Colonial Subjects' Rights under British Law: Dutch New York and French Acadia

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Introduction

British colonial policy and law provides an example of the interplay between law, policy and changing needs. The evolution of law and policy to meet new and changing circumstances is aptly demonstrated in the case of these two conquered colonies: Dutch New York and French Acadia.

Indeed, the two colonies share many similarities: Both were strategically located on waterways which provide highways into the heart of the continent--the Hudson and the St. Lawrence. Both contained a body of non-English speaking subjects of different cultures and legal traditions. Neither colony experienced any sizeable influx of English settlers for some time after their capitulation.

The size of the colony in both cases was small, however, suggesting to one that their impact on British colonial policy and law might not be too great but for the fact of later sizeable "foreign" people being integrated into the empire. Secondly, the Dutch were protestant, while the French were Roman Catholic. Consequently, their status would differ under English law--more on this later.

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The topic is an important one for Canadian history since it helps to define the degree to which conquered subjects were integrated into the British empire, or how they might have perceived the benefits and liabilities of becoming British subjects. Much, of course, of present Canada was acquired by the British through conquest.

Dutch New York, conquered in 1663, provides an example that pre-dates the first large acquisition of territory that came to form Canada: By the Treaty of Utrecht, 1713, French Acadia and Newfoundland were ceded to Britain. More followed in 1759.

The two colonies, and how they were handled, also give us a glimpse into the style of administration in the "First British Empire," and how an empire, homogenously composed of people of British ancestry to that date, began to deal with heterogenous elements.

1. The Rights of Englishmen, New Subjects and Denizens

The law with regard to subjects and aliens, at this time, carries a pre-nationalist, medieval flavour. Under English law, the full legal rights accorded an Englishman could only be accorded to subjects of the King--those who owed allegiance to the King. Allegiance, as the feudal concept of fealty, was a personal tie to the lord. Unlike the feudal concept, it did not depend on holding land. It did, however,

depend on birth on English soil.[1]

For another purpose, in 1368, Parliament declared[2] that English soil included territory belonging to the King--the continental possessions of England at the time. Could individuals born on lands which had the dominion of the King newly extended over them become subjects of the King? Did these new subjects stand in the same relation to the King as 'older subjects'? In 1608, Calvin's Case[3] considered the situation of Scottish subjects newly attached to the King. It was decided that, based on the personal tie of allegiance, new subjects could be "made". They had the same status as the King's other subjects:

> Every man is either alienigena, an alien born, or subditus, a subject born. Every alien is either a friend that is in league, etc. or an enemy that is in open war, etc. . . . Every subject is either natus, born, or datus, given or made.[4]

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[1] See Sir William Holdsworth, History of English Law, 17 vols., Vol. 9 3d edition (London: Sweet & Maxwell Ltd., 1944), p. 75.
(For standard legal citation of cases and periodical articles, the volume number precedes, and the page follows the work cited.)

[2] 42 Edward III, chapter 10.

[3] (1608) 7 Coke's Reports 1; 77 English Reports, Full Reprint 377. See also Holdsworth, History of English Law, Vol. 9, p. 84. The Scottish and English Crowns were joined in the same person in 1603. The Scottish and English governments were not joined until the Act of Union, 1701.

[4] Calvin's Case, 77 E.R. 377 at 397.

The importance of these distinctions lay in the rights accorded under English law, "the common law." As Calvin's Case went on to explain, an alien friend--the foreign merchants of the time--were to be encouraged by according them certain rights under the law: they could own personal property, bring personal actions (in tort and contract, for example), and lease a house for habitation:

> An alien friend, as at this time, a German, a Frenchman, a Spaniard, etc. . . . may by the common law have, acquire, and get within this realm, by gift, trade, or other lawful means, any treasure, or (a) goods personal whatsoever, as well as an Englishman, and may maintain any (b) action for the same: but (c) but lands within this realm, or houses (but for their necessary habitation only) alien friends cannot acquire, or get, nor maintain any action real or personal, for any land or house.[5]

An alien enemy, on the other hand, could not enjoy the benefit of the King's law. He was in the same position as an Englishman who had been "outlawed"--he was a non-person who had no rights under the law. A very harsh judgment it may seem, but one must remember how ineffective the mechanisms of the state were at this time.

The King could not make an alien into a full subject, only into a denizen, with rights to hold property and bring actions in the courts, but with no right to dispose of property by will.[6] Only Parliament could elevate an individual to the full status of a subject, by act.

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[5] Ibid., at p. 397.

[6] See Holdsworth, History of English Law, Vol. 9, p. 77.

Naturalization in that day and age was done by special act. There was no general process[7] until 1870, although a general process for naturalization was introduced for the British colonies much earlier.[8]

In dominions acquired by descent or conquest, the lands became the King's dominions and, where the individuals each took an oath to the King, an indelible[9] and personal tie of allegiance made them subjects of the King.

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[7]A limited range of people were included in the Naturalization Act of 1844 (7 & 8 Victoria, c.66). The Naturalization Act of 1870 (33 & 34 Victoria, c.14) opened the process generally: H. S. Q. Henriques, The Law of Aliens and Naturalization (London: Butterworths & Co., 1906), pp. 45-46.

[8]In 1740 (13 Geo. II, chapter 7) a statute provided for the "naturalizing (of) such foreign protestants and others (Quakers and Jews) . . . as are settled or shall settle in any of His Majesty's colonies in America" provided they took the appropriate oaths, received the sacrement of the Lord's Supper in some protestant or reformed congregation and were resident in the colony for seven years continuously.

[9]This meant that neither the King nor the subject could dissolve the bond. This caused problems following the American Revolutionary War in the 1780's and 1790's, since it was assumed in law that Americans continued to be British subjects and subject to the obligations of a British subject: See Ivan Head, "The Stranger in Our Midst: A Sketch of the Legal Status of the Alien in Canada," (1964) 2 Canadian Yearbook of International Law 107.

2. Dutch New York, 1663-1683

Dutch New York was captured by the English in 1663. There were three sets of articles of capitulation: New Amsterdam,[10] the upper Hudson settlements,[11] and the Delaware territories.[12] The English found that, in the case of New Amsterdam, simply taking over the centralized, autocratic government established under the Dutch West Indian Company allowed them to carry on the colony.[13] Long Island, Staten Island, and the Bronx area had sizeable English settlements and it was for these areas that the Duke's Law[14] was promulgated in 1664, in addition to allowing them some institutions of English local government. New Amsterdam, on the other hand, did not obtain a representative institution until 1683, and somewhat earlier, the extension of the Duke's law as well.

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[10] See: J. R. Brodhead (agent) and E. B. O'Callaghan (ed.), Documents Relative to the Colonial History of the State of New York Procured in Holland, England and France, 14 vols. (Albany: Weed, Parsons for the N.Y. Legislature, 1858), Vol. 2, p. 250. Hereafter cited as Documents of New York.

[11] Ibid., Vol. 14, p. 559.

[12] Ibid., Vol. 3, p. 71.

[13] A. E. McKinley, "The Transition from Dutch to English Rule in New York" (1901) 6 American Historical Review 693-724.

[14] The Laws of the Duke of York, 1664, are reproduced in Collections of the N.Y. Historical Society (New York, 1811), Vol. 1 (1809), p. 307 ff.

Indeed, the articles of capitulation for New Amsterdam do not seem to have envisaged that the Dutch become subjects of the King, although they allowed them certain privileges: Article 3 provided that "All people shall still continue free denizens and enjoy all lands, houses, goods, shipps, wheresoever they are within this country and dispose of them as they please" as well as allowing, by Article 14, travel by the Dutch residents to England or other plantations "in obedience to his Majesty of England" and with "a certificate that he is a free denizen of this place."

Yet, following the surrender of New York, the Dutch took an oath of allegience to the King of England:[15]

> I sweare by the name of Almighty God, that I will bee a true subject, to the King of Great Brittaine, and will obey all such commands, as I shall receive from His Majestie, His Royall Highnesse James Duke of Yorke, and such Governors and Officers as from time to time are appointed over me, by His authority, and none other, whilst I live in any of his Maj'ties territoryes; SO HELPE ME GOD.

The record does not indicate that the oath contained any additional references to the phrasings added by the Test act or related statutes.[16] In one early

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[15] Documents of New York (footnote 10), Vol. 3, p. 74

[16] See Post, Section 3 The Rights of Roman Catholics under English Law, as well as James B. Brown, An Historical Account of the Laws enacted against the Catholics both in England and Ireland (etc.) (London: Underwood and Black, 1813); and Francis G. Morrisey, "The Juridical Situation of the Catholic Church in the Canadian Maritime Provinces from 1713 to 1840," (1968) 2 Studia Canonica: A Canadian Canon Law Review 193 at 193-4:

history[17] it is noted that the burghers did not wish to take the oath unless it was guaranteed that the articles of capitulation were "not in the least broken or intended to be broken by any words or expressions in the said oath." The governor of the time assented. While there is no indication with what the burghers were concerned, they probably did not wish to legally become subjects of the King of England and thereby forego the following capitulation privileges to which an Englishman would not be entitled under the laws of England:

(1) Article eight - The Dutch here shall enjoy the liberty of their consciences in Divine Worship and church discipline.
(2) Article eleven - The Dutch here shall enjoy their own customs concerning their inheritances.
(3) Article nine - No Dutchman here, or Dutch ship here, shall, upon any occasion, be prest to serve in war, against any nation whatever.

The 'Penal Laws' of England were first enacted in 1559 and lasted until the Catholic Emancipation Act of 1829. There were five types of laws: statutes that subjected Catholics to penalties and punishments for practicing their religion; statutes that punished them for not conforming to the established Church; statutes that regulated the penalties or disabilities attending the refusal to take the Oaths of Supremacy and Allegiance and the declaration against Transubstantiation; acts concerning reception of the Lord's Supper, and statutes that affected landed property.

[17]John Fiske, The Dutch and Quaker Colonies in America, 2 vols. (Boston and New York: Houghton Mifflin Co., 1899), Vol, 2, p. 40.

Indeed, the forementioned history recounts that, when a subsequent governor wished them to take the oath without qualification and they at first refused, they are called "recusant,"[18] although this was not the charge eventually pressed against them to force their unqualified taking of the oath.

The Dutch were, accordingly, gradually absorbed[19] into the fabric of an increasingly English colony. The Duke's Laws seem to have contained some elements which may be traceable to Dutch influence.[20] But, by and large, the Laws were English and English colonial in nature, being "collected out of ye severall laws in other His Ma'ts American Colonies."[21] Select elements of Dutch influence did remain in the legal structure for some time: Dutch land tenure in the patroon

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[18]The crime of recusancy refers to the refusal of one to attend the services of the Church of England. It was punishable by fines and disabilities. The prosecution of these offences against the Dutch would seem to be in violation of article eight of the capitulation. This may be why the charge was changed.

[19]A British observer, not too distant from this point in time, indicated that the Dutch eventually became subjects, but by a curious twist of logic: "persons who had a right to claim Naturalization by the Articles of surrender were naturalized." Opinion of Attorney-General Northey to the Lords of Trade, 1717, see Documents of New York (footnote 10), Vol. 5, pp. 495-7.

[20]A. E. McKinley, "The Transition from Dutch to English Rule in New York," (1901) 6 American Historical Review 693-724.

[21]See "Order to Put the Duke's Laws in force in New York," Documents of New York, Vol. 3, p. 227.

estates[22] and freemanship of the City of New York, along with an attitude of religious toleration.

The relative ease with which full naturalization seems to have been accomplished, while allowing Dutch customs to be preserved for a time, is perhaps indicative of the "First British Empire" mode of colonial administration. An ad hoc, often inconsistent style loosely co-ordinating a group of largely self-directed colonies growing expansively.

This ready acceptance of new subjects continued in the colony. They were eagerly sought by the growing colony, and were created by (1) making them freemen of New York city,[23] (2) issuing letters patent of denization until 1700, (3) passing a private act for the naturalization of certain individuals, or (4) legislating a procedure to be followed for naturalization.[24]

These methods were not supplanted by the uniform procedure which the British authorities attempted to prescribe through the act of 1740[25] for the colonies. Indeed, the

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[22]See S. B. Kim, Landlord and Tenant in Colonial New York: Menorial Society, 1664-1775 (Chapel Hill: University of North Carolina Press, 1978).

[23]See New York Historical Society, Collections, 1885, Vol. 18 (New York: The Society, 1886), p. 41-2.

[24]E. A. Hoyt, "Naturalization Under the American Colonies" (1952) 67 Political Science Quarterly (New York), 248-265.

[25]13 George III, chapter 7. See footnote 8, ante, also later British law determined that the law of England decided

influx of new settlers undoubtedly assisted the process of replacing the Dutch customs.

3. The Rights of Roman Catholics under English Law

English statutes concerning the King's Catholic subjects date from the English Reformation and Henry VIII. Under Elizabeth I they were re-introduced in 1559:[26] "no . . . (Catholic) . . . shall . . . use, enjoy or exercise any Manner of Power, Jurisdiction, Superiority, Authority." Later rulers added to these provisions.[27]

It was made an offence[28] to say or hear a Roman Catholic Mass, to not attend services of the Church of England (a recusant), to harbour a recusant--particularly a Catholic,[29] and to venture more than five miles from home without a license, if you were a convicted recusant, among other things.

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who was and who was not an alien, but the law of the particular colony determined the civil disabilities attached to the status in the colony: Donegani v. Donegani (1835) 3 Knapp 63; 12 English Reports, Full Reprint 571.

[26] 1 Elizabeth I, chapter 1 and 2.

[27] See footnotes 16 and 34, particularly James B. Brown, An Historical Account of the Laws enacted against the Catholics both in England and Ireland (etc.) (London: Underwood and Blacks, 1813) and T. C. Anstey, A Guide to the Laws of England Affecting Roman Catholics (London, 1842).

[28] 5 and 6 Edward VI, chapter 1.

[29] 35 Elizabeth I, chapter 1 and 2. The distinction between a Catholic recusant and other recusants was hereby established.

With the Crown being the head of the Church of England, the matter became one affecting allegiance between subject and ruler. Statutes created a series of oaths to acknowledge the lordship of the ruler, deny the power of the Roman Catholic Pope vis-à-vis the King, and negative certain doctrinal differences between the Church of England and that of Rome.

Convicted recusants also experienced a number of civil disabilities: they were prohibited from practicing as lawyers, from holding a court office or any office for profit under the Crown, from maintaining a personal action in the courts, or from acting as an executor, administrator or guardian.[30] Restrictions were also placed on the extent of their land owning.

The disabilities in Britain were gradually abolished beginning with the Catholic Relief Act[31] of 1778, reaching a high point in the Catholic Emancipation Act[32] of 1829 and closing in 1871.[33]

The problem for the French, who by French colonial policy were Catholic, in Acadia was two-fold: (1) by not taking the oath of allegiance they technically remained aliens and were legally subject to a number of disabilities under

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[30] 3 James I, chapter 5.

[31] 18 George III, chapter 60.

[32] 10 George IV, chapter 7.

[33] 34 and 35 Victoria, chapter 53.

English law--fewer disabilities if they were classed as alien friends, but still a number of disabilities; and (2) as Catholics they were also subject to various disabilities, although not as severe and only if (or when) the laws were enforced.[34]

4. French Acadia, 1710-1755

There were few centres of Acadian settlement--perhaps five, the chief settlement being Port Royal (renamed Annapolis Royal)--and only, at most, some 2,500 Acadians in total in 1710.[35] Port Royal surrendered October 13, 1710. The articles of capitulation included the following:[36]

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[34]See footnote 16 and also: Francis G. Morrisey, "The Juridical Situation of the Catholic Church in Lower and Upper Canada from 1791 to 1840," (1971) 5 Studia Canonica: A Canadian Canon Law Review 279-321. The first article by Morrisey on Acadia collects some instances of prosecutions under these laws in the Maritimes.

[35]See Andrew H. Clark, Acadia: The Geography of Early Nova Scotia to 1760 (Madison, Milwaukee and London: University of Wisconsin Press, 1968), pp. 200-230.

[36]See Beamish Murdoch, A History of Nova Scotia, or Acadie, 3 vols. (Halifax: James Barnes, Printer, 1865), Vol. 1, Appendix 4, p. 318. Yet, see Bona Arsenault, Histoire des Acadiens (Quebec: L'Action Sociale Ltée, 1966), La Conseil le la Vie Francaise en Amérique, p. 96: "L'une de ces conditions stipulait: 'Les habitants, qui demeurent dans le rayon de Port-Royal, auront le droit de conserver leurs héritages, récoltes, bestiaux et meubles, en prêtant le serment d'allégiance. S'ils refusent, ils auront deux ans pour vendre leurs propriétés et se retirer dans un autre pays.' "The French and English terms differed due to attempted craftiness by the English commanders: J. B. Brebner, New England's Outpost: Acadia before the Conquest of Canada (Hamden, Conn.: Archon Books, 1965), p. 63.

> Article 5. That the inhabitants within cannon shot of Port Royal shall remain upon their estates, with their corn, cattle and furniture, during two years, in case they are not desirous to go before, they taking the oaths of allegiance and fidelity to her sacred majesty of Great Britain.

A list of the people within cannon shot (later clarified as three English miles) contained 481 names.[37] This limited surrender was all that was elicited on that date, so that the English would hold the remainder of the population on no terms, although the commanders later wished to extend the surrender to all Acadia.[38] In the meanwhile, the small British and colonial garrison clung to the area of the fort at Port Royal, in the midst of a hostile population.

The Treaty of Utrecht, 1713, provided[39] by article 14:

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[37]Beamish Murdoch, A History of Nova Scotia, or Acadie, 3 vols. (Halifax: James Barnes, Printer, 1865), Vol. 1, Appendix 4, p. 318.

[38]J. B. Brebner, New England's Outpost: Acadia before the Conquest of Canada (Hamden, Conn.: Archon Books, 1965), p. 63. Also see, B. Murdoch, A History of Nova Scotia, Vol. 1, p. 342, and Thomas B. Akins (ed.), Selections from the Public Documents of the Province of Nova Scotia (Halifax: Charles Annand, 1869), p. 263 and 264, footnote, in which it is indicated: "(the rest of the inhabitants) made terms that winter, with Col. Vetch, . . . who received their submission, but required no oath from them."

[39]This English version of this article of the treaty is from Thomas B. Akins (ed.), Selections from the Public Documents of the Province of Nova Scotia (Halifax: Charles Annand, 1869), p. 14.

See F. G. Davenport, European Treaties bearing on the History of the United States and Its Dependencies, 4 vols. (Gloucester, Mass.: Peter Smith, 1967, a reprint of the 1934 edition), Vol. 3, pp. 193-214. The full text of the treaty is reproduced in French. In this volume's introduction to the treaty, the negotiations which led up to the treaty are described in some detail.

> It is expressly provided that in all the said places and colonies to be yielded and restored by the most Christian King in pursuance of this treaty, the subjects of the said King may have liberty to remove themselves, within a year to any other place, as they shall think fit, together with all their movable effects. But those who are willing to remain there, and to be subject to the Kingdom of Great Britain, are to enjoy the free exercise of their religion according to the usage of the Church of Rome as far as the laws of Great Britain do allow the same.

The treaty specifically did not mention the right to sell their lands in the surrendered territories. However, in return for the freeing of religious dissidents from the French galleys by Louis XIV, Queen Anne agreed to allow the Acadians this right:[40]

> That you permit such of them as have any lands or tenements in the places under our government in Accadie and Newfoundland, that have been or are to be yielded to us by virtue of the late treaty of peace, and are willing to continue our subjects, to retain and enjoy their said lands and tenements without any molestation, as fully and freely as other subjects do or may possess their lands or estates, or to sell the same, if they shall rather choose to remove elsewhere.

No time limit was specified in these instructions to the governor of Nova Scotia. The Acadians were to dally between embracing status as a British subject, and assisting the French in retaking Acadia.[41] This indecision was matched

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[40] Thomas B. Akins (ed.), Selections from the Public Documents of the Province of Nova Scotia (Halifax: Charles Annand, 1869), p. 15.

[41] It is not the purpose of this paper to establish the variety of specific stances taken by the Acadians from 1710 to 1755 when the expulsion took place. An extensive literature

by a lack of interest, candor and specific instructions on the part of the British Lords of Trade. In general, the Acadians refused an unqualified oath.[42]

Meanwhile, the Coutume de Paris,[43] French seigneurial

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exists in the historical treatises already mentioned, as well as a number of French and English language articles. See Akins, Selections from Public Documents of the Province of Nova Scotia, pp. 263-267 for a brief history of British stances on the oath.

[42]This refusal is generally seen to have been based on their desire to remain neutral and not be forced to fight on the side of the British. The versions of the oath pressed upon them were not found in printed sources. Whether it would have contained the phrasings prescribed by the British acts seems questionable. It might also be doubted whether the unschooled inhabitants would appreciate the subtle religious differences.

Mr. Secretary Popple in a letter to Governor Philipps sent a corrected oath for the inhabitants in the following terms in 1730:

> Je Promets et jure sincerement en foy de Chrestien que je serois entierement fidelle a Sa Majesté le Roy George le second que je reconnais pour le Souverain seigneur de la nouvelle Ecosse et de L'acadie et que je lui obeirais vraymont.
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> Ainsi Dieu me Soit en Aide.

Oath From: Thomas B. Akins (ed.), Selections from the Public Documents of the Province of Nova Scotia (Halifax: Charles Annand, 1869), p. 85.

Following the conquest of New France or Canada in 1759 the same problem arose. This substantial French population could not be dismissed and the Quebec Act of 1774 accordingly prescribed a special oath for that population, with no reference to the phrasings imposed by other British statutes.

[43]The Code Napoleon was not published until 1804. "The Coutume de Paris was an accumulation over the centuries of the usages and customs of the territory around Paris, at first unwritten but gradually cemented in popular memory and judicial recognition and . . . formally reduced to writing in the compilations of 1510 and 1580. . . . The Coutume de Paris was recognized as the most complete and mature of all the many coutumes." W. S. Johnson, Chapters in the History of French Law (Montreal: McGill University, 1957), p. 260.

Regarding seigneurial land tenure, see W. B. Munro, The Seigniorial System in Canada: A Study in French Colonial Policy (New York: Longmans, 1907).

land tenure and past custom seems to have been followed, although the records are far from complete.[44] It is doubtful that the French law would have been applied in disputes between Acadian and Englishmen, however.

The make-shift court in which this law was applied for the settlement of disputes and the registration of land functioned at Annapolis Royal, manned by British officers and some Acadians. Following the institution of civil government, the governor and an advisory council promulgated law through proclamation. This law was modeled on that of the British colony of Virginia. Indeed, this colony's law was followed as a precedent when the government was removed to Halifax in 1749.[45]

The Acadian Catholics, who would not take an unqualified oath of allegiance, could not vote to elect an assembly. Their numbers[46] posed a perceived internal threat as well. Representative government was accordingly delayed until after

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[44]See J. B. Brebner, New England's Outpost (Hamden, Conn.: Archon Books, 1965), p. 141.

[45]See Charles J. Townsend, "Historical Account of the Courts of Judicature in Nova Scotia," (1899) 19 Canadian Law Times 25.

[46]See Andrew H. Clark, Acadia: The Geography of Early Nova Scotia to 1760 (Madison, Milwaukee and London: University of Wisconsin Press, 1968).

the expulsion of the Acadians in 1755 and the settlement of a sizeable body of protestant subjects.[47]

Conclusion

The expulsion of the Acadians in 1755, in light of the impending war with France and the adjacent position of populous New France, was the 'solution' to the Acadians. Whether this could have been avoided, as in Dutch New York, had there been no sizeable colony next door and had the Acadian numbers been proportionately less, seems quite possible. Local reasons for urging the British authorities to carry out this program undoubtedly lie in the fact that the best land was in Acadian hands--and the expulsion freed it for the newcomers.

In both Dutch New York and French Acadia, however, assimilation was the general thrust of the policy applied by the British. In the case of the Dutch, this took place gradually; in the case of the French Acadians, the sudden expulsion allowed a revisionist history to be applied to the law of the area: the legal cut-off date for the reception of English law into Nova Scotia is that of a settled, not a

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[47]The Legislative Assembly was established in 1758. There was some delay in its establishment due to the distrust of the democratic spirit of the transplanted New Englanders by the governor: W. S. MacNutt, The Atlantic Provinces: The Emergence of Colonial Society, 1712-1857 (Toronto: McClelland & Stewart Ltd., 1965), pp. 56-59.

conquered colony. The date of the first sitting of the Legislative Assembly--1758[48]--is taken. The French Acadian conquest was neatly forgotten by later law.

Within the First British Empire, British Colonial policy, and the law implementing it, varied with the circumstances presented by the colony. With the conquest of Quebec in 1759, and the political disenchantment of the American colonies at the same time, it gradually came to be recognized that greater regard for the individual character and government of the colony was necessary for a stable colonial base.

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[48]Uniacke v. Dickson, (1848) 2 Nova Scotia Reports (James' Reports) 287 at 289-291.