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THE GOVERNMENT OF NEW FRANCE

In the sixteenth and early seventeenth centuries claims to vast areas in North America were established by a few intrepid European mariners, commissioned by their respective rulers. The colonies that eventually developed from some of these claims were an extension of European nation states and served to introduce their long established customs, institutions and laws into the New World.

After the initial exploratory stage the French, like the English and Dutch, for a long time relied on private companies to establish their colonies, granting them charters which stipulated their privileges and their responsibilities. The aims of these companies were strictly commercial; to obtain the maximum profit from the exploitable resources of the land, with the minimum expenditure. The aims of the French Crown, on the other hand, were to secure colonies for long range development in the hope that they would enhance the prestige and political power of the kingdom, as well as its wealth. This required the establishment of large numbers of permanent settlers to defend the territories claimed by the Crown against assaults by the natives or by other European powers. The Crown also intended that these colonies should serve as bases for missionary activity among the pagan Indian tribes. This last was, of course, considered to be a good thing in itself, but, initially it also served to justify French encroachment on the continent in the face of Pope Alexander VI's recognition of Spain's and Portugal's claims to all of North and South America.

After several private companies had failed to establish viable colonies, Cardinal Richelieu, in 1627, organized the more ambitious Compagnie de la Nouvelle France with territorial jurisdiction from the Floridas to the Arctic and from Newfoundland to Lake Huron. A local governor was appointed with civil and military powers, a company agent to handle the colony's finances, and the coutume de Paris was decreed to be the code of law. In 1635 a local governor was appointed at the infant settlement of Trois-Rivières and in 1642 a similar appointment was made when Montreal was founded as a missionary settlement. But this company, like its predecessors, through mismanagement and misadventure, was unable to implement its founder's plans for increased settlement, or to exploit the country's resources profitably. In 1645, therefore, it leased its monopoly on the fur trade to the colonists for an annual fee of one thousand beaver pelts — worth roughly $100,000 in present day purchasing power. The Communauté des Habitants also had to pay the costs of the colony's administration but the Compagnie de la Nouvelle France retained its right to make grants of land under seigneurial tenure, and also, to appoint the senior officials in the colony.
Two years later, in 1647, the king appointed a council at Quebec to administer the colony's affairs. This first council consisted of the governor, the superior of the Jesuits, the governor of Montreal and a secretary. In 1648 two residents of the colony were added and in 1657 the council was reorganized to include the governor, the agent of the Compagnie de la Nouvelle France, and four councillors. The latter were elected for two year terms, two by the residents of Quebec and two by the settlers at Montreal and Trois-Rivières. In 1651, the administration of Justice was placed on more secure foundations: Montreal already had a seigneurial court, as did two or three other of the more important seigneuries; now, a lieutenant général for civil and criminal cases was appointed at Quebec and Trois-Rivières. Thus, by the middle of the seventeenth century, New France had a form of representative government to regulate the affairs of the colony and law courts to render justice to the settlers.

Although these administrative institutions were fairly well established, the French colonies in North America were still pitifully weak. Acadia at this time was held by the English. Its main posts had been seized in 1654 by New England freebooters, but its handful of French settlers had been allowed to remain. Not until 1670 was the province returned to France. New France too was in grave danger of collapse. Its population was less than 2,500. The company had conspicuously failed to send out the number of settlers stipulated in its charter and for a long time the Iroquois confederacy had been harassing the colony. Losses in these attacks were heavy and could not be replaced; some of the settlers gave up in despair and fled back to France. The fur trade, the economic life blood of the colony, was reduced to a trickle by the Iroquois blockade of the rivers leading to the west. By the 1660's it was clear that, as in the English colonies, private enterprise had failed as a colonizing agent. The survival and eventual expansion of New France urgently required the investment of massive amounts of capital without thought of immediate return, and a sizable military force. No private company could be expected to provide these; the only agency that could was the Crown. Fortunately for French colonizing efforts, the monarchy was, at this time, able and willing to make the necessary investment. Thus it was that in 1663 New France became a royal province and its administration was put on a much firmer footing. Under company government, however, the basic political and judicial institutions had been introduced in the colony. Along with them a theory of government and a particular concept of society with distinct values had been firmly established. The theory of government was, of course, the prevailing one of seventeenth century Europe: divine right monarchy. The concept of society was a status ordered one. That it in so many ways resembled a hierarchical military society, with the noblesse, like commissioned
ranks, enjoying higher status and greater responsibility, is no accident, for the simple reason that the military framework developed from and reflected the old feudal order of society. In England the more powerful bourgeoisie had done much to destroy this concept, but the same development was delayed in France until the end of the 18th century.

Under Louis XIV the royal administration continued the determined drive for centralised power which had long been the chief aim of the monarchy. To execute its policies this government relied on a bureaucratic machine that grew immeasurably in numbers, power and efficiency during the second half of the century and was to be imitated by other countries, not excluding England. Paradoxically, however, the man who was now given charge of colonial affairs, Jean-Baptiste Colbert, chose at the outset to imitate the English and Dutch in order to implement his long range plans for colonial development. In emulation of the powerful East Indies Companies of these great trading nations he established, in 1664, the Compagnie de l'Occident. All property rights in the French possessions in North and South America and the west coast of Africa were vested in this company. It thus became the grand seigneur in Canada, Acadia and Newfoundland and was empowered to grant lands in fief, to appoint all officials, to legislate and administer justice. The company was also given a monopoly on colonial trade, with the exception of the Grand Banks fisheries. Attempts to have private individuals subscribe the capital needed by the company were not very successful and the Crown was obliged to subscribe 60 per cent of it. In fact, the company was a Crown corporation, created and directed by Colbert. This experiment, however, did not succeed and in 1674 Colbert closed the company's books. Its rights and responsibilities reverted to the Crown. So far as the government of the colonies was concerned this change made no discernible difference. Colbert, as Minister of Marine, had directed colonial affairs while the company was in existence and he continued to do so in exactly the same way after its demise. The only real change was the removal of the company's monopoly on colonial trade, making it open to all the king's subjects.

II

From 1663 on, the government of New France was highly centralised, a clear-cut chain of command being established at the outset from the king down to the lowest colonial official. In theory all power derived from the sovereign, who delegated specific responsibilities and powers to his officials. The most senior of these, in colonial affairs, was the minister of marine who was assisted by deputies, known as commis. The more senior commis had powers and duties not unlike those of a present day Canadian deputy minister. They frequently were much better informed than the minister on colonial matters and
provided him with the information he needed to formulate policy. Sometimes they themselves devised policies for his approval. Frequently, senior officials who had seen long service in Canada and had subsequently returned to take up posts in France, were consulted before major decisions were made.

The mechanics of this system were quite simple and relatively efficient. Each year in the autumn, just before freeze-up isolated the colony for some six or seven months, the colonial officials sent lengthy dispatches to the minister informing him in great detail of all that had transpired, sometimes recommending changes in policy and requesting his decision in all manner of things. Sometimes these dispatches ran to ninety or more folio pages, much longer than the minister had time to read. A commis therefore prepared abstracts of the colonial dispatches for the minister’s perusal, condensing them into a dozen or so pages without omitting anything significant or distorting the meaning. They did this using only the right hand half of the folio page. On the left hand side the minister scribbled his brief comments, answering the queries of the colonial officials and giving his decisions in the tersest of phrases. Frequently one word sufficed: “Non.” Sometimes he scribbled a note asking the commis to provide pertinent information, and this would be added below; then the minister would give his decision. Once an abstract had been dealt with by the minister the commis then drafted two replies, one from the minister to the colonial official concerned, the other in more general terms from the king. Frequently, the abstracts are more revealing to the historian than the dispatches that were written from them and sent out over the minister’s or the king’s signature, for they display his undisguised feelings, whereas the dispatches proper were written in the more dispassionate phrases of the bureaucrat. The final draft of the king’s dispatch was written, from the commis’s rough draft, by one of the king’s four private secretaries and in the literary style suited to a grand monarch. The king’s signature was then forged on it by the first secretary, who was thus known as the secrétaire qui avait la plume. This is not to say that the king did not know what was being done in his name; he did, he was informed orally by the minister, but he was far too occupied with important affairs of state, and sometimes other matters, to attend to routine colonial affairs. Under Louis XIV, when something of importance arose he had the pertinent documents read to him, then he made the decision. When this occurred the colonial officials were informed of it to indicate how serious the matter was. Similarly the minister would write a dispatch to a colonial governor in his own hand on occasion, but here again only when issues of great consequence were involved.

In the spring or early summer the dispatches from the Court were sent on the king’s ships to Quebec. Thus, in the normal course of
events, ten months or more would elapse between the sending of a
dispatch and the receipt of a reply. This is frequently cited as a grave
weakness in the French colonial system, and occasionally when ships
were delayed it proved awkward, but it was by no means as bad as it
has been made to appear. Communications were slow everywhere in
that age; information could be sent from one place to another no
faster than a sailing vessel or a man on horseback could travel. Even
in Europe storms could block roads and contrary winds keep ships in
port for months. Thus officials in remote regions were expected to
use their own initiative. In New France this was certainly the rule.
If a policy decision was received from the minister that the colonial
officials considered was not in the best interests of the colony, they
held it in abeyance, informed the minister of their reasons and sug-
gested more appropriate measures. Usually the minister heeded their
advice; but such situations rarely arose. In the seventeenth and
eighteenth centuries life was much less complex and moved at a slower
pace. Radical changes in government policy were not made frequently,
and then only after much consultation and deliberation.

When, however, a badly advised minister insisted on pursuing a
short sighted policy the ingenuity of the governor was taxed to the
utmost to abide by it yet obviate its consequences. In such a case
the very slowness of communications with France sometimes proved to
be a blessing, for it gave the governor enough leeway to deal with
desperate situations as they arose, on his own initiative, without the
minister being able to interfere. Thus faced with a fait accompli the
minister was not obliged to admit that he had been wrong and could
belatedly sanction the policy implemented by the governor.

III

In New France the senior official was the governor-general,
appointed usually without term on a modest salary of 12,000 livres* a
year, plus approximately 12,000 livres for expenses. Most governors
received additional grants of up to 6,000 livres as a reward for meri-
torious service or as a tribute to the influence of friends and relatives
at the Court. With only one exception, Lefebvre de La Barre, the
governors-general of New France under royal government were mem-
bors of the feudal nobility and professional soldiers.

Military matters, relations with the Indian nations, and with the
European colonies to the south, were the governor-general’s particular
care, but he held a watching brief over the activities of all the subor-

* The livre had, roughly, the purchasing power then that two dollars has
today.
dinate officials to ensure that they discharged their duties honestly and efficiently.

In civil matters his orders could be questioned but not disputed by the more senior officials, and he had a veto power over the decisions of any of them. He could, however, exercise this veto only in the most dire circumstances and he always had to justify his action to the minister of marine. Not least of the governor's duties was to represent the power and majesty of the Crown. Consequently he was expected to be most circumspect lest his actions reflect adversely on the prestige of the king.

The intendant, although of lower status than the governor, was the most important official in the colony. He was responsible for the civil administration, for the maintenance of law and order, for ensuring that the people obtained swift and impartial justice before the courts, and for the colony's finances. The men appointed to this post were always skilled administrators, well educated and usually with legal training. They were responsible in no small measure for the economic development of the colony and in addition they were required to exercise a paternalistic care for the needs of the settlers. In the official instructions given the intendants upon their first being appointed this was spelled out in detail. For example, in 1686 Jean Bochart de Champigny was instructed:

His Majesty wishes him to visit once a year all the habitations that are situated between the Gulf and the Island of Montreal, to inform himself of all that goes on, pay heed to all the inhabitants' complaints and their needs, and attend to them as much as he possibly can, and so arrange it that they live together in peace, that they aid each other in their necessities and that they be not diverted from their work.

The intendants, for the most part, adhered faithfully to these instructions. Such social welfare agencies as the Bureau des Pauvres, first established by Champigny in 1686 and the provisions made for the care of foundlings, bear witness to this as, more mundanely, do the host of regulations enacted to control the price of essential commodities. By the end of the century, with the rapid rise in population and the presence of some fifteen hundred regular troops in the colony, a deputy had to be appointed to aid the intendant. Resident at Montreal, his chief functions were to care for the needs of the troops, prevent discord between them and the civilian families upon whom they were billeted, and enforce the regulations governing the western fur trade. In 1738 a deputy was appointed at Trois-Rivières, and in 1743 at Detroit. In Quebec, the lieutenant général of the Prévoté acted as the intendant's deputy. Beneath them were several minor bureaucrats; among them, town criers, a grand voyer to inspect roads, an arpenteur royal, and one official with the imposing title of
sergent royal, juré priseur, et vendeur de biens. Some at least of these minor posts were created by the intendant, not so much because they were needed, but, as Champigny admitted, to provide modest salaries of some two or three hundred livres a year to men who had given long and useful service to the colony in war time and were no longer able to support themselves unaided. They were, in short, a form of pension.

With the return of Acadia to French sovereignty in 1670 the governor and commissaire of this colony came nominally under the authority of the governor and intendant at Quebec, as did the governor and commissaire at Plaisance. At the latter place, however, communications with France were much easier than with Quebec; hence, by the end of the 17th century the officials in Newfoundland were placed directly under the ministry of marine. In wartime military campaigns in Acadia were directed by the governor-general of New France, but in all other matters the Acadian officials were virtually independent, receiving their orders directly from the minister. Louisiana was also independent of Quebec, much to the disgruntlement of the governor-general of Canada. In fact, the hostility between the two provinces was, on occasion, almost as acute as that between New France and New York.

In addition to his civil responsibilities the intendant had a very important military function. The office had originated in Europe as a military appointment. A member of all councils of war, he was responsible for paying, feeding and clothing the regular troops in the colony, keeping them supplied with arms and munitions, arranging for their billets, for hospitalization when sick or wounded, for pensions, the execution of soldiers' wills and a myriad of other duties. He was also responsible for the construction and maintenance of fortifications. In wartime this system proved its worth, being incomparably superior to that practised in the English colonies where military operations were continually hamstrung by the colonial assemblies' refusal to accede to the provincial governors' requests for men and funds to pursue the war. In Canada, the moment hostilities were declared, or even before, the entire resources of the colony in men and material could be mobilized.

There was, unavoidably, some overlapping of the powers of the governor and intendant and, in the early years of royal government, largely owing to the personalities of the men holding the senior posts, there were violent conflicts. It was difficult to find men who possessed the rather exceptional qualities required for these posts and who were willing to serve in a remote colony on the fringe of the wilderness. One or two of the governors, in the early years of royal government, grossly abused their authority. The king and the minister were thus
obliged to devise ways of curbing the powers of the governor without making him answerable to anyone but the Crown lest it should appear that the royal authority vested in a governor-general was in any way circumscribed. The respective powers and spheres of authority of the governor and the intendant were eventually defined more clearly, but it was made plain that subordinate officials could on no account disobey the governor’s orders, even though he might be abusing his authority. They could only report the matter to the minister and await his decision. The concept of checks and balances was completely foreign to French political thought under the old régime, and the king made it very clear to all the colonial governors and intendants that they were to cooperate in all things, not to serve as a check on each other.

In the colonial hierarchy the bishop played an important role. Although his chief concern was for the cure of souls, he did have temporal duties; but after the inauguration of royal government these were, to a large degree, taken over by the intendant. When the Sovereign Council was established the bishop was given the second rank, after the governor, and shared with him the responsibility for appointing the other members of the Council from among the leading colonists. This method did not work well; it led to clashes between the governor and bishop and in 1665 the bishop was deprived of the right to share in the selection of councillors. With this prerogative gone the bishop’s influence in the Council waned and his attendance at its meetings became infrequent. In fact, from this time on, clerical influence in civil matters was much less than that of the secular officials in church affairs.

The main body within which the governor and intendant performed their civil functions was the Sovereign Council at Quebec, established in April 1663 to replace the old council of the Compagnie des Habitants. In 1703 the king changed the title to Conseil Supérieur but its powers and functions remained unchanged. Its duties were to register and promulgate the laws of the kingdom, to legislate for the needs of the colony, hear criminal and civil cases in first instance, and appeals from the lower courts, according to the form and practice of the Parlement de Paris. In France no clear cut distinction was made between the legislative and judicial function; thus it was that much municipal legislation at Montreal was enacted by the local judge. Over the years, however, a distinction came to be made as the intendant assumed to himself the task of enacting most of the legislation and the Sovereign Council devoted itself mainly to its judicial function. This division of labour may well have resulted from the inevitable increase in litigation with the growth of population.
When originally founded the Sovereign Council consisted of the governor, the bishop, five councillors, an attorney-general and a recording clerk. Provision was subsequently made for an intendant, who quickly became the dominant figure despite the fact that he held third place in rank, after the governor and bishop. The governor retained the title of president of the Council but the intendant presided over the meetings. This was of great significance owing to the manner in which the Council functioned. When a legal case or legislative matter came before the Council the attorney-general first submitted his report then retired. The intendant then "asked for the opinions", which meant the question was open for discussion. After all the members had aired their views the intendant "collected the voices and delivered the judgement". This meant that each councillor in turn, beginning with the most junior, gave his verdict. When all had been heard the intendant then rendered judgement or drafted the legislation in accordance with what he took to be the consensus of opinion. No motions were made and no votes taken,* which meant in effect that the decisions of the Sovereign Council were those of the presiding officer acting on the advice of the other members. This system had much to recommend it since the intendant was trained in the law, as was the attorney-general, but the councillors were not; and the councillors, through long residence in the colony, could be expected to know local conditions and peculiar circumstances better than the intendant and so advise him, particularly if the latter were only recently come from France.

The Council held its sittings every Monday morning at eight o'clock, with extra sittings when the press of business required. At first the meetings were held in the governor's residence, the Château Saint-Louis, but in 1689 they were transferred to the Palais de Justice, a building which had originally housed Talon's brewery and was converted by the intendant Jacques de Meulles, into a combined court, gaol, and residence for the intendant. The members of the Council sat around a large table, the governor, bishop and intendant at the head, the governor in the centre, the bishop on his right and the intendant on his left. The councillors were ranged around the table in order of seniority, with the recording clerk seated half way down. At

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* In 1694, Frontenac, in a case in which he was indirectly involved, sought to have the Councillors register their individual verdicts in the records. The attorney-general rejected the demand on the grounds that such a procedure was not allowed in the Parlement de Paris or other courts, except in questions that involved the disruption of the kingdom. He further declared that the opinions and verdicts of Council members were deliberately not recorded in order that no one outside the Council could know how individual members had voted lest those punished, or their friends and relatives, should hold it against them. This clearly implies that there was no need for unanimity before a verdict was rendered.
the foot of the table the attorney-general took his place and after presenting his reports or legal opinions, retired to his ante-chamber, leaving the councillors to their deliberations. Whenever parties to a case or witnesses were being interrogated a huissier had to be in attendance to keep order and make sure that proper respect was shown in the chamber. Apparently litigants sometimes engaged in violent altercation and a show of force was required to make them keep order.

In 1675 the authority and prestige of the Council was considerably enhanced by the granting of royal commissions to the incumbents. From this point on the king, not the governor, appointed the councillors as vacancies occurred. This made the Sovereign Council virtually independent of the governor; he could no longer seek to bend them to his will by threatening them with dismissal, or the appointment, when vacancies occurred, of councillors he could rely on to comply with his wishes. At the same time the king increased the membership from five to seven. The reason for the increase was that it was often difficult to obtain a quorum in judicial cases. Three judges were required to hear civil cases and after 1685 six were necessary for cases in which a member of the Council was involved. In criminal cases five judges were necessary. Any councillor who was in any way related to a litigant or an accused, or who had or could be suspected of having any interest in a case, was required to step down. If he did not do so of his own accord he could be challenged by the accused, or a litigant in a civil suit, and the other councillors had to decide whether there were valid grounds to require the challenged councillor to remove himself from the case. This frequently required the appointment of judges to the Council from outside its ranks. In 1703 the number of councillors was increased to twelve to alleviate this problem, but still it frequently happened that judges of a lower court, or other citizens had to be called in to sit in judgement.

Shortly after the establishment of royal government a new office was established, one that was to prove extremely useful in the colony’s administration. This was the office of captain of militia. In each district a captain was appointed to command the local militia unit. There was no salary or emoluments attached to the appointment, but considerable prestige. Chosen from among the habitants, these capitaines de milice were the most respected men in their communities and they played a more important role than the seigneurs, for in addition to mustering the militia for military service they had important civil functions. They acted as the local agents of the intendant, communicating his orders to the habitants, ordering the corvées for work on the roads and bridges. In fact, when a corvée was called the local seigneur came under the captain’s orders, along with his censitaires. Thus they served as the vital link between the senior officials and the
mass of the populace. By delegating this responsibility to selected habitants rather than to the seigneurs the latter group were unable to become too powerful; they were unable to oppress the common folk or pose a threat in any way to the royal authority. The seigneurs served as land settlement agents for the Crown and enjoyed a relatively high social status; some of them became wealthy and rose into the ranks of the lower nobility, but the office of capitaine de milice, and the intendant, ensured that this did not occur at the expense of the habitants.

Prior to the establishment of the Crown administration, and during the first decade thereafter, there had been something resembling representative government in the colony through the office of popularly elected syndics. In 1647 the king had sanctioned the election of these syndics by the residents of Quebec, Montreal and Trois-Rivières. They sat in the Council at Quebec and presented the views of the townspeople in matters concerning them, but had no deliberative voice. In 1648 this was modified and two habitants, chosen by the Council at a public assembly, became regular members of the Council. Then, in 1657, a new edict decreed that four members of the Council were to be elected by the general populace.

After 1663 the office of syndic was continued and played a useful role prior to the appointment of an intendant, but at Quebec the post became a subject of contention between bishop Laval and governor Mézy. Frontenac subsequently introduced some dubious innovations and was severely reprimanded by Colbert who had no liking for representative institutions. He insisted that in relations between rulers and ruled each subject must speak for himself and no one should speak for all. To modern eyes this might appear a retrograde step but considering the anarchy from which France had only recently emerged his attitude is neither surprising nor reprehensible. On his orders then, the office of syndic was allowed to lapse and after 1674 is heard of no more.

Yet the governor and intendant were required to take considerable pains to solicit the views of the people before enacting laws that affected the general interest. When such a question arose it was customary to call an assembly of the people at large, or at least of those directly affected, and be guided by the majority opinion. Between 1672 and 1700 seventeen such assemblies were held and on at least one occasion the intendant subsequently enacted legislation in accord with the expressed wishes of the assembly, and contrary to what he himself had recommended. In 1706 Pierre de Rigaud de Vaudreuil and the intendant Jacques Raudent suggested that a general assembly should be held every year when the ships from France arrived, since many of the residents of Montreal and Trois-Rivières came to Quebec
on that occasion. This annual assembly was to be called to consider
the questions submitted to it by the governor and intendant who
would delegate someone to serve as *rapporteur* to explain the issues to
be discussed. The governor and intendant were to give their views
after every one else and the intendant would then "collect the voices",
that is, each member would briefly state his opinion on the question
submitted. The *rapporteur* would then draw up the minutes of the
meeting, which would be signed by him, by the governor and intendant,
and by five members of the assembly, two from Quebec, two from
Montreal and one from Trois-Rivières. Upon receipt of this suggestion
Louis XIV immediately ordered that it be drawn up in judicial form
so that such assemblies could be held at Quebec in a proper and regu-
lar manner every year. Thus the people of the colony did have some
say in the administration of their affairs and the authorities did try
to legislate in accordance with their views.

IV

One of the chief functions of the colonial administration was the
preservation of order. Lacking a police force the emphasis had to be
on the swift apprehension and punishment of lawbreakers in the hope
that this would serve as a deterrent. To this end the French employed
the inquisitorial rather than the adversary system favoured by the
British. It would, however, be a serious mistake to assume that the
French system was inferior; if anything the reverse was true. In the
17th and 18th centuries British criminal law was peculiarly savage;
an accused was not allowed legal counsel, the death penalty was man-
datory for petty felonies, the rights of property were supreme over all
other considerations, and imprisonment for debt was commonplace. In
New France death by hanging, or being broken on the wheel, was
invoked only for such serious crimes as murder, rape, or robbery with
extreme violence; even then it was not mandatory and mitigating
circumstances frequently resulted in lesser punishments being inflicted.
For less serious offences the penalty could be a few hours in the stocks,
a monetary fine, branding with a red hot iron, flogging, or a term of
years in the Mediterranean galleys. *Imprisonment for debt* was un-
known; indeed, royal edicts expressly forbade even the seizure of an
habitant's cattle for debt on pain of a very heavy fine and dismissal
from office for the judge concerned.

The senior law court in the colony was, of course, the Sovereign
or Superior Council. It served as both court of first instance and of
appeal. Unlike the lower courts, its members were not allowed to
charge fees. Any case heard in a lower court could be appealed to the
Council and all cases where a sentence of capital or severe corporal
punishment had been imposed by a lower court had to be reviewed by
the Council. Frequently the sentence was reduced and sometimes the
verdict of a lower court would be dismissed. Originally, appeals from
the verdicts of the Council could be taken to the Conseil des Parties
in France. This, however, was very expensive and in civil suits it
meant that a rich man could prevent a poor litigant obtaining justice.
In 1677 Colbert gave orders that no more appeals to courts in France
would be entertained since they appeared to defeat the ends of justice.
By the early 18th century, however, the practice had been reinstated,
causing the intendant Raudot to protest that it had undermined the
authority of the Superior Council and could result in a denial of
justice to the poor.

The lower Royal courts in the three towns, each consisted of a
judge, attorney-general, clerk and two or three huissiers who per-
sorted some of the functions of police officers. In a few of the country
districts there were seigneurial courts from whence appeals could be
taken to a Royal court, then if need be to the Council. The Quebec
Prévôté also served as an Admiralty Court but the increase in mari-
time cases caused the king, in 1717, to establish a separate Admiralty
Court at Quebec. In that same year a Superior Council was estab-
lished at Louisbourg. The royal edict creating it is quite revealing.
Justice, it stated, “was the foundation of the tranquillity of the peo-
ple and the essential bond of civil society...” No fees could be
charged by this court; and in the lower court fees had to be waived
for those too poor to pay them.

Petty civil cases, where less than one hundred livres was involved,
the intendant at Quebec could deal with alone and appeals against his
judgements could be taken to the Council. Since such cases were dealt
with very swiftly and there were no fees of any kind, this device was
a boon to the habitants, and also to visiting merchants from France
who could not afford to delay a sailing late in the autumn. In more
serious civil suits, where both parties requested it, the intendant could
serve as arbitrator and his decision had to be accepted as final. In
1706 the intendant Jacques Raudot declared that in the previous year
he had adjudicated over two thousand such cases in Montreal and
Quebec without any costs to the parties concerned. He commented:
“By this method the rich cannot oppress the poor, who lack the means
to take their cases to the ordinary courts.” If, for good reason, the
intendant believed that justice was not being done in a particular case
he was empowered by the terms of his commission to take the case
out of the court and try it himself, but he could do this only in
extreme circumstances and had to be prepared to justify his action to
the minister.

To ensure that justice would not be excessively expensive in New
France, the Crown, fully aware of the rapacity of the legal profession
and frustrated in its attempts to enact reforms in France, took two
quite effective steps. One was to forbid lawyers to practice in the colony. The intendant de Meulles remarked that this was one of the wisest moves that could have been made. The drawing up of contracts and work of this sort was performed by notaries who were kept under close surveillance by the intendant. Any failure on a notary's part to perform his duties in a proper manner could, and sometimes did, result in his being suspended from his functions for a few months. The other method employed by the Crown to ensure cheap justice was the rigid enforcement of a tariff of fees that could be charged by the legal officials from judges down to bailiffs. The most striking thing about this tariff is how low the fees were; for example, a notary could charge only 1 livre 4 sols (roughly the equivalent of $2.50) for searching a title, and a judge only 8 livres when he was required to spend a day out of town taking down the deposition of a witness. In civil suits, where a sizeable piece of property was involved, these fees could mount up to some forty or fifty livres, even 100 livres on occasion. But compared to legal fees charged today for similar transactions, mutatis mutandis, these amounts appear to be modest indeed.

It is, of course, very difficult to discover from the records of criminal cases in law courts anywhere, at any time, to what degree the justice meted out was equitable. Those declared guilty always appear, or are made to appear, so. The criminal records of New France are no exception. It does, however, appear that that no one in the colony was punished without an exhaustive investigation to discover all the evidence, and an intensive study of it. When a crime was found to have been committed the local judge, or the attorney-general of the Sovereign or Superior Council, ordered an investigation. Anyone thought to have knowledge of the crime was interrogated by the judge or by a member of the Council delegated by the attorney-general. If the evidence thus obtained appeared to reveal the identity of the guilty party he was apprehended, charged, and lodged in gaol. Held incommunicado, he was then put to the question ordinaire; that is, questioned and his statements taken down. Anyone having knowledge of the crime was also interrogated, everything he said was taken down in writing and after an interval read back to him to see if he wished, on reflection, to revise or add to his testimony. The witnesses could be confronted with the accused and questioned again; what then came to light could call for another round of interrogation of both the accused and the witnesses, always under oath. This could be repeated several times until the interrogator was satisfied that all the conflicts in the evidence had been reconciled or satisfactorily explained. Occasionally, when all other means to this end had seemingly failed, the accused was forced to submit to torture. Boards were bound to his shins, wedges inserted and struck with a hammer by the maître des hautes œuvres, crushing the bones painfully. After each stroke of the hammer the inter-
rogators put their questions, until they were satisfied he was telling the truth. This form of interrogation was known as the question extra-
ordinaire. Finally, all the evidence and testimony was submitted to the attorney-general — if the case were being heard by the Superior Council — who laid it before the court, gave his summation, then retired. The members of the Council studied the dossier, discussed it, and after mature reflection delivered their opinions. The intendant then delivered the verdict and a member of the Council read the sentence to the prisoner in his cell and it was carried out within a day or two, sometimes the same day.

Although there were occasional complaints of corruption in the lower courts, when they occurred they were swiftly investigated by the intendant and corrective measures taken. Arbitrary arrest, except for treason or sedition, was expressly forbidden by royal decree and poverty did not prevent even the humblest Canadian having his day in court. There can be no doubt that justice in New France was swift, impartial and cheap. Little wonder then that the Canadians were notoriously litigious; they could afford to be.

V

Until the closing years of the French régime, when Bigot and his clique made a mockery of established institutions, Canada was provided by the Crown with an efficient administrative system and officials of a relatively high degree of competence and probity. There is little or no evidence of dissatisfaction with the administrative system on the part of the colonials, only with the manner in which some of the officials discharged their duties. This may have resulted from their realization that they had better government than they could have provided for themselves, or perhaps because they could not conceive of things being arranged differently. Another possible reason was that virtually no direct taxes were levied in the colony. The costs of the administration were paid from import duties on wines, spirits and tobacco, and export duties on some furs. On a few occasions local taxes were imposed for defence works or to aid the poor, but few people were affected by them. Lacking this major bone of contention, from which usually stems the urge for political power, or at least change, the people of Canada were quite content to leave government to the appointed officials and counted themselves fortunate when these men were relatively honest and efficient.
BIBLIOGRAPHICAL NOTE

Unfortunately, most of the documentary source material directly concerning the administration of New France prior to 1663 appears not to have survived. After that date there is a great deal. The records of the Sovereign Council are preserved in the Quebec Archives. The *Jugements et Délibérations* of the Council, down to 1716, have been published in six volumes. For the period from 1717 to 1760 only an inventory of the Council’s judgements and deliberations has so far been published; it is, however, very useful. The *Edits et Ordonnances* of the intendants have also been published by the Quebec Archives in three volumes with a fourth volume index. The *Edits, ordonnances royaux, déclarations et arrêts du conseil d’État du Roi, concernant le Canada*, published in 1854, contains much useful material. Microfilm and transcripts of the correspondence between the ministry of marine and the colonial administrators are to be found in the Public Archives, Ottawa. Significant selections from it have been published from time to time in the *Rapports de l’archiviste de la Province de Québec*.

There are several scholarly works on French government and administrative bodies under the old régime, but one of the more useful studies is the brief essay by F. C. Green, *The Ancien Régime. A Manual of French Institutions and Social Classes*, (Edinburgh, 1958) The A. de Boislisle edition of the *Mémoires de St. Simon*, (Paris, 1879) in 41 volumes, contains in its multitudinous notes and appendices a mine of information on all aspects of France of the 17th and early 18th centuries. Marcel Marion, *Dictionnaire des institutions de la France aux XVIIe et XVIIIe siècles*, (Paris, 1923) is a useful reference work. Gustave Lacot’s published doctoral thesis, *L’administration de la Nouvelle-France*, (Paris, 1929) is a succinct survey of the main institutional features of the colonial administration. R. du Bois Caball’s, *The Sovereign Council of New France*, (New York, 1915) is vital for an understanding of the history and working of this important body. The article by Allana G. Reid, “Representative Assemblies in New France”, in *The Canadian Historical Review*, vol. XXVII, March, 1946 is illuminating, and that by L. B. Munro, “The Office of Intendant in New France”, in *the American Historical Review*, vol. XII, 1906 can be read with profit. The thorough study of crime and punishment in New France still awaits a scholar; the brief article by André Morel, “La Justice criminelle en Nouvelle-France”, in *Cité Libre*, janvier 1963, is an intriguing comment on the topic. A more extensive preliminary but useful study is that by André Lachance, *Le bourreau au Canada sous le régime français*, Société historique de Québec, Cahiers d’histoire no 18, (Québec, 1966).