“The Honorable Title of Squatters”: Quebecois Land Tenure and the Fiction of Legal Pluralism in British Canada

By Sebastian van Bastelaer

History Master’s Thesis

University of Virginia, Spring 2024

Acknowledgments

I owe thanks to many people for this accomplishment (such as it is). My primary advisor, Professor Jennifer Sessions, has been instrumental over the past two years, patiently encouraging and counseling me. Professors Charles Barzun and Fahad Bishara have done an exemplary job of running this program and keeping me on the right track. I am also grateful to others at the University of Virginia School of Law who have helped me explore the field of legal history, including Professors Joy Milligan and Cynthia Nicoletti.

The excellent teachers and scholars in the University of Wisconsin-Madison Department of History taught me how to love historical research and writing and encouraged my dream of earning a graduate degree in history. Professor Gloria McCahon Whiting welcomed me and accepted me as a pupil and honors thesis advisee, without ever having had me in one of her classes. Professor Suzanne Desan opened my eyes to the wonders of French (and French Atlantic) history, while Professor David McDonald has always proven a source of support and humor. I could not have gotten this far without any of their instruction and support.

My friends, family and beloved girlfriend Eleni have been steadfast in backing me through the past three years. Pursuing two degrees at the same time is a daunting challenge, and their unwavering support through the ups and downs has been absolutely crucial. I owe a special thanks to my sister Sophie, who made the choice a dozen years ago to attend university in French Canada. Looking up to her, I sought to learn as much about the place, its people, and their history as possible—and now have two theses to show for it.

Finally, while UVA is full of exceptional people on both Main and North Grounds, none are as awe-inspiringly brilliant as my colleagues in the J.D.-M.A. program. They have become great friends, collaborators and role models. Most importantly, they have formed the nucleus of one of the finest trivia teams Charlottesville has ever known. I cannot thank them enough.

I. Introduction

By 1843, the peasants of Terrebonne were fed up. Having learned of the establishment of a commission to consider the continued viability of seigneurialism, the system of land tenure under which they lived and labored, this "industrious but oppressed class of [Queen Victoria's] loyal subjects" living just north of Montreal were determined to have their say.[1] The Terrebonne peasants (or *censitaires*) convened an impromptu meeting where they denounced unequivocally the system, loosely based on French feudalism. It was, they seethed, a vestige of "slavery," the product of "the absolute laws of a semi barbarous age and country [which] have been imposed upon the people of Eastern Canada."[2] Urging their fellow peasants throughout eastern Canada to take "prompt measures," they declared that they would "shed their blood sooner than submit" to any further indignities under their *seigneurs* (lords).[3]

By the time the Terrebonne censitaires gathered to air their grievances, seigneurialism had existed in French Canada for two and a half centuries. A system of defined obligations between state, lord and tenant, it provided incentives for French persons of all social rank to come to French Canada and settle lands seized from indigenous peoples. Successive Kings Louis—the Thirteenth, Fourteenth, and Fifteenth, to be precise—had used it as a means to

---

[1] "Answers of Censitaires of Terrebonne," in *Appendix to the Third Volume of the Journals of the Legislative Assembly of the Province of Canada, from the 28th Day of September to the 9th Day of December, in the Year of Our Lord 1843, and in the Seventh Year of the Reign of Our Sovereign Lady Queen Victoria : Being the Third Session of the First Provincial Parliament of Canada : Session 1843*, (Kingston, ON: Edward John Barker, 1844) (Hereinafter *1843 Report*), 212. [Note: the published report was not itself paginated, so the numbers I use refer to the page of the report itself, rather than the page of the entire *Appendix to the Third Volume*.]

[2] Ibid.

[3] Ibid. [Note: many English sources, especially older ones, use "seignior" and "seigniorialism" to refer to the system. More recent historians, however, have used "seigneur" and "seigneurialism," which is more faithful to French usages, including those who lived under seigneurialism. Where necessary, I have changed the former spelling to the latter, with the exception of the titles of sources.]

populate the vast colony, consolidating royal power in North America. It had managed to survive General Wolfe's conquest of 1759-60 and nearly a century of British rule.

This persistence raises several questions. How did a system that was, from 1789 on, recognized by neither French nor British law, survive in a country settled by the former and ultimately ruled by the latter? And how did French seigneurialism endure for so long in the face of a transatlantic libertarian and abolitionist movement that took aim at a variety of forms of servitude? Finally, why did it take so long for the French censitaires, peasants subject to various fees, dues and incidents, to ultimately tear down the edifice of Quebecois seigneurialism?

Studies of seigneurialism have shown that such questions misunderstand the nature of the seigneurial system as initially conceived. Many historians have demonstrated that the seigneurial system, as originally implanted by the French, was in several key respects different from the oppressive system under which the European peasantry long groaned. Over the centuries—indeed, even through the 1840s, as the Terrebonne peasants rattled their sabers—many recognized the various salutary effects of the original seigneurial system, most notably easy access to land and a finely-tuned legal apparatus designed to strike a balance between the lords and the peasants. Moreover, over time Quebecois nationalist sentiment strengthened attachments to *ancien régime* laws and customs, while the British decision to keep in place French civil law under the Quebec Act entrenched seigneurialism further.

Not so tidily explained are the timing of and reasons for the system's belated demise. If the system worked so well to begin with, then what finally brought it down, and why did the censitaires stop supporting it? Several theories have been offered, each with its own merit. These include the incompatibility of the system with the emancipatory spirit of the nineteenth century;

waning support for the French-Canadian nationalist dream; and the reciprocal burdens that seigneurialism and industrialization placed upon one another.

This thesis offers another interpretation, based on the overlooked records of the 1843 Commission, officially the "Commissioners Appointed to Inquire into the State of the Laws and Other Circumstances Connected with the Seigneurial Tenure in Lower Canada." The newly unified Canadian legislature had convened the Commission in 1841 following a period of tension between the French- and English-speaking residents of the colony.[4] Comprised of three members—Alexander Buchanan, J.A. Taschereau, and James Smith—the group was tasked with discovering "the difficulties and inconveniences which have resulted, and may hereafter result, from the Tenure of Lands commonly called the Seigneurial Tenure."[5] Persons from all levels of Canadian society wrote to the Commission. Some testified before the Commission; some responded to a published list of questions; others had simply heard about the Commission and were determined to speak their part.

While broader economic and political factors certainly played a role, the records of the Commission demonstrate that seigneurialism declined not only because of external factors, but because of changes in the conditions and power dynamics within the seigneurial relationship itself. The various exactions of the system, long held in check under French rule, proliferated and harshened, exacerbating censitaires' economic distress and undermining their faith in the system. The relationship between peasant and lord therefore began to resemble under the English the more exploitative feudalism seen in metropolitan France.

---

[4] Although I generally refer to it as Quebec, because that was the name the French used and because it roughly corresponds to the modern boundaries of that current province, "Lower Canada" was its official name. Upper Canada, by contrast, was the region surrounding the Great Lakes, roughly where Ontario is today.

[5] *Journal of the Legislative Assembly of the Province of Canada, Volume I* (Ottawa, ON: 1841), 492.

These changes came about because of the fiction of legal pluralism to which the British had committed themselves upon taking control of Canada in 1760. Though the Quebec Act guaranteed the survival of French civil law, the British generally declined to enforce it. This refusal to apply the law as traditionally understood meant that censitaires found themselves frequently on the losing end of disputes that their predecessors would clearly have won. This was compounded by the increasingly prohibitive costs of going to court. Censitaires were therefore nearly always the defendants in legal actions and forced to pay the costs of defending their legal interests. Even those few who prevailed could be ruined by the cost of litigation—especially when they faced a lengthy and expensive appeal. The sense that redress could not be easily had contributed further to the delegitimization of the system, described in a language of liberty and freedom spoken increasingly fluently by French-Canadian *habitants* (inhabitants) such as those in Terrebonne. As I will argue, the choice not to enforce French law, even though various political and legal officers acknowledged its continued applicability with regard to seigneurialism, reflected an exploitative vision of empire. Eager to keep the censitaires poor and socially subordinate, the British evidently had little interest in treating them like equal British subjects or alienating the Francophone elites on whose support they relied.

This thesis will thus explore the role of law in the persistence and ultimate decline of the seigneurial system. By law, I refer to not only a collection of statutes, decrees, decisions and precedents but also to the ways in which access to justice and the means of redress are made available or curtailed. In both senses, the censitaires ended up worse off for the British decision to selectively apply *ancien régime* law. In declining both to strictly enforce the laws which they had pledged to uphold and to make litigation a realistic possibility for the poor censitaire who would benefit the most from a properly balanced system, the British were able to wield law as a

weapon in social conflict and ultimately make the abolition of seigneurialism seem appealing, if not inevitable.

II. "Its Essential Character Was Not Feudal": The Origins and Features of French-Canadian Seigneurialism

Law, as Helen Dewar has argued, was "foundational to French colonizing ventures."[6] This was particularly the case during the initial colonization of 17th-century French Canada. During the early stages of the colony, the crown laid claim to a vast area in which representatives of the crown were greatly outnumbered by indigenous inhabitants, deemed to be neither French subjects nor entitled to the protections of property rights, and by disproportionately Protestant traders, still considered a threat in the aftermath of the Wars of Religion.[7] To channel commercial power to royal allies and settle the territory with Catholic subjects after attempts to forcibly "Frenchify" (*franciser*) Indigenous peoples had been largely abandoned, the Bourbon monarchs chartered a series of royal companies with trading monopolies, modeled in part after the British and Dutch East India Companies.[8] These institutions were tasked not only with establishing trade but also with bringing knowledge of "the only God" and "induc[ing] the subjects of his Majesty to emigrate to the said country," according to the charter of the prominent Company of One Hundred Associates.[9] Encouraging settlement would in turn protect commerce

---

[6] Helen Dewar, *Disputing New France: Companies, Law, and Sovereignty in the French Atlantic, 1598-1663*, (Montreal: McGill-Queens University Press, 2022), 6.
[7] Ibid., 11, 157.
[8] Ibid., 147; See Ron Harris, *Going the Distance: Eurasian Trade and the Rise of the Business Corporation, 1400-1700* (Princeton: Princeton University Press, 2020).
[9] "Act for the establishment of the Company of the Hundred Associates for the trade of Canada, containing the articles granted to the said company by the Cardinal de Richelieu, the 27th April 1627," in *Edicts, Ordinances, Declarations and Decrees relative to the Seigniorial Tenure, required by an address of the Legislative Assembly, 1851* (Quebec: E.R. Fréchette, 1852), 10.

through the establishment of miniature military colonies and strengthen the tenuous ties that bound the colony to the metropole.[10]

It would also, of course, entail the further exclusion and exploitation of indigenous persons inhabiting the region, who would not have a say in the implantation and development of European land tenure systems and whose voices are missing from the historiography. As royal eyes (and the drafters of official documents) diverted their attention from assimilation towards displacement, so too do most historical narratives turn away from indigenous peoples--insofar as they had focused on them at all. That most serious studies of seigneurialism predate the Second World War also explains this major gap in the historiography; today's much more serious approach to studying these peoples had not yet developed.[11]

Effectively stepping into the monarchs' shoes, the companies naturally borrowed from metropolitan practice when it came to laying down a system of land tenure. Drawing on the main "axiom at the heart of French feudalism, 'no land without a seigneur,'" they offered to prominent subjects strips of prime waterfront land with vital access to the St. Lawrence, the main commercial artery of the country.[12] The newly minted seigneurs would in turn further divide these strips, maintaining riverine access, and grant (or subinfeudate) them in exchange for certain honors and payments from tenants.

---

[10] Thomas Chapais, "The Old Regime," in J. Holland Rose et al. (eds.), *The Cambridge History of the British Empire, Volume VI: Canada* (Cambridge: Cambridge University Press, 1930), 63; Leslie Choquette, *Frenchmen into Peasants: Modernity and Tradition in the Peopling of French Canada* (Cambridge, MA: Harvard University Press, 1997), 247.

[11] For instance, the historian William Bennett Munro made few mentions of indigenous persons in his 300-page *The Seigniorial System in Canada*; one of the passing references he makes to the Iroquois accuse them of "scourging" the burgeoning colony of New France. William Bennett Munro, *The Seigniorial System in Canada: A Study in French Colonial Policy*, *Harvard Historical Studies Volume XIII* (New York: Longmans, Green, and Co., 1907), 143-144.

[12] Richard Colebrook Harris, *The Seigneurial System in Early Canada: A Geographical Study* (Madison, WI: The University of Wisconsin Press, 1968), 3.

This system, which made easy use of many of the same terms as the French version, has sometimes been seen as more or less equivalent to it. Some writers have called it "feudal," no different from the metropolitan system of feudalism. Others have more colorfully denounced it as the product of an "era, where the law of the sword created Seigneurs and Barons" as well as serfs.[13] The censitaires of Terrebonne, with their rebuke of the "absolute laws of a semi barbarous age and country [that] have been imposed upon the people" of French Canada, doubtless agreed.[14]

Yet the features and actual operation of the system reveal that French-Canadian seigneurialism was in many ways much milder and more even-handed than the French feudal regime. Rather than just a system of extraction and oppression—though, again, its operation enabled and reinforced the oppression of native peoples—it could be better characterized as a contractual relationship between the seigneur and censitaires. Crucial was the role of the state, which in the 17th and 18th centuries proved able and eager to enforce either side's obligations. While Quebecois seigneurialism "drew upon feudalism for some of its rites and part of its vocabulary," wrote the eminent Canadian historian Marcel Trudel, "its essential character was not feudal."[15]

The Duties of the Censitaire

To be sure, as the various detractors of French-Canadian seigneurialism have historically pointed out, several burdens on the censitaires were imported from the French regime. The tenants were required to live on the land they had been granted (*tenir feu et lieu*) and to clear and

[13] Jean-Pierre Wallot, "Le régime seigneurial et son abolition au Canada," 50 *Canadian Historical Review* 367 (Dec. 1969), 393; Ibid; *La Convention Anti-Seigneuriale de Montreal au Peuple* (Montreal: Imprimerie de Montigny & Cie, 1854), 3.
[14] "Answers of Censitaires of Terrebonne," 210.
[15] Marcel Trudel, *The Seigneurial Regime* (Ottawa: Canadian Historical Association, 1976), 17.

cultivate it.[16] The *cens et rentes* (usually grouped together) included the *cens* (a nominal symbolic tax, whence comes the phrase "censitaire") combined with the *rentes* (a yearly rent payment).[17] The seigneur could reserve to himself the right to fish in the river or charge his tenants for the right to use common pasture lands.[18] The right of *banalité* required censitaires to grind their grain at seigneurial (banal) mills and hand over to the seigneur a small fraction of their wheat each time they came.[19] They could also be called on to perform *corvée* labor three or four days a year to help build public roads and other works.

Perhaps most vexing to the censitaire were the *lods et ventes* and *droit de retraite*, two limitations on the alienation of land. The former was a tax (amounting to one-twelfth of the sale price) on any sales that did not follow the direct line of succession. The *retraite* gave the seigneur the right to intervene within forty days of a sale to pay the purchase price himself and reunite the land to his domain. This was supposed to deter deceit, as seigneurs could exercise the right if they suspected that the parties to the transaction were underreporting the sale price to avoid paying the full *lods et ventes* due on the land.

All told, these seigneurial dues did not amount to a very large burden. Trudel calculated that between the *cens et rentes*, *banal* rights attaching to mills, and 3-4 days of *corvée* labor, the average censitaire would have paid approximately 65 livres in a year to his lord.[20] For comparison (albeit an imperfect one), in the mid-18th century the French economist François Quesnay calculated that the average agricultural worker in France earned approximately 500

[16] Tom Johnson, "In a Manner of Speaking: Towards a Reconstitution of Property in Mid-Nineteenth Century Quebec," McGill Law Journal 32, no. 3, (July 1987), 647.
[17] Trudel, *The Seigneurial Regime*, 11.
[18] Ibid., 13-14.
[19] In France, the *droit de banalité* also included the right to force *censitaires* to bake all their bread at seigneurial ovens; no such requirement existed in New France. "Report of the Commissioners," in *1843 Report*, 4.
[20] Trudel, *The Seigneurial Regime*, 13.

livres per year.[21] We know, too, that at the time of the Revolution many metropolitan peasants were giving up a much higher share of their income: French lords could sometimes claim between 25 and 50 percent.[22]

Commented [JS1]: 10% could be considered a pretty big chunk. But perhaps more germane to the comparison here is how much a French feudal lord collected from each of his tenants in ths period?

The Duties of the Seigneur

For his part, the seigneur owed various duties to both the crown and his tenants. He had to pay fealty and homage to the king's representative, the intendant, by going to his chateau, where

> he took off his hat, laid down his weapons, knelt, and declared himself to be a vassal of the king. By this official act, a rite belonging to the feudal system, the state intended that he should proclaim himself a faithful subject and undertake in a solemn manner to honour his obligations as a seigneur.[23]

When he came to pay fealty and homage, the seigneur was also supposed to present an *aveu et dénombrement* containing enumeration of lots conceded and the names of the tenants inhabiting his land, among other things. Further, the crown reserved certain natural resources: oak trees used for shipbuilding could not be cut down; maple trees could not be tapped; and woodlots could not be sold.[24] The crown also possessed the *droit de quint*, a full one-fifth tax on the sale of seigneuries.[25] Lords seeking to sell their seigneuries, rather than pass bequeath them to descendants, were subject to this charge. Much like the *lods et ventes*,this served to discourage speculation in land. he seigneur was also himself subject to the *corvée*, and could find himself constructing a highway under command of the local captain of militia, even if the latter was one of his own censitaires.[26] Finally, and most crucially, the *seigneur* had to pledge to the crown that

[21] Branko Milanovic, "The Level and Distribution of Income in Mid-Eighteenth Century France, According to François Quesnay," 37 *Journal of the History of Economic Thought* (Mar. 2015), 30.
[22] Sydney Herbert, *The Fall of Feudalism in France* (London: Methuen & Co., 1921), 36-38.
[23] Ibid., 14.
[24] Ibid., 9.
[25] William Bennett Munro (ed.), *Documents Relating to the Seigniorial Tenure in Canada* (Toronto: The Champlain Society, 1908), 73 n 2.
[26] Trudel, *The Seigneurial Regime*, 16.

he would attract settlers to clear and cultivate the land: as Louis XIV reminded the Sieurs de Frontenac and Duchesneau, they were obligated to effect the "concession of wild lands to the inhabitants actually living in the said country, or to those who may be sent thereto by us for the purpose of settling."[27]

The obligation to concede lands, of course, was one owed both to crown and to would-be censitaires. The seigneur had to grant a plot of land and a deed, free of charge, to those who requested one and were willing to pay the customary seigneurial dues. This obligation, one which "evinces how anxiously and perseveringly the French Government pursued its policy of rapidly extending the settlement of the Colony," was by far the most important benefit of the system for poor would-be tenants.[28] Much like the tenant, the seigneur was also required to *tenir feu et lieu*—to keep a physical presence on the land (or at least have an agent on site). The right of *banalité* benefitted the *censitaire*, too: while the *seigneur* had a monopoly on mills for grinding grain within his seigneury, and could take a portion of the produce, he was in fact *required* to construct a working mill and only permit his censitaires to use it.

III. "Nothing Was Left to the Whim of Either": The Bourbons, the *Intendants* and Access to Legal Redress

Why did the seigneurial system in Canada, containing many of the same provisions as its French counterpart, nevertheless so drastically differ from it? The relatively mild character of Quebecois seigneurialism in the early days has been occasionally explained by incentives. If the seigneurs had to be induced to come to French North America, so, too, did the peasants who would help populate the province. The dearth of white, Francophone labor could be overcome

[27] "Powers Granted to Messieurs de Frontenac and Duchesneau to Give Concessions," in *Edicts, Ordinances, Declarations and Decrees*, 29.
[28] "Report of the Commissioners," 3.

through the granting of concessions by both the government and the seigneurs themselves. This phenomenon aligns with a model laid forth by the sociologist Sigmund Diamond. In spite of the instinct to transplant wholesale metropolitan institutions, Diamond explains, colonizers seeking to attract settlement were forced to make concessions and relax the rigid framework of French society.[29]

While this model can explain some of the mildness of Quebecois seigneurialism, it does not explain why, once settlers had made the trip and lands been occupied, the system did not deteriorate. The array of reciprocal obligations described above could not have just come about as a result of invisible market factors or incentives, since such incentives to encourage immigration disappeared once that immigration had occurred. Instead, it was the result of efforts by the Bourbon kings and their representatives to keep in check the pretensions of the seigneurs that mattered most to the functioning of the system. This was done not only to encourage immigration but to shore up the new society against perceived threats from indigenous peoples and Protestants, especially those in the flourishing English colonies directly to the south.[30] Issuing numerous decrees reminding each party to the seigneurial contract of their duties, and urging their representatives in French Canada to enforce those duties, they helped create a balanced, durable system. This ensured that the *habitants* did not suffer from the same poverty and misery as their cousins across the Atlantic.

First, laws emanating from the kings and their counselors set forth certain "fixed and unalterable rules" from which neither seigneur nor censitaire could depart."[31] These took the form of edicts, proclamations and *arrêts* (decrees). In 1664, Louis XIV formally applied the

[29] Described in Wallot, "Le régime seigneurial," 368-369.
[30] Choquette, *Frenchmen into Peasants*, 5.
[31] "Report of the Commissioners," 9.

Custom of Paris—a compilation and standardization of local laws, first issued in 1510—to his claimed dominions in Canada.[32] Between the 17th century and the British conquest, the Bourbons periodically issued a variety of laws, often in response to complaints from local representatives and reports of noncompliance. These show that even though both seigneurs and censitaires strayed from the idealized version of seigneurialism described above, the government was both privy to such developments and keen to put an end to them.

There are numerous examples of royal actions taken to enforce a party's obligations. In 1686, evidently responding to the complaints of royal representatives a royal *arrêt* (or decree) ordered all seigneurs to erect banal mills and declared that if they failed to do so within one year, the king would "permit all individuals to build any such mill, and grant them the right of *banalité*."[33]

In 1711 Louis XIV issued two *arrêts*—also referred to as the Marly *arrêts*, after the chateau from which they were issued—which were to have significant influence. The first scolded the seigneurs who had failed to concede their lands, or had demanded that would-be tenants pay to obtain a grant or agree to pay higher seigneurial dues. Louis declared,

> all the seigneurs in the said country of New France shall concede to the settlers the lots of land which they may demand of them in their seigneuries, at a ground rent and without exacting from them any sum of money as a consideration for such concession.[34]

Those who failed to abide by this conditions faced the reunion of their lands to the royal domain. This would in effect reduce the lord to the rank of censitaire, with the king as his seigneur. The second Marly *arrêt* addressed speculation by censitaires, who evidently had obtained grants in numerous seigneuries in the hopes of accumulating large landholdings or speculating in land.

Commented [JS2]: These are awfully short paragraphs through the following pages, which makes for choppy reading. Combine related paragraphs into fewer but longer ones?

[32] Ibid., 6-7.
[33] "Decree of the King's Council of the 4 June, 1686," in *Edicts, Ordinances, Declarations and Decrees*, 251.
[34] "First Royal Arret of 6 July, 1711," in *Edicts, Ordinances, Declarations and Decrees*., 272.

The king threatened forfeiture of property for failing to reside (*tenir feu et lieu*) on the conceded lands, as this was contrary to the will of the king, "who only permitted those concessions to be made with a view to the settlement of the country, and on condition that the lands should be settled and brought into a state of cultivation."[35] Further *arrêts* followed; in 1732, Louis XIV issued another to remind both parties to the seigneurial contract of the necessity of living on the parcels of land granted to them, and preventing them from selling wood lands, which were reserved for use in shipbuilding. Some *arrêts* also dealt with procedural rights. In 1743, Louis XIV laid out in an "Declaration of the King" certain "fixed and invariable rules" regarding the reunion of lands to royal or seigneurial domains as well as "the hearing and trial of contestations arising therefrom."[36]

These trials would take place in front of the royal *intendants* (usually translated as "governor"). Performing their duties thousands of miles from the seat of government, the intendants were delegated numerous administrative and judicial powers within the colonies. At their most basic level, they were intermediaries between the inhabitants of French Canada and the royal government. Indeed, there is evidence that many of the *arrêts* discussed above came about at the urging of an intendant. One who held the office, Jacques Raudot, was possibly responsible for the influential *arréts* of 1711. In 1707, he wrote to the minister of marine:

> I would believe, Monseigneur, with your pleasure, that to bring things into a kind of uniformity and [to] do to the inhabitants the justice that the lords have not done to them until now, and to prevent them in the future from confronting the vexations to which they will undoubtedly be exposed, that it would be necessary for His Majesty to give a declaration that would reform and even regulate for the future all the rights and rents that the lords have given themselves and that they will give themselves in the future.[37]

---

[35] "Second Royal Arret of 6 July, 1711," in *Edicts, Ordinances, Declarations and Decrees*, 273.
[36] "Declaration of the King Concerning Concessions in the Colonies," in *Edicts, Ordinances, Declarations and Decrees*, 254.
[37] "Memoir of Jacques Raudot, Intendant, to M. De Pontchartrain, Minister of Marine, on the Growth of Seigniorial Abuses in Canada, November 10, 1707," in *Documents Relating to the Seigniorial Tenure*, 76.

Still seeking clarity, Raudot wrote again the following year to the minister, impressing upon him the need for uniformity, to "bring all to a level footing."[38]

The intendants' advisory role was augmented by other responsibilities. He was an executive officer, capable of conceding land in the king's name or issuing formal summons to seigneurs who refused to concede on their own. Most important, however, was his judicial role. The *arrêt* of 1743, setting forth "fixed and invariable rules" regarding concessions and the reunion of land grants, confirmed and ratified the intendants' ability to hear cases: they were to

> continue to hear, to the exclusion of the judges of the ordinary tribunals, all contestations arising between grantees or their assigns, as well in relation to the validity and execution of concessions, as in relation to the position, extent and boundaries of their grants.[39]

The availability of redress was by no means merely theoretical. Crucially, as the intendant did not charge for his intervention, "his interposition might be had by the poorest habitant."[40] Further, the *censitaires* were aware of the possibilities for legal redress and evidently practiced in the art of hauling their seigneurs (and each other) into court. In his 1707 letter, Jacques Raudot complained that he was inundated with litigation: inhabitants "who should be occupied in cultivating their lands, are obligated to quit them all the time to pursue bad trials."[41] Soon, he mused, "there will be more trials in this country than there are people."[42] Clearly, the censitaires were willing and able to press their claims—perhaps even too much so.

Added to the nonexistent cost of going to court was the intendants' freedom of action. They believed that it would be better to "deal with cases on their individual merits and not in

---

[38] "Despatch of Jacques Raudot, Intendant, to M. de Pontchartrain, Minister of Marine, containing a further Discussion of Seigniorial Abuses, October 18, 1708," in *Documents Relating to the Seigniorial Tenure*., 85.
[39] "Declaration of the King Concerning Concessions in the Colonies," in *Edicts, Ordinances, Declarations and Decrees*, 254.
[40] *Documents Relating to the Seigniorial Tenure*, ciii.
[41] "Memoir of Jacques Raudot, Intendant, to M. De Pontchartrain, Minister of Marine, on the Growth of Seigniorial Abuses in Canada, November 10, 1707," in *Documents Relating to the Seigniorial Tenure*, 72.
[42] Ibid., 71.

accordance with the strict rules of jurisprudence," and so their subject-matter jurisdiction as well as their discretion in fashioning remedies proved capacious.[43] On numerous occasions they struck down exactions which, "while thoroughly legal, were deemed contrary to public policy; for neither law nor custom required [them] to permit the enforcement of exactions that might be regarded as oppressive or at variance with [their] own ideas as to the proper relations" between seigneurs and censitaires, according to William Bennett Munro.[44]

Surviving *ordinances* (judicial decisions) show this discretion in action, as intendants intervened to enforce the rights and duties of both sides of the seigneurial equation. Based on the surviving *ordinances*, seigneurs and censitaires seemed to enjoy about equal success in their disputes. Decisions benefitting the seigneurs prevented the inhabitants from taking fish without leave; reunited land because inhabitants had failed to reside upon it; outlawed the fraudulent exaction of seigneurial dues from fishermen who did not know that it was not the censitaires' land; punished the cutting down of wood or tapping of maple trees; and forced censitaires to use the seigneurial banal mill.[45] The tenants managed to prevail in a number of cases, however, obtaining *ordinances* directing seigneurs to give deeds; relieving censitaires from having to perform *corvée* labor on consecutive days; maintaining censitaires in possession of their land "without further charges than those stated in his deed of concession"; and fixing the levels of *cens et rentes* in the towns and suburbs of Quebec.[46] While a precise study has not been done on the success rate of each side before the intendants, it is known, for instance, that eighteen seigneuries were suppressed for cause in the year 1741 alone.[47] The intendants were, therefore,

[43] *Documents Relating to the Seigniorial Tenure*, xliv.
[44] *Documents Relating to the Seigniorial Tenure*, ciii.
[45] See generally *Edicts, Ordinances, Declarations and Decrees*, 40-230.
[46] Ibid; "without further charges" found at 56.
[47] Trudel, *The Seigneurial Regime*, 16.

able and eager to come to the censitaires' aid, even if it meant ruling against those of elevated social rank.

It should be noted that the large number of extant *ordinances* speaks to the regularity of violations of the regime's rules. But they also demonstrate that those whose rights had been violated could and did successfully seek redress. This succeeded in keeping balance between the two sides and preventing exploitation, a conclusion backed up by the 1843 Commission, which in its report noted that rents remained essentially the same between 1711, when the Marly *arrêts* were issued, and 1759.[48]

The resulting mildness of the Quebecois seigneurial system created a system that would have been unrecognizable to French peasants. Writers, at the time and since, have recognized the system's relative benignity. The Baron de Lahontan, writing in the late 17th century, remarked that even the "boors" of French Canada "live with more ease and conveniency than an infinity of the gentlemen in France," while in 1737 the intendant Gilles Hocquart wrote that the peasants were not "coarse and boorish rustics" like the peasantry in France.[49] More recently assessing the effect of the seigneurial system on the masses, Leslie Choquette asserted that "seigneurialism, particularly in the seventeenth century, was far less oppressive in the Saint Lawrence than in France," an argument with which Jean Pierre Wallot concurred: "partly in its conception, especially in its functioning, the seigneurial regime breaks with [*brise avec*] its French model."[50] Munro, the 20th-century expert on the subject, concluded that seigneurialism was "never really onerous," and in fact resembled the "pristine feudalism shorn of the excrescences which in France barnacled its later days."[51]

---

[48] "Report of the Commissioners," 5.
[49] Munro, *The Seigniorial System in Canada*, 143-144.
[50] Choquette, *Frenchmen into Peasants*, 284-285; Wallot, "Le régime seigneurial," 372.
[51] Munro, *Documents Relating to the Seigniorial Tenure*, xc, xxi.

Many have also recognized that the benefits of the seigneurial system were to a great degree the result of the frequent interventions of king and intendant. One writer went so far in this regard as to claim that Canada before the conquest could be considered "nearly a democracy."[52] The 1843 Commission asserted that the system's reversion to "the condition in which it appears to have existed at an early age in the parent country," was due to the "express enactments" of the royal representatives.[53] Trudel emphasized that

> Nothing was left to the whim of either seigneur or censitaire. Every demand made by the seigneur was regulated by the state and every condition which the censitaire must accept was written into his contract when it was first drawn. State supervision was constant. The intendant intervened continually to see that both parties got their respective rights. If the censitaire failed in his duties, the state compelled him to perform them. If the seigneur neglected or refused to fulfil his function, the state could either take his place or reduce him to the rank of a censitaire by reuniting his fief to the royal domain.[54]

Finally, Munro again emphasized that the censitaire flourished prior to the conquest because "The crown, through its active agent the intendant, was ever on his side, and…its intervention on his behalf was alike frequent and vigorous."[55]

The law—meaning, again, not only substantive decrees and decisions but also the ease of seeking legal redress—was thus crucial in the design and functioning of the seigneurial regime in early Canada. The following sections will seek to explain why a system with such apparent benefits for the Quebecois censitaires ultimately came to be the object of their contempt.

IV. "We Prefer the Seigneurial Tenure": The Quebec Act, Quebecois Nationalism and Post-Conquest Persistence

French rule over Canada came to an end in 1760, with the capitulation following General Wolfe's victory at the Plains of Abraham. At Whitehall, vigorous debates ensued over how, or

[52] Wallot, "Le régime seigneurial et son abolition," 379.
[53] "Report of the Commissioners," 4.
[54] Trudel, *The Seigneurial Regime*, 17.
[55] Munro, *Documents Relating to the Seigniorial Tenure*, xc.

even whether, to integrate into the empire 70,000 *Canadiens*, whose "French law, institutions, and language, together with their Roman Catholicism, rendered them ineligible to enjoy British civil and religious liberty."[56] What followed was the Quebec Act (1774), which applied British law to the new province while retaining French civil law. This included the seigneurial regime; though a change to British-style free and common socage tenure was briefly contemplated, this suggestion was ultimately dropped.[57] The system, therefore, remained in place, incorporating with it the *arrêts* and other decrees regulating it, a notion explicitly affirmed by British officials throughout their administration of the province.[58]

The effects of the Act went beyond merely freezing in place the *ancien régime* civil law. It also hardened lines between the French-speaking majority in Quebec and the newly empowered English minority, mostly administrators and merchants living in the towns of Quebec and Montreal. As Nancy Christie explains, while French-Canadians were not "subjected to the same legal disabilities as racialized others in other colonial sites, they were never perceived as being on an equal footing with English-speaking Protestant subjects."[59] The divisions created by keeping in place French laws and religion only widened as the new rulers contemptuously likened the Francophone peasants to "slaves" or savages, "immerzed [*sic*] in the darkness of the tenth century" rather than equal subjects deserving of political rights.[60] As such views spread, both British and Quebecois, "far from engaging in the creation of new societies, sought rather to preserve remnants of their *anciens régimes*."[61] While the Quebec Act had

---

[56] P.J. Marshall, "British North America, 1760-1815," in P.J. Marshall (ed.), *The Oxford History of the British Empire*, *Volume II: The Eighteenth Century* (Oxford: Oxford University Press, 1998), 372.
[57] A.L. Burt, "The Problem of Government, 1760-1774, in *Cambridge History Volume VI*, 170.
[58] See Section VIII.
[59] Nancy Christie, *The Formal and Informal Politics of British Rule in Post-Conquest Quebec, 1760-1837: A Northern Bastille* (Oxford, UK: Oxford University Press, 2020), 6.
[60] Ibid., 388, 1.
[61] Marshall, "British North America, 1760-1815," 393.

initially received only a lukewarm reaction from the French-Canadians, owing to its restoration of religious authorities and the tithe, in light of these growing mutual animosities it came to be regarded as "the chief bulwark of [their] defense" and "the Magna Carta of French-Canadian liberties."[62] This dynamic helped contribute to the rise of Quebecois nationalism, which started to gain momentum after the end of the War of 1812. The Quebec Act has had a long career in the consciousness of the nationalist movement; even two centuries after its passage, a newspaper was hailing it as "the second foundation of French Quebec."[63]

This growing sense of difference helps to explain the seigneurial regime's perseverance. Beyond simply retaining the system, British colonial policy helped maintain a longstanding attachment to seigneurialism by linking it with the habitants' shared Frenchness. One British administrator remarked that "the great majority of the inhabitants of Lower Canada hold their lands under the seigneurial tenure, to which they are much attached."[64] In 1843, a seigneurial agent remarked that the spirit of opposition to seigneurialism was even more pronounced among British subjects who had become censitaires than among the French-Canadians, accustomed to and in some cases still attached to the old ways.[65]

Another key factor in the persistence of seigneurialism, though not at all unrelated to the sense of attachment fostered by ethnic differentiation, was the continued sense that the system, at least in its original form, was beneficial to seigneur and censitaire alike. As the records of the

---

[62] Duncan A. McArthur, "British North America and the American Revolution, 1774-1791," in *Cambridge History Volume VI*, 194. For more on initial responses to the Quebec Act, and its impact on *habitant* loyalties during the imperial crisis of the 1770s, see Sebastian van Bastelaer, "'That Damned Absurd Word Liberty": Les Habitants, the Quebec Act, and American Revolutionary Ideology, 1774-1776," *Journal of the American Revolution* (Aug. 5, 2019) (last visited Feb. 10, 2024), https://allthingsliberty.com/2019/08/that-damned-absurd-word-liberty-les-habitants-the-quebec-act-and-american-revolutionary-ideology-1774-1776/

[63] Quoted in Donald Fyson, "The Quebec Act and the Canadiens: The Myth of the Seminal Moment," in Olivier Hubert and François Furstenberg (eds.), *Entangling the Quebec Act: Transnational Contexts, Meanings, and Legacies in North America and the British Empire* (Montreal: McGill-Queen's University Press, 2020), 74.

[64] Quoted in Munro, *The Seigniorial Regime*, 227-228.

[65] "Examination of Lawrence George Brown," in *1843 Report*, 213.

1843 Commission demonstrate, this was understood by both rulers and ruled. The censitaires were quick to praise the system as administered under the French. Many focused on the benefits to the poor, who were able to obtain grants of land for nothing more than the promise of payment of relatively light seigneurial dues. Mr. Charles Robertson, a notable censitaire of English extraction in Lauzon, wrote that the system "tends to keep the *inhabitants* generally at a distance from the two extremes of superabundant riches and abject poverty so visible in some other countries."[66] Others concurred, calling it "more advantageous to the poor than any other system whatsoever," and "the easiest or most equitable arrangement or method as respects poor proprietors."[67]

Commented [JS3]: Sounds English!

Naturally, these two explanations for seigneurialism's continued survival—attachment to a shared sense of Frenchness in the face of discrimination and the belief that the regime had once held out more benefits than any other—were ultimately interlinked. Those experiencing a sense of subordination in the colonial system were likely to grow increasingly attached to a certain view of the past and to a belief that the customs of the French were superior. As Jean-Pierre Wallot argued in his influential "Le régime seigneurial et son abolition au Canada," a mythologized understanding of seigneurialism became part and parcel of Quebecois nationalism. According to him, the habitants used the seigneurial tenure as an "economic and social armor" to "promote their national ambitions and protect themselves against…instruments of their assimilation."[68] The connection between these two ideas was articulated most forcefully by the *censitaires* of Deschambault and Lachevrotière (between Quebec City and Trois-Rivières):

> We prefer the Seigneurial Tenure:—Firstly, from habit, having been brought up and accustomed to this tenure (which has been transmitted to us from our fathers) and being

[66] "Answers of Mr. Charles Robertson, of Point Levi, Seigniory of Lauzon," in *1843 Report*, 162.
[67] "Answers of J.B. Tache, Esquire," in *1843 Report*, 73; "Answers of Censitaires of the Parish of St. Cyprien," in *1843 Report*, 98.
[68] Wallot, "Le régime seigneurial et son abolition," 390.

> familiarized with its usages. Secondly, because under all other tenures the poorer sort of farmers have not the same facility of settling. Under the present tenure, provided that the Seigneur is obliged to concede the lands, a person who has nothing, if he be in the least industrious and inclined to work, may take a land in concession, hire himself out for half the year, and by this means gain sufficient to support life, and employ himself the remainder of the year in working on his land… whereas under any other tenure it is necessary to have money at the outset, or to subject one self to a rent which is generally so considerable that it causes the ruin of the tenant.[69]

Importantly, however, it was not only the censitaires who recognized the lingering benefits of the seigneurial system; in other words, it was not simply the figment of the Quebecois nationalist imagination. Other members of rural society agreed with the censitaires. A priest at St. Eustache claimed that "at Rome, at Athens, the agrarian laws never produced a more comfortable division" of land and of wealth.[70] These beliefs even found voice among some seigneurs.[71] Monsieur de Sales Laterrière, a seigneur in Les Eboulements argued that, "The Seigneurial Tenure, as the gentlemen of the Commission are well aware, is the most advantageous…in a new country like this, where the poorest man may become a landed proprietor."[72] It was preferable, even to the "more onerous system of free and common socage," which gives the rich "the means of enslaving the poor."[73]

Even imperial administrators agreed. In 1790, in the Council for the Affairs of the Province of Quebec, an advisory body constituted under the Quebec Act, the judge and politician Adam Mabane argued that

> [due to the] wise intentions and beneficent effects of the *arrêts* of 1711 and 1732, and the declaration of 1743…the services or burthens to which the censitaires under concessions

[69] "Answers Made by Certain Censitaires of the Seigniories of Deschambault and Lachevrotière," in *1843 Report*, 170.
[70] "Answers of the Reverend Mr. Paquin, Priest, St. Eustache," in *1843 Report*, 88.
[71] Nancy Christie has shown that between the conquest and 1790, approximately one-quarter of seigneuries were purchased by English landowners. Christie, *The Formal and Iinformal Politics of British Rule,* 3.
[72] "Letter from M. de Sales Laterrière, Eboulemens," in *1843 Report*, 166.
[73] Ibid.

> from Seigneurs are subject, are few, clearly understood and ascertained and are by no means onerous or oppressive.[74]

nto the 1830s, writers lauded the seigneurial regime. In his *A Rural Code for the Use of Old & New Inhabitants of Lower-Canada*, Joseph F. Perrault argued that immigrants should not view seigneurialism as a "bugbear," as it is "more advantageous to their settlement than that of [the British system], particularly much less expensive and burthensome."[75] Similarly addressing the "prejudices" of newcomers against the tenure, settlement booster A.J. Christie in his 1821 *The Emigrant's Assistant* called it "pregnant with advantages…if the original system will be fairly acted upon."[76] Evidently, it was clear to many, whether clinging to their French identity or not, that the seigneurial regime, under the French, had been a boon for those embraced by it. This belief, however, often came to be expressed as a lament as the system gradually fell into disrepair.

V. "A Radical Evil, Which the Light of the 19th Century Should Surely Dissipate": Explanations for Gradual Decline

Numerous theories have been offered to explain the degeneration of the seigneurial system, one which would advance to the point of provoking the Terrebonne censitaires to such an outburst by the early 1840s. Each seeks to explain the regime's collapse by pointing to larger

---

[74] "Resolves of the Council, 1790," in *Titles and Documents Relative to the Seigniorial Tenure, Required by an Address of the Legislative Assembly, 1851* (Quebec: E.R. Fréchette, 1852), 44.
[75] Joseph F. Perrault, Prothonotary, *A Rural Code for the Use of the Old & New Inhabitants of Lower-Canada, concerning their religious and civil duties, according to the laws in force in the country* (Quebec: T. Cary, & Co., 1832), 4.
[76] A.J. Christie, *The Emigrant's Assistant: or Remarks on the Agricultural Interest of the Canada: Part I. Containing an account of the most effectual means of assisting Settlers on their arrival in the country–Observations on the different Tenures by which Lands are held in both Provinces. Directions for Procuring grants of waste Lands, and some account of the different methods of clearing them–collected from documents and various papers furnished for the information of the Montreal Emigrant Society, in the year 1820* (Montreal: Nahum Mower, 1821), iii-iv, 61, 70-71.

intellectual, economic and political trends that influenced Canada during the early nineteenth century.

Libertarianism and Humanitarianism

The first explanation situates the decline (and growing disapproval) of seigneurialism within a broader libertarian and humanitarian movement on both sides of the Atlantic. The late eighteenth century had given birth, on Canada's southern border, to a new nation notionally devoted to freedom and quality. Meanwhile, in the nineteenth century, humanitarianism became a "tremendous force in British social and political life," raising questions "about the ethics of economic exchange, the politics of equal rights or racial differences, and the purpose of Imperial power."[77] The most important outcome of this movement was the ultimate abolition of slavery; but its libertarian impulses also inflected the Canadian political culture and discussions of the seigneurial regime.

Despite assumptions about the indolence and narrow-mindedness of the French-Canadians, notions such as liberty and freedom had long existed in the *habitant* lexicon. During the American Revolution, as the Continental Army threatened to conquer the province, British officials fretted about the impact of "that damned absurd word liberty."[78] Governor-General Guy Carleton, who played an instrumental role in the early development of British colonial policy, remarked that the residents had been "too penetrated by the American ideas of emancipation and independence."[79] In spite of their attempts to otherize the French-Canadians, the British had

[77] Paul Knaplund, "Colonial Problems and Policy, 1815-1837," in J. Holland Rose et al. (eds.), *The Cambridge History of the British Empire, Volume II: The Growth of the New Empire* (Cambridge: Cambridge University Press, 1940), 277; Andrew Porter, "Trusteeship, Anti-Slavery, and Humanitarianism," in Andrew Porter (ed.), *The Oxford History of the British Empire*, *Volume III: The Nineteenth Century* (Oxford: Oxford University Press, 1999), 198.
[78] Quoted in Victor Coffin, "The Province of Quebec and the Early American Revolution: A Study in English-American Colonial History," 1 *Bulletin of the University of Wisconsin, Economics, Political Science and History Series,* no. 3 (1896), 495.
[79] Ibid., 509.

brought with them certain ideas of liberty, "precisely the characteristic that distinguished the British Empire from others."[80]

Over time, a "formal oppositional political discourse emerged," allowing French-Canadians to "[identify] themselves with the radical political culture [of the time] which built upon…the tenets of classical republicanism."[81] The French-Canadians thereby made themselves the "champions of British liberties in the colonies," applying the terms of this discourse to dispute their position within the imperial hierarchy.[82] This can be seen in certain discourses on seigneurialism, as many concluded that the system could not continue to exist under a modern liberal government. Pierre de Boucherville, seigneur of Boucherville and Verchères, wrote to the Commission that "The feudal tenure appears to me to be a violation of the natural law, inasmuch as it creates a privileged class which does nothing but live luxuriously on the labour of the Censitaires."[83] A meeting of the "Convention Anti-Seigneuriale de Montreal," in addition to denouncing a system created by the "law of the sword," urged that "in this age, people, above all the people of America" must do away with it.[84] It could no longer coincide with a government ostensibly founded on equality.[85]

The Failure of French-Canadian Nationalism

Jean-Pierre Wallot has attributed waning support for seigneurialism to the "sinking" of the "separatist dream" (*rêve separatiste*) around the 1840s.[86] According to him, Canadian politics had until then been oriented around nationality. Wary of assimilation and the destruction of

[80] Jack P. Greene, "Empire and Identity from the Glorious Revolution to the American Revolution," in *Oxford History Volume II*, 223.
[81] Christie, *The Formal and Informal Politics of British Rule*, 386, 33.
[82] Ibid., 28.
[83] "Answer of P. De Boucherville, Esq.," in *1843 Report*, 84.
[84] *La Convention Anti-Seigneuriale*, 3.
[85] Ibid., 5.
[86] Wallot, "Le Régime Seigneurial," 390.

French culture, the censitaires were more likely to see seigneurialism as a "shield" and thus align with their social superiors in opposition to the growing English minority. Following the 1841 Act of Union, which installed a more democratic system and merged the provinces of Lower Canada (roughly equivalent to Quebec) and Upper Canada (now contained within the province of Ontario), many realized that Quebec's independence was unlikely to come any time soon. With these concessions, and the dream sunk, many came to "disassociate abolition from assimilation," in particular as Brits bought up a large number of seigneuries, and embrace a transition toward something more closely resembling free and common socage.[87]

Population Growth and Industrialization

Most explanations of the collapse of seigneurialism attribute it to a combination of demographic and economic factors—in the words of Munro, "the seigneurial system in Canada had, by the middle of the nineteenth century, clearly demonstrated its unsuitability to its new social and economic environment"[88] An "agricultural crisis" emerged following 1815 and a collapse in prices.[89] Compounding the crisis was the French method of inheritance (still in place owing to the Quebec Act), according to which land held by a censitaire was divided up in equal parts among all his children regardless of gender.[90] This was, for the decedent's younger children, doubtless preferable to the English system of primogeniture. Yet since much of the original seigneurial grants had been comprised of long, narrow strips along the Saint Lawrence to begin with, generations of subdivision had worked the creation of unmanageably small parcels. According to an 1839 report by the Earl of Durham, the French rule of succession "had caused the oblongs of land to be so cut into long narrow strips that healthy agricultural progress

[87] Ibid.
[88] Munro, *The Seigniorial Regime*, 251.
[89] Ibid., 381.
[90] Trudel, *The Seigneurial Regime*, 11.

was being strangled."[91] This subdivision also led to various other inefficiencies, as land ended up in the hands of those practicing the "worst possible method of small farming."[92]

To make matters worse, those seeking to give up tilling their miniscule lands were frequently unable to do so. Anyone trying to accumulate large holdings would have been forced to negotiate (and incur transaction costs) with numerous persons. More importantly, the seigneurial system's obstacles to alienation, so effective in preventing speculation in land under the French, made the sale of land all the more expensive. The *lods et ventes*—the payment owed to a seigneur, one-twelfth of the sale price, when seigneurial land was transferred outside of the usual line of succession—inhibited such transactions.

Though on its face the *lods et ventes* had not changed in its details or function, its effects were made much harsher due to the costs it imposed on a modernizing society. It served to impede the urbanizing and industrializing impulses of the time, while also preventing the accumulation of rural property in the hands of successful farmers. The 1843 Commission, showing pity as well as condescension, lamented that the censitaire "can never escape from the tie that binds him and his progeny forever to the soil—as a cultivator he is born, as a mere cultivator he is doomed to live and die."[93] Many complained specifically that it "impedes business and the progress of industry," in the words of the censitaires of the parish of Berthier.[94] Writing in the 1840s, Clément Dumesnil in his *De L'Abolition des Droits Féodaux et Seigneuriaux au Canada* blamed the limit on alienation "the destroyer of energies, of the enterprising spirit and of industry."[95]

---

[91] Quoted in Munro, *The Seigniorial System in Canada*, 236.
[92]
[93] "Report of the Commissioners," 11.
[94] "Answers of Censitaires of the Parish of Berthier," in *1843 Report*, 111.
[95] Clément Dumesnil, *De L'Abolition des Droits Féodaux et Seigneuriaux au Canada, et sur le meilleur mode à employer pour accorder une juste indemnité aux seigneurs* (Montreal: J. Starke et Cie, 1849), iii-iv.

The one-twelfth fee imposed by the *lods et ventes* was especially resented on seigneurial lands in towns and cities, where the value of property was rising rapidly. A petition to Queen Victoria by over 2000 censitaires of an ecclesiastical seigneury in Montreal underscored this fact, calling the *lods et ventes* the "cause of the slow progress, both in extent and prosperity, of a city, which, from its local position, and the increasing resources of the Canadas, possessed every capability of being one of the greatest marts of trade."[96]

Another breed of criticism of the *lods et ventes* embraced a Lockean labor theory of property.[97] In an article in the *McGill Law Journal*, perhaps the only English-language work to seriously analyze the censitaire contribution to the 1843 Commission, Tom Johnson describes the role of this labor theory in complaints against the seigneurial regime. As Johnson puts it, this theory asks why, "If property belongs to the creator, the transformer of the raw material…why should the censitaires (in this instance) give any compensation…for land" which they had transformed?[98] The records of the 1843 Commission are pocked with such reasoning. Why, asked the censitaires of De Léry, Longueuil, and Laprairie, when one "has cleared the said land by the sweat of his brow, and it has become of value," should the seigneur be the one to profit?[99] Their colleagues at Berthier complained, too, that "the Seigneur profits thereby by the labours of a Censitaire to whom he has never given any equivalent in value."[100]

Finally, the objections to the payment of the *lods et ventes* often sounded in the libertarian principles described earlier in this section. The spokesperson for the Terrebonne

---

[96] *Copy of a Despatch from the Right Hon. Charles Poulett Thomson to Lord John Russell, Dated Montreal, the 13th day of May 1840, Transmitting Memorial from Various Parties Respecting the Estates of St. Sulpice*, (Montreal: publisher not identified, 1840), 2.
[97] See generally Johnson, "In a Manner of Speaking."
[98] Ibid., 666-667.
[99] "Answers of the Censitaires of De Léry, Longueuil, and Laprairie, to the Questions Put to Them by the Commission of Inquiry on the Seigniorial Tenure," in *1843 Report*, 97.
[100] "Answers of Censitaires of the Parish of Berthier," 111.

censitaires, in their characteristically colorful way, denounced it as "a fine originally laid upon the slave (the serf) by the master (the Baron)…an oppressive imposition, and insulting to British freemen."[101] Dumesnil likewise expressed his hope that the *habitants*

> will finally be able to freely engage in all agricultural improvements and all industrial enterprises; and, for this, it is absolutely necessary to destroy the vestiges of feudalism which still oppress and crush them, in the nineteenth century, on the soil of freedom, on the soil of America.[102]

VI. "The *Seigneurs* Are the Ruin of the *Habitants*": The Seigneurial Regime in 1843

The theories discussed in the previous section all pertain to the impact of external factors—intellectual, economic, political—on the seigneurial regime, and attribute to them its collapse. In other words, they rest on an implicit assumption that, while the world was transforming around it, the fundamental components of seigneurialism had remained unchanged. The records of the 1843 Commission, containing a wealth of evidence produced by the censitaires themselves, suggest an additional, more internalist explanation. That is to say, the actual framework of seigneurialism, not just the world around it, had changed. Nearly every aspect of the regime had changed, to the detriment of the censitaires. This occurred, I will argue, due to legal changes born of the indifference (or outright support) of the British administration. As seigneurial impositions got worse, censitaires' lives became more difficult, and their attachment to the system more equivocal.

Land Concessions

While under the French, as stipulated in the first Marly *arrêt* of 1711, the seigneurs were obliged to concede lands, by the 1840s would-be tenants found it increasingly difficult to obtain them. In the De Léry area, a seigneur of British extraction had "refused to concede wild lands in

[101] "Answers of Censitaires of Terrebonne," 210.
[102] Dumesnil, *De L'Abolition des Droits Féodaux et Seigneuriaux au Canada*, viii.

his Seigneury," while a Mr. Dostie of St. George de la Beauce related that local censitaires "complain bitterly that the Seigneurs of the said Fief…are not willing, any more than their late honorable father in his lifetime, to concede lands in the concessions of the said Fief."[103] Other seigneurs were more forthright in their reasons for refusing, evidently looking to profit from an eventual commutation into freehold tenure. In Lacolle, one man was refused plots because the seigneur hoped "that they would become more valuable," while another was also denied a grant, with the "only reason given" being "that they were very valuable lands"[104]

Such pecuniary motives often manifested in another way, the granting of land only in exchange for consideration—again, violating the direct command of the Marly *arrêts*, which all parties (we shall see later) conceded were still in force in Canada. Dumesnil complained that the group had "shamefully given themselves over to a system of fraud and extortion," an allegation borne out by the 1843 Report.[105] In numerous parishes, potential cultivators were compelled to pay seigneurs or their agents before they could receive land. One of the censitaires of Lacolle, having been denied a grant of land, "came to the conclusion that should they offer a handsome *bonus*, the concession might have been obtained, as it had been the common practice in like applications for many years past."[106] In Daillebout, a farmer asked for land, only to have the seigneur refuse, "unless he would give consent to give his note for ten dollars, 'for value received,' without mentioning the concession in any way, and would also pay for the deed

[103] "Answers of the Censitaires of De Léry, Longueuil, and Laprairie," 98; "Answers of Mr. Dostie, N.P. Censitaire of St. George de la Beauce," in *1843 Report*, 178.
[104] "Answers to the Questions submitted to the Censitaires of the Seigniory of Lacolle, by the Board of Commission of Inquiry on the Seigniorial Tenure," in *1843 Report*, 100.
[105] Dumesnil, *De L'Abolition des Droits Féodaux et Seigneuriaux au Canada*, 33.
[106] "Answers to the Questions submitted to the Censitaires of the Seigniory of Lacolle," 100.

survey…This fact occurred about three weeks ago." Often, with land scarce and mobility limited, the censitaires had no choice but to give in to such demands.[107]

Others, having obtained land, were forced to pay to obtain titles (or updated *titres-nouvels*), legal proof of ownership to which they were entitled under the Bourbons, according to various *ordinances* issued by the intendants.[108] The censitaires of the seigneury of Beauharnois complained that when receiving their *titres-nouvels*, "Ten shillings were exacted from each Censitaire," an experience shared by a *censitaire* in Malbay.[109] Those in the area of De Léry complained that their English seigneur had "lately had our lands surveyed with the view of making us take out *titres-nouvels*, and of making us pay the Surveyor and the expense of these said titles."[110]

Cens et rentes

The royal intendants had often concerned themselves with ensuring that the *cens et rentes* (ground rent, plus a small symbolic exaction) were fair and uniform within a given seigneur's territory.[111] This requirement, too, had gone by the wayside by 1843. In the parish of St. Cyprien, the *cens et rentes* per arpent (approximately equivalent to an acre) varied: it could be nine *sous*, one *sou*, five shillings, ten shillings or even one pound.[112]

The distribution of new titles (*titres-nouvels*), taking place upon the assumption of the seigneury by a new lord, or in many cases simply on the whim of the seigneur, provided ample opportunity for the raising of *cens et rentes*. The censitaires of Lacolle recalled that for one of

[107] "Answers of the Censitaires of Daillebout, Parish of Ste. Mélanie," in *1843 Report*, 120.
[108] "Answers of Censitaires of the Parish of St. Cyprien," 99; "Answers of Censitaires of the Seigniory of Beauharnois (Ste. Martine Village)," in *1843 Report*, 93.
[109] "Answers of Censitaires of the Seigniory of Beauharnois (Ste. Martine Village)," 93; "Answers of T.C. Simon, Censitaire in Malbay," in *1843 Report*, 166.
[110] "Answers of the Censitaires of De Léry, Longueuil, and Laprairie," 97.
[111] See *Edicts, Ordinances, Declarations and Decrees*, 245.
[112] "Answers of Censitaires of the Parish of St. Cyprien," 99.

their members, the original concession deed contained a payment of three pence per arpent, but "the *titre-nouvel* compels the same land to pay four pence half penny per arpent, which sum was insisted upon by the *Seigneur* at the time of granting the said *titre-nouvel*."[113] In Lachenaye in 1810-11, the inhabitants recollected, the seigneur "caused to be given up to him different deeds of concession which were in the possession of his Censitaires, and gave them others, raising the rate of the rents."[114]

One vividly distasteful incident involved an outright refusal to grant titles so that rents could be set at the whim of the seigneur. In the Fief Mary Anne and Lanaudière, the seigneurial agent had recalled the residents' titles, claiming that it was necessary to inspect them.[115] When they requested their return, they were told that the agent had brought them to Montreal. Despite "requests, prayers, solicitations, [and] entreaties" to have them returned, they were permanently deprived of their titles.[116] The seigneur (or his agent) thus not bound by any contractual agreement, rents across the seigneury rose to nearly double what they had been previously; in the case of a Mr. Hebbert, it was four times as much.[117]

Retrait

Another vexation was the right of *retrait*, which permitted *seigneurs* to preempt, within forty days, any purchase of land by paying the agreed-upon sum himself, and thus discourage efforts to get around the *lods et ventes* payment. The Berthier censitaires put it best:

> [the right is] very onerous to the *Censitaires*, as it is generally an object of speculation, either from the new possessor consenting to allow his rent to be raised for the purpose of preventing the *Retrait* or from a third person giving a sum of money to the Seignior, to exercise it, and then giving up to him the immoveable property thus purchased, or from

[113] "Answers to the Questions submitted to the Censitaires of the Seigniory of Lacolle," 100.
[114] "Answers of Censitaires of the Seigniory of Lachenaye," in *1843 Report*, 111-112.
[115] "Answers of the Inhabitants of the Fief Mary Anne and Seigneurie de Lanaudière, to the questions to them submitted by the Commissioners," in *1843 Report*, 120.
[116] Ibid.
[117] Ibid.

> the new possessor being obliged in order to prevent the *Retrait*, to state in the deed a higher price than he really paid, and being thus compelled to pay *lods et ventes* in proportion.[118]

Examples of such conduct abound. The *habitants* of Lachenaye called the right of *retrait* "very onerous, and has disappointed many young people who sold lands in order to purchase others," for sometimes after the purchase was agreed, the seigneur would demand a payment not to exercise the right.[119] Those who did not or could not pay would find themselves "turned out upon the highway."[120] T.C. Simon told of a time that he personally had to pay 20 pounds, no small sum at the time, to prevent the right of *retrait* from being exercised.[121] In St. Joseph de La Beauce, after a sale of land for 125 pounds, the seigneur demanded of François Nadeau a *lods et ventes* payment equivalent to what it would have been had the price been 150 pounds. The seigneur threatened "to take his land *en retrait* if he did not pay him this sum, which the said *Censitaire* was obliged to do, to avoid being dispossessed of his land."[122] Finally, one censitaire found his land taken *en retrait* by a seigneur who proceeded to offer the land to a friend at precisely the price initially paid by the censitaire.[123]

Banalité

Last in the litany of complaints was the *banalité*, a benefit which ostensibly accrued to both party by forcing the seigneur to build a mill while giving him a monopoly on milling within the territory. This right, spelled out in the *arrêt* of 1686 and the frequent subject of intendants' *ordinances*, had also become a pale shadow of its former self. Many censitaires complained that there was no functioning mill at all, as in Lacolle or in Murray Bay, where censitaires had to

[118] "Answers of Censitaires of the Parish of Berthier," 111.
[119] "Answers of Censitaires of the Seigniory of Lachenaye," 111-112.
[120] Ibid.
[121] "Answers of T.C. Simon, Censitaire in Malbay," 167.
[122] "Answers of Certain Censitaires of St. Joseph de la Beauce," in *1843 Report*, 175.
[123] Ibid., 176.

walk 10-12 miles to the closest mill, as their seigneurial one had burned down and the seigneur would "neither build a mill nor let us build one."[124] Others lamented that their mill "often produc[ed] bad flour" or lacked the capacity to "grind the corn for the public wants."[125]

In some parishes, mills existed, but censitaires hoping to grind their grain had to compete with "speculators," who were willing to pay more to the seigneurs for the right to use the mill. In St. Cyprien, the inhabitants protested, there was "no Seigneurial Mill, with the exception of a wretched mill belonging to the speculators."[126] Elsewhere, residents were frustrated to find that "strangers frequently get their grain ground before the *Censitaires* of the parish," or concluded that the local banal mill would more aptly "be called manufacturing mills, since they grind all the grain brought to them, from whatever place it may come."[127]

The effect of all this mistreatment and extortion was to utterly demoralize the censitaires. As the 1843 Commission sympathetically noted, "no system can be devised better calculated to keep a man in perpetual subjugation."[128]

VII. "Above What the Seigneurs Were Warranted in Charging by Their Charters": Popular Memory, Legal Understanding and the Sense of Decline

Censitaires' complaints frequently made reference to the past. Disgust with the seigneurs' behavior was grounded in the understanding that the exactions were contrary to the laws of the *ancien régime*, as ratified by the Quebec Act. The working of the seigneurial system was not only unfair or financially unsustainable, but *worse than what it used to be*. The censitaires who

[124] "Answers to the Questions submitted to the Censitaires of the Seigniory of Lacolle," 100; "Answers of Certain Censitaires of the Seigniory of Murray Bay, in the County of Saguenay," in *1843 Report*, 196.
[125] "Answers of the Censitaires of De Léry, Longueuil, and Laprairie," 97; "Answers of Censitaires of the Parish of Berthier," 111.
[126] "Answers of Censitaires of the Parish of St. Cyprien," 99.
[127] "Answers of Censitaires of the Parish of Berthier," 111; "Answers of Certain Censitaires of the Seigniory of Murray Bay, in the County of Saguenay," 196.
[128] "Report of the Commissioners," 11-12.

transmitted their views to the Commission rarely argued that the regime was inherently outdated or unsuited for modern life; they instead argued that it its operation was not in keeping with what had come before nor legal under the laws of the *ancien régime*.

These references to the past sounded in nationalism and were related to the continuing desire to preserve and appreciate Frenchness. No doubt this was behind such expressions as the desire to return to the "laws and institutions under which my ancestors lived," in the words of a man living on Isle aux Coudres situated in the middle of the Saint Lawrence River.[129] Yet such statements were not merely sentimental or grounded in fantasy. On the contrary, nearly every dispatch from the censitaires demonstrated knowledge of the way things had been done generations before. These were often backed up by specific statistics or even citations to the legal authorities of the *ancien régime*.

The elevated rates imposed by seigneurs were, as we have seen, the frequent object of complaint. Yet rather than simply denounce them as unaffordable or unjust, the censitaires—evidently many of them in possession of older deeds, passed down by ancestors or previous owners—could prove that the exactions were higher than "those on which lands were originally granted," as articulated by the residents of Beauharnois.[130] The censitaires in Fief Mary Anne mentioned above also complained about the two- or even four-fold increase in the *cens et rentes*.[131] Citing specific figures, several different groups correctly stated that the "ancient rates" had been one *sou* (in some places one *sou* plus a quart of wheat) per arpent of riverfront land.[132]

---

[129] "Answers of Joseph Perron, N.P., Isle aux Coudres," in *1843 Report*, 151.
[130] "Answers of Censitaires of the Seigniory of Beauharnois (Ste. Martine Village)," 93.
[131] "Answers of the Inhabitants of the Fief Mary Anne and Seigneurie de Lanaudière," 120.
[132] See "Answers Made by Certain Censitaires of the Seigniories of Deschambault and Lachevrotière," 169; "Examination of Jean Baptiste Saurette dit Larose, Manuel Vien and Joseph Fortier, All of the Parish of St Jean Baptiste, In the Seigniory of Rouville, and Censitaires in that Seigniory, Taken Before the Commissioners," in *1843 Report*, 209.

The new exactions were not only higher than what had come before but also, as the censitaires understood, violated the laws as established by the kings and enforced by the intendants, from which the seigneurs could not deviate in the absence of an affirmative law. The censitaires at St. Cyprien referred generally to various "illicit acts," while those in Beauharnois recounted that various "objections were made as to the legality of exacting" higher rates than had previously been charged.[133] Others asserted that the exactions were "above what the Seigneurs were warranted in charging by their charters…he was exacting more than he had a legal right to do."[134] Summing up, a group of three censitaires of the parish of St. Césaire, Augustin Sans-Souci, Joseph de Coigne and Prudent Huot, declared themselves "anxious to return to the old standard of *cens et rentes*, which they firmly believe was fixed by Royal authority, at the time of the concession of Seigneuries."[135]

Going beyond such vague invocations of previous law, some censitaires even cited to decades-old sources to buttress their claims. Many referenced the *arrêts* of 1711 (or at least that specific date). The censitaires of Lacolle specifically point to this *arrêt,* citing also to a 1790 report by Solicitor General Williams (discussed at greater length below), in which the official had opined that the French laws were still in force. The censitaires even helpfully affixed a copy of the report to their dispatch.[136] The *habitants* of Fief Mary Anne, as well as François Vielle, of Rivière-du-Loup, also pointed to the year 1711 and the means of enforcing limits, with "severe fines for transgressions."[137] Other documents reference petitions sent by censitaires to the

[133] "Answers of Censitaires of the Parish of St. Cyprien," 98-99; "Answers of Censitaires of the Seigniory of Beauharnois (Ste. Martine Village)," 93.
[134] "Answers to the Questions submitted to the Censitaires of the Seigniory of Lacolle," 101.
[135] "Examination of Augustin Sans-Souci, Joseph de Coigne and Prudent Huot, all of the Parish of St. Césaire," in *1843 Report*, 201.
[136] "Answers to the Questions submitted to the Censitaires of the Seigniory of Lacolle," 100-101.
[137] "Answers of the Inhabitants of the Fief Mary Anne and Seigneurie de Lanaudière," ("severe fines") 122; "Answers of François Vielle, and others, of Rivière-du-Loup," in *1843 Report*, 194.

legislature of Lower Canada calling for the reduction of rent to the "amount customary previous to the year 1711…and complaining of the neglect of the Seigneurs to comply with many conditions contemplated in their charters."[138]

The censitaires' sense that seigneurialism had been distorted, bolstered by the collective memory of a previous, albeit somewhat mythologized, period of balance and contentedness under the French, explains the ultimate abandonment of the seigneurial system by the peasants. Lingering attachment to the old ways could not last. Even those who praised the initial system during this period felt the need to qualify their support. A.J. Christie, who had called seigneurialism "pregnant with advantages" had added parenthetically, "if the original system be fairly acted upon."[139] The censitaires of Deschambault and Lachevrotière, too, insisted on their "prefer[ence for] the Seigneurial Tenure," but only "provided that the Seigneur is obliged to concede the lands."[140] Support for the system was thus contingent on the maintenance of balance between the parties. It was clear to all that this no longer existed—and that the legal system was to blame.

VIII. "The Seigniors Have Always Had Their Own Way": Seigneurialism and Law under British Control

The evidence shows, and the censitaires evidently recognized, that law played a significant role in reshaping relations between seigneurs, censitaires and the state. Inconsistent (or more frequently, nonexistent) application of the *ancien régime* laws under the British had taken its toll, and it was by no means accidental. As the records of the 1843 Commission make clear, under the British, judges almost uniformly ruled in the *seigneurs*' favor. This was in part

[138] "Answers of G. Rowe, Esquire," in *1843 Report*, 94.
[139] Christie, *The Emigrant's Assistant*, 61.
[140] "Answers Made by Certain Censitaires of the Seigniories of Deschambault and Lachevrotière

because only seigneurs themselves could afford to institute and competently pursue cases. Censitaires were often unable to afford litigation, meaning they were consistently on the losing side or, more frequently though unquantifiably, were unable to bring their own meritorious claims. This helped create precedents that further enabled seigneur abuses and increased censitaire disgust with the system. As I will argue in this section, this new status quo was not a product of ignorance or inattention on behalf of the British government. There is considerable evidence that major legal officials in Canada believed that the French laws were still in effect, but that censitaires would be unlikely to successfully invoke them.

The Application of French Law

Several 18th- and 19th-century sources show that colonial officials understood and acknowledged that the French laws on seigneurialism, as they had existed at the time of the conquest, were still in effect. Solicitor General Williams' 1790 report, which the Lacolle censitaires referred to and included in their communication to the Commission, had laid out in depth his understanding of the law, including the state's role in taking back land from parties who had not complied with the law. He reported that under the 1711 *arrêts*,

> the Seigneurs were bound to concede lands to their *sub-feuditors* for the usual *cens et rentes et redevances*, and by the *arrêts* of the 15th March, 1723, upon non compliance on the part of the Royal grantee, the Governor and Intendant were empowered and directed to concede the same on the part of the grown, to the exclusion of the grantee, and the rents to be payable to the Receiver General. The grantees are thereby also restricted from selling any wood lands upon pain of nullity of the contract of concession, a reunion of the land to the royal demand.[141]

Only four years later, Governor-General Carleton had the attorney general write an official opinion which reasoned that "the edict[s] of the 6th July 1711 [are] still in force" and as a result,

[141] "Extract from the Report of J. Williams, Esquire, Solicitor General, at Quebec, delivered to the Governor and Council, by special order of His Excellency the Right Honorable Guy Lord Dorchester," in *1843 Report*, 102.

"the *reditus* fixed by the deeds of concessions can never be increased by the seigneur under any pretence whatsoever."[142]

This understanding was by no means a fleeting one. Years later, it still held; in 1836 or 1837 the attorney general testified that "I am of opinion that those *arréts* are in force as to all seigneuries.[143] And the members of the 1843 Commission themselves were of the opinion that such decrees were "still the law of the land" and that the British-erected courts in Canada possessed "full power and authority to enforce [them]."[144]

Institutional Shortcomings: The Disappearance of the Intendants

The courts applying the law, however, proved an imperfect fit with the system. The French intendant, possessed of jurisdiction "both judicial and administrative," historically empowered and willing to protect the interests of the censitaires, had no equivalent under the English system.[145] They were not only legal actors but could also strike down exactions on public policy grounds, freely striking down demands "that might be regarded as oppressive or at variance with his own ideas as to the proper relations" between seigneur and censitaire.[146]

With no person holding such plenary authority under the English, the courts assumed the judicial role of the intendant. The Commission explained that the "judicial power of the Intendant was transferred to the Court."[147] Yet their discretion in decision-making was constrained; as Munro explains, the English courts had "to administer what they conceived to be the law; they had no authority to issue decrees dictated by the interests of public policy but

[142] *Titles and Documents Relative to the Seigniorial Tenure*, 94-95.
[143] "Attorney-General's Evidence," in *Reports of the Commissioners Appointed to Inquire into the Grievances Complained of in Lower Canada* (London: publisher not identified, 1837), 47.
[144] "Report of the Commissioners, 10.
[145] Munro, *Documents Relating to the Seigniorial Tenure*, ciii.
[146] Ibid., civ.
[147] "Report of the Commissioners," 10.

repugnant to legal enactment."[148] In other words, even those exactions that appeared unfair or onerous would be enforced unless strictly illegal. As we shall see, demonstrating the illegality of such exactions proved impracticable for censitaires.

This institutional shift helps explain the censitaires' lack of success in the courts—but only partly. The 17th- and 18th-century *arrêts* which had so clearly spelled out the basic duties of the seigneur were clearly still in force. Moreover, the 1843 Commission opined that the courts could rely in their judgments on "the jurisprudence established before the conquest," presumably including those precedents issued in the intendants' *ordinances*.[149] These were evidently widely available, informing the attorneys and solicitors general who opined on the regime's continued applicability. All these had concurred: English courts were clearly empowered, indeed obligated, to enforce the decrees that formed the cornerstone of seigneur-censitaire law under the *ancien régime*.

Courtroom Defeats

As many censitaires discovered, however, the jurisdiction of the courts did not always guarantee fair or even reasonable application of the laws. Censitaires rarely managed to prevail in disputes with seigneurs before British judges. This worsened the daily lives of censitaires and inculcated a firm belief that the system was rigged against them. It appears that despite widespread acknowledgement that French laws on compulsory land concession (especially the *arrêts* of 1711 and 1732) still applied, in no cases did courts force a seigneur to make a grant when he refused to do so, thus "depriv[ing] of its former effectiveness the important rule of law in regard to compulsory subinfeudation."[150]

[148] Munro, *Documents Relating to the Seigniorial Tenure,* civ.
[149] "Report of the Commissioners," 10.
[150] Munro, *The Seigniorial Regime*, 220.

The 1843 Commission's report similarly noted that courts had generally declined to enforce the rule against exacting high or inconsistent rates from censitaires, saying they "have maintained that the Seigneur had the right of conceding upon such terms and for such rents as he might agree upon with his tenant; and have refused to give relief to the censitaires from such conventional burthens."[151] In fact, they could only find one example of the peasant prevailing: "however unfounded the pretensions of the Seignior…he has in the Courts…invariably been successful in all his contests with his tenants, with the exception of a single instance."[152] While there is in fact evidence of other limited censitaire victories, these were very rare exceptions. The Commission asserted that the courts had "departed not only from the strict letter of the law, regulating the tenure under the French Government, but from the true spirit and policy of that law, and the conditions of the original grants."[153]

If the courts were unwilling to use the existing laws in the censitaires' favor, they frequently found reasons to side with the seigneurs. While the Commission could not find an instance of courts relying on the first Marly *arrêt* to force seigneurs to concede, the second *arrêt*, forcing tenants to reside on their grants on pain of forfeiture, had been "frequently enforced" since the conquest, according to the solicitor general.[154] In his letter to the Commission, a "W. Berczy, Esq." related one such instance, in which Philippe Panet—who would one day be a Justice on the Court of Queen's Bench, demonstrating the tight links between the seigneurial and judicial classes—"instituted actions *en ré-union* under the [second] Royal *Arrêt* of the King of

[151] "Report of the Commissioners," 10.
[152] Ibid.
[153] Ibid.
[154] Ibid.

France, of 6th July, 1711, against certain Censitaires who did not occupy their lands…or clear and cultivate them agreeably to the conditions of their deeds."[155]

Courts also upheld seigneurial exactions on dubious contractual grounds, often ignoring implicit or outright coercion. The censitaires of Lacolle recollected that they had requested that the Courts invalidate certain illegal provisions, but that judges had "invariably, of late years, set the charter [presumably the first *arrêt* of 1711] aside, and condemned them on the contract, as if it were a voluntary one."[156] While conceding that a deed was "on the face of it a contract of a voluntary nature" they argued that "it was really not so, inasmuch as it was coerced."[157]

It was clear to many that the courts were unfriendly towards the complaints of the censitaires. This posture had, in turn, further empowered the seigneurs and set precedents that would further dishearten censitaires, undermining faith in the system. A sympathetic seigneur, M. de Sales Laterrière of Les Eboulements, denounced the "silence of our Courts of Justice on the illicit acts of those persons which have brought this system and its protecting laws into disrepute."[158] The effect of these substantive decisions was, according to the censitaires of Berthier, to discourage the bringing of claims in the first place. They reported that if censitaires "have not more often brought their complaints before the tribunals, it is because experience has convinced them of the protection which was there granted to the stronger side."[159]

Barriers to Seeking Redress

Even more than the lack of sympathy received from judges, it was the practical inability to get into and prevail in court that helped distort the system. The censitaires were by no means

[155] "Answers of W. Berczy, Esq. (Daillebout," in *1843 Report*, 114.
[156] "Answers to the Questions submitted to the Censitaires of the Seigniory of Lacolle," 102.
[157] Ibid.
[158] "Letter from M. de Sales Laterrière, Eboulemens," in *1843 Report*, 166.
[159] "Answers of Censitaires of the Parish of Berthier," 111.

too ignorant or disinterested to get into court; before the conquest, as the intendant Raudot had complained, the censitaires were eager (perhaps excessively so) to take parties to court to defend their legal rights. And as the records of the 1843 Commission show, the peasants were well aware that the increased exactions of the seigneurs were illegal and unprecedented. Yet the distance and especially cost of the courts under the British all but ruled out litigation for a great many censitaires.

The disappearance of the intendant from the scene also helped bring about this change. As he had "exacted no fee for his intervention in any cause, his interposition might be had by the poorest habitant."[160] After the conquest, however, litigation was so expensive that many were essentially debarred from seeking judicial redress.[161] A commission empowered in 1837 to look into rural distress found that the old laws "fell into disuse, probably owing to the expensiveness of proceedings in the King's Bench."[162] They stated that the last proceedings before that Court initiated by censitaires "of which we have any knowledge" had taken place eighteen years previously (perhaps a reference to two suits initiated in 1818 but ultimately dismissed in favor of the seigneurs).[163] While evidence given by the censitaires in the 1843 Report cast doubt on this assertion, that government officials could not find any cases speaks to the rarity with which censitaires were able to initiate suits.

The voices of the censitaires further highlight the prohibitive costs of litigation. Costs varied depending on the court, a fact that seigneurs could exploit by choosing the more costly venue. Many lords would sue in the Superior Court, more expensive than the Inferior Court, so

[160] Munro, *Documents Relating to the Seigniorial Regime*, ciii.
[161] Ibid., cv.
[162] "General Report of the Commissioners for the Investigation of all Grievances affecting His Majesty's Subjects of Lower Canada," in *Reports of the Commissioners Appointed to Inquire into the Grievances Complained of in Lower Canada*, 36.
[163] Ibid.

that censitaires, unable to pay the cost of litigation even if they prevailed, would "find themselves destitute in the street, after having labored hard on these lands, exposed to every possible misery."[164] In St. Cyprien, a certain "Barthélemi Lefebvre, farmer" was sued by his seigneur in court and was forced to sell his land in order to pay court costs (it is not clear whether he won or lost the suit).[165] The seigneur himself bought the land and promised to return it to Lefebvre, but in the event, "having acquired possession of it, turned the former proprietor from off it."[166]

Even those exceptional censitaires who managed to initiate a suit and win could find themselves unable to pay the necessary cost of litigation or appeal. In L'Islet, a man named Michel Bernier sued a seigneur who had attempted to force him to take out a new deed containing dues differing from the old. The suit took one or two years to finally be heard, yet Bernier convinced the court of his position and was not forced to accept the deed.[167] Nonetheless, he "found it impossible to pay the costs" of litigation; his land was thus sold off, with the offending seigneur reaping the benefits of the *lods et ventes* in the process.[168] One Jean Terrien of the De Léry region was able to obtain judgment in his favor; yet "the said Seigneur wishing to appeal in England [to which he was entitled], and the said Terrien being too poor to go to England," he was forced to reach a compromise with the seigneur.[169] His fellow censitaires lamented, "Thus the Seigneurs have always had their own way, and done as they pleased."[170]

---

[164] "Answers of the Censitaires of De Léry, Longueuil, and Laprairie," 98.
[165] "Answers of Censitaires of the Parish of St. Cyprien," 99.
[166] Ibid.
[167] "Answers of François Guisson, of L'Islet," in *1843 Report*, 183.
[168] Ibid.
[169] Answers of the Censitaires of De Léry, Longueuil, and Laprairie," 97.
[170] Ibid. In a separate communication to the Commission, "Edouard Desbarats, Esquire" informed them that he had been unable to find records of this case. "Letter from Edouard Desbarats, Esquire," in *1843 Report*, 71.

The inability to pay to initiate and sustain litigation meant that the *censitaires* were nearly always the defendants, while the willingness of the courts to side with the seigneurs meant they were also nearly always on the losing side. This created a positive feedback loop, whereby the inability to defend one's interests in court created precedents that served to impoverish the *censitaires*, only making it harder to go to court and to win and reinforcing the notion that the system was rigged against them. These substantive and procedural injustices are therefore interrelated. Unfavorable judicial decisions discouraged *censitaires* from going to court even if they could afford to; and their inability to institute suits or convince judges to uphold their position only helped to further reshape the law in the *seigneurs*' favor.

Cognizant of the combined effect of these two factors, the censitaires ultimately despaired of seeking help from the courts. One group averred, "A great many instances of hardships might be adduced shewing the bad working of the system, but these evils it is impossible to obviate, as the Courts of Justice have sanctioned them, and the costs of contestation are enormous."[171] The inhabitants of Fief Mary Anne and Lanaudière put it even more plaintively:

> "All these complaints in whatever quarter made, have done but very little good; and after positive injury, by expenses beyond our means for travelling, legal advice, official applications, and the loss of time by dancing attendance upon the people in office, who in almost every individual instance…seemed as if they identified themselves with those in power, and abuses, and kept putting off with promises, pleas of want of formality, wrong office, want of time, besides ten thousand other *civil* excuses, until becoming tired with running from Peter to Paul, straitened in means, we have been obliged to give up in despair and disgust, and return to fill our fields, gaining thereby loss of time, of money, but with the honorable Title of Squatters."[172]

[171] "Examination of Jean Baptiste Saurette dit Larose, Manuel Vien and Joseph Fortier,"
[172] "Answers of the Inhabitants of the Fief Mary Anne and Seigneurie de Lanaudière," 122.

It is clear, then, the role that law played in both the rise and fall of the seigneurial regime. Under French rule, the substantive law as well as the access to legal redress created a system that incented settlement (albeit at the expense of indigenous peoples) and imparted to censitaires a "degree of happiness known in no other country in the world."[173] The blocking off of avenues to justice undermined support for the system among those who had once stood to gain the most from it. Paradoxically, it was British rule that turned French seigneurialism into the sort of rotten, exploitative system much more commonly associated with the Bourbons.

IX. "Deprives Them of the Possibility of Obtaining Justice": Legal Pluralism and the Refusal to Administer Justice

Now that we have seen the role that the law played in reshaping the regime, it remains only to explore the motives behind these seismic changes in the seigneurial landscape. Some have unconvincingly argued that the system shifted merely because the British were disinterested—Trudel indicated that the authorities were "interested only in free and common socage did not feel compelled to intervene."[174]

It cannot be maintained, however, as was once said of the British Empire's formation, that these changes occurred in a "fit of absence of mind."[175] That the law was responsible for the changes to the regime would by no means have been a surprise to British administrators. In 1794, the province's attorney general had given his opinion that, while under the French system peasants "would have found an immediate remedy upon application to the court of the [intendant]," they could do no such thing under the new status quo.[176] The poverty of the tenants

[173] Chevalier Robert D'Estimauville, *Cursory View of the Local, Social, Moral and Political State of the Colony of Lower Canada* (Quebec: T. Cary & Co., 1829)
[174] Trudel, *The Seigneurial Regime*, 19-20.
[175] E.H.H. Green, "the Political Economy of Empire, 1880-1914," in *Oxford History Volume III*, 346.
[176] "Attorney-General's Evidence," 95.

prevented them from seeking redress; even those able to "institute and carry on their suits" would run into the "enormous expense attending an appeal to His Majesty in council, to which the seigneur is entitled."[177] Such costs "compels them to abandon their rights, and throw themselves upon the mercy of their antagonist, who…grants a new deed of concession upon his own terms."[178]

The evidence shows that the decline in enforcement and raising of barriers to justice, a crucial factor in worsening and undermining support for the seigneurial regime, was at best a foreseen circumstance about which the British had done nothing—at worst, a conscious choice. In the 1790s, a resolve of the Council for the Affairs of the Province had decided that there was no ground "for holding the grantees to a rigorous performance of the condition of their grants."[179] As early as 1821, Attorney General Andrew Stuart concluded that the government had "allowed the law to be as a dead letter…[there has been] neglect of the Colonial Administration to enforce the laws of the land relating to grants."[180] He acknowledged that "no such negligence as this appears to have existed" under the French; on the contrary, the "various Ordinances enforcing upon the Seigneurs the performance of obligations which they were anxious to evade, exhibit[ed] the greatest desire on the French Crown to check the very abuses which we have now to deal with."[181]

The choice to do little to secure justice for the peasants sits uneasily with a view, held by many over the years, that British rule in Canada was motivated by "benevolent humanistic impulses" or that the Quebec Act "'liberated' the servile Canadians to elevate them to British

[177] Ibid.
[178] Ibid.
[179] "Resolves of the Council, 1790," 40.
[180] Quoted in "Letter from J.W. Dunscombe, Esquire, M.P.P., Montreal," in *1843 Report*, 215.
[181] Ibid.

liberty."[182] How, then, can we explain such deliberate neglect? One could explain the choice by pointing to demographic trends. If one effectively reverses the Diamond model[183],which posited that the need to import white Francophone settlers encouraged concessions from both the crown and the seigneurs, one can plausibly explain the decline in enforcement. On this view, the British (a small minority following the conquest) simply had no incentive to attract more French-speaking censitaires or to make their lives appreciably better. Indeed, the population of the province, growing 65,000 during the conquest to 650,000 in 1850, reduced the need to make such concessions. There was little further need to "people" (*octroyer*) the valuable lands, and thus the government's posture could change.[184] Yet this still does not explain British policy. The demographic explosion of the 19th century had not been foreordained, and such considerations do not appear to have factored into British thinking.[185]

Given the evidence, the refusal to faithfully apply French law was rooted in a more cynical approach to empire and understanding of the transformative power of law. These had begun to emerge around the time of the Conquest, when the British were forced to decide which system of law would prevail in French Canada. These ideas held that the law, both in the substantive and procedural sense, could shape or reshape societies, lift people up or keep them down.

Much evidence of this strand of British thinking has emerged from the work of historians focusing on legal pluralism. As expounded most notably by Lauren Benton, legal pluralism is the

---

[182] Donald Fyson, "The Quebec Act and the Canadiens: The Myth of the Seminal Moment," in *Entangling the Quebec Act*, 74-75; Wallot, "Le Regime Seigneurial et Son Abolition," 393 note II (describing the views of L.F. Solt).
[183] See Section III.
[184] J.C. Taché, *De la Tenure Seigneuriale en Canada, et Projet de Commutation* (Québec: Lovell & Lamoureux, 1854), 4.
[185] Wallot, "Le Regime Seigneurial," 379.

"conscious [effort] to retain elements of existing institutions and limit legal change" within a newly acquired territory.[186] Such efforts can certainly be interpreted positively, as scholarship regarding the Quebec Act has made clear. As we have seen, historians have called it a liberation of the French Canadians, part of a "moral conquest" which "laid the foundations of French-Canadian trust in the justice of British rule," or the embodiment of a "gradual but palpable liberalization [policy] defined by significant concessions to local sensibilities."[187]

Recently, scholars of empire have called into question the prevailing narrative that the decision to preserve French civil law was a benevolent, humanistic act. Some have suggested that the Quebec Act was simply a cynical sop to all French Canadians, intended to ensure that should Britain and France, then "chronic foes," go to war again (as they in fact would in the latter half of the 1770s), there would be no fire in the rear.[188] They argue that the increasing restless of the thirteen colonies just to the south played a role in this calculation. There is some evidence for this view; Governor-General Guy Carleton had urged Whitehall to adopt policies to prevent Quebec from becoming "united in any common principle, interest, or wish with the other Provinces."[189]

Even this, however, does not go far enough. While it helps explain why, as a rhetorical instrument, the retention of French civil law was meant ensure *habitant* loyalty, it does not address why the British in substance did not uphold the fundamental principles underpinning French-Canadian land tenure. If the goal was actually to appease the censitaires, this strategy was wildly wrongheaded.

---

[186] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge, UK: Cambridge University Press, 2001), 2.
[187] Wallot, "Le Regime Seigneurial et Son Abolition," 393 note II (describing the views of L.F. Solt); Christie, *The Formal and Informal Politics of British Rule*, 384 (describing the views of other scholars).
[188] A.L. Burt, "The Problem of Government, 1760-1774," in *Cambridge History, Volume* II, 146.
[189] Christian R. Burset, "Why Didn't the Common Law Follow the Flag," 105 *Virginia Law Review* (2019), 506.

The decision to retain, but not enforce, French law was, instead, the result of an effort not to mollify, but to further subordinate, the censitaires. As a group whose language, customs and religion were foreign to the British, and who lacked the political or financial resources of the seigneurs, they were the targets of a two-pronged divide-and-conquer strategy. Francophones were in general subjected to discrimination, as the rulers "formulate[d] cultural boundaries that would justify British domination."[190] Yet as we have seen, even within this ethnic group, the censitaires were the least protected by the law under the British. This explains the choice to curry favor (to a degree) with the seigneur class in order to solidify elite support for the regime.

The writings of Christian R. Burset have demonstrated that, in the 18th and 19th century, the British government used law, and legal pluralism, as an "instrument of imperial exploitation," employed to hinder rather than to help their new French-Canadian subjects.[191] Burset notes that throughout the seventeenth and early eighteenth century, "some version of English law had generally followed the Union Jack."[192] This changed around the time of the Quebec Act, when "Britain's projection of power [began to depend] not on the extension of English law but on its restriction."[193] This stemmed from a new understanding of the power of legal ordering, which (Benton has argued) was integral to the ordering of the colonial state.[194] Such an epiphany coincided with the "triumph of a particular vision of the British Empire—politically hierarchical [and] economically extractive."[195] The British still believed that their system engendered liberty and wealth, and that they could, should they desire it, "turn any

[190] Christie, *The Formal and Informal Politics of British Rule*, 385.
[191] Burset, "Why Didn't the Common Law Follow the Flag," 488.
[192] Christian R. Burset, *An Empire of Laws: Legal Pluralism in British Colonial Policy* (New Haven, CT: Yale University Press, 2023), 2.
[193] Burset, "Why Didn't the Common Law Follow the Flag," 528-529.
[194] Benton, *Law and Colonial Cultures*, 253.
[195] Burset, *An Empire of Laws*, 9.

territory into an anglicized, commercial colony."[196] The denial of it to the French-Canadians, then, was not so much a genuine concession as it is often seen.

These factors, responsible for what C.A. Bayly has called the "authoritarian turn in the British imperial system" in the late 18th century, help explain the British approach to governing (or, in the case of the seigneurial regime, declining to govern) Canada.[197] Uncertain of the loyalty of thousands of Catholic, French-speaking subjects, imperial officials sought to make Quebec "easy to govern and economically dependent on the rest of the empire," thereby promoting a "due sense of obedience."[198] Retaining the French system, less free and less profitable in their eyes, was therefore a way to appear humane while in reality subjugating the French-speaking population.

Law, then, was wielded as a weapon against Canada and in particular its French-speaking inhabitants. Its use was evidently not limited to discrimination on the basis of nationality. Class also played a major role. As Lauren Benton has shown, the politics of legal ordering often features the maintenance of existing institutions "as a way of sustaining social order."[199] Eager to preserve hierarchy (and therefore maximize security), the British understood that they had to secure the loyalty of the landed elites, some of the most prominent French-Canadians remaining in the colony following the conquest. It is with this understanding that we must analyze the decision to privilege the seigneurs over the censitaires.

Concerns with social hierarchy were present from the beginning. Governor-General Carleton believed that the seigneurial regime ensured "subordination, from top to bottom" and argued vigorously during Quebec Act debates that retaining the tenure would help win the

---

[196] Burset, *An Empire of Laws*, 9.
[197] Described in Aaron Willis, "Rethinking Ireland and Assimilation," in *Entangling the Quebec Act,* 184-185.
[198] Burset, *An Empire of Laws*, 11-12, 69.
[199] Benton, *Law and Colonial Cultures*, 2.

support of the seigneurs.[200] Lord Edgmont also argued that feudal land tenures helped to stabilize colonial politics by keeping in place such a social structure.[201] The influential lawyer Francis Maseres argued, for his part, that seigneurialism

> preserved a reasonable and moderate subordination of the freeholders to their respective Seigneurs, productive of respect on the one side, and affection on the other, and which is extremely consonant to the constitution of every species of monarchical Government.[202]

The belief that the system would help retain social structure and prevent revolt against the British government by keeping the landed elites in line explains the British approach to the seigneurial regime. Keeping in place the French system in name, while declining to allow their subjects to enjoy its benefits, would serve to create both ethnic and social subordination. The incentive to give seigneurs a free hand only increased as the seigneuries progressively passed into British hands—approximately one-quarter of seigneuries had passed from French into British hands by 1790.[203]

Eventually, then, the two goals—ensuring social structure and keeping the French-Canadians economically weak—converged, providing all the more reason to construct and maintain a legal system which held out little hope for justice for the peasants. No longer associating seigneurialism with Frenchness, and unable to obtain through legal channels the more just treatment that their ancestors had often enjoyed, the humble censitaires finally abandoned the system.

X. Conclusion

[200] Michel Morin, "Choosing between French and English Law: The Legal Origins of the Quebec Act," in *Untangling the Quebec Act*, 117-118.
[201] Burset, *An Empire of Laws*, 66.
[202] Quoted in Morin, "Choosing Between French and English Law," 117.
[203] Christie, *The Formal and Informal Politics of British Rule*, 3.

The role of law in both maintaining and undermining seigneurialism has been overlooked. By declining to enforce the system as it had initially operated, the British tipped the scales in favor of the landed elites that the French had assiduously tried to keep in check. Denying access to justice ensured that the cases that censitaires could have won never came to trial, while those in which censitaires were even arguably at fault were vigorously litigated. These cases helped create precedent unfavorable to the censitaires, making them despair of justice and worsening their quality of life. This dynamic's emergence was not unexpected to the British, who can (one can only conclude) intended for it to take place—or at least did not lose any sleep over the prospect.

The documented deterioration in *seigneur-censitaire* relations therefore was not merely a matter of economics. Nor was seigneurialism simply unsuited for the realities and principles of 19th-century North America. Instead, its decline came about as the result of a perceptible and intentional approach to legal administration that reflected a divide-and-conquer strategy, pitting one group against another along two separate axes. This meant keeping French-Canadians subservient to the Anglophone minority. But it also required dividing Francophones by class in order to retain the loyalty of local elites, keeping seigneurialism in place in name—providing a fiction of legal pluralism—while in fact giving seigneurs free reign over their helpless tenants. Over time, as pluralism revealed itself to be mere rhetoric, and censitaires' attachment (waning in any case) to French-Canadian nationalism became severed from their support for seigneurialism, the regime no longer seemed worth keeping. At this stage, there was no going back.