

UNIVERSITÉ DU QUÉBEC À MONTRÉAL

THE IMPLEMENTATION OF THE ABENAKI BAND COUNCIL IN
ODANAK, 1812-1914

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BY
TRISTAN RHEAUME JONES

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UNIVERSITÉ DU QUÉBEC À MONTRÉAL

L'IMPLANTATION DU CONSEIL DE BANDE CHEZ LES ABÉNAKIS
D'ODANAK, 1812-1914.

MÉMOIRE
PRÉSENTÉ
COMME EXIGENCE PARTIELLE
DE LA MAÎTRISE EN HISTOIRE

PAR
TRISTAN RHÉAUME JONES

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TO THE ONE AND ONLY JOHN JONES

FATHER, TEACHER, BEST MATE, AND THE REASON FOR IT ALL

WISH YOU COULD STILL BE HERE TO WITNESS THE REST

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RÉSUMÉ

Après la guerre de 1812, les Autochtones perdent rapidement leur importance militaire aux yeux des Britanniques, ce qui se traduit dans un vaste programme de révision de la politique indienne du Canada. Les Abénakis de la réserve de St-François (connue sous le nom d'Odanak) sont parmi les premiers à subir les effets de cette nouvelle politique. La « politique de civilisation » est donc devenue le pilier de la stratégie canadienne, et ce dans le seul but d'assimiler les Premières Nations.

Les Abénakis de la bande de St-François représentaient une population idéale pour le Département des Affaires Indiennes, lorsque le temps est venu d'implanter le système des Conseils de bande. Plusieurs facteurs ont contribué à ce que cette bande intègre le nouveau système politique sans aucune résistance documentée. En fait, la bande, consciente de sa situation socioculturelle particulière, avait déjà commencé à restructurer son système politique avant l'intervention gouvernementale. En rétrospective, le processus de création des conseils de bande à Saint-François peut être considéré comme une réussite presque totale. La bande non seulement a participé au processus, mais s'y est aussi pleinement engagé au plan idéologique. Alors que certains chercheurs ont surtout insisté sur l'illusion de pouvoir qui se trouvait dans les conseils de bande, les Abénaquis de Saint-François se sont engagés sans réserve dans cette transformation politique dans le but de retrouver une partie de leur autonomie.

Dans le présent mémoire, il sera question: a) des actions prises par l'État colonial qui ont peu à peu transformé les coutumes d'avant guerre et ont pavé la voie à l'établissement d'une nouvelle structure légale; b) de l'élaboration et de l'évolution de la politique gouvernementale des Conseils de bande; c) du processus initial d'implantation du système des Conseils de Bandes; d) des transformations de la culture politique autochtone dans la réserve de Saint-François.

Mot clés: Odanak, St-François, Abénakis, Conseil de bande

ABSTRACT

The war of 1812 rendered the utility of First Nations as military allies obsolete, requiring the colonial state to restructure relations with their indigenous neighbours. The Abenakis of the reserve of St-Francis (renamed Odanak) were at the frontlines of these governmental initiatives. What was to be termed the 'civilization policy' henceforth became the pillar of Canada's strategy with the objective of assimilating First Nations into a society that no longer had any room for them to be, let alone to flourish.

The St-Francis Abenaki proved to be an ideal population for the Department of Indian Affairs as they began implementing the Band Council system. Due to a number of factors, this community embarked in the system without any documented resistance. In fact, the Band had already begun restructuring its political system, conscious of its particular socio-cultural situation. In retrospect, the process of establishing Band Councils in St-Francis can be considered a near total success. The Band not only participated in the process, but was also fully engaged ideologically. Whereas some scholars have discussed the illusionary power residing in the Band Council's political structure, the Abenakis of St-Francis committed wholeheartedly in an attempt to regain the lost privileges of agency and self-determination.

The following research therefore discusses: a) the precursory actions from the colonial state that eroded pre-1812 customs, paving the way for the establishment of a new legal framework; b) the elaboration and evolution of the official Band Council government policy; c) the initial process of implementing the Band Council system; d) the transformations of indigenous political culture within the Band of the St-Francis Abenaki.

Key Words: Odanak, St-Francis, Abenaki, Band Council

INTRODUCTION

Intrinsically part of North America's history, First Nations played a crucial role in the development of colonial culture, mostly through trade, alliance, and diplomacy. Once their 'utility' as military allies disappeared after the war of 1812, the British government turned its efforts at instituting a new set of policies that totally redefined the relationship between the indigenous and the colonial neighbours. The British Indian Department was hence transferred from the military to the public service branch in 1830¹, marking the official emergence of a new colonial order. Thus from the 1830s onwards, British Canada experimented with what it termed as its *civilization policy*. Finally providing a framework to guide White-Indian relations, this newly concocted legal and intellectual instrument served as a springboard for the passing of legislation that would facilitate and accelerate Indian assimilation into Euro-Canadian society. The same policies were followed by the Canadian government after its creation in 1863. In fact, it fully committed to continue the program previously developed by the British. The infamous objective of transforming the lives of the indigenous people of Canada gave rise to a non-Indian legal and bureaucratically controlled process with a legacy that has endured to the modern day.

While the consolidation of Indian law occurred with the passing of the *Indian Act* in 1876, indigenous people had been subject to a series of governmental legal initiatives since the start of the 19th century. One trigger that engendered a pressing need to handle the now considered idle Indian population was the new wave of immigrants coming from the British Isles between 1815 and 1850. Indigenous inhabitants incidentally became cumbersome to settler ambitions over land and economic development². Contained and constrained to small parcels of land through the newly established 'reserve system', the Department of Indian Affairs sought to absorb the remnants of Indian culture into Euro-Canadian society. The facets of this program were expressed through the passing of Acts that undermined almost all

¹ Richard H. Bartlett, *The Indian Act of Canada*, Saskatoon: University of Saskatchewan, 1988, p. 3.

² R.J. Miller, *Compact, contract, covenant: Aboriginal treaty-making in Canada*, Toronto: University of Toronto Press, 2009, p. 102.

aspects of indigenous culture. Through overweening state paternalism, the Canadian State sought to transform aboriginal society through the de-tribilization and reconstruction of the 'Indian' into a refurbished version of a White, enfranchised, and self-regarding individual³. More concretely, and as the focus of the following research paper, the government engineered the transformation of indigenous governmental structures through the implantation of *Band Councils* with the stated objective of making these communities resemble Euro-Canadian municipalities. Consequently, by the end of the 19th century, Canada was edging closer to what has been termed as an 'Empire of Uniformity'⁴.

1. Case Study: Odanak

The following research will analyse the process that led to the transformation of a particular indigenous political culture and community: the Abenakis of Odanak, otherwise known as the St-Francis Indians. This reserve, first established as a religious mission and later used as refuge from southern military conflicts in the 18th century, was from its conception, subject to the influence of Euro-Canadians. It evolved as what can be conceptualized as a hybrid society. Principally composed of exiled members of the more southerly Abenaki nations, St-Francis' population was heavily influenced by the presence of missionaries and their very proximate Euro-Canadian neighbours at Pierreville. Classified as a sedentary people, the Abenaki nation was originally organized by what has been termed a tradition of 'complex' political structure. Established near the mouth of the Saint-Francis River near the end of the 17th century, this reserve, as a few others in the province of Quebec, has a history of close and prolonged contact with the non-indigenous population during the 19th century – the most dynamic decades of policy formation.

Due in part to the site's geographical proximity with colonial centres and the resulting regularity of contact with non-Indians, the Abenakis of Odanak seemed to have

³ P.G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination*, Oxford: Oxford University Press, 2004, p. 49.

⁴ This term was used by J.R. Miller in *Compact, contract, covenant: Aboriginal treaty-making in Canada*, Toronto: University of Toronto Press, 2009.

adapted to the imposed Band Council without any serious crises within their society. In fact, sources demonstrate that the *Indian Act* instigated changes in the political structure of the community as early as 1876 – there is yet to be documentation indicating any form of direct resistance to this overhauling government initiative. This is not to say that St-Francis was in accord with the European-inspired modifications made to its political system, but as a general rule, the population cooperated within the new structure. In short, Odanak already had a long historical experience with colonial governments and cultural transformation by the mid-19th century. This Abenaki community thus emerges as an interesting case in the study of the implementation of *Band Councils* and its related processes.

To study this scantily researched Abenaki community reveals itself of importance in the understanding of the mechanisms that enabled the government to launch its nation-wide policy of transforming indigenous political structures. This process has a direct link with one of the most damaging legacies of Canadian colonial history: the placing in tutelage of the indigenous people of Canada; a phenomenon still at the heart of the most modern debates on First Nations autonomy and self-determination. The following research on the establishment, the functioning, and the effect of the *Band Council* at Odanak can contribute to enrich debates on indigenous governance and help to better comprehend the current political situation of Indians in Canada; more particularly the communities having settled in the St-Lawrence valley.

1.1. Timeframe

The period studied has its start in 1812, when the diplomatic status of indigenous people shifted from potential military ally to an administrative burden. From the conclusion of the war of 1812, the British government re-orchestrated its Indian policy and organized its legal apparatus, progressively laying the foundations for the eventual imposition of Band Councils. The study ends in 1914 as archival records of activity relating to the functioning of the St-Francis Band Council are sparser and the grievances become oriented to internal matters of a municipal-type nature. In fact, as testimony to the permanent success in the establishment of the Band Council in Odanak, by the coming of the Second World War, the population had grown accustomed to proceed within the system to express their (albeit

limited) political powers. In other words, the new political structure was firmly established and its authority, stemming from the government, was unthreatened. Providing more than a century of observation into the realms of Euro-Canadian policy implementation and Abenaki agency, this large historical period of study allows for a thorough analysis of the changes experienced by the inhabitants of Odanak.

1.2. Research Objectives

The following research paper hopes to fill a void in Canadian indigenous studies. Not only is Odanak a sparsely studied community in general, the subsequent work hopes to shed light on the transitional phase that brought Odanak from a 'traditional' to a modern political system engineered by the British colonial and Canadian state. This system, with all its laws and regulations, has been termed 'Band Councils', and remains largely unaltered to this day. To fully understand how Band Councils developed to be unilaterally imposed on a national scale, this paper will be divided under three frameworks of analysis:

a) Examine the elaboration and evolution of the official Band Council government policy

Band Councils started to take their official form in 1876 when the Canadian parliament instated the *Law on Indians*. The architects of this law hoped that it would accelerate the assimilation process; an objective that many legislators thought of as the premium way to operate with the indigenous population. One of the objectives of this research is thus to observe the logic behind the argumentation and justification of the Law on Indians and more precisely, on the jurisdictional, political, and ideological discourse that aimed at transforming the essence of indigenous political culture. In order to account for the evolution of this process, the discussion will encompass the policies of the colonial government prior to the unification of the Upper and Lower Canadas, as well the years following 1840 leading up to the establishment of the Canadian Confederation in 1867 under which the *Law on Indians* was passed. This study spans out until 1914, convenient as cut-off point with the start of the Great War, while also providing a marker for the purpose of this

research, indicating the clear success of the Band Council system in Odanak until 1951 when the Canadian parliament revised the Law on Indians.

b) Study the process that led to the concrete establishment of Band Councils in Quebec

In the implantation process of Band Councils, the Canadian government considered the level of 'social and cultural advancement' of indigenous communities. The more the band appeared 'civilized', the more likely they would qualify for the government's investment in the establishment of a new political system. Odanak was therefore to become one of the first communities that underwent the shift from a tribal to a European based political organization. In this particular case, transformations can be observed as early as 1869. Nearing the end of the 19th century, Odanak had already organized several successful elections. One of the objectives of this research is to observe the different phases in the establishment of this new system, analyse the attitude and the reactions of Odanak's inhabitants as well as those of the other actors included in the jurisdictional and political affairs of the band.

c) Analyse the transformations of indigenous political culture

The third objective of this study centres on the analysis of Odanak's transformations, more particularly the changes at the political culture level, once the government imposed its desired structure. Drawing inspiration from municipal-type autonomy, this new system was composed of defined guidelines and was founded on principles that were often in direct contrast to traditional indigenous political customs. For example, the cult of the individual and of property was one of these underlying principles of the new electoral system, but for most indigenous people living at the end of the 19th century, this was contrary to their customary modes of living. This final framework of analysis will seek to observe how these Abenakis positioned and expressed themselves within the structures of the Band Council and the accompanying bonds to Euro-Canadian values, mores, and expectations.

2. Historiographic Perspectives

2.1. Historiographic Context

Undoubtedly stemming from the dehumanizing horrors of the 20th century, the intellectual drive of scholarship during the 1960-70s evolved to include previously ignored or 'forgotten' people, giving rise to what has been termed *subaltern studies*. At the end of the 1970s, historiography had effectively moved away from the three mainstream paradigms of the Marxist economic model, the French 'ecologic-demographic' model, and the American Cliometric methods⁵. There emerged a sense that these paradigmatic models were in fact fatally flawed when trying to explain the full human experience. These intellectual traditions had in fact 'forgotten' and 'ignored' a large section of worthy historical inquiry that simply did not fit with any of these explanatory currents.

From the late 1970s to the 1980s, all three analytical fields of class, gender and race were confronted with major paradigm shifts, re-evaluations, and adjustments in their respective historiographies. The same process occurred with Native American studies, albeit an entirely different and independent area of study. All-encompassing historical views became increasingly irrelevant as the 1980s progressed. The grand ideals of the previous generations of progress movements and emancipation since the industrial revolution, to the triumph of science over nature, all the way to the emancipation of the working class, the victory of socialism and social equality, were now considered unworkable⁶. In a rapid overview of the main North American developments in historiography, generally speaking, indigenous people were largely excluded from the large tract Western narrative; historians proceeded to include them but often without changing the story line⁷. Finally, leading up to the 21st century, there occurred a re-evaluation of the nature of the relationship between

⁵ Christian Delacroix, *Les courants historiques en France*, Paris: Armand Colin, 2005, p. 485.

⁶ Geoff Eley, "De l'histoire sociale au tournant linguistique dans l'historiographie Américaine des années 1980", *Genèses*, vol. 7, no 7, 1992, p. 183.

⁷ Daniel K. Richter, "Whose Indian History?", *The William and Mary Quarterly*, vol. 50, no 2, 1993, p. 381.

'settler' and 'native', from cooperation and negotiation, to a discourse accounting for the modern state of settler domination and the general cultural depreciation of native communities.

2.2. Discourse Assaulted, Deconstructed, and Rebuilt: Indigenous History at the Crossfire

On an epistemological level, Western engineered history was criticized from all angles by the post-modern onslaught. Michel Foucault was pivotal in changing the current ideological thought especially among 'new wave' intellectuals centred on the noble project of releasing the 'subaltern' societies from the shackles of the history of the dominant classes. Foucault is mostly recognized for having perceived a different organization within power relations and knowledge: "the 'disciplining' of subordinate groups through being made the object of 'disciplines' "⁸. In other words, subordinate groups or subaltern societies, were being oppressed by the simple fact that they were being discussed as 'subjects' by the dominant classes, institutions, race, or gender, and were historicized by the language and discourse of any and every other person but themselves.

For Foucault, discourse could be a form of oppression on its own. Edward Said also discussed this issue but centered his argument on historiographic trends focusing on the concept of the Orient. Said, in many ways in parallel with Foucault's theorising, condemned the Occidental construction of the 'Orient' and questioned the legitimacy of Westerners that were responsible for defining and describing non-Western cultures⁹. Both these intellectuals sent shockwaves that had international influence, especially on the post-colonial paradigm, much to the dismay of a large number of scholars who prided themselves in their seemingly selfless and righteous enterprise of fighting oppression in historiography.

⁸ Peter Novick, *That Noble Dream: the 'Objectivity Question' and the American Historical Profession*, Cambridge: Cambridge University Press, 1988, p. 471.

⁹ *Ibid.*, p. 471.

2.3. Paradigm Shifts

Western intellectuals started to recognize their near total domination of native/settler history and, from the 1970s onwards, worked upon restoring *agency* to their subjects by shifting their epistemological outlooks. In this context, *The New Indian History* focused on raising the Amerindian as a historical actor equal in status to the colonizer¹⁰. In other intellectual circles, the concept of the famous American 'frontier' was re-evaluated. While it was previously defined within a discourse of conqueror versus conquered, it was reinterpreted as a zone of contact, exchange, and fluidity¹¹. Similarly, in the Australian context, the static nature of the structuralist-functionalist anthropological model, which had previously focused on reconstituting past cultures, was also criticised for completely ignoring the processes of change¹². The idea that indigenous people were immune to changing circumstances was a theme observable in almost all post-colonial societies until the late 20th century, thus reinforcing the concept that natives had no 'history' since they never 'changed'¹³. In almost all intellectual circles, the European colonizer was at the centre of all historical discourse. For the indigenous peoples of post-colonial nations, their existence was usually relegated to one of myth and awe, trapped in a literature of timelessness. In the case of Australia, the experience of the colonial frontier was so central to the formation of the nation that it tended to forget aboriginals altogether¹⁴.

The domination of ethnocentric and culturally exclusive perspective was dismantled in part by Francis Jennings. His re-evaluation centred on the joint creation of the United

¹⁰ Gilles Harvard, "Les Indiens et l'histoire coloniale nord-américaine: les défis de l'ethnohistoire", in François-Joseph Ruggiu et Cécile Vidal (dir.), *Sociétés, colonisations et esclavages dans le monde atlantique. Historiographie des sociétés américaines des XVIe-XIXe siècles*, Rennes: Les Perséides, 2009, p. 102.

¹¹ *Ibid.*, p. 107.

¹² Ann McGrath, "Un domaine de controverse: qu'est-ce que l'histoire aborigène?", *Le Mouvement social*, no 167, 1994, p. 23.

¹³ *Ibid.*, p. 23.

¹⁴ *Ibid.*, p. 22.

States by both Euramericans and Amerindians¹⁵. The concept could be extended to the different post-colonial contexts of other nations such as Canada, Australia, and New Zealand. Emphasis was put on the meeting of 'two-worlds', instead of the domineering discourse previously espoused¹⁶. Richard White followed the steps laid out by Jennings with his seminal work *The Middle Ground*, which emphasized the dynamics of adaptation, accommodation, and mutual comprehension between the two cultures¹⁷. While Jennings and White attempted to include Amerindians in the formation of their respective nations, their writing heavily under-represented the eventual and or gradual cultural domination of settler-societies. In most historical cases of settler-indigenous relations, Euramericans and Amerindians failed to maintain an egalitarian system. One author explains that "exclusive stress on the arenas of cooperation runs the risk of obscuring the very real conflicts that must remain central to the tale¹⁸." The unfortunate reality remains that policy making remained 'colonial' in nature, no matter the humanitarian arguments that governments presented. In other words, settler societies were constantly looking to gain a permanent advantage in territorial, economic, and political negotiations. Even the intellectual project of *The New American Indian History* tended to downplay the conquering process, power relations, and the growing importance of having to re-integrate Amerindian societies within the Atlantic realm¹⁹.

Scholars have for long aggregated the indigenous experience by large geographical areas or periods of conflict²⁰. Obviously, this gravely ignored regional diversity of cultures and experiences, while supporting the notion of a universal consciousness of

¹⁵ Daniel K. Richter, *loc. cit.*, p. 380.

¹⁶ Gilles Harvard, *loc. cit.*, p. 104.

¹⁷ *Ibid.*, p. 108.

¹⁸ Daniel K. Richter, *loc. cit.*, p. 390.

¹⁹ Gilles Harvard, *loc. cit.*, p. 108.

²⁰ Alain Beaulieu, "Une histoire instrumentalisée. Réflexions sur l'usage du passé dans les revendications autochtones", *Vert, le droit? Conférence des juristes de l'État 2009*, Cowansville: Éditions Yvon Blais, 2009, p. 367.

'Indigenoussness'²¹. Only recently have some scholars attempted to demonstrate that indigenous people made conscious decisions in an attempt to adapt to the changing circumstances, before and after the post-contact periods. Whereas they had previously been portrayed as passive victims²² doomed in the face of the spreading grip of colonization, scholars increasingly hoped to depict them as individuals that responded to a set of structural conditions with precise motivations²³. Therefore, previous paradigms centred on giving birth to indigenous identity only through the colonial experience can no longer hold. A narrative based on the latter type of explanatory model remains segmented and would speak only for the socio-cultural relationships between settler and native²⁴. As one historian explained, "the need is to construct a larger vision of both native and Euro-American experience (and, indeed, of the experience of all the peoples who have shaped North American society) that is inclusive and empowering, rather than imperialistic and dominating"²⁵. Australian historian Ann McGrath expressed the same idea in that large narratives on particular nations have henceforth the obligation to integrate 'aboriginal history'²⁶. The direct consequence of this paradigm shift, unfortunately but necessarily, brings back the colonial discourse at the forefront of the indigenous experience. This has direct implications for the present because instead of regarding colonialism as an amalgamation of discontinued historical pieces, it suggests that the legacy of the colonial heritage is still very much at work and perceivable through the general state of 'ghettoization' of native communities around the world²⁷.

Through all these developments, the historical field continued to evolve and historians attempted to reconstruct their field left largely 'deconstructed' by the

²¹ Ann McGrath, *loc. cit.*, p.18.

²² *Ibid.*, p. 24.

²³ Denys Delâge, "L'histoire des autochtones d'Amérique du Nord: acquis et tendances", *Annales HSS*, 57e année, no 5, 2002, p. 1349.

²⁴ Ann McGrath, *loc. cit.*, p. 39.

²⁵ Daniel K. Richter, *loc. cit.*, p. 389.

²⁶ Ann McGrath, *loc. cit.*, p. 39.

²⁷ Denys Delâge, *loc. cit.*, p.1350.

postmodernist intellectual wave now largely concluded. In response to how postmodernism and other related fields seem to suggest that “each culture is trying futilely to explain its untouched and unknowable otherness to the other²⁸,” Daniel Richter intelligently expressed that the historical enterprise should be understood as only a “partial, imperfect, provisional truth²⁹.” Western historians seem to have reached an epistemological sensibility that accounts for the changing dynamics of objectivity, methodology, and interpretation, and have thus agreed that it was still possible to make relevant, well researched, and nuanced ‘native history’. However, they are still confronted with the fact that they are largely writing (and often considered from the targeted communities) as ‘outsiders’.

3. Indigenous Political Culture in Epistemological Currents

The 1970s produced key publications that opened new avenues of historical thinking propelling the epistemological developments described above. While contributing to the field of the native people of Canada and the study of indigenous political culture, little weight has been attributed to Band Councils. This government initiative completely altered political culture in indigenous communities. In fact, the implementation of Band Councils engendered changes in political organizational structure that remained largely unchanged to this day. Authors of modern general texts have mentioned to a limited degree the existence of Band Councils and have given them some degree of notice. For example, Gélinas’ text on the Indigenous people of Quebec in the post-confederate era focuses on thematic discussions about many aspects of aboriginal life studied in parallel to evolution in Canadian and Quebecois culture³⁰. Changes in Canadian legislation are interpreted as watersheds, but the reader is left with few details about the process of implementation of Band Councils and the different effects they had on the political cultures of Quebec’s indigenous communities. Beaulieu, a specialist in indigenous history, emphasized that Band Councils were key

²⁸ Daniel K. Richter, *loc. cit.*, p. 384.

²⁹ *Ibid.*, p. 386.

³⁰ Claude Gélinas, *Les Autochtones dans le Québec post-confédéral, 1867-1960*, Sillery: Septentrion, 2007.

products of government policy that undermined Quebec's First Nations traditional political culture. Band Councils, Beaulieu stated, were one of the main tools of the federal government used to propel native communities toward the celebrated goal of 'civilization'³¹.

However, few historians have focused on specialized analyses. The work of Daugherty and Madill³² is certainly an exception but their work leave many areas of study unfulfilled. They base their presentation mostly around the electoral system and the administrative powers allotted to the Band Councils. Their work sheds light on the implementation of Band Councils through its legal proceedings, but their approach remains limited to a study centred on the history of the administration of Indian Affairs. Moreover, their case studies are exclusively examples of resistance to the federal government's efforts to overhaul their traditional political system. These cases are certainly interesting in how they demonstrate opposition to governmental policies of assimilation, but analysis of instances of where and why indigenous communities accepted Band Councils 'peacefully' lack representation. Written in 1980, there since have been few if any publications of similar dimension.

The Abenakis, as a nation, have not received as much scholarly attention as their Iroquoian neighbours. Mentioned clearly in historical records, the Abenakis obtained recognition as a distinct people and are thus present in most general narratives concerning the east coast of North America. Yet studies focusing solely on the history of the Abenaki people are sparse. *The Identity of the Saint Francis Indians* by Gordon Day³³ is revealing in how it traces the original location of several Abenaki groups at the moment of European contact, in addition to their migrations after a series of conflicts with the English displaced indigenous populations all over New England. Considering how little information exists documenting

³¹ Alain Beaulieu, *Les Autochtones du Québec: des premières alliances aux revendications contemporaines*, Montréal et Québec: Fides et Musée de la civilisation, 1997, p. 116-118.

³² Wayne Daugherty and Dennis Madill, *Indian government under Indian act legislation, 1868-1951*, Ottawa: s.n., 1980.

³³ Gordon Day, *The Identity of the Saint Francis Indians*, Ottawa: National Museums of Canada, 1981.

their move – in large majority – from their original lands to their permanent establishment in Canada, Day's work is interesting in how he puts the pieces together. Day also brings forth reports from the very few missionaries that worked closely with the Abenakis prior to their mass migration. From these documents are revealed the earliest cultural aspects of the Abenakis. In the end however, the reader is only offered a preliminary view of the daily workings of Abenaki livelihood, most certainly attributable to the lack of primary material for the period of Day's study. Another substantial survey on the subject is the work of Kenneth M. Morrison, *The People of the Dawn: The Abnaki and their relations with New England and New France, 1600-1727*³⁴. As the title suggests, Morrison's explored early relations between the Abenaki and the two colonial powers that invested interest in their area. In fact, his body of analysis centered on the conflicts between Europeans and the surrounding first nations, but more specifically on how these clashes had a ripple effect in the interior of the country, influencing Abenaki livelihood, culture and territory. Philippe Charland adds to the works of Day and Morrison with his doctoral thesis *The Last Warriors: Dynamic and Mechanic of Dispossession of Ameriquain Territory: the experience of the Wabanaki nation*³⁵. As the title suggests, the thesis observed the gradual and systematic territorial dispossession of Abenaki lands, from their original territory to their experience in Quebec. Charland did well documenting the agency of the nation when faced with relentless pressure from the non-indigenous and neighbouring tribes. A portrait of survival, resilience and adaptation is thus painted, highlighting the character of the Abenakis. For the purpose of this research, Day, Morrison and Charland deliver compelling work on the Abenakis by providing an essential starting point in the observation of cultural and political transformation. As in the case of the majority of indigenous populations, the winds of change occurred almost immediately after first contact. The Abenakis were no different; economic

³⁴ Kenneth M. Morrison, *The People of the Dawn: The Abnaki and their relations with New England and New France, 1600-1727*, Ph.D. Thesis: University of Maine, 1975. In the latter publication, Morrison uses the spelling 'Abnaki' in reference to what is more commonly spelled as 'Abenaki'. When citing Morrison's work, I use his spelling.

³⁵ Philippe Charland, "Mejessala Migakawinnoak - les derniers guerriers: Dynamique et mécanique de dépossession du territoire amérindien: l'expérience de la nation Wabanak", Thèse en géographie: Université du Québec à Montréal, 2000.

relations, territory, and religious culture were all affected by colonial trade, war, and religious missions.

Studies on the Abenakis living in Quebec specifically are also few in numbers. Thomas Marie Charland has written the decisive work covering the Abenakis of Odanak³⁶. Large in scope, T.M. Charland starts his survey in the late 17th century as some Abenakis decided to settle on Canadian land. Chronologically, he described the events occurring with this group, ranging from armed conflicts, relationships with missionaries, religious movements, territorial confrontations, and political happenings. As an indication of the academic void, the *History of the Abenakis of Odanak (1675-1937)* remains nearly fifty years old. T.M. Charland covers all the major events but for the purpose of this study, he leaves little detail on the transitional decades of the late 19th century. The author never stated that the purpose of his study was to cover the change in indigenous political systems, but like so many analyses, the emergence of the Band Council was never treated as a transformative phenomenon.

This research paper, in junction with the larger project of the Canadian Chair of Indigenous Research, hopes to contribute to the void in the current academia described above. It is positioned between two historiographic currents: the study of Canadian policies and the judiciary implications of the latter.

3.1. Study of Canadian Policies

From the late 1960s onwards, scholars of Native American history published on a wide variety of aspects concerning Canadian policies regarding First Nations. One approach remains dominant: the examination of the federal government's logic in the process of public policy formulation for indigenous people. Bartlett studied the developments in legislation that lead to the consolidation of all previous legal amendments with the passing of the *Indian Act*

³⁶ Thomas-Marie Charland, *Histoire des Abénakis d'Odanak*, Montréal: Éditions du Lévrier, 1964.

in 1876³⁷. The author went into detail when he observed the influence of different political actors, how they pushed for different legislations, what amendments were passed and revoked, and which clauses affected different areas of indigenous life on the reserve. He followed by writing *The Indian Act of Canada*; an analysis of the Act's repercussions on the aboriginal communities of Canada which has undeniably become a pillar in the field of indigenous studies³⁸. In this particular book, he emphasized the negative nature of the *Indian Act* in how it not only undermined traditional native culture, but also how it severely reduced opportunities for First Nations to thrive under this type of legislation.

In the same vein, some authors have written about specific aspects within the history of Canadian legislation. Most recently, Miller focused on treaties as special agreements between two governing bodies that should be given renewed respect and their significance, revised. Whereas signed treaties were creations of Western Civilization, the author hoped to emphasize that prior to European arrival, aboriginal communities had developed mechanisms that functioned to regulate one another as civil societies³⁹. His work was organized similarly to Bartlett's: he moved from one treaty to the next chronologically and studied how each treaty came to be, who it involved, what the different parties were hoping to achieve from it, the effects that these treaties had on indigenous and Euro-Canadian life, and how the essence of treaty-making changed over time.

The history of federal legislation has undoubtedly been well documented, but far fewer efforts have been poured over state actions at a micro level. In a recent case study, Brownlie observed the interactions of indigenous communities in Ontario when confronted with the federal government's arbitrary imposition of Euramerican societal and political structures⁴⁰. This author targeted 'Indian agents' as prime actors in the fate of indigenous

³⁷ Richard H. Bartlett, *The Historical Development of the Indian Act*, Ottawa: Treaties and Historical Research Centre, P.R.E. Group, Indian and Northern Affairs, 1978.

³⁸ Richard H. Bartlett, *The Indian Act of Canada*, *op. cit.*

³⁹ R. J. Miller, *Compact, contract, covenant: Aboriginal treaty-making in Canada*, Toronto: University of Toronto Press, 2009, p. 284.

⁴⁰ Robin Jarvis Brownlie, *A fatherly eye: Indian agents, government power, and Aboriginal resistance in Ontario, 1918-1939*, Don Mills, Ont: Oxford University Press, 2003.

communities, primarily due to the fact that they were trusted with the job of implementing federal policy, enforce the *Indian Act*, and manage First Nation communities⁴¹. Brownlie therefore considered the 'Indian agent' as the underlying force in reshaping indigenous traditional political culture. By contrast, he attributed little to no power to Band Councils, which were in fact the political system within which 'agents' had to work from.

The historiography outlined above largely focused to measure the degree in which state institutions constituted agents of social change. The following research hopes to build upon previous work by combining both the *logic* behind the overarching state apparatus and *on-field* observations of a chosen reserve: Odanak. From this dual perspective, this study seeks to clarify a complex set of relationships between the state and indigenous communities within the colonial context. As a starting point, one has to observe how Canadian legislation evolved to undermine traditional native political structures. Subsequently, analysis of events and actors in Odanak will shed light on the degree to which new political configurations and governmental initiatives engendered a true process of change within this reserve's political culture. The goal therefore is not limited to study instances of resistance or collaboration, but how indigenous people invested in this new power configuration to advance their own interests.

3.2. Judiciary Implications

A second current in historiography involves perspectives between *law* and colonialism. The establishment of legal parameters between natives and settler-societies has a complicated history and has translated into a host of hotly contested debates in the judiciary arena. In fact, only recently have the differing perceptions of First Nations been seriously addressed by academics of history and law. One of the best embodiments of deliberation within the legal-colonial arena is the Treaty of Waitangi, and the subsequent creation of the Waitangi Tribunal to address the modern implications of the document signed in 1840. The

⁴¹ *Ibid.*, p. 10.

main point of discussion remains whether the principles of the Treaty, as opposed to the terms and vocabulary used, are still negotiable to this day. "While it cannot be said that there is general agreement as to what these principles are, the Tribunal has emphasized the principles of partnership, good faith, active protection, the need for compromise, and the duty to consult⁴²." According to the latter's timeless essence, the government of New Zealand has to maintain negotiations with its indigenous population for an indefinite future⁴³. This everlasting contract has been thought burdensome by some, but the interpretations of the Treaty by the Tribunal are a strategy of 'reparatory jurisprudence' in an effort to move beyond conflict and towards understanding and settlement⁴⁴.

The Treaty of Waitangi has the tendency to depict New Zealand as an example of peace and cooperation between natives and settlers. The judiciary reality, in North America, as in New Zealand in most respects, is far less egalitarian. At the end of the twentieth century, Canadian courts have given increasing weight to oral traditions. While there have been judicial victories by indigenous claimants, Mildon has demonstrated the court's underlying reluctance in completely trusting oral narratives, especially in land claims cases where the stakes are high⁴⁵. First Nation oral traditions are still considered more primitive than 'writing' which has become *the* marker of civilization⁴⁶. The extent of the colonial heritage is unmistakable: even if ancestral indigenous rights are recognized, the law dictates that overall administration of land use remains in the hands of the non-indigenous/settler state⁴⁷. In fact, Morin has argued that ancestral or treaty rights are too often recognized when

⁴² Giselle Byrnes, " 'Relic of 1840' or founding document? The Treaty, the Tribunal and concepts of time", *Kiituitui: New Zealand Journal of Social Sciences Online*, vol. 1, 2006, p. 4.

⁴³ *Ibid.*, p. 5.

⁴⁴ *Ibid.*, p. 6 and 10.

⁴⁵ Drew Mildon, "A Bad Connection: First Nations Oral Histories in the Canadian Courts", in Renee Hulan and Renate Eigenbrod, eds., *Aboriginal Oral Traditions: Theory, Practice and Ethics*, Halifax: Fernwood 2008, p.85.

⁴⁶ *Ibid.*, p. 80.

⁴⁷ Michel Morin, "Quelques réflexions sur le rôle de l'histoire dans la détermination des droits ancestraux et issus de traités", *Revue Juridique Thémis*, vol. 34, 2000, p. 339.

this causes no inconvenience to the non-indigenous⁴⁸. If one was to compare Canada with the situation in New Zealand, there exists no system or organization currently in place that can systematically address and reassess terms or principles of previous diplomatic agreements. In the case of the treaty of Waitangi in New Zealand, it is clear that it was signed between two parties with the purpose of an entente. Since, scholars and intellectuals have argued that it should thus be considered as transcending time, free from the context of its original signing⁴⁹.

With all the odds seemingly stacked against indigenous claimants, some scholars embarked on the mission of producing 'histories' that could be used directly by the courts. The problem with such finality, an essential requirement for laws, is that the "fluid nature of theory in the humanities and the social sciences" cannot produce the type of argumentative certainty that the courts are looking for⁵⁰. Beaulieu warned that historical research consciously conducted within a judicial framework will undoubtedly seek to answer questions about current legal issues, instead of a desire to comprehend the past, which should be the primary objective of a historian⁵¹. The manipulation of historical facts or vocabulary is one problem on the level of objectivity, but its effect reaches beyond the scholastic field. For example, Beaulieu argued that the use of the Royal Proclamation as a document still holding the same legal powers since 1774 until 1982 is an aberration⁵². The effects of some of these historical falsehoods and constructs have a disturbing range. In the case of Australia, the term *Terra Nullius* has erupted at the forefront of court cases and was in fact pivotal in the most famous; the *Mabo Court Case* (1982). According to Attwood, historian Henry Reynolds simultaneously inserted and undermined the term in the legal discourse. *Terra Nullius* has apparently no legal groundings, which renders it historically erroneous and shifts the focus

⁴⁸ *Ibid.*, p. 363.

⁴⁹ *Ibid.*, p. 358.

⁵⁰ Arthur J. Ray, "Native History on Trial: Confessions of an Expert Witness", *Canadian Historical Review*, vol. 84, no 2, 2003, p. 257 and 273.

⁵¹ Alain Beaulieu, "Une histoire instrumentalisée", *loc. cit.*, p. 360.

⁵² *Ibid.*, p. 364.

away from the real culprit of aboriginal destitution: colonization⁵³. "In other words, Reynolds set out to make history in order to help the judiciary remake the law⁵⁴." In conclusion, if history remains fundamental in the process of recognition of indigenous rights, the academic work produced in the judiciary context often rest on an implicit negation of history⁵⁵.

Therefore, it is undeniably clear that law has played a central role in the colonial process. McHugh however, in his seminal book *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination*, demonstrated how History has shown the centrality, but also the limitations of Western law in observing the interactions between indigenous people and settlers⁵⁶. In other words, colonial and eventually Canadian law undoubtedly dominated the fate of First Nations, but the process was nonetheless reconfigured through indigenous agency⁵⁷. Consequently, this research project hopes to document how aboriginal communities reinvented themselves under imposed legal and political frameworks, and the ways in which they invested in Western judicial tools to pursue their own interests. To study the process of the implementation of Band Councils therefore offers a window of analysis within the new political and judicial order engineered by the settler state.

4. Methodology & Sources

In terms of *primary sources*, the reports on the commissions of inquiry of the 19th century on Indian Affairs (Great Britain, 1839; Canada, 1845 and 1847; Canada, 1858), the annual reports on Indian affairs (Canada, 1864-1990), and the debates at the Chamber of Communes and the Senate were consulted. Undoubtedly, caution was necessary when

⁵³ Bain Attwood, "The Law of the Land or the Law of the Land?: History, Law and Narrative in a Settler à Society", *History Compass*, 2, 2004, p. 7 and 17.

⁵⁴ *Ibid.*, p. 6.

⁵⁵ Alain Beaulieu, *loc. cit.*, p. 370.

⁵⁶ P.G. McHugh, *op. cit.*, p.VII.

⁵⁷ *Ibid.*, p.7. See also Lauren Benton, *A Search For Sovereignty: Law and Geography in European Empire, 1400-1900*, Cambridge: Cambridge University Press, 2009, p. 257.

interpreting this type of written material. In most cases, these documents were produced for governmental usage. The process thus required to filter out possible biases that naturally occur from the ethnocentric perspectives of the era, even though the hope remains that objectivity is standard in reports, censuses, and correspondences. We must constantly remind ourselves that these documents were written in a period where the government was attempting to adhere to the 'civilization policy' – a theme that transpires throughout the correspondences of the period.

The RG10 series of the Canadian National Archives held the vast majority of the information relating to the subject. In order to plunge into the universe of St-Francis, correspondences and administrative documents between the different actors responsible for the reserve proved to be the most valuable. These exchanges were usually relayed by members of the Department of Indian Affairs or higher ranked government officials, the Indian Agent stationed in St-Francis, elected members of the Band Council or other influential members of the band. Offering an insider view of the daily occurrences within the band, these documents covered all of the band's official proceedings, while also bringing to light the frequency of their grievances, especially regarding internal matters. Luckily for the researcher, a few of St-Francis' residents were renowned for constancy in their writing, their letters accumulating to an impressive number. While only a small proportion of the population took to the pen during the period studied, when combined with the remarks of the Indian Agent, we have a picture painted by the most socially involved and politically active segment of St-Francis. In other words, we are analysing the correspondences of Abenaki leaders. The latter often happened to be in opposition, adding to the richness of the information by presenting different angles of a single issue. The main incentive fuelling the large collection of letters was political competition or problems with the internal functioning of the band. Through this largely negative array of correspondences, one can get a good idea of the topics concerning the inhabitants of St-Francis.

5. Outline of Chapters

Chapter I starts with an overview of the first contacts between the Abenaki and European settlers, situating the colonial state as the instigator of change for communities in the Eastern Americas. Especially as encounters became more frequent and prolonged, indigenous social structures were put under pressure. Approaching the mid-nineteenth century, indigenous identity, territory, culture, and economy was already under transformation. The chapter serves to contextualize this situation as well as to examine how the colonial state was simultaneously organizing legislature that would establish its dominance permanently.

Chapter II observes the establishment of Britain's colonial vision. More than any other imperial power, Britain sought to legitimize its authority through legal means. In terms of Britain's guiding principle toward the Amerindian population, the greatest effort was placed on transforming traditional indigenous political systems. The lasting result of this process and pillar of Canadian policy was the *Indian Act* of 1876. The implementation of this *Act* and its underlying objectives will therefore constitute the chief foundation for this chapter.

Chapter III examines the concrete effects of the Band Council legislation on the community of Odanak. The process by which Odanak's inhabitants finally adopted the Band Council at the turn of the 19th century will provide key insights into a new phase of indigenous politics through state-imposed structures. Analysis will center on the electoral procedure, participation tendencies, and observation of the Band Council's duties within the framework of Canadian law.

Chapter IV will highlight the new political dynamic created by the imposition of the Band Council. The chapter observes how traditional chieftaincy was replaced by a new group of leaders that wholeheartedly embarked in the European-based system of elective politics. The characters of H.L. Masta and Joseph Laurent in particular were central in redirecting the Abenakis of St-Francis away from traditional chieftaincy to the dictate of the *Indian Act* (1876). The importance the Abenakis put on the acquisition of political power can be

observed through the struggle of these two opponents within the framework of the newly established system of the Band Council.

CHAPTER I

THE ABENAKIS: HISTORICAL CONTEXT

In the province of Quebec, the settlements of the nation known as the Abenaki are limited to Wôlinak and Odanak; originally referred to through history as Bécancour and St-Francis respectively. However the permanence of these settlements is a relatively recent phenomenon. As all other indigenous nations in North America, written accounts begin with the arrival of European explorers. It remains useful to remind oneself of the long history of the indigenous people prior to European incursions. Clearly, the beginnings of colonial domination only gains momentum through time, but the narrative cannot be limited to one of gradual degradation of the Amerindian. Whereas indigenous people were encountering massive changes to their ways of life since European arrival, their experience is one of remarkable resilience and adaptation, even when confronted with the most pervasive colonial influence. The following is not an attempt to cover the entirety of Abenaki history, but rather to contextualize the situation of the Abenakis at Odanak in order to shed light to their relationship with the colonial order at the dawn of the 19th century.

1. People of the Dawn: the Abenaki at European Contact

The Abenaki, as a nation, are part of one of the largest indigenous linguistic group in North America: the Algonquians. Specialists have been able to trace the territory of the original Abenaki tribes to what is now largely the state of Maine. The term Abenaki has been used to describe a unified indigenous group or nation, but while it is useful for contemporary use, the term is misleading since the Abenaki were not a cohesive political unit such as the Iroquois, for example. Historians have identified a series of tribes that have been grouped as 'Abenaki'. These people have cooperated together politically, albeit only in a very loose fashion, while sharing common characteristics in custom and territory. Perhaps more appropriately, in the historical phase preceding mass displacement (see below), historian Kenneth M. Morrison distinguished Abenaki tribes by their riverine or coastal locations:

Sacos, Androscoggins, Kennebecs (synonymously the Norridgewocks after the village site), Penobscots and Passamaquoddies¹.

Solid information about these original tribes and their customs is rather scarce when it comes to first hand observation by the earliest settlers. As Day has pointed out, geographically, Abenaki settlements were generally located in the interior of the country – an area not in direct contact with the first French, Dutch, and English newcomers². Nonetheless he argued that this area is of special interest because it is not only a transitional zone between hunting and agricultural Abenaki tribes, but also a dynamic area of contact between the Iroquois and the Eastern Algonquians³. The earliest written documents treating with the Abenaki surface with religious missions in the interior; on the coastline, indigenous people were experiencing the colonization process in the more classical fashion – through direct contact with the White man. In consequence, the majority of the early information about the Abenaki originated from their involvement in conflict situations between European colonizers and their indigenous counterparts in closer proximity to the coast.

1.1. Migrations: the Settling of Saint-Francis / Odanak

The Abenakis had already been travelling up north to Canada prior to King Philip's War. The relentless pressure of the Iroquois⁴, better trade relations with the French, and the increasing occurrence of the English encroaching on their territory were the main reasons for the Abenaki to get acquainted with their northern European neighbours⁵. King Philip's War

¹ Kenneth M. Morrison, *The People of the Dawn: The Abnaki and their relations with New England and New France, 1600-1727*, Ph.D. Thesis: Maine University, 1975, p. 14.

² Gordon Day, *The Identity of the Saint Francis Indians*, Ottawa: National Museums of Canada, 1981, p. 5.

³ *Ibid.*, p. 5.

⁴ Kenneth M. Morrison, *op. cit.*, p. 88.

⁵ Philippe Charland, "Mejessala Migakawinnoak - les derniers guerriers: Dynamique et mécanique de dépossession du territoire amérindien: l'expérience de la nation W8banaki", Thèse en géographie: Université du Québec à Montréal, 2000, p. 57.

created a front of resistance in the area around the Kennebec River which mobilized the majority of the Abenaki tribes. In the late 1670s however, the Kennebec region especially, experienced a mass exodus of its inhabitants towards the south shore of the St-Lawrence and its French missions⁶. Yet, there is evidence that some Abenaki had already settled at the Algonquian mission at Sillery even prior to the start of the war in 1675 in the hope of avoiding conflict⁷.

The French and the Abenaki had already enjoyed a history of good relations, but a large scale migration from this particular nation requires further explanation. The war severely disrupted traditional Abenaki lifestyle and life among the Jesuits did offer some material security. Also, the English had long been indifferent in forging healthy trade rituals⁸, which had the effect of drawing the Abenakis to the French, further fostering the relationship between the two⁹. The fact that the Abenaki had historically been not only enemies of the Iroquois but also feared opponents rendered the French particularly welcoming to this particular nation¹⁰. Thus to accommodate the increasing numbers at Sillery, a new, exclusively Abenaki mission was created in 1683 on the Chaudière River: St-Francois de Sales¹¹. By 1689, six hundred Abenaki had established themselves at the new settlement¹².

Whereas the special relationship between the French and the Abenaki discussed above was a major incentive for the latter's migration, the Abenakis did not hold any position of exclusive influence within the web of French-Indian alliance. Morrison argued that the success and permanency of the new Abenaki settlement had both practical and spiritual elements. The English had been exercising direct and indirect pressure between 1630 and

⁶ *Ibid.*, p. 58.

⁷ Gordon Day, *op.cit.*, p. 16-17.

⁸ For more details on trade rituals, please see pages 29-31.

⁹ Kenneth M. Morrison, *op. cit.*, p. 113.

¹⁰ Philippe Charland, *op.cit.*, p. 65 and 67.

¹¹ Kenneth M. Morrison, *op. cit.*, p. 113.

¹² *Ibid.*, p. 113.

1688. European guns had revolutionized Abenaki hunting economy, while conflicts with the English had cut them off from the supplies they desperately needed to maintain a new economic order. Many of the Abenaki, faced with starvation or capitulation to Massachussets, preferred exile among the French. The missions offered an opportunity to regroup far from the English and offered a new French order: the Abenaki thus entered into an official alliance with powerful Europeans which balanced the English pressure and assured the preservation of the old hunting economy¹³. On a spiritual level, Catholicism, a religion by now fully adopted by the migrating Abenaki bands, was equally instrumental in luring them northward towards French Jesuit missions:

"New diseases left religious beliefs and social order largely bankrupt [...] Catholicism offered them (*Abenakis*) some symbolic stability in the post-European world and because the Jesuits were not overzealous in demanding repudiation of their old lifestyle [...] Catholic symbols embraced much of the old religiosity and the new liturgy, translated into the Abnakis language, supplemented the song and dance ritual familiar to the Abnaki¹⁴."

From the very foundation of St-Francois de Sales, the Abenaki and French benefited from their relationship reciprocally. Adaptation, flexibility, and toleration were key features that enabled both parties to survive and at times, thrive within an increasingly colonized North America. Morrison eloquently summarized the situation at the end of the 17th century:

"The French/Abnaki alliance was based then, on a reaffirmation of the principal elements of the aboriginal order and on a program designed to minimize the debilitating effects of the post-Euro world [...] The Jesuits rejected a program of forced civilization of the Abnaki despite the clamor from Minister and King for the creation of red-skinned Frenchmen. The sedentary village remained the mission ideal but the Jesuits accepted the necessity of maintaining the traditional hunting and trapping economy. The Abnaki missions became what Indian villages had been before European contact: the locus of economic and communal life¹⁵."

The Abenaki were not the only nation experiencing heavy pressure on their territory and lifestyle. Hurons, Algonquins, Nepissingues, and Iroquois also sought refuge in New France for different reasons. Like the Abenaki, these other groups were fleeing the effects of colonial wars, tensions between the converted and traditionalists, and the demographic

¹³ *Ibid.*, p. 115.

¹⁴ *Ibid.*, p. 114 and 116 & Jean-Pierre Sawaya, *La Fédération des Sept Feux de la vallée du Saint-Laurent, XVII^e-XIX^e siècle*, Sillery: Septentrion, 1998, p. 23.

¹⁵ Kenneth M. Morrison, *op. cit.*, p. 116.

restructuration brought forth by Iroquoian war parties¹⁶. Most of these groups settled around the valley of the St-Lawrence River, giving rise to what we know today as Wendake, Pointe-du-Lac, Wôlinak, Odanak, Kahnawake, Kenehsatake, Awkesasne. In an effort to insure some cohesion, solidarity, and governmental autonomy within French controlled territory, these communities known by the French authorities as 'domiciled Indians', forged an alliance coined by historian Jean-Pierre Sawaya as the 'Seven Fires' Federation'¹⁷. Headed by the Great Council at Kahnawake, the Seven Fires, representing the seven villages of 'domiciled Indians, met and discussed diplomatic and military issues. Aware that they shared similar interests in having all invested in the Catholic religion and established away from their native lands, the Seven Fires attempted to represent their decisions as one voice – although in reality, this was not always the case. The Seven Fires' Federation can therefore be interpreted as an adaptive response to new colonial situations. On many levels, these communities had already severed some ties with their nations of origin. At the very least, economic, diplomatic, military, spiritual, and territorial relationships had changed forever. While maintaining a degree of autonomy and protecting their interests through their alliance, the Seven Fires were, more than any native grouping, the most susceptible to changes in colonial society. Their proximity to large non-Indian population centers, shared religion with colonists, and close and prolonged cooperation with the colonial government combined in placing them on the frontlines of policy making for generations to come.

1.2. Military Conflicts

Many if not most of the indigenous communities living within the reach of the English colonies faced crippling pressure. Diseases had for long decimated the east coast of North America; territorial encroachments were becoming more aggressive and recurrent, triggering irreversible change in traditional ways of life. However, many Indian groups, including the Abenakis, found some refuge in Canada. The emergence of fresh indigenous

¹⁶ Jean-Pierre Sawaya, *op.cit.*, p. 22-23.

¹⁷ There is indication that the Federation of the Seven Fires could have existed as early as 1660. *Ibid.*, p. 13.

communities in New France, several in the St-Lawrence valley, began a new era. 'Domiciled Indians', as they would be called – settled bands largely converted to Catholicism – were now undeniably part of French colonial society. While this phenomenon can be viewed as the first step to assimilation, it can also be considered as a remarkable moment of cooperation and mutual respect. At the very least, most Indians living in New France would live with some degree of security, support, and the capacity to maintain their traditional ways of life. Until the conclusion of the War of 1812, domiciled Indians were an integral part in the development of the nation.

The Abenakis who had immigrated to Canada continued to participate in colonial conflicts, usually alongside their southern Abenaki counterparts combating the English and their allies. The *War of Spanish Succession* called in the colonies *Queen Anne's War* (1702), *Dummer's War* (1713), the *War of Austrian Succession* also known as *King George's War* (1740-48), and the *Seven Years' War* (1754-60) involved many actions from the inhabitants of St-Francis¹⁸. In fact, during the last *French and Indian War*, more recently renamed the 'Seven Years' War', the Abenakis of St-Francis were present in almost every military action of the French¹⁹. Conflict even occurred within the village itself. Robert Rogers, serving under the British, was sent on mission to avenge alleged Abenaki barbarity toward British troops²⁰. In 1759, Lieutenant Rogers and his 'Rangers' approached the village. According to Abenaki oral tradition, an Indian belonging to Rogers' war party warned the village of the raid a day prior. Fortunately for St-Francis, most inhabitants were able to flee and avoid a surprise attack that would certainly have occasioned heavy losses. By contrast, Rogers' account celebrated the raid as a crippling blow to the Abenaki community. He had originally reported that he had destroyed the village and most inhabitants had been killed²¹. While debate on the details of the so called 'massacre' under Lieutenant Rogers remains, St-Francis, as an

¹⁸ Gordon Day, *op. cit.*, p. 33-34, p. 35-37 and 41.

¹⁹ *Ibid.*, p. 43.

²⁰ Thomas-Marie Charland, *Histoire des Abénakis d'Odanak*, Montréal: Éditions du Lévrier, 1964, p. 107.

²¹ Gordon Day, *op. cit.*, p. 43-44, and 46.

Abenaki community, re-emerged before long. At the outbreak of the American Revolution, the village was reoccupied²² – indication that most of the inhabitants managed to scatter prior or during the raid rather than killed.

2. Abenaki Culture at a Crossroad

After the *Seven Years' War*, with the political climate stabilized and most of the domiciled Indian population anchored down, the British government re-organized its objectives toward managing relations with their indigenous neighbours. In direct contrast with the Bond Head Commission²³ of keeping indigenous people segregated from the non-Indian society, the 1830s were marked with initiatives that hoped to bring domiciled bands closer to the Euro-Canadian ideal. With permanent settlement came the desire to transform roaming hunting bands into agriculturalists. While this project had been forwarded in the past, officials were encouraged with some sparse signs of success across scattered communities:

"The Committee therefore dismiss, as equally against Reason and Experience, the Apprehension that the Attempt to bring the Indians into agricultural and settled Habits must fail, because some Experiments made with this view have heretofore, under particular Circumstances, failed... the Committee have only to refer to the Returns laid before them by your Excellency to show that many of the Indians in this Province have applied themselves to Agriculture, and now subsist by it, either wholly or in part, and they believe that what has been done by some may, under the like Circumstances, be done by all²⁴."

As testimony to the influence of neighbouring non-Indian culture, changes in traditional customs were occurring in the Abenaki community. Fourteen individuals would have already been practicing agriculture by the end of the 1830s. More surprisingly, these Indian farmers would not only have been a small minority in comparison to their hunting comrades, but they were acting in total dependence from the rest of the St-Francis by cultivating lots that were

²² Ibid, p. 52.

²³ See Chapter 2: 2. Indian Allies Become Obsolete – Establishment of the "Civilization Policy", p. 55-56.

²⁴ Report from a committee of the executive council for Archibald Acheson Gosford, June 13th 1837, NAC, RG10, vol. 792, p. 7597-7624, microfilm C-13449.

separate from what the band held in common – the rest of the 316 inhabitants cultivated 250-260 acres of land held in commune²⁵.

To accelerate the process of implementing agriculture in the domiciled Indian villages, administrative committees concluded that they should modify one of the oldest rituals between the colonial regime and the Indian population. 'Gift giving' had for long been a manner of reaching a mutual mode of understanding and cooperation – the basis of friendly, diplomatic and in turn, commercial relationships. If any party disengaged from this practice, the status quo was usually altered thus heavily affecting the general peace. Therefore when government officials began tinkering with the age old system, the *Common Ground* so famously described in Richard White's work, started to fade and give place to a well-documented historical framework of dominator versus dominated.

The Abenakis wrote a petition in 1833 expressing alarm at the possible discontinuance of gift-giving by the British colonial government – two years had passed without having received gifts or allowances²⁶. While gifts were considered a necessary diplomatic lubricant in the past, after the major colonial conflicts they were considered more of a burden by the crown. The Indians however had grown accustomed if not dependent on external assistance. In one particular example, the chiefs of the latter petition argued that the gifts and allowances were needed to take care of the older members of the society. Albeit in a probably exaggerated discourse, the petition highlights the chiefs' reaction to the transition in the government's attitude toward gift-giving.

The Indian chiefs had anticipated the government's intention correctly. In 1837, the Abenakis were asked directly whether they were willing to substitute the regular articles for money or for educative purposes. The Abenaki Council made it clear that the suggested

²⁵ Return to an address of the Honourable the House of Commons, dated 11 June 1839 for copies or extracts of correspondence since 1st April 1835, between the secretary of state for the colonies and the governors of the British North American provinces, respecting the Indians in those provinces, Great Britain. Parliament, House of Commons (Extracted from *Early Canadiana Online*).

²⁶ Petition from the Abenakis, Malecites, and Micmacs of Green Island to Matthew Whitworth Aylmer, 20th of August 1833, NAC, RG10, vol. 87, p. 34515-34517, microfilm C-11466.

alternatives would bring nothing positive. They feared that the distributed money would be spent on liquor – a major problem in most Indian communities in contact with settler goods. Moreover, without clothes and blankets, the Council declared that “our wives and children would be naked and miserable and us, unhappy. The articles of clothing that we now receive annually from our Great Father the King, as a sort of remuneration for our past services we prize too much. We depend upon them to protect us from the cold²⁷.” The metaphorical style used by the Abenaki chiefs continued to declare the critical state of dependency and poverty of St-Francis, most likely to maintain external generosity and support²⁸. The chiefs’ insistence on material goods becomes even more evident in the following response to the education segment of the government’s query:

“[...] We are well aware that they can best reap great benefits from receiving an education. But at the same time tell him, that the great superiority of the Abenakis tribe, are so wretchedly poor, that they have not the means of paying for the instruction of their children. That the presents that they annually receive from their great father are barely sufficient to protect them from the cold and should a portion of them be retained to pay for schooling, part of the families would be obliged to go naked. And tell him that many of us have no families, and it would be unjust that such should be deprived of part of their father’s great annual bounty to pay for the instruction of the children of others²⁹.”

The discussion was soon thereafter taken up on a more official level with a report from the Committee of the Executive Council ordered by the Indian Department. Two questions were of primary concern and reflected the same issues preoccupying domiciled Indians only a few months before. Again, the Committee tackled the question of whether to abolish the gift giving practice altogether, or substituting it with more utilitarian based assistance in the fields of education and or agriculture. After debating and analysing the situation of several bands across the country, it concluded “that good Faith, Justice, and Humanity alike forbid the Discontinuance of the Presents until the Indians shall be raised to a Capacity of maintaining themselves on Equality with the rest of the Population of the

²⁷ At a Council held at the village of St-Francis 30th July, 1836, by the command of his excellency the governor in chief for the purpose of obtaining the real sentiments of the Abenquois. (Extracted from *Early Canadiana Online*).

²⁸ For more about how Amerindians used a rhetoric of poverty (and its related terminology) in their correspondences with non-Indians see Mary Black-Rogers, “Varieties of Starving: Semantic and Survival in the Subarctic Fur Trade, 1750-1850”, Royal Ontario Museum: Toronto, 1986.

²⁹ *Ibid.*

Province³⁰." In other words, the Committee, in a seemingly benevolent intention, felt that the Indian Department should continue to support indigenous communities through gift giving. The value of the objects offered were not only useful, but served another, deeper purpose: "as to the moral Effect of the System on their Character and Habits³¹." The forwarded justification to pursue the custom was that through governmental support and assistance, reserve populations would eventually become self-serving municipal-type entities.

For the Department of Indian affairs, the transformative objectives were simple and attainable if Indians were made to follow the Euro-Canadian model of citizenship. Obviously, this was not to be a two-way exchange: the British government was aligning policy to impose its own values and mores to reorder the Indian world and re-incorporate it into its own vision of Canadian society. In 1837, a report from the Committee of the Executive Council suggested several specific modifications to the essence of the gifts in order to bridge the gap between indigenous and civilized culture. The first and primarily superficial suggestion was to modify the clothes that were being distributed: "[...] a different Description of Clothing should be substituted for that hitherto supplied, in order that the Indians may be led to, adopt more generally the European Mode of Dress; and the Committee are of opinion that this Change should apply both to the Male and Female Indians³²." Secondly, if the government was to continue giving out items, they ought to encourage and support industry and agriculture:

"It would also be desirable [...] that the Trinkets and Ornaments hitherto furnished should be discontinued [...] and that Agricultural Implements and Tools should be provided to be given to such Indians as shall show an Inclination for Agricultural Pursuits or other Employments. With the same View, the Committee would think it advisable that no Firearms or Ammunition should in future be distributed to them, except to the old Hunters, or to such adult Indians as shall have become Settlers in the Forest³³."

³⁰ Report from a committee of the executive council for Archibald Acheson Gosford, June 13th 1837, NAC, RG10, vol. 792, p. 7597-7624, microfilm C-13449.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

By controlling the type of articles given out, the government believed they could persuade male Indians to invest in 'ploughing the land'. Whereas some agricultural activities had been integral to Abenaki culture, responsibility rested in the women of the village. For the British colonial government, the measure of a people's civilization level therefore depended on the male segment of society. Endorsing a Western approach of using the land was only one part of a twofold strategy to undermine traditional livelihood. By restricting the distribution of firearms and ammunition, the Indian Department was also making hunting – a socio-economic cornerstone – more difficult. A third suggestion in the 1837 Report involved a more holistic and complex approach. Schooling Indians presented the Department an opportunity powerful in potential to permanently alter indigenous customs. The following statement highlights how the project had become urging in priority:

"[...] to prepare the younger Generation of Indians for another and more useful Mode of Life the Committee would earnestly press upon His Majesty's Government the Necessity of establishing and maintaining Schools among them in which the Rudiments of Education shall be taught, joined, if possible, with Instruction in Agriculture and some of the Handicrafts; and in order to promote these Objects it is submitted whether some of the Medals or Ornaments now given as Presents might not be reserved, and hereafter be converted into Prizes for Proficiency in Learning, or for Industry and Success in Agriculture [...] It may therefore be necessary to make it a Condition of their continuing to receive Presents either for themselves or their Families, that they should send their Children to such Schools; and it may be hoped that the Clergy will lend their Aid in recommending and enforcing the Measure, as a necessary Part of any Plan for assimilating the Indians as much and as soon as possible to the rest of the Inhabitants of the Province³⁴."

The final proposal, one with the gravest implications, intended to dismantle indigenous governing structures:

"The Committee are of opinion, that, as a necessary Part of any Change in the Management and in the Condition of the Indians, the existing Institutions and Authority of their Chiefs and Councils (standing on ancient Usage alone) must either be greatly modified or gradually but totally extinguished, without which the important Point cannot be attained of teaching the Indians to feel and value personal Independence both in Property and Conduct³⁵."

The conclusions of the Report were not ignored. In fact, the suggestions highlighted above were to become the key foundations for government initiatives in the near future,

³⁴ *Ibid.*

³⁵ *Ibid.*

implemented at varying degrees depending on the reserve. The goal, as explicitly expressed through the Report, was to assimilate the Indians.

3. Undermining Traditional Land Tenure: Precursory Measures

The theme of Indigenous Land is one of the most common throughout the historiography of native studies. Almost the entirety of the North American territory that Indians had traditionally used for their daily subsistence was progressively occupied by white settlers either through simple occupation, armed conflict, or written agreement. The story is no different in the case of the Abenaki. Of primary interest for this segment is how, and from whom the Abenaki defended their land and hunting grounds so intimately tied to their livelihood. Since the earliest days of European incursions into the interior, the Abenaki have experienced displacement as much as any indigenous nation on the Eastern coast of North America. In retrospect, it is perhaps fortunate that they were offered some land in Canada some distance away from the aggressive English and later American colonists. There, in the village of St-Francis, the Abenaki exiles were left to live in relative peace until their land and livelihood was challenged at several angles.

Originally, the land on the St-Francis River was meant to be a temporary loan as long as the Abenaki practiced the Catholic faith. The Act passed at Three Rivers in 1701 was described as a 'Title of Concession'. On the 23rd of August 1700, Dame Marguerite Hutel, Widow of Sieur Jean Crevier, Seigneur of St-Francis, claimed that the Abenaki residents were considered as having no lasting, or at least no permanent title. "In those grants the Seignors have reserved the Right of reuniting to either the Seignory Lands, abandoned by the Indians, and of dispossessing the Abenquois as soon as the Religious Mission should cease to reside upon the conceded Land³⁶." The nature of the concession becomes clear; if the Abenaki should venture to renounce their Catholicism, their land on the shores of the St-Lawrence

³⁶ Return to an address of the Honourable the House of Commons, dated 11 June 1839 for copies or extracts of correspondence since 1st April 1835, between the secretary of state for the colonies and the governors of the British North American provinces, respecting the Indians in those provinces, Great Britain. Parliament, House of Commons. (*Extracted from Early Canadiana Online*)

would be rapidly 'put to use' – by European standards – by neighbouring whites through settlement, infrastructure, and agriculture. The delicate nature of the grant known as St-Francis was again exposed at the turn of the twentieth century, when one of the descendants of Jean Crevier, Louis Crevier, petitioned the government to reclaim the land as the rightful owner through inheritance. Fortunately for the Abenakis, it was proven that the Catholic faith had never left the village³⁷.

Even prior to the creation of an official reserve for the Abenakis, a Committee of the Executive Council concluded that these Indians would not have complete control and freedom over the donated territory. Hoping to limit the expression of full territorial independence from the Canadian state, title to the lands in the township of Durham were subject to provisions applied by the Crown. The 'gift' was subject to the following condition:

"[...] the said lots of land so granted nor any nor either of these nor any part thereof shall in any way be capable of being alienated, leased, transferred, conveyed or otherwise disposed of by our said grantees or any or either of them to any person or persons in any manner or way whatsoever and if at any time or times hereafter the said lots of land so granted or any or either of them or any part thereof shall cease to be occupied by them our said grantees or some or one of them, or their or some or one of their lawful heirs [...]"³⁸

In short, the Abenakis could not do anything with the land given to them by the Crown other than occupy and cultivate it. The Department of Indian Affairs' justification in the late 1830s was to protect the integrity of the rapidly shrinking parcels of land reserved for Indians; the inexperience of Indian bands in managing property would surely bring forth their own demise. This strategy was in concurrence with the prevalent attitude of the times: Indians simply did not know how to look after their own interests. However, less outspoken was the desire of the government for Indian bands to settle permanently in a number of small parcels of land out of the way of non-Indian developments. For the Abenakis, as with the majority of other bands at the time, the ideal would be to have the Indians settle, remain, and forget any attempts to do business with their land – it was not only more simple for the government to

³⁷ Jos Laurent, *La Presse*, February 23rd 1901 in Sylvain Rivard, *Jos Laurent*, Québec: Cornac, 2009, p. 72-93.

³⁸ Extracts of the Letters Patent granting Lands in the Township of Durham to certain Abenaki Indians of St Francis, June 10 1839, NAC, RG1-L3L, vol. 172, p. 83879-83882, microfilm C-2559, and NAC, RG10, vol. 711, p. 164, July 1 1839, microfilm C-13410.

administer, but it was in accordance with another point raised by the Committee: insistence on Indian 'occupation' of the land. This provision meant that any semi-nomadic activity such as seasonal hunting, a cultural pillar for Algonquian people, would jeopardize the Crown's toleration of Indians living on its land without making use of it by civilized standards. This condition would have the immediate transformative power the Department desired – Indians could no longer roam the land to maintain their traditional livelihood. Instead, they were tied down to the land as any other good European settler. For the Abenaki, this created a hybridized reserve society as the nineteenth century progressed. Most men kept to their hunting activities, but agriculture, as Euro-Canadian policy makers had wished, entered the socioeconomic mix.

3.1. Hunting Territory: Competition, Demographics, Intervention

Sources indicate that the pressure from non-indigenous people on traditional hunting land had become so severe in the early 19th century as to drive the Abenaki further north, across the St-Lawrence into woods richer in game. Settling in St-Francis might have limited their movements, but hunting remained an integral part of their livelihood. Consequently, their search for more plentiful hunting grounds led them to overlap in forests claimed by the Algonquians. In fact, as the following petition highlights, the trend had become such a problem that conflict amongst tribes were becoming increasingly hostile, triggered by the white population expanding onto aboriginal hunting grounds:

"[...] the Algonquin Indians of Three Rivers, complaining of Abenakis Indians of St Francis and Becancour trespassing on their hunting grounds and soliciting His Excellency's interference. It is now a general complaint among several Indian Tribes that they interfere with one another and I consider it an important and difficult matter to settle among them. Indians on the south side of the St Lawrence especially, have now but a very small extent of hunting ground, as settlements are rapidly increasing & the land clearing, [?] therefore [?] these to hunt elsewhere against their laws and customs and to the great dissatisfaction of others which is the occasion of threats of hostilities amongst them³⁹."

This was no small matter, as both the Abenakis and Algonquians were still heavily depended on hunting in order to sustain their families. The issue eventually grew to

³⁹ Louis Juchereau Duchesnay to George Couper, February 23 1829, NAC, RG8, vol. 268, p. 85-86, microfilm C-2856.

encompass the Hurons, who also desired to have their say in territorial reckonings at a Council held between the three nations and Superintendent Louis Juchereau Duchesnay⁴⁰. Communications between government agents seem to have been tangled, as the Abenakis made reference to a previous Council held earlier that summer where they had made separate agreements with Colonel Napier. According to the Abenakis, Napier had questioned them about which side of the St-Lawrence they wished to hunt on. As they negotiated for the North Shore, the Abenakis declared that they did not aspire to hold the territory exclusively, but to share it among all Indians⁴¹. Eventually, it was decided that the Abenakis had to keep their hunting activities on the South Shore where human activity was rapidly making their customary modes of sustenance more difficult.

3.2. Non-Indians using Odanak's land

The survival of the community of St-Francis was shaky at times, but the real challenge was to maintain the integrity of its borders. Archival documents have confirmed that aggressive neighbours exploited, rented, and surveyed land within what the Abenakis claimed as their supposedly protected territory. Even though the Canadian government was adamant about interdicting Indians the management of what was now supposed to be their own territory, the following will highlight many examples where land transactions were made amongst Indians, between Indians and non-Indians, and where non-Indians simply declared or used the land as theirs. In all likelihood, the original Abenakis that were granted the lands of St-Francis must have been misinformed, or perhaps the terms of the grant misunderstood, considering the number of cases of leasing to non-Indians. In reality, it is difficult to know if the Abenakis were explained in their entirety the laws and provisions concerning the use of this particular piece of land. Officially at least, the documents read that "[...] the said lots of Land so granted [...] nor any Part thereof, shall in anywise be capable of being alienated,

⁴⁰ Council between Louis Juchereau Duchesnay, the Algonquins of Three-Rivers, the Hurons of Lorette and the Abénaquis, October 26 1829, NAC, RG8, vol. 268, p. 724-736, microfilm C-2857.

⁴¹ *Ibid.*

leased, transferred, conveyed, or otherwise disposed of by our said Grantees [...] to any Person or Persons in any Manner or Way whatsoever⁴².”

In one case, first the agent and then the tribe, wrote to Colonel Napier demanding the return of 880 acres seized by a character known as Mr. Wartele⁴³. The request for government intervention in the settling of the territorial tangle can be traced to 1833 – twenty years later, the tribe demands that their rights be finally observed, still pursuing the issue in order for the same tract of land be returned to them⁴⁴. Whereas this example demonstrates a confrontation, there are documents from notaries indicating that the Abenakis made clear land agreements with people outside the reserve. On this particular occasion, Mr. Louis DeGozague, a prominent family within the mission of St-Francis, rented a segment of land with a bail length of ninety-nine years⁴⁵. Even though Indians, as the Committee of the Executive Council of 1839 had agreed, were not supposed to administer Crown land, some Abenakis understood that they could make a living from renting increasingly scarce land to willing cultivators. This in turn could provide an Abenaki with some personal revenue while freeing him to pursue other economic activities such as hunting.

To rent land posed a lesser threat to the survival of the St-Francis Abenaki than to sell it due to the permanency of these types of legal dealings. One can only speculate the reasons that incited some Abenakis to sell their land – unfortunately, rarely do notary documents reveal the motivations of individuals. Yet, a few hypotheses can be presented: the need of liquidity in the changing socioeconomic culture of the nineteenth century, the lack of

⁴² Return to an address of the Honourable the House of Commons, dated 11 June 1839 for copies or extracts of correspondence since 1st April 1835, between the secretary of state for the colonies and the governors of the British North American provinces, respecting the Indians in those provinces, Great Britain. Parliament, House of Commons (*Extracted from Early Canadiana Online*)

⁴³ Louis Guill to Duncan C. Napier, March 14 1845, NAC, RG10, vol. 600, p. 48012-48013, microfilm C-13380.

⁴⁴ Petition from the Abénaquis of St-Francis to James Bruce Elgin, September 2, 1853 NAC, RG10, vol. 610, p. 53369-53370, microfilm C-13385.

⁴⁵ Bail from Louis Degonzague and his wife to David Guilmet, October 19, 1840 NAC, RG10, vol. 800B, pt. 2, p. 67-71, microfilm C-13625.

affection for the reserve, or a misunderstanding of individual ownership of property. In one scenario, an Abenaki under the name of Annica Pierre Michel Degonzague was reported selling many acres to a cultivator, apparently residing on the reserve⁴⁶. The buyer, Mr. Joseph Plamondon, was most likely a non-Indian with the funds necessary not only to buy the land, but to make it profitable through cultivation. The character that was Plamondon resurged little more than a year later, when he acquired more land from the St-Francis mission, this time through Robert Obomsawin and Louis Ponteneuf⁴⁷. These recorded transactions are not isolated events but represent the repeated encroachments on Abenaki land during the nineteenth century, thus reinforcing the popular argument that non-Indians often heavily manipulated indigenous people during property transactions. But surprisingly, there have been some cases where transactions also took place between Abenakis of the same mission⁴⁸. The latter example of an Abenaki selling to another brings forth another dimension to the highly discussed phenomenon of land loss. Contrary to the prevailing governmental opinion of the era, Indians could in fact consciously act according to what they believed was in their best interest— even when dealing with landed property. Without dismissing the pervasive intentions of land-hungry neighbours, agreements among Abenakis of the same mission, at the least, serves as an example of transactions between equal parties, thus restoring some agency in Abenaki land transactions.

3.3. Neighbouring Non-Indians and Abenaki Land

The number and nature of the transactions outlined above misrepresents the situation of land ownership in the mid-nineteenth century. While government officials were debating

⁴⁶ Sale by Sr François Laurent Monatacque to Sr Joseph Plamondon, December 31, 1840, NAC, RG10, vol. 800B, pt. 2, p. 63-65, microfilm C-13625.

⁴⁷ Sale by Srs Robert Obomsawin & his wife and Louis Ponteneuf & his wife to Sr Joseph Plamondon and Ratification & by Marie Magdeleine widow of Pierre Jean Feuille, February 13, 1841, NAC, RG10, vol. 800B, pt. 2, p. 102-108, microfilm C-13625.

⁴⁸ Sale of property lot by Annica Pierre Michel Degonzague to Jean Stamilaces, August 22, 1940, NAC, RG10, vol. 800B, pt. 2, p. 59-61, microfilm C-13625.

how to implement individual ownership of land⁴⁹, in the 1840s, the communal system still remained at St-Francis. In reality, as the selling of reserve land became a mounting trend, the Abenaki community grew correspondingly anxious. The weight of the issue can be grasped by the discussion held during this village Council in 1842:

"We Chiefs and we Warriors, in our Council have Settled or decided, the Land situated within our Village which is common to us here in St Francis, that no one shall be allowed to use more land only so much that has been designed by us Chiefs and Warriors. The Land above mentioned on which our Village stands belong to the community. The proprietors shall permit anyone who belongs to the community, to build a house in such place which shall eligible to him that is so designed to situate houses. And the proprietors shall allow a person to use Land adjoining to his house containing thirty feet in length and thirty in width for a garden or for some other purpose not to sell it. Any person building a stable, the roof of which shall be covered with boards and put it or erect it at a proper distance from his house. A Barn is not to be build within the Village. Bet it further known that no one shall be allowed to enclose any of the ground or Land that belongs to the community which is situated within the Village only the said ground or land adjoining to his house⁵⁰."

Abenaki leaders were clearly putting their foot down and establishing firm rules for the community. Since the conversation was held in Council, the latter precisions and restrictions were directed primarily at band members within St-Francis. Problems undoubtedly persisted and were occasioned externally – a decade later 'Chiefs and Warriors' were no longer addressing their own people, but pleading the government to intervene. Whereas the Council held in 1842 blamed individual Abenakis of treating communal land as individual plots, the problem encountered ten years later shifts responsibility mostly to non-Indian incursions. The uneasy feeling permeating St-Francis at this time can be observed through this petition and deserves to be quoted at length:

"That your petitioners possessing an *undivided tract of land*, which has always remained common property for the whole tribe, and not being legally authorized to name and appoint for themselves a trustee or trustees, to act and defend the tribe, are wholly incapable and helpless in law, not able to stop any unjust claimants or trespassers upon the Indian lands. Being well known that none of your

⁴⁹ Through the 'Act for the gradual enfranchisement of Indians and the better management of Indian Affairs', the Canadian government officialised individual allotment of property on reserve lands. Richard H. Bartlett, *The Historical Development of the Indian Act*, Ottawa: Treaties and Historical Research Centre, P.R.E. Group, Indian and Northern Affairs, 1978, p. 53: "Clause 17 of the 1869 legislation dealt with the size of individual allotments on a per capita basis, and provided for issuance and inheritance of these patented lands. This statute sought to establish a bond between an Indian and his property similar to that between a 'white' settler and his homestead."

⁵⁰ Synopsis from a council by Ignace Portneuf and al., July 27, 1842, NAC, RG10, vol. 245, pt. 2, p. 145965-145967, microfilm C-12639.

petitioners nor any other has legal right to prosecute anyone who is encroaching upon the Indian property held in common, *the encroaching characters, unjust claimants, and trespassers are daily encouraged to do with the Indian property as they please* [...] Your petitioners have been instructed from time to time by the officers of the Indian Department that *none of the White have any right to buy the Indian lands* that were given or bought by the Government for the Indians, but in spite of this instruction many persons believe they may safely buy parts of Indian lands from any individual Indian and in fact some have bought privily, that the Chiefs may not be able to oppose. That is worse of all *the missionary to the tribe has bought several pieces of Indian land from different individual Indians against the view of the Chiefs* [...] *Your petitioners see no way to secure their property except some person be appointed as soon as possible to be commissioner of trustee who will act and defend the tribe. But as your petitioners have not been incorporated to enable them to name or appoint a trustee for themselves, they entirely depend on their Father the Governor for whom it is lawful to appoint a commissioner of Indian lands for Lower Canada, according to the act of 12 and 14 Vict C.42*⁵¹."

More than ever, the St-Francis Abenakis were feeling the pressure of the Euro-Canadian world weighting down on their community. A few key elements from the above extract shine light onto this reserves' mindset during these years leading up to the passing of the *Indian Act* of 1876. More so than any other previous recorded document, the segment quoted above reveals a sense of helplessness from the Abenaki. Written as a call for help to the Canadian government, leaders at St-Francis felt overwhelmed when faced with the rising number of white incursions on their land, but perhaps more importantly, they felt they could no longer deal with these difficulties on their own. Against warriors, they could have fought back; but the assault came with a different face and tactics. Trapped between the Crown's promise of land exclusive to the Abenaki Indians and rogue individuals trespassing or negotiating, the concepts found in Euro-Canadian law, the only defence socially acceptable for Indians living within the white-dominated Eastern North America, proved overwhelming for the majority of the St-Francis inhabitants not yet versed in the legal workings of their overseers. Ironically, even government appointed agents were questioning the system, unsure about the nature of Indian property and how it functioned within the larger system of land ownership: "[...] in dealing with the Subject I think it should be insisted upon that the Soil or land is the property of the St. Francis Band of Abenakis Indians as a people. And that it was not competent to individual Indians to dispose of any portion of the lands, which formed the property and

⁵¹ Petition from the Abenakis chiefs of St-Francis to James Bruce Elgin, January 20, 1852 (*own emphasis*), NAC, RG10, vol. 609, p. 52891-52893, microfilm C-13384.

inheritance of the Band⁵²." Even in 1868, debate still transpired on what system of land tenure not only best suited the St-Francis band, but domiciled Indians in general. According to agent William Spragge, St-Francis was not yet ready for its territory, previously held in common by the band, to be segmented and distributed for the Abenakis to acquire some form of individual ownership.

4. Conclusion

At the conclusion of the *Seven Years' War*, the British attempted to smoothly impose their own system without overtly upsetting the previous structures of European-Indian alliances established by the French. For Amerindians, until the Royal Proclamation of 1763, they were able to sustain a certain equilibrium and maintain a level of autonomy by including Europeans within an adaptive conceptual framework. After the Proclamation, Europeans, especially the British and soon followed by the Americans, chose to move away from the system of ritualized gift exchange that had largely enabled peaceful interactions. One of the main indigenous grievances was the incessant claims made on their territory. In fact, the clashes are testimony to Native American recognition of the potentialities of European territorial aggression. Unfortunately, too many factors combined to deny full sovereignty in the long-term for Native Americans⁵³.

Nevertheless, the traditional Council did speak up as injustices and discontentment mounted. It is perceptible through the sources that the first land squabbles were communicated to the government by the form of petitions written by government intermediaries responsible for certain specific communities. While traditional councils between native tribes still occurred and decisions agreed upon through ceremony and wampum belts, the pertinence of customs such as these was fading rapidly at the dawn of the 19th century; especially since most of the dealings increasingly occurred between the

⁵² William Spragge's memorandum, July 28, 1868, NAC, RG10, vol. 722, p. 441, microfilm C-13412.

⁵³ This conclusive remark was made in Bruce G. Trigger, "Early Native North American Responses to European Contact: Romantic versus Rationalistic Interpretations", *The Journal of American History*, vol. 77, no 4, March 1991, p. 1195-1215.

Canadian state and Indian communities. As the mid-nineteenth century approached, certain Abenakis had the privilege of receiving some education and were becoming gradually versed in the workings of the government enough to enable them to address their grievances directly through written petitions – St-Francis was seizing control over its own fate. However as political impositions neared culmination with the *Indian Act* of 1876, power and agency within St-Francis became increasingly exclusive. Whereas early century petitions were signed by the chiefs and other members of St-Francis, the voice of the community was ever more restricted to a small number of actors. Moreover, the nature of the grievances forwarded to the government shifted from territorial oriented issues to those of an almost exclusively internal nature. This trend is of key significance when analysing the nature of St-Francis' political dynamics and is testimony to the success of the Canadian government's efforts at isolating the political influence of the Indian populations within its borders.

CHAPTER II

ELABORATION AND EVOLUTION OF OFFICIAL GOVERNMENT POLICY

The British colonies on the eastern coast of North America were, from the start, founded with the intention of creating permanent settlements. By contrast, the French were more tentative in their efforts at controlling territory other than their major trade centers. This can be attributed to the fact that the number of French colonists was nowhere near the British figures, but it can also be related to the primary purpose of each nation's colonial project. In Richard White's seminal book *The Middle Ground*¹, he dedicates many pages to the forging of Franco-Indian relationships during the years prior to the *Seven Years' War*, when the French were the major influence in the 'pays d'en haut'. The main initiative argued by White was the establishment of smooth and profitable trade patterns for the French². Nonetheless, the French never did successfully colonize³ this area of North America, even if it was their prime area of trade for many years. In a different vein, the Spanish and their infamous tales of conquest of the Aztec and Inca empires speak in another type of colonial language. Spanish conquistadores had a mandate to assert lordship over the *people* of the New World, to eventually proclaim it their *right* to use indigenous labour⁴. In fact, all major institutions of Spanish colonial rule aimed at establishing public and private authority over the native

¹ Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*, Cambridge: Cambridge University Press, 1991.

² Native people however, would view this relationship totally differently.

³ The notion of 'colonization' will be used strictly to mean the formation of permanent settlements, inhabited, controlled and administered by the European power in question. Though I am aware that more abstract conceptions of the term 'colonization' exist in reference to economic, social, political, mental, and cultural facets, they have a tendency to give colonization a different meaning than the one I will be forwarding in this research.

⁴ Patricia Seed, "Taking Possession and Reading Texts: Establishing the Authority of Overseas Empires," *The William and Mary Quarterly*, Third Series, vol. 49, no 2, 1992, p. 207.

population⁵. In this context, the British colonial strategy seems even more evident. While the French (and to a similar extent, the Portuguese) focused on trade and commerce, the Spanish hoped to control the 'conquered', the English prioritized their colonial effort to consolidate control over *land*⁶: "the English empire in the New World was established by habitation, 'taking possession'⁷."

Grand imperial visions for North America had begun prior to hegemonic rule after the *Seven Years' War*. The visit of the 'Four Indian Kings' to Britain, an almost theatrical visit of four Iroquoian leaders, brought the potentialities of empire closer to home for the British public. In fact, the much publicized convoy helped propelled a "new visual and verbal language of empire and thus helped to establish the images, conceptions and ideals that would make imperialism a powerful component of British public life⁸." Furthermore, on a practical level, the visit of the 'kings' solidified Anglo-Iroquois relations⁹, and more precisely, it pushed the British ministry to "revive and enlarge its efforts to effect a significant territorial conquest in North America¹⁰."

Whereas land remained central to the British colonial initiative prior to the *Seven Years' War*, securing military advantage over competing imperial powers took precedent. After this major conflict was concluded, relationships changed between Britain and the indigenous peoples of North America. Previously, Britain had understood and participated in the keystone ritual of gift exchange with the native peoples – a practice mastered by the French. In fact, New France had achieved a level of mutual cooperation and a web of renewable alliances with many Indian communities unparalleled by North American colonists. The British however, were usually reluctant to fully embark in the process. As

⁵ *Ibid.*, p. 205.

⁶ *Ibid.*, p. 195-196 and 207.

⁷ *Ibid.*, p. 209.

⁸ Eric Hinderaker, "The 'Four Indian Kings' and the Imaginative Construction of the First British Empire", *The William and Mary Quarterly*, Third Series, vol. 53, no 3, 1996, p 488.

⁹ The alliance eventually proved key in the power struggle for Eastern North America.

¹⁰ Eric Hinderaker, *loc.cit.*, p. 519.

discussed in *chapter I*, Britain could not contain its colonists from spilling over onto Indian land, creating severe pressure along overlapping Indian and White frontiers. Territorial dispossession along the frontier of the thirteen colonies and soon, British North America, was a piecemeal phenomenon and remained largely unofficial. In other words, the legal apparatus that provided the arguments and authority that could effectively extinguish native title¹¹ was still in its infancy; only later did it occur on a systematic basis. But already, Britain was starting to fashion “very deliberate plans for the reallocation of land and the reordering of social relations¹².” Once they had secured much of Northern America after the *Seven Years’ War*, people like Amherst wasted no time trying to change the nature of Anglo-Indian interactions¹³.

1. Fashioning the British Imperial Vision

The fleeting potential of equality in future relations, something experienced by both French and British with their respective indigenous allies, was erased indefinitely after the *Seven Years’ War*. But a culture of domination does not occur overnight. Therefore, it is necessary to take a step back prior to the War, when Britain started to forward notions of a hierarchy of civilizations.

John Locke, along with other European thinkers such as James Tyrell and Adam Ferguson helped formulate an ‘ideology’ of Empire¹⁴ that provided a crucial condition to

¹¹ I am not stating that native title has been extinguished. The English fostered their own distinctive brand of colonial logic, followed by a legal framework established to provide the basis for the extinguishment of native title. It is within this context that the English legitimized the disappearance of native title to land.

¹² Cole Harris, “How Did Colonialism Dispospossess? Comments from an Edge of Empire”, *Annals of the Association of American Geographers*, vol. 94, no 1, 2004, p. 172.

¹³ *Ibid.*, p. 256-257.

¹⁴ *Ibid.*, p. 4.

British territorial claims overseas: legitimacy to their authority¹⁵. Many authors have discussed the essence of the British message. For instance, Buchan explained that one of the first steps to legitimize dispossession was to represent indigenous people with concepts such as 'uncivilized' or 'savage'¹⁶. Waswo emphasized how the dichotomy was made clear: what constituted 'civilization' was agriculture and cities, while savagery was linked to nomadism, hunting, and gathering¹⁷. Using such terms and concepts, Locke and other thinkers framed indigenous governments as existing but deficient:

"Locke's strategy was to demonstrate by means of the account of the 'state of nature', how political authority could be legitimately based upon the unforced consent of the members of civil society to renounce their own right of self-defence to an impartial, public authority [...] The implication that Locke did not hesitate to draw, was that the immediate possessions necessary for self-preservation could be accumulated, and thus 'great Tracts of Ground' in America were unclaimed, and so 'sill lie in common',¹⁸."

British thinkers, attempting to highlight the difference in property relations, emphasized the fact that Indian chiefs did not own or possess land according to how British culture and law conceptualized it. Again, in the British logic, dispossession was legitimized because indigenous possession was not recognized¹⁹, and thus left the door open for colonizers to make good use of it. Locke made clear that 'rights' were intimately tied with one's relationship with the land, a 'deficiency' clearly visible in most indigenous societies: "God's gift of land to Adam and his posterity acquired value only as labour was expended on it, and that labour justified individual property rights²⁰." Gaining the authority to govern New

¹⁵ Katherine A. Hermes, "Jurisdiction in the Colonial Northeast: Algonquian, English and French Governance", *The American Journal of Legal History*, vol. 43, no 1, 1999, p. 59.

¹⁶ Bruce Buchan, "The empire of political thought: civilization, savagery and perceptions of Indigenous government", *History of the Human Sciences*, vol. 18, no 1, 2005, p.3.

¹⁷ Richard Waswo, "The Formation of Natural Law to Justify Colonialism, 1539-1689", *New Literary History*, vol. 27, no 4, 1996, p. 743.

¹⁸ Bruce Buchan, *loc. cit.*, p. 4-5.

¹⁹ *Ibid.*, p. 8.

²⁰ Cole Harris, *loc. cit.*, p. 171.

World territory, the road to dominion was paved²¹. Without a 'civilized' (Western) system of property ownership, the recognition of indigenous government was limited²². Therefore, the preferred strategy by the British was not to wage wars of conquests but to negotiate through their legal conceptions of land acquisition. Often taking the form of *treaties*, Britain held the hope that they would eventually subject and control native North Americans with their own form of government²³.

Seminal thinker in British intellectual history Adam Smith placed 'savages' at the bottom of his theory of human historical development, while conveniently placing Western nations at the top: "The law of property formed the institutional keystone of this theory of history. Property rights were the exemplary indicators of a stage of civilization, corresponding in fairly neat ways to the sequential modes of social order and productive activity²⁴." Similarly, Adam Ferguson, an important advocate of replacing native indigenous property tenures, maintained that 'property ownership' provided "the ground upon which 'a permanent and palpable subordination is laid' ²⁵." Further articulating a rationale for subjection, he argued that to attain a higher level of 'civility' – a goal claimed to be pursued and used as a recurrent justification of colonization that portrayed imperial missions as philanthropic self-sacrifice²⁶ – the 'civilized' person had to attain a specific set of 'qualities' that "could only exist in a society in which private property provided the necessary foundation for 'relations of patron client, of servant and master', and for the legal and political arrangements that protected them²⁷". The notion of European powers acting as Indian protectors was not a novel idea. In New France, Indian allies of the French had

²¹ Katherine A. Hermes, *loc. cit.*., p. 59.

²² Bruce Buchan, *loc. cit.*., p. 9.

²³ *Ibid.*, p. 9.

²⁴ Jedediah Purdy, "Property and Empire: The Law of Imperialism in Johnson v. M'Intosh", *George Washington Law Review*, vol. 75, 2007, p. 356.

²⁵ Bruce Buchan, *loc. cit.*, p.11.

²⁶ Jedediah Purdy, *loc. cit.*., p. 336.

²⁷ Bruce Buchan, *loc. cit.*, p. 11.

developed the custom of naming the governor *Onontio*. The relationship that developed between *Onontio* and his Indian allies can be loosely equated to one of a 'father' over his 'children'²⁸. The father had many responsibilities to his children and constantly had to show them favour. Children also had to express their gratitude, but could also break the bonds if the relationship was not sustained appropriately. Out of this particular situation emerged a highly ritualistic form of ceremony celebrating and renewing alliances and more precisely, this father and children connection. But the notions of Adam Ferguson and other British thinkers orchestrated a different type of relationship in the colonies. In fact, Britain was moving increasingly closer in establishing themselves as the masters of the uncivilized savages without having to recourse to ritual or any type of negotiated relationship.

For historian Michel Morin, these premises proved devastating in the long term: Britain was adamant that they could claim land that 'appeared to be empty', and even when inhabitants were tied to the territory, they could provide compensation which in their minds, legitimized further dispossession²⁹. Some indigenous communities attempted to protect their title by making a case for 'possession' through oral history; only recently have they been able to make significant progress through those means. The following example however, although outside North America, shows the shattering potential of colonial ideology in its full application. Australian aboriginals were arguably the native population, within British influence, that the ideological arguments highlighted above affected the most. Due in large part to their nomadic lifestyle, James Cook concluded that: "Indigenous people possessed no extensive property, and hence no government, organized society or polity, and therefore had only tenuous claim to rights in land or political sovereignty³⁰". This description encompassed the precise vocabulary that could justify dispossession, and that would seal the Australian aboriginals' fate with the British colonizers. Combined with the concept of *terra nullius* – empty land – the indigenous people of Australia were not only confronted with aggressive

²⁸ In fact, the French and the Indians actually developed a discourse that suggested a hybrid form of family bondage that included elements of both cultures.

²⁹ Michel Morin, "La dimension juridique des relations entre Samuel de Champlain et les Autochtones de la Nouvelle-France", *Revue juridique Thémis*, vol. 38, no 2, 2004, p. 406.

³⁰ Bruce Buchan, *loc. cit.*, p. 13.

settlers, but would have to resist an even more devastating set of ideologies. Whereas Amerindians experienced a very different historical course, the following example illustrated the full effect of colonial seeds of thought.

Whereas legal justification for any action in the colonies was important for the government, so was public opinion. The visit of the 'Four Kings' in 1710, a delegation of Iroquois leaders, was intended to introduce the New World to the British public³¹. With an almost theatrical procession, the newly-labelled 'kings' of the Iroquois helped create a sense of awe and wonder, further supporting the British in their undertakings. As their grasp on America was tightening, the British public was transmitted a message quite different than the one during the 'Four Kings' visit. In 1762, a Cherokee embassy was sent to London. But far from being another celebrated visit of fantastical other-than-human characters, this embassy represented a shift in attitude; it had the effect of strengthening British conceptions of cultural and technological superiority³². The trend was continued when Britain organized public displays of indigenous 'material culture', helping "to promote formation of an increasingly imperial, globally minded society that shared assumptions about alien cultures and their relationships with Britain" and "reinforced the drive to categorize human societies into [a] hierarchy of human civilization"³³. In fact, Europeans expressed their superiority by consistently placing themselves on a higher level of *historical* development³⁴. For indigenous people encompassed within the sphere of the British Empire, the course of progress was therefore rendered inevitable. Convinced of their superiority, Britain began strengthening the foundations for the institutionalization of their colonial venture. Justifying territorial

³¹ Eric Hinderaker, *loc. cit.*, p. 488.

³² Troy Bickham, "A Conviction of the Reality of Things: Material Culture, North American Indians and Empire in Eighteenth-Century Britain", *Eighteenth-Century Studies*, vol. 39, no 1, 2005, p. 36-37.

³³ *Ibid.*, p. 31.

³⁴ Bruce Buchan, *loc. cit.*, p. 4.

acquisitions “on the grounds that the indigenous inhabitants did not make proper use of the land³⁵”, they positioned themselves as the righteous managers of Amerindian territory.

1.1. Formulation of Property Law

The British did not need Locke, Smith, Ferguson and company to more solidly entrench property rights in the public mindset – property was a cultural bastion of Britain before the imperial age. What these intellectuals did however, was to highlight the deficiencies of the indigenous system of property ownership and governance, which set the stage for the formulation of legal means that could justify dispossession, and in turn be included in the colonial administrative apparatus. However, the formation of law in the colonies was far from being a well established and refined process. In fact, Comaroff stated that it was in most cases a patchwork exercise of trial and error, invention and reinvention³⁶. One has to avoid overdetermined or monolithic conceptions of colonialism, when it was more often an “undertermined, chaotic business, less a matter of the sure hand of oppression [...] than of the disarticulated, semicoherent, inefficient strivings for modes of rule that might work in unfamiliar, intermittently hostile places³⁷.” Still, it was through the creation of legal instruments that “economic rights, entitlements, and proprieties were established, that labour relations and contracts were promulgated and policed, [and] that material interests were negotiated³⁸.” Therefore the establishment of law in the colonies, although often inconsistent, ruled the relationship between Amerindian and British coloniser. Even prior to the *Seven Years' War*, a body of international law had to be formed by European powers due to the intense rivalry over territory and trading privileges in the New World, and the recurring question of the respective ‘rights’ of colonizer and colonized³⁹. Alberico Gentili was one of

³⁵ *Ibid.*, p. 4.

³⁶ John L. Comaroff, “Colonialism, Culture, and the Law: A Foreword”, *Law & Social Inquiry*, vol. 26, no 2, 2001, p. 310-311.

³⁷ *Ibid.*, p. 311.

³⁸ *Ibid.*, p. 309.

³⁹ Richard Waswo, *loc. cit.*, p. 744.

the major jurists to lay down the foundations for key principles of law used in the colonies. One of the 'rights' he helped establish was the right to commerce as part of the Law of Nature – any restriction of this by indigenous people was proof of unsociability and even hostility, and could become a just cause for war⁴⁰.

Perhaps the best example that can be used to highlight the most pressing issues that were being considered in the application of colonial law was Chief Justice Marshall's opinion in *Johnson v. M'Intosh* (1823); a case analysed by Jedediah Purdy. One of the main points of debate involved the types of mechanisms available for a colonial power to extinguish native title:

"The customary principle that the European sovereign has the exclusive power to alienate native lands and thus extinguish native property claims – the principle on which Marshall relies – is nested with a higher-order principle distinguishing between (at least) two types of sovereigns: full sovereigns whose rights and powers are commensurate with those of European governments, and imperfect sovereigns whose prerogatives sometimes must yield to the incursions of full sovereigns⁴¹."

The passage above treats with the forever problematic concept of sovereignty. Constantly recurring in discussions about indigenous rights, the recognition of sovereignty has become central in the legal arena. The British had, by custom of their law, the authority to 'extinguish' native title if a particular tract of land was not under the dominion of a sovereign whose 'rights and powers' did not match the same level ascribed to a Western sovereign. Interestingly, the British discriminated between different sovereigns in other colonies. For example, they referred to India as having 'princes or governments', therefore suggesting that they perceived the latter as edging closer to full sovereignty than the inhabitants of North America⁴². Clearly, the defining factor deciding rank within the Western hierarchical system of sovereignty rested on property relations with the land.

⁴⁰ *Ibid.*, p. 746-747.

⁴¹ Jedediah Purdy, *loc. cit.*, p. 341.

⁴² *Ibid.*, p. 344.

The law usually had moral underpinnings. If a certain Indian 'nation'⁴³ was considered 'uncivilized', as most if not all of them were, it was that nation's duty, and in its own best interest, to willingly place itself under European tutelage. It was also the duty of the European's governing body to survey, control, and guide the said irresponsible and infantile native rulers:

"[...] the independence of indigenous 'semi-sovereign' rulers was constrained by imperial and moral considerations. Their sovereignty was acknowledged, but they were placed under an obligation to obey the paramount [civilized] power in matters of strategic and military concern. They were also vulnerable to interventions by the imperial power in order to check the dangers of misgovernment that, in European eyes, arose from placing political authority in the hands of uncivilized rulers"⁴⁴.

The logic behind ranking claims to sovereignty could have led to an all-encompassing form of domination; but how the British conceptualized partial sovereignty is of particular importance. While the British intended to dominate indigenous territory through higher claims of jurisdiction, they did not assert all possible jurisdiction. As Katherine A. Hermes has argued, the "sharing of certain kinds of jurisdiction [among British and American Indian] was the legal reflection of the fragmentation and reformation of sovereignty in a colonial domain that characterized New England for two centuries"⁴⁵. In a similar vein, Benton has argued that after struggling to come up with a coherent policy, Britain opted for a policy of toleration and "not to form a firm rule"⁴⁶. Even the status of British subjects was open-ended and uncertain⁴⁷. Finally, Britain accepted and included the ambiguous and ill-defined characteristic of its people and territories in the formation of policy:

"Indeterminacy was being articulated as policy – even as a core principal of an imperial law based on divisible sovereignty [...] Even if the government wished for further precision, some legal advisers

⁴³ The use of the term '*Indian nation*' is misleading in the colonial context. Europeans did not recognize Indian as capable of being sovereign, independent entities. Still, the irony remains that the term was used, which demonstrating that they recognized a limited degree of independence and potentiality for government.

⁴⁴ Edward Keene, in Jedediah Purdy, *loc. cit.*, p. 351.

⁴⁵ Katherine A. Hermes, *loc. cit.*, p. 54.

⁴⁶ Lauren Benton, *A Search For Sovereignty: Law and Geography in European Empire, 1400-1900*, Cambridge: Cambridge University Press, 2009, p. 257.

⁴⁷ *Ibid.*, p. 257.

argued, the 'infinite variety' of arrangements in native states, with different portions of sovereignty permitted to various natives rules, made this goal impossible⁴⁸."

Recognizing the logistical and ideological impossibilities of 'total rule' over native people, Britain opted for flexibility. Constantly hoping to extend their influence, their strategy also made room for less aggressive tactics, but as the nineteenth century unravelled, it was clear that they did not intend to recognize Indian sovereignty. Negotiation, cooperation and peaceful coexistence could be maintained, but Britain would forever consider Amerindians falling within their territories as a subdued population under the yoke of their rule.

As James Kent expressed a few years later after the Marshall decision, the 'peculiar character' and 'habits' of indigenous peoples forcibly defined their relationship with their governing colonial agents: Indian 'nations' were dependent and had to submit to European pupillage⁴⁹. Similarly, Lord Cornwallis and John Stuart Mill's approach was that an indigenous sovereign was autonomous only if competent in promoting and securing progress: "So far as it is incapable of serving that role, it may be supplanted by another sovereign to vindicate the values of civilization⁵⁰." Kent's argument summarized the situation: "Indian title was subordinate to the absolute, ultimate title of the government of the European colonists⁵¹." Discussion about the possibility of sovereignty for Amerindian communities was henceforth closed.

Eventually, colonialists came to separate the unproductive Indians from lands that could be made profitable by 'civilized people'. Across the British Empire, indigenous landscapes were perceived as nothing but wilderness until they were made of use by 'civilized' Europeans – these territories thus became real estate that could be possessed, ruled, improved, and protected⁵². American Indians would eventually be ignored, ejected or chased from their land, opening access for land-hungry Europeans. As Harris concluded:

⁴⁸ *Ibid.*, p. 258.

⁴⁹ James Kent, in Jedediah Purdy, *loc. cit.*, p. 352.

⁵⁰ Jedediah Purdy, *loc. cit.*, p. 367.

⁵¹ James Kent, in Jedediah Purdy, *loc. cit.*, p. 352.

⁵² John L. Comaroff, *loc. cit.*, p. 310-311 and 309.

"The momentum to dispossess derived primarily from the interest of capital in profit and of settlers in getting somewhat ahead in the world, both interests, in a new colony where land was the principal resource, dependent on the acquisition of land⁵³." As increasing numbers of people immigrated to America to start anew, setting large tracts of land aside for Amerindians became a losing cause.

While tutelage became the initial strategy in dealing with the less civilized Indian 'nations', colonial administrators usually framed their lordship as a process and mission for the 'public good'⁵⁴. The stated goal was to move societies along the civilization timeline conceptualized by the historical experience of Europe. Based on the theory of property formulated by Adam Smith, imperfect sovereigns were identified as "incompetent to secure the interests of their populations" and civilized sovereigns were directed to take over "the sovereign powers of their imperfect counterparts⁵⁵." Under the colonial structure, "the power of elites wedded to old regimes" would be broken and "reordering incentives [would] induce dynamic efficiency⁵⁶." In most cases however, this proposed practice would remain theoretical. One of the conclusions in the Marshall case was that the two opposing systems of property regimes, social orders, and systems of government were incommensurable: "The two systems could not be maintained concurrently; to follow one was to overrun and negate the other⁵⁷." There existed therefore only two options: to leave and abandon the cause of humanitarian 'progress', or expropriate an inhabited continent at the cost of extinguishing the way of life of indigenous people⁵⁸. Consequently, to transform Amerindian societies, the British aimed primarily at eradicating tribal political organization and gradually (as shall be discussed in the following chapters) replace it with a system based on their own – one intimately tied to property tenure.

⁵³ Cole Harris, *loc. cit.*, p. 179.

⁵⁴ Jedediah Purdy, *loc. cit.*, p. 362.

⁵⁵ *Ibid.*, p. 356.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, p. 366.

⁵⁸ *Ibid.*, p. 368.

2. Indian Allies Become Obsolete – Establishment of the “Civilization Policy”

As a renewed war with the United States became less likely, the British became increasingly less interested in maintaining good relations with Amerindians. No longer important as military and commercial allies, natives were increasingly considered obstacles by the large influx of settlers hoping to acquire and ‘develop’ unused Indian land⁵⁹. Seven treaties were signed in Upper Canada between the years 1815 and 1827; but the British were decidedly less compliant to native terms. In fact, from the latter treaties the Crown had secured access for non-natives to almost all remaining arable land in Southern Ontario⁶⁰.

Prior to the War of 1812, the British Indian Department, a branch of the military, had emphasized trade, diplomacy and alliance. By the year 1830, the British Indian Department ceased as a branch of the military, becoming instead the Department of Indian Affairs, a branch of the public service⁶¹. Transformations within these bodies of government represented important changes in the attitude of the British toward the native populations. In fact Major General H.C. Darling, the military secretary to the governor general, began the shift by founding the outlines of what was to become the driving force behind the formulation of British legislation for the coming decades: the *civilization policy*⁶². As their new official procedure, it served as a guide for the future of Euramerican-Amerindian relations. On an economic level, “financial pressures coincided with these trends as the colonial office in London questioned the expense of continuing to maintain Indian nations as military allies⁶³.” The focus therefore was placed on transforming natives into economically self-sufficient entities. For the British, this translated into anchoring mobile communities onto one determined piece of land where they could sustain themselves through farming. Combined

⁵⁹ R.J. Miller, *Compact, contract, covenant: Aboriginal treaty-making in Canada*. Toronto: University of Toronto Press, 2009, p. 94 and 102.

⁶⁰ *Ibid.*, p. 95 and 102.

⁶¹ Richard H. Bartlett, *The Indian Act of Canada*, Saskatoon: University of Saskatchewan, 1988, p. 3.

⁶² *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 3. Indian Policy: Protection, Civilization and Assimilation.

⁶³ *Ibid.*

with the influence of religion and Christian schooling, Amerindians, officials hoped, would absorb Western virtues and abandon their savagery. Even before the formation of the Department of Indian affairs, kin-forming rituals such as gift giving and pipe smoking were discouraged by a new wave of appointed civil administrators. Instead, indigenous lifestyles not only had to be abolished, but had to mirror the 'civilized' virtues of Europe.

Not all agreed that the 'civilization policy' was the best solution in dealing with Indians. Sir Francis Bond Head, lieutenant governor of Upper Canada, was in fact directly opposed to the policy established by Darling, the former claiming that it was impossible for Indians to become civilized. Over time, Bond Head argued, Amerindians would simply peter out as a race, doomed by the coming tide of 'civilized' settlers⁶⁴. In the meantime, his solution was to completely separate them from contact with non-natives. Convincing Indian bands that they may pursue their traditional lifestyle unhampered, large tracts of land were thus abandoned for the infamous relocation on Manitoulin Island in 1836⁶⁵.

Soon enough, it was clear that both policies were dysfunctional. In the case of Bond Head's, many communities had grown aware of that by agreeing to relocation, they were permanently surrendering rights to their traditional lands, while also being diametrically opposed to humanitarian movements concerned with the general decline of Indian well-being⁶⁶. In the case of Darling, it quickly became clear that the vast majority of communities were not convinced that a Western lifestyle would be beneficial for them, especially if it meant they had to abandon their traditional way of life. More importantly, both these policies reflected the underlying attitude of British colonial society: without help from the non-natives, Amerindians had the inherent incapacity to adapt to the new economic and social climate of British North America⁶⁷. The government thus moved forward to create a more official program that would progressively force selected Indian communities to adopt key

⁶⁴ *Ibid.*

⁶⁵ Ever though the experiment failed, the British never reversed Head's dispossession. R.J. Miller, *loc.cit.*, p. 109.

⁶⁶ *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 3. Indian Policy: Protection, Civilization and Assimilation.

⁶⁷ *Ibid.*

Western concepts that would lead to their 'civilization'. Legislation for the next two decades would henceforth focus on implementing this project.

3. 19th Century Policy Making: Deciding the Future Fate of Indians in Canada

As the British colonial government was debating future policies with the Amerindian populations, Abenakis were feeling the pressure of the non-native presence. Forced to wander on hunting grounds traditionally exploited by other nations in search of more plentiful game, the Abenaki found their movements constrained by both natives and non-natives:

"[...] the Algonquin Indians of Three Rivers, complaining of Abenakis Indians of St Francis and Becancour trespassing on their hunting grounds and soliciting His Excellency's interference [...] Indians on the south side of the St Lawrence especially, have now but very small extents of hunting ground, as settlements are rapidly increasing & the land clearing⁶⁸."

While Euramerican activity was mounting along the Canadas' waterways, the government had no choice but to address issues directly related to Indian land – neglect would undoubtedly bring serious confrontation between native and settler, and between Indian bands themselves competing for the same hunting territory. The following segment of a correspondence between British officials highlights the confusion and lack of a systematic policy regarding the management of lands exploited by Amerindians. Interestingly, it also mentions how the Abenaki used wampum belts not only with other nations, but also in an attempt to legitimize their claims with the government. Unfortunately for them, they would soon have to resort to other means of authenticating their traditional lands:

"They pretend to hold this exclusive right as expressed by certain branches of beeds, which they still have in their possession, the only manner of proof Indians have amongst themselves. They further assure that the Abenakis have similar collars of beeds, which explain that they shall hunt on the South side only of the St Lawrence and the Algonquins on the North. Mr le Chevalier de Niverville in his report, says 'that for 25 or 30 years passed the Algonquins have hired Abenakis and since that, they (the Abenakis) have taken knowledge of the courses of rivers & ca. They have continued on the North Shore, but that previously he never saw an Abenakis hunt on that side.' It seems to me that he is perfectly of opinion that it is an encroachment on the part of the Abenakis, I conclude by declaring that I think it a difficult and dangerous point to be settled by Government, as the Proclamation of 1763

⁶⁸ Louis Juchereau Duchesnay to George Couper, Febrary 23, 1829, NAC, RG8, vol. 268, p. 85-86, microfilm C-2856.

gives generally to the Indians the liberty of hunting on the ungranted or Crown Lands and. But there appears no Document for any distribution of hunting lands exclusively to any Tribe⁶⁹.”

As problems of this sort would increase in momentum in the mid-nineteenth century and beyond, the government was pressured to deal with these issues. As the following paragraphs will demonstrate, commissions of inquiry were sanctioned, bills passed, and treaties signed. However, as MacInnes has wryly observed, “[W]hile these treaties or agreements were bilateral in form, actually, of course, the Indians had to accept the conditions offered or lose their interest in the lands anyway⁷⁰.”

3.1. Commissions of Inquiry and the Passing of Legislation: Pillars of the *Indian Act*

In an attempt to resolve the ever-growing ‘Indian Problem’, Governor General Charles Bagot commissioned a report in 1844. The commission rightly concluded “that there were serious problems with squatters on Indian lands, poor records of land sales or leases, and inept official administration of band funds; that the wildlife necessary for subsistence was fast disappearing from settled areas; and that Indians generally were suffering from alcohol abuse⁷¹.” Furthermore, not all Indians communities were under treaty⁷², their livelihood thus left vulnerable to the score of settlers, speculators, and others hoping to gain profit from land and resources.

The government, along with the Department of Indian Affairs, decided wiser to assume the full responsibility of transforming the backward Indian instead of leaving Amerindians deal as they could with the non-native onslaught. Emerging from a hybrid Darling Bond-Head consensus, officials paternalistically decided that the best route to achieve the ‘civilization policy’ smoothly was to protect the Amerindians until they were

⁶⁹ *Ibid.*

⁷⁰ L.R.T. MacInnes, “History of Indian Administration in Canada”, *The Canadian Journal of Economics and Political Science*, Vol. 12, No. 3, 1946, p. 387.

⁷¹ *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 3. Indian Policy: Protection, Civilization and Assimilation.

⁷² Practically none in the province of Quebec.

'ready' for their Western metamorphosis. This would provide Indian bands shelter from aggression towards their lands, while providing a protected environment where the government could assume full control in the gradual implementation of its civilization plan. The 1850 statutes clearly exemplify this attitude, bearing the titles *An Act for the better protection of the Lands and Property of Indians in Lower Canada* and *An Act for the protection of Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury*⁷³. The Bagot Commission tackled the issue of Indian land by suggesting that Indians should adopt individual ownership of land, and be encouraged to sell it among themselves in an attempt to promote a spirit of free enterprise⁷⁴. Eventually, the aim was for the government to rid itself of the reserve system. The allocation of personal property was a step forward in reaching this goal – perhaps equally telling was the fact that it was in full compliance to a British set of values.

By the mid-nineteenth century, it had become clear that the government was bent on proactive means at achieving assimilation and integration of native populations. Perhaps the most explicit official manifestation of this goal came in 1857, through the *Civilization of Indian Tribes Act*. "The act provided for the enfranchisement of Indians of 'sufficiently advanced' education or of Indians who were 'capable of managing their own affairs'. Enfranchisement removed the disabilities and distinctions imposed upon the Indian people for their protection⁷⁵." The hope that Indians would shed their status as protected peoples through enfranchisement was not novel, but was now forwarded through legislation. The Act enabled Indians to assume the full duties and responsibilities of citizenship if they met specific criteria; the applicant had to be male, over 21 years of age, free of debt, literate in English or French, having received basic education, and of good moral character⁷⁶. Not only

⁷³ Richard H. Bartlett, *op. cit.*, p. 3.

⁷⁴ *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 3. Indian Policy: Protection, Civilization and Assimilation.

⁷⁵ Richard H. Bartlett, *op. cit.*, p. 4.

⁷⁶ Colin C. Buchanan, " 'They Have Presumptuously Opposed the Department in Many Ways': Kainai Leadership and Indian Act Band Government, 1880-1920", Ph.D. Thesis: University of Calgary, 2008, p. 56, and Bruce Buchan, *loc. cit.*, p. 1-22.

did the criteria exclude the large majority of indigenous people, but even if some did meet the criteria and decided to apply, the final decision was still left at the discretion of the Governor-General; only then could the Indian finally be allowed renounce his Aboriginal identity and embark on his new life as a colonial citizen. The clock had now been set for the Indian as a distinct member of society, treated differently than non-natives. The government hoped that once the Indian was rid of his special status, he would finally be able to fully integrate into Euro-Canadian society. Reverend J. Marault, a missionary living among the Abenakis at St-Francis, shared many of the government's opinion of the period:

"I think the best mode to ensure and promote the interest of the Abenaki, in every respect, would be to grant them a lot of good land, or else to give to each a certain sum of money, to relieve them from the supervision of the Government, to leave them completely free, and to grant them all the privileges of citizenship. To keep the Indians in their present state is in fact to exile them from all contact with the world [...] daily intercourse with enlightened and educated men is essential to the improvement of the Indians⁷⁷."

The *Civilization of Indian Tribes Act* also departed from the principle that the Crown protected reserve land: "Reserve lands could be reduced in size gradually without a public and formal surrender to which the band as a whole had to agree. No longer would reserve land be controlled exclusively by tribal governments⁷⁸." Put simply, the law enacted that what has been termed through history as 'Indian Land', no longer legally existed – this vital provision was carried through at the passing of the *Indian Act* in 1876. As one legal expert noted:

"[...] nothing in common law or the Indian Act gives a band the necessary capacity to hold land. Section 18(1) of the Indian Act expressly rests title to reserve lands in the Crown. Due to this legal capacity the band could not acquire title to the land even with their long and obvious possessions and despite the fact that no other party contested their title⁷⁹."

⁷⁷ *Journals of the Legislative Assembly of the Province of Canada*, Report of the Special Commissioners, Appointed on the 8th of September 1856, to Investigate Indian Affairs in Canada, Appendix no. 21, p. 1.

⁷⁸ *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 5. The Gradual Civilization Act: Assimilating Civilized Indians.

⁷⁹ Alan Robert Reiter, *An examination of the evolving concept of band councils, their authorities and responsibilities, and their statutory instruments of power*, Edmonton: First Nations Resource Council, 1990, p. 1.3.

In fact, the Act held the provision that if the Governor-General approved an Indian's application for enfranchisement, the latter would have to serve a three year probation period, which would eventually lead him to receive title of twenty hectares of reserve land and a portion of band funds⁸⁰. Quite blatantly, the policy aimed to dismantle the community orientated reserve system, simultaneously undermining traditional customs and culture. However certain that the lure of civilization and citizenship would erode backward Indian culture, the Indian Department was soon offered a dose of reality. The *Civilization of Indian Tribes Act*, its policies and its strategy, proved a complete failure. As testament, only one individual had been successfully enfranchised; a fact that clearly illustrates indigenous attitudes toward the government's new policies and an overall rejection of Euro-Canadian culture largely comprising of agriculture, sedentary lifestyle, and education – especially if the package demanded a repudiation of traditional Indian customs.

Whereas intellectuals, politicians, and administrators predicted the eventual disappearance of the backward, traditional Indian, the latter Acts hoped to provide a framework that would accelerate the process. The idea was that through enfranchisement, aboriginal individuals would free themselves from the yoke of the traditional Indian community its communal relationships, in order to make way for autonomous individuals fully able to integrate colonial society peacefully⁸¹. In short, the *Civilization of Indian Tribes Act* explicitly declared traditional Indian values and practices as inferior and were thus undermined through legislation. Through these laws, colonial society offered respect and recognition as a member of society only to Indians who "renounced their communities, cultures and languages⁸²." All these efforts by the Indian Department can be summarized by one guiding principle: indigenous people were incapable of comprehending their own interests and to act positively on their own behalf. The passing of Acts culminating in the

⁸⁰ Colin C. Buchanan, *loc. cit.*, p. 57.

⁸¹ *Ibid.*, p. 56.

⁸² *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 5. The Gradual Civilization Act: Assimilating Civilized Indians.

Indian Act of 1876 would render Amerindians as nothing less but “wards of the state to be civilized and assimilated by the Euro-Canadian polity⁸³.”

Whereas the strategy to deal with the ‘Indian Problem’ had been agreed upon, the ever present concern of the government of cutting administrative costs pushed another important inquiry: the *Pennefather Commission* of 1858. Its mandate sought to secure the best means at achieving civilization and the best mode of managing Indian property without impeding non-native settlement⁸⁴. The commissioners reported that the slow progress of the civilization policy could be solely attributed to the savage habits of the natives themselves. Lack of progress convinced officials that full assimilation of the Indian population was the only possible solution. Amongst its many proposals, individual land holding, regrouping smaller bands in one larger reserve, consolidating Indian legislation, dismantling tribal structures and the eventual disbandment of the Indian Department once the civilization policy accomplished, were all concerns that were to be addressed in the near future.

3.2. Creation of Band Government

By the mid-nineteenth century, most Indian communities in Lower Canada had been segmented in what the Indian Department had created as its two basic units of administration. One geographical, the other demographic, the new official vocabulary of ‘reserves’ and ‘bands’ embodied the shift in relationship between the Canadian government and what had previously been known as ‘Indian nations’. Unlike what this simple term suggests, Indian *bands* were not what certain anthropologists have defined as “small, mobile kin-based groups with informal leadership and flexible social organization⁸⁵,” but rather were a creation of the *Indian Act* as “a group or body of Indians having in common lands or funds held in trust for

⁸³ Colin C. Buchanan, *loc. cit.*, p. 52.

⁸⁴ *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 4. Civilization to Assimilation: Indian Policy Formulated.

⁸⁵ Leacock & Lee, in Colin C. Buchanan, *loc. cit.*, p. 5.

them by the government⁸⁶." During this very politically active period, a number of acts were passed in response to the emerging non-Indian settlements in the North-West Territories and the treaties subsequently signed with the neighbouring Indians. Combined with the frustration and failure of the *Civilization of Indian Tribes Act*, the government felt it had to gain more direct control on Indian bands. Efforts were thus focused on dismantling indigenous political organizations and replacing them with an institutional structure dictated by the Indian Department⁸⁷. Giving rise to the *Act for the gradual enfranchisement of Indians and the better management of Indian Affairs* (1869), the Indian Department directly undermined traditional native governments:

"The primary means of doing this was through the power of the superintendent general of Indian affairs to force bands to adopt a municipal-style 'responsible' government in place of what the deputy superintendent general of Indian affairs referred to as their 'irresponsible' traditional governance systems. This new system required that all chiefs and councillors be elected for three-year terms, with election terms and conditions to be determined by the superintendent general as he saw fit. Elected chiefs could be deposed by federal authorities for 'dishonesty, intemperance or immorality'. None of the terms was defined, and the application of these criteria for dismissal was left to the discretion of the Indian affairs officials upon receiving a report from the local Indian agent⁸⁸."

In the case of the Abenaki as in most cases, chiefs had traditionally been named for life. To impose an election on three-year cycles severed age-old traditions of chieftaincy. In most instances, aboriginal chiefs never held the power of coercion, but acted rather as a provider and trusted guide for the community. Under this new system, government officials expected the elected chiefs to exert authority over band members, enforce departmental regulations, and maintain peace⁸⁹. Thus under *Act for the gradual enfranchisement of Indians and the better management of Indian Affairs*, chiefs who had been in power under the traditional system, now had to present their candidature for election. If the majority of the band elected another candidate, it would thus become illegal for traditional chieftains to

⁸⁶ L.R.T. MacInnes, *loc. cit.*, p. 389.

⁸⁷ Colin C. Buchanan, *loc. cit.*, p. 59.

⁸⁸ *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 7. The Gradual Enfranchisement Act: Responsible Band Government.

⁸⁹ Colin C. Buchanan, *loc. cit.*, p. 118.

exercise their influence⁹⁰. William Spragge, the sub-Superintendent of Indian Affairs, explained that this new legal disposition would place intelligent and educated men in charge of representing the band and the establishment of a 'responsible' system⁹¹. Quite blatantly, Spragge's message totally dismissed traditional Indian political culture. The new law was meant to bring about candidates that most closely conformed to the Euro-Canadian ideal of a civilized man. Undoubtedly, the elective system served to undermine traditional elements within bands that could potentially become disruptive to the Indian Department's assimilation policy⁹². Perhaps of greater significance, this change in the structure of government marked a transfer of power from the hands of the band, to the Indian Department and the government. In fact, the Governor General was solely responsible for deciding to which bands to introduce (impose) the elective system and this without their consent⁹³. Usually, the Governor chose bands who he felt were 'ready' for this upgrade toward the attainment of full civilization. For the first time in history, Indian nations were severed from independent decision making in their own communities. Chiefs were no longer the primary authorities, but rather had to seek the approval of the superintendent general through the allocated agent or risk being deposed. Elections themselves were also under the supervision and authority from forces outside the band. Whereas this transformation of indigenous governmental organization did not alter Indian cultures overnight, it did officially position Indian bands under direct tutelage of Euro-Canadian society. In other words, bands lost most of what enabled them to be self-governing entities, except for matters of lesser importance. Whereas the Royal Proclamation of 1763 referred to Amerindians as nations or at least as independent tribes, the *Act for the gradual enfranchisement of Indians and the better management of Indian Affairs* had "[...] simply no provision for traditional groupings going beyond the individual band level. In fact, the goal of

⁹⁰ Even though the majority of voters might vote for other candidates than traditional chiefs, in many cases chiefs continued to exercise some manner of influence within their communities.

⁹¹ William Spragge, in Wayne Daugherty and Dennis Madill, *Indian government under Indian act legislation, 1868-1951*, Ottawa: s.n. 1980, p. 1.

⁹² *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 8. The Indian Act and Indians: Children of the State.

⁹³ Wayne Daugherty & Dennis Madill, *op. cit.*, p.2.

the measures was specifically to undermine nation-level governance systems and the broader nation-level associations of Indians more generally⁹⁴.”

As discussed in the previous chapter, the driving ideal of the British colonials was their title to land and its toil. Since the 1830s, the belief amongst non-Indians was that indigenous people would never ‘improve’ their land until a system of individual allotment was established. The *Act for the gradual enfranchisement of Indians and the better management of Indian Affairs* (1869) included land provisions that instituted individual property holding by encouraging reserve residents to obtain ‘location tickets’: “Clause 17 of the 1869 legislation dealt with the size of individual allotments on a per capita basis, and provided for issuance and inheritance of these patented lands. This statute sought to establish a bond between an Indian and his property similar to that between a ‘white’ settler and his homestead⁹⁵.” The Act was also infamously known for conferring the responsibility of allocation of reserve land and control of reserve revenues to none other but the Superintendent General. Clauses 25 through 28 determined conditions under which Indians could surrender reserve lands – a clear indication that the law engineered the disappearance of supposedly protected Indian territory: “no reserve or portion of a reserve shall be sold, alienated or leased until it has been released or surrendered to the Crown for the purposes of this Act⁹⁶.” The government however, did leave an opportunity, albeit limited, for Amerindians to gain full control over a piece of land – but only if they renounced communal ownership and became private owners. An Indian man that qualified for franchise would receive a ticket for land. After a three year probation period, he would receive entitlement; after six years of ‘good behaviour’ he would lose his status as an ‘Indian’ and become an ordinary subject of the Crown, equal to all other citizens under Canadian law⁹⁷. Indigenous

⁹⁴ *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 7. The Gradual Enfranchisement Act: Responsible Band Government.

⁹⁵ Richard H. Bartlett, *The Historical Development of the Indian Act*, Ottawa: Treaties and Historical Research Centre, P.R.E. Group, Indian and Northern Affairs, 1978, p. 53.

⁹⁶ Richard H. Bartlett, *The Indian Act of Canada*, op. cit., p. 4, & *The Historical Development of the Indian Act*, op. cit., p. 63.

⁹⁷ Richard H. Bartlett, *The Historical Development of the Indian Act*, op. cit., p. 68.

people thus lost with this one piece of legislation, authority over their land, "thus breaking the direct tie between Indian nations and the British Crown upon which the nation-to-nation relationship rested"⁹⁸. This was one of many contradictory examples in Indian policy formation during this time; the Canadian government, having used rhetoric of 'protecting' the Indian for decades, was providing a framework for the establishment of indigenous communities based on a European-style independent unit of administration and political organization. The paradox was that ultimate discretionary power of band administration and the elective system remained in the hands of the Superintendent, and to a lesser extent, the agent responsible for the community in question.

When the *Indian Act* of 1876 served to consolidate all previous legislation, all pillars of policy had previously been solidly entrenched and would hardly change until 1951 when the Canadian government revised the *Indian Act*. In short, with assimilation as its main policy, the Indian Department, through the *Indian Act* of 1876, transferred discretionary powers to non-Indians. The *Indian Act* altered and largely controlled key aspects of indigenous life: political culture, land management, land holding patterns, band revenue and resources.

3. Conclusion

Western imperial powers were rapid in categorizing North American indigenous cultures. Being 'kingdoms of custom', to Europeans they obviously lacked a *corpus juris*, a modern sense of right-bearing selfhood, and most seriously of all, anything approaching 'civilized' judicial procedures⁹⁹. Perceived as people of 'deficiency', it was easier for colonial powers to establish, legitimize, and then exert their authority. Different European colonies had their own ways of establishing links with the indigenous populations: the French

⁹⁸ *Royal Commission on Aboriginal People*, Vol. 1, pt.2, Chapter 9, p. 5. The Gradual Enfranchisement Act: Assimilating Civilized Indians.

⁹⁹ John L. Comaroff, *loc. cit.*, p. 306.

preferred territorial alliances rather than complete dominion¹⁰⁰; the English were flexible in the sense that they accepted a certain amount of indigenous sovereignty while maintaining their superior status. In the end though, both powers hoped to establish their authority. For the English, the preferred manner was to concentrate on securing *Land*. To accomplish such a feat in the New World, colonial officials thus improvised, invented new procedures, and cited familiar rationales that would allow them to legitimate their actions into a recognizable imperial legal framework¹⁰¹.

The formative role of British colonial law was instrumental in establishing new parameters of what it meant to be 'Indian'. McHugh brilliantly expressed the phenomenon:

"It was by means of legal instruments that 'economic rights, entitlements, and proprieties were established, that labour relations and contracts were promulgated and policed, that material interests were negotiated [...]. It was 'under legal provisions that the 'nature' of colonial subjects was constructed, ethnicized, and racialized, their relations to other human beings, to the earth, and to their own cultural practices delineated¹⁰²."

Additionally, whereas the creation of Band Councils were products of legal impositions, the analysis below hopes to avoid overdetermined or monolithic conceptions of colonialism; in the words of Comaroff, the process was more often an "undertermined, chaotic business, less a matter of the sure hand of oppression [...] than of the disarticulated, semicoherent, inefficient strivings for modes of rule that might work in unfamiliar, intermittently hostile places¹⁰³." Even the application of 'law', through all its theoretical finality, was far from being a well established and refined process. In most cases, it was a patchwork exercise of trial and error, invention and reinvention¹⁰⁴. In short, legislation, applied in the right circumstances, had the potential to shape the future of the Amerindian socio-cultural universe. However, law was not the sole factor that must be taken into consideration when

¹⁰⁰ Katherine A. Hermes, *loc. cit.*, p. 59.

¹⁰¹ Lauren Benton, *op. cit.*, p. 211.

¹⁰² P.G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status and Self-Determination*, Oxford: Oxford University Press, 2004, p. 6.

¹⁰³ *Ibid.*, p. 311.

¹⁰⁴ John L. Comaroff, *loc. cit.*, p. 310-311.

analysing interactions between state actors and indigenous people. As shall be demonstrated in the following chapters, native communities were far from willing to surrender their agency to the state.

CHAPTER III

THE BAND COUNCIL GOVERNMENT TAKES ROOT

The nineteenth century, more than any other period, brought forth permanent changes in several spheres of Abenaki livelihood and domiciled Indians in general. As experiments, modifications, and arrangements with the indigenous people and the Department of Indian Affairs multiplied, they became part of a new political, cultural and legal direction the government hoped to establish through official legislation. Rarely was the application of new laws systematic and thorough. Instead, the first years implementing these laws were a period of transition and adaptation for both the government and the band. The Indian Agent often had to judge issues through a case by case scenario, rendering him both arbitrator and interpreter of the law. For the Abenakis of St-Francis, the string of new laws provoked a reaction in the fabric of their indigenous mode of governance. They were not alone; the pressure on reserve communities to conform to Euro-Canadian values, particularly in the valley of the St-Lawrence, influenced land-holding, cultural, and socio-economic patterns, in addition to the imposition of a new system of elected chieftaincy. In the instance of the Mohawk, clashes occurred between different factions, in part brought about by the imposition of Band Councils¹. For the Abenakis, the Band Council was met with approbation early. In both cases, the indigenous communities of the St-Lawrence did not let Canadian law override their community; their different solutions at handling legal impositions demonstrate a willingness to carry on as a society different from White-Canada. Still, some traditional leaders were concentrating their efforts at warning their people from the detrimental potential of the coming waves of Canadian legislation by demanding firmer unity and solidarity to defend ancestral rights and custom. In reality, indigenous politics, in terms of traditional avenues of leadership, legitimacy of rule, and negotiation power with the state were fading rapidly. As soon as the *Act for the gradual enfranchisement of Indians and the better*

¹ Cori Simpson, "In the Eyes of the State: Indian Agents, Agency and Resistance in Kahnawake", M.A. Thesis: *Trent University*, 2008.

management of Indian Affairs of 1869 was passed, the majority of the St-Francis Abenaki had wholly adopted the Band Council as their administrative system of governance. The following hopes to shed light on Band Council government in St-Francis: the band's first experience in elected government, the elective process, the level of participation, and the nature of the band's administration.

1. First Elections in St-Francis

Abenakis were already using legal avenues, inspired by elements of Euro-Canadian political culture, to rectify situations in their community. For example, even prior to the *Act for the gradual enfranchisement of Indians and the better management of Indian Affairs* (1869), the Council met to write down a set of rules that were intended to serve as guideline for the community and its future leaders:

"[...] the subscribing majority of the Tribe in regular council [...] enacts and adopts few following fixed rules for the commencement of having written regulations drawn from the most important parts of our council, leaving other remaining parts for future acts that other fixed rules may hereafter be enacted and adopted to be written when the Tribe shall see fit to have such additional rules²."

These rules were obviously based on pre-existing Abenaki political structures, but have nonetheless a Western-democratic and bureaucratic essence to them: leaders now wished to have all future 'acts' of St-Francis written down; only the majority of voters could decide on which rules to adopt; Councils would take place with the most people possible in attendance; more than half of those at Council had to sign the notarial agreement for the 'act' to pass as St-Francis law; complaints should be directed to a higher governing power such as the Indian Department; and only the majority had the rights to name and appoint a new chief or chiefs as well as to revoke or remove them from office³. The Abenakis were now closer to the Euro-Canadian method of governance more than any other point in their history. Ironically, the Abenaki of St-Francis were re-organising and restructuring their local politics with many

² Constitution of a St-Francis Abenaki Band Council, February 9, 1856, NAC, RG10, vol. 603, p. 49410-49417, microfilm C-13381.

³ *Ibid.*

European-inspired elements without direct government intervention. The Indian Department's aspiration of transforming indigenous communities into self-serving and 'responsible' municipalities was, in the case of St-Francis, occurring even prior to the passing of the Act of 1869. Yet, as the *Indian Act* confirmed, grassroots initiatives such as the one observed at St-Francis was simply not enough: the Department of Indian Affairs wanted the total overhaul of the traditional political system – and they wanted it systematic for all bands. Policy makers decided that it was better to eradicate old foundations, even if these proved flexible and adaptable, in order to build anew.

Indian Agent H. Vassal was responsible for orchestrating the first elements of change in the political culture of St-Francis. Through his correspondences with the government, it can be understood that he attempted to respond to Abenaki demands while smoothening the transfer of power from the traditional to elected chiefs. As early as 1870, only a year after the passing of the *Act for the gradual enfranchisement of Indians*, the Abenakis of St-Francis were transmitting requests to the Canadian government to proceed with the elections of Chiefs and sub-chiefs⁴. Fully aware of the Act's provisions, the petition's signatories were demanding the permission to elect two head chiefs and four sub-chiefs. The Act of 1869 clearly stated that the proportion was of "one Chief and two Second Chiefs for every two hundred people⁵." According to the last census, the band's population was composed of three hundred and thirty souls⁶. To create their Council St-Francis was demanding the maximum number of people allowed, with an additional chief; a provision unwritten in the Act. The absence of chiefs must have been a recurring and disabling affair, since the Abenakis justified their desire for additional chiefs in order that "some may be found when occasion requires⁷." Therefore, at the dawn of the 1870s, the Abenakis were not only aware of the Act of 1869 but

⁴ Henri Vassal to E. A. Meredith, June 28, 1875, NAC, MG24-B1, vol. 26, p. 16, microfilm C-15774.

⁵ An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42, p. 10

⁶ Saint Francois Agency – Request by the Abenakis of Saint Francois that they be permitted to elect two chiefs and four subchiefs and that Jean Harmess and Salomon Benedict be confirmed as chiefs for life, NAC, RG10, vol. 1949, p. 9, microfilm C-11119.

⁷ *Ibid.*, p. 7.

communicated how they wanted to apply the new laws in accordance to the particular political requirements of their community. Considering the novelty of this initiative – and the numerous failures of past ones – the fact that they agreed to cooperate and transfer to a state sanctioned democratic system marks success for the colonial government.

Still, the Department of Indian Affairs was not convinced that the community was 'ready' to elect its chiefs. Contrary to some other disruptive bands, the Department had received positive feedback from H. Vassal about the traditionally chosen chiefs Hanness and Benedict. The Indian Agent was essentially trying to reach a compromise between Abenaki requests and governmental initiatives, thinking wiser for the systems of traditional chiefs and the newly band-elected chiefs to co-exist. As a first venture in the realm of democracy, he thought more prudent for the sake of the community to keep the two traditional chiefs, who had fulfilled their duties competently, in power at least in the short term. Jean Hanness and Salomon Benedict could thus keep their titles as chiefs and it would remain so for life, no matter the result of the first upcoming election scheduled for January 1876⁸. The maintenance of the dual chieftaincy of Hanness and Benedict, in combination with the upcoming election of a Council of two chiefs and councillors would therefore function as a hybrid system of traditional and state-sanctioned politics. H. Vassal's initiative is in fact testimony to the many *ad hoc* decisions of this transitional period in the reserves of Eastern Canada. Approved by the Deputy Minister of the Interior, for the next cycle of elections, St-Francois could potentially have four Chiefs⁹. On the 22nd of January 1876, six candidates presented themselves for election. Samuel Watso and Lazare Wawanolet triumphed over their opponents by large margins and were thus confirmed as the first chiefs of a new political order¹⁰, whereas Hanness and Benedict were still officially recognized as 'life chiefs' by the

⁸ Saint Francois Agency – Request by the Abenakis of Saint Francois that they be permitted to elect two chiefs and four subchiefs and that Jean Hanness and Salomon Benedict be confirmed as chiefs for life, NAC, RG10, vol. 1949, p. 2, microfilm C-11119.

⁹ E.A. Meredith to Henry Vassal, December 4, 1875, NAC, MG24-B1, vol. 26, p. 18-19, microfilm C-15774.

¹⁰ Saint Francois Agency – Request by the Abenakis of Saint Francois that they be permitted to elect two chiefs and four subchiefs and that Jean Hanness and Salomon Benedict be confirmed as chiefs for life, NAC, RG10, vol. 1949, p. 32, microfilm C-11119.

Department. Unfortunately, the emotional investment of Abenaki voters into the new electoral system would soon undermine the authority that used to be associated with traditional chieftaincy.

2. Procedure

From 1876 onwards, after the recommendations of Indian Agent H. Vassal, the triennial electoral system was implanted in St-Francis as dictated by the terms of the *Act for the gradual enfranchisement of Indians* of 1869 and the newly amended *Indian Act* of 1876. As one electoral cycle came to a close, the Abenakis would remind the Department of Indian Affairs directly, or through their agent, that the time had come to elect new leaders. Prior to the proceedings, the band would gather in the town hall and hold a Council to suggest candidates, their nomination in turn seconded by band members. At the moment of election therefore, the names of the candidates up for election were on one single 'master ballot'. Since the majority of the band was unlettered, it was impossible for all voters to cast their vote by their own hand. In any case, the Indian Agent appointed at the time, controlled the ballot, taking down the votes down one by one. In 1890, due to previous problems related to the public casting of votes, it was decided that "Only one person at a time may be allowed in the voting hall where the candidates and two witnesses along with the agent will be there at all time the preserve peace and order¹¹." The Agent also had the responsibility to hold a voting list usually handed down by his predecessor. At almost every voting year, the Agent would have to revise the list. This strenuous exercise often had to take into account a series of correspondences, letters, petitions and complaints contesting the eligibility of different people that had either been allowed to vote last election, or were planning to vote on the upcoming one. According to the massive amount of documents relating to this issue, the Agent had to filter through previous voting lists, censuses, paying lists, proofs of residence, baptism and marriage certificates – in short any document that could prove official membership to the band of St-Francis and thus the legality of a vote.

¹¹ Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 59, microfilm C-11230.

Depending on the voting year, the number of votes permitted per person would fluctuate. The latter variation was in direct connection to the interpretation of the laws by the Agent. The *Indian Act* of 1876 states that the selection "may be in the proportion of one head chief and two second chiefs or councillors for every two hundred Indians¹²." The Act leaves its reader to interpret whether another candidate could be elected after the initial two hundred people. Is the maximum number of members making up the Council attained with one chief and two councillors? After the initial two hundred, do an additional hundred add the possibility of another member to be elected? Or is it after another two hundred? Moreover, if there was to be additional Council members, the Act still did not precise if they were to be chiefs or councillors. In other instances, the Agent would go forward and either follow the procedure of his predecessor, make his own interpretation, or agree to those of the band itself. All these questions were brought up at some point during the first decades of the electoral system. Moreover, according to the records, since 1870s the population of St-Francis remained stable over three hundred people; the Abenakis could thus elect one head chief and two councillors, as the Act states verbatim. However, depending on some censuses and more precisely when they were taken, the population could fluctuate significantly varying on the month of the year and did not always limit its survey to band members only, but rather on the people residing on the reserve. Excluding the elections of 1876 when two chiefs were elected, only one head chief was to be elected henceforth. The question however never completely escaped debate; as late as the elections¹³ of 1890 was the band demanding a second head chief, along with four councillors¹⁴. The number of councillors however was a more troublesome matter. As the Agent clarified the issue prior to the election, the new chief and councillors could finally be decided.

¹² *An Act to amend and consolidate the laws respecting Indians*, Chap 18, sec 62.

¹³ There were two elections in the 1890s, one in June May and the other in January, the first being annulled on pretext that the date chosen was not conform to procedure: Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 53, microfilm C-11230.

¹⁴ Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 45-46, microfilm C-11230.

The election itself usually occurred in winter, in most cases during the month of January or early February, when most voters – Abenaki males of twenty one years of age and officially recognized band members¹⁵ – were residing in St-Francis and not away on the hunt. The date of the election would thus be announced and the whole procedure occurred over one day, presided and watched over by the Indian Agent. Each person eligible to vote would approach the Agent to verbally transmit his chosen candidates in front of two witnesses in the voting hall¹⁶. Electors would have a maximum of votes at any given year, even though every election several people chose to withhold using all their votes¹⁷ – a totally legal political decision. At the end of the 'election day', the Agent compiled the votes: the candidate with the highest number of votes would become chief; the ones with the second and third highest numbers would be named councillors, and so on until the established quantity of councillors had been reached to complete the new Council.

3. Participation

From H. Vassal's communications with the Department of Indian Affairs, the first elections at St-Francis can be considered a success. Once the date of election was announced, there was no protest. More tellingly however, was that six candidates presented themselves and a significant amount of voting actually occurred, enough for H. Vassal to state that

¹⁵ *An Act to amend and consolidate the laws respecting Indians*, Chap 18, sec 61.

¹⁶ In one exceptional case, the electors were asked to enter and give their vote only one at the time in the voting hall in order to preserve the peace. Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 59, microfilm C-11230.

¹⁷ Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, microfilm C-11230, Elections of May 1890: p. 33-36; November 1890: p. 63-65; January 1894: p. 150-151; Saint Francois Agency (Pierreville) – Elections of chiefs and councillors of the Abenakis Indians of St-Francois: February 1903, NAC, RG10, vol. 3060, p. 170-173, microfilm reel C-11318, January 1909: p. 323-325; January 1906: 121-124.

"Samuel Watso & Lazare Wawanonlet both had a large majority over their opponents"¹⁸. The following analysis of a survey of six election ballots ranging from 1890 to 1909 confirms that the population of St-Francis invested political interest into the new system.

The elections of May 1890, November 1890, January 1894, February 1903, January 1906, and January 1909, had 58, 68, 72, 84, 79, and 74 voters respectively. May 1890 is the odd one out, having the lowest participation numbers by far. The legality of this election was debated back and forth between the band, the agent, and the government, to finally be annulled on the basis that the date had been changed without proper notice¹⁹. Considering the drop in voters partaking, there was some obvious confusion in St-Francis. Only a few months later, in November 1890, the election was attempted once again. Whereas there was ten more voters than in May, fall was not the ideal season to hold the election. As the rest of the survey demonstrates, late January to early February were the months most likely to gather the highest number of people to the voting poll.

The annual reports of the Department of Indian Affairs present the total number of residents in St-Francis at any given time, but the census of 1890 offers the earliest statistics of greater detail. The total count for residents during that year was 379; 197 males and 182 females all ages confounded²⁰. Only males of 21 years and older were allowed to vote, which represented a total number of 92 eligible voters for St-Francis. In the elections of November 1890, 68 band members turned up to vote, totalizing an impressive participation level of 74%. Considering the largely unchanging population level of around 330 souls²¹, the

¹⁸ Saint Francois Agency – Request by the Abenakis of Saint Francois that they be permitted to elect two chiefs and four subchiefs and that Jean Harness and Salomon Benedict be confirmed as chiefs for life, NAC, RG10, vol. 1949, p. 32, microfilm reel C-11119.

¹⁹ Saint Francois Agency - Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 43-53, microfilm reel C-11230.

²⁰ *Annual Reports of the Department of Indian Affairs for the year ended 31st December, 1890.*

²¹ *Annual Reports of the Department of Indian Affairs for the year ended 31st December 1881, 1887, 1890, 1891;* and Saint Francois Agency (Pierreville) – Elections of chiefs and councillors of the Abenakis of St.Francois Indians, NAC, RG10, vol. 3060, p. 215, microfilm reel C-11318.

scenario and an average of 75 voters²² for the sample elections mentioned above, the same scenario can be extended to all the sample electoral cycles mentioned above. In fact, when combining all categories of the total averages of population, eligible voters, and those who actually voted, the participation level slightly increases to 81-82%; an impressive participation level even to modern day standards. Taking into account that some males could have been away on the hunt or elsewhere (for their basket weaving business for example), and that some may have been too sick or elderly to participate, the number of Abenakis that could and did vote could potentially have hovered around a staggering 85%.

4. Administrating the Band: The Elected Council Self-Determined?

The Band Council was designed to offer indigenous communities a municipal-type of administration, similar to those of their white neighbours. The proviso, as described in previous chapters, was that all Council decisions, no matter how trivial, had to pass through the Indian Agent, and to a higher degree, through the Department of Indian Affairs. On more important matters, as the Abenakis became increasingly versed in the political processes, they communicated directly with government officials. Their relentless participation and involvement of the Council in local affairs is testimony to what Claude Gélinas explained as a profound willingness to preserve their socio-political autonomy and to establish themselves as demographically significant population, capable of organising themselves coherently²³. In St-Francis, as soon as the first Band Council was elected, the new community leaders began taking the reins for all matters permitted by the Acts relative to a band's self-administration.

²² Excluding the annulled election of May 1890.

²³ Claude Gélinas, *Les Autochtones dans le Québec Post-Confédéral: 1867-1960*, Septentrion, 2007, p. 128.

Band Fund

The Abenakis of St-Francis, as a band, have often reported that they had little money. Some found a source of income in basket weaving, but the great majority of inhabitants lived meagrely. Consequently, any expensive projects or processes attracted careful attention from the Band Council and other aware individuals. The Abenakis kept a well organized record of the band's accounts. Especially in the late 1890s and early 1900s, archival documents offer a good account of the band's budget. Spending spanned across all categories of administration authorized by the *Indian Act*²⁴, ranging from the keeping of animals, land improvements, structural repairs, the appointment of constables, and the tenure of elections²⁵. While regular community needs were carefully documented and was administrated systematically, anything relating to land management created tension. Within the heavy amount of correspondences concerning this affair, discontent reached levels that lead to believe that there was a plot at every turn; whether it concerned Whites, the government, non-band members, band members, and Band Council members. As will be discussed more thoroughly in the forthcoming sections, anytime a sum had to be spent outside the regular budget, there was suspicion that somebody was trying to advance his personal gains. In reality, while information on the band's finances was available to everybody, administration of the fund, financial decisions and negotiations remained in the hands of the politico-elite.

²⁴ *An Act to Amend and Consolidate laws respecting Indians*, 1876, section 63.

²⁵ Abenakis of Saint Francois de Sales – Minutes of council held 26 April, 8, 15 June, 6, 9, 11 November, 19 April, 21 March, regarding sundry matters, NAC, RG10, vol. 3157, microfilm C-11332; Saint Francois Agency – Minutes of council meeting of the Abenaki of Saint Francois held 24 March 1897 regarding sundry matters, NAC, RG10, vol. 2902, microfilm C-11295; Abenakis of Saint Francois de Sales – Minutes of council held 26 April, 8, 15 June, 6, 9, 11 November, 19 April, 21 March, regarding sundry matters, NAC, RG10, vol. 2942, microfilm C-11301; Saint Francois Agency – Correspondence regarding the appointment of constables on the Abenakis of St. Francois reserve, charges against certain constables and law enforcement on the reserve, NAC, RG10, vol. 3030, microfilm C-9666.

Territory

The most pressing issue, common to almost all reserves in the valley of the St-Lawrence, was protecting what meager territory they had left. The first Band Council in authority tackled what had already become a recurrent problem in St-Francis: Whites, especially neighbouring Pierreville residents, encroaching on Abenaki land. One early occurrence relating to this issue began in 1879 and dragged on until 1881. Jean-Baptiste Charland, a non-Indian and resident of Pierreville, had been proven guilty of trespassing and cutting wood on the community's land²⁶. Members of the Band Council thus took it upon themselves to make their cause known and for justice be served; they wanted Charland to be criminally charged and demanded 300\$ for the damage he brought to the band. St-Francis had been exposed to this type of problem well before the emergence of the Band Council. Traditional chiefs Salomon Benedict and Lazare Wawanolette had accused the Indian Agent of providing too much latitude to Whites, especially in how they have been acquiring lands illegally from certain members of St-Francis, while some had not paid rent in over eight years²⁷. The two chiefs ended their correspondences disenchanted and dejected; no one was showing any interest in their affairs²⁸. The fact that the Band Council took up unresolved issues illustrates a continuation, but perhaps more accurately, a renewal in political energy and enthusiasm for political dialogue.

The village of St-Francis being located on the populous South Shore and so close to neighbouring Pierreville, the defence of Abenaki territory was for long at the top of the list in the Band Council's interaction with the government. One major issue that dragged on for two decades was the building of a railroad, projected to pass through the Abenaki community. In 1890, the Band Council energetically protested against the plan by weighting its ills: the

²⁶ Saint Francois Agency – complaint from chief Salomon Benedict concerning trespassing and cutting of wood on the reserve, NAC, RG10, vol. 2082, p. 8-16 and 30, microfilm C-11153.

²⁷ Saint Francois Agency – agent L.A. De Blois writes concerning rents due by white occupants of land on the reserve and the seignior, NAC, RG10, vol. 2021, p. 2-6, 71-73 and 95-96, microfilm C-11136.

²⁸ *Ibid.*, p. 95-96.

railroad would pass across the central properties of St-Francis, liquor would henceforth be easily available, and on the whole, the project would increase encroachment on the band and individual members²⁹. In 1902, the Council was able to arrange compensation for collateral damage on its land, the construction being halted until negotiations were agreed upon³⁰. Confrontations continued for several years however, with the Council and other members of the band again demanding compensation, or by directly interfering with railroad workers³¹. In fact, the Band Council launched its most aggressive and organized protest in 1907, while conforming to the political process accepted by white society, dictated by the law. On the 21st of January, the Council announced that they were going to present their official opposition plan in the briefest of delays, but they were unable to meet with Sir Wilfred Laurier during their visit to Montréal a few days later³². Their major grievances concerned the suspicious inequalities during negotiations between the railroad company and the indigenous proprietors in St-Francis, either in monetary compensations or land speculation³³.

On one particular occasion, conflict over land use occurred internally. In 1901, Louis Nolet and Samuel Msadoquis forwarded a request to have a new road built from their homes leading to a better access to the centre of the village³⁴. The project sparked protest from certain band members; some were wary of the honesty of certain Band Council members involved in the project, but the more tangible problem brought forth was that some would have their land damaged by the road. The political climate already volatile during this

²⁹ Saint Francois Agency – correspondence regarding the Quebec Southern railway company right of way on the Abenakis reserve, village of Pierreville, NAC, RG10, vol. 2473, p. 37, microfilm C-11226.

³⁰ *Ibid.*, p. 63.

³¹ *Ibid.*, p. 138 and 228.

³² *Ibid.*, p. 238.

³³ *Ibid.*, p. 262 and 299.

³⁴ Saint Francois Agency – request by the band for construction of a road called the Maurault road, NAC, RG10, vol. 2121, p. 4, microfilm C-11162.

period³⁵, debate raged on between band members, the Band Council, the Indian Agent and higher governmental authorities. The government, as the law indicated, had the final word. After revising the report of inspector Macrae, Indian Agent Comire and the majority of the Council in approval, the project was launched³⁶.

During the same politically active decade of the 1900s, the Abenakis in St-Francis defended their boundaries but also defined their relationship with the state. Illustrating this process, in 1902, the question of maintaining a fenced boundary between the reserve and the village of Pierreville was brought up. The debate was founded on whether the Abenakis should pay from their band funds to work on the fencing that would thus delineate their reserve. In May 1903, the Band Council was adamant that this was not their responsibility:

"Reserves up to the present time belong to the government and are thus not subject to the common law. It is therefore an innovation in our customs, altogether to our detriment, and against which we protest with all our might [...] The expense should be covered by the government without band contribution³⁷."

The St-Francis Band Council, while extremely vocal about its rights to justice, especially territorial integrity, was clearly positioning the community under the protective umbrella of the *Indian Act* – it was re-affirming its status as subject to the Crown. Oddly and without much explanation, the Band Council changed its views completely in 1911 which had until then supported the same position as in 1903. At the turn of the decade, the Council, without the regular leading figures of Joseph Laurent or H.L. Masta, decided it would take the matter into consideration³⁸.

³⁵ See Chapter 4, 2. *Opportunities Through the Band Council: Position, Power and Prestige?*; 2.3. *The Culture of Protest and Internal Turbulence*.

³⁶ Saint Francois Agency – request by the band for construction of a road called the Maurault road, NAC, RG10, vol. 2121, p. 84-85, 127 and 182, microfilm C-11162.

³⁷ Saint Francois Agency – correspondence regarding the building of fences by the Abenakis of Saint Francois, NAC, RG10, vol. 11201, p. 16-17, microfilm C-11226.

³⁸ *Ibid.*, p. 119.

Membership

The *Indian Act* enabled the Band Council to decide who could be accepted as a member. Described in the section 2. *Procedure* earlier in the chapter, and later in *Chapter IV* section 2.2. *The Brosseau Commission*, official membership was always a serious issue around the time of elections. Even after elections were confirmed, there was always contention on the legitimacy of certain individuals. In fact, the Robillard Inquiry sought to settle these controversies precisely. The Council would express its decision on the membership of a certain individual³⁹. In turn, the Indian Agent had the duty of double-checking the Council's claims, as with all band decisions. Since most issues rarely reached unanimity, the Agent and or the Band Council often wrote directly to higher officials. One scenario in 1888 prompted Joseph Laurent, chief at the time, to propose a period of probation of two to three years before being officially readmitted into the band⁴⁰. Laurent's reasoning was to test the individual's character for intemperance. However, as the future demonstrated, some self-called Abenakis of St-Francois only showed for elections, to sell their lands, or to cause trouble in general. Laurent's proposition thus proved sensible to the Indian Agent at the time, H. Vassal, who agreed to pursue the measure.

The *Civilization of Indian Tribes Act* in 1857, its provisions passed on through the *Indian Act*, hoped to pave the way for the indigenous populations to become full citizens, legally undistinguishable from other Canadians. The Band Council exercised some control on who may or may not become members⁴¹, but in the case of disputed membership, the

³⁹ Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 70, 143-144, 147-149, 185, 196-197 and 216, microfilm C-11230; Pierreville (Saint Francois) Agency – Correspondence, reports, memoranda, petitions and orders in council regarding complaints registered against agent W.C. Boucher, Chiefs H.L. Masta and Joseph Portneuf of the Abenakis band and irregularities in elections for chief of the band, NAC, RG10, vol. 2900, p. 267, microfilm C-11294.

⁴⁰ Saint Francois Agency – Chief Joseph Laurent of the Abenakis of Saint Francois is suggesting that there should be 2 or 3 years probation for the Indians applying for readmission into the band, NAC, RG10, vol. 2438, p. 2-5, microfilm C-11221.

⁴¹ Abenakis de Saint Francois – Resolution of the Abenaki Council of Saint Francois admitting Israel Msadaquis as a member of the band, NAC, RG10, vol. 2632, microfilm C-12788; Abenakis of Saint Francois – (Pierreville) – Resolution of the council to re-admit Daniel Emmett to the Abenaki band, NAC, RG10, vol. 2887, microfilm C-11292; Saint Francois Agency (Pierreville)

Superintendent made the final decision⁴². The same process was implemented on individuals who wished to emancipate themselves. In one of the few documented cases of enfranchisement from a member of the St-Francis band, the band held Council to oppose the demand of Pierre Emmett who wrote to the government in 1884 "I'd rather be subject to her Majesty's than to be deemed any longer an Indian in the meaning of the laws regulating to Indians [...] I beg of your honor to become enfranchised according to the true meaning of the Indian Act⁴³." The petition, forwarded by chiefs Joseph Laurent and Thomas Msadoquis, protested that Emmett did not deserve to be emancipated for lack of education. More importantly, the signatories were weary that emancipation would divide the little land the reserve held, and therefore demanded that the government let the Band Council decide on who may become proprietor and who should remain under the government's tutorship⁴⁴. Other than protecting communal land, band membership became a contentious issue particularly around election time. A few weeks prior to the day of election, party leaders approached people to vote for their party. More often than not, the opposing party got wind of who was being solicited, and thus followed a series of correspondences to contest the membership, and in extension the right to vote, of these would-be electors. The same problem repeatedly occurred after the results were made public; the losing party sought to overturn the decision by disqualifying certain voters – in some elections, the opposition won their case⁴⁵. In short, the strict control that the Abenaki Band Council in St-Francis hoped to keep over the

– Elections of chiefs and councillors of the Abenakis of St-Francois Indians, NAC, RG10, vol. 3060, p. 26, 67 and 145, microfilm C-11318.

⁴² Saint Francois Agency (Pierreville) – Elections of chiefs and councillors of the Abenakis of St-Francois Indians, NAC, RG10, vol. 3060, p. 23, microfilm C-11318.

⁴³ Saint Francois Agency – Correspondence regarding the attempt of Pierre Emmett to be enfranchised in the Abenakis of Saint Francois, NAC, RG10, vol. 2249, p. 5, microfilm C-12780.

⁴⁴ *Ibid.*, p. 9-14.

⁴⁵ Pierreville (Saint Francois) Agency – Report dated at Sorel 30 December 1898 of J.B. Brosseau, Commissioner, of the election of chiefs of the Abenakis of St. Francois held on 30 January 1897; and complaints against Joseph Portneuf, chief of the same tribe, NAC, RG10, vol. 2901, p. 730, microfilm C-11294. See *Chapter IV, 2. Opportunities Through the Band Council: Position, Power and Prestige?*; 2.2. *The Brosseau Commission*.

members of its band illustrates the importance it placed on establishing a legitimate and legal management.

5. Conclusion

Close contact with Pierreville, as well as their prolonged and continual relationship with the government rendered St-Francis in a particularly well disposed state to non-indigenous avenues of politics. In other words, the Abenakis had already been acquainted with the possibilities of Euro-Canadian political systems and its opportunities for new types of leadership. As discussed above, change in the tenure of chieftaincy had been in process in 1870, barely a year after the *Act for the gradual enfranchisement of Indians and the better management of Indian Affairs*. Most remarkable was that it was the band, albeit not unanimously, that demanded the switch to an elective system. The days of 'traditional' chiefs were counted, but the Indian Agent at the time sought to implement the law gradually. To his credit, the population embarked enthusiastically in the elective system from 1876 onwards. The establishment of Band Councils, therefore, did not provoke a great shock nor was it severely challenged in St-Francis. While there were some raucous elections⁴⁶, the system itself did not meet opposition. In fact as shall be discussed in the next chapter, most clashes in St-Francis emerged out of political competition to gain influence and leadership within the confines of the Band Council structure. Canadian laws, realities outside the reserve, and local problems confirmed to most Abenakis that the political customs of their forefathers might not be the best option to cope with the new state of affairs. The Band Council was thus the best, and from the 1970s onwards, the only tangible political tool for the Abenakis to express some self-determination and agency.

⁴⁶ Alexandre Benedict came in the house to proclaim his vote for Jos Laurent. His adversaries violently stopped him from exiting the house despite the opinion of the agent to let him give his vote. See Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 69, microfilm C-11230.

CHAPTER IV

EMERGENCE OF A NEW POLITICAL CULTURE

As the Abenakis emigrated from their southern lands northwards into Canada, eventually settling at St-Francis and Bécancour, the early influence of Christianity travelled with them and grew, owing to their cooperation and proximity with the French. Catholicism became the dominant branch and a founding component in the Abenaki social universe. This cultural bastion was challenged with the arrival of Protestantism, creating an ideological rift with the previously homogeneous society, coinciding with the Canadian government's application of laws that would forever change reserve communities. Through the newly imposed Band Council system, cultural and ideological realities within the reserve were offered new opportunities of expression that would have hitherto been contained by indigenous tradition.

The first segment of this chapter observes the factors enabling a smooth transition from traditional Abenaki political culture to a newly state-imposed system. A necessary first step was to dismantle traditional political tenure. The success of this process could only have been possible through a willing population, compliant in the replacement of customary modes of chieftaincy. The process launched, St-Francis witnessed the reinvention of their political leadership and the administration of its village through the implementation of the Band Council. The second segment of the chapter analyses the political life in St-Francis. In particular, the fact that the majority of the band's correspondences with the government were product of the competition fostered by a democratically elected body politic deserves attention. It was through these political confrontations that the Abenakis of St-Francis most clearly expressed their desire to recapture some degree of self-determination.

1. Change in the Guard

From its inception, St-Francis had been created as a Catholic mission. Mentioned in Chapter I, Catholicism had become ingrained in the culture of the St-Francis Abenaki¹. Moreover, it was one of the very few indigenous communities that had a functioning Catholic school – or a school at all for that matter. The Abenaki community had therefore evolved to encompass key elements that rendered it closer to a Eurocanadian municipality than a traditional Amerindian village. The advent of Protestantism therefore shook peace and order. The ensuing struggle for the maintenance of Catholicism in the community thus became an arena of contest that sheds light on the transitional dynamics of St-Francis. Initially, Protestantism affected pre-established cultural and educational aspects of Abenaki life. The manifestation of religious rivalries was thus contained until the government decided to apply the *Act for the gradual enfranchisement of Indians and the better management of Indian Affairs* in 1869, dismantling traditional chieftaincy and crystallizing the process already in progress – transforming the small Protestant following into a strong political faction rival to the Catholic majority. Undoubtedly, the coming of Protestantism upset the ideological balance of the village, but more tangibly, it was the leader of the faith that embodied and accelerated a new political culture. The Protestants found a leader to take the band of St-Francis to new directions, only to be checked by an equally ambitious leader who happened to be Catholic – thus began the rise of partisan politics in St-Francis.

1.1. Competing for Influence According to New Standards

A new wave of internal rivalries for leadership and influence within St-Francis started brewing in the early 1830s, triggered by a young Abenaki known as Pierre-Paul Osunkhirhine. Student in a protestant school in the United States, he soon returned to St-Francis and attempted to establish Protestantism as a rival faith to Catholicism. The man also known as 'Masta' found that the Abenakis were far from being reluctant to his teachings. A

¹ Chapter I: 1. *People of the Dawn: the Abenaki at European contact*; 1.1. *Migrations: the Settling of Saint-Francis / Odanak* and 3. *Undermining Traditional Land Tenure: Precursory Measures*.

few factors helped his cause: he was a resident of the village and he could communicate his message in the Abenaki language; while the Catholic priest that was associated with St-Francis visited weekly and spoke only French². Ambitious and full of conviction, Osunkhirhine attempted to gain position as a schoolmaster and became a nuisance at Councils by insulting chiefs and Bellenger, the Catholic missionary. Predictably, Osunkhirhine's antics pushed the Abenaki community into quarrel. The more severe accusation was how he was eroding the authority of the current chiefs, propelling a number of his adversaries to petition for his removal in 1832 and again in 1834³. To the joy of the village chiefs, Masta was removed as institutor in 1835, but bounced back by building a new Protestant chapel with the support of a religious society in the United States. Notwithstanding petitions and local opposition from Abenaki chiefs, Masta's chapel was built in 1837 with an entourage of ten faithful followers⁴. As a testimony to his tenacity, yet another petition from his opponents was sent in 1846 for roughly the same reasons as more than a decade before:

"That the conduct and proceedings of the Rev. P. P. Osunkhirhine Minister of the independent church of the Indian Mission of the said place of St François du Lac is of a nature rather capable of demoralizing his flock than to render them more moralizing in as much as he is the soul and instigator of Division and disorder about the mission. That in order to reach to his plans unworthy of a minister he adopts all the means that hatred, irreligion and tyranny can suggests. He even by times go so far as to adopt the banner of Catholicism and Atheism and that contrary to the intention of the said Honorable Society of A.B.C.F.M.⁵."

Osunkhirhine or Masta as he was called, had gained power and followers in the village. He established himself and the protestant faith as a real threat and act of defiance to the traditional chiefs, most of whom supported Catholicism and the *status quo*. Even as a targeted dissenter by the majority, the political context of Canada at these times favored his

² Joseph Anselme Maurault, *Histoire des Abénakis, depuis 1605 jusqu'à nos jours*, 1819-1871, Sorel: Gazette de Sorel, 1866.

³ Petition of the St-Francis Abenakis to William McKay, July 7, 1832, NAC, RG10, vol. 93, p. 37798-37799, microfilm C-11468, and Joseph Anselme Maurault, *op. cit.*

⁴ Petition of the St-Francis Abenakis to William McKay, July 7, 1832, NAC, RG10, vol. 93, p. 37798-37799, microfilm C-11468, and Joseph Anselme Maurault, *op. cit.*

⁵ Petition of John Stanislas and others to Reverends Anderson and Greene, February 14, 1849, UCCA, F 3387, doc. n° 67, microfilm D2.110.

initiatives and provided momentum to the challenge he posed to the pre-established Abenaki order.

In the case of St-Francis, Protestantism's leaders, doctrines, and institutions can be considered precursory to the values the government hoped to implant in Indian communities. In addition to Masta's success with the building of the chapel, a Protestant school was established in 1844. The Protestant movement had unarguably gained some impetus. From its barely ten followers in 1837, the school counted sixteen students. Ran by Simon Annance, the latter proclaimed the following as his school's goals for the education of the community:

"It is desirable that an English school should always be encouraged in this village to enlighten the children of the tribe that they may be something when they become grown persons. The best way to meliorate the condition of Indian Tribe is to give them learning as fast as it can be done, it is the best gift that will benefit them the most in future, they cannot always depend on hunting and as they are now surrounded by civilized people they must adopt a different life and of course they must have learning or else they will always be in a most degraded state⁶."

For Annance to state his mission as such, he and his Protestant clique were undoubtedly serious in their challenge against the Catholic order supported by the more traditional members of St-Francis. More importantly, in direct parallel with Masta, Annance was blatantly declaring that the current lifestyle Abenakis were following could not be maintained in an increasingly white-dominated society. Paraphrasing the message of Annance, to overcome their 'degraded state' and 'meliorate the condition of the tribe', children had to go to school to become 'grown persons' that would not only cope but strive in an increasingly civilized world (as opposed to their own 'uncivilized' people). Annance pushed the benefits of European-inspired schooling further two years later with a similar message about the necessity of becoming a useful member of society:

"We want a School on the basis of freedom, of utility and humanity: teaching the simple rudiments of English education, teaching the young Idea how to School, inculcating the principles of industry: and by infusing into the young mind, a taste and Love for the comforts of civilized life, leading the rising generation imperceptibly from the most Simple, to the higher branches of science, which make man an honor to himself and a useful member of Society⁷."

⁶ Pierre-Paul Osunkhirhine to Duncan C. Napier, March 5, 1846, NAC, RG10, vol. 603, p. 49126-49132, microfilm C-13381.

⁷ Noel Annance to Duncan C. Napier, November 9, 1846, NAC, RG10, vol. 603, p. 49187-49189, microfilm C-13381.

In retrospect, Masta, Annance and other followers of Protestantism in St-Francis were communicating new modes of survival in response to realities outside the reserve. Unsurprisingly, their discourse was imbued with Euro-Canadian values observable through the concrete initiatives of the Department of Indian Affairs at the time. For instance, the Superintendent urged the creation of manual labour schools despite his recognition of Indian tenacity to customs and habits, with an added punishment for student absence: "the missionaries may select the children for the manual labor schools & that the present to which they are entitled be made available to the schools & that non-attendance will exclude the children from their presents⁸." While the project of systematically sending Indians through manual labour schools did not take flight as the government had hoped, policy makers could celebrate some victories, albeit partial ones. By 1865, the pro-progressive Protestant school had a similar number of students than the Catholic one; the former with 25 and the latter with 36 students⁹. The authority of Traditional Chiefs had been cracked, leaving the population with self-doubt, thus engendering the open-mindedness and curiosity the government needed to more easily implement the system of Band Council government. Therefore, the series of worried if not alarmed tone of petitions and communications written by the Traditional Chieftains, proved to be justified.

1.2. Traditional Leaders Undermined

The Abenaki of St-Francis' almost immediate cooperation and recognition of 'municipal style' government had precursory signs. Prior to the imposition of an electoral process based on the Euro-Canadian model, Abenaki chiefs were wary of ambitious and independent minded leaders within their community that threatened to widen the gap between tradition and civilizing tendencies. Believing that the situation necessitated some form of

⁸ Extract from the superintendent's report, July 1, 1846, NAC, RG10, vol. 604, p. 49455-49458, microfilm C-13381.

⁹ Report of C.C. Obomsawine to William Spragge, January 18, 1865, NAC, RG10, vol. 611, p. 53902-53903, microfilm C-13385.

state intervention, the Abenaki Council petitioned the government to help counter the rise of dissident chiefs. According to those who signed the petition, some chiefs were:

"[...] acting contrary to the very purpose for which they were appointed to be chiefs for to do always the will of the greatest number of the Tribe by whom they were appointed and employed for the very express purpose that they may never do any other way than as the Tribe have always intended they should do, otherwise they would not have been appointed at all; for none would appoint any one to destroy his own purposes. In consequence of such wrong doings just mentioned, misunderstandings, contentions and troubles have arisen, not because the intention of the verbal constituted council is not known or indefinite, for the usage or custom has always made it very simple and well known, [...] that the chiefs never had any more power than to do what they and majority of the members of the Tribe have decided to be done [...] [*The dissenting chiefs*] aim to deprive of our undeniable right to exercise equal voices in deciding what concerns the whole Tribe, which must always be done by the united agreement of all the shareholders in what respects or belongs equally to all. It is easy to prove that the chiefs never had any exclusive right in what concerns the whole, for all our ancients have always called what belongs to our community, our common dish, to which no one has any more right than another [...]"¹⁰.

In short, some Abenaki chiefs were not only acting differently to the decisions decided by the Council, but in the opinion of the petitioners, they were also going directly against age old customs of trying to achieve consensus and acting for the common benefit of the community. In the same year, another petition was sent to the government, this time demanding direct intervention for the behaviour of one man in particular:

"That the conduct of the Rev. Peter P. Osunkhirhine since his appointment as local Agent for the tribe, as been such, that the undersigned representing their tribe and acting in their behalf, are imperiously called upon by their duty to make a complaint against the said local Agent in the following terms: That he has contemptuously refused the orders of the Chiefs when requested to give a certain sum of the money in his keeping for the use of the tribe in their common business; that he has attempted to reduce the power and influence of the Chiefs by encouraging insubordination among the young men, giving them the same weight and importance as the Chiefs in the councils of the tribe contrary to their common and ancient usage; that he has created and fomented dissension and discord in the village, that he may make himself the leading man, and dictate to the Chiefs what to do, and give them their money when he thinks proper; that he has appropriate the money to his own use on several occasions, declaring that he is not accountable to the chiefs for the money he receives as rent due to the tribe. Therefore, your petitioners pray, that before he may be dismissed from his charge before he does more [...]"¹¹.

¹⁰ Constitution of the St-Francis Abenaki Band Council, February 9, 1856, NAC, RG10, vol. 603, p. 49410-49417, microfilm C-13381.

¹¹ Petition from the Abenakis of St-Francis to Edmund Walker Head, July 7, 1856, NAC, RG10, vol.228, p. 135544-135545, microfilm.C-11539.

The accusations forwarded are of the most severe nature. According to the petitioners, Reverend P.P. Osunkhirhine was undermining not only the current chiefs, but the traditional pillars that enabled the band to function. Perhaps factionalism is too strong of a term to describe the trend emerging at St-Francis, but the fact remained that some individuals had accumulated worrying amounts of social and political power. Pro-modern influences, coming from both internal and external sources, proved disturbing enough to push the more traditional members of the village to create a written constitution – a rarity for any indigenous community – to immortalise Abenaki law and custom to any potential dissenters.

The position of Chief was becoming increasingly figurative in the latter part of the 19th century. Some members of the band were finding different avenues to gain influence within the band that would have been impossible previously. Previously in the chapter, the segment *1.2.Traditional Leaders Undermined* highlights this trend, which could most often be witnessed during negotiations with the increasingly paternalistic state. Yet, still observable today, the title of ‘Chief’ has yet to be abolished. The 1870s marks the transition to the government sanctioned system outlined in the *Act for the gradual enfranchisement of Indians and the better management of Indian Affairs*, 1869. Chieftaincy in St-Francis prior to 1876 still carried most of the traditional elements. Leadership was more abstract, less official, and less empowering than the European system. For instance, Louis Watso, senior chief for the Abenakis of St-Francis, had been named chief for life as was the custom, but no longer directly lead the band even though he maintained the highest political status: “To their knowledge they have only one old chief, Louis Watso, nearly a centenarian, and whose advanced age renders him incapable of acting as such¹².” The band was not headless however. Jean Hanness and Salomon Benedict were the two recognized chiefs and shared equal stature – and they were to be the last chosen outside of band elections¹³.

¹² Saint Francois Agency – Request by the Abenakis of Saint Francois that they be permitted to elect two chiefs and four subchiefs and that Jean Hanness and Salomon Benedict be confirmed as chiefs for life, NAC, RG10, vol. 1949, p. 9, microfilm C-11119.

¹³ Jean Hanness was elected chief at a council of the tribe. Salomon Benedict after his return from the Grand Council where he was named chief, he announced his nomination, to which there was no protest. See Saint Francois Agency – Request by the Abenakis of Saint Francois that they be permitted to elect two chiefs and four subchiefs and that Jean Hanness and Salomon Benedict be confirmed as chiefs for life, NAC, RG10, vol. 1949, p. 18, microfilm C-11119.

The flexibility and tolerance that Vassal showed for the dual system of leadership was not shared by all. Chief H.L. Masta, the rest of the elected Band Council and approximately 40 other signatories, wrote to the Superintendent of Indian Affairs in 1879 arguing that Salomon Benedict, still holding title of 'Chief' although not elected, should be deposed. According to the petition, Benedict incarnated every ill that the band hoped to get rid of:

"We don't want a tyrant. We never chose him. He's not worthy, he didn't win the esteem and confidence of the public [...] He works for his own interest and not for the people. He needs to forget himself and direct his care to make his people happy [...] Instead of maintaining order and decorum he sews disorder himself [...] He's not honest. He has retained money from the band [...] He is still today the source of our troubles, refusing to submit to the order of the Department and desires of the band [...] We wish for him to be removed from his post immediately¹⁴."

At least for this group of politically active Abenakis, they bought in the ideological foundations of the new system and its promise of serving the people; democratically elected leaders were therefore the only legitimate form of rule. Still, the Department of Indian Affairs thought wiser to keep Benedict's title valid for the time being, even though administrative exchanges only truly occurred between Band Council and state.

1.3. Rise of Political Competition

St-Francis would be one of the first bands to have not only willingly cooperated, but actively participated in the election-based system. In many respects, the new structure severed ties with the traditional form of governance and changed the face of Abenaki politics forever. In reality, Western-type democracy opened a window of opportunity for influential band members to gain positions of leadership that would have been previously impossible under traditional custom. In fact, for over three decades after the first elections St-Francis would witness the emergence of two 'new era' politicians that would dominate Abenaki political culture: Joseph Laurent and H.L. Masta. Every cycle, the two would compete for the

¹⁴ Saint François Agency – complaints by Chief H.L. Masta and other band members against Chief Salomon Benedict, NAC, RG10, vol. 2097, p. 2-4, microfilm C-11156 [own translation]

position of head chief. When one was not elected head chief, he would assault the Department of Indian Affairs with letters of careful wording. Election after the next, one would accuse the victor of "Dishonesty, intemperance, immorality, or incompetency"¹⁵, the exact characteristics that are outlined in the *Indian Act* that would justify government intervention for repudiation of title¹⁶.

Joseph Laurent

The first elections in St-Francis marked the official arrival of the Band Council system. Thereafter, the Canadian government no longer had to recognize Traditional Chiefs as head figures, wiping clean the mantle of leadership. As discussed above, the Protestant bloc inherited a strong leader in Masta who became an obvious candidate for a position of power in the community; yet, a void remained for the Catholic majority. Joseph Laurent emerged out of the group to become one of the most vocal and involved politicians of his era. More importantly, he became Masta's main opponent and provided a balance of power.

A man of his times, Laurent's career is a direct product of life in the reserve of St-Francis. He had been a hunter but had to resort to other means of subsistence as hunting lands were being increasingly restricted. Like the great majority of Abenakis living in St-Francis, he invested time and interest in the business of basket weaving, which lead him to create a dictionary to facilitate the learning of English in order to cut out intermediaries when handling business with Americans¹⁷. Inclined to gain influence in the community and notwithstanding his low level of education, Laurent was named by the 'Government Agent' for the Abenakis in 1865 and instructor for the Catholic school of St-Francis from 1868 to 1881¹⁸. Additionally, he held the position of 'Chief of Prayer', which combined ancestral

¹⁵ *An Act to amend and consolidate the laws respecting Indians*, Chap 18, sec 62.

¹⁶ Saint Francois Agency - Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 283, microfilm C-11230.

¹⁷ Sylvain Rivard, *Jos Laurent*, Québec: Cornac, 2009, p. 34.

¹⁸ *Ibid.*, p. 30.

spiritual elements of the traditional Abenaki healer with the tasks ordained by Catholicism¹⁹. This unique role exemplifies the syncretism of Laurent's character, which can also be extended to St-Francis' socio-cultural reality. In other words, Laurent, like the rest of the reserve, were attempting to reconcile the old with the new, the traditionally indigenous with the inescapable Western influence. At the dawn of the first elections in St-Francis, Laurent was thus already in an undisputable position of leadership and at the head of the Catholic majority, granting him position of head chief four times in total and twice as councillor²⁰.

Laurent and Masta had been school instructors, were well educated and corresponded eloquently with the government, and as the voting polls demonstrated, both managed to muster an almost deadlock number of followers. The fact that Laurent was associated with the Catholics and Masta with the Protestants adds a classic sense to their rivalry; in reality, it crystallized party politics in St-Francis. Having these two men as candidates, the voting was split in two. The law never stipulated that electors had to vote for candidates belonging to a certain 'party', but the tendency demonstrated that loyalty only rarely crossed lines. Taking the same five sample election ballots analyzed in *Chapter III, 3. Participation*²¹, the votes clearly illustrate the split. In the elections of November 1890, January 1894, February 1903, and January 1909, the number of electors that voted for both Laurent and Masta are minimal: 6, 2, 7, and 0 respectively. The ballot of 1894 deserves special attention. Six candidates were nominated, but a thicker line separated the two parties in two groups of three. This indicates that the Indian Agent, creator of the ballot, was aware of party politics and thus divided the candidates in two respective camps. Since the electors could vote for anybody, this 'line' was probably just a reference for the Agent, but it also illustrates the reality of political division. As only two people in the election of 1894 voted for candidates across the 'line', the political atmosphere in St-Francis undoubtedly was of intense division. In 1909, the trend was even

¹⁹ *Ibid.*, p. 37.

²⁰ *Ibid.*, p. 36. Laurent was elected Head Chief: 1879, 1884, 1887, 1990, and Councillor: 1897, 1906.

²¹ The election of May 1880 is excluded since it was annulled.

more extreme: while some voted across party lines, nobody voted for both unofficial leaders Laurent and Masta. This phenomenon is testimony to how far both of them managed to rally voters for their own party, but also how far Laurent and Masta grew apart. Considering how few voters decided to cross lines in 1909 when Laurent and Masta were candidates nominated for the Council, the election of 1906 demonstrates the exact contrary. In January of that year, 39 people voted across what had previously been established as 'party lines'. Obviously, the election of 1906 cannot be considered when analysing party politics in St-Francis – there is little or no trend observable. However, there is one determinant factor that can provide an explanation: H.L. Masta was not up for election. Without its leader, the 'party' usually opposing Laurent altogether disappeared – electors voted all across the spectrum, political polarization vanished. The tendency is ever more apparent when compared to the next cycle of election in January 1909 when Masta re-entered as a political nominee: out of 74 electors with five votes each, none voted for both Laurent and Masta out of eleven candidates. In short, Laurent and Masta were 'parties' by themselves; party politics were in direct correlation with their leadership and involvement. Prior to the 1890s, votes could be spread across all candidates, irrespective of their religious affiliation. But as Masta and Laurent gained experience and ambition in their political careers, they ostracized the opposing camp to effectively create a split in the voting populace²².

2. Opportunities through the Band Council: Position, Power and Prestige?

By participating in elections, signing petitions and writing letters, the Abenakis were building a new political culture. Embarking wholesale into the Band Council system, they decided to put their faith in a new generation of leaders that would solidify, protect, and empower their band. On the other side of the coin, Band Council elections could be interpreted as fostering all the ills of any modern democratic society: competition, avarice and dishonesty. No matter the incentives of electors and politicians to support the system,

²² Both Laurent and Masta used easy categorizations to polarize their opponents. See Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 196-205, microfilm reel C-11230. For greater detail on the electoral process, refer to *Chapter III, 1. First Elections in St-Francis*.

'doing what was good for the band' fuelled all behaviour. However, fact remains that the emerging political culture in St-Francis was constantly hostile, exacerbated by the partisanship embodied by its leaders.

2.1. Struggle for Influence

As soon as Laurent and Masta burst onto the political scene, almost every detail of village life was communicated to the Department of Indian Affairs. In the first decades of the creation of the Band Council, none more than Laurent corresponded with the government; sometimes going through the Indian Agent, but more often than not writing directly to higher representatives. He usually took the pen to contest elections when he was not elected chief – to be a councillor, or even worse, not elected to a position at the Council at all, was a personal catastrophe. He obviously believed in his personal abilities to lead and represent the band, and few could criticize his dedication. Nonetheless, Laurent had trouble swallowing the democratic choices of his people.

A few months prior to the elections, Jos Laurent and H.L. Masta made sure that no ills were attributed to his character. Laurent, during a Council meeting in 1890, made sure that the Indian Agent P.E. Robillard heard the band members present stating that they had nothing to reproach him, even though some criticism was directed towards his administration after several months of being elected chief²³. Masta would go through the same process, rectifying all accusations that had been made against him²⁴. As was to become custom, both leaders cleansed their reputations and enumerated the good they had brought to the band, especially in the crucial few months prior to elections – the most important period for the career of these ambitious men. In one episode during the electoral campaign of 1890, Laurent referred back to an inquiry pursued against him in 1880. No verdict of culpability was pronounced – he was thus more than fit to be chief, because the law would never tolerate

²³ Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 2-4, microfilm reel C-11230.

²⁴ *Ibid.*, p. 242-254

immorality, dishonesty, or intemperance²⁵. While raising his own position, he would simultaneously attack his political rivals, particularly the most threatening candidate, urging the government to pass sanction before the election: "Many complaints have been directed against H.L. Masta along the years, for his bad temperament and his drunkenness²⁶." Laurent must have sensed that he was losing influence around this time because Masta was elected on the Band Council, while he was not. Thus began the process of attempting to undermine the legality of the results. The reasons behind this effort were far from novel. Systematically, the losing party would forward petitions disclaiming the victors. In an overwhelming number of letters between 1876 and 1909, candidates and elected Band Council members were accused of intemperance, immorality, and lacking education, consequently unfit to rule. Additionally, opposing camps called each other out for corrupt practices, having paid for votes, distributed alcohol, recruited minors or non-band members²⁷. In the case of the 1890 election, violence and intimidation were also thrown in the mix of accusations²⁸. Agent P.E. Robillard – writing during the political campaign for the elections of 1894 – was stunned at the intensity of the competition. Having become a target himself, anytime that Masta or Laurent entered his office, he would be accused of favoritism²⁹. In January 1895, more than forty electors recognized the crippling problem:

"There being greater trouble in our Band than ever before, we can no longer place confidence in our chiefs [...] Therefore, we the undersigned, who voted for them in the last election of chiefs on the 24th of January 1894 together with our brothers of the band who voted adversely delegate to your Department Jos Laurent, ex-chief in order that he may better represent to you the alarming situation in

²⁵ *Ibid.*, p. 4-5

²⁶ *Ibid.*, p. 66, 71

²⁷ Jos Laurent being accused of having obtained fraudulent votes in the elections of 1880. See Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 127, microfilm reel C-11230. In the elections of 1894, Laurent accused Portneuf of having some fraudulent votes and Masta of having promised a feast to those who would vote for him. See *Ibid.*, p. 160.

²⁸ Saint Francois Agency – Correspondence regarding the desire of the Abenakis Indians of Pierreville to hold an election for their chiefs, NAC, RG10, vol. 2496, p. 91, microfilm reel C-11230.

²⁹ *Ibid.*, p. 136.

which we are and suggest to you the most effective way of putting an end to these difficulties and restoring the band peace which has been disturbed for years³⁰."

Chief or not, the majority of band members thought that the man most capable of fixing this crisis was Jos Laurent. Paradoxically, the same person was arguably the source of the problem. Even though the latter petition did not provoke any change from the part of the Department of Indian Affairs, it indicates that political influence, by contrast to political office, remained in the hands of a very limited number of candidates.

2.2. The Brosseau Commission

To his credit, Laurent's relentless protests managed to attract enough attention for the Department of Indian Affairs to launch an investigation of the electoral process in 1897. Contestation and talk of corruption had reached a climax that required direct governmental intervention. Usually, the Indian Agent would have been called upon to review the process, as was the case of many other scenarios preceding and following the election of 1897. In this particular case however, Laurent had directly accused appointed Agent W.C. Boucher of intemperance, of having arbitrarily tampered with the voting list, and of generally acting in concert with Masta in order to "govern the band by themselves³¹." In the midst of this tension, the citizens of Pierreville and traditional chief Salomon Benedict along with thirty signatories hoped to halt an investigation. Both groups sent a petition in an effort to counter Laurent and his followers, stating that Agent Boucher was an honorable man and that the complaints made against him were assaults from his political adversaries driven by vengeance³². The involvement of Indian Agents in the political affairs of their respective bands has been documented, but St-Francis has been fortunate to encounter this problem only moderately. However, the fact that Boucher was termed a 'political adversary' indicates that

³⁰ *Ibid.*, p. 284.

³¹ Pierreville (Saint Francois) Agency - Correspondence, reports, memoranda, petitions and orders in council regarding complaints registered against agent W.C. Boucher, Chiefs H.L. Masta and Joseph Portneuf of the Abenakis band and irregularities in elections for chief of the band, NAC, RG10, vol. 2900, p. 5-6, 9-12, 48 and 150-153, microfilm C-11294.

³² *Ibid.*, p. 97 and 106.

this particular agent might have been overly involved. Before the investigation was officially launched, Agent Boucher gave his resignation, which initially cancelled the project³³.

While the accusations directed toward Agent Boucher were now irrelevant, government authorities judged that commissioner J.B. Brosseau should go through with the inquiry. A large number of interviews with candidates from the losing and winning parties were conducted, guided through six points of thorough investigation: minors, non-members, absences, drunkenness, corruption, and undue influence³⁴. In terms of number of votes disallowed, the numbers are unimpressive. In total, out of the six categories stated above, only six votes were annulled. Nonetheless, the process did bring to the surface the illegality of some key votes, which in most cases were attributed to the victorious candidates, pre-investigation. Masta's campaign suffered the most from Brosseau's inquiry, having his vote tally fall from 46 to 42 and thus losing his position in the Band Council, comprised of one chief and two councillors at the time³⁵. Joseph Portneuf and Pierre Emmett also both lost votes, but remained in the Band Council, the former maintaining his position of head chief. In the end, the only change in the Council was Laurent replacing his main adversary, Masta.

2.3. The Culture of Contest and Internal Turbulence

In commissioner's Brosseau opinion, the result of the election of 1897 was of secondary importance. Omitting comments about Portneuf and Emmett in his concluding remarks, Brosseau's short stint in St-Francois confirmed what had become obvious; in reality, the leaders of the band were none other than Laurent and Masta, no matter the electoral

³³ *Ibid.*, p. 113.

³⁴ Pierreville (Saint Francois) Agency – Report dated at Sorel 30 December 1898 of J.B. Brosseau, Commissioner, of the election of chiefs of the Abenakis of St. Francois held on 30 January 1897, and complaints against Joseph Portneuf, chief of the same tribe, NAC, RG10, vol. 2901, p. 730, microfilm C-11294 and Pierreville (Saint Francois) Agency – Correspondence, reports, memoranda, petitions and orders in council regarding complaints registered against agent W.C. Boucher, Chiefs H.L. Masta and Joseph Portneuf of the Abenakis band and irregularities in elections for chief of the band, NAC, RG10, vol. 2900, p. 150-153, microfilm C-11294.

³⁵ *Ibid.*, p. 150-153.

results: "Masta and Laurent, from their education, ability, and influence, outside the election, are the true leaders of the band. Before they worked together, but the creation of one chief and two sub-chiefs is the apple of their discord". He continued by stating that "the old system of one chief and councillors may be suitable for some tribes but not the Abenaki" and that according to the law, it was possible for them to "have four chiefs or councillors, all holding equal rank³⁶." Brosseau had identified the source of the heavy political tension in St-Francis: the two most competent leaders of the band were constantly undermining each other, their energies focused at gaining the position of chief. Furthermore, he recommended that the electoral process be slightly modified to encompass the nomination of four chiefs of equal stature. In Brosseau's opinion, the competition fostered by democratic elections – a creation of the Band Council system – was detrimental to Abenaki political culture. Perhaps due to the fact that Brosseau's conclusions were directly opposed to the efforts and ideology of the government, the system remained *status quo*.

At the turn of the 20th century, the string of controversy over the result of elections and the burdensome back and forth debates over the legality and morality of those in power reached a new climax. In 1901, Indian Agent Comire wrote: "It is impossible to please everyone. The Indians are jealous of each other and all want me on their side. If I am forced to take part in one issue or another, they send a letter of complaint". In 1903, the problem persisted: "Louis Watso and Thomas Msadoquis have spent their time making complaints about chief Jos Laurent. They are jealous of him and sow dissension among Indians in order to make political capital. I am convinced that right and justice are on the side of Laurent³⁷." Bitterness and distrust can also be illustrated within the project of building the Maurault road³⁸: "The band is against Laurent's proposition to build a road because he is only serving his own ends by enhancing the value of the lands he owns at the cost of the band which has

³⁶ *Ibid.*, p. 150-153.

³⁷ Saint Francois Agency – Correspondence regarding the appointment of constables on the Abenakis of St. Francois, charges against certain constables and law enforcement on the reserve, NAC, RG10, vol. 3030, p. 29 and 46-47, microfilm C-9666.

³⁸ See Chapter 3, 4. *Administating the Band: The Elected Council Self-Determined?*

little money³⁹." Competition had in fact grown so fierce that it had become customary to contest the results of the elections. Headed by Laurent, the defeated party in the elections of 1903 wrote to the government demanding its cancellation on the grounds that the process has been irregular, illegal, and informal since the last elections of 1900⁴⁰. By now, St-Francis had been undergoing elections for more than two decades, and the governmental authorities were getting used to its party politics and intense political rivalries. The Department argued that "Laurent should have expressed his views on the last occasion in 1900 or at any time before the present, and not after⁴¹."

Having been elected on several occasions and gaining the confidence of higher authorities surely must have fostered Laurent and Masta's sense of entitlement; even when not elected, they continued their correspondences with the Indian Agent and the Department of Indian Affairs. On the quotidian, they made sure their voice was heard. Thomas Msadoquis and Louis Gill, councillors between 1903 and 1906, complained that Laurent and Masta showed up to meetings to annoy the Council and throw some insults thereby turning the people against the elected Council; Laurent went as far as saying that the current Council had done nothing good for the band⁴². Msadoquis also took the pen to accuse chief Jules Paul Denis of not caring about the band, provoking a response by Denis stating that Msadoquis is a traitor to the band, his wife, and the government⁴³. Agent Comire entered the chaos and declared Msadoquis a hypocrite, a liar of no good faith, constantly changing camps and betraying them in succession⁴⁴. Laurent's response to this endless political bickering – again, largely fuelled by the latter – was to gather his political followers and current councillors

³⁹ Saint Francois Agency – request by the band for construction of a road called the Maurault road, NAC, RG10, vol. 2121, p. 22, microfilm C-11162.

⁴⁰ Saint Francois Agency (Pierreville) – Elections of chiefs and councillors of the Abenakis of the St.Francois Indians, NAC, RG10, vol. 3060, p. 298-307, microfilm C-11318.

⁴¹ *Ibid.*, p. 309-312.

⁴² *Ibid.*, p. 19 and 40.

⁴³ *Ibid.*, p. 21 and 24.

⁴⁴ *Ibid.*, p. 33.

favorable to him and forward a proposal arbitrarily nominating himself as chief: "[...] even if Laurent does not receive a majority number of votes, we still wish that Laurent be preferred to any other to have the title of first chief and for us to be councillors[...] even if we all received enough votes to enter the Council, it is in the interest of the band, believing that Laurent is much better qualified than us⁴⁵." The elections of 1906 proceeded as all others before, but Jos Laurent only reached the title councillor, whereas Nicolas Panadis was named chief. Despite the fact that Panadis was one of the signatories of the request highlighted above favoring Laurent, the latter stated that it would be a retrograde to have an uneducated chief such as Panadis⁴⁶. Again, the government chose to ignore the veteran statesman, and so did the voters. Undoubtedly, Laurent's message must have gotten stale; in the following elections of 1909, he was not even elected in the Council.

3. Conclusion

The balance of power in St-Francis had been maintained by tradition and custom; before the mid-nineteenth century, life in the community was not much different than at the moment of the villages' inception. Stability was disturbed by a strong and ambitious leader, hoping to attract some people toward Protestantism. H.L. Masta was successful in convincing a few band members to follow his faith, which led to the development of an opposing camp to the previously heterogeneous Catholic population. More importantly, Masta brought with him a set of values and ideologies that were closer to the Euro-Canadian mould than the indigenous Abenaki. At least in part, he was responsible for accelerating the rift between tradition and 'civilization' by challenging the authority of the pre-established order. Realities of geography, demography, and the elaboration of law relative to the Indian population were going to affect all bands in the St-Lawrence valley. In the case of St-Francis, a few enlightened people had already been seeking ways of expressing agency externally and internally.

⁴⁵ *Ibid.*, p. 137.

⁴⁶ *Ibid.*, p. 162-166.

The passing of the Act of 1869 and the subsequent establishment of the electoral system in St-Francis opened the political field, albeit according to the Euro-Canadian model of law for the reserves. Two men in particular, H.L. Masta and Jos Laurent, jumped on the occasion to lead the band. While religious affiliation was their initial subject of discord, it soon became secondary to the political parties they came to embody. Elections were thus conducted with Masta and Laurent leading the ball until the 1910s, becoming the epicentre of Abenaki political life. To the surprise of the Department of Indian Affairs, controversy and protest came around every four years with the approach of a new electoral cycle. The government would receive and respond to the correspondences sent by St-Francis' inhabitants and would address issues concerning the legitimacy of the results – never did they change their policies to accommodate the realities of this reserve in particular, even when proposed by non-Indian officials⁴⁷. In conclusion, the ferocity and tenacity of political adversaries illustrated the importance the Abenakis placed on the control of their own destinies, no matter the limitations of Band Council law.

⁴⁷ See Chapter IV, 2.2. *The Brosseau Commission*.

CONCLUSION

Western scholars, from the 1960s onwards, have helped define the status of indigenous people through time and within their respective postcolonial societies. While some shared the altruistic motive of moving closer to a state of reconciliation, their work undoubtedly expanded understanding in the field of indigenous experience. Enlarging the academic field of indigenous studies brought parallel developments in the treatment of legal struggles between governments and their indigenous populations. The project presented above is thus a product of these two paradigms; the study provides continuity within the scope of *Native Studies* through a politico-judicial framework of analysis. The case study of Odanak in particular is part of a larger project of understanding the implementation of *Band Councils* in the province of Quebec, its communities having been the first subjected to the political system instated by the Canadian government.

This research paper was developed under four guiding frames of observation: the precursory actions from the colonial state that eroded pre-1812 customs, paving the way for the establishment of a new legal framework; the elaboration and evolution of the official Band Council government policy; the initial process of implementing the Band Council system; and the transformations of indigenous political culture within the band of the St-Francis Abenaki. Primarily centered in the period following the War of 1812, these angles of analysis were discussed through four chapters.

Chapter I focused on the colonial state as the instigator of change for communities in the Eastern Americas. It can be argued that the New World was forever altered the moment Europeans set foot on it. In fact, this section started with an overview of the first contacts between the Abenaki and European settlers. As encounters became more frequent and prolonged, indigenous social structures were affected. In the case of the Abenaki as with most Eastern nations, the observable transformations were adaptations in answer to the new political, economic, social, and cultural positions native people were confronted with. From the fur trade to pressure by settlers in Abenaki territory, to open military conflicts to written agreements, culminating in the exile of a large proportion of their people, the 17th and 18th

centuries changed Abenaki life in almost every aspect. The trend continued as the *Seven Years' War* drew to a close. The Abenaki people, traditionally allied to the French during almost every conflict, were left to face British domination on the continent. With the war of 1812 marking the final conflict that primarily opposed two non-native powers, the British Indian Department began taking concrete action toward indigenous people within what they considered 'Crown Territory'. Undoubtedly, Indian bands living within its boundaries had been subjected to a much different reality than more Western bands. The chapter thus served to contextualize this situation: as Canada approached the mid-nineteenth century, indigenous identity, territory, culture, and economy was already under transformation. In direct parallel, the colonial state was increasingly taking strides to organize legislation that would establish its dominance permanently.

Chapter II observed the establishment of Britain's colonial vision. As European powers scrambled to gain influence in the New World and beyond, all had their strategies and priorities. In the British colonies, most efforts were directed at securing military dominance especially through alliance with the Iroquois and their web of influence. More than any other imperial power, Britain sought to legitimize their authority through legal means. On the mainland, British intellectuals and politicians were constantly formulating policies and reconceptualising colonial laws that would put their mind – and that of public opinion – at ease with their endeavours overseas. The most important, and a hallmark of British colonial culture, is the formulation of property law. Through this legal construct, the British were able to justify an Empire that rested largely on territorial possession. In deciding the future fate of Indians within the developing Canadian society, ideologies, concepts, and social experiments became laws often through *ad hoc* legislation; little or no room was left for indigenous self-determination. The most notable effect of these laws, culminating in the *Indian Act* of 1876, is still present to this day. Whereas almost every aspect of Indian life was altered during the nineteenth century, no greater effort was placed in order to transform traditional indigenous political systems. The desired effect was to make Indian communities resemble Euro-Canadian municipalities as much as possible. The legal process in the implementation of this objective therefore constituted the chief foundation for this chapter.

Chapter III examined the concrete effects of the Band Council legislation on the community of Odanak. Not only has this form of government replaced traditional chieftainship, but as many other communities, it remains to this day the form of governance in native reserves. The process by which Odanak's inhabitants adopted the Band Council at the turn of the 19th century provided key insights into a new phase of indigenous politics through state-imposed structures. Analysis centered firstly on the electoral procedure in order to paint a picture of this brand new event within an indigenous society. Secondly, participation tendencies revealed key indicators of the system's success and acceptance. Finally, observation of the Band Council's duties within the framework of Canadian law illustrated what issues concerned the Abenakis of St-Francis and how they went about acting upon them within the entity of a band.

Chapter IV examined the new political dynamic created by the imposition of the Band Council. The chapter highlighted how traditional chieftaincy was replaced by a new group of enthusiastic leaders that seized the latest opportunities presented by the emergence of an un-indigenous system of governance based on the European model. Only through the new socio-political realities outside the reserve combined with the state-imposed Band Council could these leaders have emerged. In particular, H.L. Masta and Joseph Laurent are two characters that steered the Abenakis of St-Francis away from traditional chieftaincy by fully embracing elective politics. The importance of these two men cannot be overstated; it is largely through their involvement, conflicts, and the importance they placed in the system that the Band Council quickly established firm roots in the hearts and minds of the community. In short, they were largely responsible for the instant success in the process of implementing the Band Council. Through the struggle of these two political opponents, the importance the Abenakis put on the acquisition of political power came to light. Albeit limited, it provided a renewal in the sense of agency and self-determination for this indigenous band.

In conclusion, to finally settle the question of the indigenous population, government officials recommended to greatly modify or extinguish the existing authority of chiefs, being the only way to teach "Indians to feel and value personal Independence both in Property and

Conduct¹." Indigenous communities in the valley of the St-Lawrence were the first to feel the effect of this initiative, giving birth to the establishment of Band Councils. Odanak, or St-Francis as the village was called in the nineteenth century, had already been introduced to Euramerican cultural and social mores. Geography, demographics, and the ephemeral nature of their land title rendered St-Francis a target for land-hungry outsiders; simultaneously, the proximity and quantity of exchanges with Whites rendered St-Francis an ideal candidate to start implementing the Band Council experiment. In addition, the return of P.P. Osunkhirine (Masta) from the United States challenged Catholic homogeneity. Beyond the religious confrontation, Masta shook the pre-established order by making his demands through direct correspondence with the government, as well as spreading a new set of values through his church and school.

In other words, St-Francis' socio-political foundations were already weakened and in some respects, in a state of metamorphosis by the time the government imposed Band Councils. New leaders became influential outside the structure of traditional chieftaincy; Catholicism was no longer the sole faith binding the community together; the political fabric of the band was questioned and adaptive solutions were forwarded. All these factors help explain why the Band Council's system was not challenged but in fact, elections proceeded with high participation levels and the elected Council took to administrating the band albeit with the limited powers it was granted by the law. The new system created avenues for the attainment of political power that would have been inaccessible in the traditional indigenous political structure. In the honest opinion of Commissioner Brosseau, the competition that he felt it created was poisonous for the social fabric of the band; St-Francis became obsessed with elections and political parties constantly undermined each other even after decision was rendered. According to Brosseau, the position of head chief was consuming the population.

Still, for this Abenaki population, it has become clear that they welcomed the change. The enormous amount of correspondences regarding the result of elections and the actions of the elected Council demonstrates the considerable degree of socio-cultural investment the band placed in the municipal-type organization. This least can be said for the first decades of

¹ Report from a committee of an executive council for Archibald Acheson Gosford, June 13, 1837, NAC, RG10, vol. 792, p. 7597-7624, microfilm C-13449.

the Band Council of the Abenakis of St-Francis, they had faith that it would provide them with some degree of agency and self-determination.

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