

Contested Public Property in the Detroit River Region after the British Conquest: The French Commons

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In Ancien Régime France, roturiers, peasants holding a tract of land within a seigneurie, often benefitted from the use of collective spaces for pasture within their seigneurie. These spaces were known as commons. In theory, only the roturiers who were members of the “community of peasants” (“communauté des habitants”) could keep part of their livestock holdings in the commons. To become a member of the community of peasants, roturiers were required to pay an additional rent to their seigneur.¹ In these communities, all members had the authority to collectively supervise how the commons were used. More importantly, these communities were also responsible for dealing with the seigneurs with regards to any matter that pertained to the commons.²

The first commons in the St. Lawrence valley were created in the 1620s by the Compagnie du Canada, then the seigneur-suzerain of New France. By the 1640s, these commons were either created by seigneurs or by the roturiers themselves, who generally fashioned them out of portions of their own tracts of land. On a few occasions during the first half of the seventeenth century, the Governors of New France interceded to create commons within seigneuries particulières that had already been laid out and divided into rotures.³ By the early eighteenth century, one third of the seigneuries in the St. Lawrence valley included at least one common. With regards to the habitants’ rights to use commons in the St. Lawrence valley, R. Cole Harris asserts that the seigneurs generally charged “a flat rate for the right to use the common regardless of the number of head pastured in it.” This way, they did not have to keep a

close watch on their roturiers, who frequently herded their cattle in and out of the commons between March and November.⁴ Some communities of peasants were also founded throughout the St. Lawrence valley, although on this side of the Atlantic they were more usually referred to as “syndic de la commune.”⁵ In the St. Lawrence valley, due to the geographical landscape, commons were often located on islands, most notably on those of the St. Lawrence River.

In the Detroit River region, French settlers also made use of islands as commons during the New France era. In 1749, Gaspard-Joseph Chaussegros de Léry Jr. reported that both Fighting Island and Turkey Island (then respectively known as Grosse Isle-aux-Dindes and Petite Isle-aux-Dindes), Ontario, were commons where French settlers held livestock.⁶ This is the only evidence to be found in the French sources on the Detroit River region confirming the existence of commons there before the British conquest. Yet, it is known that Hog Island (today’s Belle Isle, Michigan) was also used by French settlers as a common.

However, during the French regime, Detroit was not a seigneurie particulière owned by a specific individual or by a Catholic order (a “particulier”), like the seigneuries in the St. Lawrence valley. Instead, it was a seigneurie directe which was owned by the King, who was its seigneur direct. In the Detroit River region, French settlers could make requests to the commanders of Fort Detroit to obtain tracts of land. The Governor of New France had to approve these grants on behalf of the King. Between 1734 and 1760, the commanders of Fort Detroit granted dozens of tracts of land to settlers along the Detroit River and the River Rouge. During this period, the holders of these lands were required to pay their seigneurial dues to the local royal notary, who collected them on behalf of the King. This royal notary was Robert Navarre.⁷ In 1758, a second royal notary, Jean-Baptiste Campau, was also appointed.⁸

None of the land grants in the Detroit river region contained any reference to any commons. Neither did transactions that pertained to private properties at Detroit during the New France era, which were all signed by Robert Navarre, refer to any commons.⁹ It is likely that the commons on Fighting Island and Turkey Island that Chaussegros de Léry Jr. discussed in 1749, as well as the common on Hog Island, were not created as a result of any grant by the commanders of Fort Detroit but as a result of personal initiatives by settlers. Therefore, it is doubtful that any kind of “syndic de la commune” existed in the Detroit River region during the French regime, especially since no additional rents giving access to any commons (“droits de commune”) were apparently ever paid by French settlers in that seigneurie directe.

This lack of official recognition might explain why the French settlers who used Hog Island as a common were challenged regarding their public rights to use this island during the French regime. In the 1720s, while serving as commander of Fort Pontchartrain, Alphonse de Tonty built a house on Hog Island, apparently to appropriate it.¹⁰ However, as notary Philippe Dejean, who settled at Detroit only after the British conquest, later reported, “a request of the public forced him immediately to abandon it.”¹¹ At the time, virtually all the French settlers in the Detroit River region lived within the fort and had not yet begun to build farms along the Detroit River. Yet, they already possessed livestock that they apparently sent to the common on Hog Island. On June 12, 1752, after four farming settlements had been established along the Detroit River (Côte du Nord-Est, Côte du Nord-Ouest or Côte des Pous, Côte du Sud, and Petite Côte) the Governor of New France granted Hog Island to the sieur Douville Dequindre.¹² But once again, as French settlers recollected after the British conquest, “the earnest representation of the public deprived him of the possession.”¹³ Therefore, on the eve of the fall of New France, it

appears that French settlers in the Detroit River region used islands as commons, although their collective rights to these islands were not supported by any written evidence.

After the British conquest, especially following Britain's Royal Proclamation of 1763, which prohibited the establishment of European-American settlements in the Great Lakes, the existence of the seigneurie directe of the Detroit River region was jeopardized. British authorities did not acknowledge that the King of France possessed a seigneurie directe in that remote location prior to the change in regime and, unlike their French counterparts, the British commanders of Fort Detroit did not have the power to grant lands between the 1760s and 1780s. This meant that the local French families could no longer acquire lands for the younger generations, at least not the way they had done for decades. The French and British censuses of Detroit taken in 1750 and 1782 reveal that during this time period the local European-American population increased from 450 to 2,012 people. French settlers still made up the overwhelming majority of the European-American population in the Detroit River region two decades after the British conquest, for English, Scottish, and Irish individuals represented less than 3% of the local population in 1782.¹⁴ In this context, by the late 1760s French settlers began to acquire small tracts of land from the Potawatomi, Ottawa and Chippewa Indians to meet the needs of their growing families. These transactions, which were not sanctioned by British authorities, helped the development of the four French settlements along the Detroit River and the one along the River Rouge.

On April 16, 1768, British authorities sent out a decree requiring “all those who have any... deeds or grants of land [in the Detroit River region] to bring them before the first of June next to Philip Dejean esquire in order to have them registered.”¹⁵ The purpose of this decree was not to acknowledge any property rights, but to facilitate the collection of property tax (quit-rent)

from these land holders. Thomas Gage, who was the Commander-in-Chief in North America from 1763 to 1774, was concerned by the fact that French settlers (and British merchants) in the Detroit River region were acquiring lands through Indian deeds, which directly violated the Royal Proclamation. However, the local tax collectors did not make any distinction between lands obtained from French or Indian grants. The Indians who granted lands may have thought that they were “loaning” them, but the French settlers did not see it that way. Property tax was paid for these lands, on which farms were built, and many of these lands were eventually sold and resold, just like the lands granted by French authorities before the British conquest. The demographic expansion of the French population between the 1750s and 1780s, as well as the increasing number of property transactions, necessitated the presence of more French notaries. Besides Robert Navarre and Jean-Baptiste Campau, at least four other French notaries worked in the Detroit River region during the three decades that followed the British conquest. These men were Philippe Dejean, François Desruisseaux Bellecour, Gabriel Legrand, and Guillaume Monforton.¹⁶ British notary Thomas Williams also signed many legal documents in the French language at Detroit throughout this period. In total, these notaries signed hundreds of property transactions, which helped legitimize the ownership claims of the local French settlers, especially since British authorities did not yet officially acknowledge any property rights to European-Americans in the Great Lakes.

In the Detroit River region, the British conquest disrupted the claims to public property rights much more than the claims to private property rights. This new reality revealed itself in the dispute regarding the usage of Hog Island. The use of Hog Island as a French common was challenged shortly after the Royal Proclamation, when Gage instructed military officer John Campbell on November 20, 1764, to “make use of Hog Island and every other part you judge

usefull and necessary for the use and convenience of the Garrison.”¹⁷ In the next months, George McDougall, a former lieutenant in Britain’s Royal American Regiment who had recently married Marie France Navarre, the oldest daughter of Robert Navarre, petitioned the King to officially be granted the entire island. McDougall’s claim was based, as he himself explained, on the fact that in 1761 “the commanding officer at Detroit granted him leave to cultivate a small island called Hog Island.”¹⁸ Although Donald Campbell’s permission to cultivate Hog Island was not a land grant, McDougall used it to convince the King and on May 4, 1768, the King informed Gage that he had ruled in favour of McDougall’s claim.¹⁹ Gage transmitted the King’s ruling to Fort Detroit Commander George Turnbull (1767-1770) no later than on May 29, 1768, and stipulated that McDougall was “allowed a temporary occupation of Hog Island... upon certain conditions.” The occupation of Hog Island depended upon the approval of the Indians from whom, as Gage directed, McDougall had to get “a written acknowledgment of their consenting to the cession of those lands.”²⁰ McDougall obtained such written sanction from the Ottawa and the Chippewa on May 29, 1770, after having given them “five barrells of rum three roles of tobacco three pounds of virmillion and a belt of wampum, and three barrells of rum and three pounds of paint [as well as] one hundred and ninety four pound ten shillings current money of the Province of New York.”²¹ However, many French settlers of the Detroit River region strongly rejected this land transaction, and argued that Hog Island was a public property granted a long time ago and, as a result, it could not be owned by a single individual.

On May 14, 1769, Turnbull had publicly announced that Hog Island now belonged to McDougall. Less than a week later, French settlers first shared their discontent with Turnbull.²² On May 24, Philippe Dejean wrote a petition to Guy Carleton on behalf of 92 French settlers of the Detroit River region to denounce McDougall’s purchase. The overwhelming majority of

these petitioners were the descendants of grantees of the French regime. Robert Navarre did not endorse this petition, not so much because he was the father-in-law of McDougall, but most likely because he questioned the legitimacy of the claim that Hog Island had been public property during the French regime. The aspect of McDougall's acquisition that upset the users of the common of Hog Island the most was the provision that now prohibited them from bringing animals to the island. Dejean explained to Carleton that the common on Hog Island had been "ceded to the public by the late M. de la Motte [Cadillac], first Commandant of the Country, to keep the cattle in safety [and] that this right lasted until now."²³ Cadillac had established Fort Detroit in 1701 and between 1707 and 1710 he had granted a dozen tracts of land along the north shore of the Detroit River, in front of Hog Island. In a separate letter also submitted to Carleton on May 24, 1769, Jacques Campau, Jean Baptiste Chapoton, Laurent Eustache Gamelin and Pierre Réaume again repeated the fact that Hog Island was a common and added that they would look to find in the St. Lawrence valley the legal document that confirmed their claim ("chercher en Canada quelques preuves ou titres par écrit"). Once this document was found, they would let Carleton see it because their detractors stressed the necessity for them to provide some written proof that Hog Island had indeed been granted status as a public property.²⁴ It is not known if any research was actually conducted in the St. Lawrence valley to find such evidence. But even if Cadillac had officially granted Hog Island as a common, New France administrators cancelled all his grants in 1716.²⁵

On October 15, 1769, Thomas Bruce, then in charge of Fort Detroit, informed Gage about these new developments. He wrote that "Mons. De La Motte's grant was, according to what discovered, only a verbal one, and [the petitioners] acknowledge[d] that their only pretention is a possession of said island for sixty years, which they seem to think, gives them a

very sufficient right.”²⁶ Upon reception of Bruce’s letter, Gage notified the King that he “recommended to both parties to decide the dispute by arbitration.”²⁷ On December 9, 1769, William Hill, Second Viscount of Hillsborough, replied to Gage that “the King approves of the method you have recommended for the decision by arbitration of the dispute about the Isle aux Cochons.” On April 6, 1770, Gage passed Hill’s instructions on to Bruce. Meanwhile, McDougall had built two houses on Hog Island.²⁸

The French settlers upset by the grant of Hog Island to McDougall continued to communicate their discontent vehemently, to the point that on March 31, 1771, Fort Detroit Commander James Stevenson (1770-1772) complained that “the people in this settlement want but little encouragement to be the most troublesome set I ever heard of.”²⁹ On April 2, 1771, Jacques Campau, Jean Baptiste Chapoton, Pierre Réaume, as well as André Charles Barthe and Pierre Laurent St-Cosme, together signed another petition addressed both to Gage and Carleton, in which they declared that day after day they felt the pain of the restriction preventing them from using the island as pasture for their livestock (“il n’y a personne de nous qui ne se ressente journallement dans ses troupeaux de la cession de cette commune”).³⁰ On June 17, 1771, McDougall and the French settlers who wanted to keep using Hog Island failed to find a compromise and Gage concluded that “the affair [could] be settled by the King and Council only.”³¹

On June 12, 1772, Robert Navarre and 32 other French settlers took position against their fellow settlers who had been claiming public property rights over Hog Island. In their letter to British authorities, they explained that during the French regime the different commanders of Fort Detroit required settlers to keep their horses and other animals on Hog Island or on other islands so they would not cause damage or trouble. But they stated that these instructions were

not confirmations of any public property rights over Hog Island: “les commandants français ordonnaient souvent de mettre certains chevaux ou autres animaux dans l’Isle aux cochons qui causaient du dommage et troublaient le public, mais cela ne prouve pas que les habitants eussent la propriété de cette isle.”³²

By the late 1770s, the issue of the ownership of Hog Island was still not resolved. On August 12, 1778, Henry Hamilton, who in 1775 had been appointed first Lieutenant-Governor of the newly created District of Detroit, wrote a letter to Théophile-Hector de Cramahé, who was then Lieutenant-Governor of the Province of Quebec, in which he sided with the French settlers who opposed McDougall. Hamilton believed that “the claims of [these] inhabitants [were] sufficient to support their claim.” He thought that if Hog Island had “ever been granted from the Crown as a common... the inhabitants [had] no power to surrender that right as their property.”³³ However, with the arrival of a few Loyalists to Detroit throughout the following months, as a result of the American Revolution, Hamilton recommended that Hog Island be taken back by the Crown so it could be used as shelter for these families.³⁴ In 1780, the Governor of the Province of Quebec, Frederick Haldimand (1778-1786), granted permissions to Loyalist families to cultivate parts of Hog Island.³⁵ Despite this, George McDougall never gave up his rights to the island, as demonstrated by the fact that on November 11, 1793, his heirs sold half of the island to William Macomb.³⁶ In the early nineteenth century, Hog Island still belonged to the heirs of Macomb.³⁷

Following the British conquest, the French who had used Hog Island as a common were not able to convince authorities that they held public property rights over that island prior to the change in regime. Even during the French regime, the status of Hog Island was not entirely clear. Robert Navarre, who had worked as royal notary in the Detroit River region between 1734 and

1760, refused to endorse any claims to public property rights over Hog Island, most likely because such claims could not be substantiated by any written evidence, unlike private property rights.

The research for this paper benefitted from Doctoral and Postdoctoral Fellowships from the Social Sciences and Humanities Research Council of Canada, an Ontario Graduate Scholarship, as well as grants from the Center for French Colonial Studies and University of Michigan's William L. Clements Library.

¹ Guy Cabourdin and Georges Viard, *Lexique historique de la France d'Ancien régime* (Paris: Armand Colin, 1978), 72.

² Édouard Gruter, "Communaux," in François Bluche, ed., *Dictionnaire du Grand Siècle* (Paris: Fayard, 1990), 370.

³ Marcel Trudel, *Les débuts du régime seigneurial au Canada* (Montréal: Fides, 1974), 115-6; Pierre-Georges Roy, ed., *Inventaire des concessions en fief et seigneurie foies et hommages et aveux et dénombremens conservés aux Archives de la province de Québec* (Beauceville, QC: L'Éclaireur Limitée, 1927), 1: 285.

⁴ R. Cole Harris, *The Seigneurial System in Early Canada*, 2nd ed. (Montreal & Kingston: McGill-Queen's University Press, 1984), 28 and 71.

⁵ Rodolphe De Koninck, Anne-Marie Turcot and Andrée G. Zubrzycki, "Les pâturages communaux du lac Saint-Pierre: De leur histoire et de leur actualité," *Cahiers de géographie du Québec*, 17, 41 (1973), 326.

⁶ Pierre-Georges Roy, ed., *Rapport de l'archiviste de la province de Québec pour l'année 1926-1927* (Québec: L.-Amable, Imprimeur de Sa Majesté le Roi, 1927), 344.

⁷ Memorial by Robert Navarre, December 17, 1770, William L. Clements Library, University of Michigan (hereafter WCL), Thomas Gage Papers, American Series.

⁸ Commission de notaire royal au Détroit par l'intendant Bigot pour Jean-Baptiste Campeau, June 12, 1758, Bibliothèque et Archives nationales du Québec, Centre d'archives de Québec (hereafter BANQQ), Fonds Intendants, E1,S1,P4276.

⁹ See BANQQ, Fonds Intendants; Library and Archives Canada (hereafter LAC), Notaires de Détroit; Burton Historical Collection, Detroit Public Library (hereafter BHC), Detroit Notarial Records; Wayne County Register of Deeds, Liber 1, 2, A, B, and C.

¹⁰ Lettre de Maurepas à Beauharnois et Hocquart, May 8, 1731, Archives nationales de France (hereafter ANF), Série C^{11A}, vol. 56, fol. 80v.

¹¹ Historical Society of Michigan, *Collections and Researches made by the Pioneer and Historical Society of the State of Michigan* (Lansing, MI: Thorp & Godfrey, State Printers and Binders, 1888) 10: 237.

¹² Acte de concession par Charles Lemoine, Baron de Longueuil, et François Bigot, administrateur et intendant de la Nouvelle-France, au sieur Douville de Quindre de l'île aux Cochons située dans le lac Érié (Détroit) au-dessus du fort de Détroit, June 12, 1752, BANQQ, Fonds Intendants, E1,S3,P432.

¹³ Historical Society of Michigan, *Collections and Researches*, 10: 237.

¹⁴ Dénombrement des habitants du Détroit, septembre 1750, ANF, Recensements et documents divers, vol. 461, fol. 31; Historical Society of Michigan, *Collections and Researches*, 10: 601-1; Christian Denissen, *Genealogy of the French Families of the Detroit River Region*, 2nd ed. (Detroit: The Detroit Society for Genealogical Research, 1987).

¹⁵ Copy of Order Registering Deeds and Sales, April 16, 1768, WCL, Thomas Gage Papers, American Series.

¹⁶ Other French notaries apparently signed legal documents in the Detroit River region between 1760 and 1783, though little is known about them. Their surnames were: Bouvard, Panet, and Philibert.

¹⁷ Gen. Thomas Gage to Lt. John Campbell, November 20, 1764, WCL, Thomas Gage Papers, American Series.

¹⁸ The petition of Lieutenant George McDougall, no date, LAC, Colonies General, Original Correspondence, Board of Trade, 1766-1768, MG11, C.O. 323, vol. 24, part 2, fol. 651.

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- ¹⁹ Historical Society of Michigan, *Collections and Researches*, 10: 235.
- ²⁰ Gen. Thomas Gage to Capt. George Turnbull, New York, August 29, 1768, WCL, Thomas Gage Papers, American Series.
- ²¹ Historical Society of Michigan, *Collections and Researches*, 10: 235.
- ²² Requête de Jacques Campeau, Eustache Gamelin..., May 18, 1769, Division des archives de l'Université de Montréal (hereafter DAUM), Collection Louis-François-Georges Baby, B1-145, mf770-77.
- ²³ Historical Society of Michigan, *Collections and Researches*, 10: 237.
- ²⁴ Requête de Jacques Campeau, Pierre Réaume..., May 24, 1769, DAUM, Collection Louis-François-Georges Baby, B1-146, mf771.
- ²⁵ Analyse d'une lettre de Beauharnois et Hocquart du 6 octobre 1734 sur l'état des concessions (fiefs et censives) accordées depuis 1731 (lac Champlain et Détroit), ANF, Recensements et documents divers, vol. 462, fol. 165-165v.
- ²⁶ Maj. T. Bruce to Gen. Thomas Gage, Detroit, October 15, 1769, WCL, Thomas Gage Papers, American Series.
- ²⁷ Gen. Thomas Gage to Maj. T. Bruce, April 6, 1770, WCL, Thomas Gage Papers, American Series.
- ²⁸ Extract of a Letter from the Right Honorable The Earl of Hills Borough, one of His Majesty's Principal Secretaries of State, to General Gage, December 9, 1769, WCL, Thomas Gage Papers, American Series; Gen. Thomas Gage to Maj. T. Bruce, April 6, 1770, WCL, Thomas Gage Papers, American Series; Capt. James Stevenson to Gen. Thomas Gage, March 12, 1771, WCL, Thomas Gage Papers, American Series.
- ²⁹ Capt. James Stevenson to Gen. Thomas Gage, March 31, 1771, WCL, Thomas Gage Papers, American Series.
- ³⁰ Requête de Jacques Campeau, A. Barthe, Pierre Réaume..., April 2, 1771, DAUM, Collection Louis-François-Georges Baby, B1-149, mf770.
- ³¹ Gen. Thomas Gage to Capt. James Stevenson, June 17, 1771, WCL, Thomas Gage Papers, American Series.
- ³² Nous soussignés habitants du Detroit..., June 12, 1772, BHC, Campau Family Papers.
- ³³ Lt.-Gov. Henry Hamilton to Lt.-Gov. Théophile-Hector de Cramahé, August 12, 1778, LAC, Haldimand Papers, MG21, vol. 21782, fol. 26.
- ³⁴ Douglas Brymner, ed., *Rapport sur les Archives publiques, 1882* (Ottawa: Maclean, Roger & Cie., 1883), 11.
- ³⁵ Lillian F. Gates, *Land Policies of Upper Canada* (Toronto: University of Toronto Press, 1968), 11.
- ³⁶ Historical Society of Michigan, *Report of the Pioneer Society of the State of Michigan* (Detroit: William Graham's Presses, 1880), 2: 588.
- ³⁷ Walter Lowrie, ed., *American State Papers from the First Session of the First to the Third Session of the Thirteenth Congress, Inclusive: Commencing March 3, 1789, and Ending March 3, 1815* (Washington D.C.: Gales and Seaton, 1832), 1: 191-2, 268-75.