

**Sovereignty and Land Tenure:
the Institutional Foundations of Economic Development
in Atlantica**

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Atlantica

Atlantica sits in the water shed east of the height of land separating the Hudson and the Connecticut rivers. Its foremost characteristic is its fronting on the west coast of the North Atlantic Ocean. Its major rivers are the Connecticut, the Merrimack, the Kennebec, the Penobscot, the St. Croix, the St. John, the Miramichi and the Restigouche. It includes the peninsulas and islands in that part of the Atlantic Ocean into which these rivers drain. It is bounded by the Hudson River and the St Lawrence River drainage basins, both of which provided Europeans with early and easy access to the interior of the continent, the denial of which to Atlantica has contributed heavily to its distinctive integration. In short, Atlantica is New England and the Maritimes taken together.

Land Tenure and Sovereignty

Land tenure systems, that is property rights systems, control the relations of individuals and groups to one another with respect to possession of commodities, chattels, and land. Sovereignty systems control the allotment of possessions by society as a whole to individuals and smaller groups. Sovereignty systems are the structures of ultimate force establishing and enforcing property rights.

Land Tenure and Sovereignty in Atlantica: an Overview

Three generic land tenure and sovereignty systems were involved in the contact between Europeans and the natives of Atlantica. They can be referred to as “tribal”, “feudal”, and “capitalist”. All three operative tenure and sovereignty systems exhibited local variations, and all changed over the period of conflict from the sixteenth century until the end of the eighteenth century. Tenure in New England carried fewer vestiges of feudalism than did British tenure in Nova Scotia. Both were virtually capitalistic. Feudal tenure in Acadia was ill defined compared to that in New France. Indeed, at times in the seventeenth and eighteenth centuries Acadia was withdrawn completely or withdrew to some extent from French sovereignty. Much of New England was always informally

outside the domain of English sovereignty. Further, over the two centuries of contact leading up to acceptance of a settled structure of sovereignty in Atlantica both England and France followed different paths of transition from feudal monarchy to capitalistic democracy. French sovereignty and feudal tenure ended in Atlantica with the cession of New France to Britain in the 1763 Treaty of Paris. Definitive suppression of native sovereignty and tribal tenure was institutionalized in the 1778 convention between Britain and the Wabenaki Confederacy (M.A. MacDonald, 1990, p. 105). British sovereignty and the structure of capitalistic property rights associated with it was established in Atlantica by the 1783 Treaty of Paris, which terminated the American War of Independence and finally obliterated any chance that New England/United States sovereignty and associated property rights would obtain in northeast Atlantica. The issues of 1763, 1778, and 1783 did not terminate the evolution of sovereignty and land tenure in Atlantica, but change became peaceful and its pace slowed.

Native American sovereignty and its associated structure of property rights, existing before contact, hardly falls within the meaning of the terms used to designate them; because both “sovereignty” and “property” have connotations deriving from their context in a European information environment. Except for personal possessions, such as clothing and weapons, ownership among the natives, though never simply communal, was not individual. The details of their arrangements varied among the Mi’Kmaq, Malecite, Abenaki, and Penobscot, and more so between these of the northeast and the Massachusett, Potumtuk, Narraganset, and others of the southwest. Further, where there was a deeper penetration of European commerce and dependence on European goods, individual ownership came into greater use among native Americans.

France had treated America as an empty land (*terra nullius*). As a Christian nation, so it was deemed, France’s sovereignty obtained in any lands it “discovered” in “the New World”. France asserted that it owned territory in America (Dickason, 1953, p. 176), but did not insist on this formality in its dealings with native Americans. Its feudal agricultural colonies did not encroach on native lands, at least no so as to generate resentment. They did not extend into the lands of the agricultural Hurons southwest of the Ottawa River. Lands reclaimed from the Bay of Fundy by Acadians were not available to the Mi’Kmaq in the first place. Further, to Franchisize and Christianize the natives, the French attempted to settle them into agricultural villages. The French in America carried on no substantial activity leading them to parade formal ownership.

French and aboriginal tenure co-existed in relative peace. French sovereignty was asserted insofar as seigneuries were granted without even a pretense of purchasing land from the natives. In Acadia, however, apart from those of D’Aulnay and La Tour, these grants were never effectively taken up. So it was that when France transferred sovereignty to Britain in the Treaty of Utrecht, the British assumed an ownership that the natives were unaware they had given up. Having acquired sovereignty, the British Crown proceeded to grant lands

with a vestigially feudal tenure that in practice, at least in time, became capitalistic private property for Euroamerican planters. Lands were “reserved” for natives in what was called “Indian title”, that is right of occupancy and use, but not ownership in fee simple (Dickason, 1953, p 188).

Disturbance and reformation of native sovereignty and tenure intensified as the market structures of the price system penetrated North America; more so in areas affected by more capitalistic English traders, and less so in areas affected by more feudal French traders. Disturbance came to the point of effective obliteration when planter colonies introduced European agriculture and private property in land. Accordingly, disturbance was most marked in areas most affected by the more capitalistic tenure globalizing from England and where natives were more dependent on sedentary agriculture. It was less marked northeast of the Kennebec River in areas more affected by the feudal tenure of France, and where nomadic hunting and fishing were the principle activities of the natives. So it was that effective suppression of tribal tenure and sovereignty first occurred in New England at the end of the first half of the sixteenth century. Suppression advanced to the northeast with the expansion of New England and of British sovereignty. It ended shortly after the final consolidation of British and United States sovereignty following the American War of Independence.

The process of contact between competing sets of tenure and sovereignty institutions was complicated by changes in the institutions themselves as technology advanced and the geopolitical circumstances of the contact front changed. Europe advanced in navigational techniques, agricultural techniques, and from predominantly feudal political structures to the capitalistic arrangements established by the Glorious Revolution of 1688 in England and to be established by the French Revolution of 1789. Europe advanced from the Age of Sail to the Canal Era, from the invention of the printing press to the Industrial Revolution. Native Americans passed from the Stone Age to the Age of Iron, and gathered themselves from relatively isolated extended family bands into confederacies intended to facilitate both hostile and peaceful contact with one another and with Europeans.

The ravages of disease, the replacement capacity of populations, the strength and staying power of social institutions, and differences and similarities in religious beliefs among the Europeans and between Europeans and native Americans most certainly contributed to events and consequences over the two centuries of conflict between 1600 and 1800. Still, it was technical superiority and the efficiency of associated with sovereignty and tenure institutions that determined the final outcome.

To explicate this I will sketch the nature and evolution of sovereignty and tenure for the English/British, French, and First Nations in Atlantica as the conflict between them played down to a finish. First I will outline the nature of property and sovereignty among native Americans. Next, I will treat these

institutions in New England and England. Following a brief account of the state of things in the territory between the Kennebec and the St. John rivers in the seventeenth century, I will deal with the nature of sovereignty and property rights in Acadia/Nova Scotia, from the Treaty of Utrecht in 1713 to the French and Indian War, 1754-1761. Finally I will adumbrate the story of the establishment of capitalism in land tenure, and the solidification of sovereignties in Atlantica from the Treaty of Paris in 1763, thorough the American Revolution, to the Treaty of Paris in 1783.

Property and Sovereignty among Native Americans

Institutional arrangements among native Americans were the product of Stone Age technology. Globalization of Age of Sail iron technology rendered such institutions irrelevant, at best, and dysfunctional, at worst. The “disintegrating influences of war, disease, alcohol, and Christianity” (Bailey, 1969, p. 45) are undeniable, but these were associated with the pervasive introduction of European instruments ranging from pots through axes, clothing, and fishing gear, to muskets (Bailey, 1969, pp. 49-50, 54-58).

Prior to contact with Europeans, native institutions of property were based on immediate use (Cronan, 1983, p. 62). They implied nothing with respect to space or time. A nomadic people found no advantage in accumulating beyond what could be carried, or in delineating boundaries that would be left unattended for long periods, and returned to under unpredictable circumstances. As bands migrated up rivers to hunt in winter, and back to the sea to fish or cultivate the soil in summer, largely by general agreement, space would be allocated for hunting, fishing or cultivation to smaller groups centered on individual families. Such allocations were honored, both within and between bands, for the purposes for which they were made. By agreement, they could be shared. In southwest Atlantica, allocations for cultivation were more binding in space and time.

In the southwest prior to contact, cultivation provided some three quarters of the natives’s food. In the extreme northeast prior to contact, virtually the whole food supply was gathered in the form of wild animals, fish, and vegetation. Whether this difference was a consequence of the gradation in soil fertility and climate from south to north, or of the slow migration of relatively sedentary cultivation from south to north on the whole continent in pre-contact times, is an open question. In any case, the cultivation of corn, beans, squash and pumpkins did not stop at the Piscataqua, the Kennebec, or even the Penobscot rivers. Only the importance and variety of crops declined from southwest to northeast. Indeed, even the Mi’Kmaq may have been on the cusp of developing agriculture (Spencer and Jennings, 1977, pp. 367 ff.; Trigger, 1985, pp. 365-367; Dickason, 1992, pp. 40, 115). When planters from Halifax arrived at Lunenburg and Chezzacook they found land cleared by Mi’Kmaq ready for settlement (Upton, 1979, p. 48). By then, however, the Mi’kmaq had been tutored in agriculture by the French for over a century, and their pre-contact sources of sustenance were running out (Bailey, 1969, p. 58).

In the southwest, where open spaces for native cultivation were made by deliberate burning of trees, and by seasonal over burning of shrubs and sprouts, the right of “villages” to return to the same lands in the spring was honored. The sachem of a village, the leadership of which he or she maintained by personal charisma and gifts, could be said to “own” a definite territory for the “village”, the use of which he might “exchange” with another sachem. This was not an outright sale, however. The sachem did not own the territory itself, and when left, usually because its fertility was temporarily exhausted, it could be taken up by others. The strength and nature of these rights generated confusion and conflict when native Americans came into contact with emergent individual tenure institutions as New England expanded its frontier to the north and east.

Prior to contact there was little internal cohesion among the native Americans of Atlantica. They were defined partly by the external circumstance of geography. They did not share language and culture with either the Iroquois of the Mohawk Gap or with the Delaware to the south. They were Algonkian, but distinct from the Montagnais and Boethuck, north of the St. Lawrence, who were anthropologically “Eastern Sub Arctic”, The natives of Atlantica were “Northeastern Woodland”(Spencer and Jennings, 1997, p. 399.). They had little intercourse “Eastern Sub Arctic” natives before contact with Europeans. Perhaps some internal trade economically integrated pre-contact Atlantica (Dickason, 1992, p. 77; Trigger, 1985, pp. 143-44, 155.), produce and wampum moving north in “payment” for furs and stone instruments moving south. Still, such trade would not have been organized on a regional basis, but would have been a matter of goods passing locally from one band to another along the coast or on interior trails. How much trade was carried on by sea is not known. Natives in general were not “seafaring” (Spencer and Jennings, 1977, p. 367), still they took their canoes or dugouts perhaps two or three kilometers off shore to fish and hunt for seal. After contact Mi’Kmaq traveled back and forth to Newfoundland making use of smaller European vessels (Dickason, 1992, p. 164).

With the advent of the European trade in furs, in the sixteenth century, native institutions of property and sovereignty began to lose their influence. European technology improved the efficiency of the hunt and created a dependence on goods available only through trade. Hunting parties penetrated further inland as the stock of animals was depleted. Individual ownership of furs taken for trade was strengthened, intermediary monopolies in trade were more aggressively enforced, and conflict with interior bands became more frequent and more destructive. Trade channels involving European goods superceded older internal channels. Violent conflict with Euroamericans and other natives led to the formation of “confederacies”. The first of these was the confederation of southern bands during King Philips War against the New Englanders, 1674-1676. The last was the mid eighteenth century Wabenaki Confederacy, associated with and modeled on the Iroquois League (Walker, 1980, p. 48).

The Expansion of New England: Commercial

The first years of the fishery in northwest Atlantic have not been recorded. When planters and colonists arrived in the seventeenth century, natives all along the coast from Cape Breton to Cape Cod were already in possession of European goods. A resident American fishery began soon after the Puritans arrived in New England. The domestic strength of that fishery lay in its combining winter operations with summer agriculture and with the export of forest products. Its role in the broad commerce of the North Atlantic depended upon events in Europe. Civil war in England in the 1660s had the double effect of stimulating shipping and trade in New England, and of terminating the West Country migratory fishery southwest of Newfoundland (Innis, 1940, p. 110.). Civil war in England and war between England and Holland occasioned the building of ships in New England, where, given extensive virgin forests, the cost of building was lower by a third (Albion, 1972, pp 23-25). The building of ships was related to commerce and commerce was related to the fishery.

New England's development was multi-faceted. The Navigation Acts of 1650, 1661, and 1663 gave its traders an advantage in intra-Imperial shipping. Fish, staves, beef, pork, and peas were shipped to the West Indies for wine, pitch, sugar, tobacco, indigo, and cotton. Some of this merchandise went to England and some to the European continent in return for linen, wool, cloth and clothing, and hardware. Salt cod and furs were an important part of this complex, and as cod and wild animals were depleted in southwest Atlantica the harvest of nature expanded to the northeast. At the end of the seventeenth century, fishermen from Boston, Salem and Marblehead in Massachusetts manned some 300 vessels on the banks off the coast of Acadia. Associated with this advance, hardware and clothing moved from New England into French settlements about the Bay of Fundy in return for furs and, at times, cattle and grain. This trade, expansion on the banks, and the opening of a whale fishery notwithstanding, in the last decades of the seventeenth century, French and Indian attacks drove the English from their land establishments on the coast northeast of the Kennebec.

Economic success in New England led to the dispensation at the end of the War of the Spanish Succession (Queen Anne's War) in 1713, in which Britain gained all of the territory northeast of the Kennebec to the Strait of Canso, and the French were confined to the west coast of the Bay of Fundy from the St. Croix to the Isthmus of Chignecto approximately, to Isle Royale and Isle St. Jean, and north towards the Restigouche River. By then the advance of New England's fishery had produced a center of trade at Canso. Following the Glorious Revolution of 1688, political stability returned in Britain. Under a Parliament exercising the remaining feudal prerogatives of the Crown, Britain attempted to bring the New England colonies to order and to secure their obedience to Imperial trade regulations. This induced New England to expand into illicit trade off Canso, Newfoundland, and the French West Indies. And this, in turn, led to increasing conflict between New England, on the one hand, and the French and

their native allies, on the other, and to the capture of Louisbourg in 1745 by New England forces.

Underpinning this advance in the fishery and trade, New England's agricultural frontier also expanded to the northeast. It advanced more slowly, but it was critical in the definitive issue of contact between Europeans and natives in Atlantica.

The Expansion of New England: Agricultural

In the globalization of European agriculture to Atlantica, French and British, land alienation and tenure systems varied with the structures of sovereignty in the colonizing nations. Early English proprietorial colonies were the product of a feudal monarchy and entailed feudal alienation and tenure institutions. English corporate colonies, to a large extent, experienced capitalistic alienation and tenure institutions. Later British royal colonies, governed by Parliament in right of the Crown, were vestigially feudal, with alienation by grant of Crown land, but virtual private property that is, capitalistic tenure (Harris, 1953). French colonies, corporate under fur trade monopolies, proprietorial, under La Tour and D'Aulnay, and royal under an Indendant in New France after 1663, operated under feudal sovereignty and tenure institutions.

Early New England planters copied the spatial characteristics of late mediaeval English villages, but, inspired by Puritan ideas, they omitted the class structure of late mediaeval feudalism. Further, either operating without a territorial grant, or having the grant mediated by a corporation (the Massachusetts Bay Company, or the Council for New England) they were freed from feudal Royal governance. When an application for a new town was granted by the General Court of Massachusetts, the thirty or so families to whom it was granted met and allotted to each family building places located close to a common for cattle and surrounded immediately by town lots (Russell, 1976, pp. 71-78). The village also had a meeting place that served for a church. In time, individuals received larger freehold allotments farther from the town center. The towns virtually self-governing, and, due to religious homogeneity, rather closely governed. They were immediately successful, not only becoming self-sufficient in food, but producing a surplus to trade for furs (Russell, 1976, pp. 10-20).

Territory taken up by the towns expanded in part by immigration, particularly after 1630 by those seeking refuge from Charles II, and again after 1660 by those seeking refuge from the Jacobean Restoration. More than any other of the English colonies, however, those in southwest Atlantica expanded by natural increase. It was, then, pressure of population that led to the advance of the agricultural frontier. From Massachusetts, Rhode Island, and Connecticut movement of the front was orderly and homogeneous with respect to tenure. No squatting and no haphazard location of allotments was tolerated (Russell, 1976, p. 47). Towns were compact and land was held "in fee simple". There were no rents, no lords, and no bailiffs.

The General Council of Massachusetts, formally recognizing native tenure, required that land taken over by a new town first be purchased from the natives. For Europeans, of course, “purchase” was understood in the context of English common law with respect to property. Unless property was “enclosed” it was not “owned”, and native agriculture did not entail enclosure. In the context of their own system of tenure, the natives were not selling an exclusive right to all uses of the land. They presumed that two might hunt on the same land. They presumed that what was exclusive with respect to one use would not be with respect to another. That animals could be owned regardless of where they roamed – and early settlers set their cattle and hogs to forage at large in the forest – was a puzzle to natives. As the front advanced, and Euroamericans applied English common law with putative justice to themselves and natives alike, confusion and a sense of injustice grew among Amerindians. The early and continuing result was violent conflict. What would be the final issue was clear as early as 1637, when the Pequots were “exterminated” by settlers (Mathews, 1962, pp 20-30). The way to that final issue, however, was neither straight nor without interruption.

Sovereignty and Tenure in Seventeenth Century MidAtlantica

By 1630, the year in which the Massachusetts Bay Company received its grant, ten years after the Plymouth settlement, the coast to the northeast, even beyond the Penobscot, was dotted with English fishing and fur trading posts. Agricultural settlement moved much more slowly, tentatively crossing the Merrimack in 1638, the Piscataqua in 1643 (Mathews, 1962, p. 30) . Beyond these rivers the character of the front was modified. Though settlers arrived from the area about Boston, and they expected town self government, northeast of the Merrimack they were formally under proprietorial grants to Fernando Gorges and John Mason. Further, beginning with King Philip’s War (1674-1676) British English settlement was frustrated, even reversed (Mathews, 1962, pp. 56, 57. 70), by native and French violence.

It was, precisely, the nature of the advance of the agricultural frontier (Cronan, 1983, pp. 162-163, 168-169) that led to the alliance of natives against the English. Conversely, it was the different nature of the agricultural frontier in feudal New France that facilitated the alliance between natives and French in resistance against New England. Accordingly, at mid-seventeenth century, when the commercial capitalism of the English frontier faced the diluted feudalism of Acadia, a kind of peace and mutual tolerance obtained.

It was not that New England ceased to advance, because its fur trading posts and lumber mills still dotted the coast, and its fishery expanded to the Acadian Atlantic shore. It was just that the region between Quebec and New York, Atlantica, enjoyed a kind of neutrality and integrity during the middle years of the seventeenth century (Reid, 1981). The weak proprietorial claims of Gorges and Mason and their heirs in what was to be New Hampshire and Maine, were

matched by the weak feudal claims of D'Aulnay and La Tour and their heirs in what was to be Nova Scotia and New Brunswick. Further, the violence associated with the rise of parliaments – ultimately successful in England and unsuccessful in France – so freed both areas from close exercise of European sovereignty, that there was a made-in-America agreement between Acadia and New England that, even in the case of war between England and France, they would remain at peace with one another (Reid, 1981, pp. 96-97). Expansion of New England's commercial frontier, sustained to the northeast in part by the mutual benefit of trade between Massachusetts and Acadia, did not have the violent consequences of expansion of its agricultural frontier.

King Philip's War was the beginning of the end for seventeenth century peaceful integration of Atlantica. Renewal of Massachusetts' charter in 1691, following the Glorious Revolution, revived its claim to Nova Scotia, and a different kind of integration was set in train. After 1713, a triumphant parliament, exercising the prerogatives of the Crown, structured integration by constituting Nova Scotia a separate royal colony.

During the 1677-1713 period of French and Indian harassment, New England's agricultural front retreated southwest to the Piscataqua and virtually stayed there. After the Treaty of Utrecht, pressure of over-population in the southwest sent a surge to the northeast. Massachusetts Puritan social institutions still spirited the advance, though they were diluted by the Anglicanism of the Wentworth oligarchy in Portsmouth and by the exigencies of a maturing colony. At first lumbering and ship building characterized the expansion. By the time the slower moving agricultural front caught up, town-centered settlement had given way in practice to a more diffuse pattern. In the seventeenth century land had been purchased from the natives. In the eighteenth century Massachusetts, Connecticut, and New Hampshire auctioned off townships to capitalists without reference to native claims. Land was purchased in the first place from colonial governments. Sovereignty had effectively changed hands. There were a number of factors at work in bringing this about. The natives had been defeated in war and the colonies had acquired debts in the process (Mathews, pp. 110-114). Unlike debts owed a century earlier to commercial lenders in England, these were not to be paid off by trade in fish, furs, lumber, and agricultural products. They were to be paid off by land sales. At the same time, restrained by British mercantilist regulations respecting manufacturing, New Englanders who had a surplus to invest wanted a place of profitable deposit (Mathews, pp. 100-101). They found it in land speculation. Speculators, intervening between the government of Massachusetts and settlers in what was to be Maine, surveyed and sold individual large lots without close attention to town establishment or to the social homogeneity of the settlers (Clark, 1970, pp 200-214. McManis, 1975, pp 59-65). In short, beyond the Piscataqua capitalistic land tenure was separated from the town-centered, socially homogeneous character of early New England.

Practice had changed, but the spirit was still alive. When New England's agricultural frontier first advanced into Nova Scotia as planters took over lands left vacant by the Expulsion, migrants expected, and were promised, the town government that characterized early New England. In the second wave of that advance, the flooding in of Loyalists after the War of Independence, the idea of town centered development again moved northeast. Many of those who subsequently left Nova Scotia for Upper Canada, or returned to what had become the United States did so because that sort institutional structure was not available to them (Haliburton, 1829, pp 359 ff.).

Sovereignty and Tenure in Northeast Atlantica before the Expulsion

In the seventeenth century Acadia included all lands northeast of the Penobscot, if not the Kennebec, River. It was geographically conterminous with the lands of the Penobscot, Abenaki, Malecite, and Mi'Kmaq natives. The Mi'Kmac, on whose land there was some European agricultural settlement, were hunters and fishers with no agriculture of their own to conflicted with that of the Europeans. The Penobscot, Abenaki, and Malecite had some agriculture, and experienced conflict with the Europeans. Still, much of the European interest in the area was related to the fur trade, particularly on the Penobscot and the St. John Rivers, and to the fishery from Cape Sable to Louisbourg. Accordingly, over the seventeenth and early eighteenth centuries, though sovereignty over Acadia was claimed by France, Scotland, England, in an embryonic way by Massachusetts, and in their own way by the natives, conflict between natives and Europeans was minimal and largely in the southwest.

In 1621, when Acadia was claimed and held by the French, Sir William Alexander, a Scottish noble, received a proprietorial grant of the region from James the First of England and Scotland. Following the seizure of Port Royal by an English force from Virginia, in 1628, Sir William dubbed his barony Nova Scotia, and attempted settlement under feudal tenure. Whatever success he may have had was obliterated when, in 1632, under the terms of the Treaty of St. Germain-en-Laye (Finnan, 1997) Acadia was returned the French. Between 1632 and 1654, when Port Royal was again taken by English forces, there was some additional French colonization. Under British sovereignty, between 1654 and 1670, there was no immigration. After 1670, once again under France, the Acadians enjoyed a period of expansion. Formally tenure was feudal according to the Custom of Paris, and competing seigneurs collected or attempted to collect *cens et rents* and *lods et vents* (Clark, 1968, pp. 120, 142-143). Other feudal dues relating to dyking, construction of mills, and the like were not collected. The colonists expanded northeast without the aid of their seigneurs. By 1710, just before return of the area to English control, Acadians, numbering about 1,700 souls, had spread themselves evenly between Port Royal, Minas and Beaubassin (Clark, 1968, 121-131).

The native-planter conflict of the New England agricultural frontier was absent in Acadian expansion. Sovereignty exercised by the French Crown through competing feudal grants was tenuous at most. Tenure, though distinctly feudal, was weakly enforced. Acadian expansion was not planned and executed by the Crown or by seigneurs. The Mi'Kmaq were largely hunters and fishers, and did not feel the loss of arable land that led to violence in the English colonies to the southwest. Further, Acadians populated their region more sparsely than did the English. [By 1710 British Atlantica had over 100,000 souls (McCusker and Menard, p. 218) concentrated southwest of the Kennebec. As late as 1730 there were only some 9,000 souls between the Merrimack and the Piscataqua (Mathews, p. 89). Between 1676, the end of King Philip's War, and 1713, when Britain again held Acadia, French and native violence virtually eliminated English settlement northeast of the Kennebec.] No doubt, early conversion of Mi'Kmaq to Roman Catholicism, and the influence of French missionaries were factors in the low level of antagonism between natives and Acadians; and so was the growing dependence of the natives on the French for food and clothing as the fur trade depleted their stock of animals. Further again, the Acadians were interested mainly in land reclaimed from salt water, land not available to natives; and, though cattle were an increasingly important part of their activities, Acadians seem not to have undertaken cattle-related enclosures of the sort that generated such antagonism on the New England frontier (Cronan, 1983, pp 127-135). Even further, Acadians were more tolerant of natives taking cattle (Dickason, 1992, p. 154). In consequence of all these conditions, in French Acadia, native sovereignty was not overtly challenged, even though the French considered it formally extinguished.

The Acadians were not self-sufficient. They relied on Massachusetts for iron products such as kitchen utensils, shop tools, fire arms, farm implements [The Acadians used the light, wheeled plough of New England, rather than the heavy French *charrue* used in New France (Clark, 1968, p. 233).], textiles, sugar, and spices. For these they traded furs, feathers, fish, grain, livestock, meat, and wool (Clark, 1968, pp. 179-185). Mutual benefit from this trade was a factor in the relatively low level of the violence between New England and Acadia, despite continuing hostilities between England and France.

The original mechanism by which the frontier of capitalistic New England tenure advanced – purchase of land from the “owning” natives ahead of the advance – was applied in Acadia between 1710 and 1714. The Acadians would not sell (Brebner, 1927, p. 57). In consequence, the seigneurial system, however attenuated, remained in place about the Bay of Fundy, and the formal legal basis of land tenure fell into doubt. Under British law the Acadians could not own property or participate in government without taking an oath of fealty to the Crown, and accepting the Thirty Nine Articles. Still, cases of dispute over property rights had to be adjudicated by the ruling courts. In practice, civil cases were judged on the basis of a combination of common sense and the Custom of Paris (Brebner, 1927, p. 135). [Acadians who returned after the Expulsion did

take an oath of fealty to the British Crown, and held the lands they were granted with the virtually capitalistic tenure by then operative in Nova Scotia (Brebner, 1927, p. 149).]

Between 1713 and 1756, the advance of New England's agricultural frontier was frustrated by three principal conditions: (1) refusal on the part of Acadians to accept the British sovereign, Protestantism, and the entailed capitalistic land tenure system, (2) changes in the nature of sovereignty in Britain, and (3) continued resistance of Mi'Kmaq to British rule. In 1721, a virtually sovereign Parliament, displeased with the relative independence, if not disobedience, of colonies in southwest Atlantica, terminated both proprietorial and corporate grants. Hence forth all colonies were to be "royal", presided over by an appointed governor and ruled by analogy with rule in the royal colony of Virginia. Further, Nova Scotia was set apart as a colony separate from Massachusetts, and Massachusetts was denied the right to independently grant or sell townships (Brebner, 1927, pp. 73, 134-35). Further still, in an unrelated piece of Imperial legislation, grants of land in Nova Scotia were postponed until some 200,000 acres might be surveyed and set aside to provide timber for the Admiralty (Brebner, 1927, p. 101). As for native resistance, it was as effective in Nova Scotia as it had been in MidAtlantica. Until well after the fall of Louisbourg French inspired or abetted native attacks inhibited the advance of New England settlers everywhere northeast of the Penobscot (McNutt, 1965, p; 29-33).

Expulsion and the Arrival of Capitalist Tenure In Nova Scotia

All obstacles notwithstanding, Massachusetts did not lose its interest in Nova Scotia. Governor Shirley continued to pursue its claim to the colony. Between 1740 and 1749, when Mascarene was governor at Port Royal, reports to the Board of Trade in Britain were sent unsealed to Boston (Brebner, 1927, p. 109). Over the period, New England's interest in the fisheries extended beyond Canso to the Grand Banks, and a New England force captured Louisbourg in 1745. Evidently Atlantica still had some political integrity. The Treaty of Boston (1725) with its insistence on British sovereignty and British law was literally repeated in all British treaties with northeastern natives down to the final treaty with the Mi'Kmaq at Halifax in 1762.

At Governor Shirley's request, in the late 1740s, Charles Morris surveyed the lands about the Bay of Fundy. Shirley's intention was to settle Protestant New Englanders in the area, forcing the Acadians share their lands (Morris, 1749). Before that intention came to its final issue, Morris surveyed the town of Halifax in the late 1740s, and the town of Lunenburg in the early 1750s. Lunenburg was to supply Halifax with produce, but there was little expansion beyond the town lots in Lunenburg until the end of French and Micmac harassment with the fall of Fort Beausejour at Beaubassin in 1755. Shortly after that, with Charles Morris drawing up the plan of action, the Expulsion began and ran into the early 1760s. This effected the substantial change in sovereignty and

tenure institutions that was required if the New England capitalistic agricultural frontier was to move northeast beyond the St. Croix River.

Morris surveyed the towns for the New England planters who replaced the Acadians, laying them out, as he had laid out Lunenburg, with a view to the kind of town centered development that was characteristic of New England. Indeed, the planters asked for and were promised the kind of town centered government to which they were accustomed. Within two years of their arrival the Imperial government reneged on that promise. Further, Nova Scotia did not join in the War of Independence. In the end, the sovereignty and tenure institutions of southwest Atlantica did not pass undiluted into the northeast. It was the land tenure system of the Second British Empire under Parliamentary sovereignty that characterized the plantation of settlers from New England both before and immediately after the War of Independence, and, indeed, the plantation of all settlers in the Maritimes between 1760 and 1849. Nonetheless, though still only tendential and virtual, the capitalistic nature of that agricultural frontier is evident. Land was held with a nominal quit rent that was at first forgiven for a time and finally never collected. Accordingly, though the frontier was not that of a sovereign, corporate colony, with a tradition of town centered development and government, still it was antithetic to both the tribal and feudal arrangements of the natives and the Acadians, and its advance entailed the violent suppression of those orders.

Final Establishment of Sovereignty and Tenure in Atlantica

With the fall of New France British sovereignty was established, and a historical process enforcing a capitalistic land tenure system in northeast Atlantica got under way. French sovereignty and the quasi feudal system of the Acadians were defeated. Massachusetts sovereignty and land tenure were rejected, but the War of Independence would entrench it in the southwest. Native sovereignty and native tenure, insofar as those names apply, were ignored or suppressed. Perhaps the result was never in doubt. In 1749, at the founding of Halifax, there were, some 8,500 Acadians in Atlantica. There were 1,500 to 2,000 Mi'kmaq, thinly scattered from the Restigouche River to Cape Sable. There were about 1,000 Malecite on the St. John River, and, perhaps 100 Passamaquoddy on the St. Croix River (Patterson, 1998, p. 79); say, 12,000 in total. In 1749 the population of New England was about 140,000.

New England Planters who came to Nova Scotia were disappointed in their assumption that they would have the form of town government to which they were accustomed. The traditional commons were surveyed into their townships, but the commons were not important in the development of their plantations. It was the deliberate policy of the government in Halifax to thwart local control over the granting of lands (Harvey, 1933; Brebner, 1937, pp. 212-216). In Granville Township, for example, the first grant was to a group of settlers in common. The grant was immediately voided and, in 1756, a new grant was made to the landholders as individuals. At Truro, a New Hampshire based Scots-Irish group

at first carried on the New England communal arrangement insofar as all land not yet granted was held in common to be sold to purchasers approved by vote of the town meeting. Applicants not residing in the township were not approved (Campbell, 1991, p. 158). By 1872, however, Halifax authorities, following orders from London, enforced a provincially centralized, Virginia type of town governance and land alienation (Campbell, 1991, p. 163). Horton Township, though planned on a grand scale and very compact, in less than a decade dissolved into a “scattered settlement of neat common houses” (Dawson, 1991, pp. 211-212).

The clear intent of the Imperial government with respect to local control of land grants, however, did not indicate a clear and determined Imperial land policy. The early years of the Second Empire were marked by a policy environment of questions and uncertainties (Gallagher, 1982). Should an ‘aristocracy’ be supported as a safeguard against republicanism? – a question on which even Loyalist settlers could not agree (McNutt, 1965, pp. 94-95). Could quit-rents be levied from impoverished settlers and from Loyalists who were promised “a safe haven” in the remnant of British North America? Could vestiges of feudalism (mortmain clergy and crown reserves, and quit-rents) be used as a source of revenue for post-feudal governments? Could local control be trusted not to lead again to rebellion? The result of uncertainty was a set of regulations that awarded vestigially feudal grants to speculators who intended to hold them as virtually rented-out private property. Eventually the Imperial government would turn to auctions and outright sales, thereby bringing the alienation and tenure system into line with democracy and a capitalistic market economy, but that would take some time. Quit rents were forgiven or, not being collected, fell into abeyance except on Prince Edward Island where a vestigially feudal, Second Empire land alienation and tenure system was the object of political controversy for most of the half century leading up to Confederation. In the remnant of British America in northeast Atlantica, elimination of vestigial feudalism was slow and incomplete (Macdonald, 1935, McNutt, 1965), but the capitalistic character of the land tenure system advancing from New England, however modified, was eventually established.

Native sovereignty was real as long as the natives were a military force, and they remained a military force until 1778. Their hostility was a major factor in the retardation of British settlement (Patterson, 1998, pp. 89, 98). Still, native sovereignty and tenure was a diffuse system, and, by 1760, after years of war, the associated patterns of life had atrophied. To make them allies and effective in the war against the British, the French had undertaken to supply the native’s wants. Having become dependent on the fur trade, the natives had no choice but to become dependent on these “presents”. Defeat and departure of the French, in 1759, deprived the natives of supplies leaving them no choice but capitulation. All of the treaties with the British signed by representatives of at least some of the natives, from 1725 to 1749, explicitly stated that the British Crown would be sovereign and British Law would be the basis of settlement in any breach of the

peace (Canada, 1890, vol. 2, pp, 28, 198, Patterson, 1998, p. 109). When the British established Halifax on Mi'Kmaq land, in 1749, and sent planters to Mi'Kmaq clearings at Lunenburg and Chezzacook, the Mi'kmaq rejected the earlier treaties and declared war. In 1762 at Halifax, with no alternative, the Mi'Kmaq accepted the terms of the earlier treaties.

Mi'Kmaq capitulation was preliminary to the final extinguishing of French and native sovereignty in the region. The advancing line of fire-fights that had first divided southwestern Atlantica, and, after the Treaty of Utrecht, divided northeastern Atlantica, burnt itself out in the British-Wabenaki Convention of 1778, and the Treaty of Paris in 1783. The line dividing the United States and British sovereignty and tenure systems was definitively drawn by the St Croix Commission in 1796 (Demeritt, 1997).

After the fall of Fort Beausejour, in 1757, under orders from Governor Charles Lawrence, General Monckton pursued the Acadians, and their native allies up the St. John River. When Monckton was called away to New York in 1759, he was succeeded by (now) Major Charles Morris. Wanting sufficient British regulars, Morris carried out his charge with 600 New England Rangers - seasoned frontier fighters from the French and Indian Wars. Behind their advance came the New England Planters to take up the land surveyed for them. Some 7,000 arrived on the Isthmus of Chignecto and the lower St. John River (MacDonald, 1990, p. 24). Not all stayed.

Quebec City fell in 1759, Montreal in 1760. The Treaty of Paris in 1763 established British sovereignty in Quebec, and Britain immediately abolished the Custom of Paris. In 1774 seigneurial tenure was reinstated in Quebec and the colony was extended into the Mississippi Valley. The American Revolution followed in 1776. By then there were Scots settled on the Miramichi, Pennsylvania Germans on the Petticodiac, and Yorkshire settlers cultivated the Isthmus of Chignecto. Jonathan Eddy's attempt to bring Nova Scotia in on the side of the southwest failed, and his followers were reduced to sending raiding parties from Machias, just southwest of the St. Croix River. A band of natives representing the Wabenaki Confederacy of Mi'Kmaq, Malcite, Abenaki, and Penobscott gathered at Aukpaque on the St. John just beyond Maugerville. Though trying to play off one side against the other for their own benefit, they finally and unfortunately chose to support the republicans and the French against the British. They were defeated by gifts, rather than by violence (Macdonald, 1990, p. 105). Nonetheless, the 1778 convention by which they ceased hostilities ended any pretense to native sovereignty.

In that same year, Richard Hughes, Lieutenant Governor of Nova Scotia, granted 500 acres at St. Ann's Point on the St John River to a band of Malecites. They were to pay a quit-rent of one farthing per acre per year, beginning ten years after occupying the grant. The land could not be sold without the government's approval (Canada, 1891, vol. 2, p. 28). With this alienation of land by the Crown

the natives of northeast Atlantica were divested of their own sovereignty and tenure and brought under those peculiar arrangements that characterized the sovereignty and tenure of Nova Scotia at the beginning of the Second British Empire.

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