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G. F. McGuigan

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**ADMINISTRATION OF LAND POLICY
AND THE GROWTH OF
CORPORATE ECONOMIC ORGANIZATION
IN LOWER CANADA 1791-1809**

G. F. McGuigan

University of British Columbia

It is no revelation to Canadian historians to hear that there are large areas where basic research is required either to fill out patterns of historical development already outlined or in other cases to explore areas where little or nothing has been done. Perhaps economic history suffers more from this lack of basic research than any other branch of Canadian history. Tenuous lines of development have been traced out by studies in the fur trade by Innis and in the timber trade by Lower. While these and other works which deal with such aspects of economic development as canal building, railroads and commerce are an indispensable base for explaining the process of development and for establishing some of the relationships between the economic and the political in the period before 1867, they are by no means sufficient for a clear and complete picture of the period. Knowledge of those areas where research has been lacking has been left mostly to our imaginations or to what can be drawn by inference. Relatively little is known, for example, about manufacturing in the period 1790-1867 or the business organization and investment connected with it. Perhaps the most neglected area has been the history of land policy and the distribution and ownership of land during the period 1790-1867 and its relation to economic and political development. Some work has been done on the seigniorial system and the land companies. However, these works, while helpful, have tended to be incomplete and not related to the context of contemporary economic and political development.

The present paper is the product of recent work done on the development of land policy and methods of alienation and distribution of land in Lower Canada from 1763 to 1809.¹ This research, carried on over a period of the past six years, has dealt with land granted under the tenure of free and common socage in that area which now comprises the Eastern Townships of Quebec. The present paper does not make a full report of the work done, but concentrates only on one small aspect of the development of land policy and land tenure — that of the

¹ The complete results of this study were presented at the University of Laval in September 1962, in a dissertation entitled "Land Policy and Land Disposal under Tenure of free and common socage, Quebec and Lower Canada 1763-1809." The author would like to thank Miss Margaret Prang, Albert Faucher, John Norris and Rev. T. J. Hanrahan for their help and suggestions in the preparation of the present paper.

relationship between the emergence of indigenous corporate forms of economic activity in Lower Canada and land tenure, with its attendant rules and regulations as an implementation of land policy. In this paper I would like to show ; (1) that there were economic organizations in the sphere of land exploitation during the period 1791-1809, which although not corporations in the legal sense did display most of the rudimentary characteristics of corporate activity; and (2) that there were two distinct but related causes of the emergence of these corporate forms. In order to do this I would like first to indicate briefly the nature of the leader and associate systems as found in Lower Canada in the period 1792-1809, and, secondly, to discuss two related lines of development which begin in the early colonial period and form the background for the adoption of the leader and associates system in Lower Canada. These two developments help to explain how the leader and associates group assumed the characteristics of crude corporations. The first development deals with the change in British colonial land policy during this period and the contrasts in colonial land policy before and after 1763. The second line of development traces the corresponding changes in the method of administering land policy during the same period.

The tendency for some leader and associates groups to develop along corporate lines, can be explained, I will suggest, by the existence of the tradition of corporate organization in the New England townships which was the sufficient cause of the emergence of corporate organization in the Eastern Townships. However, the efficacious cause of the development was the atmosphere of uncertainty generated by the clash between the internal administrative logic necessary to administer the new policy of grants and distribution of land in severalty which was developed after 1763 in Quebec, and the internal logic of the leader and associates system which had a background of corporate organization in the New England colonies before 1763.

One might ask why 1809 was chosen as the terminal date of this study. The reason is that this date marks the end of the leader and associates system in Lower Canada. This system was the method of colonizing chosen for the Eastern Townships after 1791 in response to the flow of immigrants to Quebec, many of whom came from the New England states.

The leader and associates system was a method of colonizing which originated in the thirteen colonies. It was adapted to Canadian use during the period 1791-1809 in Lower Canada. In broad outline the system was based upon the principle of giving large tracts of land, whole townships in some cases, to groups of settlers who operated under the guidance of a leader. The land was given to the group with the knowledge that each individual would retain only a portion of

the land granted to him under the patent. The portion retained by each associate was usually 200 acres out of a possible 1200 acres granted to him in the patent. The surplus 1000 acres went to the leader for his expenses and trouble in organizing, petitioning and surveying the land for occupancy by the group of associates and other settlers who would buy the surplus land from the leader.

In the original thirteen colonies there had been two principal methods for settling colonists on the land.² Both systems were employed from the beginning of colonization and were in use in modified form even after the revolution. The two methods adopted were the headright system and the township system. The headright system³ was used at one time or another in almost all of the original thirteen colonies, with the exception of the New England colonies where the township system, which was based upon the leader and associates group, was adopted. In both systems the Crown chose to delegate the practical aspects of settlement to officials of the chartered colony. For this reason the original charters did not indicate by name the individual settlers and the particular plot of land allocated to him, but indicated only the area to be granted. It was assumed that the grantees — and this was an essential part of the monopoly agreement under the charter system — would further grant the land to the settlers. In the colonies then, the original charter group ordinarily received the land in title held of the king and were given the privilege of dividing and regranting the land to individual settlers under their own seal.

To all outward appearances it was a modified form of the New England township system which was adopted in the Eastern townships of Lower Canada after 1791. In Canada, however, the system was developed in a political and administrative context entirely different from that in which the system originated. It is this difference in political and administrative context and the resulting clash between the rationale and logic of the leader and associates system coming from New England and the new land policy originating in 1763 for Quebec which lies at the heart of the problem of explaining the rise of the first indigenous corporate forms of economic activity in Lower Canada.

In its most general terms, the context out of which the corporate form developed was one of conflict between the centralizing tendencies of the new land policy and the decentralizing tendencies of marginal areas in political and fiscal matters.

As a first step towards explaining the emergence of indigenous corporate forms of economic activity in Lower Canada after 1791, let

² It is extremely difficult to generalize on methods of colonization in America because of the great variety of land tenure systems and policies and the changes to which they were subject in the pre-revolutionary period.

³ Marshall Harris, *Origin of the Land Tenure System in the United States*, (Ames, Iowa, 1953), Chaps. 12 and 13.

me deal briefly with the changing political context of economic action from the founding of chartered colonizing agencies down to 1763 and then discuss the corresponding changes in administrative systems.

In all societies one of the main functions of land tenure has been to define the character and mode of operation of the social unit in its political, social and economic aspects. Under the feudal system of land tenure the political, social and economic units were identical. This identity between economic and political power which was the basis of feudal fiscal organization has persisted as an overt form of organization even down to fairly recent times. What is interesting for our purpose is that this social organization characterized by a unity of political and economic power became obsolete as a unit of the landed economy as decentralized political and economic power were replaced by centralized economic and political control. Nevertheless it was adopted in an analogous form during the 17th century as the basic unit in the expanding field of commerce with the creation of chartered companies and colonies as instruments of European sovereigns for the extension of economic and political power to the New World. There was in the 16th and 17th century chartered organization, as there had been in its feudal counterpart, a close relationship between commerce, political power, control and division of land resources.⁴ The precise land tenure systems adopted in America and the colonial land policies that grew out of these systems, varied of course from colony to colony depending upon whether the colonies were chartered as proprietary, corporate or royal.⁵ After 1763 with the creation of the royal province of Quebec there was a notable change in British colonial land policy.⁶ It would appear that the experience of two centuries of close association between political and economic power in the chartered company was foremost in the minds of those laying down the basic framework of land policy for those lands to be granted in free and common socage in the royal province of Quebec. After 1763 colonial authority was equally aware of the seigniorial system which had been established in New France for some two centuries past. In addition to these influences shaping land policy were the possible spread of the spirit of American independence to Canada (a contagion which was bred in the culture of politically autonomous chartered colonies) and the military problem of containment and security posed by the unsettled state of Indian lands.

⁴ *Ibid.*, chaps. 7 and 16.

⁵ *Ibid.*, pp. 74-79. Cf. also *Blackstone's Commentaries*, Sharwood (ed.), Phil., 1859, Vol. 1, Intro., p. 108.

⁶ It has been suggested by one writer at least, that the most notable change in policy during the period was the recommendation by the Board of Trade in 1773 and 1774 that all American governors, with the exception of Carleton in Quebec, introduce a uniform system for the sale of land. However, a detailed study of the actual land sales policies of the colonies before the Revolution does not seem to support this suggestion. Cf. R. G. Riddell "A Study in the Land Policy of the Colonial Office, 1763-1855", C.H.R., Vol. XVIII, Dec. 1937, No. 4, pp. 385-405.

By the end of the Seven Years War it would seem that the chartered company as a means of colonization and the extension of European economic and political power to the New World had outlived its usefulness. Not only had the joint stock company as a means of accumulating capital and assisting the government in times of financial crisis come under a cloud in the speculation mania of the first two decades of 18th century England but also the commercial corporate colonies, particularly those in New England, were becoming increasingly independent, politically and fiscally.

Thus even before the Revolution of 1776, the experiment (unsuccessful in the eyes of the British), of colonizing by commercial companies was abandoned as disruptive of the purpose of the British Empire. The crown was fearful of the delegation of political power and possible losses of revenue derived from import and export duties and quit rents.⁷ Law too, had set itself firmly against what it thought to be the irresponsibility of the process of accumulating capital by means of the joint stock company.

Thus in contrast with what it had been earlier, the British land policy in Quebec after 1763 appears to have been based upon the principle of retaining in the hands of the king, political power and power over division of land, and over resource alienation and its revenue. To this purpose the older system of using chartered companies or colonizing agencies was abandoned and a system of direct grants from the king to the subjects in severalty, without the interposition of any agency holding land in common by charter, was laid down in theory as the basis of the new policy. It would appear that the intention of this policy was first, to prevent the growth of land monopoly, second, to retain the revenues from land in the hands of the king and, third, to discourage in Canada any growth of the revolutionary spirit which had characterized the American corporate colonies.

The second line of development I would like to trace as a basis for understanding the corporate nature of the leader and associates group in Lower Canada is the change in methods of administering the alienation and disposal of land. Generally speaking the administration of land policy under the earlier system of colonization was, in keeping with the decentralized character of the policy itself, one based on delegation of powers over division and alienation to quasi-autonomous bodies which in the course of time assumed many prerogatives of the corporation.⁸ Under the new land policy of individual grants in severalty

⁷ Cf. John Norris, *Shelburn and Reform*, (London, 1963), Chap. 3, "A Policy for America". Cf. also Harris, *Origins*, pp. 324-331, and B. W. Bond Jr., *Quit Rent System in the American Colonies*, (New Haven, 1919).

⁸ Shaw Livermore, *Early American Land Companies*, (New York, 1939), Intro. and p. 26 fn.

formulated for Quebec after 1763, the administration of land policy and record keeping was centralized.⁹

The clash between the two systems became apparent after 1791. When attempts were made to apply the new policy in Lower Canada, the policy of centralization based upon the individual grant in severalty was shattered upon the reality of the necessity to colonize virgin territory by groups. Under these circumstances the leader and associates system with which the immigrants from the New England states were already familiar was adopted in practise but not as a matter of high policy. The leader and associates system then, as an offshoot of the New England method of corporate colonization, was in Lower Canada grafted on to a bureaucratic structure of quite a different species and inspiration.

The bureaucratic structure of paper work designed to implement the granting of land in severalty directly from the king was in direct opposition to the principles of corporate power and holding land in common. This is most evident when we consider that nowhere in the New England states does one find at present a corpus of government documents dealing with division and distribution of land which corresponds to that found for Lower Canada for the period 1792-1809. In the New England states records dealing with the division and disposal of land for this same period and earlier are ordinarily found even today in the office of the local town clerk and in some cases in the country office. This is what one might expect, since the administration of land in the New England colonies was a local affair designed to accommodate the local autonomous character of the leader and associates group. The paper work in Lower Canada on the contrary was designed to implement a policy of individual grants in severalty and was highly centralized. In the New England system the procedure was for local bodies, having received land in common from the government of the colony, to grant it to individuals and to establish rules of tenure and land transfer or modify existing ones, in so far as they could, to facilitate corporate action. In Lower Canada where individuals received land directly in severalty from the king or his delegate, the grant was recorded and confirmed in a vertical process of responses, confirmations and recommendations to higher and higher authorities until it reached the governor. The approval was then transmitted in the reverse order through the hierarchy to the grantee. In this system individuals were dealt with as individuals. The notion of group representation was completely alien to this system and had no support in common law. At all times even today, except by accident, the bulk of these land papers is located only in the administrative centres of Quebec City and Ottawa.

⁹ Regulations for the Conduct of the Land Board 17th February 1789, P.A.C. RGI, L1, Minute Books, Quebec, Land Book A, pp. 273-282 and pp. 352-357.

The immediate consequence of this clash between a centralized administrative process based on individual grants in severalty and the decentralized private system of distribution based upon the group was confusion, delay and uncertainty. The administrators on the one hand attempted to realize the ends of the policy formulated in the period 1763-1791 but on the other they knew that if in practice, colonization was to be undertaken they had to adopt a system which by its nature would weaken if not defeat their intentions. Thus every decision concerning land policy was surrounded with confusion and uncertainty.

Despite the fact that in the first three years of the operation of the leader and associates system in Lower Canada, the immigrants were issued certificates of pretension to some 10,000,000 acres of land,¹⁰ such vital matters as the amount of land each individual should be given, the fees which would be paid, the responsibility for surveying, the location of clergy and crown reserves, were all left in abeyance and some immigrants were therefore forced to take title by occupancy. Some of the decisions, the matter of fees and the amount of land, for example, were not made until 1797, and the question of surveying not until 1798. Indeed, at one point because of the confusion and disagreement over one requirement of settlement, that of the oath of loyalty, virtually all the pretensions to land held by the American immigrants were declared invalid.¹¹

It was precisely this climate of uncertainty and delay caused by the clash of opposing administrative systems which led leader and associates groups to adopt the characteristics and techniques of corporate organization for the purposes of survival.

The detailed financial and administrative records of several leader and associates groups, particularly those of a Samuel Willard, a loyalist from Vermont who was leader in the township of Stukely,¹² show an exact correspondence between the indecision and delay of the government and the adoption of corporate techniques of survival on the part of the leader and associates groups. Among the characteristics of corporate activity thus revealed were (1) the method of land holding by means of the creation of trusts which was distinctly different from

¹⁰ This estimate based on P.A.C., RGI, L1, L.C. Land Book C., Pt. 11, pp. 331-336 and *ibid.*, L3L, Vol. 5, Warrent Book, 1795.

¹¹ In 1795-96 petitioners holding land in some 70 townships amounting to approximately 3,150,000 acres of land lost their claims. (*Ibid.*, Vol. 1. 37 pp. 34-36 and P.A.C., Collections Brome County Historical Society, IX, Township papers A, Minute Books, Nov. 28, 1797.) By 1809 almost 11,000,000 acres had been promised but by 1815 little more than 2,000,000 acres had been actually granted both in and outside the leader and associates system. (Quebec Provincial Archives, Patents of Land.)

¹² P.A.C., Collections Brome County Historical Society, Samuel Willard Papers 1783-1899.

that of the simple partnership;¹³ (2) the transfer of shares and inheritance of shares;¹⁴ (3) the financial support of the associated company by means of investment by persons not engaged in the administration and decision making of the company;¹⁵ (4) the unity of organization obtained by delegation of decision making and authority to agents and attorneys, and (5) the fact that despite the change of personnel in the organization by death and by sale of shares no new agreements were struck.

The adoption of these characteristics of the corporation by leader and associates companies was in response to two sets of influences. The combination of delays and confusion concerning regulations and their application created a condition of uncertainty. Logically speaking one could have found many possible solutions to this condition of uncertainty and the threat which it posed to the survival of the leader and associates group. However, in actual fact it was the existing predispositions of the immigrants toward some form of corporate organization which provided a solution and led them in the face of an uncertain future to abandon the partnership form as inadequate and to evolve in the direction of corporate organization.

While the change from the simple partnership type of organization to a more complex form of business organization is evident in a study of the leader and associates groups, the change in form and in quality should not be exaggerated. Of the fifty leader and associates groups actually granted land, out of approximately 157 which had been promised grants in 1792 or 1793,¹⁶ some retained many of the principles of organization of the simple partnership. In addition we find other groups which, while having progressed beyond the partnership form, terminated in a type of organization whose characteristics approximated the syndicate rather than the corporate form. The point to be recognized is that this was a period of crucial change in Canadian economic organization when businessmen were experimenting with new forms of organization. It is to be expected that while they displayed some of the techniques of organization which were to emerge in legal form some fifty years later as the non-chartered registered company, nonetheless they retained during the period of change many of the older forms of organization. Had the government accomplished its plan to

¹³ Lease and Release, Samuel Gale and others to Abraham Cuyler of Lands held in Trust, June 13 and 14, 1799. Deposited P. Lukin, N.P., July 16, 1799, Juridical Archives, Montreal.

¹⁴ P.A.C., Collections, Brome County Historical Society, Samuel Willard Papers, IX, Township Papers by Township, Stukely C., pp. 38-59 and P.A.C. Minutes of Council, June 11, 1798, Land Book D., pp. 179-188, Art. five of the Instructions of 1798.

¹⁵ E.g., Bond for lands in Stukely, Samuel Willard to John Holbrook, June 25, 1801. P.A.C., B.C.H.S., Samuel Willard Papers, B. Land Papers, pp. 86-87.

¹⁶ P.A.C., R.G.I., L3L, Vol. 5, Warrent Book, 1795.

grant land in severalty in the short time specified in the original regulations, and had there been no clash of administrative systems, it is likely that many of the aspects of corporate activity which characterized the leader and associates groups would not have appeared at all. The simple partnership or joint adventure type of organization would have sufficed.

Although the evidence presented is limited to Lower Canada for the period 1791-1809, it seems reasonable to suggest that further research in the period after 1809, both for Lower and Upper Canada, would show a continuing evolution in the form of corporative structure down to 1850. In tracing the origins of corporate activity in Canada the greatest caution must be exercised in two directions. First, the action of courts and legal precedent do not necessarily reflect the development of the corporation from the point of view of economic causality. Second, evidence seems to indicate that there is no direct line of development between the chartered company and the modern day regulated company. The corporation is not merely a legal creature nor is it some sort of 'free floating' economic phenomenon which has come and gone over the past centuries according to the pleasure or displeasure of law. Rather, there is evidence to indicate, at least in its beginnings; that the cloth of corporate organization, whether created within or outside of the law, was part of the very weave of the contemporary social, economic and political fabric. Further this study suggests something of the nature of a 'spontaneous generation' of corporate forms.¹⁷ It appears that a variety of unique historical circumstances may give rise to corporate forms of organization, each of which receives the imprint of the system of tenure (as expressed in policy and regulation) out of which it grows.

¹⁷ For further discussion of this point see Gerald F. McGuigan, "Some Beginnings of Corporate Action in Canada", *University of British Columbia Law Review*, January, 1964.