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# A Story of Marguerite: A Tale about Panis, Case Comment, and Social History

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# OSGOODE HALL LAW SCHOOL

## LEGAL STUDIES RESEARCH PAPER SERIES

Research Paper No. 01

Vol. 11/ Issue. 01/ (2015)

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**Abstract:**

Those interested in social history contend that social norms deserve attention due to how they impact and are affected by historical events. This subfield has contributed significantly to how larger historical mosaics are understood, and how themes specific to marginalized groups are appreciated today. By presenting the story of enslaved Indigenous woman in New France who was the first Indigenous civil litigant in Canadian history, and focusing on her representation in the colonial legal system, a number of themes emerge. Canada's history of slavery becomes better understood, and in so doing, a challenge to social historians is presented. By examining the legal procedure applied to an Indigenous litigant's circumstances, and then dissecting the events that followed, the strength of social norms during her time is appreciated more fully. Integrating an era's legal doctrine into historical analysis augments the social historian's search for society influence on the individual in history.

**Keywords:**

Indigenous litigation; Canadian legal history; historical method; French colonization; slavery and the law; historic legal procedure

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## **A Story of Marguerite: A Tale about *Panis*, Case Comment, and Social History** Signa A. Daum Shanks

*Those interested in social history contend that social norms deserve attention due to how they impact and are affected by historical events. This subfield has contributed significantly to how larger historical mosaics are understood, and how themes specific to marginalized groups are appreciated today. By presenting the story of an Indigenous woman in New France, and focusing on her representation in the colonial legal system, a number of themes emerge. Canada's history of slavery becomes better understood, and in so doing, a challenge to social historians is presented. By examining the legal procedure applied to an Indigenous litigant's circumstances, and then dissecting the events that followed, the strength of social norms during her time is appreciated more fully. Integrating an era's legal doctrine into historical analysis augments the social historian's search for society's influence on the individual in history.*

*Ceux qui s'intéressent à l'histoire sociale soutiennent que les normes sociales méritent de retenir l'attention en raison de la manière dont elles exercent un impact et sont affectées par les événements historiques. Cette sous-zone a largement contribué à la compréhension des grandes mosaïques historiques et à l'appréciation actuelle des thématiques propres aux groupes marginalisés. En présentant l'histoire d'une femme indigène de Nouvelle-France et en se concentrant sur sa représentation au sein du système juridique colonial, il en ressort un certain nombre de sujets. On comprend mieux l'histoire de l'esclavage du Canada, et ce faisant, on présente un défi aux historiens sociaux. En examinant la procédure juridique appliquée à la situation d'un plaideur indigène et en analysant la suite des événements, la force des normes sociales durant son époque est mieux appréciée. L'intégration de la doctrine juridique d'une époque à l'analyse historique renforce la quête de l'historien social portant sur l'influence de la société sur l'individu dans l'histoire.*

### **Shifting Presentation Methods, Noticing Society's Power**

In the autumn of 1740, a woman whose full name was Marie-Marguerite Gastineau Radisson Duplessis (hereafter Marguerite), and who was likely twenty-two years old, submitted an argument to a Montréal court

that explained she was not a *panis* (an Indigenous slave).<sup>1</sup> The courtroom presentation had at least two notable qualities. First, the presentation provided the earliest documented incidence of a person attempting to challenge the legality of the slave system in what became Canada. Second, the court argument is the first civil litigation commenced by an Indigenous person in Canadian history. In these ways, Marguerite's appearance in court helps illustrate two threads of Canada's past: legal challenges to the abolishment of slavery, and Indigenous peoples challenging non-Indigenous regulations in a non-Indigenous forum.

Because the documents that mention her are rare and their form complex,<sup>2</sup> the difficulty in compiling and presenting her story quickly became evident. Thankfully, Marguerite has appeared in a few previous historical studies, and those presentations provide helpful commentary about slavery,<sup>3</sup> the practitioners of French colonial law, and New France's regime in general.<sup>4</sup>

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Research for this paper was presented to the University of Toronto's Faculty of Law Legal History Group in February 2008. I am also thankful for funding received from the Osgoode Society for Canadian Legal History to aid the completion of this project. Thanks also to Margaret Kellow, Jim Phillips, Sid Haring, Sam Robinson, and anonymous reviewers.

1 For the purposes of this article, and with the hopes that a presentation in English may help increase our knowledge about concepts in the French legal system, I italicize any French word used the first time it appears, and then subsequently present it in regular script.

2 Documents about Marguerite are in File 1230-Duplessis in the provincial archives in Quebec City, the Archive Nationale du Québec (hereinafter "ANQ"). In visiting the archive and examining the file, one becomes immersed in French, turns of phrase, legalisms, and poor penmanship. I also visited the archives to confirm that no documents containing Marguerite remained unexamined and to extract other items that might reveal helpful context for the trial. Some other decisions include the holding that a person is confirmed as a *panis*, but the *panis* did not have direct involvement in the issue her/himself. Of these types of examples, I found decisions in *Parchemin-banque de données notariales (1626–1784)* 9 juin 1738; 17 septembre 1738; and 9 février 1722, all of which happened in front of Lepailleur de LaFerté in Montréal.

3 Brett Rushforth's recently published *Bonds of Alliance* (Chapel Hill: University of North Carolina Press, 2012) provides substantial evaluation of slavery records for New France. His work is a very successful analysis of the issue of slavery in Canada that helps expand some of the matters introduced by the late Marcel Trudel in *L'esclavage au Canada français; histoire et conditions de l'eslavage* (Quebec: Presses universitaires Laval, 1960). David Gilles' "La norme esclavagiste, entre pratique coutumière et norme étatique," *Ottawa Law Review* 40 (2008–2009): 73–114, is another a commendable effort. As a more popular source, Marcel Trudel provided an entry about her in the *Dictionary of Canadian Biography* <[http://www.biographi.ca/009004-119.01-e.php?id\\_nbr=1328](http://www.biographi.ca/009004-119.01-e.php?id_nbr=1328)> (13 February 2013).

4 A graduate thesis focusing on one particular man in New France, Jacques Nouette, has included a clear description of the complex form that legal procedure can take, and includes some remarks about Marguerite. See Alexandra Havrylyshyn's "Troublesome Trials in New France: The Itinerary of an Ancien Régime Legal Practitioner, 1740-1743" (master's thesis, McGill University, 2011).

Yet, as someone trained as both a social historian and a lawyer, as well as an Indigenous person concerned with how Indigenous stories are accepted into mainstream intellectual discourse, the efforts that do mention Marguerite create additional questions. While these works are indeed helpful for some historical conversations, they are also limited because of how they pertain to topics other than an Indigenous person's own historic voice (or role).<sup>5</sup> In recalling her path-breaking work as a litigant, and an Indigenous litigant at that, it is important to think about how situating Marguerite at the centre of a study can embolden those interested in Indigenous peoples as activists within colonial systems. As a result of these concerns, the questions explored here are as follows. First, what strategies can be employed to maintain Marguerite as the main character so that we can learn as much as possible about her life? Second, does the story of her life introduce different themes omitted or overlooked by others?

In answering the first question, and in finding concordance with certain writers who specialize in microhistory, it is helpful to include a "case comment" (i.e., a narrative of a legal proceeding).<sup>6</sup> In using a case comment, some answers to the second question develop in profound ways. The theoretical emphasis that social historians place upon society's influence on individuals becomes even more justified. Yet, as a challenge to the methods that social historians often employ, Marguerite's story illustrates how this perspective can be better understood using legal norms as an investigative tool. Following the views of those who support the growth of Indigenous Studies as a discipline,<sup>7</sup> I contend

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5 For reflections about the importance of Indigenous-centred presentations, see Aileen Moreton-Robinson and Maggie Walter, "Indigenous Methodologies in Social Research," in *Social Research Methods*, ed. Maggie Walter (Melbourne, AU: Oxford University Press, 2009), 1–18; and Lynn Lavallée, "Practical Application of an Indigenous Research Framework and Two Qualitative Indigenous Research Methods: Sharing Circles and Anishnaabe Symbol-Based Reflection," *International Journal of Qualitative Methods* 8, no. 1 (2009): 21.

6 One of the more instructive documents about how to create a case comment appears in "Preparation for the 2012 Write On Competition," organized by Georgetown University's law school. The length of a case comment can vary, influenced mostly by how much information the court provides about a circumstance's facts, previous trends in similarly situated litigation, and any analysis that appears in a decision about expanding or contracting concepts of law. See [http://www.law.georgetown.edu/journals/writeon/2012\\_how\\_to.pdf](http://www.law.georgetown.edu/journals/writeon/2012_how_to.pdf) (13 April 2013). As a result of the number of details contained in the court documents about Marguerite, I suggest that a comment about her is helpful. However, it is shorter than is typical of most case comments that have a high amount of cross-referencing to other judicial decisions and legislation.

7 See, in particular, the chapter, "Whose Reality Counts? Research Methods in Question," in Bagele Chilisa, *Indigenous Research Methodologies* (Los Angeles, CA: Sage Publications, 2011). Works about non-Indigenous peoples also help solidify this perspective. Alain Corbin's interest in a

that different methodological strategies can sharpen our appreciation for the influence of social norms upon history, particularly when those peoples being studied belong to Indigenous communities.<sup>8</sup> My strategy here is to first provide a socio-economic backdrop,<sup>9</sup> then explain more about the legal system via Marguerite's story, and then finally discuss the "layers" that those previous sections create.<sup>10</sup> The results both support and challenge some perspectives already made about Marguerite.<sup>11</sup> Certainly, efforts considered examples of social history remind us about the importance of community, interaction, and interest in others when considering what happened in the past. By learning as much as we can about Marguerite in the classroom, and deciding that she merits more attention than offered within a macroanalysis or a biography about a

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French clog-maker has certainly influenced my methodology. See his *Life of An Unknown* (New York: Columbia University Press, 2001), where Corbin decides that he will try to construct a man's "silhouette" by establishing a "zoom in and zoom out" approach to other events and judicial records that mention the clogmaker. Carlo Ginzburg's *Clues Myths and the Historical Method* (Baltimore: The Johns Hopkins University Press, 1989) explains the separate conditions of trials and social activities, but also how the activities and procedures influence each other. For a more Canadian context, Allan Greer argues that understanding daily activities helps to reveal other issues more difficult to appreciate as separate topics. See Greer's *The People of New France* (Toronto: University of Toronto Press, 1997). For a different technique for analyzing "nobodies" (my term), see André Lachance's use of a body's physical evolution in *Vivre, Aimer et Mourir en Nouvelle-France* (Montréal: Éditions Libre Expression, 2000). For remarks about the separation of two particular scholarly subfields (such as law and social history), and then a comparison of the two to present a more accurate historical study, see John Lewis Gaddis, *The Landscape of History: How Historians Map the Past* (New York: Oxford University Press), 65. Consider the presentations of Bertram Wyatt Brown in his final chapter of *Honor and Violence in the Old South* (New York: Oxford University Press, 1986), entitled "The Anatomy of a Wife Killing," and more generally Constance Backhouse's *Colour Coded: A Legal Racism of Canada, 1900–1950* (Toronto: University of Toronto Press, 1999).

8 For various views on how Indigenous Studies' historical writings about the past differ from most presentations deemed the history of Indigenous peoples, see generally the presentations in Arnold Krupat, *Red Matters: Native American Studies* (Philadelphia: University of Pennsylvania Press, 2011) and Ute Lischke and David McNab, eds., *Walking a Tightrope: Aboriginal People and their Representations* (Kitchener, ON: Wilfred Laurier University Press, 2005).

9 For remarks about how examining case studies helps reveal "rival jurisprudential positions" and how the results of a decision can be influenced by "morally repugnant ideology," see David Dyzenhaus' *Hard Cases in Wicked Legal Systems: South African Law in the Perspective of Legal Philosophy* (Oxford: Clarendon Press, 1991), especially his two chapters entitled "The War Against Law" and "The Legitimacy of Law." The first terms in this note are found on page viii of the text.

10 For remarks about the method of "layering," see Laura Peers, *The Ojibwa of Western Canada: 1780–1870* (Winnipeg: University of Manitoba Press, 1994), 210.

11 For a longer description of the issue of formulating a method to introduce a rarely mentioned party, and how doing so automatically challenges other historians' techniques, see Phillip Garrison, "Nobody's Case History," *The North American Review* 283, no. 5 (September–October 1998): 45–48.

non-Indigenous legal practitioner, Marguerite's voice speaks, and she tells us how much those social norms controlled what happened to her and to the rest of us.

### Overall to Local: Colonial Tenets to Street Encounters

Before shifting to a set of events on a particular street in a certain town in New France, I wish to first pull back and notice global trends, and then focus on some regional circumstances that were part of Marguerite's local conditions.<sup>12</sup> Already well analyzed by others, international events during the eighteenth century contained activities focused on colonialist pursuits.<sup>13</sup> Mostly originating from European powers during this era, colonialism meant that various nation-states strove to increase political power at home by claiming regions elsewhere. As part of these efforts to dominate, the exploring countries expected the regions they overtook to fill domestic coffers. An overtaken area was immediately and constantly evaluated for its economic benefits as much as it was imagined as a place to impose national characteristics such as governing systems, language, or other cultural practices. By the early 1700s, a number of European countries had claimed almost all of North America.<sup>14</sup> In the region of North America that is now Canada, Great Britain and France dominated colonial exploration. In the part of Canada where Marguerite lived, residents largely experienced the imposition of French norms.

As many researchers have already discussed,<sup>15</sup> a variety of factors ensured that the French seigneurial land system and exploitation of natural resources in New France did not create much wealth for the French domestic economy.<sup>16</sup> Due to inter-Indigenous trading systems and the region's climate, newcomers repeatedly found that their efforts around the St. Lawrence River flailed.<sup>17</sup> In trying to keep the faith that

12 For an example of this same technique, see Fernand Braudel's "Seeing the Sea," in *The Mediterranean in the Ancient World* (London: Penguin Books, 2002), 11.

13 J. H. Elliott, *Empires of the Atlantic World* (New Haven: Yale University Press, 2006), 221.

14 See Timothy Mitchell, *Colonising Egypt* (Berkeley: University of California Press, 1991), 7, for concise detailing about the reasons countries went overseas and how these reasons influenced each others' forms.

15 One of the best books about the reinforcement of classist perspectives in New France remains William Bennett Munro's *The Seigneurs of Old Canada: A Chronicle of New-World Feudalism* (Toronto: Glasgow, Brook and Company, 1922). Greer's *The People of New France* is also an incredibly helpful text.

16 See the section entitled "Preindustrial Quebec, 1650s–1810s," in John Alexander Dickinson and Brian J. Young, *A Short History of Quebec* (Montréal: McGill-Queen's University Press, 2003).

17 A helpful study of the interplay between a region's original peoples and settlers appears in Jan Grabowski's "The Common Ground: Settled Natives and French in Montréal, 1667–1760" (Ph.D. diss., Université de Montréal, 1994).



New France was actually a worthwhile endeavour, newcomers regularly hoped that the colony would share some tenets with their home country while also creating new rules that made sense for New France's own unique conditions.<sup>18</sup> However, those in the home country rarely cared about their expatriates across the Atlantic Ocean. Put bluntly, France cared only that New France paid for itself and helped France continue its own reputation as a domineering power throughout the world.<sup>19</sup>

The particularities of New France's legal regime shared some qualities with other French colonies, but New France also had its own distinctive functions. Like France, New France had men who acquired the title of *intendant*. These figures had the power to compose and declare *ordonnances*, which were publicly stated announcements that functioned as a form of law. Although some announcements originating from France required adherence in all lands claimed by France, *ordonnances* often covered specific regions. While not judges per se, intendants served a first level of judicial review to interpret the *ordonnances* and make decisions based on that interpretation. An intendant could evaluate and approve local residents' taxes, business transactions, and even activities considered criminal. In other words, the intendant's views resonated immensely and required a formal appeal to the *Conseil* (and then, potentially, the *Conseil Supérieur*) should an individual disagree with his decision or interpretation of French colonial law.<sup>20</sup>

Without an intendant publicly admitting he made a decision that immediately improved his own personal status, it is impossible to confirm that his decisions deliberately and directly bettered his own circumstances. Still, because an intendant lived in the region in which he governed, and because of other activities in which he participated, many historians have presumed that decisions announced by intendants regularly and purposefully improved their own financial and social circumstances.<sup>21</sup>

While the intendant appeared in France and its colonies, the colonies lacked practicing *avocats*. Due to immense problems with lawyers

18 Jan Noel, "New France: les femmes favorisées," *Atlantis* 6, no. 2 (spring 1981): 85; Greer, *The People of New France*, 56.

19 For a helpful overall evaluation of the differences that develop among colonies, see generally D.H. Pennington, *Europe in the Seventeenth Century* (Harlow, U.K.: Pearson, 1989). Whether such instances were openly admitted is another matter. Allan Greer's work is the best at illustrating this component of Quebec's past and determining the absence of such recognition as part of what Greer calls "colonial hagiography." See Greer, "Colonial Saints: Gender, Race and Hagiography," *William and Mary Quarterly* (3rd series) 57, no. 2 (April 2000): 325.

20 W. J. Eccles, *France in America* (New York: Harper and Row, 1972), 162.

21 *Ibid.*

domestically, France forbade the existence of *avocats* overseas. Lawyers had generally proven that they were not good at providing accurate legal advice, scurrilous in their professionalism, and even criminal in their daily activities—so much so that France found itself banning the expansion of the legal profession and even regularly jailing *avocats*. To mitigate the damage done by lawyers within the legal system, France ordered that no *avocats* be permitted to practice outside France and that the legal profession not be permitted to grow. In the 1740s, *avocats* might not have formally practiced in the land around the St. Lawrence River, but they could still move there and participate in various activities within the legal regime. As Alexandra Hawrylyshyn has noted, the former *avocats* still aided in the legal process and, in that way, helped determine how procedure happened and how locals understood the laws.<sup>22</sup>

New France's intendant could recognize a man as a *notaire*, one who approved documentation necessary for the colony's heavily codified legal system.<sup>23</sup> As well, if a man wanted to help people with legal matters, but did not have approval to do so without the possibility of providing notarial services, he could call himself a *praticien*. Unsurprisingly, *notaires* were known to charge more for their services on the contention that they understood the legal system better than *praticiens*.<sup>24</sup>

Within the colony as a type of social function, and then ingrained in New France's legal system, a specific component influenced how certain individuals ensured their own economic stability and, perhaps, their self-understanding of status in the community. Slavery existed in New France, and the vast majority of those slaves were Indigenous peoples. France had employed slavery for years within its own borders and in its colonies. The slave system in New France, however, was one that had Canada's first peoples treated as potentially tradable products by which businessmen within the colony could pocket the profit. Because the colony did not provide ways to survive that fit well with earlier newcomers' sensibilities, some individuals decided that owning slaves or—equally important—trading peoples to become slaves elsewhere fit their aspirations for the time.<sup>25</sup> Despite the fact that some Indigenous peoples pro-

22 Hawrylyshyn, "Troublesome Trials in New France," 18.

23 Eccles, *France in America*, 77–78; André Lachance, *Crimes et criminels en Nouvelle-France* (Montréal: Boréal Express, 1984), 105.

24 Huebert Watelet and Cornelius Jaenen, *De France en Nouvelle-France: Société fondatrice et société nouvelle* (Ottawa: University of Ottawa Press, 1994), 213.

25 Natalie Zemon Davis, *Women on the Margins: Three Seventeenth Century Lives* (Cambridge: Harvard University Press, 1995), 108–112; and Nancy Shoemaker, *A Strange Likeness:*

vided protection from other colonizers, various products that assisted in daily survival, and even personal enjoyment during regular socializing times, settlers found contentment in either promoting or simply observing the existence of panis within New France.<sup>26</sup>

The enslavement of various groups around the world had become a common feature of how many colonizers enforced their dominance over those who stood in their way. In North America as a whole, the enslavement of people of colour had worked its way into settlers' visions for financial security and attitudes of European superiority. But within New France, the early forms of slavery that improved newcomers' conditions originally appeared when the region's original inhabitants became a source of exploited labour. Until the middle of the 1760s, almost all slaves in New France were Indigenous, and until the turn of the nineteenth century, the vast majority of slaves continued to be those from the land's original peoples.<sup>27</sup>

During the eighteenth century's early years, Indigenous slaves made up between five and ten percent of New France's entire population.<sup>28</sup> Slave ownership crossed all socio-economic strata,<sup>29</sup> and females who

*Becoming Red and White in Eighteenth-Century North America* (New York: Oxford University Press, 2004), 64.

26 As Ian Steele has deftly contended, this idea of Indigenous slavery was an ill-constructed concept used to justify poor treatment of labour and perpetuate raced-based beliefs in religion and political regimes. Many of those originally labeled panis were actually captives experiencing a devastating side effect of inter-Indigenous warfare. Ian K. Steele, "Exploding Colonial American History: Amerindian, Atlantic and Global Perspectives," *Reviews in American History* 26, no. 1 (March 1998): 75–76. For other helpful descriptions of the comparison of captivity to slavery, see Greer *The People of New France*, 89; and John Demos, *The Unredeemed Captive* (New York: Alfred Knopf, 1994), 52. Denys Delage, "Les Iroquois Chrétiens De Reductions, 1667–1770," *Recherches Amerindiennes au Québec* 21, nos. 1–2 (1991): 64, details how a number of panis were likely part of another Indigenous nation, and that their owners failed to admit that the evidence of Pawnee heritage was traceable.

27 To appreciate Montréal's form at the time of Marguerite's life, Louise Dechêne's research about the 1731 census places the population at just under 3,000, with approximately 142 slaves. See "The Growth of Montréal in the Eighteenth Century," in *Canadian History Before Confederation—Essays and Interpretations*, ed. J. Bumsted, (Georgetown: Irwin-Dorsey, 1979), 159. The cost of a panis remained much lower than the price of an African slave up until the 1780s. As a result, Africans did not become integrated as quickly into New France's slave economy as might be assumed. See also Trudel, *Dictionnaire des esclaves*, xxiii.

28 This inter-Indigenous tension in Montréal receives the best attention in William Atherton, *Montréal 1534–1914* (Montréal: S.J. Clarke, 1912), 347–49. According to Marcel Trudel, approximately 3600 slaves resided in New France over a period of about 125 years. Never more than three percent of the entire population, most of the slaves during the 1700s were panis. By the 1760s, however, the majority of slaves were *nègres*. Trudel, *L'esclavage au Canada français*, 248.

29 Trudel, *L'esclavage au Canada français*, 228.

worked alone in a non-rural household made up the majority of the slave population.<sup>30</sup> As typically experienced by other slaves in the New World, panis were not considered persons with respect to legal rights, but they could still be evaluated under the law in criminal matters.<sup>31</sup> Despite the Indigenous component to New France's slavery, the colony did not hold the belief that all Indigenous peoples automatically acquired slave status. That is, New France was also a region where slaveholders interacted socially with Indigenous peoples considered incapable of becoming a slave.

Given its role as a large community in New France with a well-established port, daily events in Montréal invariably included activities involving the use and trade of panis.<sup>32</sup> Those specializing in the import and export of goods, along with men who invested in the colony's fledgling transportation system, frequently participated in the continuation of the slave system.<sup>33</sup> But while some Indigenous peoples remained enslaved, others participated in social and economic circles predominated by newcomers, be it as socializers, traders, or even permanent neighbours.<sup>34</sup> The sources documenting the beginning of Indigenous slavery sometimes perpetuated a myth of one particular first nation favouring slavery and then selling other nations' peoples to Europeans. Regardless of whether this was the case, rumours of Indigenous peoples having a history of slavery allowed newcomers to justify on moral grounds their practice of enslaving Indigenous peoples by claiming it was simply a continuation of what already existed.<sup>35</sup>

In the whirlwind of social, economic, and legal possibilities for Indigenous peoples and newcomers in New France's largest town during the eighteenth century, Marguerite appeared in what was considered a

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30 Ibid., 148; Lachance, "Les esclaves," 204.

31 Trudel, *L'esclavage au Canada français*, 16. By my count, the ANQ has records of at least 112 court matters that occurred between 1701 and 1791 and involved distinguishing an Aboriginal person as a "panis" or "panise." Even if originally settled by a prevost judge, the intendant would eventually approve the matter. See the ANQ, Parchemin- banque de données notariales (1626-1784).

32 W. J. Eccles, *Canadian Society During the French Regimes* (Montréal: Harvest House, 1968), 73-75; Moore, "Colonization and Conflict: New France and Its Rivals, 1600-1760," in *The Illustrated History of Canada*, ed. Craig Brown (Toronto: Lester and Orpens Dennys, 1987), 164.

33 Moore, "Colonization and Conflict," 162.

34 Shoemaker, *A Strange Likeness*, 141.

35 Rushforth's research is particularly helpful for this situation of different Indigenous existences and the beginning of slavery in New France. See n. 3 and 39.

tavern for Indigenous locals. She was dressed up, apparently for personal reasons to catch the eye of a certain man. Because the man happened to be the local *huissier* (bailiff),<sup>36</sup> and because her dress raised his curiosities, Marguerite's individual circumstances ended up evaluated by the community's and the colony's legal system. By examining the events that occurred after Marguerite met the *huissier*, we can learn more about Canada's earlier history. But within those times, details also appear that show how some topics do not interact with the laws in ways that the laws supposedly guarantee. Why that interaction does not occur remains to be told to us by Marguerite herself. The panis' experience with the law tells us how social conditions can be much stronger than realized if we study those conditions only in isolation.

### A Case Comment about Marguerite

According to conseil records, on a night before 1 October 1740, Marguerite located herself somewhere in Montréal's downtown and consumed alcohol at one of the nine *auberges* in town that were permitted to serve Indigenous peoples.<sup>37</sup> Because these taverns were established for Indigenous peoples but did not ban non-Indigenous residents, many

36 For a more detailed explanation of the multi-faceted role of the bailiff (*huissier*), see André Lachance, *La Justice Criminelle du Roi* (Québec: Les Presses de l'Université Laval, 1978), 28. For comments about how non-Indigenous people still frequently the Indian taverns, see Jan Grabowski, "French Criminal Justice and Indians in Montréal, 1670–1760," *Ethnohistory* 43, no. 3 (1996): 405–29; Lachance, "Les esclaves," 210; Kenneth Donovan, "Slaves and their Owners in Ile Royale, 1713–1758," *French Colonial History* 5 (2004): 31; and André Lachance, *La vie urbaines en Nouvelle-France* (Montréal: Boréal Express, 1987), 11.

37 This term is the French translation for inn. Although in theory such an establishment had the ability to host overnight guests, the ones mentioned in the documents I examined were known more for their serving of alcohol. ANQ, Ordonnances 1713–1720, 22 juin 1714, f. 90–91v. At the time, Montréal had nineteen taverns in total, and the nine designated for Indigenous peoples meant that Indigenous socializers could not, in effect, enter the other fourteen public houses. Taverns encouraged social interaction and some of that interaction led to information about trade, and because Indigenous peoples could provide tradable goods, local settlers realized that banning them from taverns completely was not the best economic decision. By making a space where Europeans and Indigenous peoples might meet, the alehouse policy also created circumstances where the latter might also get physically ready to go out, buy a drink, and meet people. See ANQ, "Bégon Ordonnances 1713–1720," 22 juin 1714, f. 90–91 for the specific order. For more descriptions of this circumstance, see Louise Dechêne, "La Croissance de Montréal au XVIIe Siècle," *Revue d'histoire de l'Amérique Française* 27, no. 2 (1973): 163–180; and Jean Lunn, "The Illegal Fur Trade out of New France 1713–1760," *Canadian Historical Association Report* (1939): 61–76. Eccles also gives mention of this in *Canadian Society during the French Regime* (Montréal: Harvest House, 1968), 64. See also Daniel Massicotte, "Stratification Social et Différenciation Spatiales en Milieu Urbain Pre-Industriel: Le Cas De Locataires Montréalais, 1731–1741," *Revue d'histoire de l'Amérique Française* 44, no. 1 (1990): 67, regarding how local economic imperatives interacted with assumptions about race.

locals (including members of the judiciary) also visited.<sup>38</sup> In the auberge that Marguerite visited, the town's huissier was also present. He noticed Marguerite and initially wondered how she came to wear her clothing. The huissier decided that Marguerite must have robbed another woman for the dress she was wearing at the time, and so he arrested her. Because of how the arrest ensued, the huissier also decided that Marguerite further be charged for drunkenness and "other diverse wrongdoings."<sup>39</sup>

The documents do not describe how a man named Jacques Nouette learned so quickly that Marguerite was taken away and detained in the local prison. Nevertheless, Nouette was apprised of the huissier's interaction with Marguerite, her arrest, and her forced detention in a jail cell. Nouette announced himself as a praticien when he arrived at the jail, then told the huissier about his plans to speak to all matters pertaining to Marguerite's arrest, charges, and imprisonment.<sup>40</sup> Furthermore, he said he would file documents to show how her arrest was wrong.<sup>41</sup> Not only did she not steal the dress, Nouette argued, the huissier's judgments about her actions were founded on the huissier's assumptions that Marguerite was a slave. Maybe, he allowed, she was drinking, and maybe she even spoke to the huissier rudely. But, as Havrylyshyn has explained, Nouette's understanding of the nuances of New France's legal system and the beliefs about social roles for those in New France conflicted with whatever assumptions the huissier himself held.<sup>42</sup> In other words, Nouette had a number of arguments to challenge how the huissier's actions were simply inappropriate.<sup>43</sup>

38 Lachance claims that Pierre Raimbault frequented the establishments on a regular basis. See Lachance, *La Vie Urbaine en Nouvelle France*, 100, citing ANQ, NF 21-17, documents de la juridiction de Montréal 1737-1762, 23 mar 1737.

39 My translation, and one in agreement with Trudel. ANQ, File 1230, pp. 2-3; and Trudel, *L'esclavage au Canada français*, 2-3. Brett Rushforth's translation—"licentiousness, drunkenness and theft"—is different from the guidance I have received about the terms. See his "Savage Bonds: Indian Slavery and Alliance in New France" (Ph.D. dissertation, University of California, 2003), 106.

40 Havrylyshyn provides helpful descriptions of how Nouette received permission from Marguerite to represent her on all legal matters. Havrylyshyn, "Troublesome Trials in New France," 152.

41 For more expansive analyses of the early forms of criminal procedure, see Lachance, *Crimes et criminels en Nouvelle France*, 17-24; Dickinson and Young, *A Short History of Quebec*, 38-40; and John Dickinson, *Law in New France* (Winnipeg: University of Manitoba Faculty of Law, 1992). Attempting to evade criminal charges by creating a civil action happened regularly in New France's legal system. Lachance estimates that this strategy was used in up to one-third of all criminal cases. Lachance, *Crimes et criminels*, 40.

42 The rather serpentine trail for learning the history of New France's legal system is very well explained by Havrylyshyn, "Troublesome Trials in New France," 4-9.

43 ANQ, File 1230-1.

By 4 October 1740, Nouette had filed documents he considered evidence of his claim that Marguerite was not a panis, and found himself in front of the intendant to speak about that evidence. Intendant Gilles Hocquart listened to Nouette's long explanation about Marguerite's loyalty to New France as a law-abiding and respectful *sujet*. First, because Marguerite's father was European, her biological heritage did not make her a full Indigenous person for the purposes of slavery. As such, Nouette said, imagining her a slave was not possible. To reinforce this point, he also described how Marguerite had been baptized. Although a more recent ordonnance had described how slaves could become Christians but still not leave their servitude, that ordonnance was not retroactive and therefore applied only to panis who had been baptized after 1732.<sup>44</sup> Because Marguerite had been baptized in 1730, she therefore should have been permitted to live as a non-panis Indigenous person in Montréal.<sup>45</sup> Surely Intendant Hocquart would find that at least one of these two points eliminated the possibility that Marguerite was a slave.<sup>46</sup>

Because of apparent interruptions by others in the court, the hearing took a while to complete. When Nouette completed his argument, the praticien learned that Hocquart found interest in the presentation's details but did not believe a ruling could be made. Only after Nouette filed his documents, then prepared and presented his views, did Hocquart tell Nouette that he had approached the wrong venue. Rather than persuade the intendant, Hocquart told Nouette that he must actually present his argument to the Conseil. In the meantime, Hocquart decided to continue Marguerite's detention.<sup>47</sup>

Nouette immediately told Hocquart that he would re-file documents so that a hearing could happen in front of the Conseil. Three days later, Marguerite's praticien appeared in front of *Juge* Pierre Raimbault. Unlike his experience in front of the intendant, Nouette faced significant interruptions from the judge that began as soon as the praticien began his presentation.<sup>48</sup>

When Nouette started to explain the issue of Marguerite's birth, *Juge* Raimbault demanded to read documentation that listed her birth

44 Trudel, *L'Esclavage au Canada français*, 102. ANQ, File 1230-2. Regarding the ordonnance, see Auguste Gosselin, "Le clergé canadien et la déclaration de 1732," *RSCIT*, 2d ser., VI (1900), sect.i, 23–52.

45 ANQ, File 1230-6.

46 Havrylyshyn, "Troublesome Trials in New France," 81–86, provides helpful illustrations on the matter of legal procedure.

47 ANQ, File 1230-6.

48 ANQ, File 1230-4, pp. 1–2.

date and parentage. Nouette had no such document and was reproached by the court for his poor argument. When Nouette decided to put forth the argument about Marguerite's baptism date, Raimbault demanded a baptismal certificate. When Nouette again conceded he did not have the paperwork to prove such a claim, Raimbault declared that Nouette had lost the right to speak further in the court.<sup>49</sup> On 7 October, Nouette was told to leave and not reappear unless he could submit documentation to the court to explain both what he planned to argue and evidence for those arguments.

The very next day, Nouette arrived with a record indicating a 1730 baptism that appeared to clear Marguerite's slave status because it fit with the ordonnance about Christianized panis.<sup>50</sup> What Nouette did not realize, however, was that another part of the certificate allowed Raimbault to demonstrate his own interpretive skills. But before that part of the hearing happened, another development proved just as frustrating for Nouette. Two other men in the room, who had somehow learned of the hearing and repeatedly heckled Nouette during his presentation, received standing from Raimbault and were asked to speak.

The first man that Raimbault acknowledged announced himself as Monsieur Duplessis Faber. He informed Raimbault that he was there to refute any suggestion that he was Marguerite's father. Duplessis Faber also told the judge that the very claim that he fathered Marguerite was evidence itself that she could not be trusted. As such, he argued, Raimbault should treat all claims by Marguerite as scandalously untrue.<sup>51</sup>

Nouette had not mentioned Duplessis Faber as Marguerite's father, and Duplessis Faber did not provide any documentation to meet the standard that Raimbault had demanded of Nouette. Still, Raimbault responded immediately. The judge turned to Nouette and told the praticien that Marguerite should be charged with slander because Duplessis Faber's comments would be taken as completely accurate.<sup>52</sup>

But even while declaring Nouette's overall presentation unworthy of examination because of Marguerite's supposed untrustworthy character, Raimbault continued to evaluate the praticien's position. In further evaluating the baptismal certificate, the judge demonstrated his own in-

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49 Ibid.

50 ANQ, RAB du PDRH, #145139, 8 juillet 1730.

51 Ibid; ANQ, File 1230-4, 1-2.

52 Pierre-Georges Roy, ed., *Inventaire de jugements et délibérations du Conseil Supérieur de la Nouvelle-France* (Beauceville, Québec: L'Élaireur, 1933), 3: 317.



terpretation of the document. In reading the phrase "panis, belonging to M. Duplessis," Raimbault declared that it meant that Marguerite's slave status continued after the baptism and that Marguerite would have understood such a continuation to exist, both in how she appreciated the baptism at the time and how she should understand the phrase currently. Even though other baptismal certificates with similar phrases had not generated the same interpretation, Raimbault decided that his understanding in this case was appropriate.<sup>53</sup>

Apparently Raimbault did not believe that his own observations up to that point had sufficiently demonstrated Nouette's failure. After explaining his interpretive analysis, Raimbault then turned to the man who accompanied Duplessis Faber and asked him to speak. Introducing himself as Marc-André Dormicourt, the man claimed that he owned Marguerite and, therefore, should be permitted to speak to the consequences of this entire matter. Raimbault agreed and permitted Dormicourt to continue.<sup>54</sup>

Dormicourt demanded that the judicial review be completed as soon as possible. The longer the court evaluated the situation, the more days Dormicourt lost from his own work. Moreover, regardless of whether Marguerite was innocent, surely the court could decide to place Marguerite in Dormicourt's custody rather than keep her in prison. After all, Marguerite's incarceration meant that she could not provide the labour Dormicourt relied upon as her owner. Certainly, Dormicourt did not supervise her every activity, and she could, apparently, be given permission to leave her place of residence. Indeed, Marguerite might have received permission to be out the evening she and the huissier met. But, according to Dormicourt, those points were not relevant to him at this moment. He sought a timely decision from the court, or else his own import/export business would suffer. Despite no submitted documentation, Juge Raimbault believed that Dormicourt was indeed Marguerite's owner. Raimbault, who explained his own sympathy for Dormicourt's concerns, promised to announce a ruling as soon as possible. Indeed, he promised a decision by the end of the day.<sup>55</sup>

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53 Baptism of 8 juillet 1730, Montréal, RAB du PRDH, #145139; ANQ, File 1230-4, pp. 1-2.

In searching all the records for slaves baptized in that year, I could not find any other person considered a slave in 1740 whose baptism happened a decade earlier.

54 ANQ, "Ordonnance ... que declare la d. Marguerite esclave d'une S. Dormicourt," 20 octobre 1740, *Ordonnances des intendants*, vol 15, p. 436.

55 Ibid.

A few hours later, and without any explanation, Raimbault announced in the courtroom that Marguerite's slave status would continue. Immediately upon learning this news, Nouette stood up and announced that he would appeal this decision to the Conseil Supérieur. This meant that Marguerite would remain in prison. Unsurprisingly, Dormicourt expressed his frustration with this latter development.<sup>56</sup>

After Nouette filed his application to appeal, he found himself in front of New France's Appeal court. In making his case, Nouette first returned to his remarks presented to Hocquart about Marguerite's immense respect for the administration of New France and her commitment to being a respectful citizen herself. She had faith in the colony's leaders and its legal system, and Nouette explained how she was honoured to have the Conseil hear about her circumstances. Nouette further wanted the Conseil to recall the issues he brought up in front of Juge Raimbault regarding Marguerite's parentage and her baptism date. Considering that the views of the two men who spoke up lacked supporting documentation, he argued, the idea that Marguerite was untrustworthy and owned by Dormicourt should be considered irrelevant for the matter at hand.<sup>57</sup>

But these points acted as only part of Nouette's presentation for the Conseil Supérieur. Nouette also decided to add the principle that a tenet considered legal in New France required a source to prove its legality. Nouette explained that as soon as the court was reminded about the need for judicial authority, the question of Marguerite's enslavement would be immediately resolved.<sup>58</sup>

Nouette proceeded to remind the court about the *Code Noir*, a document that detailed the conditions of slavery. But, as Nouette noted, the Code's jurisdictional details explicitly omitted New France. Given that the document's first sentences mention that the code was "pour le gouvernement et l'adminstration de justice et la police des l'iles françoises de l'Amerique, et pour la discipline et le commerce de Negres et esclaves dans l'édit pays,"<sup>59</sup> Nouette contended that the Code had been

56 For an analysis about how it is likely that Dormicourt would have automatically been given custody of Marguerite had Nouette not announced his interest in an appeal, see Lachance, *La Justice Criminel du Rois au Canada au XVIIIe Siècle*, 25; Dickinson, *Justice et Justiciables*, 14.

57 No procedural rules explicitly forbade the introduction of new facts or laws in the appeal process. This term translates literally as Grand Council. The Council included nine members (including the intendant), but five *counsellors* within the Council acted as the official Court of Appeal when lower-level court decisions needed to be reviewed. Documents do not state who heard Nouette's presentation.

58 ANQ, Files 1230-12 to 1230-17.

59 The full phrase in the Code's preamble is: "pour le gouvernement et l'adminstration de justice et la police des l'Iles françoises de l'Amerique, et pour la discipline et le commerce de Negres

erroneously sourced in New France for years. Moreover, France had made changes concerning the Code's sphere of jurisdiction since it first appeared. Nevertheless, New France had not been explicitly included within those modifications. Nouette argued that just because a colony belonged to France, it did not mean that that region automatically endorsed slavery.<sup>60</sup>

Besides the matter of jurisdictional application, Nouette also highlighted the Code's contents. When the document's specific details received attention, they clearly applied to a warmer location and to "des esclaves nègres." Nouette contended that the Code's preamble and inner mechanisms showed that the document did not apply to New France, and that France had demonstrated through its own modifications to the Code that such an exclusion should continue.<sup>61</sup>

But even if the Conseil Supérieur did not accept the praticien's opinion about the Code's validity, Nouette continued, the court should apply the Code consistently and, in fact, find Raimbault guilty of improper actions. Within the Code, Section XVI stated that slaves were not permitted to socialize outside an owner's quarters. Dormicourt had already stated that he realized it was possible for Marguerite to be out socializing during personal time. As such, Nouette contended, Dormicourt had either explicitly or tacitly permitted Marguerite to socialize outside his presence. As a result of Dormicourt's failure to keep to the Code, the owner nullified his claim to Marguerite, and thus her slave status disappeared.<sup>62</sup>

Given that Nouette's list of points had grown, it is not surprising that the court announced it would reserve judgment until 16 October. After its deliberations, and without any accompanying reason, the Conseil Supérieur concluded that the entire matter should be re-tried. Moreover, in announcing the unfortunate death of Juge Raimbault the evening prior, the trial would occur in front of the newly appointed Juge Hocquart. In

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et esclaves dans ledit pays" ("for the government and the administration of justice and police in the French islands of America, and for the discipline and trade in Negroes and slaves in that said region" [my translation]). See *Le Code Noir ou Recueil de Reglements*, ed. 1767, 281–315.

60 See Eccles' support of interpreting the Code in this manner. Eccles, *France in America*, 161–62. In 1724, Louisiana was included in *Le Code Noir ou Edit du Roi*, 1724. See *Le Code Noir ou Recueil de Reglements*, ed. 1767, 281–315.

61 For example, Article XXXIX of the Code details how anyone providing shelter to fugitive slaves had to pay a fine of three hundred pounds of sugar.

62 Article XXXI states that slaves shall not be a party in court. In fact, New France's court had permitted both activities for years, and those activities showed even more irregularity in the validity of the Code in the colony.

hearing both points, Nouette expressed his frustration openly (for which he was reproached). Despite protesting the re-attachment of Hocquart to this matter, Nouette learned that the former intendant would, indeed, be the new evaluator of Marguerite's plight.<sup>63</sup>

The very next day, then, Nouette found himself repeating his points about parentage, baptism, the Code's application, and Dormicourt's violation of the Code. But Nouette also added a new item to his overall position. He referred to another ordonnance that detailed how any Indigenous person born to a panis after 1709 could not automatically become a slave nor could any Indigenous person be captured and transformed into a panis. Therefore, Nouette argued, the ordonnance stopped the subsequent growth of the panis population. For Marguerite's purposes, however, the ordonnance's date meant that her post-1709 birth made her incapable of being a slave. Although the 1709 ordonnance's topical substance pertained to slavery, it was yet another document incorrectly understood by slave owners to perpetuate their own use and trade of panis. Whether purposely forgotten or accidentally misunderstood by people in New France, the incorrect interpretation of this ordonnance needed to stop.<sup>64</sup>

Much to Nouette's frustration, M. Dormicourt had learned of this hearing and decided to witness Nouette's presentation. Moreover, and more disheartening to Nouette, Dormicourt received permission from Juge Hocquart to contribute his own views to the matter at hand. Dormicourt again explained how Marguerite provided daily labour that continued to go incomplete, and that his own business efforts necessarily remained on hold because of the attention this court matter required. Adjourning the court, Hocquart told Nouette and Dormicourt that a decision would be rendered 20 October.<sup>65</sup>

When the two men arrived three days later to hear the decision, they learned that Hocquart concluded that Marguerite retained her slave status. Although he did not reveal his reasoning for this decision, Hocquart announced his judgment concerning a sentence for criminal behaviour and damages owed by any party involved in this circumstance. In describing how the entire matter's long length cost the court money, and noting that Marguerite, not the judicial system, was responsible for the

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63 ANQ, File 1230-10, 16 octobre 1740.

64 ANQ, File 1230-12, 17 octobre 1740; ANQ File 1230-14, 17 octobre 1740. The issue of this lobbying is also described in Rushforth's *Bonds of Alliance*, 97.

65 ANQ, 1230-11, 17 octobre 1740.

lengthiness of the case, Hocquart also deliberated on whether Marguerite must be held financially responsible for payment to the court for the expenses that originated from her arrest, detention, and the judges' efforts. Because Marguerite's slave status did not permit her to have financial obligations to the state, her owner automatically assumed responsibility to pay the court. Because of the cost that Dormicourt incurred, it only seemed fair to Hocquart that Marguerite's labour be used as a resource to obtain the finances for the debt and demonstrate the principle of "équité."<sup>66</sup> Because Hocquart also announced his assumption that Nouette would appeal this judgment, and because the Conseil Supérieur had coincidentally shut down for the winter, it seemed fair to all concerned that Marguerite be placed in Dormicourt's custody in the interim rather than have her imprisonment continue, something that would have accrued additional costs. Dormicourt thanked the judge for such a just decision. In contrast, Nouette openly decried the decision and received word from Hocquart that should the praticien's protest continue, Nouette would find himself taking Marguerite's place in the prison.<sup>67</sup>

Procedurally, Marguerite's case ended with Hocquart's decision. But according to New France's well-documented record system, Marguerite's very existence terminated at the end of October 1740. No papers were filed mentioning her change of status, sale as a panis, or even death after her release to Dormicourt. At this juncture, then, following the lives of others involved in Marguerite's case is where this story necessarily turns.

First, the man who seemed willing to be Marguerite's only champion had his own history in Montréal's court system.<sup>68</sup> Before 1740, Nouette applied several times to be designated a notaire, but faced rejection every time from then-Intendant Hocquart. Because Nouette never quite achieved the highest professional designation that interested him, he could not always witness (i.e., notarize) documentation and could not charge as a high a rate for services. Whether Nouette's poor economic conditions are a direct effect of his lower charges remains wholly specu-

66 For remarks about how this principle regularly demonstrated concern with social order and keeping to current community conditions, see Dickinson, *Justice et Justidiables*, 74.

67 ANQ, File 1230-19, 20 octobre 1740; "Ordonnance," 20 octobre 1740, MG8, A6 15, pp. 431–36.

68 Some examples of Nouette's unfortunate circumstances include ANQ, Parchemin-banque de données notariales (1626–1784): 15 août 1740; 23 août 1740; 05 décembre 1740; and 16 juillet 1741, where he both faced charges from others and attempted to represent various parties with little success.

lative.<sup>69</sup> Yet, what can be learned is that Nouette lived where he worked. He moved a number of times between Montréal and Québec,<sup>70</sup> but each move was not to a venerable district. Nouette also had trouble with his own personal debts and he never had enough private funds to invest in the increasingly lucrative exporting business.<sup>71</sup> Given the likelihood of Nouette's lower price for service and potential loss of clients due to his less-qualified status, his less-than-impressive living circumstances were probably an effect of not achieving the professional status he desired.<sup>72</sup>

Despite these difficulties, and while still taking a number of cases that allowed him to argue in court,<sup>73</sup> Nouette's stay in *les prisons royales de la ville de Québec* likely ranked as the worst of times.<sup>74</sup> In 1743, the court found Nouette guilty of *déception*.<sup>75</sup> Protesting vehemently while incarcerated, Nouette eventually found his sentence modified to release for the purposes of deportation.<sup>76</sup> After this decision, Nouette disappears from historical records.<sup>77</sup>

By comparison, the man who claimed to own Marguerite had a much more documented past than Nouette or Marguerite. Surviving records reveal how Dormicourt did not actually live in Montréal. He lived in either Québec or some undisclosed location in the Antilles. When in Montréal, he stayed with other traders. Although Marguerite provided labour and

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69 Other work included his own self-representation in a matter where the chef of the ship *L'Union* sued him. See ANQ, File 1258, dated 1741.

70 See "La Pension Morand à Montréal au XVIIIe siècle," *Bulletin des Recherches Historiques* 48, no. 10 (octobre 1942): 339–40.

71 Because all financial transactions had to be registered, it is possible to trace a person's activities using court documents. Between 1741 and 1743 Nouette's name appears on only seven transactions in the town's registration system. See also ANQ, TL5, D1326, for complaints of Nouette's efforts by various parties and the subsequent legal actions that ensued.

72 Nouette's woeful life received attention in *Bulletin des Recherches Historiques* 26, no. 7 (juillet 1920): 220–22. To set the tone, the piece is called "Le Roman d'un praticien."

73 Alexandra Havrylyshyn's "Troublesome Trials in New France" contributes significantly to learning about the role of a praticien and Nouette himself.

74 See ANQ, Parchemin- banques de données notariales (1626–1784), 12 août 1743. In front of Regeot de Beurivage, F. Nouette was also imprisoned two months before these events. See Parchemin ..., 21 juin 1743, in front of Louet, C.

75 This charge has links to a story of Nouette living with a woman to whom he was not married. See *Bulletin des Recherches Historiques* 21, no. 1 (janvier 1915): 24.

76 Likely a pleasurable moment for him, Hocquart found himself assigned the duty of making the announcement regarding this exile. See Library and Archives Canada, Correspondance générale, 1743, Vol. 80, c.11, folio 274, and "Lettre de Hocquart au ministre," 3 novembre 1743, C11A, vol. 62, folio 274–275.

77 Pierre-Georges Roy, *Inventaire D'Une Collection de Pieces Judiciaires, Notariales, Etc., Etc., Conservées Aux Archives de Québec* (vol. premier) (Beauville, PQ: La Compagnie de L'Eclaireur, 1917), 117, citing no. 1255.

income for Dormicourt, it was via lending her to others. Whether living with the mother of a friend of Dormicourt or assisting another contact's wife with the adjustments of motherhood, Marguerite rarely lived in any place for very long. No slave likely felt her/his location was absolutely ensured for life, Marguerite's moves were much higher than most panis. By the time of her trial, Marguerite had only been with Dormicourt for six months.<sup>78</sup>

As Dormicourt mentioned in court, his own business ventures included the shipment of goods out of Montréal. As a naval officer, Dormicourt actually owned ships. He did not need to pay anyone for the cost of transporting goods, and he controlled his own shipment dates. In fact, one of Dormicourt's ships left Montréal's port on or about 21 October, bound for the Antilles after Dormicourt completed many transactions that month (including the purchase of panis), and after he originally told the port authorities that his ship would be leaving some time during October's first week.<sup>79</sup> Because no record exists of Dormicourt transporting another person's products, port standards suggest that this ship contained Dormicourt's own goods. And because many traders in New France of the period went to the Antilles to sell and purchase slaves, it is possible that any slaves belonging to Dormicourt were on the ship. Moreover, because trade in the Antilles at the time would not produce records making their way back to Montréal, any goods belonging to Dormicourt that were sold overseas would not be documented in New France.

Another man who had an impact on Marguerite's times showed that his own interests had many links to her circumstances. Regularly buying and selling panis himself, Hocquart subsidized his low government pay with proceeds from Montréal's slave trade. Moreover, Hocquart regularly completed his trades due to the activities of figures like Dormicourt.<sup>80</sup> Whether his work beyond basic intendant activities helped Hocquart's own economic status is unclear, but a few years after his promotion, he resigned after allegations by townspeople that his decisions benefited him more than they did Montréal and that he failed to keep proper legal

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78 See various arrangements completed with the assistance of local notaires for these details: ANQ, Parchemin- banque de données notariales (1626–1784), 18 août 1740 par Pinguet de Vaucour, J.-N.; 03 octobre 1741 par DuLaurent, C.-H.; 04 octobre 1741 par Barolet, C.

79 ANQ, File 1230-8.

80 Eccles, *France in America*, 130. Regarding the regular pattern of various individuals attempting to increase personal wealth by diversifying their professional roles, see generally Massicotte, "Stratification Social," 61–83.

procedure.<sup>81</sup> Accused of “frustrating legal proceedings,” Hocquart concluded that he could make more money exchanging slaves full time than having a judicial role with any social or financial benefits that position provided.<sup>82</sup>

Hocquart was not alone in being both a judge and slave trader. Indeed, many men appointed to the Conseil and the Conseil Supérieur owned and traded slaves. A number acquired their judicial position based on their reputation as adept businessmen in the slave trade. Having slaves and ruling on slave issues were not considered a conflict of interest, but rather a sign of better appreciating the local conditions.<sup>83</sup> In that way, the ramifications of upholding Marguerite’s argument could have had a significant negative impact on many judicial officials’ own financial circumstances.

Although many parties felt at ease either knowing about or promoting the existence of panis within New France, it is important to appreciate that others decried the use of slavery by newcomers and sought to stop the trade. Meeting both publicly and secretly, abolitionists strategized about what tenets within religion, society, and law could be utilized to end slavery. No documentation exists to prove that Nouette regularly assisted abolitionist circles during his time in Montréal, but Nouette’s quick response to Marguerite at the onset is suggestive, and because his argumentation shifted so quickly to larger overarching challenges to the legal regime’s legitimacy, it is plausible to imagine links to those who plotted to end Marguerite’s (and others’) inferior status.<sup>84</sup>

After Marguerite’s disappearance from historical records, a number of changes far away from Montréal impacted how panis lived in New

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81 Donald J. Horton, “Hocquart, Gilles,” *Dictionary of Canadian Biography Online*, <<http://www.biographi.ca/009004-119.01-e.php?BioId=36073>> (15 April 2013). See also “Intendant Maintains Supremacy of the Council in Affairs of Justice,” in Raymond du Bois Cahall’s *The Sovereign Council in New France: A Study in Canadian Constitutional History* (Clark, NJ: The Lawbook Exchange, 2005), 115.

82 Eccles, *The Government of New France* (Ottawa: Canadian Historical Association Booklet No 18, 1968), 8; Régis Roy, “Les Intendants de la Nouvelle-France,” *RSC Trans.* (2nd series) 9 (1903): sect. i, 101–03. The phrase is my translation.

83 Pierre-Georges Roy, *Les Consellers au Conseil Souverain de la Nouvelle-France* (Ottawa: Royal Society of Canada, 1915), 173, 181–82. See also *Bulletin des Recherches Historiques* 21, no. 1 (janvier 1915): 24.

84 Trudel also remarks about some entourage of early abolitionists using Marguerite for their cause, but he provides no documentation for this claim. Trudel, *L’esclavage au Canada français*, 235. The references are also missing in Rushforth’s “Savage Bonds,” 106, suggesting that the circumstances might have happened, but without a confirmed primary source to provide guidance on the matter.



France. The takeover of New France by Great Britain in 1759, the ever-increasing number of slaves in the United States, and the subsequent illegality of slavery in British colonies after 1834 meant that owning *panis* required more capital and generated less profit as decades passed.<sup>85</sup> Still, Marguerite's time in the courtroom remained the most blunt challenge to slavery as a legitimate concept. Instead of including conclusions built on suppositions, following the legal process itself allows a step-by-step understanding of events to develop a certain understanding of how courtroom events interplayed with other components of society at the time.<sup>86</sup>

### A Story's Historic and Historical Worth

Having created a backdrop for Marguerite's era, and then organized a linear description of events using the documentation in which Marguerite appears, some observations emerge. To be sure, certain aspects of Marguerite's life remain vague. Still, imagining alternative ways to understand her life emphasizes that some members of society necessarily require different methods to better stand out in the historical record.<sup>87</sup>

By using a different method to meet Marguerite, we appreciate her life situation, learn about how she presented her circumstances in court, and then realize that a legal victory would have led to a heavy financial cost for a number of other people in Montréal. As many scholars have observed regarding Indigenous argumentation in Canadian courts, such an effect is often the case, and has therefore increased the number of parties who wish to become involved in the litigation.<sup>88</sup> Marguerite's

85 While Great Britain passed the *Slavery Abolition Act* (Ch. 73, 3 and 4 Will 4) in 1833, slaves were not technically emancipated in the British Empire until 1 August 1834.

86 Compare my observation to the use of these terms in Havrylyshyn, "Troublesome Trials in New France," 37–38.

87 For a source that provides guidance when devising alternative methods still acceptable to the academy, see generally Bruce L. Berg, *Qualitative Research Methods for the Social Sciences* (Boston: Allyn and Bacon, 2001). While this work is well received and encouraging to those who are faced with sources that do not appear similar to previous references, it also makes remarks by (mainly) Indigenous scholars who call for much more positive reception from the academy for techniques invented to help highlight Indigenous circumstances. On that note, see Eva Marie Garrouette, *Real Indians: Identity and the Survival of Native America* (Berkeley: University of California Press, 2003).

88 More recently, comments about the plethora of non-Indigenous interest in Indigenous peoples has included the observation that non-Indigenous writers have an obligation to become better versed in the colonial qualities contained in many studies about Indigenous peoples. See Michele Grossman, "When they Write What We Read: Unsettling Indigenous Australian Life-Writing," *Australian Humanities Review* 39–40 (September 2006) <<http://www.australianhumanitiesreview.org/archive/Issue-September-2006/grossman.html>> (1 May 2009);

example is important to shed light upon how Canada's first peoples have had a long history of pursuing their own survival while experiencing colonialism and the inconsistent application of legal procedure.<sup>89</sup>

Second, Marguerite's tale illustrates the complexity of Indigenous-newcomer relations throughout Canadian history. That Montréal permitted Indigenous-newcomer interaction to occur in specific taverns demonstrates that slavery was not only about racial hierarchy.<sup>90</sup> We can also observe how slavery was imagined as a tool to ensure gains for some prominent people, and that race could be used as a justification for various stages of dominance. Yet treatment of certain races could shift if that change helped those pursuits. First Nations had goods, they spent money, and they were apparently trustworthy enough to tolerate in terms of socializing, child rearing, and even marriage. Marguerite's life showed one of the worst forms of colonialism, but her personal time also illustrated how the qualities of colonialism could transform and permit her to act as she wished during some hours of the day. Treating slavery solely as an issue of race does not permit fuller analysis of the goals and assumptions of those who enforce the slavery.

Third, Marguerite's historic shape-shifting between panis and tavern guest exposes additional events during an era that remains underexplored by historians, especially those that can be revealed using documents in the civil legal regime. Canadian history has long suffered from too many Canadianists ignoring the world of New France.<sup>91</sup> Marguerite's story

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and Tony Ballantyne, "Culture and Colonization: Revisiting the Place of Writing in Colonial New Zealand," *Journal of New Zealand Studies* 9–10 (2010): 1.

89 For evidence of the activism of non-Indigenous parties in Indigenous rights cases, see generally Brian Pfefferle, "The Indefensibility of Post-Colonial Aboriginal Rights," *Saskatchewan Law Review* 70 (2007): 393–423; and Benjamin Alarie and Andrew Green, "Interventions at the Supreme Court of Canada: Accuracy, Affiliation and Acceptance," *Osgoode Hall Law Journal* 48 (2010): 381–410.

90 Compare my view to Afua Cooper's perspective about studying "racial hierarchy" in *The Hanging of Angelique: The Untold Story of Canadian Slavery and the Burning of Old Montréal* (Toronto: Harper Collins, 2006), 9. Another work that contributes to the understanding of Angelique is the well-written effort by Denyse Beaugrand-Champagne, *Le Procès de Marie-Josèphe-Angélique* (Montréal: Libre Expression, 2004). Beaugrand-Champagne's work as an archivist helps her create a presentation with a very strong documentary chronology, including that of the law. Some non-legal analyses, however, have proven influential on my concern for the themes that Marguerite's life represents. See, for example, Robin Winks' statistical analysis that concludes the average age of death for panis was 17.7 years and 25.2 for Africans. Robin Winks, *The Blacks in Canada* (Montréal: McGill-Queen's University Press, 1997), 25.

91 See Natalie Zemon Davis' remarks about the plights of attempting to "decentre history" by introducing someone who belongs to one or more categories which have repeatedly gone unnoticed. Natalie Zemon Davis, "Decentering History: Local Stories and Cultural Crossings in a Global World," *History and Theory* 50 (May 2011): 188–202.

has many components. Whether we emphasize her topical qualities of panis and Indigenous activist, or we focus on how she is from an understudied century and region, her story fits into many categories of interest because it is made up of so many intriguing elements.<sup>92</sup>

Finally, we can also consider how focusing on legal procedure may be helpful for those of us interested in showing how social conditions impact a society's evolution.<sup>93</sup> By following Marguerite's times in court with as much exactitude as can be mustered, legal inconsistencies reveal themselves.<sup>94</sup> Marguerite's role in New France's social history is further strengthened by her story in law.<sup>95</sup> Rather than deciding, as Brett Rushforth did, that she "strengthened the colony's legal regulation of slavery," we can demonstrate how her argument confronted the illegality of slavery as a whole.<sup>96</sup> Just as a number of investigations into Canada's *Indian Act* have shown,<sup>97</sup> it is important to observe how supposed legal

92 See generally Winona Wheeler, "Reflections on the Responsibilities of Indigenous/Native Studies," *Canadian Journal of Native Studies* 21, no. 1 (2001): 97–104, for remarks about how Indigenous-centred investigations will automatically challenge non-Indigenous views about what makes a study "scholarly." See also Alan MacEachern, "A Polyphony of Synthesizers: Why Every Historian of Canada Should Write a History of Canada," *Activehistory*, <<http://activehistory.ca/papers/a-polyphony-of-synthesizers-why-every-historian-of-canada-should-write-a-history-of-canada>> (12 February 2013).

93 See Lachance's remarks about society creating the legal norms in Lachance, *La vie urbaine en Nouvelle-France*, 115. See also Dickinson, *Justice and Justiciables*, 157.

94 See James Axtell, "A North American Perspective for Colonial History," *The History Teacher* 12, no. 4 (August 1979): 552, for remarks about how comparing subfields actually makes each subfield's own relevance stronger. Eccles agrees with Nouette's interpretation of the Code. Eccles, *France in America*, 161–62.

95 For remarks about the importance of constantly reinventing methodologies for analyzing social influences, see Leonard Boyle, "Montaillou Revisited: Mentalité Methodology," in *Pathways to Medieval Peasants*, ed. J.A. Raftis (Toronto: Pontifical Institute of Medieval Studies, 1981), 130–32. See John Dickinson's remarks about how more connections must be traced in order to reveal how socio-economic roles influenced the judicial structure. John Alexander Dickinson, *Justice et Justicables: La Procédure civile à la pré voté de Québec, 1667–1759* (Québec: Les Presses de L'Université Laval, 1982), 5. For explanations about the difference between laws that had continued, and those that were invented over time in New France, see Lachance's explanation of "les élites comme modèles et définisseurs des normes," in *La vie urbaine*, 115. In this way, Paquin's mention of Marguerite arguably underrates her historical relevance as not only appearing in court, but faced a type of reproach for challenging the very foundation of the slave system in New France. See n. 2 for Paquin's contribution.

96 On this point, compare my focus to the reflections provided by Rushforth about the significance of Marguerite's role. See Brett Rushforth, "Savage Bonds," 108.

97 Analysis about the *Indian Act* has benefitted greatly from the work done on legal procedure to show how various challenges to the Act were not merely more restrictive, but, in fact, had no legal authority. As an example, see J.R. Miller's challenging comments to those who have missed how changes to the Indian Act were, in fact, unsound in law, rather than just modifications to the rule of law. J. R. Miller, "Owen Glendower, Hotspur and Canadian Indian Policy," *Ethnohistory* 37, no. 4 (fall 1990): 386–415.

norms are not actually part of the legal system. Instead of imagining slavery as unjust law, we have an opportunity to wonder how and why certain parties thought slavery was legally justified at all.<sup>98</sup>

As Edward Said has discussed, the inconsistent application of law is part of colonialism's norms.<sup>99</sup> In noticing the examples of Marguerite's historical appearances, and then shifting to a method that makes her the main subject of analysis, we can notice this theme even more clearly while further elongating what we know about the history of Indigenous activism within the courts.<sup>100</sup> By learning about the history of panis, and then considering how the rules were explained in a particular situation, we realize Marguerite's historic and historical impact continues to this day. She tells us about socializing, justified resistance to authority, and the different ways that people use the law to achieve desired results. She also tells us to never stop looking for ways to include others in our historical conversations.

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98 Allan Gally's final remarks in his Afterword provide poignancy about how one must constantly wonder about moments in history described as part of the legal system when they, in fact, might have actually only acquired that description so as to veil other moments of unjust convenience. See *The Indian Slave Trade: The Rise of the English Empire in the American South* (New Haven: Yale University Press, 2002), 357.

99 See Edward Said, *Culture and Imperialism* (New York: Knopf, 1993) for a study that highlights how one of colonialism's most pervasive features is its need to hide the impact of errors originating from the inconsistent use of laws.

100 See generally Kent McNeil, "Challenging Legislative Infringements of the Inherent Aboriginal Right of Self-Government," *Windsor Yearbook of Access to Justice* 22 (2003): 329–61. Of course, examples exist of Indigenous peoples explaining their own legal norms to visiting non-Indigenous parties. The point here, however, is that non-Indigenous ways were not automatically rejected because of what they implemented. Instead, the imposition and inconsistent use of the non-Indigenous norms regularly fueled Indigenous anger about them. The various scenarios presented in Backhouse's *Colour Coded*, n. 7, illustrate this point particularly well.