

10-9-2019

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### Repository Citation

Jacques Vanderlinden, *French Jurisdictional Complexity on the Fringe— Acadia 1667-1710*, 12 J. Civ. L. Stud. (2019)  
Available at: <https://digitalcommons.law.lsu.edu/jcls/vol12/iss1/3>

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# FRENCH JURISDICTIONAL COMPLEXITY ON THE FRINGE, ACADIA 1667-1710

Jacques Vanderlinden\*

## ABSTRACT

*During the second half of the 17th century of French formally institutionalized colonial power in Acadia, the province was in an interesting state of jurisdictional complexity insofar as French colonists were concerned. While native Amerindians, mostly Malecites and Micmawqs, carried their pre-colonial political order and jurisdictional organisation without almost any interference of the colonial power, imported normative systems derived from feudalism, the Catholic Church, French colonial order, French provincial customs and family organisation were juxtaposed and interacted, each of them were a well-known part of the Western legal tradition. Yet—and this is the most interesting—the state power, which was prevalent on the books, was virtually completely absent or ineffective during this period. As a result, Acadia could thus provide an interesting example of “critical” (the Roderick Macdonald’s formulation) or “radical” (the Jacques Vanderlinden’s formulation) legal pluralism, both located outside of any specific state system, though without excluding law from the policy of the social landscape.*

Keywords: jurisdiction, complexity, Acadia, France, civil law, 17th century, 18th century, legal pluralism

**Prologue. About an Old Friend of Mine.** Jurisdictional complexity is an old friend of mine, although for a long time she has worn different dresses than those of today; after all, fashion changes as time passes. I met her in the spring and summer of 1959 when accomplishing my first research assignment as an *attaché de recherche*—the lowest rank among research fellows at the Institute for

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Sociology of the Free University of Brussels—in the Zande<sup>1</sup> country. I was assigned to the study of customary land tenure as expressed in the case law of the “customary” jurisdictions. Once in the field, I realized quite rapidly that: 1) these native courts were subjected to the control of European district courts; 2) in their daily work, well-intended civilizing missionaries regularly intervened as soon as their own view of what law should be justified it in their eyes; 3) besides the native courts as labelled by the European, other genuine and clandestine native courts existed of which the communities enforced the decisions; 4) sometimes the native courts of the two classes, would send back the decisions—especially on family matters—to the heads of the groups involved; and 5) every Zande, when confronted with litigation, made his own choice depending on various factors, sometimes quite different from one another and quite personal. This was definitely a totally new situation for a recently graduated young lawyer from a highly “positivist” faculty, which for five years had tried to persuade him that there could be no choice of court of his own in a system—the Belgian one—where there was no place for doubt about what law was. Oddly enough, he decided that the Zande way was the right one when approaching law and entered the category of the so-called legal anthropologists. This fitted perfectly with his vocation of legal historian, although he had no official qualification to call himself this, other than the degree he obtained some years later of *agrégé de l’enseignement supérieur* in both legal history and comparative law after defending a thesis on the concept of code in Western Europe from the 13th to the 19th century. Note that, at the time, Western legal tradition was not yet fashionable.<sup>2</sup>

Back from the Zande country, the necessities of life brought me far away from the jurisdictional complexity of the Zande, until the

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1. The Zande are an ethnic group living on the borders of the Central African Republic, the Congo Democratic Republic, and the Republic of South Sudan.

2. JACQUES VANDERLINDEN, *LE CONCEPT DE CODE EN EUROPE OCCIDENTALE DU XIIIÈME AU XIXÈME SIÈCLE. ESSAI DE DÉFINITION* (Éditions de l’Institut de Sociologie, Université libre de Bruxelles 1967).

time of retirement came and I became interested in a relatively neglected field: Acadian legal history (neglected just as the Zande country was some thirty years earlier). The main difference however was that, in the meantime I had turned a classical legal pluralist in 1972 and a radical one in 1992—burning with intense satisfaction what I had adored (if one may say so!) and had earned a 20-year reputation in the French academic world. Of course, forum shopping, another disguise of jurisdictional complexity, was since then a fundamental characteristic of legal pluralism according to Vanderlinden.

The author has introduced himself with all his bias. Let us enter the setting of the play.

**Introduction: The Setting.** The year 1667 is a significant time in the history of the sources of law in France; it is that of the promulgation of the first of the *grandes ordonnances* characterizing the reign of Louis (“*L’État c’est moi*”) the 14th bearing this first name. It is also the year when France reassumed, formally through the Treaty of Breda, its power on what was then known as Acadia,<sup>3</sup> which had been conquered by colonists coming from New England in 1654. At the time, the monarchy was abolished in England and the Instrument of Government recently established the Protectorate in 1653.

From 1667 to 1710, in principle, Acadia lived under French rule. What does this mean exactly, especially when one deals with jurisdictional diversity?<sup>4</sup> In 1688, under French rule, the first royal judge was appointed, followed by a notary, and a *procureur* representing the king in legal matters.

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3. Acadia (in French *Acadie*) was a colony of New France in north-eastern North America that included parts of eastern Quebec, the present Canadian Maritime provinces, and modern-day United States Maine to the Kennebec River. See WILLIAM D. WILLIAMSON, HISTORY OF THE STATE OF MAINE; FROM ITS FIRST DISCOVERY, A. D. 1602, TO THE SEPARATION, A. D. 1820, INCLUSIVE 27 (Glazier, Masters & Co. 1832).

4. I am not dealing with jurisdictional diversity during the previous periods of Acadian legal history, which are even more difficult to study due to the lack of sources, and about which I would conjecture that diversity and their quasi-total lack of hierarchy are the main characteristics.

There were also indications of the existence of a *lieutenant général*. As we shall show later, we do not know much regarding the *lieutenant général* and even less in his assumed capacities as a judge. Additionally, as of 1670, there was a succession of “provincial” governors for Acadia. However, their functions were essentially military. Also, their location on the south-western or far western border of the province faced the English possessions of New England, which considerably reduced their administrative capacities; especially since two of them spent a good deal of their term of office as prisoners in Boston after being defeated by the New Englanders.

Furthermore, the situation was quite unstable before it worsened in 1710 by the everlasting fall of Port Royal. In the meantime, a naval squadron attacked the chief town of the province in 1690 and captured the third governor who ended his career in Boston. The remnants of the French administration, including an interim governor, took refuge in the upper valley of the Saint John River, while a group of settlers swore fidelity to the English crown. However, at the same time, these settlers “administered” the main part of the local population with the approval of the absent French interim governor. At least from the French point of view, the full official administration resumed power for ten years in 1700 with the appointment of an administrator of Acadia, followed within a year by a full-rank governor.

As a representative of the king, the governor oversaw a small population spread on a vast territory. The census of 1686 refers to 882 inhabitants in Acadia. The main group lived in Port Royal, where the governor and the lieutenant normally resided, and had had a headcount of 592 inhabitants; the remaining 290 were scattered throughout six regions, with a maximum of 127 in Beaubassin and a minimum of 15 in Cap de Sable. As the crow flies, these locations were 100 to 200 miles away from the administrative and judicial centre of the province. In the difficult period running from 1690 to 1700, when the acting governor and the judge took refuge in Jemseg or Naxouax up the Saint John River on the north western periphery

of Acadia (although the distances were roughly the same for the far eastern locations on the Atlantic coast) the navigation up and down the river and in the *Baie française* was made difficult by the regular presence of Dutch and English ships.

Last but not least, Acadia was still a possession of the restored English crown when Louis XIV promulgated in 1664 the *Édit portant établissement de la Compagnie des Indes occidentales*. This *édit* (edict) was the fundamental law of New France, of which Canada was part with Louisiana, *Terre-Neuve* (Newfoundland) and the *Île Royale* (the Cape Breton Island of today). The edict was thus never formally promulgated in Acadia, though the territory was *de facto* considered as part of New France. However, how much were its administrators (not to mention its population) fully conscious of its contents is another story. The more so, the French administrators disembarked in the province coming directly from France.

A word finally about the position of the Amerindians in this setting. Their position was clear as all evidence shows. From their point of view, the Algonquins, Malecite, and Micmawks living in Acadia were simply at home and tolerating the French colonists as long as they were useful and not a nuisance. No treaty was ever signed by any of these ethnic groups with France. There never was any conquest of their territory, which could have led to a transfer of territory. Thus, from the European point of view, there may be no justification of French sovereignty over the territory, if one refers to the public international law of the times. Both sides were indeed under illusions, which did not match those of the other, a perfect example of a misunderstanding in the full sense of the word.<sup>5</sup>

Despite the difficulties of the last period of French rule in Acadia, which has just been outlined, we have a reasonable amount of evidence regarding the complexity of jurisdictional

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5. On the question of French sovereignty on Acadia, see Jacques Vanderlinden, *Une colonisation atypique – La France en Acadie (1604-1713)*, 43 BULLETIN DES SÉANCES DE L'ACADÉMIE ROYALE DES SCIENCES D'OUTRE-MER 517-541 (1997).

orders in the region. It challenges the wording of article 34 of the abovementioned *Édit*:

The judges established in these places will be bound to judge in accordance with the laws and ordinances of the Kingdom, and the Officers to follow and conform themselves to the Custom of Paris, following which the inhabitants will be able to contract without being allowed to introduce any other custom in order to avoid diversity.<sup>6</sup>

Thus, one judge enforcing one law. “Ay! There’s the rub.” But, rub or no rub, let us consider one by one the *dramatis personae* who contributed more or less to the jurisdictional complexity of Acadia at the end of the 17th and beginning of the 18th centuries.

**Jurisdiction 1: The King.** As all European kings of his time, Louis XIV was the supreme fountain of justice, and with the assistance of his council, they were the ultimate jurisdiction in the kingdom. In this respect, his intervention in favour of Marie de Saint-Étienne de la Tour, widow of Alexandre Le Borgne de Belle-Isle, at her request in a conflict that opposed her against the children of her brother, Charles de Saint-Étienne de La Tour, regarding a farm and a mill, provides us with an example of a royal jurisdictional act.<sup>7</sup> Such direct judicial action from the king was however not frequent when compared with the legislative or administrative history of Acadia, but this is beyond the scope of this paper. Furthermore, the king in such circumstance would sit *en Son conseil*, and the decision was as much his (and perhaps less) as that of his advisers. This being

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6. The above English text is a free translation of the original *Édit portant établissement de la Compagnie des Indes occidentales*, art. 34, which reads as follows:

Seront les juges établis en tous lesdits lieux, tenus de juger suivant les loix & ordonnances du Royaume, & les Officiers, de suivre et se conformer à la coutume de la prévoté & vicomté de Paris, suivant laquelle les habitans pourront contracter sans que l’on puisse y introduire aucune autre coutume pour éviter la diversité.

7. The most important noble families of Acadia were involved in this complex case. See JACQUES VANDERLINDEN, *LE LIEUTENANT CIVIL ET CRIMINEL, MATHIEU DE GOUTIN EN ACADIE FRANÇAISE (1688-1710)* 133-138 (Université de Moncton 2004) [hereinafter VANDERLINDEN, *LE LIEUTENANT*].

the case, there is plenty of evidence about what happened behind the stage in Versailles at the court of the *Roi-Soleil*. A constant, more or less discreet arbitration or bargaining process that involved the main officeholders took place in order to solve rivalries between royal officers in Acadia. The actors who took part in the process—be it the Acadian officeholders (who never hesitated to travel to Versailles to plead their cause), the minister of the Navy, or a lower level courtisan—were not numerous. Also, on the Acadian end, the apparent impact of the decision taken at the upper level were often limited to two persons. Yet, if the parties were members of the judicial or quasi-judicial establishment, it may have had an effect on the daily operation of jurisdictional complexity in Acadia.

**Jurisdiction 2: The No Case or the Judge.**<sup>8</sup> Like in France at the time, the judge in Acadia was a styled lieutenant and had a double jurisdiction: civil and criminal; hence, the title lieutenant general (*lieutenant général*) which combines the functions of *lieutenant civil* and *lieutenant criminel*. These functions could have elsewhere been separated if the situation required it. As indicated above, one of them was mentioned in existing documents; this person was apparently appointed once Acadia was returned under French rule in the late 1670s. Yet, his appointment by the intendant of New France was cancelled by Colbert, the minister of the Navy in charge of colonies in Paris as being *ultra vires*.<sup>9</sup>

In 1688, things changed. Mathieu de Goutin landed in Port-Royal, one year after a new governor, Louis-Alexandre des Friches de Meneval, arrived like him directly from France without colonial, administrative, or judicial

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8. The word “judge” is taken here in the formal sense of a person exercising a state-recognized judicial function. The judge is the first character to step in my presentation, but this does make him, in my own view, the main actor on this stage of jurisdictional diversity.

9. See Jacques Vanderlinden, *Regard sur le juge colonial en Acadie française*, in 1 LE JUGE ET L’OUTRE-MER–PHINÉE LE DEVIN OU LES LEÇONS DU PASSÉ 305-325 (Bernard Durand & Martine Fabre eds., Centre d’Histoire judiciaire 2005). The exchange of correspondence between Colbert and Duchesneau is published in VANDERLINDEN, LE LIEUTENANT, *supra* note 7, at 287, 289.



experience. All previous governors or judicial officers came from Canada and the idea of recruiting them in France was officially discouraged as they “would not be accustomed to live according to the way of the country and would shortly be bored.”<sup>10</sup>

Goutin was not a lawyer. Yet, for whatever that means, the king who appointed him was “informed that Mr Goutin ha[d] the knowledge and the other necessary qualities to well fulfil the functions of judge.”<sup>11</sup> Three pages described his functions and including those—much larger—of a scribe (*écrivain*), a sort of quartermaster general of the local troops, which he was appointed at the same time. As a judge, his main duty was to conciliate litigants, to act more of an arbitrator than a judge “unless it [was] necessary for the security and quietness of families.”<sup>12</sup> When he took up the appointment, what did he know of law in New France, of the *Édit portant établissement de la Compagnie des Indes occidentales*, and of the *Coutume de la prévôté et vicomté de Paris*, the only law he was supposed to enforce? This is no question to ask. Once the king spoke, his words turned into reality; many rulers still believe this, and even some legal historians. The same will recommend that we look at the “living” law, without realizing that this could imply that the law in the books is indeed “dead” law.

We already know the size of the population under the jurisdiction of the judge in Acadia and how it was distributed in the province. This meant that in a system devoid of judicial circuits, meeting the judge began by a long and expensive journey. This made appeals to the *Conseil souverain* of New France (situated in Quebec City) practically impossible, though it was expressly provided for in the instructions to Goutin. Though occasional documentary evidence of

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10. See the Memoir of the intendant of New France de Meulles after a visit to Port Royal, 1, 27-45 (which can be found at the Université de Moncton, Centre d'Études acadiennes). See also VANDERLINDEN, *LE LIEUTENANT*, *supra* note 7, at document 48.

11. See Provincial Archives of Nova-Scotia, RG, 1, 2-39 [hereinafter PANS]. See also VANDERLINDEN, *LE LIEUTENANT*, *supra* note 7, at 312.

12. *Id.* at 312.

these appeals exists, no record has been found in the archives of the *Conseil*. Furthermore, some parties were discouraged from appealing by the mention that it was indeed forbidden in some local judgments under the penalty of a fine.

Finally, local judges (*juges*) appeared at The Mines—the most populated (127 inhabitants) location after Port-Royal—unfortunately without any indication as to why, how, and exactly when they acquired such qualification. Not much is known of their activity, even if they occasionally appeared in highly sensitive situations, as we shall see when dealing with the jurisdictional power of the clergy. One thing however seems sure: they were laymen rather than trained jurists in any sense of the word but for their title, and persons of standing and influence in their communities. Their title is clearly lower than that of the civil or criminal lieutenant.

We have no court records whatsoever for Acadia during the French period. There is detailed information regarding some criminal cases, but this paper is essentially devoted to private litigation. At least two factors explain this unfortunate situation.

First, the destruction of all existing archives with the burning of the registrar's house, a well-documented event. Jean-Chrysostome Loppinot, who was also appointed by the Crown as notary public, was a man of distinction in the small local community of Port-Royal and, as such, he lived in the fashionable neighbourhood overlooking the *rivière au Dauphin* next to the fort. No wonder that in one of the numerous attacks on Port-Royal, his house was destroyed by fire as a result of a cannonade originating from English ships. This caused the loss of the notary's and registrar's archives and practically all direct sources on Acadian legal history during the French period. Second, the care of official documents was not entrusted to a specific department in what was the skeletal administration of Acadia. When, in 1710, French officials, including the *lieutenant civil et criminel* and the notary-registrar, left Port-Royal for good with the vanquished French garrison, the documents entrusted to their care either accompanied them or were abandoned to the next occupant of

their respective quarters. What happened to them is unknown. A small collection is left in the National Archives in Aix-en-Provence.<sup>13</sup>

Now, what if this near absence of documents is not the result of an unhappy destruction of documents—something some historians tend to abhor—but rather the near lack of judicial activity on the part of Mathieu de Goutin? Many factors converge towards this unexpected conclusion: (1) the dispersion of the population of Acadia within the province and people's reluctance to travel for the sake of being declared right (or wrong) by a judge; (2) the absence of or reluctance to circuiting French judicial practice; (3) the fact that higher authorities favoured conciliation over adjudication; (4) the competition with some governors regarding adjudication in the province; and, (5) in the case of Goutin, his quick marriage to Jeanne Thibodeau, the daughter of the miller Pierre Thibodeau. Thibodeau had nine children, all married. This prevented Goutin to sit in cases involving his affines (relatives by marriage) and the close members of their families; the same was true for the brothers and sisters of his mother-in-law, Jeanne Thériot, and their close parents. The result was that Goutin had close relationships with Acadians who had the following names (in alphabetical order): Boudrot, Bourg, Brun, Damour de Louvières, Gautrot, Guilbeau, Landry, Le Borgne de Belle-Isle, Lejeune, Robichaud, and Thériot. Two of them—the Boudrot and the Bourg—were part of a quartet of families that constituted the “centre” of Port-Royal. This lead Governor Jacques-François de Monbeton de Brouillan, Meneval's successor, to affirm that the *lieutenant général* could not judge anymore anyone in the province as he had family ties with one-third of the inhabitants.

Yet, the conjunction of these factors regarding the action (or inaction) of the state judiciary must not lead to the hasty conclusion

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13. Archives nationales d'outre-mer, Fonds des colonies : jusqu'en 1815, G3 2040 : Port-Royal : Jean-Chrysostome Loppinot (1687-1720) [hereinafter Loppinot Archives].

that there was no French law and order in colonial Acadia. As we shall see, its operation was perhaps in the hands where some, though with an anachronistic conception of history, would not expect to find it.

**Jurisdiction 3: The Governor.** The first of such unexpected hands were those of the governor. In the local setting, the governor was essentially the representative of the king in the province. His duties were mainly those of an army officer, commanding the troops under his jurisdiction. Normally, he did not interfere in the administration of justice, the more so if it concerned the Church. Yet, shortly after Goutin arrived and before his letters of provisions were duly registered in the *Conseil souverain* of New France, the governor accepted to forcefully enlist a young man, Louis Morin, in the Royal Navy for an indefinite period. The governor put Morin on the first ship sailing to France, on the sole request of the priest in charge of the parish of Beaubassin, Father Trouvé. This was done with no form of judicial process. In a memoir to Versailles,<sup>14</sup> the governor justified his action for the following reasons: (1) that the man “would have deserved a punishment” because what he did “affected a family of importance,” (2) that there was no local judge available (which was not true or very formalistic as he saw the letters of provisions of Goutin who arrived one month earlier by the very ship on which his decision was to be executed), and (3) that the matter could not be judged in Quebec. The governor seemed to be aware of the weakness of his legal position, concluding that he “hope[d] the Court (*la Cour*) shall approve his conduct.”

That Governor Meneval did not care about legal technicalities is as clear as his systematic attempts to take the law in his own hands and to bypass the man in charge of justice, i.e., the *lieutenant général*. Two months after his arrival at Port-Royal, Goutin wrote to

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14. See AN, AC, C11D, 2-101-102. See also VANDERLINDEN, LE LIEUTENANT, *supra* note 7, at document 59.

the minister in Versailles to complain of “the unceasing obstacles that Monsieur de Meneval [the governor] brings to the administration of justice by depriving me of the knowledge of conflicts, which appear in this colony.”<sup>15</sup> He forbade inhabitants to appear before the lieutenant and told them to present their cases systematically in Quebec City without considering the heavy costs involved. All this was dictated by strictly personal reasons. The governor did not like Mathieu de Goutin and did his best, though to no avail, to have him replaced.

The judge, however, was a hard-headed and, in the following years, whenever he faced trouble with the king’s representative, he came out as the winner, travelling to France if needed. The issues were not only judicial in nature; his functions as *écrivain du roi* also led to conflicts with Governor Meneval and some of his successors on what could be called “administrative” matters.

**Jurisdiction 4: The Priest.** Catholic missionaries or priests played an important role in colonial French North America. Acadia was not an exception on this matter. From our point of view, they were the most important because they had a quasi-monopoly on legal matters affecting marriage. They also exercised a nearly constant control over the daily life of their parishioners; this went to the point that one occasionally found in Acadia very strong reactions of the people against priests who overdid it.

From the very moment of his arrival in Acadia, Goutin was confronted with a locally highly sensitive affair. It all began when the daughter of a former administrator<sup>16</sup> of Acadia, Marie-Josèphe Le Neuf de la Vallière, aged 16, confessed to the local Sulpician missionary, the above-mentioned Father Trouvé, that she was expecting a child. She named a young parishioner, Louis Morin, aged 23, as

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15. See PANS, *supra* note 11, at RG 1, 2-42. See also VANDERLINDEN, LE LIEUTENANT, *supra* note 7, at document 63.

16. The title of administrator was conferred to someone who was not yet officially appointed as a governor because of the circumstances.

the possible father. At the time, the girl's father was in France and on the verge of leaving Beaubassin to take up an important position at the top of the New France administration in Quebec City. Father Trouvé decided to act on his own and, after a brief inquiry, convinced Governor Meneval to seal not only the fate of Louis Morin who was sent to France as we have seen, but also that of his full family, 19 persons, who were deported from Beaubassin; many of them ended up in Canada. As for the young girl, the fate of her child is unknown. However, seven months after her confession, she became the first lady *seigneur* of New France in her own right, her fief was located at a reasonable distance (approximately 100 km) from her parents' home. Such are the facts.

What about the self-imposed jurisdictional capacity of Father Trouvé? It seems that the only normal avenue for him would have been to transfer the culprits for judgment in Quebec City where the Officiality sits as the ordinary ecclesiastical court in fornication matters. But obviously this would have taken time and coincided with the arrival in the provincial capital of Michel Leneuf de la Vallière, *seigneur* de Beaubassin, the father of Marie-Josèphe, who was returning from France to become responsible of naval affairs in New France at the request of Governor Frontenac. The "unfortunate" events of Beaubassin was kept quiet locally in order to avoid hurting the reputation of the local *seigneur* in his new position in Quebec City. Hence, the energetic action against all the members of the Morin family justified by the preservation of moral order and good manners.

A few years later, the successor of Trouvé,<sup>17</sup> Father Jean Baudoin, entered in direct conflict with Governor Villebon as he first intervened brutally in a marriage involving Amerindians and then personally flogged a soldier to the point of causing his quick death after the infliction of the punishment.

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17. Father Trouvé was forced by his parishioners to leave Beaubassin after the Morin incident. He was rejected by the inhabitants of The Mines when it was suggested that he should officiate there and finally found refuge in Port-Royal.

Then, Jean-François Buisson de Saint-Cosme, a priest of the Seminar of Quebec, in charge of the parish of The Mines, delivered from the pulpit, in full meeting of the congregation, a direct attack against the wife of the local judge. The priest accused her of immoral behaviour in her home with her nephew and chased her from the celebration. The exclusion was valid for at least a month and, on one occasion, included the exclusion of her husband during a service where the lieutenant was present. The lieutenant did not intervene on the spot by fear of an open conflict between Church and the state. He referred the matter to Versailles and to Quebec City, in the persons of the governor and the *intendant*, who was his immediate superior in his function of *écrivain*. The lieutenant contacted the Bishop of Quebec and asked him to inform his clergy that they should not interfere with temporal matters. Apparently, this combination of actions brought peace back to the parish.

A similar intervention occurred on the celebration of a marriage by the chaplain of the garrison. The betrothed belonged to French and local nobility, but neither of them produced the required formal parental authorisations, a violation not only of Canon law, but also an infringement of the royal edict of 1556 on secret marriages. The bride was six months pregnant. The lieutenant intervened again, but this time contacting the provincial of the order of the *Récollets* for the province of Brittany; he reminded the provincial of the obligation for the members of his order to respect royal legislation.

These few examples clearly indicate the jurisdictional capacity of the clergy in Acadia and its possible conflicts either with officers of the state or with the local communities and their way to look at what could and could not be done in overlapping social contexts.

**Jurisdiction 5: The *Seigneur*.** Some of the French scholars of the 19th century who were the first to be interested by Acadian

society described it as a “feudal” one.<sup>18</sup> This certainly reflects reality at the times of the discovery of the province, during when the first French settlements were established, a few years before a similar phenomenon took place in Canada. The existing external structures look feudal indeed in official documents of the King’s Council in Versailles, up to the early years of the 18th century.<sup>19</sup> A fee was granted in exchange of a declaration of faith and homage by the beneficiary, coupled with the payment of a sum of money. As a rule, such payment was repeated at each change of either the grantor or the grantee. Simultaneously, the grantee became the lord of the fee with rights of trading, hunting, and fishing. Rights of high, middle, or low justice were also conferred subject to appeal to either the *Conseil souverain* or the court of *prévôté* in Québec city, or the lieutenant general in Acadia. Unfortunately, we have no evidence of the exercise of such feudal jurisdiction in civil matters, be it at trial or at the appeal. However, a few cases exist in criminal matters.

Due to the lack of archival material, doubts can be raised as to the effectiveness of this feudal justice. However, it also cannot prove that it was totally inexistent, especially when the *seigneur* was a woman or a man of strength and willing to assert her or his rights against the crown. Marie de Saint-Étienne de la Tour and Michel de la Vallière provide telling examples. There is well document circumstantial evidence that both were perfectly able to exercise their feudal rights of justice and even, in the case of the second, in an excessive manner. But is this not also true in the 17th (and even in early 18th) century France, when in spite of the increased centralization, the importance of seigniorial justice was established at the end of the previous century after having been neglected for long partly because of a tendency of looking at French history mainly from the centre? As for a possible control from either Quebec City

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18. *E.g.*, FRANÇOIS-EDME RAMEAU DE SAINT-PÈRE, 2 UNE COLONIE FÉODALE EN AMÉRIQUE – L’ACADIE (1604-1881) (2d ed., Plon 1889).

19. *E.g.*, the judgment of the Council dated June 2, 1705 concerning the fee of Michel Leneuf de la Vallière *as reproduced with reference to the original in VANDERLINDEN, LE LIEUTENANT*, *supra* note 7, at document 118.



authorities or the lieutenant general, the reader should know by now how theoretical it was.

**Jurisdiction 6: The Family Head.** The heads of household (*chefs de famille*) are explicitly mentioned in some documents.<sup>20</sup> This seems to conform with what we know of the importance of patriarchs in French familial life during the same period<sup>21</sup> as a counterweight to the representatives of royal authority. In the second half of the 17th century, the *chefs de famille* in Acadia were frequently the first of their family to arrive in the country. Some of them were created through their matrimonial strategy a real “centre” within the Port-Royal society (i.e., a cluster of four families who were influential). They “reigned” over lineages of quantitative and qualitative importance. Sometimes their “natural” ascendancy finds recognition with their designation as the “*syndic*” (i.e., government official) of the community.<sup>22</sup> Owing to the weakness of royal power in Acadia, the heads of families must have played a particular jurisdictional role in cases of conflict, whether within the family, between families, or when they defended their family members against the *seigneur*, the clergy, or the state.

**Jurisdiction 7: Last, but not Least, the People Collectively and Individually.** The core of the Acadian population during the second half of the 17th century was composed of people coming from western France. They were mostly from the region of Poitou. Its diffuse legal tradition is accordingly most likely to be one of the

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20. *E.g.*, in a letter written by Goutin, dated 1702, he refers to his father-in-law, Michel Thibodeau. *See* VANDERLINDEN, LE LIEUTENANT, *supra* note 7, at document 94. *See also* PANS, *supra* note 11, at RG 1, 3-10; and Rameau, II, 334.

21. PIERRE GOUBERT & DANIEL ROCHE, 2 LES FRANÇAIS ET L’ANCIEN RÉGIME – CULTURE ET SOCIÉTÉ 133 (Armand Colin 1991).

22. For New-France, *see* Christian Blais, *La représentation en Nouvelle-France*, 18 BULLETIN D’HISTOIRE POLITIQUE (2009), <https://perma.cc/JX5U-8U64>; and for France, *see* GABRIEL AUDISIO, LES FRANÇAIS D’HIER : DES PAYSANS XVE-XIXE SIÈCLES 43 (Armand Colin 1993).

regional “customs,” which are well known to French legal historians. But, even if the custom of Poitou started being reduced in writing as early as the 15th century, the link between that text, further ulterior similar ones, and what exactly governed the daily life of local inhabitants is very difficult (if not impossible) to establish. One can only come forward with what I have cautiously called elsewhere “conjecture or hypothesis.” Mine, in this instance, is that the farmers (*laboureur* as the census called them) brought their customs just like the mud under their shoe and not in the form of a *coutumier*. Most probably the majority of them could not read; another conjecture or hypothesis that I have no written evidence to support). In addition, the farmers probably did not understand the somewhat technical language used by drafters when they migrated to Acadia at the suggestion of their landlords from Poitou during the 17th century. Thus, in a first conjectural or hypothetical approximation, I assume that the Acadian community had a rather clear idea of how to behave in daily community life and that this idea was based mostly on a global behavioral and oral popular tradition inbred in the identity of the community without the need of a piece of writing. I must admit that I am influenced by my field work among the Zande where similar basic conditions prevailed and the constant answer as to why they behaved in such or such way was regularly met by a strong: “Because we have always done it this way.” This partially led me to call custom essentially a “gestural” expression of the law.<sup>23</sup>

More interesting—at least it seems to me—are the scant records left in the Loppinot archives.<sup>24</sup> Some of the marriage contracts recorded in these archives immediately strike the mind of anyone familiar with French legal history. Here, we find another sample of the so-called “customary” law built up on an image of custom in the minds of legally trained lawyers and/or the upper strata of the

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23. See Jacques Vanderlinden, *Here, There and Everywhere or ... Nowhere? Some Comparative and Historical Afterthoughts about Custom as a Source of Law*, *COMPARATIVE LEGAL HISTORY* 140 (Olivier Moréteau et al. eds., Edward Elgar 2019).

24. Loppinot Archives, *supra* note 13.

population (i.e., members of the clergy, of the nobility and of the town or country middle class (*bourgeoisie*), who are the only participants in the enterprise of reducing custom to a text.<sup>25</sup>) Loppinot's drafting of marriage contracts clearly presents contents in a twofold nature: the first one is borrowed from some standard manual for notaries, the other from the expectations of the parties. The first includes a clear reference to the *Coutume de Paris* as governing the contract. The second strikes the reader by the specific provisos required by the parties, which in some cases definitely reflect the group of customs of western France as highlighted by Jean Yver in his article *Les caractères originaux du groupe de coutumes de l'ouest de la France*.<sup>26</sup> For example, the *communauté universelle* of property between spouses is definitely not Parisian and, on the contrary, characteristic of western France.<sup>27</sup> The same is true of dowry (*dot*), which appeared in many contracts written in Port-Royal between parties originating from western France. It was also characteristic of marriage arrangements in the *pays de droit écrit* (country of written law) of which Poitou was a part, while it is relatively rare in the *pays de coutumes* (country of customs) such as that of Paris. Finally, there was the usufruct (in some cases the full ownership) of the surviving spouse on half the inheritance which was not his. This, again, does not appear in the Custom of Paris, but as Jean Yver wrote, it contributed to "the original attitude adopted by customs of the West"<sup>28</sup> in such circumstances. From my point of view, the Acadicians expressed through their addition of their individual experience at this particular time—which is an important one—the

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25. See Jacques Vanderlinden, *Le juriste et la coutume, un couple impossible?*, in ACTES DU CINQUANTENAIRE DU CEMUBAC 249-254 (Jean-Pierre Beer-naerts ed., Institut de sociologie 1988).

26. Jean Yver, *Les caractères originaux du groupe de coutumes de l'ouest de la France*, 29 REVUE HISTORIQUE DE DROIT FRANÇAIS ET ÉTRANGER 18-79 (1952).

27. See JACQUES VANDERLINDEN, *SE MARIER EN ACADIE FRANÇAISE : XVIIIE-XVIIIIE SIÈCLES* 193-194 (Éditions de l'Acadie 1998).

28. Yver, *supra* note 26, at 73 n.9.

secular customary tradition, which they brought from France and transmitted to their descendants.<sup>29</sup>

Loppinot, the notary, was a Parisian but no more a lawyer than the lieutenant general, his boss. He was bound to follow the models provided in his manual and consequently affirm that the act he registered followed the Custom of Paris, but he likely did not to know much about the different customs governing the Acadians before coming to North America. Thus, no wonder that he registered their wishes insofar as their matrimonial regime was concerned, leaving open a door for possible contradiction in case of litigation before royal courts. Unfortunately, we do not know what would have been the outcomes of this contestation. What we may reasonably assume is that, if the problem was presented before a judge like Pierre Thériot or a family head of Acadian origin, no problem would have arisen insofar as the respect of the provisions of the marriage contract was concerned.

**Conclusion.** Acadia has provided an interesting example of “critical” (the Roderick Macdonald’s formulation) or “radical” (the Jacques Vanderlinden’s formulation) legal pluralism insofar as it offered to its inhabitants many autonomous avenues to solve their possible conflicts.<sup>30</sup> The result of such potential choice between autonomous jurisdictions opened up the possibility—not to say the likelihood—of forum shopping. But the jurisdictional choice, whenever possible could have been conditioned by the available options. This is why jurisdictional complexity can sometimes only be understood through “legal”—for whatever the adjective means and perhaps I would prefer “normative”—complexity. Finally, in these situations,

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29. In another essay, I showed how much of that legal heritage from Poitou can be found in the legal practice in Louisiana among Acadians (or Cajuns) who were deported from Nova Scotia in 1755; see Jacques Vanderlinden, *Aux origines de la culture juridique française en Amérique du Nord*, 2 J. CIV. L. STUD. 1, at 19 (2009).

30. Martha-Marie Kleinhans, Roderick A. Macdonald, *What is Critical Legal Pluralism?*, 12 Canadian Journal of Law and Society 25 (1997); JACQUES VANDERLINDEN, *LES PLURALISMES JURIDIQUES* (Bruylant 2013).

where so many factors intervene and where some normative orders may be weaker or stronger than others, the final say as to what the forum and the norm will be also depend on the perception of each individual concerning both of them and confronting them with his multiple selves and his personal expectations from social life. This would explain the true meaning of the condensed phrase “the law is what each of us says it is” to which critical or radical pluralists tend to adhere, while, at the same time, not excluding any normative order, even the one of the State, from their social landscape.