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## NOTE

From: Michel Morin  
To: Colloquium Members

The paper presented to the Colloquium first appeared in French (« Propriétés et territoires autochtones en Nouvelle-France I - Contrôle territorial et reconnaissance de territoires nationaux », (2013) 43 (2-3) Recherches amérindiennes au Québec 59-75 and « Propriétés et territoires autochtones en Nouvelle-France II - La gestion des districts de chasse », (2014) 44 (1) Recherches amérindiennes au Québec 129-136). A short conference paper that summarizes its main findings is also available online ("Michel Morin, "Ownership and Indigenous Territories in New France (1603-1769)" in Jose Vicente Serrao, Barabara Direito, Eugenia Rodriguez and Susana Munch Miranda (eds), Property Rights, Land and Territory in the European Overseas Empires, Lisbon, CEHC-IUL. »).

Pages 3-19 have been expanded to discuss recent publications on the Law of Nations and Indigenous Peoples.

Ms. Elizabeth Steyn (PhD candidate in Law, UdeM) translated and revised the paper. Financial support from the Fonds Faribault of the University of Montreal is gratefully acknowledged.

I am looking forward to your suggestions for improvements and for the names of law reviews that might be interested in publishing it. Note that the paper has more than 28,000 words.

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## The Recognition of Aboriginal Property and Territories in New France

*These savages know the paths in the woods and are acquainted  
with them like we know the city streets<sup>1</sup>*

### Abstract

In North-Eastern America, the pre-Columbian origin of Indigenous familial territories has remained controversial among Anthropologists and Economists, like the possibility that Algonquian peoples devised wildlife conservation measures by themselves. During the 17<sup>th</sup> century, however, in accordance with concepts found in the literature on natural law and the law of nations, the French recognized that Indigenous Nations had national territories and controlled access to areas over which they exercised a form of collective ownership; the use of lands was regulated by chiefs. With time, the King's representatives convinced their allies to call themselves "brothers" and to grant to each other a mutual right of hunting over their lands. Nonetheless, they were cognizant of well-defined hunting "districts" exploited under the direction of the chief of a familial band. Members from another band or strangers had to obtain the permission to hunt there, though occasional incursions were accepted. Starting in 1660, conservation measures were observed in the Great Lakes and Lake Champlain area, but in the 18<sup>th</sup> century, they seemed unknown on the North Coast of the Saint Lawrence River. It seems unlikely, however, that Indigenous persons did not have enough information to devise such measures by themselves. Overall, national territorial limits and well-defined hunting districts seem to have had an Indigenous rather than a French origin.

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<sup>1</sup> Translated. The original version reads: "*Ces sauvages savent les routes des bois et les connoissent comme nous savons les ruës d'une ville*". Antoine-Denis Raudot, "Lettre XXXVIIIe de La Chasse D'hiver Des Sauvages et de Leurs Sueries," in *Relations Par Lettres de l'Amérique Septentrionale (années 1709 et 1710)*, ed. Camille de Rochemonteix (Letouzey et Ané, 1904), 97, <http://gallica.bnf.fr/ark:/12148/bpt6k57745455/f165.image>.

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## Introduction

The status of aboriginal territories in New France has given rise to divergent assessments, for French colonialization relied on two potentially contradictory principles. On the one hand, the theoretical affirmation of French sovereignty does not ipso facto entail the intent to extinguish the rights of aboriginal peoples.<sup>2</sup> On the other hand, the power to unilaterally grant lands in the immense territory of New France can be considered to be inherently incompatible with the recognition of territorial aboriginal rights.<sup>3</sup> This view finds support in the fact that, contrary to what occurred in many British colonies, the King of France's representatives did not secure the consent of aboriginal nations before granting portions of their traditional territories to colonists. However, even if negotiations or consultations were not required, this approach was clearly advisable before the French established themselves in a given region; indeed, the King constantly reiterated his intent to maintain peaceful relations with his allies.

A small number of ordinances and judgments aimed to ensure and protect aboriginal peoples' right of use on their ancestral lands.<sup>4</sup> This shows that the French acknowledged the existence of aboriginal territories, unless colonists who benefited from land grants occupied the area. In any event, following the disappearance of the Saint Lawrence Iroquoians encountered by Cartier in the

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<sup>2</sup> Brian Slattery, *The Land Rights of Indigenous Canadian Peoples as Affected by the Acquisition of Their Territories* (Saskatoon: University of Saskatchewan Native Law Center, 1979); Sébastien Grammond, *Terms of Coexistence Indigenous Peoples and Canadian Law* (Toronto, 2013); Luc Huppé, "L'établissement de La Souveraineté Européenne Au Canada," *Les Cahiers de Droit* 50, no. 11 (2009): 153–206. Michel Morin, *L'Usurpation de La Souveraineté Autochtone* (Montreal: Boréal, 1997).

<sup>3</sup> cf. Henri Brun, *Le Territoire Du Quebec: Six Études Juridiques* (Quebec: Presses de l'Université Laval, 1974); R. v. Côté, [1996] 3 S.C.R. 139 (n.d.) para 42-54; Nelson-Martin Dawson, *Feu, Fourrures, Fléaux et Foi Foudroyèrent Les Montagnais* (Sillery: Septentrion, 2005); Michel Lavoie, *Le Domaine Du Roi 1652-1859* (Quebec: Septentrion, 2010); Edward Cavanagh, "Possession and Dispossession in Corporate New France, 1600-1663: Debunking a 'Juridical History' and Revisiting Terra Nullius," *Law and History Review* 32, no. 1 (2014): 97–125.

<sup>4</sup> Michel Morin, "Des Nations Libres sans Territoire? Les Autochtones et La Colonisation de l'Amérique Française Du XVIe Au XVIIIe Siècle," *Journal of the History of International Law* 12, no. 1 (2010): 1–70.

1530's there "were almost no examples of tension" related to French settlement prior to the British Conquest of 1760, because of the sparceness of the native population between Montreal and Quebec in the early 17th century.<sup>5</sup> This was of course due to the weakness of the French, whose retaliatory expeditions against the Haudenosaunees failed miserably; on Saint-Christopher Island, in the Indies, and in Louisiana, they were quite capable of slaughtering aboriginal peoples.<sup>6</sup> The objective of this paper, however, is to to ascertain the nature of the French understanding pertaining to the control exercised by aboriginal peoples over their ancestral lands, including the exploitation of natural ressources. As a starting point, this requires a brief discussion of the general legal principles underlying French thinking during the 17th and 18th centuries.

It stands to reason that the recognition that aboriginal peoples had territories of their own implied that they could hold rights. However, this did not pose a problem, as authors writing in the field of the law of nations between the 16th and the 18th century considered (almost) unanimously that such nations were independent from European colonial powers. But there were many disagreements about exactly what constituted "just" causes of war, some of which were particularly relevant in the context of the Americas, such as refusing to admit missionaries and

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<sup>5</sup> Alain Beaulieu, "The Acquisition of Aboriginal Land In Canada The Genealogy of an Ambivalent System (1600-1867)," in *Empire by Treaty Negotiating European Expansion, 1600-1900*, ed. Salhia Belmessous (New York: Oxford University Press, 2015), 101–31. Compare Cavanagh, "Possession.," who speaks of the displacement of "invaded communities" and the jeopardizing of "territorial occupancy" (at 106).

<sup>6</sup> Daniel K. Richter, *The Ordeal of the Longhouse The Peoples of the Iroquois League in the Era of European Colonization* (Chapell Hill: University of North Carolina Press, 1992). Jose Antonio Brandão, "Your Fyre Shall Burne No More", *Iroquois Policy toward New France and Its Native Allies to 1701* (Lincoln: University of Nebraska Press, 1997). Jon Parmenter, *The Edge of the Woods* (East Lansing: Michigan State University Press, 2010). Philip Boucher, *Cannibal Encounters, Europeans and Island Caribs, 1492-1763* (Baltimore: John Hopkins Universtiy Press, 1992) 40–47. Kelby Ouchley, "Natchez Revolt of 1729," *KnowLA Encyclopedia of Louisiana*, 2010, KnowLA, <http://www.knowla.org/entry/1596/>. Conversely, some English ventures in the New World focused on the exploitation of natural ressources such as furs or fish; this did not require that aboriginal peoples be dispossessed: Philip Girard, "Imperial Legacies Chartered Enterprises in Northern British America," in *Legal Histories of the British Empire*, ed. Shaunnagh Dorsett and John McLaren (Abingdon: Routledge, 2014).

traders, or eating human flesh after the ritualistic torture and execution of prisoners.<sup>7</sup> It should be noted that the inevitability of war was taken for granted in this period; even in Europe, "tyrants" could be attacked by other sovereign powers when their abuses crossed a nebulous threshold.<sup>8</sup> The best that such authors could hope to do was to convince the sovereigns or their advisers that they should resort to force only as a last resort. War could thus be waged against indigenous peoples and the victor could enslave the survivors or subjugate them; the colonizers could enter into treaties of alliance or negotiate land cessions with them; in theory, they could also convince them to agree to a "voluntary" submission. Whether they could exclusively occupy hunting grounds or fishing sites turned out to be a much more controversial issue, a matter to which we will return in this paper.

Promoters of colonisation and colonial officers in England and in France relied on the law of nations, as did the representatives of European powers during diplomatic negotiations.<sup>9</sup> Initially,

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<sup>7</sup> Without denying that these authors provided many potential justifications for colonization and massacres, they also tried to rein in the colonizers and to afford a certain amount of protection to Indigenous Peoples. Because discussions of these issues are scattered across various parts of their works, it is hard to piece together the full picture and it is often not present in discussions of this ancient literature. Exceptions include Morin, *Usurpation*. chap. 2. Georg Cavallar, "Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans," *Journal of the History of International Law* 10 (2008): 181–209, who reviews the previous literature. Christopher Tomlins, *Freedom Bound* (Cambridge: Cambridge University Press, 2010). Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000* (Cambridge: Cambridge University Press, 2014), who also criticizes the previous literature (7-14). Dominique Gaurier, *Histoire Du Droit International Public De l'Antiquité À La Création de l'ONU* (Rennes: Presses universitaires de Rennes, 2014) 267-290.

<sup>8</sup> Luke Glanville, *Sovereignty and the Responsibility to Protect A New History* (Chicago and London: University of Chicago Press, 2014).

<sup>9</sup> See for instance Ken MacMillan, *Sovereignty and Possession in the English New World* (Cambridge: Cambridge University Press, 2006). Morin, "Nations Libres." Bernard Bailyn, *The Barbarous Years* (New York: Alfred A. Knopf, 2012) 105-106, 208, 230, 237, 271, 499-500. Mark Meuwese, *Brothers in Arms, Partners in Trade Dutch-Indigenous Alliances in the Atlantic World, 1595-1674* (Leiden: Brill, 2012). Jeffrey Glover, *Paper Sovereigns Anglo-Native Treaties and the Law of Nations, 1604-1664* (Philadelphia: University of Pennsylvania Press, 2014). Arthur Westeijn, "'Love Alone Is Not Enough' Treaties in Seventeenth-Century Dutch Colonial Expansion," in *Empire by Treaty Negotiating European Expansion, 1600-1900* (New York: Oxford University Press, 2015), 19–44. Daniel K. Richter, "To 'Clear the King's and Indians' Title': Seventeenth-Century Origins of North American Land Cession Treaties," in *Empire by Treaty Negotiating European Expansion, 1600-1900* (New York: Oxford University Press, 2015), 45–77. Daragh Grant, "The Treaty of Hartford (1638): Reconsidering Jurisdiction in Southern New England," *William and Mary Quarterly* 72, no. 3 (2015): 461–98.

the claims of the Spanish or Portuguese crowns based on discovery (i.e., the fact that Europeans had been ignorant of the existence of a whole continent) were vehemently denounced; only prior possession was to be respected. In the 17th and 18th century, however, the French and the English soon came to rely on discovery and possession (real or symbolic) to claim hundreds or even thousands of miles around their settlements, in areas where they freely acknowledged that aboriginal peoples lived, while denying the claims of their rivals based on similar arguments.<sup>10</sup> Discovery was understood to have no legal consequence for aboriginal peoples. Depending on their interests, French or English negotiators would either affirm or deny the right of their opponent to occupy aboriginal territories.<sup>11</sup> These discussions ended only when peace treaties ceded a colony or provided for its restitution after it had been occupied during a war.

Nowhere do we see that "all" European powers "assented" to the consequences of discovery when it was asserted by a rival, or that it "gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or conquest".<sup>12</sup> The nature of this "title of occupancy" was

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<sup>10</sup> MacMillan, *Sovereignty and Possession*. Laura Benton and Benjamin Straumann, "Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice," *Law and History Review* 28, no. 1 (2010): 1–38, part IV. Morin, "Nations Libres.," p. 44-65. English officials also relied on the discovery argument to justify the seizure of a Dutch ship: Glover, *Paper Sovereigns*. 158-168. The

<sup>11</sup> Morin, "Nations Libres.," 49-65; Beaulieu, "Acquisition.," 107-114; Cavanagh, "Possession.," 111-112. The same observation has been made in respect of English colonists and crown officials: Glover, *Paper Sovereigns*. Portuguese and Spanish officials also used legal arguments that best suited their needs and denied their validity when they were not useful: Tamar Herzog, *Frontiers of Possession Spain and Portugal in Europe and the Americas* (Cambridge: Harvard University Press, 2015)., 26-27.

<sup>12</sup> *Johnson v M'Intosh*, 8 Wheat. 543 (1823). The artificial character of Marshall's analysis is well illustrated by his comment that Virginia's "claim of all the lands to the Pacific Ocean, because she had discovered the country washed by the Atlantic, might, without derogating from the principle recognized by all, be deemed extravagant" (at 582). On the contrary, discovery had no practical consequences precisely because there was no way to determine when a claim became "extravagant". Since hardly a year goes by without a new publication on the opinions authored by Marshall in the famous trilogy of cases pertaining to aboriginal rights in the United States, we refer the reader only to Stuart Banner, *How the Indians Lost Their Lands Law and Power on the Frontier* (Cambridge: Belknap Press, 2005). Lindsay G. Robertson, *Conquest by Law How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (Oxford and New York: Oxford University Press, 2005). Robert J. Miller et al., *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford and New York: Oxford University Press, 2010).



constantly debated and territorial claims based on this concept were systematically rejected during diplomatic conferences. Furthermore, section 15 of the Treaty of Utrecht (1713) provided that France and Great Britain would not harass "Indian nations" subject to, or in amity with, the other signatory; submission or alliance was to be ascertained by commissioners who, as it turned out, failed to agree on a list.<sup>13</sup> Importantly, the operative criterion was alliance or submission, not discovery. Furthermore, nations who had neither submitted themselves to, nor allied themselves with a European power, remained free to travel to the colonies of any country for purposes of trading. In other words, all Indian nations were free to trade with both the British and the French. Indeed, the absence of inland boundaries between European colonies confirms their theoretical nature.<sup>14</sup>

The French Crown granted numerous documents providing for the establishment, development and administration of the colony of New France. These grants were premised on the idea that aboriginal peoples would either become trading partners and allies or would be subjugated by force, at the discretion of the King's representative. Though discovery of particular areas was sometimes mentioned, subsequent documents acknowledged that it was not followed by settlement, except in the Saint Lawrence Valley.<sup>15</sup> However, claiming "that one may justly invade a territory, whether infidel or Christian, is no to assert that the territory is legally

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<sup>13</sup> Howard R. Berman, "Perspectives on American Indian Sovereignty and International Law, 1600 to 1776," in *Exiled in the Land of the Free Democracy, Indian Nations and the U.S. Constitution* (Santa Fe: Clear Light Publishers, 1992), 178.

<sup>14</sup> Allan Greer and C. Desbarats, "Où Est La Nouvelle-France?," *Revue D'histoire de l'Amérique Française* 64, no. 3-4 (2011): 31-62.

<sup>15</sup> Brian Slattery, *The Land Rights of Indigenous Canadian Peoples as Affected by the Acquisition of Their Territories* (Saskatoon: University of Saskatchewan Native Law Center, 1979). 70-94; John D. Hurley, "Children or Brethren: Aboriginal Rights in Colonial Iroquoia" (Cambridge, 1985). 82-95, 252-282.

vacant".<sup>16</sup> Indeed, the legal doctrine of *terra nullius*, which denies that aboriginal peoples can hold any kind of collective right, was not formalized until the end of the 19th century.<sup>17</sup> Of course, this does not mean, that its roots do not go back to the colonial era, an issue to which we will return shortly.<sup>18</sup>

The French kings also recognized that unless they were conquered, aboriginal peoples remained independent. In 1627, the status of French subject was initially reserved for those who had converted to the Catholic faith.<sup>19</sup> From 1664 to 1674 this privilege was reserved for "those who shall be born from" French subjects "and from the indians converted to the roman catholic [...] faith".<sup>20</sup> Afterwards, the situation became less clear, though it seems that converts were still considered as subjects.<sup>21</sup> Indeed, christianized aboriginal communities living in proximity to Quebec, Three-Rivers and Montreal were allowed to gradually consent to a partial application of the colonial legal system.<sup>22</sup> Here again, it posed no difficulties for the French to acknowledge the

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<sup>16</sup> Brian Slattery, "Paper Empires: The Legal Dimensions of French and English Ventures in North America," in *Despotic Dominions Property Rights in British Settler Societies* (Vancouver: UBC Press, 2005), 50–77.

<sup>17</sup> See Fitzmaurice, *Sovereignty, Property*.

<sup>18</sup> Cavanagh, "Possession."

<sup>19</sup> Art. 17 of the *Establishment of the Canada Company, 1627 & 1628*, in E.R. Fréchette, ed., *Titles and Documents Relating to the Seigniorial Tenure in Return to an Address of the Legislative Assembly* (Québec: E.R. Fréchette, 1852), 5. In 1663, the King agreed to the surrender of all the rights of the company and the Edict of 1628 was effectively repealed (*ibid.* 13).

<sup>20</sup> Art. 34 of the *Establishment of the West India Company* [1664], in *ibid.*, 14. This charter was revoked by the King in 1674 (*ibid.*, 24).

<sup>21</sup> Morin, "Nations Libres.", 24-27; Gilles Havard, "'Protection' and 'Unequal Alliance' The French Conception of Sovereignty over Indians in New France," in *French and Indians in the Heart of North America, 1630-1815*, ed. Robert Englebert and Guillaume Teasdale (East Lansing/Winnipeg: Michigan State University Press/University of Manitoba Press, 2013), 113–37. This evolution is often overlooked: see, for instance, Anthony Pagden, *Lords of All the World Ideologies of Empire and France C. 1500-1800* (Baltimore: John Hopkins University Press, 1995) 149-150.

<sup>22</sup> Carole Blackburn, *Harvest of Souls The Jesuit Missions and Colonialism in North America, 1632-1650* (Montreal & Kingston: McGill-Queen's University Press, 2000) 79-134. Michel Morin, "Fraternité, Souveraineté et

existence of specific aboriginal customs or rules of governance. Thus, the law of nations allowed for true legal pluralism: French and aboriginal legal traditions coexisted and conflicts were to be resolved through negotiation or by force; the existence of an aboriginal legal order was never denied, contrary to what would be the case in the 19th century.<sup>23</sup>

What about allies living on their ancestral lands, away from French cities? It is well known that aboriginal peoples recognized neither individual land ownership nor the potential alienation of the soil; in addition, occupation and use of the land could be shared.<sup>24</sup> Still, the type of control that they historically exercised over their lands may shed light on present-day debates relating to the recognition of ancestral or treaty rights as protected by the Canadian Constitution.<sup>25</sup> Our goal is not to analyze the position of every aboriginal nation living within the present boundaries of Quebec; indeed, it is often difficult to link these nations to the names used to refer to them in the 17<sup>th</sup> century or to identify the location of lakes and rivers named in the cited sources.<sup>26</sup> Instead,

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Autonomie Des Autochtones En Nouvelle-France,” *Revue Générale de Droit* 43, no. 2 (2013): 531–98. Saliha Belmessous, *Assimilation and Empire Uniformity in French and British Colonies, 1541-1954* (Oxford and New York: Oxford University Press, 2013), chap. 1.

<sup>23</sup> Laura Benton and Richard J. Ross, eds., *Legal Pluralism and Empires* (New York and London: New York University Press, 2013). Morin, *Usurpation*. Paul G. McHugh, *Aboriginal Societies and the Common Law A History of Sovereignty, Status, and Self-Determination* (Oxford: Oxford University Press, 2004). Fitzmaurice, *Sovereignty, Property*.

<sup>24</sup> See José Mailhot and Sylvie Vincent, “Le Droit Foncier Montagnais,” *Interculture* 15, no. 2–3 (1982): 65–74;; Andrée Lajoie et al., *Le Status Juridique Des Peuples Autochtones Au Québec et Le Pluralisme Juridique*, Yvon Blais (Cowansville, 1996); Jean-Paul Lacasse, *Les Innus et Le Territoire, Innu Tipenitamun* (Sillery: Septentrion, 2004); Alain Bissonnette, “Un Regard D’anthropologue Sur Le Dialogue Entre Les Traditions Juridiques Notamment En Matière de Rapports Au Territoire,” in *La Justice À L’épreuve de La Diversité Culturelle*, ed. Myriam Jézéquel (Cowansville: Yvon Blais, 2007), 191–232. Sébastien Grammond, *Terms of Coexistence Indigenous Peoples and Canadian Law* (Toronto, 2013).

<sup>25</sup> see section 35(1) of *The Constitution Act*, 1982; R. v. Marshall; R. v. Bernard, 2005 SCC 43, [2005] 2 S.C.R. 220 (n.d.); Tsilhqot’in Nation v. Canada (Attorney General), 2014 SCC 44, [2014] 2 S.C.R. 256 (n.d.); Kent McNeil, “Aboriginal Title in Canada: Site Specific or Territorial,” *Canadian Bar Review* 71 (2014): 746.

<sup>26</sup> Nelson-Martin Dawson, *Des Attikamègues Aux Têtes-de-Boule, Mutation Ethnique Dans Le Haut Mauricien Sous Le Régime Français* (Sillery: Septentrion, 2003); Dawson, *Feu, Fourrures*; Robert J. Chamberland et al., *Terra Incognita Des Kotakoutouemis. L’Algonquinie Orientale Au XVIIe Siècle* (Quebec: Presses de l’Université Laval, 2004).

we will focus on the main Algonquian people who at the beginning of the 17<sup>th</sup> century lived on what corresponds to the modern-day territories of Québec, Ontario and the Maritime Provinces (mainly the Micmac, the Innu, the Algonquins and the Cree – all of whom we will at times designate by the names employed in the aforesaid sources).

Our reflection is the result of an analysis performed on the stories related by missionaries and the narratives of explorers, which constitute sources as rich as they are voluminous. If these documents can be said to indicate the bias of European observers, they also frequently refer to concepts that have no equivalent in Western culture. It seems to us that if various authors describe such accounts in an analogous manner, the probability that they are reliable is greatly enhanced – which obviously does not exclude the possibility that they occasionally deform or misrepresent reality.<sup>27</sup> Thus they rarely seek to understand exactly how aboriginal territories were defined and how specific rights of use were attributed. However, they regularly refer to the control exercised by aboriginal chiefs over the ancestral lands of their nation. These observations are valuable, for they show that the French were quite conscious of aboriginal land occupation.

Generally speaking, our conclusions seem to be compatible with the anthropological or ethno-historical literature pertaining to the values and conceptions of aboriginal peoples, even though some gaps may exist. Yet during the second third of the 20<sup>th</sup> century anthropologists and economists supported the idea that exclusive aboriginal or familial territories appeared pursuant to the development of commercial exchanges with the Europeans, in order to prevent the extermination of beavers, the main fur-bearing animal that was the object of trade; other anthropologists believed these territories to have a pre-Columbian origin. In a similar fashion,

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<sup>27</sup> Blackburn, *Harvest*, 4-8.

some authors now argue that conservation measures made their appearance only after beavers had been threatened with extinction. We will accordingly begin by taking a fresh look at this controversy; this will allow us to reveal the ethnocentrism that partially colors these analyses, as well as the traps that lie in wait for those who analyse the information that is available for the period in question.

Secondly, we will attempt to ascertain, from explanations furnished by the French sources, the nature of the territorial control that was exercised by aboriginal nations, as well as their decision to share natural resources pursuant to peace treaties. Finally, we will examine the very first descriptions of Algonquian hunting “districts” in the North Eastern part of North America; as will become apparent, their existence significantly predates the scarcity of resources observed in the final decades of the 17<sup>th</sup> century. On that score, we will also attempt to determine if conservation measures appeared because of this problem or if they had a more ancient origin. Our objective is not to reconstitute the thoughts and values of the aboriginal peoples concerned, but to show that ideas were intelligible to the French, at least in general terms, and that they could be described by means of legal concepts that were familiar to the latter.

### **The Debates Pertaining to the Origin of Territorial Control**

Whether aboriginal peoples could hold territories was hotly debated during the 17<sup>th</sup> and 18<sup>th</sup> century by authors writing on natural law or the law of nations. As the different views on this issue would prove to be long-lasting, it is worth examining them. Indeed, during the first part of the 20<sup>th</sup> century anthropologist Frank G. Speck documented the existence of trapping territories attributed to a single family and transmissible by way of inheritance. He considered that this form of property had existed prior to contact with the Europeans and had survived colonization.

This view has been ardently contested due to lack of corroboration in the historical documentation. According to Eleanor B. Leacock, the absence of any form of property among aboriginal peoples meant that beaver take-zones could not have appeared prior to the development of commercial exchanges with the Europeans. This explanation has retained a canonical status for a long time; in particular, it has often been asserted that family ownership and conservation measures developed among the aboriginal peoples of North-Eastern America as a consequence of the fur trade.

### Aboriginal territories and the law of nations

The discussion relating to the appearance of property has ancient roots, which it would be useful to recall. Western legal thought was influenced to a large degree in this regard by the myth of the Golden Age. Roman author Justin, to take but one example, opined that during this stage, human beings were able to exploit earthly resources at will, since neither countries nor the concept of property existed – fruits and wild animals simply belonged to the person who had first gotten hold of them.<sup>28</sup> The famous Grotius and others drew inspiration from this idea from the 17<sup>th</sup> century onwards. Grotius also relied on writings of the 16<sup>th</sup> century Spanish Scholasticists that were well known in Europe, notably in France.<sup>29</sup> He has been portrayed as having recognized a right to unilaterally occupy uncultivated lands in America, but it should be noted that this

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<sup>28</sup> Marcus Julianus Justinus, *Epitome of the Philippic History of Pompeius Trogus*, trans. John Selby Watson (London: Henry G. Bohn, 1853), <http://www.forumromanum.org/literature/justin/english/>, Book XLIII, 1.

<sup>29</sup> For France see Frank Lestringant, *Le Huguenot et Le Sauvage* (Geneva: Droz, 2004). 175-176 and 181. On Grotius see, among others, Peter Haggenmacher, *Grotius et La Doctrine de La Guerre Juste* (Paris: Presses universitaires de France, 1983). Eric Wilson, *Savage Republic De Indis of Hugo Grotius, Republicanism and Dutch Hegemony Whithin the Early Modern World System (c. 1600-1619)* (Leiden: Martinus Nijhoff, 2008).

statement can be qualified in several ways.<sup>30</sup> It is important to realize that Grotius did not deny that aboriginal peoples occupied lands. In *Mare Liberum* (1609), he explained the origin of property with reference to the fact that certain individuals came to recognize that "a certain kind of ownership is inseparable from use"; this induced peoples to abandon the universal and undefined community and to collectively occupy lands and forests; truly vacant areas, however, remained available to the first taker. After this initial appropriation, lands could be held in common or be allocated to individual owners according to national rules, thereby transforming the initial delimitations made by individuals into full property rights.<sup>31</sup> Grotius added that, "from the earliest occupation of the earth every people possessed the right in hunting in its own territory, and of fishing in its own rivers".<sup>32</sup> In "Defence of Chapter V Of the *Mare Liberum*" (ca 1615), he found the opinion plausible that "in the primeval state of Paradise there was no property [...] and there would not have been, had not sin intervened [...] because both the Essenes of old and some peoples in America have made use of community of property, which even now a few congregations make use of".<sup>33</sup> Evidently, this "community of property" (which he assumed

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<sup>30</sup> For different assessments see Morin, *Usurpation*, 44–48. Richard Tuck, *The Rights of War and Peace Political Thought and the International Order From Grotius to Kant* (Oxford: Oxford University Press, 1999).102-108 Cavallar, "Vitoria." Benjamin Straumann, "Is Modern Liberty Ancient? Roman Remedies and Natural Rights in Hugo Grotius' Early Works on Natural Law," *Law and History Review* 27, no. 1 (2009): 55–85, 74-80. Benton and Straumann, "Acquiring," 18-29. Tomlins, *Freedom Bound*. 120-156. Fitzmaurice, *Sovereignty, Property*. 87-105. Benjamin Straumann, *Roman Law in the State of Nature The Classical Foundations of Hugo Grotius' Natural Law* (Cambridge: Cambridge University Press, 2015). 184-185.

<sup>31</sup>Hugo Grotius, *The Freedom of the Seas or the Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, trans. Ralph Van Deman Magoffin (New York: Oxford University Press, 1916), <http://frelockbookseries.blogspot.com>. 24.

<sup>32</sup> *ibid.* 56

<sup>33</sup> See David Armitage, ed., *The Free Seas, Translated by Richard Hakluyt with William Welwod's Critique and Grotius' Reply* (Indianapolis: Liberty Fund, 2004). 65-66.

was no longer extant, even in America) was different from the initial absence of property, i.e., a state where "nothing belongs to anyone, but all things be common".<sup>34</sup>

In *De Iure Belli ac Pacis* (1625), Grotius repeated that a "community of property arising from extreme simplicity [...] may be seen among certain tribes in America, which have lived for many generations" in the "primitive state" during which "all things [...] were the common and undivided possession of all men, as if all possessed a common inheritance".<sup>35</sup> Here it is not immediately clear that such community of property excluded other nations or strangers. However, it was again presented as that of a bygone era. Indeed, nomadic pastoralists were said to have lived in their country without any boundaries or limits between their pastures, until these were divided between families following the increase in the number of men and flocks.<sup>36</sup> In the next paragraph, Grotius explained that "the primitive common ownership" was abandoned when men were no longer "content to feed on the spontaneous products of the earth, to dwell in caves, to have their body either naked or clothed with the bark of trees or skins of wild animals."<sup>37</sup> This description obviously referred to aboriginal peoples, but considering what was said in the previous paragraphs, this related to the period preceding the appearance of national territories.

Overall, Grotius' opinion does not seem to have changed since *Mare Liberum*. Thus, "anything that has not yet been assigned to individual owners [...] ought not on that account to be considered as unoccupied territory; for it remains subject to the ownership of the first occupant

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<sup>34</sup> *ibid.* 65-66.

<sup>35</sup> Hugo Grotius, *De Jure Belli Ac Paci Libri Tres*, trans. Francis W. Kelsey, vol. II, III vols., The Classics of International Law (Oxford: Clarendon Press, 1925) 186-187.

<sup>36</sup> *ibid.* 188-189, where Grotius refers to *Mare Liberum*.

<sup>37</sup> *ibid.* 189.



whether a people or a king. To this class ordinarily rivers, lakes, ponds, forests, and rugged mountain belongs"<sup>38</sup>. However, he insisted that strangers had a right of "innocent use" over the property of a people "for a purpose which involves no detriment to the owner"; denying them this right amounted to a just cause of war.<sup>39</sup> This included a right of peaceful passage, even for armies, and a right to be granted upon demand "any deserted or unproductive soil" or to take possession of it, because "uncultivated lands ought not to be considered occupied except in respect of sovereignty, which remains unimpaired in favour of the original people".<sup>40</sup> Correcting an incomplete quotation of Gentili, he hastened to approve the refusal of the Romans to award lands that "furnished pasturage for the flocks and herds of the soldiers"; they had also asked "with no less justice" of the Senonian Gauls: "What right they had to demand land from the rightful owners, or threaten these with war".<sup>41</sup>

Similarly, for him, there was no just cause of war if "swamps and wilderness" were abandoned in order to relocate to a "a more fruitful soil"; it was "shameless [...] to claim for oneself by right of discovery what is held by another, even though the occupant may be wicked, may hold wrong views about God, or may be dull of wit".<sup>42</sup> Grotius also "very much doubt[ed]" whether there were any people "absolutely deprived of reason" who were unable to "have ownership" on this

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<sup>38</sup> *ibid.* 192; see also on 188-189. Similarly, according to Grotius, lands or objects that had been abandoned were normally available to the first taker, except where the people had retained full ownership, in which case the thing reverted "to the community" (*ibid.* 219).

<sup>39</sup> *ibid.* 199-201.

<sup>40</sup> *ibid.* 202.

<sup>41</sup> *ibid.* 203. See Alberico Gentili, *De Iure Belli Libri Tres Volume Two The Translation of the Edition of 1612*, trans. John C. Rolfe, vol. 2, 2 vols. (Oxford: Clarendon Press, 1933). 80. Tuck, *War and Peace*. 47-48.

<sup>42</sup> Grotius, *De Iure Belli*. 550.

account.<sup>43</sup> Overall, foreigners could settle on uncultivated lands until a king or a people exercised its "unimpaired" sovereignty over this portion of its territory. There may have been many valid reasons for refusing to grant uncultivated lands, such as its use to feed flocks or, perhaps, hunting. War would be justified if, but only if, a nation requested and was denied a right of use that was truly harmless (or "innocent"). This being said, there were so many valid grounds of war against aboriginal peoples that this distinction may well have been meaningless on the ground, except to the extent that it favoured negotiations and agreements.<sup>44</sup> Nonetheless, Grotius clearly was of the opinion that aboriginal peoples possessed their own territories.

In 1672, Pufendorf more clearly committed himself on the side of the aboriginal peoples. He maintained that members of a people or a group could establish a positive community in order to reserve for themselves the enjoyment and use of a given territory, to the exclusion of strangers. This form of ownership could include hunting territories. This was contrasted with a negative community, i.e. the complete absence of appropriation, or freedom of access, as in the case of the air or the sea.<sup>45</sup> This distinction remains pertinent today. To the extent that an aboriginal people is considered to have legal personality, it may collectively own ancestral rights or aboriginal title and determine the modes in which its members may exercise such rights. Internal rules will determine who has the capacity to control this collective property (for instance the leaders of hunting groups).<sup>46</sup> In France, during the Ancient Regime, collective properties (woods, pastures,

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<sup>43</sup> *ibid.* 550.

<sup>44</sup> see Morin, *Usurpation*, 44–48. Tuck, *War and Peace*. 102-103 Cavallar, "Vitoria.", 196 Tomlins, *Freedom Bound*. 120-156.

<sup>45</sup> Morin, *Usurpation*, 52-53. Cavallar, "Vitoria.". Fitzmaurice, *Sovereignty, Property*, 107-114.

<sup>46</sup> Kirsten Anker, "Translating Sui Generis Aboriginal Rights in the Civilian Imagination," in *Les Intraduisibles En Droit Civil*, ed. R. Tremblay and L. Smith (Montreal: Éditions Thémis, 2014); Jean Leclair and Michel Morin, "Peuples Autochtones et Droit Constitutionnel," in *JurisClasseur Québec: Droit Constitutionnel*, vol. 15, Droit

etc.) had often belonged to particular communities since time immemorial.<sup>47</sup> This legal concept seems to us to be compatible with current knowledge of the ways in which hunter-gatherers exploited their territories.<sup>48</sup>

At the opposite end of Pufendorf we find John Locke, who wrote in 1690 that the American aboriginal peoples did not establish boundaries between the territories where they hunted and fished.<sup>49</sup> To his mind, the right to exclude others from the terrain made an appearance only after the creation of government and of money.<sup>50</sup> This innovation had necessitated at least an implicit agreement in terms of which particular communities had renounced their “natural communal right” to use the lands where other nations dwelled. In those regions where no agreement had been reached in this regard, uncultivated lands remained subject to this right of universal use, as long as enough lands remained available to provide for the needs of all.<sup>51</sup> In other words, aboriginal peoples are supposed to have known and accepted the rule that permitted any person to install himself on uncultivated or uninhabited land. From this point of view they could neither

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Public (Montreal: LexisNexis Canada, 2011) para 64; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623 (n.d.); Michel Morin, “Un Document Inédit Sur La Portée Territoriale de La Proclamation Royale: Les Notes Des Juges de La Cour Suprême Dans L’affaire R. C. Bonhomme,” *Revue Générale de Droit* 26 (1995): 557–64; Nadine Vivier, “Les Biens Communaux En France,” in *Les Propriétés Collectives Face Aux Attaques Libérales (1750-1914)*, ed. Marie-Danielle Demélas and N. Vivier (Rennes: Presses universitaires de Rennes, 2003), 236; Anna Di Robilant, “Common Ownership and Equality of Autonomy,” *McGill Law Journal* 58, no. 2 (2012): 263–320.

<sup>47</sup> see Vivier, “Communaux”; Di Robilant, “Common Ownership.”

<sup>48</sup> Alan Barnard and James Woodburn, “Property, Power and Ideology in Hunting-Gathering Societies: An Introduction,” in *Hunters and Gatherers Vol 2: Property, Power and Ideology*, ed. T. Ingold, D. Riches, and J. Woodburn, vol. 2 (Oxford and Washington: Berg Publishers, 1988), 4–15; Nicolas Houde, “‘Experimenting with What Will Become Our Traditions’: Adaptive Co-Management as a Bridge to an Atikamekw Nehirowisiw Post-Treaty World in Nitaskinan, Canada” (Doctoral thesis, Department of Geography, McGill University, 2011).

<sup>49</sup> John Locke, *The Second Treatise on Government and A Letter Concerning Toleration* (Mineola: Dover Publications, 2002), 13–14.

<sup>50</sup> *ibid.*: 15-19.

<sup>51</sup> *ibid.* 21.

own nor claim ancestral lands.<sup>52</sup> Even though this thesis was contested by Wolff, it would be taken up again by Vattel and would eventually become dominant in the 19<sup>th</sup> century among the internationalists with the appearance of the concept of *terra nullius*; previously the question had remained very controversial.<sup>53</sup>

In general, the French espoused the position of Vattel and Locke. At the beginning of the 16<sup>th</sup> century Marc Lescarbot, a Parisian advocate, insisted that colonization needed to remain peaceful for Christianization purposes; nonetheless, he stated point-blank: “The earth pertaining, then, by divine right to the children of God, there is no question of applying the law and policy of the Nations, by which it would not be permissible to claim the territory of another. This being so, we must possess it and preserve its natural inhabitants”.<sup>54</sup> This is reminiscent of numerous English publications of the same period.<sup>55</sup> From 1603 onwards official documents of the French authorizing colonial settlements adopted a similar view. They acknowledged the presence of aboriginal peoples and insisted that they should become allies of the crown, though it was permissible to attempt to subjugate them. At the same time, lands could be granted to colonists without such peoples’ consent. In the meantime, however, their rights were not extinguished, as we will see.<sup>56</sup> This approach is best summarized by the rationale for the gigantic territory granted

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<sup>52</sup> see Barbara Arneil, *John Locke and America* (Oxford: Clarendon Press, 1996); Allan Greer, “Commons and Enclosure in the Colonization of North America,” *American Historical Review* 117, no. 2 (2012): 365–86; Craig Yirush, *Settlers, Liberty and Empire* (Cambridge: Cambridge University Press, 2011); Tomlins, *Freedom Bound*. Fitzmaurice, *Sovereignty, Property*, 114-126.

<sup>53</sup> Morin, *Usurpation*, 40–62 and 163–178; Morin, “Nations Libres”; Tomlins, *Freedom Bound*, 117–121. Fitzmaurice, *Sovereignty, Property*, 134-149.

<sup>54</sup> Marc Lescarbot, *The History of New France*, vol. 1 (Toronto: The Champlain Society, 1907), 17.

<sup>55</sup> Tomlins, *Freedom Bound*, 138-156.

<sup>56</sup> See among others Slattery, *Land Rights*. 70-94; Hurley, “Colonial Iroquoia.” 82-95, 252-282; Morin, *Usurpation*. chap. III Morin, “Nations Libres.” Camil Girard and Carl Brisson, *Nistassinan Notre Terre Alliance et Souveraineté*

to the West India Company: "the said countries" either were or had been inhabited by French subjects, or else the company could "establish itself therein, by expelling or subjugating the indians or original inhabitants, or other nations of Europe who are not our allies."<sup>57</sup>

In sum, the possibility that aboriginal peoples owned their territories was recognized by Grotius, Pufendorf and Wolff but vehemently rejected by Locke and Vattel. The French Crown espoused the latter position, except with regards to its allies. During the 19<sup>th</sup> and 20<sup>th</sup> centuries, the first anthropologists, many of whom were legally trained, also debated the existence and persistence of a primitive community that did not recognize any form of property over land.<sup>58</sup> Those who studied aboriginal peoples living in Canada could hardly ignore this issue, as we will see further on.

### **The anthropological controversy surrounding the origin of family territories**

Frank G. Speck clearly rejected the idea that the Alouquians of North Eastern America had no notion of property whatsoever. In a 1942 text co-written with Loren C. Eiseley he presented the outcome of research and reflections spanning close to half a century and attempted to respond to certain criticisms that had been formulated by historians.<sup>59</sup> In their view, all of the Algonquian peoples who lived between the 55<sup>th</sup> and 52<sup>nd</sup> degrees of latitude, from the Atlantic shores to

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*Partagée Du Peuple Innu Au Québec Des Premiers Contacts À Nos Jours*, Monde Des Autochtones (Presses de l'Université Laval, 2014).

<sup>57</sup> *Establishment of the West India Company* [1664], Preamble, in Fréchette, *Titles*, 15. Article XXIX authorized the company to "treat of peace and make alliances" in the name of the French monarch with "the kings and princes of the countries where it shall be desired to establish commercial settlements", subject to his approval. The company was also allowed "in the event of aggression, to declare war, and attack them".

<sup>58</sup> Kaius Tuori, *Lawyers and Savages Ancient History and Legal Realism in the Making of Legal Anthropology* (Abingdon: Routledge, 2014) 46-50, 80-83, 116-117.

<sup>59</sup> Frank G. Speck and Loren C. Eiseley, "Montangais-Naskapi Bands and Family Hunting Districts in the Southeastern Labrador Peninsula," *Proceedings of the American Philosophical Society* 85, no. 2 (1942): 215-42.

Winnipeg Lake in Manitoba, recognized the existence of family hunting territories in the paternal line, particularly in respect of fur-bearing animals, which are sedentary. Further North, leaving behind the thick forests for the tundra, the hunt for caribou that mobilized a large number of individuals was practised in a communal manner on the whole of the territory, thus remaining collective by nature.

Speck's Montagnais and Naskapi sources described the boundaries of their family territory with precision, well before governmental authorities had mapped out the region.<sup>60</sup> They confirmed that an intrusion onto their lands would bring misfortune to the intruder, but they did not envisage acts of reprisal.<sup>61</sup> Importantly, at this stage of his reflection Speck in no way confused individual property of the Western type with family hunting territories. Moreover, Speck and Eiseley conceded that initially, in the context of a territory where there were few people or where animals were abundant, an aboriginal people had no reason to divide the territory in zones attributed to families or that would be exploited by different hunters on a seasonal basis. When resources became scarcer, such an allocation was made. For instance, communal hunting of certain species such as the caribou could co-exist with a division into small groups that practiced trapping. From 1926 onwards, Speck asserted that this evolution was inevitable, taking into account environmental conditions, hunting practices and the need to allow the animals to reproduce.<sup>62</sup> Speck and Eiseley were inclined to believe that the modern-day intensive

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<sup>60</sup> *ibid.*: 215-218.

<sup>61</sup> *ibid.*: 231.

<sup>62</sup> Frank G. Speck, "Land Ownership Among Hunting Peoples in Primitive America and the World's Marginal Areas," in *Atti Des XXII Congresso Internazionale Degli Americanisti, Roma, Settembre 1926* (Nendeln: Kraus Reprint, 1926), 327-328.

exploitation of fur-bearing animals had stimulated the arrival of “true family ownership”, but they remained convinced of the fact that this had had a pre-Columbian origin.<sup>63</sup>

In 1937, Alfred G. Bailey held that the 17<sup>th</sup> century commercial exchanges with the French had provoked the beaver hunts to intensify, so that this resource had become scarce. This activity therefore required expeditions by groups that were smaller in size than had previously been the case and such expeditions also had a significantly longer duration. As it was recognized that a hunter was the owner of the animal that he had killed, property rights to the areas where the fur-bearing animals lived became recognized by extension; what is more, the French contributed to the acceptance of the idea of a family territory, notably those who had married aboriginal women.<sup>64</sup> In short, the transformation could be explained by the arrival of Europeans and by the fact that the aboriginal peoples had gradually adopted an individualistic mentality.<sup>65</sup>

In 1954, Eleanor B. Leacock defended a similar point of view in her doctoral thesis. As she pointed out, Speck acknowledged that the family territories he analyzed did not have a permanent character, were not alienable and remained subject to control of the band. For Leacock this represented a form of usufruct rather than a property right. Moreover small game had been of a minor importance at the beginning of the 17<sup>th</sup> century, for the survival of the group depended on the quantity of moose or caribou killed; small game could therefore not by itself have served as incitement for aboriginal people to divide up their hunting zones. Most of all, Speck’s theory presupposed that these peoples had felt the need to adopt conservation measures

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<sup>63</sup> Speck and Eiseley, “Bands,” 238–240.

<sup>64</sup> Alfred G. Bailey, *The Conflict of European and Eastern Algonkian Cultures 1504-1700: A Study of Canadian Civilization* (Toronto and Buffalo: University of Toronto Press, 1969), 87–88.

<sup>65</sup> *ibid.*: xx-xxi.

before the arrival of the Europeans. Contrary to Speck's statements, she indicated that the Naskapi themselves had also divided their territory into family zones on a seasonal basis, even if they had hunted in the tundra in large groups.<sup>66</sup>

In respect of the 17<sup>th</sup> century historical sources, Leacock indicated that they revealed nothing similar to the family territories observed by Speck three centuries later, even if there were certainly band territories in existence, the boundaries of which were in any case ill defined and unstable. Indeed, the references to boundaries of hunting zones frequented by a group were not known to be comparable to a form of ownership. It is only towards the end of the 17<sup>th</sup> century that we can see a clear reference to ownership of beaver huts and to a seasonal allocation of hunting zones appearing.<sup>67</sup> In parallel, winter season saw the size of hunting bands diminishing in order to augment their radius of action, which facilitated this transformation.<sup>68</sup> In this regard, more recent research has established that the hunt for small game had been practised in small groups since long ago and that the size of these groups did not diminish significantly during the course of this period.<sup>69</sup>

In 1980, Leacock summarized the position of her adversaries in a stinging fashion: they “attempt[ed] to achieve by decree that which the Jesuits had failed to do in the 17<sup>th</sup> century: transform the Montagnais from a people who had traditionally practiced collective land use

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<sup>66</sup> Eleanor B. Leacock, *The Montagnais “Hunting Territory” and the Fur Trade* (Milwood: Kraus Reprint, 1974), 1–7.

<sup>67</sup> *ibid.*: 15.

<sup>68</sup> *ibid.*: 22.

<sup>69</sup> Toby Morantz, “Historical Perspective on Family Hunting Territories in Eastern James Bay,” *Anthropologica N.s.* 28, no. 1–2 (1986): 65, 86.



rights into land-owning families.”<sup>70</sup> According to her, “the sub-arctic aboriginal peoples of Canada had production relationships of a communistic nature” and the territory was regarded as the “collective property of the aboriginal population”.<sup>71</sup> There were bands or groups of hunters who each had their territory and who needed to ask permission before entering the territory of another. However, in the event of absolute necessity this permission could be extended right away. For this reason these bands, made up of households, did not allocate to themselves “any exclusive right to the territory”.<sup>72</sup>

Leacock was greatly influenced by Marxist thought, according to which primitive communism constitutes the first stage of social evolution – a variation on the Golden Age myth. In reality, the social organization of the Montagnais at the beginning of the 17<sup>th</sup> century, with its war expeditions and extended commercial networks, was not compatible with an elementary society made up of simple bands where pronounced inequalities are practically absent. Above all, the transformation and acculturation process had been much lengthier and much more complex than Leacock made it appear.<sup>73</sup> Furthermore, recent research has clearly demonstrated that the leaders have since ancient times played an important role in the dividing-up of hunting groups and in the

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<sup>70</sup> *ibid.*: 80. The original version of our translation reads: “*tentaient de réaliser par décret ce que les Jésuites avaient manqué au XVII<sup>e</sup> siècle: transformer les Montagnais, de peuple qui avait traditionnellement pratiqué le droit collectif à l’usage du territoire, en familles de propriétaires.*”

<sup>71</sup> *ibid.*: 81. The original versions of our translations read: “*les relations de production chez les aborigènes du Canada subarctique étaient du type communisant*” and “*propriété collective de la population aborigène*”.

<sup>72</sup> *ibid.*: 83. The original version of our translation reads: “*aucun droit exclusif sur le territoire*”.

<sup>73</sup> Harvey A. Feit, “Histories of the Past, Histories of the Future: The Committed Anthropologies of Richard Slobodin, Frank G. Speck and Eleanor Leacock,” in *A Kindly Scrutiny of Human Nature: Essays in Honour of Richard Slobodin*, ed. Richard Preston (Waterloo: Wilfrid Laurier University Press, 2009), 57–60; Barbara Bender and Brian Morris, “Twenty Years of History, Evolution and Social Change in Gatherer-Hunter Studies,” in *Hunters and Gatherers Vol 1: History, Evolution and Social Change*, ed. T. Ingold, D. Riches, and J. Woodburn, vol. 1 (Oxford and Washington: Berg Publishers, 1988), 7.

control of the use of territories whose boundaries have been relatively well defined.<sup>74</sup> Hence it is appropriate to ask whether they felt themselves called upon to put in place conservation measures or if this is an idea that was instilled in them by the Europeans.

### The controversy surrounding the origins of animal conservation measures

The hypothesis that family territories had made their appearance among the Montagnais as a result of the growing scarcity of fur-bearing animals rapidly awakened the interest of economists.<sup>75</sup> In 1967, Harold Demsetz argued that where a territory is being collectively exploited, it is not in the interest of any hunter to take conservation measures, for instance to abstain from killing pregnant females or to let certain zones lie fallow for one or more years. Indeed, another individual could benefit from such a measure, since he is free to hunt everywhere in the band's territory. However, with the advent of the fur trade, fur acquires a heightened value for aboriginal people, since it allows them to obtain goods that they cannot themselves produce— metal objects in particular. This leads to the intensive exploitation of resources. In the long term it could bring about the complete extinction of one or even several

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<sup>74</sup> see Jacques Leroux, "Éthique et Symbolique de La Responsabilité Territoriale Chez Les Peuples Algonquiens Du Québec," *Recherches Amérindiennes Au Québec* 29, no. 1–2 (2009): 85–97; Jacques Leroux, "Le Contrôle Territorial Ou Posséder Ce Que L'on Protège Chez Trois Peuples Algonquiens Du Québec," in *Gouvernance Autochtone: Reconfiguration D'un Avenir Collectif*, ed. Pierre Noreau (Montreal: Éditions Thémis, 2010), 99–131; Sylvie Vincent, "Circulation Sur La Territoire et Régime Foncier Des Innus Dans La Première Moitié Du XXe Siècle," in *Gouvernance Autochtone: Reconfiguration D'un Avenir Collectif*, ed. Pierre Noreau (Montreal: Éditions Thémis, 2010), 135–54; Jean-Paul Lacasse and Valérie Cabanes, "Les Fondements de L'ordre Juridique Innu: La Parole Des Aînes Comme Source de Connaissance," in *A-T-on Oublié Que Jadis Nous Étions "Frères,"* ed. M. D'Avignon and C. Girard (Quebec: Presses de l'Université Laval, 2009), 143–62.

<sup>75</sup> Feit, "Committed Anthropologies," 61.

species, thus imposing a cost on the whole of the community.<sup>76</sup> This is known as the “tragedy of the commons”.<sup>77</sup>

The problem of externalities – the fact that the actor does not bear the cost of the harmful consequences of his activity – would explain why, during the course of the 17<sup>th</sup> century, aboriginal peoples created family territories that generated an incentive for the preservation of fur-bearing animals. In a collective property regime one needs the consent of all of the members in order to take such measures, i.e. to limit the quantities hunted. This involves laborious negotiations and poses the problem of monitoring the activities of every member. In an individual or a family property regime these difficulties are much less acute.<sup>78</sup> In 2002, Demsetz emphasized that these externalities are not the only factor explaining the appearance of individual ownership. Within a sparsely populated community such as a village, a collective management system might be viable. For hunter-gatherers, individual ownership (or family ownership) is not necessarily attractive. Indeed, they are forced to cover large distances, since one parcel of land does not contain sufficient game or fruits to nourish them. What is more, they need to relinquish those that have recently been exploited. Above all, meat and fruits are difficult to conserve and to transport. Generally speaking, it is rather the arrival of agriculture that provides a motive for the appearance of family property.<sup>79</sup> The typology of economists has equally been refined and the positive role that the community may play has been acknowledged. Nowadays it is necessary to distinguish between state ownership, individual ownership, the

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<sup>76</sup> Harold Demsetz, “Toward a Theory of Property Rights,” *American Economic Review* 57, no. 2 (1967): 351–353.

<sup>77</sup> Garret Hardin, “The Tragedy of the Commons,” *Science* 162, no. 3859 (1968): 1243–48.

<sup>78</sup> Demsetz, “Property Rights,” 355–358.

<sup>79</sup> Harold Demsetz, “Toward a Theory of Property Rights II: The Competition Between Private and Collective Ownership,” *The Journal of Legal Studies* 31, no. S2 (2002): S653–72.

collective ownership of a particular group and the absence of ownership or free access.<sup>80</sup> Each of these regimes may turn out to be efficient in the right conditions.<sup>81</sup>

After having reviewed the historical data available for the 17<sup>th</sup> and 18<sup>th</sup> century in the Saint Lawrence Valley and the Hudson Bay region, Shephard Kerck III demonstrated that, in respect of the more ancient eras, aboriginal peoples did not seem to be concerned about animal resources that were not menaced by extinction, in large part due to their spiritual beliefs. Becoming aware of this problem then favoured the emergence of family territories.<sup>82</sup> Moreover, putting in place conservation measures would be due to the influence of the Europeans.<sup>83</sup> According to Harvey Feit these conservation strategies could just as well have been discovered and disseminated by the aboriginal people themselves, as their mythology appears to confirm.<sup>84</sup> Furthermore, the need for these may have been exaggerated. Thus, in a region where the population of beavers is very dense, more intensive exploitation of this resource may initially cause an increase in the fertility rate of the females and the number of animals harvested.<sup>85</sup> In conditions such as these it is

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<sup>80</sup> Daniel H. Cole and Elinor Ostrom, "The Variety of Property Systems and Rights in Natural Resources," in *Property in Land and Other Resources*, ed. D.H. Cole and E. Ostrom (Cambridge: Lincoln Institute of Land Policy, 2012), 37–66; Harold Demsetz, "Transaction Cost and the Organization of Ownership - An Introduction," *Arizona Law Review* 53, no. 1 (2011): 1–7; James E. Krier, "Essay - Evolutionary Theory and the Origin of Property Rights," *Cornell Law Review* 95, no. 1 (2009): 139–59.

<sup>81</sup> Cole and Ostrom, "Variety," 53–55; Tom Flanagan, C. Alcantara, and A. Le Dressay, *Beyond the Indian Act, Restoring Aboriginal Property Rights* (Montreal and Kingston: McGill-Queen's University Press, 2010), 202–26.

<sup>82</sup> Shephard Kreck III, *The Ecological Indian Myth and History* (New York and London: W.W. Norton, 1999), 194–195.

<sup>83</sup> *ibid.*: 182-186.

<sup>84</sup> "Myths of the Ecological Whitemen: Histories, Science and Rights in North American-Native Relations," in *Native Americans and the Environment, Perspectives on the Ecological Indian*, ed. M.R. Harkin and D.R. Lewis (Lincoln and London: University of Nebraska Press, 2007), 64; also see Ann M. Carlos and Frank D. Lewis, "Native American Property Rights in the Hudson Bay Region: A Case Study of the Eighteenth Century Cree," in *Self-Determination, The Other Paths for Native Americans*, ed. T.L. Anderson, B.L. Benson, and T.E. Flanagan (Stanford: Stanford University Press, 2006), 68; Rémi Savard, *La Forêt Vive* (Montreal: Boréal, 2004), 90.

<sup>85</sup> Feit, "Myths," 68–69.

useless to protect the resource in question, even if the exploitation rhythm might influence the productivity of the hunt in the long term.

Many Algonquian people became heavily involved in the fur trade long after the implantation of Europeans in North America. Nonetheless, the chiefs' authority and the control measures pertaining to the territory presented astonishing similarities with what had been observed at the beginning of the 17<sup>th</sup> century. The conclusion that this mode of social organization was pre-Columbian in origin is almost irresistible. For example, in the Haute-Mauricie area, it was only towards the end of the 18<sup>th</sup> century that the fur merchants installed themselves on a long-term basis. Initially their presence seemed to have had little effect on the way of life of the aboriginal peoples. Towards 1820 one observed that there were territories for hunting beavers, but also for moose. A hunter who was an outsider needed to obtain the leader's permission to exploit the resources; this chief distributed the members of his band across his territory.<sup>86</sup> During the same period, in the Lake Saint-John area, each Montagnais family was allotted "a certain tract of ground", portions of which were then assigned by the father to his sons.<sup>87</sup> This partition was "scrupulously observed": "even when compelled by hunger to kill an animal on the Domain of another they leave the fur or the hide of the animal to the proprietor".<sup>88</sup> Similarly, another observer was struck by the immense hunting grounds belonging to a Montagnais hunter and his

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<sup>86</sup> Claude Gélinas, *La Gestion de L'étranger. Les Attikamekw et La Présence Eurocanadienne En Haute-Mauricie, 1760-1870* (Sillery: Septentrion, 2000), 46, 91 and 106.

<sup>87</sup> Lower Canada, *Appendix to the XXXIIIrd Volume of the Journals of the House of Assembly of the Province of Lower Canada* (Quebec: John Neilson, 1824). Appendix (R), unpaginated, December 30<sup>th</sup>, 1823 (note this should read January 30, 1824, as in the French version). The witness was François Verrault; he said he had lived in the Saguenay country for fifty years and he could translate the Montagnais names of rivers and lakes.

<sup>88</sup> *Ibid.*

family and by his ability to trace on a birch sheet the rivers and lakes that allowed a canoe to travel from Three-Rivers to Lake Saint-John.<sup>89</sup>

The increase in the trapping of fur-bearing animals in the 1850s appeared to owe a great deal to the decline in the moose population, which in all likelihood had been caused by forest fires.<sup>90</sup> It is clear therefore that this kind of territorial management had an ancient origin while the pronounced decrease in the number of beavers had hardly started to have an impact.<sup>91</sup> Accordingly it would appear that this mode of exploitation predated the development of trade in this region. Moreover, prior to the first contact with the Europeans, forest fires – even if they were less frequent than during the 19<sup>th</sup> and 20<sup>th</sup> centuries – in all probability provoked population displacements and a growing pressure on the animal resources that almost forcibly gave rise to the appearance of family territories.<sup>92</sup>

During the 20<sup>th</sup> century in the region of Melville Lake situated in Labrador, inhabited by the Innu of Sheshatshit, where there was no beaver trapping, the composition of hunting groups was based on family ties and evolved on a continuous basis.<sup>93</sup> Collectively they made up an Innu band. Generally speaking, such a band exercised territorial control within a given hydrographical basin<sup>94</sup>. The same position held sway at the beginning of the 17<sup>th</sup> century. In this era a regional

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<sup>89</sup> Lower Canada, *Report of the Commissioners for Exploring the Saguenay* (Quebec: John Neilson, 1829). 224.

<sup>90</sup> *ibid.*: 277 and 284.

<sup>91</sup> *ibid.*: 158.

<sup>92</sup> Harvey A. Feit, “Les Territoires de Chasse Avant Leur ‘Découverte’? Études et Histoires Sur La Tenure, Les Incendies de Forêt et La Sociabilité de La Chasse,” *Recherches Amérindiennes Au Québec* 34, no. 3 (2004): 5–21.

<sup>93</sup> José Mailhot, “La Mobilité Territoriale Chez Les Montagnais-Naskapis Du Labrador,” *Recherches Amérindiennes Au Québec* 15, no. 3 (1985): 3–11; José Mailhot, *Au Pays Des Innus. Les Gens de Sheshatshit* (Montreal: Recherches amérindiennes au Québec, 1993), 138–152.

<sup>94</sup> Mailhot and Vincent, “Droit Foncier,” 71–72.

band was often called a “nation”. Despite some transformations, hunting districts and their overseers seem to have retained many of their essential characters in the 20th century.<sup>95</sup>

The importance of the disagreement between Speck and Leacock seems to have been exaggerated. The former did not deny that there is a difference between trapping territories and those where big game is hunted, nor that the hunt might have been a communitarian activity in respect of certain species and a familial one in respect of others. While admitting that the fur trade might have accentuated the phenomenon, he maintained that the division in family territories was of a pre-Columbian origin – something that a good number of contemporary authors seem to admit. Leacock recognized the existence of family territories, but in the absence of exclusive control and well-defined boundaries she refused to regard this as constituting a form of ownership. This only existed in those territories where trade had developed by reason of commercial exchanges. Prior to that, such a determination was unnecessary, because there was almost no risk that the resources might be exhausted. In a similar fashion, Kreck has argued that aboriginal people did not see the need to undertake conservation measures until they were taught to do so by Europeans.

In our view Leacock was correct to emphasize that hunting districts did not amount to a form of ownership and essentially consisted of rights of use. Yet she underestimated the importance and age of the boundaries established between the different districts, as well as the ambit of the control exercised by the nation (or regional band) in question. Speck, on the other hand, rightly insisted on the age-old character of the districts but neglected the possibility that the chiefs of the

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<sup>95</sup> Nicolas Houde, “La Gouvernance Territoriale Contemporaine Du Nitaskinan : Tradition, Adaptation et Flexibilité,” *Recherches Amérindiennes Au Québec* 44, no. 1 (2014): 23–33. Katia Kurtness, *Les Saisons de La Chasse: Un Homme et Une Femme Innu de Mashteuiastch (Québec, Canada) Témoignent de Leurs Pratiques Traditionnelles* (Chicoutimi: Université du Québec à Chicoutimi, 2014).

nations could decide to redeploy one or several groups due to demographic or socio-economic changes. It is difficult to reconcile this with the idea of family ownership of hunting zones – though in his later works Speck seemed to have dismissed this hypothesis in respect of the more distant periods. This leads us to an investigation of the sources in order to see whether they confirm the foregoing analysis. We will accordingly endeavour to present them in an exhaustive and detailed manner.

### **The recognition of national territories**

At the dawn of the 17<sup>th</sup> century, if we are to believe French sources, the nature of aboriginal people's territorial occupation did not undergo major transformations, contrary to what would happen in the ensuing decades, after epidemics had taken their terrible toll. The hydrographical basins of the large rivers (Saguenay, Saint-Jean, Betsiamites, etc.), as well as strategic passageways such as Allumette Island in the Outaouais River, were occupied by groups then generally classed as nations, whereas nowadays anthropologists rather speak of regional bands. Such a group appears to have been controlled by a captain who enjoyed a significant degree of authority over the leaders of hunting expeditions.<sup>96</sup> The French were perfectly conscious of this reality, the existence of which is confirmed by certain official documents. Moreover, the aboriginal people had since long before jealously controlled the access ways to the territories of their neighbours. Here again, the French understood these rules well, as they sought to neutralize them by encouraging the aboriginal nations to make a general peace among themselves. They would have to wait for almost a century before such peace would last.

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<sup>96</sup> Morin, "Fraternité," 550–561.



## The references to aboriginal territories

In the 16<sup>th</sup> century, after meeting the expedition led by Jacques Cartier in the Bay of Gaspé, the Stadaconians made it clear that they would not allow the French to utilize the territory where they dwelled without their permission. Indeed, after he had planted a cross there in 1534, Cartier related that a “captain” approached him with three of his sons and his brother “making the sign of the cross with two of his fingers; and then he pointed to the land all about, as if he wished to say that all this region belonged to him, and that we ought not to have set up this cross without his permission”.<sup>97</sup> The French then explained that the cross “had been set up to serve as a landmark and guide-post” which would allow them to re-enter the harbour. They proceeded to hand over presents and undertook to return the following year. The group subsequently indicated to them “that they would not pull down the cross, delivering at the same time several harangues” which the French did not understand”.<sup>98</sup> Cartier also confirmed having planted crosses elsewhere to serve as navigation marks, seemingly without having attached particular significance to such act.<sup>99</sup>

For his part, Champlain asserted in the 17<sup>th</sup> century that the Kings of France had taken possession of “a goodly part” of the countries described in his works – while at the same time admitting that there had been very little progress on the colonization front.<sup>100</sup> In 1624, Sagard

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<sup>97</sup> Cartier, in Jacques Cartier, *The Voyages of Jacques Cartier*, ed. H.P. Biggar (Ottawa: F.A. Acland, 1924), 65. Note that in the original French version Cartier uses the term “*capitaine*”: Cartier, in Michel Bideaux, *Jacques Cartier. Relations* (Montreal: Presses de l’Université de Montréal, 1986), 116.

<sup>98</sup> Cartier, *Voyages*. 66 and 67.

<sup>99</sup> *ibid.* 100.

<sup>100</sup> Samuel de Champlain, *The Works of Samuel de Champlain in Six Volumes: Vol. V 1620-1629*, ed. H.P. Biggar (Toronto: The Champlain Society, 1933), 5, 7. In 1620 Champlain caused to be publicly read first the Vice-Roy’s message and then his own, and thereafter fired the canon. He thus confirmed having taken “possession of the

furthermore equated “Antarctic France” with “an imaginary possession in others’ hands”.<sup>101</sup> Champlain also planted several crosses so as to refute such a conclusion, explaining to aboriginal peoples that “if they broke these down, harm would befall them, but that if they preserved them, they would not be attacked by their enemies”.<sup>102</sup> He accordingly did not reveal that this symbol could be invoked against European powers wishing to trade with these nations or to settle their lands. However, he attributed a very limited reach in to a similar claim made by the English on the Atlantic coast:

[...] the river which they then began to possess is in the thirty-sixth and thirty-seventh degrees [...] their allegation might peradventure be valid if it was a mere question of holding that river and seven or eight leagues on either side of it – the distance one can usually see; but that to stretch your claim to domination thirty-six times as far as your eye has ever distinguished objects, is to want to have one’s arms, or rather one’s vision, of monstrous length.<sup>103</sup>

Even when he accorded very limited rights to an aboriginal people, the King recognized that they had up to that point been in possession of the country. Thus, in 1650, Governor Lauson bestowed upon himself an eel fishery at Pointe de Puiseaux, which was adjacent to the grounds of the Sillery mission, a bit further upstream from Québec on the Saint Lawrence River. A Jesuit priest, undoubtedly Paul Ragueneau, recalled that “from time immemorial the savages had had

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settlement and the country in the name” of the “Viceroy”; a report was accordingly drawn up (*ibid.*, 7). This act of taking possession seemed to result only from a change of royal title-holder, without affecting the extent of the territory that was claimed by France at the time.

<sup>101</sup> Gabriel Sagard, *The Long Journey to the Country of the Hurons*, ed. George M. Wrong, trans. H.H. Langton (Toronto: The Champlain Society, 1939), 53.

<sup>102</sup> H.P. Biggar, trans., *The Works of Samuel de Champlain in Six Volumes: Vol. II: 1608-1613*, vol. II (Toronto: The Champlain Society, 1625), 297.

<sup>103</sup> Samuel de Champlain, *The Works of Samuel de Champlain in Six Volumes: Vol. VI 1629-1632*, ed. H.P. Biggar (Toronto: The Champlain Society, 1936), 196.

complete freedom to undertake their fishing of eels on this coast, from the Pointe de Puiseaux up to Sillery”.<sup>104</sup> In his opinion,

it would be an extreme act of violence, not to say a manifest injustice, to prevent these Christian savages from fishing in this place, the only one that they have left, which they had enjoyed before the French ever came into these lands and of which they have had the enjoyment ever since and on which they have built their hopes, having made up their minds to quit their itinerant life [...] Would it not be a very great cruelty if these poor savages had no place to make a living in their own country, and if one chased them from the only place that they have kept for themselves.<sup>105</sup>

In 1651, this concession was revoked by the *Compagnie des Cent-Associés*.<sup>106</sup> The Company gave the site to Christian neophytes as it was “desirous of collecting in certain places the wandering inhabitants of New France, in order that they might be instructed in the Christian faith and religion” and because these neophytes had “chosen, for some years past, a place which they call in their language *Kamiskda d’Angachit*, commonly called by the Frenchmen Sillery”, which “place was agreeable to the Indians”.<sup>107</sup> In the same year, the King approved the concession of the fief of Sillery, stipulating that it was bestowed on “savages who normally [took] refuge close to Québec [...] under the direction, control and approbation” of the Jesuits; in the future the opinion and consent of the Jesuits would be required to “render, concede, sell” or “alienate”

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<sup>104</sup> Translated. The original version reads: “*de temps immémorial les sauvages ont eu une entière liberté de faire leur pesche d’anguille en toute ceste coste, depuis la pointe de Puiseaux jusqu’à Sillery*”. Lucien Campeau, ed., *Monumenta Novae Franciae: Vol. VII: Le Témoignage Du Sang (1647-1650)* (Rome/Saint-Laurent: Institutum Societatis Iesu/Bellarmin, 1994, hereafter *MNF* followed by the volume number), 686–687; also see Michel Lavoie, *C’est Ma Seigneurie Que Je Réclame. La Lutte Des Hurons de Lorette Pour La Seigneurie de Sillery, 1650-1900* (Montreal: Boréal, 2010), 23–31. Beaulieu, “Acquisition.” 105-106. Cavanagh, “Possession.” 119-122.

<sup>105</sup> Translated. The original version reads: “*ce seroit une violence extrême, pour ne pas dire une injustice manifeste, d’empescher les sauvages chrestiens de pescher en ce lieu, qui est l’unique qui leur reste, dont ils jouissoient avant que les François fussent jamais venus en ces contrées, dont ils ont jouy paisiblement depuis ce temps-là et sur lequel ils ont fondé leurs espérances, ayans pris dessein de quitter leur vie errante [...] Ne seroit-ce pas une bien grande cruauté que de pauvres sauvages, en leur propre pays, n’eussent pas aucun lieu pour y chercher leur vie et qu’on les chassast de celuy seul qu’ils se sont réservés*”. Campeau, *MNF VII*, 686–687; also see Lavoie, *Ma Seigneurie*, 23–31.

<sup>106</sup> Lucien Campeau, ed., *Monumenta Novae Franciae: Vol. VIII: Au Bord de La Ruine (1651-1656)* (Rome/Saint-Laurent: Institutum Societatis Iesu/Bellarmin, 1996), 24.

<sup>107</sup> Fréchette, *Titles*, 459–460.

these properties.<sup>108</sup> In the same way, only the “Christian chief of the Indians” could allow “the full right of hunting and [...] fishing in the great river Saint Lawrence” to any of the French, with the permission of “the Jesuit Fathers”.<sup>109</sup> Onto the latter was also conferred “the conduct and direction” of the aboriginal people in question, as the Jesuits “[had] converted them to the Christian faith”.<sup>110</sup> On November 16, 1651, Lauson furthermore prohibited the French from directly contracting with this aboriginal people.<sup>111</sup>

The concession of the fief of Sillery also prescribed that the “Europeans [...] who live[d] within these boundaries [...] [could] remain there depending on the Christian chiefs and under the control of the [Jesuit] Fathers”.<sup>112</sup> Indeed, the King desired to “entice through these small emoluments drawn from their own country” the aboriginal people and to motivate them to “leave behind their wandering life and take up a Christian life under the control of their chiefs and the said Fathers who [had] converted them”.<sup>113</sup> The repeated mention of their captains constituted a recognition of their authority, both with reference to the neophytes and to the Europeans

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<sup>108</sup> Campeau, *MNF VIII*. 61–62. The original version of our translation read: “aliéner”; “sauvages qui se retirent ordinairement près de Québec [...] sous la conduite, direction et approbation”; “remettre, concéder, vendre”.

<sup>109</sup> Note that the original French version refers to “capitaine chrestien” Ibid., 61–62.

<sup>110</sup> Fréchette, *Titles*, 460.

<sup>111</sup> Campeau, *MNF VIII*, 96.

<sup>112</sup> *ibid.*: 62-63 The original version of our translation reads: “Européens [...] établis dans ces limites [...] demeurent dépendans des capitaines chrestiens et direction des dits Pères”.

<sup>113</sup> *ibid.*: 62-63 The original version of our translation read: “allescher par ces petits émoluments tirés de leur propre país”; “quitter leur vie errante et mener une vie chrestienne sous la conduite de leurs capitaines et desdits Pères qui les ont convertis”.

established within their domain, excepting only “justice” for the latter, which was to be rendered by the officers of Québec.<sup>114</sup>

As a general rule, in New France, the King’s representatives acknowledged the authority of the chiefs without difficulty.<sup>115</sup> Furthermore, in the concession of the fief of Sillery, the King stated unequivocally that aboriginal people initially possessed the “country” where they hunted and fished, even though he apparently assumed that they would quickly abandon their traditional way of life after becoming Christians.<sup>116</sup> On the other hand, he assumed a power to grant land unilaterally and to define the rights of Christian aboriginal communities. In the same way, the governor conceded land to the Jesuits in 1656 in such place as they wished to establish themselves in “the country of the Upper Iroquois, called Onnontoeronnons”.<sup>117</sup> Although these documents did not have the objective of confirming the territorial rights of the aboriginal peoples, they recognized their existence up to the time of appropriation by French. Legally this does not represent a total denial of their rights, but rather a process of gradual elimination, to the extent made necessary by the progress of colonisation. Hence the regions where the French had not established themselves still constituted the “country” of the aboriginal people who lived there.

The situation had scarcely changed in the 18<sup>th</sup> century. French officials still considered that aboriginal people who lived close to Québec and Trois-Rivières were governed by the law of

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<sup>114</sup> *ibid.*: 24 (Concession by the *Compagnie des Cent Associés* or "Canada Company").

<sup>115</sup> Morin, “Fraternité.”

<sup>116</sup> Fréchette, *Titles*, 460.

<sup>117</sup> Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents*, 71 vols. (Cleveland: Burrows Brothers, 1896), vol. 43, 221 (hereafter *JR*, followed by the volume and page number).

nations. They were required to obtain the permission of the Montagnais before they could go hunting on their terrain.<sup>118</sup> This conception of the status of aboriginal people seems to us to have had as corollary the recognition of territorial rights, despite the official discourse that the French occasionally held within the context of diplomatic negotiations, if this was in their interest.

At a minimum, these rights of use were recognized in the King's domain, where settlement was prohibited.<sup>119</sup> Moreover, the Peace Treaty of 1665, entered into by the French, their aboriginal allies and the Haudenosaunees, made reference to the notion of vassalage, but this terminology would never be used again. Nothing indicates that, in the eyes of all the parties, the King had "delivered to his vassals the lands on which they hunted in exchange for their loyalty", nor that he granted them "a right of access to resources".<sup>120</sup> To the contrary, aboriginal people were considered to be either allies or subjects of the King having owned their territories since time immemorial; indeed, the sources regularly refer to the "country" or "lands" where they hunted.<sup>121</sup>

The observations of the explorers and the missionaries confirmed this. On numerous occasions the aboriginal people furnished a detailed description of more or less remote regions and populations, sometimes providing them with a schematic representation traced on the ground or on a piece of bark. According to Lahontan the aboriginal people conserved a large number of bark maps.<sup>122</sup> This information generally accords with current knowledge.<sup>123</sup> In addition, one

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<sup>118</sup> Morin, "Nations Libres." 42-43.

<sup>119</sup> Lavoie, *Domaine*, 37, 65, 78, 137.

<sup>120</sup> *ibid.*: 104-105. The original version of our translations read: "*le roi remettait à ses vassaux l'usage des terres sur lesquelles ils chassaient en échange de leur loyauté*"; "*un droit d'accès aux ressources*".

<sup>121</sup> Morin, "Nations Libres"; *infra*, "Controlling access to the territory."

<sup>122</sup> Baron Lahontan, *New Voyages to North America: Containing an Account of the Several Nations of That Vast Continent; Their Customs, Commerce, and Way of Navigation upon the Lakes and Rivers; the Several Attempts of the English and French to Dispossess One Another; and the Various Adventures between the French and the*

frequently finds expressions such as the “territory”, “settlement”, “country” or “region” of an aboriginal nation.<sup>124</sup> In 1616, Father Biard confirmed that “[a]ll this new France [was] divided into different tribes, each one having its own separate language and country”.<sup>125</sup> Moreover, the navigation ways were completed and joined by a great number of portages that allowed immense distances to be crossed, for example from Fundy Bay to the Saint Lawrence River.<sup>126</sup>

On the other hand, Champlain often referred cursorily to places “where there [were] migratory savages, living only from hunting”, or something to that effect.<sup>127</sup> This seasonal frequentation was scarcely of interest to him, all the more so since he traversed great distances without encountering a living soul.<sup>128</sup> Lescarbot also had no doubt that these inhabitants occupied well-defined regions.<sup>129</sup> Even if this was rarely of interest to the explorers, the aboriginal people were

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*Iroquese Confederates of England, from 1683 to 1694. [...]*, vol. II, II vols. (London: Printed for H. Bonwicke in St. Paul’s Church-yard; T. Goodwin, M. Wetton, B. Tooke, in Fleetstreet; and S. Manship in Cornhil, 1703), 13.

<sup>123</sup> Cartier, *Voyages*. 102-106, 168-170, 200-203. Samuel de Champlain, *The Works of Samuel de Champlain in Six Volumes: Vol. I 1597-1607*, ed. H.P. Biggar, 6 vols. (Toronto: Champlain Society, 1922). 138, 169, 335; Samuel de Champlain, *The Works of Samuel de Champlain in Six Volumes, Vol. II 1608-1613*, ed. H.P. Biggar (Toronto: Champlain Society, 1922). 16-19, 74, 93, 255, 277. Pierre-Esprit Radisson, *Pierre-Esprit Radisson, The Collected Writings Vol I: The Voyages*, ed. Germaine Warkentin (Montreal-Kingston/London/Ithaca: McGill-Queens University Press/Champlain Society, 2012), 287.

<sup>124</sup> H.P. Biggar, trans., *The Works of Samuel de Champlain in Six Volumes: Vol. I: 1599-1607*, vol. I (Toronto: The Champlain Society, 1622), 99, 100, 101, 142, 144, 159, 161 and 336.

<sup>125</sup> *JR* 3, 69.

<sup>126</sup> Marc Lescarbot, *La Conversion Des Sauvages Qui Ont Été Baptizés En La Nouvelle France, Cette Année 1610: Avec Un Bref Récit Du Voyage Du Sieur de Poutrincourt* (Paris: Jean Millot, 1610) 40 (also in *JR* 1, 101). Nicolas Denys, *The Description and Natural History of the Coasts of North America (Acadia) by Nicolas Denys*, trans. William F. Ganong (Toronto: The Champlain Society, 1908), 473-474, 496, 503.

<sup>127</sup> The translation of Otis seems more accurate: Charles Pommeroy Otis, trans., *Champlain’s Voyages*., vol. 2 (Boston: John Wilson & Son, 1880), 169; see also Samuel de Champlain, *Derniers Récits de Voyages En Nouvelle-France et Autres Récits 1620-1632*, ed. Mathieu D’Avignon (Quebec: Presses de l’Université Laval, 2010), 76. and Champlain, *Works I*. 292.

<sup>128</sup> Champlain, *Works I*. 166, 268-273, 285-293. Champlain, *Works II*. *JR* 3, 63.

<sup>129</sup> Marc Lescarbot, *The History of New France*, vol. 2, 3 vols. (Toronto: Champlain Society, 1907). 267, 356-357.

able to describe territorial boundaries with precision. Thus, in 1536 Cartier learned that the “province and territory of Canada” commenced approximately seven leagues from the Île aux Coudres, where one found the “fourteen” islands of the Saint Lawrence River, notably the Île aux Grues.<sup>130</sup> For his part, Roberval noted that the Iroquois of Saint Lawrence “[had] a King in every Countrey, and [were] wonderfull obedient unto him”.<sup>131</sup> We should clarify that from the beginning of the 17<sup>th</sup> century onwards, this term would be rapidly replaced by “captains” under the influence of Lescarbot, so as to better account for the limited scope of their powers.<sup>132</sup>

Several observers signaled the existence of well-defined territorial limits. In 1615 Champlain encountered three hundred Cheveux-Relevés [or Outaouais] close to Huron Lake and conversed with their chief “about his country, which he drew for [him] with charcoal on a piece of tree-bark”.<sup>133</sup> An unidentified chief equally reminded Chrestien Le Clerq “that the nation of the Gaspesians extend[ed] from the Cape des Rosiers as far as Cape Breton”. For their part, the “Indians of Ristigouche” lived in the Baie des Chaleurs; they were “brothers” and “compatriots” of Le Clerq's interlocutor and spoke his language; they also had been baptized by other missionaries.<sup>134</sup> The term “brother” was frequently used to designate members of the same a

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<sup>130</sup> Cartier, *Voyages*, 119.

<sup>131</sup> *ibid.*: 269.

<sup>132</sup> Peter Cook, “Kings, Captains and Kin: French Views of the Native American Political Cultures in the Sixteenth and Early Seventeenth Century,” in *The Atlantic World and Virginia*, ed. P.C. Mancall (Chapel Hill: University of North Carolina Press, 2007), 307–41.

<sup>133</sup> H.P. Biggar, trans., *The Works of Samuel de Champlain in Six Volumes: Vol. III: 1615-1618*, vol. III (Toronto: The Champlain Society, 1629), 44.

<sup>134</sup> Crestien Le Clercq, *New Relation of Gaspesia. With the Customs and Religion of the Gaspesian Indians*, ed. and trans. William F. Ganong (Toronto: The Champlain Society, 1910), 192.



nation; in this instance, as in other documents, the concept of nation had a much broader meaning than a group occupying a hydrographical basin.<sup>135</sup>

Sagard mentioned in passing that, when leaving the country of the Hurons, warriors crossed “the frontier, in order to invade the enemies’ country”.<sup>136</sup> But let us clarify that, to his mind, the “frontiers” appeared to pass along cultivated fields; perhaps he was simply referring to the forest edge.<sup>137</sup> Exactly like Lescarbot, he asserted that war with another nation was never undertaken with the objective “of possessing [a] territory and conquering [a] country”.<sup>138</sup> Indeed, war appears to have been mostly motivated by taking prisoners and thus compensating for population losses.<sup>139</sup>

Moreover, one sometimes discovered “certain marks which the chiefs of different tribes [made] known to each other; but these not continuing always the same, they inform[ed] themselves from time to time of changes, by which means they ascertain[ed] whether they [were] enemies or friends who [had] passed” over the land of a nation.<sup>140</sup> Thus, in 1666, when the Papinachois had returned home from Tadoussac, they painted distinctive marks on certain tree trunks in order to show that they had passed there.<sup>141</sup> Generally speaking, these did not appear to set boundaries:

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<sup>135</sup> Morin, “Fraternité.”

<sup>136</sup> Sagard, *Journey*, 152.

<sup>137</sup> *ibid.*: 164.

<sup>138</sup> Sagard, *Journey*, 163. Marc Lescarbot, *The History of New France*, vol. 3, 3 vols. (Toronto: Champlain Society, 1907), 262. See also Pierre Boucher, *Canada in the Seventeenth Century*, trans. Edward Louis Montizambert (Montreal, 1883 - translation of “*Histoire Véritable et Naturelle Des Moeurs et Productions Du Pays de La Nouvelle-France Vulgairement Dite Le Canada, 1664*”), 62. Le Clercq, *New Relation*. 265.

<sup>139</sup> Marc Lescarbot, *The History of New France*, vol. 3 (Toronto: Champlain Society, 1907).

<sup>140</sup> Sagard, *Journey*. 251. Le Clercq, *New Relation*. 192-193.

<sup>141</sup> *JR* 50, 20.

they rather indicated recent movements, whether these were meant to reassure the nation that was the master of the region or intended as a challenge.

Even when they occasionally needed to leave their country, the aboriginal people remained attached to it. Thus in 1644, according to Barthelemy Vimont, the Algonquins “[had] been driven from their own country” by the Iroquois, because the “woods best suited for hunting” were to be found there, on either side of the Saint Lawrence River.<sup>142</sup> In 1646 they reintegrated their territory but were forced to leave it upon resumption of the war.<sup>143</sup> In 1647, three members of the "petite nation" of the Algonquins had similarly “resolved to leave their country” due to Iroquois attacks, not to mention the fact that an epidemic had decimated the caribou.<sup>144</sup> In 1660, three nations dwelling to the North of Lake Saint John also took refuge towards the East because of Iroquois raids.<sup>145</sup> In 1668, according to a missionary, the ancient dwelling of the Outaouais was “a district on the Lake of the Hurons, whence the fear of the Iroquois had driven them, and whither all their longings [were] directed as to their native land”.<sup>146</sup> These affirmations simply signify that the war conducted by the Iroquois had caused their enemies to flee; prior to the last third of the 17<sup>th</sup> century, access to hunting zones does not appear to have been a principal motive for conflict.<sup>147</sup>

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<sup>142</sup> *JR* 25, 107.

<sup>143</sup> *JR* 37, 213.

<sup>144</sup> *JR* 30, 281.

<sup>145</sup> *JR* 45, 33.

<sup>146</sup> *JR* 51, 23.

<sup>147</sup> Brandão, *Fyre*; Viau, *Enfants*; Havard, *Empire*; Parmenter, *Edge*.

In 1672, barely four years after the establishment of the Hudson's Bay Company's first trading post, the Kinistinon, Mataoüakirinoüek and Monsounik Nations were separated “by large rivers”; therefore, they occupied well-defined territories.<sup>148</sup> At the beginning of the 17th century, Lescarbot and Champlain often indicated the name of the “chief” or “captain” of a river and of the aboriginal people who lived there.<sup>149</sup> All the same, Father Buteux spoke of the lake where his host “usually [had] his abode”.<sup>150</sup> In 1646, on the occasion of a peace treaty concluded between the Betsiamites and the aboriginal people of “Acadia”, we learn that the regions of Tadoussac, Baie des Chaleurs, Baie de l’Acadie and Baie de Rigibouctou each had its own captain.<sup>151</sup> In 1652, there was new mention of ferocious hostilities between the “Savages of Gaspé” and the “Oumamiouek or Bersiamites” of the North Coast.<sup>152</sup> Distinct nations were also mentioned around Manicouagan Lake.<sup>153</sup>

At the beginning of the 18<sup>th</sup> century, Lahontan wrote that “[t]he Wars of the Savages [were] grounded upon the Right of Hunting, or on a Passage upon such and such Grounds; for their Limits [were] adjusted” and that “every Nation [was] perfectly well acquainted with the Boundaries of their own Country”.<sup>154</sup> He stated that in 1684 the five Iroquois nations accused the Illinois and the Oumamis of the Great Lakes area of having invaded their hunting territory, in

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<sup>148</sup> *JR* 56, 203.

<sup>149</sup> Lescarbot, *History II*. 323-324, 356-357. Champlain, *Works I*. 284-284, 311-312, 393; Champlain, *Works V*. 65

<sup>150</sup> *JR* 37, 33.

<sup>151</sup> *JR* 30, 139-143.

<sup>152</sup> *JR* 37, 233, 235. Le Clercq, *New Relation*. 266.

<sup>153</sup> *JR* 49, 52.

<sup>154</sup> Lahontan, *New Voyages II*, II:72.

addition to having breached a universally accepted rule demanding that some beavers be spared, no doubt so that they could reproduce. In breaching this rule these nations:

[...] cut down the trees of Peace that serv'd for limits or boundaries to our Frontiers. They came to hunt Beavers upon our Lands; and contrary to the custom of all the Savages, have carried off whole Stocks, both Male and Females. [...] We have done less than the *English* and the *French*, who without any right, have usurp'd the Grounds they are now possess'd of; and of which they have dislodg'd several Nations, in order to make way for their building of Cities, Villages, and Forts.<sup>155</sup>

Bacqueville de La Potherie also mentioned that the Five Nations had hunted in the region of Fort Frontenac (later Kingston) “for as long as the world [had] been in existence”.<sup>156</sup>

In 1697 in the Fort Nelson region on the west bank of Hudson Bay, the majority of wars among nations were due to conflicts relating to hunting rights, according to Bacqueville de La Potherie.<sup>157</sup> In his opinion, the same was true of “all the wars between the Iroquois and all of our allies, because the Iroquois were very compressed” and because there was “very little furs” in the regions where they lived, which caused them to attack their neighbours.<sup>158</sup> All of these documents prove that the aboriginal nations knew the boundaries of their territories and agreed on having them respected. The French were quite conscious of this reality. Even more, they had quickly grasped the primordial role played by the regional captains in controlling access to the territories of their nations.

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<sup>155</sup> Baron Lahontan, *New Voyages to North America: Containing an Account of the Several Nations of That Vast Continent; Their Customs, Commerce, and Way of Navigation upon the Lakes and Rivers; the Several Attempts of the English and French to Dispossess One Another; and the Various Adventures between the French and the Iroquese Confederates of England, from 1683 to 1694. [...]*, vol. I, II vols. (London: Printed for H. Bonwicke in St. Paul's Church-yard; T. Goodwin, M. Wetton, B. Tooke, in Fleetstreet; and S. Manship in Cornhil, 1703). 41.

<sup>156</sup> Leroy Bacqueville de La Potherie, *Histoire de l'Amérique Septentrionale*, vol. I (Paris: Éditions du Rocher, 1997), 655. The original version of our translation reads: “*depuis que le monde est monde*”.

<sup>157</sup> *ibid.*: 105.

<sup>158</sup> Leroy Bacqueville de La Potherie, *Histoire de l'Amérique Septentrionale*, vol. II (Paris: Éditions du Rocher, 1997), 447. The original version of our translation reads: “*de toutes les guerres entre les Iroquois et tous nos alliés, parce que les Iroquois sont fort bornés*”; “*très peu de Pelleterie*”.

## Controlling access to the territories

From 1535 onwards at Stadaconé (present-day Québec), Chief Donnacona opposed Cartier's plans to go to Hochelaga on the Island of Montréal without his consent.<sup>159</sup> In the same way, Champlain was forced to renounce his idea of exploring the Saguenay and Saint-Maurice rivers due to the refusal of his allies to take them there.<sup>160</sup> Other peoples had insistently tried to dissuade him from pursuing his expedition towards the West so as to retain their position as intermediaries.<sup>161</sup> Likewise, in 1642 the Montagnais of Tadoussac did not want Paul Le Jeune to accompany them on their trade expedition with the "more distant Tribes".<sup>162</sup> In 1659, access to the Saguenay river was still dependent on the goodwill of certain peoples.<sup>163</sup> Moreover, Champlain was quite conscious that he needed to offer presents if he wished to cross a territory safely. Indeed, in 1611 he promised his allies that he would return in a year's time with fifty or so soldiers. If they furnished provisions and transport, he undertook to bring along "presents to the chiefs of the regions" through which they should pass.<sup>164</sup>

The aboriginal people did not hesitate to enforce this customary rule. In 1610, according to Lescarbot, the Micmac took what pleased them from a French fishing boat that had dropped anchor close to their "cabins"; they also helped themselves to fresh fish when the rowing boats

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<sup>159</sup> Cartier, *Voyages*. 132-133, 139.

<sup>160</sup> Champlain, *Works II*. 19, 119, 174.

<sup>161</sup> *ibid.*: 265, 272-274. Sagard, *Journey*. 87.

<sup>162</sup> *JR* 21, 99.

<sup>163</sup> Radisson, *Voyages*, 245.

<sup>164</sup> Champlain, *Works II*. 195. See also Sagard, *Journey*. 99.

returned ashore.<sup>165</sup> At Tadoussac in 1624 Chief Erouachy (also known as La Forière), was insulted by the small present offered to him by a French captain. He therefore boarded the captain's boat, which contained no more than six or seven people, and invited his companions to freely help themselves and to pay what they liked for the goods. When night fell they had second thoughts and offered more furs than required to compensate for the losses incurred.<sup>166</sup> Le Jeune also observed that the Montagnais “[did] not open the hand half-way when they [gave] [...] among themselves” but that “they [were] as ungrateful as possible towards strangers”<sup>167</sup> – whereas Le Clercq made the same observation in respect of the Micmac.<sup>168</sup>

In 1633, Champlain asked the “captain” of the Québec Montagnais to stop his men from going trafficking with the contraband English merchants who were waiting for them down-river. He threatened to send armed boats and to “exercise their own custom, which [was] to seize the merchandise and goods of persons who trade[d] with their enemies, without letting them pass”.<sup>169</sup> In Québec in 1623, at an assembly of the various allied nations, the Hurons complained that the “passages were not open” because “the Algonquins treated them badly, levying on their goods” or simply plundering them. A compromise and a form of compensation was accordingly agreed on with this nation, which could have been the one of Allumette Island.<sup>170</sup> The problem

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<sup>165</sup> Lescarbot, *Voyages*, 225. Lescarbot, *History II*. 362-363.

<sup>166</sup> Sagard, *Journey*. 45-46.

<sup>167</sup> *JR* 6, 239.

<sup>168</sup> Le Clercq, *New Relation*. 172.

<sup>169</sup> Lucien Campeau, ed., *Monumenta Novae Franciae: Vol. II: Établissement À Québec (1616-1634)* (Rome/Quebec: Monumenta Hist. Soc. Iesu/Presses de l'Université Laval, 1979), 365. The original version of our translation reads: “user de la coutume qu'ils ont entr'eux, qui est que toutes personnes qui vont traiter avec leurs ennemis, on leur saisit leurs marchandises et leurs commoditez, sans les laisser passer”.

<sup>170</sup> Champlain, *Works V*, 103.

arose anew in 1625. Due to the fact that he was French, Brother Gabriel Sagard succeeded in avoiding the bad treatment meted out to his travelling companions, because the Algonquins of the Island feared that if they blocked his passage, they would be exposed to reprisals when they went to trade in Québec.<sup>171</sup>

Shortly after, at the heights of the Richelieu, the Montagnais and the Algonquins of the Trois-Rivières region wanted to hinder the Hurons from reaching Québec. Many Hurons offered presents to their counterparts, but Sagard convinced his companions not to follow this example.<sup>172</sup> He fled with them in the early morning, but they were stopped one or two leagues from Québec by the “chief” of a “Montagnais village, erected on the bank of the river” with “several others of his party”. The latter demanded maize and flour “as being due, they said, to their chief for passage and entry into their territory”.<sup>173</sup> A French boat sent to “curb such insolence” caused them to loosen their grip.<sup>174</sup> It thus appears that the Montagnais of the Québec region lost control over the river circulation during this era, but it would be more correct to say that they very reluctantly made an exception for Sagard's party. As with the establishment of commercial monopolies, these changes marked the beginning of the French domination in the estuary of Saint Lawrence. It was linked to the “splintering” of aboriginal peoples’

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<sup>171</sup> Sagard, *Journey*. 255-257.

<sup>172</sup> *ibid.*: 267-268.

<sup>173</sup> Sagard, *Journey*, 268.

<sup>174</sup> Sagard, *Journey*. 268.

sovereignty.<sup>175</sup> Thus regional captains living in proximity to the French would no longer control the circulation within their regional territory.

In 1633, when Champlain detained an Algonquin from the Island who admitted to having killed a Frenchman, a rumour circulated that the murderer's parents were going to attack the Jesuits in reprisal. The Hurons refused to take them on board, explaining that "the river was not theirs, and that great caution [would have to be] be observed in regard to those other tribes, if they were to pass by in security. As far as they were concerned, they asked nothing better than to furnish passage to the French".<sup>176</sup> The missionaries renounced their plan, for fear of provoking a "war against these people", as several nations took a very poor view of the relationships that had developed between the Hurons and the French. For his part, Brébeuf explained to his Huron "brothers" that, "as the river [was] closed", he and his colleagues would wait until the following year before going to their country.<sup>177</sup> As for the Ouperigoues Ouaouakhis who lived inland from the Lower North Coast of the Saint Lawrence River, they had never encountered Europeans but they dared not come to Tadoussac for trade purposes. Indeed, they feared being killed by the Montagnais of this region. In 1635, the Montagnais moreover pitilessly slaughtered the Bersiamites that they had previously welcomed peacefully among them.<sup>178</sup> Le Jeune drew a parallel between the fears of the Ouperigoues Ouaouakhis and the execution of the Bersiamites, even if the true causes of the latter drama were not really known to him.

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<sup>175</sup> Alain Beaulieu, "'L'on a Point D'ennemis plus Grands Que Ces Sauvages'. L'Alliance Franco-Innue Revisitée," *Revue D'histoire de l'Amérique Française* 61, no. 3-4 (2008): 365-95.

<sup>176</sup> *JR* 6, 11.

<sup>177</sup> *JR* 6, 17.

<sup>178</sup> *JR* 8, 41.



Before undertaking the journey to Québec, the Hurons always ensured that the Algonquins of the Island give them “free passage”.<sup>179</sup> Even though they were ten times more numerous than the latter, “they [would] not pass by if a single inhabitant of the island object[ed] to it, so strictly [did] they guard the laws of the Country”; but “[t]his portal [was] usually opened by means of presents, sometimes greater and sometimes smaller, according to the emergency”.<sup>180</sup> When a captain died they needed to be more generous, on account of the ceremony for the transmission of the name and title of the deceased. On this occasion, ceremonial gifts were given to his family; one then said “that the body [was] ‘cached,’ or rather, that the dead [was] resuscitated”.<sup>181</sup> Afterwards “only the usual tribute [was] paid when one passe[d] over the [marches] and boundaries of these Islanders”.<sup>182</sup>

In 1637, Abénaquis living in the modern-day State of Maine wished to go from Québec to Three-Rivers to trade with the Algonquins, but the “Captain” of the Montagnais forbade them from doing so. He thus asked the support of the governor to “close all the rivers through which they [could] return to their country”.<sup>183</sup> The governor accordingly prohibited the captain of the Abénaquis to go to Trois-Rivières, but the band carried on regardless. When questioned about it later on, they said that they had simply wished to rescue their allies. Nonetheless, the French searched their cabin and found no beavers; however, they confiscated three harquebuses that the

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<sup>179</sup> *JR* 9, 247.

<sup>180</sup> *ibid.*: 275.

<sup>181</sup> *Ibid.* 277. *JR* 9, 277. See also Rémi Savard, *L’Algonquin Tessouat et La Fondation de Montréal* (Montreal: L’Hexagone, 1996); Morin, “Fraternité,” 559–560.

<sup>182</sup> *JR* 9, 277; see also *JR* 22, 293. Thwaites' translation has “highways” for the French “*marches*”. According to the Oxford English Dictionary, like its French counterpart, “*marches*” means an “area of land on the border between two countries or territories”.

<sup>183</sup> *JR* 12, 187.

Abénaquis had in their possession. It is remarkable that the captain of the Québec Montagnais considered himself to hold such sway over the Saint Lawrence River, even though he demanded the backing of the French before exercising his power. Indeed, Le Jeune clarified for the reader “the way of these nations” when they decided to “block their passage”:

These Barbarians have a very remarkable custom. When other nations arrive in their country, they would not dare pass beyond without permission from the Captain of the place; if they did, their canoes would be broken to pieces. This permission to pass on is asked for with presents in hand; if these presents are not accepted by the Chief, not being minded to let them pass, he tells them he has stopped the way, and that they can go no further. At these words they have to turn back, or run the risks of war.<sup>184</sup>

Towards 1660 Pierre-Esprit Radisson was similarly quite conscious of the need to offer a present to the Nadoueseronons so as to obtain “a free passage” for his group.<sup>185</sup> Upstream from Montréal in 1668, the Outaouais also claimed that the Saint Lawrence River “belong[ed] to them, and that no nation [could] launch a boat on it [81] without their consent”, something that the Iroquois were certainly not inclined to admit.<sup>186</sup> In the 18<sup>th</sup> century the people living in the Fort Nelson region expressed themselves in a similar manner.<sup>187</sup>

According to Pierre-Esprit Radisson it was customary for the Iroquois to plunder all the goods of a person who was lost in the woods.<sup>188</sup> Among the Montagnais the pillage of goods equally constituted a sanction, for instance when a widow remarried less than three years after the death of her deceased husband. Her new spouse risked being stripped of all his goods by the former in-

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<sup>184</sup> *ibid.*: 189.

<sup>185</sup> Radisson, *Voyages*, 280.

<sup>186</sup> *JR* 51, 23. Parmenter, *Edge*, 133 ff.

<sup>187</sup> La Potherie, *Histoire*, 1997, I:126.

<sup>188</sup> Radisson, *Voyages*, 196. See also an obscure passage where Radisson appears to say that some starved Outaouais who had taken refuge on a neighbouring territory had been looted of their provisions by those who hunted with him (*ibid.*, 269.)

laws of the wife, because he had not respected the minimum legal period of widowhood. Le Jeune clarified: “this custom [did] so pass[...] for law that we [saw] it practiced before our eyes, —in such a way that the one who had thus married saw his Porcelain Collars and all he had, taken without saying anything else except that it was he who had injured himself by having infringed upon their custom”.<sup>189</sup> In the event of theft, the aboriginal people would similarly “strip the first persons whom [they] [met] who [were] of the same family or nation as the one who [had] [23] committed the theft”.<sup>190</sup> This rule constituted a very clear recognition of the importance that aboriginal people attached to their personal goods, since they could be deprived of them in order to sanction a transgression.

In 1638, Jérôme Lalemant travelled with the Hurons towards their country. On the Outaouais River they encountered four “cabins of the Algonquins of the Island”.<sup>191</sup> One of them was outraged, because a number of days previously, a Frenchman had passed by and had bled a sick person, who died a little later. He therefore placed a cord around Lalemant’s neck and grabbed an axe with the intention to kill him because he belonged to the same nation as the apprentice doctor. The Hurons intervened on his behalf and obtained his freedom by means of presents. In the end the Algonquin declared that he was no longer angry. Lalemant added that the following day a Huron nearly killed the aggressor on the spot. His companions requested that the incident be reported to the governor. The following year the same Algonquin was at Trois-Rivières along with a captain from his nation. This captain was gradually recovering from an axe blow to the head by a third Algonquin, whom he had generously pardoned. The French now wished to be

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<sup>189</sup> *JR* 16, 205.

<sup>190</sup> *JR* 37, 163.

<sup>191</sup> *JR* 14, 267.

compensated for the bad treatment that had been inflicted upon Father Lalemant the previous year. The chief was “astonished that those who boast[ed] of praying to God, and who [said] that it [was] necessary to pardon offenses, since God pardon[ed] them, wish[ed] to obtain revenge for an injury that [had been] done them a long time ago.” The matter ended there.<sup>192</sup>

Shortly before his unexpected death in 1717, Nicolas Perrot provided a completely different interpretation of these events, which he situated in 1650. According to him, in abandoning the country of the Hurons to take refuge in Québec with his neophytes, Lalemant refused to go to the Algonquin village on Allumette Island, where Chief Le Borgne was demanding a toll. He apparently declared that “the French, being masters of the country, were not obliged to do that”.<sup>193</sup> When Le Borgne found out about them, the Hurons cast the blame on Father Lalemant. The Chief had him suspended “from a tree by his arm-pits, telling him that the French were not the masters of his country; and that in it he alone was acknowledged as chief, and they [all] were under his authority.” When Le Borgne went down to Québec the following year, he was supposed to have been thrown into a dungeon, only to be freed a number of days later after his companions had offered gifts to the French.<sup>194</sup> This version is not corroborated by any other source; furthermore, it is marred by several gaps that render it quite implausible. Lucien Campeau has written the following note in this regard:

This episode will be deformed by the oral rendering of an Algonquin of Sault-Sainte-Marie to Perrot around 1670. The name of Lalemant is correct, but not the date (1650), nor the destination

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<sup>192</sup> *JR* 16, 209-211.

<sup>193</sup> Emma Helen Blair, trans., *The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes as Described by Nicolas Perrot, French Commandant in the Northwest; Bacqueville de La Potherie, French Royal Commissioner to Canada; Morrell Marston, American Army Officer; and Thomas Forsyth, United States Agent at Fort Armstrong.*; vol. 1 (Cleveland, Ohio: The Arthur H. Clark Company, 1911), 177.

<sup>194</sup> *ibid.*

(descent towards Montréal instead of ascent), the place (Allumette Island rather than a point down-river), the motive (toll instead of grief) and the consequences (imprisonment of Le Borgne instead of the criticisms of Montmagny).<sup>195</sup>

Furthermore, in 1643, Agwachimagan, captain of the Algonquins of the Island, declared that they had been decimated by disease, war and famine, to such an extent that they “[were] reduced to nothing”.<sup>196</sup> It is therefore quite improbable that in 1650, the survivors could have exercised control over movement in this region. Yet Perrot’s description is sometimes presented as being authoritative.<sup>197</sup>

In 1672, on their way to James Bay, Father Charles Albanel and his group entered the lands of the “Mistassirinins” Nation; one of its members, Moukoutagan, asked them to stop there so that he could announce their arrival to an “old man, the master of this country”.<sup>198</sup> Knowing the aboriginal people “to be extremely cautious in granting strangers a passage by way of their rivers, to distant Nations”, Albanel explained to the captain of this region:

‘Sesibahoura, it is not to purchase the passage of this river and of thy Lake that I am pleased to regale thee with two presents. The Frenchman, having delivered this whole country from the incursions of the Iroquois, your foes, well deserves to be accorded the right to go and come with entire freedom through this region, which he has subdued with his arms. Moreover, God whom You yourselves acknowledge to be the master of all things, [...] gives me the right of free passage everywhere, as he sends me to make him known throughout all these regions. Neither Annié, Oneiout, Onontaguéronon, Oiogouen, Sonnantouan, Nepissirinin, Outaouac, nor any strange

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<sup>195</sup> Lucien Campeau, ed., *Monumenta Novae Franciae: Vol. IV: Les Grandes Épreuves (1638-1640)* (Rome/Montreal: Institutum Societatis Iesu/Bellarmin, 1989), 129–130 n. 7. The original version of our translation reads: “*Cet épisode sera déformé par la tradition orale rapportée par un Algonquin au Sault-Sainte-Marie à Perrot, vers 1670. Le nom de Lalemant est exact, mais pas la date (1650), la destination (descente vers Montréal au lieu d’une montée), le lieu (Île aux Allumettes plutôt qu’un point en aval), le motif (péage au lieu du deuil) et les conséquences (emprisonnement du Borgne au lieu des reproches de Montmagny).*”

<sup>196</sup> *JR* 36, 303.

<sup>197</sup> Mathieu D’Avignon, *Champlain et Les Fondateurs Oubliés* (Quebec: Presses de l’Université Laval, 2008), 89–90. Cavanagh, “Possession.” 119, who, however, considers alternative explanations.

<sup>198</sup> *JR* 56, 171.

Nation has ever required anything of my brothers, when they freely passed to and fro through those peoples' territories, to instruct them and teach them the Laws of the Gospel.<sup>199</sup>

Two different claims are made here. On the one hand, as member of the nation who had imposed peace on the Iroquois, a Frenchman “well deserve[d]” to freely move about all over, including the regions close to James Bay, which had been conquered by arms (without a single French soldier ever having set foot there!) On the other hand, the missionaries had always considered themselves entitled to freely circulate in order to go preaching the Gospel. The following day, the captain expressed his gratitude to the French who had brought peace; he then asked Father Albanel to remain with his people to instruct or baptize them, which Albanel accepted to do for a number of days.<sup>200</sup> The next year, the Mistassini went to Québec to ask the governor’s protection against the Iroquois “to assure him that they took him for their father”, and promising that they would continue to pray; however, this did not imply an outright of submission.<sup>201</sup> Albanel seemed to think that he had imposed “free circulation by [French] subjects” – a point of view adopted by Dawson.<sup>202</sup> We are of the opinion that he had simply obtained permission to continue on his way. For the rest, many questions remained unanswered following this encounter.

To return to the expedition of 1672: once they had arrived in James Bay, its members ended up encountering Captain Kiaskou. Albanel explained that Onnontio, who had been responsible for the peace with the Iroquois, rendered his country to this captain so that the latter could fish, hunt

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<sup>199</sup> *ibid.*: 173-175.

<sup>200</sup> *JR* 56, 176-178.

<sup>201</sup> *ibid.*: 45. On the meaning of the word "Father", see Peter Cook, “Onontio Gives Birth: How the French in Canada Became Fathers to Their Indigenous Allies, 1645-1673,” *Canadian Historical Review* 96, no. 2 (2015): 165–93. Morin, “Fraternité,” 580–587.

<sup>202</sup> *Fourrures et Forêts Métisserent Les Montagnais* (Sillery: Septentrion, 2011), 107. The original version of our translation reads: “*la libre circulation des sujets*”.

and trade safely. He ensured that the French would come to these regions solely to convert the aboriginal people, rather than for commerce<sup>203</sup>. The captain was concerned to see that Albanel's expedition could not carry back presents to the governor: "They Will say at Quebec that I have no mouth – that I am a Child, unable to speak".<sup>204</sup> In responding, Albanel tried once again to have the right of the French to circulate throughout the territory recognized, but he was forced to fall back on his status as priest and to leave unresolved the question of expeditions for commercial purposes. Nothing indicated that his interlocutors had renounced their territorial control, even if they wished to become French allies on a voluntary basis.

In 1684 in the region of the Nelson River and the West Coast of Hudson Bay, Radisson claimed that an aboriginal people had renounced the "custom" requiring the offering of presents before agreeing to a change in commercial partners<sup>205</sup> His nephew, Jean-Baptiste Desgroseillers, furthermore noted the importance of this rule. Charged with guarding the French fort that had been constructed in 1682, he encountered a group of aboriginal people of the New Severn River, located a few hundreds of kilometers in a South Easterly direction. They were going trading with the English, more exactly with "their brothers, who were established at the bottom of the Bay", further South. Desgroseillers invited them to come smoking tobacco with the French, which was synonymous with peace.<sup>206</sup> He then was the victim of a murder attempt. His aggressor, "who was the chief of all the nations, & the friend of the English at the bottom of the Bay", reproached him

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<sup>203</sup> *JR* 56, 192.

<sup>204</sup> *ibid.*: 197.

<sup>205</sup> Gideon D. Scull, *Voyages of Peter Esprit Radisson. Being an Account of His Travels and Experiences among the North American Indians, from 1652 to 1684* (New York: Burt Franklin, 1967), 331.

<sup>206</sup> *ibid.*: 338.

for not having “paid him by a present for the possession of the country” that he lived in.<sup>207</sup> It had moreover been the English who had incited him to act this way, during a secret meeting held shortly before.

Several aboriginal people died during the course of confrontations resulting from this aggression, some of whom were the parents of the man who had become an adoptive father to Radisson the preceding year.<sup>208</sup> In order to avoid conflict, Radisson organized a meeting with the governor of the Hudson Bay Company, for which he now worked. He explained that it would be appropriate to give “some little presents” to the chief of the nation of the “place” where the company had built its fort;<sup>209</sup> this person was none other than his adoptive father.<sup>210</sup> The governor lost his temper and refused. For his part, Radisson refused to offer presents “to a simple savage” who “served as a spy” for the governor and who was the son of a regional chief living upstream of the New Severn River.<sup>211</sup>

Radisson confirmed that he “had never made any presents but to the chiefs of nations”.<sup>212</sup> He emphasized the “inconveniences” that could flow from “indifference” towards them, especially where the company “[had] built the fort”.<sup>213</sup> In reality, he had never recognized the authority of the chief who seemed to have been conducting negotiations with the English, since he had

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<sup>207</sup> *ibid.*: 339.

<sup>208</sup> *ibid.*, 340-361

<sup>209</sup> *ibid.*, 354

<sup>210</sup> *ibid.*, 351-352

<sup>211</sup> *Ibid.*, 355.

<sup>212</sup> *ibid.*

<sup>213</sup> *ibid.*: 355, 362.



formed an alliance with his “adoptive father” the preceding year while he was working for the French. We have but his word in respect of the authority of this chief; he appeared to be coherent in his narratives, though he did mention in passing the presence of another “great chief & captain of the savages” in the region.<sup>214</sup> Be that as it may, it is clear that these chiefs claimed the right to decide which Europeans could establish themselves amongst them and that they expected to receive presents in compensation for granting their permission. Furthermore, one of them resided hundreds of kilometers away, being in the region of the New Severn River, which indicates that he laid claim to the control of a vast region.

On the whole, the regional chief’s access control is vouched for on the Atlantic coast, in the Saint Lawrence Valley and in the Hudson Bay region. The colonial authorities had to ensure that this did not hinder the fur trade. At times they settled for gradual imposition of their authority (for instance on the Saint Lawrence River, downstream from Montréal); otherwise, they favoured agreements with aboriginal peoples.

### Placing resources in common use

All along the 17<sup>th</sup> century the French were eager to procure the conclusion of a general peace founded upon the principle of brotherly relations and the opening up of hunting zones.<sup>215</sup> They were well conscious of the fact that every nation kept watch jealously over movements across its territory. In the Saint Lawrence Valley, access to game regions sometimes interested the Iroquois

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<sup>214</sup> *ibid.*: 336; see Janna Promislow, “One Chief, Two Chiefs, Red Chiefs, Blue Chiefs. Newcomer Perspectives on Indigenous Leadership in Rupert’s Lands and the North-West Territories,” in *The Grand Experiment Law & Legal Culture in British Settler Societies*, ed. H. Foster, B.L. Berger, and A.R. Buck (Vancouver: UBC Press, 2008), 55; Janna Promislow, “‘Thou Wilt Not Die of Hunger ... for I Bring Thee Merchandise’, Consent, Intersocietal Normativity, and the Exchange of Food at York Factory, 1682-1763,” in *Between Consenting Peoples, Political Community and the Meaning of Consent*, ed. J. Webber and C.M. MacLeod (Vancouver: UBC Press, 2010), 77.

<sup>215</sup> Morin, “Fraternité,” 587–596.

in particular, while their hostility practically paralyzed all of the French allies, who had ever-increasing difficulties in transporting their furs.<sup>216</sup> From 1603 onwards, Champlain realized how important it was to bring all of these nations to agree to a general peace; on one occasion, he supported this project to his fullest ability, but the hostilities resumed quite quickly.<sup>217</sup> Negotiations of this nature were furthermore very delicate. In 1644, an aboriginal person declared that the construction of French forts “close[d]” the rivers to the Iroquois and allow[ed] the Christians “to live as brothers” without quarrelling, even if that was “difficult, when trade [was] being carried on”.<sup>218</sup> Reciprocally, from the point of view of the Iroquois, when the hostilities came to an end, “the river [would] be quite calm and smooth, and peace” would make the warring peoples “all friends”.<sup>219</sup>

In 1645, within the context negotiations, the Annierronnon Iroquois “Ambassador” Kiotseaeton offered to his aboriginal hosts to “eat with them”, for his country “[was] well stocked with fish, with venison, and with game” and “full of deer, of Elk and of beaver”.<sup>220</sup> After the peace was made, the Annierronnons came hunting in large numbers “with every liberty in the borders of the Algonquins”, who received them peacefully in the Christian residence.<sup>221</sup> According to Jérôme Lalemant, since “most of the animals” were “on the marches of the Algonquins”, the Annierronnons made the most of the peace and “[shot] these at their ease and without fear”,

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<sup>216</sup> Champlain, *Works V.* 78-79, 224-229; see also Parmenter, *Edge*.

<sup>217</sup> Champlain, *Works I.* 136-139. Champlain, *Works V.* 71-73, 216-217.

<sup>218</sup> *JR* 26, 85.

<sup>219</sup> *Ibid.*: 243.

<sup>220</sup> *JR* 27, 251, 261.

<sup>221</sup> *JR* 28, 279.

without denying themselves: “it is said that they have killed more than two thousand deer this winter”.<sup>222</sup> But the hostilities resumed again the following year.<sup>223</sup>

In 1653, with new negotiators, the Annierronnons demanded that after the conclusion of the peace “the hunting [would] be shared by all the confederated Nations, and that there [would] be no more war except on the Elks, Beavers, Bears, and Deer, — in order that all [could] enjoy together the dainty dishes that [were] obtained from these good animals”.<sup>224</sup> According to the Abénaquis “ambassadors”, after this peace “no more ambushades [would] be feared” and “[a]ll persons who [were] met [would] be so many friends”.<sup>225</sup> Their spokesperson added: “Come brothers [...] let us go together to hunt the Elk and the Beaver”.<sup>226</sup> The same idea formed the basis of the 1654 treaty between the Iroquois, the French and their allies.<sup>227</sup> It was expressed even more vividly by Father Ragueneau. He invited the Oneiotchronons “to go to the chase without fear, wherever it be; and that, if they should meet the Algonquians, they [would] prepare a kettle, and [would] give one another meat”, i.e. that they would cook their food together in one small pot and share it between them.<sup>228</sup> The Annierronnons proceeded in the same fashion when they encountered a group of Frenchmen in the forest.<sup>229</sup> In 1658, during peace negotiations, the

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<sup>222</sup> *ibid.*: 287.

<sup>223</sup> see especially Morin, “Fraternité.”

<sup>224</sup> *JR* 40, 185.

<sup>225</sup> *ibid.*: 205.

<sup>226</sup> *ibid.*

<sup>227</sup> *JR* 41, 113.

<sup>228</sup> *JR* 42, 257.

<sup>229</sup> *JR* 43, 103.

Onnontaguéronnons requested anew on behalf of all Iroquois the freedom to hunt.<sup>230</sup> At the end of the 17<sup>th</sup> century, proposals for making the territory communal were accompanied by wampums (beads) and a kettle.<sup>231</sup>

It is therefore clear that the establishment of brotherly relations within the context of a peace treaty had as corollary the free circulation of hunters throughout all of the territories occupied by the allies. This constituted a renunciation of the parties' right to control access to these regions, contrary to the situation that had previously prevailed. Yet this does not show that the notion of national territory had been completely abandoned. In effect, after the peace had been concluded, an aboriginal person could hunt on the territories of his former enemies without fear of being attacked; this did not mean that he could conduct a commercial expedition there or establish himself in a permanent manner without obtaining permission. The general treaties of 1665 and 1701 were founded on these principles; the metaphor of a shared dish was furthermore in use until the 19<sup>th</sup> century.<sup>232</sup> Moreover, after the Wendat refugees had established themselves in the Québec region in 1651, they seemed to have negotiated the limits of their hunting territories with

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<sup>230</sup> JR 44, 114.

<sup>231</sup> Parmenter, *Edge*, 228, 257.

<sup>232</sup> Victor P. Lytwyn, "A Dish with One Spoon": The Shared Hunting Grounds Agreement in the Great Lakes and St. Lawrence Valley Region," in *Papers of the Twenty-Eight Algonquian Conference* (Winnipeg: University of Manitoba Press, 1997), 210–27. Robert A. Williams jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Oxford University Press, 1997). Gilles Havard, *The Great Peace of Montreal of 1701 French-Native Diplomacy in the Seventeenth Century* (Montreal and Kingston: McGill-Queen's University Press, 2001). Michel Morin, "Manger Avec La Même Micoine Dans La Même Gamelle: À Propos Des Traités Conclues Au Québec Avec Les Amérindiens (1665-1760)," *Revue Générale de Droit* 33 (2003): 93–129; Alain Beaulieu, S. Béreau, and J. Tanguay, *Les Wendats Du Québec* (Quebec: GID, 2013), 115–132 and 200–211. The latter authors relate that at the beginning of the 19<sup>th</sup> century, several aboriginal nations of the Saint Lawrence Valley refused to allow their partners to access their hunting territories. Nonetheless, the Hurons and the Iroquois admitted that these territories had been placed in common under the French Regime. This understanding thus seems to have evolved afterwards.

the Algonquins and, in all probability, with the Innu.<sup>233</sup> These specific accords between domiciled nations possibly excluded the principle of placing resources in common, whose main objective was to put an end to Iroquois attacks. Inside national territories, the bands' chiefs continued to exercise control over the hunting territories of the Saint Lawrence Valley in conformity with rules that appear to be ancient in origin, as we shall see presently.

### **The management of hunting districts**

Even if they gave very few details in this regard, the French observers knew that hunting groups (or “bands”), generally made up of members of one family, deployed themselves in zones that were of very ancient origin, if not of immemorial origin. Collectively these belonged to the nation: their distribution took place in the context of a meeting of all of the groups' chiefs, under the supervision or perhaps the management of regional captains (the sources are not very clear in this regard). Later, each group held the right to exploit a “district” until its attribution to another group. Nothing indicates that these rules came into being because of the fur trade. On the other hand, it is true that at the turn of the 18<sup>th</sup> century the increasing scarcity of game and fur-bearing animals caused conflicts due to intrusions committed by strangers, which conflicts the French were called upon to settle. In spite of these difficulties, conservation measures seem to have been unknown in certain regions, much as they were mentioned in relation to others. They could have been put in place subsequent to a diminution in resources, but also because of a hypothetical European influence.

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<sup>233</sup> Beaulieu, Béreau, and Tanguay, *Wendats*, 60–62, 120–127.

## References to hunting districts

The importance of hunting and fishing for the aboriginal peoples has been known for a long time. Thus, in 1536, Cartier laconically noted that the aboriginal people of Hochelaga were sedentary, cultivated the earth and lived off their fisheries. In his opinion, eight or nine other peoples were “subjects” of this nation; this undoubtedly represented a simplistic view of a relationship between nations that remained essentially independent.<sup>234</sup> Equally, the inhabitants of Stadaconé were “nomads”, since they hunted far away in places covered with snow. They also lived “with almost everything in common, much like the Brazilians”.<sup>235</sup> According to Le Clercq, the aboriginal peoples lived in “common property”, “as in the Golden Age”.<sup>236</sup> For Sagard, they “still lived from fishing in the same way as our ancestors did after sin”, another reference to an age where the concept of property did not yet exist.<sup>237</sup>

In the Québec region, Champlain was quite conscious of the fact that his allies stocked up on dried eels in September-October, which permitted them to feed themselves until the month of January. Later, they hunted elk by dividing themselves into small bands, but if there was too little snow on the ground the game fled easily and the aboriginal peoples faced dying of hunger, a

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<sup>234</sup> Cartier, *Voyages*, 161.

<sup>235</sup> Ibid., 161; 181. In 1532, Jean Le Veneur, *Grand Aumônier* of France, confirmed that Cartier had already been to Brazil: he had attended the baptism of a Brazilian child brought to France and knew the vegetation of this region Bideaux, *Jacques Cartier. Relations*, 10, 13 and 54. Montaigne, who had interviewed some voyagers on their return to France, confirmed in 1580 that the Brazilians “[left] to their heirs in common, the full possession of their goods and chattels, without any division or any other title than what nature bestows upon her creatures, at bringing them into the world” Michel de Montaigne, *The Essays of Michael Seigneur de Montaigne, Translated into English. [...]*, 8th ed., vol. I (London: Printed for J. Pote, E. Ballard, C. Bathurst, T. Davies, T. Payne, J.F. and G. Rivington, S. Crowder, T. Longman, B. Law, T. Caslon, J. Robson, W. Ginger, T. Evans, and E. Johnston, 1776), 244; see also Lestringant, *Huguenot*, 39–52.

<sup>236</sup> Le Clercq, *New Relation*, 245.

<sup>237</sup> Gabriel Theodat Sagard, *Histoire Du Canada* (Paris: Tross, 1866), 30. The original version of our translation reads: “*viuent encore de la mesme sorte que nos premiers parens après le peché*”.

not infrequent event.<sup>238</sup> Due to lack of sufficient provisions, Champlain was obliged to refuse them assistance or render them minimal aid.<sup>239</sup> He did not seek to understand how aboriginal peoples split themselves up inside of the lands during the hunting season. The missionaries noted that their itineraries were often decided on after having consulted a shaman or again after a dream, which constituted an absolute truth for the aboriginal peoples.<sup>240</sup> The Montagnais distributed the children and the weak persons between different hunting bands, as they did able men, so as to equalize their force; the Micmac acted in the same way.<sup>241</sup> Later, in case of extreme need, the Algonquians sometimes killed their parents or their children so as to save them from prolonged suffering and to increase the likelihood that the adults would survive; they could equally abandon them to their fate when all hope appeared to be lost.<sup>242</sup>

In Acadia, according to Biard, the “Sagamies divide[d] up the country and [were] nearly always arranged according to bays or rivers”.<sup>243</sup> All the game brought back from the hunt by the boys of the band belonged to them, though those who were married conserved a portion for their wives. When returning from their forest expeditions, the latter “pa[id] their dues and homage in skins and [52] like gifts”.<sup>244</sup> These chiefs clearly exercised control over the hunting activities, which

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<sup>238</sup> See Champlain, *Works II*, 44-45, 61. Champlain, *Works V*, 239-241. *JR* 3, 78 (Acadia); *JR* 6, 277; *JR* 7, 51; Sagard, *Journey*, 51. Sagard, *Histoire Du Canada*, 62-63; Radisson, *Voyages*, 267, (Dakota Sioux).

<sup>239</sup> Champlain, *Works II*. 52-53, 248-249.

<sup>240</sup> *JR* 5, 157-159; *JR* 6, 183, 191. Chrestien Leclercq, *Premier Etablissement de La Foy Dans La Nouvelle-France* (Paris: Amable Auroy, 1691), 373. See also Lescarbot, *History III*. 105.

<sup>241</sup> Sagard, *Histoire Du Canada*, 248. Le Clercq, *New Relation*. 117.

<sup>242</sup> Sagard, *Journey*. 200. *JR* 7, 49. Le Clercq, *New Relation*. 299.

<sup>243</sup> *JR* 3, 89; see also *JR* 61, 186-187.

<sup>244</sup> *JR* 3, 89. Reuben Gold Thwaites, *The Jesuit Relations and Allied Documents: Vol. III: Acadia 1611-1616* (Cleveland: Burrows Brothers, 1896), 89; Lescarbot, *Conversion*, 20-21.

certainly took place with their consent. Towards 1675, the Gaspesia and New Brunswick Micmac also had to travel when game became rare. It “[was] the business of the head of the family, exclusively over all others, to give orders that camp be made where he please[d], and that it be broken when he wishe[d]”<sup>245</sup>. The night before leaving he “trace[d] the road”.<sup>246</sup>

At the river Restigouche in Gaspésie, a Micmac captain was charged with “assign[ing] the places for hunting, and [...] tak[ing] the furs of the Indians” and with providing for their needs.<sup>247</sup> This was a general principle:

It is the right of the head of the nation, according to the customs of the country, which serve as laws and regulations to the Gaspesians, to distribute the places of hunting to each individual. It is not permitted to any Indian to overstep the bounds and limits of the region which shall have been assigned him in the assemblies of elders. These are held in autumn and spring expressly to make this assignment.<sup>248</sup>

In the region of the country of the Neutral people (close to the Great Lakes, in the modern-day region of London, Ontario), after 1625, the Algonquian chief Iroquet and twenty of his men succeeded in capturing five hundred beaver skins; one could suppose that they had also asked for permission to come hunting in this region.<sup>249</sup>

Over the course of several decades, this type of control would neither always be averted to nor well understood in the Saint Lawrence Valley. Thus, in 1633, Le Jeune mentioned in passing that the band with which he was spending the winter in the woods received a visit from “a young

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<sup>245</sup> Le Clercq, *New Relation*, 100–101.

<sup>246</sup> *ibid.*

<sup>247</sup> Le Clercq, *New Relation*, 235.

<sup>248</sup> *Ibid.*, 237.

<sup>249</sup> Sagard, *Histoire Du Canada*, 803.



Savage from another quarter” (i.e., another hunting zone) who was desperately looking for food. Three days later, night having fallen, he discovered the carcass of an elk that had been killed that same day by hunters of the group; the previous day they had told him of the presence of this animal. He carried off a good portion of the meat, but the aboriginal people refused to blame him for this, while for Le Jeune it constituted “theft” or an “offence”.<sup>250</sup>

In describing at length the terrible experience that he had lived during the year in question, Le Jeune frequently referred to the boundaries (or “limits”) of hunting “quarters”. His tale raises many a question to which it remains difficult to respond. He accompanied two brothers on their autumnal and winter travels. They decided to go to the North shore of the river rather than to the South bank, because there was “a great many Montagnais near the place” where they wanted to “pass the winter” and they feared that they would “starve each other”. Shortly afterwards, they learnt that the hunting was not good on that side and they reverted to their initial plan.<sup>251</sup> Thus they considered themselves authorized to go to the South shore, but it is not known whether they habitually frequented this region or whether they had asked for permission to go there that year. One can detect a certain amount of “improvisation” in this episode.<sup>252</sup> For our part, we believe that it reveals the existence of a concertation procedure between bands, so as to avoid having too many hunters in the same region.

Initially, three “cabins” went together to the chosen zone. They numbered nineteen, sixteen and ten persons respectively, which “[did] not include the Savages who were encamped a few

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<sup>250</sup> *JR* 6, 235-237.

<sup>251</sup> *JR* 7, 97.

<sup>252</sup> Dawson, *Fourrures et Forêts Métisserent Les Montagnais*, 41.

leagues away from [them]”.<sup>253</sup> When there was “no longer any game within three or four leagues” of them, an aboriginal person went scouting around in order to choose a new camping place. If the snow was not high enough to enable them to follow his tracks, he would indicate the route by making marks on the trees with an axe.<sup>254</sup> In December, the “cabin” of Ekhenneabamate separated from the group, for there was not sufficient game in the region to feed everybody.<sup>255</sup>

In January 1634, an aboriginal person who had come “from another quarter” informed Le Jeune that one of his people had died of hunger. Le Jeune’s companions also “discovered the trail of several Savages” who had come closer to them than they had thought and who had come hunting upon their "marches", thus depriving them of their prey and perhaps their lives.<sup>256</sup> Later, a man, “two or three women and a child” solicited the aid of Le Jeune’s band, for they were reduced to the final extremity. The reaction of his companions forced the narrator to admire them: “These new guests were not asked why they came upon our boundaries, if they were not well aware that we were in as great straits as they were, and that they were coming to take the morsel out of our mouths”.<sup>257</sup> Without any form of “exterior ceremony, for of this the Savages have none”, they gave them pieces of a recently slaughtered moose, simply saying “*mitisoukou*, ‘eat’”.<sup>258</sup> In this passage, the “boundaries” of hunting districts are clearly mentioned. Further on, in respect of a

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<sup>253</sup> *JR* 7, 107; a league measures about four kilometers.

<sup>254</sup> *Ibid.*, 109; also see Sagard, *Histoire Du Canada*, 823–824.

<sup>255</sup> *JR* 7, 147.

<sup>256</sup> *JR* 7, 171. In French, Le Jeune speaks of “*marches*”, i.e., "marches" (see note 182).

<sup>257</sup> *JR* 7, 177.

<sup>258</sup> *Ibid.*

region that had been abandoned by a people, Le Jeune wrote that “there [was] no game in that quarter”.<sup>259</sup>

Other territorial descriptions are to be found. In 1646, an Agnier desired to return to his country. To do this, he had to pass through the “quarter” of the Sillery Algonquins so as to get to Three-Rivers. Now, he risked getting off badly from this; this is why the French decided to keep him at Québec.<sup>260</sup> In 1647, Jérôme Lalemant noted in passing that the “Montagnais who were hunting in the environs of Kebec” “composed three bands”.<sup>261</sup> For their part, a group of Abénaquis went up the river “Kinibeki” (Kennebeck) for “eight or ten days’ journey” before reaching a big lake where they agreed to meet for the hunt; they then split up into bands.<sup>262</sup> This lifestyle was moreover common among the Algonquins of the North-East of North America.<sup>263</sup>

In 1647-1648, Gabriel Druillètes came back up the Matane River in a company “consisting of fifty mouths, besides the smaller children”.<sup>264</sup> The absence of game forced them to split up and to divide themselves into two bands. Thus, “Georges Etouet, the Captain of Tadoussac, gave the district most abounding in game to Noel Negabamat through purely Christian charity”; indeed, “the Captains of a country always [gave] the advantage to the Captains of other nations who [came] to hunt in their district”.<sup>265</sup> The hunters having been successful, “four cabins from another

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<sup>259</sup> Thwaites, *JR* 7, 225.

<sup>260</sup> *JR* 28, 153.

<sup>261</sup> *JR* 31: 165.

<sup>262</sup> *JR* 31, 195.

<sup>263</sup> See *JR* 37, 213 (Lake Saint John region).

<sup>264</sup> *JR* 32, 263.

<sup>265</sup> *ibid.* 342.

quarters came, and threw themselves into their arms, crying that they were starving, - because, they said, there were neither Elks nor Beavers in their own district.” Jérôme Lalemant admired the charitable nature of the aboriginal peoples “on [105] such occasions.” Despite the absence of provisions, “[t]hese good people were not reproved because they ran over other people’s marches” and everyone shared “whatever was in the cabins”.<sup>266</sup> In the same way, in 1660, Pierre-Esprit Radisson mentioned obliquely that he and his companions found themselves on the lands of the Nadouesoronons (Sioux) to hunt there, with their permission.<sup>267</sup>

In 1668, the aboriginal peoples of “Tadoussac, Gaspé, and the Papinachois, with some of those of Sillery” hunted in the Saguenay region, but we do not know in what capacity these strangers were there. They “[were] obliged to scatter here and there, in order not to injure [117] another by their proximity in hunting”.<sup>268</sup> The “Guaspesiens” were still present the following year.<sup>269</sup> In 1672, Father Crespieul indicated that the “cabin” of the aboriginal people with whom he was travelling benefited from “an abundance of moose”, much more than was the case for neighbouring bands here; the word “cabin” referred to the district reserved to his group.<sup>270</sup> In 1705, the *Petits Mistassins* wanted to find refuge among the *Grands Mistassins* if they could “obtain lands for hunting from Mirouabech, chief of the place”.<sup>271</sup>

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<sup>266</sup> *ibid.*

<sup>267</sup> Radisson, *Voyages*, 271.

<sup>268</sup> *JR* 51, 273-275.

<sup>269</sup> *JR* 52, 217.

<sup>270</sup> *JR* 56, 85.

<sup>271</sup> “Letter of sieur Drouard of 12 May 1705”, cited in Dawson, *Fourrures et Forêts Métisserent Les Montagnais*, 111. The original version of our translation reads: “*obtenir de Mirouabech, chef du lieu, des terres pour y chasser*”.

Towards 1647, several “small nations” lived in Haute-Mauricie, including the “Attikamegue”; “[a]ll these tribes [made] war only on animals”, for “their life [was] nothing but a continual hunt”. They “all assemble[d], each one in his own district, on certain days of the year”; “and, although they [had] their own limits, if anyone advance[d] upon the lands, or rather into the woods, of his neighbors, that occur[ed] without quarrel, without dispute, without Jealousy”.<sup>272</sup> Moreover, a meeting point with the Hurons permitted them to exchange skins of “deer, elk, beavers, and other animals” for maize, flour, fillets and other merchandise.<sup>273</sup> Contrary to what Leacock had supposed, it is difficult to believe that this exchange of pelts would have come into existence only after contact with the Europeans, as it seems to have satisfied the needs of two groups dating back to a very remote era.

In 1652, one can read in respect of the Tadoussac Montagnais that towards the end of Autumn, “they proceed[ed] each to his Winter quarters, - going, however, only to the places agreed upon before their separation from one another”.<sup>274</sup> This is the first explicit mention of a concerted procedure between the chiefs of hunting bands, for this did not previously draw the attention of the missionaries or the explorers. Even though it is quite likely the case, there exists no irrefutable proof that this custom had existed since time immemorial.

It is nonetheless clear that there were hunting “quarters” (or districts) assigned to one or several aboriginal “cabins” (or bands). These territories had fixed boundaries, even if it was acceptable

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<sup>272</sup> *JR* 31, 209.

<sup>273</sup> *ibid.*

<sup>274</sup> *JR* 27, 187.

to breach them in order to obtain food.<sup>275</sup> Le Jeune mentioned a radius of three to four leagues (being 15 to 20 km) around the camp and the presence of distinct bands alongside the one that he accompanied. In any event, the hunters sometimes covered much larger distances in order to kill large game. In 1644, after three months in the forest, several “families”<sup>276</sup> met up again for the first time.<sup>277</sup> In 1653, the Sillery Algonquins went to hunt beavers and traveled “four days” towards the Southeast” “from the banks of the great river”, apparently in the North of the modern-day State of Maine.<sup>278</sup> It is not known whether this was one of their traditional hunting territories. Be that as it may, half a century later conflicts about the exploitation of these territories arose among the French allies, or were brought to their attention.

### Conflicts among allied nations in the 18<sup>th</sup> century

At the beginning of the 18<sup>th</sup> century, a difference arose between the Abénaquis of the town of Odanak on the Saint Francis River, on the South side of the Saint Lawrence River, and the Lake Saint John Montagnais. The lands of the latter were incorporated into the King’s Domain in 1653, which stretched from Saguenay to Hudson Bay, passing through Lac St. Jean and the North of the St. Maurice River. The exploitation of the fur trade was awarded to concessionaries to the exclusion of other French people; the Tadoussac post had been leased to François Hazeur. In 1703, he was furthermore appointed as member of the *Conseil supérieur*, the appeal court of the colony, even though he had no legal training. He considered the Lake Saint John area to be

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<sup>275</sup> JR 11, 213.

<sup>276</sup> In French the author uses “troupes” (i.e., troupes): Lucien Campeau, ed., *Monumenta Novae Franciae: Vol. VI: Recherche de La Paix (1644-1646)* (Rome/Saint-Laurent: Institutum Societatis Iesu/Bellarmin, 1990), 78.

<sup>277</sup> JR 25: 163.

<sup>278</sup> JR 40, 195.

“Reserved for the Domain of the King” while “belonging time out of mind to the Algonquins and the Montagnais who were the ancient inhabitants of the said Lake”.<sup>279</sup>

In 1705, about a hundred of these domiciled Abénaquis came back up the Saint-Maurice over a distance of around twenty leagues. They acted as merchants: much as they practised traditional activities, their lifestyle had considerably changed since their installation in the colony. According to Hazeur, prior to the war with England (which had resumed in 1702), they “[had] lived [...] and hunted” on the South shore.<sup>280</sup> In 1706, in the context of a court procedure, he had an interpreter undertake the interrogation of “Guillaume Chische, chief of Lake Saint-John, second chief Joseph Marachicatik and François Scachy, all three of the Montagnais nation”.<sup>281</sup> The deponents confirmed that the Abénaquis, directed by their chief Ték8érimac had threatened to plunder the Montagnais' “cabins” (synonymous with districts); effectively they had stolen some sleds and moose pelts from their hiding places. So as to avoid a confrontation, Marachicatik had to give them six moose skins.

During that year, the Montagnais were unable to pay their debts to the Tadoussac concessionary “because their entire country was full of savages who hunted on their lands and who impeached them from undertaking their own hunt”.<sup>282</sup> Now, “it [was] Their Rule that everybody hunts on

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<sup>279</sup> f° French National Archives, “Copie de L’original de La Requête Du Sr. Hazeur [...]” 1707, 297v–298, A.N.F. col., C11A, vol. 59, f° 297v-298v, Archives nationales de France. The original version of our translations read: “*Réserves au domaine du Roy*” and “*appartenans de tous tems aux Algonquins et Montagnais anciens habitans dudit Lac*”.

<sup>280</sup> French National Archives, “Faits et Articles [...]” 1706, f° 44r, A.N.F. col., C11A, vol. 25, f° 44-44r, Archives nationales de France. The original version of our translation reads: “*habitoient [...] et fasoient leur chasse*”.

<sup>281</sup> French National Archives, “Jacques Raudot [...]” 1706, f° 33, A.N.F. col., C11A, vol. 25, f° 33-36r, Archives nationales de France. The original version of our translation reads: “*Guillaume Chische, chef du Lac Saint-Jean, Joseph Marachicatik second chef et François Scachy tous trois montagnais de nation*”.

<sup>282</sup> *ibid.* The original version of our translation reads: “*parce que tous leur païs estoient plein de sauvages qui chastoient sur leurs terres et qui les ont empesché de faire leur chasse*”.

his own lands”.<sup>283</sup> Moreover, “they [had] not seen other nations hunt on their lands, save for the Papinachois, who [came] from the same lands”.<sup>284</sup> From this point of view, the search for pelts or skins for commercial purposes provoked a violation of the traditional boundaries of hunting regions, if not pure and simple pillage, of which the Montagnais were the victims.

At this time the Abénaquis responded to the Montagnais that “the grounds of Lake Saint-John belonged to them”; however, “Louis”, son of the Abénaquis chief Thék8erimat, stressed that he and his companions did not hunt on the grounds of Lake Saint-John, but “on those of Three-Rivers that belonged to his father”.<sup>285</sup> In the same way, he reproached Marachiatik and his group of having killed all the animals of this region; this is why the latter had given him six moose skins. From this point of view, in leaving their traditional territory the Montagnais hunted in a rampant manner, with no regard for conservation needs. Thék8erimat added that nobody had ever attempted to stop them from hunting in this region, for they went there “as they pleased”.<sup>286</sup> This “land had belonged to his grandfather who had given it to his father”, but the Montagnais famished them through extermination of the game.<sup>287</sup>

However, in 1707, the intendant vindicated the Montagnais. Indeed, he forbade “everybody regardless of personal qualities and conditions of whatever nature” to go hunting or trafficking in

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<sup>283</sup> *ibid.* The original version of our translation reads “*c’est la Regle entre Eux que chacun chasse sur ses terres*”.

<sup>284</sup> *ibid.* The original version of our translation reads: “*ils n’ont point veu d’autres nations chasser sur leurs terres autres que les Papinachois qui sont de leurs mêmes terres*”.

<sup>285</sup> *ibid.*, “Jacques Raudot [...]” f° 35v. The original version of our translations read: “*les terres du Lac Saint-Jean leur appartenoient*” and “*sur celles des Trois Rivieres qui appartiennent a son pere*”.

<sup>286</sup> *ibid.* The original version of our translation reads: “*quand ils veulent*”.

<sup>287</sup> *ibid.* The original version of our translation reads: “*terre appartenoient à son grand pere qui la donné a son pere*”.



the domain delimited by the King in order to create there a commercial monopoly.<sup>288</sup> Next, he asked the missionaries to see to it that the Abénaquis and Huron chiefs “prohibit the members of their nations from contravening the ordinance in question”.<sup>289</sup> In doing so, he recognized the exclusive right of the Montagnais and the Algonquins to hunt in this region, as much for purposes of preserving the profitability of the trading posts as for avoiding a conflict between the King’s allies.

In 1724, the Algonquins supported a request by the merchants of the Trois-Rivières region who were opposed to the presence in their territory of traders sent by the concessionary of the Tadoussac trading post; they produced a map showing that the lake where these strangers had rendered themselves formed part of the Saint-Maurice basin.<sup>290</sup> In 1733, an ordinance by the intendant prohibited “stranger Savages, not inhabiting the lands of the domain” from hunting or trading in the King’s Domain. It also declared that the Lake “Kouakounabiskat” and Lake Saint-John “[would] constitute the boundary of the hunting lands in the depths of the Batiscan” that belonged to the Wendats.<sup>291</sup> Even though the intendant sought principally to arbitrate a conflict between French traders, he recognized on this occasion the boundaries known to the aboriginal peoples or acceptable to them, if one is to judge from the absence of subsequent complaint.

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<sup>288</sup> Denys Delâge and Étienne Gilbert, “Les Amérindiens Face À La Justice Coloniale Française Dans Le Gouvernement de Québec, 1663-1759, II- Eau de Vie, Traite Des Fourrures, Endettement, Affaires Civiles,” *Recherches Amérindiennes Au Québec* 34, no. 1 (2004): 36–38; Dawson, *Feu, Fourrures*, 61–62; French National Archives, “Copie de L’original de La Requête Du Sr. Hazeur [...]” f° 297v–298v. The original version of our translation reads: “*toutes personnes de quelques qualité et conditions qu’elles soient*”.

<sup>289</sup> *ibid.* The original version of our translation reads: “*défendent à ceux de leur nation de contrevenir à la présente ordonnance*”.

<sup>290</sup> Delâge and Gilbert, “Justice Coloniale II,” 38.

<sup>291</sup> E.R. Fréchette, *Arrêts et Règlements Du Conseil Supérieur de Québec et Ordonnances et Jugements Des Intendants Du Canada* (Quebec, 1855), 358; Beaulieu, Béreau, and Tanguay, *Wendats*, 196–205. The original version of our translations read: “*Sauvages étrangers, non habitués dans les terres du domaine*” and *feront la borne des pays de chasse des profondeurs de Batiscan*”.

These documents show that the aboriginal peoples of the Saint Lawrence Valley had recognized for at least two generations the existence of hunting districts inside national territories, as much for moose (which did not form the object of well-developed trade) as they did for beavers, whose pelts were highly coveted. In this regard, it is obvious that the search for furs served to accentuate conflicts and that it could have provoked a much more precise delimitation of the regions occupied by the different nations. In any event, the hunting zones claimed by these nations uncannily resemble the “quarters” that had previously been observed by the missionaries. When question arose of killing a beast for purposes of eating it, the intrusion of a member of a similar nation was considered to be acceptable. This was no longer the case when a nation sought to gather skins outside of its territory.

Yet in these two cases the existence of boundaries, imprecise though they may have been, is recognized. Furthermore, among the Abénaquis, the territory was managed by a chief whose functions were hereditary, as among the Montagnais. In our opinion, this information as a whole permits us to confirm that for the Algonquins and the Innu, hunting districts had a pre-Columbian origin and were not fundamentally changed by the development of trade during the 17<sup>th</sup> century. Equally, it appears that the Innu did not consent to share their territory with the French allies – which is not surprising, given that the Innu had not participated in the Great Peace of 1701.<sup>292</sup>

Lahontan, who was also writing at the beginning of the 18<sup>th</sup> century, provided interesting precisions on the beaver hunt. According to him, in “Canada”, one only needed to walk four or five leagues to find a lake where these animals lived; these therefore seemed to be abundant at

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<sup>292</sup> Lavoie, *Domaine*, 120.

the time of his sojourn in the colony. South of Lake Huron and Lake Michigan and along certain rivers, these were to be found in a big concentration. For instance, at a distance of twenty leagues, one found approximately sixty “little Beaver Lakes”.<sup>293</sup> The aboriginal peoples knew these regions very well; when they left for the hunt,

“[...] they agree among themselves, as they are Travelling, to allot each Family a certain compass of Ground, so that when they arrive at the place they divide themselves into *Tribes*. Each Hunter fixes his House in the Center of that Ground which is his District [...] There are eight or ten Hunters in each Cottage, who have four or five Lakes for their share [...] they would choose rather to die for Hunger than to straggle out of the Bounds allotted them, or to steal the Beasts that are taken in their Neighbours Traps.”<sup>294</sup>

The essential characteristics of this custom were to be found also in the Saint Lawrence Valley, save that in this era there did not seem to be zones where the concentration of beavers was as dense. In 1722, Bacqueville de La Potherie clarified that the Mauricie Algonquins “[had] the custom of appropriating for themselves a terrain of approximately two square leagues, where they worked without others daring to go hunt there”; it was a “Law that was accepted by all Nations, unless they wanted to enter into an irreconcilable war”.<sup>295</sup> This observation applied to game as a whole rather than to a single beaver.

In 1724, according to Lafitau, when an aboriginal person “has marked a hunting territory and wishes people to know that he has chosen this place for himself and it would be an affront to him for anyone else to settle there [...]”, he then “paints on a piece of bark which he puts at the end of a post at a point of passage or blazes a tree trunk with his axe and, after making a clear spot, (as

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<sup>293</sup> Lahontan, *New Voyages II*, II:59.

<sup>294</sup> *Ibid.*, II:59–60.

<sup>295</sup> La Potherie, *Histoire*, 1997, I:175. The original version of our translations read: “*ont cette coutume, de s'approprier un terrain d'environ deux lieues en carré, qu'ils battent sans que d'autres osent aller y chasser*” and *Loi qui est reçue par toutes les Nations, à moins que de vouloir se faire une guerre irréconciliable*”.

it were), traces his portrait on it and adds to it other characters which communicate all that he wishes to make known”.<sup>296</sup> Both the Iroquois and the Algonquins used such marks.<sup>297</sup> In 1722, Bacqueville de La Potherie explained that an aboriginal person who discovered a beaver abode could reserve it for himself in the Hudson Bay region and in the Saint Lawrence Valley<sup>298</sup>:

They put in place certain marks that indicate that it is already known. But if by chance a passing Savage should find himself hard pressed by hunger, he is allowed to kill the Beaver, on condition that he leaves the skin and the tail, which is the most delicate piece.<sup>299</sup>

This author was the only one to mention an individual property right of this kind. Certainly, by 1829 special marks had become customary in the Lake Saint-John area, for Joseph Bouchette was surprised by their absence when he traveled along a river in which beavers and otters abounded.<sup>300</sup>

The existence of hunting districts controlled by captains of the nation is accordingly undeniable. Initially, these districts appeared conceived uniquely with reference to the presence of large game. Rules relating to beavers are mentioned only towards the end of the 17<sup>th</sup> century. Since this animal is sedentary, it had previously undoubtedly been easy to find in good numbers inside of each district. In respect of members of the deer family, boundaries of such districts were mentioned from 1611 onwards among the Micmac and from 1634 by Father Le Jeune, but he did not really describe the role of the captains. In any event, during the three decades that followed,

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<sup>296</sup> Joseph François Lafitau, *Customs of the American Indians Compared With the Customs of Primitive Times*, trans. William Fenton and Elizabeth Moore, vol. I, III vols. (Toronto: Champlain Society, 1977).

<sup>297</sup> *ibid.*, 37.

<sup>298</sup> La Potherie, *Histoire*, 1997, I:106; La Potherie, *Histoire*, 1997, II:653.

<sup>299</sup> Translated. The original version reads: “*Ils mettent quelques marques qui donnent lieu de croire qu’elle est déjà reconnue. Mais si par hasard un Sauvage qui passait par là se trouvait fort pressé de la faim, il est permis de tuer le Castor, à condition d’en laisser la peau et la queue, qui est le morceau le plus délicat.*”

<sup>300</sup> Lower Canada, *Report of the Commissioners for Exploring the Saguenay*. 320.

their powers were regularly mentioned for all Algonquin peoples. In the 18<sup>th</sup> century, the increasing scarcity of resources occasioned conflicts that obliged the French to precise the territorial boundaries of their allies, with the objective of protecting their own commercial interests.

It remained permissible to penetrate the territory of another when there was no other way of feeding oneself, but this had to remain the exception rather than the rule. In normal times, territorial access by a nation required a captain's permission (such captain's functions being generally hereditary), or an agreement between nations.<sup>301</sup> Globally, these conclusions correspond more with Speck's opinions, according to which the aboriginal conception of territory had survived colonization, than with those of Leacock, for whom the idea of exclusivity had been practically unknown prior to the arrival of the Europeans. More precisely, the right to exploit a district was attributed to a family group that managed it at will, subject to decisions taken collectively by one or more leaders of the nation (or regional band); it could also be exercised in new zones if circumstances justified doing so. It remains to be determined to what extent the aboriginal peoples were conscious of the need to preserve the wildlife.

### **The conservation of resources**

For a long time, the French believed that aboriginal hunters were incapable of limiting their take. According to Sagard, the Algonquins ("Canadians") killed all the elk that they could, without exception, for fear that an animal that escaped would warn the others of danger; this was why

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<sup>301</sup> A similar tradition was related by a Dene Chief living in the North-West Territory in the 1970's: Janna Promislow, "'It Would Only Be Just' A Study of Territoriality Posts along the Mackenzie River 1800-27," in *Between Indigenous and Settler Governance*, ed. Lisa Ford and Tim Rowse (Abingdon: Routledge, 2013), 35–47.

they sometimes left a carcass “on the ground to decay and rot”.<sup>302</sup> Other factors could force a hunter to refuse to save animals: the “sacrilege here did not reside in wasting food [...]; the ethic required that they kill all beasts that offered themselves and that they proceed to the ritual” of the eat-all feast, so as to signify “to supernatural forces the complete satisfaction of [their] wants and needs”.<sup>303</sup>

In 1635, Le Jeune confirmed that the aboriginal peoples of the Saint Lawrence Valley would kill all the beavers that they found in a “cabin”. There “[was] danger that they [would] finally exterminate the species in this Region, as [had] happened among the Hurons, who [did] not [have] a single Beaver”.<sup>304</sup> In his opinion, the day when nomadic peoples would be sedentary and farmers, every family could take “its own territory for hunting, without following in the tracks of its neighbours”.<sup>305</sup> The French would thus be able to counsel them “not to kill any but the males, and of those only such as are large”, so that they would have “Beaver meat and skins in the greatest abundance”.<sup>306</sup> In 1651, Father Bureaux confirmed that the Hurons “obtained nearly all their Beavers” from people living further North.<sup>307</sup> Le Jeune therefore wanted to teach conservation methods to the aboriginal peoples. However, it should be noted that in lakes with a

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<sup>302</sup> Sagard, *Journey*, 187.

<sup>303</sup> Denys Delâge, “Les premières nations d’Amérique du Nord sont-elles à l’origine des valeurs écologiques et démocratiques contemporaines,” in *Transferts culturels et métissages Amérique/Europe, XVIe-XXe siècle*, ed. L. Turgeon, D. Delâge, and R. Ouellet (Quebec: Presses de l’Université Laval, 1996), 317–45. The original version of our translation reads: “sacrilège ici ne résidait pas dans le gaspillage de nourriture [...]; l’éthique voulait que l’on tue toutes les bêtes qui s’étaient offertes et qu’on procède au rituel” and “aux forces surnaturelles la complète satisfaction des besoins et des désirs”.

<sup>304</sup> *JR* 8, 57; see also Sagard, *Histoire Du Canada*, 585.

<sup>305</sup> *JR* 8, 57-59.

<sup>306</sup> *ibid.*

<sup>307</sup> *JR* 37, 65.

sufficiently large surface several beavers could escape after their cabin had been breached, which would allow them to regenerate.<sup>308</sup> In 1684, Hennepin even wrote that the hunters captured at most “three of four beavers” at a time, though he was the only to indicate this limit, which perhaps applied solely to the area south of the Great Lakes.<sup>309</sup>

Apart from the extermination of beavers in the country of the Hurons, one finds certain mentions of the diminution of game. In 1637, the Québec Montagnais confirmed that “their country was being stripped of Elk and other animals”.<sup>310</sup> In 1646, to the north of the Outaouais valley, an epidemic spread among caribous and caused them to die in large numbers.<sup>311</sup> In 1647, in the Matane River Valley, beavers had become “scarce”.<sup>312</sup> At Cape Breton in 1635, the Micmac found fewer beavers than on firm land, but more moose.<sup>313</sup> In 1647, on Miscou Island (modern-day New Brunswick), all the elk had been exterminated.<sup>314</sup> In 1672, Denys noted that in Acadia aboriginal peoples preferred small animals to big ones and that they adored pregnant females:

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<sup>308</sup> *JR* 6, 300-301.

<sup>309</sup> Louis Hennepin, “Les Moeurs & La Manière de Vivre Des Sauvages,” in *Description de La Louisiane, Nouvellement Decouverte Au Sud’ Oüest de La Nouvelle France [...]* (Paris: Chez la veuve Sébastien Huré, 1683), 78.

<sup>310</sup> *JR* 11, 143.

<sup>311</sup> *JR* 30, 28.

<sup>312</sup> *JR* 32, 265.

<sup>313</sup> *JR* 8: 159.

<sup>314</sup> *JR* 32, 35.

“They killed all of each kind of animal that there was when they could capture it”.<sup>315</sup> Furthermore, he indicated that game was becoming scarce.<sup>316</sup>

Generally speaking, it appears that fur-bearing animals and game remained abundant in the Algonquin hunting territories for most of 17<sup>th</sup> century. In 1646, after a recently concluded peace in the Montréal region, we read that the hunt was “excellent in these quarters, because the game, during the war, [had been] as in a neutral region”.<sup>317</sup> In 1651, in the country of the Betsiamites, on the North shore, “the forests [...] [were] feeding more Moose, Bears, and Beavers than men”.<sup>318</sup> The position was the same in 1653-1654 throughout the colony.<sup>319</sup> In 1658, game was plentiful in all regions situated between Lake Temagami (not far from Sudbury in Ontario) and the upper reach of the Saint Maurice River.<sup>320</sup>

The following year, a group accompanied by Pierre-Esprit Radisson found no game on the banks of Nipissing Lake, while it was abundant close to modern-day Sault-Sainte-Marie or the South shore of Lake Supérieur, notably in respect of beavers.<sup>321</sup> Yet famine could take sway after fifteen days of abundance, if too little snow fell.<sup>322</sup> In 1660, an aboriginal person who had travelled from Lake Superior to Saguenay, passing south of Hudson Bay, reported that, in this

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<sup>315</sup> Denys, *Description*, 432.

<sup>316</sup> *ibid.*, 605.

<sup>317</sup> *JR* 29, 147.

<sup>318</sup> *JR* 37, 235.

<sup>319</sup> *JR* 40, 211, 215; *JR* 41, 67.

<sup>320</sup> *JR* 44, 245

<sup>321</sup> Radisson, *Voyages*, 255–256, 264 and 283.

<sup>322</sup> *ibid.*, 268-269.



region, caribou and beavers were numerous.<sup>323</sup> In the same era, on the Saint Lawrence River upstream from Montréal, the region of the Petite Nation, which had been deserted due to war, was also packed with animals.<sup>324</sup> In 1671, beavers abounded in the Lake Nippissing region.<sup>325</sup> At the end of the 17<sup>th</sup> century, the position was the same in Acadia.<sup>326</sup>

By 1660, the French mastered beaver and deer hunting techniques well; they could in a single operation kill thirty to forty of the latter.<sup>327</sup> Towards 1675, Louis Nicolas gave the same figure for the capture of elk by aboriginal peoples, indicating that he had been present at feasts “where six or seven hundred animals were distributed at once”.<sup>328</sup> According to him, “[t]here [was] such a large number” of animals in America “that feasts [were] held where five or six hundred beavers [were] eaten at a single meal”.<sup>329</sup> In 1684, Lahontan hunted with aboriginal people close to Québec and Montréal, so as to learn their language. He considered that along the Saint Maurice River, the Algonquins “[were then] an Erratick sort of Savages, and, like the Arabs, [had] no settled Abode”; they “seldom straggle[d] far from the banks of the River upon which they [had] excellent Beaver-hunting”.<sup>330</sup> Yet in 1701 the Outaouaks of the Big Lakes region complained of

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<sup>323</sup> *JR* 45, 229.

<sup>324</sup> Boucher, *Canada*. 28.

<sup>325</sup> *JR* 55, 146.

<sup>326</sup> Lahontan, *New Voyages I*, 322.

<sup>327</sup> *JR* 45: 193-195.

<sup>328</sup> Louis Nicolas, *The Codex Canadensis and the Writings of Louis Nicolas*, ed. François-Marc Gagnon (Tulsa/Montreal and Kingston: Gilcrease Museum/McGill-Queens University Press, 2011), 336.

<sup>329</sup> *ibid.*, 344.

<sup>330</sup> Lahontan, *New Voyages I*, I:18.

the scarcity of beavers, while the Algonquins who lived to the East and to the North spoke of their disappearance.<sup>331</sup> The position was the same in the King's Domain.<sup>332</sup>

In 1660, Radisson signalled that a “wandering” Cree nation, apparently situated on the Eastern side of James Bay, did not kill young beavers but allowed them to return to the water. According to him, no other people did that.<sup>333</sup> This is the first example of a conservation measure mentioned in the written sources. It is significant to note that it was taken by a people who had not yet been regularly in contact with Europeans. However, towards 1675, Louis Nicolas wrote, in respect of “the great American wild ox” of the Prairies (i.e. the bison):

The Louisians and their neighbours, who only kill them with arrows and take only as many as they need to live on, are more economical than the natives who live near the French. They kill all the beasts that they come across with no regard for future needs. The former are much more prudent than the latter, for it often happens that they fast for several months of the year.

The eagerness of the civilized nations to get all the pelts they can, at the lowest price, from the Iroquois, the Huron and all the Algonquian nations has inspired this massacre by two or three Americans. Even if there are five or six hundred beasts at a time, they kill everything, although they are sure that all the meat will rot along with some of the furs. [...] But among our Manitounians and their allies it would be a crime to kill more animals than is necessary, although there are so many of these animals in their country that in one meadow [...], four or five hundred oxen may be seen [...].<sup>334</sup>

Nicolas therefore attributed a “massacre” to the influence of the “eagerness of the civilized nations to get all the pelts they can”, something that Sagard did not do in 1632.

We have seen that in 1684 in the Great Lakes region, according to Lahontan, the Iroquois Five Nations reproached the Illinois and the Oumamis of having hunted the beavers on their lands and

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<sup>331</sup> La Potherie, *Histoire*, 1997, II:667 and 675.

<sup>332</sup> French National Archives, “Faits et Articles [...]”, f° 44r.

<sup>333</sup> Radisson, *Voyages*, 287–288.

<sup>334</sup> Nicolas, *Codex*, 329–330.

of having destroyed all the animals, male and female, which would have been contrary to “the custom of all the Savages”.<sup>335</sup> If we put faith in this affirmation, there was a general custom in existence of sparing certain animals, which custom had not been respected by the Illinois and the Oumamis when they hunted on the territory of a neighbouring people. Indeed, beavers had disappeared from this region, located to the South of Lake Ontario.<sup>336</sup> However, such affirmations could have been exaggerated for diplomatic purposes; moreover, in regions that were abandoned during periods of hostilities, game could become abundant again after ten or so years.<sup>337</sup>

Lahontan added that to the South of Lake Illinois (modern-day Lake Michigan), in going back up the “River of the *Oumamis*”, the “*Outaouas* [were] wont to hunt Beavers every third year”.<sup>338</sup> It was the same to the South of Lake Huron, “[o]nce in two years the *Outaouas* and the *Hurons* [were] wont to hunt great quantities of Beavers”.<sup>339</sup> Moreover, in the Lake Champlain area, after having captured thirty-five stags that had been forced to enter into an enclosure, the Algonquins saved the pregnant females.<sup>340</sup> In the Great Lakes area, after having emptied the lake where the beavers lived, “the Savages kill[ed] them all, except a dozen of Females, and half a dozen of Males” that they released again.<sup>341</sup>

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<sup>335</sup> Lahontan, *New Voyages I*, 41.

<sup>336</sup> Lahontan, *New Voyages I*. 219.

<sup>337</sup> Parmenter, *Edge*, 167, 184, 238, 254.

<sup>338</sup> Lahontan, *New Voyages I*, I:137.

<sup>339</sup> *ibid.*, 216.

<sup>340</sup> Lahontan, *New Voyages I*. 65.

<sup>341</sup> Lahontan, *New Voyages II*, II:60.

In 1732, in the region of Lake Saint John, the beasts had decreased a lot in number in the last fifty years, notably because aboriginal peoples had for a long time killed “more of them than they could eat”.<sup>342</sup> Yet, in moving away from the river, the explorer Normandin crossed regions where furrieries were abundant.<sup>343</sup> In his opinion, it was “solely hunger” that drove the aboriginal peoples to hunt; “if they had French provisions at their discretion during winter, there would not have been one who would have tried to hunt at the furriery”.<sup>344</sup> It thus appears to have been their dependence on French provisions that pushed or obliged these hunters to capture more and more fur-bearing animals.

In 1746, North of Tadoussac, François-Étienne Cugnet, manager of the King’s Domain, confirmed that he had always asked the “chiefs of every band” to remain on the lands “where they usually found themselves” rather than to go “find a more abundant hunting ground” on those that were “already inhabited by other bands”. Otherwise, these risked being “destroyed in a few years”.<sup>345</sup> There again, the intensification of the fur trade seems to have translated into more frequent incursions into the interior of districts occupied by neighbouring bands. Cugnet moreover suggested to the aboriginal peoples that they exploit solely a portion of the territory every winter and exhorted them to “at no point kill the young beavers”, nor to hunt them during

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<sup>342</sup> J.L. Normandin, *L’exploration Du Saguenay Par J.L. Normandin En 1732: Au Coeur Du Domaine Du Roi*, ed. Russel Bouchard (Sillery: Septentrion, 2002). 95, 114-115, 117. The original version of our translation reads: “plus qu’ils n’en pouvaient manger”.

<sup>343</sup> *ibid.*, 152.

<sup>344</sup> *ibid.*, 153. The original version of our translations read: “uniquement la faim” et “s’ils avoient des vivres françaises pendant l’hiver à leur discrétion, il n’y en auroit pas un qui essayà a chasser a la pelletrie”.

<sup>345</sup> “Mémoire de François-Étienne Cugnet sur la Traite de Tadoussac”, cited by Lavoie, *Domaine*, 137. The original version of our translations read: “chefs de chaque bande” ... “où ils se sont trouvés habitués” ... “trouver une chasse plus abondante” ... “déjà habitées par d’autres bandes”... “détruites en peu d’années”.

summer, “because it is during this season that they multiply”.<sup>346</sup> In his mind, the aboriginal peoples seemed to be ignorant of these processes.

It is therefore clear that at the end of the 17<sup>th</sup> century, several measures of beaver conservation existed in the Great Lakes region, where this species had become rare. In any event, Radisson indicated that an Algonquian people acted in the same manner in the James Bay region from 1660 onwards, during an era where this resource was still abundant. Towards 1675, according to Nicolas, the aboriginal peoples of the Prairies only killed such game as they needed to for purposes of feeding themselves, even though bisons were plentiful. According to Lahontan, the Algonquins spared the females of the deer that they captured in the region of Lake Champlain in 1684. These practices concerned species that did not seem threatened by extinction and that did not form the object of an important trade with the Europeans. They did not seem to reflect cultural traits peculiar to Iroquoian or Algonquian peoples, nor a distinction between the Christian communities domiciled close to the towns of the French colony and those who lived on their ancestral territories. Indeed, in respect of each of these categories, they were non-existent in certain regions or during certain periods.

On the whole, one could think that during an era where aboriginal peoples were regularly threatened with starvation, they would never let prey escape, even if they were to find themselves with a surplus of food. This accords with the observations made by missionaries in the second half of the 17<sup>th</sup> century. The pressing need to procure European merchandise could also have led the Wendats and the Iroquois to exterminate beavers, which were perhaps less numerous on their territory. The growing scarcity of resources could equally have contributed to

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<sup>346</sup> *ibid.* The original version of our translation read: “à ne point tuer les jeunes castors” ... “parce que c’est dans cette saison qu’ils se multiplient”.

the clarification of national territorial boundaries, to wit to permit the appropriation of beaver huts by certain aboriginal peoples from the Great Lakes regions. Nonetheless, the idea of collective ownership of the national territory and the assignment of districts exploited exclusively by a family group (under sufferance of intrusions in case of pressing need) largely predate this decrease in resources.

Much as the French may have believed this, it is difficult to accept that aboriginal peoples, like all other human beings, did not have a sufficiently well-developed sense of observation to come up with conservation measures by themselves and that only Europeans could teach them how to proceed in this regard. What is more, they could hardly have pretended to teach by example... The observations reported above give the impression that appropriate techniques had been known for a long time, but that these had escaped the attention of the missionaries or the explorers, or that they could not have been used during the crisis periods provoked by wars and epidemics.

## **Conclusion**

To translate the nature of aboriginal territorial rights in New France in Western terms, it is necessary to examine the anthropological controversy concerning the origin of this notion in the Saint Lawrence Valley. This debate was influenced by long-lasting conceptions about the survival among aboriginal peoples of a primitive community erking back to the dawn of humanity, which appeared in the literature on natural law and the law of nations. If one rejects the idea of a hereditary family asset comparable to a form of property, on the one hand, and that of an almost total absence of demarcation and appropriation on the other, one is left with national hunting territories exploited by family bands. The territory itself consisted of a collective

property; its use, notably the dispersion of bands in the hunting districts, was determined by one or several chiefs acting in concert, who could apparently modify this dispersion according to the needs of all. The exploitation rights conferred in this sense were meant to be exclusive, despite certain exceptions. Theoretically, the appearance of these ideas and the adoption of wildlife conservation measures could be attributed to European influence, but it is much more likely that these notions were of a pre-Columbian origin.

The observations made by the French allow us to clarify this debate. They had an excellent understanding of the general location of aboriginal territories and of the control exercised over these lands by those nations. Thus, hereditary enemies or strangers who desired to traverse a country for commercial purposes could not access it without permission. In any event, the brotherly relations established within the scope of a peace treaty under the aegis of a French common father permitted the allies to circulate freely from one area to another for hunting purposes. In the same way, family groups reserved for themselves the exclusivity of their hunting districts, even if friendly peoples or neighbouring bands could penetrate into these at any time in the event of necessity for purposes of feeding themselves. As José Mailhot and Sylvie Vincent wrote, “nobody could enter into the territory controlled by another without demanding authorization and nobody could deny another the right to life”.<sup>347</sup> Everything indicates that these principles equally had a pre-Columbian origin, even if they could have played a more important role following the increasing scarcity of resources observed in the last decades of the 17<sup>th</sup> century.

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<sup>347</sup> Mailhot and Vincent, “Droit Foncier,” 72. The original version of our translation reads: “*nul ne peut s’introduire sur le territoire contrôlé par un autre sans en demander l’autorisation et nul ne peut nier le droit de l’autre à la vie*”.

The situation is a little less clear in respect of conservation measures, of which the need became much clearer during the last decades of the 17<sup>th</sup> century. For spiritual reasons, several aboriginal peoples believed that they were obligated to capture and kill all animals that offered themselves to them, even if it would be impossible to consume their meat or if no beavers would be able to repopulate a lake. One could ask if these hunters were in a position to know the number of beasts that were being slaughtered by their colleagues and if the ever-present risk of famine did not serve to explain their conduct. Yet it remains possible that the French had gradually inculcated a conservation concern in the aboriginal peoples of the Saint Lawrence Valley, even if this hypothesis seems to be rooted in ethnocentricity and has not been verified in the Hudson Bay region or in that of the Great Lakes. Either way, these difficulties manifest themselves close to a century after the first descriptions of national territories or hunting districts, which could not have developed because of them.

Within the scope of diplomatic negotiations taking place in Europe, the French had often refused to recognize the existence of aboriginal territories that formed an obstacle to their settlement in America, or the possibility that a particular people might have ceded one of these territories to Great Britain. Nonetheless, they perfectly understood the importance of this concept for their aboriginal allies in the 17<sup>th</sup> century, as well as the powers that regional or local chiefs exercised over their lands. It even happened that they protected these chiefs against encroachments by settlers or by other aboriginal peoples. Far from ignoring or denying these aboriginal rights, they took them for granted until they awarded land rights that were incompatible with such aboriginal rights. This subtle conception, which was not meant to protect the rights of aboriginal peoples but did not assume their automatic extinction, rapidly disappeared after the Conquest of 1760.



Soon enough, the inexistence of territorial rights under the French Regime became the official mantra and the realistic assumptions of the 17th century were relegated to oblivion.<sup>348</sup>

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<sup>348</sup> see Alain Beaulieu, “‘An Equitable Right to Be Compensated’: The Dispossession of the Aboriginal Peoples of Quebec and the Emergence of a New Legal Rationale,” *The Canadian Historical Review* 94, no. 1 (2013): 1–27..