAC, Fonds des Colonies (France), Série C11D, vol. 2, fols. 110-116, accessed January 5, 2019, <http://heritage.canadiana.ca>, C-11359, images 583-589. In a burst of enthusiasm, de Meulles wrote that the meadows at Beaubassin could feed one hundred thousand cattle, "the grass there is called misotte (*mizotte*, or *poa maritima*) suitable for fattening all kinds of animals" "Mémoires généraux 1686," fol. 111; l'herbe qui y vient s'appelle misotte très propre pour engr[ai]sser toutes sortes de bestiaux.

³⁴ "Lettre du Rev. Père Ignace, Capucin," 6 août 1653, *Collection de manuscrits*, 1:136-140, 138; "Il venoit de poser des piquets, tracé les lignes et tendre les cordeaux pour faire un nouvel asséschement de terre."

contemporaries, moreover, spoke of two or three large métairies that d'Aulnay had built,³⁵ and Denys specifically referred to a "great extent of meadows" in the Port-Royal area "which the Sieur d'Aulnay had drained."³⁶ These almost certainly included the métairie later called La ferme, appropriated by Alexandre Le Borgne after Jeanne Motin's death, and later distributed among the La Tour heirs. It is likely that the first settlers farmed these areas, probably by way of a bail à métayage, or sharecropping agreement, whereby d'Aulnay provided seed, farm implements, and even animals, in exchange for some, probably relatively small, part of the produce. This made a good deal of sense in the colony when the seigneur was the only one who had the opportunity and the means to import such items. As families grew, trade increased and the colonists were able to save seed and expand their herds; they would then have been in a position to move to new areas of marsh, and begin the process of enclosure themselves. Depending on whether the seigneur was in residence, they could seek a concession before or after enclosing the marsh.

There is no evidence that Alexandre Le Borgne, Marie de La Tour, or any of the other La Tour heirs directed or otherwise encouraged the development of the marshland along the rivière du Dauphin, although extant contracts, discussed in previous chapters, show that they leased out their own métairies. Philippe Mius d'Entremont similarly developed a marshland farm on his own seigneurie along the river which he called Pleinmarais or Pleinmaret. Nor is there any evidence that the French administration encouraged or subsidized the reclamation of marsh along the rivière du Dauphin or elsewhere in the province.³⁷ On the contrary, as noted above, local officials generally took a dim view of the Acadians' farming method of choice. The "villages" of

³⁵ See discussion, pp. 94-96.

³⁶ Denys, *Description and Natural History*, 128.

³⁷ The sole exception was a late failed attempt, subsidized by the government and led by the controversial missionary Jean-Louis Le Loutre, to dike the Tantramar marsh. Butzer, "French Wetland Agriculture," 458.

extended families that grew up along the river, each with its own piece of enclosed marsh, rather appear to have proliferated organically in response to the availability of marshland and the growing needs of the population. One presumes that the seigneurs were only too happy to people their seigneurie in this way, and collect what cens et rentes that they could.

In Grand Pré, the configuration of the marshland was very different than marsh found along the rivi re du Dauphin. Because development of the Grand Pr  involved the buildout of so considerable expanse of marsh over many years, some believe that its development required a different “socioeconomic response,” in the words of historical geographer Karl Butzer.³⁸ Butzer argues that at Grand Pr , “the families of the settlement appear to have participated in a community reclamation project.”³⁹ Unfortunately, he does not explain what this would look like.

Butzer, in large part, relies on the findings of J. Sherman Bleakney in his book, *Sods, Soil, and Spades*, regarding the gradual development of the marsh. According to Bleakney, by the time of the expulsions, seventeen and a half miles of dikes on the Grand Pr  marsh enclosed almost three thousand acres.⁴⁰ He provides a plausible reconstruction of the development of the farmed marshland using drainage patterns and aerial photography. In particular, he proposes that the Acadians built twelve separate diked enclosures, walling off the more easily accessible and protected areas first, and that this expansion probably took place over sixty or more years.⁴¹ Bleakney concludes that Acadians “did not add a new enclosure each year but rather developed a new enclosure and brought it into production before adding another one.”⁴² New areas would only be constructed “when additional families moved into the area, or when their own children

³⁸ Butzer, 458.

³⁹ Butzer, 458.

⁴⁰ Bleakney, *Sods, Soil, and Spades*, 91, 93. Bleakney estimates that a family required about ten acres. Theoretically, therefore, there was enough marsh for 300 families.

⁴¹ Bleakney, *Sods, Soil, and Spades*, 71-94.

⁴² Bleakney, 92-93.

and grandchildren added to the population pressure.”⁴³ The average enclosure required approximately 7,710 feet of dike. According to Bleakney, this length of dike would take sixty men forty-nine days, over two months of tidal cycles, to build the average enclosure.⁴⁴

To Butzer, this sort of orderly build-out has suggested a degree of coordination.⁴⁵ This raises the question, however, of what person or body would have undertaken such coordination. As argued in chapter 4, Le Borgne, and later the La Tour heirs, took active measures to protect their seigneurial rights in Les Mines. As along the rivière du Dauphin, however, there is no evidence that l’Acadie’s seigneurs were involved in the development of the marsh beyond making concessions for the land.⁴⁶ Nor was the state involved. It is certainly possible that the

⁴³ Bleakney, 93.

⁴⁴ Bleakney, 91.

⁴⁵ Butzer, “French Wetland Agriculture,” 458 (“[in Grand Pré] all the families of the settlement appear to have participated in a community reclamation project, which was progressively expanded to accommodate the growing number of young couples”). Others are more noncommittal: “For a dyking project to be undertaken, many people had to be involved. The decision to take part and support the work came from those living in the area.” Johnston and LeBlanc, *Grand Pré: Landscape for the World*, 54-55.

⁴⁶ As discussed in chapter 4, no concessions have survived for Grand Pré, or for that matter other areas around the basin, excepting Mathieu Martin’s concession for land in Cobeguit and the concession of Marie-Josèphe Leneuf de La Vallière nearby. Indeed, it is difficult to tell from the official documents how far Belleisle’s seigneurie, later shared by the La Tour heirs, extended in this area. All the contracts having to do with land transfers in these areas during the French period have similarly been destroyed or are otherwise lost. The only surviving contracts for lands in the Minas Basin before the expulsions are several that were passed by Acadian emigrants in Louisbourg before notaires there in the 1740s. As discussed in chapter 5, these contracts include two that concerned parcels that appear to be located in Grand Pré. Both specifically require the buyer to pay seigneurial charges (and this notwithstanding that all such charges were now being paid to the British), and show that, at least in these cases, the land was considered to be within a seigneurie.

development of the Grand Pré was directed by some body, such as the community assembly.⁴⁷ There is, however, no evidence of this in the historical record.⁴⁸

It is equally as likely, therefore, that the development of the Grand Pré occurred through the same organic process that one sees along the rivièrè du Dauphin. The first group of Acadians settling in Grand Pré would thus have worked together to build the dikes and ditches necessary to create the first enclosure. They would have approached the seigneur for a concession either before or after the dike was built. Once that initial work was completed, the fields would have been divided and each concession holder allotted plots within the enclosure. When the population expanded, another group would follow the same procedure, and the process would begin again. And thus the buildout of the marsh could have unfolded organically much like the development of the marsh on the rivièrè du Dauphin. That being said, it is clear that the construction and maintenance of the dikes would have required coordination and cooperation by all who owned land within an enclosure, as well as those in adjoining enclosures. The custom with regard to shared responsibility for building and maintaining the dikes and ditches, practiced not only in Grand Pré, but throughout the colony, will be discussed more fully below.

⁴⁷ Such an assembly formed in Port-Royal as early as 1673. The assembly took decisions on a range of topics, including land use. The *assemblée des habitants* decided that the community would build a new church, and also deliberated on the standardization of weights and measures, and how to prevent the damage done by roving livestock. “Sur la convocation d’assemblée des habitans,” 18 juin 1763, FR ANOM Col E 266, pp. 308-309. Regarding the latter, it was determined that each land holder would enclose his or her own wheat fields and gardens, and that if those enclosures were destroyed by wandering livestock, an estimate would be made of the damage and the owner of the animal would compensate the land owner. This became the custom of the country, and was reflected many years later in decisions of His Majesty’s Council. E.g. Council minutes, 27 August 1733, *N.S. Arch. III*, 287; Council minutes, *N.S. Arch. III*, 332-337.

⁴⁸ There is an intriguing reference to the dikes as “public works,” in a letter of one Rev. Hugh Graham who was writing from Cornwallis in 1791, and who was endeavoring to recreate conditions before the expulsions for his interlocutor: “In all their public works every one did as much as he could—as in building abattiaux, and dykes, in erecting chapels, and enclosing burying grounds, and the like.” Letter of Rev. Hugh Graham to Rev. Dr. Brown, September 9, 1791, *Collections of the Nova Scotia Historical Society for the Years 1879-80*, vol. 2 (Halifax, 1881), 146-148, 147. The source of Rev. Graham’s intelligence is not known, and thus it is difficult to know whether to credit this account.

Custom of the Marsh

Marsh was valuable to the Acadians, whether drained or left in its natural state. Wet marsh could provide useful products, such as fodder and building materials, and was also an area to hunt waterfowl and other marine species. Drained marsh, more valuable yet, contained farmed fields, or arable, as well as pasture.⁴⁹ The farmed fields within an enclosure were divided by drainage ditches, or *fossés*, that typically were dug about twenty meters apart and connected ultimately with a stream that drained through the aboiteau, a kind of sluice built in the dike, and, ultimately out to the sea.⁵⁰ These fields were crowned to allow better drainage.⁵¹

The almost exclusive reliance on the marshlands as farmlands required the adaptation of a technology that could stand up to some of the highest tides in the world. It also, however, required that the community develop its own set of customs that allowed it to be successful in the unique social, economic and environmental conditions that existed in the Acadian agricultural settlements. These customs included labor arrangements that permitted families to do the hard work of bringing the marsh into cultivation with a limited work force. They also involved methods of dividing and allocating this all important resource in a way that was both practical and equitable. The following will describe aspects of the custom of the marsh that developed over the more than one 120 years that the Acadians farmed the coastal marshes.

⁴⁹ In the Marais poitevin, these were referred to as *marais mouilles* and *marais desséchés*. Clouzot, *Les marais de la Sèvre niortaise et du Lay*, 105-122.

⁵⁰ Milligan, *Maritime Dykelands*, 37.

⁵¹ This became known as the dale and ditch method. Milligan, 37. Because of this method of crowning, Acadian farm fields were still evident in aerial photography from 1940 and 1960. Bleakney, *Sods, Soil, and Spades*, 198-199.

Parties Might Work Together to Enclose and Drain a Marsh, but Fields within an Enclosure were Held Individually

Writing in 1699, Dièreville, in discussing the process of diking and draining the marsh, observed that “as they belong to several, they work on it together.”⁵² If the marsh belonged only to one, it was the custom that “he pay the others, or that he give them in other work as many days as had been employed for him.”⁵³ More generally, contemporary observers commented on the spirit of cooperation between Acadians. Antoine de Lamothe, sieur de Cadillac, noted the Port Royal inhabitants’ “great affection among themselves, assisting each other with pleasure.”⁵⁴

A map from 1708, attributed to Delabat, shows large areas of marsh with multiple owners enclosed by a single running dike.⁵⁵ In the first area, the marsh consists of two separate farms clearly marked as the “marais des Landris,” and the “marais de Pellerin.”⁵⁶ Another area of marsh shown on the map, this one northwest of the fort on the Petite Rivière, is marked “marais de Saint-Sein (Denis Petitot) and de Babineau,” possibly signifying that it remained in common ownership.⁵⁷ Yet another area of enclosed marsh is marked “marais des Belliveau,” and appears to have belonged to one extended family (fig. 3).⁵⁸

⁵² Dièreville, *Relation of the Voyage to Port Royal*, 95, 258; “Comme elles apartiennent à plusieurs, ils y travaillent de concert.” This description applies to the Port-Royal area. Dièreville makes clear that he did not visit the other two settlements of les Mines and Beaubassin. Dièreville, 90.

⁵³ Dièreville, 95, 258; “Si ce n’étoit qu’à un particulier, il faudroit qu’il payât les autres, ou bien que dans d’autres travaux, il leur donnât autant de journées qu’on en auroit employé pour luy, & c’est comment ils s’accommodent ordinairement entre eux.”

⁵⁴ “Mémoires de L’acadie . . . par le sr. De Cadillac,” 1692, LAC, Fonds des Colonies (France), Série C11D, vol. 10, fols. 17-52, 19, accessed January 10, 2019, <http://heritage.canadiana.ca/>, image 30, and quoted in translation in Peter N. Moogk, *La Nouvelle France: The Making of French Canada—A Cultural History* (East Lansing: Michigan State University Press, 2000), 174.

⁵⁵ “Plan de la banlieue du Port Royal,” BnF, département Cartes et plans, GE SH 18 PF 133 DIV 8 P 5.

⁵⁶ “Plan de la banlieue du Port Royal.”

⁵⁷ “Plan de la banlieue du Port Royal.”

⁵⁸ Other large enclosed areas of marsh are given only place names, e.g. “marais Saint Charles” adjacent to the ruisseau Saint Charles.



Figure 3. *Plan de la banlieue du Port Royal*, attributed to Delabat, 1708 (detail). Source gallica.bnf.fr/Bibliothèque nationale de France.

Enclosed marsh belonging to multiple parties, even when first owned in common, were typically divided into separate plots and worked individually. An eyewitness account from the British period suggests that areas of the marsh in Grand Pré were first enclosed and worked by multiple parties and then divided into individual fields. In 1746 or thereabouts Otis Little, a New

England lawyer and politician, was serving in a company of volunteers at Annapolis Royal during King George's War (1744-1748). In 1748 he wrote a tract promoting the settlement of Nova Scotia to the British government and public.⁵⁹ In his pamphlet he described how the marsh was worked in the town of Minas, by which he meant Grand Pré. He wrote that "[t]he inhabitants make a joint business of dyking in several large tracts which serve first as common fields, and being afterwards subdivided into smaller allotments."⁶⁰ It is not clear what Otis meant by common fields.⁶¹ Nonetheless, his observation makes clear that land within the enclosures, even if originally conceded to more than one family in common, was ultimately divided and worked individually.⁶²

Areas of enclosed marsh were frequently owned by co-heirs or even business associates. Surviving contracts, like that between Madeleine Corporon and John Easson, show that interests held in common were freely divisible upon the request of one or more of the parties.⁶³ In all of the extant contracts involving land transfers, only two involved a *rente solidaire*, where the

⁵⁹ J.M. Bumsted, "Little, Otis," in *DCB*, vol. 3, published 1974, http://www.biographi.ca/en/bio/little_otis_3E.html?print=1.

⁶⁰ Little, *The State of Trade in the Northern Colonies*, 70.

⁶¹ Did he mean that the fields were worked in common, and the harvest shared? Or was he referring to the common fields regime that could still be found in England at the time, where each was allotted fields within larger "common fields," and the timing of seeding and harvesting was determined by the community.

⁶² R.-G. LeBlanc writes that "even if all had to work together to maintain the aboiteaux and levées, each habitant cultivated we believe his 'pièce' or portion of the marsh." Ronnie-Gilles LeBlanc, "Documents acadiens sur les aboiteaux," *La société historique acadienne. Les cahiers* 19, nos. 1-2 (Janvier-june 1988): 44; même si tous devaient travailler en commun à l'entretien des aboiteaux et levées, chaque habitant cultivait croyons-nous, sa 'pièce' ou sa part de pré. LeBlanc has identified instances where re-formed Acadian communities in what is now New Brunswick worked together to create a common marsh, afterwards dividing it into individually held lots. This includes Barachois, an Acadian community in the southeast of the province, settled in the early nineteenth century. Ronnie-Gilles LeBlanc, "Les aboiteaux de Barachois," *La société historique acadienne. Les cahiers* 19, nos. 1-2 (Janvier-june 1988): 22. Another instance identified by LeBlanc are the small communities established in Memramcook after the fall of Beausejour. Ronnie-Gilles LeBlanc, "Documents acadiens sur les aboiteaux," 45, citing, Philéas Frédéric Bourgeois, *Vie de l'abbé François-Xavier LaFrance* (Montréal: Librairie Beauchemin, 1913), 73.

⁶³ See e.g. Deed of Conveyance from Magdalene Corporon to John Easson, 19 juin 1737, N.S. Arch., Grant Book 1, 64.

buyers agreed to be jointly and severally responsible for the rente.⁶⁴ In these cases the joint owners probably could not legally divide the land without the agreement of the seller/creditor.⁶⁵ Generally, rente solidaire benefits the latter, in that he or she may go against one of the buyers for the entire amount, should the other fail to pay. Rente solidaire does not appear to have been widely used in contracts in l'Acadie. Of course, any observations regarding the precise nature of the legal ownership of the land must be conditional given the limited number of contracts on which they are based.

That is not to say, especially in the first years of a settlement, that division of common marsh always resulted in separate legal ownership of the fields. Such division could have been de facto rather than de jure, although one might expect that there would at least have been some form of written agreement among the parties. When a notaire became available, such agreements

⁶⁴ "Vente d'une terre par Jean Labat à Pierre et Claude Landry et Jean Beliveau," CEAAC, AN, Fonds des Colonies, Série G3, carton 2040, Notariat, microfilm roll F-1960; "les dites acceptants ... s obligent tous solidairement l'un pour l'autre un seul pour le tout." This contract involved sale of land for the construction of a mill. See also, "Contrat d'acquisition d'une part de la ferme [pour] pierre depuis du 31 janvier 1705," CEACC, AN Colonies, Série G3, Notariat, vol. 2040, microfilm roll F-1630, involving the sale of Marie de La Tour's one-seventh interest in La Ferme to her son-in-law and his cousin whereby they agreed to be jointly and severally responsible for the annual rent payments ("lesdits acquereurs se sont obliges d'un pour l'autre un seul pour le tout au payement de la susdit rente sous l'obligation solidaire de tous uns").

⁶⁵ Under French law, if two parties agreed to purchase a piece of land, each contributing, for example, half of the price, they would generally have been considered to be responsible for half of the debt they incurred, including the rente going forward and any seigneurial charges. This was also generally true in the case of heirs that have received some part of a property. This is akin to what in British and American common law is called tenancy in common. A buyer, however, could also, perhaps at the insistence of the seller, have obligated themselves *solidairement*, or jointly, for the total price of the parcel and the rente. This is similar to what is known in the American and British system as joint ownership. The creditor could therefore go against one of the buyers for the entire amount owed should the others renege. The joint owners probably could not legally divide the land under these circumstances. The buyers' intention to obligate themselves in this way, however, had to be explicitly stated in the contract. A testator could also indicate that the heirs would be jointly responsible. See Robert Joseph Pothier, *Traité des obligations, selon des regles tant du for de la conscience, que du for extérieur* (Paris: Chez Debure, l'aîné, 1764), 1:287, 290, 292. During the period of British control, in situations where there were more than one family found on a homestead, it was determined that "the chief or the holder of the contract" was responsible for the whole amount of the cens et rente. The parties could then adjust what they owed amongst themselves. Mascarene to the Deputies of Chignecto, 20 May 1742, *N.S. Arch. II*, 164. It was more likely that this was for the convenience of the British effort to collect the seigneurial charges, than that it reflected the precise legal responsibility of the owners of the land under their French concessions.

could have been reduced to a legally valid document to protect each party's interest and the interest of his or her heirs.

While it falls outside the period examined in this paper, and the circumstances are very different, the development of the great marsh at Menoudie resettled with Acadians after 1766 may provide some insight into how fields were farmed before the expulsions, especially at Grand Pré. In 1765 Joseph Frederick Wallet Des Barres was granted with others an estate of approximately eight thousand acres in the area of Chignecto which had been the Acadian village of Menoudie, now abandoned. Des Barres quickly acquired most of the shares from the other grantees.⁶⁶ The area contained three thousand acres of marsh, including a great marsh Des Barres called "Elysian Fields," which he was eager to have diked and drained.⁶⁷ Des Barres turned to Acadians who had been held captive at Fort Halifax in Windsor. Ten families originally arrived at Menoudie sometime between 1766 and 1767, to be joined later by others. Des Barres demised to the Acadians six hundred acres of uplands and one hundred acres of enclosed marsh, with the possibility of another one thousand acres of marsh together with a "competent" amount of uplands, all of which they were to hold in perpetuity as joint tenants.⁶⁸ He provided seed, farm implements and livestock. In exchange, the Acadians were to send him a third of their harvest, plus half of the increase of their livestock.

⁶⁶ For a discussion of Des Barres's holdings in what is today Nova Scotia and New Brunswick, see Stephen J. Hornsby, *Surveyors of Empire: Samuel Holland, J. F. W. Des Barres, and the Making of The Atlantic Neptune* (Montreal & Kingston: McGill-Queen's University Press, 2011).

⁶⁷ Statement of J.F.W. Des Barres as to the establishment of the Acadians at Minudie, 1766-1775, LAC, Joseph Frederick Wallet DesBarres fonds, DesBarres family, Series 5, vol. 17, pp. 3112-3122, accessed January 12, 2019, <http://heritage.canadiana.ca>, C-1458, image 640-652.

⁶⁸ Statement of J. F. W. Des Barres, p. 3115 (C-1458, image 643). See also untitled notes of two leases, the original dated 8 May 1769, and the revised lease 20 November 1792, LAC, J. F. W. Des Barres Fonds, Des Barres family, Series 5, vols. 19-20, p. 4121, accessed January 14, 2019, <http://heritage.canadiana.ca>, C-1459, image 495. Unfortunately, the original lease does not appear to have survived. The account we have of the lease indicates that no part of the demised property could be sold to any other than the other lessees without DeBarres approval. The lease for the métairie of Menoudie was revised in 1792. Instead of paying one third of the grains, and half the increase of livestock, the tenants agreed to pay £100 per year. The leased property remained in joint-tenancy.

Fortunately, there exists a fairly good account of the Acadians' farming operation from an eyewitness. In 1795, DesBarres asked Captain John MacDonald, a proprietor on St. John's Island (Prince Edward Island) where Des Barres was governor, to assess certain of his estates, including Menoudie.⁶⁹ MacDonald reported that the Acadians at Menoudie "were settled together on the plan of a village, possessing all the rest in common."⁷⁰ By "plan of a village," MacDonald was probably thinking loosely of an English village, still common in parts of England at the time, where people lived together in a village center, usually around a manor, and farmed large "common fields," in which they held individual lots.⁷¹ MacDonald compared this to the model he preferred, writing that "everyone should have his own plantation and live on it."⁷² With regard to the marshland fields, MacDonald observed closest to the outer dike a very large field of wheat, five to seven football fields in length, but also many smaller fields in isolated higher areas of marsh in which the tenants practiced a rotation of wheat, "poor pease," oats, followed by a period of fallow.⁷³

Unlike Menoudie, the Acadians at Grand Pré most definitely were not sharecroppers, and there is no reason to believe that the marshland was held *solidairement*, as this was not much in evidence in l'Acadie or Nova Scotia prior to 1755. However, like Menoudie, the people in Grand Pré lived together on upland, albeit spread along a ridge, apart from their fields. They also worked together, as at Menoudie, to dike the marsh and ditch the fields. And like those at

⁶⁹ "Information respecting the estates of Menoudie—or the Elysian Fields—and Macan & Napan, obtained on the spot by Captain John Macdonald and transmitted to his friend Lt. Gov. Des barres the proprietor thereof," 1795, LAC, Joseph Frederick Wallet Des Barres fonds, Estate Reports, Series 2, pp. 1-76 (hereafter, "Report of Captain John MacDonald"), accessed January 15, 2019, <http://heritage.canadiana.ca>, C-1455, images 708-747.

⁷⁰ Report of Captain John MacDonald, p. 40 (C-1455, image 729).

⁷¹ Donald N. McCloskey, *European Peasants and Their Markets: Essays in Agrarian Economic History* (Princeton: Princeton University Press, 1975), chapter 2, The Persistence of English Common Fields, 74.

⁷² Report of Captain John MacDonald, p. 41 (C-1455, image 729).

⁷³ Report of Captain John MacDonald, pp. 23-24, 52 (C-1455, images 719-720, 735).

Menoudie, Acadians at Grand Pré were, as far as anyone can tell, allotted plots, perhaps even in different parts of the marsh, which they worked individually.

Division and Allocation of Marshland

If after it was drained the marsh was divided into separate fields individually worked and owned. The question then becomes, how would it be decided who owned what?⁷⁴ A contract of division from the British period provides insight into the custom with regard to the allocation of marshland. Three co-heirs owned a marsh located at Ruisseau-Fourchu in two portions: Madeleine Corporon owned a half interest in the marsh, while Pierre Préjean and Germain Doucet together owned the other half interest. In 1737, Madeleine Corporon sold her half of the marsh to John Easson, carpenter at the fort.⁷⁵ Previously the marsh had been in undivided ownership.⁷⁶ With the sale, the parties' shares in the marsh went from being *intellectuelles et indivisées* to being *réelles et divisées*.⁷⁷ In other words, after the division the parties owned two separate pieces of marsh that could be physically bounded. About six months after Easson acquired the marsh, the parties sought a division with the help of two arbitrators.⁷⁸

⁷⁴ Vanderlinden notes that while the techniques employed by the Acadians to drain the marsh are similar to those employed in the salt marshes on the charentais littoral of Atlantic France, none of the coutumes from this area (that of Aunis, Poitou or Saintonge) speak to these practices. Given this, Vanderlinden writes, Acadians were “therefore free to create a custom relative to the rights on the land resulting from this ‘défrichement’ of the sea” Vanderlinden, *Regards d’un historien du droit*, 48; La place est donc libre pour créer une coutume relative aux droits sur la terre résultant de ce “défrichement” de la mer.

⁷⁵ Deed of Conveyance from Magdalene Corporon to John Easson, 19 juin 1737, N.S. Arch. Grant Book 1, p. 64. The contract described the land being sold as being bounded by stakes (“la moitié d’une piece de prée ranferme de pique”). This apparently did not satisfy Préjean and Doucet.

⁷⁶ Madeleine Corporon was the widow of Bernard Doucet, possibly the uncle of Germain Doucet. In any event she held half of the marsh, in all probability representing the one-half of the community property owed to her as Doucet’s widow.

⁷⁷ Pothier, *Traité des obligations*, 341.

⁷⁸ Arbitrated agreement between John Easson, Pierre Préjean and Germain Doucet, 15 janvier 1738, N.S. Arch. Grant Book 1, 65-66.

The agreement they reached states that the two arbitrators, after having measured the marsh with the parties present, divided it into four parts, and this “for the sole purpose of separating the good from the bad as much as possible.”⁷⁹ After the division was made in four parts, presumably two good lots and two poor lots, “the parties all agreed to draw lots which they did before us and are content with that which fell to each of them.”⁸⁰ The idea that this was the custom of the country is reinforced by the fact that, as Vanderlinden has noted, the arbitration was overseen by Prudent Robichaud, one considered an expert in Acadian custom.⁸¹ As Vanderlinden writes, this process was “perfectly egalitarian even if aleatory,” and thus “reinforced the feeling of equality that seems to prevail during the establishment of the pré.”⁸²

Boundary Markers

French officials complained about what they considered the haphazard manner in which land was held in l’Acadie. There was the problem of multiple concessions for the same land. As Perrot wrote, the sieur de Belleisle, being “extremely given to wine, ... gives concessions to the first who comes along, and then passes contracts [for the same land] to others which causes

⁷⁹ Arbitrated agreement, N.S. Archives, Grant Book 1, p. 65; after measuring the marsh, “nous l’avont mis en quatre part a seule fins de separer la bone d’avec la mauvaise le plus que nous à esté possible.”

⁸⁰ Arbitrated agreement, N.S. Archives, Grant Book 1, pp. 65-66; “les susdittes parties sont convenues par ensemble de tirees au sors comme il ont fait pardevant nous et ont demure contant de ce qui leur [est] echu a chacun deux.” Ronnie-Gilles LeBlanc has identified an agreement between fourteen inhabitants of Chéticamp on Cape Breton dating from 1818 for the division of a piece of wet meadow. Portions of the meadow were assigned using the same method of drawing lots (“tire au sor”). Ronnie-Gilles LeBlanc, “Documents Acadiens sur les aboiteaux,” *La société historique acadienne, Les cahiers* 19, nos. 1-2 (Janvier-juin 1988): 46. He further notes that this method was said to have been employed by Acadians at Memramcook shortly after the fall of Beauséjour, and argues that it was also used in the small Acadian village of Barachois located in southeastern New Brunswick in the early nineteenth century. According to LeBlanc, this same method of allotting plots in drained marsh could be found in the Marais poitevin in the seventeenth century, and was further reminiscent of the way that benches at church were assigned in l’Acadie. LeBlanc, citing to Arthur Melanson, *Vie de l’abbé Bourg, premier prêtre acadien, missionnaire et grand-vicaire pour l’Acadie et la Baie-des-Chaleurs, 1744-1797* (Rimouski: Le “Chez Nous,” 1921), 162.

⁸¹ Vanderlinden, *Le lieutenant civil et criminel*, 181, n. 422.

⁸² Vanderlinden, 181; “Le processus dans son ensemble est donc parfaitement égalitaire, même s’il est aléatoire . . . ceci renforce le sentiment d’égalité qui semble prevaloir lors de l’établissement du pré.”

many disputes and disturbances.”⁸³ And then there was the lack, in their view, of clear boundaries between concessions. Brouillan complained about the lack of boundaries, as did Louis-Alexandre des Friches de Meneval.⁸⁴ These criticisms, however, may very well be overstated, and arise from a misunderstanding of the common sense way in which Acadians divided and marked out their land, especially the marsh.

Ditches used to drain the newly prepared fields in the marsh often served as boundaries. This may be seen in a contract for the sale of a piece of marsh from Jean Prijean (Préjean) and his wife, Andrée Savoie to their nephew, Jacques Lebroy (Levron) located along the upper rivière du Dauphin. In addition to the seigneurial charges and the rente to be paid to the seigneur, Marie de La Tour, Levron agreed to “surround the [marsh] plot from that of the said cédant by a ditch of five feet wide three deep, and this within five years.”⁸⁵ In this way the marsh was divided and a boundary between the two parcels established.⁸⁶ Natural features such as streams could similarly be used as boundaries.⁸⁷ Boundaries in the marsh could also be marked by fences, which served the double purpose of protecting against roaming animals. It will be recalled that, according to custom, land owners were responsible for fencing their properties

⁸³ Le Sr. Perrot au port Royal, 9 août 1686, LAC, Fonds des Colonies (France), Série C11D, vol. 2, fol. 27; “C’est un homme extrêmement adonné au vin, qui donne des concessions au premier venu, et qui . . . passe ensuite des contrats à d’autres qui cause beaucoup de procès et de désordres.”

⁸⁴ “Extrait d’un rapport de 1701 par le gouverneur de Brouillan,” published in part in Rameau, *Une colonie féodale*, 2:337-338. Menneval wrote the “[t]he concessions of the lands being rather badly made until now are the subject of many disputes.” “Mémoire du sieur de Menneval . . . touchant les affaires de cette province pour l’année 1688,” LAC, Fonds des Colonies (France), Série C11D, vol. 2, p. 201 (transcription); Les concessions des terres ayant esté assés mal faites jusques icy, font la matière de beaucoup de contestations. Menneval also found the need to pass ordonnances to require concession holders to develop their lands. *Mémoire du sieur de Menneval*, p. 205 (transcription).

⁸⁵ “Cession par Jean Prisjean à Jacques Lebroy,” 12 juillet 1700, CEAAC, AN, Fonds des Colonies, Série G3, carton 2040, Notariat, microfilm roll F-1960; “ledit Levron soblige par ces presentes d entourer ledit emplacement de celui dudit cedant d un fosse de cinq pieds de large trois de profondeur et ce dans cinq anneés.”

⁸⁶ The Easson division also refers to a ditch that will serve as the boundary between the two holdings. Arbitrated agreement between John Easson, Pierre Préjean and Germain Doucet, 15 janvier 1738, N.S. Arch. Grant Book 1, 65-66. See also “Deed of Sale from James Levron to Alexr Hebert,” 20 January 1738, N.S. Arch., Grant Book 1, 72.

⁸⁷ “Plan de la banlieue du Port Royal,” BnF, département Cartes et plans, GE SH 18 PF 133 DIV 8 P5 (shows marsh enclosed by a single dike, the ownership of which is divided by a natural stream).

against animals. One buyer, as a condition of sale of a piece of enclosed marsh, agreed to build “quatre pagés de Boucheure” in the marsh belonging to the sellers.⁸⁸ Fences were also used to mark boundaries in the uplands. Clark writes that Acadians “were careful to mark divisions between individual holdings on the upland with barriers or fences of wood—or at least piles of brush and trunks of trees.”⁸⁹

Property descriptions in land contracts often referred to adjoining land owners or natural features.⁹⁰ In the town of Port-Royal, however, where more precision was needed, specific boundary markers could be placed by the parties. For example, a contract from 1699 specifies that the parcel sold is bounded by boundary markers of rock under which had been placed “morceaux de machefer,” or small pieces of iron ore slag.⁹¹ Another contract provides that the parcel is similarly bounded by a rock under which slag had been placed, fence posts, and a small stake (un petit piquet).⁹² In short, as with the division and allocation of land, Acadians developed practical customs with regard to bounding their properties that reflected the nature of the land they worked and the community in which they lived.

⁸⁸ “Deed of sale from James Levron to Alexr Hebert,” 20 January 1738, N.S. Arch., Grant Book 1, pp. 72-73. A “pagée” is a span of fence of a certain length, while a “boucheure” refers to *bouchure*, or a hedge of live or dead brush or wood. Émile Littré: Dictionnaire de la langue française (1872-1877), *DVLF*, s.v. “bouchure,” www.dvlf.uchicago.edu, accessed February 2, 2019; Pascal Poirier, *Le Glossaire acadien*, s.v. “pagée,” and “bouchure,” ed. Pierre M. Gérin (Moncton: Éditions d’Acadie & Centre d’études acadiennes, 1993), accessed October 4, 2017, <http://139.103.17.56/cea/livres/doc.cfm?livre=glossaire>. Poirier writes that in Acadian French, “bouchure” is the same as “boucheture,” which in old French, according to Richelet, meant “everything serving to enclose and seal off a meadow, a farm field and other lands to prevent beasts from entering” (tout ce qui sert à fermer et à boucher un pré, une terre labourable et autres héritages pour empêcher que les bêtes n’y entrent).

⁸⁹ Clark, *Acadia*, 238. See also Delabat’s 1710 “Plan du cours de la rivière du Dauphin,” BnF, département Cartes et plans, GE SH 18 PF 133 DIV 8 P 6, showing dotted lines surrounding upland fields and also between upland and marsh. These probably represent fences. Harris and Matthews, *Historical Atlas of Canada, Vol. 1*, Plate 29 (map of Port Royal after Delabat’s 1710 map, the key identifying the dotted line as “probable fence”).

⁹⁰ See e.g. “Deed of Sale from Jean Labat to Bernard Doucet,” 3 avril 1691, N.S. Arch., Grant Book 1, p. 62.

⁹¹ “Contrat d’acquisition Monsieur de Villieu, novembre 1699,” CEAAC, AN, Fonds des Colonies, Série G3, carton 2040, Notariat, microfilm roll F-1960.

⁹² François Du Pont Duvivier and Marie Mius to Jean-François Flanc, 30 mars 1707, N.S. Arch. Grant Book 1, pp. 40-41.

Maintenance of the Dikes and Ditches: A Shared Responsibility

As noted above, ownership of the marsh was often in multiple parties. Many times these were co-heirs. A number of disputes between co-heirs brought before His Majesty's Council at Annapolis show the extent to which owners of marsh enclosed by a common dike were responsible for the maintenance of the dike as well as the common drainage ditches. One such matter was brought before the council by one of the heirs of Etienne Comeau concerning the failure of his co-heirs to contribute to the repair of a dike in the small settlement of Ruisseau-Fourchu.⁹³ Most family members agreed to repair the common dike. Those who did not, or who had left the province, forfeited their rights in the marsh, in accordance with a proclamation issued by Governor Philipps for the Port-Royal region.⁹⁴ The marsh appears to have been divided into separately owned fields as the various parties spoke of relinquishing their "part," or agreeing to repair the "part" of another.⁹⁵

⁹³ Council minutes, 26 May 1724, and 1 June 1724 (In re: Jacques Michel), *N.S. Arch. III*, 55-56.

⁹⁴ Council minutes, 26 May 1724, and 1 June 1724, 55-56. In 1735 another order was issued calling for the repair of dikes and fences in Pisiguit. Council minutes, 17 April 1735, *N.S. Arch. III*, 318. The next year, the lieutenant governor issued an order to all the settlements notifying the inhabitants that they either repair the dikes or lose their interest in the marsh. Order for keeping dykes, etc. in Repair, 5 March 1735/6, N.S. Archives II, 208.

⁹⁵ Council minutes, 26 May 1724, and 1 June 1724, *N.S. Arch. III*, 55. Of course, whether they farmed separate fields would not necessarily be determinative as to the legal ownership of those fields. In fact the schedule of seigneurial rents collected by the British in 1734 listed the property as being in the hands of only three of the Comeau heirs. Schedule of seigneurial rents (town and banlieue of Annapolis Royal), LAC, Colonial Office (Great Britain) Series CO 217, N.S. "A" vol. 23, fols. 7-11v (C-9122, image 846). The schedule shows that the marsh at Ruisseau-Fourchu was owned originally by two owners, the first, Germain Doucet (son of Germain Doucet dit La Verdure) and his wife Marie Landry, who was later remarried to Etienne Comeau. Comeau was the original owner of the second part of the marsh. It appears that the marsh originally belonging to Comeau was the one at issue before the council. By 1734 this marsh was in the hands of Comeau's widow, Marie Landry, and his heirs, including Jacques Michel, married to Comeau's daughter Catherine, and Claude Doucet, married to another daughter, Marie. Other heirs went unnamed. A "Monsieur Laverdeur" was also named in the council's minutes as wishing to abandon his claim in the marsh. In 1734, this probably referred to Toussant-François Doucet, Germain Doucet's nephew (son of his brother Pierre). It is possible, therefore, that the marsh in question before the council was actually the greater marsh, in two separate but overlapping ownerships: one, the heirs of Germain Doucet (by 1724, Claude and Jacques Doucet, both sons of Germain Doucet), and the other, the heirs of Etienne Comeau, as listed above. It should be noted that the British considered that when "there are more than one seated on an habitation, the chief or the holder of the contract is answerable for the whole amount." Mascarene to the deputies of Chignecto, 20 May 1742, *N.S. Archives II*, 164-165. It is therefore a reasonable assumption that where multiple parties are listed on the schedule of rents, they are, in most cases, the parties that hold the contracts for the land in question.

A second case before the council, brought by a leaseholder, one Jacques Gouzil, involved the failure of another set of co-heirs, owners of the property, to maintain a common fence associated with an enclosed marsh in the upper part of the river, as per an agreement they had all signed. A gap in the fence was found to have resulted in damage to Gouzil's crops caused by the cattle of one of the co-owners.⁹⁶ The council found against those who had failed to maintain the common fence.⁹⁷

In another case, involving marshland in Chipoudy, Ambroise Breux (Breau) complained that Joseph Brossard (Broussard) and others had refused to do the necessary work on a dike that enclosed a marsh that the parties owned "in common."⁹⁸ These joint owners do not appear to be co-heirs. The use of the phrase "in common" may indicate that each owned a specific percentage or part of the land or an undivided interest. Without a concession or deed, however, it is not possible to know precisely how the land was held. In any event, the recalcitrant owners in this case were told by the council, in accordance with their several orders on the subject, that they must do the work or renounce their claim to the marsh.

While the British authorities held co-owners responsible for the maintenance of common dikes and fences, they appear to have been simply enforcing what was otherwise the custom of the country. In the case brought by Jacques Gouzil discussed above, for example, the council was, at least in part, enforcing an agreement made by the parties themselves.

The contract of division between Easson, Préjean and Doucet discussed above also illustrates the custom concerning the responsibility for maintenance of common dikes and

⁹⁶ Council minutes, 21 February 1735/6 (James Gouzile (Jacques Gouzil) against John Bastarach (Jean Bastarache), et al., *N.S. Arch. III*, 332-337.

⁹⁷ Council minutes, 21 February 1735/6, 337.

⁹⁸ Order Regarding a Marsh at Chippody, 16 May 1737, *N.S. Arch. II*, 214-215.

ditches. The contract states that “if the said marsh is enclosed because of the aboiteau found in the said marsh[,] this will be common as well as the ditch which will be there to serve as a boundary marker, [to be shared] half and half without question by one side or the other.”⁹⁹

Although this contract is late—it was made in 1737—it contains a rare glimpse of what almost certainly was the longtime custom of the country, namely the shared upkeep of dikes and drainage ditches enclosing marsh with multiple owners. In this case the cost of such repair was shared equally between the owners. It is likely, however, that the responsibility for repairs was in other cases apportioned according to the amount and location of the fields worked by each owner within the enclosed marsh.¹⁰⁰

Yves Cormier has written that where an enclosure was owned by multiple parties, an individual named by the group called a “sour des marais” was given charge of inspecting the dikes and alerting the owners where maintenance was needed.¹⁰¹ If a repair was necessary, Cormier writes, it was his job to “assemble the men for *la corvée*” (il se chargeait de rassembler les hommes pour la corvée).¹⁰² Presumably, Cormier is making an analogy to the corvée imposed by a seigneur, the state or even a community assembly.¹⁰³ Depending on the seriousness of a

⁹⁹ Arbitrated agreement between John Easson, Pierre Préjean and Germain Doucet, 15 janvier 1738, N.S. Arch. Grant Book I, 65-66; “cy la ditte prée se renferme des que la boiteau qui se trove dans la ditte prée [s]e sera de communité aussi bien les fosse qui se trouveront pour servir de borne [s]e seront moitie par moitie sans contradict de part ny d’autre.” The late Régis Brun was the first to write about this contract and its implications in his book, *Les Acadiens avant 1755*, which he was kind enough to bring to my attention.

¹⁰⁰ For example, in the two cases discussed above concerning the responsibility to repair common dikes and fences, parties referred to having “made good his part,” Council minutes, 21 February 1735/6, N.S. Arch. III, 333, or agreeing to “do up his own part but would not midle with that belonging to his mother,” Council minutes, 26 May 1724, and 1 June 1724, N.S. Archives III, 55.

¹⁰¹ Yves Cormier, “Nos aboiteaux,” *La société historique acadienne. Les cahiers* 19, nos. 1-2 (Janvier-juin 1988): 14. Cormier provides no reference for this.

¹⁰² Cormier, 14. Elsewhere, Cormier has written that “the feudal system had initiated the first settlers in community work, which was necessary for the least extent of marsh diking.” Yves Cormier, *Les Aboiteaux en Acadie*, 34 (le régime féodal avait initié les premiers colons au travail communautaire, ce qui s’avérait nécessaire pour la moindre étendue de marais endigué).

¹⁰³ It is to be supposed that the French administration in l’Acadie, as that in Canada, or perhaps the community assembly, did require the corvée for things like the repair and extension of roads and bridges. A British order for the repair of a road in Annapolis Royal seemingly refers to this when it directs that “[e]veryone must, according to

breach, it appears that people could be called to help from neighboring communities. A minister living in Cornwallis at the end of the eighteenth century, presumably having some intelligence from one or more persons living in the area before the expulsions, described the Acadian willingness to assist their neighbors: “[i]f . . . an abbitaux had given way, or a dyke had been broken at Cumberland, upon such an emergency as many hands were sent from Cornwallis as could be spared with any degree of conveniency.”¹⁰⁴

Cormier was discussing the inspection of dikes in relatively small enclosures of approximately a dozen fields like those seen along the rivière du Dauphin. How would such a system work, however, in a more complex system of dikes as in Grand Pré? It seems likely that as more and more marshland was enclosed on Grand Pré—and some enclosed sections may have shared dikes with four or five other sections if Bleakney is correct—greater coordination was necessary. It is certainly possible that the community as a whole hired a “sour des marais.” Possibly several men were responsible on a rotating basis.¹⁰⁵ Such a system, however, does not appear to have survived after 1710. The British, concerned for the conditions of the dikes and fences ordered “three of the Deputies and two of the ‘Ancient’ inhabitants to inspect the dykes every spring and fall, and direct repairs.”¹⁰⁶ This order was first sent to Pisiguit, but later made applicable to all of the settlements.¹⁰⁷ It is at least possible that the British approach reflects some

custom, contribute in proportion, material, labor or carriage, or else a payment.” Order for Repairing Road, June 4, 1740, *N.S. Arch. II*, 240 (emphasis added). On the use of the *corvée* by the community assemblies in France as a way to maintain the community’s roads and bridges, see Mousnier, *Institutions of France*, 555.

¹⁰⁴ Rev. Hugh Graham to Rev. Dr. Brown, September 9, 1791, *Collections of the Nova Scotia Historical Society for the Years 1879-80*, 2:146.

¹⁰⁵ Clouzot has recounted how in the sixteenth century, in Champaigné in the west of France, the men of the parish were divided into eleven teams of ten workers. Each team worked when it was their turn to make repairs on the dikes and the canals under the orders of a *dizainier* or chief. The notaire of the village was charged with keeping the lists current. Clouzot, *Les marais de la Sèvre Niortaise et du Lay*, 85.

¹⁰⁶ Order for Repairing the Dykes of Piziquid, 17 April 1735, *N.S. Arch. II*, 205-206.

¹⁰⁷ Order for Keeping Dykes, etc., in Repair,” March 5, 1735/6, *N.S. Arch. II*, 208.

remnant of an older Acadian tradition whereby the community, possibly through the assembly, chose respected members who would inspect the dikes and coordinate repairs.

Common Pastures and Woodlands

There is no indication that the farmed fields on Acadian marshland farms were held in any other than individual—as opposed to “collective,” or community—ownership.¹⁰⁸ This does not mean, however, that there were no commons in Port-Royal. In the only extant concession granted by him, d’Aulnay agreed that he would designate a commons in or around Port-Royal to which Martin de Chevery would have access for pasture.¹⁰⁹ The latter would moreover have the *droit de chauffage*, or right to cut wood for heat as well as other purposes, in the nearest forest.¹¹⁰ More than half a century later, then gouverneur Brouillan wrote that he had the notaire make a copy of a “contract of concession that the old seigneurs of this country made to the habitants who were established there.”¹¹¹ This contract, Brouillan said, granted to each of the settlers the right to cut wood where they saw fit, and he had decided to continue this practice.¹¹² This strongly suggests that the woods in l’Acadie, unless otherwise conceded, were considered a commons for heating, building materials, and other purposes throughout the French period and, possibly, into the period of British control.

¹⁰⁸ Even Otis Little’s observation that some number of inhabitants owned a field in common before dividing it between them, does not go so far as to suggest that the marshes were held by the community.

¹⁰⁹ Martin de Chevery concession, FR ANOM COL E 12, p. 222.

¹¹⁰ Rameau further reported that d’Aulnay planned a common around the church, not only for pasture but also for public gatherings. Rameau, *Une colonie féodale*, 2:112.

¹¹¹ M. de Brouillan au ministre, 25 novembre 1703, LAC, C11D, vol. 4, fol. 281v; “Brouillan caused a copy “du p^t concession que les antiens seigneurs de ce pais ont fait aux habitants qui s’y sont establis, ou jl semble quilz ayent eu dessein d’engager chaque particulier de defricher les terres et l’envie l’un de l’autre par une permission que ledit seigneur donne a chacun de couper des bois partout ou bon luy semblera.”

¹¹² M. de Brouillan au ministre, fol. 281v.

Additional evidence that common pastures existed in the Port-Royal area may be found in the correspondence of French officials regarding the loss of those pastures. In the beginning of the eighteenth century, local French officials began to see shrinking common pasturelands in and around Port-Royal as a problem. Brouillan wrote in a 1701 that the people were complaining about the disappearance of the “commons that had been formerly given for pasturing the animals,” and that, as a result, those living in the vicinity of Port-Royal were unable to keep cattle.¹¹³ Two years later, Brouillan sought to defend himself from criticism that he had pressured an inhabitant and his wife to sell land, arguing that he did not intend to appropriate the land for himself, “but only to return them in common for the use of public” (mais seulement les faire revenir en communes pour l’utilité du public).¹¹⁴ That same year, lieutenant général, Mathieu de Goutin, wrote to an unidentified official that Meneval, as former gouverneur, had in 1688 “accorded some habitants from Port-Royal the meadows around the fort,” but that he had notified these that “the meadows being common one could not deprive the whole of the habitants of them.”¹¹⁵

There continued to be common pasture in Port-Royal into the British period. In 1733, Lieutenant Governor Armstrong signed an order appointing Francis Robicheaux (François Robichaud) and Claude Melanson as herdsmen and overseers of the herds of French and English inhabitants of Port-Royal and the surrounding areas.¹¹⁶ All who wanted to pasture their animals

¹¹³ Mémoire pour accompagner la lettre de M. de Brouillan du 6 octobre 1701, LAC, Fonds des Colonies (France), Série C11D, vol. 4, fols. 63v-64, accessed February 4, 2019, Archives Search, <http://collectionsCanada.gc.ca/>, MIKAN 2410122, published in part in Vanderlinden, *Le lieutenant civil et criminel*, 346; lamenting the loss of “communes qui avoient este antiennement données pour le pasturage des bestes.”

¹¹⁴ M. de Brouillan au ministre, 25 novembre 1703, LAC, C11D, vol. 4, fol. 281v.

¹¹⁵ Extrait d’une lettre de Desgouttins, 1703, published in part in Rameau, *Une colonie féodale*, 2:338, also in Vanderlinden, *Le lieutenant civil et criminel*, 354; “M. de Meneval . . . avait accordé à quelques habitants du Port-Royal les prés qui sont aux environs du fort, mais nous leur avons notifié que ces prés étant communs on ne le pourrait ôter au général des habitants.”

¹¹⁶ Governor’s Order in Relation to Sheep, *N.S. Arch. II*, 194-195.

in common were to have them marked, pay a fee per head, as requested by the French deputies, and notify the overseers if they intended to remove an animal. Failure to follow the rules set forth would result in a penalty “besides loss of commonage.”¹¹⁷

There is no similar evidence of common pastures having existed in the settlements that extended along the rivière du Dauphin above and below Port-Royal, probably because there was ample pasture for the number of farms on the river. A contract from 1738, moreover, suggests that people were willing to make their meadows available to others for pasture. In that year Jacques Levron and his wife Marie Doucett sold a piece of marsh to Alexandre Hébert (son) along the upper river.¹¹⁸ The young Hébert would take a part of the enclosed marsh belonging to Levron in exchange for a lump sum. In addition, however, he agreed, among other things, to help build a track across his land to access the sellers’ meadow which was used as pasture. The track would be “given over to be used to make the meadow beneficial for everyone.”¹¹⁹

There is no direct evidence that there were commons in the Grand Pré area, and yet there are certain hints in the historical record that such commons did exist. In 1732, for example, Jacques Hébert and his siblings appeared before His Majesty’s Council with a petition concerning the ownership of a certain piece of uplands known as “the Common at Menis,” which they claimed belonged to their father, Emmanuel Hébert.¹²⁰ It appears that this was located south of the ridge overlooking the marsh on which the Acadians had built their houses, across the

¹¹⁷ Governor’s Order in Relation to Sheep.

¹¹⁸ “Deed of sale from James Levron to Alexr Hebert,” 20 January 1738, N.S. Arch., Grant Book 1, 72-73. Jacques Levron and Alexandre Hébert were listed as living in the Village Emmanuel on the south bank of the river in the 1734 accounts of seigneurial rentes collected.

¹¹⁹ Deed of sale from James Levron to Alexr Hebert”; “le dit chemin sera de la meme largeur qui celui d’Alexandre Hebert et sera livre pour s en servir pour l’utilite du marais pour tout le monde.”

¹²⁰ Council minutes, 5 February 1731/2, N.S. Arch. III, 213-215..

River Gaspereau.¹²¹ The council held that Emmanuel Hébert was to have ownership of the property during his life, after which time it would become a “common,” provided the inhabitants took a grant for the same from His Majesty. In the meanwhile, the “inhabitants of the Grand Pré de Menis,” would have the freedom to cut as much wood as was necessary for their families upon paying Hébert six pence per cord.¹²² These facts strongly suggest that this piece of uplands was a commons on which the people relied for wood, but had been for some time treated by Hébert as his own property.¹²³

Labor Arrangements

Apart from the collective work on the dikes, Acadians employed a number of strategies for working their fields, the chief of which involved family. As Dièreville observed, “when they are fit to work, which is at an early age, Children are the wealth of the country.”¹²⁴ They thus “saved their fathers days of men’s labor,” which they could not easily afford.¹²⁵ While there was generally something of a labor shortage in the colony—this was one of the reasons given by French officials for the undeveloped state of the uplands—there does appear to have been some who neither owned land, nor followed a trade, and were thus in all likelihood day laborers.¹²⁶ Dièreville estimated that daily labor costs there were between twenty-five and thirty sols, an

¹²¹ Council minutes, 16 February 1732/3, *N.S. Arch. III*, 272. One Gautreau had claimed before the council that he had inherited part of the so-called Common of Menis. After initially being convinced of this, the council reversed itself and determined that Gautreau owned only a piece of land adjacent to the common, and that “it does not appear to the Board as yet that Gautreau has any manner of lawful claim or pretention to lands lying on the southern side of the River Gaspereau.”

¹²² Council minutes, 5 February 1731/2, *N.S. Arch. III*, 215.

¹²³ In 1748 Charles Morris made a map illustrating his plan for incorporating Protestant settlers in the Acadian community at Grand Pré. He marked the area south of the ridge and the River Gaspereau as “grass and woodland for French and Protestant.” Morris’s map is found in the Nova Scotia Archives and has been reproduced in Johnston and LeBlanc, *Grand Pré: Landscape for the World*, 87.

¹²⁴ Dièreville, *Relation of the Voyage to Port Royal*, 94, 258; “Mais c’est la richesse du Pays, quand ils sont en état de travailler, ce qu’ils sont de bonne heure.”

¹²⁵ Dièreville, 94, 258; “ils épargnent à leurs Peres des journées d’hommes.”

¹²⁶ See discussion, pp. 150-151.

expense difficult to cover.¹²⁷ Habitants, therefore, would have depended mostly on their sons to bring the marshes into cultivation.

There were also instances where engagés from France or Canada were hired on for a specific period of time as farm hands. Thus, for example, one Jean Campagnard, who would be charged with sorcery in Beaubassin around 1685, was said by witnesses to have been an engagé first at Pentagouët, and then at Beaubassin, where he worked in the marshes for the sieur de La Vallière.¹²⁸

Finally, some Acadians found other ways to ensure that they had the labor they needed to work their marsh. In the contract for the sale of a piece of marsh from Jean Préjean to his nephew Jacques Levron discussed above, Levron, the buyer, agreed, among other things to give his uncle six days of work every year for six consecutive years to be employed preparing new fields.¹²⁹ This was probably not an unusual condition, especially when bringing new members of an extended family into an established area of marsh.

Land Taxes and Tithes

Aside from whatever seigneurial fees they may have paid, the habitants did not pay taxes (*taille*) on their land.¹³⁰ They did pay the *dîme*, or tenth part of their produce to support their priests, at least in established parishes. In 1699, Villebon wrote that at least fifteen hundred livres in *dîmes* was collected from Port-Royal and Les Mines the year before. He vowed to have an

¹²⁷ Dièreville, *Relation of the Voyage to Port Royal*, 258.

¹²⁸ Procès de Jean Campagna, 26 septembre 1684 à 28 juin 1685, BANQ, Fonds Conseil souverain, TP1.S777.D117.

¹²⁹ “Cession par Jean Prisjean à Jacques Lebroy,” 12 juillet 1700, CEAAC, AN, Fonds des Colonies, Série G3, carton 2040, Notariat, microfilm roll F-1960; the buyer agreed “de donner audit Cedant pendant six annees consecutivement chaque annee six journees . . . pour etre employe a la friche.” Levron also promised not to sell the land to any other than the cédant or his heirs without written consent.

¹³⁰ Dièreville, *Relation of the Voyage to Port Royal*, 256.

account made of the payment of each habitant in these settlements and Beaubassin the following year, to be certified by the “principal habitants of the place.”¹³¹

Inheritance of Land

Finally, with regard to the transmission of the *héritage* (family land subject to inheritance), Acadians practiced partible inheritance much in the same way as their Canadian neighbors to the north.¹³² Also like the Canadians, however, Acadian parents used *inter vivos* gifts to pass the family homestead to one or more of their children. This was not for the specific purpose of defeating partible inheritance or favoring one child over another, but rather to ensure that parents were taken care of in their retirement by the child in the best position to do so.¹³³

This was probably done with the knowledge and agreement of the other heirs, some of whom

¹³¹ Sieur de Villebon au ministre, 27 octobre 1699, LAC, Fonds des Colonies (France), Série C11D, vol. 3, fols. 208-214v, accessed May 21, 2018, <http://heritage.canadiana.ca/>, C-11360, image 218. Note that in Mrs. Clarence Webster’s translation of Dièreville, she translates, “On ne leur parle point ny d’Impôts ny de Taille,” as “No one speaks to [the habitant] of taxes or of Tithes.” Dièreville, *Relation of the Voyage to Port Royal*, 50. However, while “impôts” meant taxes on various things, like wine or wood, “taille” generally referred to tax collected by the state, and did not include tithes. *Dictionnaire de l’Académie française*, 1re édition (1694), in *DVLF*, s.v. “impost” and “taille,” accessed June 2, 2018, <https://dvlf.uchicago.edu>.

¹³² Vanderlinden, *Se Marier*, 121.

¹³³ The Coutume de Paris required equality between heirs; however, this equality could be defeated to some extent by *inter vivos* gift. See discussion of inheritance law and practice in Canada, p. 68-70. In studies done of the transmission of patrimony in rural society in Québec, it was found that beginning in the seventeenth but increasingly in the eighteenth and nineteenth centuries, families employed such *donations* to pass on the “vieux bien,” or family homestead to one or more children. However, as in l’Acadie, this was not intended, at least in the seventeenth and eighteenth centuries, to defeat equality of inheritance, but rather to ensure the care of elderly parents, or a surviving spouse. The non-favored heirs almost always received their légitime as required by the Coutume (half of what would have been received if no donation was made), and often other lands obtained by parents, if they had the wherewithal, for that purpose. The choice of male heir to receive the donation of the family farm was not so much determined by birth order as by a “convergence of interests [between the] donors ready to retire and a son ready to take over.” Sylvie Dépatie, “La transmission du patrimoine dans les terroirs en expansion: une exemple canadien au XVIII^e siècle,” *Revue d’histoire de l’Amérique française* 44, no. 2 (automne 1990): 180 (Le choix du donataire apparaît plutôt fondé sur une conjonction d’intérêts entre les donateurs prêts à se retirer et un fils prêt à prendre la relève); Gérard Bouchard, “Les systèmes de transmission des avoirs familiaux et le cycle de la société rurale au Québec, du XVII^e au XX^e siècle,” *Histoire sociale – Social History* 16, no. 31 (mai-May 1983): 35-60; Gérard Bouchard, Jeannette Larouche et Lise Bergeron, “Donation entre vifs et inégalités sociales au Saguenay: sur la reproduction familiale en contexte de saturation de l’espace agraire,” *Revue d’histoire de l’Amérique française* 46, no. 3 (hiver 1993): 443-461.

may have been already established on their own lands. Nor was it without some compensation to the disfavored heirs. As Perrot described it in 1686, when parents were older with married children, they ceded to them “all the héritage, provided that they will be nourished and looked after during their life.”¹³⁴ Sometimes “it is the eldest, sometimes the youngest, they do not care, and it is ordinarily he who accommodates himself best with the father and mother.”¹³⁵ Perrot’s observations are supported by two extant contracts in the Loppinot collection: the 1708 concession Marie de Saint-Étienne de La Tour made to her son-in-law, Alexandre Girouard, and to her godson, Pierre Dupuis;¹³⁶ and a 1707 donation by Jeanne Tériot to her sons Michel and Claude Thibodeau.¹³⁷

In the first concession, the Dame de Belleisle transferred her seventh interest of the farm in the upper river called Our Lady of the East jointly to her daughter’s husband and her godson in exchange for ten bushels of wheat per year, and the promise to winter two of her cows at the farm. After her death, the buyers would pay her other heirs a yearly unredeemable rent of eight livres. Much is not known about the context within which this concession was made, and the

¹³⁴ Relation de la province d’Acadie (Perrot), n.d., LAC, C11D, vol. 2, fol. 40; “ils leur cèdent tout l’héritage à condition qu’ils seront nori et entre tenus leur vie durant.” In eighteenth century Canada, as Dépatie describes it, parents who had the means to buy additional land used a combination of these lands and money to provide some equality for the other heirs. Dépatie, “La transmission du patrimoine,” 189. In l’Acadie, this probably was not possible. Instead, as Perrot writes, the favored heir was to pay rent to his siblings, who, in any event, had available new areas of settlement, and marsh, should they wish to continue to farm.

¹³⁵ Relation de la province d’Acadie, fols. 40-41; “quelquefois c’est l’aisné, tantost le cadet, ils ny prennent pas garde, et c’est ordinairement celuy qui saccomode le mieux avec le père et la mère.” Perrot also commented that the *dot*, or property the bride brought to a marriage, did not play a significant role in Acadian marriages. “They worry about these things so little,” Perrot wrote with some astonishment, “that their contracts are made only six months to one year most often after the marriage is consummated.” Relation de la province d’Acadie, fol. 41; ils se metent si peu en paine de toutes ces choses . . . que leurs contracts ne se fait que six mois ou un an le plus souvent après la consommation du mariage. On the other hand, we know that most Acadians married without entering into marriage contracts. Vanderlinden has estimated that only perhaps fifteen or sixteen percent of Acadians had marriage contracts, as opposed to sixty-six percent in Canada. Vanderlinden, *Se marier*, 164-166. Not surprisingly, seigneurial families, families of men practicing some profession, and influential Acadian families with greater resources were more likely to enter into marriage contracts. Vanderlinden, 168.

¹³⁶ “Contrat d acquisition d’une part de la ferme [pour] pierre dupuis du 31 janvier 1705,” CEACC, AN, Fonds des Colonies, Série G3, Notariat, vol. 2040, microfilm roll F-1630.

¹³⁷ Donation par Jeanne Tériot à Michel et Claude Thibodeau, 6 juillet 1707, CEAAC, AN, Fonds des Colonies, Série G3, Notariat, vol. 2040, microfilm roll F-1630.

importance of this land in relation to the total family assets, which were undoubtedly greater than those of most habitants. Nonetheless, the concession may be read as an attempt to achieve some equity with regard to the other heirs, given the buyers' obligation to pay rent to those heirs in the future.

The donation of Jeanne Tériot to her sons Michel and Claude Thibodeau similarly supports Perrot's observation. In this case, Jeanne Tériot, widow of Pierre Thibodeau, gave her sons Michel and Claude the homestead found at Pré Ronde on the south bank of the river, consisting of marsh, meadow, woods, houses and mills, together with all the furnishings, utensils and cattle. This donation, much like those found in Canada at the time, attached very specific conditions to ensure that Jeanne Tériot would be adequately cared for in her old age.¹³⁸ She reserved for herself during her lifetime "four steer three cows and a calf two ewes five pigs and two rams." She also arranged to be given fleece to make clothing and reserved a mother cow for milk. At her death the animals were to be given to her youngest son Charles. The increase from the animals, however, was to go to Michel and Claude. The latter also jointly obligated themselves to feed and maintain their mother in their house for the rest of her days.¹³⁹ In addition, they were obliged to pay to their siblings a bushel of wheat as rent after Jeanne's death. They were also required to feed and look after their youngest brother, Charles, in their own house, seed two boisseau of wheat for him, and take other actions to help him establish himself.¹⁴⁰ Thus, while the mother, Jeanne Tériot, was giving the land to the two sons who could

¹³⁸ Bouchard, et al., "Donation entre vifs et inégalités sociales au Saguenay," 449.

¹³⁹ The contract specifies in great detail what she will be provided should she live on her own, including such things as twenty-eight pounds of butter, two bushels of turnips, cabbages (peu choux pommes), a pig, three barrels of wheat, fine toile, an agricultural worker (brassier) who must be "honest and clean," and more.

¹⁴⁰ This probably meant to set aside as much land as could be seeded by two bushel of wheat seed, or two *boisselées*. Raveau, *L'Agriculture et les classes paysannes*, 36.

best take care of her in her dotage, she also made arrangements for all of the heirs to get something, and especially for Charles, the youngest son, to get assistance from his older brothers.

In his study of marriage in l'Acadie, Jacques Vanderlinden concluded that as important as land was, especially the marsh, its relative availability made it less important for Acadian families to conserve their *patrimoine foncier*, or landed patrimony, through marriage arrangements.¹⁴¹ Whether this was the case or not, most families, it may be assumed, did not have holdings sufficient to permit each child to receive a competent amount of land. Under these circumstances, parents pursued strategies that ensured that the family homestead could continue to provide a living sufficient to support one or perhaps two of their sons who would also take care of them in their old age, while at the same time seeing to it that the other siblings were either well established elsewhere, or received some form of compensation for the loss of what would have been their inheritance.

Summary

Many questions remain about Acadian practice and custom regarding land use. As the surviving contracts show, people transferred their lands and otherwise organized their work lives around their particular holdings, all as necessary to accommodate their growing families and to reflect the changing circumstances of their lives. They developed technologies and customs relating to land use that permitted them to take advantage of the resources available to them,

¹⁴¹ Vanderlinden, *Se marier*, 122-123. More important, Vanderlinden argues, was that the marriage establish “a network of relations which assured at the same time the future of children and a broad and solid base of real power in society.” Vanderlinden, 125; l’essentiel n’est pas toujours la préservation et la transmission des patrimoines, mais l’établissement d’un réseau de relations qui assure à la fois l’avenir des enfants et une assise aussi large que solide à un réel pouvoir dans la société. Livestock were more significant than land, he argues, as a form of patrimonial property. Vanderlinden, 125

most importantly the marsh, in a way that was both practical and equitable. In this way, they built strong communities that thrived, even in the face of the volatile political circumstances of their lives. These customs were built upon the scaffolding of seigneurial tenure and French customary law which for over 120 years provided the legal framework for ownership on which this marshland people rested their hopes of securing their own and their children's future.

CONCLUSION

Seigneurialism was the sole system of land tenure established in seventeenth century Nouvelle-France, in l'Acadie as much as Canada. Chapter 2 establishes a baseline for the investigation of land tenure in l'Acadie by not only reviewing the applicable law, but also exploring what seigneurialism had become by early seventeenth century, a time when most settlers left France for North America. Seigneurialism had in fact undergone significant changes. The beginning of the seventeenth century saw the expansion of seigneurial domaines, and the shrinking of the commons on which the peasants had relied. Seigneurial obligations were being reduced to contractual ones. Seigneurial authority was also being limited by both the crown and the courts, both of which exhibited a certain hostility to feudalism. Seigneurs had become less paternalistic, and their censitaires less dependent on their seigneurs. According to some, a nascent "individualism" had already found a foothold, especially in areas characterized by enclosed field agriculture, such as in the west of France, the region from which most Acadian emigrants came. Notwithstanding these changes, however, seigneurialism showed itself to be remarkably flexible, transforming in response to the new economic, political and legal realities. As such, it remained integrated into the economy and the culture, and retained its vitality up until it was abolished by the Revolution.

Colonists left France for North America, therefore, at a time when seigneurialism was still firmly established, but had evolved away from feudal forms. At the start of the colony of Nouvelle-France, this trend may well be seen to have reversed: seigneurs were the only ones in a position to ship goods on which the colony relied, and settlers depended on the first seigneurs,

who were also the crown's representatives, for protection much as peasants did feudal lords in pre-modern France. This would change, however, beginning in the last third of the seventeenth century as agriculture became more established and channels for trade were opened. Indeed, the opportunities offered by the colony—especially the access to land, and the freedom accorded colonists in a bid to attract and keep them—made it almost a certainty that seigneurialism would continue to evolve in Nouvelle-France. One would not, for example, find banal bake ovens or harsh work requirements (*corvée*) on seigneuries in Canada or l'Acadie. The climate made a centrally placed banal bake oven completely impractical, and harsh work requirements would only scare away settlers seigneurs were desperate to attract and keep. Similarly, seigneurs often could not afford to build banal mills on their seigneuries. Officials in Québec went so far as to threaten the loss of the banal right in order to encourage seigneurs to build mills.

Even as it was modified to meet colonial conditions, however, seigneurialism continued to function throughout Nouvelle-France. Cens et rentes were collected by seigneurs in l'Acadie, as well as in Canada, although in both colonies they were, as Louise Dechêne writes, “capped at an indisputably low level.”¹ Lods et ventes, a more significant part of seigneurial revenue, were similarly enforced in Canada and in l'Acadie. While there is some dispute about the extent to which Canadian seigneurs exercised their rights of justice, they did so more than Acadian seigneurs who transferred most cases of any seriousness to Québec for adjudication. Nonetheless, there is evidence that both Belleisle and La Vallière acted as judges on their seigneuries. Seigneurial monopolies on fishing and hunting were asserted by seigneurs throughout Nouvelle-France, and seigneurs in both colonies granted their censitaires rights in lands set aside as commons for the pasturing of their animals, as for foraging and cutting of

¹ Dechêne, “L'Évolution,” 153

wood. Les droits honorifiques were also observed in both colonies, and the seigneur, in both, was an important figure in the social life of the community.

There is no question that the Canadian population increased more rapidly than that of l'Acadie, or that seigneurialism was more developed in Canada than l'Acadie by the end of the seventeenth century. At first, however, seigneurs in both Canada and l'Acadie were forced to bow to circumstance, asking little from, and providing less, to their censitaires. It was only at the end of the century, when the population increased, and improvement of the land progressed, that seigneurs in Canada began to exploit all the seigneurial rights as provided by the Coutume. In many ways, therefore, seigneurialism in l'Acadie was not so different than seigneurialism as implemented during much of the seventeenth century in Canada, and this notwithstanding the disruptions and political upset experienced in l'Acadie. While seigneurialism continued to develop in Canada, the conquest of l'Acadie in 1710, and the subsequent cession of the colony to the British in 1713, froze this development in time. The fact that seigneurialism was not fully developed does not mean that it was "moribund," as some have assumed, or that it did not provide the basic legal and social framework within which the Acadian settlements grew.

Chapter 3 more specifically describes French land tenure in l'Acadie, beginning with the earliest, sporadic, attempts of the crown under the auspices of figures like the Marquis de La Roche, Pierre Dugua, sieur de Mons, and Jean Biencourt de Poutrincourt. Despite these efforts, however, it cannot be said that at the end of the third decade of the seventeenth century there was anything like a functioning seigneurial system in l'Acadie, or for that matter in any part of Nouvelle-France, and this because of the lack of colonists. This began to change in 1632 when Samuel de Champlain reestablished French control in Québec and was able to attract colonists, and Isaac de Razilly brought some "trois cens hommes d'élite," to La Hève in l'Acadie. It is not

at all certain whether Razilly also brought families. It is likely, however, that some of those brought by Razilly would shortly follow a young nobleman and successor to Razilly, Charles de Menou d'Aulnay, to what many consider the first functioning seigneurie in l'Acadie, located at Port-Royal on the rivière du Dauphin. In addition to becoming the largest land owner in l'Acadie, d'Aulnay had been granted lettres patentes providing him wide-ranging powers as gouverneur and lieutenant général.

There is no question that d'Aulnay had established a small, but functioning seigneurie in Port-Royal. From contemporary accounts, we know that he built two métairies along the river that he undoubtedly leased to settlers by way of something akin to a shareholder agreement. He also, however, granted land using other forms of tenure that created more permanent, real interests in property, such as the bail à rente foncière. D'Aulnay also met his traditional responsibilities as a seigneur by building mills, settling colonists, building a church and a convent, ensuring tithes would be paid to the local parish, Saint-Jean-Baptiste, and planned to, and probably did, establish areas of commons from which the community could gather wood and pasture their animals. While he asserted his banal right to build an oven, he gave his tenants the "right of oven," probably for the same reasons that seigneurs in Canada did. He also asserted his banal rights to hunt and fish, giving his tenants permission to do both, albeit within certain limitations. At the time of d'Aulnay's death in 1650, therefore, the seigneurie of Port-Royal was firmly established, there being about three hundred French residents and forty-five or fifty families, many of whom had begun to dike and farm marshlands along the river.

Most scholars see the death of d'Aulnay in 1650, and especially the 1654 British defeat of the French at Pentagouët, the rivière Saint-Jean, and especially Port-Royal, as the beginning of the end of the seigneurial system in l'Acadie. The transfer of political power that occurred

between 1654 and 1670, however, did not mean a change in the form of land tenure in l'Acadie. The Anglo-Americans who took Port-Royal did not attempt to impose an English common law system of land tenure on the Acadian people, and in fact, did not even have a presence in Port-Royal, choosing instead to administer the colony through a governing council made up of Acadians. More to the point, Sedgwick specifically agreed in the articles of capitulation at Port-Royal that the habitants would retain their property, "by means of the recognition and seigneurial obligations for which they are obliged by their concessions."²

The question remains, however, in what manner Acadians met these "seigneurial obligations"? Some assume that these were not enforced because of the absence of a seigneur or other authority to do so. However, Jeanne Motin, d'Aulnay's widow, now married to Charles de La Tour, was in Port-Royal, at least until her death sometime between 1663 and 1667. There is every reason to believe that Motin, who was seigneur pending the majority of her eldest son, would have enforced her and her children's rights up until the time of her death. It is reasonable to believe that those Acadians that held their lands from d'Aulnay, or were seeking to settle on new lands, would have wanted to meet their seigneurial obligations, as provided in the articles of capitulation, to protect their rights for themselves and for their heirs.

Some suggest, however, that Emmanuel Le Borgne, d'Aulnay's creditor, so disrupted the seigneurial claims of Jeanne Motin and the d'Aulnay heirs that his absence from Port-Royal for the period of Anglo-American control left the inhabitants to do with the land what they pleased. While a possibility, this seems improbable, for the simple reason that Le Borgne never had a legally perfected right to d'Aulnay's lands in l'Acadie. Le Borgne himself always claimed that he was entitled to those lands as a result of the 1650 agreement that he made after d'Aulnay's

² "Capitulation de Port-Royal, du 16 août 1654," in *Mémoires des Commissaires*, 2:509; manuscript at LAC, Fonds des Colonies (France), Série E, Dossiers personnels, vol. 12, pp. 32-33.

death with the latter's father, René Menou de Charnizay. A close reading of that agreement, however, shows that those debts were intended to be satisfied not by liens on, and still less, the transfer of d'Aulnay's Acadian lands. Instead, Le Borgne was to collect what was owed him through the sale of d'Aulnay's French estate near Loudun, as well as a monopoly on all trade in l'Acadie. His actions in l'Acadie directly after the agreement was signed belie any notion that he believed himself to be the seigneur in place of Jeanne Motin. Nor did he ever reduce his alleged claim to d'Aulnay's Acadian properties to a judgement, as would have been required. A decision by the Parlement in Paris, sometimes cited by scholars as confirming Le Borgne's rights in l'Acadie, merely finds that the 1650 agreement between Le Borgne and René Menou de Charnizay was in effect "according to its form and tenure," thus begging the question as to what the agreement provides. It does not even mention d'Aulnay's lands in l'Acadie. Le Borgne began pressing his claim to d'Aulnay's lands in l'Acadie sometime in 1657 or 1658. He gained the attention of the crown, and was granted a concession and made lieutenant général of l'Acadie, a position in which he was never to serve. It is unlikely, however, that Motin would have bowed to Le Borgne's proprietary claims while she was still contesting the accounting on which they were based in court, and while Le Borgne was unable to enter the colony.

Alexandre Le Borgne returned to l'Acadie in 1670 when the French resumed control and after the death of Jeanne Motin and Charles de La Tour, claiming to be seigneur of Port-Royal and Les Mines. The sieur de Belleisle, as he fashioned himself, now took ownership of the métairies that had belonged to Motin. Her sons by d'Aulnay had perished, or would soon perish, fighting France's wars, and her daughters had entered the convent. Her children by La Tour, moreover, were too young to resist Le Borgne. French officials in Québec appear to have accepted Belleisle's claims, perhaps as an act of expediency, while local officials continued to

voice their doubts. Shortly after taking the governorship, for example, Grandfontaine told the inhabitants to consider Belleisle a “simple habitant,” and a later governor, Villebon, complained in 1699 that he did not believe that Belleisle “has any reason to call himself Seigneur of Port Royal.”³

Perhaps the best argument to be made that seigneurialism persisted in l’Acadie during this first period of Anglo-American control is the ease with which the habitants accepted Le Borgne as seigneur after the death of Motin and La Tour, notwithstanding all the questions surrounding his right to such a title. In a record of a meeting of habitants in 1673, Jacques Couraud, “lieutenant of Monsieur Le Borgne seigneur and owner of part of l’Acadie,” was asked to take charge of the construction of a new church that was to be built at the expense of the “Commun des habitants.” Thus by 1673, Alexandre Le Borgne had assumed the responsibilities and rights as seigneur in the Port-Royal area, at least as far as the leaders of the community of habitants were concerned.

Chapter 4 addresses the period from 1670, when the French regained l’Acadie, to 1713, the year l’Acadie was permanently transferred to the British by the Treaty of Utrecht. While there were raids by New England troops and pirates, and even one more period of ostensible Anglo-American rule (1690 to 1697), Acadian settlements were never occupied by an invading force. Nor was there any attempt by the English to introduce English settlers. As was the case in the period following the Sedgwick attack in 1654, there was no English authority established in l’Acadie during these seven years. Instead, the Acadians were once again governed by a council made up of prominent Acadians. This time, however, the council was led by a man that turns out to have been an agent of the French commander, Joseph Robinau de Villebon, who was based on

³ “Villebon’s Last Journal Sent to Count Pontchartrain,” October 27, 1699, in Webster, *Acadia at the End of the Seventeenth Century*, 123.

the rivière Saint-Jean, and who still exerted influence in Acadian communities. If the political hold of the British on the Acadian communities was weak from 1690 to 1697, their cultural influence was non-existent. The English were simply in no position to impose cultural authority over the people. Under these circumstances, it is not surprising that Acadians retained central elements of their French culture, including their language, their religion, and their law, including their form of land tenure.

There is ample evidence contained in official reports, correspondence and documents, as discussed in chapter 4, that seigneurialism continued to function in l'Acadie up to the end of the French period in each of the three major agricultural settlements. It is, however, perhaps as important what is not in the record as what is; in all of the official reports criticizing land use practices in Port-Royal—the size of the concessions, the distance between them, the haphazard way they were granted, the underutilization of the uplands—there were no similar complaints regarding the failure of habitants to obtain concessions for the lands they occupied. The lack of any expressed concern in the historical record, and the repeated reference to concessions granted, shows that seigneurs in the agricultural settlements around the baie Française continued to carry on the primary function of a seigneur in seventeenth century Nouvelle-France, namely conceding lands, and that some, like La Vallière in Beaubassin doing much more.

Records of official acts and correspondence, however, are not the only evidence that Acadians continued to hold their lands from a seigneur during the French period. Most of the concessions granted by l'Acadie's seigneurs have been lost. Only three in fact have survived. However, a small but important collection of contracts involving the transfer of land from one inhabitant to another contains valuable information regarding the obligations of the land holders to a seigneur during this period. A clear majority of these make reference to the concessions on

which the seller's right to the land was based, or to the seigneurial dues, and the buyer's obligation to pay these to the seigneur.

Sixteen contracts have survived involving the transfer of land between 1691 and 1707. All but one of these are from a small collection of extant contracts made before the notaire Loppinot that survived a fire at his greffe in 1708. The one that is not included in the latter collection was from this period but recorded later by the British in the first registry of deeds for Nova Scotia. All of the contracts involve land in Port-Royal or along the rivière du Dauphin, except for one for land in Chignecto. In all but two cases, the sale or gift is made on condition that the buyer pay seigneurial charges. In eleven of the fourteen contracts that discuss seigneurial charges, the contract specifies in whose censive the land is located, and the specific charges owed. Seven of these contain specific amounts of cens et rentes, while four specify only lods et ventes, these being in the mouvance of the fort at Port-Royal and thus in the censive of the crown. In a twelfth contract, the seller states that the land belongs to him "par une concession du seigneur de ce dit lieu," and promises to deliver the concession to the buyer within eight days. Presumably, the specifics regarding the seigneur and the charges will be confirmed when the buyer receives the concession. Thus out of sixteen contracts, twelve (if one counts the last discussed contract) are specific as to the censive in which the land is located, and the seigneurial charges due. In two others, the sale is made "à la charge des droits seigneuriaux," but is not specific as to the amount of the charges or the censive in which the land is located.

While this is not a large sample, the fact that twelve of sixteen contracts contain specific seigneurial charges, and two more mention them more generally, shows decisively that seigneurialism was not moribund at the end of the French period. Seigneurs like Marie de La Tour, the d'Entremonts, and Claude-Sébastien de Villieu acting for his father-in-law, La

Vallière, still lived in l'Acadie and would be expected to enforce their rights, as did, no doubt, a notaire like Loppinot when writing up contracts. From these contracts one can be confident that Acadians in Port-Royal and along the river, but also elsewhere, as in Chignecto, held their lands by a concession from a seigneur and that in the last two decades of the French regime, they were still paying cens et rentes to those seigneurs, and passing on those charges to successive owners..

Seigneurs were not conceding land, however, in a vacuum. Administrative and legal structures existed in the colony that supported and enforced the seigneurial system. Changes had occurred during the sixteen years that the British had ostensibly held l'Acadie (1654-1670). Nouvelle-France had become a royal province, and French officials arriving in l'Acadie after 1670 acted to implement these in the colony. Grandfontaine, for example, moved quickly to appoint a procureur de roi, or king's attorney, shortly after he arrived in the colony. Already operating in the town were a lieutenant général and a greffier, both apparently dating back from d'Aulnay's time. The new gouverneurs found the administration of justice, in particular, lacking. The latter was placed on a better footing, however, when Mathieu de Goutin was appointed lieutenant civil et criminel in 1688. The legal structure of the colony undoubtedly remained in place during the second period of English control (1690-1697): the then procureur du roi and judge, Pierre Chenet Du Breuil, served on the council established by Phips, as did Goutin, both of whom would almost certainly have continued to also serve in their official capacities.

One problem was that officials could not easily be replaced once they resigned or passed away. The town of Port-Royal, for example, may have gone without a greffier for at least eleven years before Jean-Chrysostome Loppinot, who was also a notaire, replaced Claude Petipas. It was similarly without a notaire for that amount of time or longer. There is evidence, however, that in the absence of a functionary, like a notaire or a greffier, other officials, and even members

of the clergy filled the void. Some of the outer settlements also came to have their own notaires. At least two notaires, for example, were known to have operated in Les Mines. Informal billets, or contracts entered into *sous seing privé*, or without the presence of a notaire, were legalized once a notaire became available.

The Church similarly would have provided a stabilizing force with regard to French custom and even law. All indications are that the Church remained an important institution in l'Acadie. Acadians built churches in each of their communities, and although they sometimes had to go without priests, they petitioned the bishop to send more to serve in their communities. Because of their influence in the community, priests often were asked to resolve disputes. In one case, a priest was said to have removed a parishioner who had failed to provide the proper deference to Madame Belleisle, the seigneur, while exiting the church.

In short, there were, during the forty-three year period of French control, legal, administrative, and even religious institutions in place that would have helped to stabilize and preserve French law and custom, including seigneurial forms. While it is difficult to know to what extent Acadians in the outer settlements in particular submitted themselves to administrative and legal authorities—Brouillan once referred to the habitants of Les Mines “*demy republicains*”—there is no indication that with regard to the manner in which they held their lands, there was widespread resistance to receiving concessions from their seigneurs or paying their seigneurial charges.⁴

Land tenure in the Acadian agricultural settlements under British rule (1713 to 1755) is examined in chapter 5. Pursuant to the terms of the 1713 treaty, and a subsequent letter of Queen Anne modifying and clarifying the treaty, Acadians would be “subject to the Kingdom of Great

⁴ M. de Brouillan au ministre, 6 octobre 1701, LAC, Fonds des Colonies (France), Série C11D, vol. 4, fol. 47, accessed June 20, 2019, <http://collectionsCanada.gc.ca>, MIKAN 2410120; “practically republicans.”

Britain,” but were permitted to enjoy the free exercise of their religion, and retain their lands, or sell them if they chose to move elsewhere. The terms of the treaty raised multiple questions, such as what it meant to be “subject to the Kingdom of Great Britain” (the British interpreted this to mean that Acadians must take an oath of loyalty); or whether Acadian families could be granted new lands in which to expand (local officials were instructed that grants of unappropriated land were to be made to “Protestant subjects” only). It was how seigneurial property was to be treated under the treaty, however, that British officials struggled with the most.

Some Acadians, much to the irritation of local British officials, continued to pay their rent to the “Lords of Mannors” who had removed to Ile Royale. Seigneurs who stayed after the British assumed control, or left and returned, like Marie de La Tour, also were asserting their right to cens et rentes on their seigneurial lands. For the British, this was an intolerable situation. The Acadians paid no quit-rents to help maintain the government. Acadian seigneurs, moreover, theoretically represented a layer of authority between the people and the new government. More concerning yet, from the British perspective, was the fact that land could not be made readily available to Protestant colonists if Acadian seigneurs continued to hold large areas of undeveloped land.

The British would thus make concerted and deliberate efforts to eliminate seigneurial tenure in Nova Scotia. They did this initially by way of legal opinions, contested by the French, effectively dispossessing seigneurs who had left the colony, or had failed to take the oath of loyalty within a prescribed time. The culmination of these efforts, however, was the dubious purchase in 1734 of all remaining seigneurial rights of the La Tour heirs from Agathe Saint-Étienne de La Tour, otherwise known as by her married name, Agathe Campbell. Campbell was the granddaughter of Charles de La Tour and Jeanne Motin. She had been assigned the

seigneurial rights of her aunts and uncles who left the province and placed their lands in her hands, but only for that time during which the province remained in the possession and control of the British. Whether they intended to give her the authority to sell those lands, the profits to be passed on to them, is not apparent from the face of the assignments. It is telling, however, that the British attorney general opined at the time that the instruments produced to support Agathe Campbell's claims "are very oddly drawn in a way that might render a title here in England questionable."⁵ He nonetheless approved the purchase. In the end, through one device or another, the British were able to justify, at least to themselves, the transfer of all seigneurial rights in the province to the British crown.

As the "sole seigneur" of the place, the crown was now entitled to collect the Acadians' seigneurial charges, including the cens et rentes and the alienation taxes, or lods et ventes, which they did in all of the settlements. The accounts that were made of these payments provide further convincing evidence that Acadians held their lands from seigneurs and that they had continued to pay their cens et rentes to those seigneurs at least up until the time the British assumed control of the colony.

Rent-gatherers were appointed from the Acadian population and forms were prescribed for keeping accounts of monies and other goods collected. An account submitted by Prudent Robichaud for the town and banlieue of Annapolis Royal, and one submitted by Jean Duon for the settlements along the river, both for the years 1732 and 1733, are particularly informative. In both cases it is indicated whether the payor had produced a contract to support his or her statement of the seigneurial amounts due. The payments were then broken down into "cens," "rent fontiere," and "fines of alienations," or lods et ventes. Listed also are the names of the "first grantee" and the "present possessor." Of the twenty-five payors listed for the town and banlieue

⁵ Shaw, *Calendar of Treasury Books*, 572.

of Annapolis Royal, only two could not produce a contract showing cens et rentes. Of the thirty-eight payors listed for areas on the river outside the banlieue of the town, only three were identified as having no contract, although at least one of these claimed to owe a seigneurial rent of one beaver with tail. One contract did not contain mention of cens et rentes. Thus the vast majority of families—twenty-three out of twenty-five in one case, and thirty-four out of thirty-eight in the other—could produce a contract or concession that showed charges owed to the seigneur of the place. Some number of these contracts had been previously collected by the British and notes taken of the amount of seigneurial charges by the secretary of the council. When the accounts were submitted by Robichaud and Duon, Armstrong ordered that a committee of the council examine them “and compare them with the minutes taken of the contracts in the Secretary’s Office and the state Mr Secretary has made of the same.”⁶

The vast majority of the accounts from the other settlements have not survived. The minutes of the governing council in Annapolis Royal, however, show that rent-gatherers were also appointed for the Minas Basin as well as Beaubassin. Moreover, at least in Minas, people submitted their contracts so that authorities could ascertain the amount of rents they had been paying. Council minutes and correspondence between British officials and rent-gatherers in these communities demonstrate, moreover, that while the people may have resisted paying their cens et rentes and fines of alienation to the British, the latter was able to collect these from both of the settlements at least for some years. For example, William Shirreff, secretary to the council, estimated that for 1740, Minas, Cobeguit and Pisiguit produced 65 $\frac{3}{4}$ bushels of wheat, 43 capons and £36, 10 shillings, in cash.⁷

⁶ Council minutes, 4 March 1733/4, *N.S. Arch. III*, 294.

⁷ Shortt, Johnston and Lanctôt, *Documents Relating to Currency, Exchange and Finance*, 220-221.

The accounts for the Annapolis River, therefore, strongly support the view that land in the agricultural settlements was held from French seigneurs up until the time that the British extinguished their rights. While the evidence is strongest with regard to Annapolis Royal and areas along river where detailed accounts have survived, a similar argument may be made as to the other settlements, given the evidence that contracts were collected, at least for Grand Pré and the surrounding areas, and that rents were submitted, which rents were intended to be based on these grants. In short, there is only one reasonable inference to be drawn from the evidence presented by the British collection of seigneurial cens et rentes: the people of l'Acadie had held their land from their seigneurs and paid their cens et rentes, and lods et ventes, just as French colonists did in other parts of Nouvelle-France at the time. When the British assumed power, they were able to use the then existing records of that seigneurial ownership to collect those charges in the seigneurs' stead.

The last chapter of the dissertation discusses land use practice, especially concerning the exploitation of the marsh, both under French and British rule. Acadian land use is identified above all with marshland farming whereby areas of saltwater marsh were diked and drained. Once salt was leached from the soil, these vast areas of marsh, naturally clear of trees and other impediments, were found to be exceedingly productive. Acadians developed a manner of working the marsh that was not only practical but also equitable.

While this study has found that seigneurs played more of a role in the settlements than has been thought, this does not mean that they directed or determined the development of the marsh. One would need to go back to d'Aulnay's time to find a seigneur who took the lead in draining marshland and creating farms. The earliest settlers no doubt worked these farms, or métairies, by way of sharecropping agreements, which made sense when the only access to seed,

equipment and livestock was through the seigneur who imported these from France. As families grew, trade increased, and the settlers were able to save seed and expand their herds, they would have been in a position to move to new areas of marsh and begin the process of draining their own land. Depending on whether the seigneur was in residence, they could seek a concession before or after enclosing the marsh. In this way, each extended family came to own a piece of enclosed marsh through an organic process determined only by the availability of marsh and the growing needs of the population. Seigneurs must have been only too happy to people their seigneurie in this way, and collect what cens et rentes that they could.

The fact that the development of the Grand Pré marsh involved the buildout of so considerable expanse of marsh over many years has led some to believe that it may have involved more organization. Historical geographer Karl Butzer, for example, has written that “the families of the settlement appear to have participated in a community reclamation project.”⁸ The question, however, is what body would have directed such a project. It is possible that the community assembly took on this task. There is no evidence, however, that this was the case. It is equally likely that the development of Grand Pré occurred through the same organic process more or less as did the development of the marsh along the rivière du Dauphin. The first group of Acadians settling in Grand Pré would thus have worked together to build the dikes and ditches necessary to create the first enclosure on the marsh. They would then have approached the seigneur for a concession either before or after the dike was built. Once that initial work was completed, according to contemporary accounts, the fields were divided and each concession holder allotted plots within the enclosure. When the population expanded, another group would follow the same procedure, and the process would begin again.

⁸ Butzer, 458.

One question that has often been raised concerns how Acadians allotted plots between multiple owners within an enclosure. In the case of a contract of division for a piece of marsh from 1737, the decision was made by drawing lots. First the land was divided into an even number of good, and less good pieces. Then each of the two parties drew lots to determine which of the parcels in the two categories he would take. That this was the custom of the alcountry is reinforced, as Jacques Vanderlinden has written, by the fact that the arbitration was overseen by Prudent Robichaud who was considered an expert in Acadian custom. Historian Ronnie-Giles LeBlanc has found use of this same method at Memramcook shortly after the fall of Beauséjour, and at least one Acadian community in southeastern New Brunswick in the early nineteenth century.⁹ This method, as Vanderlinden has noted, was “perfectly egalitarian even if aleatory,” and thus “reinforced the feeling of equality that seems to prevail during the establishment of the pré.”¹⁰

Acadian custom of the marsh, however, was not only fair and equitable, it also was practical. French officials complained about the lack of boundaries in the Acadian settlements, causing what they saw as unnecessary confusion and conflict. The Acadians, however, had their own method of dividing and marking land that officials may have misunderstood. Ditches used to drain the newly prepared fields in the marsh often served as boundaries, as did natural features, such as streams. Boundaries were also marked by fences, both in the marsh and in uplands. These fences also served to protect against roaming animals. Land owners were in fact responsible for fencing their properties against animals at least since 1671 when the community assembly decided that damages could only be sought if the land was fenced.

⁹ LeBlanc, “Documents Acadiens sur les aboiteaux,” 46.

¹⁰ Vanderlinden, *Le lieutenant civil et criminel*, 182.

Most scholars agree, without providing much in the way of evidence, that Acadians shared the responsibility for the maintenance of the dikes. Disputes involving Acadians before the British governing council at Annapolis Royal demonstrate that both maintenance of dikes, as well as common fences and ditches were considered a shared responsibility. Governor Philipps issued an order as early as 1724 calling for the repair of dikes, thus reinforcing the custom. This would be followed by other orders from the government declaring that inhabitants either repair their dikes or lose their interest in the marsh. The contract of division discussed above provides finer detail as to this shared responsibility. In that case it was agreed that if an aboiteau was built, it would be common, as well as the ditch which would serve as a boundary marker, and that the parties would share the responsibility for both, “half and half without question by one side or the other.”¹¹

Yves Cormier has written that where an enclosure was owned by multiple parties, an individual named by the group called a “sour des marais” was given charge of inspecting the dikes and alerting the owners where maintenance was needed. If a repair was needed, he would “assemble the men for la corvée.” In Grand Pré, where there were miles of dikes and ditches, it is possible that several men, possibly under the direction of the syndic, inspected the dikes and made repairs on a rotating basis. If such a system existed, however, it does not appear to have survived after 1710. The British concerned for the conditions of the dikes and fences ordered “three of the Deputies and two of the ‘Ancient’ inhabitants to inspect the dykes every spring and fall, and direct repairs.”¹² It is possible that the British approach reflects some remnant of an

¹¹ Arbitrated agreement between John Easson, Pierre Préjean and Germain Doucet, 15 janvier 1738, N.S. Arch. Grant Book 1, 65-66.

¹² Order for Repairing the Dykes of Piziquid, 17 April 1735, *N.S.Arch. II*, 205-206.

older Acadian tradition whereby the community, possibly through the assembly or the syndic, chose respected members who would inspect the dikes and coordinate repairs.

As to labor arrangements, it is clear as has been noted by scholars, that Acadians relied principally on their large families to drain the marsh and work the fields. As Dièreville wrote, “when they are fit to work, which is at an early age, children are the wealth of the country.”¹³ Besides their own families, farmers depended on the help of neighbors, and the work of day laborers, although the latter seems to have been in short supply. Engagés were also brought in from France or Canada in some instances to work for a specific period of time as farm hands. This was hardly an option, however, for most Acadians. One contract from the British period shows that Acadians were resourceful in finding ways to work their fields. In addition to the sale price for a piece of marsh belonging to his uncle, Jean Préjean, Jacques Levron agreed to give Préjean six days of labor on six consecutive years preparing new fields. This was probably not an unusual contractual condition, especially when bringing new members of an extended family into an established area of marsh.

Like their counterparts in Canada, Acadians also employed various strategies to keep the family homestead intact, while still holding to the principles of partible inheritance, as required by the Coutume. *inter vivos* gifts were used to pass the family homestead to one or more children, usually with the agreement of the other heirs. The disfavored heirs were not without compensation. Usually the favored heir bought out the others or provided some compensation, for example in the form of rent after the death of the parents. The purpose of favoring one heir over the others was not to defeat partible inheritance. Rather, in addition to preserving the family farm, it was a way to ensure that aging parents were taken care of in their old age by the child or

¹³ Dièreville, *Relation of the Voyage to Port Royal*, 94, 258.

children best equipped to do so. As Perrot wrote in 1686, sometimes “it is the eldest, sometimes the youngest, they do not care, and it is ordinarily he who accommodates himself best with the father and the mother.”¹⁴

Many gaps still exist in our knowledge of how Acadians obtained, used and passed on land in the agricultural settlements around the Bay of Fundy. Much of this is due to the accidental, as well as deliberate destruction of the records that would have filled in those gaps. Scholars have been too quick to see in the void left by the lack of documents a cultural void. Culture, however, is not so easily erased, especially when there is nothing to replace it.

The Acadians brought with them their language, their religion, and their law, including their form of land tenure. Ample documentation—especially in the form of contracts, correspondence, and official records—survives to show that they retained these essential parts of their culture even after the British assumed final control of the colony. Seigneurialism was woven into the fabric of that culture, which is why by stepping into the shoes of the departed seigneurs, the British were able to use the existing seigneurial contracts to structure their own system of rent collection. There is no question that the agricultural settlements had undergone significant challenges, ranging from neglect to physical attacks and transfers of political power. The seigneurs, however, like the Acadian people themselves, endured, providing a more or less stable system of land tenure by which Acadians sought to ensure their future and the future of their children.

¹⁴ Relation de la province d’Acadie (Perrot), n.d., LAC, C11D, vol. 2, fols 40-41.

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