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Foundations of British Policy in the Acadian Expulsion: A Discussion of Land Tenure and the Oath of Allegiance

In the seminal work on the Acadian deportation, J.B. Brebner observed that

> if one could see and feel with the *habitants* in 1754 and 1755, one would discover that their temper and circumstance were so different from our own that our terms of description do not adequately portray them.[1]

It is evident, moreover, that he did his best to overcome this difficulty in telling the Acadians' story. Although he did not say so, nor is it too apparent in his writing, Brebner could, nevertheless, have said, with equal truth, that the temper and circumstances of the upper-class Englishman of the time are as far from our ken as those of the Acadians. At first sight, the validity of this assertion may appear open to question because, unlike the Acadians, the Lords of Trade and the colonial governors of the mid-eighteenth century can communicate directly with us through the medium of the fluent and graceful English they used in their letters and papers. But it is precisely this fact which should give us pause; for these men lived in a world whose whole frame of reference was very different from ours; where, for example, powerful monarchs still reigned, where economic thinking was dominated by the mercantile theory, and where a man's faith could bar him from positions of trust. Consequently, because their upbringing and experience were so different, the connotations of their English differ from ours, not to speak of the concepts that were derived from it. Two such legal conceptions, which received much attention in the documents of the period and which were central to British policy in the Acadian expulsion, were the oath of allegiance and qualification for land tenure. In what follows, it will be shown what meaning these concepts had for British officials of the period, in order to provide a clearer perception of the reasoning on which their policy was based.

Although the modern form of the oath of allegiance had only been on the statute books for seventy years[2] at the time of the Acadian expulsion, the concept it then evoked was the outcome of a long development which had its origins in the similar societies evolving in England and Normandy during the century before the Battle of Hastings. Both were engaged in almost continual warfare, both had an agricultural base, and both, therefore, depended on assessments levied on land to provide men and money for their military forces. Under such circumstances, it is not difficult to understand why, on both sides of the Channel, "the law of the land was rapidly becoming little more than the land law."[3] However, while there was a close resemblance between the two systems and each was effective in producing military manpower or its fiscal equivalent, they had developed from different traditions, and this caused them to evolve significantly different qualifications for acquiring and holding land.

In England, Germanic traditions supplanted Roman after the departure of the legions in the fifth century. The invaders from the continent were organized in accordance with the concept of the *comitatus* whereby "a great chief would surround himself with a band of chosen warriors and enter into a close personal bond with them"[4] which was sealed with an oath of fealty to the leader.[5] As the invaders became occupiers, the paramount chiefs assumed regal titles and created a nobility by rewarding ing the faithful service of their followers with titles of dignity and grants of land. These grants could be large or small and, by the eleventh century, could include one or more "hundreds" or "wapentakes",[6] the Anglo-Saxon administrative divisions on which statutory assessments for men and money for war were levied.

Across the Channel, Duke William followed the European practice of the time which was in the Roman tradition.[8] He also ennobled his followers and made grants of land to them, but the basis of tenure was quite different from the English. The land, or "fief", be it large or small, constituted a single assessable unit[9] and was held at the sovereign's pleasure, which was dependent on the fulfillment of specified services agreed to before the grant was made.[10] This agreement was made binding by the solemn and ceremonial act of homage by which the noble pledged to become the sovereign's man — his vassal — in respect of the land he held of him.[11] If the services required the noble to provide knights for military service, he could, with regal approval, carve out subfiefs from his own lands and enfeoff suitably qualified fighting men who then provided the required services and sealed the bond in an

act of homage to the noble. There was, however, a flaw in this system, at least as far as Duke William was concerned, because, if he and his vassal fell out, the vassal had a private army whose men owed allegiance to him alone by virtue of their individual acts of homage to him. Not infrequently, such questions were "solved by the sword".[12]

Briefly then, the important points of difference between the English and the Norman systems of land tenure were that, in the former, the oath of fealty played no part, had no territorial significance, and was expressive rather of a personal bond between king and noble or between noble and retainer. Grants of land were made for past performance, not for services to be rendered. While the lord might be held responsible for insuring that men and money were provided from his lands, the assessments for each were statutory and made on the basis of an administrative unit, the hundred. In contrast, the Norman knight was granted an arbitrarily assessed fief only in respect of services to be rendered and only after he had become the duke's vassal by performing an act of homage.

This was the only tenurial system with which William was familiar and, naturally, he introduced it to England after the Conquest. The first grant of a fief in England with the attendant ceremony of homage of which there is record was made to "Peter, one of the Conqueror's knights, in return for three or four knights"[13] in a charter which is unfortunately undated.[14] But there was no revolutionary change with the introduction of what was, essentially, a feudal system because the process was accomplished gradually over twenty years[15] as the lands of the old Anglo-Saxon nobility were seized by the King after the Battle of Hastings and the rebellions of later years.

But the replacement of the hostile Anglo-Saxons by Normans did not end William's troubles because, as in Normandy, the process of subinfeudation could cause private armies to be raised by his vassals which could be used against him. That he was aware of the danger and took steps to prevent it is demonstrated by the fact that, in 1086, acting in his capacity of paramount lord of all lands in England,[16] he "exacted, not only an oath of fealty, but an act of homage from all the considerable tenants of his kingdom, no matter whose men they were."[17] Thus, it is evident that the King had taken from both old English and Norman practice and had combined the idea of the close personal bond between sovereign and subject in the former to the more legal idea of a contract or bargain expressed in the latter. Moreover, "he insisted that in every expression of homage or fealty to another, there shall be a sav-

ing for the faith that is due to him."[18] That his insistence was successful is evident in the writing of the Chief Justiciar of Henry II, Ranulf Glanville. In his discourse on homage, Glanville laid it down that

> he who is to do homage shall become the man of his lord, swearing to bear him faith of the tenement for which he does his homage, and to preserve his earthly honour in all things, saving the faith owed to the lord King and his heirs.[19]

He further specified that, if a man held lands of several lords, "chief homage, accompanied by an oath of allegiance, is to be done to that lord of whom he holds his chief tenement."[20]

These pronouncements were echoed and amplified seventy years later, circa 1250, by one of the first judges of King's Bench, Henry of Bratton, known as Bracton.[21] Men before and after Bracton wrote at length on the subject of homage, but none so eloquently or authoritatively. He began by asking the rhetorical question, "what is homage?"

> Homage is a legal bond by which one is bound and constrained to warrant, defend, and acquit his tenant in his seisin against all persons for a service certain, described and expressed in the gift, and also, conversely, whereby the tenant is bound and constrained in return to keep faith to his lord and perform the service due. . . The *nexus* between a lord and his tenant through homage is thus so great and of such quality that the lord owes as much to the tenant as the tenant to the lord, reverence alone excepted.[22]

He goes on to specify who must do homage,[23] who must accept it,[24] when and how often it should be done,[25] and the form of the ceremony, which should be performed "in a public place and openly, in the presence of many in the county or hundred court or the court of the lord."[26] The lord should sit and the tenant kneel in front of him[27] and then he

> ought to place both his hands between the two hands of his lord, by which there is symbolized protection, defense and warranty on the part of the lord and subjection and reverence on that of the tenant, and say these words: 'I become your man with respect to the tenement which I hold of you (or 'which I ought to hold of you') and I will bear you fealty in life and limb and earthly honour (according to some, but according to others, 'in body and goods and earthly honour') and I will bear you fealty against all men (or 'all mortal men,' according to some) saving the faith owed the lord king and his heirs.'[28]

Immediately following, the tenant should stand up, place his hand on the Gospels, and swear the oath of fealty:

> 'Hear this, lord N., that I will bear you fealty in life and limb, in body, goods, and earthy honour, so help me God and these sacred (relics).'[29]

It is apparent that this was a solemn ceremony whose ramifications extended far beyond mere land law.[30] In a real sense, the lord was bound to help his man with aid and counsel in all things, even, in some cases, "if he attacks or molests another,"[31] while the man had to "observe his lord's command in all that is honourable and proper."[32]

But even before Bracton wrote, the almost mystic conception of homage that he evokes had begun to decline and to be replaced by the idea of a higher allegiance to the king. This is nowhere more evident than in the law book known as *Fleta*, published only forty years after Bracton's death (circa 1290). While *Fleta* covers all the ground of earlier works and paraphrases Bracton on homage and fealty, it also includes an oath which, omitting mention of any tenement, "promises a fealty so unconditional that it becomes known as the oath of ligeance or allegiance *(ligeantia)*";[33]

> This hear you, who stand by, that I will bear the king fealty in life and limb and earthly honour, and against him I will not bear arms.[34]

While similar in intent to the modern oath of allegiance, this formulation is more like the oath of fealty sworn to the Anglo-Saxon kings.[35] Moreover, like both of these, it conveys the idea of the oath-taker's personal loyalty to the king but appears to exclude any notion of a bond between the two based on mutual advantages and obligations, such as was explicit in the act of homage. In other words, it has the appearance of being a one-sided covenant in favour of the sovereign whereby those who take the oath receive little or no return for their allegiance. But this was not so. First, the protection of the lord which had enabled his vassal to enjoy peaceful possession of his lands now came to be secured to him in a more definite and impartial manner by the nascent but increasingly powerful courts of the king.[36] Second, by the time *Fleta* appeared in the reign of Edward I, these courts, reflecting the royal will and the sentiment of the time, were becoming increasingly "English" and thus tending to see all men divided into two great classes: liege subjects of the king, and aliens.[37] And it was coming to be the rule that only liege subjects could acquire and hold land in England.[38]

This rule had its origins in the loss of Normandy by King John in 1204 and the succeeding state of hostility between England and France which did not end until 1259 when Henry III renounced his claim to the fief. During that time, claimants to the English estates of the descendants of William I's barons who had adhered to the French king were at first met with the dilatory exception:

> You are within the power of the King of France and resident in France, and it has been provided by the Council of our lord the King that no subject of the King of France is to be answered in England until English men are answered in France;[39]

which, over the years, hardened into the peremptory "you are an alien and your king is at war with our king"[40] and finally became "you are an alien".[41] It is therefore apparent that the concepts of an "alien" and, by extension, a "subject" and the reason why the former could not hold English land arose out of "an exaggerated generalization of (the king's) claim to seize the land of his French enemies. Such an exaggerated generalization of a royal right will not seem strange to those who have studied the growth of the king's prerogatives."[42]

Thus, in the time of Edward II's reign, the law relating to allegiance and land tenure had set in the general form it was to hold for the next five hundred years. The duty of allegiance, a word which encompassed the meanings of the older terms, fealty and homage, was due to the king alone in his capacity as the ruler of all England. Acceptance of the duty was made by taking the formal oath in a court or other appointed place.[43] If the duty were accepted by a subject, certain benefits accrued to him, chief among which was the right to acquire land.

Once the law had assumed this form, legislators and judges concerned themselves with working out details. The first item to engage their attention was the definition of the legal status of children born outside the king's ligeance. Edward III and his army spent much time on the continent in war against the French and, without doubt, fathered many children during their progress. Some, including the King, became concerned that their offspring would be considered aliens and would be barred from inheriting their ancestral lands. Debate on this question was initiated in 1343,[44] but not until 1358 did a statute declare that the king's children, wherever born, and certain other named children "born beyond the Sea out of the Ligeance of England"[45] could inherit. The statute also stated that, in future, all children born "without the Ligeance of the King" whose parents were by birth of that ligeance

would be able to inherit. From these provisions, it is apparent that the king's ligeance is considered to be a geographical area, that the right to inherit real property in that area is central to the status of a subject, and that, by implication, anyone born outside the king's ligeance cannot inherit lands and is thus an alien. Twenty years later, however, the qualifications for inheritability were significantly altered when a statute was enacted which proclaimed that "infants born beyond the Sea, within the Seignories of Calais (Guines and Gascony) and elsewhere within the lands and seignories that pertain to our king beyond the sea, be as able and inheritable of their heritage in England as other infants born within the Realm of England."[46]

By the time the most able legal writer of the fifteenth century, Sir Thomas Littleton, had published his *Treatise on Tenures* (1481), the law had progressed to the point where not only was an alien barred from bringing a real action on the grounds that he could not own or possess real property, but he could not even sue in a personal action. However, while Littleton's words are clear and unequivocal,[47] his famous commentator, Lord Chief Justice Coke, in 1628 interpreted them to mean that only an alien enemy, as opposed to an alien friend, could not sue in a personal action, but he was in total agreement that no alien, friend or enemy, could "maintain either real or mixt actions."[48]

And Coke wrote with authority because it was he who, twenty years before, had written the Report of *Calvin's Case*[49] after hearing this famous action in the Exchequer Court. During the case, all earlier legislation and judicial precedents were cited and reviewed, and precise and ample definition was given to many hitherto hazy and uncertain terms touching allegiance, aliens, subjects, and much more besides. Beginning with Glanville, Coke cited statute and precedent to show that "ligeance is a true and faithful obedience of the subject due to his Sovereign"[50] and defined it as the "mutual bond and obligation between the King and his subjects, whereby subjects are called his liege subjects, because they are bound to maintain and serve him; and he is called their liege lord, because he should maintain and defend them."[51] Coke went on to distinguish four kinds of ligeance recognized by law: natural, local, acquired, and legal. Natural ligeance was the obedience owed to the sovereign by a person born in any of the king's possessions.[52] Such an individual was termed a "natural subject" *(subditus natus)*.[53] The bond of ligeance was considered to be indefinite, without limit,[54] irrevocable, and operative from the time of birth whether or not a formal oath of ligeance were taken in court.[55] Moreover, Coke took pains to

show that, for over a hundred years, a breach of this bond had been defined and punished as treason.[56] On the other hand, the advantages which accrued to the subject were not inconsiderable, and chief among these were the rights to inherit, purchase, own, and devise real property, and to protect his right to such property in the king's courts.[57] These rights were denied to an alien.[58] However, it was found that such a person owed the sovereign a local allegiance so long as he remained in the king's dominions in return for the king's peace and protection which enabled him to carry on his business or commerce and to protect his interests at law. In these provisions it can thus be seen that there is a direct link with the feudal conception of homage in that there is a *quid pro quo:* protection draws allegiance and allegiance draws protection.[59] Acquired ligeance he defined as the ligeance owed to the monarch by an alien who was granted the status of a natural subject.[60] While grants to individuals were rare and hedged with restrictions,[61] this was, nevertheless, the provision, based on ample precedent,[62] which eventually enabled the British to people a vast empire. For whenever the crown acquired a new possession, whether by conquest, cession, discovery, or inheritance, all its inhabitants, *anti-nati* and *post-nati* alike (infidels excepted), became subjects of the crown in no way inferior to natural subjects.[63] To define legal ligeance, Coke went back to Anglo-Saxon times. He found it to be formal expression of the oath of allegiance by a natural subject in a court of law.[64] The oath itself he traced from a version of the Anglo-Saxon oath of fealty said to have been transmitted to the seventeenth century by the legal writers of medieval times.[65]

In the turbulent years which followed the publication of Coke's writings, the oath of allegiance changed form frequently and the profession of legal ligeance became standard procedure for most subjects, but especially for educated persons and those holding government posts. Finally it became standardized in its modern form in the Abrogation Act of 1689,[66] passed after the accession of William and Mary. This statute repealed all previous legislation and laid down the several oaths that were required to be taken by various classes of subjects. Its provisions reflected the fear of a Stuart revival and a continuing insistence on the suppression of the Catholic religion. It is a long, comprehensive document which reproduces the text of each oath in full, specifies that they are to be taken in the open Court of King's Bench or in the county Quarter Sessions, and details the persons who are to take them. Although this Act was amended in several statutes prior to the Acadian expulsion, with the evident purpose of making the oaths more com-

prehensive and extending their reach, the oath of allegiance remained unchanged. In none of these statutes is there mention of a conditional oath or of a situation where such an oath may be necessary. Regardless of the motives which prompted the enactment of this statute, it is clear that all Englishmen in positions of trust were familiar with the solemn ceremony attendant on the taking of these oaths. Furthermore, in view of the events of 1745 and the subsequent expulsion of the rebellious Scots clans from their ancestral lands, it is probable that they were fully aware of the punishments and penalties they would incur if they were found to be in violation of their oath.[67]

In 1753, Mr. Justice Blackstone began to lecture on jurisprudence at Oxford and preserved the substance of his texts in his *Commentaries on the Laws of England.* This work was published in 1755, the year in which all-out hostilities began in the North American phase of the Seven Years' War and during which the British deported the Acadian population from Nova Scotia. Thus, we are fortunate to have a definitive statement of the law at the time the expulsion took place. In general, the author took an historical approach to his subject and followed the same reasoning to the same conclusions as had his distinguished predecessors, particularly Sir Edward Coke. Concerning the right of the subject to acquire land and the inability of the alien to do so, the situation was precisely the same as it had been over a century before.[68] But the concept of allegiance had undergone some refinement since Coke's time because, after a discussion of land tenure and the obligations arising therefrom, Blackstone concluded:

> With us in England, it becoming a settled principle of tenure, that *all* lands in the kingdom are holden of the king as their sovereign and lord paramount, no oath but that of fealty could ever be taken to inferior lords, and the oath of allegiance was necessarily confined to the person of the king alone. By an easy analogy the term of allegiance was soon brought to signify all other engagements, which are due from subjects to their prince, as well as those duties which were simply and merely territorial.[69]

He then turned to the legislation of the previous sixty years. During the course of a lengthy treatment in which it was evident that the Abrogation Act had been the subject of much legal thought, he remarked that the Oath of Supremacy which

> very amply supplies the loose and general texture of the oath of allegiance . . . must be taken by all persons in any office, trust or employment: and may be tendered by two justices of the peace to any person whom they shall suspect of disaffection. But the Oath of Allegiance may be tendered to all persons above the age of twelve years. . . .[70]

It is evident that the Lords of Trade, and senior officers and colonial officials who carried out the Acadian expulsion would have had a very different conception of the oath of allegiance and its ramifications than we have today. To them, it had real and immediate meaning not only because they themselves had to swear allegiance in a solemn ceremony held in an open law court, but because their qualification to take the oath gave them the right to inherit, acquire, and devise real property anywhere in the British empire. This right was highly important in an age when property was synonymous with wealth and high place. By contrast, an alien could not purchase land for his own use at any price. Moreover, as far as the Western hemisphere was concerned, this common law ruling was reinforced by statute law which expressly forbad the sale or other disposal of lands "upon the Continent of America" to any but the subjects of the crown.[71] From these facts, but perhaps even more from the mental attitude they engendered in crown officials, stemmed much of the problem that the British faced in administering Nova Scotia after the Treaty of Utrecht was signed.

After Acadia was ceded to Queen Anne in 1713, her governor found himself in charge of a relatively[72] large, homogenous French-speaking population already cultivating the most arable land in the province to which they laid claim by reason of title deeds granted by former French administrations.[73] As the years passed and the population grew, more and more of the remaining arable land came under the ploughs of the Acadians,[74] and the colony became, to an extent, prosperous. Under normal circumstances, that is to say normal to that time and place, this would have been a most desirable development because article fourteen of the Treaty of Utrecht made it clear that, if an Acadian remained in the colony after the year of grace allowed for removal to a French colony, he would become a subject of the British crown.[75] As such, he would then assume the rights and privileges of a natural born subject under the doctrine of acquired ligeance because his right to practise his religion, albeit in a circumscribed manner, had been recognized.[76] But this desirable state of affairs never came about because the Acadians would not consent to take the oath of allegiance unless it were qualified with a saving clause to the effect that they would not bear arms against the French; an impossible demand in view of British law and tradition. In essence then, successive governors of Nova Scotia were confronted by a population of indeterminate legal status, neither true subjects nor outright aliens, who were attempting to lay claim to crown land. This situation was a prime factor in causing the British dilemma; for as they saw it, this, and other problems, could be solved only by causing the Acadians to become loyal subjects of the crown or by deporting them.

That British officials on both sides of the Atlantic saw the problems and pondered the solutions there is no doubt. For example, in a letter of September 12, 1720 to King George I, Governor Philipps and his Council requested the dispatch of troops to enable them to subdue the Acadians "or to oblige them to depart and leave this Country."[77] In answer, the Board of Trade directed that the Acadians "ought to be removed as soon as the Forces which we have proposed be sent to you shall arrive in Nova Scotia."[78] This was not a new or original solution for, as Brebner points out, deportation had been a frequent proposal since the British first occupied Acadia in 1658.[79] Likewise, but to a much greater extent, the senior men discussed the oath of allegiance and expedients that would enable it to be administered successfully to the Acadians.

Just as the oath of allegiance receives a considerable share of attention in the letters and papers of British officials of the time, so it does in arguments of most historians who have since written on the Acadian deportation. But a like parallelism is not apparent in the amount of space each group of writers devotes to a discussion of land tenure and its ramifications. On the one hand, British officials gave much attention to land, to the right of Acadians to remain in possession of such, and to their right even to remain in the province. Moreover, their remarks were usually made in the context of their discussion of the oath of allegiance, which is to be expected in view of the close relationship which existed between the two concepts. On the other hand, historians have devoted little attention to the subject of land tenure. None the writer has studied has given a clear explanation of why the right to possess title to land depended on allegiance to the crown.

The first official of record to relate allegiance to land tenure was the first Lieutenant-Governor of Nova Scotia, Thomas Caulfield. In 1715, the year of grace allowed in the Treaty of Utrecht having expired, he was instructed to cause the inhabitants of the colony to take the oath of allegiance.[80] He and his emissaries to the outports were unsuccessful in their mission, as Caulfield made clear in a letter of May 3, 1715 to the Secretary of State:

> ye Inhabitants of this country, being most of them french refuse the oaths, having as I am informed refused to quite this collony intirely and to settell under ye french Govrmt. and I humblie desire to be informed how I shall behave to them.[81]

Succeeding governors were equally nonplussed by the behaviour of the Acadians. In a letter of January 3, 1719, General Richard Philipps told the Board of Trade that the "people. . . say they will neither sweare allegiance, nor leave the Country."[82] In September 1720, he observed that

> the Inhabitants seem determined not to sweare allegiance at the same time I observe them goeing on with their tillage and building as if they had no thoughts of leaving their habitations. . .[83]

It is not improbable that the Governor's remark was based on observations in a report describing Nova Scotia which had been prepared some months earlier for the Lords of Trade by Major Paul Mascarene who said:

> The Inhabitants of these Settlements are still all French and Indians; the former have been tolerated in the possession of the lands they possessed, under the French Government, and have had still from time to time longer time allowed them either to take the Oaths to the Crown of Great Britain, or to withdraw, which they have always found some pretence or other to delay, and to ask for longer time for consideration.[84]"

Six years later, a new Lieutenant-Governor, Lieutenant-Colonel Lawrence Armstrong, in an attempt to induce a group of Acadian deputies to take the oath, told them that the king, in return for their oath, promised them "the enjoyment of their Estates and the rights and other immunities of his own freeborn subjects of Great Britain."[85] In 1730, after receipt of information from Governor Philipps that he would again attempt to cause the Acadians to take the oath, the Lords of Trade issued an instruction which said in part:

> As to the French Inhabitants who shall take the Oaths, it must be esteemed by them as a mark of His Majesty's goodness that they have not long since been obliged to quit their settlements in Nova Scotia, according to the terms of the treaty of Utrecht, not having till now taken the Oaths of Allegiance to his Majesty.[86]

Ten years later, Paul Mascarene, now Lieutenant-Governor of Annapolis, when asking for instructions from the Secretary of State on how to deal with land claims from a new generation of Acadians, observed that the Acadian elders

> have divided and subdivided amongst their children the lands they were in possession of, and which his Majesty was graciously pleased to allow to them on taking the oaths of allegiance.[87]

With the appointment of Governor Cornwallis in 1749, the substance of official communications stayed the same, but the tone changed. In a declaration to the "French Subjects of His Majesty King George Inhabiting Nova Scotia," Cornwallis laid it down that

> His Majesty. . . is Graciously pleased to allow the said Inhabitants. . . the peaceable possession of such lands as are under their cultivation; Provided that the said Inhabitants do within Three months from the date of his Declaration take the oaths of Allegiance appointed to be taken by the Laws of Great Britain.[88]

Four years later, Cornwallis's deputy, Lieutenant-Governor Charles Lawrence, had occasion to remark how litigious the Acadians were among themselves. In the course of his discussion, he made the following significant observation:

> To give them a hearing in our Courts of Law would be attended with insuperable difficulties; their not having taken the oath of allegiance is an absolute bar in our la(w) to their holding any landed possessions. . . .[89]

This remark demonstrated Lawrence's complete knowledge of the connection between allegiance and land tenure, more than a year before the expulsion, as did the answer from the Lords of Trade who, on March 4, 1754 wrote:

> We are sorry to find that the French Inhabitants, tho' in other respects quiet, are so much engaged in Litigation and Controversy amongst themselves, and We are the rather concerned for it, because, as you rightly observe, it will be impossible to come to any judicial Determination upon these Disputes without admitting a legal Right in them to the Lands, concerning which the Disputes have arisen, and to which by Law, by the Treaty of Utrecht, and by His Majesty's Instructions, they have in fact no Right but upon condition of taking the Oath of Allegiance absolute and unqualified with any Reservation whatever; such a state of Suspense and Indecision is certainly an Obstacle to the Industry and Quiet of these People, but We cannot see how their Disputes can be decided for the Welfare of the Province without an entire compliance on their parts. . .[90]

During the summer of that year, and in accordance with this policy, Lawrence refused to re-admit Acadians to land held by them before their defection to the French "without an absolute compliance on their part."[91]

After the expulsion had begun, Governor Lawrence addressed a circular letter to all governors on the continent stating what he had done and giving his reasons. In part, he explained:

> I offered such of them as had not been openly in arms against us, a continuation of the Possession of their lands, if they would take the oath of Allegiance, unqualified with any Reservation whatsoever; but this they audaciously as well as unanimously refused. . . As by this behavior the in-

> habitants have forfeited all title to their lands and any further favour from the Government, I called together his Majesty's Council. . . to consider by what means we could. . . rid ourselves of a people who would forever have been an obstruction to the intention of settling this Colony and that it was now from the refusal of the Oath absolutely incumbent on us to remove.[92]

Although Governor Lawrence gave, in the paragraphs just preceding the quoted passage, other and, for him, probably more immediate reasons for the expulsion, he rested his case for what he had done on firm legal ground. And, from what has been demonstrated in this paper, it is unlikely that he did so for purely expedient reasons. He repeated the argument in a subsequent communication to the Secretary of State[93] and, somewhat obliquely, in the first paragraph of a letter to the Board of Trade.[94]

In the foregoing, an attempt has been made to include a comprehensive selection of writers and to choose shorter quotations which demonstrate a clear and intimate relationship between the concepts of allegiance and land tenure.[95] But the interested reader can also discern the close connection between the two concepts from many other passages in the documents. Again, it is suggested that the reason for this is that all the British officials were of the same frame of mind.[96] This is not remarkable for these men were the heirs of an integral and essential component of British tradition which had been conceived at the beginning of British legal and social history. Land tenure then had been directly related to service on the part of the vassal and protection on the part of the lord, which was symbolized in a solemn act of homage. Out of this had grown the concept of a higher fealty, or allegiance, to the king, which, by mid-eighteenth century, had been enlarged to contain all the duties a subject owed to the state. But the feudal principle of *quid pro quo* was retained by granting the subject who owed natural or acquired allegiance certain inalienable rights, chief among which was the right to own land. These facts were part of the reason why British officialdom of the time had a perception of the world so different from the one we have today and of the Acadians in that world. This difference in perception comes through very strongly in the correspondence of the period. And this, in turn, helps to provide a clearer understanding than hitherto has been the case of the reasoning of the men who conceived and carried through the expulsion of the Acadians.

NOTES

1. J.B. Brebner, *New England's Outpost* (Hamden, Connecticut: Archon Books, 1965) p. 205.
2. 1 Wm. & Mary, C.8 (1688(sic)). 'I.A.B. do sincerely promise and swear, that I will be faithful

and bear true allegiance, to their Majesties King William and Queen Mary." Owen Ruffhead. *Statutes at Large*. London, 1763. III, p. 419.

3. G.O. Sayles, *The Medieval Foundations of England* (2nd ed.; London: Methuen, 1964) p. 207. But see H.G. Richardson and G.O. Sayles, *The Governance of Medieval England from Conquest to Magna Carta* (Edinburgh: University Press, 1963) pp. 22-61 for the fully developed argument.
4. T. F. T. Plucknett, *A Concise History of the Common Law* (4th ed.; London: Butterworth, 1948) p. 480.
5. F.M. Maitland, *Domesday Book and Beyond* (Cambridge: University Press, 1897) pp. 69-70; S.F. Pollock and F.M. Maitland, *The History of English Law before the Time of Edward I* (2nd ed.; Cambridge: University Press, 1898, reissued 1968) I, p. 300.
6. See Pollock and Maitland, I, p. 556ff for a discussion of the hundred and the wappentake.
7. Richardson and Sayles, *Op. Cit.*, p. 42ff.
8. Pollock and Maitland, *Op. Cit.*, I, pp. 66, 77-78.
9. Richardson and Sayles, p. 105.
10. Pollock and Maitland, I, pp. 68-70, 297-8.
11. *Ibid.*, p. 68.
12. *Ibid.*
13. Richardson and Sayles, p. 106.
14. *Ibid.*
15. *Ibid.*, p. 100.
16. Plucknett, *Op. Cit.*, p. 13.
17. Pollock and Maitland, I, p. 299.
18. *Ibid.*
19. G.D.G. Hall, ed. and translator, *The treatise on the laws and customs of the realm of England commonly called Glanville* (London:Nelson, 1965) p. 104.
20. *Ibid.*
21. Pollock and Maitland, I, p. 206.
22. G.E. Woodbine, ed., S.E. Thorne, translator, *Bracton on the Laws and Customs of England* (Cambridge, Mass.: Belknap Press, 1968) II, p. 228.
23. *Ibid.*
24. *Ibid.*
25. *Ibid.*, p. 229.
26. *Ibid.*, p. 332.
27. Pollock and Maitland, I, p. 297.
28. *Bracton, Op. Cit.*, I, p. 332.
29. *Ibid.*
30. It is of interest to learn that, in early Anglo-Norman law, a breach of homage was defined to be the distinctively feudal crime of felony and was punished, in part, by causing the felon's lands to escheat or revert to his lord. "A mere common crime, however wicked and base, mere wilful homicide, or theft is not a felony, there must be some breach of that faith and trust which ought to exist between lord and man." (Pollock and Maitland, I, p. 304.) However, as the king's courts began to develop and to assume jurisdiction over cases concerning real property, homage gradually became a ceremony devoid of any real meaning. Concurrent with this decline and by an unknown process, there came "a deep change in thought and feeling. All the hatred and contempt which are behind the word 'felon' are enlisted against the criminal, murderer, robber, thief, without reference to any breach of the bond of homage and fealty." *(Ibid.)*
31. Pollock and Maitland, I, p. 300.
32. *Ibid.*
33. *Ibid.*, p. 299; Matthew Hale, *The History of the Pleas of the Crown* (London, 1736) I, p. 66.
34. H.G. Richardson and G.O. Sayles, eds. and translators, *Fleta* (London: Seldon Society, 1972) III, p. 40.
35. Pollock and Maitland, I, p. 300.
36. *Fleta, Op. Cit.*, III, p. 110.
37. Pollock and Maitland, I, pp. 459, 463. The earliest use of the word "alien" in legislative writing appears to be in the "Statute of Carlyle" (1306), where alien priors are prohibited from assessing taxes on the property of any English monasteries they control. *(Statutes of the*

Realm, I, p. 151.) "Subject" in the sense used in this paper does not appear until 1321 when, in the Bill to exile the Dispensers, the king is said to be "bound by his oath to govern the people and his Liege Subjects." (*Statutes of the Realm*, I, p. 183.)

38. Pollock and Maitland, I, p. 463.
39. *Ibid.*, p. 462.
40. *Ibid.*, p. 463.
41. *Ibid.*
42. *Ibid.*
43. See Sir Francis Bacon's speech to the court in *the Case of Post-Nati* (1608) T.B. Howell, *State Trials* (London, 1816) II, p. 582.
44. 25 Edw. III, Stat. 2 (1350).
45. *Ibid.* See also Bacon's argument in 2 State Trials 585.
46. 42 Edw. III, C. 10.
47. Sir Edward Coke, *The Institutes of the Laws of England* (7th ed.; London, 1670) I, p. 128b. Coke translates Littleton as follows: "The third (category) is an alien which is born out of the allegiance of our Sovereign Lord the King; if such an alien will sue an action real or personal, the tenant or defendant may say, that he was born in such a Country which is out of the Kings allegeance, and ask judgement if he shall be answered."
48. *Ibid.*, I, p. 129b.
49. *Calvin's Case*, the *Case of the Post-Nati*, had curious antecedents. It arose from a desire of James I to unite England and Scotland into one kingdom (2 State Trials 559). To this end, a committee of Scots and English commissioners produced a report which, *inter alia*, recommended that "the common law of both nations should be declared to be, that all born in either nation since his majesty was king of both, were mutually naturalized in both." (2 State Trials 562). The Commons of England would not assent to this, so, in 1608, recourse was had to law to settle the issue. Land was purchased in England on behalf of an infant, Robert Calvin, a post-natus of Scotland (i.e. a person born in Scotland after the accession of James I to the throne of England), of which he was disseised by two native born Englishmen. Suit was brought on Calvin's behalf to recover the lands. The defendants answered with the plea that Calvin was an alien born and so unable to hold land in England or to bring a real action in an English court. After lengthy legal arguments at every judical level, an Exchequer court composed of the Lord Chancellor and twelve high court judges found for Calvin. In part, their decision rested on demonstrations that whoever is born under one natural ligeance to one sovereign is a natural born subject and, since Calvin was born under one natural ligeance, "*ergo*, he is a natural-born subject" (77 English Reports 406) and therefore entitled to acquire and hold land anywhere in the king's dominions.
50. *Calvin's Case*, 77 English Reports 382.
51. *Ibid.*, p. 383.
52. *Ibid.*
53. *Ibid.*
54. *Ibid.*, p. 385.
55. *Ibid.*, p. 382.
56. *Ibid.*, p. 383.
57. *Ibid.*, p. 408.
58. *Ibid.*, p. 396.
59. *Ibid.*, p. 382. "*Protectio trahit subjectionem, et subjectio protectionem*" is the phrase Coke coined or quoted.
60. *Ibid.*, p. 384.
61. *Ibid.*, p. 383. Denization, as such a grant was called, required an act of Parliament or letters patent from the king, and the grantees were usually subject to limitations on their right to acquire land or hold office.
62. *Ibid.*, pp. 383, 397, 398.
63. *Ibid.*, p. 398.
64. *Ibid.*, p. 385.
65. *Ibid.*
66. 1 Wm. & Mary, C. 8 (1688 (sic)). Ruffhead, *Loc. cit.*
67. A person convicted of treason (as many were after the Rebellion of 1745) died a horrible death by drawing, hanging, and quartering. But this was not the end, at least not for his survivors, because all the property of a traitor, real or moveable, was forfeited to the king. The section of

the *Commentaries* in which Blackstone discusses forfeiture is lengthy and informative, and it is obvious that he considers it to be the greater of the two punishments. It is a striking expression of the high regard for real property in Blackstone's time. William Blackstone, *Commentaries on the Laws of England* (12th ed. rev.; London, 1795) IV, pp. 380-385.

68. *Ibid.*, I, p. 371ff.
69. *Ibid.*, I, p. 367.
70. *Ibid.*, I, p. 368.
71. 7 & 8 William III, C. 22 (1696).
72. Colonel Vetch, the commander at Port Royal, estimated that there were approximately 500 families (about 2500 persons) in Acadia in 1713, of whom only two did not wish to remove to French territory. The military garrison was apparently inconsiderable also, and, in 1720, did not number much more than 200 all ranks. T.B. Akins, ed., *Selections from the Public Documents of Nova Scotia* (Halifax: Charles Annand, 1869) pp. 5, 18. Hereafter PDNS.
73. Brebner, *Op. Cit.*, p. 144.
74. Brebner estimates that there were about 10,000 Acadians in Nova Scotia in 1749. *Ibid.*, p. 165.
75. PDNS, p. 14, n.
76. *Ibid.*
77. *Ibid.*, p. 56.
78. *Ibid.*, p. 58.
79. Brebner, p. 122.
80. PDNS, pp. 1-2.
81. *Ibid.*, pp. 7-8.
82. *Ibid.*, pp. 16-17.
83. *Ibid.*, p. 51.
84. *Ibid.*, p. 41.
85. *Ibid.*, p. 67.
86. *Ibid.*, p. 85.
87. *Ibid.*, p. 108.
88. *Ibid.*, p. 165.
89. *Ibid.*, p. 206.
90. *Ibid.*, p. 207.
91. *Ibid.*, p. 214.
92. *Ibid.*, p. 278.
93. *Ibid.*, p. 284.
94. *Ibid.*, p. 281.
95. Only a few of many such passages have been quoted. For example, see *Ibid.*, pp. 21, 65, 91, 121, 171, 187, 251, 262, 279.
96. It is relevant to point out that the British were not unique in this respect. French policy too was much the same and for similar reasons, but the French were not as long-suffering. For example, concerning the Acadians who lived in the area controlled by Fort Beauséjour, the Governor of New France, Marquis de Lajonquière, issued an order dated May 1, 1751 which said in part: "tous accadiens qui (huit jours après la publication d'icelle) n'aurons point prêté serment de fidélité et ne seront point incorporés dans les Compagnies de milices que/nous avons créés, seront avérés rebelles aux ordonnances du Roy et comme tels chassés des terres dont ils sont en possession." Quoted from a copy of this letter in J.B. Brebner, "Canadian Policy towards the Acadians in 1751", *Canadian Historical Review*, v. XII, no. 3 (September, 1931), pp. 284-86.